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3<sup>rd</sup> June 2021

**Subject:** Appeal FAC 227/2019 relating to Licence CN83591

Dear M [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 (DAFM). The FAC established in accordance with Section 14A (1) of the Agriculture Appeals Act 2001 (as amended) has now completed an examination of the facts and evidence provided by all parties to the appeal.

#### **Licence**

Licence CN83591 is for a forest road 250 metres in length in the townland of Bawnreagh, Co. Tipperary. The proposed forest road is required to service an area of 10Ha. of conifer plantation. The application was submitted to the DAFM on 11/03/2019. One third party submission was received on the licence application dated 08/04/2019. The licence was approved by the DAFM on 28/08/2019 with standard conditions.

There was one appeal against the decision to grant the licence.

#### **Hearing**

The appeal was considered by FAC Members: Mr. Donal Maguire (Chairperson), Mr. Derek Daly, Mr Iain Douglas, Mr. Vincent Upton on the 14<sup>th</sup> of May 2021.

#### **Decision**

Having regard to the evidence before it, in particular the record of the decision by the DAFM, the notice and grounds of appeal, the Statements of Fact (SoF) submitted by the DAFM, and the considerations set out hereunder, the FAC has decided to set aside and remit the decision of the Minister regarding licence CN83591.

#### **Background**

The Inspector's Certification Report certified on 29/05/2020 indicates that a desk inspection only was carried out on the proposal. The report describes the soil type underlying the project area as predominantly podzols in nature. The slope is predominantly flat to moderate (<15%). The project crosses or adjoins or contain an aquatic zone(s). The certification also identifies Special Construction Costs for a river crossing. An Appropriate Assessment (AA) Screening Form (26Nov18) dated 05/04/2019 records that

there are no Natura 2000 sites within 3Km of the proposed forest road.

The AA Screening concludes that the project can be screened out and an appropriate assessment is not required. The reasons stated are (a) the physical separation of the site from the nearest SAC and (b) the lack of any ecological pathway. The AA Screening Form did not make provision for an “in combination” assessment of the project with other plans or projects.

The Inspector’s Certification Pre-Approval Report also contains an assessment of the environmental factors relating to the proposed forest road in order to determine whether an Environmental Impact Assessment Report (EIAR) is required and concludes that it is not necessary to subject the proposed road to the EIA process.

The licence application was referred to Tipperary South County Council on 25/03/2019. No reply was received.

### **Appeal**

There is one appeal against the decision to grant the licence. The grounds of appeal are summarised as follows:

- Based on the information supplied it is not possible to make a decision which would be in compliance with the requirements of the Habitats and EU directives, and having regard to a number of CJEU judgements
- A lack of proper assessment eg no assessment of cumulative effects.

### **Evidence before the FAC**

At the hearing the FAC had before it, addition to the record of the decision, a SoF dated 17/11/2020 provided by the DAFM confirming the administrative details of licence CN83591 as outlined above and stating that the DAFM is satisfied that all criteria in its standards and procedures had been adhered to in the making of the decision on this licence application.

The FAC also before it a SoF was provided by the DAFM Inspectorate dated 17/11/2020 stating that the relevant AA Screening procedure of 26Nov2018 was applied and that screening for AA was carried out within 3 km radius of the proposed site and that the AA Screening procedure has changed since this file was approved.

### **Consideration by the FAC**

The FAC consulted with publicly available mapping provided by the Environmental Protection Agency (EPA), the Ordnance Survey of Ireland (OSI), the DAFM and other on-line services.

Aerial photography indicates that the forest to be serviced by this forest road is bounded by agricultural grassland to the north and east, grassland and forestry to the south and forestry to the west. The proposed road itself is fully contained within the existing forest.

Soil type is identified on the EPA maps as cutaway/cutover peat. There is an extensive area of industrial bogland adjoining the forest to the west.

The proposed forest road crosses a WFD River Waterbody, the Drish\_10 that flows northwards from site. The water quality in the Drish\_10 is classified as poor in the WFD River Waterbody Status report 2013-



2018 and at risk with forestry identified as a pressure. The WFD 3<sup>rd</sup> Cycle categorises the river waterbody as being at risk.

The Drish\_10 River Waterbody is part of the WFD Suir Catchment and the Suir\_SC\_040 Sub Catchment. The underlying groundwater body is Templemore IE\_SE\_G\_131 with the risk to reviewed due to anthropogenic pressures in the WFD River Waterbody Status report 2013-2018. The ground waterbody is identified as at risk in the WFD 3<sup>rd</sup> Cycle programme.

The proposed forest road is not within a Natura 2000 site nor is it required for the management of a Natura 2000 site. The FAC has confirmed that there are two Natura 2000 sites within 15km of the site, The Loughans SAC (Site Code 000407) some 9.3 km distant and the River Barrow & River Nore SAC (Site Code 002162) some 8.6 km distant. Both Natura sites lie within the Nore Catchment with no hydrological connection from the site of the proposed forest road to that catchment.

The FAC noted that DAFM completed an AA Screening and recorded a determination that the proposal would not impact on a Natura site. The FAC further noted that the AA Screening conclusion made no reference to an in-combination assessment of the proposal with other plans and projects.

The FAC noted that the site is not within a Primary or Secondary Amenity Area identified in the South Tipperary County Development Plan 2009-2017 (as varied).

In addressing the grounds of appeal, the FAC considered the following matters,

**Insufficient Information to make a decision that complies with the Habitats and other EU Directives.**

The FAC noted that the Forest Road Specification refers to the construction of a "large diameter culvert" and that the specification also refers to 1no. 300mm culvert and 3no. 600mm culverts. The Inspector's Certification Report refers to "Special Construction Works" consisting of a river crossing. It is unclear if the various culverts proposed in the specification are the "Special Construction Works" referred to in the Inspector's Certification and no detail is given as to the nature of works required to construct the river crossing. Given the poor water quality status of the Drish\_10 waterbody, the fact that it is at risk and the fact that forestry is a pressure identified in the WFD River Waterbody Status report 2013-2018 the FAC is of the opinion that clarification of the above is required and that a more detailed assessment of the river crossing should be undertaken.

**A lack of proper assessment eg. no assessment of cumulative effects.**

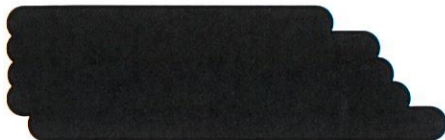
The FAC noted that the AA Screening of the proposal, using the standard operating procedures in effect at the time (26Nov2018), recorded that no Natura site is located within 3km of the proposed forest road. The AA Screening also indicates that the proposal that it does not overlap a Freshwater Pearl Mussel Catchment and that there is no possibility of a significant effect by the proposed forest road on any Natura 2000 site. The FAC however also noted that there is no assessment of this project considered in-combination with other plans and projects recorded on the file and the FAC considers that this constitutes a serious error in the making of the decision.

**Conclusion**

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal. In the above circumstances, the FAC is satisfied that there was a serious or significant error in the making of the decision to grant the licence. As a result, the FAC concluded that the decision of the DAFM regarding licence CN83591 should be set aside and remitted to the Minister to undertake a new

Appropriate Assessment screening of the likely significant effects on European sites of the proposed forest road itself and in-combination with other plans and projects and to provide detailed information and assessment on the proposed Special Construction Works for the river crossing.

Yours sincerely,

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Iain Douglas, On Behalf of the Forestry Appeals Committee