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1<sup>st</sup> July 2021

**Subject:** Appeal FAC786/2020 regarding licence TFL00518320

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, as amended, has now completed an examination of the facts and evidence provided by all parties to the appeal.

#### **Background**

Licence TFL00518320 for felling on 25.7 hectares at Coornishal, Co. Cork was issued by the Department of Agriculture, Food and the Marine (DAFM) on 9<sup>th</sup> September 2020.

#### **Hearing**

A hearing of appeals FAC786/2020 was held by the FAC on 30<sup>th</sup> June 2021. In attendance at hearing:  
FAC Members: Mr. Donal Maguire (Deputy Chairperson), Mr. Iain Douglas, Mr. Derek Daly and Mr. Vincent Upton.

Secretary to the FAC: Ms. Marie Dobbyn.

#### **Decision**

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, submissions received and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister for Agriculture, Food and the Marine regarding licence TFL00518320.

The licence pertains to the thinning of 25.7 hectares across three plots in 2021, 2023 and 2026. The forest is comprised of Sitka spruce, ash and additional broadleaves. The DAFM record describes the site as on a gentle to moderate slope on a podzolic soil and crossed or adjoining an aquatic zone. The proposal would be in a managed forest. The proposed thinning is not within the boundaries of a European site and the DAFM recorded a screening for Appropriate Assessment and identified six European sites within 15km. Each site is considered in turn alongside its qualifying interests/special conservation interests and a screening conclusion and reasons are recorded. The DAFM also recorded a consideration of other plans and projects in-combination with the proposed thinning. The DAFM considered the proposal across a range of criteria and recorded that the proposal should not proceed to

the Environmental Impact Assessment process. There were no referrals to prescribed bodies and one submission was received from a member of the public, the Appellant, which raise issues and concerns of a general nature. The licence was issued on 9th September 2020 with conditions.

There is one appeal against the decision. The grounds contend that the Appellant made a submission on this application on 29-7-20 and that in failing to notify them of the decision (and provide relevant records) the Minister has failed to comply with Regulation 21 (1) of the Forestry Regulations. It is submitted that this invalidates the awarding of this licence as the approvals process was not conducted in accordance with the law.

In a response to the appeal, the DAFM submitted the dates and steps in processing the application. They submit that the decision was issued in accordance with our procedures, S.I. 191/2017 and the 2014 Forestry Act and that they are satisfied that all criteria outlined in its standards and procedures policy have been adhered to in making a decision on the application. The statement goes on to submit that there is no hydrological connection or obvious threat to any SPA or SAC.

In considering the appeal, the FAC had regard to the record of the decision, the grounds of appeal and any submissions received. The FAC considered that the issue of notification appeared to relate to the period after the decision by the Minister was made and the obligations on the Minister under the Forestry Regulations 2017. The record includes a copy of an email sent to the Appellant on the day of the decision, 9<sup>th</sup> September 2020, and includes a cover letter and documentation regarding the decision. These were provided to all parties to the appeal and no further submissions were received. The FAC is not satisfied that the Minister had erred in regard to the submitted grounds of appeal.

The FAC further considered the record of the decision. Under Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The proposal is for the thinning of a managed forest across three interventions without the complete clearance of land. The proposal is not within a European site and is not connected with or necessary to the management of such a site. The FAC consulted publically available information from the NPWS and EPA and identified the same European sites within 15km. The proposal is at a considerable remove from any European site with the closest being Myross Wood SAC some 4.5km to the southeast at its closest. The FAC considered the range and type of plans and projects considered in combination with the proposal and found them acceptable. The FAC considered the reasons recorded for screening the proposal and the decision not to proceed to Appropriate Assessment and did not identify any serious or significant errors.

The proposal lands lie within the Ilen\_SC\_020 subcatchment of the Bandon-Ilen Catchment. The closest Water Framework Directive (WFD) waterbody is the ILEN\_030 which lies some 500 metres at its closest and has been assigned a High status and considered Not At Risk in relation to the WFD. The FAC considered that there was no evidence that the proposal would impact on this waterbody. The FAC also

considered whether the proposed development should have been addressed in the context of the Environmental Impact Assessment (EIA) Directive. 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 Forestry Regulations 2017 (S.I. 191 of 2017), 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 decision before the FAC relates to the thinning of 25.7 ha of commercial managed forest. The FAC concluded that 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 not covered by national regulations and that screening for significant effects under the EIA Directive was not required in this case. The DAFM did undertake a consideration of the proposal across a range of criteria and concluded that it should not proceed to EIA. The FAC did not consider that there was any evidence before it that an error had been made in this regard.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, and other submissions received. The FAC is not satisfied that a serious or significant error or a series of errors was made in making the decision or that the decision was made without regard to fair procedures. The FAC is thus affirming the decision to the Minister regarding licence TFL00518320 in line with Article 14B of the Agricultural Appeals Act 2001, as amended.

Yours sincerely,

A black rectangular redaction box covering the signature of Vincent Upton.

Vincent Upton On Behalf of the Forestry Appeals Committee

