



Liam Malone,
Coillte Teoranta,

27th October 2025

Subject: Appeal FAC 076/2024 regarding DU02-FL0189.

Dear Mr. Malone,

I refer to the appeal to the Forestry Appeals Committee (FAC) in relation to the above licence granted by the Minister for Agriculture, Food and 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 the parties to the appeal.

DECISION.

Having regard to the evidence before it, including the Department of Agriculture, Food, and the Marine (DAFM) record of the decision, the Statements of Fact (SoF) provided by the DAFM, all materials on file, the notice and grounds of appeal, the post-appeal submissions and, in particular the following considerations, the FAC has decided to set aside and remit the decision of the Minister regarding licence DU02-FL0189.

THE LICENCE.

Licence DU02-FL0189 is for the clearfelling of 0.63 hectares of mixed high forest comprising of Douglas fir, Ash, Birch & Oak. No Reforestation is proposed.

The application for the licence was published on the Forestry Licence Viewer (FLV) on 23/04/2024. A decision approving the licence was issued on 18/07/2024 subject to 13 Conditions including adherence to the mitigation measures set out in an Appropriate Assessment Determination (AAD) and ecology report and a condition setting out the requirements for the protection of the archaeological heritage of the area.

FORESTRY APPEALS COMMITTEE.

A sitting of the FAC was held remotely on the 23/09/2025 which considered the appeal against the decision DU02-FL0189 as dated 18/07/2024. The FAC members present were:

Mr. Donal McGuire (Deputy Chairperson), Mr. Vincent Upton, and Mr. Iain Douglas.
Secretary to the FAC: Ms. Aedín Doran.

BACKGROUND.

The proposal consists of the clearfelling of 0.63 hectares of mixed high forest comprising of Douglas fir, Ash, Birch & Oak with no reforestation.

The soils on the site are described as 100% Podzols (Peaty), Lithosols, Peats, with some outcropping rock (AminSRPT). The slope is described as Steep 19%, sloping in a north-easterly direction. The habitat on the site is Mixed broadleaved/conifer woodland and recently felled woodland.

The site lies in the Liffey and Dublin Bay Water Framework Directive (WFD) Catchment and the Dodder_SC_010 Sub-catchment. The site is located within the Owenadoher_010 River Sub-Basin. The nearest WFD River Waterbody Owenadoher_010 (Segment Ref. 09_341 the Jamestown River, (a 3rd Order stream shown on Ordnance Survey maps as Glendoo Brook) which lies ca. 550m SE of the site and which had Moderate Status in the period 2019-2024, it is identified as being At Risk in the WFD 3rd cycle. Forestry is not identified as a pressure on this river waterbody. The underlying groundwater body is the Kilcullen IE_EA_G_003 which was of Good status in the 2019-2024 monitoring period and is stated as being At Risk in the WFD 3rd cycle.

The application documents before the FAC included an Application Pack consisting of an Application Form dated 26/03/2024, a Felling Licence Location Map, a Felling Licence Application Map, a Harvest Plan Map (Pre-licence) and a Reforestation Map. A separate Pre Screening Report dated 16/04/2024 prepared by the Applicant was also on file.

The licence application was referred to South Dublin County Council (SDCC) and Inland Fisheries Ireland (IFI) on 23/04/2024. There is no record of a reply from either referral body.

The DAFM file on the FLV includes an Appropriate Assessment Screening Report & Determination (AASRD) and an AASRD In-combination_Report both dated 09/07/2024, an Appropriate Assessment Determination (AAD) and an AAD In-combination Report both dated 09/07/2024, an Ecology Report dated 09/07/2024 an Archaeology Report dated 10/06/2024

The Applicant's AA Pre-Screening Report identified 8 Natura 2000 sites within 15 km of the proposed felling; Ballyman Glen SAC (Site Code 000713), Glenasmole Valley SAC (Site Code 001209), Knocksink Wood SAC (Site Code 000725), Poulaphouca Reservoir SPA (Site Code 004063), South Dublin Bay and River Tolka Estuary SPA (Site Code 004024), South Dublin Bay SAC (Site Code 000210), Wicklow Mountains SAC (Site Code 002122), and Wicklow Mountains SPA (Site Code 004040).

On the basis that there were no hydrological pathways for likely significant effect from the site to any of the European sites within 15km of the project area all sites were screened out. The Applicant also states that there was no hydrological connection from the site to any European site at a distance greater than 15km. The Applicant's AA Pre-screening Report concluded that:

"on the basis of objective information and in light of the conservation objectives of the relevant European sites, that the proposed project, individually or in combination with other plans and projects, will not have a significant effect on any European Site."

and contended that the competent authority can determine that there is no requirement for this project to proceed to AA (Stage 2).

The DAFM AASRD identified 9 Natura 2000 sites (the same 8 as identified by the Applicant and additionally Red Bog SAC (Site Code 000397) and "screened in" the Wicklow Mountains SPA due to the potential for impacts on Merlin and the Wicklow Mountains SAC due to the potential impacts on heathland habitats on the basis that *"there is potential for a small increase in footfall to lead to braiding and erosion of the habitat along the existing trails, reducing the overall area in the SAC"*. The AASRD acknowledges that the site is part of planning permission (An Bord Pleanála Reference 06S.JA0040) for the Dublin Mountains Visitor Centre (DMVC) and that the Merlin and heathland habitats were subject to AA by An Bord Pleanála by way of a Natura Impact Statement (NIS) and that *"on an extremely precautionary basis given that the overall permitted development was screened in, this European Site is screened in"* the DAFM determined that AA Stage 2 was required for both sites.

The file records that there was no third-party submission on the licence.

THE APPEAL.

There is one third-party appeal against the decision to approve this licence application. The grounds of appeal, in brief summary, are as follows:

1. There was no public notice as required by the Forestry Act 2014 and relevant regulations and that there was no effective public participation on the licence.
2. Post-permission surveys are required to determine whether a Derogation Licence is required which is contrary to EUCJ Case 463/20 Namur Est.
3. The surveys for bats carried out in 2019 are out of date and cannot be relied upon to determine whether a Derogation Licence is required and that the FAC cannot rely on them in reaching a conclusion of no significant effects on the environment or Natura 2000 sites and protected species.
- 4,5,6 The 2019 survey for otter (a Qualifying Interest of the Wicklow Uplands SAC) is out of date.
7. The FAC has no information to allow it to conclude that the proposed felling will not have a significant effect on otter or other Annex IV species.
8. That a Derogation Licence can only be granted for the purpose of protecting flora & fauna and not to facilitate a tourism development.

Attached to the main grounds of appeal were *“Further Grounds and Links to documents and files to be included and used in this appeal.”*

- a. There has been “Project Splitting”, the felling licence should have preceded the planning permission and should have been part of the EIAR for that project.
- b. The Dublin City Otter Report of 2019 indicated increased otter activity in the Dodder Catchment.
- c. The comments of the SDCC Heritage Officer on Taylor’s Lane Large Scale Residential Development (LRD) LRD23A/0002 are out-of-date and IFI reports on that LRD regarding risks to the Owenadoher/Dodder Catchment are relevant to this application.
- d. A number of specified plans & projects have not been included in the cumulative assessment.
- e. The DMVC got planning permission without tree felling licences, Ballycullen/Oldcourt Local Area Plan (BOLAP) identifies additional tributaries, a vulnerable aquifer and 2 unauthorised dumps on Hellfire Mountain and that Woodtown Stream and rivers have been omitted from BOLAP.
- f. There has been no hydrology report on the effect of the proposal on the underground lake on Hellfire Mountain & Dodder Catchment.
- g. Drains exiting the forestry have not been mapped to ensure there is no impact on the Dodder and the Natura 2000 site into which it flows, from pollution and siltation.
- h. There has been no assessment to minimise soil disturbance, to address carbon loss, sedimentation risk or nutrient loss.
- i. Six other felling licence applications in the vicinity of this site (DU02-FL0189, DU02-FL0190, DU02-FL0175, DU02-FL0174, DU02-FL01171, DU02-FL0148) represent project splitting.
- j. Coillte has not disclosed that it is a partner with South Dublin County Council in the DMVC and that SDCC has a vested interest in the project but has been consulted on this licence application.
- k. The Applicant has not identified all National Monuments or Protected Structure in the site.
- l. Unauthorised works on-site have not been reported to the National Monuments Service.
- m. Tree removal within the curtilage of a National Monuments or Protected Structure will impact on their setting and as such requires planning permission.
- n. There is non-compliance with the licence for the original planting.
- o. That there are DAFM errors in the processing of the application regarding (i) EU Habitats Directive, (ii) Harvest Plan Standards, (iii) Protection of Recreational Trail Users, (iv) Unenforceable licence conditions, (v) Inadequate public notice, (vi) Inconsistent wildlife protection, (vii) Lack of assessment for Annex IV species.
- p. There has been no hydromorphological assessment of the proposal on the Owenadoher Catchment.

- q. There has been no assessment of the cumulative impact of this licence and the six other licences on the natural & built heritage of the area, including iconic trees.
- r. There is no agreement from Irish Water.
- s. That the Climate Action Plan & Nature Restoration Law have not been taken into account.

Attached to the Notice of Appeal Form and Grounds of Appeal was correspondence between the FAC and the Appellant regarding a number of other appeals. In the interest of clarity and for the avoidance of doubt the FAC has only considered appeal FAC 076/2024 against licence DU02-FK0189.

Post-Appeal Submissions.

A submission was made by the Applicant in response to the appeal that contests the grounds and contends that the grounds attempt to conflate a planning permission process and the tree felling process in a number of instances. The post-appeal submission was circulated to the other parties. DFAM responded stating it had no further submissions, the Appellant did not respond. In the interest of clarity and for the avoidance of doubt, in considering the post-appeal submission the FAC had regard only to those matters it deemed to be an elaboration or clarification of points raised by the Appellant in the grounds of appeal proper and responses to those grounds.

CONSIDERATION BY THE FAC.

At its sitting on the 23rd of September 2025, the FAC had before it the full DAFM record of the decision as made available on the FLV, the Notice of Appeal Form, the grounds of appeal, the Statement of Fact (SoF) provided by the DAFM, the post-appeal submission and all materials on file. In the correspondence between the FAC and the Appellant attached to the grounds of appeal the Appellant has suggested that not all the documents referenced in the Coillte and Ministerial correspondence for comment have been supplied to them and that all information pertaining to the need for such licenses by Coillte and their partners SDCC and that any other parties in this process have had access to, should be made available to them. In the interest of clarity, the FAC confirms that the file record relating to the licence under appeal in this case, as is available to the FAC on the FLV, is the same as is available to the Appellant.

The FAC having reviewed all the documentation and submissions, including that of the Appellant, considered that there was sufficient information to enable it to assess and determine the appeal without recourse to an oral hearing.

DAFM STATEMENT OF FACT.

The SoF provided by the DAFM for the appeal which is dated 09/04/2025, confirms the administrative details of the licence application. The SoF states that the DAFM was satisfied that all criteria in its standards and procedures were adhered to in making the decision on the licence application. The SoF also contains a response to the grounds of appeal.

GROUND OFS OF APPEAL.

The FAC considered the Appellant's grounds of appeal under the headings, Public Notice & Public Participation, Bat & Otter Surveys & Derogation Licence, Annex IV Species & Article 5 of the Birds Directive, Project Splitting, Water Quality, and Archaeology. Appropriate Assessment and Harvest Plan, Protection of Recreational Trail Users, Unenforceable Licence Conditions, Climate Change, FSC interim forest stewardship standard for Ireland

Role of the FAC.

The FAC considered the grounds of appeal that referred to the decision for planning permission and the transposition of Conventions and Directives. The FAC is an administrative committee established under the Agriculture Appeals Act 2001, as amended, to consider whether the Minister for Agriculture made a serious or significant error, or a series of errors in making the decision under

appeal, and whether that decision was made in compliance with fair procedures in relation to certain forestry licence decisions.

The Appellant made reference to the relationship between the tree felling licence application and the project which has attained planning permission. The FAC considers that its remit does not extend to making a determination on a planning permission application or a decision of An Bord Pleanála. The FAC considers its remit to extend only to the decision of the Minister for Agriculture, Food and the Marine to grant a tree felling licence following application by the forest owner. Furthermore, the FAC understands its remit does not extend to determining whether the EU and Ireland have correctly implemented the UNECE Aarhus Convention.

The FAC concluded that it should make a determination of the appeal against the tree felling licence based on its remit as provided in the Agriculture Appeals Act 2001, as amended.

Public Notice & Public Participation.

This ground of appeal contends that there is inadequate and ineffective public notification of felling licences, in contravention of the Forestry Act 2014 and the Forestry Regulations 2017 (as amended) and is not compliant with the Aarhus Convention.

In considering these grounds of appeal the FAC noted the response to this ground of appeal marked as ground 1 of the DAFM SoF dated the 09/04/2025 in the DAFM SoF that its chosen method of notifying the public of felling licence applications is through the FLV and on its website.

The Forestry Regulations 2017 also require a site notice to be erected at the entrance to the lands to advise the public that the felling and extraction being undertaken is in accordance with a licence issued by the Minister. This requirement relates to the undertaking of felling after a licence has issued. The FAC does not consider that the Forestry Act 2014 requires any additional notices to be made in relation to the application as suggested in the grounds.

The FAC concluded that the public was notified of the licence application through the FLV in accordance with the DAFM procedures and the provisions of the Forestry Act 2014 and Forestry Regulations 2017 and is not satisfied that an error occurred in relation to the making of the decision in relation to these grounds.

As described below, the FAC considered that there was a failure to engage in public consultation in relation to the Appropriate Assessment process.

Bat & Otter Surveys & Derogation Licence.

The grounds contend that the surveys carried out for the DMVC are out of date and no longer relevant and that new surveys are required if a Derogation Licence under Regulation 54 of the European Communities (Birds and Natural Habitats) Regulations 2011 – 2021 is required.

In considering these grounds of appeal the FAC noted the responses marked as grounds 2 and 3 of the DAFM SoF dated the 09/04/2025.

The grounds contend that the application is predicated on the necessity to carry out surveys (post licence) in order to establish whether there is a necessity for a derogation licence. The position of the DAFM is that there is no condition in the licence which requires post-permission surveys.

The grounds further contend that such post-consent surveys are not compatible with EUCJ Case C-463/20 *Namur-Est Environnement ASBL v Région Wallonne* and *O'Donnell v An Bord Pleanála* Case 2021/251 JR. The FAC noted that both of these cases deal with Derogation from the Strict Protection for Animals set out in Regulation 54 of the Habitats Regulations for which the Minister for Housing, Local Government and Heritage is responsible.

The Court of Justice of the EU has already issued a ruling on the referral, finding,

Articles 12 and 16 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that a piece of national legislation intended to transpose those provisions into national law cannot be regarded as contrary to that directive on the ground that that piece of national legislation does not provide for (i) a development consent procedure which involves a decision by a competent authority determining whether it is necessary to apply for a derogation under Article 16 of the abovementioned directive because of matters identified following the grant of development consent to a project and/or whether surveys are required to that end or (ii) public participation in that derogation procedure.

The FAC noted that the licence conditions include adherence with the measures in the ecology report, a report which includes adherence with the mitigation measures in the DMVC EIAR,

Adhere to the mitigations detailed in Section 6 of the EIAR and the Schedule of Environmental Commitments (both dated 23rd December 2019) for the Dublin Mountains Visitors Centre and all associated works - full details available at <https://www.sdcc.ie/en/services/sport-and-recreation/tourism/dublin-mountains-visitorcentre-dmvc-project/an-bord-pleanala-application/>

The FAC does not agree with the Appellant's contention that the tree felling licence application was predicated on the necessity to carry out post-permission surveys to establish whether there is a necessity for a derogation licence. However, by including a condition to adhere with the mitigations in Section 6 of the EIAR and the Schedule of Environmental Commitments for the DMVC and all associated works, the FAC would understand that the Minister has in effect conditioned the undertaking of surveys and checks by an Ecological Clerk of Works prior to the commencement of works as the referenced mitigations include such surveys. However, these measures were included after the undertaking of a wide range of surveys to facilitate the undertaking of an EIA and a planning permission application and consent process which did not identify a requirement to attain a derogation licence. As previously stated, the planning permission decision is not before the FAC, and neither is the FAC empowered to issue planning permission or a derogation for the purposes of the wildlife legislation. The FAC are satisfied that the tree felling licence was not issued predicated on the necessity or assumption that the Applicant would attain a derogation licence.

The grounds refer to bat surveys carried out for the DMVC planning application and that they are out of date and refer to the information contained in Section 6.5.2.5 of the Final EIAR dated 23.12.19. The FAC noted that in Section 6.5.2.5 the site of the proposed visitors centre (the site of this felling licence) was surveyed and no bat roosting sites were identified, notwithstanding the bat activity identified in this area. The grounds refer to Masseys wood which is a different location to the tree felling licence application and comprised of different habitat. The appeal before the FAC relates to a tree felling licence decision on land comprised of young and recently felled plantation which would not be considered to be of particular value to bats. The Appellant has adduced no evidence that there are bat roosts within the area of licence DU02-FL0189 or has identified a reason as to how the felling of a managed forest as applied for and licenced might have a significant effect on the species. The FAC does not consider that the granting of the licence removes protections provided under other legislation.

The grounds refer to the Dublin City Otter Survey 2019 stating that the report indicates increased otter activity in the Dodder Catchment. The FAC noted that the area covered by the Dublin City Otter Survey 2019 was confined to inside the M50 Motorway some 1.5 Km north of the site.

The Appellant has adduced no evidence that otter is present or likely to be present within the area of licence DU02-FL0189 or has identified a reason as to how the felling of a managed forest as applied for and licenced might have a significant effect on the species. The application does not show any watercourses on or proximate to the site and this was confirmed by the Applicant. While making some general contentions, the grounds provide no basis for considering that the application details were deficient in this matter.

The Appellant provides no convincing evidence to substantiate this claim nor explains how the proposal might have a significant effect on otter or bat species. The role of the FAC is to consider whether the DAFM made a serious or significant error, or a series of errors in making the decision under appeal, and whether that decision was made in compliance with fair procedures. The FAC considers that Derogation Licences are the responsibility of the Minister for Housing, Local Government and Heritage and is therefore not a matter that falls within its remit.

Annex IV Species & Article 5 of the Birds Directive.

This ground of appeal contends that FAC has no information to allow it to conclude that the proposed felling will not have a significant effect on otter or other Annex IV species nor have any of the surveys relied upon in the licence application given scientific certainty on the impact of the felling on 11 key ecological receptors identified in the grounds by photographs. The FAC noted that the photographs were of fauna, habitats and flora.

In considering these grounds of appeal the FAC noted the responses marked as grounds 11 and 12 of the DAFM SoF dated the 09/04/2025.

The FAC noted that there is no convincing evidence submitted that any species protected under Annex IV of the Habitats Regulations 2011 (as amended) would be adversely impacted by the proposal. The FAC considers that the granting of a forestry licence does not relieve the recipient of their responsibilities under the Wildlife Acts to obtain a Derogation Licence where works undertaken may result in the deterioration or destruction of breeding sites or nesting places of Annex IV species, even where such destruction is not deliberate. However, there is no basis to conclude that such a derogation is required.

In relation to the Appellant's stated ground of appeal that the DAFM procedures are not consistent with the requirement for providing a General System of protection for birds commensurate with Article 5 of the Birds Directive and that the Wildlife Acts are themselves deficient in relation to Annex IV species and birds. The FAC noted that the Appellant has not substantiated these claims and the FAC does not consider its remit to extend to making a determination of the legality of the Wildlife Acts. The grounds do not engage with the nature of the lands or the proposed actions in any real way. In any case, the conditions on the licence include adherence with the ecology report which includes temporal and other restrictions which the grounds do not engage with in any meaningful way.

The grounds further question the enforcement of conditions 10 and 11 of the licence that refer to obligations in relation to invasive species and protected species. The FAC agrees that these conditions appear to be more akin to general statements that may be more suited to the application documentation or the cover letter that accompanied the licence, but the FAC is not satisfied that this might constitute a serious or significant error in itself as it has no real impact on the decision.

The FAC is not satisfied that an error was made in granting of the licence in relation to these grounds of appeal.

Project Splitting.

This ground of appeal contends that there has been "*project splitting*" (taken by the FAC as a reference to the EIA Directive) between the proposed felling and the DMVC granted planning permission by An Bord Pleanála Ref: 06S.JA0040. The Appellant also refers to the separate licence applications DU02-FL0189, DU02-FL0190, DU02-FL0175, DU02-FL0174, DU02-FL01171, DU02-FL0148 as constituting "project splitting".

In considering this ground of appeal the FAC noted the responses marked as ground 5 of the DAFM SoF dated the 09/04/2025.

The FAC considers it self-evident that the applications for planning permission and tree felling licences were made to comply with the relevant legislation and would not and could not be considered to be an attempt to avoid any regulatory requirement.

As previously advised the function of the FAC is to determine appeals against certain decisions of the Minister for Agriculture made under section 7 of the Forestry Act 2014 and the Forestry Regulations 2017. It is only the tree felling licence application decision that is before the FAC.

The FAC noted that the EU EIA Directive sets out in Annex I, a list of projects for which EIA is mandatory. Annex II contains a list of projects for which member states must determine, through thresholds or on a case-by-case basis (or both), whether or not EIA is required. Neither afforestation nor deforestation is 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 (as amended), in relation to forestry licence applications, require the compliance with the EIA process for only for licence 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 Forestry Regulations 2017 do not provide for the Minister for Agriculture to undertake an EIA in relation to deforestation. As the parties have noted the development of the DMVC, which included the felling of trees and conversion of land use, was subject to an Environmental Impact Assessment (EIA) process and a planning permission procedure. The FAC does not consider that the Minister was obligated or empowered under the Forestry Regulations 2017 to undertake an EIA in relation to the tree felling licence application that was before them. As previously stated, the FAC does not have a role in granting or assessing planning permission decisions. The FAC is not satisfied that the Minister for Agriculture erred in the making of the decision in relation to these grounds of appeal.

In relation to the submission of multiple tree felling licence applications in the general area, the FAC considers that it is standard and good practice to manage forest stands or plots following individual prescriptions that might be based on the species composition and age of the trees and the overall management objective of the landowner in addition to any regulatory constraints. The FAC would understand that submitting separate licence applications for the felling of trees separate from the planning application is in keeping with standard forest practice and the requirements of the Forestry Act 2014. The Applicant identified the visitor centre planning application in their consideration of other plans and projects. In both the AASRD and AAD In-combination Reports of 09/07/2024 the Minister did consider the cumulative impact of licences DU02-FL0189, DU02-FL0190, DU02-FL0175, DU02-FL0174, DU02-FL01171, DU02-FL0148 amongst a wide range of other plans and projects.

The grounds further submit that the forestry licence should have been acquired before planning consent and should have formed part of the planning application and that the failure to do this was project splitting. The FAC would understand the reference to project splitting to relate to a situation where a developer might separate a development into separate parts or applications to circumvent a regulatory process. In this instance, the FAC would understand that the landowner was required to obtain a felling licence for the felling of trees in keeping with the Forestry Act 2014 and the FAC does not consider that there is any evidence of an attempt to avoid any regulatory requirements or assessments in relation to the decision before it. The development of the visitor centre was subject to an EIA process by the competent authority, and the decision of the planning authorities is not before the FAC.

The FAC is not satisfied that an error occurred in the making of the decision in this regard.

Water Quality.

This ground of appeal contends that there has been no hydrological assessment of the impact of the proposal on the Dodder catchment, or a hydromorphological assessment of the Owenadoher Catchment or the impact of the proposal on water quality through siltation and sedimentation.

In considering this ground of appeal the FAC noted the responses marked as ground 4 of the DAFM SoF dated the 09/04/2025.

The application does not identify any waterbody on or proximate to the site and the Applicant confirmed this position. The grounds contend that there are errors in the identification, mapping and assessment of the hydrology of the site but have put provided no basis for this claim or evidence to substantiate it.

The FAC noted from the publicly available EPA website that the Owenadoher_10 river waterbody is "At Risk" with "Urban Run-off" listed as the Significant Pressure. The FAC noted that the project description for DU02-FL189 indicates that no new drainage is proposed and that Condition 12 of the licence requires adherence to the mitigation measures specified in the AAD and Ecology report which includes the mitigations to protect water quality found in Section 6 of the EIAR and the Schedule of Environmental Commitments (both dated 23rd December 2019) for the DMVC.

While it is well known that tree felling can have a negative impact on water quality this is dependent on a number of factors including the nature of the works, including any good practice measures, its location and the status of any waterbody that might be impacted. In this case the grounds do not provide any convincing evidence that the proposal might have a significant adverse impact on water quality of the Dodder and Owenadoher catchments. The FAC would understand from the DAFM SoF that it is the general policy of the Minister to Condition felling licences to adhere to the DAFM Standards for Felling and Reforestation (2019) which provides specific measures related to the protection of water. The FAC noted that the licence at Condition 3 requires the Applicant to comply with these standards. The FAC noted that the application was referred to Inland Fisheries Ireland and South Dublin County Council, and no response was received. The application was not referred to Irish Water, but the FAC does not consider that there was any reason why such a referral would be required in this instance. The FAC is not satisfied that an error occurred in the making of the decision in this regard.

Archaeology.

This ground of appeal contends that the Applicant has not identified all the protected structures and national monuments within the site and that the curtilage of the protected structures, their character and setting will be affected by the forestry works but provide no evidence to substantiate this claim. The grounds make specific reference to a standing stone.

In considering this ground of appeal the FAC noted the responses marked as ground 14 of the DAFM SoF dated the 09/04/2025.

The application did not identify any recorded monument within the site boundary. The application was considered by a DAFM Archaeologist who prepared a report dated 10/06/2024 and recommended specific conditions be attached to the licence. Condition 13 of the licence as issued attaches those conditions which take into account and accord with the archaeological conditions attached under Condition No. 8 to the grant of planning permission for the primary development, the Remedial and Mitigation Measures proposed in Section 11.6 of the Archaeology and Cultural Heritage Chapter in the EIAR, and the Schedule of Environmental Commitments Final (dated 23rd December 2019 and provided to An Bord Pleanála in response to a Request for Further Information).

The grounds make general contentions regarding the treatment of a standing stone at a different location unrelated to DU02-FL189 and appear to relate to anti-social activities of members of the public. The FAC considered the treatment of the application, the archaeology report prepared by the DAFM and the archaeological conditions attached to the licence were appropriate for the proposed tree felling project.

While the FAC is not satisfied that a serious or significant error was made in relation to these grounds it notes that condition number 13 in the licence sets out 6 specific archaeological and architectural heritage protection requirements which *"shall be fully complied with"*. Requirement (f) references the archaeological and architectural heritage protection report and illustrative map which contains 8 conditions which *"should be adhered to during the proposed works."* In the particular circumstances of this case, the FAC considered this to be a significant error as there is uncertainty as to whether the conditions set out in the report referenced as being attached to the licence are to be complied with or are included for *"further detail."* In particular, the Archaeologist recommended adherence to 'Forestry and Archaeology Guidelines' and the 'Forest Harvesting and the Environment Guidelines', which have not been specifically conditioned on the licence. The Minister should take the opportunity to resolve any ambiguity that might arise from the wording in condition number 13 when making a fresh determination on the licence application.

Habitats Directive.

This ground of appeal contends that; the DAFM has not complied with the Habitats Directive; that the Assessments under Article 6(3) are not comprehensive; the DAFM cannot issue a licence unless it is sure that there will be no impact on European sites; the AA Screening is deficient; the DAFM approach contradicts the precautionary principle with regard to the Wicklow Mountains SPA and its Special Conservation Interests.

In considering this ground of appeal the FAC noted the responses marked as ground 14 of the DAFM SoF dated the 09/04/2025.

Notwithstanding the fact that the Appellant has adduced no convincing evidence that the Habitats Directive has not been complied with, as set out below, the FAC has identified serious and significant errors in the AA process and documentation for DU02-FL0189, which are described below.

Harvest Plan.

This ground of appeal contends that the Harvest Plan submitted with the application is not to the requisite standard.

In considering this ground of appeal the FAC noted the response marked as ground 7 of the DAFM SoF dated the 09/04/2025.

The Forestry Act 2014 and the Forestry Regulations 2017 reference the information required to be submitted with a tree felling licence application and provide discretion to the Minister to prescribe further particulars and to seek further information.

The Appellant contends that the Harvest Plan mapping should be 1:5,000 and that even this would be deficient based on the size of the site. The FAC does not consider that the Minister has established an exact legal standard as suggested by the Appellant. The licence application DU02-FL0189 included a number of maps at varying scales including 1:10,000, 1:6,001, and 1:2,101. The Appellant contends that the maps lack important details such as nearby dwellings and haulage routes. The FAC considered that the mapping appears comprehensive and that the grounds do not identify a specific error. The forest road network and route to the public road are marked and buildings in the surrounding landscape are clearly shown.

The FAC would understand from the Standards for Felling and Reforestation and Felling and Reforestation Policy 2019 that the submission of a Harvest Plan is not a requirement to make a tree felling licence application.

The FAC does not consider that there is any reason to conclude that the application was deficient in relation to these grounds.

Protection of Recreational Trail Users

This ground of appeal contends that the Montpelier Loop Recreational Trail is not properly shown and that the licence lacks safety conditions for trail users during construction.

In considering this ground of appeal the FAC noted the response marked as ground 8 of the DAFM SoF dated the 09/04/2025.

The FAC finds that recreational trails are mapped in the application and the grounds provide no basis for concluding that the mapping is deficient. In relation to recreational users, the application mapping identifies forest roads and recreational trails, and the area is a commercial managed forest. The Standards for Felling and Reforestation 2019 address the matter of safety signage, and Condition 3 of the licence requires adherence to those standards.

In relation to the scale of the maps, the FAC finds on the record, maps of the lands at various scales both higher and lower than the suggested 1:5,000 and does not consider that there is any basis to conclude that the mapping scales are insufficient.

The FAC does not consider that there is any reason to conclude that the application was deficient in relation to these grounds.

Unenforceable Licence Conditions

This ground of appeal contends that conditions 10 and 11 of the licence are unenforceable.

In considering this ground of appeal the FAC noted the response marked as ground 9 of the DAFM SoF dated the 09/04/2025.

Climate Change

This ground of appeal contends that the Climate Action Plan & Nature Restoration Law have not

been taken into account in the processing of this licence.

In considering this ground of appeal the FAC noted the response marked as ground 13 of the DAFM SoF dated the 09/04/2025.

The FAC noted that the Appellant has adduced no convincing evidence that the Climate Action Plan & Nature Restoration Law and Habitats Directive have not been complied with, therefore FAC does not consider that there is any reason to conclude that the application was deficient in relation to this ground. The forest is comprised of young and newly planted plantation forest.

FSC interim forest stewardship standard for Ireland

This ground of appeal contends that the licencing process is contrary to the FSC interim forest stewardship standard for Ireland. The FAC noted that the FSC interim forest stewardship standard for Ireland is a voluntary, private, sustainable forest management certification scheme and is not a matter on which the FAC would make a determination.

APPLICATION DOCUMENTATION.

Appropriate Assessment.

DAFM AA Screening & AA Determination.

In reviewing the documentation on file, the FAC noted that the Applicant's AA Pre-screening Report dated 16/04/2024, having assessed 8 Natura 2000 sites within 15km of the site, concludes that the proposed clear-felling without reforestation will not will not have a significant effect on any European Site, and contends that there is sufficient information for DAFM to determine that there is no requirement for this project to proceed to Appropriate Assessment (Stage 2).

The FAC also noted that the DAFM AASRD dated 09/07/2024 concludes that, having examined the same 8 Natura 2000 sites within 15km (and one other), the project was required to proceed to AA (Stage 2). In reviewing the documentation on file, the FAC noted that at Section 3 of the DAFM AASRD dated 09/07/2024 it is stated that the AASRD considered the NIS, EIAR, Planning permission (Approval) and associated documents for the Dublin Mountain Visitors Centre (DMVC) and all associated works (An Bord Pleanála Reference No.: 06S.JA0040) as the proposed felling is a component that permitted development.

In the case of the Wicklow Mountains SPA the DAFM screened in the project for the following reason:

"Possible effect. The proposed felling is a component of a permitted development (the Dublin Mountain Visitors Centre and all associated works (An Bord Pleanála Reference No.: PL06S.JA0040)) which has been screened in and considered for potential impacts on Merlin as "any increase in visitors accessing the SPA as a direct result of the proposed development could lead to habitat degradation, either directly through disturbance (visual, noise) or indirectly through a reduction in prey availability". While in isolation it is not considered that the proposed felling would result in significant effects on this European Site, on an extremely precautionary basis given that the overall permitted development was screened in, this European Site is screened in."

In the case of the Wicklow Mountains SAC the DAFM screened in the project for the following reason:

"Possible effect. The proposed felling is a component of a permitted development (the Dublin Mountain Visitors Centre and all associated works (An Bord Pleanála Reference No.: PL06S.JA0040)) which has been screened in and considered for potential impacts on heathland habitats as "there is potential for a small increase in footfall to lead to braiding and erosion of the habitat along the existing trails, reducing the overall area in the SAC". While in isolation it is not considered that the proposed felling would result in significant effects on this European Site, on an extremely precautionary basis given that the overall permitted development was screened in, this European Site is screened in."

The FAC noted that in both instances the NIS for the DMVC concluded that

"Therefore, given the full and proper implementation of the mitigation prescribed in this NIS, it can be concluded beyond all reasonable scientific doubt that construction and operation of the proposed development will not adversely affect the integrity of the Wicklow Mountains SPA in view of the Conservation Objective for "Merlin"."

and

"Therefore, given the full and proper implementation of the mitigation prescribed in this NIS, it can be concluded beyond all reasonable scientific doubt that construction and operation of the proposed development will not adversely affect the integrity of the Wicklow Mountains SAC in view of the Conservation Objectives for "Northern Atlantic wet heaths with Erica tetralix" and "European dry heaths"

The FAC noted that neither the licence application nor the Applicant's AA Pre-screening report refer to the clearfelling as being part of the DMVC project, in view of this it is the FAC's opinion that, on the face of the record, licence application DU02-FL0189 is a stand-alone project before the Minister for Agriculture. 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 2017 Regulations further provide that the Minister may require the provision of a Natura Impact Statement within a specified period and for the Minister to rely on other sources of information to facilitate an appropriate assessment.

In this instance the FAC considers that the DAFM AA screening undertaken does not identify or assess if the tree felling application, either individually or in combination with other plans or projects, is likely to have a significant effect on a European site. While the Minister is required to consider other plans and projects, the FAC considers that it is the tree felling application that is before the Minister for Agriculture. The Minister has determined that the tree felling licence proposal should proceed to appropriate assessment as a planning application on the same land, but for a different and larger development, was subject to appropriate assessment. However, the FAC considers that in adopting this approach the Minister has considered matters outside of the scope of the consent application before them. European Communities (Birds and Natural Habitats) Regulations 2011 to 2021 (SI 477 of 2011) provides the following in relation to secondary consents,

21 (b) In taking account of a screening for Appropriate Assessment or Appropriate Assessment in relation to a plan or project and of a Natura Impact Statement, the second authority shall consider the extent to which the scope of that screening for Appropriate Assessment or Appropriate Assessment or Natura Impact Statement covers the issues that would be required to be addressed by the second authority in a screening for Appropriate Assessment or Appropriate Assessment of the plan or project in view of the scope of the consent to be given by it, and shall identify any issues that have not, in that regard, been adequately addressed.

The FAC considers that the Minister has not undertaken a screening for appropriate assessment in keeping with the requirements of the Forestry Regulations 2017 and the FAC is satisfied that this represents a serious and significant error in the making of the decision.

The FAC noted that there is neither a Natura Impact Statement nor an Appropriate Assessment Report on the tree felling file available on the Forestry Licence Viewer nor does the DAFM AASRD identify that the DAFM will be relying on the NIS submitted by the Applicant in relation to a planning permission or direct the public to that document. According to the DAFM statement and the record of the decision, the Minister did not provide for a period of public consultation in relation to their Appropriate Assessment process and the screening undertaken by the Minister was published at the same time as the licence. While the Minister appears to have been acting as a second authority for the making of a consent on an activity that was also considered by the planning authorities in relation to a much larger development, the FAC does not understand that the Minister was entitled to forego the public consultation process in relation to the Appropriate Assessment process where no joint procedure was initiated and the Minister had undertaken a screening and determined that an Appropriate Assessment was required.

The FAC considers that, under such conditions, there could not be effective public consultation in relation to the appropriate assessment of the tree felling application and the FAC is satisfied that this represents a serious error in the processing of the licence application.

The DAFM AAD requires adherence to the “mitigations detailed in NIS for the Dublin Mountains Visitors Centre and all associated works”. The FAC considers that this requirement further demonstrates the problems with the Minister’s approach as it essentially conditions a tree felling licence on 0.63 hectares on meeting the mitigation measures related to activities concerning a much larger and different development. The mitigation measures specified in the NIS relate to visitor numbers and behaviour and the NIS considered the felling of trees across multiple parts of the site in relation to specific conservation interests and concluded that no mitigation measures were required. However, the Minister has conditioned the specific tree felling licence on implementing measures which are not related to tree felling.

In addition, the DAFM AAD includes other measures related to potential effects not identified in the screening, which are not included in the NIS and have not been assessed. There is no Appropriate Assessment Report prepared by DAFM nor any request for the Applicant to amend the NIS to address these matters.

The FAC does not consider that the Minister has undertaken a screening for Appropriate Assessment or an Appropriate Assessment of the tree felling licence application that was made to them under the requirements of the Forestry Regulations 2017. The FAC is satisfied that serious and significant errors were made in the making of the decision in relation to the Appropriate Assessment screening and Appropriate Assessment such that the decision should be set aside and remitted for the Minister to undertake a new screening and Appropriate Assessment, as required.

DAFM In-combination Reports.

In reviewing the documentation on file, the FAC noted that the AASRD In-combination assessment (Appropriate Assessment Screening Report Appendix A: In-combination report for Felling and Reforestation project DU02-FL0189) it is stated that

"There is no likelihood of residual effects that might arise from this project, which are not significant in themselves, creating a significant effect in combination with other plans and projects."

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 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 has 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 it is not appropriate to consider potential "residual" effects of a proposed plan or project at the AA Screening stage. The FAC consider that this wording is ambiguous as it is not clear whether residual effects are being considered cumulatively in-combination with other plans and projects, or individually in-combination with other plans and projects, and that as a result it is unclear if the proper test has been applied.

In the context of undertaking a new AA screening the FAC considers that the Minister should correct this language to avoid the introduction of any unnecessary confusion.

The in-combination document specifies that the project comprises felling and reforestation but no replanting is proposed and the project has been mis-described.

The FAC noted that both the In-combination assessments for the AASRD and AAD referred to the objectives of the South Dublin County Development Plan 2016-2022 but that on the date the in-combination assessment was carried out (09/07/2024) the operative county development plan was the South Dublin County Development Plan 2022-2028 which came into effect on 3rd August 2022.

The FAC noted that the final paragraph of the In-combination assessment for the AAD refers an AA report and that no Appropriate Assessment Report is on the FLV.

The FAC considers that the lack of clarity in the wording of the In-combination conclusion, the use of an out-of-date county development plan and the reference to an AAR that has not been carried out represent a series of errors in the processing of the licence application.

CONCLUSION.

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal, the SoF submitted by the DAFM, and the additional submissions from all parties. In accordance with Article 148 of the Agricultural Appeals Act 2001, as amended, the FAC is satisfied that a series of significant or serious errors was made in the making of the decision in relation to licence DU02-FL0189. The FAC is thus setting aside and remitting the decision of the Minister in relation to licence DU02-FL0189 to ensure that before a new decision is made the project is subjected to the Appropriate Assessment process such that the requirements of the law are met

either through carrying out a new Appropriate Assessment screening of the proposal itself and in combination with other plans or projects under Article 6(3) of the EU Habitats Directive, and, should the findings of the screening require, have in place an Appropriate Assessment Report or an updated NIS for the project,, to address the errors identified by the FAC earlier in this letter.

Yours sincerely,



Iain Douglas,
On Behalf of the Forestry Appeals Committee