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9th April 2021

Subject: Appeal FAC769/2020 in relation to felling licence TY05-FL0069

Dear [REDACTED]

I refer to the appeals to the Forestry Appeals Committee (FAC) in relation to the above licence issued by the Minister for Agriculture, Food and the Marine. The FAC, established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001, has now completed an examination of the facts and evidence provided by all parties to the appeal.

Background

Felling licence TY05-FL0069 was issued by the Department of Agriculture, Food and the Marine (DAFM) on the 28th August 2020.

Hearing

An oral hearing of appeals FAC730/2020 & FAC769/2020 was held by the FAC on the 18th February 2021.

FAC:	Mr Des Johnson (Chairperson), Mr Pat Coman, Mr Dan Molloy & Mr Luke Sweetman
Secretary to the FAC:	Mr Michael Ryan
Appellants:	[REDACTED]
Applicant:	[REDACTED]
DAFM representatives:	Ms Eilish Kehoe, Mr Anthony Dunbar

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 vary the decision to grant felling licence TY05-FL0069.

This licence is for the clearfelling and replanting of 12.96ha of Sitka spruce at Foilduff (Jackson), Co. Tipperary. The restock species is 100% Sitka spruce (12.31ha) with 0.65ha open space retained. The underlying soils are approximately Podzols (Peaty), Lithosols, Peats (8%) & Surface water Gleys, Ground water Gleys (92%) and the slope is predominantly moderate (<15%). The application site is in the Shannon Catchment, the Newport[Tipperary]_Sc_010 Sub-Catchment, and the Newport (Tipperary)_010 River Sub-Basin. The Newport (Tipperary)_010 Waterbody was assigned 'Good' status and deemed to be 'Not at Risk' by the Environmental Protection Agency in the 2013-2018 reporting period. A watercourse runs adjacent to the south east boundary of the site and flows northeast for 1.9km before merging with the Newport [Tipperary] River.

The applicant submitted an application pack with inventory data, a Harvest Plan document, an Appropriate Assessment (AA) Pre-Screening Report, and associated maps. The applicant also submitted a Natura Impact Statement (NIS) dated 5th August 2020 which assessed the project's potential impact and identified mitigation measures for two Natura sites: Lower River Shannon (LRS) SAC and the Slievefelim to Silvermines Mountains (SSM) SPA. The NIS included an in-combination statement and concludes that the project, individually, and when considered in combination with other plans and projects, "will not give rise to the possibility of a significant effect on any European Sites."

In completing a desk-assessment of the application, the DAFM carried out a Stage 1 AA screening (18th August 2020) that considered 10 Natura 2000 sites within 15km of the proposal. Two sites were screened in for Stage 2 AA for the following reasons:

- **SSM SPA:**
 - Possible effect due to the location of the project within the Natura site.
- **LRS SAC:**
 - Possible effect due to the direct hydrological connectivity existing between the project area and this SAC.

Eight Natura sites were screened out for Stage 2 AA for the following reasons:

- **Clare Glen SAC, Glenstal Wood SAC, Bolingbrook Hill SAC, Keeper Hill SAC, Silvermine Mountains SAC, Silvermines Mountains West SAC:**
 - Due to the absence of a direct upstream hydrological connection, and subsequent lack of any pathway, hydrological or otherwise
- **Anglesey Road SAC, Lower River Suir SAC:**
 - Due to the location of the project area within a separate waterbody catchment to that containing the Natura site, with no upstream connection, and the subsequent lack of any pathway, hydrological or otherwise.

The DAFM considered the potential for the proposal to contribute to a cumulative impact on Natura sites. They consulted various planning websites along with their own records for both forestry and non-forestry plans and projects in the general vicinity of the project area in the River Sub-Basin Newport (Tipperary)_010. The DAFM deemed 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 DAFM produced an AA Determination (AAD), dated 24th August 2020, which was made by an Ecologist on behalf of the Minister for Agriculture, Food and the Marine. The AAD states that “in undertaking the AA of the likely significant implications and effects of the activity on European Sites, the following were taken into account:

- The initial application TY05-FL0069, including all information submitted by the applicant, information available via iFORIS (including its GIS MapViewer), responses from referral bodies and submissions from 3rd 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;
- Any NIS provided by the applicant on foot of a request by the Minister, or otherwise.”

The AAD differs from the NIS in that “retention of bank-side Otter habitat is required in addition to increasing the width of the aquatic setback zone from 10m to 20m as the site is within a High Status Objective Catchment.” The AAD prescribes site-specific mitigation measures to which the proposed works shall adhere and concludes that “no reasonable scientific doubt remains as to the absence of any adverse effect on the integrity of any European site.”

The DAFM referred the application to the Tipperary County Council (TCC) and Inland Fisheries Ireland (IFI). TCC did not respond. IFI responded stating they had no objection to the felling but made specific requests regarding silt traps, ground stability, crossing of watercourses, and contacting their Limerick office at least one month prior to commencement of works. IFI also stated that all work must be carried out in accordance with Good Forestry Guidelines and Water Quality Guidelines.

The licence issued on the 28th August 2020 and is subject to relatively standard conditions (a) to (g) plus (h) and (i) relating to water crossings and contacting the IFI prior to commencement of operations and (j) – (r) which are mitigation measures from the AAD.

There are two appeals against the licence. The written grounds of appeal were considered in full by the FAC, the following is a summary of the issues raised:

- **FAC730/2020:**
 - No EIA screening was ever carried out on this site when planted. It is necessary to establish if the planting was in accordance with the law,
 - No AA screening was carried out in accordance with the provisions of the Habitats Directive and implementing Irish law.
- **FAC769/2020:**
 - In failing to notify me of the decision the Minister has failed to comply with Regulation 21 (1) of the Forestry Regulations. Relevant records that should have been legally provided to me were not,
 - The Forest Service failed to supply, on request, in an appropriate timeframe, relevant records that have informed its decision to award this licence. No copy of the licence, consultation feedback or AAD has been provided to me,
 - Breach of Article 4 (3) of the EIA Directive 2014/52/EU - Failure to carry out screening for EIA,
 - The potential impact on a nationally designated site has not been adequately considered as part of the approvals process,
 - This licence and its associated operations threaten the achievement of the objectives set for the underlying waterbody or waterbodies under the River Basin Management Plan for

Ireland 2018-21. Clear felling has the capacity to impact on water quality. This is particularly the case in a Sub-Basin catchment that is vulnerable to landslides,

- The mitigations contained in the AAD/licence are not written with sufficient precision as to ensure that they will result in compliance of this development with Article 6 (3) of the Habitats Directive,
- No evidence has been provided to me that would exclude residual effects from this project
- No evidence of an In-Combination assessment under Article 6 (3) of the Habitats Directive has been provided to me,
- The Harvest Plan is not consistent with the requirements of the Interim Standard for Felling & Reforestation,
- 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 conditions do not provide a system of protection for all wild birds during the period of breeding and rearing consistent with the requirements of Article 5 of the Birds Directive,
- No evidence has been provided that the licence contains a requirement for the licensee to notify the Minister at both the commencement and conclusion of operations pertinent to the licence,
- No evidence has been provided that the licence contains a condition that plans and works must be inspected by the Forest Service prior to, during and post works to ensure compliance with all environmental conditions contained within the licence,
- No evidence has been provided that the licence includes stringent and enforceable conditions regarding notification to appropriate bodies, groups and the public concerned in the case of any spraying of chemicals.

The DAFM submitted responses to each appeal which were considered in full by the FAC and are summarised below:

DAFM response to FAC730/2020:

The project licenced as TY05-FL0069 has been subject to the DAFM's AA Screening procedure, as set out in the document entitled AA Procedure: Guidance Note & iFORIS SOP for DAFM Forestry Inspectors (v.05Nov19) (DAFM, 2019). The potential for the project to result in impacts on the Special Conservation

Interests (SCIs) and Qualifying Interests (QIs) of the SSM SPA and the LRS SAC was identified on a precautionary basis and site-specific measures prescribed by the DAFM to mitigate such impacts were described. The mitigations ensure that the proposed project itself (i.e. individually) will not prevent or obstruct the SCIs of the SSM SPA and the QIs of the LRS SAC from reaching favourable conservation status, as per Article 1 of the EU Habitats Directive.

The potential for the proposed project to contribute to an in-combination impact on European sites was considered by the DAFM. The DAFM concluded that the identified potential pathways for any adverse effect are robustly blocked using avoidance, appropriate design and the implementation of best practice and through the mitigation measures as set out within the AAD for TY05-FL0069. The DAFM determined that the project, either individually or in combination with other plans or projects, will not adversely affect the integrity of any European site. A felling licence was issued having considered the comments and observations of referral bodies who submitted information to DAFM. The site-specific mitigations identified in the AAD Statement were attached as conditions of the licence issued.

It is the position of the Department that clear-felling and replanting an already established plantation forest is a standard operational activity and does not involve an activity or project that falls within the specified categories of forestry activities or projects subject to the requirements of the EIA Directive, as transposed and set out nationally 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).

DAFM response to FAC769/2020:

- DAFM notes the submission by the appellant in respect of 351 felling licence applications submitted by the applicant on the 3rd January 2020. A record of information provided to the appellant in relation to the original application along with associated correspondence in relation to same is included on file. The DAFM notes also that the appellant has subsequently exercised their right to appeal licence TY05-FL0069, which is the subject of this appeal (FAC 769/2020).
- the standard operational activities of clear-felling and replanting of an already established forest area are not categorised either in Annex II of the EIA Directive or in the national transposing legislation (and where the legislature had the discretion to include such activities had it wished to do so), 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.
- The NPWS site synopsis for Mauherslieve Bog NHA notes a significant threat to the whole site is the possible expansion of plantation forestry which currently surrounds most of the site. There

is currently a moratorium on all new afforestation within the bounds of the SSM SPA. Felling and reforestation is not listed as a threat to the Mauherslieve Bog NHA in the NPWS site synopsis. The DAFM submits that the felling and replanting of the area licenced as TY05-FL0069 is consistent with national forest policy.

- 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)*. Critically, any felling licence issued is conditional on adherence to the Interim Standards for Felling and Reforestation (DAFM, 2019), which set out a wide range of operational measures to prevent direct and indirect impact on water quality arising from the operation. Regarding consultations, referrals to statutory consultees are automatically triggered according to interactions with certain spatial rules. Discretionary referrals outside of these rules can also be triggered in individual cases, if deemed necessary. The licence application was referred to TCC and IFI in line with current practice and procedures. The DAFM is fully informed of its responsibilities regarding the achievement of objectives under the Water Framework Directive.
- Site-specific measures prescribed by the DAFM to mitigate impacts on the SCIs and QIs of the screened-in European sites were identified in the AAD and attached to the felling licence. The measures described in the application documentation, together with adherence to relevant environmental guidelines/requirements/standards and to the site-specific mitigation measures ensure that the proposed project will not result in any adverse effect on any European Site.
- It was concluded by the DAFM that the proposed project will itself (i.e. individually) not result in any adverse effect on the SSM SPA and LRS SAC and associated QIs and Conservation Objectives. The DAFM determined, 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.
- An in-combination report is included on file for TY05-FL0069.
- The DAFM had considered the application and associated information as submitted by the applicant in support of the granted licence and deemed this information met DAFM requirements.
- 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.

- Specific conditions were issued on the licence in respect of mitigations identified in the AAD. The measures described in the application documentation, together with adherence to relevant environmental guidelines/requirements/standards and to the site-specific mitigation measures ensure that the proposed project will not result in any adverse effect on any European Site.
- A commencement/conclusion notice in respect of the proposed project was considered not warranted by DAFM.
- In the case of TY05-FL0069, a mandatory field inspection is considered not warranted by DAFM.
- The use of plant protection products (PPPs) in Ireland, is governed by Statutory Instrument 155 of 2012 and Statutory Instrument 159 of 2012. Both of these S.I.s are based on, and give effect to, EU legislation on PPPs - respectively Directive 2009/128/EC (concerning the sustainable use of pesticides) and Regulation (EC) No 1107/2009 (concerning the placing of plant protection products on the market). Users of PPPs shall apply the principles of Good Plant Protection Practice (GPPP), as provided for in S.I. 155 of 2012. There is no legal requirement for forest owners to inform adjacent land owners of their intention to spray. 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 the 18th February 2021. The FAC sat remotely. The applicant, the DAFM and one of the appellants also participated remotely while the other appellant did not participate. The DAFM detailed the background to the issuing of the licence. They confirmed to the FAC that the NIS had not been requested but had been submitted by the applicant to aid the AA process and that the Natura sites it references are the same as in the DAFM's AA screening. The DAFM confirmed their in-combination assessment was completed the week of the 19th August 2020.

The appellant stated that the proposal is within an SPA and therefore should have been referred to the NPWS. He stated the project lands are 295m from a Hen Harrier 'Red Zone' and that this was a small distance given the species, referencing a Raptor field guide which states that nesting pairs may have a new nest each year within a few hundred metres of the last. He queried if the Ecologist making the AAD knew the exact location of the Red Zone and argued that the precautionary principle should apply. The appellant submitted that the site synopsis for the adjoining Mauherslieve Bog NHA states the area is surrounded by plantation forestry and states "a significant threat to the whole site is the possible

expansion of plantation forestry which currently surrounds most of the site.” The appellant stated that natural regeneration of Sitka spruce could impact on the hydrology of the NHA and that if it were a Natura site it would be screened-in using the 200m rule in the DAFM’s Habitats Table. He stated that the NHA is within the SPA and could be a resting site for Hen Harrier and that failure to consult the NPWS is not constructive for the SPA or the NHA. He stated that in other cases the NPWS request contact prior to commencing operations and queried was the application not referred because the NPWS may request 20% open area be retained for foraging. The appellant contended that the AA could not be definitive if the experts (NPWS) were not consulted and that the Red Zone approach is a lacuna in the AA process. He stated that the AA does not properly assess restocking the site with spruce, that there is a lot of forestry in the surrounds and that 100% restock should not be assumed. The appellant stated that the use of the river sub-basin in the in-combination assessment is not appropriate and that this assessment did not include some felling licences (TY05-FL0060 and TFL00196218) which were listed in the NIS. He queried the completion dates of the NIS and the AAR and how much consideration the DAFM gave to the NIS. Relating to the appellant’s grounds of appeal, the FAC queried the name and current status of the underlying waterbody. The appellant stated it is the Newport (Tipperary)_010 and its status is ‘Good’. Responding to FAC questions the appellant stated that his grounds relating to the threat of landslide were based on evidence from the Geological Survey Ireland (GSI) website, which has a mapping layer showing the susceptibility to landslide. He stated the area above the proposal is the NHA and that everything below it is rated a medium to high susceptibility to landslide.

The applicant stated that their IT system had failed and gave an overview of the proposal based on hand-written notes. A field inspection had taken place in November 2020, after the licence had been granted, during which two relevant watercourses (RWCs) were discovered on-site which converge and flow out of the southeast corner of the application site and then north to the Newport River and the LRS SAC. The appellant stated the hydrological distance from the project lands to the SAC is c.2km. The applicant confirmed to the FAC that the presence of two RWCs on site was not known when applying for the felling licence.

Responding to FAC questions, the appellant stated the DAFM did not provide the information he had requested pertaining to the licence until the 18th September 2020 and that this was too close to the deadline for submitting an appeal and gave him too little time to review the information.

The FAC queried the DAFM regarding their consideration of the potential for colonisation of the adjoining NHA by Sitka spruce. The DAFM stated that natural regeneration would have been considered by the Ecologist producing the AAD and was not deemed to be a threat. The FAC asked the appellant if

he had any evidence of natural regeneration impacting on the NHA and he stated it cannot be assessed using aerial photography. He also stated that the DAFM's AA relates to Natura sites, not NHAs and that assessing the impact of the proposal on the NHA was not in the brief of the reviewing Ecologist. The appellant contended that a commercial crop of trees may not grow on the NHA naturally but that enough trees could establish themselves to impact its ecology. Responding to FAC questions, the appellant stated the application site does not have a high landslide susceptibility classification but the land above it is a risk and that clearfelling would impact the hydrology in the area. He stated this is known from an area in Leitrim where a landslide occurred. The appellant was unsure of the direction of the slope on the site but stated that, from his interpretation of the mapping, if a landslide occurred above the site it would be impossible for it to avoid the proposal. He contended that climate change has led to periods of drought and heavy rainfall and their impact on landslide susceptibility needs to be assessed and that there had already been three big landslide events in Ireland this year.

The FAC questioned the DAFM regarding the RWCs found on site and whether the DAFM knew about them when considering the application. The DAFM stated that these had been considered as they are visible on the 6" raster maps. The FAC queried if the licence conditions reflected this knowledge of the site's hydrology. The DAFM stated there were multiple conditions related to water quality. The FAC queried why the licence conditions do not refer to specific RWCs. The DAFM responded that the wording of some licence conditions was unfortunate but the RWCs are clearly visible and they were considered in the DAFM's screening. Responding to the FAC's statement that the NIS does not refer to these RWCs, the DAFM stated that the NIS (dated 5th August 2020) identifies a hydrological connection to the LRS SAC and it was therefore assumed that the hydrological connection was known. The appellant expressed dissatisfaction with the DAFM's approach to the AA and argued that the licence conditions should be more specific.

In addressing the grounds of the first appeal, the FAC considered the appellant's contention that no AA screening was carried out in accordance with the provisions of the Habitats Directive and implementing Irish law. The FAC noted that the DAFM completed a Stage 1 AA screening which considered the potential for the proposed development to have a significant effect, individually, on Natura sites within a 15km radius. The DAFM identified 10 Natura 2000 sites within this radius and screened out eight sites for Stage 2 AA with reasons provided. Two sites, SSM SPA and LRS SAC, were screened in for Stage 2 AA. The DAFM also assessed the proposal's potential to contribute to a cumulative effect on Natura 2000 sites in combination with other forestry and non-forestry plans and projects within the Newport

(Tipperary)_010 River Sub-Basin before concluding that the project, “when considered in combination with other plans and projects, will not give rise to any adverse effect on the integrity of any European site.” The FAC noted that the DAFM produced an AAD which was made following consideration of the information submitted by the applicant, including an NIS and any “other plan or project that may, in combination with the plan or project under consideration, adversely affect the integrity of a European Site.” The AAD prescribes site-specific mitigation measures to which the proposed works shall adhere and concludes that “no reasonable scientific doubt remains as to the absence of any adverse effect on the integrity of any European site.” The FAC observed that the AAD states the proposed works shall adhere to a number of standards and guidelines including the Forestry and Otter Guidelines (Department of Agriculture, Fisheries and Food, 2009). This is stated to be due to the presence of an aquatic zone “nearby” to the site which drains into high status objective waterbodies and the LRS SAC where it may affect Otters and species requiring good water quality. However, the FAC observed that, although the licence conditions contain a specific Otter-related mitigation measure to do with retention of bank-side vegetation, they do not contain any reference to the Forestry and Otter Guidelines. In the specific circumstances of this case, and given the proximity of the LRS SAC (<2km) the FAC considered this a significant error on behalf of the DAFM.

The FAC noted the first appellant’s submission related to EIA screening at the time of afforestation at this site, the appellant provided no evidence in support of these grounds. The remit of the FAC is to decide if the DAFM made a serious or significant error, or series of errors in making the decision to issue felling licence TY05-FL0069 and to decide if they did so in compliance with fair procedures.

In addressing the grounds of the second appeal, the FAC firstly had regard to the submission by the appellant which contended that the DAFM had not notified him of their decision regarding this licence and had not supplied him with relevant records in an appropriate timeframe. The FAC observed that the licence was issued on the 28th August 2020 and that the information he had requested was supplied on the 18th September 2020, a week prior to the 28 days provided for the submission of appeals. The FAC noted the appellant exercised his right to appeal and submitted detailed and specific grounds of appeal related to this licence.

The FAC considered the grounds contending a breach of Article 4 (3) 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 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 assessment under 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 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 are not covered by the Irish regulations (S.I. 191 of 2017). The FAC does not consider that the proposal comprises deforestation for the purposes of land use change and neither that it falls within the classes included in the Annexes of the EIA Directive or considered for EIA in Irish Regulations.

The FAC had regard to the second appellant's submission that the potential impact on Mauherslieve Bog NHA had not been adequately considered as part of the approvals process. The FAC noted the NPWS site synopsis for this NHA notes a significant threat to the whole site is the possible expansion of plantation forestry which currently surrounds most of the site. The FAC considers that the felling and replanting of an existing forest plot will not increase the level of forestry in the area. The FAC noted the DAFM's statement regarding the current moratorium on all new afforestation within the bounds of the SSM SPA and that felling and reforestation is not listed as a threat to the Mauherslieve Bog NHA in the NPWS site synopsis. The FAC observed that the S.I. which designated this NHA (S.I. No. 498/2005) does not refer to any off-site works and noted that neither this S.I. nor the NPWS site synopsis reference colonisation by natural regeneration as a potential threat to the NHA.

The FAC considered the grounds relating to the potential for clearfelling to impact on water quality and prevent the achievement of the objectives set for the underlying waterbody under the River Basin Management Plan for Ireland 2018-21. The FAC observed that licence conditions (a), (b), (h), (i), (k) and (l) – (r) prescribe various measures to protect water quality. The FAC noted the DAFM's statement that a hydrological connection between the proposal and the LRS SAC had been considered prior to issuing the licence and concluded that the licence conditions reflect the DAFM's consideration in this regard. Based on the information before it, the FAC concluded that there is no convincing evidence that the proposed development would give rise to a negative impact on water quality. The FAC had regard to the appellant's submission regarding the susceptibility of the Newport (Tipperary)_010 River Sub-Basin to landslides. The FAC consulted the GSI website and had regard to the fact that it states that their Landslide Susceptibility Map should not be treated as a "Hazard" map which shows the potential to cause damage by frequency/probability or intensity or a "Risk" map which shows loss potential.

Notwithstanding this context, the FAC noted that the application site is almost entirely within an area with low landslide susceptibility. The FAC observed that there is an area, c.420m south of the proposal, at a higher elevation, that is rated as having high susceptibility to landslides. The FAC noted that it appears that this area, which forms part of the Mauherslieve Bog NHA, is sloped predominately to the northwest, away from the project site which is situated to the north. In these circumstances, the FAC considers that there is no convincing evidence before it that the proposed operation will give rise to a landslide event.

The second appellant made submissions relating to the AAD's mitigation measures, the potential for residual effects from this project, and the assessment of in-combination effects under Article 6 (3) of the Habitats Directive. As outlined previously in this letter, the FAC consider that the DAFM completed an AA screening which led to the making of an AAD (following consideration of, *inter alia*, the applicant's NIS), in line with the requirements of the Habitats Directive. There is no convincing evidence before the FAC that the conclusions the DAFM came to in making an AAD, including the conclusion of their in-combination assessment or the resultant mitigation measures, contained a serious or significant error, or series of errors, or were made without compliance with fair procedures. The FAC considers that the proposed development, completed in line with the mitigation measures prescribed in the AAD would not lead to residual effects on the screened Natura sites. The FAC considered the second appellant's submissions at the Oral Hearing regarding the DAFM's Red Zone approach. The FAC consulted Appendix 21 of the publicly available Forestry Standards Manual (2015) which states that Red Zones are areas of 1.2km radius which centre on known Hen Harrier nesting areas and that the DAFM apply specific procedures, agreed with the NPWS, when processing applications for forestry operations with the potential to disturb "Hen Harrier breeding activity within and surrounding SPAs designated for breeding Hen Harrier". The FAC noted the licence conditions require the Licensee to adhere to Appendix 21 of the Forestry Standards Manual. However, as stated above, the FAC consider it a significant error that the site-specific mitigation measures in the AAD were not wholly transposed to the licence conditions regarding the Forestry and Otter Guidelines.

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

Regarding a requirement for the licence conditions to provide a system of protection for wild birds during the bird breeding and rearing season and for the animal species listed in Annex IV (a) of the Habitats Directive, the FAC noted that the appellant did not provide any site-specific details in relation to any particular species of concern. The FAC considers that the granting of a felling licence does not exempt the holder from meeting any legal requirements set out in any other statute.

The second appellant's grounds of appeal state that no evidence has been provided to him that the licence contains a requirement for the licensee to notify the Minister at both the commencement and conclusion of operations pertinent to the licence, or a condition that plans and works must be inspected by the Forest Service prior to, during and post works to ensure compliance with all environmental conditions contained within the licence, or conditions regarding notification to various groups in the case of any spraying of chemicals. The FAC observed that the licence does not contain the conditions outlined in these grounds. The FAC considers that enforcement of licence conditions is a matter for the DAFM as the licencing body. The FAC noted the use of plant protection products in Ireland is governed by a legislative framework as detailed by the DAFM in their written submission. In these circumstances the FAC do not consider that additional conditions as referred to by the second appellant should not be attached to the felling licence.

Based on the evidence before it, as outlined above, the FAC considered that the DAFM made a significant error in failing to include the full suite of mitigation measures contained in the AAD. In these circumstances, the FAC decided to vary the decision of the Minister so that felling licence TY05-FL0069 include a requirement for adherence to the Forestry and Otter guidelines, as prescribed by the AAD. Otherwise the FAC concluded that the proposed development would be consistent with Government Policy and good forestry practice.

Additional condition to be attached to TY05-FL0069:

- Adhere to the Forestry and Otter Guidelines (Department of Agriculture, Fisheries and Food, 2009).
 - Reason: to mitigate the potential adverse impact of the licenced operations on the Otter; a Qualifying Interest of the Lower River Shannon SAC.

Yours sincerely,



Luke Sweetman on Behalf of the Forestry Appeals Committee

