



16th June 2025

Subject: Appeals FAC 568 and 616/2020 against licence decision LS01-FL0090

Dear

I refer to the appeals to the Forestry Appeals Committee (FAC) in relation to the above licence granted by the Minister for Agriculture, Food and the Marine (Minister). The FAC established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001 ("The Act"), as amended, has now completed an examination of the facts and evidence provided by the parties to the appeal.

Oral Hearing

An Oral Hearing of appeals FAC 568/2020 and FAC 616/2020, of which all parties were notified and representatives of the Department of Agriculture, Food and the Marine (DAFM), the Applicant and the Appellants attended, was held by the FAC at the Midlands Park Hotel, Portlaoise on 11th April 2025 and commenced at 11.30am.

In attendance at Oral Hearing:

DAFM Representative(s):

Mr. Emmet O'Fahy, Mr. Karl Coggins, Mr. Anthony Dunbar, Mr. Niall Phelan, Mr. Graham Lennox, and Ms. Roisin Mc Gee.

Appellant (FAC 616/2020):

Appellant (FAC568/2020):

Applicant / Representative(s):

FAC Members:

Mr. Seamus Neely (Chairperson), Mr. Derek Daly, Mr. Vincent Upton & Mr. Iain Douglas.

FAC Administration / Secretary to the FAC:

Ms. Aedin Doran, Ms. Roisin Moore & Ms. Ruth Kinehan.

The Appellant in the case of FAC 568/2020, Mr. _____, accompanied by Mr. _____ attended at the opening of the Oral Hearing. Following the introduction of attendees at the Hearing Mr. _____ raised issue with the membership of the Committee hearing the appeals and in particular in

relation to the membership of the Committee by an Employee of the DAFM. Mr. [redacted] also raised an objection to proceedings on the basis that he submitted that the Applicant is effectively the Minister. Mr. [redacted] sought that the FAC member concerned would recuse himself from the sitting of the FAC. This request was not acceded to. Mr. [redacted] sought an adjournment of the hearing. The adjournment was not acceded to by the Chairperson. Mr. [redacted] and [redacted] then withdrew from the Hearing. The Chairperson of the FAC confirmed that the FAC would proceed with the Oral Hearing of the two appeals (FAC 568/2020 and FAC616/2020) against the licence LS01-FL0090.

Decision

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notices of appeal, the Statements made by the Minister to the FAC, submissions made at the Oral Hearing and all other submissions received, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to set aside and remit the decision of the Minister regarding licence LS01-FL0090. The reasons for this decision are set out hereunder in this letter.

Background

The appeals that are the subject of this decision letter were previously determined by the FAC and notified by letter of 21/01/2021. The said determination affirmed the decision to approve the licence LS01-FL0090 and was challenged by way of a Judicial Review (2021 399 JR) taken by the Appellants, and which has resulted in the following order (perfected 19/12/2023) being made by the Courts:

In addition to holding the Oral Hearing, the FAC sought the views of the NPWS on the appeals. A response from the NPWS was received and a copy of this response was provided to all parties. The NPWS were also informed of the Oral Hearing and invited to attend but no representative was made available.

The proposal subject of licence LS01-FL0090

The decision under appeal relates to the granting of a felling licence at Sheskin, Co. Offaly. The application as submitted is dated 02/12/2019 and included operational and environmental information and maps outlining the licence area and operational and environmental features. The operations are described as involving the clearfelling in 2021 of an existing plantation comprising an area of 11.71 ha which was all Sitka spruce planted variously in 1987 (9.13 ha), 1988 (2.15 ha), 1992 (0.32 ha), and 2004 (0.07 ha) with the balance being windblown. The site would be replanted with Sitka spruce and 5% of the project area to be left as open space.

Appropriate Assessment Pre-Screening Process, dated September 2019 (Applicants)

The application material included a document entitled *Appropriate Assessment Stage 1 15km Pre-Screening Process*, dated September 2019, prepared on behalf of the Applicant. This report sets out that its purpose is to explain the preliminary assessment and objective criteria used in the determination of whether a plan or programme, alone and in combination with other plans and programmes, could have significant effects on a Natura 2000 site in view of the conservation objectives of the site. The zone of

influence, it states, for this appropriate assessment (AA) is 15km for Natura 2000 sites. The document goes on to describe in summary the process applied at screening stage.

Appropriate Assessment Pre-Screening Report (Applicants)

The Application was accompanied by an Appropriate Assessment Pre-Screening Report which is stated as being for project LS01-FL0090 comprising 11.71 ha located at Sheskin, Co. Offaly. It states that the harvest block is within 15 kilometres of six SACs. However the Slieve Bloom Mountains SAC (000412) is listed in duplicate resulting in there being five SACs listed as below. These are listed below with a distance quoted as being the closest distance from the centre point of the harvest block to the SAC.

- Slieve Bloom Mountains SAC (1,325.07 m distant),
- Slieve Bloom Mountains SAC (2,421.08 m distant),
- Charleville Wood SAC (13,846.29 m distant),
- Clonaslee Eskers and Derry Bog SAC (2,815.70 m distant),
- River Barrow and River Nore SAC (8,318.61 m distant), and
- Island Fen SAC (14,211.24 m distant).

The report states that the harvest block is within 15 kilometres of one SPA (overlaps) as below.

- Slieve Bloom Mountains SPA (Overlaps with Project Area).

The qualifying interests, relevant to each of the SACs and the SPA within 15 kilometres of the harvest block are listed and the reforestation objective for the harvest block is described as Conifer Forest for Wood Production. The report states that alone, the project does not represent a source, or if so, no pathway for significant effect on any European site exists. Thus, it states, there is no potential for it to contribute to any such effects when considered in-combination with any other plans/projects.

Possible In-Combination Effects (DAFM)

A separate report, with a title on its first page *Possible In-Combination Effects*, in relation to project LS01-FL0090, is to be found on file. It is undated and does not record who its author is. It records that *'The following online planning systems were consulted on the week of the dates indicated, focusing on the general vicinity of the project area in the River Sub Basin (Silver (Kilcormac)_020)'* and separately records that *'The Department of Housing, Planning and local Government website <https://www.housing.gov.ie> consulted on the week of the 29/04/2020, indicated the following in the general vicinity of the project'*.

Projects in the vicinity of the proposal LS01-FL0090 taken from the Laois County Council, Offaly County Council and EPA websites are listed in the assessment report. The report also records that the *'DAFM's internal records were also consulted on the week of the 29/04/2020. This identified various forestry-related projects (either submitted and still under evaluation, with valid licences / approval in place or completed and approved) in the general vicinity of the project as follows'*. A number of forestry related projects are listed in the assessment. The report contained an In-Combination Statement as below:

'Individually, the project does not represent a source, or if so, has no pathway for an effect on any of the Natura site's listed in AA screening conclusions for individual Natura sites table. Consequently, the DAFM deems that there is no potential for the project to contribute to any effects, 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 Natura 2000 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 the possibility of an effect on the Natura site(s) listed above'.

DAFM AA (Appropriate Assessment) Screening Report & Determination dated 03/06/2020

An AA screening Form (v 20) dated 03/06/2020 is to be found on file as prepared a Forestry Inspector, Department of Agriculture, Food and the Marine on behalf of the Minister. The screening refers to application LS01-FL0090 at Sheskin, Co Offaly. It describes the underlying soil types as Blanket Peats (22%), Peaty Gleys (72%) & Podzols (Peaty), Lithosols, Peats (6%). The slope of the project area is described as predominantly moderate 0-15%. The screening records considerations of seven European sites one of which (River Shannon Callows SAC is outside the 15 km radius of the project area). The seven sites are listed below.

- Slieve Bloom Mountains SPA (overlaps),
- Slieve Bloom Mountains SAC,
- Clonaslee Eskers And Derry Bog SAC,
- River Barrow And River Nore SAC,
- Charleville Wood SAC,
- Island Fen SAC, and
- River Shannon Callows SAC.

The AA screening considers each site in turn and records reasons for the screening conclusion reached. The screening document concludes that an AA was required in relation to one European Site, ie Slieve Bloom Mountains SPA.

DAFM Appropriate Assessment Report (AAR) 24/06/2020.

A separate AAR for felling and reforestation project LS01-FL0090, at Sheskin, Co. Offaly, (marked as prepared and reviewed by different Forestry Inspectors) is to be found on file. It is also marked as having had an ecological review which is dated 30/06/2020.

It records that the purpose of the AAR is to identify and characterise any possible implications arising from felling and reforestation project LS01-FL0090, either individually or in combination with other plans or

projects, in view of the conservation objectives of any European Site(s) screened in for Appropriate Assessment, and to identify and evaluate possible mitigation measures needed to avoid, reduce or eliminate the risk of such implications.

It states that the DAFM procedure for undertaking screening and appropriate assessment in relation to forestry projects is pursuant to Article 6(3) of the Habitats Directive, the European Communities (Birds & Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011) (as amended) and the Forestry Regulations 2017 (S.I. No. 191 of 2017), as amended by inter alia the Forestry (Amendment) Regulations 2020 (S.I. No. 31 of 2020).

The Report provides a description of the project at Section 4. At section 5 it records that the screening conclusions reached by the Forestry Inspector are upheld in relation to the seven European Sites examined in the AA Screening Report. At section 6 it provides an analysis of the potential adverse effects on the screened-in European Site(s) arising as a result of the felling and reforestation project LS01-FL0090 itself (i.e. individually). Potential adverse effects are stated to be assessed in view of best scientific knowledge, based on objective information in relation to the project. It states that where potential adverse effects are identified, appropriate measures to avoid, reduce or prevent such effects are identified.

At section 7 the report identifies and examines the implications of the proposed project on habitats and species not listed for the screened-in European site in question but upon which, the Special Conservation Interest and Conservation Objectives of that European Site depend. In relation to Hen Harrier (*Circus cyaneus*), it states that the opening of the canopy to pre-thicket in the future reforestation has the potential to provide breeding habitat for Hen Harrier (Wilson et al, 2009). It also states that a minimum of 3 rows of broadleaves adjacent to the setback of Silver (Kilcormac)_020 water body on the east of the plot will enhance connectivity provided by the water body acting as a corridor and haven for Hen Harrier prey species.

At section 8 the report describes the environmental management framework to be adhered to during the project's implementation which it states incorporates the mitigating principles required to ensure that the work is carried out in a way that avoids or minimises the potential for any environmental impacts to occur. It also sets out that the proposed works shall adhere to the following forestry-related guidelines / requirements / standards:

- Felling & Reforestation Standards (v.Oct. 2019) (see Forest Service Circular 14/2019).
- Appendix 21 of the Forestry Standards Manual (DAFM, 2015), which sets out an agreed protocol regarding breeding Hen Harrier and potential disturbance operations, developed by the Forest Service of the DAFM and the National Parks & Wildlife Service (NPWS).
- Felling & Reforestation Policy (DAFM, 2017).
- Environmental Requirements for Afforestation, December 2016 (DAFM, 2016), and
- Forestry Standards Manual (DAFM, 2015).

At section 9 it records that the potential for the felling and reforestation project LS01-FL0090 to result in impacts on the Special Conservation Interest and Conservation Objectives of the Slieve Bloom Mountains SPA 004160 was identified on a precautionary basis and goes on to set out site-specific measures prescribed by DAFM to mitigate against such impacts, to be inserted as conditions of the licence / approval, if subsequently issued. Section 10 of the report deals with the assessment of potential residual impacts. Section 11 of the report deals with In-Combinations and states that in relation to LS01-FL0090, the potential for the proposed project to contribute to an in-combination impact on European sites was considered by the Department of Agriculture, Food & the Marine (DAFM). It lists the online planning systems that were consulted as part of the assessment.

At section 11.6 the report includes a statement which concludes *'that the proposed felling and reforestation, with mitigation measures set out in Section 9, will itself (i.e. individually) not result in any residual adverse effect on the Slieve Bloom Mountains SPA 4160 and associated Special Conservation Interest 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 LS01-FL0090 only. Any subsequent forestry-related activity shall be subject to the DAFM Appropriate Assessment Procedure, including an in-combination assessment with the current proposal, prior to any future consent being granted'.

DAFM Appropriate Assessment Determination (AAD) 24/06/2020.

A separate AAD dated 24/06/2020 for felling and reforestation project LS01-FL0090, at Sheskin, Co. Offaly, (marked as prepared and reviewed by two different Forestry Inspectors) is to be found on file. It is also marked as having had an Ecological review by Niall Phelan, Environmental Facilitation dated 30/06/2020.

At section 1 it states that the purpose of the Appropriate Assessment (AA) Determination is to provide a statement for the public and for relevant bodies to ascertain that an Appropriate Assessment has been conducted in accordance with relevant regulations, and to allow interested parties to assess the determination reached by DAFM, as the competent authority. It also states that the DAFM procedure for undertaking screening and appropriate assessment in relation to forestry projects is pursuant to Article 6(3) of the Habitats Directive, the European Communities (Birds & Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011) (as amended) and the Forestry Regulations 2017 (S.I. No. 191 of 2017), as amended by inter alia the Forestry (Amendment) Regulations 2020 (S.I. No. 31 of 2020).

At section 2 it states that the felling and reforestation proposed under LS01-FL0090 at Sheskin is not directly connected with or necessary to the management of any European site and that therefore, in accordance with Article 6(3) of the Habitats Directive, the DAFM, as the relevant public body, undertook a screening for Appropriate Assessment to assess, in view of best scientific knowledge and the conservation objectives of the site, if the activity, individually or in combination with other plans or projects, is likely to have a significant effect on any European site. In this context, particular attention was paid to the following European site(s).

- Slieve Bloom Mountains SAC 000412,
- Clonaslee Eskers and Derry Bog SAC 000859,
- River Barrow And River Nore SAC 002162,
- Charleville Wood SAC 000571,
- Island Fen SAC 002236, and
- River Shannon Callows SAC 000216.

The AAD also states that in concluding the AA screening, and pursuant to Article 6(3) of the Habitats Directive, the European Communities (Birds & Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011) (as amended) and the Forestry Regulations 2017 (S.I. No. 191 of 2017), as amended by inter alia the Forestry (Amendment) Regulations 2020 (S.I. No. 31 of 2020), the DAFM has determined that there is the possibility of felling and reforestation project, LS01-FL0090 having a significant effect, either individually or in combination with other plans and projects, on the following European Site, for the reasons described.

- Slieve Bloom Mountains SPA 004160 - Possible effect – due to the location of the project within the Natura site.

Section 3 of the AAD records the Appropriate assessment of project LS01-FL0090 and Section 4 sets out the Determination for the project and the specific mitigation measures to be attached as conditions to the licence (if issued). The report records that the basis for this AA determination is as follows:

‘the felling and reforestation site is not within 1.2km of a known Hen Harrier nesting site within the SPA. No felling or forestry operations will take place within 100m of the forest edge in the breeding season for Merlin, while the habitat of the site in question is also not suitable for Hen Harrier foraging, nesting or roosting. With the conditions outlined above and with some prey habitat created along the creation of prey habitat along the Silver (Kilcormac)_020 water body, no negative impact is anticipated to the Qualifying Interest with some medium and longer term benefits expected. If notification of a new Red Area is given during the breeding season, any disturbance operations associated with the Felling Licence will cease immediately on receipt of notification, and unless otherwise agreed can only recommence after the breeding season’.

County Council Referral

The application was referred to Offaly County Council who responded in a letter dated 13/01/2020 as below.

'The site is located within the Slieve Bloom Mountains SPA.

The site is located within an Area of High amenity (ID: Slieve Bloom Mountains) and classified as High Sensitivity Landscape Area.

The western section of the tree felling area is located within a protected view (Map Ref.V02).

It is important that every effort is made to implement measures to protect water quality in this area and ensure there is no negative impact on the water quality as a result of this development. The development should be carried out in accordance with Forestry and Water Quality, Forestry Biodiversity, Forest Harvesting and the Environment, and Forestry and the Landscape Guidelines (Dept. of Agriculture)'.

The Licence

The licence was issued with conditions dated 15/07/2020.

Appeals

There are two third party appeals against the decision to grant the licence:

- FAC 568/2020 submitted by
- FAC 616/2020 submitted by

The grounds of appeal are summarised as follows:

FAC 568/2020

- Submission that the Appropriate Assessment screening did not comply with the decision of Finlay J in Kelly.
- Submission that the decision is invalid as the Minister is being a judge in this case.
- Submission that there has been no investigation as to whether the application site has complied with the requirements of EU law.
- Submission that according to the new bill the Minister has assumed control of the FAC.
- Submission that the basic requirements of the NPWS have not been complied with.

FAC 616/2020

- Submission that there is a breach of Article 4 (3) of the EIA Directive 2014/52/EU through failure to carry out screening for EIA.

- Submission that there is a breach of Article 4 (4) of the EIA Directive 2014/52/EU submitting that the licence application does not represent the whole project and that the application does not describe any aspects of the environment which are likely to be significantly affected.
- Submission that a licence has already been issued for part of this site (LS01-FL0093) with a more diverse re-stocking specification and that it is unclear as to which licence will apply to the area concerned.
- Submission that it is unclear which licence will apply to part of the project area as it is submitted that another licence (LS01-FL0093) covers part of the same area as licence LS01-FL0090).
- Submission that the licence and its associated operations threaten the achievement of objectives set for the underlining waterbody or waterbodies under the River Basin Management Plan for Ireland 2018-21.
- Submission that the Stage 2 AA determination is not legally valid.
- Submission that that DAFM has not sought the opinion of the general public under Article 6 (3) of the Habitats Directive on the Appropriate Assessment Determination.
- Submission that the licence conditions do not provide a system of protection for all wild birds during the period of breeding and rearing consistent with the requirements of Article 5 of the Birds Directive.
- Submission that the licence conditions do not provide a system of strict protection for the animal species listed in Annex IV (a) of the Birds Directive in their natural range, prohibiting deliberate disturbance of these species. particularly during the period of breeding, rearing, hibernation and migration.
- Submission that the harvest plan is not consistent with the Interim Standard for Felling & Reforestation.
- Submission that the licence should contain a condition requiring notification of commencement and conclusion of operations.

Ministers Statements (SOF)

The Minister provided a statement relating to each of the two appeals which was provided to the relevant parties. These statements outline the processing of the application and the issuing of the licence.

The statement in respect of FAC 568/2020 submits that:

'1) In regard to the granted Felling licence application LS01-FL0090, information submitted by Coillte in the form of maps (GIS and softcopy), harvesting and establishment operational procedures as well as an Appropriate Assessment Pre-screening Report and associated Pre-screening Report methodology document were considered during the licencing process.

The 11.71 ha felling and reforestation project licenced as LS01-FL0090 has been subject to the DAFM's AA Screening procedure, as set out in the document entitled Appropriate Assessment Procedure: Guidance Note & iFORIS SOP for DAFM Forestry Inspectors (v.05Nov19) (DAFM, 2019). The related AA screening document is on file. Appropriate Assessment screening was carried out by DAFM for European sites within 15 km from the clearfell and reforestation project submitted for licencing.

Having reviewed the details of relevant European sites their qualifying interests and conservation objectives, the DAFM identified the possibility of the project having a significant effect on screened European sites. As such, the clearfell and reforestation project was screened in (for the Slieve Bloom Mountains SPA 004160) and an Appropriate Assessment carried out. The AA Screening involved review of Special Conservation Interests and the Conservation Objectives of the above European sites (as set out in the corresponding Conservation Objective documents available from the National Parks & Wildlife Service). These have also been considered in the AA Report and AA Determination Statement on file.

The potential for the project to result in impacts on the Special Conservation Interest of the Slieve Bloom Mountains SPA 004160 was identified on a precautionary basis and site-specific measures prescribed by the DAFM to mitigate against such impacts were described. The mitigations ensure that the proposed project itself (i.e. individually) will not prevent or obstruct the Special Conservation Interests of the European sites from reaching favourable conservation status, as per Article 1 of the EU Habitats Directive. The measures described in the application documentation, together with adherence to relevant environmental guidelines/requirements/standards and to the site-specific mitigation measures set in the AA Report and AA Determination statement ensure that the proposed felling and reforestation project LS01-FL0090 will not result in any adverse effect on any European Site.

In relation to LS01-FL0090, the potential for the proposed project to contribute to an in-combination impact on European sites was considered by DAFM. It was concluded that the proposed felling and reforestation project, when considered on its own, will not result in any residual adverse effect the screened in European site and associated Special Conservation 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.

DAFM concluded that the identified potential pathways for any adverse effect are robustly blocked using avoidance, appropriate design and the implementation of best practice, and through the mitigation as set out within the AA Report and AA Determination Statement for LS01-FL0090.

DAFM determined, pursuant to Regulation 42(16) of the European Communities (Birds and Natural Habitats) Regulation 2011 (as amended) and based on objective information, that the project (LS01-FL0090), either individually or in-combination with other plans or projects, will not adversely affect the integrity of any European site. The site specific mitigations identified in the Report and AA Determination Statement were attached as conditions of the licence issued for felling and reforestation project LS01-FL0090'.

The statement in respect of FAC 616/2020 submits that:

'1) Whilst a provision in the Act does impose an obligation on the Minister in the making of the decision whether to grant a Tree Felling Licence (TFL), with or without conditions, or to refuse it, further to the making of an application for the same under the relevant statutory provisions, to also consider whether the performance of that function also requires the carrying out of a screening for an environmental impact

assessment (EIA) and if necessary the carrying out of an EIA, that statutory obligation is fully discharged once it has been clearly identified at the outset that application in question does not involve an activity or project that falls within the specified categories of forestry activities or projects set out in Schedule 5 Part 2 of the Planning and Development Regulations 2001, as amended, and in Regulation 13(2) of the Forestry Regulations 2017, and wherein relevant national mandatory thresholds and criteria for EIA are also prescribed.

In the case of the former, those are:

- *Projects involving the replacement of broadleaf high forest by conifer species, where the area involved would be greater than 10 hectares; and*
- *Projects involving deforestation for the purpose of conversion to another type of land use, where the area to be deforested would be greater than 10 hectares of natural woodlands or 70 hectares of conifer forest.*

In the case of the latter, those are:

- *Initial afforestation projects which would involve an area of 50 hectares or more; and*
- *Forest road works which would involve a length of 2000 metres or more.*

The standard operational activities of a) thinning or b) clear-felling and replanting already established forest areas are not so categorised and therefore a screening assessment for sub-threshold EIA does not need to be carried out by the Department in the case of applications for TFLs for these particular activities.

In regard to Article 4(3) of the EIA Directive, this Article requires that when a Competent Authority is considering whether a category of project listed in Annex II of the Directive or in any national transposing legislation, e.g. initial afforestation, should be subject to a sub-threshold EIA, it is required to take into account the relevant selection criteria set out in Annex III of Directive.

However, because the standard operational activities of clear-felling and replanting of an already established forest area are not so categorised either in Annex II of the Directive or in the national transposing legislation (and where the legislature had the discretion to include such activities had it wished to do so), a screening assessment for subthreshold EIA did not need to be carried out by the Department in this case and thus Article 4(3) of the Directive is not applicable.

2) Article 4(4) of the EIA Directive requires that where a category of project listed in Annex II of the Directive or in the national transposing legislation (i.e. where not otherwise automatically required by nationally prescribed thresholds or criteria) are required to be subject to a determination as whether a sub-threshold EIA needs to be carried out or not, the applicant is required to provide information on the characteristics of the project and its likely significant effects on the environment. A detailed list of information to be provided is specified in Annex IIA of the Directive (as transposed by Schedule 1 of the Forestry Regulations 2017) and includes, amongst other things, a description of the physical characteristics of the whole project.

However, because the standard operational activities of clear-felling and replanting an already established forest area are not so categorised either in Annex II of the Directive or in the national transposing legislation (and where the legislature had the discretion to include such activities had it wished to do so), a screening assessment for subthreshold EIA did not need to be carried out by the Department in this case and thus Article 4(4) of the Directive is not applicable.

Furthermore, were it the case (which it is not) that the application for a TFL involved an activity or project falling within the specified categories of forestry activities or projects which are subject to the requirements of the EIA Directive, then in the opinion of the Department the outputs from the Forest Management Unit (FMU) planning process undertaken by Coillte and any resultant Business Area Unit (BAU) strategic plan would still not be a material consideration in the Department's assessment inter alia of the potential environmental effect of the application.

Amongst other reasons, this is because the FMU planning process and any resultant BAU strategic plan is not an obligatory statutory process, arising either from the legislation governing the operation of the company (the Forestry Act 1988 and the Forestry (Amendment) Act 2009) nor from the provisions for forest management plans set out in Section 10 of the Forestry Act 2014. Similarly, they do not constitute a plan or programme subject to the requirements of the SEA Directive, as transposed inter alia by the European Communities (Environmental Assessment of Certain Plans and Programmes) Regulations 2004, as amended.

The FMU planning process and any resultant BAU strategic plan is entirely separate and diversely focussed process, with reviews every five years, undertaken by the Company (Coillte) –

- a) In order to set out a vision for the forests in each BAU and outlines how Company policies and objectives will be implemented within them; and*
- b) To meet the requirements of the externally accredited forest certification schemes to which the Company voluntary subscribes, namely FSC (Forest Stewardship Council) and PEFC (Programme for the Endorsement of Forest Certification).*

The process and any resulting plan neither involve the participation of the Department or its officials, nor the approval, formal or otherwise, of the Department. The plans are also subject to change and in the opinion of the Department do not provide the level of detail (were they to constitute some form of masterplan for EIA Directive related projects or activities) required to determine whether a particular project or activity envisioned thereunder and which was first required to be licenced by the Minister or by any other statutory consent authority could be assessed as to its likely to significant effects on the environment or otherwise.

3) See No. 2 above.

4) As indicated in the felling licence issued for LS01-FL0090, where an unexpired felling licence exists for any part of lands delineated in this Tree Felling Licence it is the newly issued tree felling Licence that will take precedence over the same areas delineated in the earlier licence.

5) The DAFM applies a wide range of checks and balances during its evaluation of felling licence applications in relation to the protection of water, as set out in the DAFM document *Forests & Water: Achieving Objectives under Ireland's River Basin Management Plan 2018-2021* (2018). Critically, any felling licence issued is conditional on adherence to the *Interim Standards for Felling and Reforestation* (DAFM, 2019), which set out a wide range of operational measures to prevent direct and indirect impact on water quality arising from the operation. These measures cover a wide range of issues, including pre-commencement awareness, contingency plan, exclusion zones, silt and sediment control, temporary water crossings, managing extraction, timing operations, monitoring, the preparation, storage and use of potentially hazardous material, and post-operation works.

In relation to reforestation, those Standards stipulate water setbacks adjoining aquatic zones, and these, together with the silt trapping and slow-water damming of forest drains required during felling, introduce a permanent undisturbed semi-natural buffer along the watercourse, developed primarily to protect water. The water-related eco-system services such a buffer delivers is described in the document *Woodland for Water: Creating new native woodlands to protect and enhance Ireland's waters* (DAFM, 2018), with benefits further enhanced if accompanied by adjoin native woodland. Further setbacks are also required along relevant watercourses and water-related hotspots throughout the site, where present. With the application of this restructuring, the level of protection regarding water will increase.

Regarding consultations, referrals to statutory consultees, including Inland Fisheries Ireland, National Parks & Wildlife Service and local authorities, are automatically triggered according to interactions with certain spatial rules. Discretionary referrals outside of these rules can also be triggered in individual cases, if deemed necessary. As set out in *Forests & Water*, DAFM has developed considerable experience in relation to the protection of water during the forestry licensing process, and is actively engaged in the WFD process, contributing proactively to both the 2nd cycle and the 3rd cycle, the latter currently under development. Therefore, while referrals are an important part of the evaluation process, the DAFM is fully informed of its responsibilities regarding the achievement of objectives under the WFD.

6) In regard to the granted Felling licence application LS01-FL0090, information submitted by Coillte in the form of maps (GIS and softcopy), harvesting and establishment operational procedures as well as an *Appropriate Assessment Pre-screening Report* and associated *Pre-screening Report methodology* document were considered during the licencing process.

The 11.71 ha felling and reforestation project licenced as LS01-FL0090 has been subject to the DAFM's AA Screening procedure, as set out in the document entitled *Appropriate Assessment Procedure: Guidance Note & iFORIS SOP for DAFM Forestry Inspectors* (v.05Nov19) (DAFM, 2019). The related AA screening document is on file. Appropriate Assessment screening was carried out by DAFM for European sites within 15 km from the clearfell and reforestation project submitted for licencing.

Having reviewed the details of relevant European sites their qualifying interests and conservation objectives, the DAFM identified the possibility of the project having a significant effect on screened European sites. As such, the clearfell and reforestation project was screened in (for the Slieve Bloom Mountains SPA 004160) and an Appropriate Assessment carried out. The AA Screening involved review of Special Conservation Interests and the Conservation Objectives of the above European sites (as set out in the corresponding Conservation Objective documents available from the National Parks & Wildlife Service). These have also been considered in the AA Report and AA Determination Statement on file.

The potential for the project to result in impacts on the Special Conservation Interest of the Slieve Bloom Mountains SPA 004160 was identified on a precautionary basis and site-specific measures prescribed by the DAFM to mitigate against such impacts were described. The mitigations ensure that the proposed project itself (i.e. individually) will not prevent or obstruct the Special Conservation Interests of the European sites from reaching favourable conservation status, as per Article 1 of the EU Habitats Directive. The measures described in the application documentation, together with adherence to relevant environmental guidelines/requirements/standards and to the site-specific mitigation measures set in the AA Report and AA Determination statement ensure that the proposed felling and reforestation project LS01-FL0090 will not result in any adverse effect on any European Site.

In relation to LS01-FL0090, the potential for the proposed project to contribute to an in-combination impact on European sites was considered by DAFM. It was concluded that the proposed felling and reforestation project, when considered on its own, will not result in any residual adverse effect the screened in European site and associated Special Conservation 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.

DAFM concluded that the identified potential pathways for any adverse effect are robustly blocked using avoidance, appropriate design and the implementation of best practice, and through the mitigation as set out within the AA Report and AA Determination Statement for LS01-FL0090.

DAFM determined, pursuant to Regulation 42(16) of the European Communities (Birds and Natural Habitats) Regulation 2011 (as amended) and based on objective information, that the project (LS01-FL0090), either individually or in-combination with other plans or projects, will not adversely affect the integrity of any European site. The site specific mitigations identified in the Report and AA Determination Statement were attached as conditions of the licence issued for felling and reforestation project LS01-FL0090.

7) In respect of opportunities for public participation in the decision-making process around applications for felling licences, under Part 6 of the Forestry Regulations 2017 (S.I. No. 191 of 2017) where the Minister for Agriculture, Food and the Marine receives such an application he or she is required amongst things to:

- Publish a notice of the application; and*
- Inform the public that any person may make a submission or observation in writing concerning the application to the Minister within 30 days from the date of publication of that notice.*

The notification of such felling licence applications and details of the arrangements for public participation are published and readily accessible on the Department's website. In the making of a submission or observation concerning such applications, this includes the opportunity for members of the public to make a submission or observation on the likely effect on the environment of the proposed felling activity.

In regard to Screening for Appropriate Assessment and Appropriate Assessment specifically, and the consideration, if appropriate, of the opinion of the general public in the making of a related determination under Article 6(3) of Habitats Directive –

a) Regulation 20 of the Forestry Regulation 2017 expressly provides that in the making his or her decision on a felling licence application the Minister must have had regard to any written submissions or observations made by the public under Part 6; and

b) Regulation 19(4) expressly requires the Minister when carrying out an Appropriate Assessment of the implications of a felling licence application for a European site, either individually or in combination with other plans or projects, and in view of that site's conservation objectives, in doing so, to take into account inter alia, and if appropriate, any written submissions or observations made by the public under Part 6.

The Department submits that these provisions, and any considerations and decisions made pursuant to them, fully concord with the requirements of Article 6(3) of Habitats Directive as regards public participation.

8) It's a principle of law that unless the grant of a first statutory licence, permit, permission, lease or consent, expressly exempts the holder thereof of any obligation to obtain a second licence, permit, permission, lease or consent required or to adhere to any other restrictions on the timing of activities or similar where such is set out by statute elsewhere, those other obligations and restrictions apply. The site-specific mitigations identified in the AA Report and AA Determination Statement were attached as conditions of licence issued for felling and reforestation project LS01-FL0090.

9) The site-specific mitigations identified in the AA Report and AA Determination Statement were attached as conditions of the licence issued for felling and reforestation project LS01-FL0090.

10) DAFM had considered the application and associated information as submitted by the applicant in support of the granted licence and deemed this information meeting DAFM requirements.

11) It is the Minister that may at any time attach or vary conditions to any licence granted (see Section 17.4 of the 2014 Forestry Act).

12) The use of plant protection products (PPPs) in Ireland, is governed by Statutory Instrument 155 of 2012 and Statutory Instrument 159 of 2012. Both of these S.I.s are based on, and give effect to, EU legislation on PPPs –

respectively Directive 2009/128/EC (concerning the sustainable use of pesticides) and Regulation (EC) No 1107/2009 (concerning the placing of plant protection products on the market). Users of PPPs shall apply the principles of Good Plant Protection Practice (GPPP), as provided for in S.I. 155 of 2012. These are published by the DAFM and provide the basis for the proper and appropriate use of these products.

There is no legal requirement for forest owners to inform adjacent land owners of their intention to spray, (although many do) nor is there a need for animals in adjacent properties to be moved as the application of this PPP is by hand in a very targeted manner that minimises exposure of the environment. Regulations require users of this PPP to be professionally trained and they are required to refrain from application within 20m of watercourses’.

Oral Hearing

An Oral Hearing of the appeal was held of which all parties were notified and representatives of the DAFM, the Applicant and the Appellants attended as previously described. The following includes a brief summary of the primary matters discussed. The DAFM representatives provided a summary of the processing of the application that led to the issuing of the licence and stated that it is the position of the Department that clear-felling and replanting an already established plantation forest is a standard operational activity and does not involve an activity or project that falls within the specified categories of forestry activities or projects subject to the requirements of the EIA Directive. They also referred to the protection of water quality and that it was dealt with within the licence conditions where operations are required to adhere to the Departments ‘Environmental Requirements’ and ‘Standards for Felling and Reforestation’ policy documents.

In relation to Hen Harrier, the DAFM representatives stated that the Department relies on the protocol agreed with the NPWS where High Likelihood Nesting sites are identified and that it is updated on a regular basis. He stated that DAFM uses this dataset to apply the timing restriction and that with regard to LS01-FL0090, based on the latest update of High Likelihood Nesting Areas layer that LS01-FL0090 does not fall within such an area and therefore the Department did not apply any timing restriction for the project.

The DAFM representatives further stated that in accordance with the High Court decision in relation to the judicial review of this licence decision the NPWS made a submission on the 23/10/2024 and that pending the outcome of the Oral Hearing, if the Department has the opportunity they will include this submission as part of their considerations in any new decision. The DAFM representatives stated that the application sought to replant 95% of the total area leaving 0.6 ha as open space and that the licence also included the planting of 3 rows of broadleaves on either side of the aquatic zone in addition to the water

setback and that taking the open space into account it is not accurate to say that the site would be replanted with 100% Sitka spruce.

The Appellant (FAC 616/2020) asked if the status of the licence has expired and read through his grounds of appeal. He stated that the Applicant had indicated that the nearest redzone was 800 meters and asked what the Applicant relies on to say this and queried if the Applicant has access to red zone Hen Harrier information. He made reference to the Conservation Objectives for the SPA, submitted that there was no clear assessment of the Site Conservation Objectives in the AA process for the proposal and submitted that consideration of not restocking the site should have occurred. He submitted that as the population of Hen Harrier breeding pairs has suffered a 25% decline then disturbance should not occur even at a level that affects one pair. He submitted that Hen Harrier are not site faithful but are area faithful.

He submitted that the NPWS response reads of the view that the site should not be replanted and that map zones may not be reliable as Hen Harriers move and that there should be consideration to not restock the site due to the overriding effects of afforestation. He referred to discussion at a previous Oral Hearing and was advised by the FAC that no details submitted in other hearings will be included in the current hearing specific to FAC 568 and 616/2020.

The Appellant (FAC 616/2020) continued with his submission stating that the location of Hen Harrier nests change on an annual basis, that they are not site faithful but are area faithful and move to adjust in terms of forestry. He submitted that not all nests are identified and queried if the precautionary principle protocol with reference to this licence was followed for all results identified. He also referenced a Bird Watch Ireland report from April 2024 '*Review of Mitigation of Hen Harrier and Merlin*'. He submitted that planting should not proceed unless pre-operational surveys are completed and asked for an update on the protocol and discussions between DAFM and National Park and Wildlife Service (NPWS) regarding the Hen Harrier protocol. He submitted that a seasonal licence is required, that there should be no pesticides in general areas, and not in European sites. He referred to SI 155/2012, paragraph 12 and said that this prohibits pesticides in EU sites unless obliged to use them. He submitted that the in-combination assessment for the licence is flawed as it was limited to the river sub basin boundary and must have the natura site approach. The entire SPA he submitted must be looked at and not just river sub basin as the Hen Harrier doesn't stick to sub-basin boundaries.

In relation to his appeal ground number seven, he submitted that public consultation is required, and the appropriate assessment was not subject to public consultation. On ground number eight the Appellant submitted that the Birds Directive requires that disturbance should be prevented and submitted that the Wildlife Act states forestry is exempt from disturbance of nests and eggs and that there are no legal consequences. On ground 11, the Appellant submitted that if the licence issued today that it would have commencement notices and that the DAFM needs to know when Coillte will be starting to plant in order to monitor conditions. The Appellant raised the EIA directive and referred to Annex 2 (13)(a), temporary deforestation and reforestation policy and submitted that Clear-fell should be subject to the EIA Directive and submitted that there is temporary deforestation when clearfell occurs stating that the DAFM policy is for Clearfell and Reforestation. He submitted that the scale of clearfell in this case is significant and can

have an effect on the Environment. He also submitted that screening for EIA is done by DAFM for application for private licences and not for Coillte applications.

The Appellant (FAC 616/2020) referred to the submission made by Offaly County Council and quoted from it, including in relation to the scenic nature and high amenity of the site, and that the western area is in a protected view. The Appellant submitted that there is a conflict within the licence and that there is no evidence that landscape was considered by the DAFM and asked how the Local Authority submission was considered by the DAFM. He submitted that he was aware that the DAFM is not obliged to take the requirements of a submission on board but should address it in its processing of the application. The Appellant further submitted that there is nothing on record as to why the submission from Offaly County Council was not considered and that the DAFM should show reasons why they have not taken on board the submission.

The representative of the Applicant addressed the hearing and as a preliminary matter to his submission, stated that the Applicant's submission to follow would be for the two appeals that are subject of the hearing and that a non-response to appeal grounds does not mean acceptance by the Applicant of those grounds.

The Applicant's representatives then proceeded to give a summary of the application process from 6 years ago and spoke about the harvest procedure that the Applicant follows. He spoke about the particulars of the site, the screenings undertaken, the approach taken to restocking and the Applicant's pest management system. He also set out that the screening for European Sites established that there were six sites within the zone of influence and that the project area overlaps with the Slieve Bloom Mountains SPA. He stated that there was no hydrological connection to European Sites other than the River Shannon Callows which was at a distance of approximately 45km and originating from a stream at the north-east of the project area.

A representative on behalf of the Applicant submitted that there was no change in landuse in this case and that felling had occurred before the notification of the Judicial Review application had been received. He stated that the area remains unplanted. He referred to the training and operational pack that the Applicant provides to its contractors, stated that visual monitoring of water features occurs during operations and that there was one log buffer in place in this case. He submitted that in relation to replanting that the Applicant intends to follow the requirements of licence.

An Ecologist on behalf of the Applicant addressed the hearing and gave an overview of the Appropriate Assessment process relating to this project. She submitted that while the data from 2019 is different to what it might be today that she considers the 2019 Appropriate Assessment process to be robust and that none of the five SACs within the zone of influence overlapped with the project area. She submitted that the site was 1.3 km from the core habitat and that no ecologist would consider that snails were valid for this project and referenced that the Clonaskee Eskers and Derry Bog SAC is some 2.8 km distant. She submitted that the Hen Harrier was the main concern as the proposal was within the SPA. It was stated

that at the time of this licence application, Coillte did not have access to the contemporaneous survey data and that Coillte notify DAFM if Hen Harrier's are seen.

A representative on behalf of the Applicant stated that Bird Watch Ireland is assisting with policy development. Coillte, it was submitted is also working with NPWS on improving landscapes and that there is a memorandum of understanding (MOU) in place between Coillte and the NPWS. He also stated that there is a working group in the Slieve Blooms to improve landscape there. In response to a question from the FAC Chairperson the representative advised that the MOU was signed with experts in Coillte and NPWS, and a copy of this MOU would be sent to FAC.

The Chairperson asked the Applicant's representatives to address the question posed by the Appellant earlier in relation to the landscape designations and the category 3 as referenced by the Applicant. A representative of the Applicant provided a commentary as an explanation of the categories where an area of high visual impact is category 1, an area of medium visual impact is category 2 and area of low visual impact is category 3. The Appellant (FAC 616/20220) queried the scale from 1 to 32 as referenced and made reference to works done on landscape classification by i. The Applicant's representative explained that the entire estate is broken into areas and that these numbers refer to these specific areas and that the scale 1 to 32 refers to location rather than being a rating.

The Chairperson asked the DAFM for the dates of the AA Screening, AA Report and AAD. The DAFM's representative advised that the date of the AA Screening was 03/6/2020, the date of the AA Report was 24/6/2020 and the date of the AA Determination was 26/6/2020. He also stated that the AA Report and AA Determination were reviewed and completed on 30/6/2020.

Following a resumption of the hearing following a lunch break an Ecologist on behalf of the DAFM addressed the suggestion in the NPWS submission that the project work would occur from August 15th to February. He submitted that the next sentence in the submission states if work starts outside this period that appropriate assessment is to be undertaken which had occurred in this case. He stated that as a contract Ecologist with the DAFM he has access to the Hen Harrier data. He referred to Section 7.2 of Hen Harrier threat response plan (2022-2024), which he submitted mentions the strategic use of landscape and open space in relation to Hen Harrier and that addressing Hen Harrier on a block-by-block basis would not be strategic.

A DAFM representative addressed the question raised about the status of the licence and expiry, referenced the two-year timeframe / requirement to replant and stated that the replanting had not taken place. He submitted that it was not accurate to say the licence is dead. In relation to the matter of the AAR not having been subject to public consultation as queried by the Appellant (FAC 616/2020) he accepted that it should have been. He submitted that commencement notices do not appear in all licences and that it is not the DAFM policy. He stated that Coillte do notify the DAFM of every harvesting operation. He also stated that there is a desk check weekly on Hen Harrier sites.

He submitted that the application is 100% Sitka but there will be three rows of broadleaf trees and that the DAFM guidelines have been adhered to. He submitted that the DAFM did consider landscape in its assessment and that the Local Authority submission was to advise of the location of the project within the scenic location designation. In relation to the regulation of pesticides he stated that SI 155/2012 was replaced by SI 438/19. He further stated that the DAFM is happy with the sub catchment approach in relation to its In-Combination assessment of projects and that other distance would not yield a different result.

The Appellant (FAC 616/2020) submitted that the licence says in schedule 3 a 100% restock. The DAFM representative submitted that conditions on a licence take precedence over the schedule. Schedule 3 he submitted is Sitka spruce and that there would be a buffer zone and three broadleaf rows. The Appellant (FAC 616/2020) stated that the in combination statement has no date and refers to week of 29/04/20 and asked who issued the statement. The DAFM representative stated that 29/04/20 is the date the County Council website was consulted, and it was done by a Forestry Inspector. The Chairperson queried to the DAFM representative in relation to the date the process came to conclusion and how it related to the completion of the AA Report. The DAFM representative stated that the In-Combination and the AAR were signed off together and referenced page 32 of the AAR at section 11.6 which was signed on the opposite page by who completed it and the date. He added that the in combination starts on page 13.

The Appellant (FAC616/2020) asked if the second in combination is null and void. The DAFM representative said the dates are the same, prepared separately and incorporated. The Chairperson asked if there is a specific piece of wording that captures the wording of the In-combination assessment. The DAFM representative stated that it was further on in the document. The Appellant (FAC 616/2020) Mr. asked if the In-Combination assessments were separated and the DAFM representative replied that they were done on a different date, and none were done as an appendix to a report. The Appellant (FAC616/2020) stated that the language in the In-Combination at the beginning of paragraph two is one that FAC has rejected before, and the DAFM representative agreed.

In a response to a question from the FAC the Applicant's representative confirmed the *3 rating* used for landscape represented a low rating.

In a response to a question from the FAC the Appellant stated that he had received correspondence from a member of staff of the NPWS, who has since retired, saying to him that the Wildlife Act is not complying with EU law and stated that he would provide a copy to the FAC. A copy of a correspondence which is reflective of the verbal submission made at the hearing was since received by the FAC from the Appellant (FAC 616/2020). The Appellant (616/2020) submitted that the proposal might be considered as rehabilitation in line with the views expressed in the document Interpretation of Definition of Project Categories of Annex 1 and 2 of EIA directive, European Commission, 2015.

In response to a question from the FAC as to whether the AAR was specifically published at the time the DAFM representative stated that the processing of the application predated the Forestry Licence Viewer (FLV) and there was a submission from the Appellant (FAC 616/2020). In relation to the Water Framework

Directive sub basins the DAFM representative stated that there appeared to be an error in the description relating to the sub-basins as it appeared in the DAFM AAS. In response to a query from FAC as to whether the entire SPA area should be considered and not just the sub-basins given that birds don't stop at boundaries, the Ecologist representing the DAFM submitted that the In-Combination assessment is sufficient as it takes into account the NPWS layers for Birds.

In response to a query from FAC as to why the Shannon Callows SAC was screened in and that the Shannon Callows SPA was not while being the same area, the Ecologist representing the DAFM submitted that it related to the distance for foraging and that there has to be a cut off and that it is 15Km. The Appellant (FAC616/2020) stated that this means that the DAFM is concluding based on something that hasn't been considered. The Applicant's representative stated that the Coillte interpretation of condition (i) on the licence concurs with the DAFM submission made earlier in the hearing.

The Appellant (FAC 616/2020) said that the foraging table and habitat have not been reviewed and that the DAFM operate on the basis that they are scientifically justified and queried if they had been peer reviewed. The DAFM representative rejected the assertion that they are not scientifically based and stated that Bird Watch Ireland fed into their work.

The Chairperson referred to the water setback requirements in the licence and queried if the setback of 20m is sufficient to prevent the trees impacting on water quality. The DAFM representative stated that the water quality and set back is set out in the DAFM documentation such as Woodlands for Water and that the information submitted by the Applicant included maps of the proposal.

Consideration by the FAC

In relation to the submission in the grounds of appeal that the basic requirements of the NPWS have not been complied with as raised in FAC 568/2020, the FAC noted the submission from the NPWS following the referral of the application to it:

J. The licence application was not referred to the NPWS and the NPWS made no submission on the application. The FAC also noted the submission from the DAFM representative at the Oral Hearing to the effect that the NPWS submission of the 23/10/2024 would, if the Department has the opportunity, be included as part of their considerations in any new decision that the DAFM will make on the application. The decision in this case is being set aside and remitted for reasons set out elsewhere in this letter and the FAC recommends that the DAFM should consider the submission from the NPWS before a new decision is made on the application. The submission from the NPWS considered it necessary for this proposal to be screened for Appropriate Assessment.

The FAC considered the contention in the grounds and as raised in FAC 568/2020, that there has been no investigation as to whether the application site has complied with the requirements of EU law. The Information available to the FAC from the application materials indicated that the existing forest was planted variously in 1987, 1988, 1992 and 2004. There is no information before the FAC that this was initial afforestation or replacement of existing forestry, or if the forestry, the subject of the current proposal, is in any way, unauthorised. Based on the information before it on this issue, the FAC finds no

reason to conclude that there was any significant or serious error made in the making of the decision to grant the licence as it relates to this contention.

In relation to the role of the Minister for Agriculture, Food and the Marine in issuing licences for forestry activities as referred to in the grounds of FAC 568/2020, this is provided for under the Forestry Act 2014 and the Forestry Regulations 2017. An appeal to the Forestry Appeals Committee is not the correct forum in which to challenge such provisions of the forestry legislation itself as the FAC is not the competent authority to address such a challenge. Similarly, the FAC does not consider its function to extend to making determinations on the Agriculture Appeals Act itself. The function of the FAC is to determine appeals against certain decisions of the Minister for Agriculture, Food and the Marine made under section 7 of the Forestry Act 2014 and the Forestry Regulations 2017 and it is independent in its function as provided for in the Agriculture Appeals Act 2001-2020.

The FAC considered the contentions raised in the grounds of appeal that 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. Forestry projects are not 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 and subsequent replanting of 11.71 ha of commercial managed forest. Such activity involves ongoing, standard operations within the same land use. 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 in the grounds of appeal that it is unclear which licence will apply to part of the project area as it is submitted that another licence (LS01-FL0093) covers part of the same area as licence LS01-FL0090. The FAC noted the submission from the DAFM in its SOF wherein it sets out that as indicated in the felling licence issued for LS01-FL0090, where an unexpired felling licence exists for any part of lands delineated in this Tree Felling Licence it is the newly issued tree felling Licence that will take precedence over the same areas delineated in the earlier licence. Based on the information available to it the FAC considers that the DAFM has not erred in its processing of the application as it relates to this ground of appeal.

The FAC considered the contention in the grounds of appeal that the licence and its associated operations threaten the achievement of the objectives set for the underlying waterbody (or waterbodies) under the River Basin Management Plan 2018-2021. In doing so, the FAC noted the content of the DAFM statement,

which outlines the checks and balances applied during the evaluation of felling licence applications, in relation to the protection of water. The statement also sets out that any felling licence issued is conditional on adherence to the Interim Standards for Felling and Reforestation (DAFM, 2019), which set out a wide range of operational measures to prevent direct and indirect impact on water quality arising from the operation and that these measures cover a wide range of issues, including pre-commencement awareness, contingency plan, exclusion zones, silt and sediment control, temporary water crossings, managing extraction, timing operations, monitoring, the preparation, storage and use of potentially hazardous material, and post-operation works.

The project is located within the Silver (Kilcormac)_020 sub-basin and the waterbody has been assigned a GOOD status during the 20216-2021 monitoring period. The project also lies in the broader Silver (Kilcormac_SC_010 which was correctly described in the documentation. Based on the information available to it and having regard to the scale, nature and location of the project, the conditions under which operations would be undertaken, the conditions attached to the licence regarding water quality (k, l, m, n, o, and p), and condition q, the FAC is not satisfied that there is any reason to consider that the proposal represents a significant threat to water quality of the objectives of the Water Framework Directive. However, the FAC did note the language employed in condition k) is expressed in an advisory rather than a mandatory manner,

K) Aquatic zone setbacks should be installed and maintained at reforestation as specified in the Environmental Requirements for Afforestation (DAFM, 2016) (see Tables 5 & 6, primarily), setback widths may vary within a the project area but should reflect: (i) the slope leading to the aquatic zone; (ii) whether the project area is on peat soils; and (iii) whether the project area is within the catchment area of a high status waterbody.

The FAC considers this to be a serious error as the FAC considers that conditions should be included where necessary and should be clear and readily enforceable.

The FAC noted that both appeal FAC 568/2020 and appeal FAC 616/2020 raised concerns in relation to the Appropriate Assessment of the project. The FAC considered these grounds of appeal relating to the Appropriate Assessment of the project. In this connection the FAC finds on file:

- A DAFM In-Combination report which is undated,
- A DAFM AA (Appropriate Assessment) Screening Report & Determination dated 03/06/2020,
- A DAFM Appropriate Assessment Report (AAR) dated 24/06/2020, and
- A DAFM Appropriate Assessment Determination (AAD) 24/06/2020.

The FAC would understand that the consideration of other plans and projects should take place as part of the process to ascertain whether the project, either individually or in-combination with other plans or projects, is likely to have a significant effect on a European site. The FAC finds that the report described as In-Combination Statement on file, which is undated, states that data sets (County Council Website, An

Bord Pleanála Website, EPA Website and other forest plans and projects) were consulted on the week of the 29/04/2020. The FAC finds that this report sets out that Objectives relating to Natura 2000 sites set out within the Laois County Development Plan 2017-2023 was consulted on the week of the 29/04/2020 however no record exists within the report to state whether the Offaly County Development Plan, within which administrative area the project is located, was similarly consulted. Neither is there any reference within the report that any spatial analysis informed the assessment as to what European Sites were within the zone of influence of the project or whether any sites within the zone of influence were screened in or screened out for stage 2 Appropriate Assessment.

The FAC finds that the In-Combination Statement included in this undated report is as follows:

'Individually, the project does not represent a source, or if so, has no pathway for an effect on any of the Natura site's listed in AA screening conclusions for individual Natura sites table. Consequently, the DAFM deems that there is no potential for the project to contribute to any effects, 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 Natura 2000 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 the possibility of an effect on the Natura site(s) listed above'.

The FAC considers that the DAFM has erred in its completion of this statement as it relies on a list of Natura Sites as being listed in the report and there is no such list to be found in the report as made available to the FAC. The FAC further considers that this represents a serious error in the processing of the application.

The FAC also notes that the DAFM Appropriate Assessment Screening Determination for the project (03/06/2020) postdated the time when the various data sets were consulted as an input to this In-Combination Assessment.

The FAC noted the clarifications provided at the Oral Hearing in relation to In-Combination to the effect that the In-Combination assessments were signed off concurrent with the completion of the DAFM AAR for the project. In connection to this the FAC notes that the AAR at section 11 deals with In-Combination effects and records that data sets (County Council Website, An Bord Pleanála Website, EPA Website and other forest plans and projects) were consulted on the week of the 24/06/2020. The FAC finds that similar to the undated separate In-Combination statement on the file record that Objectives relating to Natura 2000 sites set out within the Laois County Development Plan 2017-2023 was consulted on the week of the 24/06/2020 however no record exists within the report to state whether the Offaly County

Development Plan, within which area the project is located, was similarly consulted. The FAC finds that the In-Combination Statement included at 11.6 of the AAR is as follows:

'This project lies in a rural landscape in Sheskin, Killinaperson, Magherabane Co. Laois in the River Sub Basin Silver (Kilcormac)_020. The River Sub Basin Silver (Kilcormac)_020 has approximately 24% forest cover which is higher than the national average of 11%. At 11.71 hectares the project is considered medium in scale. Forestry activity including afforestation, forest roading and felling, have been either submitted and still under evaluation, licenced / approval in place or completed and approved in the River Sub Basin in the last 5 years and are listed above. These are subject to environmental protection measures. A number of developments in the River Sub Basin Silver (Kilcormac)_020 have been granted planning permission over the last five years and these are listed above and are also subject to appropriate environmental protection measures. As can be seen from the ortho photo this forest adjoins another forest. In order to protect the existing forest resource within the Slieve Blooms, the applicant upgraded an existing fire line at an area known as The Cut in 2018 on instruction from the fire services. This fire line measures c. 920 m in length and is 5091 m from the project area for LS01-FL0090. Maintenance and upkeep of fire lines is not licenced by the DAFM.

It is concluded that the proposed felling and reforestation, with mitigation measures set out in Section 9, will itself (i.e. individually) not result in any residual adverse effect on the Slieve Bloom Mountains SPA 4160 and associated Special Conservation Interest 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 LS01-FL0090 only. Any subsequent forestry-related activity shall be subject to the DAFM Appropriate Assessment Procedure, including an in-combination assessment with the current proposal, prior to any future consent being granted'.

The FAC considers that it is not clear that the wording in the In-combination statement contained within the AAR demonstrates that the potential for significant effects to arise from the proposal in-combination with other plans and projects, as it relates to screened out sites, was considered by the DAFM as the wording refers to consideration on the basis that there is no likelihood of 'residual effect(s)' that might arise, which are not significant in themselves, creating a significant effect in combination with other plans and projects.

In the FAC's view, the reference to 'residual effects' in the In-Combination report / assessment within the AAR, if it is intended to deal with the screened-out sites, creates confusion as it is not clear what effects are being referred to in this instance and there is no explanation as to what gives rise to these effects such that they can be described as being 'residual'.

The FAC would understand that the term residual is generally used in the context of what remains after an action is undertaken. In the context of Appropriate Assessment (AA) the term 'residual effects' is more commonly employed in relation to the consideration of what effects remain after mitigation measures have been assessed as part of the AA. For example, the Department of the Environment, Heritage and Local Government published a guidance document on Appropriate Assessment entitled Appropriate Assessment of Plans and Projects in Ireland Guidance for Planning Authorities (DEHLG, 2009). This document states on page 40,

'If the competent authority considers that residual adverse effects remain, then the plan or project may not proceed without continuing to stage 3 of the AA process: Alternative Solutions'.

The FAC considers that neither the undated separate In-Combination assessment and Statement nor the In-Combination Assessment and Statement within the body of the AAR demonstrably deals adequately with the screened out sites and further considers that this represents a further serious error in the processing of the application. The FAC noted that the DAFM representative acknowledged at the Oral Hearing that the use of the term 'residual effects' within the In-Combination Statement was an error. The FAC would agree with this in so far as it relates to an In-Combination assessment for screened out sites.

The FAC considered the contentions in the grounds of appeal relating to the publication of the AAR as a consultation with the public in relation to Appropriate Assessment. The FAC noted that both the DAFM AAR and the DAFM AAD bear the same date. The FAC also noted the contribution from the DAFM representative at the Oral Hearing that the AAR was not published at the time of its completion and that same should have been. The FAC considered that the non-publication of the DAFM AAR as part of the consultation process and in advance of reaching the Appropriate Assessment Determination relating to the project LS01-FL0090 is a further serious error in the processing of the application in this case.

As recognised during the Oral Hearing by the DAFM, the statement in the AA determination that *"No felling or forestry operations will take place within 100m of the forest edge in the breeding season for Merlin, while the habitat of the site in question is also not suitable for Hen Harrier foraging, nesting or roosting."* represented a further error as there are no such provisions in the assessment or licence.

In relation to the general AA and mitigation approach adopted by the DAFM, the FAC has previously commissioned a report by an independent ornithologist and this report is available on the website of the Agriculture Appeals Office (Ornithological Opinion on conditions attached to appealed felling licences, specifically relating to the protection of the Hen Harrier and/or Merlin. Report to the Forestry Appeals Committee. Dr. Alan Fielding. 2nd December 2021), which recommended the extension of the time period adopted in the measure. The DAFM approach is based on an information sharing protocol agreed with

the NPWS and the NPWS recommended AA screening where works might occur outside of the period 15th August to the 28th of February. Neither of the submitted appeal grounds provided a basis as to how the licenced activity would impact on the integrity of the SPA or what specific concerns they had regarding the licenced area under appeal as opposed to the overall status of the species within the designated area as a whole. Both the Applicant and the DAFM put forward the views of qualified ecologists who both shared the view that the proposal would not have an impact on the integrity of the SPA and that the management of lands for Hen Harrier should be addressed on a landscape level. The conservation objectives of the SPA include targets for population size and spatial utilisation but also include an objective in relation to the age structure of the forest estate and the proposal, by its nature, would contribute to diversifying the age structure of the forest estate within the SPA. Neither Appellant has claimed to have any ecological or ornithological qualifications or expertise, nor have they submitted an opinion of such an individual in relation to their specific appeals against the licence decision. While the report referred to by the Appellant (FAC616/2020) suggests that Bird Watch Ireland has recommended improvements on the overall approach and measures adopted by the DAFM, that report postdates the assessment process undertaken by the Minister. The DAFM has already accepted that errors were made in the assessment process, and the decision is being remitted to the Minister for Agriculture to undertake a new screening and, as required, Appropriate Assessment.

The NPWS submission on the appeals makes reference to the replanting schedule and suggests that DAFM requirements in relation to species and areas for biodiversity enhancement were not being adhered to but such requirements relate to specific grant aid schemes of the DAFM.

The grounds of appeal submit that the harvest plan is not consistent with the requirements of the Interim Standard for Felling & Reforestation, while not submitting specific concerns. A harvest plan, mapping and project description was provided with the application which outlined inventory and restocking details and maps identifying the proposal, forest roads, water courses, designated sites and other environmental features. In its statement to the FAC the DAFM asserts that the application and associated information as submitted by the applicant in support of the application was considered and deemed as meeting the Department's requirements. Based on the information available to it, the FAC is satisfied that the information submitted with the application was sufficient to inform the decision-making process in this case. While setting down the content of a Harvest Plan the Standards for Felling and Reforestation do not require an applicant to submit such a plan unless required by the Minister for Agriculture, Food and Marine. Neither is the FAC satisfied that the DAFM has erred in its processing of the application as it relates to this ground of appeal.

In relation to the submitted grounds of appeal (No 7 and No 8 FAC 616/2020) that the licence conditions do not provide a system of protection for wild birds during the period of breeding and rearing consistent with Article 5 of the Birds Directive and relating to a system of strict protection for the animal species listed in Annex IV(a) of the Habitats Directive, the FAC considered that the granting of a felling licence does not exempt the holder from meeting 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, or details of any animal species for which licence conditions should be provided. The FAC

also noted that the licence conditions contain reference to standards of good forestry practice. Based on the evidence before it, the FAC is not satisfied that an error was made in relation to the processing of the licence as it relates to these grounds in the appeal.

The Appellant (FAC616/2020) made reference to communication that they have with the NPWS and a suggested acceptance on behalf of the NPWS that Wildlife legislation was deficient. The FAC does not consider its function to extend to making determinations on the legality of the Wildlife Act and did not consider the submission to be relevant to the appeal decision.

Regarding the conditions that the grounds in appeal FAC 616/2020 suggested should be attached to the licence relating to commencement and conclusion of operations, inspections, and notification in the case of the spraying of any chemicals, the FAC noted the response provided to it by the DAFM in its SOF and considered that the Minister may attach conditions, including the erection of site notices and any other environmental or silvicultural requirements, as the Minister considers appropriate. The FAC considers that the DAFM has not erred in its processing of the application as it relates to these grounds of appeal nor does that FAC, based on the information available to it, consider that the inclusion of the conditions relating to these grounds in the appeal in this case, was required.

The FAC concluded that the decision in relation to licence LS01-FL0090 should be set aside and remitted in accordance with Section 14B of the Agriculture Appeals Act 2001, as amended, and given the nature of the errors, the FAC considered that the Minister should subject the proposal to a new Appropriate Assessment screening that identifies and assesses likely significant effects on European sites of the proposal itself and in-combination with other plans and projects and, where they occur, mitigation measures and an assessment as to whether the proposal would impact on the integrity of a European site and to consider the submission from the NPWS dated 23/10/2024, before a new decision is made. The FAC considers that a new period of public consultation should be undertaken prior to the making of a new decision.

Yours sincerely,

Seamus Neely,
On Behalf of the Forestry Appeals Committee