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6th October 2021

Subject: Appeal FAC 814/2020 regarding licence LS08-FL0113

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

Background

Licence LS08-FL0113 for felling and replanting of forest on 15.55 ha at Bordowin, Monicknew, Co. Laois was issued by the Department of Agriculture, Food and the Marine (DAFM) on 14th October 2020.

Hearing

A hearing of appeal FAC 814/2020 was held by the FAC on 26th May 2021. The FAC Members in attendance at the hearing were Mr. John Evans (Deputy Chairperson), Mr. Vincent Upton, Mr. James Conway and Mr. Seamus Neely.

Decision

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, submissions received and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to vary the decision of the Minister for Agriculture, Food and the Marine regarding licence LS08-FL0113.

General

The licence pertains to the felling and replanting of forest on 15.55ha in one overall site at Bordowin and Monicknew, Co. Laois. The forest is currently composed of Sitka spruce (2.89ha planted in 1991 and 12,67ha planted in 1989). Replanting would be Sitka spruce with 5% of the project area to be open space. The application is accompanied by a location and felling (bio) map and a Harvesting Plan. The Underlying

soil type is described in the DAFM Appropriate Assessment Screening report and Determination dated 09/09/2020 as being approximately 51% Surface water Gleys, Ground water Gleys and approximately 48% Peaty Gleys (with some Lithosols and Regosols). The Slope is described as being Moderate 0-15%, and the habitat is predominantly WD4. The project is located within the catchment / sub basin of the DELOUR_010 and the waterbody has a HIGH status assigned to it in the 2013-18 WFD assessment period. The file shows that the application was desk assessed and that two submissions were received from members of the public. The application was referred to the Laois Council on 5th March 2019 and to the National Parks and Wildlife Service (NPWS) and the Inland Fisheries Ireland (IFI) on 6th March 2019. The NPWS made a submission on 17th June 2019 which included the following;

'The compartment is wholly situated within the Slieve Bloom Mountain Special Protection Area (SPA) (site code 004160). In addition, the proposed felling site is partially within a Hen Harrier 'Higher Likelihood Nesting Area' (HLNA). Therefore, it is recommended the proposed works should take place from August 15th to March 31st to avoid disturbance of nesting birds. If works are to take place outside these dates, then an Appropriate Assessment Screening should be undertaken as per Forest Service guidelines. Firebreaks shall not be ploughed, sprayed or cut without Appropriate Assessment Screening within the Slieve Bloom Mountain SPA'.

Applicants Pre-Screening Report (16/07/2020)

The applicant has submitted an Appropriate Assessment Pre-Screening report dated 16th July 2020. It describes the project and summarises the method of re-establishment as by windrow and mounding and then to be planted with Sitka spruce @ 2500 trees per hectare. It states that plants used in restocking this project area will be treated off site in the nursery with an insecticide (acetamiprid) approved by Pesticide Registration and Control Division, DAFM and that the site will be monitored for any damage to young trees from newly-emerged pine weevil (*Hylobius abietis*), and if deemed necessary following an appraisal of the project area through Coillte's Integrated Pest Management Policy, a top up spot spray may be applied to prevent excessive levels of damage and tree losses. It states that due to inherent levels of fertility, no fertiliser application is required to promote the establishment and growth of newly planted trees.

This pre-screening report identifies seven European sites (River Barrow and River Nore SAC 002162, Slieve Bloom Mountains SPA 004160, Clonaslee Eskers and Derry Bog SAC 000859, Coolrain Bog SAC 002332, Knockacoller Bog SAC 002333, River Nore SPA 004233 and Slieve Bloom Mountains SAC 000412) within 15km of the project area (one of these overlaps with the site). The report concluded that there is the possibility that the project will have direct, indirect or in combination effect(s) on three European sites (River Barrow and River Nore SAC 002162, Slieve Bloom Mountains SPA 004160 and River Nore SPA 004233). The report records the rationale for the conclusions reached in respect of each of the sites concerned. The report at section 4 sets out an In-Combination assessment for the project and recommends that the project proceeds to Appropriate Assessment stage 2 for the three screened in sites.

Natura Impact Statement (NIS) submitted by the applicant dated 30/07/2020

There is also a Natura Impact Statement (NIS) on file which has a completion date of 30th July 2020 as submitted by the applicant. It is titled as being *'For Clearfell and Reforestation project LS08-FL0113, located at Monicknew, Bordowin, Co. Laois'*. It sets out the qualifications of those involved in its preparation and the legal framework for NIS. It deals with specifics of the project including its location, soil type, slope, hydrology, habitat, and in relation to harvesting and re-establishment methods. It states that setbacks will be implemented along watercourses present on site, within which part of the setback area will not be reforested, and part will be planted with native broadleaves, in order to create a separation distance between the future forest edge and the stream. It also points out that there will be no mechanical disturbance of these setbacks throughout the reforestation works, nor will they be entered into by any machinery or receive any pesticide or herbicide application.

The NIS at section 2 examines the three screened in sites (River Barrow and River Nore SAC 002162, Slieve Bloom Mountains SPA 004160 and River Nore SPA 004233) as identified in the applicant's pre-screening report together with their Qualifying Interest(s) (if SAC) / Special Conservation Interest(s) (if SPA) as listed. The NIS at section 3 sets out the proposed mitigation for the project. At section 4 the NIS deals with *'Residuals'* and at section 5 it sets out an In-Combination assessment and statement.

Appropriate Assessment Screening Report and Determination (DAFM) (09/09/2020)

An Appropriate Assessment Screening Report and Determination (AASRD) undertaken by DAFM and dated 9th September 2020 is to be found on file. It examines seven European Sites (Slieve Bloom Mountains SPA IE0004160, Slieve Bloom Mountains SAC IE0000412, River Barrow and River Nore SAC IE0002162, River Nore SPA IE0004233, Clonaslee Eskers and Derry Bog SAC IE0000859, Knockacoller Bog SAC IE0002333 and Coolrain Bog SAC IE0002332) together with their qualifying / special conservation interests. The radius was not extended in this case to include further sites and the project area is noted as overlapping with the Slieve Bloom Mountains SPA IE0004160. The Slieve Bloom Mountains SPA IE0004160 and the River Barrow and River Nore SAC IE0002162 were screened in. All the other sites (five) were screened out and the project proceeded to AA stage 2 for the two screened in sites. The reasons for the screening conclusions reached for each of the European sites examined are recorded in the AASRD. There is also an examination of 'In-Combination' effects in this case as set out in a separate In-Combination assessment report, which is based on a spatial run of 20th August 2020. This report includes the following text in its concluding paragraphs;

'It is concluded that the proposed felling and reforestation, with mitigation measures set out in Section 4 of the determination, will itself (i.e. individually) not result in any residual adverse effect on the Slieve Bloom Mountains SPA IE0004160, River Barrow and River Nore SAC IE0002162 and associated Qualifying Interests and Conservation Objectives. There is therefore no potential for the proposed works to contribute to any cumulative adverse effects on this European site, when considered in-combination with other plans and projects. Furthermore, it is considered that the regulatory systems in place for the approval, operations (including any permitted emissions) and monitoring of the effects of these other plans and projects are

such that they will ensure they too do not cause environmental pollution or give rise to direct or indirect effects on the integrity of any European Sites in view of those sites' conservation objectives. Therefore, DAFM deems that this project, when considered in combination with other plans and projects, will not give rise to any adverse effect on the integrity of any European Site. This relates to the proposed activities under LS08-FL0113 only'.

Appropriate Assessment Determination (DAFM) (14/09/2020)

An Appropriate Assessment Determination (AAD) report dated 14th September 2020 is to be found on file. In relation to the screened out European sites the AAD sets out that in concluding the AA screening, the Minister has determined that there is no likelihood of the felling and reforestation project LS08-FL0113 having any significant effect, either individually or in combination with other plans or projects, on any of the following European site(s), in view of their conservation objective, for the reasons set out:

- Slieve Bloom Mountains SAC IE0000412 - Due to the absence of a direct upstream hydrological connection, and subsequent lack of any pathway, hydrological or otherwise.
- River Nore SPA IE0004233 - Due to the separation distance between the Natura site and the project.
- Clonaslee Eskers and Derry Bog SAC IE0000859 - Due to the location of the project area within a separate water body catchment to that containing the Natura site, with no upstream connection, and the subsequent lack of any pathway, hydrological or otherwise.
- Knockacoller Bog SAC IE0002333 - Due to the location of the project area within a separate water body sub-catchment to that containing the Natura site, with no upstream connection, and the subsequent lack of any pathway, hydrological or otherwise.
- Coolrain Bog SAC IE0002332 - Due to the absence of a direct upstream hydrological connection, and subsequent lack of any pathway, hydrological or otherwise.

It also sets out that in concluding the AA screening, the Minister has determined that there is the likelihood of felling and reforestation project LS08-FL0113 having a significant effect, either individually or in combination with other plans and projects, on the following European Site(s), for the reasons described, in view of best scientific knowledge and in view of the conservation objectives of the European Site(s).

- Slieve Bloom Mountains SPA IE0004160 - Possible effect due to the location of the project within the Natura site.
- River Barrow and River Nore SAC IE0002162 - Possible effect due to the direct hydrological connectivity that exists between the project area and this SAC.

The Appropriate Assessment Determination report in section 3 at page 3 sets out that the Minister determined that an Appropriate Assessment of the activity proposed under LS08-FL0113 was required in relation to the above 'screened in' European sites. It states that for this reason,

'The applicant submitted a Natura Impact Statement (completed 30/07/20) to facilitate the Minister carrying out an appropriate assessment. Niall Phelan, acting on behalf of the DAFM, subsequently evaluated the submitted NIS, defined as "a report comprising the scientific examination of a plan or project and the relevant European Site or European Sites, to identify and characterise any possible implications of the plan or project individually or in combination with other plans or projects in view of the conservation objectives of the site or sites, and any further information including, but not limited to, any plans, maps or drawings, scientific information or data required to enable the carrying out of an Appropriate Assessment'.

It states that in undertaking the Appropriate Assessment of the likely significant implications and effects of the activity on European Sites, the following were taken into account:

- the initial application LS08-FL0113, including all information submitted by the applicant, information available via iFORIS (including its GIS Map Viewer), responses from referral bodies and submissions from 3rd parties,
- any subsequent supporting documentation received from the applicant,
- any other plan or project that may, in combination with the plan or project under consideration, adversely affect the integrity of a European Site,
- if appropriate, any written submission or observation made by a consultation body or the public to the Minister in relation to the application under Part 6,
- the Natura Impact Statement provided by the applicant on foot of a request by the Minister, or otherwise,
- any supplementary information furnished in relation to any such report or statement.

The AAD states that *'The information provided in the NIS was sufficient to derive appropriate conditions for a determination. Freshwater Pearl Mussel Requirements have been added to factor in the qualifying feature sensitivities in the area'.*

The AAD report at section 4 (pages 4, 5, 6 and 7) sets out the Appropriate Assessment Determination and the mitigations required which are to be attached as conditions to any licence issued for the project. In concluding the AAD report sets out that,

'The basis for this AA Determination is as follows: This 15ha site sits within a larger patchwork of forest with watercourses linking to the Delour_010, historically known to have suitable habitat for Freshwater Pearl mussels (Moorkens 1992) and feeding into the Nore, therefore triggering FPM requirements. With the Aquatic, Otter and FPM requirements laid out and with timing restrictions prioritised for Hen Harrier no residual impact is expected to this site. Therefore, the Minister for Agriculture, Food & the Marine has determined, pursuant to Regulation 42(16) of the European Communities (Birds and Natural Habitats) Regulations 2011 (as amended) and Regulation 19(5) of the Forestry Regulations 2017 (as amended), based on objective information, that no reasonable scientific doubt remains as to the absence of any adverse effect on the integrity of any European site'.

Appeal

There is one appeal against the decision to issue the licence in this case. The full grounds of appeal have been considered by the FAC and are to be found on file. The following is a summary of the grounds.

- Submission that the assessment carried out has Lacuna and does not contain complete, (sic) precise and definitive findings,
- Submission that the Author states "The purpose of this Appropriate Assessment (AA) Determination is to record that an appropriate assessment of the project below has been carried out by the Minister in accordance with the relevant legislation, for the information of the public and interested bodies." Making it clear to us "THAT HE DOES NOT UNDERSTAND THE DUNCTION OG THE Appropriate Assessment PROCESS" (sic).
- Submission that as the FAC have failed to supply the CVs and declarations of interest, that the FAC is not a fit and proper body to consider this appeal because of potential conflicts of interest.
- Submission that the €200 fee to make this appeal is not legal.
- Submission that in relation to the assessment carried out under Article 6(3) of the Habitats Directive, it should be pointed out that it cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned.
- Includes a reference to 'Kelly -v- An Bord Pleanala [2014] IEHC 400' (25 July 2014) and quotes from it. A copy of the AA Determination with comments was also submitted.

DAFM Statement to the FAC

In a statement to the FAC, the DAFM stated that the decision was issued in accordance with procedures, S.I. 191/2017 and the 2014 Forestry Act and that the Department is satisfied that all criteria outlined in its standards and procedures policy have been adhered to in the making of a decision on the application. It also records the relevant application processing dates, sets out that there were two submissions received from third parties, that it was referred to Laois County Council, the Inland Fisheries Ireland and the National Parks and Wildlife Service and that it was desk assessed. The statement provides a summary of the application submitted, details the consideration of the application by the DAFM, and including the setting out of the approach taken by the DAFM in carrying out the Appropriate Assessment screening and Determination. The statement provides a response to the appeal in this case and concludes by setting out that the *'site-specific mitigations identified in the AA Determination were attached as conditions of the licence issued for the felling and reforestation project licenced as LS08-FL0113. DAFM submits that the conditions attached to the licence are consistent with best forest practice, national forest policy and protection of the environment'*.

Consideration of the appeal by the FAC

In considering the grounds of appeal, the FAC considered, in the first instance, the contention in the grounds that the FAC is not a fit and proper body to consider this appeal on the basis of potential conflicts of interest. This matter was not substantiated and no evidence of a deficiency in this regard was submitted. The FAC operates under the Agriculture Appeals Act 2001 as amended and as required by the legislation, is independent and impartial in the performance of its functions. Regulation 3(7) of the Forestry Appeals Committee Regulations 2020 requires members of the FAC, where they believe that their participation would give rise to the perception of any potential conflict of interest, to disclose this to the parties to an appeal. The members of the FAC did not consider that such an action was required in this instance.

The FAC 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 mandatory EIA 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 and subsequent replanting of 15.55 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 FAC considered the contention in the grounds of appeal relating to Appropriate Assessment and related matters. In this regard the FAC finds that the applicant has submitted an Appropriate Assessment Pre-Screening report dated 16th July 2020 which describes the project, summarises the method of re-establishment and sets out that it will be replanted with Sitka spruce @ 2500 trees per hectare. The FAC finds that this pre-screening report identifies seven European sites (River Barrow and River Nore SAC 002162, Slieve Bloom Mountains SPA 004160, Clonaslee Eskers and Derry Bog SAC 000859, Coolrain Bog SAC 002332, Knockacoller Bog SAC 002333, River Nore SPA 004233 and Slieve Bloom Mountains SAC 000412) within 15km of the project area (one having an overlap with the site). The FAC further finds that the report concluded that there is the possibility that the project will have direct, indirect or in combination effect(s) on three European sites (River Barrow and River Nore SAC 002162, Slieve Bloom Mountains SPA 004160 and River Nore SPA 004233) and that the rationale for the screening conclusions reached in respect of each of the sites is provided. The FAC finds an In-Combination assessment for the project at section 4 in the report, a recommendation that the project should proceed to Appropriate

Assessment stage 2 for the three screened in sites and that the reasons for the screening conclusions reached in respect of each site are recorded.

The FAC finds that there is also a NIS on file as submitted by the applicant and which has a completion date of 30th July 2020 as referenced earlier in this letter. The FAC finds that the NIS examines the three screened in sites (River Barrow and River Nore SAC 002162, Slieve Bloom Mountains SPA 004160 and River Nore SPA 004233) as identified in the applicant's pre-screening report together with their Qualifying Interest(s) (if SAC) / Special Conservation Interest(s) (if SPA) as listed and sets out proposed mitigation for the project. The FAC further finds that at section 4 the NIS deals with 'Residuals' and at section 5 that it sets out an In-Combination assessment and statement for the project.

The FAC finds that an Appropriate Assessment Screening Report and Determination (AADRD) undertaken by DAFM and dated 9th September 2020 is to be found on file which examines seven European Sites (Slieve Bloom Mountains SPA IE0004160, Slieve Bloom Mountains SAC IE0000412, River Barrow and River Nore SAC IE0002162, River Nore SPA IE0004233, Clonaslee Eskers and Derry Bog SAC IE0000859, Knockacoller Bog SAC IE0002333 and Coolrain Bog SAC IE0002332) together with their qualifying / special conservation interests. The FAC noted that the radius was not extended in this case to include further sites and the project area is noted as overlapping with the Slieve Bloom Mountains SPA IE0004160. The FAC finds that the Slieve Bloom Mountains SPA IE0004160 and the River Barrow and River Nore SAC IE0002162 were screened in and that the other five sites were screened out with the reasons for the screening conclusions reached for each of the European sites examined being recorded. The FAC also finds that the DAFM carried out an examination of 'In-Combination' effects in this case as set out in a separate In-Combination assessment report, which is based on a spatial run of 20th August 2020.

The FAC considered the Appropriate Assessment Determination (AAD) report dated 14th September 2020 as completed by DAFM which is to be found on file. The FAC finds that in relation to the screened out European sites the AAD sets out that in concluding the AA screening, the Minister has determined that there is no likelihood of the felling and reforestation project LS08-FL0113 having any significant effect, either individually or in combination with other plans or projects, on any of the five screened out sites for the reasons as set out. The FAC also finds that the AAD sets out that in concluding the AA screening, the Minister has determined that there is the likelihood of felling and reforestation project LS08-FL0113 having a significant effect, either individually or in combination with other plans and projects, on the two screened in sites (Slieve Bloom Mountains SPA IE0004160 and River Barrow and River Nore SAC IE0002162) for the reasons described, in view of best scientific knowledge and in view of their conservation objectives.

The Appropriate Assessment Determination report in section 3 at page 3 is found to set out that the Minister determined that an Appropriate Assessment of the activity proposed under LS08-FL0113 was required in relation to the above 'screened in' European sites. It states that for this reason,

'The applicant submitted a Natura Impact Statement (completed 30/07/20) to facilitate the Minister carrying out an appropriate assessment. Niall Phelan, acting on behalf of the DAFM, subsequently

evaluated the submitted NIS, defined as "a report comprising the scientific examination of a plan or project and the relevant European Site or European Sites, to identify and characterise any possible implications of the plan or project individually or in combination with other plans or projects in view of the conservation objectives of the site or sites, and any further information including, but not limited to, any plans, maps or drawings, scientific information or data required to enable the carrying out of an Appropriate Assessment'.

It is also found that the AAD sets out that in undertaking the Appropriate Assessment of the likely significant implications and effects of the activity on European Sites, the following were taken into account:

- the initial application LS08-FL0113, including all information submitted by the applicant, information available via iFORIS (including its GIS Map Viewer), responses from referral bodies and submissions from 3rd parties,
- any subsequent supporting documentation received from the applicant,
- any other plan or project that may, in combination with the plan or project under consideration, adversely affect the integrity of a European Site,
- if appropriate, any written submission or observation made by a consultation body or the public to the Minister in relation to the application under Part 6,
- the Natura Impact Statement provided by the applicant on foot of a request by the Minister, or otherwise,
- any supplementary information furnished in relation to any such report or statement.

The AAD is found to state that *'The information provided in the NIS was sufficient to derive appropriate conditions for a determination. Freshwater Pearl Mussel Requirements have been added to factor in the qualifying feature sensitivities in the area'*. The FAC finds that the AAD report at section 4 (pages 4, 5, 6 and 7) sets out the Appropriate Assessment Determination and the mitigations required and that these have been included as obligations of the licence as issued by the DAFM.

The FAC noted that the DAFM also sets out those considerations that were taken into account in undertaking the Appropriate Assessment of the likely significant implications and effects of the activity on European sites which included the original application LS08-FL0113, all information submitted by the applicant, information available via iFORIS (including its GIS Map Viewer), responses from referral bodies, submissions from 3rd parties, any other plan or project that may, in combination with the plan or project under consideration, adversely affect the integrity of a European Site, if appropriate, any written submission or observation made by a consultation body or the public to the Minister in relation to the application under Part 6, any NIS provided by the applicant on foot of a request by the Minister, or otherwise, and any supplementary information furnished in relation to any such report or statement. The FAC finds that the AAD records that the information provided in the NIS was sufficient to derive appropriate conditions for a determination and that freshwater Pearl Mussel requirements have been added to factor in the qualifying feature sensitivities in the area. The FAC also finds that the DAFM recorded other plans and projects, including forestry and non-forestry projects and plans, that were considered in relation to potential in-combination effects of the proposal.

In arriving at a conclusion as to whether the DAFM has erred in its processing of this licence application as it relates to Appropriate Assessment, the FAC considered all of the relevant documentation on file in this connection including the Appropriate Assessment pre-screening report (16/07/2020) and the Natura Impact Assessment Statement (30/07/2020) as submitted by the applicant, the DAFM Appropriate Assessment Screening and Determination report (09/09/2020) and the DAFM Appropriate Assessment Determination and report (14/09/2020) on file. The FAC notes that the number of Natura sites screened in differed as between the applicant's reports (three sites screened in) and the DAFM reports (two sites screened in). Notwithstanding this, the FAC finds that the site which only the applicant's reports had screened in (River Nore SPA), was examined by the DAFM in its own AA screening report (AASRD) of 9th September 2020, was screened out in same and that the reasons (Due to the separation distance between the Natura site and the project) for the screening conclusion reached by DAFM for this site was recorded. The FAC also noted that the DAFM AASRD post-dated both the applicants pre-screening report and NIS and that in the course of setting out the Appropriate Assessment that it carried out for the project DAFM acknowledges the content of the NIS. The grounds of appeal do not identify any particular European site, significant effects, pathways or other details of concern in relation to the specific proposal.

The FAC examined publicly available information provided by the EPA and NPWS and identified the same European sites as DAFM within 15km of the proposal. The FAC considered that the DAFM had sufficient information in respect of the characteristics of the proposal, the location, types and characteristics of potential impacts, in order to determine the likely significant effects of the proposal itself or in combination with other plans and projects on any European sites and agrees with the conclusions reached. The FAC further considers that the procedures adopted by the DAFM provide for opportunities for the public to make submissions on the proposal. The procedures adopted by the DAFM in their assessment are considered by the FAC to be acceptable. Based on the information available to it, the FAC is not satisfied that a serious or significant error or series of errors were made in the making of the decision regarding Appropriate Assessment.

However, in reviewing the record of the decision the FAC noted that the DAFM had transferred the measures identified in the AAD to the felling licence as individual conditions and that an error has occurred in this process. The AAD also requires adherence with the Forestry and Otter guidelines (Department of Agriculture, Fisheries and Food, 2009) and Freshwater Pearl Mussel Guidelines (DAFM 2019), which were not transferred to the licence. As this relates to the AA undertaken, the FAC is satisfied that this constitutes a serious error in the making of the decision. The FAC confirmed with the DAFM that the Freshwater Pearl Mussel Guidelines were published in 2008. The FAC is therefore varying the decision to make the following addition to condition dd) The proposed works shall adhere to the,

- vii) Forestry and Otter guidelines (Department of Agriculture, Fisheries and Food, 2009),*
- viii) Freshwater Pearl Mussel Guidelines (DAFM 2008)*

The FAC considered this matter to be of a serious but clerical nature relating only to the specification of licence conditions and that it would not have any effect on the AA undertaken.

In relation to the contention in the grounds that the appeal fee (€200) is not legal the FAC finds that the legislative basis for the FAC is set out in Irish law. The FAC also finds that where a person wishes to make an appeal under the Agriculture Appeals Act 2001 (as amended) in respect of forestry licencing a €200 appeal fee is payable. The FAC further finds that the said fee is prescribed in Article 10 of the Forestry Appeals Committee Regulations 2020. The FAC considered that the setting of a fee for appeals was a matter for the Minister for Agriculture, Food and the Marine.

In considering the appeal in this case the FAC had regard to the record of the decision, the submitted grounds of appeal, and submissions received. Based on the information available to it the FAC concluded that a serious error was made in the processing of the application in this case and is therefore varying the decision of the Minister regarding licence LS08-FL0113 in line with Article 14B of the Agricultural Appeals Act 2001, as amended, to make the following addition to condition dd) The proposed works shall adhere to the,

ii) Forestry and Otter guidelines (Department of Agriculture, Fisheries and Food, 2009),

viii) Freshwater Pearl Mussel Guidelines (DAFM 2008).

In varying the decision, the FAC considered that the proposal would be in keeping with Good Forestry Practice and Government policy.

Yours sincerely,

A black rectangular redaction box covering the signature of the official.

Seamus Neely On Behalf of the Forestry Appeals Committee