Mr. Cyril Hopkins
[redacted]

19th October 2026

Subject: Appeal FAC116/2024 against licence decision CN91069

Dear Mr. Hopkins,

I refer to the appeal to the Forestry Appeals Committee (FAC) in relation to the above licence granted by the Minister for Agriculture, Food and Marine (the Minister). The FAC, established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001, as amended, has now completed an examination of the facts and evidence provided by the parties to the appeal.

Hearing
Appeal reference FAC116/2024 was considered during a meeting of the FAC held remotely on the 31st March 2026. In attendance:

FAC Members: Mr. Ed Carrol (Chairperson), Mr. Derek Daly and Mr. Luke Sweetman.
FAC Administration: Ms. Aedín Doran

In the particular circumstances of this case, the FAC considered that it was not necessary to conduct an oral hearing in order to properly and fairly determine the appeal.

Decision
Having regard to the information before it, including the record of the decision by the Department of Agriculture, Food, and the Marine (DAFM) on the Forestry Licence Viewer (FLV), the notice of appeal, the DAFM's Statement of Fact (SoF), and the Appellant's additional submission responding to same, the FAC has decided to affirm the decision of the Minister to grant licence CN91069 for the reasons set out hereunder.

Background
The licence under appeal is for the afforestation of 4.24ha at Corderry, Co. Leitrim and was issued on the 9th October 2024. The proposal is for the planting of mixed native broadleaf tree species comprised of pedunculate oak, birch, hazel, and other broadleaves. Invert mounding is proposed in relation to additional broadleaf species and ground preparation would be through woody weed removal followed by slit planting. No fertiliser or herbicides are proposed and weed control would be undertaken manually. The proposal included 1,049 metres of deer fencing. The site is described as enclosed, agricultural land with a neutral aspect and as underlain by a mixture of mineral and peat soils with a grass, grass/rush vegetation type. The application further states that adequate access is in place and that a site notice has been erected.

The application included a Bio Map that included an outline of the site and marked a number of environmental features and the location of the site notice and access. The map marks a relevant watercourse crossing the lands from east to west and the location of an existing crossing point. A ruined building, hedgerows and setbacks are also marked. Fencing and species maps were also submitted. The

file documentation records that the proposal is within the Owengar (Leitrim)_020 River Sub-Basin. Publicly available information from www.Catchments.ie records the current status of this river waterbody as 'Good' and 'Not at Risk' and that this status was assessed by monitoring.

A licence for this proposal was originally issued on the 13th October 2022 and, following a third-party appeal, was set aside, and remitted by the FAC in a decision dated the 26th June 2023 (FAC164/2022). The reasons for remittal were related to the Appropriate Assessment (AA) screening and determination and the Environmental Impact Assessment (EIA) screening. For the avoidance of doubt the determination of the FAC outlined below relates to appeal reference FAC116/2024 against the DAFM's decision to grant afforestation licence CN91069 on the 9th October 2024.

DAFM Assessment

The DAFM produced an "Appropriate Assessment Screening Report & Determination for Afforestation project CN91069, at Corderry, Co. Leitrim" (AASRD) signed by a DAFM Ecologist and dated the 7th October 2024. The AASRD screened the following four European sites within 15km of the proposal, and all were screened out with reasons provided:

- Boleybrack Mountain SAC IE0002032
- Cuilcagh - Anierin Uplands SAC IE0000584
- Lough Gill SAC IE0001976
- Cuilcagh Mountain SAC UK0016603

The AASRD refers to "Appendix A: In-Combination Report for Afforestation proposed under CN91069" and states "See File". On file is a document titled "Appropriate Assessment Screening Report Appendix A: In-combination report for Afforestation project CN91069". This report states that "Various online resources, datasets and DAFM's own databases were consulted on the 02 OCT-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-Basin OWENGAR (LEITRIM)_020."

The report states that online data from Leitrim County Council, An Bord Pleanála, and the Environmental Protection Agency (EPA) were examined, and also references the Leitrim County Development Plan 2023-2029. The report concludes that:

> *…there is no likelihood of the proposed Afforestation project CN91069 when considered individually, having a significant effect on the relevant European Site(s), as described elsewhere in the Screening Report. The relevant Qualifying Interests / Special Conservation Interests and Conservation Objectives, as listed elsewhere in the Screening Report, have been taken into consideration in reaching these conclusions… There is no likelihood that the proposed project will have, or contribute to, any significant effect on those same European Site(s), when considered in combination with other plans and projects.*

Also on file is a document titled "Assessment to Determine EIA Requirement" dated the 9th October 2024. This assessment had regard to the nature, size, and location of the proposal and considered its potential impacts in relation to, inter alia, soil and wetlands, water and freshwater pearl mussel (FPM), birds and special protection areas (SPAs), other areas designated for nature conservation, high nature value farmland (HNVf) and habitats, archaeology and built heritage, landscape, amenity and recreation, "transfrontier and other potential impacts", and determined that the project is unlikely to give rise to

significant effects on the environment by virtue of its nature, size and location and consequently, an EIA was not required.

The DAFM completed a number of ecological assessments in relation to HNVf, Hen Harrier, and the wider ecology of the site. On file is a document titled "DAFM Forestry Inspectorate High Nature Value farmland Assessment Report" which states that:

> *CN91069 was field inspected on 18/04/2024 and desk assessed on 16/05/2024 to score the site in relation to High Nature Value Farmland (HNVf). Following assessment, this application has scored high as documented below. Site specific measures are required. Recommendations for inclusion in the license if issued, below.*

The HNVf Report recorded that the application area is comprised of a variety of habitats as follows: GS4 Wet Grassland, WN2 Oak-Ash-Hazel Woodland, GA1/BL1 Improved Agricultural Grassland/Stone Walls and Other Stonework, GS4/HH3 Wet Grassland/Wet Heath, and WN2/WS1/GS4 Oak-Ash-Hazel Woodland/Scrub/Wet Grassland. The Report refers to an area of existing scrub/woodland which is "not eligible for planting", stating that "these areas are to be excluded (See separate Ecology Report)". The Report found that the area of GS4/HH3 habitat is of "very high species-richness, with a very high coverage of positive indicator species, and moderate coverage of negative indicator species, and moderate vegetation structure" and recommended that this area be retained unplanted (excluded or retained as ABE) in order to protect the species-rich HNVf habitat.

In relation to Hen Harrier a DAFM Ecologist completed a "Hen Harrier Report – Non Breeding", dated the 21st June 2024, which determined that "CN91069 will not result in significant effects on hen harrier" but did prescribe mitigation measures on a precautionary basis. The DAFM also produced an "Assessment of Applications within Article 12 Hen Harrier Breeding Distribution Layer", which was also completed by a DAFM Ecologist and was dated the 10th May 2024. This assessment concluded that "Given the results of the assessment above, and mitigations applied as precaution, and for local biodiversity reasons, it is determined CN91069 will not result in significant effects on hen harrier".

Also on file is an Ecology Report which was produced by a DAFM Ecologist on the 10th May 2024. This report describes the habitats and species recorded on the application site and outlines the proposal's potential impacts. The Ecology Report prescribes a number of conditions which "must be attached to any licence issued". These include mitigations measures relating to badger, existing trees and hedgerows, bats, and otter.

Referrals & Submissions

There is no record of submissions from members of the public on the FLV and The DAFM's SoF states that no submissions were received, and that the application was not referred to any external referral bodies.

Grounds of Appeal

There is one third-party appeal against this licence. The grounds of appeal were considered in full by the FAC and are summarised below:

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

The information provided with the application was not legally compliant. The Bio Map provided (30th June 2022) fails to clearly show legally required features, e.g., hedgerows, townland boundary, mature

trees. The Habitat Map on the file is undated but was not published until the decision had been issued. Where the Map provided under 5 (2) contains a legend (as it should under Forestry Standards) then only those features which are indicated on the map with a legend entry can be considered to be clearly shown. It is not sufficient to claim that the application is adequate to assess the application. The application must be legally compliant; anything less is a serious error.

2. All information relevant to the project has not been published

There is no amended Bio Map on file that reflects the amended project. There is no map on file that identifies the area of the amended project minus the excluded areas. There is no map on the file that actually indicates the licensed project area (as amended). The AA Screening identifies the wrong (un-amended) area. "We must assume that such a map exists on the file and it has not been made available to the public through the Forest Licence Viewer."

3. Areas identified for exclusion have not been excluded

The Ecology Report identified two areas of existing woodland which were required to be excluded from the project. There is no evidence on the file or the public record that these areas have been excluded.

4. Undue process

12 documents (excluding the licence itself) were only published on the FLV documents page after the public consultation period had closed. This includes multiple documents that informed the decision-making process and is information that should have been provided by the developer under the EIA Directive.

Under the EIA Directive, determinations, including screening determinations are required to be made within 90 days of the completed application*. The processing of this application has not conformed to the timescales of the Environmental Impact Assessment Directive and therefore represents a serious error in the processing of this application.

** "Article 4(6). Member States shall ensure that the competent authority makes its determination as soon as possible and within a period of time not exceeding 90 days from the date on which the developer has submitted all the information required pursuant to paragraph 4.*

5. Material change to a project

There has been a material change to this project that required it to be re-published for public consultation. The original application was for a single plot of 4.95ha. The licensed project has two plots but is only for an area of 4.26 ha (a 14% reduction in area). The boundary of the project site has changed. The Forestry Standards Manual (November 2023) states:

> *"2.3 Changes to specifications It is strongly advised that the project submitted is the project which will, if approval is granted, proceed. Whilst there may be changes to an application as a result of the assessment process, other changes, post approval can lead to delays or not be facilitated. Any proposed changes to species and / or plot boundaries must be submitted to the Approvals Section of the Forestry Division in the form of a revised Certified Species Map, a revised Form 1 Plot Table (i.e. page 5 of the Form 1) and any other relevant documentation e.g. revised Bio map. Where significant changes to species and / or plot locations are proposed, re-referral to one or more prescribed consultation bodies and / or public notification may be required. In addition, the application may have to be reassessed by the Forestry Division. This may include situations where it is proposed to exclude a plot(s), as this may create an adverse*

environmental impact, particularly in relation to landscape considerations. For example, if the exclusion of some plots left the remaining plots visually obtrusive on a landscape-sensitive hillside, then this would constitute a significant material change to the project, thereby necessitating further consultation or a new application if the approval was granted. However, the revised application must still conform to the scheme requirements regarding, for example, ABE allowance and broadleaf content, on its own merits"

There is no revised Form 1 Plot Table or Revised Bio Map for the amended project area. This is a failure of recording and hence a failure of due process. DAFM have failed to adhere to their own standards in awarding this licence.

6. Licence Conditions

Licence condition 2 is not understandable by the layperson. Licence conditions are not consistent with the reason for the conditions. The volume of documentation that a forester, a forestry inspector, a forest owner, an ecologist, or a member of the FAC must be familiar with is extensive and the rules and guidance are changing on a regular basis.

Appendix A: The licence does not include all the conditions of the licence. Some conditions are imposed by referral to other documents. The Operational Proposals/the licence itself does not indicate the boundaries of the land to be planted.

The appellant challenges the FAC to validate their comment from the previous decision on the appeal of this licence that "The FAC is satisfied that the term woody weed removal is readily understood, particularly by anyone working in a land-based sector. The lands in question are enclosed, agricultural lands and have been subject to agricultural management."

There is no record of what existing trees are to be retained, their location, height, and prominence in the landscape. These trees should be identified individually in order that the licence condition can be enforced.

The condition to protect the Old Ruins uses a point reference for a feature which is not a point.

7. The ecological assessment of the project is deficient

Ecology Report - The survey can only be considered to be indicative of the ecological features of the site and cannot be considered to be definitive.

HNVf – refers to State Aid rules regarding afforestation. Neither Form A nor Form B are on the public record. The validity of the screening cannot be assessed and challenged in the absence of the evidence. The failure to publish the data which has informed the decision is a serious error.

With reference to the "Evidence of passerine or other farmland birds" - the response to this cannot be considered to be definitive - the field survey was early enough in the year (April 2024) such that many summer visitors would not have returned to the site.

The High Nature Value Farmland Report has indicated "The area of WN2 Oak-Ash-Hazel Woodland is and WN2/WS1/GS4 Oak-Ash-Hazel Woodland/Scrub/Wet Grassland are greater than 0.1ha and are therefore not eligible for planting. These areas are to be excluded (See separate Ecology Report)." These

areas do not appear to have been excluded. Any area of woodland greater than 0.1 ha must be excluded from the application.

No crossing point for the FW1 is identified. In the absence of details as to how the stream will be crossed an impact on water quality cannot be excluded.

This new iteration of the project vindicates our concerns as part of the project area has been excluded based on its association with European Annex I Habitat. According to the NPWS Irish Semi-Natural Grassland Survey all lands accorded a Fossitt classification of GS or GM should be considered to be of High Nature Value. The Minister has not reasoned why the areas of the project which are classified as GS have not been excluded given the view of the conservation authority as expressed in a published report on Semi-Natural Grasslands (Irish Wildlife Manual 78).

Planting trees near to areas of High Nature Value grassland will result in significant additional leaf litter on these lands which has the potential to impact on the fertility of the land and on the nature of the soils.
The DED of Mahanagh in which this project lies, has a Teagasc High Nature Value figure of 4.19 out of 5 for its potential to be considered as High Nature Value Farmland. This puts it in the top 10% in the country. This indicates the significance of the wider environment in terms of High Nature Value Farmland.

Inadequate assessment and mitigation for protected species - Marsh Fritillary. No landscape level ecological assessment has been made but we do know that there are Marsh Fritillary within dispersal distance.

Hen Harrier - The methodology that underpins the Department's Hen Harrier assessment is not publicly available. There is no clearly stated scientific basis for the assessment. It therefore cannot be considered to be adequately demonstrated that any conclusion reached has scientific validity. Notwithstanding this there are at least two serious, erroneous responses in the Breeding Report.

Additionally, there is no data provided for "Existing Forestry/suitable open habitat cover within 2km of closest non-designated hen harrier nest". Is this because it would show that there is greater than 40% forestry within this buffer? We know this to be the case but to demonstrate it would involve the provision of environmentally sensitive data. We request that the FAC requires the Department to provide the missing figures to confirm our position.

8. The determination of the EIA Screening is based on inadequately reasoned assessment

The screening form devised and used by the DAFM is not adequate to ensure compliance with the EIA Directive. The checkbox questions do not fully and correctly address the scope of what is required. It is unclear as to how there can be any consistency in the decision-making process for EIA Screening, short of a blanket screening out for sub-threshold assessment. This is what is happening in practice and is resulting in precisely the same situation which found Ireland in breach of the Directive in Case C392-96.

In circumstances where the Minister awarding the licence is also the promotional authority for forestry in Ireland, the Minister has placed himself in a situation giving rise to a conflict of interest.

DAFM's process for assessing cumulative impact in the context of the EIA Directive is flawed as it restricts, without adequate reasoning, the spatial and temporal criteria applied.

There are erroneous, unvalidated or unreasoned responses within the EIA screening. There is no evidence on the file to support the 'Yes' response to the screening question, "Do all parts of the site meet the R+N score of 6.0 or greater?". The Inspector has indicated 'No' response to the question, "Is the amount and type of forest cover in this locality known to be a significant issue?". This represents a serious error in the EIA Assessment Screening assessment and invalidates the determination.

In response to the question, "Is the project area within an area identified in the relevant County Development Plan as being sensitive for: landscape / visual amenity; and / or recreational / amenity purposes?" the Inspector's response is 'No'. The project lies within the Upland Farmland and Foothills Landscape Character Type as defined by Leitrim County Council. This Landscape Character Type is considered to be of medium to high sensitivity to commercial forestry. The project was not referred to Leitrim County Council for comment and the Inspector's response is in error.

It appears that the Environmental Impact Assessment Screening Form is truncated and is therefore incomplete. The Form indicates that other non-standard mitigation measures that have been incorporated into the project design have been taken into account, but these are not stated. This is a serious error. On this basis the Determination to screen out this project from EIA cannot be considered to be adequately reasoned and a new EIA screening is required.

9. The Screening under Article 6(3) of the Habitats Directive is deficient

Section 2 of the AASRD provides project details and a description of site and surrounds which do not align with the licensed project. The AASRD states that the project is 4.95ha:

> "Combined with the project details and site characteristics summarised above, there is sufficient information within the application and available from elsewhere to form a sound judgement regarding the likelihood of the project having a significant effect on a European site".

Since incorrect project details have been considered a sound judgement cannot be considered to have been reached.

The In-Combination Report for the AA Screening does not involve any assessment of In-Combination effects and relies on an inadequate spatial and temporal framework for consideration.

10. Access to Justice is prohibitively expensive

The Appellant submitted a number of points in relation to the fee charged for forestry appeals including that the current appeal fee regime is possibly contrary to European Law.

11. The Pollution Impact Potential of the project has not been considered or assessed

The Minister has failed to assess the potential for impact to water quality as a consequence of overland flow. Publicly available information indicates flow paths for pollution impact which have not been addressed by DAFM in the mitigation for this project.

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

The licence contains no seasonal restrictions or mitigation to protect all wild birds during the period of breeding and rearing.

13. Inadequate assessment under Article 12 of the Habitats Directive (Annex IV species)

There has not been an adequate assessment of the potential impact on species listed in Annex IV of the Habitats Directive – notably bats and otter. Article 12 of the Habitats Directive requires there to be a strict system of protection for species listed in Annex IV of the Habitats Directive. The Birds and Natural Habitats Regulations require that;

> *Any public authority having or exercising functions, including consent functions, which may have implications for or effects on nature conservation shall exercise those functions in compliance with and, as appropriate, so as to secure compliance with, the requirements of the Habitats Directive and the Birds Directive and these Regulations.*

Any strict system of protection would start with a basic assessment of the potential for impact.

Although the Ecologist has indicated mitigation for bats this is not based on any scientific referencing.

Mature / Veteran Trees have been highlighted on the site but there is no requirement for a survey to determine whether any roosts are present. There is no mitigation against disturbance of potential roosts. Retention of such features alone is not sufficient to eliminate an adverse effect through disturbance. A project must be assessed in terms of best available scientific data. There is no evidence that best available scientific data has been accessed and assessed as part of the considerations of this licence application. NPWS Guidance has not been followed.

Six of the nine species of bat native to Ireland are within their range within OS square G92.
It is for the Minister to evidence that the necessary assessment has been conducted, not for the appellants to provide evidence of bats or otters on this site. There is no evidence in the project documentation of any bespoke assessment for species listed in Annex IV of the Habitats Directive. This represents a serious error in the assessment of this application.

14. The Right Tree in the Right Place for the Right Reasons

It is the Appellant's view that the Emergent Semi-Natural Woodland Scheme would be a more appropriate vehicle for any afforestation of these lands, subject to a full ecological assessment.

Minister's Statement

Under the Forestry Appeals Committee Regulations 2020 (S.I. No. 418/2020), the Minister is required, in relation to each notice of appeal, to provide to the FAC:

> *(a) a statement showing the extent to which the facts and contentions advanced by the appellant are admitted or disputed, and*
> *(b) information, documents or items in the power or control of the Minister that is relevant to the appeal.*

The Minister provided an SoF responding to the grounds of appeal and this statement was provided to the parties to the appeal and has been considered by the FAC. The DAFM's SoF stated that the decision under appeal was issued "in accordance with our procedures, S.I. 191/2017 and the 2014 Forestry Act, as amended". The DAFM also responded to the individual grounds of appeal and the following is a brief summary:

• **Ground 1**

A new Bio Map was not required as the revised area was contained within the original advertised area and the reduction in area was the result of assessment and determination by the DAFM. Re-advertisement is only required if the new area is larger than what was originally advertised, or if a different plot is being proposed for planting. As the application was screened out following Appropriate Assessment, it did not go for a second period of public consultation.

The presence and representation of various features on submitted maps were deemed acceptable
and sufficient for the Department to make an informed assessment of the application. At the time
of licence approval, all information was available for review on the FLV.

All submitted maps are checked against the DAFM's available Iforis mapping layers and in this instance the submitted Bio Map did not affect the AA or EIA screening processes. For this particular project, the Department conducted a site visit to verify site features and assist in the assessment process. No evidence of mapping errors has been provided.

While not expressly marked on the Bio map, the townland boundary falls along the site boundary
which includes a hedgerow. These features are marked on the Bio Map with associated setbacks,
for their protection. Furthermore, as noted in this ground of appeal, it is a condition of the licence that "All existing trees and hedgerows within the site shall be retained". This condition together with the condition that "the afforestation project and all associated operations shall be carried out and completed in accordance with the measures set out in the Environmental Requirements for Afforestation and the Forestry Standards Manual (as amended by periodic Circulars)" affords
protection to the features noted in the grounds of appeal.

• **Ground 2**

The Ecology Report identifies the habitats on site and highlighted that there was a "small stone ruin in the eastern part of the site was surrounded by a disturbed area, and an associated woodland (Oak-ash-hazel, WN2) mixed with Scrub. This joins with a very well-developed Treeline that covers an Eroding/upland river (FW1) (small stream), and some associated shady Wet grassland and woodland flora. This mixed woodland/scrub habitat area linked up with another small woodland further south in the site through linear woodland habitats."

Appendix 1 of the Ecology Report is a Habitat Map of CN91069. The Report recommended that "The larger woodland mosaic area in the Habitat Map (Appendix 1) shall be excluded". Given that the area that is not eligible is clearly identified on the Habitat Map, a revised Biodiversity Map was not requested. CN91069 was previously remitted by the FAC on the 26th June 2023. This application was remitted prior to the new Forestry Programme but it was approved under the Forestry Programme 2023 – 2027 and therefore was subject to the additional constraints and restrictions to enhance the protection of the environment provided for therein. The AASRD shows the original application area on the cover page but it acknowledges the other reports and the exclusion of the area of existing woodland and did not affect the conclusion of the screening.

• **Ground 3**

The Ecology Report included several conditions. It only recommended that the larger area of woodland be excluded, not both areas. It recommended that "The larger woodland mosaic area in the Habitat Map (Appendix 1) shall be excluded". The area that is not eligible is clearly identified on the Habitat Map in the Ecology Report and as such a revised Biodiversity Map was not requested. The following condition is attached to the licence for CN91069 and is the evidence for the public that the area is excluded:

> "Condition: Adhere to the mitigation measures set out in the attached Ecology Report, dated 10/05/2024 Reason: In the interests of protection of the environment, in particular the protection of biodiversity features, species and habitats.".

• **Ground 4**

The DAFM set out their reasoning for why certain documents, records or reports are not published on the FLV until the time of the final decision, including that these may be internal advisory reports produced by one of the internal specialist advice sections and the report is a considered a working draft up to the point where all public consultations periods are completed, and a final decision is made.

• **Ground 5**

The reduction in the area of this project was not regarded as a material change. In this instance there has been no increase the size of the project, no discernible new impact on the neighbouring properties, and as such does not require re-advertisement. In relation to the AA of the project and its impacts, a reduction in the area of operations and area of influence of the project would result in a reduction of impact and does not necessitate another assessment. The external boundary has reduced as stated and falls within the original application area of influence. At the time of approval, the reduced area was clearly displayed on the FLV and was noted in the licence documentation.

•**Ground 6**

Condition 2 is a standard condition which is attached to all afforestation licences and the DAFM are firmly of the opinion that the condition, considered within the ordinary meaning of the language used, can be readily understood by the average person. The DAFM believe that the condition is consistent, and that the adherence to standards and good practice is accepted practice in many sectors. The DAFM do not believe that there is 'confusion' regarding this condition and the *Training Needs Analysis* did not include this as a specific finding.

All circulars issued by the DAFM are located on an easily accessible platform on the website.
The location of the circulars is familiar to Registered Foresters and is easily found by searching the
Forestry homepage. Furthermore, circulars are circulated directly to Registered Foresters.

Operational proposals are initially submitted and set out in the submitted Pre-Approval Submission Report. The Pre-Approval Submission Report together with documents outlining additional operational details are available on the FLV for viewing and consideration.

The DAFM are satisfied that the term *woody weed removal* is clear and readily understood

by those involved or working in the forestry sector. It is the DAFM's opinion that the caveat in appendix A (page 8 of the licence) which states that "The proposed operational details listed apply to this project, except where otherwise identified in the conditions attached to the licence and if relevant, scheme approval" requires that conditions attached to the license be considered first and foremost.

The Bio map submitted with the application has identified hedgerows within and bordering the project area. The condition attached to the licence does not however specify that only the hedgerows marked in the Bio Map be retained. With regard to the mature/veteran trees, the reference in the grounds is taken from the Ecology Report, adherence to which is a requirement of the licence conditions. The *recommendations* section of this report states:

> "**Mature/Veteran trees:** Note that some specimens occur in the field boundaries. These will be protected by the requirement for setbacks from Hedgerows/Treelines (WL1/WL2) above. Additionally these are frequent in the small woodland area, which should be retained (see below). **Retained habitat:** The small woodland shall be retained as ABE.". As outlined the trees in question will be protected through inclusion with the hedgerow setback or within the ABE."

The application of the condition regarding the protection of upstanding structures is clearly and easily understood from the associated licence condition. The DAFM has outlined the location of the structure(s) identified on site and the associated setbacks. Additionally, the wording of the condition attaches the same setback to "any upstanding remains of historic buildings/structures" within the project area which ensures the setback to be applied to features outside of the specific location.

- **Ground 7**

Ecology Report

The Ecology Report summarises the walkover survey by the DAFM ecologist, the purpose of which is to record, describe and to map the habitat types present within the project site, to identify and map any features and/or species of concern (either species observation or observations of their presence e.g., tracks, mammal paths, badger setts) and to address any environmental considerations under the Forestry Programme 2023-2027. Habitats are categorised according to Level 3 of Fossitt (2000). If during the walkover survey, semi-natural habitat with the potential to be linked to Annex I habitat are identified, an assessment for the Annex I habitat is conducted.

It is recognised (Kelleher and Marnell 20061) that features such as hedges, treelines and waterways are used by bats to navigate between roosts and feeding areas and the continuity of such features are important to them. Most bats tend to fly close to linear features or close to a tree canopy, so the presence of protected flight routes around roosts is important. The Ecology Report highlights that the edges of woodland and lines of woody species in Treelines and Hedgerows are important for bat species, as are watercourses. It recommends "All Hedgerows (WL1) and Treelines (WL2) will be retained and a 7m wide unplanted setback installed" and that the "small woodland shall be retained as ABE". The veteran trees are within the hedgerows and woodland and are to be protected. A survey of the veteran trees for bats is not required. The veteran
trees are being protected and enhanced by setbacks and native woodland planting.

The Ecology Report recommended that the "*The larger woodland mosaic area in the Habitat Map*
(Appendix 1) shall be excluded", not both areas. The area that is not eligible is clearly identified on the Habitat Map in the Ecology report and as such a revised Biodiversity Map was not requested. The following condition is attached to the licence for CN91069 "Adhere to the mitigation measures set out in the attached Ecology Report, dated 10/05/2024 Reason: In the interests of protection of the environment, in particular the protection of biodiversity features, species and habitats.". The condition is the evidence for the public that the area is excluded.

High Nature Value Farmland
The ecological assessment of the site identified an area of wet grassland (GS4) / wet heath (HH3) in the northern part of the original application. This area is a mosaic and as such was not classed as a wetland habitat, and it also passed the R+N score. The HNVf report identified this area as "GS4/HH3 habitat is of very high species-richness, with a very high coverage of positive indicator species, and moderate coverage of negative indicator species, and moderate vegetation structure" and recommended it to **be retained unplanted** (excluded or retained as ABE) in order to protect the species-rich HNVf habitat (See HNVf Habitat Map). This area is to remain unplanted, and the remainder of the project site will be planted with broadleaves, hence enhancing the HNVf value of the landscape.

Under the Forestry Programme 2023 – 2027 DAFM has developed procedures for the assessment
of HNVf, which refers to areas where "*agriculture sustains or is associated with either a high species and habitat diversity, or the presence of species of European conservation concern, or both*" (Andersen *et al*., 2003). There are three types of HNVf (as defined by Andersen *et al*. (2003)):

➢ Type 1: Farmland with a high proportion of semi-natural vegetation.
➢ Type 2: Farmland dominated by low intensity agriculture or a mosaic of semi-natural and cultivated land and small-scale features.
➢ Type 3: Farmland supporting rare species or a high proportion of European or world populations.

Type 3 HNVf is addressed by DAFM through separate procedures in relation to AA, NHAs/pNHAs, water quality and specific species (e.g., for Hen Harrier, Breeding Waders, Curlew and Freshwater Pearl Mussel). Type 1 (semi-natural vegetation) and Type 2 (mosaic) HNVf are assessed in the HNVf Procedure for Afforestation. The objective of this assessment is to determine if the proposed afforestation will significantly negatively impact HNVf. DAFM assesses risk to HNVf firstly at a landscape level, using the indicative HNVf map of Ireland by Matin *et al*. (2020). Areas identified as having a value of 0.5 SD HNVf or greater on this map are now incorporated into iNET and iFORIS. If an application falls within this layer, further assessment is required. CN91069 was originally submitted under the old Forestry Programme but upon remittance by the FAC it was assessed under the Forestry Programme 2023-2027. Consequently, as it is within the HNVf layer, it was assessed for HNVf. No Annex I habitat was recorded. The application is not within the Irish Semi-Natural Grassland (ISNG) layer 2008 -2012. HNVf areas are agricultural areas dominated by semi-natural vegetation which support high

biodiversity including habitats and species of national and international conservation concern. Forests can contribute and are part of a HNVf landscape.

Marsh Fritillary

The project site was assessed for Marsh Fritillary habitat and recorded Devil's bit scabious (*Succisa pratensis),* the food plant of marsh Fritillary. However, whilst this plant was present, it does not mean the site is suitable for the species. In the case of CN91069, it was assessed for suitability as Marsh Fritillary habitat and found to be unsuitable. The comments from third parties cited in the appeal appear to be assuming that CN91069 has suitable habitat for Marsh Fritillary, which the site survey found was not the case.

Hen Harrier

The assessment of CN91069 for breeding hen harrier is documented in the Hen Harrier Breeding Report dated 10th May 2024. This assessment identified that the project site is within the core foraging range of one non-designated hen harrier nest site. The review indicated the project site contains areas/habitats that potentially offers foraging habitat for hen harrier, but the project site is at the outer limits of the core foraging range of the closest hen harrier nest site. The cover of total forestry within core foraging range of closest hen harrier nest site is within recommend thresholds, and cover of open suitable habitat is above recommended limits. It was also found that similar (wet grassland habitat) is abundant within the core foraging range of the closest hen harrier nest site. The Hen Harrier Breeding Report concluded that it is unlikely CN91069 will result in significant effects on hen harrier as a result of loss of suitable foraging habitat. It recommended the following mitigation:

- Retain wet grassland/heathland field areas (as per HNVf report).
- Retain hedgerows and apply a minimum 5m setback.
- Apply a minimum 10m setback adjacent the Aquatic Zone bisecting the project site.

- **Ground 8**

In relation to the Appellants' contentions that there is a conflict of interest between the DAFM's role as the Competent Authority for forestry licensing and activities regulated under the Forestry Act 2014, as amended, and the Forestry Regulations 2017, as amended, and the Strategic Goals and Strategic Enablers set out in the Ireland's Forest Strategy (2023 – 2030) and the targets in the Climate Action Plan 2024, it has a responsibility to contribute to, in particular through the use of service delivery plans and prioritised actions as set out in the Forestry Licensing Plan 2024; and by implication there is a breach of Article 9a of the EIA Directive or Article 47 of the Charter of Fundamental Rights of the European Union (Right to an effective remedy and to a fair trial). The DAFM fundamentally disagrees with these contentions.

Whilst it is a general function of the Minister, pursuant to Section 5 of the Forestry 2014 to promote afforestation, the exercise of that function is expressly stated as being without prejudice to the functions conferred on the Minister by the Act and which includes, per Section 11 of the Act, his or her role in safeguarding the environment.

In the performance of their duties DAFM's own officials, as Civil Servants, are always required to comply with the Civil Service Code of Standards and Behaviour (as drawn up and promulgated by the Minister for Finance on pursuant to Section 10(3) of the Standards in Public Office Act

2001 and published by the Standards in Public Office Commission pursuant to Section 10(11) of the Standards in Public Office Act 2001) and whereunder, Civil Servants, *inter alia*, must always act within the law; maintain the highest standards of probity by conducting themselves with honesty, impartiality and integrity; and avoid conflicts of interest.

The Appellants have failed to particularise never mind substantiate their claims –

a) That the two statutorily prescribed roles the Minister has as regards promoting afforestation and safeguarding the environment, as performed by the DAFM on his or her behalf, means DAFM staff are incapable of acting in an objective manner and avoiding conflicts of interest and thus favour / increase the likelihood of the granting of a licence over its refusal.

b) Otherwise cited any applicable statutory provision or clear point of EIA case law that has not been complied with by DAFM in respect of these matters.

Cumulative impact

As set out in the most recent European Commission guidance document on the matter - *Environmental Impact Assessment of Projects: Guidance on Screening (2017),* Member States are afforded considerable discretion in determining how and on what grounds an Annex II Project may be subject to EIA. Accordingly, reference should always be made to the relevant national legislation in order to ascertain what specific requirements must be met. Without prejudice to the foregoing, it is accepted that in relation to the assessment of cumulative impacts, amongst other things, a Competent Authority (such as DAFM) is required to examine a proposed project's potential impact alongside other existing and/or approved projects (and not just projects of the same kind). In doing so it is required to have regard in particular to the nature, size, and the location of the development and sensitivity of that location; as well as the interactions between those three aspects. In the case of location, amongst the matters to be considered are a) the existing and approved land use; b) the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground; and c) the absorption capacity of the natural environment.

However, outside of the applicable statutory requirements, there is no standard prescriptive method for assessing such potential impacts at a national or European level. To the best of the DAFM's knowledge all spatial development sectors in Ireland undertake Screening for EIA using a combination of objective information relating to the proposed project derived from relevant spatial and temporal criteria / envelopes / limits, statutorily based environmental quality standards / statuses, and professional judgment. For example, it is a standard approach for projects subject to a requirement for planning permission not to seek to individually assess existing and/or approved projects older than five years.

In the identification of potential impacts on particular receptors where the spatial component is especially critical, the "source-pathway-receptor" model is applied. Hence the use by this Department of a given project's sub-basin(s) as the spatial envelope to identify potential impacts on water and water quality as a natural resource. This spatial envelope (along with a 500m radius,

the townland, and a 5km radius and temporal windows of 3 years and 5 years) is also utilised to assess the extent of forestry in the receiving environment, the longevity of that land use, and whether the afforestation project under consideration is likely to have significant cumulative impact on the environment, when considered in conjunction with the impact of other existing and/or approved afforestation projects.

In summary, the Appellants have –
a) Failed to particularise any applicable statutory provision or clear point of EIA case law that has not been complied with by the DAFM,

b) Failed to identify any applicable point or principle set out in the national guidance relating to Screening for EIA that the DAFM has not had regard to, as produced by the European Commission (*Environmental Impact Assessment of Projects: Guidance on Screening, European Commission (2017))*; the Department of Housing, Planning and Local Government *(Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment (2018));* the OPR *(Practice Note PN02 - Environmental Impact Assessment Screening (2021))*; or the EPA *(Guidelines on the information to be contained in Environmental Impact Assessment Reports (2022)).*

Reasoning inadequate
The submission of a soil survey and R+N evaluation is not a requirement of the afforestation scheme as outlined in the Land Types for Afforestation document. The assessment of site suitability made by the professional forester was inspected during the site visit and application assessment. The DAFM accepted the details provided and in this instance the land types were clearly defined with no R+N sampling being required.

The Department makes an assessment of, and decision on, all projects using a variety of information and sources. In this instance the Department have not been made aware of any significant local issue concerning this particular forest type or coverage, in the locality. Expressions of concern are not proof of issues and the assertion by the appellant that the previous successful appeal (164/2022) on the licence indicates otherwise is rejected. The appeal decision regarding 164/2022 does not provide any evidence to contradict the answer given as part of the assessment.

Landscape impact
As per the Leitrim County Council Development plan landscape designations, the project area falls within a landscape character type of *Upland Farmland and Foothills.* The proposal lies outside the designations of *Area of outstanding Natural Beauty* and *Area of High Visual Amenity*. The County Council development plan designation of the landscape, over which the project overlaps, includes capacity for commercial forestry. With regard to this proposed project specifically, the proposal is for a small native woodland afforestation outside of a highly sensitive area and as such referral to the County Council was not deemed necessary.

EIA Screening Determination & Non-standard mitigations

The screening determination is based on a review of all submitted material and informed by completion of the EIA screening. The inspector applies their professional judgment in arriving at a decision. Standard mitigations are included in the referenced documents or regulations, noted in the Licence and Technical Approval. Any additional (non-standard) mitigation measures are referred to in the conditions attached to the licence. References to conditions within separate reports can be viewed on the FLV and were reviewed by the Inspector prior to arriving at their decision.

• Ground 9

CN91069 was remitted by the FAC on the 26th June 2023, which was prior to the new Forestry Programme. It was approved under the Forestry Programme 2023 – 2027 and therefore was subject to the additional constraints and restrictions to enhance the protection of the environment provided for therein. Although the original size of the project has decreased, the species to be planted has not changed and other project details remain the same. The area excluded is a small area of woodland and the assessment, which determined that an AA was not required is still valid. As such, it is the position of DAFM, that there are no substantive or procedural lacunae in the AA Screening Determination and the DAFM sees no legal or practical need to re-assess the application for the purposes of AA on these grounds.

• Ground 10

The DAFM set out the legislative basis for the appeal fee and contended that, inter alia, they have set a fee to appeal that "seeks to somewhat defray the administrative costs of servicing and dealing with an appeal but in no way meets such costs, and that in accordance with the Article 9(4) of the Aarhus Convention this fee is not prohibitively expensive."

• Ground 11

"The Department are satisfied that the project design, incorporating relevant setbacks, adhering to environmental requirements, and undertaken in compliance with forest standards, will have no impact on water quality. The assessment process for afforestation applications involves review of environmental spatial layers and site visits, where required, to assess risk and evaluate proposed operations. The assessment of this small native woodland project did not conclude a potential for impact on water quality. No specific information has been provided to indicate an additional risk not considered by the Department during the project assessment."

• Ground 12

The Forestry Programme 2023 – 2027 focusses on key sensitivities potentially impacted by inappropriate afforestation, including organic soils, HNVf, specific Freshwater Pearl Mussel catchments, breeding waders, Hen Harrier. The DAFM submitted that they have measures which relate to specific species, namely Curlew, breeding waders (Snipe, Dunlin, Golden Plover, Redshank and Lapwing) and Hen Harrier, and outlined other policies and procedures which do not relate specifically to birds, but are "multi-purpose, protecting various aspects of the environment." These included:

• Afforestation is not permitted in any SPA (or in sections of the 'High Likelihood Nesting Areas (HNLA), also referred to as 'Red Areas' extending outside those SPA designated for breeding Hen Harrier).
• New requirements regarding soil type and soil fertility (Land Types for Afforestation Soil and Fertility) further reinforce the trend towards soils that are mineral or organo-mineral,

removing afforestation as a land use change in many upland landscapes and at a farm level, from the more marginal areas (from the agricultural production perspective). Such landscapes and areas represent important habitats, breeding and foraging, for a range of species.
• Annex 1 habitats (designated or non-designated) must not be planted
• HNVf procedures may result in areas remaining unplanted or being planted with broadleaves.
• The *Environmental Requirements for Afforestation* (2024). This includes measures requiring the retention of existing hedgerows (reinforced by broadleaf planting within 7 m or in the case of important hedgerows a 5 m wide unplanted setback), and the installation of setbacks adjoining various environmental sensitivities such as water, archaeological features and dwellings, the latter providing areas of undisturbed habitat and valuable edge habitat between the open space and the forest canopy.

The DAFM added that licences are typically accompanied by site-specific ecological conditions, arising from the application of AA and/or some other ecological assessment and that in general such conditions will invariably benefit birdlife. CN91069 was screened out for AA, but it was assessed for Hen Harrier and specific mitigation applied.

• Ground 13
The Ecology report summarises the walkover survey conducted by the DAFM Ecologist. It is stated in the Ecology Report that "No fauna of note were observed during the walkover survey but many mammal tracks were present and some holes in the ground and in the field boundaries (See photos in Appendix 3). Droppings were observed, most likely fox (Vulpes vulpes) and badger (Meles meles). While bats were not observed, there were many potential good flight lines (Treelines/Hedgerows/river) and roosting sites in the mature trees".

In relation to bats, features such as hedges, treelines and waterways are used by bats to navigate between roosts and feeding areas and the continuity of such features is important to them (Kelleher and Marnell 2006). Most bats tend to fly close to linear features or close to a tree canopy, so the presence of protected flight routes around roosts is important. The Ecology report highlights that the edges of woodland and lines of woody species in Treelines and Hedgerows are important for bat species, as are watercourses. It recommends "All Hedgerows (WL1) and Treelines (WL2) will be retained and a 7m wide unplanted setback installed" and that the "small woodland shall be retained as ABE". The veteran trees are within the hedgerows and woodland and are to be protected.

The application is for FT1 native woodland. A survey of the veteran trees for bats is not required. The veteran trees are being protected and enhanced by setbacks and native woodland planting. The licence for CN91069 incorporates measures which will protect and enhance the habitat for bats including maintaining connectivity/commuting routes, planting native species, and protecting existing veteran trees.

• Ground 14
"The Department have assessed the proposed project in line with scheme rules, silvicultural suitability and environmental regulations. It is the Departments view, communicated in the decision to award the licence, that the proposed project is suitable for the proposed location and
complies with the requirements set out in the scheme documents."

Additional Submission Following the DAFM's Statement
The Appellant submitted a response to the DAFM SoF titled "Critique of DAFM's Statement of Facts (CN91069)". This response was considered by the FAC and circulated to the parties to the appeal and no further response was received.

Considerations of the FAC
The remit of the FAC, as set out in Section 14B of the Agriculture Appeals Act 2001, as amended, is to consider appeals against specified decisions of the Minister and to determine if a serious or significant error, or a series of errors, was made in making the decision under appeal, and if the decision was made in compliance with fair procedures.

At its sitting on the 31st March 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 DAFM's SoF, and the Appellant's response to the SoF.

1. Application error; not consistent with Section 5 (2) of the Forestry Regulations
The FAC considered the grounds relating to Section 5 (2) of the Forestry Regulations 2017. The Appellant contends that not all hedgerows have been clearly shown in the application but has not adduced any evidence to support this contention. The Appellant states that it is not possible to determine with certainty whether a feature meets the official definition of a hedgerow (Fossitt WL1 or WL2) purely by means of the inspection of an aerial image. In the case of CN91069, the site was field inspected by a DAFM ecologist and a habitat map produced which records the presence and location of hedgerows amongst other environmental features. The FAC noted that the DAFM's SoF responding to this ground of appeal stated that "A new Bio map was not required in this instance as the revised area was contained within the original advertised area. The reduction in area was the result of assessment and determination by the Department. Re-advertisement is only required if the new area is larger than what was originally advertised, or if a different plot is being proposed for planting."

In these grounds, the Appellant quotes the Ecology Report which states "Mature/Veteran trees: There are a number of mature/veteran trees on-site in the small woodlands and along field boundaries. These are important features for biodiversity." The Appellant states that "This makes all existing trees relevant to the application, but they have not been clearly recorded in the application." However, the Appellant is quoting from the description of the *Potential impacts/issues* section of the Ecology Report and does not include the actual recommendation by the ecologist which is in the *Recommendations* section and which states "The following conditions must be attached to any licence issued" before listing the following in relation to mature/veteran trees:

> **"Mature/Veteran trees:** Note that some specimens occur in the field boundaries. These will be protected by the requirement for setbacks from Hedgerows/Treelines (WL1/WL2) above. Additionally these are frequent in the small woodland area, which should be retained (see below).
>
> **Retained habitat:** The small woodland shall be retained as ABE."

The ecologist's description of the location of mature/veteran trees explicitly states that some specimens occur in the field boundaries and others in the small woodland area and that these will be protected by the hedgerow setback and the retention of the small woodland as ABE (Area of Biodiversity Enhancement) and does not imply that all existing trees are relevant to the application.

The Appellant submits that the Bio Map submitted with the application does not record the townland boundary in the map legend and states that "mapping is required to enable the Department to assess the application; it is also required to enable the public to understand the application. The timeliness of the provision of accurate mapping information is critical. It must be available to the public when the public is in a position to make submissions." In response to this ground of appeal the DAFM stated that "While not expressly marked on the Bio map, the townland boundary falls along the site boundary which includes a hedgerow. These features are marked on the Bio map with associated setbacks, for their protection." The FAC noted that the DAFM were satisfied that they had sufficient information before them to assess the application. The FAC also notes that a site notice was erected to notify the public of an afforestation application at the proposal site and that the application was published for public consultation on the FLV. The FAC found that the default *Open Street Maps* layer on the FLV clearly shows that the Corderry/Derrinvoney Upper Townland Boundary runs along the western boundary of the application area and that this information was readily available to the public from the time the application was published on the FLV, and within the timeframe for public consultation.

Based on the information before it, the FAC found that the townland boundary in question is comprised of a hedgerow and that this information was clearly available to both the DAFM and the public via the FLV. In the particular circumstances of this case, this cultural feature has been assigned a 7m planting setback via the conditions prescribed in the Ecology Report, and that this exceeds the 5m wide habitat setback prescribed for "important hedgerows… e.g. townland boundary" required by the Environmental Requirements for Afforestation. Having considered the information before it, the FAC is not satisfied that the DAFM has erred in its processing of the application in so far as this ground of appeal is concerned.

2. All information relevant to the project has not been published

The Appellant states that there is no amended Bio Map on file that reflects the amended project. The FAC noted that Section 2.3 of the *Forestry Standards Manual 2024*, which provides guidance on the operational requirements of the Afforestation Scheme, does not require a revised Bio Map to be submitted where amendments to the proposed area are a result of the DAFM's assessment of the application.

The FAC considered that a reading of the file as whole indicates that an area of GS4/HH3 habitat was identified in the HNVf Assessment Report for exclusion/retention and that this report is referenced in the Ecology Report, and the area of GS4/HH3 habitat is shown on the Habitat Map in Appendix I of the Ecology Report. This map delineates the areas to be excluded from planting/retained as ABE and the licence conditions require the Licensee to "adhere to the mitigation measures set out in the attached Ecology Report". Based on the information before it, 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 of appeal.

3. Areas identified for exclusion have not been excluded

As outlined above in the findings under ground no. 2, the FAC considered that a reading of the file as whole clearly shows that the Habitat Map in Appendix I of the Ecology Report delineates the areas to be excluded from planting/retained as ABE and that the licence conditions require the Licensee to "adhere to the mitigation measures set out in the attached Ecology Report". Based on the information before it, 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 of appeal.

4. Undue process

The FAC considered the grounds relating to the publishing of relevant documents and the availability of same to members of the public. The Appellant contends that the initial public consultation for this project ran for 30 days from 15th July 2022 and that there was no other public consultation. They submit that 12 documents (excluding the licence itself) were only published on the FLV documents page after the public consultation period had closed. The Appellant states that the failure to make this information available in a timely manner is contrary to due process. The FAC considered the requirements of Section 10(1) the Forestry Regulations 2017 (S.I. 191/2017) that:

> *Where the Minister receives an application under Regulations 3, 5, 6 or 7, he or she shall, before making a decision on the matter, publish a notice of the application in a manner determined by the Minister.*

Section 10(4) of the Forestry Regulations 2017 states that:

> *The public may make submissions or observations in writing concerning the application to the Minister within 30 days from the date of publication of the notice or whatever longer timeframe is set out in the notice, and where additional information is published, at least 30 days from the date of the publication of that information.*

The FAC considers that Section 10(4) of the 2017 Regulations primarily relates to the public consultation process regarding the application for a licence while the Minister might, at their discretion, provide for further periods of public consultation. In this instance, the FAC is satisfied that the Minister published the licence application on the FLV before the making of a decision and that this was in line with the requirements of the Forestry Regulations 2017.

Although the Appellant has not specified which additional documents they are referring to in this ground of appeal, the FAC considered that the Ecology Report, for example, constitutes an internal advisory report, produced as part of the DAFM's assessment of the licence application and that conditions prescribed in the report were attached to the afforestation licence. The FAC noted that this report was published on the FLV, alongside a number of other documents which did not form part of the afforestation licence application but were generated during the DAFM's assessment of the application. The FAC noted that the Ecology Report, along with other documentation, was available to the Appellant during the period in which it was open to the Appellant to submit an appeal and that the Appellant submitted grounds of appeal regarding the ecological assessment of the proposal.

Under this ground the Appellant submits that Article 4(6) of the EIA Directive requires determinations, including screening determinations to be made within 90 days of the completed application and that the processing of this application has not conformed to the required timescale which represents a serious error in the processing of this application. It is not clear the exact argument the Appellant is putting forward in relation to this point, but it appears to be that because the DAFM, as competent authority, did not adhere to the 90-day timescale (as claimed by the Appellant) in relation to the EIA screening that the FAC should find that a serious error has been made. The FAC would understand that the point of this 90-day period is to give prospective applicants certainty with respect to timelines and whether EIAR is required (environmental-law-reference-report.pdf). The Appellant has not clarified exactly what relief is being sought in the circumstances of this appeal. The FAC would consider it plainly irrational for an

error of this nature in the DAFM's processing of the licence application to lead to a finding of significant error with the result that the licence decision would be, for example, set aside and remitted to the DAFM to make a new EIA screening decision within 90 days of the application being submitted. Not only is this clearly impossible, given the passage of time, but it would not serve to achieve the intention of Article 4(6) of the EIA Directive.

Based on the information before it, the FAC was satisfied that the DAFM did not make a serious or significant error or a series of errors in the making of the decision or that the decision was made without complying with fair procedures in relation to these grounds of appeal.

5. Material change to a project

The grounds contend that there has been a material change to this project that required it to be re-published for public consultation. The Appellant quotes from the *Forestry Standards Manual (November '23)* which states that (emphasis added) "It is strongly advised that the project submitted is the project which will, if approval is granted, proceed. **Whilst there may be changes to an application as a result of the assessment process, other changes, post approval can lead to delays or not be facilitated.** Any proposed changes to species and / or plot boundaries must be submitted to the Approvals Section of the Forestry Division in the form of a revised Certified Species Map, a revised Form 1 Plot Table (i.e. page 5 of the Form 1) and any other relevant documentation e.g. revised Bio map." The FAC found that the quoted text clearly outlines that there may be changes to an application as a result of the DAFM's assessment process and that it is "other changes, post approval" which are proposed by the Applicant that can "lead to delays or not be facilitated". The FAC considered that the change in area between what was originally applied for and what was eventually approved arose as a result of the DAFM's assessment process and were not changes to the species and/or plot boundaries proposed by the Applicant and therefore did not require the submission of a revised Form 1 Plot Table or revised Bio Map. Having considered the information before it, the FAC is not satisfied that the DAFM has erred in its processing of the application in so far as this ground of appeal is concerned.

6. Licence Conditions

In relation to the licence conditions, the FAC considers that the requirement to comply with standards and guidelines of good practice is a normal and accepted type of licence condition in many sectors including forestry. As with many other sectors, a licence holder is required to abide by the conditions of the licence, and a licence holder may engage the services of trained professionals to undertake the works that have been licenced.

The Appellant states that they challenge the FAC to validate their comment from the previous decision on the appeal of this licence in relation to woody weed removal which they describe as "an anachronism that needs to be expunged from the lexicon of the forestry licence assessment process." As stated previously, the determination of the FAC in this decision letter relates to appeal reference FAC116/2024 against the DAFM's decision to grant afforestation licence CN91069 which was issued on the 9th October 2024. An appeal to the FAC is not the appropriate forum to challenge a previous decision of the FAC. Grounds of appeal should relate to the licence decision under appeal. Notwithstanding the foregoing, the FAC is satisfied that the term *woody weed removal* is readily understood by those working in Irish agriculture, forestry, or ecology and would typically include the removal of species like Gorse (*Ulex europaeus*) and Brambles (*Rubus fruticosus*).

The Appellant contends that the trees to be retained should be identified individually in order that the licence condition should be enforced. The FAC considered that enforcement of licence conditions is the

responsibility of the DAFM and compliance with licence conditions is the responsibility of the Applicant and that neither party has expressed any issues with the details of any of the licence conditions. The FAC considered that the individual recording of the location of each tree, and the verification of same, would be an impractical and unnecessary burden for the parties involved given that the Ecology Report states that the trees to be retained occur within the field-- boundaries and the small woodland to be retained, both of which are marked on the Habitat Map in Appendix I of the Ecology Report.

The Appellant contends that the condition to protect the Old Ruins uses a point reference for a feature which is not a point. The relevant licence condition states "Protect any upstanding structures or ¿Old Ruins¿ located at ITM 594995 825067, a 10m wide unplanted buffer zone/setback should be established around any upstanding remains of the historic buildings/structures within and the proposed planting area." The FAC considered that, despite the apparent inclusion of some erratic punctuation in the wording of the condition, the reasoning and intention of the condition is clearly understood.

Based on the information before it, the FAC was satisfied that the DAFM did not make a serious or significant error or a series of errors in the making of the decision or that the decision was made without complying with fair procedures in relation to these grounds of appeal.

7. The ecological assessment of the project is deficient

The FAC considered the grounds relating to the ecological assessment of the project. These assessments include an Ecology Report, a High Nature Value Farmland Assessment Report, a *Hen Harrier Report – Breeding*, a *Hen Harrier Report – Non Breeding*, and an Appropriate Assessment Screening Report & Determination.

Ecology Report

In the first instance the FAC had regard to the grounds relating to the Ecology Report. The Appellant submits that "The survey can only be considered to be indicative of the ecological features of the site and cannot be considered to be definitive." The FAC considers that the ecological survey represents a record of the ecological features found on site by the DAFM ecologist at the time of the survey.

The Appellant submits that the Ecologist failed to require a survey of the mature/veteran trees referenced in the Ecology Report and which "may contain bat roosts which may be disturbed, even if retained." The DAFM's SoF states that the Ecology Report highlights that "All Hedgerows (WL1) and Treelines (WL2) will be retained and a 7m wide unplanted setback installed" and that the "small woodland shall be retained as ABE". The DAFM also contend that the application is for FT1 native woodland, that a survey of the veteran trees for bats is not required. The Appellant has not claimed to have been on site or to be familiar with the site. The FAC noted that the veteran trees identified by the DAFM's ecologist during the site survey are within the hedgerows and small woodland and were considered in terms of the protection of bat species and relevant mitigation measures were prescribed in the form of setbacks and retention of habitat as set out in the recommendations of the Ecology Report, adherence to which is required by the licence conditions.

In reference to the fact that the small area of woodland is to be retained as ABE, the Appellant submits that "any area of woodland greater than 0.1 ha must be excluded from the application". However, the Appellant has not produced any evidence as to the area of the woodland to be retained. In relation to the exclusion of the larger area of existing woodland, the FAC has addressed the issue of mapping etc previously in this decision.

HNVf

In these grounds the Appellant quotes from the DAFM's High Nature Value farmland Assessment Report which found that "Following detailed assessment for the application site in relation to HNVF which included screening, site inspection, review and assessment, this application scored High." The Appellant queries "how is it possible for a site to record this level of High Nature Value Farmland features and afforestation of the lands not result in a negative effect on this area." The FAC noted that the proposal to afforest the lands was amended by the DAFM as a result of the HNVf assessment of the application site and that this meant a portion of the lands were removed from the area to be afforested. This is outlined in the *Conclusion and Recommendations* section of the HNVf assessment which states that "The area of GS4/HH3habitat is to be retained unplanted (excluded or retained as ABE) in order to protect the species-rich HNVf habitat".

The Appellant refers to "State Aid Condition 63" and states that "the State Aid Conditions are incorporated into the Forestry Programme." As set out in Schedule 2 of the Agriculture Appeals Act 2001, as amended, DAFM decisions related to payments made under the Afforestation Scheme are outside of the jurisdiction of the FAC to determine. Determining appeals related to such decisions of the Minister is the function of Appeals Officers of the Agriculture Appeals Office, as provided for by Section 5(1) of the Agriculture Appeals Act 2001, as amended.

The Appellant submits that the validity of the DAFM's HNVf "screening" cannot be assessed and challenged in the absence of Form A and Form B of the HNVf field sheet which contributed to the scoring of the HNVf assessment. Notwithstanding the fact that the Appellant has assessed the DAFM's findings and submitted a challenge to the validity of the HNVf report, which resulted in the application site being scored as "High", the FAC considered that the HNVf Assessment Report represents the DAFM's findings following their assessment of the site in terms of HNVf and does not agree with the Appellant's view that the failure to publish Form A and Form B of the field sheets, the results of which are incorporated into the final report, is a serious error.

The Appellant states that "No crossing point for the FW1 is identified" however, the Bio Map submitted with the application shows an "existing watercourse crossing" at the boundary of the site at the eastern end of FW1.

The FAC had regard to all of the grounds relating to HNVf, in doing so the FAC noted that the Appellant has not claimed to have visited the application site nor to have ecological expertise, or to have engaged the services of an ecologist/ecological expert in the preparation of their grounds of appeal. The information before the FAC includes evidence of the DAFM's ecological assessment of the application site and their amendment of the area approved for planting with native broadleaves in order to mitigate potential impacts on ecological receptors, including HNVf. The FAC also noted that the application site is not within the Irish Semi-Natural Grasslands GIS layer. On the balance of the evidence before it, the FAC is satisfied that the DAFM did not make a serious or significant error or a series of errors in the making of the decision or that the decision was made without complying with fair procedures in relation to these grounds of appeal.

Marsh Fritillary

The Appellant submits that the DAFM's assessment and mitigation applied for Marsh Fritillary was inadequate. The Appellant included submissions from a conservation officer based in Northern Ireland and a representative of the National Biodiversiy Data Centre. It is apparent from the content of these submissions that neither party is familiar with the application site. The DAFM's SoF states that the

project site was assessed for Marsh Fritillary habitat and recorded devil's bit scabious (*Succisa pratensis) but contends that the presence of this plant (the food plant of marsh Fritillary) does not mean* the site is necessarily suitable for the species. The FAC noted that section B of the HNVf Assessment Report, *Presence and quality of HNV indicators and features*, which was completed following a site survey by an ecologist, records that the site is unsuitable for Marsh fritillary. The Appellant has not adduced any convincing evidence to contradict this finding.

Hen Harrier

These grounds submit that the methodology that underpins the DAFM's Hen Harrier assessment is not publicly available. There is no clearly stated scientific basis for the assessment. It therefore cannot be considered to be adequately demonstrated that any conclusion reached has scientific validity.

The Appellant also states that "Notwithstanding this there are at least two serious, erroneous responses in the Breeding Report." But does not provide any further details of these alleged errors or their alleged significance. The Appellant also references Section 4 of the *Hen Harrier Report – Breeding* and a question which they submit is missing data which the Appellant claims to have access to but did not provide as it would involve "the provision of environmentally sensitive data." The Appellant provided no further details as to the nature or source of this data. The FAC considers that Section 14B(4) of the Agriculture Appeals Act, 2001, as amended requires that "an appellant shall, when making an appeal, state all of the grounds upon which the appeal is made and provide to the Forestry Appeals Committee all of the documents and evidence upon which he or she intends to rely to support those grounds." And Regulation 5(5) of the Forestry Appeals Committee Regulations 2020 requires that "The appellant shall submit the notice of appeal to the office of the Forestry Appeals Committee, along with all submissions and such documentary evidence as the appellant wishes to rely on in support of his or her appeal, and the notice shall contain a list of any such documents."

In relation to Hen Harrier, the FAC noted the DAFM's statement in their SOF that their assessment for Hen Harrier "indicated the project site contains areas/habitats that potentially offers foraging habitat for hen harrier but the project site is at the outer limits of the core foraging range of the closest hen harrier nest site. The cover of total forestry within core foraging range of closest hen harrier nest site is within recommend thresholds, and cover of open suitable habitat is above recommended limits. It was also found that similar (wet grassland habitat) is abundant within the core foraging range of closest hen harrier nest site. The Hen Harrier breeding report concluded that it is unlikely CN91069 will result in significant effects on hen harrier as result of loss of suitable foraging habitat." The FAC noted that the DAFM's Hen Harrier assessment stated that "While significant effects on hen harrier are unlikely, mitigations are prescribed as a precaution" and prescribed measures including the retention of wet grassland/heathland areas and hedgerows and setbacks along hedgerows and the aquatic zone.

Based on the information before it, the FAC was not satisfied that the DAFM made a serious or significant error or a series of errors in the making of the decision or that the decision was made without complying with fair procedures in relation to these grounds of appeal.

8. The determination of the EIA Screening is based on inadequately reasoned assessment

In relation to the EIA screening undertaken, the grounds of appeal include matters that relate to policy in general and not the decision under appeal and do not fall within the FAC's remit. The record includes a document entitled *Assessment for EIA Requirement*. Annex II of the EU EIA Directive (*2011/92/EU as amended by 2014/52/EU*) identifies classes of development for which Member States may set thresholds or criteria for requiring EIA. This includes "initial afforestation and deforestation for the

purpose of conversion to another type of land use" and road construction. The Forestry Regulations 2017, SI 191 of 2017, require that afforestation of 50 hectares or more be subject to an EIA. Afforestation of less than the threshold of 50 hectares but which the Minister considers likely to have significant effects on the environment, taking into account the criteria set out in Schedule 3, must also be subject to EIA. The licence under appeal is for the afforestation of 4.24ha of agricultural land with a mixture of native broadleaf species. This is well below the threshold for a mandatory EIA and the DAFM undertook a screening process to determine whether a sub-threshold EIA might be required. The *Assessment to Determine EIA Requirement* was certified on the 8th October 2024 which is after the DAFM's ecological assessments took place and the screening document indicates that certain ecological sensitivities have been addressed by DAFM ecologists prior to the completion of the EIA screening. The screening document assessed the potential for the proposal to have a significant effect on the environment across a range of criteria including the physical characteristics of the site, the location, soil and wetlands, water quality, birds & SPAs, SAC and other designated areas, HNVf & habitats, Archaeology and Built Heritage, Landscape, Amenity and Recreation, and Transfrontier and Other Potential Impacts, before determining that the project is unlikely to give rise to significant effects on the environment by virtue of its nature, size and location and consequently, an EIA is not required.

When making an application for a forest licence, an applicant must provide the information in Schedule 1 of the Forestry Regulations 2017. This includes a physical description of the whole project and location; a description of the aspects of the environment likely to be significantly affected and a description of any likely significant effects on the environment from the expected residues, emissions, and waste where relevant and the use of natural resources, to the extent of the information available on such effects. This information must take account of the criteria identified in Schedule 3 of the Forestry Regulations 2017.
In this case, the application includes details of the proposed operations and a series of maps including detailed maps showing environmental features on and surrounding the lands. In addition to the environmental features on the maps provided, the application includes a range of other environmental considerations. While the grounds contend that there were a number of issues with the maps submitted, as outlined previously in this decision the FAC does not agree with the Appellant's contention that a serious error occurred in this regard.

The Appellant contends that there is a conflict of interest between the Minister's afforestation policies and the regulation of afforestation. The DAFM contests the argument and submits that the promotional function of the Minister is expressly stated as being without prejudice to the other functions conferred on the Minster and DAFM officials are required to comply with the Civil Service Code of Standards and Behaviour.

The Appellant contends that the DAFM's application of temporal and spatial restraints in their cumulative impact assessment is flawed. The DAFM's SoF states that "As set out in the most recent European Commission guidance document on the matter - *Environmental Impact Assessment of Projects: Guidance on Screening (2017),* Member States are afforded considerable discretion in determining how and on what grounds an Annex II Project may be subject to EIA and acknowledge the need for a competent authority to consider a proposed project's potential impact alongside other existing and/or approved projects (and not just projects of the same kind) but submit that outside of the applicable statutory requirements, "there is no standard prescriptive method for assessing such potential impacts at a national level never mind at a European level." The DAFM contend that "all spatial development sectors in Ireland undertake

Screening for EIA using a combination of objective information relating to the proposed project derived from relevant spatial and temporal criteria / envelopes / limits, statutorily based environmental quality standards / statuses, and professional judgment. The DAFM submit that they employ the "source-pathway-receptor" model in identifying potential impacts and in doing so they use a given project's sub-basin(s) as the spatial envelope to identify potential impacts on water and water quality as a natural resource. The DAFM state that "this spatial envelope (along with a 500m radius, the townland, and a 5km radius and temporal windows of 3 years and 5 years) is also utilised to assess the extent of forestry in the receiving environment, the longevity of that land use, and whether the afforestation project under consideration is likely to have significant cumulative impact on the environment, when considered in conjunction with the impact of other existing and/or approved afforestation projects." The DAFM also contend that the Appellant has:

> "a) Failed to particularise any applicable statutory provision or clear point of EIA case law that has not been complied with by the Department,
> b) Failed to identify any applicable point or principle set out in the national guidance relating to Screening for EIA that the Department has not had regard to, as produced by the European Commission (*Environmental Impact Assessment of Projects: Guidance on Screening, European Commission (2017))*; the Department of Housing, Planning and Local Government *(Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment (2018));* the OPR *(Practice Note PN02 - Environmental Impact Assessment Screening (2021))*; or the EPA *(Guidelines on the information to be contained in Environmental Impact Assessment Reports (2022)).*"

Having considered the information before it, the FAC is not satisfied that the DAFM erred in their processing of the licence application in relation to these grounds of appeal.

The FAC considered the grounds related to the reasoning in the EIA assessment. The FAC noted that the R+N score of a site is a criterion of the Afforestation Scheme as outlined in the Land Types for Afforestation document. The FAC understands that this is a document that sets out the potential eligibility of land for support under the Afforestation Scheme, based on soil type(s) and the level of site fertility.

In relation to the Forestry Inspector's answer of "No" in response to the question in the EIA assessment "Is the amount and type of forest cover in this locality known to be a significant issue?", the Appellant states that "The Inspector is clearly aware of the concerns of Save Leitrim CLG who have regularly and routinely expressed concerns over the amount and type of forestry in County Leitrim and in this area in particular". The DAFM's SoF states that they have not been made aware of any significant local issue concerning *this particular forest type* or coverage, in the locality. The FAC noted that the Appellant in this case is Save Leitrim Environmental & Biodiversity CLG (Reg Number 656560) which is an entity that has submitted numerous appeals to the FAC, a large proportion of which, it can be reasonably estimated, would relate to commercial coniferous forestry. Given that the licence under appeal is not for commercial coniferous forestry but relates to a small area being planted under the native woodlands scheme, the FAC did not consider the Inspector's answer in this instance to comprise a significant error.

The Appellant states that the project lies within the *Upland Farmland and Foothills Landscape Character Type* as defined by Leitrim County Council and that "this Landscape Character Type is considered to be of medium to high sensitivity to commercial forestry" and indicates that the proposal should have been referred to Leitrim County Council for this reason. This submission is a, presumably unintentional,

misrepresentation of the facts. As the Appellant is aware, the *Landscape Capacity Study for Commercial Forestry – Co Leitrim* which is included in Appendix VI of the Leitrim County Development Plan 2023 – 2029, differentiates between commercial coniferous forestry and *plantations comprised of broadleaves*. In relation to the latter, the study states "This category refers to plantations comprised primarily of broadleaved species… The broadleaf species are generally considered to be more easily accommodated in the Leitrim landscape especially where these match the species within the wider broadleaved woodland cover, found to be a key characteristic in the landscape." Section 3.10.2.5 of the Landscape Capacity study; *LCT 7. Upland Farmland and Foothills – Sensitivity ranking*, states (emphasis added):

> "This LCT is considered to be of medium to high sensitivity to commercial **coniferous** forestry. A large part of this LCT falls within AONB and AHVA designations and this is reflective of its importance as the setting of the upland areas and mountains. The landscape in its own right is sensitive to further commercial **coniferous** forestry where implemented at a scale that would further erode the farmed landscape pattern. In this regard, there would be limited capacity for further planting in the foothills of Dough Mountain, the Boleybrack Mountains, Slieve Anierin and Bencroy as the underlying key characteristics such as field patterns would be eroded to the extent that the character type would change to commercial **coniferous** forestry. which could, in addition to that existing, undermine the character of these hillsides. The Glenade and Glencar valleys to the north west would be highly sensitive to commercial **coniferous** forestry due to their importance as the setting or foreground to the elevated and highly scenic mountain landscapes."

Based on the information before it, the FAC found that the DAFM did not err in their processing of the licence application in relation to this ground of appeal.

The grounds submit that the EIA assessment indicates that other non-standard mitigation measures that have been incorporated into the project design have been taken into account, that these are not listed and that this is a serious error. The DAFM's response states that the screening determination is based on a review of all submitted material and informed by completion of the EIA screening and the Inspector's professional judgment in arriving at a decision. The DAFM submit that standard mitigations are included in the referenced documents or regulations, noted in the Licence and that any additional (non-standard) mitigation measures are referred to in the conditions attached to the Licence.

The FAC considered that the grounds relating to EIA fail to identify any significant effects on the environment that the Appellant considers likely to occur. Based on the evidence before it, the FAC was satisfied that the DAFM did not make a serious or significant error or a series of errors in the making of the decision in relation to these grounds of appeal.

9. The Screening under Article 6(3) of the Habitats Directive is deficient

The FAC considered the grounds regarding the DAFM's AA procedures. The FAC noted that the DAFM produced an "Appropriate Assessment Screening Report & Determination for Afforestation project CN91069, at Corderry, Co. Leitrim" (AASRD) signed by a DAFM Ecologist and dated the 7th October 2024. The AASRD screened four European sites within 15km of the proposal, and all were screened out with reasons provided. Section 2 of this screening report is titled "Project details and description of site and surrounds". The FAC noted that the area listed in this section reflects the original application area of 4.95ha. This section goes on to describe the species to be planted, the proposed vegetation control (manual – no herbicide use), ground preparation, stocking rate, planting method, access, fencing, and confirms that zero fertiliser will be used on the site. Section 2 goes on to describe the soils on site, the

elevation, slope and aspect of the site, the Basic habitat(s) and/or onsite vegetation, and records the relevant Water Framework Directive Catchment, Sub-Catchment, and River Sub-Basin data. The Appellant has not submitted that any of the project details besides the overall area are incorrect.

In relation to the reduced area, as outlined previously in this letter, the FAC understands that the area approved for afforestation was reduced following the DAFM's ecological assessment of the application. The FAC agrees that the area recorded in Section 2 of the AASRD is inaccurate and amounts to an error in the DAFM's processing of the licence. However, the Appellant has not put forward an argument as to how the reduction of the proposed planting area, and the DAFM's inaccurate recording of same, will be likely to result in a significant effect on any European site. In the particular circumstances of this case, the FAC formed the view that this error was not a serious or significant error and there is no evidence before the FAC to indicate that the error should vitiate the DAFM's conclusion regarding the AA screening or the overall licence decision.

In relation to the DAFM's In-Combination Report, on file is a document titled "Appropriate Assessment Screening Report Appendix A: In-combination report for Afforestation project CN91069". This report states that "Various online resources, datasets and DAFM's own databases were consulted on the 02 OCT-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-Basin OWENGAR (LEITRIM)_020." The report states that online data from Leitrim County Council, An Bord Pleanála, and the Environmental Protection Agency (EPA) were examined, and also references the Leitrim County Development Plan 2023-2029. The report concludes that:

> *…there is no likelihood of the proposed Afforestation project CN91069 when considered individually, having a significant effect on the relevant European Site(s), as described elsewhere in the Screening Report. The relevant Qualifying Interests / Special Conservation Interests and Conservation Objectives, as listed elsewhere in the Screening Report, have been taken into consideration in reaching these conclusions… There is no likelihood that the proposed project will have, or contribute to, any significant effect on those same European Site(s), when considered in combination with other plans and projects.*

The information before the FAC is that the DAFM completed an AA screening and considered the likelihood of the proposed project having a significant effect on the European sites within 15km of the application site both as an individual project and in combination with other plans and projects, including both forestry and non-forestry projects. The Appellant has not submitted an argument or provided any evidence as to how the proposal might have, or contribute to, a significant effect on any European sites either individually or in combination with other plans and projects. Based on the information before it, the FAC is not satisfied that the DAFM erred in relation to these grounds of appeal.

10. Access to Justice is prohibitively expensive

The Appellant raises issues relating to the fee to make an appeal to the FAC. The FAC consider that under the Agriculture Appeals Act 2001, as amended, the Minister is empowered to set fees for appeals and the matters raised in the grounds in relation to the appeal fee are not matters for the FAC to determine. The FAC considered that these grounds amounted to a challenge to the provisions of the Agriculture Appeals Act, 2001 as amended.

11. The Pollution Impact Potential of the project has not been considered or assessed

The grounds submit that the Minister has failed to assess the potential for impact to water quality as a consequence of overland flow and that publicly available information indicates flow paths for pollution impact which have not been addressed by DAFM in the mitigation for this project. No further details or evidence have been submitted by the Appellant in support of this claim. The DAFM's SoF states that "The Department are satisfied that the project design, incorporating relevant setbacks, adhering to environmental requirements, and undertaken in compliance with forest standards, will have no impact on water quality. The assessment process for afforestation applications involves review of environmental spatial layers and site visits, where required, to assess risk and evaluate proposed operations. The assessment of this small native woodland project did not conclude a potential impact on water quality. No specific information has been provided to indicate an additional risk not considered by the Department during the project assessment. Based on the information before it, the FAC is not satisfied that the DAFM erred in relation to these grounds of appeal.

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

The grounds submit that the licence contains no seasonal restrictions or mitigation to protect all wild birds during the period of breeding and rearing. The DAFM's response to this ground states that apart from measures for specific species, namely Curlew, breeding waders (Snipe, Dunlin, Golden Plover, Redshank and Lapwing) and Hen Harrier, the following policies and procedures provide protection also provide protection to birds, even though that may not be the specific focus of the policy or procedure:

- Afforestation is not permitted in any SPA (or in sections of the 'High Likelihood Nesting Areas (HNLA), also referred to as 'Red Areas' extending outside those SPA designated for breeding Hen Harrier).
- New requirements regarding soil type and soil fertility (Land Types for Afforestation Soil and Fertility) further reinforce the trend towards soils that are mineral or organo-mineral, removing afforestation as a land use change in many upland landscapes and at a farm level, from the more marginal areas (from the agricultural production perspective). Such landscapes and areas represent important habitats, breeding and foraging, for a range of species.
- Wetlands -if an area is a wetland as per the Irish Wetland Types – An Identification Guide and Field Survey Manual (Irish Ramsar Wetlands Committee, 2018) it must not be planted. If an application is within an area listed in the Wetland Survey of Ireland (refers to the Map of Irish Wetlands by Wetland Survey of Ireland Ltd.) then the area must be assessed.
- Annex 1 habitats (designated or non-designated) must not be planted.
- High Nature Value Farmland (HNVf) procedures may result in areas remaining unplanted or being planted with broadleaves.
- If approved, any afforestation must also adhere to the *Environmental Requirements for Afforestation* (2024). This includes measures requiring the retention of existing hedgerows (reinforced by broadleaf planting within 7 m or in the case of important hedgerows a 5 m wide unplanted setback), and the installation of setbacks adjoining various environmental sensitivities such as water, archaeological features and dwellings, the latter providing areas of undisturbed habitat and valuable edge habitat between the open space and the forest canopy.

In the case of CN91069, it was screened out for Appropriate Assessment, but it was assessed for hen harrier and specific mitigation applied. This mitigation included not planting the area of wet grassland/wet heath identified in the HNVf report and applying setbacks to hedgerows and the aquatic zone.

The FAC noted that the Wildlife Act 1976 (as amended) confers protection to wild birds and their nests and eggs. The FAC considers that the granting of a forestry licence does not relieve the recipient of their responsibilities under the Wildlife Act 1976 (as amended) or the Birds and Natural Habitats Regulations. The FAC did not consider that the grounds provided a basis to consider that a bird species might be threatened by the issuing of the licence. 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.

13. Inadequate assessment under Article 12 of the Habitats Directive (Annex IV species)

The grounds contend that there has been not been an adequate assessment of the potential impact on species listed in Annex IV of the Habitats Directive – notably bats and otter. The DAFM's SoF reiterates their response to earlier grounds relating to the Ecology Report, highlighting the finding therein that "No fauna of note were observed during the walkover survey but many mammal tracks were present and some holes in the ground and in the field boundaries (See photos in Appendix 3). Droppings were observed, most likely fox (*Vulpes vulpes*) and badger (*Meles meles*). While bats were not observed, there were many potential good flight lines (Treelines/Hedgerows/river) and roosting sites in the mature trees". The DAFM submitted that the licence conditions for CN91069 incorporates measures which will protect and enhance the habitat for bats including maintaining connectivity /commuting routes, planting native species, and protecting existing veteran trees. The FAC noted that the Ecology Report also includes mitigation measures which will serve to protect otter, in particular, "No Scrub removal within 20m of the watercourse. Other mitigations for linear woody habitats and setbacks from the watercourse will protect possible otter foraging territory." In addition to the foregoing, the FAC considered that the Appellant has adduced no evidence that there are bat roosts within the area of licence CN91069 or has identified a reason as to how the planting of a small native woodland, with the retention of existing hedgerows, treelines, and mature trees, long with associated planting setbacks, might have a significant effect on the species. The Appellant has adduced no evidence that the planting of a small native woodland as applied for and licenced, with specific mitigation for otter prescribed, might have a significant effect on otter. The FAC considered that there is no convincing evidence submitted that any protected species would be adversely impacted by the proposal. The FAC considers that the granting of a forestry licence does not relieve the recipient of their responsibilities under the Wildlife Acts or the Birds and Natural Habitats Regulations.

The grounds submit that NPWS Guidance titled "Strict Protection of Animal Species - Guidance for Public Authorities on the Application of Articles 12 and 16 of the EU Habitats Directive to development/works undertaken by or on behalf of a Public Authority" has not been followed. As the title suggests and as stated in the contents, the document provides guidance to public authorities in relation to development/works undertaken by or on their behalf. The FAC noted that the DAFM are not undertaking the development in this instance. The DAFM processed an afforestation licence application under the Forestry Act 2014 and the Forestry Regulations 2017. Based on the information before it, 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.

13. The Right Tree in the Right Place for the Right Reasons

The Appellant outlines their disagreement with the project type approved in this proposal. They set out their view that the project is not, from an ecological perspective, establishing a native woodland but is a project to plant native tree species in anticipation that the area may develop into an area of woodland

comprised of native species. The Appellant states that there already is a genetic base for an authentic area of native woodland to become established on the project lands and that it would be more ecologically prudent to allow nature to do the job as nature has more experience and would do the job cheaper and better. The Appellant states that "the Emergent Semi-Natural Woodland Scheme would be a more appropriate vehicle for any afforestation of these lands" and that this project is not proven to be consistent with the Government's principle of the Right Tree in the Right Place for the Right Reasons. The DAFM's SoF states that "The Department have assessed the proposed project in line with scheme rules, silvicultural suitability and environmental regulations. It is the Departments view, communicated in the
decision to award the licence, that the proposed project is suitable for the proposed location and complies with the requirements set out in the scheme documents."

The FAC noted that the Appellant proposes the application site would be more suitable to the Emergent Semi-Natural Woodland Scheme. The FAC noted that the goal of this scheme is to protect and enhance emerging young native forest mainly through enrichment planting[1] and that eligible scheme operations include:

- Purchase of suitable native planting stock for enrichment planting,
- Appropriate ground preparation such as light scarification to facilitate natural regeneration,
- Enrichment planting in existing canopy gaps,
- Maintenance (including vegetation management),
- Maintenance of open spaces, rides, and glades.

The FAC also noted that the tree species approved for planting in CN91069 are also eligible for the Emergent Semi-Natural Woodland Scheme. However, in this instance the Applicant has exercised their right to avail of a government grant and premium scheme aimed at establishing native forest under a different forest type in the Afforestation Scheme 2023 – 2027. Notwithstanding the foregoing, the FAC is not the Competent Authority with responsibility for assessing afforestation applications or issuing afforestation licences. The role of the FAC, as provided for in the Agriculture Appeals Act, 2001, as amended, is to consider appeals against specified decisions of the Minister for Agriculture, Food, and the Marine and to determine whether the DAFM made a serious or significant error, or a series of errors in making the decision under appeal, and whether that decision was made in compliance with fair procedures. The FAC is not satisfied that the DAFM erred in relation to these grounds of appeal.

Conclusion

Based on the evidence before it, as outlined above, the FAC is not satisfied that a serious or significant error, or a series of errors was made in the DAFM's decision to issue CN91069 or that the decision was made in contravention of fair procedures. Therefore, in line with the provisions of the Agriculture Appeals Act 2001, as amended, the FAC decided to affirm the decision of the Minister to issue afforestation licence CN91069.

Yours Sincerely,



Luke Sweetman on behalf of the Forestry Appeals Committee

[1] Emergent Forests - Teagasc | Agriculture and Food Development Authority