



[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

5<sup>th</sup> March 2021

**Subject:** Appeal FAC081/2018 regarding licence CN75966

Dear [REDACTED]

I refer to the 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**

Licence CN75996 for 467 metres of forest road works at Buffanagh, Co. Tipperary was approved by the Department of Agriculture, Food and the Marine (DAFM) on 20th March 2018.

#### **Hearing**

A hearing of appeal FAC081/2018 was held by the FAC on 3<sup>rd</sup> March 2021. In attendance:

FAC Members: Mr. John Evans (Deputy Chairperson), Mr. James Conway, Mr. Seamus Neely, Mr. Vincent Upton

#### **Decision**

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, submissions made and all other submissions received, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to set aside and remit the decision of the Minister regarding licence CN75966.

The licence decision pertains to 467 metres of forest road works at Buffanagh, Co. Tipperary to service a forest area of 23.39 ha. The forest is comprised of ash, Norway spruce and Sitka spruce. The road would be constructed through the existing managed forest and maps and specification details were provided with the application. The road would join an existing private road that leads to the public road and no new entrances would be constructed. The soil is described as a heavy clay with a shallow layer (100mm) of peat. The application was referred to Tipperary County Council and no response was provided. The DAFM considered the application across a range of criteria and concluded that it should not be subject to Environmental Impact Assessment (EIA). The DAFM approved the application on 20/03/2018.

There is one appeal against the decision. The grounds submit that the DAFM failed to provide an Appropriate Assessment screening in relation to the decision and that the AA procedure adopted by the

DAFM is flawed. In particular reference is made to the consideration of conditions and that these are mitigation measures. Reference is made to the Judgement of the CJEU in case C323/2017 in this regard.

In a statement in responded to the appeal, the DAFM submitted that the site had been field inspected and assessed using GIS. That none of the scenarios employed by the DAFM in their procedures at the time were triggered and therefore an Appropriate Assessment screening form was not completed. It is submitted that the road would be 10km to the north of the Lower River Suir SAC and that there is no hydrological connection with this site.

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 DAFM submitted that they did not record a consideration and decision regarding screening for appropriate assessment. The FAC is not satisfied that a proper consideration of the potential significant effects of the proposal itself and in combination with other plans and projects on a European site was completed before the approval of the licence and that this would constitute a serious error. The FAC is therefore remitting the decision to the Minister to undertake a new screening of the likely significant effects of the proposal on European sites itself and in combination with other plans and projects.

In considering the appeal the FAC had regard to the record of the decision, the submitted grounds of appeal, and submissions received. The FAC is satisfied that a serious error was made in making the decision. The FAC is thus setting aside and remitting the decision of the Minister regarding licence CN75966 in line with Article 14B of the Agricultural Appeals Act 2001, as amended to undertake a new screening for Appropriate Assessment under Article 6 of the EU Habitats Directive before a new decision is made.

Yours sincerely,



Vincent Upton On Behalf of the Forestry Appeals Committee