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12/10/2021

Subject: Appeal FAC 099/2021 regarding licence CN87383

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

Background

Licence CN87383 for afforestation of 15.77 ha at Rossfinch, Co. Tipperary was issued by the Department of Agriculture, Food and the Marine (DAFM) on 21/05/2021.

Hearing

A hearing of appeals FAC 099/2021 was held by the FAC on 16/09/2021. In attendance at hearing:

FAC Members: Mr Donal Maguire (Chairperson), Mr Vincent Upton and Mr Derek Daly.
Secretary to the FAC: Ms Marie Dobbyn.

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 affirm the decision of the Minister for Agriculture, Food and the Marine regarding licence CN87383.

Overview

The record describes the application site as comprising a total area of 16.17ha, separated into eight plots as follows: Plot1. 1.66ha, Plot2. 4.77ha, Plot3. 0.27ha, Plot4. 4.08ha, Plot5. 1.68ha, Plot 6. 2.14ha, Plot 7. 1.28ha and Plot 8. 0.28ha

The site comprises a mosaic of several soil types, mainly mineral soils. Soil types within each plot are described below.

Plot 1. A small eastern portion is underlain by Lithosols, Regosols, described as shallow well drained mineral; derived from mainly non-calcareous parent materials. Most of the plot is Acid Brown Earths, Brown Podzolics described as Deep well drained mineral; derived from mainly non-calcareous parent materials.

Plot 2. Most of this plot contains Lithosols, Regosols described as shallow well drained mineral; derived from mainly non-calcareous parent materials. Some small portions to the north and west of the plot are underlain by Acid Brown Earths, Brown Podzolics described as deep well drained mineral; derived from mainly non-calcareous parent materials.

Plot 3. The northern half of the plot is underlain by Surface water Gleys, Ground water Gleys described as deep poorly drained mineral; derived from mainly non-calcareous parent. The other half of the plot contains Acid Brown Earths, Brown Podzolics described as deep well drained mineral, derived from mainly non-calcareous parent materials.

Plot 4. The plot is mostly underlain by Acid Brown Earths, Brown Podzolics described as deep well drained mineral; derived from mainly non-calcareous parent materials. Some northern and southern portions are Lithosols, Regosols described as shallow well drained mineral; derived from mainly non-calcareous parent materials.

Plot 5. The northeast section of the plot is underlain by Surface water Gleys, Ground water Gleys described as deep poorly drained mineral; derived from mainly non-calcareous parent. Most of the plot contains Acid Brown Earths, Brown Podzolics described as deep well drained mineral; derived from mainly non-calcareous parent materials.

Plot 6. A small eastern portion of the plot contains Surface water Gleys, Ground water Gleys described as deep poorly drained mineral; derived from mainly non-calcareous parent. The North of the plot is Acid Brown Earths, Brown Podzolics described as deep well drained mineral; derived from mainly non-calcareous parent materials. To the south of the plot Lithosols, Regosols are described as shallow well drained mineral; derived from mainly non-calcareous parent materials.

Plot 7. The western portion of the site is underlain by Basin peats and Blanket Peats, described as cutaway/cutover peat. A small portion northeast and the southern portion are Surface water Gleys, Ground water Gleys described as deep poorly drained mineral; derived from mainly non-calcareous parent. To the East, Acid Brown Earths, Brown Podzolics described as deep well drained mineral; derived from mainly non-calcareous parent materials.

Plot 8. The totality of the plot contains Lithosols, Regosols described as shallow well drained mineral; derived from mainly non-calcareous parent materials. (Source: Soil layer, iFORIS)

Elevation (m) Plots 1, 5 and 6 range from 80 to 100m AOD. Plots 2 and 4 range from 90m to 130mAOD. Plot 8 is located at 120m AOD, plot 3 at 90m AOD and plot 7 at 80m AOD.(Source: OS Discovery Map)

Slope The land is relatively flat/gently sloping towards the Kilmastula River. Plots 1, 5 and 6 have a gradient of 10%. Plots 2 and 4 have a gradient of roughly 18%

Habitats. Basic habitat(s) and/or onsite vegetation include, improved agricultural grassland (GA1);Eroding / upland river (FW1) / Drainage ditches (FW4); Hedgerow (WL1) / Treelines (WL2) / Scrub (WS1) and Ponds.

A site survey was carried out on 09/02/2021 by DAFM. In it, the inspector noted that 'the project comprises wet grassland (GS4). There are hedgerows (WL1), associated earth banks (BL1) and agricultural drains (FW4) along old field boundaries. There are pockets of scrub (WS1)

along the riverbanks. Access to the project area requires crossing the watercourses. The surrounding landscape consists of similar agricultural grasslands (GSi4, GS4), hedgerows (WL1), conifer plantation (WD4), watercourses (FW4), roads (BL3) and dwellings (BL3)'.

There is a natural watercourse on site, running along the boundaries of plots 5, 6 and 7. It is 1 – 3+m wide, < 50cm deep (down a 2m bank), medium flowing and with a pebble /gravel / silt substrate. Its banks are vegetated with willow (*Salix* sp.) and a similar mix to that detailed below for hedgerow. It flows into the Kilmastula River, which is part of the Lower River Shannon SAC approximately 2km downstream. The river waterbody status (2013-18) within the Kilmastula River and its nearby tributaries is classified as good (EPA database). Old field drainage channels also occur along some field boundaries of Plot 1. These are very shallow (< 0.5m), grassed over and with virtually no water flow –just seepage. They filter into the watercourse along the north-western boundary. There is a rush dominated hollow within Plot 4 seeping northward.

There is a small wet depression in the northwest corner of Plot 2. In correspondence with NPWS dated 16 December 2020, this area was referred to as a fen. However, further correspondence received from NPWS on the 19 January 2021 describes this area as a shallow depression which holds water but dries up in the summertime. A revised NIS and Bio Map were submitted by the applicant and uploaded to iFORIS on the 10/03/2021, marking the location of this wet depression but noting that it is too small to map. The FIR response describes this area is approximately 10m x 20m and is a result of run-off from the surrounding area and a lowering of ground in the past.

The record states that the information and photographs provided indicate that this area is best described as a pond, corresponding to FL8 Other Artificial Lakes and Ponds under Fossitt's *A Guide to Habitats in Ireland*. This area is a 'water-related hotspot' and will have a 10m setback as per Forest Service guidance. (Source: NIS dated December 2020, Correspondence from NPWS dated 19 January 2021.

The site does not have any identified flood hazard, apart from a narrow section at the northern end of Plot 5, associated with the Kilmastula River

A stream, a tributary of the Kilmastula River, flows along the northern boundary of the site, forming the boundaries of plots 5, 6 and 7. This river flows in a north westerly direction, flowing into the Lower River Shannon SAC002165 approximately 1.5km downstream of the site. The Kilmastula River flows towards the River Shannon, also part of the Lower River Shannon SAC, 5.7km in-stream distance to the West of the site

Referrals and submissions

Referral letters were sent to Inland Fisheries Ireland (IFI) and the National Parks and Wildlife Service (NPWS) on the 29/10/2020. A response was received from NPWS on the 16/12/2020. It contained comments related to the proximity with the Lower River Shannon Special Area of Conservation SAC, and a stricture that appropriate aquatic buffer zones and mitigation proposed for biodiversity to be strictly adhered to. Also, general guidelines were attached in relation to Appropriate Assessment. Further correspondence was received from NPWS on the 19 January 2021 with clarification provided on an area of wetland within the site. A response

was received from IFI on the 19/11/2020, with recommendations for control of water quality. Third Party submissions were received on the 01/11/2020, 02/11/2020 and 13/11/2020, with concerns raised in relation to biodiversity, water quality, infrastructure and visual impact and included a submission from the Appellant.

The applicant supplied a Natura Impact Statement (NIS), prepared by an ecologist, as part of the application.

A detailed archaeology report dated the 31/03/2021 was prepared by the Archaeological Section within DAFM. It contains recommended licence terms to preserve built heritage and have further extensive recommendations to maintain the landscape character. These recommendations were carried through into the licence that was subsequently granted by the Minister.

The DAFM completed an Appropriate Assessment Determination (AAD), dated 12/03/202. In the AAD, the DAFM recorded a screening for Appropriate Assessment and identified twelve European sites within 15km. Each site was considered in turn alongside its qualifying interests/special conservation interests (QI's and CO's) and a screening conclusion and reasons are recorded on the file. Of the twelve identified, the following Natura 2000 sites were screened out:

Bolingbrook Hill SAC 002124. The proposed forestry works are entirely outside this Natura 2000 site and therefore there is no potential for any direct impacts. This SAC is some 12.2km distant with no hydrological connection and the QIs are terrestrial/peatland; therefore, there is no pathway for impacts.

Clare Glen SAC 000930. The proposed forestry works are entirely outside this Natura 2000 site and therefore there is no potential for any direct impacts. This SAC is some 9.3km distant and the QIs are both terrestrial; therefore, there is no pathway for impacts.

Glenomra Wood SAC 001013. The proposed forestry works are entirely outside this Natura 2000 site and therefore there is no potential for any direct impacts. This SAC is some 12.2km distant the sole QI, oak woodland, is terrestrial; therefore, there is no pathway for impacts.

Glenstal Wood SAC 001432. The proposed forestry works are entirely outside this Natura 2000 site and therefore there is no potential for any direct impacts. This SAC is some 11.4km distant with no hydrological connection and the QIs are terrestrial/peatland; therefore, there is no pathway for impacts.

Keeper Hill SAC 001197. The proposed forestry works are entirely outside this Natura 2000 site and therefore there is no potential for any direct impacts. This SPA is some 7.4km distant with no hydrological link.

Lough Derg (Shannon) SPA 004058. The proposed forestry works are entirely outside this Natura 2000 site and therefore there is no potential for any direct impacts. This SPA is some

6.6km distant with no hydrological link, this lake is upstream of the proposed works. Therefore, no potential impact on wetlands habitat. All the bird species designated are aquatic based and would not forage on the site lands which are beyond their foraging range.

Silvermine Mountains SAC 000939. The proposed forestry works are entirely outside this Natura 2000 site and therefore there is no potential for any direct impacts. This SAC is some 10.5km distant and the QIs are both terrestrial; therefore, there is no pathway for impacts.

Silvermines Mountains West SAC 002258. The proposed forestry works are entirely outside the Natura 2000 site and therefore there is no potential for any direct impacts. The nature of the works is such to only result in localised impacts e.g. potential impact on the aquatic environment. These SACs are 5.1 –12.5km distant. There is no hydrological link to any of these SACs, with the only potential hydrological link being to the Lower River Shannon. As such there are no pathways for any indirect impact on designated habitats. The only species designated within these SACs is the Killarney Fern (Clare Glen, Glenstal Wood). This species does not occur on site.

Slieve Bernagh Bog SAC 002312. The proposed forestry works are entirely outside this Natura 2000 site and therefore there is no potential for any direct impacts. This SAC is some 8.3km distant with no hydrological link.

River Shannon and River Fergus Estuaries SPA (004077). This site lies downstream of the site, but at a distance of over 32km (in-stream distance), the large dilution factor means that no impacts are expected via hydrological pathways. The site lies outside the foraging range for all QI bird species.

In concluding the AA screening, the DAFM determined that there was the likelihood of the afforestation project CN87383 having a significant effect, either individually or in combination with other plans and projects, on two of the identified Natura 2000 sites. The reasons for this decision were set out and took into account best scientific knowledge and the conservation objectives of the two European Sites.

These two sites were.

The Lower River Shannon SAC 002165. The proposed forestry works are entirely outside the Natura 2000 site and therefore there is no potential for any direct impacts. There is direct hydrological connectivity to the site via the Kilmastullagh River which borders the site to the north. The proposed site preparation method is for invert mounding, which is low risk for run-off of silt and sediment, but there is still a risk of run-off due to the proximity of watercourses and peaty nature of soils in Plot 7, which is adjacent to the river. Subsequent harvesting operations also have the potential to result in run-off to watercourses. All of the above elements of the project have the potential to result in impacts to the aquatic Qualifying Interests of the Lower River Shannon SAC.

The Slievefelim to Silvermines Mountains SPA 004165. The site is not located within a Hen Harrier Red Zone and does not provide suitable breeding habitat, so no direct impacts are

expected on this species. The site is located within the foraging range of Hen Harrier (5km) and there are some habitats on site which may provide foraging potential for this species.

Mitigation measures arising from the AA

In relation to the Qualifying Interests, and supporting habitats and species, associated with the two Natura 2000 sites that were the subject of the Stage 2 AA, the DAFM imposed the following conditions:

- No mounding or new drainage shall be employed at the site.
- A 10m setback area will apply alongside the aquatic zone (the stream along the northern boundary of the site).
- 5m setback areas will apply to internal drains.
- The pond in the Northwest corner of Plot 2 shall be retained with a 10m setback area around it.
- There is to be no planting within the setback areas, and no machinery is to enter these areas.
- Native woodland planting is to be focussed at the edge of the setbacks, with five rows of pit-planted native broadleaves planted immediately outside the 10m setback areas.
- There shall be no refuelling within 50m of any aquatic zone or drain that connects directly to an aquatic zone within any part of the site.
- Operators shall avoid operations immediately before, during and after times of heavy rainfall or extreme weather events. Monitoring of the site conditions shall be carried out by the forester and/or ecologist to ensure surface water run-off is not a problem e.g. heavy rainfall. Works shall be stopped immediately should any issues arise.
- No artificial fertilisers are to be used on site.
- In addition to the above, the applicant shall adhere to all relevant measures set out under the following: Environmental Requirements for Afforestation (DAFM, 2016); and the Forestry Standards Manual (DAFM, 2015)

Conclusion of the AAD

In the ADD document on file, the Minister for Agriculture, Food & the Marine 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 remained as to the absence of any adverse effect on the integrity of any European site.

In combination assessment

In relation to CN87383, the potential for the proposed project to contribute to an in-combination impact on European sites was considered by the Department of Agriculture, Food & the Marine (DAFM). Various online planning systems and datasets (including DAFM's own internal records) were consulted on the 12/03/2021 in relation to other plans and projects, focusing on the general vicinity of the project area in the River Sub-Basin Kilmastulla.

The DAFM excluded the likelihood of this project, either individually or in combination with other plans and projects, having a significant effect on the European Sites listed above.

The site was field inspected on 22/10/2020 by a DAFM Inspector.

The licence was granted on 21/05/2021, with a range of conditions, including detailed archaeological conditions and a specific condition specifying that the mitigation conditions in the ADD be adhered to.

The DAFM further considered the proposal across a range of relevant criteria and recorded a decision that the proposal should not proceed to Environmental Impact Assessment (EIA).

The appeal

A single appeal to the granting of the licence was received by DAFM on the 15/06/2021 and the Notice of Appeal and full grounds of appeal were provided to all parties.

Grounds of appeal

The appellant contended, that there had been breaches of:

- Forestry Act 2014
- Forestry Regulations, 2017, (S.I. No. 191 of 2017)
- Planning & Development (Amendment) Act 2018
- Forestry (Amendment) (No. 2) Regulations 2020(S.I. No. 39 of 2020)

Also contained in the grounds of appeal

New Roadway: It is submitted that the proposed afforestation is in close proximity to an area of archaeological sensitivity. The Archaeology Report advises that any proposed forest road should be within 100 metres of the structure Ringfort-rath (TN025-080) subject to archaeological constraints. It is submitted that the land owner has constructed a roadway through the historic farm track and also within very close proximity to the above-mentioned ringfort.

The track that existed previously is now unrecognisable. It has been widened and bears no resemblance to the grassy track

It is submitted that the Archaeological Report states that "every effort should be made to avoid any damage to the Recorded Monument (including its landscape setting and relationship to other Recorded Monuments), the historic 119/20th century structures, the historic townland and civil parish boundary and the historic laneway and to ensure that there would be an appropriate response should any previously unrecorded archaeology be discovered during the course of the works"

Hillside: It is submitted that in order to construct this roadway, the farmer employed a large track machine to dig into the hillside. The area used for the filling is within close proximity also

to the above ringfort-rath and that there may have been artifacts on the hillside destroyed in this process in direct contravention of the advice stated in the above Archaeology Report.

It is submitted that the realignment/'upgrading' of the roadway/track was not referred under the National Monuments Act to the National Monuments Service it required a statutory notice.

Gateway: It is submitted that the gateway to the proposed afforestation via the public road has been widened and changed irrevocably.

It is submitted that **Planning permission** from the DAFM was not applied for in this instance nor was a site notice for any proposed entrance widening displayed as required under the Planning and Development (Amendment) Act 2018.

Historic Townland & Civil Parish Boundary: It is submitted that the historic townland & civil parish boundary has been breached through the preparation for this plantation and through the construction of this unsightly roadway.

The historic farm track is no more, and scant regard has been paid to the civil parish boundary or indeed the preservation of the historic infield garden and farmyard area.

The applicant responded offered an extensive defence to these grounds of appeal, and are it was recorded on the file as follows;

New roadway

They submit that the appellant states that a new forest access road was built but that it is not a new 'forestry access road - it is, and always has been, a private farmer's access road used for normal farming activity such as moving livestock, making hay and silage etc. It is the only safe access to this land for farming and has been used for generations. This road has been in existence since the 1840s. The road was resurfaced as, per normal maintenance for the safety of farm vehicles using it and also for the safety of livestock. The works began on this road in March 2020 (long before any afforestation application) and, concluded in April 2021 (before the afforestation licence was granted]. It is submitted that the appellant made no objection to this road previously, so it is disingenuous for her to now take an objection one year later. In addition, the claim that there was any widening of the road is untrue, as it is bordered permanent fencing and old trees, which remained unchanged and untouched.

Hillside

It is submitted that in relation to the hillside, this has not been interfered with and that an old borrow pit has always existed here for the purpose of building the farm roadways, and We did extract a few loads of shale from this as has always been the case. The distance from the Ringfort/Rath to the borrow Pit is over 100 metres, and the distance from the Ringfort/Rath to the resurfaced farm road is 70 metres. A derelict farmhouse lies between the Ringfort/Rath and the farm access road. This has been and will always be protected., in all instances I will be adhering to the guidelines for its historical preservation.

Gateway

It is submitted that the farm roadway has been in existence since the 1840s. For improved visibility and safety of road users, scrub was cleared at the entrance - the entrance was not widened at this moment in time; Tipperary County Council is upgrading the entire public road which intersects with their private farm Road. They refer to photos and submit that the council is clearing scrub and widening gate points all along this public Road. I put up a gate because there is livestock on their land, and because it is a private farm access Road. They submit that this had nothing to do with the forestry application, it was simply normal farming activity

Historic town land and civil parish boundary

It is submitted that no historic town land boundary or civil parish boundary was interfered with other than light briar scrub clearance at the gateway for safety purposes. The roadway in question is an internal farm road. All the guidelines recommended by the archaeologist during the site visit on March.25th. 2021 will be adhered to during the afforestation process

The Applicant's submission makes comment on their personal circumstances.

DAFM Responses to the appeal

In a supplementary report, dated the 26/06/2021, a senior DAFM archaeologist also responded to the appeal. A key phrase in the report states "*...the works identified (by the appellant) are distinct and not a material consideration in respect of the application for the Afforestation Licence...*"

In a standard response to the appeal, the DAFM submitted the dates and steps they followed in processing the application. They submit that the decision was issued in accordance with their procedures, S.I. 191/2017 and the 2014 Forestry Act and that they were satisfied that all criteria outlined in its standards and procedures policy had been adhered to in making a decision on the application.

On foot of the appeal received and by way of general clarification, the FAC corresponded with the appellant on the 15th of June, informing her, inter alia, that the FAC had no powers of enforcement and outlining the remit of the FAC and that the FAC could only make a decision within its powers provided for in law. On the 28/6/2021 the appellant responded to the FAC communication. This communication did not make reference to the original grounds of appeal and instead submitted a number of entirely new grounds. The closing date for any further appeals was the 18/6/2021. The FAC considered that this submission would constitute a new appeal being made after the closing date of appeals and therefore could not be accepted. This additional material was not circulated to any of the other parties to the appeal. However, the FAC did note that the matters referred to in this submission related to general obligations on the Minister for Agriculture, Food and the Marine in their decision making and as such included

matters that the FAC did consider, as a matter of course, in having regard to the record of the decision.

FAC considerations

The FAC held a hearing to consider the appeal on the 17.09.2021, the FAC had regard to the record of the decision, the grounds of appeal, the submissions received and information in the public domain.

The grounds contend that the decision was made in breach of Forestry and Planning and Development legislation. As the Appellant was informed, the FAC has no role in Planning and Development legislation. The decision under appeal is CN87383 for the afforestation of 15.77 ha at Rosssfinch, Co. Tipperary. The grounds contend that breaches of Forestry legislation had occurred in relation to this decision. However, it appeared to the FAC that the grounds submitted in the Notice of Appeal related almost entirely to works undertaken on a road outside of the licenced area and undertaken prior to the granting of the afforestation licence. The DAFM and the Applicant further submits that this is the case and that these works should not effect the decision under appeal. The Applicant further submits that no issues arose with these works. The FAC considered that the Applicant's works undertaken on an existing road and the DAFM's processing of the application could not be considered as an error in the making of the decision in relation to afforestation licence CN87383.

In relation to general obligations on the Minister for Agriculture, Food and the Marine under the Forestry Act 2014 and the Forestry Regulations 2017 the FAC considered the record of the decision and information provided to it.

The application contains details of the proposal and environmental information and series of maps. The maps show an outline of the lands on which the proposal would occur and a number of environmental features, including hedgerows and archaeological features. A number of maps were revised to show new features and copies are contained on the file. This included an area of possible fen habitat that was queried as further information. The Applicant also provided an Appropriate Assessment pre-screening report and Natura Impact Statement; the latter was updated following a reply by the NPWS. The land was also subject to a site survey. A number of site notices were said to be erected and their locations are marked on the bio maps provided. The FAC further noted that the application was published on the DAFM's Forestry Licence Viewer and the decision was published on the DAFM website.

Under Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of a protected site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The proposal is for the afforestation of lands. The proposal is not within a European site and is not connected with or necessary to the management of such a site. The FAC consulted publicly available information from the NPWS and EPA and identified the same European sites within 15km. The FAC considered the range and type of plans and projects

considered in combination with the proposal and found them acceptable. The proposal is for the afforestation of agricultural land on a mineral soil and has undergone both desk and field assessment by the DAFM.

As noted, the DAFM determined that the proposal should proceed to Appropriate Assessment in relation to two sites, Lower River Shannon SAC 002165 and Slievefelim to Silvermines Mountains SPA 004165 and reasons are provided. Other European sites within 15km were screened out and reasons are provided. The FAC did not consider that any error was made in the screening decisions. A Natura Impact Statement and a revised Natura Impact Statement were submitted by the Applicant and the DAFM prepared an Appropriate Assessment Determination.

In relation to the Lower River Shannon SAC, potential effects are noted through a hydrological connection and the measures outlined relate to exclusion zones and setbacks from the watercourse. In addition, an existing pond or wet area would be retained and setback included around it. There is also an exclusion on the use of artificial fertilisers. The FAC noted that the Ecologist had clarified the type of mounding to be undertaken in relation to the submission made by Inland Fisheries Ireland. In relation to Slievefelim to Silvermines Mountains SPA it is stated that the site lies outside of the SPA and does not lie within a red area or area of higher likelihood of nesting for the Hen Harrier. The FAC considered this in relation to the procedures outlined in the Forestry Standards Manual (DAFM, 2015). The Ecologist further states that

The site layout has been designed to retain the best habitat for hen harriers, and sufficient habitat for this species exists in the wider area.

The FAC considered the reasons recorded for screening the proposal and the decision to proceed to Appropriate Assessment, and the Appropriate Assessment undertaken and did not identify any serious or significant errors.

The FAC also considered the proposed development 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 the compliance with the EIA process for applications relating to afforestation involving an area of more than 50 Hectares, the construction of a forest road of a length greater than 2000 metres and any afforestation or forest road below the specified parameters where the Minister considers such development would be likely to have significant effects on the environment. At 16.17ha the proposal is significantly below the threshold for mandatory EIA.

The DAFM did undertake a sub-threshold consideration of the proposal across a range of criteria including existing land use, cumulative effect and extent of project, designated and non-designated habitats, archaeology, and landscape and concluded that it should not proceed to EIA. The proposal is for the afforestation of land currently in agricultural use and is separated into a number of plots separated by areas of agricultural land, existing forest and scrub. The lands are situated in an agricultural, rural landscape with pockets of existing forest and in close proximity to the M7. The lands lie in the Shannon [Lower] 080 subcatchment of the Lower Shannon Catchment (25D) and in the Kilmastulla 050 sub-basin. As noted in the AA, the Kilmastullagh River borders part of the lands and this forms part of the Kilmastulla 050 waterbody which has been assigned a good status and not at risk by the EPA (2013-2018). Measures include a 10 metre setback from the aquatic zone followed by 5 rows of broadleaf planting which is in keeping with the Environmental Requirements for Afforestation (2016) and the FAC considered would protect the status of the waterbody as recorded by the DAFM. The land does not lie within an area of special amenity and is considered not of high sensitivity regarding afforestation. Information provided by the Commissioners of Public Works/OPW (floodinfo.ie) does not identify the area as being prone to flooding or record past flooding events. Specific conditions are attached to the licence in relation to the protection of water quality and European sites and the FAC considered these to be acceptable and reflect matters raised in the submissions received on the application.

The proposal was subject to an Appropriate Assessment and the conclusions are definitive and acceptable to the FAC. No evidence of the presence of protected species or habitats was submitted with the appeal. The FAC noted the detailed consideration of the proposal by the Archaeologist in relation to monuments and heritage and the specific and detailed conditions attached to the licence, which includes the exclusion of a portion of plot 6 to retain visual connectivity and setbacks from townland boundaries. The FAC did not consider that there was any reason to view these as deficient. No planting can take place within 60 metres of a dwelling which provides for protection of light and other potential impacts immediate to a dwelling, and the FAC does not consider that the proposal would have a significant adverse impact on the landscape. Having regard to the nature, scale and location of the proposal as licenced and the record of the decision, the FAC did not consider that there was any evidence before it that a serious or significant error had been made in this regard.

The FAC considered that the DAFM had adequately addressed the grounds of appeal and, having regard to the nature, scale and location of the proposal and the licence conditions that there was no evidence that they had made any serious errors in assessing the application in relation to the submitted grounds of appeal.

As previously stated, the FAC noted the second submission made by the appellant dated the 28/06/2021. In it, the appellant raised a wide range of new grounds not connected to the original grounds of appeal, in addition to those set out in the actual appeal, which was received within the proper timeframe. The FAC took the view that this second submission could not be treated as a proper appeal, as such, as it was received outside of the allowed time frame for the submission of appeals as set out in the Act and related to matters not raised in the submitted

Notice of Appeal and its acceptance would not be fair or appropriate. Notwithstanding this, the FAC noted that the substantive issues raised in the appellant's second submission had, in fact, been adequately addressed by the DAFM in their deliberations prior to granting the licence as described. There was considerable evidence on file to show that the DAFM took account of the potential for adverse visual impact on scenery or heritage, possible impacts on the archaeological heritage associated with the project site and compliance with the requirements of the Birds and Habitats Directives and the EIA Directive.

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 not satisfied that a serious or significant error or a series of errors was made in making the decision or that the decision was made without regard to fair procedures. The FAC is thus affirming the decision of the Minister regarding licence CN87383 in line with Article 14B of the Agricultural Appeals Act 2001, as amended and the FAC considered that the proposed development would be consistent with Government policy and Good Forestry practice.

Yours sincerely

A black rectangular redaction box covering the signature of Donal Maguire.

Donal Maguire on behalf of the forestry Appeals Committee

