



An Coiste um Achomhairc  
Foraoiseachta  
Forestry Appeals  
Committee

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

22<sup>nd</sup> September 2021

**Subject: Appeals 149/2020 & 152/2020 regarding licence TFL00447619**

Dear [REDACTED]

I refer to your appeal made 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 and Hearing**

A licence for clearfell and replanting of 1.18 ha under TFL00447619 at Cornamucklagh, Killadoon, Co. Sligo was approved by the Department of Agriculture, Food and the Marine (DAFM) on 27<sup>th</sup> February 2020.

An oral hearing of appeals FAC 149/2020 & 152/2020 regarding TFL00447619 was held by a division of the FAC on 12<sup>th</sup> April 2021. In attendance at Oral Hearing:

|                                |  |
|--------------------------------|--|
| FAC Members:                   | Mr. Myles Mac Donncadha (Chairperson), Mr. James Conway, Mr. Seamus Neely and Mr. Derek Daly |
| Department Representative(s):  | Ms. Eilish Kehoe   |
| Appellants:                    | [REDACTED]   |
| Applicant / Representative(s): | [REDACTED]   |
| Secretary to the FAC:          | Ms. Heather Goodwin  |

**Decision**

Having regard to the evidence before it, including the licence application, processing by the Department of Agriculture, Food and the Marine (DAFM), the grounds of appeal, submissions made at the oral hearing and all other submissions received, all materials on file, and in particular the following considerations, the Forestry Appeals Committee (FAC) has decided to vary the decision of

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the Minister regarding licence TFL00447619. The adjustment to the conditions required by FAC is that the current condition (h) now read:

- Adhere to Felling and Reforestation standards - 25 m setback from the contour marking the level of surface outflow of the lake and plant 5 rows of ADB adjoining. Strictly adhere to the Standards for Felling & Reforestation (October 2019) including avoidance of harvesting of any trees where the root system is submerged and avoidance of replanting any areas prone to flooding. These standards replace the existing Forest Harvesting & the Environment Guidelines (2000).
- Liaise with COCO prior to works commencing.
- 2 week commencement notice to be provided to felling section prior to any works, including the confirmation of the established level of outflow of the lake and intended setback.

### **Background**

The proposal at Cornamucklagh, Killadoon, Co. Sligo is to clearfell and replant one block of 1.18 Ha of conifers in 2024 at the age of 37. According to the Inspectors Certification report the predominant underlying soil type is podzolic in nature. The slope is predominantly flat to moderate and the site is crossed by / adjoins an aquatic zone. It is located in the Feorish[Ballyfarnon]\_SC\_010 sub-catchment of the Upper Shannon (26A) WFD Catchment. The plot is adjacent to a small lake, Lough na Súil (approximately 8 Ha in size) which is said to exhibit turlough-like behaviour, having drained completely in 1933, 1964, 1989 and most recently in 2006. Based on the topography of the area it would appear that (at times other than when it is being drained exclusively through an underground network of channels) it would drain to the south east to the river water body FEORISH (BALLYFARNON)\_(code IE\_SH\_26F020080) which has status of 'good' per WFD 2013-2018 assessment. Forestry is not identified as being a significant pressure for any of the waterbodies in the vicinity.

The project area does not fall within any designated Natura 2000 site but six Natura Sites were identified within 15km of the project site: Bricklieve Mountains and Keishcorran SAC 001656, Lough Arrow SAC 001673, Lough Arrow SPA 004050, Lough Gill SAC 001976, Union Wood SAC 000638, Uinshin River SAC 001898.

### **Approval**

The licence application was submitted on 18<sup>th</sup> December 2019 and the project was referred to NPWS, IFI and Sligo County Council, all of whom responded. NPWS response is general in nature. IFI requested that the aquatic buffer zone along the lake be increased to 25m with two rows of native broadleaf trees planted outside this buffer zone. Sligo County Council response is general in nature although it too requests a 25m buffer around any watercourses during replanting and to be informed prior to the commencement of works. One third party submission of a general nature was received on 21<sup>st</sup> January 2020.

The application was desk assessed and an Appropriate Assessment (AA) Screening conclusion was made that all six sites could be screened out using the AA Screening procedure in place at the time (November 2019 version). The basis for screening out was that Bricklieve Mountains and Keishcorran SAC 001656, Lough Gill SAC 001976 and Uinshin River SAC 001898 are within a separate water body catchment to that containing the project area, with no upstream connection, and the subsequent lack of any hydrological connection. Union Wood SAC 000638, Lough Arrow SAC 001673 and Lough Arrow SPA 004050 were screened out on the basis of distance. An in-combination assessment is also



completed for the site, indicating that DAFM considers that this project, when considered in combination with other plans and projects, will not give rise to the possibility of a significant effect on any Natura site.

Approval issued on 27<sup>th</sup> February 2020 with standard conditions and a specific condition to impose a 10m setback to the lake and planting of 5 rows of additional broadleaf trees around this setback. This would imply a 20m total distance from the lake to the first conifers.

### **Appeals**

There are two third party appeals against the decision. The first appeal (149/2020) submits that the Appropriate Assessment Screening does not comply with the requirements of the law; that the catchment within which the proposal is located be identified; that where a turlough is concerned evidence of lack of groundwater connectivity is necessary and that the opinions of Sligo County Council and IFI cannot be construed as 'no objection'. The second appeal (152/2020) submits that the felling site is located immediately adjacent to Lough na Súil, a sensitive environmental area; that the lake is similar to, but is not a turlough and its level has risen considerably in recent years with the root systems of some of the trees in this application now submerged and it is unclear how anyone can know the level of the lake in the proposed fell year of 2024; that any felling would have a negative impact on nearby Lough Bo and on Lough Arrow SAC/SPA/NHA and Uinshin River SAC with which it may have an underground hydrological connection and that it is steep in places; that road access using existing roads would be dangerous although there may be a plan to gain access through an adjacent forest property; and submits that both an Environmental Impact Assessment and an Appropriate Assessment are required for both sites.

### **DAFM Statement to the FAC**

The DAFM in a statement to the FAC confirmed that the decision was issued in accordance with DAFM procedures, S.I. 191/2017 and the 2014 Forestry Act. It also sets out the various processing dates relating to the application and that submission(s) were received from members of the public in January 2020. It concludes with a statement from the District Inspector that the relevant AA procedure was applied in approving this licence. The screening information can be found on file. An in-combination assessment was also carried out for this application and can also be found on file. Using the current AA procedure in conjunction with the Habitat & Foraging guidance tables all Natura 2000 sites have been screened out as outlined on file. This application alone or in-combination with other forest and non-forest plans/projects in the area will not have a significant impact the qualifying interests of the Natura 2000 sites screened as part of the AA. The site was assessed as per standard operating procedures and Appropriate Assessment requirements. This information is available on the public file. The site is adjoining a lake and the trees were planted close to the lake shore. Once the site is felled and replanted a 10 m setback will be applied and another 5 rows of broadleaves (10 m). This will ensure a permanent 20 m buffer between the lake and the conifer crop. All relevant procedures have been followed in approving this application. There is a licence requirement to contact the local authority and the DAFM prior to commencing operations.

### **Hearing**

The FAC held an oral hearing of the appeal on 12<sup>th</sup> April 2021 and was attended by representatives of the DAFM and the Applicant. At the oral hearing the forester for the applicant clarified that access to

the site will be gained through the adjoining forest for which a felling licence is currently being applied; this is essential given the small size of the proposed felling area. The timing of felling will also be at any point up to and including 2024, from the date at which the licence is approved. It was the opinion of the forester that Lough na Súil was 'plugged' in recent years by the landowner and this coincides with sustained high water levels. The forester was not aware of any correspondence between the landowner or any statutory bodies regarding the plugging operation. The forester outlined how trees that have their roots submerged by the lake waters will not be harvested for health and safety, practical and environmental reasons and it will be their priority to conduct harvesting in summer when the lake level should subside somewhat. With regard to replanting, the forester explained how there is surface outflow that drains the lake and given that the lake now has no other means of draining this is now the highest point that the lake waters can reach. Using the level of this outflow as a reference point and to avoid the next generation of trees having submerged root systems, no planting would take place below this point.

### **Consideration by the FAC**

Addressing the written grounds of appeal, the FAC considered, in the first instance the Appropriate Assessment screening undertaken by the DAFM. The FAC finds that the screening of the proposal for Appropriate Assessment established that there were six European sites within 15km of the proposal and that there was no reason to extend this radius in this case. Each site was found to have been considered in turn and all sites were screened out for the purposes of Appropriate Assessment. The FAC finds that the reasons for the screening conclusions reached in respect of each site are provided in the screening documentation on file and that the DAFM also recorded other plans and projects that were considered in combination with the proposal.

In response to query at oral hearing regarding Appropriate Assessment procedures, the DAFM representative drew attention to the Statement of Fact provided to the FAC confirming that the Appropriate Assessment screening was carried out and the conclusion reached in relation to these European Sites was in compliance with the requirements of the law and relevant procedures. The FAC examined publicly available information from the NPWS and EPA and identified the same six European sites. The FAC considered that the DAFM had sufficient information in respect of the characteristics of the proposal, the location, and 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 a European site. 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 in this case and concurs with the conclusions reached.

Regarding the responses received from IFI and Sligo County Council it is reasonable, in the view of the FAC, to interpret them as not objecting to the proposal. One of the submitted grounds of the first appellant that Lough na Súil is a turlough is contradicted by the second appellant. The definition of turlough includes the unique botanical communities that are associated with them and these seems to be absent in the case of this lake; in addition, the underlying bedrock is not wholly karst with other mineral shales overlying the karst. A survey commissioned by NPWS in 2015 was unable to conclude



that the site was a turlough and proposed that lower water levels would be needed to allow a decision to be made<sup>1</sup>.

Addressing the grounds on the consistency of the decision to grant the licence with the requirements of the EU EIA Directive, the 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. The Irish Regulations, 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 proposal in this case is for the clearfell of 1.18ha and therefore does not attract mandatory submission of an EIA report. The FAC is satisfied that the DAFM did not err in the decision regarding EIA, that the proposal was not required to undergo the EIA process.

The FAC notes from the applicant's forester that access may be gained for harvesting through an adjacent forest property. The provision of access, construction of forest roads or entrances onto the public road network are subject to separate consenting procedures. Regarding the potential impact on Natura sites and the environment generally, the FAC is satisfied that the AA and EIA procedures applied in this case, together with the proposed conditions are sufficient to eliminate any such potential risk.

With regard to compliance with the Water Framework Directive, the FAC considers that given the scale and nature of the proposal and the conditions attached, there will be no effect on Lough na Súil and consequently there is no risk to the achievement of 'good' WFD status by Lough na Súil if it is ever defined as a Water Framework Directive waterbody for the purposes of the Directive.

Regarding the ground of appeal on the felling and subsequent planting of trees in areas that are (or may become) waterlogged the FAC notes an additional condition (h) in the licence approval reads

- Adhere to Felling and Reforestation standards - 10 m setback to lake and plant 5 rows of ADB adjoining. Strictly adhere to the Standards for Felling & reforestation (October 2019). These standards replace the existing Forest Harvesting & the Environment Guidelines (2000).
- Liaise with COCO prior to works commencing.
- 2 week commencement notice to be provided to felling section prior to any works.

In considering the appeal in this case the FAC had regard to the record of the decision, the submitted grounds of appeal, and all submissions received, including at the oral hearing. Referring to the lack of clarity on the additional condition (h) in the context of the proposal's proximity to a lake that appears to have a rising water level, the FAC is satisfied that a significant error was made in that the reference point for the start of the setback was not sufficiently well defined. At oral hearing the representative for the applicant offered that the elevation of the point of surface discharge from the lake would be established. A contour line would then be established that joins all points at this elevation around the perimeter of the lake. This could then be used as the reference line for the setting out of any setbacks and clearly exclude areas for replanting where the root system is submerged or any areas prone to

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<sup>1</sup> [https://www.npws.ie/sites/default/files/files/NTSV14\\_Turlough\\_report\\_Volume\\_I\\_and\\_Volume\\_II\\_01a.pdf](https://www.npws.ie/sites/default/files/files/NTSV14_Turlough_report_Volume_I_and_Volume_II_01a.pdf)

flooding. In addition, in the interest of consistency with other materials relevant to Lough na Súil, namely the NIS and Appropriate Assessment Determination for TFL00447519, a 25m buffer is now proposed rather than the current 10m buffer. The FAC is therefore varying the decision of the Minister regarding licence TFL00447619 in line with Article 14B of the Agricultural Appeals Act 2001, as amended, such that the existing condition (h) is replaced with the following condition:

- Adhere to Felling and Reforestation standards - 25 m setback from the contour marking the level of surface outflow of the lake and plant 5 rows of ADB adjoining. Strictly adhere to the Standards for Felling & Reforestation (October 2019) including avoidance of harvesting of any trees where the root system is submerged and avoidance of replanting any areas prone to flooding. These standards replace the existing Forest Harvesting & the Environment Guidelines (2000).
- Liaise with COCO prior to works commencing.
- 2 week commencement notice to be provided to felling section prior to any works, including the confirmation of the established level of outflow of the lake and intended setback.

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

Yours sincerely,

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

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Myles Mac Donncadha, on behalf of the FAC