



Mr. Pascal Preston,

24<sup>th</sup> February 2026

**Subject: Appeals FAC 043-046/2024 regarding CN89154**

Dear Mr. Preston,

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 CN89154.

**THE LICENCE.**

Licence CN89154 is for the Afforestation of 7.47 Ha of land in eight plots, four plots (1,2,3 and 8) of FT1 Native Forest comprising Alder, Pedunculate oak, Birch and Additional Broadleaves and four plots (4,5,6,7) as bio in the townlands of Drumman More & Knockhall Co. Roscommon.

The application for the licence CN89154 was published on the Forestry Licence Viewer (FLV) on 14/07/2021. The FAC noted that licence CN89154 was remitted to the Minister on 17/01/2023 following a number of appeals (FAC 010/2022, FAC 011/2022, FAC 012/2022). In the interest of clarity and for the avoidance of doubt the sitting of the FAC held on 09/02/2026 considered only appeal refs. FAC 043/2024, FAC 044/2024 and FAC 045/2024 and 046/2024, in relation to licence CN89154 as issued on 24/05/2024.

A decision approving the licence was issued on 25/04/2024 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, and Liaison with Roscommon County Council.

### **FORESTRY APPEALS COMMITTEE.**

A sitting of the FAC was held remotely on the 9<sup>th</sup> of February 2026 at which appeals Ref: FAC 043/2024, 044/2024, 045/2024 and 046/2024 against the decision to grant licence CN89154 as dated 25/04/2024 was considered. The FAC members present were:

FAC Members: Mr. Donal Maguire (Deputy Chairperson), Mr. Vincent Upton, Mr. Iain Douglas.  
Secretary to the FAC: Ms. Aedín Doran.

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

### **BACKGROUND.**

The site is located some 2 km North-west of the village of Roosky, Co. Roscommon and close to Lough Bofin being separated from it by agricultural land, a public road and a number of dwellings.

The soils on the site are described as being Surface water Gleys, Ground water Gleys (26%), Peaty Gleys (31%), Cutaway, Cutover Basin Peats and Blanket Peats (some) (43%). The average slope across the site is flat (1%, ranging from 0% to 5%). The habitat on site is described as Wet grassland (Fossit GS4), Improved agricultural grassland (Fossit GA1) Hedgerows (Fossit WL1) and Treelines (Fossit WL2), Existing field drains (Fossit FW4) are also present.

The site lies in the Upper Shannon 26C Water Framework Directive (WFD) Catchment and the Shannon [Upper]\_SC\_040 Sub-catchment and is 100% within the Shannon [Upper]\_SC\_070 River Sub-Basin. The nearest Water Framework Directive (WFD) River Waterbodies are the Derrymacstur Stream 625 m north of the site and the Aghoo Stream 1 km south-east. The site is not hydrologically connected to those river waterbodies. The underlying Groundwater Body is the Scramogue North which was of Good Status in the 2019-2024 monitoring period and is Not at Risk. Forestry was not identified as a pressure on either river waterbody.

The application documents before the FAC on file on the FLV included a Drainage Survey dated 25/03/2019, a Natura Impact Statement (NIS) dated 11/05/2021, a Location Map dated 06/07/2021, a Fencing Map dated 06/07/2021, a Photograph of Site Notice In-situ dated 07/07/2021, an undated Pre-Approval Submission Report uploaded to the FLV 14/07/2021, Fencing Map dated 06/07/2021, a copy of the Site Notice uploaded to the FLV 14/07/2021, an NIS dated 11/05/2021 uploaded to the FLV 11/08/2021, Bio-Diversity/Operational Maps dated 06/07/2021, Revised Bio-Diversity/Operational Maps dated 06/07/2021 uploaded to the FLV 14 & 15/10/2021.

The licence application was referred to Roscommon County Council, the National Parks & Wildlife service (NPWS) and An Taisce on 16/08/2021, the county council responded requesting conditions be included for the protection and maintenance of roads and the submission of a map showing extraction routes. The NPWS responded setting out general observations on the duties of public authorities for Appropriate Assessment (AA) and Environmental Impact Assessment (EIA), Annex IV species and the Wildlife Act. An Taisce responded requesting 20 m. water setbacks from watercourses and consideration of cumulative impact with the existing forestry in the area. The licence application was referred to the NPWS and Inland Fisheries Ireland (IFI) on 02/10/2023, no response is recorded from either prescribed body.

The DAFM documents before the FAC on file on the FLV include, an In-combination Screening Stage Report dated 21/01/2022, an Appropriate Assessment Screening Report and Determination (AASRD) and Appropriate Assessment Determination (AAD) both dated 27/01/2022, an Appropriate Assessment Screening Report (AASR), a Site Plots - Pre Approval Report, a Site Details - Pre Approval Report, an Inspector's Certification Report, and a EIA Requirement report all dated 09/02/2022. An AASRD and a Screening Stage In-combination Report, an AAR and AAR In-combination Report, all dated 08/01/2024, a Habitat Map, Photographs and High Nature Value (HNV) Assessment Report all undated and uploaded to the FLV on FLV 06/02/2024, an Inspector's Certification Report and EIA Requirement both dated 22/02/2024, An AAD and an AAD In-combination Report, both dated 12/04/2024, a Site Plots - Pre Approval Report and a Site Details - Pre Approval Report both dated 25/04/2024.

#### **SUBMISSIONS.**

The FLV records that there were eight submissions on the licence application during the first public consultation.

#### **APPROPRIATE ASSESSMENT.**

The applicant's NIS dated 11/05/2021 assessed the impact of the proposed afforestation on the Lough Forbes Complex SAC (Site Code 001818). The NIS concluded that the proposed afforestation would not have an adverse effect on the integrity of the Lough Forbes Complex SAC, in view of its conservation objectives, either individually or in combination with other plans and projects providing the mitigation measures in the NIS were implemented.

The DAFM AASRD dated 08/01/2024 screened five Natura 2000 sites within 15 km of the proposed afforestation, Clooneen Bog SAC (Site Code 002348), Ballykenny-Fisherstown Bog SPA (Site Code 004101), Annaghmore Lough (Roscommon) SAC (Site Code 001626), Brown Bog SAC (Site Code 002346) and Lough Forbes Complex SAC (Site Code 001818) and 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 site and the SAC.

The DAFM carried out AA Stage 2 in the form of an AAR dated 08/01/2024 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 CN89154, 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 12/04/2024 determined that:

*“The proposed project is not located within Lough Forbes Complex SAC IE0001818 but is hydrologically connected to this European site. However, the details of the proposed works and mitigations described above will ensure that the project will not adversely affect the integrity of this European site. These details will protect water quality and riparian areas/etc. and, as such, protect aquatic qualifying interests and (e.g. supporting habitats and/or species of terrestrial qualifying interests).”*

Condition 5 of the afforestation 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 undated and uploaded to the FLV on FLV 06/02/2024 which concluded that *"This application site does not meet the criteria/description for HNVf. No additional measures are required in relation to HNVf."*

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

#### **THE APPEALS.**

There are four third-party appeals 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:

#### **043/2024**

1. The Operational Proposed Details at Appendix A of the licence have been left blank.
2. The lands are HNVf.
3. There is no detailed peat depth mapping consistent with DAFM Circular 3 of 2024.
4. The DAFM has erred in law in screening out this project from an AA for Ballykenny-Fisherstown Bog SPA.
5. There has been no assessment of the potential impacts of the proposed drainage works in the AAD mitigation measures.
6. The incorrect County Development Plan is referred to in the In-combination Reports.
7. There are errors in the EIA Screening Report
8. The Drainage Survey refers to a site in Co. Tipperary.
9. Forest cover in the townland is already too high.
10. The land is subject to flooding, there is no R+N score, and the site does not meet the criteria for planting under the DAFM - Forests and Water Document.
11. There has been inadequate consideration of the importance of drains to the low lying flood-plain.
12. The DAFM has had little regard to the concerns expressed by An Taisce on watercourse setbacks.
13. The DAFM has not given enough consideration of the effect this afforestation will have on the Lough Forbes SAC.
14. There has been inadequate consideration of the pNHA adjacent to the site.
15. The power lines crossing through the centre of this site will not be accessible.
16. Summary.
17. Photographs of flooding in January 2024.

#### **044/2024**

1. The afforestation site floods every year.
2. Trees falling on the power lines crossing site have caused power outages.
3. The soils on the site are peat and peat has been cut on some of the land in this site.
4. Concern is expressed for the wildlife of the area.
5. Drains on the site collect drainage from adjoining land and have not been cleaned for years.
6. Planting will affect tourism on the River Shannon.

7. Photographs of flooding in January 2024.

#### **045/2024**

1. The site is on a floodplain.
2. Trees falling on the power lines crossing site have caused power outages.
3. The soils on the site are peat.
4. The site borders a wild bog which will cause problems for residents in the area.
5. A quarter of land in the area is already forested.

#### **046/2024**

1. The site adjoins Lough Bofin pNHA which contains wetland bird species, afforestation is not compatible with those species.
2. Trees falling on the power lines crossing site have caused power outages.
3. The site is on a floodplain and floods every year.
4. The existing on-site drains have not been maintained, and leaves and debris from the afforestation will cause further blockage.
5. The site is not feasible once setbacks for powerlines, houses, watercourses, flooding and the pNHA have been considered.

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

The DAFM submitted a Statement (SoF) on each appeal to the FAC all dated 07/02/2025. Each statement 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 statements submit 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. The Operational Proposed Details were not entered due to a system error/technical glitch with no impact on the licencing decision.
  2. The site was assessed for HNVf and scored as moderate. HNVf sites that score moderate can be planted with native woodland.
  3. Peat mapping, the application was inspected by a Forestry Inspector. The proposed project area consists of a mixture of peaty gleys (organo mineral) and highly modified peats > 30cm.
  4. Ballykenny-Fisherstown Bog SPA was assessed by an Ecologist, who examined all aspects of the proposal, including carrying out an AA screening. In relation to Ballykenny-Fisherstown Bog SPA, screening determination is clear.
  5. No assessment of impact of drainage works, the drainage report on file was for a previous iteration of this application and the forest type has changed to Native Woodland FT1. No drainage is permitted or required for this proposal.
  6. Incorrect CDP referenced, the current CDP indicates no material differences in the scale and characteristics of developments within the sub-basin assessed s part of the AA In-combination Report.
  7. EIA screening errors, CN86604 is a separate application and is not related to this application. FAC findings regarding CN86604 are not relevant to this application. There is little forest cover in the immediate vicinity. There are 60 m. setbacks in place from all adjoining domestic dwellings.
  8. Drainage Survey error, all guidelines relating to setbacks will have to be adhered to as outlined in the Environmental Requirements for Afforestation.

9. Forest cover in the area, there is no evidence that the establishment of 7.47 ha of native woodland will lead to children leaving the area, property devaluation and diminishment of flora, fauna and wildlife.
10. The soil types are peats and peaty gleys, the site was inspected and various reports were prepared, a R+N score is only required on marginal sites. The R+N score for this site is >5.9 and suitable for FT1 scenario 5 pioneer Birch woodland.
11. Flooding, the application was inspected during a period of heavy rainfall. While part of the proposed project area floods seasonally, the tree species approved will tolerate these events.
12. Watercourse setbacks, all guidelines relating to setbacks will have to be adhered to as outlined in the Environmental Requirements for Afforestation.
13. Lough Bofin pNHA, this proposal to plant a native woodland will not have a negative impact on the adjoining pNHA.
14. ESB powerlines, all areas left unplanted under ESB powerlines are maintained by the ESB or its agents who are empowered to lop or cut any tree, shrub or hedge which obstructs or interferes with electrical wires or to do the same where the tree, shrub or hedge interferes with the erection or laying of any such electrical wires or with the survey of the proposed route of any transmission or distribution lines in respect of the maintenance of electricity transmission line corridors within forests.
15. Impact on local wildlife, there is no evidence supplied by the appellant that the planting of this area with native woodland will impact on local wildlife.

#### **Post-Appeal Submissions**

There were a number of post-appeal submissions. All appellants submitted responses to the DAFM SoF, the Applicant submitted a response to the Appellants post-appeal submission, and the Appellants made a replying submission. The FAC considered all post-appeal submissions to be an elaboration of matters raised in the appeals proper.

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

At its sitting on the 09/03/2026, 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 considered appeals FAC 043/2024, FAC 044/2024, FAC 045/2024, and FAC 046/2024 at the sitting and the considerations set out below address the grounds together where relevant.

The FAC, having reviewed all the documentation and submissions, including that of the Appellants, 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, Operational Proposed Details, HNVf, Peat Mapping, AA Screening, Flooding & Drainage, In-combination Reports, EIA Screening Report, Consultation Body Report, Lough Forbes SAC, Lough Bofin pNHA, and Electric Power Lines. In the interest of clarity and for the avoidance of doubt and the matters raised in all four appeals have been dealt with in common under these headings.

#### **Operational Proposed Details.**

The FAC considered the ground of appeal that Operational Proposed Details at Appendix A of the Afforestation Licence and Technical Approval Letter were not provided in the Appendix. In considering this ground of appeal the FAC noted the DAFM response in the SoF for appeal FAC 043/2024 dated 07/02/2025.

The FAC noted that some of the Operational Proposed Details contained in the applicant's Pre-Approval Submission Report uploaded to the FLV 14/07/2021 are not included in Appendix A of the Afforestation Licence and Technical Approval Letter and that the "Not Entered" response applies to those Operational Proposed Details not contained in the applicant's Pre-Approval Submission Report. The DAFM have submitted that this was due to a technical error.

The FAC would consider that the Applicant would have to adhere to the details of the application as made unless the licence conditions specified changes to the application. In this instance, the FAC did not consider that the technical error that occurred would have any impact on the decision. In any case, for the reasons outlined elsewhere in this letter the decision is being remitted to the Minister and the error that arose can be addressed in making a new decision.

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.

#### **HNVf.**

The FAC considered the ground of appeal that the site is High Nature Value Farmland (HNVf).

The FAC noted that the DAFM HNVf Report states that the site was field inspected on 21/11/2024, that no high quality species rich semi-natural habitats were present on the site and that site is comprised of mostly species poor wet grassland. The FAC further noted that in the Environmental Requirements for Afforestation (ERA) (June 2024) Appendix B - *High Nature Value Farmland (HNVf) Procedure for Afforestation* at Section 2.2(6) it is stated:

*"It is strongly recommended that HNVf field surveys are conducted between May and September (inclusive). It is difficult to identify many of the indicator plant species outside these months."*

The FAC noted that the DAFM, in the HNVf Report, has not advanced any explanation or reasons as to how the conclusion of the HNVf Report was arrived at in the absence of sufficient growth and flowering of the species present given the fact that it departed from the recommended survey period.

The FAC noted that the HNVf Report states that "*Under this Forest Type, drainage will remain as it currently is on the application site, so there will be no increase in the number or type of potential pathways of impact.*" but that the Applicant's Drainage Survey indicates that the site will require drainage improvement and the measures have been incorporated into the licence conditions so that the drainage on the site will not remain as it is currently.

The FAC considers, having regard to the specific details of the application and decision, that the departure from the recommended survey period without advancing an explanation or reasons and using an incorrect assumption that drainage on the site would remain unaltered in reaching the conclusion of the HNVf Report, represents serious errors in the making of the decision. The FAC considered that the decision should be set aside and remitted to the Minister to address the issue. The FAC considered that a new HNVf Report to verify the nature of the habitats following the DAFM survey recommendations would be required in making a new decision.

**Peat Mapping and R+N Score.**

The FAC considered the ground that peat was not mapped in accordance with methodology in Annex A. and that the site has not been given a R&N score.

The FAC has taken that "Annex A" refers to "Appendix A: Methodology for Soil Survey" of the DAFM publication Land Types for Afforestation: Soil & Fertility (June 2024). The FAC notes that the methodology states that "On sites where the soil types are clear, sampling will not be required.". The FAC also noted that the site was field inspected and the soils were deemed suitable for planting of Native Woodland.

The FAC noted that that the site was field inspected and that the Assessment to Determine EIA Requirement dated 22/04/2024 indicates that all parts of the site meet the R+N score of 6.0 or greater.

The appellant has adduced no evidence that the soils are not suitable for the planting of the species proposed in the licence application.

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.

**Appropriate Assessment Screening.**

The FAC considered the grounds of appeal that the rationale for screening out of Ballykenny-Fisherstown Bog SPA IE0004101 in the AA Screening is flawed.

The FAC understands that the information used in an AA Screening Determination should be up-to-date and based on the best available techniques and methods to determine the likelihood of significant effects. The FAC noted that the DAFM AASRD of 08/01/2024 referenced the NPWS Conservation Objectives for Ballykenny-Fisherstown Bog SPA which are dated 18 Apr 2025 Version 1 and as such can be considered the most up-to-date information available. The FAC noted that the Conservation Objectives for Ballykenny-Fisherstown Bog SPA identify that one of the key habitats for foraging of the Greenland White-fronted Goose (Qualifying Interest A395 of the SPA) is "grasslands (such as wet grassland, callows, semi-improved grassland, and intensive grassland)" and that the DAFM AASRD of 08/01/2024 was prepared by a qualified ecologist and that the site had been inspected by an ecologist who found that

*"While the proposed application site is within the core foraging range of the SCI species (5- 8km), the site is recorded as being abandoned. Additionally, there are no records of Greenland White Fronted Goose within 10km on biodiversity maps, or any of the local IWeBS sites. Furthermore, all plots within the site are surrounded by mature hedgerows, meaning it would be sub-optimal to the SCI species given the potential cover for predatory species."*

The FAC considers that the Appellant has adduced no evidence that the site is suitable foraging for the Qualifying Interest of the for Ballykenny-Fisherstown Bog SPA or that a likelihood of significant effect exists such that this European site should have been screened in for Stage 2 AA. The application was subject to consideration and assessment by two ecologists, one on behalf of the applicant and one on behalf of the DAFM and their conclusions aligned. The assessment included field surveys, and a number of reasons are provided as to why Ballykenny-Fisherstown Bog SPA was screened out. The Appellant has not claimed to have any environmental or ecological expertise nor to have engaged such an individual.

The FAC is not satisfied that the DAFM has erred in its processing of the application regarding this ground of appeal.

#### **Flooding and Drainage.**

The FAC considered the ground that the DAFM have not given enough consideration to the fact that the land comprising the proposed afforestation is prone to flooding and that there has been inadequate consideration of the importance of drains to a low lying flood plain.

The FAC noted that in publicly available mapping [www.floodinfo.ie](http://www.floodinfo.ie) much of the site is prone to flooding. The FAC noted the comments in the Inspector's Assessment to Determine EIA Requirement that the DAFM was aware that the site floods and that the Applicant's Drainage Survey of 25/03/2019 addressed the issue of flooding. The FAC further noted that the DAFM are satisfied that within those areas prone to flooding native woodland species proposed are suitable for waterlogged land and intermittent flooding. The FAC noted that the Appellants have adduced no evidence that the species it is proposed to plant will not tolerate such flooding events.

With regard to drainage the FAC noted that no new drainage is proposed within the site and that planting will be by invert mounding which does not require drainage. The FAC noted that the Applicant's Drainage Survey dated 25/03/2019 was submitted as part of the application documentation and further noted that the mitigation measures in the AAD "*Proposed Drainage Improvements as per drainage report dated 25/03/2019*" are in fact improvements to the existing drainage on the site and as such are operational measures.

The FAC understands that mitigation is defined in the European Communities (Birds and Natural Habitats) Regulations 2011 to 2021 as:

*"a measure or a combination of measures that, in relation to Article 6(3) of the Habitats Directive, has the effect of ensuring that a plan or project, individually or in combination with other plans or projects, will not have a significant effect on, or adversely affect the integrity of, a European Site;"*

The FAC considers that the regrading of the existing drains was proposed prior to the carrying out of the Appropriate Assessment under to Article 6(3) of the Habitats Directive and so could not be said to be a mitigation measure but are rather works of an operational nature which would have taken place without having been specified in the AAD. It is also unclear as to how the drainage works would be considered to mitigate potential impacts on a European site as their purpose relates to the drainage of the lands and form part of the proposed works.

The FAC noted that in the *Silt and Nutrient Control* mitigation measures it is specified that existing relevant watercourses should not be cleaned the FAC considers that this is contradicted by the mitigation measures under the heading *Proposed Drainage Improvements as per drainage report dated 25/03/2019*. The *Silt and Nutrient Control* mitigation measures also refer to mound drainage but that no new drainage is proposed and that planting will be by invert mounding.

The AA Report and Determination of the DAFM state that they had regard to the Nature Impact Statement (NIS) submitted by the Applicant, but the submitted NIS specified a 10 metre setback from the main drain on the site. This measure was not adopted by the DAFM, which specified 5 metre setbacks on all relevant watercourses, and no explanation is provided as to why the DAFM considered that this was not required. While the DAFM is the competent authority to issue the afforestation consent and prepared its own

Appropriate Assessment Report, the FAC would anticipate that where a specific mitigation measure of this nature was stipulated by the applicant that the DAFM would provide a reason as to why it was not adopted, having regard to the specific nature of the proposal and assessment.

The statement from the DAFM also contradicts the licence decision as it states that the drainage report was associated with a previous application, but the report was relied upon in the decision-making process of the licence decision that was appealed to the FAC.

The FAC considers that the identification of works contained in the operational documentation submitted with the licence application do not constitute mitigation measures as defined in the European Communities (Birds and Natural Habitats) Regulations 2011 to 2021 and the contradictory mitigation measures in the AAD are serious errors in the making of the decision.

#### **In-combination Reports.**

The FAC considered the ground that the In-combination Reports relied on an incorrect county development plan and that they fail to consider the fact that there are projects which have not been subject to AA Screening which could also contribute to an in-combination effect.

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 Roscommon CDP 2014-2020 and further noted that the current Roscommon County Development Plan is the 2022-2028 development plan which came into effect on 19/04/2022 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.

The grounds contend that there are projects plans and projects listed in the In-combination Report which have not been subject to AA screening, but which could also contribute to an in-combination effect.

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 CN89154" and it is dated 12/04/2024. 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 that date in order to identify other plans and projects which are also located in the general vicinity of the project area in the River Sub-Basin of Shannon (Upper\_\_070. The report concludes:

*"that there is no possibility that the Afforestation project CN89154, 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-Basin, 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 plan or project 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 in relation to this ground.

The FAC did note that in making the AASRD, the Minister relied on an absence of “*residual effects*”.

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 Appropriate Assessment (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 published a guidance document on Appropriate Assessment entitled Appropriate Assessment of Plans and Projects in Ireland Guidance for Planning Authorities (DEHLG, 2009). This document states on page 40,

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

The FAC would consider that this is not the correct test to employ at the screening stage as mitigation measures cannot be considered as part of the screening. As previously noted the screening also relied on the incorrect County Development Plan. The FAC would further consider that the screening should be undertaken after the HNVf report is prepared to ensure that the appropriate information is available for the process. The FAC therefore considered that the decision should be remitted to undertake a new screening for Appropriate Assessment.

#### **EIA Screening Report.**

The FAC considered the ground that there are errors in the DAFM “Assessment to Determine EIA Requirement” concerning the significance of forestry as a local concern, site drainage, the HNVf report landscape sensitivity, and the impact on residential amenity.

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. With regard to the “No” response to the question “*Is the amount and type of forest cover in this locality known to be a significant issue?*”. The FAC noted that the appellant relies on a separate licence application CN86604 which is some 33 km north-west of this current site and which the FAC does not consider to be in the “locality” of licence application CN89154.

With regard to the “Yes” response to the question “*Does this area meet the requirements of the native woodland Forest Type and is possible to progress without site cultivation works that involve site drainage?*”. The FAC noted that no new drainage is proposed and that invert mounding does not require site drainage.

With regard to the “N/A” response to the question “Does DAFM concur with this assessment, based on the submitted report supporting this assessment, and other sources of information (e.g. recent aerial imagery, site inspection)?”. The FAC considers that a definitive response as this section of the certification is an assessment to determine EIA requirement would be appropriate but does not constitute a significant error considering the overall processing and assessment of the proposal including the fact that an Appropriate Assessment was undertaken and the nature, scale and location of the proposal.

With regard to the “Yes” response to the questions on landscape designation in the County Development Plan and whether any potential impact on these sensitivities been offset. The FAC considers the questions to require a binary response, and such response has been given.

With regard to the “No” response to the question “Is there potential for the project to impact negatively on any adjoining or nearby dwelling(s), public road(s), infrastructure and/or densely populated area(s)?” The FAC notes that the bio-map shows setbacks from dwellings and a 10m setback from the public road and that the Environmental Requirements for Afforestation and the Forestry Standards Manual 2024 (compliance with which is a requirement of the licence) specifies a minimum unplanted setback of forestry from a dwelling of 60m (or 30m with the approval of the owner of the dwelling).

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. However, the FAC considered that a new Assessment to Determine EIA Requirement would be required to be completed after the Minister had addressed the other errors identified in this decision.

#### **Consultation Body Report.**

The FAC considered the ground that the DAFM had not given sufficient consideration to the report of An Taisce dated 13/09/21 requesting a 20 metre setback from aquatic zones and a 5 metre setback from relevant watercourses. The FAC noted that the mitigation measure relating to Water Setbacks contained in the DAFM AAD of 12/04/2024 requires a setback of 5 metres to either side of the relevant watercourses on site and that the setback for relevant watercourses specified in Table 4 of the Environmental Requirements for Afforestation 2024 is 5 metres. There are no aquatic zones on the site.

The FAC noted that the DAFM is the competent authority for issuing forestry licences and referrals to consultation bodies and that it is a matter for the DAFM to consider any submission or observation that consultation body may make. The AAD, at Section 3 states that the response from AnTaisce, amongst other was, considered. The record notes the submissions made, and the setbacks are in keeping with those stated in the submission from An Taisce. The application was subject to screening for AA and EIA and an AA process.

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.

#### **Lough Forbes SAC.**

The FAC considered the ground that the DAFM had not given sufficient consideration to the impact the proposed afforestation would have on Lough Forbes SAC.

The FAC noted that the DAFM screened in the Lough Forbes SAC as requiring AA Stage 2 due to hydrological connectivity between the site of the proposed afforestation and the SAC and that the DAFM prepared an AAR as AA Stage 2. The DAFM AAD concluded:

*“The proposed project is not located within Lough Forbes Complex SAC IE0001818 but is hydrologically connected to this European site. However, the details of the proposed works and mitigations described above will ensure that the project will not adversely affect the integrity of this European site. These details will protect water quality and riparian areas/etc. and, as such, protect aquatic qualifying interests and (e.g. supporting habitats and/or species of terrestrial qualifying interests).*

*In combination effects were assessed prior to meeting this determination. The mitigations outlined will ensure that the proposed project will not represent a source and, as such, there is no potential for the project to contribute to any significant cumulative effects, when considered in combination with other plans and projects. Therefore, DAFM deems that the proposed project, when considered in-combination with other plans and projects, will not give rise to the possibility of significant effects on any European site.”*

The FAC noted that the DAFM AA procedure was carried out by a qualified ecologist who took into account the Qualifying Interests and Conservation Objectives for Lough Forbes SAC and the mitigation measures in making the AAD.

The FAC noted that the appellant has adduced no evidence that the AA process was not carried out correctly.

Notwithstanding the errors in the mitigation measures outlined above the FAC is satisfied that the DAFM did give due and proper consideration to Lough Forbes SAC in the AA process in relation to these grounds of appeal.

**Lough Boderg/Lough Bofin pNHA.**

The FAC considered the ground that the proposed afforestation is not compatible with Lough Boderg/Lough Bofin pNHA (Site Code: 001642) which is in close proximity to the site.

The FAC noted that hydrological connection to the Lough Forbes SAC is via the Lough Boderg/Lough Bofin pNHA and that notwithstanding the errors in the mitigation measures outlined above the fact that there is no new drainage is proposed, that planting will be by invert mounding and the requirement for water setback from the existing relevant watercourses any impact on there will be no risk of siltation from the site to Lough Boderg/Lough Bofin pNHA.

The FAC also noted that the Site Synopsis for Lough Boderg/Lough Bofin pNHA refers solely to habitats and that the appellants have adduced no evidence that that species of terrestrial or avian fauna referred to in the appeals are present on the site.

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.

**Electric Power Lines.**

The FAC considered the ground that trees from the proposed afforestation falling onto the power lines crossing the site will cause power outages.

The FAC noted the response to this ground of appeal the DAFM SoF that it is a requirement under the Forestry Standards Manual that there is an unplanted corridor under powerlines, in this case 20 metres as shown on the applicant's bio-map dated 06/07/2021 and that it is the ESB, its authorised undertakers or any other holder of a relevant authorisation that is responsible for the maintenance of that corridor. The FAC further noted that it is a condition of the licence that the afforestation is to be carried out and completed in accordance with the measures set out in *inter alia* the Forestry Standards Manual.

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.

**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 submissions. 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 CN89154 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 through carrying out a new HNVf Report, a new screening for Appropriate Assessment, Appropriate Assessment Report and Appropriate Assessment Determination of the proposal itself and in combination with other plans or projects under Article 6(3) of the EU Habitats Directive and a new screening for Environmental Impact Assessment before a new decision is made.

Yours sincerely,

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On Behalf of the Forestry Appeals Committee