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12<sup>th</sup> October 2021

**Subject:** Appeals 002/2021 and 005/2021 regarding licence CN83948

Dear [REDACTED],

I refer to appeals made 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 and Hearing**

Licence CN83948 was approved by the Department of Agriculture, Food and the Marine (DAFM) for native woodland afforestation of 10.8 ha at Lurgan, Co. Sligo on 16<sup>th</sup> December 2020 comprising two blocks separated by an electricity transmission line.

A hearing of appeals FAC 002/2021 and 005/2021 with regard to CN83948 was held by a division of the FAC on 23<sup>rd</sup> August 2021. The FAC members in attendance at the hearing were Mr. Myles Mac Donnadha (Chairperson), Mr. James Conway, Mr. John Evans and Mr. Derek Daly.

#### **Decision**

Having regard to the evidence before it, including the licence application, processing by the Department of Agriculture, Food and the Marine (DAFM), the grounds of appeal, all materials on file, and in particular the following considerations, the Forestry Appeals Committee (FAC) has decided to vary the decision of the Minister regarding licence CN83948. Specifically, the approval should be amended to

- replace the second additional constraint which currently reads 'Adhere to Ecology report attached to protect environment.,' with the text 'Adhere to the mitigations listed in the Ecology Report and the Appropriate Assessment Determination, both dated 10<sup>th</sup> December 2020';
- attach the Ecology Report and the Appropriate Assessment Determination to the letter 'Afforestation Licence and Technical Approval under the Afforestation Scheme';

- update the list of inclusions and appendices on page one of this letter to include the Ecology Report and the Appropriate Assessment Determination;
- add an additional condition as follows: 'Use 3m x 3m tree spacing in the 5 rows nearest to each dwelling (in the dwelling setback)'.

## **General**

According to the Appropriate Assessment Screening Report and Determination the soils are approximately 70% mineral and 30% peat. The slope is predominantly flat to moderate (15%), with north, south and neutral aspects. The land appears to be in use for agriculture (grazed by sheep) and having predominantly grass rush vegetation.

Ballygrania Stream runs along the northern perimeter of Plot 1. Drainage ditches (relevant watercourses under the Environmental Requirements for Afforestation, located along the perimeters and dissecting Plots 1 and 3 feed into the Ballygrania Stream, further connecting the site to the stream. This stream is a tributary of the Unshin River, located downstream of the project and designated as the Unshin River SAC (001898).

Downstream from the point at which the Ballygrania Stream feeds into the Unshin River, there is an in stream distance of ca. 9km to where the Unshin River feeds into Ballysadare SAC (000622) and Ballysadare SPA (004129).

The project area does not fall within any designated Natura 2000 site but within 15kms of the project there are twelve 12 Natura 2000 sites: Bricklieve Mountains and Keishcorran SAC, Cummeen Strand SPA, Cummeen Strand/Drumcliff Bay (Sligo Bay) SAC, Lough Arrow SAC, Lough Arrow SPA, Lough Gill SAC, Sligo/Leitrim Uplands SPA, Templehouse and Cloonacleigha Loughs SAC, Union Wood SAC, Ballysadare Bay SAC, Ballysadare Bay SPA, Unshin River SAC.

The licence application was not referred to any statutory consultees. Two submissions were received in relation to the proposal in June 2019. The site having been referred to it, the DAFM Archaeology unit reported on archaeology, heritage and landscape character.

## **Approval**

The licence was approved with standard conditions and issued on 16<sup>th</sup> December 2020. The document was said to include:

- Section 1 - Afforestation Licence and related conditions.
- Section 2 - Technical Approval under the Afforestation Grant and Premium Scheme.
- Section 3 - Stay on works commencing that applies to both the Afforestation Licence and the Technical Approval under the Afforestation Scheme.
- Section 4 - Forestry Appeals process.
- Signed Afforestation Licence
- Appendix A - Operational proposals

Standard conditions are attached with the addition of the following: all conditions of Native Woodland Establishment to apply; Adhere to Ecology report attached to protect environment; Adhere to forestry & water quality guidelines; All guidelines to apply.

### **Appropriate Assessment**

In the Appropriate Assessment Screening Report & Determination, dated 10<sup>th</sup> December 2020 nine sites were screened out leaving Ballysadare Bay SAC, Ballysadare Bay SPA and Unshin River SAC as screened in. The document describes the proposed activity, including the applicant proposal that the last 5 rows at each dwelling buffer be planted at 3m x 3m spacing. An in-combination assessment of the remaining sites found no likely impact. In support of the Appropriate Assessment, an ecology report dated 10<sup>th</sup> December 2020 highlighted the potential for habitat loss, habitat fragmentation, disturbance and displacement effects. In relation to hedgerows/ treelines, it was recommended to apply a minimum of 3m setback on either side (within project site) of each hedgerow/treeline and no machinery or storage is to be allowed in the zone. In relation to mature Trees (Plot 3: lower eastern and southern boundary) two recommendations were made: a 3m setback from the perimeter, adjacent to mature trees; no machinery or storage is to be allowed in the zone and manual invert mounding only and manual planting to be undertaken from the 3m exclusion zone to 7m from the perimeter of mature trees.

In the Appropriate Assessment Report dated 10<sup>th</sup> December 2020 the following mitigations were proposed so that it could be ruled out that the activity would have any effect on the screened-in Natura 2000 sites. An in-combination assessment is also made and this concludes that the activity will not give rise to any adverse effect on the integrity of any European Site. The listed mitigations are

- In keeping with Table 5 of the Environmental Requirements for Afforestation December 2016 (DAFM, 2016), a 20m water setback is to be applied to the aquatic zone along the northern perimeter of Plot 1 and a 5m water setback for all relevant watercourses (drainage ditches in Plot 1 and Plot 3). Within these setbacks there is to be no planting.
- All machine traffic and the storage of materials or equipment are to be excluded from these water setbacks. Table 6 of the Environmental Requirements for Afforestation December 2016 (DAFM, 2016) applies.
- All operations are to be stopped during rainfall and after rainfall where site conditions create a risk of sediment becoming mobilised onsite. Operations are to recommence once the risk has abated. Consult the Met Éireann website [www.met.ie](http://www.met.ie) and review/track the forecast details for the meteorological station nearest to the site.
- Do not apply herbicides within any water setbacks. Application of herbicide to adhere to Good Plant Protection Practice [www.pcs.agriculture.gov.ie/sud/professionalsuserssprayeroperators/](http://www.pcs.agriculture.gov.ie/sud/professionalsuserssprayeroperators/)), to relevant sections of the Guidelines for the Use of Herbicides in Forestry and Environmental Requirements for Afforestation December 2016 (DAFM, 2016).
- Avoid the storage and preparation of chemicals (i.e. herbicide and fuels) on site where possible. If preparation/storage is required, this is to be undertaken outside of Plot 1 and Plot 2 and in a dry elevated location that is 50m from an aquatic zone and 20m from any other water feature. Adhere to Section 3.7.5 of Environmental Requirements for Afforestation December 2016 (DAFM, 2016).

- Machinery used for afforestation works to be selected to minimise the risk of rutting. Section 3.7.5 of Environmental Requirements for Afforestation December 2016 (DAFM, 2016) applies.

Mitigation measures to protect Otter are as follows:

- The 20m water setback along Plot 1s aquatic zone is to remain uncultivated and unplanted. This setback is to remain undisturbed during establishment (apart from fencing, if required) and throughout the forest rotation. Apply and maintain as per details set out in Tables 5 and 6 of the Environmental Requirements for Afforestation December 2016 (DAFM, 2016).
- Do not remove or disturb any areas of wet woodland, carr (woodland growing on wet ground or waterlogged soil usually dominated by alder or willow species) and thick scrub on the site within 50m of the aquatic zone in Plot 1 or within 20m of a relevant watercourse; drainage ditches within Plot 1 and the western perimeter of Plot 3.
- Regarding any existing relevant watercourses (e.g. existing field drain), do not clean any section of such watercourses within 50 m of an aquatic zone.

### **The Appeals**

There are two third party appeals against the decision. The grounds of appeal are similar, submitting that light and views will be obstructed, including having a negative effect on mental health; that one appellants may in future open his house as tourist accommodation and the altered views will negatively impact on same; that the proposed lands are high nature value farmland; that the lands in the area are better quality than usual for forestry and as such it would be out of place; that the area hosts a significant amount of wildlife; that the area attracts tourists due to its close proximity to Lough Gill; that the area has a high density of archaeological and cultural sites of interest; a tributary of the Unshin river flows near the project area and that its status dropped from High to Good in the 2013-2015 'monitoring threat cycle' and the proposal will see a further threat to its status; the project area lies at the heart of an increasingly well populated area and forestry and is not isolated as suggested; the hedgerows and natural flora within the site will be negatively affected by the development, as will the wildlife upon which it relies; neighbours were not notified about the application or approval; the small local road adjoining the project area will not support heavy machinery used for felling.

### **DAFM Statement to the FAC**

The DAFM in a statement to the FAC confirmed that the decision was issued in accordance with DAFM procedures, S.I. 191/2017 and the 2014 Forestry Act. It also sets out the various processing dates relating to the application and that one submission had been received from members of the public in June 2019. It concludes with a statement from the District Inspector that he carried out a desk audit and field inspection on this application and is satisfied that all criteria and guidelines were fully adhered to and Approval is in order.

### **Consideration by the FAC**

The FAC held a hearing of the appeal on 23<sup>rd</sup> August 2021. Addressing the written grounds of appeal, the Committee considered, in the first instance, the visual sensitivity of the project, finding that the surrounding area is designated as a 'Normal Rural Landscape' on the Sligo Development Plan Landscape Characterisation Map, with no specific visually vulnerable areas or scenic routes in close

proximity. While the lands may be viewable from the appellants dwellings this is not grounds for refusal of the proposal. Similarly, any perceived threat to tourism arising from the proposed development is not well substantiated. Regarding the submission that the area is high nature value farmland, the ecological assessment of the site records the existing use as grazing and the main vegetation being grass/rush with no particular biodiversity value. The area is not within any national or Natura 2000 designated site and no records are available of additional habitats or species of note in or near the site. Regarding the historical and cultural value of the lands, the archaeologists report notes that a ring-fort (SL 031-060) lies 130m to the north of the site and is unlikely to be impacted, directly or indirectly, by the proposed development. All other Recorded monuments are over 300m distant, with Ballysumaghan Church/graveyard being located some 570m to the southwest and Kilross graveyard c. 1km to the northwest. In addition, the appellant submitted that 'a very old stone Celtic cross found in the fields surrounding this area' recently. While there were no further details provided, the appellants are presumably referring to SMR site (and proposed Recorded Monument) - cross (SL 021-214), which was a medieval stone cross discovered partially buried in a field 1.1km to the northwest of the development area in 2018 and was subsequently re-erected on the site. The distance between the find in question and the proposed development area would indicate no likelihood of a direct or indirect impact on this monument from the proposed afforestation.

Regarding water quality, the status of UNSHIN\_040 waterbody was classed as 'High' in the 2013-2018 assessment. The Unshin River SAC (001898) was screened-in for Appropriate Assessment and was included in consideration of mitigation actions. The hedgerows mentioned by the appellants were noted during ecological assessment and Appropriate Assessment and specific mitigations devised. Regarding poor notification of the planned afforestation, it should be noted that two appeals were made and the bio map and photos show the prominent position of the site notice. Regarding the suitability of the road for carrying machines used in tree felling adequate access is established for planting and may later be upgraded as necessary. Given that the area will be native woodland the level of harvesting in the future is likely to be minimal.

In reviewing the material in this case, the FAC had cause to examine the additional conditions attached to the approval. The FAC finds that the list of included sections in the Approval Letter does not include the 'Ecological Report' referred to in the third additional condition. It is therefore unclear to the FAC whether this was attached or not. The Appropriate Assessment Determination dated 10<sup>th</sup> December 2020 lists additional mitigations specific to the protection of Natura 2000 sites. These are not referred to in the licence conditions. The Appropriate Assessment cites the applicants plan to use wider (3m x 3m) spacing for a 5-row band around dwelling setbacks; this is not mentioned in any mitigations or in the Operational Proposals accompanying the approval. The lack of specific linkage between approval conditions and the Appropriate Assessment, Appropriate Assessment Determination and Ecological Report is seen to be a significant error in this approval.

In considering the appeal in this case the FAC had regard to the record of the decision, the submitted grounds of appeal, and all submissions received. The FAC is satisfied that a serious or significant error or a series of errors were made in making the decision in relation to this licence and that and is therefore varying the decision of the Minister regarding licence CN83948. The approval should be amended to

- replace the second additional constraint which currently reads 'Adhere to Ecology report attached to protect environment.,' with the text 'Adhere to the mitigations listed in the Ecology Report and the Appropriate Assessment Determination, both dated 10th December 2020';
- attach the Ecology Report and the Appropriate Assessment Determination to the letter 'Afforestation Licence and Technical Approval under the Afforestation Scheme';
- update the list of inclusions and appendices on page one of this letter to include the Ecology Report and the Appropriate Assessment Determination;
- add an additional condition as follows: 'Use 3m x 3m tree spacing in the 5 rows nearest to each dwelling (in the dwelling setback)'.

Yours sincerely,

A large black rectangular redaction box covering the signature area.

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Myles Mac Donnadhá On Behalf of the Forestry Appeals Committee