



[REDACTED]

28<sup>th</sup> July 2021

**Subject:** Appeal FAC 008/2021 regarding licence GY11-FL0376

Dear M [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 as amended, has now completed an examination of the facts and evidence provided by all parties to the appeal.

#### **Background**

Licence GY11-FL0376 for felling and replanting of forest on 15.90ha at Derrybrien North and Derrybrien West, Co. Galway was issued by the Department of Agriculture, Food and the Marine (DAFM) on 21<sup>st</sup> December 2020.

#### **Hearing**

A hearing of appeal FAC 008/2021 was held by the FAC on 15<sup>th</sup> July 2021. The FAC Members in attendance at the hearing were Mr. Seamus Neely (Chairperson), Mr. Luke Sweetman and Mr. Iain Douglas.

#### **Decision**

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, submissions received and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to set aside and remit the decision of the Minister for Agriculture, Food and the Marine regarding licence GY11-FL0376.

#### **General**

The licence pertains to the felling and replanting of forest on 15.90ha in one overall site at Derrybrien North and Derrybrien West, Co. Galway. The forest is currently composed of Sitka spruce (95.3%) and Lodgepole Pine LPS (4.7%) planted in 1983 (3.99ha), 1985 (2.74ha) and 1989 (9.17ha). Replanting would be Sitka spruce (60%) and LPS (40%) of the replanted area and 5% of project area is to be open space. The application is accompanied by a location and felling (bio) map and a Harvesting Plan. The site is in the

OWENDALULLEGH\_010 sub basin, the waterbody has a Good Water Framework Directive status assigned to it in the 2013-18 assessment period and is not at risk. The site is described as having a predominantly moderate slope (<15%), the habitat is described as predominantly coniferous plantation (WD4) and the soil type underlying the project area is described in the DAFM Appropriate Assessment screening documentation as being approximately; 96%, Blanket Peats and basin peats and 4% Peaty Gleys, podzols, lithosols (podzols (peaty), lithosols, peats, with some outcropping rock.

The file shows that the application was desk assessed and that two submissions were received from members of the public. The application was referred to the Galway Co Council on 8<sup>th</sup> January 2020 and to the National Parks and Wildlife Service (NPWS) on 10<sup>th</sup> December 2019. The NPWS made a submission which included the following;

*'The potential for flooding, which may affect European Sites downstream: The removal of the tree canopy, the exposure of underlying drains, and the cleaning of drains prior to any forestry related activity at this site, has the potential to lead to accelerated run-off and increased silt loading. On its own, or in combination with other forestry or similar works in the catchment, it thus has the potential to have an impact on wetland European Sites that are located downstream namely;*

- *Termon Lough Special Area of Conservation (SAC) (Site Code 001321),*
- *Cahermore Turlough SAC (Site Code 002294),*
- *Caherglassaun Turlough SAC (Site Code 000238),*
- *Coole-Garryland Complex SAC (Site Code 000252),*
- *Lough Cutra SAC (Site Code 000299).'*

#### **Applicants Pre-Screening Report (15/10/2020)**

The applicant has submitted an Appropriate Assessment Pre-Screening report dated 15<sup>th</sup> October 2020. It states in section 2 (at page 5) that there are nineteen European Sites within a 15km radius of the project of which six (Slieve Aughty Mountains SPA 004168, Gortacarnaun Wood SAC 002180, Lough Cutra SAC 000299, Coole-Garryland Complex SAC Site Code: 000252, Lough Cutra SPA Site Code: 004056, and Coole-Garryland SPA 004107) are said to be hydrologically connected to the project site. In section 3 (pages 7 to 35) titled '*Individual Effect on European Sites*' it examines twenty-two European sites and lists their Qualifying Interests / Special Conservation Interests. The twenty-two sites examined are; Slieve Aughty Mountains SPA 004168, Ballinduff Turlough SAC 002295, Caherglassaun Turlough SAC 000238, Carrowbaun, Newhall and Ballylee Turloughs SAC 002293, Coole-Garryland Complex SAC 000252, Coole-Garryland SPA 004107, Derrycrag Wood Nature Reserve SAC 000261, Drummin Wood SAC 002181, Galway Bay Complex SAC 000268, Gortacarnaun Wood SAC 002180, Inner Galway Bay SPA 004031, Kiltartan Cave (Coole) SAC 000286, Lough Coy SAC 002117, Lough Cutra SAC 000299, Lough Cutra SPA 004056, Lough Rea SAC 000304, Lough Rea SPA 004134, Loughatorick South Bog SAC 000308, Peterswell Turlough SAC 000318, Pollagoona Bog SAC 002126, Pollnacknockaun Wood Nature Reserve SAC 000319, and Sonnagh Bog SAC 001913. It screens in the Slieve Aughty Mountains SPA 004168 and screens out the other twenty-one sites. The reasons for the screening conclusions reached in respect of each site are provided in the report.

### **Natura Impact Statement (submitted by the applicant) (12/11/2020)**

There is also a Natura Impact Statement (NIS) on file which has a completion date of 12<sup>th</sup> November 2020 as submitted by the applicant. It is titled as being '*For Project comprising of Road Construction CN86760 and CN87068 and Clearfell and Reforestation GY11-FL0368, GY11-FL0376, GY10-FL0156 and GY11-FL0348, located in the vicinity of Loughatorick North, Co. Galway*'. It sets out the qualifications of those involved in its preparation and the legal framework for NIS. It deals with the '*Specific Details for GY11-FL0376: Clearfell & Reforestation*' for this project beginning at page 15 of 61 in the NIS. It sets out details of the project area, current stocking, that an existing forest road (GY11-R0258) runs along the west and south boundary of the project area and that a second road runs from the southern part of the site in a northerly direction into the centre of the project area and that these roads will be used to remove felled timber from the project area. It also states that timber felled in the northeast of the site will need to be brought across an aquatic zone to reach the forest roads.

It states that the project area occurs within the Galway Bay Southeast catchment, which is not a Margaritifera sensitive catchment (i.e. Catchment of SAC populations listed in S.I. 296 of 2009), that two aquatic zones (rivers) are present in the project area, that these two unnamed rivers flow along the north western (order 1; EPA river waterbody code: IE\_WE\_290010500, segment code: 29\_291) and western (order 1; EPA river waterbody code: IE\_WE\_290010500, segment code: 29\_205) boundaries of the project area. These two rivers, it states, meet and flow in an easterly direction through the eastern part of the project area. It sets out that after leaving the project area this river continues to flow in an east / south easterly direction for approximately 3km before joining the Owendalulleegh River (order 4). The Owendalulleegh River then flows in a west/south westerly direction for approximately 14km before entering the Gortacarnaun Wood SAC. The NIS states that there are nineteen European Sites within a 15km radius of the project site (GY11-FL0376) and that six of these sites (Slieve Aughty Mountains 004168, Gortacarnaun Wood SAC 002180, Lough Cutra SAC 000299, Coole-Garryland Complex SAC 000252, Lough Cutra SPA Site Code: 004056, and Coole-Garryland SPA 004107) are hydrologically connected to the project site. The project area is said to occur entirely within the Slieve Aughty Mountains SPA.

The NIS sets out that work on this site will comprise of clearfelling, followed by reforestation (i.e. replanting of trees) of the area as CHF (Conifer High Forest). It states that this area will be re-established by windrowing and planting, with the following species: 60% Sitka spruce @ 2500 trees per hectare, 40% Lodgepole pine -South Coastal @ 2500 trees per hectare and those plants used in restocking this area will be treated off site in the nursery with an insecticide (acetamiprid) approved by Pesticide Registration and Control Division, DAFM. The site, it states, will be monitored for any damage to young trees from newly emerged pine weevil (*Hylobius abietis*), and if deemed necessary following an appraisal of the project area through Coillte's Integrated Pest Management Policy, a top up spot spray may be applied to prevent excessive levels of damage and tree losses. Fertiliser, in the form of ground rock phosphate, will be applied as part of this project. The rate of application of elemental phosphate is 42 kgs/ha if deemed necessary following an appraisal of the project area through Coillte's Integrated Pest Management Policy, herbicide (glyphosate) will be required to manage competing vegetation through manual spot spray application, to

encourage rapid tree growth and to reduce trees losses through competition. The NIS sets out details that are common to all clearfell and reforestation components of the projects such as in relation to machine harvesting, reforestation objective and replanting species, ground preparation, fertilisation, use of chemicals, environmental setbacks and also details that are common to all forest operations such as pre-commencement meetings, site monitoring, contingency planning, and contractor training.

The NIS sets out that the Slieve Aughty Mountains SPA is screened in for the purposes of Appropriate Assessment in relation to project GY11–FL0376. It lists the Special Conservation Interests and sets out components of the Conservation Objectives for this Natura site. It sets out in section 3 details of the proposed mitigation that are to be applied in relation to the Slieve Aughty Mountains SPA and confirms that these are relevant to project GY11–FL0376. The NIS deals with ‘Residuals’ at section 4, with ‘In-Combination Plans & Projects on European Sites’ at section 5 and gives details of the sources accessed for information to inform same, it set out collated mitigation measures at section 6, and provides the author declarations at section 7. Various maps relevant to the projects considered in the NIS are included at Appendix 1 and IFS soil classifications are set out in Appendix 2.

#### **Appropriate Assessment screening and Determination (DAFM) (3/12/2020) & In-combination report**

An Appropriate Assessment screening and Determination report undertaken by DAFM and dated 3<sup>rd</sup> December 2020 is to be found on file. It examines twenty European Sites (Slieve Aughty Mountains SPA 0004168, Sonnagh Bog SAC 0001913, Pollagoona Bog SAC 0002126, Drummin Wood SAC 0002181, Gortacarnaun Wood SAC 0002180, Peterswell Turlough SAC 0000318, Lough Coy SAC 0002117, Lough Cutra SAC 0000299, Lough Cutra SPA 0004056, Lough Rea SPA 0004134, Lough Rea SAC 0000304, Carrowbaun, Newhall and Ballylee Turloughs SAC 0002293, Loughatorick South Bog SAC 0000308, Ballinduff Turlough SAC 0002295, Pollnacknockaun Wood Nature Reserve SAC 0000319, Derrycrag Wood Nature Reserve SAC 0000261, Kiltartan Cave (Coole) SAC 0000286, Coole-Garryland Complex SAC 0000252, Coole-Garryland SPA 0004107, and Galway Bay Complex SAC 0000268). The Slieve Aughty Mountains SPA overlaps with the project area whereas the Galway Bay Complex SAC lies beyond a 15km distance from the project area.

The Slieve Aughty Mountains SPA has been screened in due to the possible effect due to the location of the project within the Natura site. The Coole-Garryland Complex SAC has been screened in as the project could have a possible effect due to the direct hydrological connectivity that exists between the project area and this SAC. The Galway Bay Complex SAC has been screened in as the project could have a possible effect due to the direct hydrological connectivity that exists between the project area and this SAC. All other sites examined (seventeen) were screened out and the project as set out to proceeded to Appropriate Assessment. There is a separate in-combination report / document on file which contains a project specific in-combination statement for GY11–FL0376 and it is based on a spatial run on the week of 24/11/2020.

## Appropriate Assessment Determination Report (DAFM) (15/12/2020)

An Appropriate Assessment Determination report dated 15<sup>th</sup> December 2020 is to be found on file. It sets out that in concluding the Appropriate Assessment Screening, the Minister has determined that there is no likelihood of the felling and reforestation project GY11-FL0376 having any significant effect, either individually or in combination with other plans or projects, on any of the following European site(s), in view of their conservation objective, for the reasons set out:

- Sonnagh Bog SAC IE0001913 Due to the absence of a direct upstream hydrological connection, and subsequent lack of any pathway, hydrological or otherwise.
- Pollagoona Bog SAC IE0002126 Due to the location of the project area within a separate water body catchment to that containing the Natura site, with no upstream connection, and the subsequent lack of any pathway, hydrological or otherwise.
- Drummin Wood SAC IE0002181 Due to the absence of a direct upstream hydrological connection, and subsequent lack of any pathway, hydrological or otherwise.
- Gortacarnaun Wood SAC IE0002180 Due the application of the current Habitat table (v18Dec19).
- Peterswell Turlough SAC IE0000318 Due to the absence of a direct upstream hydrological connection, and subsequent lack of any pathway, hydrological or otherwise.
- Lough Coy SAC IE0002117 Due to the absence of a direct upstream hydrological connection, and subsequent lack of any pathway, hydrological or otherwise.
- Lough Cutra SAC IE0000299 Due to the separation distance between the Natura site and the project.
- Lough Cutra SPA IE0004056 Due to the separation distance between the Natura site and the project.
- Lough Rea SPA IE0004134 Due to the separation distance between the Natura site and the project.
- Lough Rea SAC IE0000304 Due to the absence of a direct upstream hydrological connection, and subsequent lack of any pathway, hydrological or otherwise.
- Carrowbaun, Newhall and Ballylee Turloughs SAC IE0002293 Due to the absence of a direct upstream hydrological connection, and subsequent lack of any pathway, hydrological or otherwise.
- Loughatorick South Bog SAC IE0000308 Due to the location of the project area within a separate water body catchment to that containing the Natura site, with no upstream connection, and the subsequent lack of any pathway, hydrological or otherwise.
- Ballinduff Turlough SAC IE0002295 Due to the absence of a direct upstream hydrological connection, and subsequent lack of any pathway, hydrological or otherwise.
- Pollnacknockaun Wood Nature Reserve SAC IE0000319 Due to the location of the project area within a separate water body catchment to that containing the Natura site, with no upstream connection, and the subsequent lack of any pathway, hydrological or otherwise.
- Derrycrag Wood Nature Reserve SAC IE0000261 Due to the location of the project area within a separate water body catchment to that containing the Natura site, with no upstream connection, and the subsequent lack of any pathway, hydrological or otherwise.

- Kiltartan Cave (Coole) SAC IE0000286 Due to the separation distance between the Natura site and the project.
- Coole-Garryland SPA IE0004107 Due to the separation distance between the Natura site and the project.
- Caherglassaun Turlough SAC IE0000238 Due to the scale and nature of the activity, the large downstream hydrological distance (> 44km) separating the project and the Natura site, with sufficient volume and surface area for settlement, dispersion and dilution of any possible nutrient sediment or siltation residue from the site.
- Coole-Garryland Complex SAC IE0000252 Due to the scale and nature of the activity, the large downstream hydrological distance (> 38 km) separating the project and the Natura site, with sufficient volume and surface area for settlement, dispersion and dilution of any possible nutrient sediment or siltation residue from the site.

It also sets out that in concluding the AA screening, the Minister has determined that there is the likelihood of felling and reforestation project GY11-FL0376 having a significant effect, either individually or in combination with other plans and projects, on the following European Site(s), for the reasons described, in view of best scientific knowledge and in view of the conservation objectives of the European Site(s).

- Slieve Aughty Mountains SPA IE0004168 Possible effect due to the location of the project within the Natura site.

The Appropriate Assessment Determination report in section 3 at page 4 sets out that the Minister determined that an Appropriate Assessment of the activity proposed under GY11-FL0376 was required in relation to the above 'screened in' European sites. It states that for this reason,

*"The applicant submitted a Natura Impact Statement (completed 12/11/2020) to facilitate the Minister carrying out an appropriate assessment. Niall Phelan, acting on behalf of the DAFM, subsequently evaluated the submitted NIS, defined as "a report comprising the scientific examination of a plan or project and the relevant European Site or European Sites, to identify and characterise any possible implications of the plan or project individually or in combination with other plans or projects in view of the conservation objectives of the site or sites, and any further information including, but not limited to, any plans, maps or drawings, scientific information or data required to enable the carrying out of an Appropriate Assessment".*

*In undertaking the Appropriate Assessment of the likely significant implications and effects of the activity on European Sites, the following were taken into account:*

- *the initial application GY11-FL0376, including all information submitted by the applicant, information available via iFORIS (including its GIS Map Viewer), responses from referral bodies and submissions from 3<sup>rd</sup> parties;*
- *any subsequent supporting documentation received from the applicant;*

- any other plan or project that may, in combination with the plan or project under consideration, adversely affect the integrity of a European Site;
- if appropriate, any written submission or observation made by a consultation body or the public to the Minister in relation to the application under Part 6;
- any Natura Impact Statement provided by the applicant on foot of a request by the Minister, or otherwise;
- any supplementary information furnished in relation to any such report or statement,
- if appropriate, any further information sought by the Minister and furnished by the applicant in relation to a Natura Impact Statement,
- any information or advice obtained by the Minister,
- any other relevant information.

*The information provided in the NIS was sufficient to derive appropriate conditions for a determination.'*

The report at section 4 (pages 4, 5 and 6) sets out the Appropriate Assessment Determination and the mitigations required which are to be attached as conditions to any licence issued for the project. In concluding the report sets out that,

*'The basis for this AA Determination is as follows : This 15.9ha blanket peat project area sits on a moderate south east slope within the Slieve Aughty Mountains SPA with appropriate Green Area conditions listed for Hen Harrier and operational timing restrictions given the area is directly adjacent to peat bog. Broadleaf planting has been set out for the south border to create an ecotone and haven for prey species of the two features. Two rivers are present within the project area, flowing along the north border and across the east of the project area. However, all downstream SAC hydrological connections were screened out due to distance and insignificance of impact. A setback distance has been set reflecting the blanket peat nature of the project area. The above considerations combined will eliminate risks of impact to the screened in features. Therefore, the Minister for Agriculture, Food & the Marine has determined, pursuant to Regulation 42(16) of the European Communities (Birds and Natural Habitats) Regulations 2011 (as amended) and Regulation 19(5) of the Forestry Regulations 2017 (as amended), based on objective information, that no reasonable scientific doubt remains as to the absence of any adverse effect on the integrity of any European site.'*

## **Appeal**

There is one appeal against the decision to issue the licence in this case. The full grounds of appeal have been considered by the FAC and are to be found on file. The following is a summary of the appeal grounds;

- Contention that the Natura Impact Statement doesn't comply with the legislation.
- Contention that the assessment carried out has lacunae.
- Submission that the FAC is not a fit and proper body to consider this appeal on the basis of potential conflicts of interest.
- Submission that the appeal fee is not legal.

- Submission that the Forest Service or FAC has never considered the Appendix 1 document as regularly submitted by the NPWS.
- The appeal provides extracts from a number of court cases / judgements.

#### **DAFM Statement to the FAC**

In a statement to the FAC, the DAFM stated that the decision was issued in accordance with procedures, S.I. 191/2017 and the 2014 Forestry Act and that the Department is satisfied that all criteria outlined in its standards and procedures policy have been adhered to in the making of a decision on the application. It also records the relevant application processing dates, sets out that there were two submissions received from third parties, that it was referred to Galway County Council and the National Parks and Wildlife Service and that it was desk assessed. The statement also sets out that the FAC is independent of the DAFM and carries out its functions in an independent and impartial manner in regard to the appeal process. It sets out that in regard to the granted felling licence application, information submitted by Coillte in the form of maps (GIS and softcopy), harvesting and establishment operational procedures as well as an Appropriate Assessment Pre-screening Report and associated Pre-screening Report methodology document and a Natura Impact Statement (NIS) were considered during the licencing process. It states that these documents are stored on file and have been submitted to the FAC in respect of appeal reference FAC 008/2021. It states that the licenced area comprises WD4 coniferous forest planted in 1983/1985/1989 and submits that the felling and replanting of the area licenced by DAFM as GY11-FL0376 is consistent with best forest practice, DAFM standard procedures in relation to Appropriate Assessment, S.I. 191/2017 and the 2014 Forestry Act. In consideration of the felling licence application for GY11-FL0376, the DAFM states that it carried out and documented an AA Screening exercise, arrived at a determination that the proposed felling and reforestation project meets the threshold of being considered likely to have significant effects on European sites, carried out and documented a Stage 2 Appropriate Assessment exercise and produced a formal determination as per Regulation 19(5) of SI 191 of 2017, as amended, and per Regulation 42(16) of SI 477 of 2011. This formal determination it says, stated 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 measures identified. It points out that the formal determination also states that based on objective information, no reasonable scientific doubt remains as to the absence of any adverse effect on the integrity of any European site. The statement goes on to provide additional narrative in response to the appeal.

#### **Consideration of the appeal by the FAC**

In considering the grounds of appeal, the FAC considered, in the first instance, the contention in the grounds that the FAC is not a fit and proper body to consider this appeal on the basis of potential conflicts of interest. The FAC operates under the Agriculture Appeals Act 2001 as amended and as required by the legislation, is independent and impartial in the performance of its functions.

The FAC considered whether the proposed development should have been addressed in the context of the Environmental Impact Assessment (EIA) Directive. The EU 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 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 (S.I. 191 of 2017), in relation to forestry licence applications, require mandatory EIA 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 decision before the FAC relates to the felling and subsequent replanting of 15.9 ha of commercial managed forest. The FAC concluded that the felling and replanting of trees, as part of a forestry operation with no change in land use, does not fall within the classes referred to in the Directive, and is not covered by national regulations and that screening for significant effects under the EIA Directive was not required in this case.

The FAC considered the contention in the grounds of appeal relating to Appropriate Assessment and related matters. In this regard the FAC finds that the applicant has submitted an Appropriate Assessment Pre-Screening report dated 15<sup>th</sup> October 2020 which states in section 2 (at page 5) that there are nineteen European Sites within a 15km radius of the project. At section 3 (pages 7 to 35) titled ‘*Individual Effect on European Sites*’ this report examines twenty-two European sites and lists their Qualifying Interests / Special Conservation Interests. (The list of the various sites examined in this report is detailed earlier in this letter in a section dedicated to this Pre-screening report). The report screens in the Slieve Aughty Mountains SPA 004168 and screens out the other twenty-one sites. The reasons for the screening conclusions reached in respect of each site are provided in the report.

The FAC finds that there is also a NIS on file as submitted by the applicant and which has a completion date of 12<sup>th</sup> November 2020. (There is further detail provided earlier in this letter in relation to the content of the NIS in a section dedicated to it). The FAC finds that the NIS states that there are nineteen European Sites within a 15km radius of the project site (GY11–FL0376), that six of these sites (Slieve Aughty Mountains 004168, Gortacarnaun Wood SAC 002180, Lough Cutra SAC 000299, Coole-Garryland Complex SAC 000252, Lough Cutra SPA Site Code: 004056, and Coole-Garryland SPA 004107) are hydrologically connected to the project site and that the project area is said to occur entirely within the Slieve Aughty Mountains SPA. The FAC also finds that the NIS screens in the Slieve Aughty Mountains SPA for the purposes of Appropriate Assessment in relation to the project GY11– FL0376. It lists the Special Conservation Interests and sets out components of the Conservation Objectives for this Natura site. It sets out in section 3 details of the proposed mitigation that are to be applied in relation to the Slieve Aughty Mountains SPA and confirms that these are relevant to project GY11–FL0376. The NIS deals with ‘Residuals’ at section 4, deals with ‘In-Combination Plans & Projects on European Sites’ at section 5 and gives details of the sources accessed for information to inform same. The FAC finds that collated mitigation measures are set out in addition to the as author declarations. Various maps relevant to the projects considered in the NIS and IFS soil classifications are included as appendices.

The FAC finds that an Appropriate Assessment Screening (AAS) and Determination report was undertaken by DAFM and dated 3<sup>rd</sup> December 2020. (This report has a section largely dedicated to it earlier in this letter which gives summary details of its content and the various sites examined in it). In this context the FAC finds that the AAS examined twenty European Sites, one of which overlaps with the project area (Slieve Aughty Mountains SPA), eighteen of which are within 15km of the project area, and one (Galway Bay Complex SAC) lies beyond a 15km distance from the project area. The FAC finds that the report screens in the Slieve Aughty Mountains SPA (due to the possible effect due to the location of the project within the Natura site), screens in the Coole-Garryland Complex SAC (as the project could have a possible effect due to the direct hydrological connectivity that exists between the project area and this SAC), and screens in the Galway Bay Complex SAC (as the project could have a possible effect due to the direct hydrological connectivity that exists between the project area and this SAC). All other sites examined (seventeen) were screened out and the project as set out to proceed to Appropriate Assessment for the three screened in sites.

The FAC considered the Appropriate Assessment Determination (AAD) report dated 15<sup>th</sup> December 2020 which is to be found on file. (There is further detail provided earlier in this letter in relation to the DAFM's AAD in a section of the letter dedicated to it). The AAD sets out that in concluding the Appropriate Assessment Screening, the Minister has determined that there is the likelihood of felling and reforestation project GY11-FL0376 having a significant effect, either individually or in combination with other plans and projects, on the following European Site(s), for the reasons described, in view of best scientific knowledge and in view of the conservation objectives of the European Site(s).

- Slieve Aughty Mountains SPA IE0004168 Possible effect due to the location of the project within the Natura site.

The list of sites considered in the AAD and screened out are; Sonnagh Bog SAC 0001913, Pollagoona Bog SAC 0002126, Drummin Wood SAC 0002181, Gortacarnaun Wood SAC 0002180, Peterswell Turlough SAC 0000318, Lough Coy SAC 0002117, Lough Cutra SAC 0000299, Lough Cutra SPA 0004056, Lough Rea SPA 0004134, Lough Rea SAC 0000304, Carrowbaun, Newhall and Ballylee Turloughs SAC 0002293, Loughatorick South Bog SAC 0000308, Ballinduff Turlough SAC 0002295, Pollnacknockaun Wood Nature Reserve SAC 0000319, Derrycrag Wood Nature Reserve SAC 0000261, Kiltartan Cave (Coole) SAC 0000286, Coole-Garryland SPA 0004107, Caherglassaun Turlough SAC 0000238, and Coole-Garryland Complex SAC 0000252. The reasons for the screening conclusions reached in respect of each of the above sites is set out in the AAD report.

The FAC finds that the Appropriate Assessment Determination report in section 3 at page 4 sets out that the Minister determined that an Appropriate Assessment of the activity proposed under GY11-FL0376 was required. It records that the applicant submitted a NIS (completed 12/11/2020) to facilitate the Minister carrying out an appropriate assessment, that the DAFM subsequently evaluated the submitted NIS, defined as *"a report comprising the scientific examination of a plan or project and the relevant European Site or European Sites, to identify and characterise any possible implications of the plan or project individually or in combination with other plans or projects in view of the conservation objectives of*

*the site or sites, and any further information including, but not limited to, any plans, maps or drawings, scientific information or data required to enable the carrying out of an Appropriate Assessment".* The FAC noted that the DAFM also sets out those considerations that were taken into account in undertaking the Appropriate Assessment of the likely significant implications and effects of the activity on European Sites which included the original application GY11-FL0376, all information submitted by the applicant, information available via iFORIS (including its GIS Map Viewer), responses from referral bodies and submissions from 3<sup>rd</sup> parties, any other plan or project that may, in combination with the plan or project under consideration, adversely affect the integrity of a European Site, if appropriate, any written submission or observation made by a consultation body or the public to the Minister in relation to the application under Part 6, any NIS provided by the applicant on foot of a request by the Minister, or otherwise, any supplementary information furnished in relation to any such report or statement, if appropriate, any further information sought by the Minister and furnished by the applicant in relation to a NIS, any information or advice obtained by the Minister, and any other relevant information. The FAC finds that the AAD records that the information provided in the NIS was sufficient to derive appropriate conditions for a determination. The FAC also finds that the AAD report at section 4 (pages 4, 5 and 6) sets out the Appropriate Assessment Determination and the mitigations required which are to be attached as conditions to any licence issued for the project. The FAC also finds that the DAFM recorded other plans and projects, including forestry and non-forestry projects and plans, that were considered in relation to potential in-combination effects of the proposal.

In arriving at a conclusion as to whether the DAFM have erred in its processing of this licence application as it relates to Appropriate Assessment the FAC considered all of the relevant documentation on file in this connection including the Appropriate Assessment pre-screening report (15/10/2020) and the Natura Impact Assessment Statement (12/11/2020) as submitted by the applicant, the DAFM Appropriate Assessment screening and Determination report (3/12/2020) and the DAFM Appropriate Assessment Determination and report (15/12/2020) on file. The FAC notes that the number of Natura Sites examined differed as between a number of the reports. The FAC finds that the applicant's Appropriate Assessment pre-screening report examined twenty-two European sites and screened in one site (Slieve Aughty Mountains SPA) whereas the DAFM Appropriate Assessment screening and Determination report examined twenty European sites and screened in three sites (Slieve Aughty Mountains SPA, Coole-Garryland Complex SAC, Galway Bay Complex SAC). The two sites examined in the applicant's pre-screening report and not screened in the DAFM AAS are the Caherglassaun Turlough SAC and Inner Galway Bay SPA. The FAC finds that the DAFM Appropriate Assessment Determination report examined / dealt with twenty European sites, one of which (Slieve Aughty Mountains SPA) was screened in. The FAC also finds that the DAFM AAD examined the Caherglassaun Turlough SAC IE0000238 whereas the DAFM AAS did not, similarly the DAFM AAS examined the Galway Bay Complex SAC IE0000268 whereas the DAFM AAD did not. The FAC finds that of three European sites screened in the DAFM AAS (3/12/2020), the Slieve Aughty Mountains SPA was considered in the AAD as screened in and proceeded to Appropriate Assessment, the Coole-Garryland Complex SAC was considered in the DAFM AAD and was screened out with reasons given, however the Galway Bay Complex SAC which was screened in in the DAFM AAS was not considered in the DAFM AAD and was not subjected to Appropriate Assessment. While noting that this European site (Galway Bay Complex SAC) was considered in the pre-screening report submitted by

the applicant and was screened out in same with reasons given, the FAC considered that the DAFM made an error in the processing of the application as it relates to Appropriate Assessment in that it did not consider in its AAD a European site (Galway Bay Complex SAC) that was screened in its AAS (which itself post-dated the applicant's pre-screening that screened same out). The FAC concluded that this represented a serious error in the processing of the application and decided that a new screening of the proposal itself and in combination with other plans or projects under Article 6 of the EU Habitats Directive is required and should be undertaken regarding this proposal.

The FAC considered the contention in the grounds of appeal that the Forest Service or the FAC has never considered the Appendix 1 document as regularly submitted by the NPWS. The appellant has not provided specific information to evidence this contention nor has the appellant submitted specific examples to support the submission. The FAC therefore concluded that there is no basis to this contention. In relation to the contention in the grounds that the appeal fee (€200) is not legal the FAC finds that the legislative basis for the FAC is set out in Irish law and that the FAC is independent of the DAFM and carries out its functions in an independent and impartial manner in respect of the appeals process, as mandated and required under Irish law. The FAC also finds that where a person wishes to make an appeal under the Agriculture Appeals Act 2001 (as amended) in respect of forestry licencing a €200 appeal fee is payable. The FAC further finds that the said fee is prescribed in Article 10 of the Forestry Appeals Committee Regulations 2020. The FAC therefore concluded that no convincing evidence has been provided by the appellant to substantiate this contention.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, and other submissions received. The FAC is satisfied that a serious or significant error or a series of errors was made in making the decision in relation to licence GY11-FL0376. The FAC is therefore setting aside and remitting the decision regarding licence GY11-FL0376 to the Minister to carry out a new screening of the proposal itself and in combination with other plans or projects under Article 6 of the EU Habitats Directive, before a new decision is made.

Yours sincerely,

Seamus Neely On Behalf of the Forestry Appeals Committee