



16th January 2023

Subject: Appeals FAC069, 073 and 074/2022 against licence decision CN90277

Dear

I refer to the appeals to the Forestry Appeals Committee (FAC) in relation to the above licence issued by the Minister for Agriculture, Food and 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 the parties to the appeal.

Hearing

Having regard to the particular circumstances of the appeal, the FAC considered that it was not necessary to conduct an oral hearing in order to properly and fairly determine the appeal. A hearing of appeals FAC069, 073 and 074/2022 was held remotely by the FAC on 9th of November 2022. In attendance:

FAC Members:	Mr. John Evans (Deputy Chairperson), Mr. Iain Douglas, & Mr. Vincent Upton
Secretary to the FAC:	Mr. Michael Ryan

Decision

Having regard to the evidence before it, including the record of the decision, the notice of appeal, and submissions received, FAC has decided to set aside and remit the decision of the Minister for Agriculture, Food and the Marine to grant the licence CN90277. The reasons for this decision are set out hereunder.

Background

The licence decision under appeal pertains to an application for afforestation at a site located in Dunavinally, Co. Leitrim in two plots for an area totalling 13.48ha (per licence approval letter). Planting is to be predominantly of Sitka spruce with some additional planting of broadleaved species. The licence also provides for fencing of 1,973m. The site is largely contiguous, with a smaller plot of 1.12ha to the southeast of a larger plot of ca 12.26. The plots are separated from each other by a strip of land, which on review of the file can be observed to be the line of the former Cavan/Leitrim Railway route.

OSI contour mapping available at www.geohive.ie indicates that the site is located on a slight to moderate slope with a small hill in the north of the site. There is existing forestry to the west of the site. EPA mapping available at gis.epa.ie shows the Drumhirk_26 river to flow through the site. This is part of

the Relagh_010 waterbody which has most recently been assigned a status of Good/Not at risk by the EPA. It is part of the 26C_4Cloone [LoughRin_SC_010] Sub catchment. The Groundwater body is IE_SH_G_171 which has most recently been assigned a status of Good/Not at risk by the EPA. The closest hydrologically connected downstream Special Area of Conservation (SAC) is the Lough Forbes Complex SAC (1818) at a hydrological distance of ca. 28.5km which is designated for a number of habitats. Lough Ree SAC (0440) is at hydrological distance of ca. 49km and includes designations for various habitats and Otter. The nearest European site is the Cuileagh-Anierin Uplands SAC (0584) which lies ca. 12km from the project site.

The public record of the processing of the licencing decision, including the licence application documents, is available on the Department of Agriculture, Food and the Marine (DAFM) Forestry Licence Viewer (FLV). Application documents include a Pre-Approval Submission Report, a Fencing Map, BioDiversity Operational Maps, a photo of the Site Notice in situ and, a copy of the Site Notice.

A BioDiversity Operational Map dated the 7th of February 2022 shows details of a watercourse (the river noted above), the location of an existing water crossing, site access routes, site access and site notice, the location of the ruins of a house and shed together with associated setbacks, various hedgerows, locations for additional broadleaf planting, a strip of land that crosses the site separating the plots (which as noted above subsequent reading of the files is shown to be the route of a former railway), and the direction of mound drains and the locations of silt traps. Also shown are existing dwelling houses at ca. 600m and ca. 380m distance. The public road is marked at ca. 370m from the site over a private road. Two utilised building setbacks are indicated relating to the ruin and the sheds. An updated BioDiversity Operational Map is also on file dated the 9th of March 2022, this includes all the details mentioned above, and also notes the presence of an additional watercourse on the southern edge of a segment of the north-western portion of the site.

Submissions and referrals

There are three submissions from the public. The first is dated the 14th of February 2022. It objects to the application on the basis of shadow impacting adjacent farmland. It is further submitted that a small river separates farmland from the proposed site and that there is a risk of fertilizer run off from the forestry. Reference is also made to concerns relating to flora and fauna, forestry cover in Co. Leitrim, potential for negative impact on mental health, and negative impact on local community and culture.

The second submission is also dated 14th of February 2022. It expresses concerns in relation to an application for planning permission that may be impacted by the proposed afforestation, impacts on community and rural area, impacts on agricultural land which may impact on the submitter's income, impact on their children, and impact on the landscape.

The third submission is on file dated the 14th of March 2022. This makes reference to national policy regarding afforestation, and highlights obligations on the part of the licencing authority in relation to EIA, cumulative impact assessment, evaluation by the developer on likely impacts on the environment, and also references obligations under the Habitats and Birds Directives.

There are no referrals on file.

DAFM consideration of the application

The DAFM undertook a screening for Appropriate Assessment. An AA Screening report (AASR), dated the 16th of June 2022 describes the site as:

This project comprises 13.48 hectares of afforestation. The predominant soil type underlining the project area is predominantly podzols 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 grass rush. Pockets of peaty gleys and highly modified peat.

A single European site is noted as being 15Km or less from the project site, the Cuileagh-Anierin Uplands SAC (0584). This is screened out on the basis of:

The position of the project area downstream from the Natura site, and the subsequent lack of any hydrological connection.

The AASR also relies on an in-combination statement. This is on file and refers to various planning systems as having been consulted on the 8th of June 2022 and having focused on the general vicinity of the project area in the River Sub-basin Relagh_010. It also considers the Leitrim County Development Plan 2015-2021. The AASR notes that the project is:

It is within the River Sub-Basin Relagh_010, approximately 28% of which is under forest cover, which is greater than the national average of 11%.

The AASD concludes that

It is concluded that there is no likelihood of the proposed Afforestation project CN90277 itself, i.e. individually, having a significant effect on certain European Site(s) and associated Qualifying Interests/Special Conservation Interests and Conservation Objectives, as listed in the main body of this report. In light of that conclusion, there is no potential for the proposed project to contribute to any significant effect on those same European Site(s), when considered in-combination with other plans and project.

An Assessment for Environmental Impact Assessment (EIA) requirement is included on the public file and refers to a spatial run date of 13th of June 2022. This considers the proposed project across a number of criteria. It gives the "approximate % of forest cover currently in the underlining waterbody (or waterbodies)?" as 28.93. In relation to consideration of cumulative effect and extent of the project, the project is assessed together with other afforestation projects. In the Inspectors comments it is stated: "Site inspected 24/02/2022, 01/06/2022 added due to Iforis limits". The assessment concludes that the application should not be subject to the EIA process.

A document recording the Inspector's certification is on the public file dated the 15th of June 2022. This records the date Inspection Certified as the 13th of June 2022 and records recommendations for conditions relating to the retention of existing trees and hedgerows, adherence to the measures set out

in the Environmental Requirements for Afforestation and the Forestry Standards Manual (as amended by periodic circulars), setbacks (of 10m) from water courses with and additional further planted area of 8 rows of appropriate native broadleaves from the edge of the setback, a setback from the wayleave of 10m and, a setback from the ruined dwelling house (ITM coordinates provided).

An approval letter issued on the 15th of June 2022. This contains standard conditions, together with conditions reflective of the Inspector's Certification that primarily relate to setbacks from watercourses and the route of the former railway and additional broadleaf planting. The document containing the licence includes separate portions addressed to the Applicant and to SWS Forestry Ltd. Both include the paragraph:

The Department welcomes your consideration as a landowner to create a new forest. Taking account of the project as described, any submissions received and the silvicultural and environmental analysis it has undertaken, and once properly established, the project has been deemed by the Department to be in keeping with good forest practice and the protection of the environment. I am happy, therefore, to inform you that the Department has concluded its evaluation of the above application and is herein issuing you with an Afforestation Licence and Technical Approval under the Afforestation Grant and Premium Scheme (with conditions attached), for this application.

The Appeals and Statements of Fact

There are three third party appeal against the decision. The DAFM also provided responses in the form of Statements of Fact (SoF). These are included in the FAC file and the full grounds together with the SoFs have been provided to the parties as appropriate. The appeals are summarised below, together with a summary of the the relevant DAFM responses in *italics*.

FAC 069/2022. It is submitted that:

1. the decision was not made known to the public in a sufficiently timely manner.

DAFM SoF: Advertisement took place in line with standard DAFM processes. Documents were available on the FLV on the date of the decision. The appellant had previously made a submission and was notified on the day of the decision.

2. The Licence cannot be understood by a lay person (with reference to use of amending circulars).

DAFM SoF: The conditions referred to are standard conditions for forestry licences which are intended to be adhered to by the applicant, and these can be understood by a forester.

3. There is uncertainty with regard to the title held on part of the site (Plot 2) as it is not registered with the Land registry, which includes the route of an old railway.

DAFM SoF: This is an issue for the Land Registry. Proof of ownership are provided at Form 2 stage in the application process by the applicant.

4. There are application errors with respect to the recording of hedgerows and townland boundaries which may represent a breach of Sections 5(2)(vi) & (vii) of the Forestry Regulations (2017)

DAFM SoF: Reference is made to the regulations, and it submitted that these state that the map is to be acceptable to the minister, and that this was the case in this instance.

5. the Western third of the site is on peat soil/peat subsoil.

DAFM SoF: The site was field assessed and observed to be of peaty soils highly improved and in active agricultural, and that soil maps indicative only.

6. the absence of identification of location for woody weed removal.

DAFM SoF: It is submitted that this is a standard operation included in the conditions for afforestation sites and agriculture in general, and that the figures provided are indicative only.

7. the application, together with existing afforestation of 3 years or less, is 46.99ha – which is close the threshold of 50ha for EIA. The appellant also raises concerns with respect to the accuracy of the percentages provided.

DAFM SoF: It is submitted that standard EIA procedures were adhered to, including the calculation of values provided.

8. the presence of the route of the former Cavan to Leitrim Railway.

DAFM SoF: This has been catered for in licence conditions through the inclusion of a setback.

9. Licence conditions not consistent with reasons, with respect to record of location of existing trees, and appropriateness of setbacks from hedgerows.

DAFM SoF: It is submitted that there would be no benefit to aggregating data as suggested, and that stipulating adherence to measures in the Environmental requirements for Afforestation and the Forestry Standards Manual is sufficient.

10. There is inadequate adherence to Art 12 of the Habitats Directive, with respect to the EIA screening reference to habitats and not species.

DAFM SoF: There was a site inspection, which yielded no observation of veteran trees or roofed derelict buildings with respect to bats.

FAC 073/2022. It is submitted that:

11. access to the project site is via a right of way over lands owned by the appellant:

DAFM SoF: Access is via a right of way from the public road which is clearly indicated on the bio maps and was confirmed via field inspection. Adequate access has been assessed as per section 5.3.2. of the FSM.

12. the site forms part of the Cavan/Leitrim greenway proposed route.

DAFM SoF: Historical railway was noted during desk and field assessment and a licence condition attached for setback to accommodate this.

FAC 074/2022. It is submitted that:

13. The applicant is not local to the project area.

DAFM SoF: It is submitted that the origin of applicant has no bearing

14. impact on proposed greenway following route of old railway

DAFM SoF: Historical railway was noted during desk and field assessment and a licence condition attached for setback to accommodate this.

15. right of way in private ownership.

DAFM SoF: Access via a right of way from the public road which is clearly indicated on the bio maps and was confirmed via field inspection. Adequate access as per section 5.3.2. of the FSM.

Considerations of FAC

The FAC considered in the first instance the matter of the date of the publication of the decision. An appellant contends that the decision was not made known to the public until the 17th of June following the decision being made on the 15th of June, and that as a consequence the appellant was unable to construct an a fully considered appeal. The FAC noted that the application documents had been made available on the FLV for a number of months before the decision was made and that the application was subject to public consultation. The FAC also had regard for the submission by the DAFM that the appellant was notified on the date of the decision and that the documents were published on the FLV on that date also. The FAC does not consider that the fact that the licence was published on the DAFM website two days after its issue could be considered a significant error particularly in the context of the application documentation having been available for a number of months prior to the decision being made, that the application was subject to public consultation, and that the appellant was notified of the decision on the date of its being made.

An appellant submits that the conditions of the licence are not readily understood by the lay person. The FAC had regard for the submission by the DAFM in its SoF that the conditions can be understood by a forester. The FAC noted that the Forestry Act of 2014 makes several references to the inclusion of conditions in a licence. Section 7 of the Act provides for the Minister to grant a licence, to revoke a licence for reasons that may include non-compliance with any conditions, that where the applicant is not the owner that the conditions are binding on the owner. The conditions that are referred to relate to standards of good practice that are published and available on the DAFM website. On this basis the FAC is satisfied that conditions attaching to a licence are for the purposes of ensuring compliance on the part of an applicant or owner of lands on which a licence is granted, and that a basic understanding of forestry operations, including those relevant standards and circulars that may be in effect, can reasonably be assumed. The FAC is not satisfied that an error was made in the granting of the licence in relation to these grounds of appeal.

A number of grounds of appeal relate to the use and ownership of a right of way to access the project site. In one instance, an appellant asserts ownership over the lands through which the right of way passes, and the possibility of such ownership is also stated by a second appellant. In neither case is any evidence of ownership provided. A third appellant asserts that there is uncertainty over ownership of a portion of the project site itself as it is not registered with the Land Registry. The DAFM in their SoFs state that proof of ownership is provided at Form 2 stage in the application process by the applicant, that access via a right of way is indicated on the application maps, and that the suitability of the route was confirmed at site inspection in conformance with section 5.3.2. of the Forestry Standards Manual. The proof of ownership referred to by the DAFM at Form 2 stage is not available in the public file and was not provided to the FAC. Section 5.3.2 of the Forestry Standards Manual relates to adequacy of access. Section 5.3.1 of the manual specifies that:

The applicant must own or have written permission, certified by a solicitor, to use or have right-of-way on the access route to the plantation. Where the owner's site is land-locked, access to a public road should be sought and written permission to use an access road should be provided to the Forest Service. Access and legal rights-of-way should be shown on the Biodiversity Map at Form 1 stage.

None of those appellants disputing the ownership of the right of way or the project lands have provided the FAC with evidence to support their assertion, nor have the DAFM or the applicant provided the FAC with evidence that the requirements of section 5.3.1 of the Forestry Standards Manual in relation to permissions for the use of a right of way have been satisfied. The FAC is not in a position to adjudicate on legal entitlements of ownership or use of rights of way, and considers these matters for the civil courts, but notes that a granting of a licence does not confer any entitlements to such rights. On this basis the FAC is not satisfied that an error was made in the granting of the licence in relation to these grounds of appeal. In so concluding, the FAC note that for reasons outlined elsewhere in this letter, the decision of the Minister to grant a licence is being set aside and remitted for the Minister to make a new decision, and suggest that greater clarity in relation to the use of the right of way be ascertained and recorded in any new decision to be made by the Minister.

In relation to the ground of appeal that there are application errors with respect to the recording of hedgerows and townland boundaries, and that these may represent a breach of Sections 5(2)(vi) & (vii) of the Forestry Regulations (2017), the FAC had regard to the SoF provided by the DAFM which addressed this ground. This stated that the bio-map provided by the applicant was acceptable to the Minister, and that the features referenced in the ground of appeal were clearly shown in the ortho photo and via additional markings, which were confirmed via field inspection. The FAC is not satisfied that an error was made in the granting of the licence in relation to this ground of appeal.

The grounds of appeal include concerns that the site to be planted is on peat soil/peat subsoil. The site is described in the AA Screening Report of comprising grass rush, with pickets of peaty gleys and highly modified peat. A number of grounds of appeal refer to the lands as in agricultural use. The project site was subject to a site assessment, and the SoF provided by DAFM states that on inspection the lands were *observed to be of peaty soils highly improved and in active agricultural use*. The SoF also states that

soil maps are only indicative of ground conditions. The FAC is not satisfied that an error was made in the granting of the licence in relation to this ground of appeal.

The grounds contend that woody weed removal has been proposed while scrub has not been identified on the maps submitted and that this represents an error. Woody weeds and scrub are common terms and refer to different forms of vegetation and there is no contradiction in this matter. The application states that existing trees and hedgerows will be retained. The FAC is not satisfied that an error occurred in this regard.

All the appellants raise the presence of the former route of the Leitrim-Cavan railway on the site, and the potential impact afforestation may have on the future use of the historic route. This route appears to have no specific protection and the grounds relate to the future potential use. The Application BioDiversity Operational Map does not explicitly note the route, however the project site is divided into two plots which can clearly be seen to be physically separated from each other on the line of the railway route. The DAFM in their SoFs state that the presence of the route was noted during site inspection, and that a licence condition has been included to accommodate the route. A condition is to be found in the licence stipulating that a setback at a minimum width of 10m accompanied by 5 rows of mixed broadleaves of native species on the boundary of plots 1 and 2, in the interests of visual amenity and to safeguard features of special architectural or historic interest on the site. On this basis, the FAC is not satisfied that an error was made in the granting of the licence in relation to these grounds of appeal.

An appellant objects to the granting of the licence to an applicant who it is submitted does not reside in the locality. The FAC considers that any requirements relating to residence to be matters of policy and are outside the remit of the FAC. The FAC notes that two parties are referenced in the approval letter as being issued with *"an Afforestation Licence and Technical Approval under the Afforestation Grant and Premium Scheme (with conditions attached), for this application"*. The FAC is satisfied that the two parties in question are the applicant and their forester and consider this a minor error. In so concluding, the FAC note that for reasons outlined elsewhere in this letter, the decision of the Minister to grant a licence is being set aside and remitted for the Minister to make a new decision and suggest that greater precision be utilised in any new decision to be made by the Minister.

An appellant submits in a ground of appeal that the licence conditions regarding the recording and location of existing trees in the context of preservation of the landscape, and the appropriateness of setbacks from hedgerows, are not consistent with reasons the reasons given. In a SoF, the DAFM submit that the licence is clear in the requirement to that all existing trees are to be retained and submits that there is no need or benefit to be gained from aggregating data as suggested by the appellant. The DAFM further submit that, in relation to the maintenance of the ecological integrity and hedgerow setbacks that a condition of the licence is that all operations adhere to the measures set out in the Environmental Requirements for Afforestation and the Forestry Standards Manual. The FAC considers that these are appropriate standards, and is not satisfied that an error was made in the granting of the licence in relation to this ground of appeal.

An appellant submits two grounds of appeal in relation to the Screening for EIA Requirement. Firstly, it is submitted that the application, together with existing afforestation of 3 years or less, is 46.99ha – which is close the threshold of 50ha for EIA. The appellant also raises concerns with respect to the accuracy of the percentages provided, and in light of these factors state that the Inspector should have provided a justification for the decision. Secondly it is submitted that there is inadequate adherence to Art 12 of the Habitats Directive, with respect to the EIA screening reference to habitats and not species.

In the context of these grounds the FAC considered the record of the decision and the Assessment for EIA Requirement document which refers to a spatial run date of 13th of June 2022. Annex II of the EU EIA Directive (2011/92/EU as amended by 2014/52/EU) identifies classes of development for which Member States may set thresholds or criteria for requiring environmental impact assessment. This includes “initial afforestation and deforestation for the purpose of conversion to another type of land use” and road construction. The Forestry Regulations 2017, SI 191 of 2017, require that afforestation of 50 hectares or more be subject to an Environmental Impact Assessment (EIA). Afforestation of less than the threshold of 50 hectares but which the Minister considers likely to have significant effects on the environment, taking into account the criteria set out in Schedule 3, must also be subject to EIA.

The FAC observed that the record available to it includes several documents that describe the likely effects of the proposal on the environment including the application and maps and screening for Appropriate Assessment. The FAC understands that the reasons for the decision not to proceed to EIA might be read across different documents on the record. The FAC understands that the DAFM employs a Geographic Information System and multiple spatial datasets as part of its acceptance, processing and assessment of an application as described in the Forestry Standards Manual (DAFM, 2015) and Forests & Water Achieving Objectives under Ireland’s River Basin Management Plan 2018-2021 (DAFM, 2018).

When making an application for a forest licence, an applicant must provide the information in Schedule 1 of the Forestry Regulations 2017. This includes a physical description of the whole project and location; a description of the aspects of the environment likely to be significantly affected and a description of any likely significant effects on the environment from the expected residues, emissions, and waste where relevant and the use of natural resources, to the extent of the information available on such effects. This information must take account of the criteria identified in Schedule 3 of the Forestry Regulations 2017.

The application includes details of the proposed operations and a series of maps including detailed Biomaps showing environmental features on and surrounding the lands. In addition to the environmental features on the maps provided, the application includes a range of other environmental considerations. The application also recorded a number of responses to questions that relate to possible effects on the environment some of which automatically require the submission of an additional report and further information on the nature of effects and measures to mitigate such effects. In this instance no additional reports were submitted as part of the original application.

Article 4(5) (b) of the EIA Directive states, in relation to a sub-threshold Determination that,

where it is decided that an environmental impact assessment is not required, state the main reasons for not requiring such assessment with reference to the relevant criteria listed in Annex III, and, where proposed by the developer, state any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

Regulation 21 of the 2017 Forestry Regulations requires the Minister to provide reasons for their decisions in relation to applications for licences. The FAC understands that these reasons may be provided in the record of the decision, including the maps and Appropriate Assessment, and in particular the Assessment for EIA Requirement determination and licence. Furthermore, the FAC understands that such reasons and information should allow members of the public to check whether an adequate screening for EIA was carried out, and to enable interested parties to decide whether to appeal against the decision.

In this instance, a number of responses are recorded in the Assessment for EIA Requirement document including the area of the project and other afforestation of 3 years or less within a 500m radius, which is given as 46.99 (ha) which is sub threshold. However, while the FAC considers that 50 hectares is the threshold provided for single projects, sub-threshold projects must be screened having regard to cumulation with other plans and projects and significant effects must also be considered in this context. While the Minister recorded a separate characterisation of plans and projects in the area in the Form of an In-combination report as part of the AA Screening Report, this is not explicitly cross-referenced in the Determination for EIA Requirement, which itself only refers to forestry projects. While the FAC would consider it reasonable that the record as a whole should be considered and that the reasons for not considering that the proposal is likely to have a significant effect on the environment might be found in separate documents, it would be clearer if an explicit reference to the characterisation of existing and approved projects was included in the Determination.

In responding to the appeal, Officers of the Minister provided considerations in relation to protected species, such as Bats and the absence of Habitats and Birds Directives Annex Species and Habitats, that are not recorded in the Determination that was made. The FAC considers that these reasons are relevant and should have been recorded. The FAC noted that while the Assessment for EIA Requirement document which refers to a spatial run date of 13th of June 2022 does not include specific fields for the recording of these aspects, it does include a field in which the Inspector may record additional comments, and that on this occasion this was not utilised.

As noted, the Minister is required to have regard to the relevant criteria identified in Schedule 3 of the Regulations. While the FAC considers that the matters addressed on the record, both in the application and the assessment of the application by the DAFM, reflect a consideration of the relevant criteria in Schedule 3, the FAC considers that it would be clearer if the Minister employed the exact language of the relevant criteria as headings or another form of identification in the application and assessment process. Furthermore, while it can be reasonably interpreted that in concluding that the proposal should

not be subject to the EIA process the Minister considers that the proposal is not likely to have significant effects on the environment taking into account the criteria set out in Schedule 3, the FAC considers that it would be clearer if this language was employed.

For these reasons the FAC is of the view that the Minister should undertake a new determination as to the likely significant effects on the environment and whether an EIA is required in keeping with the requirements of the Forestry Regulations 2017 and the EU EIA Directive.

In reviewing the Appropriate Assessment screening, the FAC noted that the consideration of other plans and projects in combination with the proposal includes the following reasoning,

It is concluded that there is no likelihood of the proposed Afforestation project CN90277 itself, i.e. individually, having a significant effect on certain European Site(s) and associated Qualifying Interests / Special Conservation Interests and Conservation Objectives, as listed in the main body of this report. In light of that conclusion, there is no potential for the proposed project to contribute to any significant effect on those same European Site(s), when considered in-combination with other plans and project.

The FAC would understand that the consideration of other plans and projects should take place as part of the process to ascertain whether there are likely significant effects arising from the project itself and in-combination with other plans and projects, having regard to the conservation objectives of the European site concerned, and in the Appropriate Assessment of the impact of such effects on the integrity of the European site. As stated on the record, it appears that the incorrect test was employed at the screening stage in that any potential significant effects on a European site from the proposal itself or in-combination with other plans and projects should be considered in deciding whether to proceed to Appropriate Assessment. The Minister in making a new decision should undertake a new screening for Appropriate Assessment to ensure that the correct test is being employed.

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 serious and significant errors was made in the making of the decision in this case. The FAC is, thus, setting aside and remitting the decision of the Minister regarding licence CN90277 in accordance with Section 14B of the Agriculture Appeals Act 2001, as amended, to undertake new screenings for Appropriate Assessment and Environmental Impact Assessment, before a new decision is made. In so doing the FAC suggests that greater clarity in relation to the use of the right of way be ascertained and recorded in any new decision to be made by the Minister, and that any ambiguity as to whom the licence is granted in the letter of decision be resolved.

Yours sincerely,

John Evans On Behalf of the Forestry Appeals Committee

