



[REDACTED]

11 January 2021

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine in respect of Afforestation approval CN84345.

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 the parties to the appeal.

#### **Background**

Afforestation CN84345 was granted by the Department on 10 December, 2019.

#### **Hearing**

A hearing of appeal 431/2019 was conducted by the FAC on 7 December, 2020.

**FAC Members:** Mr. Myles Mac Donncadha (Chairperson), Ms. Claire Kennedy and Mr. James Conway.

#### **Decision**

The Forestry Appeals Committee considered all of the documentation on the file, including application details, processing of the application by DAFM, and the grounds of appeal before deciding to affirm the decision to grant this Afforestation (Reference CN84345).

The proposal comprises of 4.73ha of afforestation at Ballynultagh, Co. Wicklow and involves a change in land use type from agriculture to forestry. Proposed species composition comprises of Sitka spruce (4.02ha) and ADB - Birch, Oak, Hazel & Rowan (0.71ha) in one block. The project area does not fall within any designated Natura 2000 site but is within the 15km zone of the Slaney River Valley SAC (code: 000781) located 1.3km to the south east of the project area. Margaritifera is listed as one of the qualifying interests of which the main populations are known to be located in a different sub-catchment to that of the project area, with the two water bodies joining downstream at a distance of over 13kms from the project site. The project area borders agricultural land on all sides, with some non-adjointing mature forestry to the south.

The predominant soil types underlying the project area are brown earths. The slope is mostly flat to moderate (<15%). The project area does not adjoin or contain an aquatic zone. The vegetation type within the project area comprises GA1 grassland. No watercourses are documented within the proposal area and it is located within the WFD Catchment Slaney & Wexford Harbour (ID 12) and sub-catchment of Derry (Slaney) (ID SC\_010).

DAFM did not refer the project to any external bodies. On 06 December 2019 the Forest Service District Inspector undertook a field inspection and Stage 1 Screening Assessment in relation to the provisions of the Habitats Directive using the Appropriate Assessment Screening protocol in place at the time. The inspector reviewed the details of the Natura 2000 site within 15km of the project, including its qualifying interests and conservation objectives, and supporting habitats and species. The inspector concluded that the project could be screened out on the basis that the project would not have a significant effect on any designated areas due to the absence of any significant relevant watercourse. This conclusion was based on analysis of the project design (including associated operations and ancillary works) and location; the European Site, its qualifying interests and conservation objectives; and the possibility of potential sources and pathways.

An in-combination assessment was carried out on the 09 December 2019 of any other developments in the vicinity of the project and concluded that individually the project does not represent a source, or if so, there is no pathway for an adverse effect on any European Natura site. DAFM therefore concluded that there is no potential for the project to contribute to any such effects, when considered with other plans and projects before completing the assessment process on 9 December 2019.

DAFM issued its technical approval on 10 December 2019. The standard afforestation conditions are imposed. The FAC is satisfied none of the conditions attached are in place for the purposes of mitigation in respect of any European site.

There is one appeal against the decision. The grounds relate to The Forest Service, in its screening for Appropriate Assessment found that there were Natura sites within 15km of the project and this should be a 'trigger' for Appropriate assessment as the project may have an impact.

In a statement to the FAC, the DAFM responded to the grounds of appeal stating that the relevant AA procedure was applied in approving this licence. The screening information can be found on file. An in-combination assessment was also carried out for this application and can also be found on file. Using the current AA procedure in conjunction with the Habitat & Foraging guidance tables all Natura 2000 sites have been screened out as outlined on file. This application alone or in-combination with other forest and non-forest plans/projects in the area will not have a significant impact the qualifying interests of the Natura 2000 sites screened as part of the AA.

The FAC had regard to the record of the decision under appeal and the submitted grounds. The site for the proposed afforestation is in a rural area with agriculture being the primary land use.

In addressing the grounds of appeal, the FAC considered the contention that the proposed development should have automatically triggered Appropriate Assessment. Under Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of a European site, must be subject to an assessment of the likely significant effects the project may have on such a designated site, either individually or in combination with other plans projects, having regard to the conservation objectives of that designated site. In this case, the DAFM undertook a Stage 1 screening including in-combination effects in relation to the listed Natura 2000 sites, prior to the issuing of the licence, found one European site within 15km, Slaney River Valley SAC and concluded that the proposed project would not have a significant effect on this or any European sites and their Qualifying Interests, and that Appropriate Assessment was not required.

While the grounds of appeal do not raise specific concerns regarding environmental impact assessment, the FAC also considered the DAFM record of this consideration. The EU EIA Directive sets out in Annex II 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. 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 proposal is considerably sub-threshold for the mandatory submission of an EIA report. The DAFM considered the application across a range of criteria, including water, designated areas, landscape and cumulative effects, and determined that the project was not required to undergo the EIA process. The proposal as described is being for the afforestation of 4.73 ha of agricultural land on a predominantly brown earth soil and does not adjoin or contain an aquatic zone. Having regard to the record of the decision and the submitted grounds and the nature, scale and location of the proposal the FAC is satisfied that the proposal would not result in any likelihood of significant effects on the environment and that the DAFM did not err in the decision regarding EIA.

The FAC is satisfied that the procedures adopted by the DAFM in reaching the conclusion that the proposed development would not be likely to give rise to significant effects were correct based on the AA screening process in use at the time.

In deciding to affirm the licence decision, on the balance of evidence, the FAC is satisfied that there was no serious or significant error or series of errors made in making the decision or that the decision was made without complying with fair procedures. The FAC concluded that the proposed development would be consistent with Government policy and Good Forestry Practice.

Yours sincerely

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Mr. Myles Mac Donncadha (on behalf of the FAC)