



6th June 2025.

Subject: Appeal References: FAC 042/2024 & FAC 048/2024 regarding CN88532

Dear I

I refer to the appeals 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 CN88532.

THE LICENCE.

Licence CN88532 is an application for the afforestation of 8.09 Ha. with Sitka spruce & Additional Broadleaved species, reduced to 4.19 Ha. as licenced, located in the townland of Killernan, Co. Clare.

The application for the licence was submitted to the DAFM on the 14th of June 2022. A decision approving the licence was issued on the 2nd of May 2024 with conditions including compliance with the Forestry Standards Manual & Environmental Requirements for Afforestation, retention of existing trees and hedgerows on site, adherence to the mitigation measures in the DAFM Appropriate Assessment Determination, adherence to the conditions of the DAFM Archaeological Report, a setback of 60m from the house on west side of the site.

FORESTRY APPEALS COMMITTEE.

A hearing was held remotely at a sitting of the FAC held on the 29th of April 2025 which considered the appeal and the processing of the licence as it relates to the decision to issue the licence on the 2nd of May 2024.

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

Secretary to the FAC: Ms. Aedín Doran.

BACKGROUND.

The proposal as submitted originally consisted of the afforestation of 8.09 Ha. of Sitka spruce and broadleaved species in four plots, during the application process the area of afforestation was reduced to 4.19 Ha. in three plots as a precaution to avoid the possibility of flooding in part of the site and to avoid an area of Wetland Grassland.

The soil type is stated to be Surface water Gleys/Ground water Gleys (10%), Peaty Gleys (87%) and Mineral Alluvium (3%) with the average slope across the site being moderate, ranging between 0% and 8%.

The site lies in the Water Framework Directive (WFD) Mal Bay Catchment 28 and the Annagh[Clare]_Sc_010. The site is located in the Annagh (Clare)_010 Sub-Basin. The closest River Waterbody to the site is the Annagh (Clare)_010 which forms the northern boundary of the site. The Annagh River was of Bad Status in the 2016-2021 monitoring period and is At Risk in the 3rd cycle. Forestry & Wastewater are identified as pressures on the Annagh River. 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 3rd cycle.

The application documents before the FAC included an Inet Pre Approval Submission Report, a Biodiversity Map, a copy of the Site Notice, a photograph of the Site Notice in Situ, a Fencing map, an Acid Sensitive Report, and a location map. The species map, biomap, and plot details were revised following the requests for further information dated the 11th of February 2022 and the 1st of September 2022.

The licence application was referred to the National Parks & Wildlife Service (NPWS) on 19/08/2021 which responded on 29/09/2021 stating that it had no comment to make.

On the DAFM file there is an DAFM Archaeology Report dated 08/09/2022, a DAFM Inspector's Site Description dated 17/11/2023, a DAFM Peat Map dated 20/11/2023, a DAFM Inspector's Appropriate Assessment Screening Report & Determination (AASRD) dated 18/02/2024, an In-combination Report for the AASRD dated 28/02/2024, a DAFM Appropriate Assessment Report (AAR) dated 28/02/2024 In-combination Report AAR 28/02/2024 In-combination Report AAR 08/04/2024 DAFM AAD 30/04/2024 DAFM Inspector's Certification 01/05/2024 DAFM Inspector's EIA Assessment Report 01/05/2024 an undated GPC to FT Transition Notice, an undated DAFM HNVf Report, a Site Details Report 02/05/2024, and a Site Plots Report 02/05/2024.

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

The Inspector's Certification Report recommends approval of the licence subject to conditions.

The Inspector's Appropriate Assessment Screening Report and Determination (AASRD) identified five Natura 2000 sites within 15 km of the proposed afforestation: Carrowmore Point to Spanish Point and Islands SAC IE0001021, Mid-Clare Coast SPA IE0004182, Carrowmore Dunes SAC IE0002250, Inagh River Estuary SAC IE0000036, Cliffs of Moher SPA IE0004005. Two sites were screened in for Appropriate Assessment, Carrowmore Point to Spanish Point and Islands SAC, and Mid-Clare Coast SPA.

DAFM carried out an Appropriate Assessment in the form of an Appropriate Assessment Report which was advertised to the public on the FLV on 06/03/2024. The AAR concluded that the proposed afforestation, subject to a number of mitigation measures would not, by itself or in combination with other projects result in any adverse direct effect or residual adverse effect on the integrity of the Carrowmore Point to Spanish Point and Islands SAC, and Mid-Clare Coast SPA.

Submissions prior to the publication of the AAR.

A third-party submission on the application was received on 05/07/2021 expressing concern that although the proposed afforestation was within 60m of their dwelling & business no consultation took place as per the Forest Standards Manual, that lands adjoining Annagh River are prone to flooding and that Parcel 3 of the application be refused, Impacts on Carrowmore Point To Spanish Point And Islands SAC and Mid-Clare Coast SPA need to be assessed, impact on water quality due to part of the application lands having been drained, that the 60m setback from utilised building be enforced, that forestry road upgrading should form part of the application and that the proposal will have an adverse impact on the submitter's business, health of their livestock and views from their business.

Request for Supporting Documentation

A Request for Supporting Documentation was issued by the DAFM on 03/11/2021 requiring the applicant to exclude a significant area in the north of the site that is liable to flooding and appropriate setbacks installed from the line of maximum flooding, drawing the applicant's attention to the fact that the fencing map proposes fencing along boundaries for which there is no need for fencing, that the western part of the site had drains installed in the 1990s which provide direct connectivity to the adjoining river and requiring a plot of native woodland at that location and that some hedgerows were not marked on the bio map and that they should be included and the bio-area recalculated.

A reminder issued on 07/02/2022 and revised documents were submitted dated 11/02/2022.

A second Request for Supporting Documentation was issued by the DAFM on 14/03/2022 requiring the applicant to setback planting 50m from the edge of the river bank as a precaution, that the broadleaved planting in the west of the site was to cover the entire western field that is north of the adjoining house and farm yard, that the black and white aerial photography in Lforis should be consulted for the location of drains that were installed on the site and that the appropriate maps should be resubmitted.

A reminder issued on 14/06/2022 and revised documents were submitted dated 01/09/2022.

Submissions post publication of the Appropriate Assessment Report (AAR).

Following publication of the DAFM AAR on 06/03/2024 five individual submissions were received. One submission referred to the presence of his watermain running through part of the application site and the potential for damage to the watermain from the use of heavy machinery. Three submissions referred to the impact the proposed forestry would have on social & economic fabric of the area, the impact noise/vibration would have on wildlife in the area, loss of habitat, the unsuitability of the access road to accommodate heavy vehicles, the impact on residential amenity and the fact that there is already too much forestry in Co. Clare. One submission disputes the date of advertisement of the AAR, that he had made an earlier submission but was not notified of the DAFM Determination, that AA was required AAR as per the Birds & Habitats Regulations (as amended), that no NIS was submitted therefore the AA was deficient, that the proposal had undergone significant changes without having an opportunity for him to make submissions, that the terms Plot & Parcel are confusing, that access to the remaining planting area is across an area that has been excluded from planting, that no planting should occur within a minimum 10m of the maximum flood level, that the land is owned by the applicant's son and that part of the proposed planting is in the ownership of a third-party, that other surveys are required and refers to the Habitats Regulations and the Wildlife Act, that issues raised in his original submission regarding the impact on his business have not been addressed.

The licence as issued is dated 2nd May 2024.

THE APPEALS.

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

042/2024

- The proposed planting is located in close proximity to the house & farm.
- The appellant has a watermain running through that land it is proposed to plant and that as the watermain is not laid to any great depth there is concern that heavy machinery has the potential to damage the pipework.
- The appellant was not informed by applicant of the licence application.
- Incorrect information is given in the Pre-Approval Submission Report.
- The applicant is not the owner of the lands, and that the applicant's son is the registered owner.
- The site is prone to flooding.
- Multiple drains have been laid through the land directly to the Annagh River which could impact on Natura 2000 within 15Km of the site.
- Afforestation will impact on the existing wildlife of the area.

048/2024

- There were significant changes to the application during the process to which the appellant was not notified and that the changes were of such magnitude that a new application should have been required.
- The AAR Notification was not advertised as stated & no site notice was erected.
- The appellant lives within 60m. of the proposed afforestation and there was no consultation by the applicant.
- The proposed afforestation will interfere with views from the appellant's dwelling.
- There is no updated map showing constraints of the afforestation.
- A neighbour has a water supply running through the lands it is proposed to plant.
- The forestry road upgrading should form part of the application.
- There was no request for a NIS therefore the application is so not compliant with the Habitats Regulations.
- The terms Plot & Parcel used in the documentation on file is confusing.
- The road access crosses an area excluded from planting.
- The site is prone to flooding.
- The applicant is not the owner of the lands, and that the applicant's son is the registered owner.
- More detailed surveys of Otter are required.
- Concern is expressed about the impact of the afforestation on the appellant's business.

Post-Appeal Submissions.

Appellant Ref. FAC 048/2024 made a post-appeal submission. The post-appeal submission referred to the fact that two trees had been felled during the Storm Éowyn event, proving the unsuitability of the soil for planting trees, a conversation with Clare County Council which indicated to the appellant it was not in favour of afforestation blocking views to the sea from as far away as Mt. Callan, the appellant wanted to know the exact spacing between trees to preserve his view to Mt. Callan, the confusion between plot numbers referring to the 60m setback.

In the interest of clarity and for the avoidance of doubt, in considering the post-appeal submission the FAC deemed the matters raised to be an elaboration or clarification of points raised by the third-party in his grounds of appeal proper and did not consider it necessary to circulate the post appeal submission to the other parties.

CONSIDERATION BY THE FAC.

At its sitting on the 29th of April 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.

Statements of Fact (SoFs) dated 13/02/2025 were provided by the DAFM for the appeals, that confirm the administrative details of the licence application, and state that the decisions were issued in accordance with DAFM procedures, SI 191/2017 and the 2014 Forestry Act. The SoFs contain responses to a number of the grounds of appeal for both appeals and the SoF for FAC 048/2024 contains a response from the DAFM Archaeologist.

GROUND OFS OF APPEAL.

Both appeals have a number of grounds in common Proximity to the house & farm, the presence of watermains across the site, ownership, flooding, and impact on the existing wildlife of the area which, in the interest of expediency, are dealt with together. Other grounds for each appeal are dealt with individually.

COMMON GROUND OFS OF APPEAL.

Proximity to the house & farm FAC 042/2024.

The FAC noted that the appellant's house is located ca. 220m north of the nearest point of the proposed afforestation. The FAC further noted that the appellant's house is outside the 60m setback from dwellings required by the DAFM in the Forestry Standards Manual in force at the time the decision was made to issue the licence. The FAC does not consider that the DAFM have erred in respect of this ground of appeal.

Proximity to the house & farm FAC 048/2024.

The FAC noted the matters raised in the appeal concerning a lack of consultation by the applicant regarding the forestry setback and the protection of views from their property. The FAC also noted that the Forestry Standards Manual in force at the time the decision was made to issue the licence in Section 6.5.2 states that "*Forest developers should liaise with the owners of neighbouring properties, to resolve in advance, any potential concerns.*" which the FAC takes to be advisory in nature rather than mandatory. The FAC further noted the response DAFM SoF Ground 1 (Public consultation views/60m setback from utilised buildings) and that the AAD mitigations include that no afforestation is to be carried out within Plot 1 adjoining the dwelling to the east. It is a condition of the licence that a setback with a minimum width of 60 metres shall be installed from the dwelling house located at the western boundary of the site which complies with the requirements of the Forestry Standards Manual 2024. The FAC does not consider that the DAFM have erred in respect of this ground of appeal.

Watermains.

This ground of appeal contends that the appellant has a watermains running through the land that it is proposed to plant and that as the watermains is not laid to any great depth there is concern that heavy machinery has the potential to damage the pipework. The FAC noted that in a submission dated 12/03/2024 following publication of the AAR the appellant submitted an aerial photograph showing the route of the watermain. Neither the Applicant nor the DAFM have contested this matter. The FAC further noted the response in the DAFM SoF Ground 3 (Major Watermains & Setbacks) to this issue. The FAC also noted Article 5(2)(a) of the Forestry Regulations 2017 (as amended) states:

An application for a licence in respect of afforestation shall be accompanied by—

- (a) an Ordnance Survey map or other map acceptable to the Minister, with the boundary of the land to which the application relates, and all internal plots, where applicable, delineated and shall clearly show the following details—
- (i) public roads,
 - (ii) forest roads,
 - (iii) aquatic zones,
 - (iv) wayleaves,
 - (v) archaeological sites or features,
 - (vi) hedgerows, and
 - (vii) any other features which may be relevant to the application,

The FAC considers that the watermain crossing through the site is a feature that is relevant to the application and therefore the biomaps submitted as part of the application were deficient in that respect. The FAC is satisfied that the statutory requirement set out in Article 5(2)(a)(vii) of the Forestry Regulations 2017 (as amended) has 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 applicant is not the registered owner of the land comprising CN88532 as shown on the FLV and that the applicant's son is the owner of the land subject of the application not the applicant himself. The FAC noted the response in the DAFM SoF Ground 1 (Land Ownership) to this issue. 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 submission of 20/03/2022 by appellant FAC 048/2024 and having viewed the Land Direct website, there was sufficient grounds for the DAFM to require documentary proof of ownership or consent at Form 1 stage, before the application was assessed and that failure to do so represents a serious error in the processing of this licence. The obligation under the Forestry Act 2014 was on the licence applicant to provide the name and address of the landowner if it differed from that of the applicant. As a number of errors were made in the submission of the application the FAC considered that the appropriate decision was to allow the appeal and set aside the decision.

Flooding.

This ground of appeal contends that the lands of CN88532 are liable to flooding, especially in the area adjoining the Annagh River. The FAC noted the response in the DAFM SoF Ground 2 (Flooding) to this issue. The FAC noted that the DAFM Request for Supporting Documentation of 14/03/2022 required a planting line should be setback 50m from the edge of the river bank for precautionary purposes, while the site boundary along the Annagh river on the revised biomap dated 01/09/2022 submitted in response appears to have been set back from that originally proposed (biomap dated 09/06/2021) no distance is indicated and the map legend shows an aquatic zone setback as being "10m mineral 20m Peat" furthermore the mitigation measure within the AAR specifies a water set back of 20m on either side of the aquatic zone adjoining Plot 2 when the northern bank of the aquatic zone does not form part of the application site. The FAC considers the lack of clarity in which setback is required to be an error in the processing of the licence application.

Impact on the existing wildlife of the area.

This ground of appeal contends that the proposed planting will impact on the wildlife in the area. The FAC noted that the DAFM carried out an evaluation of the site for High Nature Value farmland (HNVf) and found it not to be HNVf. The site was also appraised under the AA where evidence was found that geese and otter utilised site. The AA mitigation measures require that no afforestation is to be carried out within Plot 1 (the location of evidence of geese frequenting the site) and it is a condition of the licence that the AA mitigation measure are complied with. With regard to the presence of otter noted in the AA the FAC noted that the DAFM Forestry and Otter Guideline 2009 require the retention of

woodland/dense scrub within 50m of watercourse as Area for Biodiversity Enhancement for the protection of otter and that the DAFM Request for Supporting Documentation of 14/03/2022 required a planting line should be setback 50m from the edge of the riverbank for precautionary purposes. While the 50m set back is required for other purposes it meets the requirement of the DAFM Forestry and Otter Guideline 2009 for the protection of otter. However, this appears to be contradicted by the content of the Appropriate Assessment which specified a 20 metre setback. This lack of clarity represents a serious error but also undermines the findings of the AA by introducing a lack of precision and clarity in the measures and findings.

INDIVIDUAL GROUNDS OF APPEAL.

FAC 042/2024.

The appellant was not informed by applicant of the licence application.

This ground of appeal contends that the applicant did not inform the appellant of the proposed afforestation. The FAC noted the provisions of Section 6.5.2 of the Forest Standards Manual - Setback for dwelling houses / associated buildings – and that the appellant's dwelling is outside the 60m setback. The FAC further noted that the appellant had erected the require site notice informing the public of the application. The FAC does not consider that the DAFM have erred in respect of this ground of appeal.

Applicant's Pre-Approval Submission Report.

This ground of appeal contends that the applicant's Pre-Approval Submission Report contains factual errors. The FAC understands that the Pre-Approval Submission Report is supplementary to the information required under Article 5 of the Forestry Regulations 2017 (as amended) for the making of An application for a licence in respect of afforestation. documents and is completed by the applicant's registered forester and the answers submitted by the registered forester are taken in good faith by the DAFM, furthermore the FAC noted that the DAFM carries out its own evaluation of the site. However, as previously noted the FAC has accepted that errors were made in identifying the owner of the land.

Multiple drains have been laid through the land directly to the Annagh River which could impact on Natura 2000 within 15Km of the site.

This ground of appeal contends that the lands have been drained directly to the Annagh River and that any impact on water quality arising from the proposed planning would affect Natura 200 sites hydrologically connected to the Annagh River. The FAC noted that planting in the area of the site drained previously was changed from conifer to broadleaved planting which is typically carried out by pit planting without drainage. The FAC further noted that the application was subject to Appropriate Assessment which duly considered the impact the proposed planting would have on the only site within 15km hydrologically connected to the site, the Carrowmore Point to Spanish Point and Islands SAC. It was determined that, subject to mitigation measures, the proposed planting would not have an adverse effect on that Natura 2000 site. The FAC does not consider that the DAFM have erred in respect of this ground of appeal.

FAC 048/2024.

Significant changes to the application.

This ground of appeal contends that there were significant changes to the project during the licencing procedure to which the appellant was not notified and that the changes were of such magnitude that a new application should have been required. The FAC noted the reduction in the area to be planted the change in species to be planted as contained in the licence as issued. The FAC noted that the Forestry Regulations 2017 (as amended) do not require the notification of significant changes made to applications during the process. The FAC also noted the DAFM response in its SoF Ground 6 (Spatial

Changes) that the appellant had the opportunity to comment on the changes as a result of him being notified of the second public consultation. The FAC does not consider that the DAFM have erred in respect of this ground of appeal.

Notification of the second public consultation.

This ground of appeal contends that, having been informed on 04/03/2024 that the licence would be advertised for 30 days beginning the following week, the licence application was not published as of 13/05/2024 and that no site notice advertising the public consultation was in place on 19/03/2024. The FAC noted the DAFM response in its SoF Ground 6 (Spatial Changes) paragraph 3 particularly that the relevant documentation was uploaded to the FLV on 05/03/2024 and was available to the public from that date. The FAC also noted that the DAFM's method of notifying the public of consultations is on its website. The FAC noted that the Forestry Regulations 2017 (as amended) do not require the erection of a site notice for public consultations. The FAC does not consider that the DAFM have erred in respect of this ground of appeal.

No updated map showing constraints.

This ground of appeal contends that there is no up-to-date map showing constraints on the site. The FAC noted the Section 2 of the DAFM Archaeologist's submission included as part of the DAFM SoF which highlights the fact that there is no provision in the Forestry Regulations 2017 (as amended) that requires the Minister to produce a map of the approved planting showing revisions and constraints to the original proposal. Having regard to in the Forestry Regulations 2017 (as amended) the FAC does not consider that the DAFM have erred in respect of this ground of appeal.

Forestry road upgrading should form part of the application.

This ground of appeal contends that forestry road upgrading should form part of the licence application. The FAC noted existing farm track shown on the biomaps and the DAFM response in its SoF Ground 3 (Forestry Access Road). The FAC noted that this licence application is for afforestation only and that planting, operations are normally carried out without the need for heavy machinery. The FAC also noted that the construction of a forest road is subject to a separate licencing procedure under the Forestry Regulations 2017 (as amended). The FAC does not consider that the DAFM have erred in respect of this ground of appeal.

No NIS was requested.

The FAC considered in the first instance the grounds that contend that there was a requirement to submit a Natura Impact Statement (NIS) and a failure to make an NIS subject to public consultation. Part 8 of the Forestry Regulations 2017 (as amended) addresses the undertaking of an Appropriate Assessment by the Minister for Agriculture. Under these Regulations, the Minister is empowered to require the submission of a Natura Impact Statement and is required to have regard to an NIS where submitted. However, the Regulations allow for the Minister to undertake an Appropriate Assessment without the submission of an NIS where information is available from other sources. In this case the DAFM have stated that an Appropriate Assessment Report (AAR) was prepared and that it was subject to public consultation before a final Appropriate Assessment Determination was made. The FAC reviewed the record of the decision as provided on the Forestry Licence Viewer and found that the AAR was prepared in keeping with the dates of the identified second period of public consultation and that the AA Determination makes reference to this period and that additional submissions were made on the AAR. The FAC considers that this is in keeping with the requirements of the Forestry Regulations 2017 and is not satisfied that a serious or significant error was made in this regard.

Terms Plot & Parcel are confusing.

This ground of appeal contends that the terms plot & parcel is confusing and that a chronological summary of changes to the proposal is required to follow the decision-making process. The role of the FAC is to consider whether the DAFM made a serious or significant error, or a series of errors in making

the decision under appeal, and whether that decision was made in compliance with fair procedures. The matters raised in this ground of appeal was not considered to be a serious or significant error.

The access road to the planting area crosses over areas excluded from planting.

This ground of appeal contends that because the existing access road to the area it is proposed to plant crosses an area excluded from planting and an area of archaeological constraint the road too should be excluded. The FAC noted that the construction of a forest road is subject to a separate licencing procedure under the Forestry Regulations 2017 (as amended) and that the second paragraph of condition 5 of the DAFM archaeologist's report of 08/09/2022 and the map accompanying the report indicates that use of the access road which passes through the archaeological buffer zones referred to in the report is not precluded. The FAC does not consider that the DAFM have erred in respect of this ground of appeal.

Concern that the afforestation will impact on the appellant's business.

This ground of appeal contends that the proposed afforestation has the potential to adversely impact on the appellant's equine business. The FAC was established under the Agriculture Appeals Act 2001, as amended, with a function to hear and determine appeals against decisions of the Minister for Agriculture, Food and the Marine under Section 7 of the Forestry Act 2014, (excluding grant aid), and the Forestry Regulations 2017-2020 in relation to afforestation, tree felling, forest road works and aerial fertilisation. The matter of this ground of appeal is of a civil nature and does not ultimately fall within the remit of the FAC itself to determine.

APPLICATION DOCUMENTATION.

DAFM AASRD In-combination assessment.

In reviewing the documentation on file, the FAC noted that in the statement in the AASRD In-combination assessment (Appropriate Assessment Screening Report Appendix A: In-combination report for Afforestation project CN88532) dated 28/02/2024 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 submission 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 making and processing of the application in relation to licence CN88532. The FAC is thus allowing the appeal and setting aside the decision of the Minister in relation to licence CN88532.

Yours sincerely,

Iain Douglas,
On Behalf of the Forestry Appeals Committee