



22nd April 2025.

**Subject:** Appeal Reference: FAC 102/2024 regarding CN90348

Dear I

I refer to the appeal to the Forestry Appeals Committee (FAC) in relation to the above licence granted by the Minister for Agriculture, Food and Marine (The Minister). The FAC established in accordance with Section 14A(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.

**DECISION.**

Having regard to the evidence before it, including the Department of Agriculture, Food and the Marine (DAFM) record of the decision, the Statement of Fact (SoF) provided by the DAFM, all materials on file, the notice and grounds of appeal and post-appeal submissions and in particular the following considerations, the FAC has decided to allow the appeal and set aside the decision of the Minister regarding licence CN90348.

**THE LICENCE.**

Licence CN90348 is an application for a forest road of 475 metres in length located in the townlands of Formoyle Eighteradh (east) & Formoyle Oughterahgh (east), Co. Clare.

The application for the licence was submitted to the DAFM on the 16<sup>th</sup> of February 2022. A decision approving the licence was issued on the 6<sup>th</sup> of September 2024 with conditions including: compliance with Technical Standard for the Design of Forest Entrances from Public Roads, compliance with the COFORD Forest Road Manual, compliance with the Forestry Standards Manual, compliance with the DAFM Guidelines on Forestry and Archaeology, Forestry and Water Quality, Forest Harvesting and the Environment, Forestry and Landscape, compliance with mitigations in a DAFM ecology report, and an "advisory" condition advising consultation with Clare County Council regarding drainage and hedge removal/setback along proposed sightlines at the junction of the public road.

**FORESTRY APPEALS COMMITTEE.**

A hearing was held remotely at a sitting of the FAC held on the 11<sup>th</sup> of March 2025 which considered the appeal and the processing of the licence as it relates to the decision to issue the licence on the 6<sup>th</sup> of September 2024.

The FAC members present were: Mr. Seamus Neely (Chairperson), Mr. Luke Sweetman and Mr. Iain Douglas.

Secretary to the FAC: Ms. Aedín Doran.

## **BACKGROUND.**

The proposal consists of a forest road 475 metres in length comprising of two distinct sections as shown on the FLV as CN90348(1) (an existing private agricultural laneway circa 75m in length) and CN90348(1) (an existing forest track circa 400m in length). The laneway exits onto a public road (Local Primary Road L-1092-0) some 436m south-west of Plot 1. The application is not made under the Single Consent System as the proposal does not require a new entrance on to a public road or the material widening of an existing entrance.

The application states that no new entrance is being created onto the public road and that the construction will be by excavation of the existing laneway (which the FAC takes to mean both the existing forest track and existing agricultural laneway) for the formation of the new forest road. The application indicates that a Right of Way is a constraint to ownership. The soil type is stated to be a well-drained mineral soil (sandy clay). The road gradient will be between 1% and 10%.

The site lies in the Water Framework Directive (WFD) Mal Bay Catchment 28 and the Inagh[Ennistymon]\_SC\_010 Sub-catchment where forestry is not identified as a pressure. The site is located in the Inagh(Ennistymon)\_020 Sub-Basin. The closest River Waterbody to the site is the Inagh (Ennistymon)\_020 circa 150m from the eastern boundary of forest road. The River Waterbody was of Good Status in the period 2016-2021 and is Not At Risk in the 3<sup>rd</sup> cycle. The underlying Groundwater body is Miltown Malbay IE\_SH\_G\_167 which was of Good Status in the period 2016-2021 and is Not at Risk in the 3<sup>rd</sup> cycle.

The application documents before the FAC included an Inet Pre Approval Submission Report, a Forest Management Plan & maps, a Harvesting Road Map, a Biodiversity Map, a Photograph of the Site Notice in Situ, the Site Notice, Forest Road Required Information, and Road Specifications.

The licence application was referred to Clare County Council on 03/05/2022 whose Planning Section replied on 30/05/2022 recommending that the licence be refused for the following reasons: (1). A lack of consultation with Clare County Council as Roads Authority for the area; (2). Non-compliance with the Technical Standard for the Design of Forest Entrances from Public Roads regarding (i) a lack of information regarding sightlines for forest road access to public roads, (ii) a lack of information on proposed relaxation or departure from the Technical Standard, (iii) a lack of information relating to the forest road as it approaches the entrance from the public road, (iv) a lack of information relating to the forest road entrance with the public road; (3) a lack of information relating to the forest road regarding the number of entrances within 100m of the proposed forest road, the average gradient of the forest road approaching the public road, the gradient of the forest road for the first 40 m from the public road, the necessity that the forest road will require a new entrance onto the public road. The county council requested that the licence should not be granted without the required mandatory consultation between the local authority and the applicant.

On the DAFM file there is an Inspector's Certification Report, an Inspector's Assessment to Determine EIA Requirement and an In-combination Statement all dated the 23/08/2024, an Inspector's Appropriate Assessment Screening Report (AASR) and an Ecology Report both dated 02/11/2023, and a Site Details Report dated 09/06/2024.

The Inspector's Certification Report recommends approval of the licence subject to conditions, no conditions are specified in the report.

The Inspector's Assessment to Determine EIA Requirement concluded that the proposed forest road is not required to undergo EIA.

The Inspector's Appropriate Assessment Screening Report (AASR) identified sixteen Natura 2000 sites within 15 km of the proposed forest road, Ballycullinan Lake SAC IE0000016, Pouladatig Cave SAC IE0000037, Toonagh Estate SAC IE0002247, Corofin Wetlands SPA IE0004220, East Burren Complex SAC IE0001926, Ballycullinan, Old Domestic Building SAC IE0002246, Knockanira House SAC IE0002318, Newhall and Edenvale Complex SAC IE0002091, Ballyallia Lake SAC IE0000014, Ballyallia Lough SPA IE0004041, Lower River Shannon SAC IE0002165, Inagh River Estuary SAC IE0000036, Old Farm Buildings, Ballymacrogan SAC IE0002245, Dromore Woods and Loughs SAC IE0000032, River Shannon and River Fergus Estuaries SPA IE0004077, Moneen Mountain SAC IE0000054. All sites were screened out for the reason that there was a *"lack of a sufficient impact pathway, terrestrially, hydrologically or otherwise"*. The screening concluded that Appropriate Assessment of the project is not required.

It is stated in the District Inspector's Statement of Fact (SoF) that the licence application was subject to desk and field assessment.

The file records that there was one third-party submission on the licence from the submitter's solicitor dated 25/05/2022. The issues raised in the submission related to ownership of part of the proposed forest road, stock proof fencing in the event of hedgerow removal and that the improvement works required to accommodate timber lorries at the submitter's farmyard had not been agreed. The solicitor's submission refers to a further submission by the submitter's engineer which does not appear on the record.

#### **Request for Supporting Documentation**

A Request for Supporting Documentation was issued by the DAFM on 16/08/2022 requiring the applicant to resolve issues of the ownership and stock-proof fencing. A reminder letter stated to be dated 04/01/2023 was issued by DAFM and the applicant indicated by e-mail on 21/07/2023 that the two issues had been resolved and requested that the application proceed.

The licence issued on the 6<sup>th</sup> of September 2024.

#### **THE APPEAL.**

There is one third-party appeal against the decision to approve this licence application. The grounds of appeal are summarised as follows:

##### ***Procedure.***

- The appellant's submission on the licence was not placed on the file and not taken into consideration when the decision on the licence was made.

##### ***Ownership***

- The applicant does not have the appellant's consent to make the application or to travel over those sections of proposed road which are not in his ownership.
- The appellant is the registered owner of CN90384 Plot 1 as shown on the FLV and has not given his consent to use the existing road.

##### ***The Proposed Forest Road & (Annex 2 Forest Road Specification)***

- The proposed forest road is not suitable for the carrying of heavy machinery, heavy trucks or heavy equipment.
- The proposed forest road is not a new road, the route of the proposed road is in fact an existing road and that there is no reference to the upgrading an existing road.
- The existing road through the appellant's land only has a 3m carriageway with limited camber
- The roadway marked A-B on the Harvesting Road Map is not well drained, is formed on heavy clay not sandy clay and the pavement is 150mm of local shale and not 330mm of Clause 804 crushed stone as stated.
- The junction of the proposed forest road and the public road requires improvement works.

***Applicant's Pre-Approval Submission Report.***

- Question 2. The ownership details are incorrect, and the road is existing rather than proposed.
- Question 3. The applicant does not have the consent of the owner of the land and no landowner permission is included with the application.
- Questions 6 & 6(a). The response on consultation with the Local Authority is left blank and in the opinion of the appellant's engineer, the connection point where the private road joins the public road is not suitable for access and egress of heavy trucks without significant upgrading.
- In the Section on the Single Consent System the appellant's engineer reiterates that the entrance from public road requires widening.

The appeal concludes with a request that the Minister refuse the application.

***Post-Appeal Submissions.***

Post-appeal submissions were made by the appellant and DAFM. All Post-appeal submissions were circulated to all parties. In the interest of clarity and for the avoidance of doubt, in considering the post-appeal submissions the FAC had regard only to those matters it deemed to be an elaboration or clarification of points raised by the parties in the grounds of appeal proper and responses to those grounds.

***CONSIDERATION BY THE FAC.***

At its sitting on the 11<sup>th</sup> of March 2025, the FAC had before it the full DAFM record of the decision as made available on the FLV, the notice, the grounds of appeal, the SoFs provided by the DAFM, post-appeal submissions and all materials on file. Having reviewed all the documentation and submissions, including those of the appellant, the FAC considered that there was sufficient information to enable it to assess and determine the appeal without recourse to an oral hearing.

***DAFM STATEMENT OF FACT.***

The SoF provided by the DAFM for the appeal, dated the 29/11/2024 confirms the administrative details of the licence application, and states that the decision was issued in accordance with DAFM procedures and SI 191/2017 and the 2014 Forestry Act.

There is also a statement from the District Inspector (DI) dated the 12/11/2024 confirming that the AA process was carried out using the procedures in place at the time of approval of the licence, that the standard operating procedures were applied, and containing responses to the grounds of appeal.

***GROUND'S OF APPEAL.******Procedure.***

This ground of appeal contends that the appellant's submission on the licence was not placed on the file and not taken into consideration when the decision on the licence was made. The FAC noted the DAFM's post-appeal submission dated 21/01/2025 regarding a second submission dated 25/05/2022 from the appellant's engineer and the explanation of why it did not appear on the FLV. The FAC noted that DAFM in its SoF acknowledges that the appellant's submission dated 25/05/2022 was not made public on the FLV until 25/09/2025 and in this regard the DAFM failed to comply with its own stated procedures regarding the availability of submissions on the FLV (Public Consultation on Licence Applications for Felling, Afforestation, Forest Roads and Aerial Fertilisation published on the DAFM website). The FAC further noted that the appellant's submission of 25/05/2022 was in fact given due consideration by the DAFM as evidenced by the issues raised by the DAFM in its Request for Supporting Documentation.

The FAC considers the failure of the DAFM to adhere to its own procedures regarding the availability of submissions on the FLV is an error in the processing of the application, however since the

submission was received within the permitted timeframe and was demonstrably considered by the DAFM before making its decision, the FAC does not consider the error to be serious or significant. The FAC noted that the DAFM SoF records the date of submission of the licence application as 16/02/2022 being the same date the application was made available to the public on the FLV. The DAFM SoF records the date of the site notice required under Article11(1) of the Forestry Regulations 2017 (as amended) as 23/02/2022, which post-dates the submission of the licence application. The FAC also noted that the FLV contains a photograph of the site notice, published on the 22/03/2022, which states that the site notice was erected on the 23/02/2022. Article11(1) of the Forestry Regulations 2017 (as amended) states:

*Where an application involves—*

*(a) afforestation, or*

*(b) forest road works*

*the applicant shall, before the making of the application, erect a notice in a form determined by the Minister, at the entrance from the public road to the land to which the application relates or, where no entrance exists, at the point where it is proposed to create an entrance, so as to be easily visible and legible by persons using the public road, and shall not be obscured or concealed at any time.*

On examining the record in the case of CN 90348 the FAC is satisfied that the statutory requirements set out in Article11(1) of the Forestry Regulations 2017 (as amended) have not been met and that failure to comply with the regulations represents a serious error in the licence application.

### **Ownership**

This ground of appeal contends that the appellant is the registered owner of CN90348(1) as shown on the FLV and has not given his consent to the applicant to make the application or to travel over those sections of proposed road which are in the appellant's ownership. The applicant was required to resolve the issue of ownership and consent as evidenced by the DAFM Request for Supporting Documentation. The FAC noted that the applicant did not dispute the question of ownership or consent to use the road (the applicant's Pre-Approval Submission Report indicates a Right of Way as a constraint to ownership and comments at Question 8 that the first section of road will be on a RoW and that the majority of road is within forest property). However, the only correspondence from the applicant that the issue of ownership had been resolved is an e-mail of 21/07/2024 from the applicant's forester stating that *".....(name redacted) is now satisfied that our road application can proceed. A portion of the forest road crosses his land which he is happy for us to proceed with and we have discussed the issues around livestock movement and this is no longer a concern."* There is no other documentary evidence on the FLV that such was in fact the case. The FAC further noted that the DI in addressing the issue of ownership in his SoF stated that a response to the Request for Supporting Documentation was received declaring ownership. (The FAC noted that in the post-appeal submission from DAFM dated 21/01/2025, it is indicated in response to Point A regarding ownership that *"The applicant's submission, which included folio numbers, constitutes partial proof of ownership."* but that none of the applicant's documents on the FLV show folio numbers).

The FAC does not consider the applicant's response of 21/07/2024 to be a declaration of ownership. The DI in his SoF and the post-appeal submission from DAFM dated 21/01/2025 both refer to Section 3.2 of the Forestry Standards Manual 2024, that ownership will be confirmed at Form 2 Stage, however the FAC notes that Section 3.2 of the Forestry Standards Manual also makes provision for DAFM to seek proof of ownership at Form 1 stage, before an application can be assessed. The FAC is satisfied that, in view of the appellant's submission of 25/05/2022 on the licence and the applicant's response of 21/07/2024 on file, the failure to require documentary proof of ownership or consent at Form 1 stage, before the application was assessed represents a serious error in the processing of this licence.

### ***The Proposed Forest Road & (Annex 2 Forest Road Specification)***

This ground of appeal contends that the proposed forest road is partly an existing farm roadway and partly an existing forest track and that the project is the upgrading of an existing road rather than a new forest road, that the existing roadway is not suitable for the carrying of heavy machinery, heavy trucks or heavy equipment due to its limited carriageway width, pavement and poor drainage over part of its length (outside the boundary of CN90348). The FAC noted that the licence application was referred to the Local Authority which recommended refusal based on a lack of prior consultation by the applicant and a lack of information relating to the Technical Standard for the Design of Forest Entrances from Public Roads 2019. The FAC also noted that the proposed forest road does not exit onto a public road but onto a private roadway and that the licence application was not made under the Single Consent System which requires mandatory consultation with the Local Authority by the applicant. The FAC noted in the DI's SoF it is stated that the private roadway was inspected by the DI who was satisfied that the private roadway was suitable for use as a forest road. The FAC noted the DI's response to this ground of appeal at Section 5 of his SoF and the DAFM response to Point E in its post-appeal submission and is not satisfied that an error was made in relation to these grounds of appeal.

### ***The Licence.***

The FAC noted that the licence approval included an "Advisory Condition" that:

*"Consultation should be sought with the local authority prior to commencement of works with regards to entrance drainage and hedge removal/setback along proposed sightlines. Reason: In the interests of compliance with Technical Standard."*

The FAC understands that conditions contained in a licence must be definitive in nature and cannot be "advisory" and that the Forestry Act 2014 makes no provision for "advisory" conditions. The imposition of an "Advisory Condition" and the wording of that condition creates ambiguity and a lack of clarity as to what is required of the applicant which the FAC considers to be a serious error in the processing of the application.

### ***Applicant's Pre-Approval Submission Report.***

This ground of appeal contends that the applicant's Pre-Approval Submission Report contains errors and omissions; in Question 2 the ownership details are incorrect; in Question 3 the applicant does not have the consent of the owner of the land and no landowner permission is included with the application; in Question 6 the response on consultation with the Local Authority is left blank. This ground of appeal also contains the opinion of the appellant's engineer that the connection point where the private road joins the public road is not suitable for access and egress of heavy trucks without significant upgrading. The FAC noted the DI's response to this ground of appeal at Section 4 of his SoF wherein it states that the pre submission report is completed by the registered forester and the answers submitted by the registered forester were taken in good faith regarding the response to the further information request that the applicant had satisfied the query in relation to the ownership of parts of the proposed route and that upon inspection it was the opinion of the inspector that the entrance did not require material widening. The licence decision in this case is being set aside for reasons set out elsewhere in this letter.

### ***APPLICATION DOCUMENTATION.***

#### ***Inspector's Certification Report***

In reviewing the documentation on file, the FAC noted that in the Inspector's Certification Report of 23/08/2024 under the section *Submission Details* the "Inspector Comments" is left blank. The FAC considers it reasonable that when a submission is received the DAFM should comment on that submission in order to demonstrate that it has had regard to any written submission or observation made under the Forestry Regulations 2017 (as amended).

**DAFM In-combination Reports.**

In reviewing the documentation on file, the FAC noted that in the AASRD In-combination assessment (Appropriate Assessment Screening Report Appendix A: In-combination report for Forest Road project CN90348) dated 23/08/2024 it is stated that *“There is no likelihood of residual effects that might arise from this project, which are not significant in themselves, creating a significant effect in-combination with other plans and projects.”*

The FAC noted the DAFM’s use of the word *“residual”* in its conclusion. The FAC considered that, the term *‘residual effects’* is more commonly employed in relation to the consideration of what effects remain after mitigation measures have been assessed as part of the AA. For example, the Department of the Environment, Heritage and Local Government has published a guidance document on Appropriate Assessment entitled Appropriate Assessment of Plans and Projects in Ireland Guidance for Planning Authorities (DEHLG, 2009). This document states on page 40,

*‘If the competent authority considers that residual adverse effects remain, then the plan or project may not proceed without continuing to stage 3 of the AA process: Alternative Solutions’.*

The FAC considers that it is not appropriate to consider potential *“residual”* effects of a proposed plan or project at the AA Screening stage. The FAC consider that this wording is ambiguous as it is not clear whether residual effects are being considered cumulatively in-combination with other plans and projects, or individually in-combination with other plans and projects, and that as a result it is unclear if the proper test has been applied.

The FAC considers that the lack of clarity in the wording of the In-combination conclusion is a serious error in the processing of the AASRD of the licence application.

**CONCLUSION.**

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal, the SoFs submitted by the DAFM, and the post-appeal submissions from the parties. In accordance with Article 14B of the Agricultural Appeals Act 2001 (as amended) the FAC is satisfied that a serious error was made in the making of the licence application itself and that a series of significant or serious errors was made in the processing of the application in relation to licence CN90348. The FAC is thus allowing the appeal and setting aside the decision of the Minister regarding licence CN90348.

Yours sincerely,

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Iain Douglas,  
On Behalf of the Forestry Appeals Committee

