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19<sup>th</sup> March 2021

**Subject:** Appeal FAC519/2020 regarding licence TFL00428819

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 TFL00428819 for tree felling on 14.52 ha at Trusk, Co. Donegal was issued by the Department of Agriculture, Food and the Marine (DAFM) on 13th July 2020.

#### **Hearing**

Appeal FAC519/2020 was considered by the FAC on 10<sup>th</sup> March 2021. The FAC Members in attendance were Mr. John Evans (Chairperson), Mr. James Conway, Mr. Seamus Neely, and Mr. Vincent Upton.

#### **Decision**

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, submission received and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister for Agriculture, Food and the Marine regarding licence TFL00428819.

The decision relates to a felling licence for 14.52 ha at Trusk, Co. Donegal. The application includes site inventory and restocking details, a harvest plan and maps. The forest is comprised of three plots containing Sitka spruce. Two of the plots would be thinned and the third plot would be clearfelled and replanted with the same species. The application submits that there are no relevant watercourses or aquatic zones present on the site. The DAFM assessment described the soil as predominantly highly modified peat & peaty podzols in nature. The slope is predominantly flat to moderate (<15%). The project area does not adjoin or contain an aquatic zone. The vegetation type within the project area is coniferous forest. The DAFM undertook and documented a screening for Appropriate Assessment under the Habitats directive and identified five sites within 15km, these are Croaghonagh Bog SAC 000129, Dunragh Loughs/Pettigo Plateau SAC 001125, Lough Derg (Donegal) SPA 004057, Lough Eske and Ardnamona Wood SAC 000163, River Finn SAC 002301. The DAFM also recorded a consideration of

other plans and projects in-combination with the proposal. Each European site is considered in turn with its qualifying interests and conservation objectives and screened out and reasons are provided. The application was referred to Donegal County Council, NPWS and the Loughs Agency. Responses were provided by NPWS which stated that it had no comment to make but provided general information on the obligations on public authorities and the Loughs Agency which requested that the operations be conducted in adherence with good practice and recommendations. The DAFM recorded a consideration of the application across a range of criteria and concluded that it should not be subject to the EIA process. The licence issued on 13th July 2020.

There is one appeal against the decision. In summary, the grounds contend that the Minister should have established the legitimacy of the forest. It is submitted that if the appealed decision was correct it would not be necessary for the FAC to look for information which should have been on the file prior to a decision being made. Reference is made to a submission document and a document on the headed paper of the Department of Culture, Heritage and the Gaeltacht was submitted. It is also submitted that this decision does not comply with the Habitats Directive, the Birds Directive and the Environmental Impact Assessment Directive; the test for Appropriate Assessment Screening in Irish and EU law is, it is, merely necessary to determine that there may be such an effect, rather than to state that it will not have a significant effect; the Appropriate Assessment procedure adopted by the DAFM is flawed, with reference made to the Judgement of the CJEU in case C-323/2017 in regard to the consideration of conditions/measures at the screening stage; and it is the duty of the FAC to carry out both a full Appropriate Assessment Screening and a full Environmental Impact Assessment Screening in accordance with the law, with the opinion of Advocate General Kokott in Case C-254/2019 referred to in this regard.

In a statement to the FAC, the DAFM submitted that they are satisfied that the decision was made in line with their procedures and that they carried out a desk audit and reviewed submissions.

In considering the appeal, the FAC noted that it had not made any decision or requested any further information in relation to the proposal prior to the appeal being made.

The licence pertains primarily to the thinning of trees from a managed forest with the clearfelling of a proportion, 6 ha, and would involve operations which would be of a temporary nature. A forest road and access to the public road is already in place. The soil is described as a mixture of organo-mineral and organic soils. The western half of the forest lies in the MourneBeg 010 sub catchment while the eastern side lies in the Finn (Donegal) 040 subcatchment, both of which form part of the Foyle Catchment. The Trusk river as mapped by EPA flows 450 metres to the south and forms part of the Mourne Beg River (Derrygoonan) Waterbody (WFD status unassigned 2013 – 2018) and the Burn Durnett 010 Waterbody (WFD status poor 2013 – 2018) lies c.300 metres to the east of forest boundary. There is no evidence of a direct hydrological connection with either waterbody and the forest is separated by agricultural land, mature forest and open land. The DAFM recorded that the project area does not adjoin or contain an aquatic zone. The FAC concluded that there is no evidence of a pathway of effects from the forest to any watercourse and that as a result no waterbody would be impacted by the proposal. In addition, the DAFM referred the proposal to the Lough Agency, who in responding did not object to the proposal and



requested that the operations be conducted in adherence with good practice and recommendations to help protect rivers and streams during harvesting operations.

The FAC further considered the screening for appropriate assessment undertaken by the DAFM. Under Article 6(3) of the EU Habitats Directive any plan or project not directly connected with or necessary to the management of a European site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The grounds of appeal do not identify any specific European sites, measures or effects of concern. Five sites are identified within 15km from the proposal by the DAFM and the FAC confirmed the location of these sites using information provided by the NPWS and EPA. The River Finn SAC covers an extensive area and boundaries of the SAC are located at various aspects to the proposed felling. The closest appears to be to the south at 2.6km. There is no evidence of a pathway of effects to this boundary or any other part of the SAC. Croaghonagh Bog SAC lies 5.7 km to the west, Lough Eske and Ardnamona Wood SAC lies 12.5km to the southwest, Dunragh Loughs/Pettigo Plateau SAC lies 14km to the south, and Lough Derg (Donegal) SPA lies 14.2km to the south. The FAC considered the nature, scale and location of the proposal, the location and conservation objectives of the European sites and the reasons provided by the DAFM and concluded that in relation to these sites that there was no reason to consider that the DAFM had erred in its decision. The FAC noted that two sites within Northern Ireland were not listed amongst those considered by the DAFM. The boundary of Moneygal Bog SAC UK0030211 lies 12km to the east, while the boundary of River Foyle and Tributaries SAC UK0030320 lies 2.5km to the south adjacent to the River Finn SAC. While the failure to record these sites could be considered an error by the DAFM the FAC considered that these sites lie at a considerable distance from the proposal and that there is no evidence of a pathway of effects from the site to these or any other European site. In addition while the River Foyle and Tributaries SAC is hydrologically connected to the River Finn SAC, and where they are of closest proximity to the proposal area, their designations lie alongside each other along the Ireland and Northern Ireland border, with the River Finn SAC fronting to the side facing the proposal area. The Qualifying Interests of the River Foyle and Tributaries SAC are reflected in the River Finn SAC qualifying interests also. The DAFM included the River Finn SAC in their Appropriate Assessment Screening and screened out the site for AA given the following reasons; 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. Having regard to the nature, scale and location of the proposal the FAC concluded that this error could not be considered of a serious or significant nature and that it should not affect the outcome of the decision.

The FAC further considered whether the proposed development should have been addressed in the context of the Environmental Impact Assessment (EIA) Directive. 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 are 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 Forestry Regulations 2017 (S.I. 191 of 2017), 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. The decision before the FAC relates to the felling of 14.52 ha of commercial managed forest. The FAC concluded that the felling and replanting of trees, as part of a forestry operation with no change in land use, does not fall within the classes referred to in the Directive, and is not covered by national regulations and that screening for significant effects under the EIA Directive was not required in this case. The DAFM did consider the proposal across a range of criteria as documented and concluded that the proposal should not be subject to the EIA process. The FAC considered the record and concurs that having regard to the nature, scale and location of the proposal that the proposal would not result in any likelihood of significant effects on the environment.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, and other submissions received. 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 affirm the decision of the Minister regarding licence TFL00428819 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,

A black rectangular redaction box covering the signature of Vincent Upton.

Vincent Upton On Behalf of the Forestry Appeals Committee