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31st August 2021

Subject: Appeal FAC845/2020 in relation to felling licence KK06-FL0146

Dear [REDACTED]

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

Background

Felling licence KK06-FL0146 was issued by the Department of Agriculture, Food and the Marine (DAFM) on the 28th October 2020.

Hearing

The FAC conducted a Hearing of appeal FAC845/2020 on the 24th June 2021.

FAC: Mr Des Johnson (Chairperson), Mr Dan Molloy, Mr Derek Daly & Mr Luke Sweetman

Secretary to the FAC: Mr Michael Ryan

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 vary the decision to grant felling licence KK06-FL0146.

The licence under appeal is for the clearfell and restocking of 13.58ha in Coolnamuck, Cullaun, Co. Kilkenny. The proposed area to be felled is comprised of mixed species, predominately Douglas fir with Sitka spruce, Japanese larch, Ash, Birch and Beech with planting years from 1960 – 1981. Restock species are Douglas fir (11.61ha) with Oak (1.29ha) with the provision of 0.68ha open space. The underlying soil type is mineral - predominately Acid Brown Earths, Brown Podzolics (90%) with some Surface water Gleys and Ground water Gleys (9%) and Mineral alluvium soils (1%). The slope is predominantly moderate (0-15%) in a south-easterly direction. The project area is part of a larger conifer plantation of varying age and class. An abundance of agricultural grassland lies along the western boundary of the proposal which is accessible via existing forest roads.

The project is located in the Nore Catchment, the Nore_SC_120 Sub-Catchment, and the Clodiagh_010 River Sub-Basin. The status of the Clodiagh_010 Waterbody is 'Unassigned' by the Environmental

Protection Agency (EPA) under the Water Framework Directive (WFD) 2013-2018 reporting period. This waterbody is within a Protected Area for drinking water. The River Clodiagh (Order 2), flows along the eastern/south-eastern boundary of the project area in a south-westerly direction for c.0.25km before it merges with the River Nore, constituting a hydrological connection with the River Barrow and River Nore SAC (RBRN SAC). The River Nore flows south and merges with the River Barrow, which ultimately discharges at Waterford Harbour, c.39km downstream from the project area.

The application for this proposal was accompanied by an Appropriate Assessment (AA) Pre-Screening Report dated 30th September 2020. The AA Pre-Screening Report lists individual Qualifying Interests (QIs)/Special Conservation Interests (SCIs) of the following European sites, and all are screened out for reasons including separation distance, lack of suitable habitats, lack of hydrological connectivity, the terrestrial nature of the QIs, and the lack of a source-receptor pathway: (i) River Nore SPA, (ii) Blackstairs Mountains SAC, (iii) Hugginstown Fen SAC, (iv) Thomastown Quarry SAC. The RBRN SAC is stated to be 0.25km downstream of the proposal and was screened in for AA due to "possible effect".

The applicant also submitted a Natura Impact Statement (NIS) dated 30th September 2020 which covers the clearfell and reforestation projects; KK06-FL0146 and KK06-FL0153. The NIS provides a project description, stating re-establishment will take place using windrowing and mounding, plants will be treated off-site with an approved insecticide and top-up spraying or spraying of herbicide will be carried out following monitoring and appraisal through Coillte's Integrated Pest Management Policy. The NIS states that no fertiliser will be required due to the inherent fertility of the site. The NIS lists the QIs of the RBRN SAC which include Freshwater Pearl Mussel (FPM), Lamprey, Salmon, Otter, and White-clawed Crayfish. The NIS individually assesses the proposal's potential for an adverse effect on each QI (and associated Conservation Objectives) and proposes mitigation measures where deemed necessary. The NIS contains an In-Combination statement which concludes "this project, when considered in combination with other plans and projects, will not give rise to the possibility of a significant effect on the River Barrow and River Nore SAC (002162), or any other European Sites."

In assessing the application, the DAFM completed an AA Screening (AAS), dated 9th October 2020, of five European sites within 15km of the proposal. The following sites were screened out for Stage 2 AA –

- **Blackstairs Mountains SAC:**
 - Due to 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 pathway, hydrological or otherwise.
- **Thomastown Quarry SAC:**
 - Due to the absence of a direct upstream hydrological connection, and subsequent lack of any pathway, hydrological or otherwise.
- **Hugginstown Fen SAC:**
 - Due to the absence of a direct upstream hydrological connection, and subsequent lack of any pathway, hydrological or otherwise.

The DAFM determined that the following sites should be screened in for Stage 2 AA -

- **River Barrow and River Nore SAC:**
 - Possible effect due to the direct hydrological connectivity which exists between the project area and this SAC.
- **River Nore SPA:**
 - Possible effect due to the proximity of potential habitat for the species listed as the SCI of this Natura site (Kingfisher).

An AA Determination (AAD) was produced by an external Ecologist acting on behalf of the DAFM. The AAD, dated 14th October 2020, states that the applicant submitted an NIS to facilitate the Minister carrying out an AA and that this was subsequently evaluated by the external Ecologist before concluding that "the information provided in the NIS was sufficient to derive appropriate conditions for a determination".

The AAD lists the same screened-out sites as the AAS but also screens out the River Nore SPA "due to the separation distance (>1km) between the Natura site and the project." The AAD lists the only screened-in site as the RBRN SAC due to "possible effect due to the direct hydrological connectivity (that) exists between the project area and this SAC." The AAD states *"The Minister has carried out the AA of potential impacts on the likely significant effects of the activity / project on those European sites 'screened in' (as listed above) and has made certain, based on best scientific knowledge in the field and the European Communities (Birds & Natural Habitats) Regulations 2011 (as amended) and the Forestry Regulations 2017, as amended, and Article 6(3) of the Habitats Directive, that the project proposed under KK06-FL0146, 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."* The AAD then prescribes mitigation measures in relation to the protection of water quality and adjoining / downstream aquatic-based species and habitats to be attached to any licence issued. Adherence to specific standards and guidelines is also specified.

The AAD states that the basis for the AAD is as follows: this 13.58ha mainly brown podzol site. The River Clodiagh flows along the eastern boundary of the project area in a south-westerly direction. The Clodiagh merges with the River Nore which is part of the RBRN SAC approx. 0.25km downstream. This river is known for historic populations of FPM. With this in mind, FPM requirements have been set out along with appropriate aquatic zone and watercourse measure protections. With the strict conditions outlined which includes broadleaf pit planting along the extended 25m setback, no residual pathways of impact of significance to the screened in features are concluded." The AAD concludes that "no reasonable scientific doubt remains as to the absence of any adverse effect on the integrity of any European site."

The DAFM produced an in-combination report, dated the week of the 16th October 2020, which considered the proposal's potential to contribute to a cumulative effect on European sites in combination with other forestry and non-forestry plans and projects in the general vicinity of the Clodiagh_010 River Sub-Basin. The DAFM stated that the River Sub-Basin Clodiagh_010 has approximately 13% forest cover which is higher than the national average of 11% and concluded that "this project, when considered in combination with other plans and projects, will not give rise to any adverse effect on the integrity of any European Site."

The DAFM referred the application to Kilkenny County Council and Inland Fisheries Ireland, with no responses in evidence before the FAC, before issuing KK06-FL0146 on the 28th October 2020. The licence is subject to relatively standard conditions (a) – (g) plus conditions (h) – (gg) which transpose the prescribed mitigation measures from the AAD onto the felling licence with reasons provided such as; the protection of water quality, soil stability, the environment, and to ensure the protection of the European sites during harvesting and restocking operations, to protect environmental sensitivities and to minimise disturbance and protect established habitat potentially used by the feature in the RBRN SAC as per the determination for KK06-FL0146, and to ensure mitigation measures are working satisfactorily.

There is one appeal against the licence. The grounds of appeal were considered in full by the FAC and are summarised below:

1. The process of approving this project has not met the requirement of the EIA Directive. Clearfelling is a purposeful act and the consequence of clearfelling is deforestation and a change in land use type. The retention of 0.68ha of open space means that this area will remain deforested.
2. The submission of this application without including details of all other Coillte projects within the 'Business Area Unit' (BAU) amounts to project splitting under the EIA Directive.
3. Approval of this licence is not consistent with the requirements of Article 4 of the WFD. The appellant references the Weser case. The mitigations for protecting water quality contained in the (Interim) Standards for Felling and Reforestation (and hence the licence conditions) are not written with sufficient precision and clarity regarding their requirements and permitted 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 4 of the WFD. Unless the DAFM can be certain this project will not result in any deterioration in the status of any waterbody the project must be refused.
4. Approval of this licence is not consistent with the requirements of Article 6 of the Habitats Directive. The application was made on 2nd December 2019 but the applicant's AA Pre-Screening Report was not dated until the 30th September 2020. The DAFM AAD is dated 14th October 2020. No DAFM AAS report or AA Report was provided to me with the decision records.
 - Regarding the River Nore SPA - the DAFM 'Screen-Out' scenario for Kingfisher states "for... clearfelling / reforestation, where the project is between 1 and 5km from the SPA and within 250m of the watercourse." The project is within 5km and located within 250m of the watercourse which is the basis for the SPA. The DAFM screen-out scenario does not specify hydrological distance; therefore the proposal is within 1km of the Natura site and must be screened in. What constitutes "watercourse" is not defined. The criterion is not "over 250m" from the SPA. The proposal is approx. 0.25km upstream of the RBRN SAC. No scientific basis for the screen-out scenario has been provided. Uncertainty and lack of clarity in the screen-out scenario and lack of evidence for the scenario itself means the DAFM cannot have the requisite degree of certainty to screen out this proposal for AA in relation to the River Nore SPA.
 - The mitigation measures in the AAD (and consequently the licence) are not written with sufficient precision or clarity regarding their requirements and permitted 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 of the Habitats Directive. The mitigations are generic. The licence conditions require further assessment prior to implementation (e.g. condition (k)) and therefore are not based on the potentiality for implementation. Condition (t) leaves potential for chemicals to be applied immediately preceding heavy rainfall. Condition (v) should include a specified inspection period.
 - No mitigation has been applied in respect of Old Sessile oak woods with *Ilex* and *Blechnum* in the British Isles [91A0] despite this habitat being within 180m of the project area.
 - The AA in-combination assessment is flawed as it is based on an assumption that the regulatory systems in place for the approval, operations and monitoring of the effects of

this and other plans and projects are sufficiently developed and implemented such as to ensure that there will be no direct or indirect impact on the integrity of any Natura 2000 sites in view of those sites' Conservation Objectives. There is no evidence to substantiate this assumption.

5. The NIS states that Alder will be planted in the wetter areas of the site. These areas are not identified on the Harvest Plan and Schedule 3 of the licence does not indicate Alder as part of the re-stocking species.
6. Approval of this licence is not consistent with Articles 5 and 9 of the Birds Directive. Licence conditions do not provide a general system of protection for all species of wild birds as would be required by Article 5 of the Birds Directive. The approval of this project without a necessary system of protection in place or derogation from that system of protection represents a breach of Articles 5 and 9 of the Birds Directive.
7. The Harvest Plan is not consistent with the requirements of the (Interim) Standards for Felling and Reforestation.
8. The monitoring and inspection regime implemented by the DAFM is not sufficiently robust enough to ensure that any conditions appended to this licence will be carried over into action.
9. The conditions appended to this licence are not written with sufficient precision or clarity regarding their requirements and permitting procedures to ensure that they will result in compliance of this development with the overall environmental regulatory framework.

The DAFM responded in a written Statement to the FAC which was considered in full by the FAC and is summarised below:

1. The clear-felling and replanting of an already established forest area are not categories of project which are required to be subject to a determination as whether a sub-threshold EIA needs to be carried out or not, either in Annex II of the EIA Directive or in the national transposing legislation (and where the legislature had the discretion to include such activities had it wished to do so). Therefore, a screening assessment for sub-threshold EIA did not need to be carried out by the Department in this case and thus Article 4(4) of the Directive is not applicable.
2. The Forest Management Unit planning process and any resultant BAU strategic plan is not an obligatory statutory process, arising either from the legislation governing the operation of the company (the Forestry Act 1988 and the Forestry (Amendment) Act 2009) nor from the provisions for forest management plans set out in Section 10 of the Forestry Act 2014. Similarly, they do not constitute a plan or programme subject to the requirements of the SEA Directive, as transposed inter alia by the European Communities (Environmental Assessment of Certain Plans and Programmes) Regulations 2004, as amended.
3. The DAFM applies a wide range of checks and balances during its evaluation of felling licence applications in relation to the protection of water, as set out in the DAFM document Forests & Water: Achieving Objectives under Ireland's River Basin Management Plan 2018-2021 (2018). Critically, any felling licence issued is conditional on adherence to the Interim Standards for

Felling and Reforestation (DAFM, 2019), which set out a wide range of operational measures to prevent direct and indirect impact on water quality arising from the operation. These measures cover a wide range of issues, including pre-commencement awareness, contingency plan, exclusion zones, silt and sediment control, temporary water crossings, managing extraction, timing operations, monitoring, the preparation, storage and use of potentially hazardous material, and post-operation works. The specific measures as described in the application documentation, together with adherence to relevant environmental guidelines/requirements/standards and to the site-specific mitigation measures set out in the AAD and attached as licence conditions ensure that the proposed felling and reforestation project KK06- FL0146 will not result in any adverse effect on any European Site nor on the water quality or the water body status regardless of hydrological connectivity.

4. The AA Screening Report and Determination were emailed to the appellant on the 28th October 2020 along with the Notice of Decision and other documents. The project was screened in as documented in the AAS and after thorough investigation screened out by the Ecologist as stated in the AAD due to "the separation distance between the Natura site and the project." The DAFM submits that the AAD has undergone full ecological review by an experienced Ecologist and the AA is consistent with the requirements of the Habitats Directive. The specific measures detailed in application documentation, together with adherence to relevant environmental guidelines/requirements/standards and to the site-specific mitigation measures set out in the AAD ensure that the proposal will not result in any adverse effect on any European Site nor on the water quality or the water body status regardless of hydrological connectivity. The DAFM submits that the conditions attached to the licence are consistent with best forest practice, national forest policy and protection of the environment. The DAFM submits that the requirements set out in the AAD are clear and precise and will ensure that the proposal will not result in any adverse effect on any European Site. The site-specific mitigations identified in the AAD were attached as conditions of felling licence KK06-FL0146.

The DAFM does not concede that there is any potential for issue over chemical spraying as long as it is used with best forest practice. The DAFM agree that this QI is terrestrial in nature, there is no pathway for impacts arising from the project. As such, there is no potential for the proposed project to directly or indirectly impact on this QI and mitigations are not necessary. The replanting objective as identified by the applicant in their application form and detailed in the associated pre-screening documents and NIS is consistent with the DAFM Felling and Reforestation Policy (2017).

An in-combination report included on file, which included both forestry and non-forestry projects in the vicinity of the project area, was given due consideration during the production of the AAD for KK06-FL0146. While DAFM has no regulatory or licencing role in regard to the other non-forest plans and projects considered in the in-combination report, the DAFM submits that the regulatory systems in place for the approval, operations (including any permitted emissions) and monitoring of the effects of other (non-forestry) plans and projects are such that they will ensure they too do not cause environmental pollution or give rise to direct or indirect effects on the integrity of any European Sites in view of those sites' conservation objectives. Therefore, the DAFM deems that the felling and reforestation project, KK06- FL0146, when considered in combination with other plans and projects, will not give rise to any adverse effect on the integrity of any European Site.

5. The DAFM submits that the AA has provided sufficient information in relation to the felling and reforestation project to assess the potential impacts of the replanting of the lands in question.

The replanting objective as identified by the applicant in their application form and detailed in the associated pre-screening documents and NIS is consistent with the DAFM Felling and Reforestation Policy (2017). In relation to Alder and wetter areas of the site, there will be no woody weed removal within 50m of an aquatic zone or 20m of a relevant watercourse. There will be no removal or disturbance of any areas of wet woodland, Carr (woodland growing on wet ground or waterlogged soil usually dominated by alder or willow species) or thick scrub on the site within 50m of an aquatic zone or 20m of a relevant watercourse. This is to minimise disturbance and protect established habitat potentially used by the feature in River Barrow and River Nore SAC as per the determination for KK06-FL0146. The DAFM submits that the conditions attached to the licence are consistent with best forest practice, national forest policy and protection of the environment.

6. The granting of the licence does not exempt the holder from meeting any legal requirements set out in any other statute and as such is not necessary as a condition on this licence.
7. The DAFM had considered the application and associated information as submitted by the applicant in support of the granted licence and deemed this information meeting DAFM requirements.
8. The DAFM is satisfied that the licence conditions issued for KK06-FL0146 are necessary, relevant to the felling and reforestation project which a licence has been sought and are enforceable, precise, and reasonable. The applicant is bound legally by the conditions that have been issued in respect of the licence and DAFM will take appropriate enforcement measures where the licence conditions for KK06-FL0146 have not been adhered to.
9. The DAFM submits that the conditions attached to the licence are consistent with best forest practice, national forest policy and protection of the environment.

The FAC convened a Hearing of FAC845/2020 on the 24th June 2021 at which the FAC sat remotely. In considering the grounds of appeal, the FAC had regard, in the first instance, to the appellant's submission that the issuing of this licence resulted in breaches of the EIA Directive. The FAC noted that the EIA Directive sets out, in Annex I, a list of projects for which EIA is mandatory. Annex II contains a list of projects for which Member States must determine through thresholds or on a case-by-case basis (or both) whether or not EIA is required. Neither afforestation nor deforestation are referred to in Annex I. Annex II contains a class of project specified as "initial afforestation and deforestation for the purpose of conversion to another type of land use" (Class 1 (d) of Annex II). The Irish Regulations, in relation to forestry licence applications, require assessment under the EIA process for applications relating to afforestation involving an area of more than 50 Hectares, the construction of a forest road of a length greater than 2000 metres and any afforestation or forest road below the specified parameters where the Minister considers such development would be likely to have significant effects on the environment. The felling and replanting of trees, as part of a forestry operation with no change in land use, does not fall within the classes referred to in the Directive, and is similarly not covered by the Irish Regulations (S.I. 191 of 2017). In these circumstances, the FAC concluded that the licence is not in breach of the provisions of the EIA Directive.

The FAC considered the appellant's submission in relation to the WFD. The FAC noted that the proposal is in the River Sub-Basin Clodiagh_010, which currently has 'Unassigned' status. The FAC are cognisant that a recent High Court (Hyland) judgment relates to a licencing decision for a proposal with the potential to impact on an unassigned Lake waterbody. The 'Hyland' judgment concluded that, in

circumstances where there would be a direct impact on an unassigned lake waterbody, the efficacy or appropriateness of mitigation measures could not be evaluated by reference to the requirements of the WFD. The adoption of 'some type of proxy evaluation' which did not follow steps identified in the WFD for the assignment of status to all waterbodies does not constitute compliance with the WFD. The FAC considered the implications of the 'Hyland' judgment for the licence under appeal. The FAC noted that in the 'Hyland' case it is accepted by all parties that there would be a direct physical impact on the unassigned lake waterbody, and that the mitigations proposed were designed to reduce the impacts on the ecological and chemical status of the waterbody. The FAC noted that there are 28 conditions attached to the licence which relate to the protection of water quality. The FAC noted that these conditions were prescribed by the AAD which was produced by an external Ecologist on behalf of the DAFM following a review of the applicant's NIS. The FAC considered the DAFM's statement of facts which states that "the specific measures as described in the application documentation, together with adherence to relevant environmental guidelines/requirements/standards and to the site-specific mitigation measures set out in the AAD and attached as licence conditions ensure that the proposed felling and reforestation project KK06-FL0146 will not result in any adverse effect on any European Site nor on the water quality or the water body status regardless of hydrological connectivity." The DAFM also state that "the in-combination effects of adjacent plans and projects have been considered and DAFM maintains that water quality and water body status will be maintained through best practice on-site during felling and reforestation operations and adherence to licence conditions." The FAC noted that the project area is underlain by mineral soils and is moderately sloped. The FAC considered the requirements of the site-specific mitigation measures prescribed by the AAD, and attached to the licence, and concluded based on the information before it, that the proposed project would not have any impact on the Clodiagh_010 River Waterbody. The FAC concluded that the DAFM did not make a significant or serious error in the making of the decision to grant KK06-FL0146 regarding this issue.

The FAC considered the appellant's grounds relating to the AA procedures employed by the DAFM. The FAC noted that the applicant submitted a Pre-Screening Report which included an AAS that screened out four European sites and screened in the RBRN SAC stating that it is 0.25km downstream of the proposal and was screened in for Stage 2 AA due to "possible effect". The applicant subsequently submitted an NIS which assessed the proposal's potential for an adverse effect on each QI (and associated Conservation Objectives) of the RBRN SAC and proposes mitigation measures where deemed necessary. It is noted that, in regards to the FPM, the NIS states that "the Upper Nore catchment located within this SAC is classified as a *Margaritifera* sensitive area (i.e. Catchments of SAC populations listed in S.I. 296 of 2009) however there is no hydrological connectivity between the project area and this catchment." The DAFM completed an AAS which was completed by a Forestry Inspector and screened out three European sites but screened in the RBRN SAC and the River Nore SPA. This led to the production of an AAD by an external Ecologist. The AAD screened out the River Nore SPA "due to the separation distance (>1km) between the Natura site and the project." The AAD states "the information provided in the NIS was sufficient to derive appropriate conditions for a determination" and prescribes mitigation measures to be attached as licence conditions. The FAC considered the appellant's submissions regarding the River Nore SPA. The FAC noted that the DAFM's AAS screened in the River Nore SPA but that the applicant's Pre-Screening Report and the AAD both screen this site out for Stage 2 AA. The FAC noted the Pre-Screening Report states that the habitats identified within the proposed project area are not of ecological significance to the SCI of the River Nore SPA and that there is no hydrological connectivity between this European site and the proposed project area. Indirect impacts on this SCI species can be ruled out due to the distance from proposed project area and the absence of a complete source-pathway-receptor chain for impact. The FAC noted the inconsistency of the DAFM's AAS screening the River Nore SPA while the AAD screens the site out. In the circumstances, given the mature conifer

habitat within the project area, the separation distance between the proposal and the River Nore SPA and the fact that the SPA was screened out by an external Ecologist following a review of the AAS, the FAC is satisfied that the DAFM did not make a serious or significant error in concluding that the proposal would not give rise to the potential for significant effects on the River Nore SPA. The FAC noted that the mitigation measures prescribed by the AAD were attached to the felling licence KK06-FL0146 in addition to relatively standard conditions (a) to (g). Regarding in-combination effects, the FAC noted that the DAFM considered the potential for the proposal to contribute to an in-combination effect alongside other forestry and non-forestry plans and projects before concluding that the project, when considered in combination with other plans and projects, will not give rise to any adverse effect on the integrity of any European Site. In these circumstances, the FAC is satisfied that there is no convincing evidence before it to conclude that the DAFM made a serious or significant error or series of errors in their AA process and the conclusions reached. The FAC considered that the DAFM's AA procedures were in line with the requirements of the Habitats Directive.

The DAFM considered the appellant's contention regarding the reference in the NIS to Alder being planted in the wetter areas of the site. The FAC noted that the application pack submitted states that the restock species will comprise 90% Douglas fir and 10% Oak and that these species are listed in Schedule 3 of the felling licence. The FAC finds no reason to conclude that the DAFM have made an error in this regard.

The FAC had regard to the appellant's submissions relating to the licence's compliance with the Birds Directive. The FAC noted that the appellant did not provide any site-specific details in relation to any particular species of concern or give reasons why the proposed development could have an adverse impact on the species. The FAC considers that the granting of a felling licence does not exempt the holder from meeting any legal requirements set out in any other statute.

The FAC had regard to the appellant's contention that the Harvest Plan was not consistent with the requirements of the Interim Requirements for Felling and Reforestation (DAFM, 2019). The FAC concluded that the Harvest Plan is, in fact, a document outlining general environment and safety rules and that all the licenced operations must comply with the conditions of the felling licence.

The FAC considered the appellant's submissions regarding monitoring and inspection regime implemented by the DAFM. The FAC considers that compliance with, and enforcement of licence conditions is a matter for the DAFM as the licencing body and noted that the applicant is bound legally by the conditions that have been issued in respect of the licence.

The FAC had regard to the appellant's contention that the licence conditions are not written with sufficient precision and clarity to ensure that they will result in the compliance of the proposal with the overall environmental regulatory framework. The FAC noted that the majority of the conditions attached to felling licence KK06-FL0146 were attached following the conclusion of the DAFM's AA process which included the production of an AAD by an external Ecologist which resulted in a list of prescribed mitigation measures. The AAD also prescribed adherence to a set of standards and guidelines which were also transposed to the licence conditions. However, the FAC observed that the list of prescribed standards and guidelines found at licence condition (gg) does not include the Forestry and Otter guidelines (Department of Agriculture, Fisheries and Food, 2009) as is prescribed in the AAD. In the context of the Otter being a QI of the RBRN SAC, the FAC consider the omission of the requirement for adherence to this particular guideline to be a significant error on behalf of the DAFM.

Based on the information before it, as outlined above the FAC decided to vary the decision of the Minister in order for licence condition (gg)(iii) "Appendix 21 of the Forestry Standards Manual (DAFM, 2015), which sets out an agreed protocol for Hen Harrier developed by the Forest Service of the DAFM and the National Parks & Wildlife Service (NPWS), regarding potential disturbance operations" to be replaced with the following:

(gg)(iii) Forestry and Otter guidelines (Department of Agriculture, Fisheries and Food, 2009).

The FAC is satisfied that this variation to felling licence KK06-FL0146 will result in the licenced operations being consistent with Government policy and good forestry practice.

Yours sincerely,

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

Luke Sweetman on behalf of the Forestry Appeals Committee