



[Redacted]

28th September 2021

**Subject:** Appeals FAC 321, 324, 325, 329-333, 345, 347, 350, 351, 353, 355, 356, 358-365, 367-375, 377-383/2020 regarding licence CN84977

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 and Hearing**

Licence CN84977 for afforestation of 17.8 ha at Moneenreave, Co. Leitrim was approved by the Department of Agriculture, Food and the Marine (DAFM) on 12<sup>th</sup> June 2020. An oral hearing of appeals FAC 321, 324, 325, 329-333, 345, 347, 350, 351, 353, 355, 356, 358-365, 367-375, 377-383/2020, of which all parties were notified, was held by a division of the FAC on 16<sup>th</sup> June 2021.

**In attendance:**

FAC Members:

Mr. John Evans (Deputy Chairperson), Mr. Iain Douglas, Mr. Vincent Upton and Mr. Seamus Neely.

Secretariat to the FAC:

Ms. Marie Dobbyn, Ms. Charon Reamsbottom.

Applicant/representative:

[Redacted]

Concerned party:

[Redacted]

Appellants:

[Redacted]

DAFM Representatives:

Mr. Martin Regan and Ms. Mary Coogan.

## **Decision**

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, submissions made at the oral hearing and all other submissions received, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to set aside and remit the decision of the Minister regarding licence CN84977.

The licence decision pertains to afforestation of 17.8 ha with a mixture of native tree species including downy birch, sessile oak, Scots pine and silver birch at Moneenreave, Co. Leitrim. The application describes the lands as enclosed agricultural land that is exposed with a northerly aspect on a mineral soil and with a grass, rush vegetation type. The land is described in the Inspectors Certification as having a soil type underlying the project area which is predominantly podzolic in nature and the slope is described as being predominantly steep (15%- 30%). The project is located in the River sub-basin Tarmo\_010 which lies in the Arigna[Roscommon] 26A\_4\_SC\_10 sub catchment, part of the 26A Upper Shannon Catchment. The project area is crossed by an aquatic zone and the vegetation type(s) within the project area comprises grass/rush.

## **Summary of Application**

The application includes a biomap (in two parts - dated 29/10/19) which shows road setbacks, the location of a site notice, rights of way, hedgegrows, a drain and watercourse which flows through part of the site, and one house setback. An exclusion area is also shown along a Powerline which splits a small plot off from the rest of the site which is irregular in shape. The proposed species was amended during the currency of the application and in response to a request for supporting documentation as issued on by DAFM on 19/02/20. A revised species map dated 6/3/2020 is to be found on file which shows a mixture of Sessile oak (5.3ha), Scots Pine (5.3 ha), Birch (2.65 ha), Rowan (2.65 ha), Holly (.88ha), additional broadleaves (.88 ha) and in a smaller plot of Birch (.12ha). There is correspondence on file dated 6th November 2019 from DAFM to the applicant pointing out that a separate application for the same lands had been received and requesting proof of ownership. A declaration dated 24th October 2019 from the owner is on file declaring that the lands were being sold to the applicant and that the applicant had authorisation to make the application in their own name. Also on file is correspondence from the applicant showing evidence of transfer of purchase funds and stating that the other applicant referenced (CN82292) needed to revise their application. The record suggests that a site notice dated 23<sup>rd</sup> October 2019 was erected at the entrance to the lands. Fifteen submissions were made by members of the public within the consultation period. All of the submissions constituted objections to the proposal.

The original proposal was for the planting of 85% Sitka spruce and 15% broadleaves. The DAFM wrote to the Applicant on 19th February 2020 stating that the proposed species were not acceptable and that alternatives would be considered. Revised documents were submitted to the DAFM on 6th March 2020 with a change of species to mixed native tree species. A revised species map dated 6/03/2020 was submitted describing the new species to be planted.



The DAFM recorded an Appropriate Assessment screening of the proposal (which is to be found in the Inspectors Certification on file) that identified five European sites (Cuilcagh - Anierin Uplands SAC, Boleybrack Mountain SAC, Lough Arrow SAC, Lough Gill SAC, and Lough Arrow SPA) within 15 km. All five sites are screened out and the project did not proceed to Appropriate Assessment stage 2. A separate in-combination assessment and statement is to be found on file and shows that it is based on a spatial search date of planning systems on the week of 19<sup>th</sup> May 2020. The DAFM considered the environmental effects of the proposal across a range of criteria and determined that the project was not required to undergo the EIA process. The application was referred to Shannon Regional Fisheries Board on 15/11/2019, to An Taisce on 15/11/2019, to the National Parks and Wildlife Service on 15/11/2019, and to Leitrim Co. Council on 15/11/2019, 15/04/2020 and 22/05/2020.

The reply received from Inland Fisheries Ireland submitted that it had no objection subject to adherence with DAFM guidelines and noted that the lower reaches of stream which flows from site has potential brown trout spawning areas, stipulates the need for silt traps, and the size and nature of internal drain crossing. The reply from An Taisce noted that the site does not fall within a designated prime scenic area, noted the site does lie within an Area of High Visual Amenity, and that objective 81 of the County Development Plan (CDP) protects these areas (area B7 Corry Mountain in CDP Table 19 and Map 4.12) and noted that the road directly to the west is also designated as an Area of High Visual Amenity (area B8, Table 19, Map 4.12 of CDP). The reply from the National Parks and Wildlife Service made no specific comments and included a standard "Appendix" in its response. The first reply from Leitrim Co. Council identified the lands in the majority as Medium Capacity/Medium Sensitivity to accommodate forestry (small scale woodlands), Identified the southernmost lands in the proposal as being in Low Capacity/High Sensitivity where forestry is strongly discouraged, stipulated contact with the Councils District Engineer prior to works, advised on possible requirement for bounding, required contact of person (Applicant/representative) and draws attention to provisions of the Planning and Development Regs 2013 (not exempted development). The reply received on 11/05/2020 notes that it did not have contact from the applicant, that access to public road L8283-2 is very narrow at 2.4m wide, that the pavement is poor that there will be a need to fund improvement "if intensification of use is to proceed", that existing access is inadequate, that sightlines are very poor, that the proposed project site is elevated with gradient of 17%, and that Forestry and Water Quality Guidelines in such cases require a 15m buffer. The subsequent reply largely restates the content of the earlier two.

### **Appeals**

There are thirty-nine appeals lodged against the decision to grant the licence (CN84977) in this case. The grounds of appeal were provided to all parties and were before the FAC. There are a range of grounds of appeal submitted which are broadly summarised as follows:

**Visual Amenity:** Appears as a ground in FAC 321, 324, 325, 330, 331, 332, 333, 345, 347, 350, 351, 356, 358, 361, 363, 364, 369, 371, 372, 373, 374, 375, 377, 378, 380, 381 & 382/2020.

**Topography and Landslide risk:** Appears as a ground in FAC 321, 325, 329, 331, 333, 345, 350, 353, 358, 359, 363, 364, 365, 367, 368, 372, 373, 375, 380, 382 & 383/2020.

**Water Quality:** Appears as a ground in FAC 321, 324, 325, 331, 332, 333, 345, 353, 356, 358, 359, 362, 364, 370, 372, 375, 377, 379, 380 & 382/2020.

**Potential Impact on Local Economy and Community:** Appears as a ground in FAC 324, 331, 345, 347, 350, 353, 356, 359, 360, 362, 364, 365, 372, 373, 374, 377, 379, 380 & 382/2020.

**The Nature of Applicant:** Appears as a ground in FAC 324, 331, 332, 359, 362, 365, 373, 374, 379 & 383/2020.

**The Health and Well-being of Local Residents:** Appears as a ground in FAC 324, 331, 353, 356, 358, 359, 362 and 380/2020.

**Potential Impact on Fish Species in proximate rivers:** Appears as a ground in FAC 345, 355, 359, 362, 375, and 382/2020.

**Potential Impact on flora and fauna:** Appears as a ground in FAC 324, 330, 345, 355 and 377/2020.

**Adherence to County Development Plan:** Appears as a ground in FAC 331, 345, 372 & 382/2020.

**Disturbance by heavy machinery:** Appears as a ground in FAC 324, & 350/2020.

**Road Infrastructure:** Appears as a ground in FAC 324, 331 and 372/2020

**Adherence with Water Framework Directive:** Appears as a ground in FAC 331, 353, 372 & 382/2020.

**Suitability of soils for planting:** Appears as a ground in FAC 345, 370 and 382/2020.

**Potential flooding:** Appears as a ground in FAC 324/2020.

**Light and Overshadowing:** Appears as a ground in FAC 324, 361, and 365/2020.

**Possible errors in administration:** Appears as a ground in FAC 331/2020.

**Consideration of submissions in the licencing process:** Appears as a ground in FAC 331/2020.

**The Nature of Lands:** Appears as a ground in FAC 331, 359, 361, and 372/2020.

**The impact of deer populations:** Appears as a ground in FAC 331, 376, 371, & 373/2020.

**Proximity of NHA:** Appears as a ground in FAC 331, 345, 362, & 382/2020.

**Planning systems for forestry:** Appears as a ground in FAC 331 & 383/2020.

**Wind blow on planted trees:** Appears as a ground in FAC 345/2020.

**The planting of Sitka spruce:** Appears as a ground in FAC 345 & 358/2020.

**Compliance with the Habitats Directive, (NHA near to the site):** Appears as a ground in FAC 372/2020.

**Adequacy of EIA considerations:** Appears as a ground in FAC 372/2020.

**Compliance with Regulation 5(2) of the Forestry Regulations:** Appears as a ground in FAC 372/2020.

**Licence compliance with Article 5 of the Birds Directive:** Appears as a ground in FAC 372/2020.

The full written grounds of appeal and the DAFM response to those grounds are to be found on the file.

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

In the statement provided to the FAC, the DAFM submitted that the decision was issued in accordance with their procedures, Statutory Instrument 191/2017 and the 2014 Forestry Act, and that the Department is satisfied that all criteria as outlined in the standards and procedures (listed in the statement) have been adhered to in making a decision on the application. The statement sets out the chronology of the processing of the application, that the project was both desk and field assessed, that submission materials were reviewed and that the licence issued on 12<sup>th</sup> June 2020.



### **The Oral Hearing**

At the oral hearing the DAFM representatives updated the FAC on relevant dates, referrals to consultation bodies, that fifteen submissions had been received by DAFM in relation to the licence application (up to the 6<sup>th</sup> December 2019), that the application was desk and field assessed, that an Appropriate Assessment screening for sites within 15 km was carried out, that all five European sites identified were screened out, that an Appropriate Assessment was not required, that responses to the referrals (in this case, Inland Fisheries Ireland, An Taisce, National Parks and Wildlife Service and Leitrim County Council) had been received and that the licence was issued on 12<sup>th</sup> June 2020. It was also confirmed by the DAFM representative that there had been a number of exchanges with the Local Authority in this case as the application was originally for a conifer mixture and that following a request from the DAFM the proposal was revised to comprise a mainly Native Broadleaf mixture and containing a small portion of Scots pine as set out in the schedule attached to the licence.

At the oral hearing a number of the appellants made presentations.

The appellant in the case of appeal FAC 353/2020 addressed the hearing and indicated that he was also speaking for the appellant in the case of FAC 331/2020. He pointed that as stated by the DAFM that there had been fifteen submissions made to DAFM in relation to the project and that the issue of the licence had outraged neighbours which resulted in the thirty-nine (mainly local) appeals being made against the licence. He submitted that the afforestation of the lands would have a detrimental effect on the health and wellbeing of the appellant in the case of FAC 331, and of his wife and child as they were the nearest to the project area. He submitted that there would be negative impact on this high visual amenity designated area, on the outstanding prospects and views and that the proposal was in contravention of the County Development Plan. He submitted that the existing entrance to the site and sightlines were inadequate, referenced the Leitrim Co Council submission in this regard, referenced the work of the newly established LAWPRO (The Local Authority Waters Programme Office), the efforts underway to improve water quality while submitting that the afforestation of the lands in this case would be contrary to this effort and making specific reference to the requirements of the Water Framework Directive (WFD). He submitted that this proposal did not take account of the WFD objective to improve the status of Lough Allen from moderate to good by 2027 while referencing that the TARMO\_010 had not been assigned a WFD status. He contended that there are more drains on the site than shown on the bio map, referenced the 10m setback shown on same and that this should be 15m from aquatic zones in steep conditions. He submitted that there will be a radical change in the topography of the site, that there was no drainage plan to show that and that old drains may well become active again. He also submitted concerns about soil stability and referenced landslides in the wider area such as at the 'Dawn of Hope'. He submitted that the proposal would impact on the suitability of Lough Allen as a spawning ground and referenced the hen harrier and the golden plover. After a short loss of connection with the hearing the appellant (FAC 353) reconnected and continued presenting – submitting that the project should have proceeded to Appropriate Assessment, that a significant amount of planting is planned above the 160 m line which contravenes the requirements of

the County Development Plan, submits that fire breaks are required particularly near the appellants house in the case of FAC 331/2020, that the bio map is very hard to read, and referenced what he perceived as a pinch point in the area available for planting in the plot near the house of appellant FAC 331/2020.

The appellant in the case of FAC 324/2020 addressed the hearing, contextualised his grounds of appeal, indicated that he wished to reiterate the presentation made by appellant in the case of FAC 353/2020, described his lands relative to the project area, that the plantation would effectively be like a horseshoe around his lands, described the vegetation on his lands, submitted that the proposal would impact on wildlife movements in the area, and submitted that a hedgerow between part of the project and part of his lands was not shown on the bio-map. He indicated that there was confusion as to what type of trees that are proposed for the site, gave details of the correspondence he received from DAFM and indicated that he had been of the view that 85% of the trees were to be Sitka spruce. In response to a question from the FAC in this regard he indicated that he still had concerns about the proposal even with the clarification that the species mix approved was mainly of native broadleaf.

The appellant in the case of FAC 372/2020 addressed the hearing, contextualised his grounds of appeal, indicated that he also wished to reiterate the presentation made by appellant in the case of FAC 353/2020. He requested that this licence would be cancelled and referenced the large amount of local opposition. He queried the percentage of forest cover recorded in the application assessment, indicated that he was concerned if a further appeal fee would have to be paid in this case if it is sent back to the DAFM and submits that the 'no comment' from the NPWS should not be considered as no objection.

The appellant in the case of FAC 380/2020 addressed the hearing, she also contextualised their grounds of appeal, indicated that she lived fairly close to the site and referenced that a road near the site had featured on a 'Hidden Heartlands' advertisement. She referenced another afforestation proposal in the area and indicated a concern that the plan was to afforest the area between that site and this project. She concluded by stating that it would be devastating for the area if this project goes ahead.

The appellant in the case of FAC 382/2020 addressed the hearing, contextualised her grounds of appeal, congratulated the appellant FAC 353/2020 for the presentation made and indicated that she also wished to endorse same. She indicated that she felt that the area had a lot of potential for tourism and that the proposal would negatively impact same, referenced particular attractions such as the Miners Way and the Lough Allen Drive and the significance of the area in the context of walking routes in particular the linked route from Cork to the Burren in Co Cavan.

The appellant representative in the case of FAC 325/2020 addressed the hearing, contextualised their grounds of appeal, and indicated that the appellant FAC 353/2020 spoke very well on the appeals. She indicated that she runs on the roads near the project area, reiterated the fabulous views, raises concerns as to the impact of the afforestation proposal on these, and points out the positive impact that this area, as it currently is, can have on the mental health of people. She made reference to the impact



of harvesting on a nearby site and submitted an account of her interaction with the trucks servicing same. She referenced that large numbers of visitors currently are coming to the area.

The appellant in the case of FAC 358/2020 addressed the hearing, contextualised his grounds of appeal, and indicated that he felt that every appellant had spoken very well about their appeals. He referenced that large number of local appeals, overshadowing, the inadequacy of road infrastructure near the project area, the likelihood of run off from the site, the impact on neighbouring lands, the impact on the efforts to promote tourism locally, and indicated that he doesn't believe that local concerns have been adequately considered.

The appellant in the case of FAC 364/2020 addressed the hearing, indicated that he was also speaking for the appellant in the case of FAC 360/2020, contextualised their grounds of appeal, and made specific reference to the apparent ease to get approval for afforestation proposals while referencing the difficulties being faced by returning locals getting planning permission for new dwellings. He indicated that he felt that this would lead to a cycle of depopulation in the area. He submitted that if this continued then in twenty years time up to 60% of the area would be planted and that in his view this was a lack of joined up thinking by state organisations. He makes reference to visitors coming to the area, referenced relevant provisions in the County Development Plan, investments in local tourism facilities / infrastructure being made by the Council, and indicated that he felt that Leitrim was being viewed differently while saying that places such as the Lakes of Killarney wouldn't have such planting approved.

The appellant in the case of FAC 367/2020 addressed the hearing, contextualised his grounds of appeal, indicated that he agreed with everything that the appellant in the case of FAC 353/2020 had said.

The appellant in the case of FAC 374/2020 addressed the hearing, indicated that she is speaking on behalf of the appellant in the case of FAC 375/2020 also, contextualised their grounds of appeal, commends previous speakers, indicates that she is part of a walking group, emphasised the value of the place for clearing the head and submitted concerns that the project will have on this. She referenced the provisions in the County Development Plan as it relates to the 'low capacity' for afforestation on part of the site area.

The appellant in the case of FAC 378/2020 addressed the hearing, contextualised her grounds of appeal, and indicated that she wished to reiterate what previous speakers had said. She said that she didn't live in the area and was a frequent visitor. She asked that the place would be left alone.

The applicant's representative gave details of the application, the land that is subject of the proposal, and indicated that the applicant had decided to go with the revised proposal following the request from DAFM. He set out the planting method being invert mounding, confirmed that no drainage is proposed for the site, and that the forest will never be clearfelled. The FAC asked some questions to both the appellants and the applicant's representative on a number of matters. In this context the appellant in the case of FAC 324/2020 confirmed what documents he had received from the DAFM when being

notified of the licence decision and confirmed that he still had concerns about the proposal notwithstanding the revisions to being mainly Native Broadleaf. The applicant's representative confirmed that the answer to question 4.2 in relation to the screening form should have been yes as it is a high amenity landscape area. He confirmed that the 10m setback from the aquatic zone on site was as agreed with the DAFM and this was acknowledged. He also provided some clarification regarding the site at the 'top' end and when asked whether he had considered increased setbacks from the top road he indicated that he felt that what is proposed is suitable. The DAFM representative contended that the change in land use would likely lead to improvements in water quality and that the inclusion in the licence regarding fertilizer to be applied was an error while pointing out that there would be no fertilizer applied in this case and that this would be controlled through the grant payment system. In relation to the answer provided to question eleven on the EIA screening form the DAFM representative indicated that it was his consideration for the local concerns that led him to seek the revised planting proposal for the site. He also indicated that he considered that access and the road capacity was adequate as this project would never be commercially felled.

The appellant in the case of FAC 353/2020 responded to queries in relation to 'pressures' on water quality in the area and on whether the lack of clearfelling requirement would have an impact on his concerns. In this context he contended that the planting itself raised concerns and cited a local example of where the Local Authority had issued a section 12 notice as a consequence of impact caused by a particular afforestation (planting) operation. He also confirmed that he is a chartered civil engineer. The representative of the proposed purchaser of the project area gave an account of the approach that they would take including in relation to working with the community to leverage the value of the plantation for walks and community enhancement if the licence is granted. He indicated that he is a soils specialist, that he visited the site and that he considers that there is no risk of soil slippage on this site having regard to the conditions, the proposal and the conditions under which the planting would occur. He also indicated that where peat was encountered it would be left unplanted. The DAFM representative confirmed that he took the TARMO\_010 waterbody into account when processing the licence, that no drainage would be opened up, that the planting would be on the basis of a square metre of soil being upturned for each tree and that he was satisfied that there would be no impact on the waterbody. The applicant's representative outlined the traffic to be generated by the project and submitting that it would be a six to eight tonne digger that would do the work on site and that the roads and access were adequate. The chair of the hearing called the names of all the appellants in turn to ensure that each appellant in attendance had an opportunity to address the hearing. Some of the speakers took the opportunity to reiterate their views in summary towards the end of the hearing.



### **Post Hearing Correspondence**

Having regard for the unassigned status of the TARMO\_010 waterbody, the FAC wrote to the EPA on the 24<sup>th</sup> of June 2021. The FAC provided a summary of the facts as they relate to the site and its proximity to water bodies and invited the EPA to comment as to whether the EPA was in a position to assign a status to the TARMO\_010. The request was made under Section 14B(9) of the Agricultural Appeals Act of 2001 (as amended) and a response was requested within 21 days of the date of the letter. No response was received by the FAC.

### **Consideration by the FAC**

The function of the FAC, as laid out in the Agriculture Appeals Act 2001 as amended, is to hear and determine appeals of people who are dissatisfied with a decision of the Minister for Agriculture, Food and the Marine under Section 7 of the Forestry Act 2014 excluding grants and the Forestry Regulations 2017 (S.I. No. 191 of 2017) insofar as they relate to a licence for afforestation, felling of trees, forest road construction or aerial fertilisation of forests. The FAC is independent in its function and has no role in forest policy or grant aid.

In addressing the grounds of appeal, the FAC considered, in the first instance, the considerations of conservation areas and the potential for the proposal to result in significant effects on the environment as documented in the DAFM record.

The FAC notes that the EU EIA Directive sets out, in Annex I a list of projects for which Environmental Impact Assessment (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. 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 decision under appeal relates to afforestation of 17.8 ha so is sub threshold for mandatory EIA as set in Irish Regulations. The planting would be of mixed, native species and on private enclosed agricultural land. Historic maps of lands suggest a history of agriculture and land management. The DAFM recorded a consideration of the proposal across a set of criteria to determine whether the application should be subject to the EIA process. The FAC did not consider that there was convincing evidence that the DAFM had erred in relation to the screening for EIA undertaken.

The FAC considered those grounds of appeal relating to the Water Framework Directive and water quality generally. In doing so, the FAC had regard for publicly available mapping, the written submissions received and those made at oral hearing, and the decision of the High Court (Hyland J.) in *Sweetman v An Bord Pleanála* [2021] IEHC 16.

The DAFM record that adherence to water quality guidelines, harvesting guidelines and any condition to be attached to approval, are sufficient to prevent any potential significant impact to aquatic zones and water quality arising from the project and that the proposal is compatible with the Water Framework Directive (WFD). EPA mapping shows the Tarmo\_010 water course emerging in the clear area, and proceeding through the left arm of the site before exiting the site on the west, where it then flows to Lough Allen ca. 2.4km hydrological distance. The Tarmo\_010 has an unassigned (2013-2018) WFD status. It is in the Arigna[Roscommon] 26A\_4\_SC\_10 sub catchment, part of the 26A Upper Shannon Catchment. Lough Allen has a moderate (2013-2018) WFD Ecological status recorded by the EPA and pressures on the Lough for the second cycle of the WFD are agriculture, pasture and invasive species.

The proposal is for the planting of mixed species native woodland and the FAC considered that the medium to long term impact of the proposal on water quality would likely be positive. The response provided by Inland Fisheries Ireland included no objection subject to adherence with DAFM guidelines. The FAC is of the view that operations at the establishment stage could have the potential to result in silt and nutrient mobilisation in the absence of appropriate preventative measures. The marked watercourse was described as well vegetated and this appears to be the case from aerial imagery of the lands. An unplanted setback and retention of existing vegetation would provide a significant buffer around the watercourse. The proposal includes a 10 metre setback from aquatic zones. This measure was questioned in submissions from the County Council and in the grounds of appeal in relation to the procedures of the DAFM. The slope of the lands was submitted to be 17% by the County Council and was discussed at the oral hearing. The *Environmental Requirements for Afforestation* (DAFM) require a setback of 10 metres for land on mineral soils less than 15% slope. Lands between 15% and 30% require a 15 metre setback. In examining contour maps of the lands the FAC considered that the slope of the lands was likely between 15% and 17% and so a setback of 15 metres is required. The FAC considered this to be an error in the making of the decision to grant the licence.

The proposal is of medium size at 17.8 ha and follows an elongated shape largely in the direction of the slope. Table 9.1 of the *Forestry Standards Manual* would suggest that, based on the slope and soil type, the lands would be considered at high risk of soil erodibility. The proposal would involve invert mounding without the creation of additional drainage channels. It was submitted by the applicant's representative at the oral hearing that invert mounding would be employed in keeping with the guidelines of the Native Woodland Establishment Scheme. In addition, it was submitted that no fertiliser would be employed and that the reference to fertiliser in the operational details should not have been retained. The FAC considers that the failure to revise the operational details represents a further error.

As noted above, the Tarmo\_010 flows through a significant portion of the site and has an unassigned (2013-2018) WFD status. In addition, the lands are on a medium slope and slope towards the waterbody. Having regard to the High Court (Hyland J.) Judgment in *Sweetman v An Bord Pleanála* (2021) IEHC 16, delivered in January 2021, and to the fact that there is direct connectivity between the project lands and the Tarmo\_010 and the nature of the lands and the errors identified in the



specification of the operations and mitigation measures as identified, the FAC is not satisfied that, based on the information before it, it can be reasonably concluded that the proposed development as licenced would not have any impact on this 'unassigned' waterbody. The FAC considered this to be a significant error in the making of the decision to grant the licence and considers that the Minister should also address the identified errors in the aquatic setback and operational details before assessing whether the proposal could have any impact on the Tarmo 010 waterbody.

Under Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The FAC employed publicly available information from the EPA and NPWS and identified the same five European sites. The proposal does not lie within a European site and is not connected with or necessary to the management of any such site. The approximate distances from the proposal lands to the boundaries of these European sites are Cuilcagh - Anierin Uplands SAC 6.6km, Boleybrack Mountain SAC 7.9km, Lough Arrow SAC 14.5km, Lough Gill SAC 15km, Lough Arrow SPA 14.5km. The DAFM recorded that they considered the project design (including associated operations and ancillary works) and location; the European Site, its qualifying interests and conservation objectives; and the possibility of potential sources and pathways for each recorded European site. The proposal as noted is for the planting of 17.8 ha of land in agricultural use with native tree species following the operations as submitted. Each site is screened out on the basis that there is no hydrological connection. The lands generally drain easterly towards Lough Allen. Cuilcagh - Anierin Uplands SAC lies to the east of the proposal at the border of the 26A Upper Shannon and Erne Catchments, in separate sub-catchments to the proposal and with no direct hydrological connection. Boleybrack Mountains SAC lie to the north at the boundary of the 26A Upper Shannon, Sligo Bay and Erne Catchments in separate sub-catchments to the proposal and with no hydrological connection. Both SACs have been designated for the conservation of a number of terrestrial habitats and species as recorded. Lough Gill SAC, Lough Arrow SAC and SPA lie to the west of the proposal in the Sligo Bay Catchment with no hydrological connection. Lough Arrow SPA is the only Special Protection Area within 15km and its Special Conservation Interests are Little Grebe (*Tachybaptus ruficollis*) [A004], Tufted Duck (*Aythya fuligula*) [A061] and Wetland and Waterbirds [A999]. The DAFM have published the *Bird Foraging Table* that it employs in its assessments. This provides distances *whereby the District Inspector can rule out the possibility of any significant effect arising from the project itself* in relation to a number of identified species. In relation to Little Grebe and Tufted Duck this distance is 1km. In this instance the forest would be established 14.5km from the SPA and in a separate catchment. The FAC did not consider that any convincing evidence was provided to it that this procedure was insufficient in this instance. The FAC considered the nature, scale and location of the proposal and concluded that the 15km distance for screening was appropriate in this instance. As noted the DAFM recorded a consideration of other plans and projects consideration in combination with the proposal. The FAC considered that the type and range of plans and projects considered was appropriate

and included both forestry and non-forestry projects. The FAC did not consider that there was evidence that the DAFM had erred in relation to the screening for Appropriate Assessment undertaken.

The Corry Mountain Bog NHA (002321) lies to the west of the proposal. The site synopsis states that:

*Corry Mountain Bog NHA is a site of considerable conservation significance comprising a relatively intact area of upland blanket bog. The site supports a good diversity of blanket bog microhabitats, including bog moss lawns and flushes. Blanket bog habitat is a globally scarce resource.*

The synopsis notes that mature forest forms part of the boundary of the NHA and that plantation forestry has encroached on heath and bog habitat. The proposal was referred to the NPWS/DCHG which did not raise any specific concerns in relation to the NHA. The proposal is for the planting of mixed native species including sessile oak and birch which, it is submitted, would be considered to form part of the natural vegetation of the area. The land is currently in agricultural use. It is submitted that this area would never be clearfelled and the nature of the species proposed and the land being exposed would suggest that the proposal would not be managed in such a manner. The FAC is not satisfied that the DAFM did not give sufficient consideration to this issue.

In relation to visual amenity, a number of grounds identified the public road to the southwest of the proposal, referred to as the Top road by the Appellants, as providing valuable views of Lough Allen and being employed for local recreation and by visitors to the waterfall to the north. It is noted by both the County Council and An Taisce that this area is designated for High Visual Amenity. The FAC consulted the County Development Plan and confirmed that this is the case. The closest Outstanding View is to the southeast "View towards Lough Allen from the R280" V21 and would not be directly impacted by the proposal.

In relation to Landscape the *Environmental Requirements for Afforestation* state:

*The predominantly open landscape of Ireland is a result of the progressive clearance of the natural woodland cover through the centuries, primarily for agriculture. In such an open landscape, afforestation is a major change. Registered Foresters should therefore apply attention to shape, scale, species diversity, margins, open spaces and views, to ensure that the new forest complements the character of the landscape, and to avoid intrusive and monotonous plantations.*

During the oral hearing the DAFM submitted that it did not consider that the landscape was suited to a commercial plantation and that this formed part of the reason for requesting a change in species. The FAC notes that the species choice and design is reflective of the requirements of the Native Woodland Scheme. The FAC considers the proposal to be of a moderate scale and that through following the existing field boundaries does not comprise a strict square shape. The existing hedgerows and mature trees on site will be maintained providing further for the natural shape of the land. The proposal would involve the planting of diverse native species, primarily broadleaf but also Scots pine. The FAC



considered that this species choice would provide greater texture and diversity to the proposal. As noted the proposal is of a medium scale and adjoins two public roads and unplanted setbacks are included. While the site is reasonably elevated and prominent in the landscape., the FAC does not consider that the proposal represents an intrusive or monotonous plantation, nor does it consider that it will have a significant negative effect on visual amenity.

In relation to potential overshadowing, the FAC noted that setbacks of 60 metres from dwellings are required. There are a number of dwellings to the north of the proposal and no planting could take place within 60 metres of the houses. As noted at the oral hearing these houses are currently bounded by existing mature trees and hedgerows. The proposal is for the planting of mixed species native woodland which would be primarily deciduous in nature and allow for the passage of winter sun to a greater degree than evergreen species. The small plot to the northwest of the lands would be planted with silver birch, a light crowned deciduous species. In relation to adjoining lands, hedgerows border some of these lands already and would be required to be retained and unplanted setbacks to be implemented. Given the exposed nature of the site, tree height is likely to be constrained. The FAC is satisfied that the proposal would not result in significant additional shading of properties or on residential amenity.

In relation to the information provided in the application, the record shows the application included operational, administrative and operational information and a series of maps including a biomap, species maps and fencing map. The species map was amended following a request from the DAFM and the FAC notes that this change was referred to the County Council. The lands were subject to a site inspection. The Biomap identifies relevant watercourses and aquatic zones, hedgerows and roads and the location of setbacks. The FAC considers that the information provided was appropriate and sufficient to facilitate the DAFMs assessment of the proposal.

In relation to the potential for disturbance and nuisance, the FAC considered the nature of the proposal being for the establishment of mixed species native woodland. It was submitted that this was not a commercial endeavour and based on the nature of the proposal and its location the FAC considered it unlikely that the lands would ever be clearfelled. The proposal would involve operations at the establishment phase which could result in additional traffic and noise. However, this would be of a limited nature and over a period of a number of weeks. Planting would be by hand using slit planting. The FAC does not consider that the proposal would represent an intensification of the use of the lands which are currently in agricultural use.

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 made in the making of the decision to grant the licence in this case. As a result, the FAC has decided to set aside and remit the decision of the Minister regarding licence CN84987 and is remitting the decision and the consideration of the application to address the errors in the specification of operations and aquatic setbacks as set out above before making an assessment of the potential for the proposed development to have an impact

on the unassigned waterbody (Tarmo 010) having regard to the 'Hyland' High Court judgement previously referred to, before making a new decision in respect of the application.

Yours sincerely,

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

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John Evans On Behalf of the Forestry Appeals Committee