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23<sup>rd</sup> October 2020

**Subject: Appeal FAC550/2020 regarding licence TFL00303219**

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 TFL00303219 for thinning of 40.2 ha at Gortagowan, Co. Kerry was issued by the Department of Agriculture, Food and the Marine (DAFM) on 17<sup>th</sup> August 2020.

#### **Hearing**

A hearing of appeal FAC550/2020 was held by the FAC on 7<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 affirm the decision of the Minister regarding licence TFL00303219.

The licence pertains to a second thinning of Sitka spruce across 40.2 ha. The estimated number of trees and volume to be felled, percentage canopy cover and age for each species are supplied with the application. The forest is described as 20 years old and on peat soils with poor drainage. As the licence is for thinning without the clearance of land no replanting is proposed. The proposal was referred to Inland Fisheries Ireland which replied stating that Gortagowan Lough is in the vicinity and that adherence with Forestry Harvesting Guidelines and control of machinery and drainage on site was recommended. An original appropriate assessment screening concluded that there was no likelihood of a significant effect on a European site. Additional screening was undertaken prior to the licence being issued and a Natura Impact Statement and harvest plan was requested by the DAFM and supplied by the Applicant before a decision was made. An appropriate assessment determination was made and documented. Conditions on the licence are mostly of a general nature with specific conditions related to

archaeological features and the protection of the environment, including European sites, in line with the Natura Impact Statement submitted and appropriate assessment undertaken.

There is one appeal against the decision. The grounds question the legitimacy of the forest and submit that the FAC has requested further information and that as a result the FAC has upheld the appeal. They submit that a submission document is attached and contend that the fact that the NPWS has not made an individual objection should not be relied upon. They submit that that the decision does not comply with the Habitats Directive, the Birds Directive and the Environmental Impact Assessment Directive or the basic guidelines of the NPWS. They suggest that they have made detailed legal submissions in the past and that the test for appropriate assessment screening in Irish and EU law is that it is, *"merely necessary to determine that there may be such an effect. Rather than to state that it will not have a significant effect."* They contend that if the development is within 15km of a Natura 2000 site that it has been screened in. The grounds also submit text from Judgement C-323/17 in relation to taking account of mitigation measures at the screening stage. The grounds suggest that information regarding catchments must be provided and that it is necessary to realise that birds do not only rely on watercourses to move. They suggest a map showing European sites should be provided. In relation to EIA screening, they suggest that it is necessary to consider other forestry projects in the area and show that cumulative afforestation does not exceed 50 ha and that it is also necessary to consider and identify the length of roads in the area and show that no roads not concluded in the application will be needed to carry out the development, including thinning and clearfelling. The grounds also provide text attributed to Kokott in Case C-254/19 in relation to obligation arising from EU directives on the authorities of Members States.

In a statement to the FAC, the DAFM submitted that they are satisfied that standards and procedures have been adhered to in making the decision. They further submit that there is no real threat to a Natura site based on the Natura impact statement and in-combination assessment.

No specific European sites or effects are referred to in the grounds of appeal and an appropriate assessment was undertaken and documented by the DAFM prior to its decision being made. This was based on a Natura Impact Statement (NIS) submitted by the applicant and prepared by independent consultants. Twelve European sites were considered by the DAFM within 15km of the proposal with eleven being screened out. Kenmare River SAC was screened in for appropriate assessment as there is direct hydrological connection from the proposal and the SAC lies some 5km downstream from the proposal site. The FAC concurs with the conclusion of the screening. Details of other plans and projects considered in the appropriate assessment are provided. Mitigation measures proposed in the NIS and adopted in the determination relate primarily to the measures implemented in relation to watercourses on site and are in line with DAFM harvesting guidelines. The determination concludes that *"the Minister has determined pursuant to Regulation 42 (16) of the EC (Birds and Habitats) Regulation 2011 (as amended) and Regulation 19(5) of the Forestry Regulations (2017) as amended, based on objective information, that no reasonable scientific doubt remains as to the absence of any adverse effect on the integrity of any European site."* While no specific errors were identified in the grounds of appeal in relation to the appropriate assessment the FAC considered the sites identified in the screening and



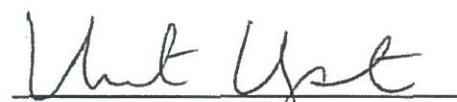
concurred with the conclusions regarding there being no likelihood of significant effects on European sites other than Kenmare River SAC. The NIS and appropriate assessment determination identified the conservation objectives and qualifying interests that might be impacted by the project and the mitigation measures required to avoid adverse effect on the integrity of the SAC. The FAC concurs with the appropriate assessment conclusions reached by the DAFM that the proposal, itself or in combination with other plans and projects, would not impact on the integrity of any European site.

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 Regulations, 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 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 similarly not covered by the Irish regulations (S.I. 191 of 2017). The FAC does not consider that the proposal falls within the classes included in the Annexes of the EIA Directive or considered for EIA in Irish Regulations.

The grounds do not identify what further information the FAC may have requested in this case and the FAC did not seek any further information from any party in relation to this appeal. The FAC had regard to the record of the decision under appeal and the submitted grounds in reaching its decision. Based on the evidence before it, the FAC is satisfied that a serious or significant error or a series of errors were not made in making the decision under appeal, nor that the decision was made without complying with fair procedure. Subsequently the FAC is affirming the decision of the Minister in line with Article 14B of the Agricultural Appeals Act 2001 as amended.

In deciding to affirm the decision of the Minister to grant the Licence, the FAC concluded that the proposed development would be consistent with Government policy and Good Forestry Practice. Before making its decision, the FAC considered all of the information submitted with the application, the processing of the application by the DAFM, the grounds of appeal and any submissions received.

Yours sincerely,



Vincent Upton On Behalf of the Forestry Appeals Committee

