



[REDACTED]

23<sup>rd</sup> October 2020

**Subject: Appeal FAC477/2019 regarding licence TFL00326019**

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

#### **Background**

Felling licence TFL00326019 for thinning of 11.4 ha at Caher, Co. Roscommon was issued by the Department of Agriculture, Food and the Marine (DAFM) on 24th December 2019.

#### **Hearing**

A hearing of appeal FAC477/2019 was held by the FAC on 8<sup>th</sup> October 2020.

FAC Members in attendance: Mr. Des Johnson (Chairperson), Mr. Pat Coman, Ms. Bernadette Murphy, Mr. Vincent Upton

#### **Decision**

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, 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 TFL00326019.

The licence pertains to the felling of 11.4 ha across 4 plots at Caher, Co. Roscommon. The site is described as containing 0.49 ha of Additional Broadleaves and Sitka spruce, 3.54 ha of Additional Broadleaves and Sitka spruce. 7.66 ha of Lodgepole Pine (North Coastal). The site will be replanted and will include 15% broadleaves. There is an ESB line running across site. The application was referred to the NPWS but no response was provided. A harvest plan and related information were submitted by the applicant. An appropriate assessment screening was undertaken by the DAFM which documented sixteen European sites within 15km and screened out the proposal for appropriate assessment.

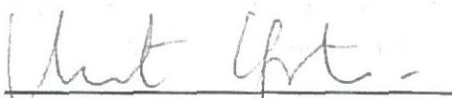
There is one appeal against the decision. The grounds relate to the appropriate assessment screening undertaken by the DAFM and suggest that an appropriate assessment should have been undertaken. It suggests that the Forest Service identified that there were Natura 2000 sites within 15km and that in

this case an appropriate assessment was legally required. It is further submitted that safeguards published in the Forest Service guidelines, requirements & procedures are in fact measures intended to avoid or reduce the harmful effects of the plan or project on a site. It is suggested that a decision must comply with Commission notice C(2018) 7621. The grounds contend that the Irish Courts have interpreted the requirements for appropriate assessment screening in Kelly v An Bord Pleanála and others 2013 802 JR 25/07/2014 and goes on to quote from that judgement.

In a statement to the FAC, the DAFM stated that they are satisfied that the decision met their criteria and guidelines and that they confirm the licence. They submit that the AA screening procedure relevant at the time was applied and that the closest Natura site is located 240m from the proposal. They suggest that there is no hydrological connection to this or any other Natura site and therefore there can and will be no impact from this proposal. Furthermore they submit that the proposal would be screened out using the Habitat Table 18 Dec 2019 and the Bird Foraging table 06 Jan 2020 and that an in combination assessment was carried out and that all relevant information can be found on file.

The FAC had regard to the record of the decision under appeal and the submitted grounds. There is no evidence before the FAC regarding other plans and projects that might have been considered in the appropriate assessment screening, or may be present in the area. The FAC can not therefore determine whether the appropriate assessment screening, undertaken by the DAFM and referred to in the grounds of appeal, was sufficient to conclude that there is no likelihood of the proposal resulting in a significant effect on a European site itself or in combination with other plans and projects. The FAC is satisfied that this may be a significant error made in making the decision and is therefore setting aside the decision and remitting it to the Minister for the appropriate assessment screening to be undertaken and documented, to include a consideration of other plans and projects in combination with the proposal.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Vincent Upton', written over a horizontal line.

Vincent Upton On Behalf of the Forestry Appeals Committee