



Howard McCollum,

9th February 2026

Subject: Appeal FAC 067/2024 regarding CN91279

Dear Mr. McCollum,

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 Statements of Fact (SoF) provided by the DAFM, all materials on file, the notice and grounds of appeal, the post-appeal submissions and, in particular the following considerations, the FAC has decided to set aside and remit the decision of the Minister regarding licence CN91279.

THE LICENCE.

Licence CN91279 is for the Afforestation of 37.97 Ha of land in five plots, two plots of FT12 Mixed high forest comprising of mainly spruce with 20% broadleaves and three plots of FT1 Native Forest comprising Alder and Birch and two unplanted bio-plots in the townlands of Creenagh and Cloonlaughil Co. Leitrim as set out in the licence application.

The application for the licence was published on the Forestry Licence Viewer (FLV) on 03/10/2022. A decision approving the licence was issued on 27/06/2024 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, compliance with mitigation measures in the DAFM AAD, compliance with archaeology conditions, ADB species & location specified for Plots 1 & 4 (dwelling & road setbacks), Water setbacks & planting, and Liaison with Leitrim Co. Co.

FORESTRY APPEALS COMMITTEE.

A sitting of the FAC was held remotely on the 16th of December 2025 at which appeal Ref: FAC 067/2025 against the decision to grant licence CN91279 as dated 27/06/2024 was considered. The FAC members present were:

FAC Members: Mr. Donal Maguire (Deputy Chairperson), Mr. Derek Daly, Mr. Vincent Upton, Mr. Iain Douglas, Mr. Edward Carroll (Chairperson – non-participating)

Secretary to the FAC: Mr. Radoslaw Wojtczak.

At the sitting the FAC had before it the full DAFM record of the decision, the notice and grounds of appeal and a Statement of Fact (SoF) provided by the DAFM and post appeal submissions from the appellant and applicant.

BACKGROUND.

The site is located some 2 km south-east of the village of Mohill, Co. Leitrim and adjacent to Greenagh Lough.

The soils on the site are described as being predominantly mineral with peat also present. The slope across the site is flat (7-8%). The habitat on site is described as Wet grassland (Fossit GS4). Hedgerows and Treelines (Fossit WL2) form the field boundaries of the site which transitions to Scrub (Fossit WS1) in several areas. Existing field drains categorised as Drainage ditches (Fossit FW4) are also present. The Cloone River forming the eastern boundary of plots 1 and 3 and a watercourse were categorised as Depositing/lowland rivers (Fossit FW2).

The site lies in the Upper Shannon 26C Water Framework Directive (WFD) Catchment and the Shannon[Upper]_SC_050 Sub-catchment and is 100% within the Rinn_020 River Sub-Basin. The nearest WFD River Waterbodies are the Cloone [Lough Rinn] which adjoins Plots 1 & 3 on their eastern boundaries and the Aghadrumderg Stream which borders Plot 5 on the western site boundary. Both river waterbodies were of Poor status in the 2019-2024 monitoring period and At Risk. Forestry was not identified as a pressure on either river waterbody. Both drain into Lough Rynn.

The application documents before the FAC on file on the FLV included a Location Map dated 11/08/2022, a Fencing Map dated 11/08/2022, an AA Pre-Screening Report dated 26/08/2022, a Copy of a Site Notice dated 05/09/2022, a photograph of the Site Notice In-situ uploaded to the FLV on 30/09/2022, Bio-Diversity/Operational Maps dated 11/10/2022 and an Inet Pre Approval Submission Report undated uploaded FLV 30/09/2022. The applicant submitted three undated documents, a Breeding Bird Survey Report and a Wintering Bird Survey Report classified as "Further Information" and a "Soil Survey" which were uploaded to the FLV on 11/04/2024. The applicant also submitted an Archaeological Impact Assessment following a formal Further Information Request dated 20/02/2023 for such from the DAFM. This document is not on the FLV.

The licence application was referred to Leitrim County Council on 04/10/2022. The council's Environment & Rural Water Section responded on 06/10/2022 raising concerns about drinking water, sedimentation, flood risk, and recommending that an EIA and AA Stage 2 be carried out. The Assistant Engineer in the council's South Leitrim Area Office response of 21/10/2022 indicates that stating that he had no objection to the proposal subject to conditions attached. The council's planning section responded on 07/11/2022 stating that it objected to planting on Plots 4 & 5 and incorporated the other reports from the council, and requested conditions should the licence application be granted.

The licence application was referred to the National Parks & Wildlife Service (NPWS) and Inland Fisheries Ireland (IFI) on 02/01/2024. The NPWS responded on 05/01/2024 stating it had no comment to make and attaching general requirements for AA. No response is recorded from IFI.

The DAFM documents before the FAC on file on the FLV include, an Archaeology Report dated 26/07/2023, an Appropriate Assessment Screening Report & Determination (AASRD) dated 26/03/2024, an AASRD In-combination Screening Stage Report dated 26/03/2024, an Appropriate Assessment Report (AAR) dated 26/03/2024, an AAR In-combination Report dated 26/03/2024, a DAFM letter dated 20/02/2023 to the applicant requesting Further Information (an Archaeological Assessment). Other DAFM documents included, a Habitat Map dated 06/06/2024, and High Nature Value (HNV) farmland Assessment Report dated 10/06/2024, undated photographs uploaded FLV 27/06/2024.

SUBMISSIONS.

The FLV records that there were 7 submissions on the licence application during the first public display period and an additional submission following the second public display period.

APPROPRIATE ASSESSMENT.

The applicant's AA Pre-Screening Report dated 26/08/2022 assessed 3 Natura 2000 sites within 15 Km of the proposed afforestation: Clooneen Bog (Site Code 002348), Lough Forbes Complex SAC (Site Code {001818}), Ballykenny-Fisherstown Bog SPA (Site Code 004101). The Report concluded that there was no likelihood of the proposed afforestation project having a significant effect, individually, on the three European sites.

The DAFM AASRD dated 26/03/2024 identified the same three Natura 2000 sites within 15 km of the proposed afforestation but concluded in the case of the Lough Forbes Complex SAC that it should proceed to AA Stage 2 because it could not be ruled out that the project itself (i.e. individually) would not have a significant effect on the European Site due to hydrological connectivity between the project and that European site. The DAFM carried out AA Stage 2 in the form of an Appropriate Assessment Report (AAR) dated 26/03/2024 which assessed the likelihood of the proposed afforestation having a significant effect on the Natura 2000 sites. The AAR concluded that:

“that the proposed Afforestation project under CN91279, with mitigation measures identified, will itself (i.e. individually) not result in any adverse effect or residual adverse effects on the integrity of the European site(s) listed above. The project was also considered in combination with other plans in the area that could result in potential significant cumulative effects on these European site(s). No potential significant cumulative effects are predicted with the plans and projects listed in listed in Appendix A.”

The DAFM AAD dated 20/06/2024 determined that:

“that the proposed project, individually or in combination with other plans or projects, will not adversely affect the integrity of any of the aforementioned European Sites, having regard to their conservation objectives, provided the following mitigation is implemented”:

Condition 5 of the licence requires that the mitigation measures in the AAD are to be adhered to.

At each stage of the DAFM AA procedure a record of other plans and projects was prepared and considered in-combination with the proposed afforestation for effects on the Natura 2000 sites.

The DAFM also recorded a High Nature Value farmland Assessment Report dated 10/06/2024 which concluded that *“No additional measures required in relation to HNVf.”*

The record indicates that a second period of consultation was carried out following the publication of the AAR.

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. Undue process, a number of documents, including DAFM reports were not published until the decision issued.
2. The licence conditions are not consistent with reasons given for the condition and cites Condition 3 as an example.
3. The licence application does not comply with Article 5 (2) of the Forestry Regulations in that the area is subject to flooding while the AA Pre-Screening Report states that it is not and that the townland boundary which is cultural feature is not shown as such.
4. The AA carried out under Article 6 (3) of the Habitats Directive is flawed, the mitigation measures in the AAR & AAD are not consistent or effective, and they lack precision. The in-combination report is a list of projects without an assessment of those projects, the wrong county plan is referred to, and the 5-year timeframe for the in-combination is too short.
5. There has been no assessment under Article 12 of the Habitats Directive of the impact of the proposed afforestation on Annex IV species with reference to Bats & Otter.
6. Access to all the plots of the afforestation has not been identified and reference is made to the overall lands owned by the applicant, to two previous applications CN85441 and questions avoidance of EIA.
7. The EIA Screening Determination is not adequately reasoned.
8. Under the Water Framework Directive DAFM is required to refuse authorisation where the project may cause a deterioration of the water quality status of a waterbody where there is no benchmark against which water quality status can be compared. The licence contains conditions to protect water quality which is an acknowledgement that the project may cause a deterioration of water quality
9. The soil survey map is inadequate as there was no peat sampling was earned out across a significant portion of the southern half of the site.
10. The Minister has acted outside of his authority by choosing to disregard the position of the local authority with regard to the policies on landscape and forestry in the Leitrim County Development Plan.

The appeal concludes with a summary to the submission raising issues with regard to the DAFM's acceptance and processing of the licence, the charging of an appellant a fee for each subsequent appeal on the same licence, that the appeal fee is prohibitively expensive, there is a conflict of interest between the promotional role and the licensing function of the DAFM Forest Service and an Oral Hearing is requested.

Minister's Statement.

The DAFM submitted a Statement (SoF) to the Forestry Appeals Committee dated 20/10/2025 providing an overview of the decision and responding to the appeal, a full copy of which was provided to the parties. In summary the statement 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 appeal is summarised as follows:

1. Undue Process, a number of circumstances are outlined as to why the documents referred to are not made available on the FLAV until the decision is issued
2. Licence conditions, the DAFM contends that licencing conditions are consistent with the reasoning for the particular condition.
3. Flooding & Townland Boundary, the DAFM states that Flood Risk is assessed regardless of the of the silvicultural considerations selected by registered foresters and that the Protection measures for the townland boundary were stipulated in the Archaeological report.
4. The site access is indicated on the submitted Bio Diversity/Operations map. Access to the project area, from the public road, is via plot 2 and the land connecting the remaining plots is under the same ownership as the application area.
5. Potential effects on the status of a waterbody are specifically considered during DAFM's assessment, and any decision is considered in the context of DAFM's obligations under the Water Framework Directive as the competent authority.
6. That while access is from Plot 2 the applicant owns all the land between the plots so access is available.
7. EIA Screening assessment is based on a process requiring a wide range of questions on environmental factors answered and a full assessment being carried out.
8. Potential effects on the status of a waterbody are specifically considered during DAFM's assessment and any decision is considered in the context of DAFM's obligations under the Water Framework Directive.
9. The area to the south which the appellants refer to, was assessed during the walkover and found to be uniform mineral soil on a drumlin hill.
10. The Forestry Act 2014 clearly outlines the legal basis & role of the Minister in assessing/granting afforestation licences. DFAM assess landscape considerations at a site level, not at a large spatial scale as is the case in the landscape characterisation exercise conducted by Leitrim Co. Co. The DAFM does not consider that this proposal will have a negative impact on the landscape character of the area.

In response to the issues raised in the summary to the appeal regarding multiple appeals and multiple fees, and the amount of the fees for appeals to the FAC. The DAFM response is that fees are set down in Regulation 10 of the Forestry Appeals Committee Regulations 2020 (S.I. No. 418 of 2020) and are not a subject that applies to the conditions of a licence and are not subject to an appeal.

Post-Appeal Submissions

There were two post-appeal submissions, a response by the appellant to the DAFM SoF and a response by the applicant to that submission. The FAC considered the appellant's submission of 17/12/2025 to be an elaboration of matters raised in the appeal proper. The applicant's was that he had complied with all information required.

CONSIDERATION BY THE FAC.

At its sitting on the 9th of December 2025, the FAC 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 Statement of Fact (SoF) provided by the DAFM, post-appeal submissions, and all materials on file.

The FAC, having reviewed all the documentation and submissions, including that of the Appellant, 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, Publication of Documents, Licence Conditions, Compliance with Article 5(2) of the Forestry Regulations 2017, Article 6(3) Habitats

Directive, Article 12 Habitats Directive (Annex IV species), Access, EIA Screening, Water Framework Directive, Peat Assessment, Local Authority Report, Summary.

Publication of Documents.

The FAC considered the ground of appeal that a number of documents, the Archaeology Report of 27/07/2023, the Habitat Map dated 06/06/2024, the High Nature Value (HNV) farmland Assessment Report dated 10/06/2024, and undated photographs uploaded FLV 27/06/2024 were not made available to the public until after the decision issued on 27/06/2024.

In considering this ground of appeal the FAC noted the DAFM response marked as Ground 1 of the DAFM SoF dated 02/07/2025.

The FAC would consider that the primary purpose of Regulation 10(4) is to provide for public consultation in relation to the application that is made for a licence. While the Minister might extend the period for a specific purpose, for example if further information was submitted by an applicant, the FAC would not consider that the Minister is required to provide for a period of public consultation in relation to all of the documents created by the Minister.

The FAC noted that the DAFM issued a letter on 20/02/2023 requesting Further Information from the applicant by way of an updated an Archaeological Assessment and that it appears that such was submitted but is not on the FLV. Given that the DAFM Archaeologist's report of 26/07/2023 refers to "*receipt of an Archaeological Impact Assessment (AIA) report prepared by consultant archaeologists Atlantic Archaeology*" the FAC is of the view that the said Archaeological Assessment having been formally requested by the DAFM formed part of the applicant's licence documentation and was relied on in the DAFM Archaeology Report and licence conditions and therefore should have been published on the FLV and as such subject to public consultation. The FAC further noted that a number of documents that formed part of the application, including the plot table, were not published at the time of public consultation.

The FAC is satisfied that by not publishing the applicant's Archaeological Assessment, and other application documentation, and seeking public consultation there was a serious or significant error in the making of the decision in relation to the requirements of the forestry legislation. The FAC considered that the decision could be set aside and remitted to the Minister to address the error.

Licence Conditions.

The FAC considered the ground of appeal that the licence conditions are not consistent with reasons given for the condition.

In considering this ground of appeal the FAC noted the DAFM response marked as Ground 2 of the DAFM SoF dated 02/07/2025.

The FAC noted that this ground provides no real basis to conclude that a serious or significant error had occurred. Condition 3 of the licence relates to operational measures which typical of the type of conditions that are attached to an afforestation licence. The FAC found the conditions to be clearly stated and to be in keeping with the standards established by the Minister.

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.

Compliance with Article 5(2) of the Forestry Regulations 2017

The FAC considered the ground of appeal that contended that Article 5(2) of the Forestry Regulations 2017 had not been complied with in regard to flooding and that a false declaration had been made in regard to such in the applicant's Pre-Approval Submission Report and that a cultural feature (a townland boundary) was not mapped.

In considering this ground of appeal the FAC noted the DAFM response marked as Ground 3 of the DAFM SoF dated 02/07/2025.

The FAC noted that neither flooding nor cultural features are a requirement of Article 5(2)(a) of the Forestry Regulations 2017 and that it is for the applicant to decide what "*other features which may be relevant to the application*" unless the DAFM decide to request information under Article 5(2)(d) of the same regulations. With regard to flooding the FAC noted that in publicly available mapping www.floodinfo.ie portions of the site are prone to flooding while the greater part of the site is not. The FAC noted the comments in the Inspector's Assessment to Determine EIA Requirement that the DAFM was aware that parts of the site flood and that within those areas prone to flooding native woodland areas with species accustomed and suitable for waterlogged land and intermittent flooding are proposed and that no new drainage is proposed in those areas. With regard to the contention that applicant made a false declaration regarding flooding, the FAC noted the DAFM response that the Silvicultural considerations are not declarations.

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.

Article 6(3) Habitats Directive

The FAC considered the grounds that allege deficiencies in the Appropriate Assessment of the proposal, inconsistency of a mitigation measure between the AAR and AAD, the mitigation measures will be ineffective in the event of flooding, mitigation measures lack precision, inadequacy and an error in the In-combination report.

In considering this ground of appeal the FAC noted the DAFM response marked as Ground 4 of the DAFM SoF dated 02/07/2025.

With regard to the inconsistency of a mitigation measure between the AAR and AAD the FAC noted the DAFM response to this matter in Ground 4 of the SoF and is satisfied that there was a typographical error.

With regard to the contention that the mitigation measures will be ineffective in the event of flooding, the FAC noted that in addition to the water setback mitigation measure in the AAD there is a condition in the licence specifying additional and more detailed measures to be taken for the protection of water quality and aquatic ecosystems.

With regard to the contention that the mitigation measures lack precision and clarity and scientific certainty. The FAC, having read the mitigation measures contained in Section 4 of the DAFM AAD of 20/06/2024, considers that they give clear, definitive actions to be taken in each circumstance.

With regard to the contention that the In-combination Report is simply a list of identified projects and there is no actual assessment or consideration of in-combination effects, the FAC noted that published on

the FLV is a document labelled "In-Combination Report". The title of this document is "Appropriate Assessment Report Appendix A: In-combination report for Afforestation project CN91279. In the heading of this report it is stated that "...the potential for the proposed Afforestation project CN94222 to contribute to an in-combination impact on European sites was considered by the Department of Agriculture, Food & the Marine (DAFM)." and various online resources, datasets and DAFM's own databases were consulted on the 20/06/2024 in order to identify other plans and projects which are also located in the general vicinity of the project area in the River Sub-Basins of Cloone_030 and Rinn_020.

The report concludes

"that there is no possibility that the Afforestation project CN94222, with the mitigation measures set out in Section 4, will itself, i.e. individually, adversely affect the integrity of those European Site(s) screened in (as listed elsewhere in this AA Report. The relevant Qualifying Interests / Special Conservation Interests and Conservation Objectives have been considered in reaching this conclusion. There is no likelihood of any residual effects that might arise, which do not in themselves have an adverse effect, creating an adverse effect on the integrity of the site(s) in-combination with other plans and projects."

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-Basins, and considered the relevant Qualifying Interests and Conservation Objectives of the screened European site in reaching their screening conclusion. The Appellant has not provided any specific evidence that this conclusion is incorrect. The grounds do not even go as far as identifying any European site that the Appellant might have concerns about or how the conclusions of the DAFM might be incorrect. Based on the information before it, the FAC is not satisfied that the Minister made a serious or significant error in the AA process.

With regard to the contention that the In-combination Report quotes the wrong county development plan. The FAC noted that the three In-combination reports on file all refer to the Leitrim County Development Plan 2015-2021 and further noted that the current Leitrim County Development Plan is the 2023-2029 Development Plan which came into effect on 21/03/2023 and therefore the In-combination Reports refer to an incorrect development plan. The FAC considers that reliance on an out-of-date development plan is a serious error in the processing of the licence application.

With regard to the contention that pre-2019 forestry projects had inadequate AA Screening therefore the AAD is invalid the FAC noted that the Appellant has adduced no evidence as to the adequacy of AA Screening for pre-2019 forestry projects.

With regard to the contention that the five-year timeframe for including forestry projects in the In-combination Report is inadequate. The FAC noted that the authority conferred by the licence under appeal is exercisable for a period of five years from the date of issue. The DAFM's In-Combination assessment identifies planning permissions in the general vicinity of the afforestation site which also have a lifespan of 5 years and which, if not already utilised, may be utilised during the lifetime of the issued licence. The FAC noted that the Planning Permissions and Forestry Plans and Projects identified in the In-combination Report of 20/06/2024 comply with the general 5-year temporal criterion used by the DAFM. The grounds do not identify plans or projects which were not properly considered in-combination with the proposal.

In adhering to its own processes, the FAC is not satisfied that the Minister made a serious or significant error, or that the decision was not made in compliance with fair procedures with regard to this ground of appeal.

With regard to the contention that the statement that “there is no possibility of the project contributing to an In-combination effect” has not been proven to the requisite degree of scientific certainty, the FAC noted that published on the FLV is a document labelled “In-Combination Report”. The title of this document is “Appropriate Assessment Report Appendix A: In-combination report for Afforestation project CN91279” and it is dated 20/06/2024. In the heading of this report it is stated that “...the potential for the proposed Afforestation project CN91279 to contribute to an in-combination impact on European sites was considered by the Department of Agriculture, Food & the Marine (DAFM).” and various online resources, datasets and DAFM’s own databases were consulted on the 19/03/2024 in order to identify other plans and projects which are also located in the general vicinity of the project area in the River Sub-Basins of Cloone_030 and Rinn_020.

The report concludes

“that there is no possibility that the Afforestation project CN91279, with the mitigation measures set out in Section 4, will itself, i.e. individually, adversely affect the integrity of those European Site(s) screened in (as listed elsewhere in this AA Report. The relevant Qualifying Interests / Special Conservation Interests and Conservation Objectives have been considered in reaching this conclusion. There is no likelihood of any residual effects that might arise, which do not in themselves have an adverse effect, creating an adverse effect on the integrity of the site(s) in-combination with other plans and projects.”

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 site in the Cloone_030 and Rinn_020 River Sub-Basins, and considered the relevant Qualifying Interests and Conservation Objectives of the Lough Forbes Complex SAC in reaching their screening conclusion. The Appellant has not provided any specific evidence that this conclusion is incorrect. The grounds do not even go as far as identifying any European site that the Appellant might have concerns about or how the conclusions of the DAFM might be incorrect.

Based on the information before it, the FAC is not satisfied that the Minister made a serious or significant error in the AA process.

The FAC noted that the DAFM’s preferred criterion for identifying and assessing potential impacts on water and water quality of Natura sites is the WFD Sub-basin(s) within which the project is located. The FAC noted that the site of the proposed afforestation is located in the Rinn_020 River Sub-Basin.

In adhering to its own processes, the FAC is not satisfied that the Minister made a serious or significant error, or that the decision was not made in compliance with fair procedures with regard to this ground of appeal.

The FAC considered the requirements of the Forestry Regulations 2017 and Article 6(3) of the EU Habitats Directive were met in this case and 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.

Article 12 Habitats Directive (Annex IV species)

The FAC considered the grounds that contend that there has been inadequate assessment under Article 12 of the Habitats Directive (Annex IV species).

In considering this ground of appeal the FAC noted the DAFM response marked as Ground 5 of the DAFM SoF dated 02/07/2025.

The grounds make general unreferenced claims about bats and otter "*Bats are likely to occur on these lands*" and "*Otter have been recorded in the water systems connected to these lands at Lurga Bridge in the NE corner of the project site*" (the FAC noted the record was not on this site). The DAFM submitted that the licencing process represents the checks and balances by which their responsibilities are exercised and outlines stages of that process. It is further submitted that there are no populations of protected species confirmed in the project area or in the vicinity of the project area and that the granting of a afforestation licence does not exempt the holder from meeting the legal requirements of the Wildlife Acts.

The FAC did not consider that the grounds provide a basis for how the identified species might be significantly impacted by the licenced activities. The lands are comprised primarily of Wet Grassland, Linear woodland & scrub, and freshwater watercourses. The application is for afforestation and there are protections in place in relation to hedgerows and broadleaf trees on site (Condition 5 of the licence) and in relation to the protection of water quality which include operational setbacks. The application includes the planting of native tree species in the plots that adjoin the aquatic zones. The FAC considered that the grounds in the main amounted to a challenge in relation to the legality of the Wildlife legislation and Ireland's transposition of EU Directives and that making such a determination would not fall within the remit of the FAC.

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.

Access

The FAC considered the ground that because access to the proposed planting is shown only at Plot 2 which is separated from Plots 3,4 and 5 which raises an issue with the EIA Directive and refers to previous planting licence applications and the fencing map submitted with the licence application.

In considering this ground of appeal the FAC noted the DAFM response marked as Ground 6 of the DAFM SoF dated 02/07/2025.

The only licence before the FAC is under this appeal is afforestation licence CN91279. The FAC noted that the lands connecting all plots are under the same ownership as the application area and therefore can be accessed from the one access point shown on the biodiversity/operational map dated 11/08/2022. The FAC also noted the fencing map shows the location, amount and type of fencing to be erected.

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.

EIA Screening

The FAC considered the ground that there is a lack of reasoning given for the range and type of criteria contained in the EIA Screening Determination (the "Assessment to Determine EIA Requirement"). The FAC considers that the grounds of appeal refer to the adequacy of the DAFM "Assessment to Determine EIA Requirement" of 26/06/2024 as a screening document to allow the DAFM to determine whether a particular project should be subject to EIA.

In considering this ground of appeal the FAC noted the DAFM response marked as Ground 7 of the DAFM SoF dated 02/07/2025.

The FAC noted that the "Assessment to Determine EIA Requirement" is a standard document used by the DAFM for EIA screening. 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. In reviewing the "Assessment to Determine EIA Requirement" of 26/06/2024 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 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.

Water Framework Directive

The FAC considered the ground that the afforestation should be refused as it may cause deterioration of the status of two water bodies neither of which has a formal water quality status under the WFD.

In considering this ground of appeal the FAC noted the DAFM response marked as Ground 8 of the DAFM SoF dated 02/07/2025.

The FAC noted that the conditions of the licence required compliance with the Environmental Requirements for Afforestation and the Forestry Standards Manual both of which contain measures to protect water quality and further that the DAFM AAD had specified a mitigation measure of a setback of 20 metres on either side of the aquatic zones adjoining the eastern and western borders of the project site which is to remain undisturbed and unplanted. This setback is twice the distance proposed by the applicant. In addition to the water setback mitigation measure in the AAD there is a condition in the licence specifying additional and more detailed measures to be taken for the protection of water quality and aquatic ecosystems. The FAC noted that the grounds provide no basis as to how the afforestation as licenced might impact on the two waterbodies downstream of the forest.

The grounds do not provide any basis as to how the afforestation as licenced might impact on a waterbody downstream of the forest or contest the effectiveness of the proposed measures. The FAC considers that there is no evidence before it that a waterbody may be affected by the authorisation, for the purposes of the Water Framework Directive.

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.

Peat Assessment

The FAC considered the ground that peat depths on the southern end of the site were between 300-600 mm deep.

In considering this ground of appeal the FAC noted the DAFM response marked as Ground 9 of the DAFM SoF dated 02/07/2025.

The FAC noted that the MAES15_ESmap_soilcarbon_Final Peat Map was compiled using GIS techniques. The FAC considers that a site inspection, survey and physical soil sampling, as carried out on this site, to be a more reliable methodology for establishing on-site soil conditions.

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.

Local Authority Report

The FAC considered the ground that by not accepting the views of the local authority with regard to landscape the Minister has exceeded his authority.

In considering this ground of appeal the FAC noted the DAFM response marked as Ground 10 of the DAFM SoF dated 02/07/2025.

The FAC noted that the DAFM is the competent authority for issuing forestry licences and that referrals to local authorities and other bodies is a matter for the DAFM and that in its SoF the DAFM addresses the issue of why it did not accept the comments of Leitrim County Council. The licence was issued with a condition to liaise with the County Council.

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.

Summary.

The grounds of appeal contain a summary which contends that the DAFM have erred in the processing of the licence, in particular whether the DAFM should have accepted the licence application in the first instance (as set out in the appellant's post-appeal submission regarding date of submission of the licence application). The grounds go on to challenge the appeals system itself and specifically the fee that is charged, in addition to other aspects of the process and the legislation.

With regard to the acceptance or otherwise of the application by the DAFM, the FAC noted that the DAFM have accepted the licence application as valid, have processed the application and issued a decision to grant a licence for this afforestation. 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. It is clear that the fee was not paid until after the site notice was erected and that the DAFM did not have a file set up until after this point. More importantly the

application was not put out for public consultation until after the site notice was erected and there is no reason to believe that the various dates of the application documents had disadvantaged anyone, notwithstanding the errors identified by the FAC previously in relation to the public consultation process.

Under the Agriculture Appeals Act 2001, as amended, the Minister is empowered to set fees for appeals and the matters raised in the grounds do not relate to the decision to grant CN91279 and are not matters for the FAC to determine.

In relation to the holding of an oral hearing, the agriculture appeals Act 2001, as amended, provides that,

14C (1) The Forestry Appeal committee shall determine an appeal without an oral hearing unless, having regard to the particular circumstances of the appeal, it considers that it is necessary to conduct an oral hearing in order to properly and fairly determine the appeal.

The FAC is satisfied that it conducted the appeal in a fair and appropriate manner, in keeping with the Agriculture Appeals Act 2001, as amended, and the Forestry Appeals Committee 2020.

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. 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 CN91279 was made. The FAC is satisfied that a serious or significant error or a series of errors 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 address the errors identified by the FAC earlier in this letter and to ensure that before a new decision is made the project is subjected to the Appropriate Assessment process such that the requirements of the law are met either through carrying out a new Appropriate Assessment screening of the proposal itself and in combination with other plans or projects under Article 6(3) of the EU Habitats Directive, and having in place an updated Appropriate Assessment Report for the project should the findings of the screening require same.

Yours sincerely,



On Behalf of the Forestry Appeals Committee

