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29<sup>th</sup> April 2021

**Subject:** Appeal FAC340/2019 regarding licence TFL00359919

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

#### **Background**

Licence TFL00359919 for 5.01 ha of felling at Moytirra West, Co. Sligo was approved by the Department of Agriculture, Food and the Marine (DAFM) on 1<sup>st</sup> November, 2019.

#### **Hearing**

An oral hearing of appeal FAC340/2019 was held by the FAC on 18<sup>th</sup> January 2021. In attendance:

FAC Members: Mr. Myles McDonagh (Deputy Chairperson), Mr. James Conway, Ms. Mary Lawlor

Secretary to the FAC: Ms. Emma Guerin

Appellant: [REDACTED]

Applicant's Representatives: [REDACTED]

DAFM Representatives: Mr. Emmet Byrnes, Ms. Eilish Kehoe

#### **Decision**

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, submissions made at the oral hearing 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 TFL00359919.

The licence pertains to an application for a felling and thinning licence for 5.01 ha at Moytirra West, Co. Sligo. The forest is currently composed of Sitka spruce, Norway spruce, Sycamore and Ash and replanting of the Sitka spruce and Norway spruce plots would be with 85% Sitka spruce and 15% Additional Broadleaves. The application was referred to Sligo County Council, Inland Fisheries Ireland and the National Parks and Wildlife Service. The County Council provided a response which advised in relation to adherence with forestry guidelines and the protection of water and the manner in which operations should be undertaken. The licence was issued on the 1<sup>st</sup> November, 2019 and was subject to standard conditions together with 8 additional conditions, many of which relate to the protection of water quality and protection of the environment.

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There is one appeal against the licence decision. The grounds of appeal state that the Appellant is opposed to the development in relation to the preservation and remediation of a nationally important archaeological site and landscape. It is submitted that this project site lies within the Moytirra archaeological complex and comprises of an extensive range of prehistoric monuments and subsurface remains strategically distributed along a raised plateau running parallel to the eastern side of Lough Arrow in Co. Sligo. It is submitted that Moytirra, in tandem with the Carrowkeel archaeological complex, stretching along the western side of Lough Arrow, forms an irreplaceable landscape of Irish material and mythological culture and that this has been documented in several archaeological studies. The appeal was accompanied by a journal article (Mount, C. 1996. The Environmental Siting of Neolithic and Bronze Age Monuments in the Bricklieve and Moytirra Uplands, County Sligo), The Institute of Archaeologists of Ireland "New Forestry Programme 2014-2020 Submission to Consultation Process" and the Geohive map of the application area. It is submitted that there was no consultation with, or referral to, any Archaeological agencies or other relevant agencies either by the applicant or the Forest Service, and that no Harvesting Plan or Reforesting Plan has been submitted with this application. The Forest Service Landscape Guidelines (2000) are now twenty years out of date. It is submitted that there is no information recorded of any Social & Environmental Features & Considerations or proposed measures to protect these sites.

In a statement to the FAC the DAFM submitted that it is satisfied that all criteria as outlined in its standards and procedures have been adhered to in making a decision on the application. Due to that fact that the project site is not within 200 m of registered monument it does not need to be referred to DAFM Archaeology. The information submitted by the applicant/forester was deemed sufficient to make a decision. The site is not hydrologically connected to any Natura 2000 site. The proposal was referred to Inland Fisheries Ireland (IFI), NPWS and Sligo County Council. There are responses on file from NPWS and Sligo County Council, neither of which raise any objection. The appellant should note that under the Forestry Act 2014, forest owners are by law required to replant their forests once felled, as is the case with this proposal. It was submitted that the Appropriate Assessment procedure relevant at the time was applied and the project was screened out adding that there is no physical connection to any Natura 2000 site and that there is no hydrological connection to the proposed site. There are no SPAs in proximity of the site that have qualifying interests relating to the use of Sitka spruce plantations.

An oral hearing of the appeal was held and was attended by representatives of the DAFM and the Applicant. The DAFM re-submitted aspects of the written statement and highlighted that, procedurally, the proposal would not have been automatically referred for archaeological review or to the National Monuments Service due to the distance to the nearest monument. It was submitted that while there were a number of archaeological sites in the wider area, the closest recorded monument was 275 metres from the proposal. It was submitted that while Moytirra Ridge has been designated as a sensitive landscape in the County Development Plan, the proposal does not fall within this area.

The FAC considered in the first instance, the grounds related to the proximity of the proposed felling to recorded monuments and the wider landscape. The FAC examined publicly available information from the National Monuments Service and confirmed that the closest recorded monument is some 275 metres from the proposal. The Moytirra Ridge is classified as a Visually Vulnerable Area and the surrounding landscape is classified as a Sensitive Rural Landscape in the Sligo County Development Plan 2017-2023. The area of proposed felling does not fall within either of these designations. The FAC also considered that the granting of the licence does not exempt the holder from meeting any legal requirements set out in any other statute, such as the National Monuments Act. The grounds of appeal included that there was no consultation with, or referral to, any Archaeological agencies or other



relevant agencies either by the Applicant or the Forest Service. The DAFM submitted that the project site is not within 200 m of an Archaeological site and therefore it does not need to be referred to DAFM Archaeology. A DAFM Archaeologist attended the oral hearing and gave an account of archaeological sites within the wider vicinity of the proposal area and gave reassurances as to compliance with DAFM's procedures regarding Archaeology in this case. The DAFM did refer the proposal to the Local Authority, IFI and NPWS. The Local Authority responded with some commentary, while NPWS responded with no specific comments on the proposal and IFI did not respond. Based on the information available to it, the FAC is satisfied that the DAFM made suitable referrals in this case and considered the responses received in their decision making. The FAC concluded with regard to archaeology and landscape that it was not satisfied that the DAFM had erred in their processing of the application and that there was no convincing evidence before it that the application should have been refused or varied.

The grounds of appeal also included the absence of a Harvesting Plan or Reforestation Plan, concerns regarding the Forest Service Landscape Guidelines and that no information was recorded of any Social & Environmental Features & Considerations or proposed measures to protect these sites. The DAFM submitted that the information submitted by the applicant/forester was deemed sufficient to make a decision. The FAC considered the location and scale of the proposal and are satisfied that DAFM had sufficient information to make a decision on the proposal and the conditions of the licence offer suitable protections in this case, namely for instance;

- "The licensee shall ensure that all felling and planting operations are carried out in accordance with Forestry and Water Quality, Forest Biodiversity, Forest Harvesting and the Environment, Forestry and Archaeology, Forestry and the Landscape and Forestry and Aerial Fertilisation guidelines and the Code of Best Forest Practice - Ireland and the Irish National Forest Standard published by the Department.
- Strictly adhere to the Standards for Felling & Reforestation (October 2019). These Standards replace the existing Forest Harvesting & the Environment Guidelines (2000)."

The DAFM undertook an initial Appropriate Assessment screening of the proposal focusing on any European sites within 3km of the proposal area and identified two sites, Lough Arrow SAC (001673) and Lough Arrow SPA (004050). The proposal was screened out based on mandatory adherence to any safeguards within the project, as set out in Forest Service Guidelines, requirements and procedures without any reference to an absence of pathways or effects. The DAFM undertook a further Appropriate Assessment screening prior to making its decision, and identified five European sites within 15km and deemed this radius did not need to be extended in this case. The sites identified were Bricklieve Mountains and Keishcorran SAC, Lough Arrow SAC, Lough Arrow SPA, Lough Gill SAC and Unshin River SAC. The FAC consulted publicly available information from the NPWS and EPA and identified the same five sites. The DAFM considered each site in turn and listed the associated qualifying interests and conservation objectives and the reasons for their screening conclusions. The DAFM's reasons for screening out the sites included the absence of pathways and for the Lough Arrow SPA also included the unsuitability of the project area for use by any species listed as a qualifying interest of the Natura 2000 site. In the course of considering the appeal in this case it came to the attention of the FAC that a document (DAFM Application Notes which included an In combination assessment dated the 15<sup>th</sup> October 2019) that formed part of the DAFM decision file in this case, had not been provided to the FAC or the appellant. The FAC obtained this document and provided it to the appellant by email and a period was allowed within which observations / submissions could be made to the FAC. That period has now expired and a submission has been made by the appellant. This submission, which was made by email dated 24<sup>th</sup> March 2021, has been considered by the FAC in its overall consideration of the appeal in this case. The in-combination assessment records other plans and projects that were considered with the

proposal and concludes that individually, the project does not represent a source, or if so, no pathway for significant effect on any European site exists and that consequently, there is no potential for the project to contribute to any such effects, when considered in-combination with other plans and projects. Based on the information available to it, the FAC is not satisfied that a serious or significant error was made in the making of the decision regarding Appropriate Assessment in this case and concurs with the conclusions reached.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, and submissions received including at the oral hearing. The FAC is not satisfied that a serious 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 in deciding to affirm the decision considered that the proposed development would be consistent with Government policy and Good Forestry Practice.

Yours sincerely,

A black rectangular redaction box covering the signature of Mary Lawlor.

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Mary Lawlor On Behalf of the Forestry Appeals Committee