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28th June 2021.

Subject: FAC703/2020 and FAC741/2020 regarding licence CN86418

Dear [REDACTED]

I refer to the appeals 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.

Licence CN86418 is for the construction of a forest road 545 metres in length at Coollegreane, Co. Leitrim which was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 10<sup>th</sup> September 2020 subject to conditions.

#### Hearing

An oral hearing of appeals 703/2020 and 741/2020 was held by a division of the FAC on the 18<sup>th</sup> June 2021.

In attendance:

Department Representative(s); Ms Mary Coogan; Mr Martin Regan.

Applicant; [REDACTED]

Appellant; [REDACTED]

FAC Members: Mr. Donal Maguire (Chairperson), Mr. Iain Douglas, Mr. Vincent Upton  
& Mr. Derek Daly.

Secretary to the FAC Ms. Marie Dobbyn.

#### Decision

Having regard to the evidence before it, including the record of the decision 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 CN86418.

#### Licence

The licence pertains to the construction of a forest road of 545 metres in length to serve c.25 hectares planted in the period 2006 to 2008 at Coollegreane, Co. Leitrim. The proposed forest road is from an

existing track which in turn is accessed from the public road. The project site is within the River Sub Basin OWENNAYLE\_020 and the River Waterbody status is moderate for the 2013-18 assessment period and in terms of risk is indicated as at risk.

The method of construction is excavation of the surface material and build on top after this material is excavated. The application documentation as submitted includes maps, management plan and details relating to the road construction.

The inspector certification refers to the site as having a predominant soil type underlining the project area as predominantly podzols in nature. The slope is predominantly flat to moderate. The project area does not adjoin or contain an aquatic zone(s). The vegetation type(s) within the project area comprise forest. The licence application was referred to Leitrim County Council with no response received.

An Appropriate Assessment screening was carried out and recorded on the file. Four Natura sites were found to be within 15kms of the project site, namely Boleybrack Mountain SAC 002032; Corratirrim SAC 000979; Cuilcagh - Anierin Uplands SAC 000584 and Lough Gill SAC 001976. All sites were screened out by reference to the proposal sites referring to screened out due to the absence of any aquatic zone within or adjoining the project area and the absence of any significant relevant watercourse(s) within or adjoining the project area. The overall screening conclusion was that there was no likelihood of a significant effect on any European site, and Appropriate Assessment was not required.

In-combination assessments dated with a reference to the week of 28<sup>th</sup> July 2020 are on the file indicating no effects on any Natura site concluding that the project does not have a potential to contribute to any effects when considered in-combination with other plans and projects.

The licence was issued on the 10<sup>th</sup> September 2020 subject to standard conditions and a requirement to consult with the County Council re usage of public roads prior to the commencement of any works.

### **Appeal**

There are two appeals against the decision to grant the licence.

The grounds of appeal contends that the afforestation of the area occurred without appropriate screening for the requirement of EIA; there is, a breach of Article 4(3) of the EIA Directive 2014/52/EU; there is insufficient information submitted included with the application to enable the Inspector to make a conclusive determination as to whether EIA is required; that the Determination of the Inspector in terms of the requirement for an EIA is inadequately reasoned as there is no foundation for the conclusion reached on the basis of the responses to the IFORIS checkbox queries or any other basis upon which this conclusion is made; that the licence and its associated operations threaten the achievement of the objectives set for the underlying waterbody or waterbodies under the River Basin Management Plan for Ireland 2018-21; there is insufficient detail and clarity in the in-combination information to enable a definitive decision to be reached in relation to cumulative impact; that the licence conditions do not provide, as would be required by Article 12 of the Habitats Directive, a system of strict protection



for the animal species listed in Annex IV (a) of that Directive in their natural range, prohibiting deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration; that the licence conditions do not provide a general system of protection for all species of birds as would be required by Article 5 of the Birds Directive and referred to in Article I of that Directive; prohibiting in particular the deliberate destruction of, or damage to, their nests and eggs or removal of their nests; there is insufficient consideration of third party submissions; no legal Appropriate Screening has taken place; the accumulation of roads in this forest exceeds 2km and an EIA is required.

In a statement to the FAC, the DAFM indicated that the decision was issued in accordance with their procedures, S.I. 191/2017 and the 2014 Forestry Act and the Department is satisfied that all criteria as outlined in the relevant standards and procedures had been adhered to in making a decision on the application. The Statement from the Forestry Inspectorate indicates that the District Inspector carried out both a desk audit and field inspection and reviewed submission/appeal and is satisfied that all criteria have been fully adhered to and approval is in order.

In the course of the oral hearing clarification was sought by the FAC in relation to the road access, the characteristics of the site based on the field inspection, the method of construction of the road, drainage and hydrological connection, coverage of forestry on the area and forest roads in the area and clarification in relation to questions 10,15 and 16 of the Inspector's Certification. The site was described and it was submitted that the forest road was designed along the contours and in keeping with the conditions of the area. It was submitted that the forest road meets a short section of private, gravelled road with a gate before the public road and that there are no roads to service this forest.

In addressing the grounds of appeal, the FAC considered the requirements of the Habitats and EIA Directives, the completeness of the assessment of the licence application, whether there was an adequate assessment of cumulative effects and an examination of the procedures applied which led to the decision to grant the licence.

In considering the appeal the FAC noted that the EU EIA Directive sets out in Annex I, a list of projects for which EIA is mandatory and that 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. Forest roads are not referred to in Annex I or Annex II. The Irish Forestry Regulations 2017, in relation to forestry licence applications, require the compliance with the EIA process for applications relating to 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 DAFM considered the application across a range of criteria, including water, designated areas, landscape and cumulative effects and determined that the project was not required to undergo the EIA process. The proposal is for 545 metres of forest road construction to facilitate the management of commercial forest for timber production, which is considerably sub-threshold for the mandatory submission of an EIAR. The road would be located within the managed forest. The forest road was

described as meeting a short private road before joining the public road but that this represents the only forest road serving the forest. The FAC does not consider that there is any evidence before it that the proposal constitutes a length of road greater than 2,000 metres or that there has been a failure to consider potential cumulative impacts. Having regard to the record of the decision and the submitted grounds, submissions at the oral hearing and the nature, scale and location of the proposal, the FAC is satisfied that the proposal would not result in any likelihood of significant effects on the environment and that the DAFM did not err in its decision concerning EIA.

In considering the appeal the FAC examined the Appropriate Assessment Screening undertaken by the DAFM. The FAC considered that the decision of the Minister before it related to the 545 metres of forest road works. The FAC examined publicly available information from the EPA and NPWS and identified the same four sites as the DAFM within 15km from the proposal; Boleybrack Mountain SAC 002032; Corratirrim SAC 000979; Cuilcagh - Anierin Uplands SAC 000584 and Lough Gill SAC 001976. The FAC is satisfied that there was no need to extend the radius in this case. The FAC considered the nature, scale and location of the proposal, the European sites identified, and their conservation objectives and the reasons provided by the DAFM for screening them out. The DAFM considered each site in turn and provided the reasons for screening all the sites out for Appropriate Assessment. Details of other plans and projects were also examined. The proposed road works are located outside of any European site and there is no evidence of a pathway of effects to a European site. Neither is there evidence of protected habitats or species on the site. The FAC is satisfied that the DAFM did not make any serious or significant error in their decision regarding Appropriate Assessment and concurs with the conclusions reached.

Specifically, in relation to potential hydrological impacts on Natura 2000 sites and on water quality generally, it is noted in the statement provided to the FAC by the DAFM that a field inspection revealed that there are no drains present on the site and no drainage is required to facilitate this project. The FAC also examined this issue and from an assessment of the topography of the site and the pattern of contours and slopes, mapping and aerial imagery of the area concluded that there is no watercourse on the site, surface water from the proposed road would not drain directly to a watercourse and there was no direct pathway to any watercourse. The FAC is satisfied based on the submissions received that the construction measures and the accompanying method of drainage as proposed will not impact on any Natura 2000 sites or any receiving waters.

In relation to the grounds of appeal and specifically insufficient consideration of feedback from other parties it is noted that although Leitrim County Council did not respond the conditions of the licence requires consultation with the County Council in advance of any works. The FAC considers that there was sufficient consideration of feedback. It was also clarified at the oral hearing issues in relation to the responses in the Inspector's Certification and the FAC are satisfied based on the response at the oral hearing that it does not constitute a serious error. It is also noted that in relation to cumulative effects



the proposed road is a standalone road to serve an existing forest and facilitate operations for that forest.

In relation to the ground of appeal referring to birds and animal species it is noted that the appellant did not submit any specific details in this regard. Based on the evidence before it the FAC considered that the DAFM had undertaken a site inspection, completed a screening for Appropriate Assessment, there is an absence of information to conclude effect on qualifying interests and species based on these matters prior to making the decision. The FAC also note that the granting of a licence for a forest road does not exempt the holder from complying with any legal requirements set out in any other statute.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal. 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 CN86418 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,

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Derek Daly On Behalf of the Forestry Appeals Committee

