



Donald McDonald,

30th March 2026

**Subject: Appeal FAC 131/2024 regarding CN95415**

Dear R. McDonald,

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, in particular the following considerations, the FAC has decided to set aside and remit the decision of the Minister regarding licence CN95415.

**THE LICENCE.**

Licence CN95415 is for the Afforestation of 3.01 Ha. of land in three plots, Plot 1 FT 10 (Continuous Cover Forestry of Mixed conifers & ADB) and Plots 2 & 3 FT10 Bio in the townland of Raheendarragh, Co. Carlow.

The application for the licence CN95415 was published on the Forestry Licence Viewer (FLV) on 23/07/2024. A decision approving the licence was issued on 07/11/2024 subject to a number of conditions including Standard planting conditions, Retention of all existing trees and hedgerows within the site, compliance with the Environmental Requirements for Afforestation and the Forestry Standards Manual.

**FORESTRY APPEALS COMMITTEE.**

Appeal Ref: FAC 131/2024 against the decision to grant licence CN95415 as dated 07/11/2024 was considered by a division of the FAC at a hearing held remotely on the 11<sup>th</sup> of March 2026. The FAC members present were:

FAC Members: Mr. Ed Carroll (Chairperson), Mr. Luke Sweetman & Mr. Iain Douglas.  
Secretary to the FAC: Ms. Aedin Doran.

At the sitting the FAC had before it the full DAFM record of the decision, the notices and grounds of appeal and a SoF provided by the DAFM.

**BACKGROUND.**

The site is located some 7.35 km north-east of the village of Borris, Co. Carlow. The site is bounded by an unsurfaced track to the south-east and by existing woodland on the southern and western site boundaries and scrubland to the north.

The soils on the site are described as being mineral and predominantly Podzolic in nature. The slope of the site is described as steep (15% to 30%). The habitat on site is described as Wet Grassland (Fossit GS4) (applicant's Current Environment & Habitat Map dated 04/07/2024).

The site lies in the Water Framework Directive (WFD) Barrow 14 Catchment and the Barrow\_SC\_140 Sub-catchment and is 100% within the Mountain (Carlow)\_010 River Sub-Basin. The nearest WFD River Waterbody is Mountain (Carlow) aka. Killedmond River, an Order 3 river which forms northern site boundary and was of Good status 2019-2024 in the 2019-2024 monitoring period and is Not-at-Risk Forestry is not a pressure on this river.

The documents before the FAC on file on the FLV included; a Site Notice dated 20/06/2024, a Fencing Map dated 04/07/2024 and a Inet Pre Approval Submission Report all uploaded to the FLV on 23/07/2024. A Location Map and a Bio\_Diversity Map both dated 04/07/2024 and a photograph of the site notice all uploaded to the FLV on 26/02/2025. A Habitat Survey & Ecological Assessment dated 04/06/2024 uploaded to the FLV on FLV 07/08/2024 and a Freshwater Pearl Mussel Report (FPM Report) dated 04/06/2024 uploaded to the FLV on FLV 13/08/2025

The licence application was referred to Carlow County Council, the National Parks & Wildlife Service (NPWS) and Inland Fisheries Ireland (IFI) on 28/08/2024. Carlow County Council responded on 25/09/2024 indicating that it had no objection in principle to the proposed planting and that the area has moderate capacity for forestry planting and that the DAFM should take account of the County Development Plan provisions and requirements as applying to the sensitive uplands landscape area. The NPWS responded on 03/09/2024 stating that it was not in a position to provide specific observations on the licence application and referred the DAFM to an appendix attached to the submission which set out the general duties of a public authority with regard to Appropriate Assessment (AA), Environmental Impact Assessment (EIA) and Other Biodiversity Considerations. No response is recorded from IFI.

The DAFM documents before the FAC on file on the FLV comprised: an Inspector's Certification Report, an Appropriate Assessment Screening Report (AASR), an AASR In-combination Screening Stage Report, an Assessment to Determine EIA Requirement all dated 30/10/2024, a Site Plots - Pre Approval Report and a Site Details - Pre Approval Report and a EIA Forest Cover Report, all uploaded to the FLV on 07/11/2024.

**SUBMISSIONS.**

The FLV records that there were no third-party submissions on the licence application.

**APPROPRIATE ASSESSMENT.**

The DAFM AASR screened three Natura 2000 sites within 15 km of the proposed afforestation, Blackstairs Mountains SAC (Site Code 000770), River Barrow and River Nore SAC (Site Code 002162) and the Slaney River Valley SAC (Site Code 000781). All three sites were screened out, in the case of the Blackstairs Mountains SAC because of the position of the project area downstream from the Natura site, and the subsequent lack of any hydrological connection, and in the case of the other two Natura sites because of the unsuitability of the project area for use by any species listed as a qualifying interest of the Natura sites.

### **ENVIRONMENTAL IMPACT ASSESSMENT.**

The FAC noted that the "Assessment to Determine EIA Requirement" is a standard document used by the DAFM for EIA screening and that the DAFM determined that EIA was not required. In reviewing the "Assessment to Determine EIA Requirement" of 30/10/2024 the FAC is satisfied that the range and type of criteria considered is appropriate for DAFM to determine whether an EIAR was required having regard to the nature, scale, and location of the proposal.

### **THE APPEAL.**

There is one third-party appeal against the decision to approve the afforestation licence. The Notice of Appeal and full grounds of appeal were provided to the parties.

The grounds of appeal are summarised as:

1. Errors in Appropriate Assessment (AA) Screening:- No Qualifying Interests (QIs) are listed, River Barrow and River Nore SAC & Slaney River Valley SAC should be screened in, no evidence vegetation was ground truthed in the growing season, potential for Annex habitats of all Natura sites to be present on the site.
2. Incorrect High Nature Value Farmland (HNVf) assessment within the EIA Screening: - project area is within an HNVf area that is > 0.5 where further assessment is required, DAFM procedures are inadequate using only desktop assessment.
3. Freshwater Pearl Mussel (FPM): - FPM is not addressed by the Ecology Section then error FPM and EIA.
4. No Marsh Fritillary assessment: - Marsh Fritillary Butterfly and its foodplant and habitat are environmental receptors to be considered in EIA and Marsh Fritillary was not assessed.
5. Landscape EIA Error and absence of Landscape mitigation: - the site is in a landscape which has the highest value in the County Development Plan, no design/redesign in the application or licence conditions to offset the impacts on the landscape sensitivity, errors in ABE plots.
6. DAFM Ecologist Site survey data is Missing: - no evidence on FLV that a suitably qualified DAFM inspector/ecologist field inspected the site to verify the application information so as to assess ecological impacts on species and habitats and European Sites.
7. Incorrect Birds Assessment within EIA Screening: -use of desktop assessment of Bird Watch Ireland (BWI) Breeding Wader Hotspot maps means EIA incomplete, Hen Harrier sighted in the Blackstairs Mountains and no/inadequate assessment carried out.

### **Minister's Statement.**

The DAFM submitted a SoFin response to the appeal. The SoF provides an overview of the decision-making procedure and a response to the appeal, a full copy of the relevant SoF was provided to the parties.

In summary the SoF submits that:

- (a) The decision was made in accordance with DAFM procedures, SI 191 of 2017 and the 2014 Forestry Act (as amended).
- (b) The SoF response to the grounds of the appeals is summarised as follows:
  1. Appropriate Assessment Screening Report: - QIs are not listed in the report but a link is provided in the report to the relevant information, which is publicly available on the NPWS website. The site was inspected and was found not to contain protected habitats, with regard to salmon and otter, the

application area does not directly adjoin the aquatic zone. The maps provided with the application show that there is a setback from the aquatic zone which varies in width but is generally 10m or greater. This area is outside the project boundary and as such no works will occur in it. The Habitat map, dated 04/07/2024, identified the application as wet grassland, the application was field inspected on the 30/10/2024 and found to be extensively grazed with sheep, the application was field inspected and did not contain wet heath.

2. HNVF: - Areas identified as having a value of 0.5 SD HNVf or greater require further assessment. CN95415 is within the HNVf layer but the HNVf assessment was not conducted.
3. Freshwater Pearl Mussel (FPM): - It is not a requirement for all sites within FPM catchments to be referred to Ecology for assessment, in this instance the Forestry and Freshwater Pearl Mussel Requirements apply to this site and the required forms submitted identify the measures that are part of the project design.
4. No Marsh Fritillary assessment: - The DAFM is satisfied with the ecological reports on this project.
5. Assertion of a landscape EIA error and absence of landscape mitigation: - the site will be established and managed through CCF which is planned at landscape scale in order to maximise benefits such as landscape design.
6. Assertion that DAFM Ecologist site survey data is missing: - not all afforestation applications are referred to Ecology. The District Inspector field inspected the site prior to completing the Appropriate Assessment screening and this informed the process.
7. Assertion of an incorrect Birds assessment within EIA screening: - CN95415 is not within the Hen Harrier Article 12 breeding distribution layer. Hen Harrier (breeding or wintering) is not a concern in relation to CN95415, likewise the application is not within the Breeding Wader layer as identified on iNET or iFORIS, and as such the procedures do not apply.

#### **CONSIDERATION BY THE FAC.**

At its sitting on the 06/03/2026, the FAC considered appeal FAC 131/2025 and had before it the full DAFM record of the decision as made available on the FLV, the Notice of Appeal Form and grounds of appeal, the SoF provided by the DAFM, and all materials on file.

The FAC, having reviewed all the documentation and submissions, considered that there was sufficient information to enable it to assess and determine the appeal without recourse to an oral hearing.

The FAC considered the grounds of appeal under the following headings, Appropriate Assessment, Assessment to Determine EIA Requirement Report, Freshwater Pearl Mussel, Marsh Fritillary Butterfly, Landscape, Site Inspection, Birds Assessment, Habitat Map.

#### **Appropriate Assessment.**

The FAC considered the ground that the AA Screening Report for the proposed afforestation contained certain errors. In considering this ground of appeal the FAC noted the DAFM response marked as Ground 1 of the DAFM SoF dated 01/07/2025. With regard to the contention that because the QIs of the Natura 2000 are not listed in the AASR the public has been prevented from scrutinising the QIs considered in the report. The FAC noted that there were no third-party submissions on the licence application and that the public had access to the QIs for each SAC through the NPWS website links identified for each SAC in the AASR when published. With regard to the contention that all SAC's should have been "screened in" on the basis that there is potential for species and habitats that are QIs in the SACs to be present on this site "*potential Ex situ Qi presence and impacts and with respect to potential pollution from the project , development*" and "*potential presence of Annex Qi habitat in the project area.*" The DAFM submitted that

the aquatic zone (the Killedmond River) is outside of the licence application area and that the site does not contain any of the habitats referred to in the grounds of appeal. The FAC did not consider that the grounds provide a basis for how the identified species or habitats might be significantly impacted by the licenced activities. With regard to the contention that the site was inspected outside of the growing season therefore the applicant's habitat map cannot be verified. The appellant has adduced no evidence that applicant's habitat map was incorrect.

The FAC was not satisfied that a serious or significant error or a series of errors was made in the making of the decision or that the decision was made without complying with fair procedures in relation to these grounds.

#### **Assessment to Determine EIA Requirement Report.**

The FAC considered the ground that the Assessment to Determine EIA Requirement Report for the proposed afforestation contained an error with regard to the evaluation of High Nature Value farmland (HNVf). In considering this ground of appeal the FAC noted the DAFM response marked as Ground 2 of the DAFM SoF dated 01/07/2025. The FAC noted that the Assessment to Determine EIA Requirement Report indicated that the site has a HNVf score of 0.5 SD or greater and that the DAFM has stated that in such circumstances further HNVf assessment is required but that in this particular instance such further HNVf assessment was not carried out. The FAC noted that the Environmental Requirements for Afforestation 2024 Appendix B sets out the procedure to be carried out where the HNVf score of a site for afforestation of 0.5 SD or greater and that the DAFM had not followed that procedure.

The FAC considers that a failure by the DAFM to comply with its own procedures represents a significant error in the processing of the licence and the making of the decision.

#### **Freshwater Pearl Mussel.**

The FAC considered the ground that the Assessment to Determine EIA Requirement Report for the proposed afforestation was in error with regard to the FPM by not referring the licence application to the DAFM ecology section and the absence of Forms A & B. In considering this ground of appeal the FAC noted the DAFM response marked as Ground 3 of the DAFM SoF dated 01/07/2025. The FAC noted that Form A - FPM Site Assessment-Site Description and Form B - FPM Site Assessment-Mitigation Measures both dated 30/09/2024 were submitted by the applicant and as such form part of the application documentation. The FAC considers that as part of the application documentation the forms should have been published on the FLV prior to the making of the decision.

The FAC considers that a failure by the DAFM to comply with its own procedures regarding publication of documents on the FLV represents a significant error in the processing of the licence and the making of the decision.

The FAC noted the "Yes" response to the question "*Is the project area greater than 5 ha and wholly or partially within an area identified as being sensitive for fisheries?*" and the area of the site is given as 3.01 Ha. The FAC considers the response to be an error but one which does not materially affect the conclusion of the Assessment to Determine EIA Requirement Report.

#### **Marsh Fritillary Butterfly.**

The FAC considered the ground that the Assessment to Determine EIA Requirement Report for the proposed afforestation was in error with regard to the lack of assessment of the impact of the proposed afforestation on the Marsh Fritillary Butterfly. In considering this ground of appeal the FAC noted the

DAFM response marked as Ground 4 of the DAFM SoF dated 01/07/2025. The FAC noted that the Assessment to Determine EIA Requirement Report for the proposed afforestation indicates that there is no potential environmental impact on the Marsh Fritillary Butterfly. The appellant refers to a record of the Marsh Fritillary in the townland of Seskinnamadra some 1.25 km north of the site (the FAC noted the record was not on this site). The appellant adduced no evidence that the species of butterfly referred to the grounds was actually present on the site and did not consider that the grounds provide a basis for how the identified species might be significantly impacted by the licenced activity.

The FAC was not satisfied that a serious or significant error or a series of errors was made in the making of the decision or that the decision was made without complying with fair procedures in relation to these grounds.

**Landscape.**

The FAC considered the ground that the Assessment to Determine EIA Requirement Report was in error with regard to the sensitivity of the landscape and an absence of mitigation of the impact of the proposed afforestation on the landscape. In considering this ground of appeal the FAC noted the DAFM response marked as Ground 5 of the DAFM SoF dated 01/07/2025. The FAC also noted the response of Carlow County Council that it had no objection to the proposed afforestation and that the council's response indicates that, according to the Carlow County Development Plan 2022-2028, the configuration of forestry plantations should not be geometric and should form irregular blocks within established field boundaries. The FAC noted that the site is irregular in shape and that the afforestation is confined within existing field boundaries. The ground also refers to the lack of a setback from existing hedgerows and trees on the applicant's biomap. The FAC noted that while the biomap identifies hedgerows on the site no setback is shown. The FAC further noted that biomaps as indicated in section 17.7 and Map 17.3 in the Forestry Standards Manual 2024 should show hedgerow setbacks and that they should be referred to in the map legend.

In the particular circumstances of this case, where the decision is being remitted for reasons outlined elsewhere in this letter, the FAC found that a new biomap, which clearly shows all relevant features and associated setbacks in the map's legend, should be required by the DAFM prior to the making of a new decision.

**Site Inspection.**

The FAC considered the ground that there was no publicly available evidence that a suitably qualified DAFM inspector/ecologist field inspected the site to verify the information contained in the licence application in order to assess ecological impacts on species and habitats and European Sites.

In considering this ground of appeal the FAC noted the DAFM response marked as Ground 6 of the DAFM SoF dated 01/07/2025. The FAC noted that the DAFM District Inspector prepared an AASR for the proposed afforestation and that the SoF states that a District Inspector field inspected the site prior to completing the AASR and that both documents are available on the FLV.

The FAC was not satisfied that a serious or significant error or a series of errors was made in the making of the decision or that the decision was made without complying with fair procedures in relation to these grounds.

**Birds Assessment.**

The FAC considered the ground that assessment of bird species in the Assessment to Determine EIA Requirement Report was inadequate by using Bird Watch Ireland (BWI) Breeding Wader and Farmland Birds Hotspot maps and by not carrying out an assessment for Hen harrier. In considering this ground of appeal the FAC noted the DAFM response marked as Ground 7 of the DAFM SoF dated 01/07/2025. The FAC noted that DAFM has a map-based methodology and procedure to determine whether further assessment is required for wading birds, farmland birds and Hen Harrier and that the Assessment to Determine EIA Requirement Report indicates that, according to that methodology, the site is not wholly or partially within the Current Breeding Distribution for Hen Harrier, as recorded in the current NPWS Article 12 Report, not wholly or partially within the BirdWatch Ireland (BWI) Breeding Wader Hotspot layer and does not overlap with the BirdWatch Ireland Farmland Birds Hotspot layer. The appellant has adduced no evidence that the findings of the Assessment to Determine EIA Requirement Report are incorrect or that the methodologies and procedures were not complied with.

The FAC was not satisfied that a serious or significant error or a series of errors was made in the making of the decision or that the decision was made without complying with fair procedures in relation to this ground.

**Habitat Map.**

In reviewing the applicant's Habitat Map dated 04/07/2024 that FAC noted that Plots 1,2 and 3 are described as Wet Grassland (Fossit GS4) but that on examination of publicly available aerial photography on GeoHive Map Viewer part of Plots 1&2 and all of Plot 3 as mapped on the Habitat Map appear to be forested. The applicant should be requested to clarify this discrepancy and if necessary, submit a new Current Environment & Habitat Map.

**CONCLUSION.**

In considering the appeal, the FAC had regard to the record of the decision, the Notice and grounds of appeal, and the SoF submitted by the DAFM and post-appeal submission. The FAC considered the provisions of the Agriculture Appeals Act 2001, as amended, and the Forestry Appeals Committee Regulations 2020 and the relevant legislation under which the decision on licence CN95415 was made. The FAC is satisfied that a serious or significant error was made in the process of making of the decision the FAC is therefore setting aside and remitting the decision of the Minister for Agriculture, Food and Marine to ensure that before a new decision is made the DAFM carries out a full HNVf assessment in accordance with the Environmental Requirements for Afforestation 2024 and a new Assessment to Determine EIA Requirement Report, and that the applicant submits a new biomap and Habitat map, which must be published for public consultation, prior to the making of a new decision.

Yours sincerely,

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On Behalf of the Forestry Appeals Committee

