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28th April 2020

Our ref: FAC054/2019

Subject: Appeal in relation to afforestation licence CN83021

Dear [REDACTED]

I refer to the appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine in respect of licence CN83021. 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 the parties to the appeal.

Background

Licence CN83021 for afforestation at Loughnagore, Co. Kerry was granted by the Department of Agriculture, Food and the Marine on 15th March 2019.

Hearing

A hearing of appeal FAC054/2019 was conducted by the FAC on 23rd April 2020.

FAC Members: Mr Des Johnson (Chairperson), Mr Vincent Upton, Ms Mary Lawlor and Mr Pat Coman

Decision

Having regard to the evidence before it and the following considerations, the Forestry Appeals Committee (FAC) has decided to confirm the decision of the Minister of Agriculture, Food and the Marine regarding licence CN83021.

The proposal is for afforestation of 3.22 ha of Sitka spruce and alder planted in an integrated mix. The licence also states to *Plant small groups of Birch Scots Pine and Rowan where possible*. Unplanted setbacks for tracks, drains and streams will make up 0.43ha of the site making the planted area less than 3 ha. The site is described as enclosed, agricultural land with a grass, grass rush vegetation type on mineral soil at an elevation of 20m. A stream adjoins the western edge. Site preparation is proposed by mounding with drainage. Fertilisation at a rate of 250kg/ha of granulated rock phosphate and weed control through herbicide use in years 0-2 and manual controls are proposed.

The grounds of appeal suggest that based on the information supplied it was not possible to make a decision which would be in compliance with the requirements of the Habitats and EIA directives, having regard to the following judgements of the CJEU; Case C-258/11, Peter Sweetman and Others v An Bord Pleanala, Case C-164/17, Edel Grace and Peter Sweetman v An Bord Pleanala, Case C-323/17 People Over Wind and Peter Sweetman v Coillte Teoranta, Case C-461/17 Brian Holohan and Others v An Bord Pleanala. It is also suggested that no assessment of cumulative effects had been undertaken.

In a statement to the FAC in response to the appeal, the DAFM stated that they are satisfied that their criteria have been met and recommend no changes to the decision. The DAFM Inspector stated that they conducted a field visit, followed the standard operating procedures and obeyed the forest standards manual. They also state that the species selection is in line with recommendations from the Land Types for Afforestation manual and that all environmental requirements have been considered and identified with an appropriate screening. They also deemed that there was no possibility that this project will have a significant effect on any Natura site, due to physical separation and the lack of any ecological pathway. In response to additional information requested by the FAC, the DAFM provided details of European sites in the vicinity of the site and details of other plans and projects in the area.

In considering the appeal and before making its decision, the FAC undertook an appropriate assessment screening and examined the proposal regarding the EIA Directive, and these considerations are available on the public file.

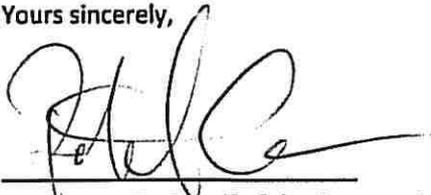
There are eight European sites within 15km of the site. The proposal lies in the Laune-Maine-Dingle Bay catchment and the stream on the western side of the proposal flows north to join the Maine River which runs southwesterly and flows into the sea at Castlemaine Harbour SAC and SPA. The hydrological distance between the proposed site and the SAC is some 20km. The proposal is of a small scale and the site is currently in agricultural use. As the site is on mineral soil and has a neutral aspect the risks of runoff are low and were any to occur it would be of a limited and temporary nature. The Castlemaine Harbour SPA lies outside of 15km from the site and has been designated primarily on the basis of a number of coastal seabirds and the proposal lies beyond their typical foraging range. The boundary of Slieve Mish SAC lies at a distance of over 9km to the west and downstream of the SAC and is mainly in a separate catchment from the proposal. Boundaries of the Lower River Shannon SAC and Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC lie 9.2km and 13.5km respectively from the proposed planting. Tralee Bay and Magharees Peninsula, West to Cloghane SAC, Tralee Bay and Magharees Peninsula, West to Cloghane SAC, and Ballyseedy Wood SAC all lie to the north of the proposal in a separate catchment and beyond the foraging or regeneration ranges of their associated species and habitats. The boundary of the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA lies to the east of the proposal. This is a large SPA covering an area of 56,648 ha and the proposal, which is of a small scale, is outside of the typical foraging range of the qualifying interest of this SPA. Having regard to the small scale and location of the proposal, other developments in the area, the qualifying interests of Natura 2000 sites, and the separation distances, the FAC concluded that there is no likelihood of significant effects on any Natura 2000 site from the proposal alone or in combination with other plans or projects.

The EU Environmental Impact Assessment (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". The Irish Forestry Regulations 2017 in relation to forestry licence applications require the 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.

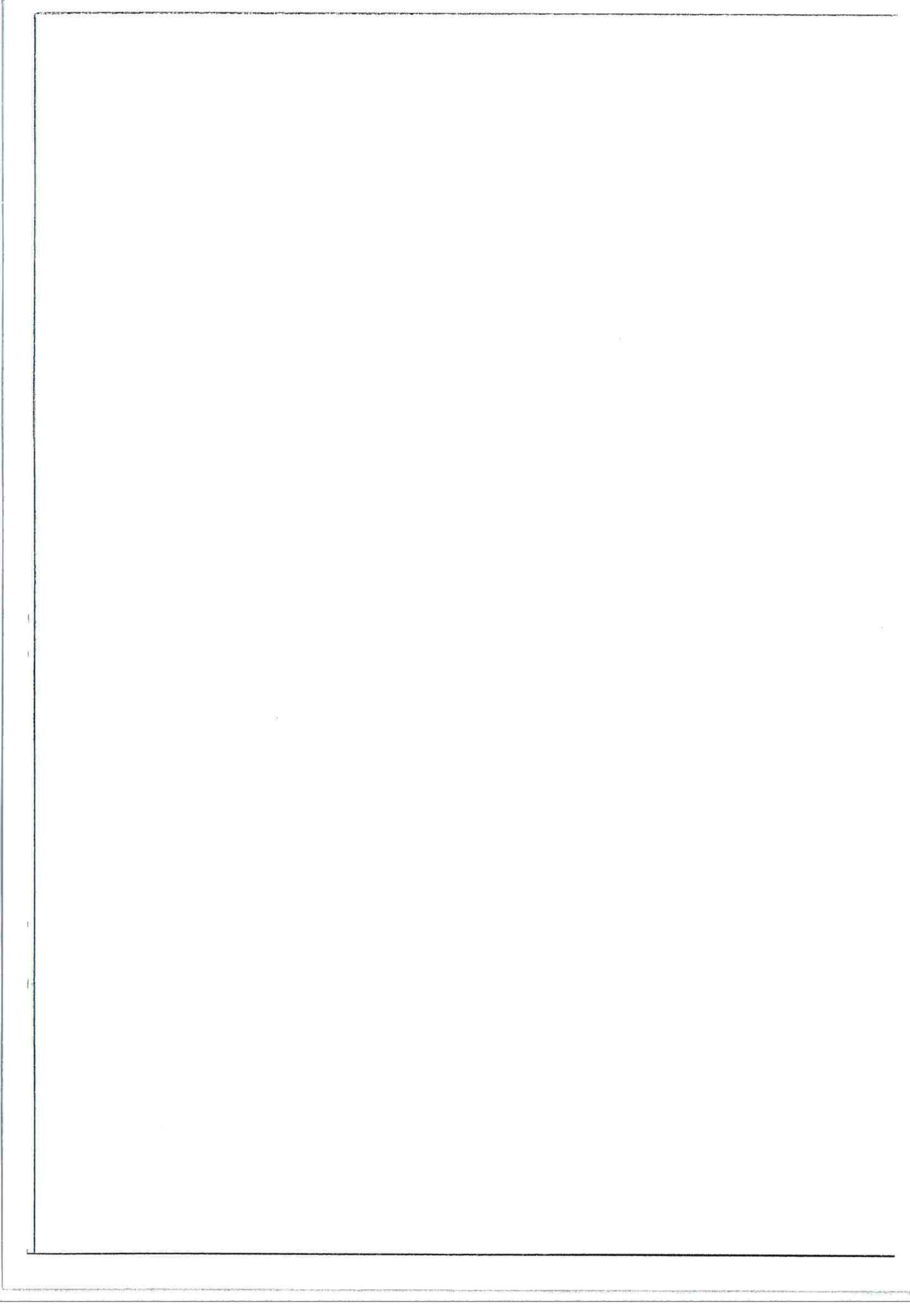
The proposal is of a small scale and involves the conversion of agricultural land to forest, and the associated operations, and is situated within a rural, agricultural landscape with some existing mature forests, including one adjacent to the proposal. The land is currently in agricultural use and it is not located in a prime scenic area in the County Development Plan and there are no other high amenity landscape considerations. There is a possibility of some runoff during operations, including future felling, on the site but these will be limited, and temporary in nature, due to the scale and nature of the site and conditions attached to the licence should severely limit their occurrence. The removal of livestock will reduce potential pollution both to the atmosphere and water from related activity. The site is not classified as acid sensitive. Anna More Bog NHA lies some 3km to the southeast but in a separate sub-catchment upstream of the proposal. The site is not designated for conservation and impacts on biodiversity, both positive and negative, are likely to be limited. As noted, there is no likelihood of significant effects on a European site. There are few other projects in the vicinity and the proposal is not considered sufficient to increase cumulative effects on the environment. The FAC concluded that there is no real likelihood of the proposal resulting in a significant effect on the environment, itself or cumulatively with other projects.

In deciding to confirm the decision of the Minister, the FAC considered that the proposed development would be consistent 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 submissions and observations 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



Before making its decision the FAC undertook an appropriate assessment screening and examined the proposal regarding the EIA Directive. These were based on the information provided by the parties and information available in the public domain and the FAC is satisfied that sufficient information was available to it to consider the proposal.

The proposal is for afforestation of 3.22 ha of Sitka spruce and alder planted in an integrated mix. Unplanted setbacks for tracks, drains and streams will make up 0.43ha of the site making the planted area less than 3ha. The site is described as enclosed, agricultural land with a grass, grass rush vegetation type on mineral soil at an elevation of 20m, currently in agricultural use. A stream adjoins the western edge. Site preparation is proposed by mounding with drainage. Fertilisation at a rate of 250kg/ha of granulated rock phosphate and weed control through herbicide use in years 0-2 and manual controls are proposed.

Appropriate Assessment screening

There are eight European sites within 15km from the site. These are listed below along with their direct distances to the proposed planting and their qualifying interests. The proposal lies in the Laune-Maine-Dingle Bay catchment. The stream on the western side of the proposal flows north to join the Maine River which runs south-westerly and flows into the sea at Castlemaine Harbour SAC and SPA. The hydrological distance between the proposed site and the SAC is some 20km. The proposal is of a small scale and the site is currently in agricultural use. As the site is on mineral soil and has a neutral aspect, the risks of runoff are low and were any to occur it would be of a limited and temporary nature. The distance to the SAC would ensure considerable dilution of any sediment or nutrient runoff were it to occur. There is an existing mature forest to the south of the proposal but few other forests or afforestation licences in the broader landscape which is generally agricultural in nature. The Castlemaine Harbour SPA lies outside of 15km from the site and has been designated on the basis primarily of a number of coastal seabirds and the proposal lies beyond their typical foraging range. The boundary of Slieve Mish SAC lies at a distance of over 9km to the west and downstream and the SAC is mainly in a separate catchment from the proposal. The qualifying interests of this SAC are primarily related to upland habitats and not agricultural land in the lowlands. Boundaries of the Lower River Shannon SAC and Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment SAC lie 9.2km and 13.5km respectively from the proposed planting. Both of these SACs lie in different sub-catchments from the proposal and while the closest river to the proposal and the SACs flow into Castlemaine Harbour there is no direct hydrological connection upstream. Both SACs are at a considerable distance from the proposal and beyond the foraging range or regeneration range of the associated species and habitats. Tralee Bay and Magharees Peninsula, West to Cloghane SAC, Tralee Bay and Magharees Peninsula, West to Cloghane SAC, and Ballyseedy Wood SAC all lie to the north of the proposal in a separate catchment and beyond the foraging or regeneration ranges of their associated species and habitats. The boundary of the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA lies 5.4km to the east of the proposal. This is a large SPA covering an area of 56,648 ha and afforestation

outside of the SPA is not listed amongst the most important threats, pressures and activities with high effects on the site in the Natura 2000 data form¹, although land use change is generally recognised as a potential threat to the hen harrier. The site synopsis of the SPA states that “Hen Harriers will forage up to c. 5 km from the nest site, utilising open bog and moorland, young conifer plantations and hill farmland that is not too rank”². Thus the proposal is outside of the typical foraging range of the species and is also of a small scale. The site is composed of improved pasture which would not be considered suitable for nesting³ of the Hen Harrier and no nests have been recorded by the NPWS in this general area. Based on the scale and nature of the proposal significant effects on Natura sites outside of 15km were not considered possible. Having regard to the small scale and location of the proposal, other developments in the area, the qualifying interests of Natura 2000 sites, and the separation distances the FAC concludes that there is no likelihood of significant effects on any Natura 2000 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	2185	Slieve Mish Mountains SAC	9048.78	Habitats 4010 Northern Atlantic wet heaths with <i>Erica tetralix</i> 4030 European dry heaths 4060 Alpine and Boreal heaths 8110 Siliceous scree of the montane to snow levels (<i>Androsacetalia alpinae</i> and <i>Galeopsietalia ladani</i>) 8210 Calcareous rocky slopes with chasmophytic vegetation 8220 Siliceous rocky slopes with chasmophytic vegetation Species 1421 Killarney Fern (<i>Trichomanes speciosum</i>)	http://www.npws.ie/sites/default/files/protected-sites/conservation-objectives/CO002185.pdf
SAC	343	Castlemaine Harbour SAC	9181.91	Habitats 1130 Estuaries 1140 Mudflats and sandflats not covered by seawater at low tide 1210 Annual vegetation of drift lines 1220 Perennial vegetation of stony banks 1230 Vegetated sea cliffs of the Atlantic and Baltic coasts	http://www.npws.ie/sites/default/files/protected-sites/conservation-objectives/CO000343.pdf

¹ <https://www.npws.ie/sites/default/files/protected-sites/natura2000/NF004161.pdf>

² <https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004161.pdf>

³ <https://www.npws.ie/sites/default/files/publications/pdf/IWM93.pdf>

			<p>1310 Salicornia and other annuals colonising mud and sand</p> <p>1330 Atlantic salt meadows (<i>Glaucopuccinellietalia maritimae</i>)</p> <p>1410 Mediterranean salt meadows (<i>Juncetalia maritimi</i>)</p> <p>2110 Embryonic shifting dunes</p> <p>2120 Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes)</p> <p>2130 Fixed coastal dunes with herbaceous vegetation (grey dunes)*</p> <p>2170 Dunes with <i>Salix repens</i> ssp. <i>argentea</i> (<i>Salicion arenariae</i>)</p> <p>2190 Humid dune slacks</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>Species</p> <p>1106 Salmon (<i>Salmo salar</i>)</p> <p>1099 River Lamprey (<i>Lampetra fluviatilis</i>)</p> <p>1395 Petalwort (<i>Petalophyllum ralfsii</i>)</p> <p>1355 Otter (<i>Lutra lutra</i>)</p> <p>1095 Sea Lamprey (<i>Petromyzon marinus</i>)</p>	
SAC	216 5	Lower River Shannon SAC	<p>Habitats</p> <p>1110 Sandbanks which are slightly covered by sea water all the time</p> <p>1130 Estuaries</p> <p>1140 Mudflats and sandflats not covered by seawater at low tide</p> <p>1150 Coastal lagoons*</p> <p>1160 Large shallow inlets and bays</p> <p>1170 Reefs</p> <p>1220 Perennial vegetation of stony banks</p> <p>1230 Vegetated sea cliffs of the Atlantic and Baltic coasts</p> <p>1310 Salicornia and other annuals colonising mud and sand</p> <p>1330 Atlantic salt meadows (<i>Glaucopuccinellietalia maritimae</i>)</p> <p>1410 Mediterranean salt meadows (<i>Juncetalia maritimi</i>)</p> <p>3260 Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitricho-Batrachion</i> vegetation</p> <p>6410 <i>Molinia</i> meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinion caeruleae</i>)</p>	<p>http://www.npws.ie/sites/default/files/protected-sites/conservation-objectives/CO002165.pdf</p>

				<p>91E0 Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, Alnion incanae, Salicion albae)*</p> <p>Species 1029 Freshwater Pearl Mussel (<i>Margaritifera margaritifera</i>)</p> <p>1099 River Lamprey (<i>Lampetra fluviatilis</i>) 1349 Common Bottlenose Dolphin (<i>Tursiops truncatus</i>)</p> <p>1355 Otter (<i>Lutra lutra</i>)</p> <p>1096 Brook Lamprey (<i>Lampetra planeri</i>)</p> <p>1095 Sea Lamprey (<i>Petromyzon marinus</i>)</p> <p>1106 Salmon (<i>Salmo salar</i>)</p>	
SAC	211 2	Ballyseedy Wood SAC	9832.84	<p>Habitats</p> <p>91E0 Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, Alnion incanae, Salicion albae)*</p>	http://www.npws.ie/sites/default/files/protected-sites/conservation-objectives/CO002112.pdf
SAC	365	Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment SAC	13454.2 1	<p>Habitats</p> <p>3110 Oligotrophic waters containing very few minerals of sandy plains (<i>Littorelletalia uniflorae</i>) 3130 Oligotrophic to mesotrophic standing waters with vegetation of the <i>Littorelletea uniflorae</i> and/or <i>Isoeto-Nanojuncetea</i> 3260 Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation 4010 Northern Atlantic wet heaths with <i>Erica tetralix</i></p> <p>4030 European dry heaths</p> <p>4060 Alpine and Boreal heaths 5130 <i>Juniperus communis</i> formations on heaths or calcareous grasslands 6130 Calaminarian grasslands of the <i>Violetalia calaminariae</i> 6410 <i>Molinia</i> meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinion caeruleae</i>)</p> <p>7130 Blanket bogs (* if active bog) 7150 Depressions on peat substrates of the <i>Rhynchosporion</i> 91A0 Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles 91E0 Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, Alnion incanae, Salicion albae)* 91J0 <i>Taxus baccata</i> woods of the British Isles*</p> <p>Species</p>	http://www.npws.ie/sites/default/files/protected-sites/conservation-objectives/CO000365.pdf

			<p>1065 Marsh Fritillary (<i>Euphydryas aurinia</i>)</p> <p>1095 Sea Lamprey (<i>Petromyzon marinus</i>)</p> <p>1096 Brook Lamprey (<i>Lampetra planeri</i>)</p> <p>1099 River Lamprey (<i>Lampetra fluviatilis</i>)</p> <p>1029 Freshwater Pearl Mussel (<i>Margaritifera margaritifera</i>)</p> <p>1106 Salmon (<i>Salmo salar</i>)</p> <p>1303 Lesser Horseshoe Bat (<i>Rhinolophus hipposideros</i>)</p> <p>1024 Kerry Slug (<i>Geomalacus maculosus</i>)</p> <p>1833 Slender Naiad (<i>Najas flexilis</i>)</p> <p>1355 Otter (<i>Lutra lutra</i>)</p> <p>1421 Killarney Fern (<i>Trichomanes speciosum</i>)</p> <p>5046 Killarney Shad (<i>Alosa fallax killarnensis</i>)</p>	
SAC	207 0	Tralee Bay and Magharees Peninsula, West to Cloghane SAC	<p>14612.8 3</p> <p>Habitats</p> <p>1130 Estuaries</p> <p>1140 Mudflats and sandflats not covered by seawater at low tide</p> <p>1150 Coastal lagoons*</p> <p>1160 Large shallow inlets and bays</p> <p>1170 Reefs</p> <p>1210 Annual vegetation of drift lines</p> <p>1220 Perennial vegetation of stony banks</p> <p>1310 Salicornia and other annuals colonising mud and sand</p> <p>1330 Atlantic salt meadows (<i>Glaucopuccinellietalia maritima</i>)</p> <p>1410 Mediterranean salt meadows (<i>Juncetalia maritimi</i>)</p> <p>2120 Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes)</p> <p>2130 Fixed coastal dunes with herbaceous vegetation (grey dunes)*</p> <p>2170 Dunes with <i>Salix repens</i> ssp. <i>argentea</i> (<i>Salicion arenariae</i>)</p> <p>2190 Humid dune slacks</p> <p>6410 Molinia meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinion caeruleae</i>)</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>http://www.npws.ie/sites/default/files/protected-sites/conservation-objectives/CO002070.pdf</p>

				Species 1395 Petalwort (<i>Petalophyllum ralfsii</i>) 1355 Otter (<i>Lutra lutra</i>)	
SPA	416 1	Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA	5428.11	Birds A082 Hen Harrier (<i>Circus cyaneus</i>)	http://www.npws.ie/sites/default/files/protected-sites/conservation-objectives/CO004161.pdf
SPA	418 8	Tralee Bay Complex SPA	14727.3 9	Birds A052 Teal (<i>Anas crecca</i>) A054 Pintail (<i>Anas acuta</i>) A137 Ringed Plover (<i>Charadrius hiaticula</i>) A157 Bar-tailed Godwit (<i>Limosa lapponica</i>) A142 Lapwing (<i>Vanellus vanellus</i>) A048 Shelduck (<i>Tadorna tadorna</i>) A053 Mallard (<i>Anas platyrhynchos</i>) A149 Dunlin (<i>Calidris alpina</i>) A169 Turnstone (<i>Arenaria interpres</i>) A130 Oystercatcher (<i>Haematopus ostralegus</i>) A062 Scaup (<i>Aythya marila</i>) A182 Common Gull (<i>Larus canus</i>) A156 Black-tailed Godwit (<i>Limosa limosa</i>) A179 Black-headed Gull (<i>Chroicocephalus ridibundus</i>) A141 Grey Plover (<i>Pluvialis squatarola</i>) A140 Golden Plover (<i>Pluvialis apricaria</i>) A144 Sanderling (<i>Calidris alba</i>) A160 Curlew (<i>Numenius arquata</i>) A050 Wigeon (<i>Anas penelope</i>) A038 Whooper Swan (<i>Cygnus cygnus</i>) A162 Redshank (<i>Tringa totanus</i>)	

				A046 Light-bellied Brent Goose (<i>Branta bernicla hrota</i>)
				Habitats
				Wetlands

EIA Examination

The EU 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 11 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. Neither afforestation nor deforestation (nor clear-felling) are referred to in Annex I. 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 the 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 proposal is of a small scale and involves the conversion of agricultural land to forest, and the associated operations, and is situated within a rural, agricultural landscape with some existing mature forests, including one adjacent to the proposal. The land is currently in agricultural use and it is not located in a prime scenic area in the County Development Plan and there are no other high amenity landscape considerations. There is a possibility of some runoff during operations, including future felling, on the site but these will be limited, and temporary in nature, due to the scale and nature of the site and conditions attached to the licence should severely limit their occurrence. The removal of livestock will reduce potential pollution both to the atmosphere and water from related activity. The site is not classified as acid sensitive. Anna More Bog NHA lies some 3km to the southeast but in a separate sub-catchment upstream of the proposal. The site is not designated for conservation and impacts on biodiversity, both positive and negative, are likely to be limited. As noted, there is no likelihood of significant effects on a European site. The proposal will employ herbicides and fertiliser but these are limited to a small number of years and are regulated by conditions on the licence and legislation. The use of such inputs is likely to be lower under the proposal than the existing land use. There is likely to be an increase in traffic during operations but only of a limited and temporary nature. There are few other projects in the vicinity and the proposal is not considered sufficient to increase cumulative effects on the environment. The FAC concluded that there is no real likelihood of the proposal resulting in a significant effect on the environment, itself or cumulatively with other projects.

Vincent Upton On Behalf of the Forestry Appeals Committee

