



15th October 2025

Subject: Appeal FAC108/2024 in relation to the decision to grant tree felling licence CE02-FL0267

Dear

I refer to the appeal to the Forestry Appeals Committee (FAC) in relation to the above licence decision issued by the Minister for Agriculture, Food, and the Marine (the Minister). The FAC, established in accordance with Section 14A (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.

Hearing

A hearing of appeal reference FAC108/2024 was held remotely on the 23rd September 2025.

In attendance:

FAC Members: Mr. Donal Maguire (Deputy Chairperson), Mr. Iain Douglas & Mr. Vincent Upton.

FAC Administration: Ms. Aedín Doran

In the particular circumstances of this case, the FAC considered that it was not necessary to conduct an oral hearing in order to properly and fairly determine the appeal.

Decision

Having regard to the information before it, including the record of the decision on the Forestry Licence Viewer (FLV), the notice of appeal, the Statement of Fact (SOF) from the Department of Agriculture, Food, and the Marine (DAFM) and submissions received, the FAC has decided to allow the appeal and set aside the decision of the Minister to grant tree felling licence CE02-FL0267 for the reasons set out hereunder.

Background

The appeal relates to the decision of the Minister for Agriculture, Food and the Marine to grant a tree felling licence on 17.25 hectares at Affick, Derryulk Upper, Loughaun North, Co. Clare. The application is

recorded as having been published on 13th July 2022. The application included operational and environmental information, including a number of maps.

The trees to be felled are divided into a number of sub-compartments and comprise Sitka spruce and a smaller area of wind-blown Japanese larch. The trees were scheduled for felling in 2024 at 33 years of age with a smaller area at 39 years. As described in the application the lands border a public road and are crossed by a forest road and an aquatic zone. The lands are also located within a Special Protection Area. The forest would be clearfelled and then replanted as described.

The application was accompanied by a document described as an Appropriate Assessment pre-screening report and a Natura Impact Statement (NIS). This described the proposal and lands in further detail and considered likely significant effects on the conservation interests of European sites.

The pre-screening determined that the proposal should proceed to AA Stage 2 in relation to potential effects on a number of aquatic based interests of the Lower River Shannon SAC and the two bird species for which the Slieve Aughty Mountains SPA is designated. The NIS describes the operations and the likely effects, and the measures proposed to mitigate those effects. In relation to bird species, this includes a temporal restriction on operations.

The DAFM recorded an Appropriate Assessment (AA) Screening Report and Determination dated 27th October 2022 which described the proposal and lands and considered potential significant effects on European sites. Twenty-six European sites are considered, one of which lies beyond 15km of the proposal lands. Each European site is considered in turn with its interests and objectives and reasons are provided for the screening conclusion. The screening determined that the proposal should proceed to Appropriate Assessment in relation to potential significant effects three European sites, Slieve Aughty Mountains SPA IE0004168, Lower River Shannon SAC IE0002165 and River Shannon and River Fergus Estuaries SPA IE0004077. Other plans and projects considered in-combination with the proposed felling are also recorded. The DAFM recorded an AA Determination dated 28th October 2022 that provides an overview of the screening process, the sources of information and the measures deemed required to ensure that the proposal would not adversely affect the integrity of a European Site. The Determination concludes,

Therefore, the Minister for Agriculture, Food & the Marine has determined, pursuant to Regulation 42(16) of the European Communities (Birds and Natural Habitats) Regulations 2011 (as amended) and Regulation 19(5) of the Forestry Regulations 2017 (as amended), based on objective information, that no reasonable scientific doubt remains as to the absence of any adverse effect on the integrity of any European site.

The application was subject to two periods of public consultation and no submissions from the public are recorded. The application was referred to the NPWS and Clare County Council and responses from both were received. The NPWS noted the location of the proposal within an SPA and noted the requirements of the Birds and Habitats Directive and recommended screening for Appropriate Assessment. It further recommended that felling work within the HLNA (Higher Likelihood of Nesting Area) take place outside of the breeding season or that a survey be undertaken. It also requested that the local Conservation Ranger

be contacted at least four weeks prior to felling. The County Council also noted the location within an SPA and upstream of a European site and suggested screening for Appropriate Assessment be undertaken. The submission included comments in relation to roads and recommended a number of conditions be attached to the licence in relation to water quality and other matters.

A decision to grant the licence was made on 8th November 2022. On 16/09/2024, the DAFM wrote to the applicant suspending the licence and stopping works on the basis that the licence was not properly advertised when the licence was issued. A second AA Determination is on file dated 19/09/2024 which contains the same conclusions as that dated 28/10/2022. The file contains a tree felling licence for CE02-FL0267 dated 26th September 2024.

Grounds of Appeal

There is one third party appeal against the granting of the licence which was received by the FAC on 7th October 2024 and the notice of appeal and full grounds of appeal have been provided to the parties. In brief summary the grounds contend,

That work had commenced on the site, and a significant area has been felled and trees removed and that the project area is now not the same as in 2022.,

That the application was incomplete as it did not contain a management plan for Plot 2 which has a Biodiversity (BIO) Reforestation Objective.,

That the assessment under Article 6(3) of the Habitats Directive does not contain precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works on the protected area concerned. The grounds make specific reference to the fact that works had commenced and submits that when the licence issued the site area did not contain 100% WD4, that the conclusions in relation to hen harrier and merlin habitat were no longer correct and that no new assessment had been undertaken and that the assessment undertaken was deficient including in relation to hen harrier, merlin and the consideration of other plans and projects in combination with the felling.,

That the DAFM procedures are not consistent with the requirement for providing a General system of protection commensurate with Article 5 of the Birds Directive and that the provisions of the Wildlife Act are deficient.,

That there is no strict system of protection in place under Article 12 of the Habitats Directive (Annex IV species).,

That there are mapping deficiencies and omissions in the application in relation to features and scales.,

That there was inadequate and ineffective public notice in contravention of Article 6(2) of the Aarhus Convention.,

That there were no conditions to protect local residents.,

That access to justice is prohibitively expensive.,

That there has been no assessment of carbon emissions from the project.,

That there is risk of colonisation of Annex I habitat by re-seeding conifers.,

That the project is not consistent with the requirements of the Water Framework Directive in relation to a lake waterbody.,

That it is not clear when the lands were afforested in compliance EIA and that the afforestation of the lands were not subject to an environmental impact assessment.,

That the use of fertiliser indicates that the project does not meet the requirements of Sustainable Forest Management.

Statement of Fact from Minister

The DAFM provided a statement in response to the appeal that described the processing of the application and sought to address the grounds of appeal and a full copy of this statement was provided to the parties. In brief summary the DAFM submitted,

That the DAFM acknowledges that the Management Plan for the BIO area was not included in the application,

That the licence issued in 2022 was not posted on the Forestry Licence Viewer in error and that to rectify this the licence was suspended, a new AA Determination was prepared and a new licence issued and posted. The DAFM considered that there was no requirement for a new Appropriate Assessment screening or NIS as neither were deemed incorrect and as there was an NIS there was no requirement for an AA Report.

That the situation is somewhat unique as harvesting was taking place when the error was identified. That the applicant was still entitled to their licence and DAFM issued the licence based on the original application.,

That the DAFM stands by its decision to remove the merlin condition as there is insufficient merlin habitat within 500 metres of the project area.,

That the AA determination confirms that the NIS was taken into account and that it is incorrect to say that the DAFM does not accept the findings of the NIS.,

That the use of chemicals is addressed in the AA Determination and in the Standards for Felling and Reforestation and that there are restrictions on their use.,

That the licence application was screened in due to possible effects on Slieve Aughty Mountains SPA and that the DAFM has procedures in place in relation to Hen Harrier that are agreed with the NPWS. That the application fell within a "red area", a 1.2km radius area centred on known Hen Harrier nesting areas and temporal restrictions were added. An additional condition was to contact the local Conservation Ranger.,

That the granting of a felling licence does not exempt the holder from meeting any legal requirements set out in the Wildlife Acts 1976-2010.,

That the Forest Service promotes sustainable forest management as a central principle of Irish forest policy and that reforestation after felling is essential to prevent deforestation and that such emissions are accounted under EU regulations.,

That conditions in relation to merlin were included in the NIS but were not included in the AAD due to there being insufficient habitat for merlin within 500 metres of the project area and that breeding merlin need to be in close proximity to ample optimal foraging grounds.,

That the DAFM considered other plans and projects and considered the correct County Development Plan at the time the decision was made.,

That the DAFM implements a range of policies and procedures in relation to the protection of water quality and an overview is provided.,

That the DAFM contests the suggestion that its procedures are inconsistent with Article 5 of the Birds Directive and that no specific adverse effects are referred to in the appeal. That the granting of a felling licence does not exempt the holder from meeting any legal requirements.,

That the DAFM licencing process represents the checks and balances by which responsibilities are exercised with regard to Annex IV species.,

That while the Standards for Felling and Reforestation include maps at a scale of 1:5,000 other scales can be accepted by the DAFM once the information is clear and that applicants provide a shapefile which facilitates interrogation using GIS.,

The DAFM recognises that the original decision was not published and sought to rectify this, an overview of the public consultation and referrals process is provided including publication on the Forestry Licence Viewer.,

That forestry operations take place intermittently and require specialised machinery, that forest owners and operators will wish to minimise disruption and that residents should contact the forest owner directly. That Coillte operate an open forest policy but can place restrictions on access.,

That natural regeneration was addressed in Condition 20 which is quoted.,

That work on accounting, reporting, budgets and targets for the forestry sector in relation to emissions is ongoing.,

That the decision of an Advocate General is advisory and not determinative and that the CJEU has addressed decision making in relation to small, unclassified waterbodies in C-301/22 which is quoted.,

That forest management certification schemes are independent schemes.,

That a section of the appeal goes beyond the appeals process but an overview of the public consultation process is provided and it is contested that public participation is prohibitively expensive.,

Further submissions

The appellant made a further submission, which was provided to the parties, contending that the statement did not address all of the grounds clearly and re-emphasising a number of their grounds, including in relation to the suggested presence of protected species on the site. The submission also includes allegations against the FAC and the appeals process.

Considerations of the FAC

The FAC noted the events leading to the issuing of a licence in 2022 and the suspension of the licence and the issuing of a licence on 26th September 2024. The FAC considered that the parties appeared in general agreement that it was the decision of 26th September 2024 that is subject of the appeal and that the FAC could proceed on that basis.

The FAC noted that a number of grounds and commentary in the appeal related to the legislative provisions underpinning the appeals process, other broader policy matters and a private certification scheme which would not fall to the FAC to address. Furthermore, the FAC noted that a number of grounds are of a general nature or include a number of unsubstantiated claims. Under the Agriculture Appeals Act 2001, as amended, an appellant is required to provide all of the grounds and evidence that they wish to rely on when making an appeal.

In relation to the grounds relevant to the tree felling licence decision of the Minister for Agriculture, the FAC considered in the first instance the contention that the application was required to include a management plan under DAFM policies and that this did not form part of the application. The grounds refer to the DAFM Felling and Reforestation Policies and contend that the Minister is required to have regard to this document in making a decision. The grounds also refer to a previous decision of the FAC and parts of the text mirrors grounds contained in previous appeals. However, the FAC does not consider itself necessarily bound by previous decisions and considers that appeal grounds that are specific to a particular licence rather than generic claims would have to be considered on its own merits and the available evidence.

Page 25 of the Felling and Reforestation Policy (DAFM, 2017) document contains the following in relation to reforestation objectives,

4.6 Reforestation for Biodiversity and Water Protection (BIO)

Appropriate applications

This objective applies to situations where the objective is to create a mixture of native woodland and open habitat, predominantly for biodiversity or water protection. This objective involves the creation of woodland cover comprising native broadleaf species and Scots pine, through:

- *planting,*

- *planting supplemented by natural regeneration, or*
- *natural regeneration alone.*

Note, Objective BIO is generally limited to plots no greater than 1 ha in size, and can be used adjoining unplanted setbacks installed alongside watercourses, in order to reinforce the protection of water. However, it can be applied at a larger scale in situations where water sensitivities are high (e.g. within freshwater pearl mussel catchments or alongside high status objective waterbodies at risk of decline due to forestry, under the Water Framework Directive).

In general, wood production is not a management objective under BIO. However, small scale wood production may be appropriate, e.g. the occasional felling of individual trees by chainsaw, for domestic firewood use.

Objective BIO may be pursued where specific case-by-case justification is presented to, and accepted by, the Forest Service.

Prescription

Felling Licence application to be accompanied by a management plan and map setting out the justification for selecting this objective, site preparation and fencing details, the proposed species composition and details of the future management regime (including provisions for natural regeneration – see below)...

The DAFM Felling and Reforestation Standards (2019) also contain similar provisions. The FAC understands the position of the appellant to be that as the application included a plot with a biodiversity objective that a management plan was required under the Minister's policies and that none was submitted and no reasons for this were provided. The application records that plot 2 would contain a mixture of low-density trees and open space at replanting stage and attributes a reforestation objective of biodiversity to this plot. The statement from the DAFM acknowledges that a management plan was not submitted and the FAC considers that the DAFM have not contested the claims of the appellant. The applicant did not make a submission on the appeal and, accordingly, has not responded to the claims of the appellant.

The Forestry Regulations 2017 requires the Minister to have regard to any guidelines, codes of practice and standard for good forest practice in making a decision on a licence application. The legislation also provides for a period of public consultation in relation to tree felling licence applications, which the FAC consider would include any management plan or map that formed part of the application. The FAC considered that there was a failure to abide by the Minister's policies and standards in the making of the decision and that neither the Minister nor the applicant have provided an explanation or defence of the situation. The FAC is satisfied that this would constitute a serious and significant error and that given the nature of the error that the appeal should be allowed and the decision set aside.

Having determined that the decision should be set aside the FAC considered that the other grounds might be considered moot. However, having regard to the specific circumstances and grounds of the appeal and the legislative provisions the FAC considered that it would be fair and reasonable to address the other relevant grounds.

In relation to Appropriate Assessment, Part 8 of the Forestry Regulations 2017 provides that where the Minister receives an application for a tree felling licence,

...which is not directly connected with or necessary to the management of a European site, the Minister shall carry out a screening for appropriate assessment of the development, in view of the conservation objectives of the European site, to assess if the development, either individually or in combination with other plans or projects, is likely to have a significant effect on the European site.

The Regulations further provide for the Minister to require the provision of a Natura Impact Statement (NIS) within a specified period and for the Minister to rely on other sources of information to facilitate an appropriate assessment.

In this instance the applicant had provided a pre-screening report dated 21st June 2022 and a Natura Impact Statement (NIS) with the same date. The Minister undertook a screening for appropriate assessment and an Appropriate Assessment Determination that referred to the NIS and other sources of information.

Regulation 10 of the Forestry Regulations 2017 provide for the Minister for Agriculture to publish notice of the application in a manner determined by the Minister. The decision was subject to Appropriate Assessment in relation to Slieve Aughty SPA and the Forestry Regulations 2017 provide for the Minister to undertake an Appropriate Assessment. SI 477/2011 also provides for Appropriate Assessments by public authorities and includes a requirement to undertake a period of public consultation and to publish a notice in a manner to be determined by the public authority. In this instance, the Minister provided for two periods of public consultation, at application stage and in relation to the Appropriate Assessment Report. The DAFM website states that the procedure for public consultation includes the publishing of documentation on the Forestry Licence Viewer, which was undertaken in this case.

The grounds contend that a number of failures occurred in the appropriate assessment process. The Appropriate Assessment Determination was made by a qualified ecologist who made a determination that the proposal implemented with the required measures would not impact on the integrity of a European site. The appellant does not claim to have any ecological or environmental qualifications or expertise nor to have engaged such an individual and many of the contentions are of a vague and general manner.

The FAC did, however, determine that a number of serious errors were made in the assessment process. Of perhaps most significance is the fact that the River Shannon and River Fergus Estuaries SPA (IE0004077) was "screened in" to proceed to Appropriate Assessment in the DAFM screening of 27th October 2022. The likely significant effects on the conservation objectives are not described but it is stated that there is a possible effect due to the direct hydrological connectivity that exists between the project area and the SPA. The applicant's pre-screening determined that there are no likely significant effects on this SPA with the following reason recorded,

Based on the nature and scale of the project, the downstream hydrological distance of approx. 30.3km, and the assimilative capacity of the intervening watercourses, there is no potential for significant effect on this downstream European site.

and, accordingly, the NIS does not address any significant effects. Despite the screening conclusion of the DAFM, no request was made for the applicant to amend the NIS and no Appropriate Assessment Report was prepared by the DAFM. The Appropriate Assessment Determination records that the River Shannon and River Fergus Estuaries SPA was screened out “*Due to the separation distance between the Natura site and the project*” which does not reflect the conclusion in the DAFM screening and the contradiction is not addressed. The FAC is satisfied that this would represent a serious and significant error.

The grounds refer to the provisions for merlin (one of the conservation interests of the Slieve Aughty SPA) in the NIS which were subsequently removed in the AA Determination. The DAFM response was that the grounds are contested and reflect the requirements of the species. As previously noted, the appellant has not claimed to have any environmental expertise or to have engaged such an individual, whereas the DAFM decision involved a number of specialists. Furthermore, the grounds contend that the lands should be deforested and converted to other habitat, however the FAC considers such an issue to be a broader question of the management of the European site and not a situation that the Minister for Agriculture is empowered to bring about through the determination of a tree felling licence application under the forestry legislation.

The appeal also contends that the Minister should have treated the lands as recently felled forest. However, there is no requirement to attain a licence in relation to recently felled trees. As described by the DAFM, the decision to issue the licence of 26th September 2024 was to address what they considered to be an administrative error when the decision of 8th November 2022 was made. The FAC did not consider that it would be reasonable or logical to assess the lands as if they were comprised of recently felled trees as there would be no requirement to attain a licence in such a scenario.

The grounds contend that the DAFM did not consider other plans and projects as part of the screening and appropriate assessment process and states that regard was given to an outdated County Development Plan. The DAFM contend that other plans and projects were considered in-combination with the proposal as recorded and that the correct County Development Plan (CDP) was considered at the relevant time.

The DAFM Appropriate Assessment Screening Report and Determination includes an Appendix A which refers to the file. The Forestry Licence Viewer includes a document entitled,

Appropriate Assessment Screening Report and Determination Appendix A: In-combination report for Felling and Reforestation project CE02-FL0267

This refers to the Clare County Development Plan 2017–2023, which covers the period of the assessment and the issuing of the first licence. A second document entitled “Appendix A: In-combination report for

Felling and Reforestation project CE02-FL0267” is on file that refers to the CDP 2023-2029 which covers the period of the determination and the licence that is the subject of the appeal.

The grounds are of a generic nature and do not identify any plans and projects that the appellant considers should have been considered that were not, other than a general, unsubstantiated reference to roads that should have been subject to a consent process.

Nonetheless, the document that is described as Appendix A to the Appropriate Assessment Screening Report and Determination makes the following conclusion,

It is concluded that there is no possibility that the proposed Felling and Reforestation project CE02-FL0267, with mitigation measures set out in Section 4 of the AA Determination document, will itself, i.e. individually, give rise to an adverse effect on the integrity of any European Sites and their associated Qualifying Interests / Special Conservation Interests and Conservation Objectives. Therefore, there is no potential for the proposed project to contribute to any cumulative adverse effect on the integrity of any European Site(s), when considered in-combination with other plans and projects.

The FAC would understand that in considering the likely significant effects of a project on a European site to determine whether an appropriate assessment is required, the competent authority is not entitled to rely on such mitigation measures. It is evident from the text contained in the document that the Minister employed the incorrect test at the screening stage and employed a conclusion associated with an Appropriate Assessment rather than a screening. The FAC is satisfied that the appropriate assessment screening, which includes the consideration of other plans and projects in-combination with the proposal, contained serious and significant errors.

The grounds allege that DAFM procedures are not consistent with the requirement for providing a General System of protection commensurate with Article 5 of the Birds Directive. The claim is a general one regarding the policy and procedures of the DAFM and does not provide any basis to conclude that the proposal would have an impact on bird species. The proposal is for the felling of a commercial plantation which would not generally be considered to be a rare or particularly valuable habitat. As noted by the DAFM the granting of the licence does not exempt the licence holder from meeting any other legal requirements. While the grounds allege legal deficiencies in the Wildlife Acts, such a determination does not fall within the jurisdiction of the FAC to make. In any case, the licence in this instance precludes operations from taking place during the main breeding and rearing season and the grounds, being primarily of a generic nature, do not engage in a meaningful way with the actual assessment undertaken or the conditions attached to the licence.

The grounds further allege that there is no strict system of protection in place under Article 12 of the Habitats Directive (Annex IV species). The grounds refer to a guidance document produced by the NPWS in relation to works undertaken by or/on behalf of a public authority but this does not describe the

decision which is the subject of the appeal. As noted by the DAFM, the granting of a felling licence does not remove of any other legal obligations on the applicant unless such is provided for in law.

The grounds allege deficiencies in the mapping with reference to the Standards for Felling and Reforestation. However, the FAC would not understand that these standards create an obligation to submit a harvest plan nor impose mapping requirements as restrictively as defined in the grounds.

The grounds submit that there are no conditions to protect local residents. The licence includes a condition to adhere to the Standards for Felling and Reforestation which includes the following provisions,

Where felling operations adjoin public roads, appropriate safety signs should be in place to alert the public, including road users. Close off the forest (or parts of, if large) to users, if utilised for recreation. See the Health & Safety Authority's (HSA) Code of Practice for Managing Safety & Health in Forestry Operations, available at https://www.hsa.ie/eng/Publications_and_Forms/Publications/Agriculture_and_Forestry/Code_of_Practice_Forestry.pdf

The Code of Practice for Managing Safety & Health in Forestry Operations includes matters of public safety. The licence also includes conditions in relation to setbacks from dwellings and public roads. The matter before the FAC is the decision on the tree felling licence application under Section 7 of the Forestry Act 2015 and the Forestry Regulations 2017 and the FAC cannot make a determination on planning permission or civil matters.

The grounds allege that there has been no assessment of the carbon emissions that will result in the project related to the carbon loss from soils, the manufacturing of inputs, the use of fossil fuels in the harvesting and processing of timber and the "re-distribution" of timber products and the construction and maintenance of forest infrastructure but provides no basis for why such a broad assessment might be required in the context of the specific felling licence decision.

The grounds submit that there is a risk of colonisation of Annex I habitat 750 metres from the site by re-seeding conifers and make reference to an unidentified Norwegian study and an unidentified unpublished Irish study. The grounds provide no basis for concluding that the felling of a mature forest would impact on an NHA.

The FAC was not satisfied that an error was made in the making of the decision by the Minister in relation to these grounds.

The grounds suggest that the decision does not meet the requirements of the Aarhus Convention with specific reference to Article 6 (2). The appellant submits that they have limited access to the internet. The FAC understands the "Aarhus Convention" to be a reference to the UNECE *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters*. The FAC understands the Aarhus Convention to be a convention under the UNECE and that it does not form

part of domestic legislation as such. The Aarhus Convention has been transposed through a number of pieces of EU legislation, including the EU EIA Directive (Directive 2011/92/EU as amended by Directive 2014/52/EU). The EU EIA Directive sets out in Annex I, a list of projects for which Environmental Impact Assessment (EIA) is mandatory. Annex II contains a list of projects for which member states must determine, through thresholds or on a case by case basis (or both), whether or not EIA is required. Neither afforestation nor deforestation, or a class of development related to the proposal under appeal, are referred to in Annex I. Annex II contains a class of project specified as "initial afforestation and deforestation for the purpose of conversion to another type of land use" (Class 1 (d) of Annex II) and "Any change or extension of projects listed in Annex I or this Annex, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment." (Class 13 (a) of Annex II).

The Irish Forestry Regulations 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 threshold where the Minister considers such development would be likely to have significant effects on the environment. The decision before the FAC relates to the felling of trees in a commercial plantation which would be replanted and does not constitute afforestation or deforestation for the purposes of land use change or any change or extension to an existing project. The operations are of a standard nature in the context of ongoing forest management of a commercial plantation in Ireland. The FAC does not consider that there was a requirement to undertake a screening for Environmental Impact Assessment or an Environmental Impact Assessment in processing the application.

Regulation 10 of the Forestry Regulations 2017 provide for the Minister for Agriculture to publish notice of the application in a manner determined by the Minister. The decision was subject to Appropriate Assessment in relation to the Slieve Aughty Mountains SPA and Lower River Shannon SAC and the Forestry Regulations 2017 provide for the Minister to undertake an Appropriate Assessment. SI 477/2011 also provides for Appropriate Assessments by public authorities and includes a requirement to undertake a period of public consultation and to publish a notice in a manner to be determined by the public authority.

In this instance, the Minister provided for two periods of public consultation in July and August 2022. The DAFM website states that the procedure for public consultation includes the publishing of documentation on the Forestry Licence Viewer, which was undertaken in this case. The grounds refer to the application only being available on the DAFM website. However, the Forestry Licence Viewer is a standalone website providing a map based and searchable listing and archive of forestry licence applications and related documents. The applicant submitted that they did have engagement with the Applicant on the proposal, although they were unhappy with the outcome.

The FAC considered that the grounds ultimately amounted to a challenge to domestic legislation and the transposition of a UNECE Convention by Ireland and the EU and that such a challenge would not fall within the remit of the FAC to address. The FAC was not satisfied that an error was made in the making of the decision under Section 7 of the Forestry Act 2014 and the Forestry Regulations 2017 in relation to these

grounds of appeal. In any case as previously stated and for other reasons, the determination of the FAC is to allow the appeal and set aside the decision.

The grounds allege that the afforestation of the lands were not subject to an Environmental Impact Assessment but provide no basis for this claim nor any evidence of significant effects on the environment that have arisen as a result nor claim that any authority has made a determination that the development was legally deficient. During the intervening period from the time the forest was planted there has been changes in legislation, including thresholds, and competent authorities.

In relation to water quality and the Water Framework Directive (WFD), the FAC would share the DAFM's understanding that it is the CJEU that is responsible for interpreting the law and establishing case law. The licence includes a number of conditions related to the protection of water quality and the proposal includes the creation of a plot at reforestation stage comprised of setbacks and low-density broadleaf planting around the waterbody, which would have clear benefits in relation to water quality. The grounds make a number of general claims but do not engage with the substance of the decision or provide any basis for concluding that the status of a waterbody would be impacted by the proposal or how the granting of the licence would not meet the objectives of the WFD.

The grounds suggest that the use of fertiliser indicates that the proposal does not meet the requirements of sustainable forest management but the use of fertilisers is a common practice across commercial land uses, is more limited in forestry than other commercial land uses and is provided for in the Standards for Felling and Reforestation. As previously stated, the provisions of private certification schemes are not matters for the FAC to address.

The FAC are not satisfied that an error was made in the making of the decision in relation to these grounds.

In considering the appeals, the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions made. The FAC is satisfied that serious and significant errors were made in the making of the decision which included serious and significant errors in the application process. The FAC concluded that the appeal should be allowed and the decision in relation to licence CE02-FL0267 set aside in accordance with Section 14B of the Agriculture Appeals Act 2001, as amended.

Yours sincerely,

Vincent Upton on behalf of the Forestry Appeals Committee

