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5th October 2020

Subject: Appeal FAC418/2020 regarding licence TFL00468520

Dear [REDACTED]

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

Background

Felling licence TFL00468520 for thinning of 9.94 ha at Ballynahallia, Co. Kerry was issued by the Department of Agriculture, Food and the Marine (DAFM) on 29th June 2020.

Hearing

A hearing of appeal FAC418/2020 was held by the FAC on 2nd October 2020.

FAC Members in attendance: Mr. Des Johnson (Chairperson), Mr. Pat Coman, Ms. Bernadette Murphy, Mr. Vincent Upton

Decision

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to confirm the decision of the Minister regarding licence TFL00468520.

The licence pertains to the thinning of a forest comprised of four stands containing Sitka spruce, Japanese larch and ash in years 2020, 2025 and 2029 across 9.94 ha. The forest is situated in the townland of Ballynahallia some 3km east of Castleisland, Co. Kerry. The estimated number of trees and volume to be felled, percentage canopy cover and age for each species are supplied with the application as was a harvest plan. As the licence is for thinning no replanting is proposed. Conditions are of a general nature while specific archaeological conditions are attached and a condition to thin to marginal thinning intensity which relates to the maintenance of timber volume production from the forest. The site is crossed by an ESB line and an unplanted buffer is in place. There are no recorded monuments in the site but a number are present outside of the site to the south and north. A river, identified as the Shanowen in EPA data, flows east west across the northerly section of the forest while the forest is

setback from the river and the river is bordered by broadleaf trees and scrub. The forest is situated in the Maine sub-catchment of the Laune-Maine-Dingle Bay catchment.

There is one appeal against the decision. The grounds relate to the appropriate assessment screening undertaken by the DAFM and suggest that an appropriate assessment should have been undertaken. It suggests that the Forest Service identified that there were Natura 2000 sites within 15km and that in this case an appropriate assessment was legally required. The grounds suggest that where an EIA screening is undertaken that other forestry projects in the area must be taken into account. The Appellant also submitted grounds relating to legal obligations of the Forestry Appeals Committee.

In a statement to the FAC, the DAFM stated that they are satisfied that the decision met their criteria and guidelines and that they confirm the licence. They submit that they followed the current DAFM AA Screening guidance document and deemed that the Natura 2000 sites within the 15 km radius could be screened out due to their physical separation from the proposed felling area and having reviewed the qualifying interests of the Natura sites in question and by using the latest information available.

In considering the appeal and before making a decision, the FAC undertook a screening in relation to the requirements of the Habitats Directive and an examination regarding environmental effects and a copy has been placed on the public file. The proposal is not connected with or necessary to the management of any European site. There are five sites whose boundaries fall within 15km of the proposal, which are also listed in the screening undertaken by the DAFM. Given the nature, scale and location of the proposal, the FAC concluded that significant effects on sites outside of this radius would not be possible. There are no conditions on the licence that relate to the mitigation of effects on a European site and none were considered in this screening.

A boundary of the Blackwater River (Cork/Waterford) SAC lies 11.4km to the east of the proposal in the Blackwater (Munster) Catchment. The large degree of separation and absence of any hydrological connection would preclude a likelihood of significant effects from arising on this SAC. Part of the Lower River Shannon SAC lies 6.9km to the north and this section is within the Tralee Bay-Feale Catchment. The large degree of separation and absence of any hydrological connection would preclude a likelihood of significant effects from arising on this SAC. Killarney National Park, Macgillycuddy's Reeks And Caragh River Catchment SAC lies on a watershed between the Laune-Maine-Dingle Bay and Dunmanus-Bantry-Kenmare Catchments 11.7km to the south. The proposal lies in a separate sub-catchment with no hydrological connection with the SAC. The large degree of separation and absence of any hydrological connection would preclude a likelihood of significant effects from arising on this extensive SAC. A boundary of Castlemaine Harbour SAC lies 12.5km to the west. The Shanowen flows westerly and joins the Maine which flows through Castlemaine and enters the SAC and the hydrological distance is over 27 km to the boundary of the SAC. The proposal is for a thinning without the clearance of land and the production of significant amounts of sediment or nutrients is not likely. The forest is setback from the river and separated by hedgerows and grassland and were any runoff to occur it is not likely to reach the watercourse and if any runoff was to occur the hydrological distance to the SAC would provide extensive dilution and settling. Forestry is not listed amongst the most important impacts and activities with high

effect on the site in the Natura 2000 data form prepared by the NPWS. The degree of separation, including the hydrological distance, would preclude any other form of impacts on the qualifying interests of the SAC. Significant effects on this extensive SAC are not considered likely. Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA covers an area of 56,648.8 ha and its boundary lies 2.5km to the east. Forestry outside of the SPA is not listed amongst the most important impacts and activities with high effect on the site in the Natura 2000 data form prepared by the NPWS. Semi-mature coniferous forests with a closed canopy are not considered suitable habitat for the qualifying interest of this SPA and the distance from the boundary would preclude disturbance from noise. Significant effects on this large SPA are not likely.

The proposal is divided into a number of stands. Those to the north surround a farmyard and are surrounded by agricultural land, while the stand to the south adjoins a smaller block of forest. There have been few afforestation or forest road licences granted in the area while a small number of felling licences have been issued, some of larger areas. There are a number of planning permissions granted in the area but these are of a primarily residential and agricultural nature and are not adjacent to the forest. Castleisland lies to the northwest and there is ribbon development along the public road. The County Development Plan and EPA emission data were also examined, and no related issues were identified. Due to the absence of a pathway for significant effects from the proposal and any European sites and the nature and scale of the proposal and other projects, the proposal would not result in in-combination effects with these other plans and projects. Having regard to the nature, scale and location of the proposal, its proximity to European sites and the conservation objectives of those sites, the FAC concluded that the proposal is not likely to have any significant effect on any European site, itself or in combination with other plans or projects and that appropriate assessment under Article 6 of the Habitats Directive was not required. The FAC's conclusion concurred with the conclusion reached by the DAFM following screening.

The EU EIA Directive sets out, in Annex I a list of projects for which EIA is mandatory. Annex II contains a list of projects for which member states must determine through thresholds or on a case by case basis (or both) whether or not EIA is required. Neither afforestation nor deforestation are referred to in Annex I. Annex II contains a class of project specified as "initial afforestation and deforestation for the purpose of conversion to another type of land use" (Class 1 (d) of Annex II). The Irish Regulations, in relation to forestry licence applications, require the compliance with the EIA process for applications relating to afforestation involving an area of more than 50 Hectares, the construction of a forest road of a length greater than 2000 metres and any afforestation or forest road below the specified parameters where the Minister considers such development would be likely to have significant effects on the environment. The felling of trees and subsequent replanting, as part of a forestry operation with no change in land use, does not fall within the classes referred to in the Directive, and is similarly not covered by the Irish regulations (S.I. 191 of 2017). The FAC does not consider that the proposal falls within the classes included in the Annexes of the EIA Directive or considered for EIA in Irish Regulations and following examination, the FAC concluded that the proposed development would not result in any real likelihood of a significant effects on the environment.

In deciding to confirm the decision of the Minister to grant the Licence, the FAC concluded that the proposed development would be consistent with Government policy and Good Forestry Practice. Before making its decision, the FAC considered all of the information submitted with the application, the processing of the application by the DAFM, the grounds of appeal and any submissions received.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Vincent Upton", written over a horizontal line.

Vincent Upton On Behalf of the Forestry Appeals Committee



FAC418/2020 TFL00468520 Ballynahallia, Co. Kerry

4th October 2020

Before making its decision the Forestry Appeals Committee (FAC) undertook an appropriate assessment screening of the proposal in line with the Habitats Directive and examined the proposal from the perspective of the likelihood of significant effects on the environment. These considerations were based on information provided parties to the appeal, including the original application, and available in the public domain. The FAC is satisfied that the information available to it is sufficient to undertake these considerations of the proposal.

The licence pertains to the thinning of a forest comprised of four stands containing Sitka spruce, Japanese larch and ash in years 2020, 2025 and 2029 across 9.94 ha. The forest is situated in the townland of Ballynahallia some 3km east of Castleisland, Co. Kerry. The estimated number of trees and volume to be felled, percentage canopy cover and age for each species are supplied with the application as was a harvest plan. As the licence is for thinning no replanting is proposed. Conditions are of a general nature while specific archaeological conditions are attached and a condition to thin to marginal thinning intensity which relates to the maintenance of timber volume production from the forest. The site is crossed by an ESB line and an unplanted buffer is in place. There are no recorded monuments in the site but a number are present outside of the site to the south and north. A river, identified as the Shanowen in EPA data, flows east west across the northerly section of the forest while the forest is setback from the river and the river is border by broadleaf trees and scrub. The forest is situated in the Maine sub catchment of the Laune-Maine-Dingle Bay catchment.

Appropriate Assessment Screening

The proposal is not connected with or necessary to the management of any European site. There are five sites whose boundaries fall within 15km of the proposal that are listed below alongside the distance from the boundary to the centre of the proposal and their qualifying interests. Given the nature and scale of the proposal, the FAC concluded that significant effects on sites outside of this radius would not be possible. There are no conditions on the licence that relate to the mitigation of effects on a European site and none were considered in this screening.

A boundary of the Blackwater River (Cork/Waterford) SAC lies 11.4km to the east of the proposal in the Blackwater (Munster) Catchment. The conservation objectives of this SAC relate to a number of coastal and riparian habitats and species, some of which are highly sensitive to water quality. The large degree of separation and absence of any hydrological connection would preclude a likelihood of significant effects from arising on this SAC. Part of the Lower River Shannon SAC lies 6.9km to the north and this section is within the Tralee Bay-Feale Catchment. The conservation objectives of this SAC also relate to a number of coastal and riparian habitats and species, some of which are highly sensitive to water quality. The large degree of separation and absence of any hydrological connection would preclude a likelihood of significant effects from arising on this SAC. Killarney National Park, Macgillycuddy's Reeks And Caragh River Catchment SAC lies on a watershed between the Laune-Maine-Dingle Bay and Dunmanus-Bantry-Kenmare Catchments 11.7km to the south. The proposal lies in a separate subcatchment with no hydrological connection with the SAC. The large degree of separation and absence of any hydrological connection would preclude a likelihood of significant effects from arising on this extensive SAC. A boundary of Castlemaine Harbour SAC lies 12.5km to the west. The Shanowen flows westerly and joins the Maine which flows through Castlemaine and enters the SAC and the hydrological distance is over 27 km to the boundary of the SAC. The proposal is for a thinning without the clearance of land and the production of significant amounts of sediment or nutrients is not likely. The forest is setback from the

river and separated by hedgerows and grassland and were any runoff to occur it is not likely to reach the watercourse and if runoff was to occur the hydrological distance to the SAC would provide extensive dilution and settling. Forestry is not listed amongst the most important impacts and activities with high effect on the site in the Natura 2000 data form prepared by the NPWS. The degree of separation, including the hydrological distance, would preclude any other form of impacts on the qualifying interests of the SAC. Significant effects on this extensive SAC are not considered likely. Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA covers an area of 56,648.8 ha and its boundary lies 2.5km to the east. Forestry outside of the SPA is not listed amongst the most important impacts and activities with high effect on the site in the Natura 2000 data form prepared by the NPWS. Semi-mature coniferous forests with a closed canopy are not considered suitable habitat for the qualifying interest of this SPA and the distance from the boundary would preclude disturbance from noise or other sources. Significant effects on this large SPA are not considered likely.

The proposal is divided into a number of stands. Those to the north surround a farmyard and are surrounded by agricultural land, while the stand to the south adjoins a smaller block of forest. There have been few afforestation or forest road licences granted in the area while a small number of felling licences have been issued, some of larger areas. There are a number of planning permissions granted in the area but these are of a primarily residential and agricultural nature and are not adjacent to the forest. Castleisland lies to the northwest and there is ribbon development along the public road. The County Development Plan and EPA emission data were also examined and no related issues were identified. Due to the absence of a pathway for significant effects from the proposal and any European sites and the nature and scale of the proposal and other projects, the proposal would not result in in-combination effects with these other plans and projects.

Having regard to the nature, scale and location of the proposal, its proximity to European sites and the conservation objectives of those sites, the FAC concludes that the proposal is not likely to have any significant effect on any European site, itself or in combination with other plans or projects.

Site Type	Site Code	Site Name	Distance To (m)	Qualifying Interests (* denotes a priority habitat)	Conservation Objectives	Assessment
SAC	002165	Lower River Shannon SAC	6906.91	Habitats 1110 Sandbanks which are slightly covered by sea water all the time 1130 Estuaries 1140 Mudflats and sandflats not covered by seawater at low tide 1150 Coastal lagoons* 1160 Large shallow inlets and bays 1170 Reefs 1220 Perennial vegetation of stony banks 1230 Vegetated sea cliffs of the Atlantic and Baltic coasts 1310 Salicornia and other annuals colonising mud and sand 1330 Atlantic salt meadows (Glauco-Puccinellietalia maritimae) 1410 Mediterranean salt meadows (Juncetalia maritimi) 3260 Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation 6410 Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) 91E0 Alluvial forests with Alnus glutinosa and Fraxinus	http://www.npws.ie/sites/default/files/protected-sites/conservation-objects/CO002165.pdf	No Likelihood of Significant Effects

				<p>excelsior (Alno-Padion, Alnion incanae, Salicion albae)*</p> <p>Species</p> <p>1029 Freshwater Pearl Mussel (<i>Margaritifera margaritifera</i>)</p> <p>1099 River Lamprey (<i>Lampetra fluviatilis</i>)</p> <p>1349 Common Bottlenose Dolphin (<i>Tursiops truncatus</i>)</p> <p>1355 Otter (<i>Lutra lutra</i>)</p> <p>1096 Brook Lamprey (<i>Lampetra planeri</i>)</p> <p>1095 Sea Lamprey (<i>Petromyzon marinus</i>)</p> <p>1106 Salmon (<i>Salmo salar</i>)</p>		
SAC	002170	Blackwater River (Cork/Waterford) SAC	11423.58	<p>Habitats</p> <p>1130 Estuaries</p> <p>1140 Mudflats and sandflats not covered by seawater at low tide</p> <p>1220 Perennial vegetation of stony banks</p> <p>1310 Salicornia and other annuals colonising mud and sand</p> <p>1330 Atlantic salt meadows (<i>Glauco-Puccinellietalia maritima</i>)</p> <p>1410 Mediterranean salt meadows (<i>Juncetalia maritimi</i>)</p> <p>3260 Water courses of plain to montane levels with the <i>Ranunculum fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation</p> <p>91A0 Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles</p> <p>91E0 Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, Alnion incanae, Salicion albae)*</p> <p>Species</p> <p>1096 Brook Lamprey (<i>Lampetra planeri</i>)</p> <p>1106 Salmon (<i>Salmo salar</i>)</p> <p>1421 Killarney Fern (<i>Trichomanes speciosum</i>)</p> <p>1095 Sea Lamprey (<i>Petromyzon marinus</i>)</p> <p>1355 Otter (<i>Lutra lutra</i>)</p> <p>1103 Twaite Shad (<i>Alosa fallax fallax</i>)</p> <p>1092 White-clawed Crayfish (<i>Austropotamobius pallipes</i>)</p> <p>1029 Freshwater Pearl Mussel (<i>Margaritifera margaritifera</i>)</p> <p>1099 River Lamprey (<i>Lampetra fluviatilis</i>)</p>	http://www.npws.ie/sites/default/files/protected-sites/conservation-objects/CO002170.pdf	No Likelihood of Significant Effects
SAC	000365	Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC	11740.30	<p>Habitats</p> <p>3110 Oligotrophic waters containing very few minerals of sandy plains (<i>Littorelletalia uniflorae</i>)</p> <p>3130 Oligotrophic to mesotrophic standing waters with vegetation of the <i>Littorelletalia uniflorae</i> and/or <i>Isoetia-Nanojuncetea</i></p> <p>3260 Water courses of plain to montane levels with the <i>Ranunculum fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation</p> <p>4010 Northern Atlantic wet heaths with <i>Erica tetralix</i></p> <p>4030 European dry heaths</p> <p>4060 Alpine and Boreal heaths</p> <p>5130 <i>Juniperus communis</i> formations on heaths or calcareous grasslands</p> <p>6130 Calaminarian grasslands of the <i>Violetalia calaminariae</i></p> <p>6410 <i>Molinia</i> meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinion caeruleae</i>)</p> <p>7130 Blanket bogs (* if active bog)</p> <p>7150 Depressions on peat substrates of the <i>Rhynchosporion</i></p> <p>91A0 Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles</p> <p>91E0 Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, Alnion incanae, Salicion albae)*</p> <p>91J0 <i>Taxus baccata</i> woods of the British Isles*</p>	http://www.npws.ie/sites/default/files/protected-sites/conservation-objects/CO000365.pdf	No Likelihood of Significant Effects

				Species 1065 Marsh Fritillary (<i>Euphydryas aurinia</i>) 1095 Sea Lamprey (<i>Petromyzon marinus</i>) 1096 Brook Lamprey (<i>Lampetra planeri</i>) 1099 River Lamprey (<i>Lampetra fluviatilis</i>) 1029 Freshwater Pearl Mussel (<i>Margaritifera margaritifera</i>) 1106 Salmon (<i>Salmo salar</i>) 1303 Lesser Horseshoe Bat (<i>Rhinolophus hipposideros</i>) 1024 Kerry Slug (<i>Geomalacus maculosus</i>) 1833 Slender Naiad (<i>Najas flexilis</i>) 1355 Otter (<i>Lutra lutra</i>) 1421 Killarney Fern (<i>Trichomanes speciosum</i>) 5046 Killarney Shad (<i>Alosa fallax killarnensis</i>)		
SAC	000343	Castlemaine Harbour SAC	12448.27	Habitats 1130 Estuaries 1140 Mudflats and sandflats not covered by seawater at low tide 1210 Annual vegetation of drift lines 1220 Perennial vegetation of stony banks 1230 Vegetated sea cliffs of the Atlantic and Baltic coasts 1310 Salicornia and other annuals colonising mud and sand 1330 Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>) 1410 Mediterranean salt meadows (<i>Juncetalia maritimi</i>) 2110 Embryonic shifting dunes 2120 Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) 2130 Fixed coastal dunes with herbaceous vegetation (grey dunes)* 2170 Dunes with <i>Salix repens</i> ssp. <i>argentea</i> (<i>Salicion arenariae</i>) 2190 Humid dune slacks 91E0 Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i> , <i>Alnion incanae</i> , <i>Salicion albae</i>)* Species 1106 Salmon (<i>Salmo salar</i>) 1099 River Lamprey (<i>Lampetra fluviatilis</i>) 1395 Petalwort (<i>Petalophyllum ralfsii</i>) 1355 Otter (<i>Lutra lutra</i>) 1095 Sea Lamprey (<i>Petromyzon marinus</i>)	http://www.npws.ie/sites/default/files/protected-sites/conservation/CO000343.pdf	No Likelihood of Significant Effects
SPA	004161	Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA	2451.54	Birds A082 Hen Harrier (<i>Circus cyaneus</i>)	http://www.npws.ie/sites/default/files/protected-sites/conservation/CO004161.pdf	No Likelihood of Significant Effects

Examination of Environmental Impacts

The EU EIA Directive sets out, in Annex I a list of projects for which EIA is mandatory. Annex II contains a list of projects for which member states must determine through thresholds or on a case by case basis (or both) whether or not EIA is required. Neither afforestation nor deforestation are referred to in Annex I. Annex II contains a class of project specified as "initial afforestation and deforestation for the purpose of conversion to another type of land use" (Class 1 (d) of Annex II). The Irish Regulations, in relation to forestry licence applications, require the compliance with the EIA process for applications relating to afforestation involving an area of more than 50 Hectares, the construction of a forest road of

a length greater than 2000 metres and any afforestation or forest road below the specified parameters where the Minister considers such development would be likely to have significant effects on the environment. The felling of trees, as part of a forestry operation with no change in land use, does not fall within the classes referred to in the Directive, and is similarly not covered by the Irish regulations (S.I. 191 of 2017).

The proposal is of a small scale and for thinning which would be normal activities in a commercially managed forest and would be carried out under licence and with conditions to adhere to a series of requirements and guidelines. There is no recorded monument within the forest while some lie in close proximity and were considered by the DAFM archaeologist and conditions have been attached regarding setbacks around the monument. The FAC are satisfied that these are acceptable. There is a condition to thin to marginal thinning intensity which places a restriction on the volume to be removed and ensures that a sustainable yield is maintained. The area is rural and agricultural and these activities would not be out of keeping with the general landscape. There are a number of conditions related to the protection of biodiversity and water quality on the licence and, taking account of the scale and degree of hydrological connectivity, the proposal is not considered likely to result in a significant impact on water quality or biodiversity. There is no evidence of protected species or habitats in or adjacent to the site and there are no conservation areas in the vicinity. The FAC concluded that there is no likelihood of a significant effect on any European site. There is an existing access to the public road and traffic will likely increase as a result of the operations and there may be some noise disturbance but this will be of a localised and temporary nature. There are conditions on the licence regarding the management of operations. The FAC does not consider that the proposal falls within the classes included in the Annexes of the EIA Directive or considered for EIA in Irish Regulations and does not consider that it would result in any real likelihood of a significant effect on the environment.

Vincent Upton
On Behalf of the Forestry Appeals Committee

