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16<sup>th</sup> March 2021

**Subject:** Appeal FAC 214/2020 relating to Licence CN85914.

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 reference CN85914 for the construction of a forest road 600 metres in length in the townland of Latteragh, Glenmore Upper, Co. Tipperary was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 7<sup>th</sup> of April 2020.

#### **Hearing**

An oral hearing of the above appeal of which all parties were notified, was held by the FAC on 5<sup>th</sup> of March 2021.

FAC Members:	Mr. Donal Maguire (Deputy Chairperson), Mr. Vincent Upton, Mr. Derek Daly and Mr. Iain Douglas.
Appellant:	[REDACTED]
Applicant:	[REDACTED]
DAFM	Ms. Mary Coogan, Mr Seamus Kennedy
Secretary to the FAC	Ms. Marie Dobbyn

#### **Decision**

Having regard to the evidence before it, in particular the submissions at the oral hearing given by the applicant and the DAFM, including the record of the decision by the DAFM, the notice of appeal, and, the considerations set out hereunder, the Forestry Appeals Committee (FAC) has decided that the decision regarding licence CN85914 should be set aside and remitted to the Minister to complete and record a new consideration to determine whether the proposal should be subject to the EIA process before a new decision is made.

The licence pertains to the construction of a forest road 600 metres in length located within an existing conifer plantation. The Ordnance Survey maps submitted with the application appear to show the development as an extension of an existing forest road. The application was submitted to the DAFM on the 11<sup>th</sup> of February 2020.

The licence application was referred to Tipperary County Council on 25/02/2020. No response was received.

An undated Inspector's Certification - Pre-Approval Report said to be dated 06/04/2020 indicates that a desk inspection only was carried out on the proposal. This describes the soil type underlying the project area as predominantly podzols in nature, with a predominantly flat to moderate (<15%) slope. The report notes that there are 6 Natura 2000 sites within 15Km of the proposed forest road. Bolingbrook Hill SAC 002124, Kilduff, Devilsbit Mountain SAC 000934, Lower River Shannon SAC 002165, Lower River Suir SAC 002137, Silvermine Mountains SAC 000939, Slievefelim to Silvermines Mountains SPA 004165.

The report records an Appropriate Assessment (AA) screening decision to screen out the application on the basis that due to:

- The position of the project area downstream from the Natura sites, and the subsequent lack of any hydrological connection in the case of Bolingbrook Hill SAC 002124, Kilduff, Devilsbit Mountain SAC 000934,
- The absence of any aquatic zone within or adjoining the project area in the case of Lower River Shannon SAC 002165, Lower River Suir SAC 002137 and Silvermine Mountains SAC 000939
- Other factors, F.S. Annex 1 Habitat Table 18Dec2019, in the case of Silvermine Mountains SAC 000939
- Other factors, F.S. Bird Foraging Table 09Dec2019, in the case of Slievefelim to Silvermines Mountains SPA 004165.

And the conclusion of an undated in-combination assessment carried out by DAFM that this project, when considered in combination with other plans and projects, would not give rise to the possibility of an effect on the Natura 2000 site(s) listed above.

The Inspector's Certification - Pre-Approval Report also contains an assessment of the environmental factors relating to the proposed forest road to determine whether an Environmental Impact Assessment Report (EIAR) is required. The FAC noted that almost all of the responses in this section of the report were n/a, (not applicable) however; the report concludes that the proposed road should not be subject to the EIA process.

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

1. A breach of article 4 (3) of the EIA Directive 2014/52/EU in that a number of criteria set out in Annex III have not been included in the DAFM screening assessment and have not been taken in to account,
2. A breach of Article 4 (4) of the EIA Directive 2014/52/EU in that the licence application does not represent the whole project.
3. A breach of Article 4(5) of the EIA Directive 2014/52/EU in that the applicant has not provided all information to DAFM as the application for this licence does not represent the whole project.
4. That the application 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.
5. That the licence conditions do not provide a system of protection for wild birds during the period of breeding and rearing that are consistent with Article 5 of the Birds Directive.



At the oral hearing, the DAFM provided a Statement of Fact dated 19/05/2020 to the FAC confirming the administrative details of the licence CN83592 as outlined above and states that the Department is satisfied that all criteria in its standards and procedures had been adhered to in making the decision on the licence application. A Statement of Fact was provided by the DAFM Inspectorate dated 21/05/2020 indicating that the relevant Appropriate Assessment (AA) procedure was applied at the time (05Nov2019), that the project was screened out after appropriate consultation with Local authority as required under Forest Service procedures and notes that on 6/4/2020 there were technical difficulties with the IFORIS system retaining the inputted reporting.

At the oral hearing, the applicant confirmed to the FAC that they intend to use an existing track in the forest and that the works proposed are in fact an upgrade to that existing track. It was further confirmed that the proposed works do not cross any watercourse and that no specific drainage measures were required.

The DAFM stated at the oral hearing that the site was inspected in the field on 18/03/2020. The DAFM confirmed to the FAC that the dates on the Statement of Fact were when the Inspector's Certification Report and the In-Combination Statement were completed prior to the issuing of the licence. The DAFM also confirmed that all questions in the EIA section of the report were answered yes/no but the due to a technical difficulty all answers presented as n/a on the form but stated for the record that all components of the EIA section were examined before the conclusion to screen out EIA was reached. The DAFM confirmed that the technical difficulty did not affect the outcome of the conclusion to screen out EIA.

The DAFM submitted that the EIA screening had considered that the site is within a landscape sensitive area in the County Development Plan (CDP) but a significant distance from the public road and located within a managed forest and within a landscape of managed forest and agricultural land and that there would be no impact on the landscape. The application had been referred to Tipperary County Council but no response was received. It had been verified through site inspection that there are no water features that cross or adjoin and that there would be no impact on water quality. It was further submitted that, through site inspection, the road would be built along an existing track and on a free-draining, mineral soil. It was also submitted at the oral hearing that the road is proposed to facilitate all forest management activities in the area that it serves and that it would extend an existing well-established forest road network within a managed forest area. The road would not be open to public vehicles but would result in an increase in traffic on the public road during operations but this would not be of an excessive nature given the type of development.

The FAC consulted with publicly available mapping provided by the Environmental Protection Agency, the OSI, the Forest Service, and other on-line services. The site is located approximately 14km east-south-east of Thurles in an existing forest comprising mainly of Sitka spruce. The forest is bounded on the north, west and south by managed agricultural land and to the east by the forest plantation. The existing forest track network runs both north/south and east/west. The track subject of this licence runs slightly south-south-west to north-north-east and north.

Soil type is identified as Brown Podzolic on the GSI mapping, which is generally a free draining mineral soil.

The stream bounding the forest on the north is identified as River Waterbody NENAGH\_030 part of the Nenagh\_SC\_010 sub catchment. This stream lies c.260 metres north of proposed road. The ecological



status of the river waterbody is classified as moderate in the River Waterbody WFD Status report 2013-2018 and not at risk. The WFD 3<sup>rd</sup> Cycle has the sub-catchment at risk from anthropogenic sources.

The underlying groundwater body is Nenagh (E\_SH\_G\_178) with an overall status of good. The waterbody risk is to be reviewed under the WFD 3<sup>rd</sup> Cycle.

The proposed 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 the only Natura sites identified as being within 15km of the site are the 6 sites examined in the AA Screening.

The FAC noted that the CDP includes the following listed view, V11 Views north and south of the R498 from Bouladuff through Borrisoleigh to Latteragh (Tipperary CDP). The FAC agrees with the DAFM that the forest road would be well setback from the public road and within a managed forest and that no significant impacts on the landscape would occur.

The FAC noted that DAFM completed and recorded a screening for Appropriate Assessment (AA) of the proposal itself and in-combination with other plans and projects and the FAC concurs with the conclusions reached, agreeing that the road would be situated at a considerable distance from any European site. The road would be built through an existing managed forest and there is no evidence that it would impact on protected species or habitats. The soil is a free-draining mineral and there is no evidence that a watercourse or water quality would be impacted by the proposed road and the DAFM submitted that this had been established through site inspection.

The FAC noted that DAFM had recorded a conclusion that the proposal should not be subject to the EIA process but had submitted at the oral hearing that, due to a technical issue, the answers had not been recorded but that all criteria had been considered and the determination on EIA screening had been recorded.

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

#### **EIA Directive.**

With regard to the three grounds of appeal relating to the EU EIA Directive. The FAC considered that 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 is 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. At 600 metres the forest road is significantly sub-threshold for the mandatory submission of an EIAR.

Article 4 of the EU EIA Directive requires that a determination be made available to the public and, where it is decided that an environmental impact assessment is not required, state the main reasons for not requiring such assessment with reference to the relevant criteria listed in Annex III, and, where proposed by the developer, state any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

### **Water Framework Directive**

The FAC considered the contention in the grounds of appeal that in granting the licence DAFM had taken inadequate consideration of the objectives of the WFD River Basin Management Plan. In doing so, the FAC reviewed available EPA maps and data as noted above and aerial photography. The aerial photography of the area shows a separation of circa 260 m from the site to the river waterbody Nenagh\_030 that will act as a buffer zone between the proposed road and that river waterbody. In conclusion, based on the information available to it, and having regard to the limited nature of the proposal, namely construction of a forest road 600m in length, the location of it and the terrain and the conditions under which operations would be undertaken, the FAC is satisfied that there was adequate consideration of water matters by DAFM in their decision making and is not satisfied that the proposal poses a significant threat to water quality.

### **Licence conditions relating to birds**

In relation to the ground of appeal that the licence conditions do not provide a system of protection for wild birds during the period of breeding and rearing consistent with the requirements of the Birds Directive. The FAC note that the granting of road licence does not exempt the holder from complying with any legal requirements set out in any other statute. The FAC noted that the appellant did not submit any specific details in relation to bird nesting or rearing on the proposed site. The FAC considered that the DAFM had completed a screening for Appropriate Assessment and had undertaken a site inspection prior to making the decision. Based on the evidence before it, the FAC concluded that additional conditions of the nature described by the appellant are not warranted.

In considering the appeal the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions received including those at the oral hearing. The FAC concluded that the failure to record the reasons for making the determination represented a serious error in the making of the decision and that the decision should be remitted to the Minister to complete a new consideration to determine whether the proposal should be subject to the EIA process.

Yours sincerely,

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Iain Douglas, On Behalf of the Forestry Appeals Committee

