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21st September 2021

Subject: Appeal FAC788/2020 in relation to felling licence TFL00419419

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 TFL00419419 was issued by the Department of Agriculture, Food, and the Marine (DAFM) on the 10th September 2020.

Hearing

The FAC convened an Oral Hearing of appeal FAC788/2020 on the 9th September 2021.

FAC: Mr Des Johnson (Chairperson), Mr Seamus Neely & Mr Luke Sweetman
Secretary to the FAC: Mr Michael Ryan
Appellant: [REDACTED]
Applicant: [REDACTED]
DAFM Representatives: Ms Eilish Kehoe, Mr Eugene Curran, Ms Jean Hamilton (Ecologist)

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 and remit the decision to grant felling licence TFL00419419.

The licence under appeal is for the clearfell and restocking of 19.1ha in two plots containing 100% Sitka spruce in Glenbaun, Co. Limerick. Clearfelling is planned for 2021 and 2022 and the proposed restocking is with 100% Sitka spruce. The DAFM information states the underlying soil is predominately blanket peat and the slope is predominantly flat with a slight northerly aspect.

The site is within the Shannon Estuary South Catchment, the Owvane [Limerick]_SC_010 Sub-Catchment and the Owvane (Limerick)_030 River Sub-Basin. The Owvane (Limerick)_030 Waterbody has been assigned a 'Poor' status and deemed to be 'At Risk' by the Environmental Protection Agency (EPA). An unnamed, EPA-mapped, 1st order stream rises within the project lands and flows in a northerly direction through the site for about 530m. Another stream, the Glenbaun 24, rises at the eastern corner of the site, with a public road between the site and this watercourse. A third (unnamed) stream rises approximately 250m to the west of the site. All of these watercourses are tributaries of the Cloonlahard

West River (part of the Owvane (Limerick)_030 Waterbody), which flows into the Lower River Shannon SAC approximately 12km downstream of the site.

There are four Inspector's Certification documents before the FAC. The 4th version (dated 24th May 2021) contains an Appropriate Assessment (AA) screening of five European sites within 15km of the proposal. All five sites are screened out for AA. There are no reasons included for the individual screening conclusions and the overall screening conclusion states that there is "No likelihood of a significant effect on any European site, and Appropriate Assessment not required". However, the file was referred for ecological assessment. An AA Screening Report & Determination (AASRD) was prepared by an external Ecologist on behalf of the DAFM and is dated 20th August 2020. The AASRD provides a project description and states "The site is located within the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (004161) and within two overlapping 'Red Zones', i.e., High Likelihood of Nesting Area (HLNA) for Hen Harrier."

The AASRD screens the same five Natura sites listed in the Inspector's Certification with two sites (Barrigone SAC and Moanveanlugh Bog SAC) screened out for AA for reasons including separation distance, the lack of pathways for impacts, and the lack of hydrological connectivity.

Three sites were screened in for AA for the following reasons:

- **River Shannon and River Fergus Estuaries SPA:**
 - Direct hydrological connectivity exists between the project area and this European site. There is a stream flowing through the site, another along the eastern boundary and a third approximately 250m to the west of the site, all of which may act as conduits for pollution should the works result in a high level of erosion.
 - The site is underlain by blanket peats which are highly erodible. Therefore, there is potential for the work to negatively impact water quality.
 - The possibility of impact on supporting habitats and / or species: Sedimentation of the stream could result in a reduction in the availability of fish prey for Otter.

- **Lower River Shannon SAC:**
 - Direct hydrological connectivity exists between the project area and this European site. There is a stream flowing through the site, another along the eastern boundary and a third approximately 250m to the west of the site, all of which may act as conduits for pollution should the works result in a high level of erosion.
 - The site is underlain by blanket peats which are highly erodible. Therefore, there is potential for the work to negatively impact the aquatic qualifying interests of the Lower River Shannon SAC.
 - The potential significance of the project area for foraging, breeding, roosting (etc.) by a species listed as a QI. The streams on and near the site could be used by Otter and Atlantic salmon.
 - The possibility of impact on supporting habitats and / or species: Sedimentation of the stream could result in a reduction in the availability of fish prey for Otter.

- **Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA**
 - The potential significance of the project area for foraging, breeding, roosting (etc.) by a species listed as a qualifying interest. The site lies within two overlapping 'Red Zones', i.e., High Likelihood of Nesting Area (HLNA) for Hen Harrier, and the works may therefore result in disturbance to this species.

An AA Report (AAR), dated 20th August 2020, was completed by an external Ecologist on behalf of the DAFM. The AAR contains a project description and lists the QIs of the sites screened in by the AASRD, lists their Conservation Objects, and considers the potential for an adverse impact from the proposed development. Mitigation measures are prescribed for the project's felling and reforestation stages in relation to the Hen Harrier, Otter and aquatic QIs of the Lower River Shannon SAC and the QIs of the River Shannon and River Fergus SPA.

The AAR contains an assessment of the proposal's potential to contribute to an in-combination effect on European sites which focussed on the general vicinity of the project area in the River Sub-Basin Ovwane (Limerick)_030. Various planning websites were consulted along with DAFM records for both forestry and non-forestry plans and projects. The AAR 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."

An AA Determination (AAD), dated 21st August 2020, was made by an external Ecologist on behalf of the DAFM. The AAD states that the project, 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 mitigations are implemented. The AAD lists the set of mitigation measures proposed by the AAR to be included as licence conditions. The AAD concludes that based on objective information, 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), Limerick County Council & Inland Fisheries Ireland (IFI). Limerick County Council did not respond. The NPWS responded with nature conservation recommendations as follows:

1. The proposal is within the Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA. It is part of a Red Zone for nesting Hen Harrier. Therefore, an AA is required if the works are planned to be carried out within breeding season – April 1st to August 15th.
2. A tributary stream of the Lower River Shannon SAC runs through the proposal, "bearing in mind Forest Service guidelines, this will require a 20m wide aquatic buffer zone which should be put in place at this thinning stage if possible (it would also benefit foraging Hen Harrier)." In addition, the Forest Service should also ensure, if possible and relevant, that appropriate aquatic buffer zones are established next to any other stream/watercourse that may occur on site.

The NPWS also attached an appendix of more general points of relevance. The IFI made the following recommendations:

1. Ground stability should be kept under constant review and felling operations carried out in such a manner as not to result in the creation of unstable ground conditions (leading to excess run-off into watercourses) or subsequently lead to post-harvesting ground instability.
2. If any watercourse to be crossed this should be done by a clear-span structure or by embedding a culvert with diameter >900mm where at least 25% of the culvert is embedded. This includes all internal forestry drains.
3. All internal drains should be identified and fed into receptor drains. There is to be no direct discharges of any on-site drains into any watercourse.
4. IFI Limerick office to be contacted at least one week prior to commencing operations.
5. All work to be carried out in accordance with good forestry guidelines and water quality guidelines.

The licence issued on the 10th September 2020 and is exercisable for two years. Schedule 2 contains standard licence conditions 1-5. A second section in Schedule 2 titled "Other conditions attached to this licence", lists relatively standard conditions (a) to (g) plus:

(h) & (i) related to Hen Harrier restrictions.

(j) Adhere to conditions in the AAD.

(k) Adhere to IFI conditions 1-5.

(l) Strictly adhere to Standards for Felling & Reforestation (October, 2019). These replace Forest Harvesting & the Environment Guidelines (2000).

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

- The 20m machine exclusion zone along the watercourse at felling is excessive. In order to support requested reduction, we intend to engage an Ecologist to survey the site for presence of Otter and outline a site-specific setback.
- 50m Otter setback is excessive and will impede our ability to drain the site, which will have a negative impact on the next forest rotation.
- A setback of 10-15m will equally protect the watercourse against siltation with the inclusion of sump holes at regular intervals. Many drains will not actually require cleaning, and some will only require maintenance.
- Reforestation requires 20m setback uncultivated and unplanted along aquatic zones. This is excessive and creates a 40-50m corridor which is effectively "sterilised". Slope of site is flat/moderate. 10m setback suitable. As soil on site is a determining factor in specifying a setback "the Ecologist report will clarify soil type in the area".
- Licence issued 10/09/2020 for a 2-year period. Hen Harrier exclusions mean only 14 weeks of 2022 available for operations to take place. Inadequate.
- IFI condition (k) 2: "If any watercourse to be crossed this should be done by a clear-span structure or by embedding culvert with diameter >900mm where at least 25% of the culvert is embedded. This includes all internal forestry drains."
 - This is completely impractical. Expecting a 900mm pipe embedded into 200mm deep drains across a site 12m apart would be exorbitant in terms of cost and soil disturbance where an excavator would need to dig to embed.
 - This condition is understood and realistic in terms of a watercourse but not on additional drains and needs to be removed.

The DAFM responded in a written Statement to the FAC with input from the Forestry Inspector and the external Ecologist who dealt with this file, as summarised below:

Forestry Inspector's response

Following the current DAFM AA Screening guidance document I carried out a 15km radius screening on the Natura sites in the area. I had reviewed the QIs of the Natura 2000 sites in question and by using the latest information available to some Natura sites were screened out, the remainder have had an AAR and subsequently an AAD has been carried out. Following the recommendation from the AAD I have recommended this licence to proceed.

The felling licence was approved as per the applicant's request for harvesting operations in 2021 and 2022, if the applicant wished to fell the trees over a longer period of time this should have been recorded in the felling licence application at the time of submission.

External Ecologist's response

- The 20m exclusion at felling was prescribed in error which arose due to confusion around machinery exclusion zones and water setbacks. Since this report was produced, a new standard text for machinery exclusion zones has been developed to take into account health and safety considerations and the maximum reach of the harvester arm. The condition can be reworded as per the latest standard condition for machinery exclusion zones, as follows:
 - A 10m machinery exclusion zone shall be applied around the aquatic zone during the harvesting stage. The 10m exclusion zone precludes all forwarding, processing and stacking operations. Machines that are exclusively harvesters whose maximum reach is less than 10m, may enter the 10m aquatic exclusion zone to harvest trees adjoining the aquatic zone but the harvester must use its maximum reach and it must always be 5m or greater from the aquatic zone. The harvester must move all trees outside of the 10m exclusion zone for subsequent processing and stacking.
- A 20m setback at replanting is required due to the hydrological connection to the Lower River Shannon SAC and the fact that the site is underlain by blanket peat. This is a water quality control measure, to prevent run-off of silt and sediment which may affect the aquatic QIs of the site, such as Atlantic salmon and Lamprey. The same mitigation was also specified under Otter, but this was just to keep it consistent with the water quality mitigation. A 10m setback is usually sufficient for Otter, but not in this instance.
- This mitigation measure is in accordance with DAFM's AA Stage Mitigation for Otter v. 07Jan19. If the applicant can provide survey information to confirm no evidence of Otter within 50m of the aquatic zone, we can consider easing this restriction; however, in the interests of protecting water quality there should be no clearing out of drains within the 20m water setback.
- The 20m setback was specified because the area is underlain by blanket peat, and because the site lies within a Hen Harrier SPA and open space should be provided (as per NPWS response).
- Regarding the embedding of culverts with diameter >900mm; I did not recommend this as a condition, and I don't think it's necessary. The AAD specifies the following:
 - If watercourse crossings are required for any reason, these must adhere to the requirements set out under Section 8 of the Interim Standards for Felling & Reforestation, in relation to all temporary water crossings. Relevant watercourses to be crossed using free-standing structures (e.g. timber lengths) arranged to span over the watercourse.

The applicant made an additional submission to the FAC in the form of a letter, dated 2nd July 2021, comprising a set of responses to the DAFM's Statement of Facts. The appellant included a report from an independent Ecologist which had been produced following a site walkover. The letter welcomes the DAFM's acceptance that a 20m machinery exclusion zone is unnecessary but raises the point that the DAFM ecologist still requires a 20m setback as part of the reforestation of the site. The appellant states that this condition is a deviation from the Interim Standards for Felling and Reforestation (2019) and is based on the alleged presence of blanket peat soil throughout the site. The appellant submits that the soils within the project lands are Gleys and that peat soils are present in the surrounding areas but not within the forest area of Glenbaun.

The appellant references the DAFM's statement that the standard Otter mitigation could be altered following the submission of relevant survey data and refers to the site walkover report which states "the proposed setback of 20m for felling and replanting operations is excessive and deviates from the Standards for Felling and Reforestation. 10m is more suitable for this site as its watercourse is not suitable for Otters and Otter foraging. The water is too shallow and contains no prey species for Otters". The appellant references the NPWS referral response which states "...bearing in mind Forest Service

guidelines, this will require a 20m wide aquatic buffer zone...” The appellant submits that the only relevant document that sets down the conditions for forestry felling and replanting is the Interim Standard for Felling and Reforestation (2019) which specifies that a water setback width for a moderately sloped site is 10m. The NPWS recommendation for a greater setback does not comply with the current standard.

The appellant states that most of the points raised in their appeal could have been resolved without going through the appeals process, if the DAFM were willing to engage and communicate but they were left completely frustrated and with no option but to submit an appeal.

Initially, the FAC convened a non-Oral Hearing on the 20th July at which it was decided an Oral Hearing was required to clarify the issues at hand. The appellant’s additional submission was circulated to the DAFM, Limerick County Council, IFI and the NPWS for comments. Responses were received from the NPWS and IFI. The IFI response states:

- The stream on the site in question is a 1st order tributary of the Owvane, which reaches the Shannon Estuary at Loughill.
- If when re-planted, there are additional lines of broadleaves, IFI do not require the buffer to be in excess of the standard 10m.
- Any silt traps should be maintained prior to forestry operations and during the lifetime of forest. The riparian zone should be protected with no activity inside the 10m buffer and no self-seeding to occur within this zone.
- The advice in our original submissions stands.

The NPWS response to the appellant’s additional submission states:

The Forest Service Guidelines that the Department referred to in its response to the DAFM were the ‘Environmental Requirements for Afforestation’ and the Buffer Zone Guidelines in the ‘Forestry and Water Quality Guidelines’ published by DAFM (Section 1.2 of the ‘Environmental Requirements for Afforestation’ notes that “The Environmental Requirements for Afforestation replace those measures relating to afforestation contained within the following Forest Service Environmental Guidelines: Forestry & Water Quality Guidelines, Forestry & Archaeology Guidelines, Forestry & the Landscape Guidelines and Forest Biodiversity Guidelines). (Note, however, that these guidelines still apply to other Forest Service regulated activities, as specified in any approval, consent or licence issued.)”

In this Department’s response to DAFM it advises that the 20m wide aquatic buffer zone should be put in place at this thinning stage if possible and that in addition appropriate aquatic zones are established next to any other stream/watercourse, if possible and relevant.

Please be advised that the NPWS is a consultation body under Forestry legislation. In this capacity, the Department’s role is to provide observations that will assist an authority in its consideration of the implications of a proposal for the environment and in its decision-making to do so in compliance with various legislative and administrative requirements with respect to the conservation, protection and preservation of natural heritage. Ultimately, however, the decision to grant permission is a matter for the relevant consent authority.

The FAC held an Oral Hearing of FAC788/2020 on the 9th September 2021 at which the FAC sat remotely. The appellant’s (first party) representative and the DAFM representatives also participated remotely. At the outset of the hearing the FAC Secretary read into the record of the hearing the responses from IFI and the NPWS. All parties agreed in principle to these documents being read into the record. It was noted that the NPWS response refers to a thinning operation rather than a clearfell licence.

The DAFM detailed their processing of the application and issuing of TFL00419419, stating that a field and desk inspection had taken place. The DAFM stated that the original licence had been issued on the 10th September 2020 but that a second licence had also been issued, dated 21st May 2021. The certifying Inspector was not present but was represented by a colleague who stated that the application had been referred to the Ecology Unit due to its location within the Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA and its direct hydrological link to the Lower River Shannon SAC. The DAFM's external Ecologist confirmed that she had considered the In-Combination report during the AA process. The Ecologist stated that she had considered the NPWS's referral response, which references water quality and the provision of Hen Harrier foraging area, before prescribing a 20m water setback at reforestation. She stated that she had referred to the Teagasc soils map within iFORIS when assessing the soils on-site and submitted that the applicant's Harvest Plan had not provided any information regarding soil type. The Ecologist states it is the soil in the vicinity of the aquatic zone which is pertinent and queried had soil cores been taken in this area by the appellant.

Responding to FAC queries, the DAFM Inspector stated that the monitoring of ground stability would be carried out by the contractors on-site and that adherence to the licence conditions and best forest practice (e.g. avoiding water 'hot spots' on site) would prevent soil damage and subsequent run-off from the site.

The FAC highlighted the recommendation from IFI that there is to be no direct discharges of any on-site drains into any watercourse and queried the DAFM as to how this would be managed, given the reference in the site walkover report that drainage ditches in the project area are connected to the watercourse. The DAFM Inspector stated that it is hard to say categorically without a field inspection but that there would be no major ground disturbance near ditches and that silt traps would be installed prior to harvesting. The Inspector stated that drainage ditches would be avoided by harvesting machinery and that the reach of the harvesting machine's arm would allow the removal of the trees along the banks of the ditches from distance.

The appellant stated that they welcome the amendments the DAFM had made to the licence conditions but that the revised requirement of a 15m setback at replanting stage was still excessive given the Ecologist, who completed a site walkover report, stated 10m would be adequate.

The applicant stated that they contract out their forest management operations. They stated that their issues with the licence conditions could have been resolved without having to appeal but that liaising with the DAFM had proven difficult. They highlighted their financial losses caused by delays. The applicant contended that their Registered Forester and an independent Ecologist had both inspected the site and agreed that 15m water setback at reforestation would be excessive. The applicant stated that the DAFM had worked with them in recent weeks to revise the licence conditions and reiterated that some of the original conditions would be hard to abide by without incurring unjustified financial losses and delays.

The appellant submitted that the Interim Standards for Felling and Reforestation and the Environmental Requirements for Afforestation have different requirements but that the Interim Standards do not specify a 20m setback on a moderately sloped site. Responding to the FAC, the appellant stated that a visual soil survey had taken place during a site visit and that there is blanket peat to the south of the site but that everything which is forested is underlain by gley soils.

The FAC queried the DAFM in relation to the second licence which had been issued. The DAFM stated that a new licence with an increased period of validity had been issued on the 21st May 2021. The applicant stated that this licence contained revised conditions but still required a 15m setback and that this licence can't be acted upon because the first licence is under appeal. The applicant confirmed that they had not appealed this second licence and that they had not received an actual licence document but the proposed revised conditions of same had been sent by email from the DAFM for agreement.

Responding to FAC questions, the DAFM stated that it was unusual for a second licence to issue and that usually the date would just be changed following an extension of the period of exercisability. The DAFM confirmed that a second application had not been received nor advertised but that the second licence had been publically advertised on the 21st May 2021. The FAC queried the legal status of this second licence and the DAFM were unable to confirm. The Chairperson of the FAC stated to all parties that the Oral Hearing was related to the appeal of the original licence and it was that decision of the Minister which had been appealed to the FAC.

Responding to FAC questions, the appellant confirmed that the site walkover report produced by the independent Ecologist did not actually state the soil type within the project area.

The FAC queried the DAFM's external Ecologist regarding the revision of licence conditions, as implied by her statement in the Statement of Facts, and how this might happen. The Ecologist stated that this was not her area of work but that she did not object in principle. She stated that she had reviewed the grounds of appeal along with a DAFM Forestry Inspector and that she gained a more detailed understanding of the practicalities of harvesting operations. She stated that a 20m exclusion zone at felling stage would inadvertently result in a negative impact on water quality as the trees closest to the watercourse would be outside of the harvesting machine's reach which could lead to them not being felled and eventually succumbing to windblow.

The FAC queried the propriety of changing mitigation measures after the AAD had been concluded. The Ecologist stated that changing the 20m machinery exclusion zone to 10m was not a material change and had come about after she had learnt more about the technicalities of forestry operations.

Responding to the FAC, the appellant stated that this application had been submitted prior to the requirement for a NIS. They also stated that a full soil survey did not take place because the focus at the time of the site walkover was on the presence of Otter and related conditions rather than soil type.

The applicant stated that the DAFM had never requested a soil survey and reiterated their main issue was the lack of feedback from the DAFM in relation to their queries prior to the submitting of an appeal. The DAFM's external Ecologist stated that she was happy for the Otter conditions to be revised following the submission of the site walkover report. She contended that the reason for the 20m replanting setback were the soil type but also the provision of strategic open space for Hen Harrier.

In closing, the applicant stated they did not have access to the Teagasc soils map during the hearing but that the setbacks in the Interim Standards for Felling and Reforestation are based on slope and not soil type and that they could prove that the soil on site is Gley. The FAC clarified that they would not be accepting any submissions after the closing of the hearing unless specifically requested.

In considering the issues at hand, the FAC limited their considerations to the original licence and the submitted grounds of appeal in relation to the original decision by the DAFM to issue TFL00419419. The FAC had regard, in the first instance, to the appellant's submission that the 20m machine exclusion zone at felling stage is unwarranted. The FAC noted the DAFM's external Ecologist's comments that this condition had been prescribed in error and that it could lead to the retention of trees along the edge of the watercourse which were likely to suffer windblow resulting in negative impacts on the watercourse. The FAC considers this to be a significant error on the DAFM's behalf in the context of the potential negative impacts on local water quality and subsequently the Lower River Shannon SAC.

The FAC considered the appellant's submission that a 10m water setback at reforestation stage would be sufficient. The FAC were cognisant that conflicting evidence was presented at the Oral Hearing regarding the soil type within the project area. The FAC noted that only a visual soil survey had been conducted and this was during a site walkover by the applicant's independent Ecologist (the main focus of which had been assessing the site's suitability for Otter). The FAC reviewed publically available information on the EPA website including the National Soils layer which provides an indicative soils map.

This layer shows that approximately two thirds of the site (the northern portion) is underlain by surface water gleys, ground water gleys. The remaining portion of the site to the south is shown as blanket peat. The EPA Flow Network (Indicative) layer shows that a 1st order tributary of the Owvane rises within the blanket peat section of the project lands before traversing, for the majority of its length within the proposal, across the poorly drained mineral soils in the north of the site. However, this flow network layer is described as being schematic only, and "not representing the precise location of these flow channels". The FAC also noted the response from IFI which states that "If when re-planted, there are additional lines of broadleaves, IFI do not require the buffer to be in excess of the standard 10m." The FAC considered that there is a lack of clarity over the soil type in the immediate surrounds of the watercourse and the necessity of a 20m water setback. The FAC noted that the Interim Standards for Felling and Reforestation recommends setback distances based on slope and not soil type. However, the FAC considered that the DAFM, with a view to protecting water quality, had taken a cautious approach in applying a 20m water setback and this prescription had also been based on providing foraging area for Hen Harrier in the locality of the proposal, in line with the NPWS's referral response. The FAC noted that the appellant had not provided conclusive evidence, in the form of a soil survey in the vicinity of the watercourse, to support their petition to reduce the water setback at reforestation. In these circumstances, the FAC could not conclude that the DAFM made a significant or serious error in requiring a 20m water setback at reforestation.

Regarding the Otter setback required by the AAD, including the restriction on the cleaning of drains within 50m of the watercourse, the FAC noted the DAFM's acceptance at the Oral Hearing of the evidence provided by the site walkover report that the proposal does not provide suitable foraging habitat for Otter. The FAC also noted the DAFM's statement that, at the time of issuing, standard Otter requirements had been applied to the licence, in the absence of survey data supporting reduced restrictions, due to the proximity of the Lower River Shannon SAC. The FAC concluded that the DAFM had not erred in applying standard Otter mitigation in the first instance, in lieu of survey evidence to support a reduction of standard measures.

The FAC considered the appellant's contention that the period of exercisability of the licence is inadequate. The FAC noted that the application form submitted by the applicant states that the planned fell years are 2020 and 2021 and that these were the years covered by the period of exercisability of the licence when issued. The FAC concluded that the DAFM had not made a significant error in this regard.

The FAC had regard to the appellant's submission that the requirement to embed culverts with diameter >900mm into 200mm deep drains across the site would be exorbitant in terms of cost and result in unnecessary soil disturbance as excavation would be required to embed the culverts. The FAC also noted the appellant's statement that this condition is understood and realistic in terms of a watercourse but not on all internal drains. The FAC considered the response from the DAFM's external Ecologist which states "I did not recommend this as a condition, and I don't think it's necessary" before referencing the requirement in the AAD for the crossing of watercourses to adhere to the requirements set out under Section 8 of the Interim Standards for Felling & Reforestation, in relation to all temporary water crossings and that relevant watercourses are to be crossed using free-standing structures (e.g. timber lengths) arranged to span over the watercourse. The FAC considered that the licence requires the licensee to adhere to both the IFI requirements and the measures prescribed in the AAD results in a contradiction in the licence conditions.

Based on the information before it, in the circumstances outlined above, the FAC decided to set aside and remit the decision of the Minister in order for the DAFM to complete a Stage 2 AA of the screened-

in European sites, to include, *inter alia*, consideration of the soil type in the vicinity of the watercourse and the appropriate replanting setback, the potential for the proposal to impact on Otter, and the crossing of on-site drains and relevant watercourses, before making a new decision in respect of TFL00419419.

Yours sincerely,

A large black rectangular redaction box covering the signature of the sender.

Luke Sweetman on behalf of the Forestry Appeals Committee