



17th January 2023

Subject: Appeal FAC 010/2022, 011/2022 and 012/2022 regarding licence CN89154

Dear

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 as amended, has now completed an examination of the facts and evidence provided by all parties to the appeal.

Background

Licence CN89154 comprising the afforestation of 7.47 hectares at Drumman More Knockhall, County Roscommon was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 9th February 2022 subject to conditions.

Hearing

A hearing of appeals FAC 010/2022, 011/2022, and 012/2022 was held remotely by a division of the FAC on the 3rd October 2022.

In attendance at the hearing were:

FAC members;

Mr. Myles Mac Donncadha (Chairperson), Mr. Iain Douglas, Mr Vincent Upton and Mr Derek Daly.

Secretary to the FAC:

Mr. Michael Ryan.

Having regard to the particular circumstances of the appeal an examination of submissions received and an examination of the documentation relating to the licence available, the FAC considered that it was not necessary to conduct an oral hearing in order to properly and fairly determine the appeal.

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, and all other submissions received, and, in particular, the following considerations, the FAC has decided to set aside and remit the decision of the Minister regarding licence CN89154.

Licence

The licence pertains to the afforestation of 7.48 hectares at Knockhall, County Roscommon over a number of plots proposed to be planted as a native woodland with a variety of broadleaf species and in which four of the plots are indicated as bio areas. The species proposed are alder, pedunculate oak,

birch and other broadleaves. The site has frontage to the public road network and is also in close proximity to Lough Bofin through which the River Shannon flows. The project is in very close proximity to the boundary of Counties Leitrim and Longford.

Documentation on the file submitted with the application include mapping, a fencing map, bio map, location map, a NIS, a site drainage report and public notices.

The NIS as submitted refers to the six plots with an overall area of 7.44 hectares. The NIS identifies the potential impact to 001818 Lough Forbes Complex SAC located circa 8.6km downstream of Lough Bofin and 000440 Lough Ree SAC which is ca. 25km surface water distance from the site due to a hydrological connectivity. The NIS indicates that with the incorporation of mitigation measures in Section 5 will protect the QIs of Lough Ree SAC (000440) and Lough Forbes Complex SAC (001818) for which pathways for effect were identified and ensure there will be no residual indirect impacts and therefore there is no possibility of the project itself individually having an adverse effect on the integrity of any European Site.

The drainage report included a survey of the site, examination of flood risk, a survey of existing drains, water levels and invert levels. Standards as set out in the Forestry Standards Manual in relation to drainage were assessed and applied and a number of measures were recommended in relation to a number of the existing drains to comply with the standards as set out in the Manual.

Documentation submitted with the application refers to the project area with the predominant soil type underlining the project area as predominantly podzolics in nature. The slope is predominantly flat to moderate (<15%). The project area is crossed by / adjoins an aquatic zone(s). The vegetation type(s) within the project area comprise grassland.

The site is within the WFD sub catchment Shannon [Upper]_SC_040 which is listed as at risk in relation to the objectives of the Water Framework Directive and the status is indicated as moderate. Lough Bofin which is located in close proximity (less than 100 metres) has a Lake Waterbody WFD Status 2013-2018 of poor and is listed with Lake and TRaC Invasive Species Pressures.

The licence application was referred to Roscommon County Council on the 27/05/ 2020 with a response indicating no objection but refers to consideration of potential impacts on drainage and flooding.

The application was referred to An Taisce 27/05/2020, and their response refers to issues relating to Water Quality and Setback from watercourses and cumulative impacts of forestry in the area.

A referral to NPWS elicited a response which indicates no site-specific observations and refers to general requirements.

There were a number of third party submissions which raised concerns regarding previous unsuccessful applications on the site; the site is part of a flood plain, prone to flooding and contains drains which are important to flood management in the area; the proposal will give rise to pollution and impact on

wildlife; reference is made to the impact of forestry on the local population and impact on individual residential properties and the impact on the visual amenities of the area is referred to.

In the course of the DAFM assessment in particular in relation to Appropriate Assessment (AA) the Appropriate Assessment Screening Determination identifies 5 sites within 15 kilometres of the site. Clooneen Bog SAC 002348; Ballykenny-Fisherstown Bog SPA 004101; Annaghmore Lough (Roscommon) SAC 001626 and Brown Bog SAC 002346 were screened out and Lough Forbes Complex SAC 001818 was screened in. The Appropriate Assessment Determination (AAD) dated 27/01/2022 in relation to the screened in site Lough Forbes Complex SAC 001818 indicated *"the proposed application is for the afforestation of native broadleaves across this site, which is situated on a flat topography. It is proposed to plant the trees via invert mounding, with no associated drainage, and without the use of herbicides or fertilisers. It is determined that there will be no deterioration in water quality to the European sites located downstream, or the adjoining lakes/pNHA's, particularly with the protective measures outlined in the NIS and within this report. These measures include setbacks from existing drains and aquatic features. It has been determined that from a silvicultural perspective, following discussions with the Regional Inspector, who had previously visited the site. that seasonal flooding will not impact the growth potential of the chosen species. It is widely recognised that the planting of native trees can help reduce the effects of flooding. In addition to the absorption from the roots of the trees, the root systems are also effective in increasing water infiltration into the soil and reducing and slowing run-off on farmland"*.

The AAD also refers to that the NIS screened in Lough Ree SAC (000440), despite it being located c.25km downstream on the basis that there were Otters recorded in the area, and this is the closest European site for which this QI is listed. The NIS the NIS indicated did not record any signs of Otter within the proposed application site.

The DAFM recorded a consideration of the proposal across a range of criteria with reference to the information provided with the application and the assessments undertaken by the DAFM and concluded that the proposal did not need to proceed to EIA.

The licence was issued on the 9th February 2022 subject to conditions including adherence with the measures set out in Appropriate Assessment Determination.

Appeal

There are three third party appeals against the decision to grant the licence and the full grounds of appeal and response from the DAFM have been provided to the parties.

In relation to FAC 010/2022 the grounds of appeal in summary refer to three previous attempts to get approval for forestry on the site; the issue of flooding of the area is a fact and has occurred in four of the last twelve years and the position does not change with the type of planting; existing wildlife will be replaced by predator species; the project will impact adversely on the community and individuals and the impact on drainage is referred to with consequent impact on adjoining properties and lands. Photographs are submitted in relation to the flooding in the area.

In relation to FAC 011/2022 and 012/2022 the grounds of appeal in summary refer to a high level of forestry in the area as referenced by 23.41% in the townland; reference is made to the impact on the community, loss of population in the area and the impact on the landscape and wildlife; reference is made to flooding and the setbacks which are inadequate from drains are irrelevant in this area of peatland and also to issues of restoring and maintaining drains and consequently the issue of drainage has not been satisfactorily addressed; the location of the site adjoining two Proposed NHAs is ignored and the impact on the area visually is not assessed. Photographs are submitted in relation to flooding.

DAFM Statement

A response Statement of Fact (SoF) was provided on behalf of the Minister for Agriculture, Food and the Marine for all three appeals which is on file. This outlines the procedure adopted by the DAFM in processing the application, the related dates and the final decision in relation to the licence. The statement from the Department regarding the appeal states that the decision was issued in accordance with DAFM procedures, SI 191/2017 and the Forestry Act.

In the Inspectors comments on all three appeals it is indicated that part of the site floods seasonally, the tree species will tolerate these events and notes the site was the subject of a drainage study and in relation to 011/20202 and 012/2022 the site was assessed by a DAFM Ecologist.

There was also a response from DAFM ecologist with individual responses to the appeals.

In response to appeal FAC 010/2022 in relation to flooding it is indicated that the planting of native trees can help reduce the effects of flooding. In addition to the absorption from the roots of the trees, the root systems are also effective in increasing water infiltration into the soil by reducing and slowing run-off on farmland. Water infiltration rates can be 60 times higher within tree shelterbelts than adjoining farmland. There are many publications and studies which recognize the importance of trees as sustainable, low-maintenance solutions for flooding and as a result they are being adapted into many flood-defence project. Commenting on predator species in particular rats and mink it is indicated that the proposed application site is situated c.70m from the shores of Lough Bofin, and also has a separating road, so is not considered riparian, and is sub-optimal for the species due to the intervening distance. It is also stated that the proposed application site also does not contain optimal habitat for waterfowl as it only seasonally floods, with more suitable habitat found in the wider environs of the project site.

In response to appeals FAC 011/2022 and 012/2022 the ecologist response indicates that it has been determined that from a silvicultural perspective, following discussions with the Regional Inspector who had previously visited the site, that seasonal flooding will not impact the growth potential of the chosen species; the site consists of a Wet Grassland habitat with signs of improvement and which is overlain on organic soils, as opposed to a Peatland or Bog habitat and the site will be planted with native tree species which have a high ecosystem value. In relation to setbacks, it is indicated that *there are no aquatic zones located within, or directly adjoining the proposed application site. Relevant watercourses were recorded on site and it was highlighted that a centralized relevant watercourse intersects the*

proposed site at its centre and connects to Lough Bofin to the east. It was instructed that a 'water setback', a minimum of 10 meters in width (from both sides) shall be installed adjoining the main relevant watercourse within the centre of the site, as specified in the NIS and the AAD. The remaining relevant watercourses were to be given a setback of 5 metres.

In relation to the proposed NHA it is indicated that the site synopsis for Lough Boderg/ Lough Bofin pNHA (001642) identifies the adjoining peatland as an area of old cut-away, which floods in winter and contains widespread Bog Myrtle, with locally abundant Royal Fern. The site synopsis also states that it is surrounded by deep water drains, and there is also an existing woodland separating the bog and the site, which is visible on aerial mapping. It was determined that there could be no significant effects to this peatland as a result of the proposed afforestation. There will be no change in habitat to the pNHA for any breeding bird species utilizing it as a result of forestry related activities, due to the separation distance, the intervening habitats and the deep drainage channels surrounding the pNHA. The pNHA is also protected for its Lakeland habitats, including native woodland habitats which are present on the lakeshore. The proposed application site is not directly adjoining the lakeshore, and there will be no loss of this habitat. The planting of native broadleaves adjoining the existing woodlands will be beneficial to the pNHA as it will expand its range. As specified in the AAD, water protection measures will ensure that there is no deterioration in water quality as a result of forestry related activities. The response concludes, as per the AAD, that the mitigation measures outlined in the AAD will ensure there are no adverse effects on the integrity of the European sites and their associated Qualifying Interests, or on water quality within the local environment. There will also be no negative impact on local biodiversity, with native broadleaves instead being a beneficial habitat, and also negating any flooding issues, rather than exacerbating them.

The Applicant made a submission to the FAC in response to the appeal contesting the grounds of appeal. In particular it is submitted that some of the grounds appear to be based on belief rather than fact and that a detailed ecological and drainage survey had been prepared. The submission emphasises the nature of the proposal as a native woodland and considers a number of associated benefits. The submission also indicates a willingness to monitor the public roads as required. This submission was provided to the other parties and the Appellants of FAC011/2022 and FAC012/2022 provided a further submission. The submission in relation to FAC011/2022 referred to remaining concerns in relation to setbacks, consultation, and drainage and FAC012/2022 reiterates their concerns including in relation to flooding and water quality, setback and public consultation. The Applicant made a further submission referring to the details of their management of the lands including drains and the matters raised in relation to water quality. All submissions were before the FAC when considering the appeal.

Assessment of Appeal.

In addressing the grounds of appeal, the FAC considered the requirements of the Habitats and EIA Directives, the completeness of the assessment of the licence application, whether there was an adequate assessment of cumulative effects and an examination of the procedures applied which led to the decision to grant the licence. The FAC considered that a number of grounds of appeal appeared to

relate to general policy matters and civil matters and the FAC could only consider those matters that fell within its remit under the Agriculture Appeals Act 2001, as amended.

Regarding the potential for the proposal to have a significant effect on the environment and related matters, the EU EIA Directive (2011/92/EU as amended by 2014/52/EU) 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. The Irish Forestry Regulations 2017, in relation to forestry licence applications, require mandatory EIA 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, taking into account the criteria set out in Schedule 3. The Minister must make their Determination available to the public and state the main reasons for requiring or not requiring an EIA with reference to the relevant criteria. The proposal as described is for the afforestation of 7.47 hectares and is sub-threshold for the mandatory submission of an EIA report. In this case the FAC found that the DAFM assessed the proposal and considered the application across a range of criteria, including water, designated areas, landscape and cumulative effects, and determined that the project was not required to undergo the EIA process.

It is however noted that in relation to the Assessment to Determine EIA Requirement in response to what is the approximate % of forest cover currently in the underlining waterbody (or waterbodies) a percentage of 1.8% is stated. This percentage forest cover is at variance with the in-combination statement which indicates that the site is within the River Sub-Basin Shannon (Upper)_070, approximately 12% of which is under forest cover.

The FAC understands that while the "*Assessment for EIA Requirement*" document should be read as a summary document, and in-combination with the record as a whole, it does not state which waterbody is being referenced or offer an explanation of the discrepancy or further reasons in the section provided. Furthermore, the document only refers to forestry projects and does not expressly cross-reference the detailed record of other plans and projects on the file, while it may be reasonable to interpret that the decision-maker had this information before them. In relation to soil, this document also records that whether the site is within an area of high nutrient sensitivity has been self-assessed by the Applicant but provides no explanation of this response or explanation on the record. The FAC is also of the view that while the Minister should use the information provided by the Applicant in undertaking the screening, it is for the Minister to reach the required determination and provide the necessary reasons. The FAC further noted that in screening for EIA, the Minister relied on Guidelines in relation to water quality, landscape and archaeology but these Guidelines have not been attached as conditions on the license and the *Environmental Requirements for Afforestation* document, adherence with which is a condition of the licence, states that it replaces those Guidelines. In relation to landscape, it is noted that the lands are within a sensitive area and that comments were received from the Local Authority and members of the public but there are no further reasons provided in relation to this matter which might be expected in this situation. The FAC considers these matters to be a series of errors in the making of the decision.

In considering the appeal the FAC examined the Appropriate Assessment Screening undertaken by the DAFM as it related to the afforestation of 7.47 hectares. Having examined the documentation submitted, the FAC identified the same five Natura sites as the DAFM within 15 km of the site. Clooneen Bog SAC 002348; Ballykenny-Fisherstown Bog SPA 004101; Annaghmore Lough (Roscommon) SAC 001626 and Brown Bog SAC 002346 and Lough Forbes Complex SAC 001818 and the FAC is satisfied that there was no need to extend the radius in this case. The FAC considered the nature, scale and location of the proposal, the European sites identified, and their conservation objectives. The proposed works are located outside of any Natura site and the project site was the subject of a field inspection. The potential significant effects that have been identified would be of an indirect nature and the measures relate in the main to the removal of pathways of effect.

In the course of the AA process undertaken by DAFM which included an initial screening in which the Lough Forbes Complex SAC 001818 were screened in due to a hydrological connection to Lough Bofin to the east, and subsequently joins the SAC c.10km downstream stating a possible effect due to a deterioration in water quality as a result of forestry related activities. The screening report and determination states the reasons for this determination. In relation to Brown Bog SAC the screening provides reasons for screening the site out but concludes that an AA is required. This appears to be an obvious error but in the context of the screening being undertaken again this should be resolved.

The Appropriate Assessment Determination(AAD) further assessed possible effects in relation to the screened in site Lough Forbes Complex SAC 001818 refers to the nature of the project which is for the afforestation of native broadleaves across this site which is situated on a flat topography; that it is proposed to plant the trees via invert mounding, with no associated drainage, and without the use of herbicides or fertilisers and consequently it is determined that there will be no deterioration in water quality to the European sites located downstream, or the adjoining lakes/pNHA's, particularly with the protective measures outlined in the NIS and within AAD report. The determination also noted that from a silvicultural perspective, following discussions with the Regional Inspector and who had previously visited the site, that seasonal flooding will not impact the growth potential of the chosen species and that it is widely recognised that the planting of native trees can help reduce the effects of flooding. In addition to the absorption from the roots of the trees, the root systems are also effective in increasing water infiltration into the soil and reducing and slowing run-off on farmland.

In relation to the Appropriate Assessment Screening the FAC noted the following reason formed part of the screening conclusion in a number of instances,

Furthermore, as set out in the in-combination assessment attached to this this AA Screening, as there is no likelihood of the project itself (i.e. individually) having a significant effect on this European site, there is no potential for it to contribute to any cumulative adverse effects on the site, when considered in-combination with other plans and projects

The FAC considers the conclusion stated above to be an error as it suggests that the decision maker has not considered effects that might arise from the proposal which themselves may not be significant but which in-combination with other plans and projects could result in a significant effect on a European site.

The FAC also considered the reasons that formed part of the Appropriate Assessment Determination and in particular the text stating,

It is concluded that there is no possibility that the proposed felling and reforestation project CN89154, with mitigation measures set out in Section 4, will itself, i.e., individually, giving rise to an adverse effect on the integrity of the following European Sites and their associated Qualifying Interests / Special Conservation Interests and Conservation Objectives: Lough Forbes Complex SAC IE0001818. Therefore, there is no potential for the proposed project to contribute to any cumulative adverse effect on the integrity of the above European Site(s), when considered in-combination with other plans and projects.

The FAC would understand that the consideration of other plans and projects should take place as part of the process to ascertain whether the project, either individually or in-combination with other plans or projects, is likely to have a significant effect on a European site and in the Appropriate Assessment of the implications of the project and such effects on the European site, having regard to the conservation objectives of the site concerned. As stated on the record, it appears to the FAC that other plans and projects were only considered in this Appropriate Assessment after a conclusion had been made that the project itself would not have an adverse effect on the integrity of the sites concerned. The FAC would consider this not to be in keeping with the requirements of the Forestry Regulations 2017 and Article 6(3) of the EU Habitats Directive.

The grounds of appeal raise specific concerns in relation to the cumulative effects of forests in the area. In relation to this matter the FAC examined the documentation in relation screening for EIA and that the DAFM recorded in the Assessment to Determine EIA Requirement that the current forest cover in the underlying waterbody is 1.8% and that this is at variance with the comparable figures as quoted in the In-Combination assessment report wherein it is recorded that the forest cover in the river sub-basin is approximately 12%.

The FAC while noting the nature of forest proposed is of the view that the difference in this instance represents a serious and unexplained error and that the error was not addressed in the DAFMs deliberations. Furthermore, the DAFM does not identify which figure is considered to be the correct representation of forest cover in the locality. While the FAC is of the view that numerical and clerical errors can easily occur, it considered that the error in this case was a serious error and that the difference was not sufficiently resolved in the record of the decision or in the statement in response to the appeal. In addition, the FAC formed the view that the DAFM appeared not to consider other plans and projects appropriately in undertaking the AA screening and Determination which would constitute a

serious error. The FAC has therefore concluded that the Assessment to Determine EIA, AA screening and AA Determination should be undertaken again to address these matters.

In relation to the stated grounds of appeal and specifically to the issue of flooding which is raised in the grounds of appeal in all appeal submissions the FAC noted that the application documents submitted included a drainage study of the site and that drainage and flooding were considered by the DAFM in their assessment of the site both in a silvicultural and ecological context. The species mix proposed was considered in the context of the identified site conditions including seasonal flooding. It is noted that the Ecologist response to the appeals that with the planting of native broadleaves considers generally that this will have a beneficial habitat for existing species and biodiversity, and will also negate any flooding issues rather than exacerbating them.

It is not disputed in the DAFM's response that the site and general area is subject to seasonal flooding and photographs submitted by the appellants attest to this. The FAC understands the species proposed to be associated with wet woodland in Ireland that would have a tolerance for seasonal flooding events. Furthermore, the FAC acknowledges that forests have been found to have positive effects on flood attenuation in general. The FAC considers, however, that it is unclear whether the Minister has accepted the drainage survey and whether the Minister considers the measures proposed in the report to be necessary or attached to the licence.

In particular, the FAC noted that in the AA Determination that the Ecologist refers to the drainage survey as having been considered but describes the works as involving site preparation by invert mounding with no associated drainage and there appears to be no other reference or measures in relation to the proposed treatment of drains as described in the drainage survey. While the reference to no associated drainage could reasonably be interpreted as referring to the mounding process only, the FAC considers that it would be reasonable to expect that the AA would address this, particularly given the nature of the effects which are suggested to be likely in the NIS and AA. The grounds of appeal raise concerns regarding the management of drains on the land. The FAC considered that this matter represented a lack of clarity and a possible lacuna or gap in the assessment. In undertaking the AA and issuing a new decision, the FAC considers that the Minister should make it clear whether the measures stated in the Drainage Survey form part of the application or not and that the AA should consider the relevant operational details.

Furthermore, the Natura Impact Statement states that *"There is no flood risk noted (IFORIS/Floodinfo.ie)"*. A number of submissions on the application raised concerns in relation to flood risk and the Appropriate Assessment addresses these submissions. The FAC reviewed Floodinfo.ie and while, based on the CFRAM River Flood Extents – Present Day dataset, a High Probability is not recorded, the lands do appear to fall within an area classified as Low and Medium Probability on this dataset, which relate to 1 in 1,000 and 1 in 100 events. While the FAC does not consider that there is necessarily any consequence to this error, it would have expected the DAFM to seek clarity from the Applicant's Ecologist as to whether they were referring only to High Probability (1 in 10) risks or for the DAFM Ecologist to address this in the AA.

In relation to water quality generally the site is within the WFD sub catchment Shannon [Upper]_SC_040 which is listed as at risk in relation to risk and the status is indicated as moderate. It is also noted that the site is in close proximity to Lough Bofin which has a Lake Waterbody WFD Status 2013-2018 of poor and is listed with Lake and TRaC Invasive Species Pressures. In relation to potential impact on water quality it is noted by the FAC that the proposed project for the afforestation of native broadleaves and bio areas across this site, it is proposed to plant the trees via invert mounding, with no associated drainage, and without the use of herbicides or fertilisers. Measures in relation to drainage are provided for in the AAD which are included in the conditions of the licence which include setbacks from existing drains and there is nothing to conclude that deterioration of water quality might arise that could impede the goal of achieving the objectives of the Water Framework Directive on the face of the record as it stands but without prejudice to the setting aside of the decision and a new decision being made. While the grounds refer to specific scientific research on forests and water quality, this research relates to commercially managed coniferous plantation in specific locations and the effects that can arise for example during and after harvesting operations. The FAC does not consider that this research has any real relevance to the licence decision under appeal which relates to a mixed species native woodland being established in a low impact manner.

In relation to the stated grounds of appeal of a history of previous attempts to get approval for forestry on the site. The FAC noted this but considered the current project on the basis of all documentation submitted. In relation to the issue of existing wildlife being replaced by predator species and the impact on protected species was considered by DAFM in their assessment of the site and the ecological assessment did examine the site for the possibility of protected species on the site and potential impacts of the projects on these species. The grounds suggest that only a cursory assessment has been undertaken but the application includes a detailed Natura Impact Statement that includes an assessment of the habitats present on site by a qualified Ecologist. The application was also processed by a number of professional staff in the DAFM including an Ecologist and Forester. The FAC are satisfied that the DAFM did not err in the general approach adopted on these matters but considers that a number of errors occurred in the making of the decision as described previously.

In relation to the impact on the landscape and on the local community the licence application was referred to Roscommon County Council on the 27/05/ 2020 with a response indicating no objection. Management of the public road network falls to the County Council. While the County Council in this instance requested that certain conditions be attached to the licence these relate explicitly to the extraction and transportation of timber while the proposal is for the afforestation of a mixed species native woodland. The lands are described as having been in agricultural use for the rearing of cattle. The operations associated with the establishment of the woodland would not be significantly different or more intensive than might occur in relation to agriculture and once established there would be very limited management associated with such woodland and would likely result in an improvement in water quality to a limited extent.

It was also noted by the FAC that the project is for native species with a number of bio plots which will provide for increased biodiversity and reduced visual impact and that there is provision made for the retention of existing hedgerows and setbacks from roads and dwellings. The setback from dwellings would be 60 metres which the FAC considers would significantly mitigate effects on local dwellings, having regard to the nature, scale and location, including orientation, of the proposed native woodland establishment.

The submitted grounds refer in a number of instances to public consultation. Part 6 of the Forestry Regulations 2017 addresses consultation in relation to forestry licences. Regulations 10 and 11 requires the publication of a notice by the Minister and the erection of a site notice by the Applicant. The FAC noted that a notice of the application was published on the DAFM website and details were provided on the Forestry Licence Viewer starting on 14th July 2021. The record includes copies and photos of the site notices on either side of the proposal on two public roads and a map showing the location of the site notices. A number of submissions were made on the application and the record shows that the DAFM sought further information on the application. The submissions are recorded as having been considered in the Appropriate Assessment and EIA screening documents. The FAC is not satisfied that an error was made in the making of the decision under the Forestry Regulations 2017 and Forestry Act 2014 in relation to public consultation.

In considering the appeal the FAC had regard to the record of the decision, the submitted grounds of appeal, and submissions received. The FAC is satisfied that a series of errors was made in making the decision. The FAC is, thus, setting aside and remitting the decision to the Minister regarding licence CN89154 in line with Article 14B of the Agricultural Appeals Act 2001, as amended, to undertake a new screening for EIA and Appropriate Assessment Screening and Appropriate Assessment in line with the requirements of the Forestry Regulations 2017 before a new decision is made.

Yours sincerely,

Derek Daly On Behalf of the Forestry Appeals Committee

