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30<sup>th</sup> March 2021

**Subject:** Appeal FAC 452/2019 regarding licence TFL00340319

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**

Licence TFL00340319 for thinning, clearfell in 2029, and reforestation of 13.69 ha at Curraun, Co. Leitrim was approved by the Department of Agriculture, Food and the Marine (DAFM) on 10<sup>th</sup> December 2019.

#### **Hearing**

A hearing of appeal FAC 452/2019, attended by FAC Members Mr. Myles Mac Donncadha (Chairperson), Mr. John Evans, Mr. Derek Daly, and Mr Seamus Neely, was held on 22<sup>nd</sup> March 2021.

#### **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 affirm the decision of the Minister regarding licence TFL00340319.

The soil type underlying the project area is described in the Appropriate Assessment (AA) screening documents as being podzolic in nature, and the slope is described as being predominantly flat to moderate (<15%). The project area is said not to adjoin or contain an aquatic zone. The vegetation type(s) within the project area comprise conifer plantation. The project site lies in an area that is between two branches of the Cloone\_030 waterbody and for which the assigned WFD status in the 2013-18 assessment period is good. The DAFM undertook two separate screenings for Appropriate Assessment. The first is dated 6<sup>th</sup> June 2019 was based on the process in use at the time. The second, which is undated, is contained within the Inspectors Certification which references the accessing of records on 15<sup>th</sup> November 2019. This assessment supersedes the first and predates the issue of the licence. The second screening process did not identify any European sites within 15km of the project and

the Likely Zone of impact was not extended to include further Natura sites in this case. It was found that the zone of influence centred on the application does not overlap with any Natura site and therefore, due to spatial separation, the project was screened out for the purpose of Appropriate Assessment. An In Combination consideration was undertaken and is recorded on the file relating to the licence. The file was referred to Leitrim County Council on 13<sup>th</sup> May 2019 who replied on 29<sup>th</sup> May 2019 and while raising no specific objection, the submission made suggestions for inclusion as conditions in the licence (haulage route) and made comment in a circumstance if there is a forest road. The licence was approved with conditions on 10<sup>th</sup> December 2019.

There is one appeal against the decision. The grounds submitted broadly include, that the Forest Service in its screening for Appropriate Assessment found that there were Natura sites within the 15 km zone of impact; that this is a trigger for the requirement for an Appropriate Assessment as it may have an effect; the grounds further submit that the Inspector answered in the affirmative to Questions 3 & 4 in the Forestry Inspection Report but did not provide any evidence as to what this answer is based on; submits that in most cases the Inspector states that the Natura site(s) is in a different catchment but fails to state which catchment that it is in and submits that in these circumstances the only legal answer in this case should be that the application has been (sic) screened in for Appropriate Assessment.

In the statement to the FAC in relation to appeal FAC 452/2019, the DAFM provide a response to the appeal wherein it submitted that the decision was issued in accordance with the procedures S.I. 191/2017 and the 2014 Forestry Act and that the Department is satisfied that all criteria as outlined in the standards and procedures as listed on the statement have been adhered to in making a decision on the application. It is further stated that there is no Natura 2000 site within 15km of this proposal and that the site does not adjoin or contain an aquatic zone.

The FAC, in the first instance, considered the Appropriate Assessment screening undertaken by the DAFM. The grounds of appeal do not make reference to any specific European site, specific pathways or specific effects of concern. The FAC found that the DAFM undertook two separate screenings for Appropriate Assessment in this case and that the screening dated 6<sup>th</sup> June 2019, which was based on the process being used at the time, was superseded by a screening which is included in the Inspectors Certification and which found that there were no European sites within 15 km of the project area. The FAC finds that as the zone of influence centred on the application was found by DAFM not to overlap with any Natura site, the project was screened out due to spatial separation and therefore did not proceed to Appropriate Assessment. The FAC examined publicly available information from the NPWS and EPA and did not find any European sites within 15 km of the project. The FAC finds that the DAFM also recorded other plans and projects that were considered in combination with the proposal. In considering the contention in the grounds of appeal that the Forest Service in its screening for Appropriate Assessment found that there were Natura sites within the 15 km zone of impact (and that this is a trigger for the requirement for an Appropriate Assessment as it may have an effect) the FAC finds that there are no European sites within 15 km of the project and therefore no basis can be found for this particular appeal ground. The FAC considered that the DAFM had sufficient information in respect of the characteristics of the proposal, the location, and types and characteristics of potential

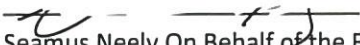


impacts, in order to determine the likely significant effects of the proposal itself or in combination with other plans and projects on a European site and therefore the FAC is not satisfied that an error was made in relation to Appropriate Assessment in the processing of this licence.

In considering the contention in the grounds of appeal that a Natura 2000 site was in a different catchment the FAC finds that there does not appear to be such a reference in this case and therefore no basis can be found for this particular appeal ground. Regarding the grounds of appeal that the Inspector answered in the affirmative to Questions 3 & 4 in the Certification Report but did not provide any evidence as to why he did so, the FAC finds question 3 refers to the review of all referrals and submissions in this case. The FAC finds, based on the evidence before it, that a referral was made in this case to the Leitrim County Council. The FAC finds that the Leitrim County Council responded and while raising no issue with the proposal made some suggestions as to conditions to include in the licence. The FAC finds that the suggestion made was accommodated in the licence as issued. In relation to question 4 the FAC finds it refers to having sufficient information to make a sound judgement regarding the likelihood of the project having a significant effect on a European site. In this case the Inspector answered these questions on the certification / report in the affirmative. The FAC is not satisfied that an error was made in relation to the processing of the licence as it relates to this ground of appeal.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, and submissions received. In the above circumstances, the FAC is not satisfied that a serious or significant error or a series of errors was made in making the decision or that the decision was made without complying with fair procedure. The FAC is thus affirming the decision of the Minister regarding licence TFL00340319 in line with Article 14B of the Agricultural Appeals Act 2001, as amended. In deciding to affirm the decision, the FAC considered that the proposed development would be consistent with Government policy and Good Forestry Practice.

Yours sincerely,



Seamus Neely On Behalf of the Forestry Appeals Committee

