



25<sup>th</sup> June 2020

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**Subject:** Appeal FAC150/2019 regarding licence CN83000

Dear [REDACTED]

I refer to the appeal to the Forestry Appeals Committee (FAC) in relation to the above licence issued by the Minister for Agriculture, Food and the Marine. The FAC established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001 has now completed an examination of the facts and evidence provided by all parties to the appeal.

#### **Background**

Licence CN83000 for 2.58 hectares of afforestation at Lisnanaw, Co. Leitrim was issued by the Department of Agriculture, Food and the Marine on 13<sup>th</sup> May 2019.

#### **Hearing**

A hearing of the appeal was held by the FAC on 23<sup>rd</sup> June 2020.

FAC Members: Mr. Des Johnson (Chairperson), Mr. Jim Byrne, Mr. Pat Coman, Mr. Vincent Upton

#### **Decision**

Having regard to the evidence before it and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to vary the decision of the Department of Agriculture, Food and the Marine (DAFM) regarding licence CN83000 through the inclusion of the following conditions,

- To ensure adherence with Good Forestry Practice, a minimum of three rows of native, broadleaf species are to be planted between the aquatic setback and conifer planting.
- To ensure adherence with Good Forestry Practice and to retain existing habitats, a 5-metre habitat setback will be included from all existing hedgerows on site. All existing hedgerows and trees will be retained.

The licence decision pertains to afforestation of 2.58 ha, 85% Sitka spruce and 15% broadleaf, and fencing of 250 metres at Lisnanaw, Leitrim. Site preparation would be through mounding with drainage with herbicide weed control in years 1 and 2 and fertilisation with 250kg per hectare of granulated rock phosphate. The site is described as enclosed, agricultural land with a grass, rush vegetation type and mineral, peat soil at 60 metres elevation and with a neutral aspect. There are existing mature hedgerows on site. The Diffagher River runs adjacent to the north of the site and a setback is proposed.

There is one appeal against the licence decision. The grounds of appeal question why the application was not referred to the NPWS and suggest that it is in close proximity to Boleybrack SAC. It is suggested that the Diffagher river is a salmonid river/trout nursery stream and noted for otters, kingfisher and bats and floods have occurred and question why the application was not sent to the NPWS or Inland Fisheries Ireland. The grounds also question why the application was not sent to the County Council and suggest that Lough Allen is a priority area for the protection and improvement of water quality. The grounds suggest that the appropriate assessment screening is not accurate and that there was a lack of consultation and anger amongst the local population. The grounds also suggest that the application is in breach of the EU Habitats and Water Framework Directives.

In a statement to the FAC, the DAFM suggested that they had sufficient information to make a decision on the application, that referral to prescribed bodies is not mandatory and was not deemed necessary by the inspector. They suggest that the proposal would not have an impact on the SAC due to the distance from it and that the Environmental Requirements for Afforestation will be sufficient to remove any risks associated with the development. They suggest that the notice and consultation periods were adhered to and contest the suggestion that the application is in breach of EU Directives.

Regarding the assessment of impacts on European sites and the environment, before making a decision the FAC undertook a screening of the proposal for appropriate assessment and an examination regarding the likelihood of significant effects on the environment, which are available on the public file. There are three European sites within 15km and based on the nature and scale of the development significant impacts on sites outside of this radius are not considered possible. Boleybrack Mountain SAC 2.6km to the north of the site and covers a large area of 4,242 ha. The conservation objectives are to maintain or restore the favourable conservation conditions of a number of terrestrial habitats based on specific attributes and targets. The proposal is downstream from the SAC and on the opposite side of the Diffagher river. Lough Gill SAC lies 8.2 km to the west in a different catchment and with no hydrological connection which in combination with the degree of separation would preclude impacts arising from the proposal. Cuilcagh - Anierin Uplands SAC lies 10.5km to the east in a different subcatchment with no hydrological connection with the proposal. Having regard to the scale, nature and location of the proposal, other developments in the area, the qualifying interests and conservation objectives of the European sites in proximity to the proposal, the absence of a hydrological connection or other pathway of effect and the separation distance to those sites, the FAC concluded that there is no likelihood of significant effects on any European site from the proposal alone or in combination with other plans or projects. The proposed afforestation of 2.56 ha is substantially sub-threshold for the mandatory submission of an Environmental Impact Assessment Report and is located in a rural landscape with existing agriculture and forests c.3km to the north of Drumkeeran. The proposal is not considered by the FAC to be a threat to water quality. The use of inputs, fertiliser and herbicide, are proposed in the management of the forest but these would not be out of keeping with land use in the area and would be limited and controlled by the licence. The area is not within an SAC or SPA and it is not considered that there is a likelihood of it impacting on designated sites. Having regard to the nature, small scale and location of the proposal, the FAC concluded that there is no real likelihood of it resulting

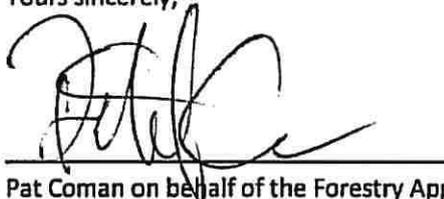
in a significant effect on the environment, itself or cumulatively with other projects, and that the submission of an Environmental Impact Assessment Report or formal screening is not required.

The FAC has been provided with no convincing evidence of protected species being present in or adjacent to the proposal and can find no information in the public domain to that effect. The lands are described as enclosed, agricultural land with a grass, rush vegetation type. There are evidently existing mature hedgerows on the land which must be retained but the FAC is including a 5-metre setback from the hedgerows to provide some protection of the habitat and to enhance the proposal. To enhance the setback habitat a minimum of three rows of native broadleaves will be planted adjacent to the setback.

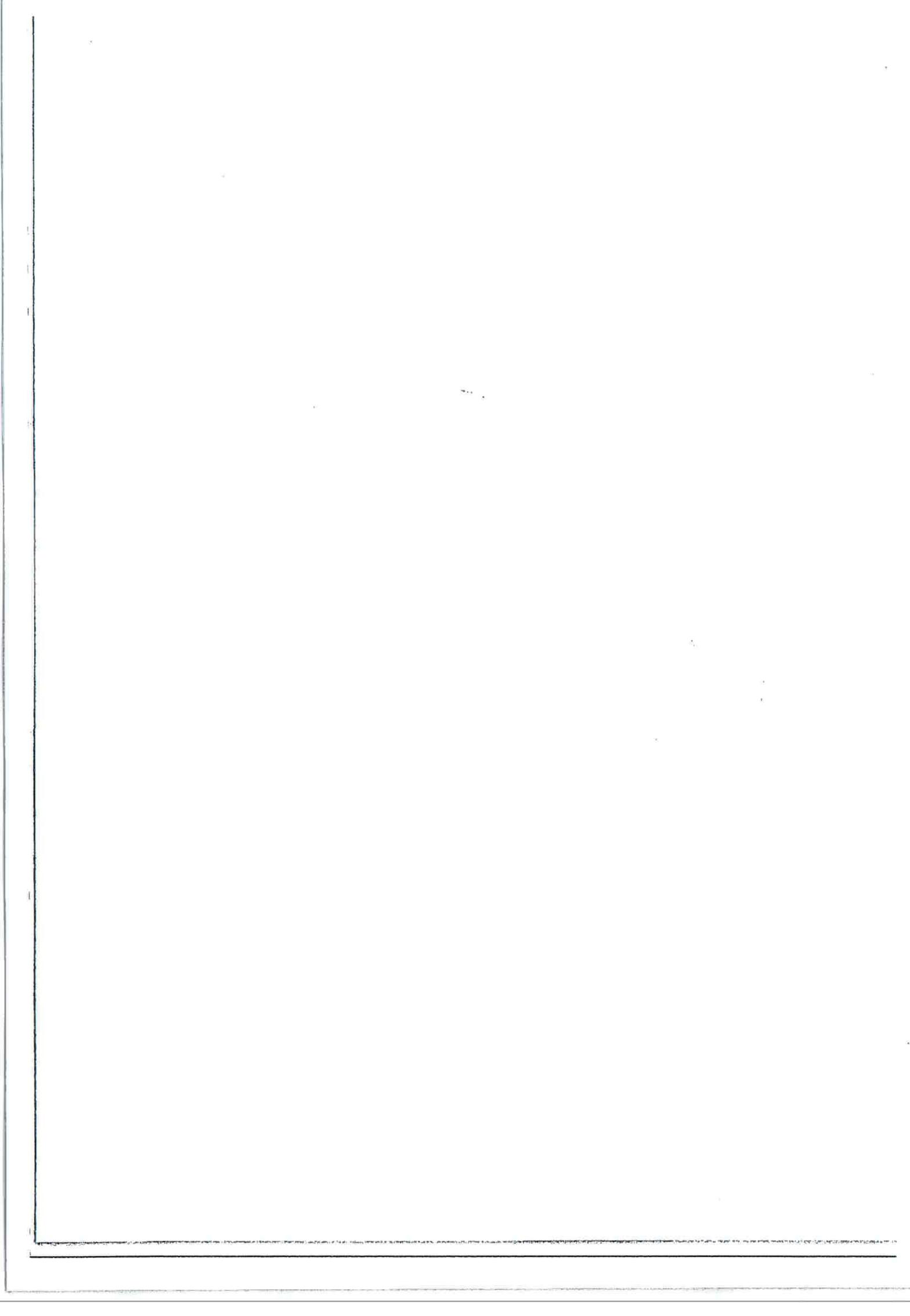
The FAC was provided with a copy of the original site notice and considers that consultation was appropriate in this case and provided for submissions from the public. Regulation 9 of the Forestry Regulation 2017 addresses notices to consultation bodies and the circumstances in which the Minister will make such notices. As noted, the FAC does not consider the proposal to pose a significant threat to water quality or any designated site and the landscape in the area is not designated. The FAC does not consider that referral to consultation bodies is required in this instance.

The FAC concluded that the proposal is in line with Government policy and good forestry practice. Before making its decision, the FAC considered all of the information submitted with the application, the processing of the application by the DAFM, the grounds of appeal and any submissions received.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Pat Coman', written over a horizontal line.

Pat Coman on behalf of the Forestry Appeals Committee





**FAC150/2019 CN83000 Lisnanaw, Leitrim**

**24th June 2020**

Before making a decision, the Forestry Appeals Committee (FAC) undertook an appropriate assessment screening and an examination regarding the likelihood of impacts on the environment of the proposal in relation to the requirements of the Habitats Directive and the Environmental Impact Assessment Directive respectively. These considerations were based on information provided by the applicant, DAFM and other parties to the appeal and information available in the public domain.

The licence decision pertains to afforestation of 2.58 ha afforestation (85% SS and 15% broadleaf) and fencing of 250 metres at Lisnanaw, Leitrim. Site preparation would be through mounding with drainage with herbicide weed control in years 1 and fertilisation with 250kg per hectare of granulated rock phosphate. The site is described as enclosed, agricultural land with a grass, rush vegetation type and mineral, peat soil at 60 metres elevation and with a neutral aspect. There are existing mature hedgerows on site and a five metre setback has been included by the FAC. The Diffagher River runs adjacent to the north of the site and a ten metre setback has been proposed.

#### **Appropriate Assessment Screening**

There are three European sites within 15km and based on the nature and scale of the development significant impacts on sites outside of this radius are not considered possible. These European sites and their direct distances to the proposal and qualifying interests are listed below. Boleybrack Mountain SAC 2.6km to the north of the site and covers a large area of 4,242 ha. The conservation objectives are to maintain or restore the favourable conservation conditions of a number of terrestrial habitats based on specific attributes and targets. The proposal is downstream from the SAC and on the opposite side of the Diffagher river. Lough Gill SAC lies 8.2 km to the west in a different catchment and with no hydrological connection which in combination with the degree of separation would preclude impacts arising from the proposal. Cuilcagh - Anierin Uplands SAC lies 10.5km to the east in a different subcatchment with no hydrological connection with the proposal. This large SAC has been designated on the basis of a number of terrestrial habitats and a species and the proposal sits at a considerable remove from the SAC.

There are no licence conditions that relate to the mitigation of impacts on European sites and none were included in this assessment.

Other afforestation licences have been granted in the area but few in recent years with one which is directly adjacent to the proposal There are existing blocks of mature forest to the west and east of the proposal and a number of felling licences have been granted. Garvagh Glebe Windfarm is situated c.6km to the southwest but in the opposite direction of Boleybrack Mountain SAC. There are few other forms of development in the area, mainly residential in nature, and there is not considered to be a risk of in-combination impacts of the proposal particularly given its nature, scale and lack of connectivity to any European site.

Having regard to the scale, nature and location of the proposal, other developments in the area, the qualifying interests and conservation objectives of the European sites in proximity to the proposal, the absence of a hydrological connection or other pathway of effect and the separation distance to those sites, the FAC concludes that there is no likelihood of significant effects on any European site from the proposal alone or in combination with other plans or projects.

Site Type	Site Code	Site Name	Distance To (m)	Qualifying Interests (* denotes a priority habitat)	Conservation Objectives
SAC	2032	Boleybrack Mountain SAC	2607.71	<p><b>Habitats</b></p> <p>3160 Natural dystrophic lakes and ponds</p> <p>4010 Northern Atlantic wet heaths with <i>Erica tetralix</i></p> <p>4030 European dry heaths</p> <p>6410 Molinia meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinion caeruleae</i>)</p> <p>7130 Blanket bogs (* if active bog)</p>	<p><a href="http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002032.pdf">http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002032.pdf</a></p>
SAC	1976	Lough Gill SAC	8146.78	<p><b>Habitats</b></p> <p>3150 Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation</p> <p>6210 Semi-natural dry grasslands and scrubland facies on calcareous substrates (<i>Festuco-Brometalia</i>) (* important orchid sites)</p> <p>91A0 Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles</p> <p>91E0 Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>)*</p> <p><b>Species</b></p> <p>1106 Salmon (<i>Salmo salar</i>)</p> <p>1099 River Lamprey (<i>Lampetra fluviatilis</i>)</p>	<p><a href="http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO001976.pdf">http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO001976.pdf</a></p>

				<p>1096 Brook Lamprey (<i>Lampetra planeri</i>)</p> <p>1355 Otter (<i>Lutra lutra</i>)</p> <p>1095 Sea Lamprey (<i>Petromyzon marinus</i>)</p> <p>1092 White-clawed Crayfish (<i>Austropotamobius pallipes</i>)</p>	
SAC	584	Cuilcagh - Anierin Uplands SAC	10464.7 1	<p><b>Habitats</b></p> <p>3110 Oligotrophic waters containing very few minerals of sandy plains (<i>Littorelletalia uniflorae</i>)</p> <p>3160 Natural dystrophic lakes and ponds</p> <p>4010 Northern Atlantic wet heaths with <i>Erica tetralix</i></p> <p>4030 European dry heaths</p> <p>4060 Alpine and Boreal heaths</p> <p>6230 Species-rich <i>Nardus</i> grasslands, on siliceous substrates in mountain areas (and submountain areas, in Continental Europe)*</p> <p>7130 Blanket bogs (* if active bog)</p> <p>7140 Transition mires and quaking bogs</p> <p>7220 Petrifying springs with tufa formation (<i>Cratoneurion</i>)*</p> <p>8110 Siliceous scree of the montane to snow levels (<i>Androsacetalia alpinae</i> and <i>Galeopsietalia ladani</i>)</p> <p>8220 Siliceous rocky slopes with chasmophytic vegetation</p> <p><b>Species</b></p> <p>1393 Slender Green Feather-moss (<i>Drepanocladus vernicosus</i>)</p>	<p><a href="http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000584.pdf">http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000584.pdf</a></p>

The EU EIA Directive (Directive 2011/92/EU as amended by Directive 2014//52/EU) sets out, in Annex I a list of projects for which EIA is mandatory. Annex II contains a list of projects for which Member States must determine through thresholds or on a case by case basis (or both) whether or not EIA is required. Annex II contains a class of project specified as "initial afforestation and deforestation for the purpose of conversion to another type of land use" (Class 1 (d) of Annex II). The Irish Forestry Regulations 2017 in relation to forestry licence applications require compliance with the EIA process for applications relating to afforestation involving an area of more than 50 Hectares, the construction of a forest road of a length greater than 2000 metres and any afforestation or forest road below the specified parameters where the Minister considers such development would be likely to have significant effects on the environment.

The proposed afforestation is substantially sub-threshold and is located in a rural landscape with existing agriculture and forests c.3km to the north of Drumkeeran. The soil is described as mineral and peat and the Teagasc soil map would suggest this area is comprised of poorly drained mineral soil with some areas of peat and the GSI classify the geology of the area as shale. There are existing hedgerows on the site which will be retained and the land is described as enclosed and in agricultural use with a grass rush vegetation type. The proposal does not adjoin any public road and is well setback from any dwellings. Traffic will likely increase during operations but this will be temporary and sporadic in nature and the activities would not be out of keeping with land use in the area. There are no recorded monuments on or adjoining the site. The area is not classified as being of high visual amenity. The area is not considered acid or fisheries sensitive. The lands lie within the Upper Shannon catchment and the Diffagher river is adjacent to the eastern boundary of the proposal. This river flows into Lough Allen at a distance of some 6km. In addition to the 10 meter setback there are conditions on the licence regarding environmental protection and the proposal is not considered to be a threat to water quality. The use of inputs, fertiliser and herbicide, are proposed in the management of the forest but these would not be out of keeping with land use in the area and would be limited and controlled by the licence. The area is not within an SAC or SPA and there is no likelihood of it impacting on designated sites. Existing hedgerows will be maintained and a setback is included, which will provide some benefits in relation to biodiversity. The planting of native, broadleaves adjacent to the river setback is also included to provide for additional habitat benefits. There is no evidence of protected habitats or species on the site or in the area. There are existing forests in the area and an afforestation licence has been granted for land adjacent to the proposal but these are not considered to lead to significant cumulative effects. Having regard to the nature, small scale and location of the proposal, the FAC concluded that there is no real likelihood of it resulting in a significant effect on the environment, itself or cumulatively with other projects, and that the submission of an Environmental Impact Assessment Report or formal screening is not required.

Vincent Upton On Behalf of the Forestry Appeals Committee