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26<sup>th</sup> October 2021

**Subject:** Appeals FAC085/2021, FAC086/2021, FAC087/2021 & FAC088/2021 in relation to afforestation  
licence CN83087

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 & Hearing**

Afforestation licence CN83087 was issued by the Department of Agriculture, Food, and the Marine (DAFM) on the 15 April 2021. A Hearing of appeals FAC085/2021, FAC086/2021, FAC087/2021 & FAC088/2021 was convened by the FAC on the 14 September 2021. The FAC members in attendance were Mr Des Johnson (Chairperson), Mr Seamus Neely and Mr Luke Sweetman. Mr Michael Ryan participated as Secretary to the FAC.

#### **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, and all other submissions, before deciding to set aside the decision to grant afforestation licence CN83087

This licence is for the afforestation of 16.8ha at Ballynastockagh, Co. Mayo. The proposal is composed of five plots. Plot 1 is 5.84ha of Native Woodland Establishment (50% Birch, 50% Additional Broadleaves (ADB)), Plot 3 is an unplanted 'Bio' plot of 0.86ha, and Plots 2 (5.7ha), 4 (1.12ha) & 5 (3.28ha) are each

85% Sitka spruce, 15% ADB. The information on file states there is a mix of soil types throughout the project area. Plot 1 is predominately Basin Peats, Blanket Peats with Mineral Alluvium along its eastern boundary with the Dalgan River. Plots 2, 4 and 5 are predominantly mineral soil but Plot 5 contains a small portion to the south containing Lithosols and Peats and a small northeast portion containing Basin Peats, Blanket Peats. The project site is flat, low-lying, and slopes marginally (<5%) towards the Dalgan River. The current vegetation cover is mostly semi-improved acid grassland, wet grassland, and Willow scrub. There are drainage ditches located throughout the low-lying areas of the site which drain to the Dalgan River, with no existing silt traps. The proposal is in the Clare[Galway]\_SC\_010 River Sub-Basin. The Clare[Galway]\_SC\_010 Waterbody was assigned 'Good' status and deemed to be 'Not At Risk' under the Environmental Protection Agency (EPA) 2013-2018 reporting period. The DAFM's approval letter states that the site will be mounded, slit planted, 250kg/ha of Ground Rock Phosphate (GRP) is proposed along with herbicide weed control in year 0, road access is provided, and drainage and firebreaks are not required.

There are four Inspector's Certification documents on file. The 4<sup>th</sup> and "Final" document states that the site was field and desk-assessed, is free of shell marl or highly calcareous soils, not acid-sensitive or sensitive for fisheries, contains a listed archaeological site or monument, is not within a Prime Scenic Area and there are no other High Amenity Landscape considerations. The proposal is not within, but is within 3km of, a pNHA/NHA/Natura site or National Park, not within a Freshwater Pearl Mussel (FPM) 6km zone or FPM Catchment. In response to Q4 "Is the site prone to flooding?" the Registered Forester ticked 'No' and the DAFM Inspector ticked 'N/A'. The Inspector's Certification states the approximate percentage forestry cover in the Townland is 7.22% with 0.34% in the underlying Waterbody and 7.95% within 5km of the proposal at present. The application, together with new afforestation of three years or less within 500m is 41.3ha. The application together with other applications within 500m and approved but not yet planted is 16.8ha.

The applicant submitted a Natura Impact Statement (NIS) with their application. The NIS (dated 6 July 2020) was compiled by a Consultant Ecologist along with two Registered Foresters. The NIS provides a description of the site and the proposed operations, stating that no fertiliser or herbicide will be used on broadleaf species. The NIS contains an Appropriate Assessment (AA) screening which screens in Lough Corrib SAC due to the "potential for indirect impacts to CO000297 via the source-pathway-receptor represented by the hydrological links along the Dalgan River" and the "potential for silt and sediment, chemical/ hydrocarbon loss and spread of invasive species and pathogens to QIs of 000297." The NIS

provides the rationale for screening out the other 10 European sites within 15km of the proposed development. The NIS lists the Qualifying Interests (QIs) and Conservation Objectives of Lough Corrib SAC and assesses the potential for adverse effects. Mitigation measures are proposed in relation to silt & sediment control, loss of chemicals/hydrocarbons to the environment, biosecurity measures, protection of the Otter, and post-operations works. The NIS assesses the potential for the proposal to contribute to an 'In-Combination Effect' on European sites, referencing various online planning systems and EPA data, before concluding that the development "cannot contribute to any cumulative effect on any European Natura sites."

The NIS states that "the eastern site boundary is bordered by the Dalgan River, which is prone to flood significantly over the site to the east of the road and beyond (see flood risk map in Appendix). For this reason, wide setbacks are recommended with a broad margin of pit-planted broadleaves for retention. It is recommended to leave this area either un-planted or plant with alluvial woodland with no fertilizers, or pesticides used here and storage of any chemicals outside zone of potential flooding." The NIS submits that "it is not intended to have machinery crossing over large ditches on site. Appropriate setbacks of 20m will be retained, silt traps placed on existing drains outside the setbacks. The provision of generous setbacks and well-functioning silt traps on site will help remedy losses being made to the surrounding aquatic habitat from agricultural practices in the area."

The NIS also states "due to the risk of extensive flooding over 300m of the site on either side of the roadway, there is a possibility of the project itself (i.e., 'individually') and in combination having an adverse effect on the integrity of the associated Natura site (Lough Corrib SAC 000297), despite the mitigation provided in Section 3 and 4 of NIS. Severe weather and extreme conditions can occur leading to flooding of low-lying areas and the risk of loss of silt and sediment to surrounding environment which may impact on the CO000297 (Section 3), particularly in combination with losses from surrounding lands in the catchment."

Following receipt of the NIS, the DAFM issued a Further Information Request (FIR) to the applicant, dated 14 October 2020, stating that OPW mapping indicates the site may be prone to flooding. The FIR states that flooding would lead to an unacceptable level of run-off to nearby watercourses, which would have a detrimental impact on the integrity of the Lough Corrib SAC, even with mitigation measures outlined in the NIS. The three options presented to the applicant are summarised below:

1. Submit revised mapping and plot details with the lands liable to flooding removed from the planting project.

2. Submit revised mapping and plot details with the lands liable to flooding proposed as GPC 10 (NWS Scenario 4) which will require silvicultural and environmental assessment.
3. Undertake and submit a Site-Specific Flood Risk Assessment including a hydraulic model in order to more accurately determine the extent of flooding on site.

Subsequently, the applicant submitted a Drainage Report/Flood Risk Assessment prepared by a Chartered Engineer, dated 30 November 2020. The aim of the report was to “carry out a drainage survey with reference to assessing the nature of the landholding, the existing land drainage system, the likelihood of flooding and provide mitigating measures to address these issues where appropriate.” The report states that “The land is prone to partial flooding from the River Dalgan to a limited extent in the most severe events which are of a relatively short duration.” The report states the soil type is of low fertility and is largely impermeable, but cleaning of the existing drainage system will mitigate against these issues. No new drains are required as the site is well catered for with the existing drainage network. The report concludes that “If these works are carried out it is my opinion that it is possible to ensure that water levels can be retained at a minimum of 45 to 60cm’s below the surface which will satisfy the Department’s  $E=(L/300)+K$  requirement.”

In processing the application, the DAFM completed an AA screening, contained within the final Inspector’s Certification document which screened 11 European sites within 15km of the proposal. 10 sites were screened out for the following reasons:

- **Carrowbehy/Caher Bog SAC, Coolcam Turlough SAC, Cloonchambers Bog SAC, Croaghill Turlough SAC, Derrinea Bog SAC, Drumalough Bog SAC, Errit Lough SAC, River Moy SAC, Urlaur Lakes SAC, Williamstown Turloughs SAC:**
  - *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. Corrib 30.*
  - *Other factors, from 9.6km to 14.8km distant, no hydrological connection.*

**Lough Corrib SAC**, which was screened in for AA, is listed as screened out due for the following reason:

- *Other factors, Natura site originally screened in, as per original AA Screening Report & Conclusion filed under CONTACTS. This Natura site is now functionally screened out in order to progress the file in iFORIS for Approval with Conditions or Refusal, as set out in the internal e-mail 22 April 2020.*

An AA Screening Determination (AASD), dated 25 February 2021, was completed on behalf of the DAFM by Jean Hamilton of Fehily, Timoney & Co. The AASD provides a description of the project site and the proposed operations. It states, "Due to the risk of flooding at the site and the presence of deep drains with no silt traps or other silt control measures, Plot 1 will now be planted with Birch (*Betula* sp.) instead of GPC3."

The AASD contains an "expert verification" which agrees with the District Inspector's AA screening conclusions. In this section, Lough Corrib SAC is listed as screened-in due to direct hydrological connectivity.

The AASD contains an in-combination report, completed on the 25 February 2021, which consulted various online planning systems (and DAFM's internal records) for other forestry and non-forestry plans and projects on the 18 February 2021, focusing on the general area of the Dalgan\_030 River Sub-Basin. This report states that the Dalgan\_030 River Sub-Basin has approximately 5% forest cover, below the national average of 11%, and concludes that the "DAFM excludes the likelihood of this project, either individually or in combination with other plans and projects, having a significant effect on the European Site(s) listed above."

There are two AA Determinations (AADs) on file. Both were produced by Fehily, Timoney & Co. The first is dated 25 February 2021 and a second "amended" version is dated 2 March 2021. The amended AAD lists the screened-out European sites with reasons given and Lough Corrib SAC as screened in for the following reasons:

- *The site is located wholly outside of this SAC so there will be no opportunity for direct impacts.*
- *There is potential for indirect impacts to CO000297 via the source-pathway-receptor represented by the hydrological links along the Dalgan River, located on the eastern site boundary. The site drains into the river via peats and peaty soils which are inherently unstable and subject to erosion. The site is susceptible to flood up to c. 300m from banks.*
- *Indirect impacts via disturbance are unlikely given the distance from the SAC. However, there is potential for silt and sediment, chemical/hydrocarbon loss and spread of invasive species and pathogens to QIs of 000297.*

The amended AAD states that, *inter alia*, the following were considered:

- *The NIS, including the Drainage Report/Flood Risk Assessment dated the 30th November 2020.*

- *Email correspondence between DAFM Ecologists and Environmental Scientists and Consultant Ecologist Saoirse O'Donoghue – see Contacts uploaded on the 19/02/2021.*
  - This correspondence outlines the Consultant Ecologist's concerns about the recommendation in the drainage report to clean existing on-site drains as this could result in a significant effect on the Lough Corrib SAC due to silt and sediment release. The Consultant Ecologist notes that the drains are particularly deep on site which suggests they are required to hold a significant amount of water. It is noted that some areas were recently cleaned which also indicates a lot of water drains from the site. The Ecologist states "the use of temporary silt traps on these deep drains, which probably hold a good deal of water may not be terribly effective unless they are continuously monitored as they will simply be washed away along with the silt and sediment downstream and on to the European site." The Ecologist states "adequate and robust silt trapping is required to suit the large, deep drains with ongoing monitoring and no activities prior, during or after flood events and wide setbacks as required in the NIS."

The amended AAD states that the NIS contains a fair and reasonable examination, evaluation, and analysis of the likely significant effects of the activity on the environment, particularly on the Lough Corrib SAC, and adequately and accurately identifies, describes and assesses those effects. The amended AAD states the following

- It is of note that Section 7 of the NIS states that a residual effect on the integrity of the Lough Corrib SAC cannot be ruled out, despite the mitigation provided in Section 3 of the report, due to the risk of extensive flooding over 300m of the site. It was therefore recommended in the NIS that the area at risk of flooding is either left un-planted or planted with alluvial woodland with no fertilizers or pesticides used here and storage of any chemicals outside the zone of potential flooding.
- To address this issue, the DAFM sought further information from the applicant requesting either a design change or further information on the flood risk at the site. A Drainage Report/Flood Risk Assessment was submitted by the applicant, which stated that the land is suitable for planting under GPC3, provided the existing drains on site were cleaned out.
- This Drainage Report was considered by the DAFM and the Consultant Ecologist who prepared the NIS was contacted for further advice. It was concluded that the proposed afforestation

under GPC3 on lands identified as being at risk of flooding would present a risk of residual adverse effects on Lough Corrib SAC both at the afforestation stage and the subsequent harvesting stage.

- The DAFM have therefore advised the client to change the planting scheme in this area of the site to a native woodland mix.

The amended AAD states that “the project proposed under CN83087, individually or in combination with other plans or projects, will not adversely affect the integrity of any of the aforementioned European Sites, having regard to their conservation objectives, provided the following mitigation is implemented” and lists the following mitigation measures:

- **Works in Plot 1:**
  - Planting in Plot 1 is to comprise native woodland planting under Scenario 5: Highly Modified Peat & Peaty Podzols / Pioneer Birch Woodland, which is under GPC10.
  - Site inputs to be in accordance with the GPC rules – see Native Woodland Establishment GPC9 & GPC10: Silvicultural Standards (September 2015).
  - There shall be no clearing of drains in Plot 1. A 5m setback will apply to all relevant watercourses.
- **Silt and sediment control:**
  - Silt and sediment control necessary as outlined in Environmental Requirements for Afforestation, December 2016 (DAFM, 2016) and Forestry Standards Manual (DAFM, 2015). Silt traps to be added to existing drains outside of setbacks prior to any works.
  - 20m setbacks along the river will be established with 5 rows of retained pit-planted broadleaves adjacent to this setback. 3 rows to be retained along minor setbacks. Natives will be retained and will assist in soil stabilisation in the long-term. Risk of flooding on this site is significant and mitigation may not be achievable in some of the area (see flood risk map in appendix and see Section 7: Residual effects)
  - Adhere to all water protection measures relating to cultivation and the disposal of waste, set out in the Environmental Requirements for Afforestation (DAFM, 2016) and Forestry Standards Manual (DAFM, 2015)
  - There will be no crossing of relevant watercourses located on the site by heavy machinery to avoid excessive soil compaction and drainage issues arising. Access either side of relevant watercourses only

- Monitor efficacy of drains and silt traps until greened-up.
- The significant risk of flooding will overcome these mitigations should it occur.
- **Loss of Chemicals/Hydrocarbons to Environment:**
  - Granular fertiliser to be applied to conifers only, 20m outside aquatic zone and outside of broadleaves.
  - In addition to the above, the applicant shall adhere to all relevant measures set out under the Environmental Requirements for Afforestation (DAFM, 2016); and the Forestry Standards Manual (DAFM, 2015).

The proposed mitigation in the NIS for the protection of the Otter was not transposed to the AAD.

The amended AAD states the basis for the AAD is “the recommended change in the project design to native woodland planting in Plot 1, together with mitigation measures as listed above, will ensure no residual adverse effects on the integrity of the Lough Corrib SAC 000297.”

The amended AAD concludes “no reasonable scientific doubt remains as to the absence of any adverse effect on the integrity of any European site.”

The DAFM referred the application to the National Parks & Wildlife Service (NPWS) and the DAFM Archaeologist. The NPWS responded noting the location of Lough Corrib SAC 2km downstream and stating Plot 1 is contiguous to the Dalgan River which flows into the Lough Corrib SAC. The NPWS highlighted the risk of eutrophication/run-off etc. and state the potential impacts would be caused by:

- Deterioration in water quality in Dalgan River due to excavation, cultivation, drainage and fertilisation associated with forest establishment.
- Disturbance to local wildlife including Otter during establishment and future forest management
- Damage/destruction to the adjacent habitats due to poor site management and inappropriate forestry establishment techniques.

The NPWS also attached an appendix of more general relevant points.

The DAFM Archaeologist’s Report, accompanied by an annotated map, states the first edition OS maps depict an historic access lane leading to a settlement cluster (farmhouses or other buildings) along the north and northwest boundaries of Plots 4 & 5 and recent aerial photographs indicate many of these are still extant in whole or part. The report then prescribes conditions to be attached to any approval.

The licence was issued on the 15 April 2021 with conditions 1-4 relatively standard and condition 5:

- To ensure that the project will not have an adverse effect, alone or in-combination with other plans and projects, on any European Site, all mitigation set out in the attached *Appropriate Assessment Determination* (dated 2 March 2021) must be adhered to, and form conditions of this approval,
- Maintain a 100m setback from the dwelling as indicated on the bio map of the 11 March 2021 planting 5 rows of mixed broadleaf trees adjoining the setback. Observe public road setbacks on the access road to this dwelling,
- The plot east of the public road is to comprise of native woodland planting only. Adhere to specific Archaeological conditions attached,
- Public Road Setback, Broadleaves 10m, Conifers 20m,
- Adhere to Environmental Requirements for Afforestation,
- Minimum 5m wide unplanted buffer zone/setback required to be established adjacent to the historic access lane leading to the settlement cluster and minimum 10m wide unplanted buffer zones/setbacks required to be established around the remains of any historic farmhouses and other buildings in the cluster itself, as illustrated.

See archaeological report and illustrative map for further details.

### **Grounds of Appeal**

There are four appeals against the licence. The written grounds of appeal were considered in full by the FAC and are summarised below.

The grounds common to several appeals are fire risk, illegal dumping, isolation, the level of forestry in the area ("heavily planted"), impact on land (shading, wet ground etc), property values, compensation, disturbance of views, impact on Lough Corrib SAC and local water quality and Salmon populations, water mains on site, cancellation of a previous afforestation licence following appeal, a request for an Oral Hearing was not granted.

The grounds specific to individual appeals are summarised below:

#### **FAC085/2021**

- Severe asthmatic – forestry will impact on health.
- "New strain" of Sitka spruce grows to 30m quickly.
- Permanent watercourses along "A", "B", "C", "D". 20m setbacks should apply as these are on peat-based soil.
- View to village lost. Security issues due to isolation.
- Setbacks in overall plan need re-examining.

- Outside contractors means no economic benefit to the area.
- Plot 148 surrounds my 3 Acre field. Proposal devalues my property.

#### **FAC086/2021** [REDACTED]

- Blocking light will degrade access road to the village.
- Flies and midges will make life uncomfortable.
- Wildlife habitats will be destroyed.
- Climate change is causing desertification around the world – it is immoral to destroy arable land.
- The disturbance of soil during the plantation of this flood-prone site could cause serious siltation of the river and decrease the oxygen levels of the water.
- Impact of conifers can increase the acidity of the water and this combined with silt could impact aquatic ecosystems.
- “This river has burst its bank within the last two years.”

#### **FAC087/2021** [REDACTED]

- The school and church are main village focal points. If project proceeds the entire village is effectively surrounded by forestry.
- Already poor internet service to school. Existing nearby forestry causing this. More afforestation will exacerbate the issue. School will be lost in a “sea of forestry”.
- Increased child safety risks – fire, pesticide/herbicide drift, Rats/Pine martens.
- The effect of non-native monoculture trees on local ecosystem.
- Should not have to pay €200 to object.

#### **FAC088/2021** [REDACTED]

- The AAD does not address the following:
  - The whole site drains via the main drain in Plot 1 directly to the “Clare-Dalgan”.
  - An area of Plot 2 is mapped as Peat soils on the Teagasc/EPA Indicative Soils O.M. Map. This recent, publicly available map was not considered.
  - There is no mention of wells and “swallow holes” drainage on the assessment.
  - The river Clare-Dalgan floods regularly. Ground disturbance will generate silt and silt traps will not help.
  - The presence of the Common otter (an EU protected species) on-site is not mentioned.

- My access road between Plots 4 & 5 is listed as a Right of Way. This is not a Right of Way but an access road. This is fenced each side with hedgerows on top.
- The historic farmhouse and buildings referenced in the Archaeologist's report are a house and buildings recently purchased for renovation. A 10m exclusion is incorrect in this case.

The DAFM provided a response to each of the four appeals in the form of Statements of Facts to the FAC. Each statement included responses from the District Inspector and the DAFM's external Ecologist. The DAFM's statements were considered in full by the FAC and are summarised below.

In response to the grounds common to multiple appeals the DAFM stated the following:

- The fire risk is extremely low as the proposed lands and existing forestry are surrounded by agricultural land.
- "In my role for District Inspector for Co. Mayo I do not agree that *dumping is a major problem in afforested areas*"
- The assessment to determine EIA requirement of the Pre-Approval Certification Report shows 7.95% forest cover within 5km of the proposal and 7.22% in the Townland of Ballynastockagh. This cannot be considered "heavily planted."
- Most of the proposed area is currently classified as GS4 Wet Grassland and currently vegetated with Grass and Rush.
- "I am not in a position to comment on property values."
- A setback will be applied to any water mains for maintenance and repair.
- Regarding water quality, flooding and acidification: the project has been redesigned to address concerns raised by the Consultant Ecologist who prepared the NIS. Plot 1, which is prone to flooding, is now proposed for the Native Woodland Scheme.
- The AAD recommended a condition that 20m setbacks along the river will be established with five rows of broadleaves adjacent to this setback. For relevant watercourses, a 5m setback applies, with three rows of native species adjoining.
- Regarding Phosphate, the AAD recommends that granulated fertiliser only be applied only to conifers and only when greater than 20m from an aquatic zone.
- The mitigation measures prescribed by the AAD will prevent impacts on the QIs of the Lough Corrib SAC, including Otter.

- The NIS submitted with the application includes details of local ecology. No other ecological features have been noted within the site.
- The application is significantly different from the previous application both in terms of area and diversity. An NIS has been completed, a comprehensive drainage survey has been completed and an AAD has been completed.

In relation to the grounds of appeal specific to each appellant the DAFM submitted the following responses:

**FAC085/2021**

- There will be a 100m setback from the dwelling with an additional five rows of broadleaf species.
- Existing hedgerows and trees screen views from the dwelling to the L1512.
- The proposed forestry will unlikely reach 30m height due to windblow risk. The trees would be expected to be harvested at 20-22m height. Improved Sitka spruce will likely be used.
- The water feature is classified as a relevant watercourse as defined in the Environmental Requirements for Afforestation. A 5m setback applies.
- The Pre-Approval Submission proposes a single application of 250kg/ha of GRP. No fertiliser application in the Native Woodland plot. Adherence to the Environmental Requirements for Afforestation is a condition of approval.
- Forestry staff and contractors are regionally based.
- Plot 148 (1) is proposed to be planted with Native Woodland with a 2/3m setback from the external boundary and a 5m setback from the RWC.

**FAC086/2021**

- The lands adjoining the cul-de-sac leading to the dwellings will be afforested on one side only with a 20m setback for conifers and 10m for broadleaves. There will also be an extended 100m dwelling setback along part of the route.
- The dwelling is over 100m from the proposal and the afforestation will have a very limited impact on views eastwards from the dwelling with the majority of visible lands to be afforested over 210m distant and proposed for native woodland.

- The proposal for a mixed woodland to include 5.84ha of native species woodland and 4.4ha of open space will add diversity to the habitats locally in an area predominated by intensive agricultural land uses.
- It is Government policy to support landowners who wish to afforest agricultural lands.
- Mitigation in relation to silt/sediment is detailed in the AAD. The amount of fertiliser planned is considerably less than that which would be expected if the lands remained in agricultural use.

#### **FAC087/2021**

- The school building is approximately 135m from the boundary of the proposed area with intervening grassland and existing forestry land. There is existing forestry within 50m of the school building.
- The church building is approximately 550m from the proposed area. The church is almost entirely surrounded by existing mature woodland. The proposed afforestation will not have any impact on the church or its surroundings.
- The impact on broadband/internet connectivity caused by the existing semi-mature forestry within 50m of the school building is not relevant to this application. St. Johns national school is inside the intervention area for the National Broadband Plan and is on the schools broadband connection point list for connection to high-speed broadband.
- A single application of herbicide is proposed in the first year of growth and only as and if required. Adherence to section 3.7.3 of the Environmental Requirements for Afforestation applies.
- Rodents, Rats and vermin inhabit all types of agricultural/forest lands and are widespread in the countryside regardless of land-use type.

#### **FAC088/2021**

- The Right of Way/laneway is excluded from the application area. The applicant has indicated it will be fenced.

A DAFM Archaeologist also provided a response to the grounds of appeal in FAC088/2021 in an email dated 2 June 2021. This response states, in summary, that they could not prove or disprove that the historic farmhouse and buildings had been recently purchased for renovation, it is for the FAC to determine whether to require the utilised buildings setbacks detailed in the Environmental Requirements for Afforestation.

The Archaeologist's response submits that the recommended setbacks were based on the assumption that the structures were derelict i.e., uninhabited buildings, and that the setbacks were merely the minimum required distance. The response highlights that the applicant's Biodiversity Map did not label these structures as utilised buildings and recent aerial photography does not indicate any great deal of activity in their vicinity in the last decade. The response also submits that the Eircode website has not assigned a unique Eircode to these buildings as would usually be assigned to a distinct residential address.

### **Additional Submissions**

All four appellants made additional submissions to the FAC in response to the DAFM's Statements of Facts. These submissions were considered in full by the FAC although it is noted that much of what is stated reiterates the original grounds of appeal. The fourth appellant submitted that they have lived adjacent to this plot all their life and high flooding has happened on more than 20 occasions.

### **Hearing**

The FAC convened a Hearing on the 14 September 2021 to consider the appeals against CN83087. In the first instance, The FAC considered DAFM's processing of the application in relation to the requirements of the EIA Directive and the Habitats Directive. The DAFM conducted an EIA screening using the Inspector's Certification process in iFORIS. The DAFM considered the nature and scale of the proposal and its potential to have an impact on the environment. A range of criteria were assessed including the potential effects on water quality, designated sites, protected species, archaeological and landscape considerations, and the amount of existing forest cover and approved afforestation in the immediate surrounds of the proposal and within the underlying waterbody. The percentage of forest cover in the underlying waterbody is listed as 0.34%. The AASD's in-combination report states that the River Sub-Basin Dalgan\_030 has approximately 5% forest cover. This is below the national average (11%) but is significantly different to the 0.34% stated in the Inspector's Certification. The FAC considers that one of these figures for percentage cover in the waterbody is included due to an error by the DAFM. In response to the question "is the site prone to flooding?", the Inspector's Certification states "N/A". This is potentially a clerical error given the information on file related to the flooding of the River Dalgan.

Regarding the DAFM's AA process, the FAC noted that the applicant submitted an NIS which screened in the Lough Corrib SAC for Stage 2 AA. The NIS describes the potential for the proposal to result in adverse effects on this European site and includes proposed mitigation measures. The NIS states that

the project lands are prone to flooding “to the east of the road and beyond” before recommending to “leave this area either un-planted or plant with alluvial woodland.”

The FAC noted that following an AA screening contained within the Inspector’s Certification, the AASD’s AA screening reflects the conclusions in the NIS with only the Lough Corrib SAC screened in for AA. The AASD contains an assessment of the potential for the proposal to contribute to an in-combination effect on European sites, concluding that there would be none.

The AAD relies on the information in the applicant’s NIS. The AAD states “the project proposed under CN83087, individually or in combination with other plans or projects, will not adversely affect the integrity of any of the aforementioned European Sites, having regard to their Conservation Objectives, provided the following mitigation is implemented” and lists measures to be included as licence conditions. The AAD does not contain the measures recommended by the NIS for the protection of the Otter. However, these measures are accounted for in the decision to plant Plot 1 with native woodland with no cleaning of drains, retention of native species on site, and a 20m setback from the Dalgan River. The AAD highlights that the risk of flooding is significant, and mitigation may not be achievable in some of the project area. The FAC noted that the AAD also states “the significant risk of flooding will overcome these mitigations should it occur.” The basis for the AAD is stated to be the recommended change in the project design to native woodland planting in Plot 1, together with prescribed mitigation measures, which “will ensure no residual adverse effects on the integrity of the Lough Corrib SAC.” The AAD concludes “no reasonable scientific doubt remains as to the absence of any adverse effect on the integrity of any European site.”

The FAC considered that main issue to be the potential for the proposal to have a significant effect on local water quality and subsequently the downstream Lough Corrib SAC. The evidence before the FAC indicates that the site is prone to flooding and, in general, a considerable amount of water drains from the project area to the Dalgan River. This movement of water carries a particular risk of transporting silt and sediment in the east of the site where peat soils are present. The FAC is cognisant that the DAFM considered this issue and decided to require GPC10 planting in Plot 1 with ground preparation prescribed as inverted mounding. However, the FAC considered that, on a plot underlain by peat soils, in an area that is prone to flooding, and where a considerable amount of water drains from the site directly to the River Dalgan, even inverted mounding would represent a significant level of soil disturbance with the potential arising for an impact on water quality. Additionally, the information before the FAC indicates that silt-trapping the large, deep drains present on the site may be ineffective unless “continuously monitored.” The FAC is also mindful of the evidence from the NIS and the AAD that

the significant risk of flooding at this site may overwhelm the prescribed mitigation measures. In these circumstances, and in adopting a precautionary approach, the FAC concluded that approval of planting in Plot 1 could not be granted without giving rise to the potential for a significant effect on water quality in the Dalgan River and consequently the Lough Corrib SAC.

The FAC considered the submission by the fourth appellant that the north-east corner of Plot 2 contains peat soils and that this had not been considered by the DAFM. Plot 2 is proposed to be planted as GPC3 following the installation of mound drains. The FAC noted that the AASD describes the soils in Plot 2 as "Grey Brown Podzolics, Brown Earths (medium-high base status) described as deep well drained mineral; derived from mainly calcareous parent materials." The source of this information is stated to be the Soil Layer on iFORIS. The NIS contains less detail on the soils in each plot but does state "the site is generally located within a flat, low-lying area on peats adjacent to the Dalgan River... to the west there are three fields on undulating ground with brown earth soils and semi-improved acid grassland." The FAC reviewed the National Soils layer on the publicly available EPA website. This layer indicates the presence of Cutaway/cutover peat in the north-east corner of Plot 2, to the west of the public road and in the proximity of the relevant watercourse which flows to the Dalgan River. In the particular circumstances of this proposal, with regard to its size and scale and the sensitivities of the QIs of the downstream Lough Corrib SAC, the FAC considered that the DAFM erred in not showing its consideration of the potential presence of peat soils within Plot 2.

The FAC considered the submission by multiple appellants that there are water mains present on the project lands. These grounds were not supported by maps or any documentary evidence. The NIS states "there is a water mains line running through improved grassland fields to west of site." The DAFM response states that a setback will be applied to any water mains for maintenance and repair. The FAC considered that any water mains present on site should have been identified and marked on the Bio map (including any required setbacks) which accompanied the application.

The FAC considered the fourth appellant's contention that the historic farmhouse and buildings had recently been bought for renovation and should have the same setback applied as utilised buildings. The FAC noted that the appellant did not provide any evidence to substantiate this claim. The DAFM provided a clear explanation of their consideration of the status of these buildings. The FAC concluded

that the DAFM did not make an error in their decision to require standard minimum setbacks for derelict historic buildings, based on the information that was before them at the time of the decision.

Regarding the first appellant's submission relating to impact on land (shading, wet ground etc) by Sitka spruce trees growing to 30m high. The FAC noted that the proposed species in Plot 1 are native broadleaves and not an improved provenance of Sitka spruce.

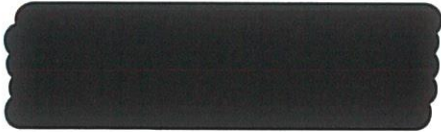
In considering the proposal's impact on isolation and views, the FAC considered that the dwelling setbacks in this instance are increased to 100m as opposed to the standard 60m setback and that, based on the revised species map dated 26 February 2021, this would bring the view from the dwellings concerned to the line of an existing hedgerow on-site.

The FAC considered the other grounds of appeal, having regard to the submissions from the appellants and the DAFM. The FAC noted that the licence conditions require adherence to the Environmental Requirements for Afforestation which includes standard setbacks for various features. The FAC concluded that there was no convincing evidence that the DAFM made a serious or significant error, or series of errors in the decision to grant CN83087 in relation to fire risk, illegal dumping, isolation, interruption of communication services, property values, or compensation. The cancellation of a previous afforestation licence by the FAC following appeal is not considered pertinent to the decision under appeal. The grounds related to the payment of a fee and the request for an Oral Hearing are not related to the DAFM's decision to grant CN83087.

Based on the evidence before it, as outlined above, the FAC concluded that the DAFM made a series of errors in their processing of this application. The FAC considered the most significant error to be approving afforestation on this site which is underlain in part by peat soils in an area where a large volume of water drains to the adjacent Dalgan River, which is prone to flooding, and is hydrologically connected to the Lough Corrib SAC. The FAC accepts that the DAFM's consideration of these issues led to the requirement for Plot 1 to be planted as GPC10 which presents less potential to impact water quality. However, the FAC considered that inverted mounding on a site of this nature, in the circumstances outlined above, would result in significant soil disturbance in Plot 1. In addition to this, the evidence before the FAC is that the efficacy of silt-trapping in the drains on-site is questionable and, in any event, the significant risk of flooding will overcome the proposed mitigations should it occur. In

these circumstances, and in applying the precautionary principle, the FAC decided to set aside the decision of the Minister to grant CN83087.

Yours sincerely,

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

Luke Sweetman on behalf of the Forestry Appeals Committee