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13<sup>th</sup> September 2021

**Subject:** Appeal FAC 006/2021 relating to Licence CN86426

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

**Licence.**

The licence is for 10.87 Ha of afforestation of 85% Sitka spruce 15% ADB species at Doogary, Kilkelly, Co. Mayo. The application was submitted to the DAFM on the 25/05/2020 and included a Natura Impact Statement. Eight third-party submissions were received on the licence application. The Department of Agriculture, Food and the Marine (DAFM) approved the licence on the 17/12/2020 with a number of conditions, including specific conditions requiring compliance with all mitigation measures set out in the Appropriate Assessment Determination (AAD) and archaeology report.

There is one appeal against the decision to grant the licence.

**Forestry Appeals Committee.**

The appeal was considered by at the sitting of the FAC held on 01/08/2021. The FAC Members present were; Mr. John Evans (Deputy Chairperson), Mr. Seamus Neely, Mr. Luke Sweetman and Mr. Iain Douglas. The FAC had before it; the full DAFM record of the decision, the notice and grounds of appeal and a Statement of Fact (SoF) provided by the DAFM and a submission from a DAFM ecologist.

**Decision.**

Having regard to the evidence before it, in particular the record of the decision by the DAFM, the notice and grounds of appeal, the SoF from the DAFM and the considerations set out hereunder, the FAC has decided to vary the decision of the Minister to grant licence Reference CN86426 at Doogary, Kilkelly, Co. Mayo Leitrim by amending Condition 5 of the licence as set out later in this letter.

**Background.**

The licence application was accompanied by an Appropriate Assessment (AA) Pre-Screening Report prepared by a consultant on behalf of the applicant dated 20 April 2020 examining 5 Natura 2000 sites within 15 km of the proposed afforestation; 1. Carrowbehy/Caher Bog SAC (Site Code 000597), 2. Derrinea Bog SAC (Site Code 000604), 3. Errit Lough SAC (Site Code 000607), 4. River Moy SAC (Site Code 002298) and 5. Urlaur Lakes SAC (Site Code 001571) and screening in only the River Moy SAC. A Natura Impact Statement (NIS) Report of the same date was submitted assessing only the River Moy SAC. A revised Biomap was submitted dated 12/10/2020 showing Plot 5 unplanted (house setback), Plot 6 showing a 20 m strip of broadleaves and an area of wet heath omitted from the licence application.

The final Inspector's Certification Report (with a spatial run dated 22/10/2020) indicates that a both a desk and field inspection were carried out on the site of the proposed afforestation and describes the soil type underlying the project area as predominantly podzolic in nature. The slope is predominantly flat to moderate (<15%). The project area is crossed by/adjoins an aquatic zone(s). The vegetation type(s) within the project area comprise Improved agricultural grassland, Wet grassland, Drainage ditches, Earth banks and Hedgerows. There are areas of Gley soils on elevated areas and Peats on lower areas of the site.

The report notes the same 5 Natura 2000 sites within 15Km of the proposed afforestation as the applicant's pre-screening report and records an AA screening decision to screen out the application for sites 1,2,3,and 5 on the basis that the location of the project area is distant from the SAC and a lack of source pathway connectivity. For site 4 the River Moy SAC the site is screened out for administrative purposes to complete the form but recognises the site was screened in for AA in the applicant's Pre-Screening Report.

The report is accompanied by an in-combination assessment carried out by the DAFM dated 12/11/2020 that concluded that the proposed project with mitigation measures included, will not result in any adverse effect or residual adverse effects on the integrity of the River Moy SAC site either individually or in-combination with other plans or projects.

The Inspector's Certification Report also contains an assessment of the environmental factors relating to the proposed afforestation in order to determine whether the proposed afforestation requires an Environmental Impact Assessment Report (EIAR) and concludes that it is not necessary to subject the proposed afforestation to EIA.

The DAFM carried out an AA Screening Determination dated 09/12/2020 which concluded that the River Moy SAC 002298 must advance to AA (the NIS had been submitted) and an AA Determination dated 10/12/2020.

The licence application was referred to Mayo County Council, An Taisce, the National Parks & Wildlife Service (NPWS) and the Archaeology Section of the Forest Service. Mayo County Council did not reply. An Taisce replied on 17/07/2020 indicating concerns about water quality and requesting a 10 m setback from watercourses and that 10-15% ABE planting is required by the DAFM Guidelines while it calculates only 8.8% is proposed. The NPWS replied on 25/09/2020 stating that it had no objection to the proposal and attaching a general submission with regard to AA. The report of the Archaeology Section of the Forest Service containing a number of conditions was agreed by the National Monuments Service on 06/11/2020, compliance with the conditions in the report is contained in the licence.

#### **Appeal.**

There was one appeal against the decision to grant the licence. The grounds of appeal are summarised as follows:

1. Failure to make the AA Determination available to the public and the charging of the appellant for the same information.
2. Failure to take the impact of forestry on the water quality of the River Moy SAC into account.
3. There is no evidence that an AAD has been carried out.
4. That the "site specific mitigations" in reality means compliance with Forestry Standards and Procedures Manual 2015.



5. That the 'do nothing' scenario is not addressed in NIS.
6. That the proposed planting conflicts with the published re-alignment options for the N17 at this location and that the purpose of the proposed planting is to increase amount of any compensation arising as a result of the N17 road realignment.

#### **Hearing.**

At the hearing, the FAC had before it a Statement of Fact (SoF) dated 09/07/2021 confirming the administrative details of licence application CN86426 as outlined above and states that the DAFM is satisfied that all criteria in its standards and procedures had been adhered to in making the decision on this licence application.

The FAC also had before it a SoF by the DAFM Forestry Inspectorate dated 05/07/2021. The Inspector confirmed that the relevant AA procedure in operation at the time was applied, outline the process undertaken with regard to AA and responded to the grounds of appeal, referring to the DAFM ecologist's submission.

The response to the grounds of appeal by the DAFM ecologist and dated 05/07/2021 is on file.

#### **Consideration by the FAC.**

The FAC consulted with publicly available mapping provided by the Environmental Protection Agency, the OSI, the Forest Service, and other on-line services.

Aerial photography including that submitted with the application shows the existing landuse of the site as agriculture. The site shown on the revised biomap is in four plots. (Plot 1) north of a county road is bounded by bog and agricultural grassland to the north, a small plantation and agricultural grassland to the west and grassland to the south and east. (Plot 2) at some remove south of the county road is surrounded by agricultural land. (Plots 3 & 4) also south of the county road is surrounded by agricultural grassland.

Soil types on the site identified on the EPA mapping as Surface water Gleys and Groundwater Gleys, which are generally shallow, poorly drained mineral soils and shallow brown earths, peaty gleys and peat.

The nearest identified waterbody to the site is the Trimoge\_020 which flows north to south. This waterbody forms the northern boundary of Plot 2 and western boundary of Plot 1 and is proximate to the northeast corner of Plot 3. The Trimoge\_020 as it runs through this site is directly connected to the River Moy SAC hydrologically by a hydrological distance of c. 5 km.

The Water Framework Directive (WFD) Assessment of this river waterbody is that it is of Good status 2013-18 and that it is Not at Risk in information provided by the EPA. The site is underlain by two Groundwater bodies, north of the county road is the Kilkelly Charlestown IE\_WE\_G\_0032 groundwater body and south of the county road is the Swinford Charlestown IE\_WE\_G\_0033 groundwater body. Neither is classified as being at risk.

The overall WFD Catchment is the Moy & Kilalla Bay Catchment and the Sub-Catchment is Moy\_SC\_050

The proposed afforestation is not within a Natura 2000 site nor is it required for the management of a Natura 2000 site. The FAC confirmed that the Natura sites contained in the Inspector's Certification, AA Pre-screening, AAS and AAD were those as being within 15km of the site.

The FAC noted that DAFM completed and recorded an AAD that determined that the that the project proposed under CN86426, individually or in combination with other plans or projects, would not adversely affect the integrity of the River Moy SAC, having regard to its conservation objectives, provided the mitigation measures contained in the AAD were implemented in full. The FAC noted an error in AAD Condition 16 which states "*In relation to the management of chemicals, hydrocarbons or other hazardous material, the proposed felling operations will adhere to measures outlined in the DAFMs Environmental Requirements for Afforestation (2016)*". Licence CN86426 is for afforestation, not felling although the FAC consider this a clerical error, the FAC considered it to be a significant error in the circumstances of the potential for the proposed development on the River Moy SAC.

The FAC noted that the DAFM recorded a consideration of the application across a range of criteria relevant to the development proposed, including water, soil, terrain, slope, designated areas, landscape and cumulative effects, and determined that the project was not required to undergo EIA. The FAC is satisfied that the range and type of criteria considered is appropriate for DAFM to determine whether an EIAR was required having regard to the nature, scale and location of the proposal.

The land is located in Landscape Policy Area 4 in Mayo County Development Plan DP 2014-2020 where forestry is normally acceptable.

In addressing the grounds of appeal, the FAC considered the following matters,

**Failure to make the AA Determination available to the public and the charging of the appellant for the same information.**

The FAC considers that the provision quoted (Article 42(18)(a) of the EU (Birds and Natural Habitats) Regulations 2011) does not provide a right to the appellant to receive information, but rather requires the Minister to make such information available. The FAC notes that the information was made available to the appellant. The FAC is satisfied that the Appellant was provided with an opportunity to appeal the licence and provided with further opportunity to make submissions on the licence decision, including through appeal. The setting of fees is a matter for the Minister and as such does not fall within the remit of the FAC. The FAC therefore accepts that DAFM has not erred in its processing of the application as it relates to this ground of appeal.

**Failure to take the impact of forestry on the water quality of the River Moy SAC into account.**

The FAC notes that the proposed afforestation is not located within River Moy SAC but is hydrologically connected to that Natura 2000 site by a hydrological distance of c. 5 km. The FAC further notes that the site specific mitigations specified in the AAD largely deal with the protection of water quality and are designed to ensure that the proposed project will not adversely affect the integrity of the Natura site. The FAC is satisfied that the DAFM has followed proper procedure and the FAC is not satisfied that an error was made in this regard.

**There is no evidence that an Appropriate Assessment Determination has been carried out.**

The FAC notes that the file contains a document titled "*Appropriate Assessment Determination made by the Minister for Agriculture, Food & the Marine, for afforestation project CN86426, located at Doogary, Co. Mayo.*" dated 10/12/2020 and that the AAD was signed by a DAFM ecologist on behalf of the Minister for Agriculture, Food and the Marine. The FAC is satisfied that an AAD was made prior to the decision being issued on 17/12/2020 and that no error was made in this regard.



**That the “site specific mitigations” in reality means compliance with Forestry Standards and Procedures Manual 2015.**

The FAC notes that the AAD for this proposed afforestation refers to documents specific to licence CN86426 and 16 different conditions for compliance for afforestation on this site as listed on page 6 and 7 of the AAD, therefore, site specific conditions were described.

**That the ‘do nothing’ scenario is not addressed in NIS.**

The FAC notes that the EU guidance on AA and the ‘do-nothing’ scenario or ‘no Project’ Alternative indicates that they cannot be considered a feasible policy option where another policy dictates an action is required. In this case national policy is that the area of forest cover nationally is to be increased substantially. The NIS therefore is focussed on the particular implication of the afforestation of this site on the River Moy SAC.

**That the proposed planting conflicts with the published re-alignment options for the N17 at this location and that the purpose of the proposed planting is to increase amount of any compensation arising as a result of the N17 road realignment.**

The FAC notes that the land it is proposed to plant lie outside any of the corridors of the “refined Feasible Options” shown on the TII mapping for the N17 Knock to Collooney [Atlantic Economic Corridor] Project published 20/08/2021.

**Conclusion**

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal and the DAFM Statements of Fact and the ecologist’s submission. In accordance with Article 14B of the Agricultural Appeals Act 2001(as amended) the FAC is satisfied that a significant error was made in the making of the decision regarding licence CN86426 and that the licence should be varied to:

(a) amend bullet point one of Condition 5 of the licence to read:

*-To ensure that the project will not have an adverse effect, alone or in-combination with other plans and projects, on any European Site, all mitigation set out in the attached Appendix B must be adhered to, and form conditions of this approval.,*

(b) amend bullet point two of Condition 5 to read:

*-Adhere to the specific Archaeological conditions contained in the DAFM Archaeologist’s Report attached,*

An Appendix B shall be included in the licence consisting of the 16 mitigation measures specified in the AAD of 10/12/2020 with the word “felling” replaced with the word “afforestation” in mitigation measure 16.

Yours sincerely,



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Iain Douglas,  
On Behalf of the Forestry Appeals Committee

