



18th June 2025

Subject: Appeal FAC022/2024 against licence decision CN92168

Dear '

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 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

A hearing of appeal reference FAC022/2024 was held remotely on the 11th March 2025. In attendance:

FAC Members:	Mr. Seamus Neely (Chairperson), Mr. Iain Douglas & Mr. Luke Sweetman.
FAC Administration:	Ms. Aedín Doran

In the particular circumstances of this case, 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 information before it, including the record of the decision on the Forestry Licence Viewer (FLV), the notice of appeal, the Department of Agriculture, Food, and the Marine (DAFM) Statement of Fact (SOF), and all additional submissions, the FAC has decided to set aside and remit the decision of the Minister to grant afforestation licence CN92168 for the reasons set out hereunder.

Background

The licence under appeal is for the afforestation of 4.35ha of mixed conifer/broadleaf across two plots in Keshcarrigan, Co. Leitrim and was issued on the 1st February 2024. The proposal is for 2.02ha of FT12; mixed high forest with 80% Sitka spruce and 20% broadleaves in Plot 1, and 2.33ha of FT1; Downy birch, in Plot 2. The licence was issued with standard conditions 1-4 and Condition 5 which specifies additional requirements including that "Strictly forest type one (FT1) only in plot 1, no new drainage is permitted, invert mounding, scrap mounding or pit planting only. No conifer planting on peat soils greater than 30cm in depth is permitted. Reason: In the interests of protection of the environment".

The *Site Details Report* indicates that the proposal site is currently enclosed agricultural land underlain by both mineral and peat soils, has an easterly/neutral aspect, and is moderately exposed. The current vegetation type is Grass/Rush and site access is "adequate". The DAFM's Appropriate Assessment documents state that the average slope across the site is moderate at 4% and ranges from 0% to 10%, and the topography lies between 68m - 82m above sea level. The proposal is bounded to its north, west, and

south-west by agricultural fields and adjoins mature commercial forestry comprising predominately coniferous species to the east and south-east.

Information available online from the Environmental Protection Agency (EPA) shows that the proposal is in the Adhacashlaun_030 River Sub-Basin. Catchments.ie shows the Adhacashlaun_030 river waterbody currently has "Good" status for the 2016-2021 period and its risk status is under review. The proposal is underlain by the Newtown-Ballyconnell Ground Waterbody which has 'Good' status and is 'Not at Risk'. The nearest EPA-mapped watercourse is the Aghacashlaun (Order 4) which is c. 350 to the north-west at its nearest point. The Scur Lake Waterbody is c. 400m to the north-west of the proposal. The *Cycle 3 HA 36 Erne Catchment Report, May 2024* states that this lake waterbody has a status of 'Moderate' and is 'At Risk' from sediments and nutrients due to agriculture and hydromorphology.

DAFM Assessment to Determine EIA Requirement

The DAFM completed an Assessment to Determine EIA Requirement, dated 25/01/2024, which considered the proposal's potential impact on the environment across a range of criteria before concluding that the application should not be subject to the EIA process.

The FAC noted that under "Project Location" the DAFM stated that there is not likely to be a significant cumulative impact on the environment from this project when considered in conjunction with the impact of other existing and/or approved afforestation projects. The DAFM also stated that the amount and type of forest cover in this locality is not known to be a significant issue. The reasons given by the DAFM for the preceding answers is stated to be "in-combination assessment and no submissions".

Under "Natural Resources: Soil and Wetlands" it is noted that wetlands are present, and the associated sensitivities have been addressed by the Ecology Section.

In relation to "HNVf and Habitats" the DAFM record that the site is within a HNV farmland area with a score of 0.5 SD or greater and that the site includes some extensively managed farmland. The DAFM also state that the site does not overlap with the Irish Semi-Natural Grasslands Survey layer, does not contain Annex I Habitat, and does not overlap with the Birdwatch Ireland Farmland Birds Hotspot layer.

Further Information Request (FIR)

Following their review of the application, the DAFM wrote to the applicant on the 2nd February 2023 stating:

...Please confirm that a right of way is in place from the public road to the proposed afforestation area. Please map relevant watercourse on eastern boundary proposed afforestation area.

A Revised Bio Map dated 3rd February 2023 on the FLV shows the relevant watercourse. There is also a document titled "Maps Scanned Docs" submitted which shows a ROW/Wayleave highlighted in a blue circle.

Appropriate Assessment (AA)

On file is a document titled "Appropriate Assessment Screening Report & Determination for Afforestation project CN92168, at Keshcarrigan, Co. Leitrim" (AASRD) dated 15th January 2024 and published on the FLV on 1st February 2024. The project description notes that "This is the original plan, it is altered by presence of peat soil in east part of site and the wetland areas in north-east" and includes details of drainage works and the planned application of fertiliser at 250kg/ha. The AASRD refers to 872m of sheep-stock fencing

whereas licence approval letter indicates 436m is approved. The fencing map on file shows 436m of fencing but notes that “only essential fencing will be erected”.

In Section 3, *Information*, the AASRD lists the information that was taken into account, including the revised Bio Map, the “DAFM Ecologist site visit 10/10/2023”, the DAFM High Nature Value farmland report, Peat Soil report, and Ecology Report submitted, and concluded that “Combined with the project details and site characteristics summarised above, there is sufficient information within the application and available from elsewhere to form a sound judgement regarding the likelihood of the project having a significant effect on a European site.”

The AASRD screened one European site within a 15km radius; the Cuilcagh - Anierin Uplands SAC (located 7.1km northwest of the project area), which was screened out “due to the separation distance, the character of the hydrological connection (c. 10km downstream to project site) and the nature of the Qis..”.

The AASRD contains an Appendix A titled *In-Combination Report for Afforestation proposed under CN92168, dated 3/1/2024* which states – “See File”.

In-Combination Report

On file is a document titled “Appropriate Assessment Screening Report Appendix A: In-combination report for Afforestation project CN92168” dated 3rd January 2024. This report states “The potential for the proposed Afforestation project CN92168 to contribute to an in-combination impact on European sites was considered by the Department of Agriculture, Food & the Marine (DAFM).” The report indicates that various online planning systems and datasets (including DAFM’s FLV) were consulted on the 3rd January 2024 in order to identify other plans and projects, focusing on the general vicinity of the project area in the River Sub-Basin Adhacashlaun_030.

The report consulted the websites of Leitrim Co. Council (LCC), An Bord Pleanála, the EPA, and the Objectives relating to Natura 2000 sites set out within Leitrim County Development Plan 2015-2021. The report concluded that:

...there is no likelihood of the proposed Afforestation project CN92168, when considered individually, having a significant effect on the relevant European Site(s), as described elsewhere in the Screening Report. 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 relevant Qualifying Interests / Special Conservation Interests and Conservation Objectives, as listed elsewhere in the Screening Report, have been taken into consideration in reaching these conclusions. Furthermore, it is considered that the regulatory systems in place for the approval, operation (including any permitted emissions) and monitoring of the effects of other plans and projects are such that they will ensure that they do not have any significant effect on those same European Site(s). There is no likelihood that the proposed project will have, or contribute to, any significant effect on those same European Site(s), when considered in combination with other plans and projects. Note that no European Sites screened in.

Referrals & Submissions

The DAFM’s SOF indicates that there were no referrals in this case and there were no third-party submissions on this application.

Grounds of Appeal

There is one third-party appeal (FAC022/2024) against the decision to grant CN92168. The grounds of appeal were considered in full by the FAC and the following is a summary:

1. Procedural Errors – failure of due process

Numerous documents relevant to the application were not published on the FLV until the decision was issued - outside of the public consultation process, including:

- A FIR and response
- A revised BioMap
- A modification to the project proposal
- Revised maps

"The Presence and quality of HNV indicators and features form (part of the DAFM Forestry Inspectorate High Nature Value farmland Assessment Report) refers to Form A and Form B of the Field Sheet but we cannot find this information on the project file."

2. Licence error

The Operational Proposals set out in Appendix A of the approval letter, with the exception of 436m of sheep fencing, are described as 'Not Entered'.

3. Application error; not consistent with Section 5 (2) of the Forestry Regulations

Mapping deficiencies

- No wayleaves are indicated on the project maps – including the Bio Map. A Property Registration Authority (PRA) map showing a Right of Way (ROW) was submitted but not published until after the decision was issued.
- Section 5.3.1 of the Forestry Standards Manual (FSM) sets out the requirements for the use of a ROW.
- The Right of Way does not extend the full distance from the public road to the project area.
- Based on EPA Land Cover mapping, not all hedgerows in the project area have been clearly identified.

4. High Nature Value Farmland (HNVf) not safeguarded

The Irish Semi-Natural Grassland Survey (ISGS) was a sample survey. The associated data layer is not a full representation of semi-natural grasslands cover across the country. The survey report indicates that;

"... all semi-natural grasslands under GS and GM in the Fossitt (2000) classification system – can be regarded as High Nature Value (HNV) grasslands; Annex I grasslands are a subset of HNV grasslands..."

If lands included on the ISGS layer are excluded from afforestation then so should any lands which are not included on the layer, but which meet the definition in the Report. The lands identified for afforestation with FT12 are HNV semi-natural grasslands and should be protected from afforestation under the new scheme.

The site was not field inspected at the ideal time to carry out a survey of grasslands. Despite this the DAFM Ecologist's report indicates that

"However, the more species-rich areas had affinities to the Annex I habitat *Molinia* meadows on calcareous, peaty or clayey-silt laden soils (*Molinion caeruleae*) [6410], but not all the characteristics of this were evident."

The Report fails to indicate which characteristics were not evident and whether the timing of the survey might have any influence on the missing characteristics. This is a lacuna in the assessment. The DAFM's approach to determining what constitutes HNVf conflicts with that of the NPWS as expressed in the ISGS

NPWS has not been consulted on this application, nor has Leitrim County Council; both might have had something to say on the issue of the planting of semi-natural grasslands and wetlands.

It would appear from the Assessment of the DAFM Forestry Inspectorate High Nature Value farmland Assessment Report that the DAFM is only looking to protect Annex I quality grasslands. This is not sufficient to meet the State Aid Guidelines to safeguard HNVf.

The Report states that "The scoring of A indicates that there are species-rich high quality semi-natural habitat/s present on the site."

The response to question 3 of the 'Integrity and extent of semi-natural habitats form' *Presence of broadleaved woodland on the site or directly adjacent*. records Absent. This conflicts with the Ecology Report which indicates that there is WN habitat on site.

5. Failure to provide protection for a protected species; failure to consult with competent authority

The High Nature Value farmland Assessment Report states:

...this application scored Moderate.

The scoring of A indicates that there are species-rich high quality semi-natural habitat/s present on the site. The field survey results indicates that these are not of Annex I quality, however areas of fen/flush are wetland habitats, ineligible for planting and should be retained as ABE. There is a small area of wet woodland adjacent to this that should also be retained. This area to the north east is the location with suitable habitat for Marsh fritillary and so the retention of this area will protect Marsh Fritillary.

The scoring of B indicates that the site has suitable habitat for Marsh Fritillary. As above the area that may be suitable for Marsh Fritillary is to be retained.

No further measures required.

Conclusion

Retain area of fen/flush and adjacent wet woodland to the north east of the site as ABE.

The maps on file do not actually show what area is to be excluded.

No specific survey was carried out to determine whether Marsh Fritillary were present on the site despite the suitability of the habitat.

Scheme Circular 2 of 2024 (14th February 2024) contains an amendment to the Environmental Requirements for Afforestation (ERA):

“If applications are within the range of the Marsh Fritillary butterfly and a field assessment identifies that an area may be potential habitat, a survey for Marsh Fritillary is required. Potential habitat is indicated by the presence of Devil’s Bit Scabious between ankle and knee height. If larval webs are found, the area is excluded from the application.”

This change indicates that the DAFM has realised that the procedures in place to protect a number of protected species when this application was processed were inadequate or deficient.

6. EIA Screening Determination is not adequately reasoned

The EIA Screening questions and responses include:

“- Is the project area within an area identified in the relevant County Development Plan as being sensitive for: landscape / visual amenity; and / or recreational / amenity purposes?”

Response – Yes

“- Has any potential impact on these sensitivities been offset, through: project redesign; conditions to be attached to any licence issued (including adherence to landscape measures set out in the Environmental Requirements for Afforestation); or refusal?”

Response – Yes

Leitrim County Council has not been consulted. The Inspector has failed to reason his position.

The Inspector cannot reasonably determine that an EIA is not required in circumstances where the assessment is based on erroneous responses to the validating questions.

7. AA Screening Error

The project described as being screened is not the project that has been approved.

The Screening describes the project as 4.35ha of CHF, FT12. The wrong iteration of the project has been screened.

8. AA – In Combination ‘Assessment’ error

There is no evidence that an actual assessment of In-Combination effects has been undertaken by the DAFM. There is a list of projects; there is reference to a County Development Plan (CDP) but there is no assessment. Had an in-combination assessment been undertaken it would have identified that the wrong County Development

9. Inappropriate planting of and impact on Wetlands; failure to consult

This project involves the planting of Wetlands. Leitrim County Council carried out a survey of wetlands in the county in 2019. Leitrim County Council planning staff should have been consulted on this development.

10. DAFM procedures are not consistent with the requirement for providing a General System of protection commensurate with Article 5 of the Birds Directive

There is no general system of protection in Ireland (applicable to forestry operations) for wildlife, including birds, particularly during the period of breeding and rearing.

11. Article 12 of the Habitats Directive (Annex IV species)

Forestry applications need to be screened for the potential implications on the Annex IV (a) species known to, or likely to, occur within their natural range and the zone of influence of the proposed forestry activity.

This is implied in Table 2, Question 5 of the Environmental Requirements for Afforestation (ERA) which asks;

5. Is there an Annex IV species or its habitat (if in the species range) known to be present or observed within the plot(s)?

There is no evidence in the project documentation of this question being asked or answered in relation to this project. The DAFM's EIA Screening procedure does not reference protected species, only protected habitats. The question in the ERA is not sufficient to address the legal obligations of the Minister as it does not refer to the likelihood of the Annex IV species occurring within their natural range and zone of influence relevant to the forestry activity.

There has been no assessment of the potential impact on species listed in Annex IV of the Habitats Directive – notably bats. The Ecology Report makes no mention of bats. Bats are likely to occur on these lands – refer to the NBDC website.

12. Access to the public road infrastructure for future extraction is not suitable

"The project access is on to a Regional Road. Leitrim County Council should have been consulted as to whether it is (sic) "

Minister's Statement

The Minister provided two statements responding to the grounds of appeal, one with comments from the DAFM's Forestry Administration Section and the Forestry Inspectorate, and a second statement from the DAFM's Forestry Ecology Section. Both statements were provided to the other parties to allow for a response. Subsequent submissions were made by both the Appellant and the DAFM and these will be summarised later in this letter. The statements from the Minister were considered in full, and the following is a brief summary:

Forestry Administration Section Comments:

The decision was issued in accordance with our procedures, S.I. 191/2017 and the 2014 Forestry Act...

For documents published as highlighted in Q1. As the contract was screened out, it would not have gone for a 2nd Public Consultation. Therefore, documents that came in subsequent to the initial advertising would not have been made public until the decision issued.

It is regrettable that an incorrect county development plan was referenced. The process has been corrected since to ensure the correct one is used in all cases.

Forestry Inspectorate Comments:

2. "The proposals relevant to the licence at hand are listed."

3. Standard operating procedure, Afforestation Scheme/Licences Forestry Inspector Standard Operating Procedure adhered to.

- *"Form 1 stage" is the initial application stage "pre-approval" which can at times result in a further information request such as in this case. When the applicants responded to the further information request the application is still at "form 1 stage" pre-approval. The further information request clearly shows the access from the public road to the licenced area.*
- *Appellants have provided no evidence for the claim regarding missing hedgerows or treeline as shown National Land Cover Mapping. The site was field inspected by a DAFM Forestry Inspector and DAFM ecologist. All hedgerows present are clearly shown and the bio map is acceptable to the Minister.*

4. "...This is not the appropriate forum to discuss the concepts and opinions on High Nature Value Farming this licence was approved as per national policy and agreed standard operating procedures the application was also assessed by a qualified ecologist with a report regarding HNVf produced."

The following is a summary of the comments from the DAFM Forest Service's Ecology Section:

"The application for afforestation is partly within the peat layer and the High Nature Value Farmland (HNVf) layer. It is not within the Wetland layer, the Hen Harrier layer (Article 12 breeding distribution) or the Breeding Wader layer."

3. "All Hedgerows and Treelines were mapped in the Habitat map submitted in the DAFM Ecology Report, Appendix 1, and with the HNVf Habitat Map." The Ecology Report and Habitat Map are referenced in the licence conditions.

4. "The application was assessed in line with the HNVf procedures at the time." Documents were submitted which provide details of HNVf assessment. The DAFM submit that they developed specific procedures for the assessment of HNVf.

- *"Matin et al. (2020) provides an indicative map of HNVf in Ireland and this was used as the basis for deciding when further assessment is required."*
- *"In the indicative HNVf map, areas with a value of 0.5 SD HNVf or greater are assessed and a layer was developed for iFORIS and iNET which indicates whether or not assessment is required."*

- A typographical error resulted in the lands afforestation with FT12 being identified as WS4, but it is clear from the full name of the habitat type in the map legend that this is Wet grassland.
- The initial application involved the planting of 100% FT12. the presence of peat soil resulted in the application being divided into two plots, Plot 1 of FT12 and Plot 2 (2.33ha) of FT1.
- The application was assessed for HNVf and mitigation is provided – see HNVf Assessment report dated 12th January 2024.
- The Ecology fieldwork was carried out on the 10th October 2023. The date of field work is correctly stated in the AA Screening Report and Determination. “Although, early October is outside the recommended field season for surveying grasslands, it is possible to survey at this time of year, especially if the surveyor is experienced.”
- “The results of the field survey are documented in the Ecology report dated 15/01/2024 and in the HNVf assessment... The western part of the site was predominantly Wet grassland (GS4)... There was some evidence of agricultural improvement... The eastern part of the site graded from Wet grassland (GS4) into Poor fen and flush (PF2). Quite large swathes of this eastern area were dominated by soft rush (*Juncus effusus*), indicating nutrient enrichment, and these areas were less species diverse. However, the more species-rich areas had affinities to the Annex I habitat *Molinia* meadows on calcareous, peaty or clayey-silt laden soils (*Molinion caeruleae*) {6410}, but not all the characteristics of this were evident. In addition, it did not meet the criteria of characteristic of Annex I habitat... The Ecology report recommended that the wetland areas (Poor fen and flush, Wet willow-alder-ash woodland and mosaics) remain unplanted.”
- “DAFM have spatial referrals and discretionary referrals. CN92168 was not a spatial referral nor upon assessment by the District Inspector and/or the assigned ecologist deemed to require a discretionary referral.”
- “As the consenting authority for afforestation, the Department of Agriculture, Food & the Marine (DAFM) must ensure that afforestation... takes place in a way that complies with environmental legislation and State Aid conditions underpinning the Programme, and enhances the contribution new forests can make to the environment and to the provision of ecosystem services, such as carbon capture, water protection and landscape enhancement...”
- “Protection of Annex I habitats was a consideration under the previous forestry programme and this has continued in the current programme and it applies regardless of whether an application is subject to HNVf procedure...”
- “...the application was assessed under the HNVf procedures. The HNVf report specifically mentions the wetland area (fen/flush) and that it should be retained and also the small

area of wet woodland adjacent and which is also to be retained. In addition, these areas are now within Plot 2 which is to be planted with FT1."

5. Regarding the mapping on file - There are no areas to be excluded. Areas to be retained are specified in the Ecology report and shown on the accompanying Habitat Map (Appendix 1 of the Ecology Report). These areas are also referenced in the HNVf report.

- "CN92168 was field inspected on the 10/10/2023 and whilst the habitat was suitable for Marsh Fritillary, no evidence of Marsh Fritillary (larval webs) was observed. However, the HNVf report recommended the retention of the area suitable for Marsh Fritillary."
- **Regarding referral to the NPWS** – "...DAFM have spatial referrals and discretionary referrals. CN92168 was not a spatial referral nor upon assessment by the District Inspector and/or the assigned ecologist deemed to require a discretionary referral."

7. Regarding the Appellant's submission that the wrong iteration of the project has been screened – *"The baseline data on which Appropriate Assessment documentation is generated is updated periodically and the changes as a result of peat survey were between updates to the baseline data. Consequently, the AA documentation references the original application which consisted of one plot of FT12. As a result of the peat survey, the application area did not change but the species composition changed from all FT 12 to FT12 and FT1. This change resulted in over 50% of the application being planted with broadleaves with no additional drainage. Therefore, in terms of impacting operations the revised application is less impacting. By virtue of the application being screened out when assessed on the original application, there would be no change to the screening determination when assessed on the revised application. A statement was included at the end of the AA Screening: "Note that a DAFM Ecology Report, DAFM High Nature Value farmland Report and DAFM Peat Soil report were filed for this application, and consequent to these there is an alteration to the FT allowed and the configuration of the site planting plans and ABE areas".*

...It is DAFM's position that, the change due to the peat survey (to reduce the area or change to broadleaves) will not result in any significant ecological effect and as such revision of the AA documentation is not required.

9. Regarding the Appellant's submission that LCC should have been consulted on this development – *"Under the Forest Programme 2023 – 2027, wetlands have been specifically considered and are part of the assessment of all afforestation applications... See Environmental Requirements for Afforestation (2023) for more details. If wetlands are present, they must not be planted and may or may not be eligible as ABEs.*

- *As mentioned above, the Map of Irish Wetlands shows the location of over 13,000 wetland sites with varying degrees of information available. This map is considered in the assessment by the Forest Service. Wetland survey conducted by Local Authorities are included in this map and as such are considered in DAFM assessment without the need to refer to specific local authorities.*

- *As mentioned above, DAFM have spatial referrals and discretionary referrals. CN92168 was not a spatial referral nor upon assessment by the District Inspector and/or the assigned ecologist deemed to require a discretionary referral. In the case of CN92168, fen / flush area was recorded on site and will be retained with a 5m unplanted setback.*

11. Regarding the Appellant's submission that there is no evidence in the project documentation regarding Annex IV species (e.g., Bats) – "It is stated in the Ecology Report that no fauna of significance were found during the field survey. In relation to bats, it is recognised (Kelleher and Marnell 2006¹) that features such as hedges, treelines and waterways are used by bats to navigate between roosts and feeding areas and the continuity of such features is important to them. Most bats, other than high-flying species such as Leisler's, tend to fly close to linear features or close to a tree canopy, so the presence of protected flight routes around roosts is important. This application is retaining linear features and will not adversely affect commuting bats. CN92168 contains hedgerows, treelines and wet woodland, the location of which is shown in the Ecology Report Appendix 1 Habitat Map. These features will be retained. In addition, over 50% of the application will now be planted with broadleaves. The afforestation license and technical approval letter dated 01/02/2024 conditions include retain all existing trees and hedgerows, adhere to the recommendations of the Ecology report and install a setback of 5m from retained habitats including the wetland habitats."

Additional Submissions

Both the Appellant and the DAFM made additional submissions following circulation of the DAFM's SOF which reiterated and elaborated upon specific grounds of appeal and their responses. These additional submissions were considered by the FAC and circulated to the parties to the appeal.

Considerations of the FAC

The remit of the FAC, as set out in Section 14B of the Agriculture Appeals Act 2001, as amended, is to consider appeals against specified decisions of the Minister and to determine if a serious or significant error, or a series of errors, was made in making the decision under appeal, and if the decision was made in compliance with fair procedures. The FAC considered all the submissions and material provided to it by the parties, including the record of the decision on the FLV.

1. The FAC considered the grounds that there was a failure of due process due to numerous documents not being published on the FLV until after the decision was published. The FAC noted the DAFM's submission in their SOF that "As the contract was screened out, it would not have gone for a 2nd Public Consultation. Therefore, documents that came in subsequent to the initial advertising would not have been made public until the decision issued." The FAC consider that there is a difference between an unsolicited submission being published late, and the failure to publish a material request (e.g., an FIR) and the resulting submission. The FAC consider that any document that informed the decision-making process should have been included in the record of the decision. The Forestry Regulations 2017 provide that the Minister may extend the period of public consultation where new information is submitted. In this case, an FIR was issued which resulted in the submission of a new Bio Map and a PRA map showing a ROW. The FAC considers that the Minister should have opened the application for an additional period of public consultation in order for all relevant documents to be considered by the public and that the failure to do this is a serious error.

2. The FAC considered the grounds which highlighted that the operational proposals set out in Appendix A of the approval letter, except for 436m of sheep fencing, are described as “Not Entered”. The FAC considered that there are circumstances where the application documents on the record of a decision may record the operational details in such a way as to be satisfactory, meaning that the lack of Operational Details being transposed into a licence approval letter may be considered an insignificant clerical error. However, in the particular circumstances of this case, there are discrepancies within the application documents regarding the operational details (which will be addressed in detail later in this letter) with the result that the FAC found the failure to enter operational proposals in Appendix A of the licence approval letter to be a significant error.

In addition to the above, the FAC noted that the licence conditions require that “Strictly forest type one (FT1) only in plot 1, no new drainage is permitted, invert mounding, scrap mounding or pit planting only. No conifer planting on peat soils greater than 30cm in depth is permitted.” The licence approval letter also records that FT12 (Sitka spruce with additional broadleaves) is to be planted in Plot 1. The FAC considered this to be a significant error.

3. The grounds of appeal submit that there were mapping deficiencies in the application, and it was not consistent with Section 5 (2) of the Forestry Regulations. As alluded to above, the DAFM issued an FIR requesting the Applicant to confirm that a right of way is in place from the public road to the proposed afforestation area, and that they map the relevant watercourse on the eastern boundary of the proposal. A Revised Bio Map published on the FLV on the 1st February 2024 shows the relevant watercourse. Another document published on the FLV on the same date, titled “Maps Scanned Docs”, shows a ROW/Wayleave highlighted in yellow within a blue circle. The FAC noted that Regulation 5 (2) of the Forestry Regulations 2017 requires that:

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—

...(iv) wayleaves...

(vi) hedgerows, and

(vii) any other features which may be relevant to the application,

The revised Bio Map does not clearly show the extent of the ROW, although the route of the ROW is included in a feature labelled “Existing onsite track”. The FAC noted that the Forestry Regulations 2017 require wayleaves to be shown on a map accompanying an application and that a ROW is different to a wayleave. The FAC considers that a ROW *should* be included on a Bio Map where applicable but does not consider its absence from the revised Bio Map in this case to be a serious error, particularly in the circumstances where an accompanying PRA map delineating the ROW has been supplied. The FAC considered the more significant issue to be the fact that the ROW appears to stop short of the proposal area. The map submitted by the Applicant map does not appear to demonstrate that the Applicant has access to the application area from the public road.

In relation to the revised Bio Map, the FAC also noted that the areas to be retained as ABE are not shown. The ERA (June 2024) states in Section 2.5.3 *ABE Criteria*, that the submitted Bio Map must show any proposed ABEs (including retained habitats) as Bio Plots or as linear or point features. The

FAC noted that these areas are annotated on the Habitat Map included in the ecology report. The FAC considered that, as the decision is being set aside and remitted for other reasons, a new revised Bio Map should be sought by the DAFM which records the ABE in line with the requirements of the ERA.

Regarding the mapping of hedgerows, the Appellant contends that not all of the hedgerows on site have been marked on the Applicant's maps but has not provided any evidence to support this contention. The FAC noted the revised Bio Map uploaded on the 1st February 2024 and the hedgerows marked thereon and visible on the underlying aerial imagery. The FAC examined aerial photography from a number of publicly available sources and is satisfied that the hedgerows marked on the revised Bio Map are consistent with the information available to the FAC and that the site was inspected, and the Inspector indicated in his response to this ground of appeal that all hedgerows have been clearly marked on the Bio Map.

4. The FAC considered the grounds relating HNVf. The FAC noted that the application was assessed for planting under the Afforestation Scheme 2023-2027 which included an assessment of the proposal site's potential to be HNVf. The FAC noted that the most recent version of the ERA (June 2024) states in *Appendix B High Nature Value Farmland (HNVf) Procedure for Afforestation* that "the objective of this assessment is to determine if the proposed afforestation will significantly negatively impact HNVf." The application under appeal was assessed prior to the publication of the June 2024 ERA. However, the application site was surveyed by a DAFM Ecologist, who compiled an ecology report, and a HNVf report was also filed. The information before the FAC is that the DAFM's HNVf assessment scored the application site as "Moderate" and noted the presence of an area of fen/flush and an adjacent wet woodland with the recommendation that both habitats be retained as ABE. The FAC is not satisfied that the DAFM erred in relation to these grounds of appeal. Additionally, the FAC noted the DAFM's submission which stated that "...as the basis of State Aid approval from the European Commission, particular focus has been placed on key sensitivities potentially impacted by inappropriate afforestation" including HNVf. The FAC considers the rules around State Aid and the associated payment of afforestation scheme grants and premiums to be outside the remit of the FAC.
5. The grounds submit that the DAFM have failed to provide protection for a protected species and failed to consult with a competent authority. Regarding Marsh fritillary, as stated previously, the FAC noted that the *High Nature Value farmland Assessment Report* scored the application site as "Moderate" for HNVf and stated it is "eligible for all forest types, subject to the below measures and all other standard environmental considerations". The Report details that the area with suitable habitat for Marsh fritillary should be retained (left unplanted) in order protect Marsh fritillary. The information before the FAC is that having conducted a field visit, the DAFM identified that the site has suitable habitat for Marsh Fritillary and based on this information, decided to retain said habitat as ABE. The FAC noted the Appellant's reference to current DAFM procedures for Marsh fritillary and considered that these can result in the retention of unplanted areas, or the exclusion of areas, for the protection of Marsh fritillary. In the particular circumstances of this case, the DAFM have already decided the area suitable for Marsh fritillary should be retained. Nonetheless, as this decision is being remitted for other reasons, the FAC noted that the application will be subject to the current requirements of the ERA in relation to Marsh fritillary.

These grounds also submit that the application should have been referred to the NPWS. The FAC considered that the DAFM are the licencing authority with responsibility for afforestation and that Regulation 9 of the Forestry Regulations 2017 outlines the circumstances where the Minister shall consult with a consultation body. The FAC is satisfied that these circumstances were not applicable in

this case. The FAC also noted the DAFM's SOF which stated that the DAFM have spatial referrals and discretionary referrals and CN92168 was not a spatial referral nor upon assessment by the District Inspector and/or the assigned ecologist deemed to require a discretionary referral.

6. The FAC considered the grounds regarding the DAFM's EIA screening determination. The FAC noted that the application was field, and desk assessed, and that the EIA assessment was certified on the 30th January 2024, after the production of the ecology report and the completion of the HNVf assessment. There are a number of details recorded in the EIA assessment which appear to represent errors on the face of the record of the decision.

Under the section titled "Natural Resources: Soil and Wetlands" the below question is asked (emphasis added):

*- Does any part(s) of the site contain soil type(s) other than the following eligible soil types: (i) mineral soil; (ii) organo-mineral soil with a **peat depth of less than or equal to 30 cm**; and (iii) modified fen or modified cutaway raised bog that meets the requirements of the native woodland Forest Type and possible to progress without drainage?*

The answer given is "No". This answer appears to be contradicted by the peat depth map which was published on the FLV titled "Other" on the 1st February 2024 and which records numerous points within the application area where the peat depth is 40-70cm.

The DAFM Ecologist's SOF states that the application site is "not within the Wetland layer". The EIA assessment answers "Yes" to the question "Does the project contain an area listed in the Wetland Survey of Ireland?". The assessment goes on to state that "this sensitivity been addressed by the Ecology Section and any resulting recommendation(s) enacted, either through project redesign, conditions to be attached to the afforestation licence..." Elsewhere on the record of the decision, and in the DAFM's SOF, it is stated that wetland areas are present within the site and these have been retained as an ABE.

Under "Referral Responses and Submissions", the EIA assessment states that the application was "referred to the necessary Consultation Bodies, as required by referral procedures". It is then stated that not all of the referral responses received were given due consideration. The DAFM's SOF records that no spatial referrals were triggered by the application and no discretionary referrals were considered necessary by the Forestry Inspector or the Ecologist.

The grounds of appeal state that the proposal is within an area identified in the relevant County Development Plan as being sensitive for: landscape/visual amenity; and/or recreational/amenity purposes and indicates that any potential impact on these sensitivities been offset, through project redesign; conditions to be attached to any licence issued (including adherence to landscape measures set out in the Environmental Requirements for Afforestation).

The FAC considers that the DAFM is the licencing authority with responsibility for afforestation and that the Forestry Regulations 2017 outline the circumstances where the Minister shall consult with a consultation body. The FAC noted that neither of the DAFM's SOF's address this ground of appeal specifically but it is stated in several places that there were no spatial or discretionary referrals made. The FAC considered that any future EIA screening should address the fact that the proposal appears to be located within an area of amenity sensitivity in more detail. The FAC considers that there may be a case for a referral to the Local Authority for comment and if not a clear rationale for not doing

so should be included on the record of the decision (e.g., included in the comments section in the EIA screening determination).

7. The FAC considered that the wrong iteration of the project was screened for AA and this constitutes a significant error. The FAC considered that the changes to the project details which arose after ecological assessment of the proposal, were not adequately addressed by the DAFM in the record of their decision. There is a note in the AASRD which refers to changes due to presence of peat but does not record the details of these changes. The FAC considered that the amended version of the proposal should have undergone AA screening.
8. The grounds state that there is "no evidence that an actual assessment of In-Combination effects has been undertaken by DAFM". They contend that there is a list of projects; there is reference to a County Development Plan (CDP) but there is no assessment. The grounds state that had an in-combination assessment been undertaken it would have identified that the wrong CDP is referenced.

The FAC noted that published on the FLV is a document labelled "In-Combination". The title of this document is "Appropriate Assessment Screening Report Appendix A: In-combination report for Afforestation project CN92168" and it is dated the 3rd January 2024. This report states "The potential for the proposed Afforestation project CN92168 to contribute to an in-combination impact on European sites was considered by the Department of Agriculture, Food & the Marine (DAFM)." The report indicates that various online planning systems were consulted in order to identify other plans and projects, focusing on the general vicinity of the project area in the River Sub-Basin Adhacashlaun_030.

The report concludes that there is no likelihood of the proposal "when considered individually, having a significant effect on the relevant European Site(s), as described elsewhere in the Screening Report". It also states 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 relevant Qualifying Interests / Special Conservation Interests and Conservation Objectives, as listed elsewhere in the Screening Report, have been taken into consideration in reaching these conclusions." The FAC found that the in-combination report states that the DAFM considered the potential for the proposal to contribute to an in-combination impact on European sites, and in doing so, considered other plans and projects from a variety of sources within the general vicinity of the surrounding River Sub-Basin, and considered the relevant Qualifying Interests and Conservation Objectives of the screened European site in reaching their screening conclusion. While the FAC found that there are other errors in the detail of the In-Combination Statement in this case, as set out below, it considered that the DAFM did not err in relation to the specific matter raised in the grounds of appeal submitted regarding the in-combination assessment

Notwithstanding the above, the FAC noted that the in-combination report refers to the likelihood of "residual effects." Based on this wording, the FAC considered that it is not clear that the report demonstrates that the potential for significant effects to arise from the proposal in-combination with other plans and projects was considered by the DAFM as the wording refers to consideration on the basis that there is no likelihood of "residual effect(s)" that might arise, which are not significant in themselves, creating a significant effect in combination with other plans and projects. In the FAC's view, the reference to residual effects creates confusion as it is not clear what effects are being referred to in this instance and there is no explanation as to what gives rise to these effects such that they can be described as being "residual". The FAC would understand that the term residual is generally used in the context of what remains after an action is undertaken. In the context of AA, 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 AA titled “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 noted that the in-combination report states that “The current Leitrim County Development Plan was examined” and the objectives relating to Natura 2000 sites set out within Leitrim CDP 2015-2021 were consulted. The FAC found the DAFM’s consideration of an outdated CDP to be a significant error in their processing of the application. In these circumstances, the FAC considered that the in-combination report contains significant errors and finds that the AA screening should be undertaken again.

9. As outlined in response to the grounds of appeal under 6. Above, the FAC considered that the decision is being remitted for other reasons, and in re-assessing the application prior to making a new decision, the DAFM should either refer the application to Leitrim County Council or provide a clear rationale for not doing so. Notwithstanding this, the FAC noted the DAFM’s SOF which stated that their assessment included consideration of the Map of Irish Wetlands which includes information from surveys conducted by Local Authorities.
10. The grounds state that the DAFM’s procedures are not consistent with the requirement for providing a General System of protection commensurate with Article 5 of the Birds Directive. The Appellant states that Member States are required under Article 5 of the Birds Directive to have in place a General System of protection for all species of wild birds and contends that “The failure in this instance is that Ireland PLC has failed to transpose in to National Law the requirement for a General System of protection for all wild birds consistent with the requirements of Article 5 of the Birds Directive by providing exemptions for activities which will result in outcomes that are contrary to the objectives of the Directive”. The FAC considers that its remit does not extend to making a determination as to whether Ireland has correctly transposed into national law the requirements of the Birds directive. The FAC considers its remit to extend only to the decision of the Minister for Agriculture, Food, and the Marine to grant an afforestation licence following application by the landowner. The FAC concluded that it should make a determination of the appeal against the afforestation licence based on its remit as provided in the Agriculture Appeals Act 2001.
11. The grounds relate to the strict protection regime under Article 12 of the Habitats Directive (Annex IV species). The Appellant contends, *inter alia*, that forestry applications need to be screened for implications for European sites and their species, but also for the potential implications on the Annex IV (a) species known to, or likely to, occur within their natural range and the zone of influence of the proposed forestry activity. The DAFM’s SOF submits that the Ecology Report records that no fauna of significance were found during the field survey. In relation to bats, the DAFM submits that features such as hedges, treelines and waterways are used by bats to navigate between roosts and feeding areas and the continuity of such features is important to them and the presence of protected flight routes around roosts is important. The DAFM stated that this application is retaining linear features and will not adversely affect commuting bats. They contend that CN92168 contains hedgerows, treelines, and wet woodland, and over 50% of the application will now be planted with broadleaves.

The DAFM stated that the licence conditions require the Applicant to retain all existing trees and hedgerows, adhere to the recommendations of the Ecology report and install a setback of 5m from retained habitats. The FAC noted the Appellant's submission regarding the BioForest Report (Biodiversity in Irish Plantation Forests Final Report), contending that the 5m hedgerow setback specified in the ecology report is insufficient and that the BioForest Report recommends a setback of 7m. The FAC noted that the BioForest Report was a research project supported by the EPA and COFORD and includes a recommendation to "Retain scrub, hedgerows and other marginal and additional habitats and allow for adequate buffer zones" and is not part of the DAFM Guidelines and Standards. The FAC also noted that the application of a 5m setback is in line with the requirements of Section 2.5.4 of the ERA working document published in August 2023. The FAC is not satisfied that the DAFM erred in relation to this ground of appeal.

12. The content of this ground of appeal appears to be missing some text. The main contention is that access to the public road infrastructure for future extraction is not suitable, the project access is on to a Regional Road and Leitrim County Council should have been consulted. The FAC considered that the decision before it relates to an afforestation project and the proposed access route, apart from the issues previously identified regarding the Applicant's ROW, is suitable for the standard machinery and vehicular access that would be required to complete the forest establishment operations. As such, the FAC found that the DAFM did not err in relation to this ground of appeal.

Based on the evidence before it, as outlined above, the FAC is satisfied that a number serious or significant errors were made in the DAFM's decision to issue CN92168. In these circumstances, the FAC decided to set aside and remit the decision to the Minister to undertake a new screening for AA, a new screening for EIA, and to address the other errors identified previously in this letter before making a new decision in relation to the application for CN92168.

Yours Sincerely,

Luke Sweetman on behalf of the Forestry Appeals Committee

