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6<sup>th</sup> January 2021

**Subject:** Appeal FAC576/2020 & 626/2020 regarding licence TY03-FL0207

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**

Felling Licence TY03-FL0207 was approved by the Department of Agriculture, Food and the Marine (DAFM) on 17<sup>th</sup> July 2020.

#### **Hearing**

An oral hearing of appeals FAC576/2020 and FAC626/2020, both regarding the decision to issue licence TY03-FL0207, was conducted by the FAC on 10<sup>th</sup> December 2020.

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. Luke Middleton, Ms. Jade McManus

#### **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 affirm the decision to grant this licence (Reference TY03-FL0207).

The licence granted is for the clearfell and replanting of 9.91ha in Coolruntha & Middlequarter, Co. Tipperary. The species to be felled are composed of 95% Sitka spruce and 5% Willow, Hazel and other Broadleaves. The restock species at application was 100% Sitka spruce with 0.5ha open space retained. As per the DAFM information the underlying soil type is Peaty Gleys (98%) & Podzols (Peaty), Lithosols, Peats (2%) and the site is on a predominantly steep slope. The project is located in the Shannon Catchment (100%), the Newport [Tipperary]\_Sc\_010 (100%) Sub-Catchment, the Newport (Tipperary)\_020 (100%) Waterbody. This project lies in a rural landscape in the River Sub-Basin Newport (Tipperary)\_020. The Mulkear River runs just north of the site at c. 100m to the nearest point. A

watercourse, mapped by the Environmental Protection Agency (EPA), runs directly adjacent to the western boundary of the site.

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 Tipperary County Council and Inland Fisheries Ireland (IFI). There was no response from the County Council but the IFI responded on the 22<sup>nd</sup> January 2020. The IFI stated they had "some concerns but no objections to the felling". They outlined the following:

- The site is in close proximity to the Newport River so contractors must ensure that no silt enters the Newport River which is an important Salmonid spawning river and forms part of the Lower Shannon SAC.
- Measures should be taken to ensure no silt enters into any watercourse near these sites and that all silt traps are maintained regularly. These must be of sufficient length and retention time for rainfall in the area.
- Ground stability should be kept under constant review, and felling operations must be carried out in such manner as not to result in the creation of unstable ground conditions (leading to the excess run off of silt into water courses) or subsequently lead to post harvesting ground stability.
- If any water course is to be crossed during the felling operations then this should be done by either a clear span bridge or embedded culvert of diameter greater than 900mm and where at least 25% of the culvert is embedded. This includes all internal forestry drains.
- IFI Limerick office should be contacted at least one month prior to commencement of works
- All work must be carried out in accordance with Good Forestry Guidelines and Water Quality Guidelines.

The DAFM carried out a Stage 1 Screening for Appropriate Assessment (AA) of 10 Natura sites (8 SACs & 2 SPAs) within 15km of the project site. All but two of these sites were screened out for Stage 2 AA.

The Slievefelim to Silvermines Mountains SPA 004165 (within which the project site is located) and the Lower River Shannon SAC 002165 (which begins c. 100m to the north of the site) were screened in for AA due to the proximity of the proposed development to these Natura sites.

The DAFM produced an AA Report and AA Determination (both dated 30<sup>th</sup> June 2020) which were reviewed by an external Ecologist and signed-off on 10<sup>th</sup> July 2020. The AA report 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 TY03-FL0207 having any significant effect, either individually or in combination with other plans or projects, on any of the European sites listed".

The AA Report states that the DAFM has determined that there is a possibility of the project having a significant effect on the Slievefelim to Silvermines Mountains SPA and the Lower River Shannon SAC and "as such the project must advance to Appropriate Assessment stage in relation to these European Sites". The Report lists the Qualifying Interests (QIs) and Special Conservation Interests (SCIs) for both European sites. For the Slievefelim to Silvermines Mountains SPA the SCI is the Hen Harrier and the Lower River Shannon SAC has numerous QIs listed in Section 6.2 of the AA Report. This table also lists the components of each QI's Conservation Objectives relative to the project, the potential adverse impacts (if any) of the project on each QI (and its Conservation Objective(s)) and the mitigation measures (where required).

Section 9 of the AA Report lists the site-specific measures for both Natura sites to be included as conditions of the felling licence. There is an error in this section of the Report where it stated that the



project is within a Higher Likelihood of Nesting Area, which the DAFM state elsewhere is not the case. This error was not repeated in the AA Determination or on the licence issued.

The AA Report includes a section on “In-Combination Effects” which lists the various planning websites consulted (including the Department of Housing, Planning and local Government website, An Bord Pleanála, the EPA, the County Development Plan and the DAFM’s internal records) on the week of 26<sup>th</sup> June 2020. This document listed projects and plans in the general vicinity of the project area; the Shannon Catchment (100%), the Newport[Tipperary]\_Sc\_010 (100%) Sub-Catchment and the Newport (Tipperary)\_020 (100%) Waterbody. The Report also includes 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 17<sup>th</sup> July 2020 and is exercisable until 31<sup>st</sup> December 2022. It is subject to standard conditions plus additional conditions regarding the crossing of watercourses (h) and contacting the IFI prior to commencement of works (i). Conditions (j) – (r) are the site-specific mitigations from the AA Report and Condition (s) lists a set of standards and guidelines which the proposed works shall adhere to.

There are two appeals against the decision to grant the licence. In summary, the grounds of the first appeal contend that the Appropriate Assessment 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.

The grounds of the second appeal state that there is a breach of Articles 4(3) and 4(4) of the Environmental Impact Assessment (EIA) Directive. The licence is in a class of development covered under Annex II of the EIA Directive. On the same date that the application for this licence was submitted a further two applications for clear felling licences were submitted for the same Forest Management Unit (FMU) totalling 22.24 ha. The purpose of the EIA Directive cannot be circumvented by the splitting of projects. The application has not described any aspects of the environment which are likely to be significantly affected.

The licence and its associated operations threaten the achievement of the objectives set for the underlying waterbodies under the River Basin Management Plan for Ireland 2018-2021. The Stage 1 and Stage 2 AA determinations are not legally valid. An assessment carried out under Article 6 (3) of the Habitats Directive may not have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works on the protected areas concerned.

DAFM has not sought the opinion of the general public under Article 6 (3) of the Habitats Directive on the Appropriate Assessment Determination

The licence conditions do not provide, as would be required by Article 12 of the Habitats Directive, a system of strict protection for the animal species listed in Annex IV (a) of that Directive in their natural range, prohibiting deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration.

The licence does not provide a system of protection for wild birds during the period of breeding and rearing consistent with the requirements of the Birds 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.

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.

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.

In summary, the DAFM's response to the grounds of appeal states that the 9.91ha felling and reforestation project licenced as TY03-FL0207 has been subject to the DAFM's AA Screening procedure. AA screening was carried out by the DAFM for Natura sites within 15km of the project. The DAFM identified the possibility of the project having a significant effect on the Slievefelim to Silvermines Mountains SPA and the Lower River Shannon SAC. As such, the clearfell and reforestation project was screened in and an AA carried out. The AA Screening involved a review of SCIs and the Conservation Objectives of the above Natura sites which were considered in the AA Report and AA Determination. The potential for the project to result in impacts on the SCIs and QIs of these Natura was identified on a precautionary basis and site-specific measures identified by the DAFM to mitigate such impacts were described. The DAFM stated that the mitigations ensure that the proposed project itself (i.e. individually) will not prevent or obstruct the SCIs 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 Slievefelim to Silvermines Mountains SPA and Lower River Shannon SAC was considered by the DAFM. It was concluded that the proposed project, when considered on its own, will not result in any residual adverse effect on these Natura sites and associated SCIs and Conservation Objectives. The DAFM concluded that there is therefore no potential for the proposed works to contribute to any cumulative adverse effects.

The DAFM stated that clearfelling and replanting already established forest areas do not fall within the specified categories of forestry activities or projects set out in Schedule 5 Part 2 of the Planning and Development Regulations 2001, as amended, and in Regulation 13(2) of the Forestry Regulations 2017, and wherein relevant national mandatory thresholds and criteria for EIA are also prescribed. Therefore a screening assessment for sub-threshold EIA did not need to be carried out by the Department in this case and thus Article 4(3) of the Directive is not applicable.

In the DAFM opinion the outputs from the FMU planning process undertaken by the Applicant and any resultant Business Area Unit (BAU) strategic plan should not be a material consideration in the DAFM's assessment *inter alia* of the potential environmental effect of the application. Amongst other reasons, this is because 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). 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 impacts on water quality. In relation to



reforestation, those Standards stipulate water setbacks adjoining aquatic zones, and these, together with the silt trapping and slow-water damming of forest drains required during felling, introduce a permanent undisturbed semi-natural buffer along the watercourse, developed primarily to protect water. These measures are described in the document Woodland for Water: Creating new native woodlands to protect and enhance Ireland's waters (DAFM, 2018).

The AA Report for this project considered the forestry and other projects within the River Sub-Basin where the licenced project is located. 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. The DAFM is fully informed of its responsibilities regarding the achievement of objectives under the WFD.

Regarding 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 they are required to i) Publish a notice of the application, and ii) 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 DAFM'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 AA Screening 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 DAFM submits that these provisions, and any considerations and decisions made pursuant to them, fully comply with the requirements of Article 6(3) of Habitats Directive regarding public participation.

The site-specific mitigations identified in the AA Report and AA Determination Statement were attached as conditions of the licence issued for felling and reforestation project TY03-FL0207.

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. The site-specific mitigations identified in the AA Report and AA Determination Statement were attached as conditions of licence issued for felling and reforestation project TY03-FL0207.

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 (SI) 159 of 2012. Both of these SIs 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, as per SI 155 of 2012. There is



no legal requirement for forest owners to inform adjacent land owners of their intention to spray, nor is there a need for animals in adjacent properties to be moved as the application of this PPP is by hand in a very targeted manner that minimises exposure of the environment. Regulations require users of this PPP to be professionally trained and they are required to refrain from application within 20m of watercourses.

The FAC held an Oral Hearing on 10<sup>th</sup> December 2020. The parties were invited to attend in person or to join electronically. There were two Appellants with separate appeals against this licence. One of the Appellants participated electronically while the other did not participate. The DAFM and the Applicant both participated electronically. The FAC sat in person at this hearing.

At the hearing, the DAFM detailed their approach to processing and issuing the licence application.

The DAFM outlined how referrals to statutory consultees are automatically triggered according to interactions with certain spatial rules, and that this licence application had been referred to the IFI in this instance and that Tipperary County Council had also been consulted and they did not respond. The DAFM submitted that the National Parks & Wildlife Service (NPWS) were not consulted because the project site is within a "Green Area" for Hen Harrier and that this was in line with the DAFM's Hen Harrier protocol (Appendix 21 of the Forestry Standards Manual (DAFM, 2015)). The DAFM confirmed that the AA Report and AA Determination were completed and considered prior to their decision to grant licence TY03-FL0207.

The Appellant referenced the planting date of the project area (1989) and queried if EIA screening had been carried out? They asked was the area part of a larger, contiguous block of forestry planted at that time. They submitted that in the absence of confirmation that the original plantation had undergone EIA screening the licence should not have been granted by the DAFM. The Appellant argued that if the original plantation should have been subject to EIA screening but was not, then, in line with the decision of the European Court in C-201/02, Paragraph 64, Member States are required to nullify the unlawful consequences of a breach of Community law. It was further submitted that Paragraph 65 of that decision indicates that the original project should be examined in order to determine whether it was likely to have significant effects on the environment. The Appellant indicated that revocation of approval already granted may be the appropriate outcome. They submitted that C-117/17 states that Member States must nullify the consequences of a failure to carry out EIA screening and cannot be prevented from doing so by National rules. They state that the FAC is required to confirm the legitimacy of the original plantation prior to affirming the Minister's decision to grant the licence at issue.

The Appellant stated that Silvermines Mountains West SAC had been screened out due to the absence of a hydrological connection but that Wet Heath (a QI of the SAC) is mapped at c.250m from the project site which was within the colonisation range of Sitka spruce and this should have triggered a Stage 2 AA. They stated that the DAFM AA Procedure SOP references potential colonization of Annex I habitats as a potential risk. The Appellant submitted that Keeper Hill SAC should also have been screened in due to the risk of colonisation. The Appellant highlighted conflicting information in the AA Report and AA Determination regarding the Hen Harrier Green/Red Areas.

The Appellant stated that the underlying waterbody was of high status and was at risk from the proposed project. They said the River Sub-Basin has 39% forest cover and that the Environmental Protection Agency (EPA) should have been consulted. They queried what consideration had been given to cumulative impacts regarding the Water Framework Directive. They indicated that their recent AIE request for information from the DAFM in relation to their referrals process had been delayed which prevented them from making their case at the oral hearing.

The Appellant was asked by the FAC to clarify under which part of Irish Law or the EIA Directive was a retrospective EIA provided for. The Appellant did not provide a reference to any part of Irish law or the EIA Directive that provides for a retrospective EIA but stated that the issue must be dealt with in the



context of EU law as a whole, not just the EIA Directive. The Appellant stated that if an EIA was required, and not carried out, then the FAC should cancel the felling licence.

The Applicant gave an overview of their application and stated that Keeper Hill SAC was c.800m upslope from the project site and Silvermines Mountains West SAC was on the other side of the valley from the proposed development. They stated that the stream along the western boundary of the project site was separated by a forest road and was c.10-20m from the site's boundary. The FAC requested information from the Applicant regarding planting dates of the surrounding, contiguous sites (within 500m). The Applicant stated that 13ha was planted in 1989, 14ha in 1991 and 4ha in 1992.

The DAFM confirmed that the overlapping conditions for aquatic QIs where all included as they specify slightly different requirements. The DAFM confirmed that the inclusion of a reference to a Hen Harrier Higher Likelihood of Nesting Area was an error in the compilation of the AA Report.

The Appellant stated that it was in the best interests of the site that the NPWS be consulted.

In addressing the grounds of appeal, the FAC considered, in the first instance, the first Appellant's contention that the Appropriate Assessment screening was not carried out in compliance with the decision of "Finlay J in Kelly". The FAC noted that the DAFM undertook a Stage 1 AA Screening in relation to 10 Natura 2000 sites within a 15km radius of the project. The DAFM screened out eight of these sites but concluded that the proposed project could potentially have a significant effect on the Slievefelim to Silvermines Mountains SPA and the Lower River Shannon SAC. The FAC noted that the project was screened in and an AA carried out. The potential for the project to result in significant effects on the SCIs/QIs of these Natura sites was identified on a precautionary basis and site-specific measures, identified by the DAFM to mitigate such impacts, 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 Slievefelim to Silvermines Mountains SPA and Lower River Shannon SAC was considered by the DAFM. It was concluded that the proposed project, when considered on its own, will not result in any residual adverse effect on these Natura sites and associated SCIs and Conservation Objectives. The DAFM stated there is therefore no potential for the proposed works to contribute to any cumulative adverse effects.

The FAC is satisfied that the procedures adopted by the DAFM in their completion of a Stage 1 AA Screening and the subsequent production of an AA Report and AA Determination were consistent with the requirements of 6(3) the Habitats Directive and the FAC agrees with the conclusions reached at each stage.

The FAC considered the Appellant's contention that "the basic requirements of the NPWS have not been complied with". The FAC also took into account the DAFM's statement regarding the referral of licence applications to the NPWS and that this proposed project was not referred for consultation because the criteria for doing so were not met. Based on the information before it, the FAC considers the processes completed prior to issuing the decision have complied with the requirements of the Habitats Directive and that the DAFM exercised its discretion in respect of referrals.

Addressing the grounds of the second appeal, 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 noted the Appellant's contention that the felling licence should be revoked unless it can be confirmed that the original planting was compliant with the EIA Directive. The FAC observed that no evidence was presented to indicate that the existing plantation is in breach of the provisions of the EIA Directive. Furthermore, the remit of the FAC, as outlined in the Forestry (Miscellaneous Provisions) Act 2020 is to decide if the DAFM made a serious or significant error, or series of errors in their decision to grant licence the subject of this appeal or did not comply with fair procedures while doing so.

The FAC considered the Appellant's contention that the proposed project threatens the achievement of the objectives set for the underlining waterbody or waterbodies under the River Basin Management Plan for Ireland 2018-21. The FAC noted the DAFM's AA Report included site-specific measures for the protection of aquatic QIs of the Lower River Shannon SAC 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 the licence issued contained the AA Report's site-specific measures relating to the protection of water quality as additional conditions (k) to (r) along with conditions (h) and (i) which were inserted in response to the IFI's feedback. The FAC concludes that there is no convincing evidence before it that the proposed development, executed in line with the conditions attached to the licence, will have a negative impact on water quality.

As outlined previously in this document, the FAC considers the Stage 1 and Stage 2 AA determinations made by the DAFM to be consistent with the relevant provisions of the Habitats Directive. The FAC had regard to the Appellant's argument in the oral hearing that the Annex 1 Habitats of the Keeper Hill SAC and the Silvermines Mountains West SAC were at risk of colonisation by Sitka spruce and this meant that they should be screened in for Stage 2 AA. The FAC noted the distance of these two SACs (c.760m and c.250m respectively) and concluded that, in this case, there was no convincing evidence that the proposed project would be likely to give rise to a significant effect on these Natura sites due to colonisation.

The FAC had regard to 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.

In regard to 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 observe 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. Based on the information before it, the FAC concluded that additional conditions of the nature described by the Appellant should not be attached to the licence.



The FAC considered the Appellant's grounds that the licence should contain conditions relating to the commencement, carrying-out and conclusion of operations. 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.

The FAC also considered 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. In this regard, the FAC noted there is no statutory basis to enforce the Licensee to inform individual landowners. The FAC observed 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. On balance, the FAC finds that there is insufficient basis on which to apply additional conditions as contended by the Appellant.

Based on the evidence before it, the FAC concluded that the DAFM did not make a serious or significant error, or series of errors, and complied with fair procedures in the process of making their decision to grant this licence (TY03-FL0207). In deciding to affirm the decision to grant the licence, the FAC considered that the proposed development would be consistent with Government policy and good forestry practice.

Yours sincerely,

A large black oval redaction covering the signature of Luke Sweetman.

Luke Sweetman on behalf of the Forestry Appeals Committee