



[REDACTED]

12th February 2021

Subject: Appeals FAC583/2020 & FAC621/2020 regarding licence WW03-FL0068

Dear [REDACTED]

I refer to the appeals 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

Felling Licence WW03-FL0068 was approved by the Department of Agriculture, Food and the Marine (DAFM) on 17th July 2020.

Hearing

An oral hearing of appeals FAC583/2020 and FAC621/2020 regarding the decision to issue licence WW03-FL0068, was conducted by the FAC on 14th January 2021. Attendees:

FAC:	Mr. Des Johnson (Chairperson), Mr. Pat Coman, Ms. Paula Lynch, Mr. Luke Sweetman
Secretary to FAC:	Mr. Michael Ryan
Appellant:	[REDACTED]
Applicant representatives:	[REDACTED]
DAFM Representatives:	Mr. Anthony Dunbar, Ms. Eilish Kehoe

Decision

The FAC considered all of the documentation on the file, including application details, processing of the application by the DAFM, the grounds of appeal, submissions made at the Oral Hearing and all other submissions, before deciding to set aside and remit the decision to grant felling licence WW03-FL0068.

The licence granted is for the clearfell and replanting of 5.61ha at Carrigroe, Co. Wicklow. The species to be felled is 100% Sitka spruce across three sub-compartments planted 1970/'71. The proposed restock species is 99% Sitka spruce (5.28ha), 1% Rowan (0.05ha) with 0.28ha of open space retained. As per the DAFM information, the underlying soil type is 100% Podzols (Peaty), Lithosols, Peats. The slope is predominantly steep (15-30%). The application site is in the Avoca-Vartry Catchment, the Avonmore_SC_010 Sub-Catchment and the Avonmore_020 River Sub-Basin, a High Status Objective Waterbody which is currently assigned good status that is deemed to be at risk by the Environmental Protection Agency (EPA) under the Water Framework Directive (WFD) monitoring programme. The Applicant submitted an application pack which included maps, inventory data, a harvest plan document and an Appropriate Assessment Pre-screening Report.

The DAFM referred the application to the Wicklow County Council, the National Parks & Wildlife Service (NPWS), and Inland Fisheries Ireland (IFI). The County Council response provided background data for the project site, including that it was located in a Priority Area for Action under the River Basin Management Plan and a request to "check water protection compliance during felling". The IFI response stated that approval should include the following conditions:

- All works are carried out in accordance with the Forestry Harvesting and Environmental Guidelines.
- A minimum 10m buffer zone is created along all watercourses.
- Sedimentation traps are constructed at appropriate locations in advance of the felling and are maintained throughout the operation
- IFI personnel (gretta.hannigan@fisheriesireland.ie) should be notified by the applicant/contractor at least two weeks in advance of the commencement date.
- Ground stability should be kept under constant review; the felling operation must not create unstable ground conditions or result in post harvesting ground instability.

- Please provide us with a copy of the licence as issued

The NPWS response stated that the proposed felling area is adjacent to the Wicklow Mountains SAC and partially within the Wicklow Mountains SPA. This SPA is of high ornithological importance as it supports nationally important populations of Merlin, a species that is listed on Annex I of the E.U. Birds Directive, and has been recorded breeding near the site of this proposed forestry operation. They listed a number of specific nature conservation recommendations:

- All forestry operations should take place outside of the breeding season for the Merlin - 1st March until 31st August.
- The Applicant should ensure that drivers/operators of harvesting and other machinery associated with Forestry Operations are made aware of the Wicklow Mountains SAC. This machinery should not be allowed to operate outside the forested area on these sensitive designated habitats.
- Management of the site post-felling will need to take into consideration the SAC. Liaison with local Conservation Rangers should take place to ensure adequate protection measures are in place.

The DAFM carried out an Appropriate Assessment (AA) screening of 10 Natura sites (7 SACs & 3 SPAs) within 15km of the project site. All but two of these sites were screened out for AA. The Wicklow Mountains SAC and the Wicklow Mountains SPA were screened in due to the location of the project within the Natura site(s). The DAFM produced an AA Report (AAR) and AA Determination (AAD), both dated 30th June 2020, which were reviewed by an external Ecologist and signed-off on 8th July 2020. The AAR includes the list of Natura sites screened out for AA, and the reasons for those decisions, and states that the DAFM has determined that there is no possibility of the felling and reforestation project having any significant effect, either individually or in combination with other plans or projects, on any of the screened-out European sites.

The AAR lists the Qualifying Interests (QIs) and Special Conservation Interests (SCIs) for both European sites and describes the required mitigations for each SCI/QI. These were included in the AAD. The Merlin mitigation listed in Section 6 of the AAR varies from the mitigation listed in Section 9 - 'Site-Specific Measures'. The Merlin mitigation in the AAD and the licence conditions are consistent with Section 9 of the AAR. The QIs of the Wicklow Mountains SAC are listed in the AAR with site-specific mitigations included in relation to the Otter.

The AAR includes a section on “In-Combination Effects” which lists the various planning websites consulted alongside the DAFM’s internal records and an in-combination statement which states that “the DAFM deems that this project, when considered in combination with other plans and projects, will not give rise to any adverse effect on the integrity of any European Site”.

The licence issued on 17th July 2020 and is exercisable until 31st December 2022. It is subject to relatively standard conditions (a) to (g) plus additional conditions: (h), (j), (k) & (l) related to the Merlin and the Peregrine; (i) regarding contacting the IFI prior to commencement of works; (m) – (s) related to the Otter, and (t) which outlines specific standards and guidelines which the proposed works shall adhere to.

There are two appeals against the decision to grant the licence. The written grounds of appeal for each appeal were considered in full by the FAC. These are summarised below.

FAC583/2020:

- The AA screening did not comply with “the decision of Finlay J in Kelly”.
- Under the basic principles of EU law, the decision is invalid as the Minister is being a judge in his/her case.
- There has been no investigation as to whether the application site has complied with the requirements of EU law.
- The basic requirements of the NPWS have not been complied with.

An issue raised in the appeal relating to the FAC is not a valid ground of appeal against a decision to issue a felling licence.

FAC621/2020:

- Breach of Article 4 (3) of the EIA Directive 2014/52/EU - Failure to carry out screening for EIA
- Breach of Article 4 (4) of the EIA Directive 2014/52/EU - This licence is for an area of 5.61 ha in Coillte’s Forest Management Unit (FMU) WW03. On the same date that the application for this licence was submitted a further three applications for clearfelling licences were submitted for the same FMU totalling 24.61 ha.
- Breach of Article 4 (4) of the EIA Directive 2014/52/EU - a developer must submit a description of the aspects of the environment likely to be significantly affected by the project. This application has not described any aspects of the environment which are likely to be significantly affected.

- This licence and its associated operations threaten the achievement of the objectives set for the underlining waterbody or waterbodies under the River Basin Management Plan for Ireland 2018-21
- Inadequate consideration of feedback from a Consultation Body
- The mitigations of the AAD and licence conditions are not consistent with those in the AAR or the recommendations of a prescribed body.
- DAFM has not sought the opinion of the general public under Article 6 (3) of the Habitats Directive on the AAD
- The Harvest Plan is not consistent with the requirements of the Interim Standard for Felling & Reforestation
- Licence conditions do not provide a system of strict protection for the animal species listed in Annex IV (a) of the Habitats Directive, as would be required by Article 12 of that Directive.
- Licence conditions do not provide a general system of protection for all species of birds as would be required by Article 5 of the Birds Directive and referred to in Article 1 of that Directive.
- The licence should contain a standard condition for the licensee to notify the Minister at both the commencement and conclusion of operations pertinent to the licence.
- This licence should contain a condition that plans and works must be inspected by FS prior to, during and post works to ensure compliance with all environmental conditions.
- The licence should include stringent and enforceable conditions regarding notification to appropriate bodies, groups and the public concerned in the case of any spraying of chemicals.

The DAFM provided written statements to the FAC responding to the grounds of each appeal. These were considered in full by the FAC and are summarised below.

FAC583/2020:

The proposed development underwent the DAFM's AA Screening procedure. Stage 2 AA was carried out for the Wicklow Mountains SPA and Wicklow Mountains SAC. The potential for the project to result in impacts on the Special Conservation Interests SCIs and QIs of these Natura sites was identified and site-specific measures prescribed by the DAFM to mitigate such impacts were described. The mitigations ensure that the proposed project itself (i.e. individually) will not prevent or obstruct the SCIs of the Wicklow Mountains SPA and Wicklow Mountains SAC from reaching favourable conservation status, as per Article 1 of the EU Habitats Directive.

The measures described in the application documentation, together with adherence to relevant environmental guidelines/requirements/standards and to the site-specific mitigation measures set in the AAR and AAD statement ensure that the proposed felling and reforestation project WW03-FL0068 will not result in any adverse effect on any European Site.

The potential for the proposed project to contribute to an in-combination impact on European sites was considered by the DAFM. The DAFM concluded that the identified potential pathways for any adverse effect are robustly blocked using avoidance, appropriate design and the implementation of best practice, and through the mitigation as set out within the AAR and AAD Statement for WW03-FL0068. The DAFM determined, pursuant to Regulation 42(16) of the European Communities (Birds and Natural Habitats) Regulation 2011 (as amended) and based on objective information, that the project, either individually or in-combination with other plans or projects, will not adversely affect the integrity of any European site. A felling licence was issued for the clearfell and reforestation project having considered the comments and observations of referral bodies who submitted information to DAFM in respect of the licence. The site-specific mitigations were attached as conditions of felling licence WW03-FL0068.

FAC621/2020:

- Clearfell and reforestation are not classes of development covered by EIA. If they were, this application would be sub-threshold to trigger an EIA. the FMU planning process and any resultant BAU strategic plan is not an obligatory statutory process, arising either from the legislation governing the operation of the company (the Forestry Act 1988 and the Forestry (Amendment) Act 2009) nor from the provisions for forest management plans set out in Section 10 of the Forestry Act 2014. Similarly, they do not constitute a plan or programme subject to the requirements of the SEA Directive, as transposed *inter alia* by the European Communities (Environmental Assessment of Certain Plans and Programmes) Regulations 2004, as amended.
- The DAFM applies a wide range of checks and balances during its evaluation of felling licence applications in relation to the protection of water, as set out in the DAFM document *Forests & Water: Achieving Objectives under Ireland's River Basin Management Plan 2018-2021 (2018)*. Regarding consultations, referrals to statutory consultees, including IFI, NPWS, and local authorities, are automatically triggered according to interactions with certain spatial rules. Discretionary referrals outside of these rules can also be triggered in individual cases, if deemed necessary. As set out in *Forests & Water*, the DAFM has developed considerable experience in relation to the protection of water during the forestry licensing process, and is actively engaged

in the WFD process, contributing proactively to both the 2nd cycle and the 3rd cycle, the latter currently under development.

Any felling licence issued is conditional on adherence to the Interim Standards for Felling and Reforestation (DAFM, 2019), which set out a wide range of operational measures to prevent direct and indirect impact on water quality arising from the operation.

- Information submitted by licensee in the form of maps (GIS and softcopy), harvesting and establishment operational procedures as well as an AA Pre-screening Report and associated Pre-screening Report methodology document were considered during the licencing process. Standard procedures were followed in relation to initiation of referrals and consultation with statutory bodies prior to licencing. Comments and observations from referral bodies were considered prior to issuing felling licence WW03-FL0068.
- The site-specific mitigations identified in the AAD were attached as conditions of the licence issued (WW03-FL0068)
- In respect of opportunities for public participation in the decision-making process around applications for felling licences, under Part 6 of the Forestry Regulations 2017 (S.I. No. 191 of 2017) where the Minister for Agriculture, Food and the Marine receives such an application he or she is required amongst things to:
 - Publish a notice of the application; and
 - Inform the public that any person may make a submission or observation in writing concerning the application to the Minister within 30 days from the date of publication of that notice.

The notification of such felling licence applications and details of the arrangements for public participation are published and readily accessible on the Department's website. In the making of a submission or observation concerning such applications, this includes the opportunity for members of the public to make a submission or observation on the likely effect on the environment of the proposed felling activity.

- In regard to Screening for AA and AA specifically, and the consideration, if appropriate, of the opinion of the general public in the making of a related determination under Article 6(3) of Habitats Directive –
 - a) Regulation 20 of the Forestry Regulation 2017 expressly provides that in the making his or her decision on a felling licence application the Minister must have had regard to any written submissions or observations made by the public under Part 6; and
 - b) Regulation 19(4) expressly requires the Minister when carrying out an AA of the implications of a felling licence application for a European site, either individually or in combination with other plans or projects, and in view of that site’s conservation objectives, in doing so, to take into account inter alia, and if appropriate, any written submissions or observations made by the public under Part 6.

The Department submits that these provisions, and any considerations and decisions made pursuant to them, fully concord with the requirements of Article 6(3) of Habitats Directive as regards public participation.

- The DAFM had considered the application and associated information as submitted by the applicant in support of the granted licence and deemed this information meeting the DAFM’s requirements.
- The site-specific mitigations identified AAD were attached as conditions of felling licence WW03-FL0068.
- It’s a principle of law that unless the grant of a first statutory licence, permit, permission, lease or consent, expressly exempts the holder thereof of any obligation to obtain a second licence, permit, permission, lease or consent required or to adhere to any other restrictions on the timing of activities or similar where such is set out by statute elsewhere, those other obligations and restrictions apply.
- It is the Minister that may at any time attach or vary conditions to any licence granted (see Section 17.4 of the 2014 Forestry Act).

- The use of plant protection products (PPPs) in Ireland, is governed by Statutory Instrument 155 of 2012 and Statutory Instrument 159 of 2012. Both of these S.I.s are based on, and give effect to, EU legislation on PPPs - respectively Directive 2009/128/EC (concerning the sustainable use of pesticides) and Regulation (EC) No 1107/2009 (concerning the placing of plant protection products on the market). Users of PPPs shall apply the principles of Good Plant Protection Practice (GPPP), as provided for in S.I. 155 of 2012. These are published by the DAFM and provide the basis for the proper and appropriate use of these products.

The FAC held an Oral Hearing on 14th January 2021. The parties were invited to attend in person or to join electronically. One of the Appellants participated electronically while the other did not participate. The FAC members sat in person and remotely at this hearing. The DAFM and the Applicant both participated electronically.

At the hearing, the DAFM detailed their approach to processing and issuing the licence. They stated that a submission had been received and that the application had been desk-assessed. The DAFM stated the application had been referred to the IFI, NPWS and Wicklow County Council and confirmed that the responses had been taken into account prior to issuing the licence. Responding to the FAC, the DAFM stated that a condition relating to ground stability had not been included as requested by the IFI as the DAFM did not consider the project lands to be at risk of landslide, but that the measures relating to water quality included on the licence addressed most of the IFI's concerns. The Appellant stated that the licence should include a condition as recommended by the NPWS to ensure machinery should not be allowed to operate outside the forested area on the sensitive designated habitats of the Wicklow Mountains SAC. They also argued that the potential damage from machine traffic in the SAC had not been assessed in the AAR. The Appellant contended that the AAR was in error as it does not contain reference to Habitat category 3110 and that potential effects on pH did not feature in the AA. The Appellant stated that the threat of landslide had not been assessed in the AA. They also stated that the NPWS have mapped Wet Heath adjacent to the project site and that the AA states this habitat "has no pathway and is not in the vicinity" and that the potential colonisation by Sitka spruce had not been assessed. The Appellant submitted that restocking with Sitka spruce was assumed but its impacts had not been properly assessed in the AAR. The Appellant contended that the response from the NPWS states all forestry operations should take place outside of the Merlin's breeding season (1st March – 31st August) and that this recommendation is not qualified based on certain criteria like the licence condition (l) is. The Appellant queried the time lag between the DAFM completing the AAR and AAD and the

review by the external Ecologist (8 days) and stated that neither the DAFM nor the expert reviewer had picked up on the mistakes within the documents. They stated that, based on the precautionary principle, the licence should be remitted.

The Applicant described the project lands as having a moderate south-west slope, that it was within the Wicklow Mountains SPA (with a portion of the western edge of the site inside the Wicklow Mountains SAC also) and that it was bordered by a forest road. The soils on site were described as shallow peat. The Applicant confirmed that they had completed a site visit on the 30th October 2020 and that a relevant watercourse (RWC), visible on the Ordnance Survey Ireland 6-inch map, flows west along the southern boundary of the proposed development, exiting the site before flowing c.325m to Lough Dan, which is inside the Wicklow Mountains SAC. They reported that the ground is soft in this area with surface water present and the site was otherwise dry and firm underfoot. The FAC queried if any consideration had been given to re-stocking the application site with more diverse species in such a scenic area. The Applicant stated that 1% Rowan had been applied for which would be planted for visual amenity to “soften the edges” and stated various criteria inform the re-stock species selection including soil, elevation, aspect and landscape considerations. They further stated that Deer browsing in the area is a major constraint in establishing broadleaf species and that the cost of tree guards and Deer fencing was a factor to be considered when balancing forest management objectives. In response to questioning by the FAC, the DAFM confirmed that the mitigation measures in the AAR were inputted by the external Ecologist and stated that the standard Merlin condition was based on data from the study by Lusby *et al* (2017) on the Breeding ecology and habitat selection of the Merlin in forested landscapes and the input of an external Ornithologist. The FAC queried why licence condition (I) differed from the recommendation of the NPWS. The DAFM stated that the standard Merlin mitigation measure (which allows potential disturbance operations to take place within the breeding season under specific circumstances) had been prescribed in this case but, given the response from the NPWS, in this instance their recommendation should have superseded the standard mitigation. The DAFM confirmed access to the project site was by existing forest road adjoining the site. The Appellant stated that, if the external reviewer had inputted data into the AAR then the completion date listed (prior to review) was wrong and the conclusions drawn by the DAFM from the Lusby report were erroneous.

The FAC considered the grounds of both appeals relating to the AA process. The FAC observed that, having completed their AA screening process, the DAFM concluded that the proposed project could potentially have a significant effect on the Wicklow Mountains SAC and the Wicklow Mountains SPA,

and both were screened in for AA. The potential for the project to result in significant effects on these Natura sites was identified and site-specific mitigation measures were described. The DAFM stated that the mitigations ensure that the proposed project itself (i.e. individually) will not prevent or obstruct the SCIs/QIs of the Natura sites from reaching favourable conservation status, as per Article 1 of the EU Habitats Directive and the proposed development will not result in any adverse effect on any European Site. The potential for the proposed project to contribute to an in-combination impact on the Wicklow Mountains SAC and the Wicklow Mountains SPA was considered by the DAFM. This included the assessment of various forestry and non-forestry plans and projects within the vicinity of the application site. The DAFM concluded that this project, when considered in combination with other plans and projects, will not give rise to any adverse effect on the integrity of any European Site. The FAC noted that the site-specific mitigations listed in Section 9 of the AAR matched those in the AAD which were transposed into the licence conditions. The FAC considered the Appellant's submission relating to the NPWS's recommended Merlin mitigation and noted the DAFM's statement during the Oral Hearing that, in these particular circumstances, the NPWS's Merlin mitigation should have been attached to the licence as a condition. Based on the evidence before it, the FAC concluded that, in the circumstances of this case, licence condition (I), relating to the Merlin, should have reflected the recommendation from the NPWS, rather than the standard DAFM Merlin mitigation. The FAC also considers that, given the location of a portion of the project site within the Wicklow Mountains SAC, the licence conditions should have included the NPWS's recommendation that no machinery should be allowed to operate outside the forested area on the sensitive designated habitats of the SAC.

The FAC considered the second Appellant's contention during the Oral Hearing that the AAR did not sufficiently assess the potential impact of the proposed project on "Wet Heaths"/Northern Atlantic wet heaths with *Erica tetralix* [4010] and Oligotrophic waters containing very few minerals of sandy plains (*Littorelletalia uniflorae*) [3110]' in the vicinity, both of which are QIs of the Wicklow Mountains SAC. The FAC observed that the QIs of this SAC had been listed in the AAR and that the Otter was the only QI which the DAFM deemed to require mitigation measures. Regarding Oligotrophic waters, the AAR states "This habitat has been mapped in conservation objectives (NPWS, 2017) and is not in the vicinity plot". The FAC observed that the NPWS's Conservation Objectives document for this SAC maps Lough Dan as Oligotrophic waters containing very few minerals of sandy plains (*Littorelletalia uniflorae*). This waterbody is located c.240m west of the project site, at the base of a significant slope. The FAC noted the Applicant's statement at the oral hearing that a RWC exits the south of the project site and provides a direct hydrological connection to Lough Dan. In these circumstances, the FAC concluded that the

DAFM made a significant error in assessing this QI due to the fact that a pathway for possible significant effect exists and the QI is within the vicinity of the project site. The FAC also considered the Appellant's contention that the AAR does not adequately address the potential impact on Wet Heath. The FAC considered the aerial photography of the site which shows that the proposed development is surrounded by mixed-aged conifer forestry on all sides except the southwest, which is an area with patchy tree cover sloping significantly down to Lough Dan. The FAC also observed the NPWS's Conservation Objectives document for the Wicklow Mountains SAC states that Wet Heath habitat is not mapped. Based on the information before it, the FAC concluded there is no convincing evidence that the proposed project would give rise to a significant effect on the SAC's Wet Heath habitat and agreed with the DAFM's AAR conclusion in relation to this QI.

The FAC considered the first Appellant's contention that "the basic requirements of the NPWS have not been complied with". The FAC observed that the application had been referred to the NPWS in the first instance, in accordance with their procedure for doing so. As outlined above, the FAC considered that the DAFM made a significant error in their response to the NPWS's feedback. There was no evidence before the FAC to support the first Appellant's submission that the DAFM's decision was invalid under the "basic principles of EU law".

Addressing the grounds of appeal of the second Appellant, the FAC had regard to the Appellant's submission that the proposed development should have been assessed in the context of the EIA Directive. The EIA Directive 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. Neither afforestation nor deforestation (nor clearfelling) 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 Regulations, 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 FAC concluded that the felling and subsequent replanting, as part of a commercial forestry operation, with no change in land use, does not fall within the classes of development referred to in the Directive, and similarly are not covered in the Irish Regulations (S.I. No. 191 of 2017). As such, the FAC concluded that there is no breach of any of the provisions of the EIA Directive as contended in the written grounds of appeal.

The FAC considered the Appellant's contention that the proposed project threatens the achievement of the objectives set for the underlying waterbody or waterbodies under the River Basin Management Plan for Ireland 2018-21. The FAC observed that the River Waterbody AVONMORE_020 is deemed to be a High-Status Objective waterbody and 'At Risk' but that its assigned status is currently 'Good'. The FAC noted the DAFM's AAR included site-specific measures for the protection of the Otter and that the In-Combination Statement of that report considered other forestry and non-forestry plans and projects in the general vicinity of the project site. The FAC observed that licence condition (a) refers to the Forestry & Water Quality Guidelines, along with other standards, which provide for general water protection measures. Regarding the recommendations of the IFI, the FAC notes the DAFM attached water quality guidelines as licence conditions having considered the response from the consultation body. The FAC is satisfied that the DAFM adequately assessed the impact of this proposed development on the underlying waterbody.

The FAC considered Article 6(3) of the Habitats Directive and its provisions for obtaining the opinion of the general public where the consent authority considers it appropriate, and that the DAFM did not consider it appropriate in this case. Having regard to the Appellant's grounds of appeal, the FAC concluded that there is no convincing reason for public consultation at this stage.

The FAC had regard to the Appellant's contention that the Harvest Plan submitted by the Applicant was not consistent with the requirements of the Interim Requirements for Felling and Reforestation (DAFM, 2019). The FAC concluded that the Harvest Plan is, in fact, a document outlining general environment and safety rules and that all the licenced operations on site must comply with the conditions of the felling licence.

Regarding a requirement for the licence conditions to provide a system of protection for wild birds during the bird breeding and rearing season and for the animal species listed in Annex IV (a) of that Directive, the FAC noted that the Appellant did not provide any site-specific details in relation to any species of concern. The FAC note that the granting of a felling licence does not exempt the holder from meeting any legal requirements set out in any other statute. The FAC considered the Appellant's grounds that the licence should contain conditions relating to the commencement, carrying-out and conclusion of operations, and the DAFM's monitoring of same. The FAC noted that the DAFM inspect a number of licences after completion of operations in order to establish the Licensee's adherence to the conditions of those licences and that enforcement of these conditions is a matter for the DAFM. Based on the evidence before it, the FAC concluded that additional conditions of the nature described by the Appellant should not be attached to the licence.

The FAC had regard to the Appellant's submission that the licence should include a stringent and enforceable condition regarding the notification of certain parties in the case of any spraying of chemicals. The FAC observed there is no statutory basis to enforce the Licensee to inform individual landowners. The FAC noted the use of plant protection products in Ireland is governed by SI 155 of 2012 and SI 159 of 2012, which are based on and give effect to EU Directive 2009/128/EC (concerning the sustainable use of pesticides) and Regulation (EC) No. 1107/2009 (concerning the placing of plant protection products on the market). Users of plant protection products shall apply the principles of good plant protection practice, as provided for in SI 155 of 2012. As such, the FAC finds that there is insufficient basis on which to apply a condition related to spraying as contended by the Appellant.

Based on the information before it, and in the circumstances outlined above, the FAC concluded that the DAFM made a significant error by not having adequate regard for the recommendations of the NPWS relating to the Merlin and machine traffic within the SAC. The FAC considered that the DAFM made a significant error by not adequately assessing the potential for the proposed project to have a significant effect on the Annex I habitat QIs of the Wicklow Mountains SAC. As such, the FAC concludes that the decision should be set aside and remitted to the Minister to carry out a new AA screening of the proposed development regards Natura 2000 sites within a 15km radius, on its own and in combination with other plans and projects, and resulting from the screening conclusion, an AA if necessary, before making a new decision in respect of the licence.

Yours sincerely,

A black rectangular redaction box covering the signature of Luke Sweetman.

Luke Sweetman on behalf of the Forestry Appeals Committee