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27th October 2021

Subject: Appeal FAC 857/2020 in relation to licence CN85314

Dear [REDACTED]

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

Background

Licence CN85314 for afforestation of 11.72 ha at Fluganagh, Co. Leitrim was approved by the DAFM on 5th of November 2020.

Hearing

A hearing of appeal FAC 857/2020 was held by the FAC on 21st of July 2021. Members of the FAC in attendance were Mr. John Evans (Deputy Chairperson), Mr. Vincent Upton, Mr. Seamus Neely & Mr. Iain Douglas. Secretary to the FAC: Ms. Marie Dobbyn

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, and submissions made, the Forestry Appeals Committee (FAC) has decided to set aside and remit the decision of the Minister to grant licence CN85314.

Summary of licence and file

The licence application is for the afforestation of 11.72 ha of lands in two plots of 11.42 ha and 0.3 ha. Planting in both plots is indicated to be as 85% Sitka Spruce and 15% Additional Broadleaves. Documentation on file indicates that the ground preparation is to be mounding and planting is to be by angle notch. The licence states that fertilizer is to be 350kg Granulated Rock Phosphate with weed control by means of herbicide in Years 1 and 2. Fencing was initially specified as 1200m stock fencing, and a note is on file from the applicant's representative correcting this to 700m. Proximity to Lough Gill (<3km) and archaeological features are recorded.

Maps provided by the applicant include a location map, a species map, a fencing map showing 700m fencing, and a biodiversity and operational map showing EPA watercourses, ESB lines, hedgerows,

location of site notice and an archaeological feature. A copy of the site notice, and two photos of notices in-situ, are on file and signed by the applicant.

Also on file are an AA Pre-Screening report and a Natura Impact Statement (NIS) submitted by the applicant both dated the 12th of September 2020 and prepared by a consultant ecologist. The NIS notes it was submitted by the applicant based on their own pre-screen exercise.

There were two submissions from members of the public, and these are on file. A submission received on the 20th of December 2019 objected to the proposal based on obstruction of views and there being too much forestry in the area. A further objection received on the 11th of December 2019 objected on the basis of there being detrimental impact on the social and economic fabric of the community, cited issues with National Policy on forestry as implemented in County Leitrim, and impact on the environment, farming, heritage and culture of the area.

The application was referred to An Taisce on the 11th of December 2019, and a reply was received on the 17th of December 2019. This highlighted the proximity of the site to Lough Gill SAC (1976), the status of the Cashel Stream (Bonet) as having a High Status classification, and the associated legal requirements arising from both.

The application was also referred to Leitrim County Council on the 11th of December 2019, and a reply was received on the 8th of January 2020. The response draws attention to the need, should the licence be granted, for consultation by the applicant's representatives with the District Engineer, communication with the Council's planning department as to details of the forestry contractor, adherence to Forestry Best Practice guidelines, and consultation with the Department of Culture, Heritage, and the Gaeltacht (DCHG) with respect to a recorded monument. Attention is also drawn to Article 8(f) and (g) of the Planning and Development Regulations 2013 and that any forest roads that may be required to access the site may not be an exempted development under those regulations. The response also highlights the Forest Service's obligations with respect to Appropriate Assessment and EIAR, and the need to consider forestry in the greater area in so doing.

Also on file is a response from the DAFM Archaeology Section, dated as being received on the 10th of March 2020. This observes that the area proposed for afforestation contains a record of a historical monument – a ringfort (LF 015-119), and that there are records of a historic road and roadside building which may survive in whole or part. The report recommends conditions for any licence that may issue including a 20m exclusion zone from the recorded monument with no drains within 30m. It further recommends a 10m wide unplanted buffer around any upstanding buildings, and a 5m buffer either side of the historic road. Other typical archaeological conditions in relation to standards and discoveries are also included. A map illustrating the various buffers is included.

An Inspector's Certification Report, with a record of the District Inspectors consideration of the application, is on file. This describes the proposed project as comprising 11.72 hectares of afforestation, with a predominant soil type underlying the project area that is predominantly podzolic in nature. The

site is described as having a slope that is predominantly flat to moderate (<15%) and being crossed by/adjoins an aquatic zone(s). The vegetation within the project area is stated to comprise of grass/rush. The Inspector's Certification report also includes a record of screening for Appropriate Assessment. This identifies eight European Sites within 15km of the project side, with none other being considered outside that range. The sites identified are: Ben Bulbin, Gleniff And Glenade Complex SAC [000623], Boleybrack Mountain SAC [002032], Lough Arrow SAC [001673], Lough Arrow SPA [004050], Lough Gill SAC [001976], Sligo/Leitrim Uplands SPA [004187], Union Wood SAC [000638], and Unshin River SAC [001898]. The Inspector's certification report records all these sites as being screened out and includes no stated reasons for this conclusion in each case.

The certification report also includes a consideration of the requirement for EIAR, and in this instance concludes that none is required.

The applicant submitted a Pre-Screening Assessment and an NIS. This Pre-Screening records the same eight sites listed in the Inspector's certification above and advises that two should be screened in for stage 2 Appropriate Assessment based on consideration of the Special Conservation Interests (SCIs)/Qualifying Interests (QIs) for the sites. These are the Lough Gill SAC [001976] and the Sligo/Leitrim Uplands SPA [004187]. The NIS, dated the 12th of September 2020 and with a final review date of the 25th of September 2020, considers the QIs/SCIs for the two screened in sites, and proposed mitigations where relevant. It also considers residual effect and in-combination effect finding none will arise. The consideration of in-combination effects in the NIS includes references to planning searches conducted on the 12th of September 2020 including searches of the planning and other relevant systems of Leitrim County Council, the EPA in relation to water quality and licenced emissions, and DAFM in relation to fisheries sensitive and flood risk areas. Consideration is given to the Leitrim County Development Plan 2015-2021 in relation to visual amenity.

An Appropriate Assessment Screening Report and Determination (AAS) is on file dated the 13th of October 2020. This was prepared by a consultant Environmental Scientist on behalf of DAFM and considers eight European sites selected on the basis of hydrological connectivity and/or being within 15km of the project site as follows:

1. Ben Bulbin, Gleniff And Glenade Complex SAC [000623],
2. Boleybrack Mountain SAC [002032],
3. Lough Arrow SPA [004050],
4. Lough Gill SAC [001976],
5. Sligo/Leitrim Uplands SPA [004187],
6. Union Wood SAC [000638],
7. Unshin River SAC [001898], and
8. Cummeen Strand/Drumcliff Bay (Sligo Bay) SAC [000627].

The AAS determines that two sites should be screened in for stage 2 Appropriate Assessment, namely Lough Gill SAC [001976] on the basis of hydrological connectivity and the potential of impact on

supporting habitats and/or species, and Sligo Leitrim Upland SPA [004187] on the basis that the site is located in the foraging range for Peregrine Falcon.

The other sites are screened out for appropriate assessment for a variety of reasons that can be summarised as:

- The application of the current Annex 1 Habitats Table (18 Dec 2019) which indicate screen out scenarios (sites 1, 2, 6 & 7 above).
- The position/distance of the project area from the SAC and the SAC is designated for terrestrial habitats, therefore no effects will occur (sites 2 & 6 above).
- The position/distance of the project area from the SAC with no hydrological connection (sites 1 & 7 above).
- The position/distance of the project area (instream distance) from the SAC. Due to the large dilution factor in the river system and the SAC, no effects are likely in the SAC which is subject to natural fluctuations in sediment in any case (site 8 above).
- The application of the current Bird Foraging Table (6/1/2020) which indicate screen out scenarios (site 3 above).
- The position/distance of the project area from the SPA (Site 3 above).

In addition, each of the sites are screened out on the basis of an in-combination assessment which is included as an Appendix in the AAS. The In-Combination report includes planning searches carried out on the week of the 13th of October 2020, including searches of systems provided by Leitrim County Council, An Bord Pleanála, the EPA, and other forest plans and projects on DAFM systems.

An Appropriate Assessment Determination (AAD) is on file also dated the 13th of October 2020, prepared by a Consultant Environmental Scientist on behalf of DAFM. The AAD states that DAFM undertook a screening for Appropriate Assessment and screened out six European sites. These are listed reflecting the AAR and reasons for the screening decision are given. Two sites are listed as being screened in, Lough Gill SAC [001976] and Sligo/Leitrim Uplands SPA [004187], and reasons are provided. The AAD lists the considerations taken in reaching a determination, including 3rd party submissions, written submissions from consultation bodies, the application itself and any subsequent information (including the NIS), other plans and projects that might impact on a European site. It goes on to list a number of mitigations which are to be imposed as conditions to the licence, including mitigations in relation Otter and Peregrine Falcon, and in relation to impact on water quality. The AAD refers to the NIS and states that:

The NIS also included an in combination assessment and concluded that as the project will not itself have any effect on a European Site, no cumulative effects are possible.

Grounds of Appeal and Statement of Fact.

There is one appeal against the decision to grant the licence and this is available on the FAC file. In summary the grounds are:

1. That in respect of the Minister's decision on CN85314, in response to a number of requests made the DAFM failed to make available records immediately for examination in situ or otherwise free of charge, consistent with Article 6 (6) of the Aarhus Convention as would be required in order to ensure the effectiveness of the entitlement to appeal or bring a challenge. The appellant further submits that the fact that an appeal has been made in this case is not evidence that the capacity to make an informed appeal has not been compromised. Parties who may have wished to lodge an appeal have been denied access to view records to which they have a legal entitlement.
2. That there has been a breach of Article 4 (3) of the EIA Directive (Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014) on the basis that the Directive requires that where a case-by-case examination for screening is carried out the relevant selection criteria set out in Annex III shall be taken into account. The appellant submits that a number of criteria set out in Annex III do not form part of the standard Forest Service (FS) screening assessment, and that a Member State exceeds the limits of its discretion under Article 2(1) and 4(2) of the EIA Directive in circumstances where it does not take into account all relevant selection criteria listed in Annex III.
3. That two sites/areas of historical, cultural significance have not been identified in the application and have therefore not been considered in the screening assessment.
4. That the information provided with the application did not comply fully with the requirements of SI 191/2017, and that the application was not legally compliant and should not have been accepted/ processed by DAFM without rectification of the legal deficiencies.
5. That DAFM's approval of the application in the absence of a map or maps which were compliant with Article 5 (2) of SI 191 (2017) was an error in law. All hedgerows on external boundaries have not been identified.
6. That the FAC is obliged to make a de novo assessment of this application and cannot make a legally compliant decision to confirm or vary DAFM's decision in the absence of a map or maps which are compliant with Article 5 (2) of SI 191 (2017).
7. That the production of a post approval Bio Map is not a legally adequate response to the issue raised in ground 5, and that legally complete mapping is required at the point of application, and it would not be an adequate interpretation of the law to seek a retrospective copy once the case has been approved.
8. That prescribed bodies and third parties seeking information on the application are entitled to receive a copy of legally compliant application details, and that any failure to provide the same represents a failure in law. Legally compliant maps were not provided to consultation parties in the first instance. The appellant further submits that in making a de novo assessment of the application the FAC is obliged to make appropriate consultation on this case including rectification of the issue raised in ground 5.
9. That the Environmental Requirements for Afforestation require all hedgerows to be retained. The appellant submits it is unclear from the mapping provided how establishment and commercial

harvesting of this site can be undertaken without resulting in the requirement to remove sections of hedgerows.

10. That the application was not referred to NPWS for comment despite being in a referral zone and identified as such in the Inspector's Certification. The appellant submits that NPWS is the competent authority in respect of Lough Gill SAC and the failure of the FS to refer this application for comment represents an omission in the environmental oversight of the possible impact of this project.
11. That while the AA Determination indicates that the submissions from Leitrim County Council and An Taisce were considered in producing the Determination, the absence of comments from the NPWS renders the AA Determination in respect of this project to be not adequate or complete.
12. That in the absence of the mapping of environmental features referred to in the AA Determination it is not possible to ensure that this project can be monitored and enforced in a manner that is consistent with the AA mitigations.
13. That the Determination of the Inspector in terms of the Requirement for an EIA is inadequately reasoned. The appellant submits that there is no foundation for the conclusion reached on the basis of the responses to the IFORIS checkbox queries or any other basis upon which this conclusion is made and there is, in consequence, an error of law in the processing of this application.
14. That in relation to the Assessment to Determine EIA Requirement, there has been a 236 ha increase of forest cover within 5km of the licenced site in the last 5 years and there has been a 257 ha increase in the forest cover in the underlying waterbody in the last 5 years and that these increases do not provide a basis the No response to Q10.
15. That in relation to the Assessment to Determine EIA Requirement, there is no qualification of the S/A responses to Q's 11,18 and 19. The appellant submits that The IFORIS Screening checkbox questions represent validations in respect of the screening assessment, that EU Guidance on carrying out EIA screening using a checkbox system states that the greater the number of 'Yes' answers and the greater the significance of the impacts identified, the more likely it is that EIA is required and that answers indicating uncertainty about the occurrence or significance of impacts, should also point towards a positive Screening Decision.
16. That in relation to the Assessment to Determine EIA Requirement, any error in the response to the EIA screening questions invalidates the determination reached by the Inspector.
17. That in relation to the Assessment to Determine EIA Requirement, mitigation and avoidance measures can be taken into account as part of the EIA screening decision, however, the responsibility remains on the competent authority to ensure that these mitigations, if relied upon to screen out EIA, are then carried into the awarded licence and are monitored and enforced. The appellant submits that if a competent authority screens out EIA for a development, based on mitigations proposed at screening, and those mitigations are not subsequently carried out, then the licence is open to challenge on the basis that it is required EIA.

18. That the mitigations contained in the AA Determination are not written with sufficient precision and clarity regarding their requirements and permitting procedures or substantiated with adequate scientific evidence to ensure that they will eliminate or reduce the adverse impacts of this project and result in compliance of this development with Article 6 (3) of the Habitats Directive or the overall environmental regulatory environment.
19. That residual effects from this project cannot be excluded and therefore the in-combination effect of this project with other plans and projects has not been adequately assessed.

The DAFM provided a Statement of Fact (SoF) to the FAC which confirms the administrative details of the processing of the licence as outline above. The SoF summarises the conditions attached to the licence including adherence to guidelines, archaeologist and ecologist reports and various setback. In the SoF, DAFM submitted that the decision was issued in accordance with DAFM procedures, Statutory Instrument 191/2017 and the 2014 Forestry Act.

The SoF includes a number of comments submitted by an ecologist on behalf of DAFM. These include:

- A. In relation to hedgerows, that the Hedgerows on external boundaries have been obscured by Site Boundary line on the Bio map, however, these are marked on the Habitat Map in the NIS. It is submitted that the AAD includes a condition for the retention of all hedgerows, that the Bio Map states that all hedgerows will be retained, and that existing gaps will be utilized for the cultivation and planting works.
- B. In relation to lack of referral to NPWS, that DAFM is competent authority for forestry licencing, not the National Parks and Wildlife Service. It is submitted that a referral response is not required from NPWS in order to complete an AA Determination, and that referrals to prescribed bodies are at the discretion of the District Inspector, and that Conservation Objectives produced by NPWS for the Lough Gill SAC were referred to in the AA Determination.
- C. In relation to mapping that Maps are provided in Appendix 2 of the NIS and these were deemed adequate to complete the AA Determination.
- D. In relation to mitigation, that the Mitigation measures listed in the AA Determination have been informed by the NIS which included site-specific mitigation measures in relation to water quality, otter and peregrine falcon and are based on best practice. It is asserted that precise setback distances have been provided based on site conditions.
- E. In relation to residual impacts and In Combination Assessment it is asserted that as part of the AA process, the In Combination Assessment in the NIS was supplemented by DAFM's internal procedure for assessment of In Combination effects (included as Appendix 1 of the AA Screening Determination). It is submitted that the AA Determination concluded that there would be no residual impacts from the project on the integrity of European sites, following the implementation of site-specific mitigation measures and adherence to forestry best practice, and that therefore, no In Combination effects are expected.

The SoF also includes comments submitted by the District Inspector that the approval of the licence was carried out in line with all relevant criteria and guidelines in operation by DAFM at the time of approval, and that the site was field inspected on the 24th of April 2020 prior to approval.

Consideration by the FAC

In addressing the grounds of appeal the FAC had regard for the Grounds of Appeal, the Statement of Fact, the DAFM file relating to the processing of the licence application, and publicly available sources of information such as mapping provided by the EPA, OSI and DAFM.

In the first instance, the FAC considered those grounds of appeal that relate to the EIA Directive. The FAC noted that the EU Environmental Impact Assessment (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. 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 a licence for afforestation of 11.72 ha, so is sub threshold for mandatory EIA as set in Irish Regulations.

The appellant submits that two sites/areas of historical or cultural significance have not been identified in the application but does not submit details of the nature of those sites. The FAC notes that in the section of the Inspector's Certification dealing with Assessment to Determine EIA Requirement, in response to question 22 as to whether the area contains or adjoins a listed archaeological site or monument, archaeological area, zone or archaeological amenity or World Heritage Sites (question 22), the Inspector recorded a Yes answer. The FAC further notes that the application was referred to the DAFM archaeology section, who responded with observations in relation to a principal feature of archaeological interest and two other possible features of interest and suggested conditions. These suggested conditions are carried through to the licence in the form of a requirement to adhere to the requirements of the Archaeologists report. The FAC is not satisfied that an error was made in relation to the grounds in the appeal relating to sites/areas of historical or cultural significance.

The appellant submits that a number of criteria set out in Annex III of the EIA Directive were not considered, but does not indicate which criteria are absent. In the Inspector's Certification report the DAFM recorded a consideration of the application across a range of criteria, including existing land use, cumulative effect and extent of project, designated and non-designated habitats, archaeology, and in considering this ground of appeal, the FAC reviewed these.

The appellant submits that the 'No' response to Question 10 of the Assessment to Determine EIA Requirement ("Based on the extent of forestry as outlined above, is the cumulative effect of this

application likely to have a significant impact”) has no basis in light of a 236 ha increase of forest cover within 5km of the licenced site in the last 5 years and there has been a 257 ha increase in the forest cover in the underlying waterbody in the last 5 years. The appellant further submits that as there is no qualification of the ‘S/A’ responses to questions 11 (“Is the amount and type of forest cover in this locality known to be a significant issue? If so tick yes and describe in the Inspectors comments box below”), 18 (“Is the site likely to require more than one application of fertilizer?”), and 19 (“Is the site within an area of high nutrient sensitivity?”), and that resulting uncertainty points towards a positive Screening Decision. The appellant further submits that the determination reached in the Inspector’s Certification report in terms of the Requirement for an EIA is inadequately reasoned.

The extent of forest cover is addressed in the Inspector’s certification in questions 3 to 11 relating to the Cumulative effect and extent of project. These questions are answered in respect of a spatial run that was conducted on the 4th of November 2020. An increase of 236 ha in forest cover as contended in the grounds represents an increase of ca. 3% within 5km, while an increase of 257ha as contended in the grounds represents an increase of ca. 5.6% in the EPA recorded area for the Cashel Stream (Bonet) (4555ha).

The FAC notes that it is stated in the Inspector’s Certification report that forest cover within 5km at present is approximately 20.48% of the land cover and is approximately 15.31% in the underlying waterbody both of which are above the national average of 11% and both of which are recorded in the certification as having increased by over 5% in the past 5 years. Also in relation to the percentage cover in the underlying waterbody, which as noted is given as 15.31% in question 12 of the Inspector’s Certification report, the FAC note that in the In-Combination assessment carried out in support of the AAS it is stated that *“The River Sub Basin Cashel Stream (Bonet)_010 has approximately 34% forest cover..”*.

In their original submission to the DAFM in relation to the licence, the appellant had submitted that afforestation was having a detrimental effect impact on the social and economic viability of the community and a negative impact on the environment, farming, heritage, and culture of the environs of the application. In question 3 of the certification (“... have you reviewed all referral responses and submissions received in relation to this”) it is indicated that this submission was considered as part of the certification process. Under these circumstances, the FAC is of the view that there was sufficient information available to form a view in respect of question 11, and that if DAFM were of the opinion that the concerns outlined by the appellant were without merit this could be addressed in the comment box as indicated in the question. In relation to question 18, the FAC notes that the Inspector’s certification and the applicant’s pre-approval submission report both record a fertiliser application of 350Kg Granulated Rock Phosphate, while the applicant’s pre-screen report as submitted and the NIS both record an application of 250Kg. The latter two documents indicate that the application of fertilizer should be carried out according to the Forestry Standards Manual section 11. This indicates that a split application of fertilizer may be acceptable in circumstances where an application of 350Kg/ha may not be appropriate for environmental reasons. In the Inspector’s Certification it is indicated that the site was field assessed, and it is noted that the site is crossed by/adjoins an aquatic zone. Given the discrepancies in the

information provided by the applicant, the FAC is of the view that an "S/A" (which is taken by the FAC to mean "self-assessed") response was not an appropriate response in this case and that in light of the field inspection there was sufficient information available for DAFM to form a view in respect of question 18. In relation to question 19, the FAC consulted publicly available information from the EPA and determined that the project site is not in an area of high nutrient sensitivity and note that this same information would have been available to DAFM. Considering the specific circumstances as outline above, the FAC is satisfied that the responses in respect to questions 10, 11, 12, 18 and 19 represent errors in the consideration of EIA requirement by DAFM or require further rationalisation. The FAC is therefore remitting the decision of the Minister for re-consideration of the requirement for EIA.

In relation to the appellant's contention that a licence is open to challenge where mitigations considered in determining a requirement for EIA are not subsequently carried out, the FAC notes that enforcement of licence conditions is not a matter for the FAC.

In considering those grounds of appeal that relate to mapping, those grounds that relate to hedgerows, and also those grounds of appeal that relate to the adequacy of the application of SI 191/2017, the FAC had regard for the SoF provided by DAFM. This states that the decision was issued in accordance with DAFM procedures, SI 191/2017 and the 2014 Forestry Act. The appellant submits that the information with the application did not comply fully with the requirements of SI 191/2017 but does not submit any specific deficiency. The appellant also indicates that there was an absence of a map or maps that were compliant with Article 5(2) of the Statutory Instrument and submits that all hedgerows on external boundaries have not been identified. In the SoF, DAFM submit that Maps are provided in Appendix 2 of the NIS, that the Hedgerows on external boundaries have been obscured by Site Boundary line on the Bio map but that they are also are marked on the Habitat Map in the NIS. In the SoF DAFM further submit that the AAD includes a condition for the retention of all hedgerows, that the Bio Map states that all hedgerows will be retained, and that existing gaps will be utilized for the cultivation and planting works. The FAC not satisfied that an error was made by DAFM in respect of these grounds in the appeal as they relate to the processing of the application for this licence.

The appellant has submitted grounds of appeal on the basis that the application was not referred to NPWS and that this represents an omission in the environmental oversight of the project and also renders the AAD to be not adequate or complete. In the SoF provided by DAFM it is submitted that DAFM is the competent authority for forestry licencing, not the National Parks and Wildlife Service. It is also asserted that a referral response is not required from NPWS in order to complete an AA Determination, that referrals to prescribed bodies are at the discretion of the Minister, and that Conservation Objectives produced by NPWS for the Lough Gill SAC were referred to in the AA Determination. The FAC is satisfied that the lack of referral to NPWS does not represent an error in the processing of the licence.

With regard to the ground of appeal that the mitigations contained in the AA Determination are not written with sufficient precision and clarity regarding their requirements and permitting procedures or substantiated with adequate scientific evidence to ensure that they will eliminate or reduce the adverse

impacts of this project and result in compliance of this development with Article 6 (3) of the Habitats Directive or the overall environmental regulatory environment, the FAC had regard for the SoF provided by the DAFM. The DAFM submits that the Mitigation measures listed in the AA Determination have been informed by the NIS which included site-specific mitigation measures in relation to water quality, otter and peregrine falcon and are based on best practice, and that precise setback distances have been provided based on site conditions. The FAC is not satisfied that the DAFM made an error in the manner in which those licence conditions relating to mitigations have been provided for in the licence.

In having regard to the record of the decision and the Appropriate Assessment (AA) undertaken, the FAC noted that the application states a fertiliser rate of 350 kg of granulated rock phosphate per hectare while the Natura Impact Statement (NIS) states that the application rate would be 250kg per hectare. The AA Determination is stated to be based in part on the NIS and this discrepancy is not addressed. The licence includes adherence with the operations provided for in Appendix A which states a fertiliser rate of 350 kg per hectare. The FAC considered that this constitutes a serious error in the making of the decision having regard to the nature of the error and the higher rate provided for in the licence than formed the basis of the NIS. On this basis the FAC considered that the application should be remitted to Stage 2 Appropriate Assessment.

In considering the ground of appeal that residual effects from the project cannot be excluded and therefore the in-combination effect of this project with other plans and projects has not been adequately assessed, the FAC in the first instance reviewed the in-combination statement which is included as Appendix 1 of the AAS Determination, and which is referred to in the SoF provided by DAFM. This in-combination statement states that:

The following online planning systems were consulted on the week of the dates indicated, focusing on the general vicinity of the project area in the River Sub Basin Cashel Stream (Bonet)_010.

The report then goes on to list searches in the relevant Local Authority (Leitrim County Council) carried out via the website of the Department of Housing, Planning and Local Government, An Bord Pleanála, the EPA, and DAFM's internal records with respect to other forest plans and projects. In respect of the search conducted of Leitrim County Council's planning system, one relevant application is identified in the report. This is a planning application (file number 2073) for the construction of a dwelling house ca 600m to the south of the project site on the L4264. A search conducted by the FAC of the same publicly available database based on the townland of Flughanagh returned several results including four other finalised applications submitted since 2018. These include an application submitted on the 25th of September 2018 to construct a dwelling house (file number 18197) ca. 400m to the east of the project site and an application submitted on the 19th of February 2019 (file number 1934) to demolish a derelict dwelling and construct a new dwelling ca. 750m to the southeast of the project site. Several of the returned planning applications are located in the Cashel Stream (Bonet)_010 sub basin.

Based on the above, the FAC is satisfied that the in-combination report provided in support of the AAS Determination was incomplete and that this represents an error in the processing of the application, and on this basis is remitting the application for Stage 1 Appropriate Assessment.

In respect of the appellant's contention that the DAFM failed to make available records immediately for examination in situ or otherwise free of charge, the FAC notes that the appellant made a submission to the DAFM in respect of the proposed licence on the 11th of December 2019 and received notification of the DAFM decision on the 5th of November 2020. No convincing evidence is submitted as to how DAFM failed to make records available to the appellant or any other third party or the relevance of such information being provided to any other such third party to this appeal. The FAC is satisfied that the Appellant was provided with an opportunity to appeal the licence and provided with further opportunity to make submissions on the licence decision, including through appeal.

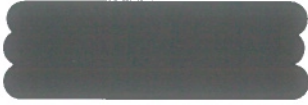
The Forestry Appeals Committee (FAC) was established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001 as amended by the Forestry (Miscellaneous Provisions) Act of 2020. Section 14B (13) provides that the FAC may –

- a) affirm a decision of the Minister
- b) where it is satisfied that a serious or significant error or series of errors was made in making the decision the subject of the appeal or that the decision was made with complying with fair procedure –
 - i. vary the decision,
 - ii. allow the appeal and set aside the decision,
 - iii. set aside the decision and remit it, for stated reasons to the minister, or
 - iv. where the Committee considers it appropriate to do so, by reference to submissions, documents or evidence before it which were not considered by the Minister or for other good reason, substitute its decision for the decision of the Minister.

The FAC considers that several other of the grounds as submitted have presupposed a particular determination by the FAC in relation to *De Novo* assessment, and that these grounds are not applicable in light of the decision of the FAC as summarised below.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, and other submissions received. As outlined earlier in this letter, the FAC is satisfied that a serious or significant error or a series of errors were made in making the decision in relation to licence CN85314. The FAC is therefore setting aside and remitting the decision regarding this licence to the Minister to carry out and record a new assessment to determine whether the application should be subject to the EIA process under the EU EIA Directive and to carry out a new screening of the proposal itself and in combination with other plans or projects under Article 6 of the EU Habitats Directive, and if appropriate an Appropriate Assessment of the project proposals, before a new decision is made.

Yours sincerely,



John Evans, On Behalf of the Forestry Appeals Committee

