



[REDACTED]

12th July 2021

Subject: Appeal FAC 753/2020 regarding licence TFL00320219

A Chara,

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

Background

Licence TFL00320219, for felling and restocking of trees on 49.20ha at Derrylahan, Cappagh, Co. Kerry. was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 28th of August 2020.

Hearing

An oral hearing of the above appeal of which all parties were notified, was held by the FAC on 6th of May 2021.

FAC Members:	Mr. John Evans (Deputy Chairperson), Mr. Dan Molloy, Mr. Derek Daly and Mr. Iain Douglas.
Appellant FAC 699/2020:	Not in attendance.
Appellant FAC 753/2020:	Not in attendance.
Applicant:	[REDACTED]
DAFM:	Ms. Eilish Keogh, Mr. Eugene Curran, Mr. Ken Bucke
Secretary to the FAC:	Mr. Michael Ryan.

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notices of appeal, and, in particular, the following considerations, the FAC has decided to vary the decision of the Minister regarding licence TFL00320219.

Summary of licence and file

The licence relates to the felling and replanting of trees in 2 plots. Current stocking is 92% Sitka Spruce (SS), 6% Lodgepole Pine (LP) and 2% Japanese Large (JL). Restocking is to be 90% Sitka Spruce (SS) and

10% Additional Broadleaves (ADB) in both plots. The application was received by DAFM on the 19th of March 2019. Based on the stated felling age, planting of the stock took place between 1996 and 1997. Maps accompanying the application show the location, with vehicular access, cultivation direction and the presence of a watercourse marked on the Northeast of the site.

An Inspector's Certification Report is on file which indicates that the application was desk assessed. The report describes the site as comprising 48.91 hectares of felling & reforestation, with some thinning. The predominant soil type underlining the project area is described as predominantly podzols in nature. The slope is said to be predominantly flat to moderate (<15%) and it is stated that the project area is crossed by / adjoins an aquatic zone(s). Vegetation within the project area is described as comprising forestry.

The report records the site as being within a 3km buffer zone, upstream of, and hydrologically connected to an NHA, SAC or SPA. It also records that the area proposed for felling contains, adjoins or lies within 200 m of a listed archaeological site or monument or that the indicated timber haulage route(s) or storage area(s) contain, adjoin or lie within 50 m of a listed archaeological site or monument. The report records the site as not lying in a Freshwater Pearl Mussel sensitive area.

The report notes referrals to the National Parks and Wildlife Service and Kerry County Council with no responses noted as having been received. One submission was received by DAFM in relation to the proposal dated the 23rd of April 2019, and this is on file. A communication from the DAFM archaeologist, dated the 20th of August 2019 is on file noting that there are no archaeological issues concerning the application.

A record of screening for Appropriate Assessment exists in the Inspector's Certification report. This records the presence of 15 European sites within a radius of 15km of, but not overlapping, the project site. No sites beyond this 15km range are identified as being needed to be added to the sites to be considered for screening. The sites identified are:

1. Blackwater River (Kerry) SAC 002173
2. Caha Mountains SAC 000093
3. Cloonee And Inchiquin Loughs, Uragh Wood SAC 001342
4. Derryclogher (Knockboy) Bog SAC 001873
5. Eirk Bog SPA 004108
6. Glanlough Woods SAC 002315
7. Glengarriff Harbour And Woodland SAC 000090
8. Kenmare River SAC 002158
9. Kilgarvan Ice House SAC 000364
10. Killarney National Park SPA 004038
11. Killarney National Park, Macgillycuddys Reeks And Caragh River Catchment SAC 000365
12. Maulagowna Bog SAC 001881
13. Mucksna Wood SAC 001371
14. Old Domestic Building, Curraglass Wood SAC 002041

15. Old Domestic Building, Dromore Wood SAC 000353

Each site is considered in turn along with its QIs. Sites 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 15 above are recorded as having been screened out for a single reason: *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 hydrological connection.* Site 9 is recorded as being screened out for the single reason: *The position of the project area downstream from the Natura site, and the subsequent lack of any hydrological connection.* No reason is provided for the Kenmare River SAC (site 8). This includes Otter as a Qualifying Interest.

All sites are also screened out on the basis of an in-combination assessment, and this is on file. This indicates searches of planning systems on the 5th of December 2019. The report includes a conclusion to the effect that in-combination effects will not arise, and the planning searches listed include other forestry projects.

The Inspector's Certification report also records an examination of the need for Environmental Impact Assessment. This considers the proposal across a range of criteria including cumulative effect and extent of the project, water, protection of Freshwater Pearl Mussel, archaeology, landscape, designated habitats, non-designated habitats, social impacts, potential for accidents, and public participation. In relation to archaeology, it records a recommendation from the Forestry Service Archaeologist to adhere to the normal standards of the Forestry and Archaeology Guidelines, and concludes EIA is not required.

Also on file is an Appropriate Assessment Report (AAR) and an Appropriate Assessment Determination (AAD) both dated the 13th of August 2020.

The AAR states that its purpose is:

...to evaluate whether the project, individually or in combination with other plans and projects, would have an adverse effect on the integrity of any European Site, in view of that European Site's conservation objective(s) and in view of best scientific knowledge.

The report provides an overview of the project site, examines each of the qualifying interests for the two European sites identified in the AAS (the Kenmare River SAC 002158 and the Kilgarvan Ice House SAC 000364) in order to determine possible effect, identifies mitigation measures where appropriate, and considers potential residual impacts and in-combination effects.

The AAD contains a summary of the project site, a record of the Screening for Appropriate Assessment, a summary of the Appropriate Assessment of those screening in sites, and a determination which captures those mitigation identified as proposed licence conditions.

In relation to the record of the Screening for Appropriate Assessment, the same 15 European sites noted in the Inspector's Certification Report are listed. In this instance the following reasons are record for screening in and out individual sites:

1. Blackwater River (Kerry) SAC 002173. Screen Out: *The location of the project area approx. 11km to the east of the Natura site in a separate WFD sub-catchment with no hydrological connection.*
2. Caha Mountains SAC 000093, Screen Out: *The location of the project area approx. 11km to the north of the Natura site in a separate WFD sub-catchment with no hydrological connection.*
3. Cloonee And Inchiquin Loughs, Uragh Wood SAC 001342. Screen Out: *The location of the project area approx. 14km to the northeast of the Natura site in a separate WFD sub-catchment with no hydrological connection.*
4. Derryclogher (Knockboy) Bog SAC 001873. Screen Out: *The location of the project area approx. 8km to the northwest of the Natura site in a separate WFD sub-catchment with no hydrological connection.*
5. Eirk Bog SPA 004108. Screen Out: *The location of the project area approx. 13km to the southeast of the Natura site in a separate WFD sub-catchment with no hydrological connection. Project area is outside the foraging range of the listed species.*
6. Glanlough Woods SAC 002315. Screen Out: *The location of the project area approx. 4km to the northwest of the Natura site with no hydrological connection. Project area is outside the foraging range of the listed species.*
7. Glengarriff Harbour And Woodland SAC 000090. Screen Out: *The location of the project area approx. 13km to the north of the Natura site in a separate WFD sub-catchment with no hydrological connection.*
8. Kenmare River SAC 002158. Screen In: *The location of the project area approx. 7km upstream of the Natura site with a direct hydrological connection. There is potential for impacts due to the nature and scale of the project activity.*
9. Kilgarvan Ice House SAC 000364. Screen In: *The location of the project area approx. 1.6km from the Natura site which is a Lesser horseshow bat roosting site. This is within the 2.5km foraging distance for this species and therefore must be screened in.*
10. Killarney National Park SPA 004038. Screen Out: *The location of the project area approx. 7km to the south of the Natura site in a separate WFD sub-catchment with no hydrological connection. Project area is closed canopy conifer forest and Screened Out as per Appendix 21 of the Forestry Standards Manual.*
11. Killarney National Park, Macgillicuddys Reeks And Caragh River Catchment SAC 000365. Screen Out: *The location of the project area approx. 5km to the south of the Natura site with no hydrological connection.*
12. Maulagowna Bog SAC 001881. Screen Out: *The location of the project area approx. 10km to the northeast of the Natura site in a separate WFD sub-catchment with no hydrological connection.*
13. Mucksna Wood SAC 001371. Screen Out: *The location of the project area approx. 5.5km to the east of the Natura site. Habitat listed is terrestrial in nature with no potential for impact.*
14. Old Domestic Building, Curraglass Wood SAC 002041. Screen Out: *The location of the project area approx. 11km to the southwest of the Natura site with no hydrological connection. Project area is outside the foraging range of the listed species.*
15. Old Domestic Building, Dromore Wood SAC 000353. Screen Out: *The location of the project area approx. 13km to the east of the Natura site in a separate WFD sub-catchment with no hydrological connection. Project area is outside the foraging range of the listed species.*

The licence was issued by DAFM on the 28th of August 2020 for a period of 10 years with a number of standard conditions, a requirement that harvesting take place in dry weather only, and that the licence holder strictly adhere to recommendations in the AA screening report.

Grounds of Appeal and Statement of Fact.

There are two appeals to the granting to the licence.

Briefly and in summary, the grounds of the first appeal (FAC 699/2020) are: that the forest is unauthorised and does not meet the requirements of the EIA Directive, afforestation has been permitted since 2016 that exceeds 50ha, and as no EIA was carried out the replanting requires EIA; and that Case 258/11 states that an assessment under Article 6(3) cannot have lacunae and must be complete, precise and have definitive findings capable of removing all scientific doubt as to the effects of the works on the protected site, and that it cannot be considered that all scientific doubt has been removed in this case.

The grounds of the second appeal (FAC 753/2020), also briefly and in summary, are: that the licence does not refer to the precise townland; that there is a breach of Article 4(3) of the EIA Directive; as the application is a class of development covered under Annex II and that a number of criteria set out in Annex III do not form part of the screening and have not been taken into account; that DAFM failed to carry out an adequate EIA screening of the proposed development and that there is no foundation for the conclusions reached; that the afforestation of the lands that are the subject of the application was carried out without any EIA screening, that under EU law this deficiency should be remedied, and that no licence should be granted until a retrospective assessment has been carried out; that the site has a moderately high risk of landslides with reference to the Geological Survey of Ireland; that there is no evidence that a nationally designated site has been adequately considered; that the licence and associated operations threaten the achievement of the objectives set for the underlying waterbody under the RBMP for Ireland 2018-2021 as clear-felling has the capacity to significantly impact on water quality; that the mitigations in the AAD are not written with sufficient precision; that residual effects from this project cannot be excluded and in-combination effects have not been adequately assessed; that the AA in-combination assessment is flawed; that the Minister did not seek public opinion under Article 6(3) of the Habitats directive; that no Harvest Plan is provided; that there should be a standard condition requiring notification to the Minister at the commencement and conclusion of operations; that there should be stringent and enforceable conditions requiring notification to appropriate bodies, groups and the public in the case of the spraying of chemicals; that the licence conditions do not provide for the strict protection of Annex IV animal species in their natural range; and that the licence conditions do not provide for the strict protection of all wild birds during periods of breeding and rearing consistent with the requirements of the Birds Directive.

In a Statement of Fact (SoF) to the FAC in relation to FAC 699/2020, DAFM states that:

The AA procedure relevant at the time was applied. This forest road application is considerably under the EIA threshold. The Natura 2000 sites were assessed within 15 km radius as per procedure. Each of the Natura 2000 sites were screened out using the details submitted as part of the application in conjunction with the Habitat & Foraging Tables used by the DAFM as part of the AA screening process. All AA screening information/results are available on the public file.

In a SoF to the FAC in relation to FAC 753/2020, DAFM states that:

The initial screening showed hydrological connectivity with the Kenmare River SAC. The AA assessment had indicated there were no threats to this SAC.

Oral Hearing

At Oral Hearing representatives from DAFM submitted that the licence application related to felling and thinning of trees that had been planted in the 1996/1997 planting season, and that a reference to a forest road in one of the Statements of Fact was an error. DAFM submitted that the application had been referred to the Archaeology section of DAFM in light of recorded ruins of a lime kiln and separate enclosure to the south of the site, and that in response the Forest Service had been advised to adhere to standard Forest Service conditions in relation to archaeology. DAFM further submitted that as the northeast corner of the project site is proximate to the Roughty River which is hydrologically connected to the Kenmare River SAC [2158], the application had been referred to the Forest Service ecology unit who had carried out a full Appropriate Assessment which had screened in two European sites.

In response to questions from the FAC regarding the Screening for Appropriate Assessment contained in the Inspector's certification, DAFM accepted that the record of screening show no European sites being screened in for Appropriate Assessment. DAFM submitted that this was due to an error in the IFORIS system used by DAFM which on occasion resulted in overwriting of previously entered data when an application was referred to the ecology unit. DAFM submitted that two sites had in fact been screened in: the Kenmare River SAC [2158] and the Kilgarvan Ice House SAC [0364], and that this is reflected in AAR and AAD. In response to questions from the FAC about the appropriateness of some of the reasons offered for screening out other European sites in the Inspector's Certification Report, DAFM again submitted that this was as a result of the report containing over-written default values as a result of having been referred to the ecology unit.

In relation to a question from the FAC relating to a condition in the licence (condition i) referring to adherence to recommendations in the AA screening report, DAFM submitted that this should be a reference to the AAD. The representative for the applicant submitted that the AAD had been supplied with the licence issued, and that he regarded the mitigations described in it as conditions on the licence, and that these were clear and specific.

In answer to a question from the FAC regarding the first ground of appeal in FAC 753/2020 that the licence does not contain a reference to the townland in which the project site is located, DAFM submitted that the townland is reference in the Appropriate Assessment Determination, the application,

and the site map and that all of these contain a reference to the licence application number TFL00320219, and that as a result the townland to which the licence relates is unambiguous.

In relation to the ground of appeal in FAC 753/2020 that the lands in question were susceptible to landslides, DAFM submitted that the site is relatively flat and as a consequence unlikely to be prone to landslides.

The FAC questioned the DAFM in relation to the ground of appeal that no Harvest Plan is provided in the licence application. In response, DAFM submitted that this application was received in March 2019, which predated a DAFM Circular issued in June 2019 on the requirements relating to Harvest Plan details that were required with licence applications thereafter. DAFM further submitted that, in any event, a schedule of cutting had been submitted with the application and that DAFM had included detail as to how harvesting was to be conducted in the AAD.

At the oral hearing, DAFM submitted that in relation to the requirement for EIA, the coupe size proposed were less than 25ha, that these were broken up over a number of felling years, that the felling regime proposed follows the relevant forestry service guidelines, and that the licence application was sub EIA threshold. DAFM submitted, that in relation to Roughy River, while EPA data shows the river to have an unassigned Water Framework Directive (WFD) status under the 2013-2018 monitoring cycle, all other rivers in the sub-catchment (the Cleady_010, Owbeg(Roughy)_010, and Owbeg(Roughy)_020) have a Good status as does the receiving transitional waterbody (the Inner Kenmare River), and that the licence conditions include measures designed to protect the SAC which will ensure no effect on the waterbody.

In relation to questions from the FAC relating to those grounds of appeal concerning licence conditions, DAFM submitted that the Forest Service perform spot checks on licence holders, that the resourcing within the Forest Service to conduct such checks have increased recently, and as consequence there is no need for the licence conditions implied in the grounds. DAFM further submitted that, in any event, the licence conditions include a stipulation that all guidelines apply, that this covers issues such as spraying, and there is no requirement for such a condition given this and separate legislation. In relation to the suggestion that there should be conditions regarding notification to the Minister as to start and finish of operations, DAFM submitted that such a requirement is sometimes inserted to licences where necessary, but that this is at the Minister's discretion, and was not adjudged to be required in this instance.

Consideration by the FAC

In considering the grounds of appeal, the FAC consulted with publicly available mapping provided by the Environmental Protection Agency, the OSI, the GSI, DAFM, and other on-line services. These readily confirm the details of the site as outlined above, in particular the presence of the 15 European sites

identified in the Inspector's Certification report, the AAR and the AAD as being within 15km of the project site. EPA mapping shows two branches of the Roughty_040 water body to be proximate to the site, one of which bounds the site at its NE edge. The water body can be seen to have an unassigned status arising from the 2013-2018 monitoring cycle, and is part of the 21_4_Roughty_SC_020 Sub catchment, which is part of the 21Dunmanus-Bantry-Kenmare Catchment. OSI and Historic mapping do not indicate drains in the project site. The Roughty river enters the sea directly at Kenmare at a hydrological distance of ca. 7.6km from the project site.

In the first instance, the FAC considered the ground of appeal relating to the legitimacy of the forest but does not raise specific concerns in relation to the legitimacy of this area of forest, and the FAC is satisfied that the forestry under consideration was established in line with those statutory requirements which were in place at the time of its planting and that DAFM has not made an error in the processing of the decision in this regard.

The FAC further considered those other grounds of appeal relating to the EIA directive. Directive 2011/92/EU, as amended by 2014/52/EU, 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 is 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 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. The felling 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 similarly not covered by the Irish regulations (S.I. 191 of 2017). The decision under appeal relates to a licence for the felling for the purposes of clearfell and thinning of an area of 49.2 ha. 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 as requiring EIA in Irish Regulations.

An appellant submits that the proposal is a class of development set out in Annex II, and that a number of criteria set out in Annex III do not form part of the screening but does not submit details of which criteria are in question, and that DAFM failed to carry out adequate EIA screening. Notwithstanding the observations above as to the applicability of Annex II to this proposal, the FAC notes that in considering the requirement for EIA DAFM considered a wide range of criteria. These include the characteristics of the project, cumulative effect and the extent of the project, water, protection of Freshwater Pearl Mussel, archaeology, landscape, designated and non-designated habitats, social considerations,

potential for accidents, and public participation. The FAC therefore concludes that no error was made in the processing of the licence with respect to the requirements of the EIA Directive.

In addressing those grounds of appeal relating to Appropriate Assessment, the FAC considered, under Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of a European site, must be subject to an assessment of the likely significant effects the project may have on such a designated site, either individually or in combination with other plans or projects, having regard to the conservation objectives of that designated site. In this case, the DAFM undertook a Stage 1 screening, and found 15 European sites within 15 km of the proposal area, and that there was no reason to extend the zone of influence in this case. The sites identified were as noted above in summarising the Inspectors Certification Report file. An appellant submits that an Appropriate Assessment under article 6(3) cannot have lacunae, but does not provide details of what lacunae may exist. DAFM submit that a screening process considered each of the identified European Sites, and determined that two sites required Appropriate Assessment. DAFM further submit that an error in the IFORIS system resulted in the record of this screening being lost, but that the results are separately recorded in the AAD where the reasons for screening in or out individual sites is provided, together with a detailed consideration of the qualifying interests for those two sites resulting in identified mitigations. The FAC consider that while there is an error in relation to the record of the screening for Appropriate assessment in the Inspector's Certification report, this is not a serious error in the processing of the licence given the record of the decision provided in the AAD.

An appellant submits that these mitigations are not written with sufficient precision, without providing details of where any deficiencies might arise. In addition to reviewing the mitigations contained in the AAD, the FAC has regard for the statement at oral hearing by the applicant that the AAD was provided with the licence, and that the mitigations are clear unambiguous. The FAC finds that the mitigations are clear and are written with sufficient precision but finds that the reference in the licence to the Appropriate Assessment Screening is an error, and that this condition should refer to the AAD.

In considering the grounds of appeal that the Appropriate Assessment is flawed and that residual effects from the project cannot be excluded and in-combination effects have not been adequately assessed, the FAC had regard for the record of the decision including the in-combination report and AAR. A stand-alone in-combination report is on file showing searches of planning systems as having taken place on the 5th of December 2019. The AAR includes details of consideration of in-combination effect of a similar nature to that in the in-combination report, however it records searches of planning systems that took place on the 13th of August 2020. The FAC is satisfied that it was this latter in-combination assessment which DAFM relied on in making its decision. This assessment included searches of the Kerry County Council, An Bord Pleanála, Environmental Protection Agency systems; and DAFM systems in relation to afforestation, forest roads and felling licences. Consideration is also given to the County Kerry Development Plan. The in-combination assessment in the AAR notes that the proposed development is considered large in scale, and states that:

It is concluded that the proposed thinning, felling and reforestation, with mitigation measures identified, will itself (i.e. individually) not result in any adverse effect or residual adverse effects on the integrity of Kenmare River SAC (002158) and Kilgarvan Ice House SAC (000364). There is therefore no potential for the proposed works to contribute to any cumulative adverse effects on this European site, when considered in-combination with other plans and projects, because mitigation measures to be added as conditions will ensure no deleterious effect on the addressed European sites. Measures in place for Lesser Horseshoe Bat, which is a Q.I. for Kilgarvan Ice House SAC (000364) will increase the suitable habitat for the species in the surrounding area.

The AAR, when considering residual effects, asserts that:

The project design, together with adherence to the relevant site-specific mitigation measures set out above, ensure that potential residual impacts do not arise and that the project itself (i.e. individually) will not prevent or obstruct the Qualifying Interests or Special Conservation Interests of the Kenmare River SAC (002158) and Kilgarvan Ice House SAC (000364) from reaching or maintaining favourable conservation status.

Based on the above, it can be concluded, in view of best scientific knowledge and based on objective information, that the proposed project itself (i.e. individually) will have no adverse effect on the integrity of any European Site(s), in view of its conservation objectives.

Based on the above, the FAC does not identify any error in relation to consideration of In-combination effects or residual effects by DAFM in making its decision.

In relation to the contention in the grounds of appeal that the site has a moderately high risk of landslides, the FAC had regard for the submission at Oral Hearing by DAFM that the site is relatively flat, and also considered publicly available data provided by the GSI. The GSI provides landslide susceptibility data, and in guidance on the use of this data draws a distinction between landslide risk, hazard and susceptibility. Susceptibility is based on a concept that if a landslide has occurred in a particular set of conditions, then if those conditions occur elsewhere those locations could also be susceptible to landslides. Landslide hazard is the potential for a landslide to cause damage and landslide risk shows how vulnerable or the potential for loss an area has due to a landslide. Mapping from the GSI shows a portion of the central area of the site to have a high susceptibility to landslide, with areas downslope from this area between the site and the nearest downslope road to have low susceptibility. This lower area is also under afforestation, and the area which is the subject of licence application has been under forestry since 1996. Based on this information, the FAC is of the view that the risk of landslides to watercourses or dwellings is low, and the susceptibility of portions of the site to any resultant risk that may arise to the stock is a matter for the applicant.

When considering the grounds of appeal to the effect that the licence and its associated operations threaten the achievement of the objectives set for underlying waterbody under River Basin Management Plan for Ireland 2018-2021, the FAC had regard for the unassigned status of the noted by the EPA following the 2013-2018 monitoring cycle, and the appellants assertion that Clearfelling has the capacity to impact on water quality. While noting the DAFM submission at oral hearing that other riverbodies in the sub-catchment had a Good status, the FAC considered the implications of the recent High Court ('Hyland') judgment for the current case under appeal. The FAC noted that, in the 'Hyland' case, it is accepted by all parties that there would be a direct physical impact on the unassigned lake, and that the mitigations proposed were designed to reduce the impacts on the ecological and chemical status of the waterbody. The appellant's contention in the current appeal appears to be based on an assumption that the licensed development would give rise to an impact or impacts on a proximate waterbody, but does not submit any evidence to demonstrate how or why this would be the case. The FAC noted the mitigations included in the AAD that are designed to protect the Kenmare River SAC 002158, and in so doing to protect the underlying watercourse. The mitigations are in relation to the prevention of silt and sediment run-off from the project area, and include the use of exclusion zones, setbacks and restrictions on stacking locations and the use of machinery in certain circumstances. Mitigations are also identified in relation to specific thinning and clearfell operations and also to the reforestation of the site. Based on the nature, range and specificity of the measures proposed the FAC is satisfied that, if implemented, the mitigations in the AAD will ensure that no pathway of effect will arise in relation to the Roughty_040 River.

In relation to the submitted grounds of appeal that the licence conditions do not provide a system of protection for wild birds during the period of breeding and rearing consistent with the requirements of the Birds Directive and relating to the requirements of Article 12 of the Habitats Directive, the FAC notes that the granting of a felling licence does not exempt the holder from meeting any legal requirements set out in any other statute. The FAC noted that the appellant did not submit any specific details in relation to bird nesting or rearing on the proposed site. The FAC also notes that the licence conditions contain reference to standards of good forestry practice. Based on the evidence before it, the FAC concluded that no error arose in relation to the licence conditions of the nature described by the appellant.

In relation to those grounds of appeal relating to the Harvest Plan, the imposition of licence conditions, the absence of consideration of nationally designated sites, and the absence of reference to a precise townland, the FAC had regard to the answers provided to its questions at oral hearing on the matters, and finds no error has occurred in the processing of the licence in relation to these grounds of appeal.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, in addition to submissions made by parties to the appeal. In the above circumstances, the FAC is satisfied that there was a serious or significant error or series of errors in the making of the decision to grant the licence. As a result, the FAC concluded that the decision of the DAFM regarding TFL00320219 should be varied so that licence condition:

i) Strictly adhere to recommendations in the AA screening report

Be replaced by licence condition:

i) Strictly adhere to the mitigations identified in the Appropriate Assessment Determination report.

Reason: In the interests of protecting water quality and to protect the qualifying interests of the Kenmare River SAC [2158] and the Kilgarvan Ice House SAC [0364].

And that a new copy of the licence be placed on the file of the decision and provided to the applicant.

A black rectangular redaction box covering the signature of John Evans.

John Evans On Behalf of the Forestry Appeals Committee