

**Coogan, Mary**

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**From:** Coogan, Mary  
**Sent:** Monday 19 September 2022 17:49  
**To:** forestry agriappeals  
**Cc:** Connaire, Daniel; ODonoghue, Saoirse; OBrien, MichaelG; Forestry Support Unit, Coogan, Mary  
**Subject:** DAFM Statement FAC026/2022 CN88498  
**Attachments:** CN88498 026-2022 FAC Ecology Statement to the Forestry Appeal Committee.docx; CN88498 DAFM Statement FAC026 2022.pdf

Please note that DAFM Statement FAC026/2022 CN88498 has been uploaded to FAC Cloud Link today.

Please note that no copy file is provided as IFORIS documentation is visible on the Forestry Licence Viewer for this contract.

Regards

Mary Coogan

Forestry Support Unit

Mary Coogan  
Forestry Division, Forestry Support Unit,  
Rannóg/Seirbhís Foraoiseachta, Rannóg Cheadúchan,

An Roinn Talmhaíochta, Bia agus Mara  
Department of Agriculture, Food and Marine  
Eastát Chaisleán Sheonach, Contae Loch Gorman, Y35 PN52  
Johnstown Castle Estate, Co. Wexford, Y35 PN52

+353 (0)53 9170357  
mary.coogan@agriculture.gov.ie  
[www.agriculture.gov.ie](http://www.agriculture.gov.ie) +353 (0)761 064415

## DAFM Ecologists Response to Appeal FAC 026/2022 [CN88498]

FAC Reference	FAC 026/2022
File Reference	CN88498
Scheme	Afforestation
Species proposed	GPC 3
Area	10.65 Hectares

Grounds of appeal relevant to ecology are summarized and addressed below.

The appellant states:

“Mapping not consistent

There are various discrepancies between the different maps

The environmental features on the two Maps (BioMap (revised) and Environmental & Habitat Map are not consistent. Which is the correct one? Which is the one that DAFM has used to assess the application?

Has the project been modified from the original application? This is not clear. “

DAFM Ecology response:

The revised maps were sent 3/12/2021 but the revision was not been digitised on IFORIS on 12 January 2022 when the AASD was complete.

However, the revised maps reduced the overall area by excluding part of parcel 875 (Plot 4) and parcel 880 (Plot 5). The AASD was based on the larger original area and the subsequent reduction does not affect the validity of the AASD.

The appellant states:

“No Area for Biodiversity Enhancement details are shown on the BioMap. There is reference to the use of public road and dwelling setbacks as Area for Biodiversity Enhancement

DAFM Ecology response:

Refer to Section 2.5. of *Environmental Requirements for Afforestation*, December 2016 (DAFM, 2016). ABE may include environmental setbacks, future operational areas or retained habitats.

The appellant states:

“DAFM and the Registered Forester need to provide justification for the use of required setbacks as Areas for Biodiversity Enhancement. How are these specific areas the 'Best' areas? This is especially the case when the Environmental & Habitat Map has identified GS3 Semi-Natural Grassland for much of the site and the site adjoins a mapped area of wetland on the Co. Leitrim Wetland survey (Site 197 Drumminshin Glebe Cutover). “

DAFM Ecology response:

A current Environment and Habitat Map (dated 7/12/2021) was submitted for CN88498 and it identified that site as comprised of wet grassland (GS4) with some semi-natural grassland (GS3). This did not identify any Annex I habitat on site. The application was not part of the Irish Semi-Natural Grassland Survey and the Small White Orchid layer is not showing any records for this area. It is not within a Curlew buffer area. This mapped area of wetland on the Co. Leitrim Wetland survey (Site 197 Druminshin Glebe Cutover) has been under different management and is located in a separate habitat.

The appellant states:

"We note that the NPWS was not consulted on this application."

DAFM Ecology response:

Mandatory referral to NPWS is not required for this site, referral to NPWS is discretionary under the current agreed DAFM NPWS referral procedure.

The appellant states:

"The 4m hedgerow setback applied is not adequate to ensure the long-term viability of the hedgerows given the shading effects of Sitka Spruce. The BIOFOREST Report recommends a 7m setback to ensure that shading does not impact on these biodiversity features. "

DAFM Ecology response:

Hedgerows are to be retained and a 4m wide setback to be applied and where hedgerows are internal this will apply to both sides. The Environmental Requirements for Afforestation (2016) states that hedgerows are eligible as ABEs and must be retained but a setback is not mandatory.

The appellant states:

**"AA Errors and Issues**

Neither the MD nor the AAR has identified the fact that part of the project is in the Townland of Miltron Glebe.

Lough Oughter Complex SPA 004049: *"The project is entirely outside the SAC which negates risk of direct impacts."* This assertion can be challenged on two counts - Count one; the site is an SPA not an SAC "

DAFM Ecology response:

This was a typographical error and can be recognised as such given it is within the table dealing with Lough Oughter Complex SPA, it occurs in a row dealing with birds and further down in the same column it clearly refers to the SPA.. The misspelling does not change the meaning and interpretation that is being applied.

The appellant states:

"The correct model is Source / Pathway / Receptor - not direct or indirect impact. An impact is an impact. "

DAFM Ecology response:

Although the term source-pathway-receptor is not utilised, the project was screened in on the basis of a source – pathway – receptor.. In this case, the hydrological link is the source-pathway-receptor, which is clearly explained below:

*" There is an aquatic zone running northwards along the eastern boundary of plot 1 towards Laheen Stream\_010 ca. 730m surface water distance away. This connects in with Lough Oughter and Associated Loughs SAC 000007 ca. 13.1km surface water distance away and Lough Oughter Complex SPA 004049 a further ca.4km upstream."*

And further as a precautionary measure, the site is screened-in due to presence of source-pathway-receptor which is the hydrological connection as follows:

*"Despite the distance and dilution factor and as a precautionary measure, the site is screened-in for AA due to the potential for impacts to aquatic habitat and integrity of conservation objectives for the SPA."*

The source-pathway-receptor model resulted in the site being screened in and in the Appropriate Assessment when assessing the potential impact, the term direct impact was used – in this case it was to highlight that the project was not within the SPA and as such would not have a direct impact.

The appellant states:

"Some of the mitigations of the AA are not sufficiently clear or precise.

*"Do not carry out any works before during or after extreme weather events (orange/ red events) or prolonged periods of rainfall where soils are saturated"* Note that the AAR uses the term "soaked" not "saturated".

Orange / red events are not defined. We assume that this relates to Met Eireann terminology but this should not be left to assumption.

How long before an event should works be suspended for?

How long after an event should works be suspended for?

How long is 'prolonged'?

What is the scientific basis for suspending operations only when soils are saturated?

There is potential for the mobilisation of silt before soils become saturated. "

DAFM Ecology response:

This condition was included on a precautionary basis. Met Eireann weather warnings Orange/ Red weather events: Orange/ red weather events or at times when existing sediment control measures are at risk from failing and soil mobilisation is a risk. See Section 3 under Operations safeguards in *Environmental Requirements for Afforestation*, December 2016 (DAFM, 2016). Operations should be suspended immediately before, during and after until soils are in a suitable condition to negate risk of loss of silt/ sediment/ dust mobilisation for example or extreme adverse impact to soil structure. For further information see Section 3.7 under Operations safeguards in *Environmental Requirements for Afforestation*, December 2016 (DAFM, 2016). "Soaked/ saturated" interchangeable terms meaning the same. "Soaked" accepted as probably more of a colloquialism.

The appellant states:

"Neither the MD nor the AAR has identified the fact that part of the project is in the Townland of Miltron Glebe. "

DAFM Ecology response:

The Site Notices cited both townlands, the licence details on the Forest Licence Viewer (FLV) clearly states both townlands and the Afforestation Licence and Technical Approval under the Afforestation Scheme cites both townlands.

The appellant states:

"This is not sufficiently precise or definitive and allows the licensee (who has a commercial imperative to keep working) the scope to make interpretations.

*It is advisable to carry out works at drier times of year (May-September) to avoid losses of silt/ sediment from use of machinery over wet soils."*

Advice is not mitigation. AA mitigation must be precise and definitive - it should be based on requirements not advice.

Is the licensee compliant with the licence conditions if he / she disregards advice? If so how can the integrity of the Natura Site be assured?

*"Article 6(3) of Directive 92/43 must be interpreted as meaning that the competent authority is permitted to grant to a plan or project consent which leaves the developer free to determine subsequently certain parameters relating to the construction phase, such as the location of the construction compound and haul routes, only if that authority is certain that the development consent granted establishes conditions that are strict enough to guarantee that those parameters will not adversely affect the integrity of the site."* C461 /17 (Holohan Case)

DAFM cannot be certain as to how the developer will interpret this mitigation leaving the possibility for the project to contribute to an adverse effect on the integrity of a Natura 2000 site."

DAFM Ecology response:

Please refer to Section 4. Appropriate Assessment Determination, where it states:

*"The Minister has carried out the Appropriate Assessment of potential impacts on the likely significant effects of the activity / project on those European sites 'screened in' (as listed above) and has made certain, based on best scientific knowledge in the field and the European Communities (Birds & Natural Habitats) Regulations 2011 (as amended) and the Forestry*

*Regulations 2017, as amended, and Article 6(3) of the Habitats Directive, that the project proposed under CN88498, individually or in combination with other plans or projects, will not adversely affect the integrity of any of the aforementioned European Sites, having regard to their conservation objectives, provided the following mitigation is implemented:"*

All points found in this section are therefore mitigation and the approval and condition of license is therefore dependent upon adherence to those terms.

The appellant states:

"There is no mitigation regarding timing of operations in respect of Otter. The AAR states; *"Note: Otter may breed at any time during the year"* but this is not transferred to AAD."

DAFM Ecology response:

Given the nature of the watercourses appropriate mitigation for otter was outlined in both the AAR and the AAD

The appellant states:

"The MR is not consistent with project ecologist in terms of on-site habitats; the AAR (based on a desk survey) indicates that the lands are GS4 (Wet Grassland), the project ecologist, based on a field survey has indicated a significant area of Semi Natural Grassland (GS3)

There was no site visit by the ecologist who carried out the AA "

DAFM Ecology response:

CN88498 was not field inspected by the Ecologist that carried out the AAR. The Current Environment and Habitat map indicated that the site contained both GS4 and GS3. Fossitt describes GS3 as Unimproved or semi-improved grassland that occurs on free-draining acid soils that may be dry or humid, but not waterlogged. This type of grassland mainly occurs on mineral rich or peaty podzols in upland areas but can also be found on siliceous sandy soils in the lowlands, as in the case of the Curragh in Kildare. It is usually most extensive near the upper limit of enclosed farmland on hills and mountains, particularly those in the centre and east of the country, but also occurs widely on steep slopes in upland and lowland regions, and near the coast. Dry-humid acid grassland frequently grades into, or forms mosaics with dry siliceous heath - HH1 or blanket bog (PB2-3). Herbs of improved agricultural grassland - GA1 may be well represented in areas that are semi-improved.. The grassland has been managed somewhat in the areas considered GS3 by ecologist (7/12/2021) by cutting and grazing and it is not considered of conservation importance.

The appellant states:

"The MR states *"Hedgerows retained as part of the ABE with 3m set-backs along external boundary hedgerows"*. This is not consistent with the project documentation which indicates a 4m setback. Which one applies? "

DAFM Ecology response:

According to Table 6.2 of the *Forestry Standards Manual* (DAFM, 2015), there is no requirement for hedgerow set-back but a set-back may be utilised as part of the overall 15% ABE. One is expected to follow the mitigation provided in AAD. The Bio Map 3/12/2021 calls for 4m set-backs.

The appellant states:

“There is a discrepancy between the mitigation in the AAR and that of the AAD (saturated! soaked).”

DAFM Ecology response:

“Soaked/ saturated” interchangeable terms meaning the same. “Soaked” accepted as probably more of a colloquialism.

**Signed:** Saoirse O’Donoghue

**Date:** 29 July 2022

## References

- *Environmental Requirements for Afforestation*, December 2016 (DAFM, 2016)
- *Forestry Standards Manual* (DAFM, 2015)
- *Foraging flight distances of wintering ducks and geese: a review. Avian Conservation and Ecology* 9(2): 2. (Johnson, W. P., P. M. Schmidt, and D. P. Taylor. 2014).
- *Assessing Connectivity with Special Protection Areas (SPAs)- Guidance*. (Scottish Natural Heritage, 2016)
- *Managing grassland for wild geese in Britain: a review. Biological Conservation* 89(1):93-106. [http://dx.doi.org/10.1016/S0006-3207\(98\)00134-7](http://dx.doi.org/10.1016/S0006-3207(98)00134-7). (Vickery, J. A., and J. A. Gill. 1999.)



## Forestry Division Statement to the Forestry Appeals Committee

FAC Reference	FAC026/2022
File Reference	CN88498
Scheme	Afforestation
Species proposed	GPC 3
Approved Area	10.65 hectares

### Summary of application:

Date Submitted	31/03/2021
Site Notice date	30/03/2021
Date Application Advertised	14/04/2021
Date Advertised for 2 <sup>nd</sup> Public Consultation	21/01/2022
Referrals to referral bodies	No referrals
Referral to Ecology	Appropriate Assessment Screening Determination 12/01/2022 by Saoirse O'Donoghue, Consultant Ecologist, North-West Ecology Ltd., on behalf of DAFM Appropriate Assessment Report 12/01/2022 by Saoirse by O'Donoghue, Consultant Ecologist, North-West Ecology Ltd., on behalf of DAFM Appropriate Assessment Determination 14/03/2022 by Saoirse O'Donoghue, Consultant Ecologist, North-West Ecology Ltd., on behalf of DAFM
Date Referred to Inspector	15/04/2021 - Certified 06/05/2021 16/12/2021 - Certified 14/03/2022 Inspect at 1 <sup>st</sup> Instalment
Desk Assessment/Desk & Field Assessment	Field & Desk Assessment: Field inspected 29/04/2021, (01/03/2022 added to satisfy IFORIS limits)  (SMS Sent: 28/04/2021
Submissions Received	1 submission - 10/05/2021,
Appropriate Assessment Screening	Natura Site 1, 2 - Screen Out: No likelihood of a significant effect on any European site. (See Ecology above)
Recommendation from Inspector	Approve with Conditions

<p>Decision</p>	<ul style="list-style-type: none"> <li>- 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). Reason: In the interest of clarity and to ensure good forest practice and the protection of the environment.</li>   <li>- All existing trees and hedgerows within the site shall be retained. Reason: In the interests of protecting the character of the landscape and the protection of the environment, in particular, habitats for flora and fauna.</li>   <li>- Adhere to the mitigation measures set out in the attached Appropriate Assessment Determination, dated 14/03/2022. Reason: In the interests of protection of the environment, in particular the protection of European Site(s).</li>   <li>- Condition: Plant groups of 20 to 50 Scots pine on sloped areas of plot 1. Reason: In the interests of visual amenity.</li>   <li>Condition: A setback with a minimum width of 10 metres from the nearest waters edge shall be installed alongside the water course located on eastern boundary of plot 1. A setback with a minimum width of 5 metres shall be installed on one side (if on the outer perimeter) or both sides (if traversing the site) of the relevant watercourse[s] and treated in accordance with Table 5 and Table 6 of the Environmental Requirements for Afforestation. A further five rows of broadleaves of mixed broadleaves of native species suited to the immediate site Hawthorn, Hazel, Birch, rowan, willow, oak where appropriate to be planted at 10m water set back with an additional two to three rows planted at the relevant water course set backs. Reason: In the interests of protection of the environment, in particular the protection of water quality and aquatic ecosystems.</li>   <li>- Condition: An unplanted public road setback of a minimum width of 10 metres (as measured from the surfaced edge of the public road) and accompanied by a 10 metre wide strip of mixed broadleaves of native species suited to the immediate site: Hawthorn, Hazel, Birch, rowan, willow, oak where appropriate to be planted at 10 metre set back in all conifer plots adjoining a public road located at ITM Easting: 621266 Northing: 803454 , in accordance with Tables 5 and 6 of the Environmental Requirements for Afforestation. Reason: In the interests of visual amenity and the safety of vehicular traffic and pedestrians.</li> </ul>
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	<p>- A setback with a minimum width of 60 metres shall be installed from the dwelling house at ITM Easting: 621266 Northing: 803454 in accordance with Table 5 and Table 6 of the Environmental Requirements for Afforestation. Five rows of broadleaves of mixed broadleaves of native species suited to the immediate site (Hawthorn, Hazel, Birch, rowan, willow, oak where appropriate to be planted at 60m setback Reason: To protect the visual and residential amenities of property in the vicinity, to prevent encroachment and isolation, the blocking of light and the curtailment of views in relation to dwellings and associated buildings.</p>
Date Decision Issued	15/03/2022
Date Decision Advertised	16/03/2022

**Administrative Comments:**

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

Please see the statement from the Inspectorate.

Name: Mary Coogan

Grade: EO

Date: 19/09/2022

## Grounds Of Appeal

25 MAR 2022

**Grounds of Appeal for CN88498 Drumminshin Glebe, Miltron Glebe, Leitrim**

### **Errors in the Application – lack of legal compliance**

The application was submitted on the 31-3-21. The BioMap that was submitted with the application was not correct in that it was not compliant with Section 5 (2) of the Forestry Regulations - External hedgerows were not identified on the BioMap provided by the applicant. A later map (Environmental & Habitat Map) provided on the 7-12-21 does show them. The application was not complete and should not have been published for consultation until all of the required information was provided.

The application was not legally compliant as legally correct information should be provided with the application. DAFM should have identified the failure and issued a Request for Further Information (RFI) before accepting the application.

There is a legal requirement for all hedgerows to be clearly identified at the application stage.

The information available to the public and to consultation bodies during the consultation phase was legally deficient.

In addition a Historical / Cultural feature has not been identified in the application (or later documentation) – the Townland Boundary between Miltron Glebe and Drumminshin Glebe. This is a further deficiency in the application.

A Right of Way (shown on Land Direct) along the Townland Boundary has not been identified on the project application – another legal error.

Part of the plot in Miltron Glebe is on deep peat (Teagasc soil and subsoil layer). Pre-application from the developer indicates that site is not on peat - an error.

### **Area for Biodiversity Enhancement**

No Area for Biodiversity Enhancement details are shown on the BioMap. There is reference to the use of public road and dwelling setbacks as Area for Biodiversity Enhancement.

DAFM and the Registered Forester need to provide justification for the use of required setbacks as Areas for Biodiversity Enhancement. How are these specific areas the 'Best' areas? This is especially the case when the Environmental & Habitat Map has identified GS3 Semi-Natural Grassland for much of the site and the site adjoins a mapped area of wetland on the Co. Leitrim Wetland survey (Site 197 Drumminshin Glebe Cutover).

The use of required setbacks for Biodiversity Enhancement is lazy and expedient on the part of the Applicant / Forester. It is bad practice and should not be accepted by DAFM.

The 4m hedgerow setback applied is not adequate to ensure the long term viability of the hedgerows given the shading effects of Sitka Spruce. The BIOFOREST Report recommends a 7m setback to ensure that shading does not impact on these biodiversity features.

25 MAR 2022

### Mapping not consistent

There are various discrepancies between the different maps

The environmental features on the two Maps (BioMap (revised) and Environmental & Habitat Map) are not consistent. Which is the correct one? Which is the one that DAFM has used to assess the application?

The project area shown on these two maps is not consistent with that shown on the Fencing Map or shown on the AAD.

What is the correct area of the project? Where there is conflicting information how is the correct project area determined?

If the AAD mapping is correct then part of the area of the BioMap / Environmental & Habitat Map has not been identified and recorded.

Project documentation must be consistent regarding the area of the project and that is not the case with this project.

Has the project been modified from the original application? This is not clear.

Lands which form part of Folio LM17469F are not shown on the BioMap and the Environmental & Habitat Map. Do these lands form part of the project? Are these lands in the same ownership as the remainder of the project? If not, then not only are there mapping issues there may be access issues.

DAFM's mapping is not consistent with land parcels on Land Direct.

### EIA Screening is unreliable

The Determination by the Inspector that an EIA is not required is based on conflicting data and cannot be relied upon.

The EIA Screening form indicates that there is 83% Forest Cover in the underlining (sic) waterbody. The In Combination Statement gives a figure of 23%. This is a massive discrepancy and there is no explanation for it.

How can the Determination of the Inspector be considered valid when he / she has not even identified such significant discrepancies in the project information before issuing a determination?

There is a 'Yes' response to the Question "*Does this application, together with existing afforestation of 3 years or less within a 500 metre radius, constitute an area greater than 50 ha?*" A figure of 53.84 ha is stated.

It would also appear that there is a further 15 ha in the system within a 500m radius. Where is this 15 ha and is it in the same ownership (project splitting)?

25 MAR 2022

It is our assessment that the 53.84 ha figure is incorrect.

Despite the mandatory threshold for EIA being exceeded in the area and a positive response to the question concerned the Inspector has still determined that no EIA is required. Surely some form of justification is required from the Inspector to explain why not.

The 'No' response to the question "*Does the application and its associated operations threaten the achievement of 'good ecological status' recovery objective set for the underlining waterbody or waterbodies under the WFD River Basin Management Plan?*" is not correct. There must be a threat or else why is mitigation for water quality required.

We note that the Water Quality for Laheen Stream \_010 is Poor and deemed to be At Risk by the EPA. Forestry is identified as a Significant Pressure on water quality and according to DAFM's figures there is 83% Forest Cover in the underlying waterbody.

We note that the Local Authority was not consulted on this application despite (according to DAFM's assessment) the mandatory EIA threshold being exceeded within a 500m radius in the last 3 years.

*Is this proposed area within 3km upstream of a European or national designation including SACs, cSACs, SPAs, iSPAs, NHAs, pNHAs Nature Reserves and National Parks? Why is a 3km figure used?*

The project is upstream of aquatically sensitive sites – where is the scientific basis that the potential for Environmental Impact does not need to be considered over a 3km threshold? 15km is used in AA screening and projects are Screened In on a precautionary basis at greater distances. This is an At Risk waterbody where Forestry is already a Significant Pressure on Water Quality.

It is difficult to come to any other conclusion than that Screening Out for EIA is pre-determined by the Inspector. There are sufficient issues identified in the Screening to warrant a more detailed justification for Screening Out than the mere ticking of a box.

#### **Semi Natural Grassland - licence is inconsistent with the RDP and the State Aid Decision**

The Report on the Irish Semi-Natural Grassland Survey (ISGS) states, regarding the links to National and EU policy;

*"All Member States of the EU must ensure that their Rural Development Programmes (RDPs) prioritise the identification, support and maintenance of high nature value (HNV) farmland, and that they monitor any changes to the area of land covered by HNV farming (Sullivan et al. 2010). The EU's Common Agricultural Policy (CAP), which has recently been reformed, is of direct relevance to Irish semi-natural grasslands in that conservation of HNV farmland outside of protected areas such as SACs depends mainly on programmes such as agri-environment and less-favoured-area schemes that operate under the CAP (EEA 2004).*

*All of the grasslands surveyed in the course of the ISGS – and indeed, all semi-natural grasslands under GS and GM in the Fossitt (2000) classification system – can be regarded as High Nature Value (HNV) grasslands; Annex I grasslands are a sub-set of HNV grasslands. As most of the grassland surveyed during the ISGS was located within farming systems, these may all be described as HNV farms; most would be classed as Type 1 HNV farmland, which is defined as that which has a high proportion of semi-natural vegetation (EEA 2004).*

The project site is almost exclusively comprised of semi-natural grasslands (GS3 and GS4). The lands are farmed High Nature Value Grasslands.

Condition 36 of the State Aid Decision states;

*The inappropriate afforestation of sensitive habitats such as peat lands and wetlands will be avoided, as well as the negative effects on areas of high ecological value including areas under high natural value farming.*

Condition 40 states;

*The environmental requirements and the ecological infrastructure will be considered in a coherent and integrated manner, in order to achieve the indicated environmental aims in relation to soil and water quality, biodiversity and ecosystems protection.*

How will the negative effects on HNVF be avoided by planting Sitka Spruce on GS grassland?  
How has the ecological infrastructure of the area been considered in a coherent and integrated manner when the scale of afforestation has triggered an EIA Screening threshold?

How are biodiversity and ecosystems being protected here?

The decision to award this licence has prioritised afforestation over the support and maintenance of identified HNVF contrary to the RDP.

We note that the NPWS was not consulted on this application.

#### AA Errors and Issues

Neither the AAD nor the AAR has identified the fact that part of the project is in the Townland of Miltron Glebe.

Lough Oughter Complex SPA 004049: *"The project is entirely outside the SAC which negates risk of direct impacts."* This assertion can be challenged on two counts - Count one; the site is an SPA not an SAC. Count 2; the location of a project outside the SPA does not automatically negate the risk of a direct impact.

The correct model is Source / Pathway / Receptor – not direct or indirect impact. An impact is an impact.

Some of the mitigations of the AA are not sufficiently clear or precise.

Forestry Appeals Committee

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*"Do not carry out any works before during or after extreme weather events (orange/red events) or prolonged periods of rainfall where soils are saturated"* Note that the AAR uses the term "soaked" not "saturated".

Orange / red events are not defined. We assume that this relates to Met Eireann terminology but this should not be left to assumption.

How long before an event should works be suspended for?

How long after an event should works be suspended for?

How long is 'prolonged'?

What is the scientific basis for suspending operations only when soils are saturated?

There is potential for the mobilisation of silt before soils become saturated.

This is not sufficiently precise or definitive and allows the licensee (who has a commercial imperative to keep working) the scope to make interpretations.

*"It is advisable to carry out works at drier times of year (May-September) to avoid losses of silt / sediment from use of machinery over wet soils."*

Advice is not mitigation. AA mitigation must be precise and definitive - it should be based on requirements not advice.

Is the licensee compliant with the licence conditions if he / she disregards advice? If so how can the integrity of the Natura Site be assured?

*"Article 6(3) of Directive 92/43 must be interpreted as meaning that the competent authority is permitted to grant to a plan or project consent which leaves the developer free to determine subsequently certain parameters relating to the construction phase, such as the location of the construction compound and haul routes, only if that authority is certain that the development consent granted establishes conditions that are strict enough to guarantee that those parameters will not adversely affect the integrity of the site." C461 /17 (Holohan Case)*

DAFM cannot be certain as to how the developer will interpret this mitigation leaving the possibility for the project to contribute to an adverse effect on the integrity of a Natura 2000 site.

There is no mitigation regarding timing of operations in respect of Otter. The AAR states; "Note: Otter may breed at any time during the year" but this is not transferred to AAD.

How are Otter protected from disturbance operations? There is no evidence of an Otter survey.

We note the following points

The AAR is not consistent with project ecologist in terms of on-site habitats; the AAR (based on a desk survey) indicates that the lands are GS4 (Wet Grassland), the project ecologist, based on a field survey has indicated a significant area of Semi Natural Grassland (GS3)

There was no site visit by the ecologist who carried out the AA

Forestry Appeals Committee  
25 MAR 2022

The AAR states "*Hedgerows retained as part of the ABE with 3m set-backs along external boundary hedgerows*". This is not consistent with the project documentation which indicates a 4m setback. Which one applies?

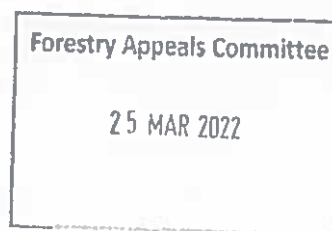
There is a discrepancy between the mitigation in the AAR and that of the AAD – (saturated / soaked).

#### Conclusion

**The assessment of this project involves a series of errors, inconsistencies and uncertainties and the awarding of the licence is not consistent with good practice, the conditions of the State Aid Decision or the law.**

#### Oral Hearing

would like to request an Oral Hearing of this case.



**Statement from Inspectorate.**

Assessment Criteria	
Was the AA screening procedure at the time of approval applied? (Y/N)	Yes
What version of the AA procedure?	Nov19
Standard Operating Procedures applied? (Y/N)	yes

**Based on the information supplied by the appellant, do you recommend any change to the original decision?**

(Tick as appropriate)

No change	<input type="checkbox"/>	Confirm recommendation to grant licence	<input type="checkbox"/>	Revise conditions of licence	<input type="checkbox"/>	Remit licence for reassessment	<input checked="" type="checkbox"/>	Revoke licence	<input type="checkbox"/>
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Regarding EIA screening, DAFM would like to point out that a significant error was identified after the decision was made in relation to some of the EIA outputs on Iforis. % forest cover in the underlining waterbody was identified as 83% on in the EIA screening output on the 14<sup>th</sup> of March 2022 this was taken as an indicative value however this is factually incorrect due to a technical issue at the time. % forest cover here is in fact likely approximately 23%. This error would likely invalidate the EIA.

Name: Daniel Connaire

Role: Forestry Inspector

Date: 27/07/2022