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17th May 2021

Subject: Appeals FAC141/2020 & FAC159/2020 in relation to felling licence TFL00300019

Dear [REDACTED]

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

Background

Felling licence TFL00300019 was issued by the Department of Agriculture, Food and the Marine (DAFM) on the 2nd March 2020.

Hearing

An Oral Hearing of appeals FAC141/2020 & FAC159/2020 was held by the FAC on the 30th March 2021.

Oral Hearing Participants:

FAC:	Mr Des Johnson (Chairperson), Mr Pat Coman & Mr Luke Sweetman
Secretary to the FAC:	Mr Michael Ryan
Applicant's Representative:	[REDACTED]
Appellant:	[REDACTED]
DAFM representatives:	Ms Eilish Kehoe, Mr Momme Reibisch

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 set aside and remit the decision to grant felling licence TFL00300019.

The licence is for the clearfell and replanting of 43.17 ha across 13 plots composed of 100% Sitka spruce at Corskeagh/Mullen, Co. Roscommon. The licenced operations are proposed to be split and staggered over 10 years with 22.07ha felled in 2020 and 21.1ha in 2030. The restock species are 85% Sitka spruce and 15% Additional Broadleaves (Oak, Birch, Rowan and Hazel) for all plots. The DAFM information states the underlying soils are predominately highly modified peat and peaty Podzols in nature. The slope is predominantly flat to moderate. The site is in the 26B Upper Shannon Catchment, the Breedoge_SC_010 Sub-Catchment, and the Carricknabraher_010 River Sub-Basin. The Carricknabraher_010 River Waterbody runs from south-west to north-east through the proposal and is

bordered by seven plots. This waterbody was assigned 'Good' status and deemed to be 'Not at Risk' by the Environmental Protection Agency (EPA) during the Water Framework Directive (WFD) 2013-2018 reporting period.

The applicant originally submitted a felling licence application (dated 21st November 2018) which proposed to fell the entire project area in one operation. Subsequently, following a request by the DAFM, a Harvest Plan was submitted and then a revised application (dated 15th January 2020) which detailed two felling operations proposed for 2020 (22.07ha) and 2030 (21.1ha). Following the submission of the appeals against TFL00300019, the applicant also submitted a Natura Impact Statement (NIS), dated 17th August 2020, which was completed by a Consultant Ecologist. The NIS includes a Stage 1 Appropriate Assessment (AA) screening of the 11 Natura 2000 sites within 15km of the proposal. Three of these sites were screened in for Stage 2 AA for the reasons below -

- **Bellanagare Bog SAC 000592 (c.300m):**
 - "There is no source-pathway-receptor linkage between the site and the SAC, however, there are concerns over the natural regeneration of Sitka spruce on nearby heath and peatlands listed as Qualifying Interests (QIs) of 000592. Using the precautionary principle, it is difficult to ensure no natural regeneration can take place. However, identifying the source of regenerating trees is difficult as spruce pollen has been shown to travel great distances. Various studies of pollen dispersal in conifers indicate that over 90% of the pollen comes to rest less than 100m from the source (Wright, 1976). Nevertheless, conifer pollen may remain viable for several days and a substantial quantity may travel great distances (Lindgren et al, 1995, Lindgren and Lindgren, 1996). Gregory (1973) cites reports that pollen of *Pinus* and *Picea* may travel as far as 500m to 1000km. While pollen dynamics are not well known for Sitka spruce, a study of pollen dispersal dynamics in a Black spruce seed orchard indicated that "large amounts" of pollen rose to a height of 300m above ground level (DiGiovanni et al, 1996). At a steady wind speed of 5 m/s⁻¹, the authors calculated that spruce pollen reaching this altitude would drift about 47km."
- **Bellanagare Bog SPA 004105 (c.150m):**
 - Current DAFM guidelines for the screening out distance of A395 Greenland White-fronted Goose (*Anser albifrons flavirostris*) is over 1km from the SPA. There is also a source-pathway-receptor linkage between the site and the SAC in the form of the Carricknabraher River.
- **Lough Gara SPA 004048 (6149m):**
 - For clearfelling and reforestation, where the project is over 1km from the SPA it may be screened out for impacts. However, there is a source-pathway-receptor linkage between the site and the SPA in the form of the aquatic connection and potential for water quality impacts may be felt downstream at the SPA as the Carricknabraher River flows into the Breedogue River and onwards to Lough Gara and the Carricknabraher River may be utilised as a commuter route for the QIs of the SPA.

The applicant's NIS considered the QIs/Special Conservation Interests (SCIs) of each screened-in Natura site and described the potential for the project to have an adverse effect on each QI/SCI and the achievement of the corresponding Conservation Objectives. The NIS then details proposed mitigation measures to reduce, avoid or prevent potential adverse impacts of the proposed development -

- **Bellanagare Bog SPA 004105 – A395 Greenland White-fronted Goose:**
 - The site is outside the SPA boundaries, leaving no risk of direct impacts, however, it is within the core foraging range for A395 and on a precautionary level, the potential for water quality impacts should be flagged as the SPA is downstream of the site and the

River can provide a means of transport and forage for commuting individuals which have been recorded in 10km grid square M79, where the project is located. It should be noted that the watercourse habitat on site is so overgrown and restricted there are no suitable forage grounds on site or on the watercourse as it slows through the site for A395 Greenland White-fronted Goose.

- Operations to follow the current DAFM guidelines to reduce risk of aquatic impacts from silt and sediment loss, loss of chemicals/hydrocarbons and spread of competitive exotics following; Forestry Standards Manual (DAFM, 2015), COFORD Forest Roads Manual (Ryan et al, 2004), Forest Harvesting & the Environment Guidelines (DAFM, 2000), Felling & Reforestation Standards (v. Oct 2019), Felling & Reforestation Policy (DAFM, 2017).
- **Lough Gara SPA 004048 - A395 Greenland White-fronted Goose & A038 Whooper Swan:**
 - The site is outside the SPA boundaries, leaving no risk of direct impacts, however, it is within the core foraging range for both A395 & A038 and on a precautionary level, the potential for water quality impacts should be flagged as the SPA is downstream of the site and the River can provide a means of transport and forage for commuting individuals which have been recorded in 10km grid squares M79 & M78, where the project is located. It should be noted that the watercourse habitat on site is so overgrown and restricted there are no suitable forage grounds on site or on the watercourse as it slows through the site for the Greenland White-fronted Goose or the Whooper Swan.
 - Operations to follow the current DAFM guidelines to reduce risk of aquatic impacts from silt and sediment loss, loss of chemicals/hydrocarbons and spread of competitive exotics following; Forestry Standards Manual (DAFM, 2015), COFORD Forest Roads Manual (Ryan et al, 2004), Forest Harvesting & the Environment Guidelines (DAFM, 2000), Felling & Reforestation Standards (v. Oct 2019), Felling & Reforestation Policy (DAFM, 2017).
- **Bellanagare Bog SAC 000592 – Active raised bogs [7110], Degraded raised bogs still capable of natural regeneration [7120], Depressions on peat substrates of the Rhynchosporion [7150]:**
 - There is potential of the reforestation of the site to provide regenerating Sitka spruce on nearby bog land which affects the Conservation Objectives of each QI in the medium to long-term over the lifecycle of the plantation.
 - A broad band of native broadleaves (10m) will be planted along the site boundary with bog land. The 200m set-back suggested in appeal is not practicable and compromise will need to be made as this issue will arise repeatedly around the country.
 - Following extensive walkover of external site boundaries by Greenbelt, it can be seen that no regeneration of Sitka is occurring in “virgin bog” but rather it appears to regenerate on cut-over bog, which lies between the site and the QI and is more suited to colonisation by exotics. In addition, it is believed that any regeneration will be less than 1% cover of any peatland QI listed in the Conservation Objectives for 000592.

The application was desk and field assessed. In completing a desk-assessment, the DAFM carried out a Stage 1 AA Screening that considered the 11 Natura 2000 sites within 15km of the proposal. All of which were screened out for Stage 2 AA for the following reasons:

- **Bellanagare Bog SAC, Carrowbehy/Caher Bog SAC, Cloonchambers Bog SAC:**
 - The position of the project area downstream from the Natura site, and the subsequent lack of any hydrological connection

- The unsuitability of the project area for use by any species listed as a Qualifying Interest (QI) of the Natura site.
- **Bellanagare Bog SPA:**
 - The unsuitability of the project area for use by any species listed as a QI of the Natura site.
 - Other factors, Bellanagare Bog SPA (004105) – the generic conservation objective of this designated site is: to maintain or restore the favourable conservation condition of the bird species listed as SCI for this SPA Greenland White-fronted Goose (*Anser albifrons flavirostris*) [A395] (Wintering). Wintering populations of this species are traditionally known to winter on peat-land habitats, though now are more commonly recorded on wet grasslands and intensively managed agricultural fields where they feed on plant material including roots, shoots, tubers and leaves. The species is listed on Annex I of the Birds Directive and is on the Birds of Conservation Concern in Ireland Amber List as the majority of the winter population is located at less than 10 sites with the majority occurring in the Wexford slob. Bellanagare Bog SPA is not one of these 10 overwintering sites. A review of literature pertaining to the Bellanagare Bog SPA was conducted. The Natura 2000 Standard Data Form, as updated in 2017, states “in the past, the bog was used by wintering *Anser albifrons flavirostris* from the population that is centred on Lough Gara. However, the Geese now feed mainly on intensively managed grassland and seldom use the bogs in the area”. The international Single Species Action Plan for the Conservation of Greenland White-fronted Goose (AWEA, 2012 Technical Series No.45) identifies that the Bellanagare Bog population have abandoned the SPA.
- **Callow Bog SAC, Corliskea/Trien/Cloonfellov Bog SAC, Drumalough Bog SAC, Mullygollan Turlough SAC, Tullaghanrock Bog SAC:**
 - The position of the project area downstream from the Natura site, and the subsequent lack of any hydrological connection.
- **Cloonshanville Bog SAC:**
 - Other factors, distance of project area from Natura site.
- **Lough Gara SPA:**
 - The unsuitability of the project area for use by any species listed as a QI of the Natura site.
 - Other factors, distance of project area from Natura site.

The DAFM consulted various planning websites along with their internal records in completing an assessment of the potential for the proposal to contribute to a cumulative impact on Natura 2000 sites in the project Townland (Corskeagh/Mullen, Co. Roscommon). The DAFM deemed that this project, when considered in combination with other forestry and non-forestry plans and projects, “will not give rise to the possibility of a significant effect on any Natura site.”

The Inspector’s Certification information states that the project area, together with existing thinning and/or clearfelling of three years or less within a 500m radius constitutes an area of 106.2ha. It also states that the project area, together with other thinning and/or clearfelling applications within 500m and recommended for felling equates to an area of 106.2ha.

The DAFM referred the application to Roscommon County Council, the National Parks and Wildlife Service (NPWS) and the DAFM’s internal Archaeologist. The DAFM received no response from the County Council or the NPWS. The Archaeologist’s report states the application site does not contain any Recorded Monuments but there a number of such sites nearby including a cluster of three Fulacht Fiadh

sites c.30m to the south of Plot 2. The licence was issued on the 2nd March 2020 and is subject to relatively standard conditions (a) to (g) plus the following conditions:

(h) - Strictly adhere to the Standards for Felling and Reforestation (DAFM, 2019). These standards replace existing Forest Harvesting and the Environment Guidelines (2000).

- ADB's to consist of Oak, Birch, Rowan and Hazel.

- Minimum of 2 years greening up period to be observed from each harvesting operation.

(i) Archaeological conditions:

- Particular caution to be taken to avoid impacting on the nearby Recorded Monuments during the works in this area, access and egress etc. See attached report and illustrative maps for further details.

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:

FAC141/2020 –

- There is a breach of Article 4(3) of the EIA Directive, a number of relevant criteria in Annex III do not form part of the screening assessment.
- The application should not have been screened out from AA. The screening conclusion is technically incorrect for 0592. Also, the QIs for this site are habitats, not species. The screening conclusion for 4105, based on a report from 2012, has not operated on the basis of the Precautionary Principle. The conservation objective of the SPA remains the same. The site is less than 1km from an SPA and this site should have been screened in under the DAFM's protocol. It is not for the District Inspector to screen out based on an eight-year-old report. AA is the appropriate vehicle to assess the potential impact on the QI of the SPA.
- There should be a standard condition that if any works are to be carried out during the period of breeding and rearing, there should be a prior ecological survey by qualified personnel and any mitigation measures recommended should be implemented.
- A 200m setback should be required for restocking with any species with potential to spread into active bog or heath land within the SAC/SPA.
- The proposed 41.3ha site is greater than the large coupe size of 25ha indicated in the Code of Best Forest Practice. There should be phasing of felling in areas greater than 25ha.

FAC159/2020 –

- The Appropriate Assessment screening does not comply with the requirements of the law.
- There is no need to establish a significant effect to trigger AA - it is merely necessary to determine that there may be a significant effect (Kelly v An Bord Pleanála). The Appropriate Assessment screening shows that there may be such an effect.
- Cumulative effects have not been assessed.
- The FAC, as a public authority, is required to carry out screening for Appropriate Assessment.
- The FAC must make available records of assessments undertaken to the appellant
- Where a waterbody is concerned, it is necessary to examine the catchment map and state which catchment the proposed development is in.
- Where there is a Turlough, it is necessary to show evidence that there is no groundwater connectivity.
- The FAC must comply fully with NPWS requirements.
- It is not appropriate at screening stage to take account of measures intended to avoid or reduce the harmful effects on a European site.

The DAFM submitted a response to the grounds of appeal in a written statement to the FAC, summarised below:

FAC141/2020 – Whilst a provision in the Act does impose an obligation on the Minister in the making of the decision whether to grant a Tree Felling Licence (TFL), with or without conditions, or to refuse it, further to the making of an application for the same under the relevant statutory provisions, to also consider whether the performance of that function also requires the carrying out of a screening for an environmental impact assessment (EIA) and if necessary the carrying out of an EIA, that statutory obligation is fully discharged once it has been clearly identified at the outset that application in question does not involve an activity or project that falls within the specified categories of forestry activities or projects set out in Schedule 5 Part 2 of the Planning and Development Regulations 2001, as amended, and in Regulation 13(2) of the Forestry Regulations 2017, and wherein relevant national mandatory thresholds and criteria for EIA are also prescribed. The standard operational activities of a) thinning or b) clear-felling and replanting already established forest areas are not so categorised and therefore a screening assessment for sub-threshold EIA does not need to be carried out by the Department in the case of applications for TFLs for these particular activities. In regard to Article 4(3) of the EIA Directive, because the standard operational activities of clear-felling and replanting of an already established forest area are not so categorised either in Annex II of the 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 felling and reforestation project licenced as TFL00300019 has undergone 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 AA Screening report was completed by the Inspector and contains the recommendations regarding screened out European Sites. Screening information for each Natura 2000 site is available on file. The paperwork submitted as part of application was reviewed by the inspector. It was deemed sufficient in providing the required information in reaching a decision to approve the licence with conditions. The protection of wild birds and mammals is governed under the remit of the Wildlife Acts for which the NPWS is responsible. It is for landowners and their agents to ensure they carry out their operations within the law. The DAFM is not the regulatory agency responsible for enforcing the Wildlife Acts. The felling area of 43.29ha has been staggered to allow for "greening up" between clearfell operations.

FAC159/2020 – The felling and reforestation project licenced as TFL00300019 has undergone the DAFM's AA Screening procedure, as set out in the document entitled Appropriate Assessment Procedure: Guidance Note & iFORIS SOP for DAFM Forestry Inspectors (v.05Nov19) (DAFM, 2019). The AA Screening report was completed by the Inspector and contains the recommendations regarding screened out European Sites. Screening information for each Natura 2000 site is available on file. The paperwork submitted as part of the application was reviewed by the Inspector. It was deemed sufficient in providing the required information in reaching a decision to approve the licence with conditions. The protection of wild birds and mammals is governed under the remit of the Wildlife Acts for which the NPWS is responsible. It is for landowners and their agents to ensure they carry out their operations within the law. DAFM is not the regulatory agency responsible for enforcing the Wildlife Acts. The AA screening procedure relevant at the time was applied. The proposal was screened out using the Habitat Table 18Dec19 and the Bird Foraging table 06Jan20. In-combination assessment was carried out. All relevant information can be found on file.

The FAC held an Oral Hearing on the 30th March 2021. The FAC sat remotely; the DAFM and one of the appellants also participated remotely and the second appellant did not participate. The circulated introduction with agenda was read into the record of the Hearing following a statement from the

appellant that he had received a copy missing some relevant information. The appellant also made a statement objecting to the composition of the FAC which was recorded, along with the Chairperson's response, on the Oral Hearing record. The DAFM detailed their process in considering and subsequently approving the application, confirming that the application was field and desk assessed. The DAFM explained that the initial application area was considered too large and the application had been amended and re-submitted following contact between the District Inspector and the Registered Forester. *A Harvest plan had also been submitted following a request for further information from the DAFM.* The application site had been field inspected and had been screened out for AA following relevant procedures. The proposal would restructure the forest by creating setbacks at reforestation. The appellant queried had the application been re-referred to outside bodies following amendment. He stated there is no evidence the NPWS had no objection to the application. There is a discrepancy in the licenced area. Some relevant documents had not been provided by the FAC. The NIS had been submitted post-approval and the DAFM's AA screening cannot be relied upon as the NIS screened in three Natura sites. Based on the DAFM's own protocol the Bellanagare Bog SPA should have been screened in given the proposal is <1km from the SPA. The NIS cites research evidence regarding natural regeneration while the DAFM does not and a minimum distance of 400m is required. There are no areas or lengths in the In-Combination document. Regarding the DAFM's Statement of Facts to the FAC in relation to wild birds, the grounds of appeal reference the EU Directives, not the Wildlife Acts like the DAFM has referenced. The NPWS acknowledge the deficiency of Section 22 of the Wildlife Act regarding the protection of wild birds and the Forest Service and the FAC need to address the issue. The FAC should call on the NPWS for their opinion. The appellant contended that previous FAC decisions (specifically regarding felling licence CK24-FL0083) have stated the DAFM's checks and balances do provide a level of protection and the FAC should state which national and EU legislation they are referring to. The appellant queried was this decision made with knowledge of recent EU court judgements. The appellant submitted that the change of 15% of the area from commercial to environmental forestry constituted a change of land use. No Inspector's Certification document had been provided by the FAC but it had been provided by other means. There is 106ha licenced for felling within 500m and 496ha within 5km. The appellant queried the DAFM Inspector's responses to several questions in the Inspector's Certification. He submitted that the application states there is no access to plots 5 & 6 yet there is no reference to this in the licence. He stated that the restocking would take place on bog and that an AA is needed. There will be hydrological impact and the groundwater in part of the site is deemed to be at risk.

The FAC and the appellant discussed the inclusion of the term 'species' rather than individual birds in Article 5 of the Birds Directive. The appellant made reference to EU Court judgement C473/2019 regarding forest harvesting and birds in Sweden.

The applicant's representative (AR) explained the background to the forest plantation stating that it was established to provide an income stream for a charity managing a group of respite and residential care homes. He stated it was planted in 1991 and has been thinned. The decision to clearfell was taken in order to provide cash-flow to the charity and because windblow is an issue on the site. The original application had been submitted and then divided into two separate felling coupes following consultation with the DAFM Inspector. This would allow for significant greening-up between fellings. There are concerns from locals regarding the danger posed to property by windblow. An NIS had been commissioned to expedite the process. No red flags had been presented to the AR by the NIS and the AR believed there are no major concerns. Following the NIS, the AR inspected the adjoining bog and found industrial peat cutting was taking place. He highlighted that this had not been mentioned by the appellants. Replanting would include 15% broadleaves leading to an increase in biodiversity. Regarding colonisation of the SAC/SPA, the AR stated the only place that natural regeneration is taking place is in the area being harvested for peat ~ not the virgin bog. Responding to FAC questions, the AR confirmed

that broadleaves would be planted along setbacks and where the proposal borders bog land. He highlighted the financial loss to the owners if the site is not harvested.

The FAC queried the licence's reference to a minimum of two years greening-up period on the licence when the fell years are 10 years apart. The DAFM Inspector confirmed that the fell years are as per the licence and that if the licensee wished to harvest earlier than 2030 they must request that through the felling section of the DAFM's Forest Service. The DAFM confirmed there is no direct hydrological connection between the proposal and a Turlough. The FAC queried the appellant's grounds relating to a 200m setback from the SAC/SPA, noting the SAC is c.300m from the proposal. The appellant stated that the SPA is within 200m and that their current thinking on this issue has changed, stating Sitka spruce can colonize areas up to 1.3km away. Responding to FAC questions, the DAFM stated that a felling coupe refers to a singular large plot within an area and that the plots to be felled in 2020 are specified on the licence. The FAC asked the DAFM to comment on the AA screening results of the NIS. The DAFM stated they were not prepared to comment on the NIS as it had not been submitted until six months after the licence had issued and stated that the SAC was c.290m from the proposal with no hydrological connection and the flow of water is away from the SAC. The FAC asked the appellant to clarify their contention regarding EIA and the broadleaves/environmental area to be planted. He stated that an EIA screening is required as the reforestation objective has changed from commercial forestry, constituting land-use change. He also stated that an EIA screening has been conducted but the validity of the conclusion is at issue.

In concluding remarks, the AR queried had the appellant been on site, observed the site conditions and witnessed the peat harvesting. He stated the felling would take place in two phases and that it was concerning that the process was being looked at but not the reality. The AR stated the applicant is trying to protect the environment by including broadleaves and biodiversity areas and would like to hear the appellant's comments on that. He stated the applicant was under financial pressure and their cash-flow had been impeded by this appeal process. He stated that harvesting would take place during the summer as to do so in the autumn would lead to an increased pressure on water quality due to higher rainfall. The appellant stated his concern is not with the plan but how it is carried out. The proposed operations would take place during bird nesting season and that everyone is under pressure, including nature and biodiversity, which is in crisis. He contended the licence doesn't require phased fellings, only a two-year greening-up period and that if the whole area was felled at once it would not breach the conditions. Regarding Turloughs, the appellant stated that groundwater connectivity had not been investigated. He queried was a felling licence needed in the case of a risk to property or health and safety concerns. The DAFM stated that the Turlough SAC in question was in a different catchment and that water leaving the site flows in a totally different direction. They stated that health and safety concerns had only been raised in the previous month with letters from locals being submitted and the DAFM Inspector had not received notification of these concerns prior to the hearing but that they were recorded on iFORIS. He noted the concerns were mostly to do with the public road. He also stated that the fell years are listed on the licence. The appellant queried how fellings could take place in 2020 as per the licence. The DAFM Inspector stated that he can only certify applications at the time they are on his work-list. The AR queried had the appellant visited the site. The appellant stated that he had not but that he had carried out a desk assessment as would be completed in many cases by the Forest Service. He contended that his appeal was not spurious and that he had brought specific issues to light.

In addressing the grounds of appeal, the FAC considered, in the first instance, the first appellant's contention regarding Article 4(3) of the EIA Directive. The FAC noted that 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 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 clearfelling and replanting (in two phases) of an area of 43.17 ha. The FAC does not consider that the proposal falls within the classes included in the Annexes of the EIA Directive or considered for EIA in Irish Regulations.

The FAC considered the grounds common to both appeals concerning the DAFM’s AA screening process. The FAC noted that the DAFM completed a Stage 1 AA screening that considered the 11 Natura 2000 sites within 15km of the proposal, all of which were screened out for Stage 2 AA with reasons provided. The FAC considered the submission by the first appellant that the DAFM should have screened Bellanagare Bog SPA in for AA based on the DAFM’s Bird Table criteria as the proposal is within 1km of the SPA and that AA is the appropriate vehicle to assess the potential impact of the proposed project on the SCI of the SPA. The FAC also considered the DAFM’s reasons for screening out this SPA, including the lack of suitable foraging habitat within the project area for the SCI and a review of literature pertaining to the Bellanagare Bog SPA. The FAC noted the proximity of the proposal to the Bellanagare Bog SPA (c.120m) and the fact that the Conservation Objective of this SPA remains as to maintain or restore the favourable conservation condition of the Greenland White-fronted Goose. In these circumstances, the FAC considered that, based on the information before it, and using the precautionary principle, the Bellanagare Bog SPA should have been screened in for Stage 2 AA to allow a full assessment of the potential for the proposal to have a significant effect on the Natura site.

However, the FAC considered that none of the DAFM’s reasons for screening out Natura sites constituted the taking into account of measures intended to avoid or reduce the harmful effects on a European site, as proposed by the second appellant.

The applicant submitted an NIS after felling licence TFL00300019 had been appealed. The Consultant Ecologist who completed this NIS screened in three Natura sites for Stage 2 AA which the DAFM had screened out – Bellanagare Bog SAC, Bellanagare Bog SPA, and Lough Gara SPA. The FAC were cognisant that the NIS had not been provided to the DAFM with the other application documents and was therefore not considered prior to the DAFM’s decision to grant the felling licence. However, the NIS was presented as evidence to the FAC and the FAC considered its conclusions which are juxtaposed to those of the DAFM’s AA screening regarding the three Natura 2000 sites listed above.

The FAC had regard to the first appellant’s grounds relating to the colonisation of the Bellanagare Bog SAC/SPA by trees and the requirement for a 200m planting setback. The FAC noted that the project site is c.290m from the SAC. The SPA is c.120m to the south-east of the proposal and this corner of the SPA contains parcels of coniferous forestry and sections which appear to be cutaway bog. The FAC considered the appellant’s submissions at the Oral Hearing related to colonisation, and had regard to the references in the NIS to several studies of the seed dispersal dynamics of various coniferous tree species. The FAC also noted the applicant’s evidence, following a field survey, that natural regeneration of conifers is only occurring on the cutaway bog areas between the application site and the ‘virgin bog’ and not on the ‘virgin bog’ itself. The FAC considered that the proposal to clearfell mature conifers, capable of producing seed (100% Sitka spruce) and replant with 85% Sitka spruce and 15% broadleaves will immediately remove a potential seed source in the vicinity of the Bellanagare bog and result in less coniferous seed production in the medium term due to the decreased proportion of spruce at reforestation.

The FAC considered the first appellant's contention that a condition of the licence should require an ecological survey if works are to be carried out during the period of breeding and rearing with recommended measures implemented. The FAC noted that no animal species is identified by the appellant as being of particular concern to the proposal site and is cognisant of the protections afforded to animal species in legislation. 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. Based on the information before it, the FAC concluded there is no convincing evidence to justify a condition as proposed by the appellant.

The FAC is in agreement with the first appellant's submission that the felling of the total area of 43.17ha should be phased in order to reduce the potential for environmental impacts from the proposed operations. The FAC is satisfied that the plots to be felled were split over a 10 year period as detailed in Schedule 2: Table 1 of the felling licence.

The FAC noted that the second appellant submitted several grounds relating to the duties of the FAC which are not grounds relating to the decision of the Minister which is under appeal. The remit of the FAC is to decide if the Minister made a serious or significant error, or series of errors, in deciding to issue felling licence TFL00300019 and to decide if the decision was made in compliance with fair procedures.

The second appellant makes reference to groundwater connectivity to a Turlough – no specific Turlough is referenced. The evidence before the FAC from the NIS submitted by the applicant is that there is no source-pathway-connector linkage between the proposal and Mullygollan Turlough SAC, which is c.13km from the proposal. Approximately half of the proposed development is in the same groundwater body as the Mullygollan Turlough SAC, the Carrick-on-Shannon/IE_SH_G_048. The other half, separated by the Carricknabraher River, is in the GWDTE-Bellanagare Bog (SAC000592)/ IE_SH_G_241 groundwater body. The FAC considered that, given the separation distance between the proposal and the Mullygollan Turlough SAC (to the south-east of the site), combined with the topography of the application area and surrounds, and the general flow of the local river network towards Lough Gara in the north-west, there is no convincing evidence that the proposed development will give rise to a significant effect on the Mullygollan Turlough SAC.

The second appellant submitted grounds stating that no cumulative effects have been assessed. The FAC noted that the DAFM had completed and considered an in-combination report prior to deciding to issue TFL00300019. This report considered both forestry and non-forestry projects within the proposal's Townland of Corskeagh/Mullen. The Inspector's Certification states that the project area, together with existing thinning and/or clearfelling of three years or less within a 500m radius constitutes an area of 106.2ha. It also states that the project area, together with other thinning and/or clearfelling applications within 500m and recommended for felling equates to an area of 106.2ha. The FAC considers that, in the particular circumstances of this case, and with regard to the amount of felling licenced in the area, the DAFM's in-combination report should differentiate between the exact amount of thinning and clearfell operations licenced within 500m of the proposal. The FAC also considered that it would be more appropriate for the in-combination report to focus on the proposal's River Sub-Basin rather than the Townland.

In the circumstances outlined above, and based on the information before it, the FAC concluded that the DAFM made a series of errors, in their decision to issue TFL00300019. The FAC decided to set aside and remit the decision of the Minister for Stage 2 AA to be completed by the DAFM. The FAC considers that in doing so, the DAFM should have particular regard to the NIS submitted by the applicant and should include an assessment of the amount of thinning and clearfell projects licenced in the River Sub-Basin Carricknabraher_010 in any in-combination report produced, before making a new decision.

Yours sincerely,

A black rectangular redaction box covering the signature of Luke Sweetman.

Luke Sweetman on Behalf of the Forestry Appeals Committee

