



Irish Forestry Unit Trust

31st October 2025

Subject: Appeal FAC50/2025 against licence decision TFL00652821

Dear Sir/Madam,

I refer to the appeal to the Forestry Appeals Committee (FAC) in relation to the decision of the Minister for Agriculture, Food and Marine (Minister) to grant tree felling licence TFL00652821. The FAC established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001, as amended, has now completed an examination of the facts and evidence provided by the parties to the appeal. The Agriculture Appeals Act 2001, as amended, and the Forestry Appeals Committee Regulations 2020 provide the statutory basis for the functioning and operation of the FAC.

Hearing

A hearing of appeal FAC50/2025 was held remotely by the FAC on 10th October 2025. In attendance:

FAC Members: Mr. Seamus Neely (Chairperson), Mr. Iain Douglas, Mr. Luke Sweetman & Mr. Vincent Upton.

Secretary to the FAC: Mr. Radek Wojtczak.

Decision

Having regard to the evidence before it, including the record of the decision, the notice of appeal, and submissions received, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister for Agriculture, Food and the Marine to grant licence TFL00652821. The reasons for this decision are set out hereunder.

Background

The appeal relates to a decision of the Minister to grant a tree felling licence on 15.33 hectares at Lisnanorrus, Co. Leitrim. The decision was made on 29th April 2025. The application was made in 2021 and a previous licence decision had been made by the Minister on 15th November 2021. That licence decision had been appealed to the FAC which set aside and remitted the decision to a specified point and for stated reasons. For the avoidance of doubt, it is the appeal against the decision of 29th April 2025, and the associated record, that is before the FAC and the subject of this determination. The record includes a number of revised documents that were requested by the Department of Agriculture, Food and the Marine (DAFM) and submitted by the Applicant.

Application

The application included a revised harvest plan, maps and other documents that provides details of the site and operations and includes measures in relation to badger and red squirrel. The application documents also included environmental and operational information including details of the trees to be felled and features on the lands.

The forest is divided into four plots of varying sizes and are comprised of Sitka spruce. The lands would be replanted with a mixture of Sitka spruce and broadleaves with areas of open space. The felling was planned for two periods, 2023 and 2027. The forest is located in a rural location and is bounded to the east and west by public roads and access is marked at the western side. Drumkeeran is the closest village located to the southwest.

The application included a document entitled “Natura Impact Statement for Clearfelling, located at Lisnanorrus, Co. Leitrim”. The document states that this was prepared and submitted by the Applicant without being requested by the DAFM. This identified six European Sites and determined,

“No European Sites identified as having potential for potential adverse effects therefore no mitigation is necessary in relation to Natura 2000 sites.”

The document records the details of an ecological survey of the lands which describes the habitats encountered and the hydrology of the site. It also assesses the site and operations for badger and red squirrel, evidence of which was identified on site and recommends measures. The report notes that the lands are not within a Natura 2000 site and that no Annex I habitats or Annex II species were recorded during the survey.

Referrals and submissions

The application had been referred to Leitrim County Council and the National Parks and Wildlife Service (NPWS) and both provided responses. The County Council submitted that the lands are not located within any designated area and was within an area of high capacity in relation to forestry as identified in the County Development Plan. It is submitted that the lands identified appear to impact on a recorded monument and that the Forest Service should satisfy itself in relation to any Appropriate Assessment and EIA requirements. The submission also included a number of conditions that should be included in the licence. The NPWS submitted that it had no comment to make on the application and provided a

document entitled “*Appendix 1: General observations from the National Parks and Wildlife Service (NPWS) in relation to forestry application referrals*”.

The application was subject to four periods of public consultation. At the application stage, there were two submissions from members of the public who described themselves as living proximate to the site and objected to the proposed felling and the replanting of the lands across a range of concerns including impacts on dwellings and adjoining lands and biodiversity. The DAFM had requested further information and the revised documentation was subject to a further period of public consultation. The Appellant made a submission on the application and assessment that referred to a significant number of issues including public consultation, the state of the lands and the ecology report amongst other matters. The DAFM had also undertaken an Appropriate Assessment in relation to the decision of 15th November 2021 and the decision of 29th April 2025.

DAFM Reports

The application was considered by a number of technical staff in the DAFM.

The application was assessed by a DAFM Archaeologist who prepared a report, dated 31st March 2023, and specified a number of conditions that should be adhered with in relation to the works. In particular, this included the undertaking of a survey and the inclusion of an exclusion zone around a ringfort on site in addition to measures related to replanting.

The DAFM prepared an Ecology report dated 23rd January 2025 that outlined the proposal and lands and noted the provisions of the EU Water Framework Directive and the Wildlife Act. The report goes on to specify measures for red squirrel and badger and the protection of water.

An Inspector’s Certification Report, certified on 10th April 2025, which records that the application was made in accordance with procedures, that all environmental datasets have been cross-checked, that the proposal does not include deforestation and that the replanting species are silviculturally and environmentally suitable and that the felling has taken account of environmental considerations on the ground.

The record includes a document, date of certification 10th April 2025, headed *Project Description, Environmental and Social Considerations* in which the proposal was considered across a range of criteria, including project description, cumulative effect and extent of project, water, archaeology, landscape, designated and non-designated habitats amongst other criteria. This document concludes,

EIA: On the basis of this examination this application be subject to the EIA process – No

Appropriate Assessment

The DAFM undertook a screening for Appropriate Assessment, dated 29th November 2024, that identified three European sites within 15km of the lands, Boleybrack Mountain SAC IE0002032, Cuilcagh - Anierin Uplands SAC IE0000584, and Lough Gill SAC IE0001976. Each site is considered in turn with its conservation interests and objectives and reasons are provided for the screening conclusion. The document concludes,

Following AA screening, and pursuant to Article 6(3) of the Habitats Directive, the European Communities (Birds & Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011) (as amended) and the Forestry Regulations 2017 (S.I. No. 191 of 2017), as amended by inter alia the Forestry (Amendment) Regulations 2020 (S.I. No. 32 of 2020), DAFM has determined that there is no likelihood of the Felling project proposed under TFL00652821 having any significant effect, either individually or in combination with other plans or projects, on any of the following European site(s), for the reasons set out in Part A: Screening Report:

- Boleybrack Mountain SAC IE0002032.*
- Cuilcagh - Anierin Uplands SAC IE0000584.*
- Lough Gill SAC IE0001976.*

All European Sites have been screened out, however a Natura Impact Statement was erroneously provided by the applicant, as such the file must progress to Appropriate Assessment.

The DAFM further prepared an Appropriate Assessment Determination, dated 3rd April 2025, that provides an overview of the process and states,

... DAFM determined that there is no likelihood of the felling project proposed under TFL00652821 having any significant effect, either individually or in combination with other plans or projects, on any European site for the reasons set out in Part A of the Screening Report and Section 2 of this report. However DAFM erroneously received an unsolicited Natura Impact Statement (NIS) from the applicant so the file progressed to Appropriate Assessment. The NIS did not screen in any sites and came to the same conclusion as DAFM's AA Screening. As all European Sites were screened out, no mitigation is required or provided.

The document records that the proposal was screened out in relation to all European sites and restates this conclusion. Submissions made by third parties and prescribed bodies are also considered and a submission received on 20th December 2024 as part of the public consultation on the assessment is addressed.

Licence decision

The decision to grant the licence subject to conditions, including adherence with the archaeological and ecological reports, was made on 29th April 2025. The licence conditions also include a specified setback from dwellings which is in keeping with the Standards for Felling and Reforestation (2019), broadleaf planting adjacent to the setback and a requirement to contact the felling section of the DAFM and Leitrim County Council prior to operations commencing.

Appeal

There is one third party appeal against the decision to grant of the licence. The Notice of Appeal was received on 15th May 2025 and within the statutory appeal period. The Notice of Appeal and full grounds have been provided to the parties. The FAC considered the grounds in full and, in brief summary, the grounds submit that,

- Storm damage and windblow has rendered the application information obsolete with reference to the ecology and archaeology report and application documents.,
- The harvest plan is deficient and in conflict with licence conditions with reference to landscape sensitivities and hedgerows and the Environmental Requirements for Afforestation.,
- There is no requirement to phase works,
- There was inadequate and ineffective public notice in contravention of Article 6(2) of the Aarhus Convention,
- That there was a failure to have regard to the social function of forestry with reference to consultation,
- That there was a breach of Section 10(4) of the Forestry Regulations in relation to public consultation on the application.,
- That the lands were not afforested in accordance with the law with reference to Appropriate Assessment and EIA screening and previous operations on the land.,
- That licence conditions are not adequately reasoned with reference to the window in which to take an appeal and provisions for setbacks from powerlines amongst other matters.,
- 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 with specific reference to the submission of an NIS and the consideration of in-combination effects.,
- There was inadequate consideration of the submission of December 2024 and that it should not have been addressed as part of the Appropriate Assessment.,
- There was inadequate assessment under Article 12 of the Habitats Directive (Annex IV species),
- DAFM procedures are not consistent with the requirement for providing a General System of protection commensurate with Article 5 of the Birds Directive,
- The Pollution Impact Potential of the project has not been considered or assessed.,
- Conditions of the Ecology Report lack precision and clarity,
- The determination of the Environmental Impact Assessment Screening is based on an inadequately reasoned assessment and is unsound in law.,
- There are inadequate setbacks and risk assessment,
- Access to justice is prohibitively expensive,
- Fees were not prescribed in accordance with the law.,
- The Felling and Reforestation Policy was not subject to a Strategic Environmental Assessment,

Minister's statement and evidence

Under the Forestry Appeals Committee Regulations 2020 (S.I. No. 418/2020), the Minister is required, in relation to each notice of appeal, to provide to the FAC,

(a) a statement showing the extent to which the facts and contentions advanced by the appellant are admitted or disputed, and

(b) information, documents or items in the power or control of the Minister that is relevant to the appeal.

The DAFM provided a statement, dated 25th June 2025, providing an overview of the decision and responding to the appeal, a full copy of which was provided to the parties. As the parties were advised, the FAC relied on the record of the decision as provided by the Minister on the online Forestry Licence viewer (FLV). The FAC had regard to the statement and record in full and, in brief summary, the statement submits that,

- The decision was made in accordance with DAFM procedures, SI 191 of 2017 and the 2014 Forestry Act.,
- That this is the second appeal in relation to the property and that the application was submitted in April 2021. That the measures and plan are appropriate for the site accounting for windblow,
- The Environmental Requirements for Afforestation is not always directly transferable to felling and reforestation and that there was no requirement to identify landscape features on the plan map. Silt traps do not appear to be located on the harvest plan map but that it is clear to the Forestry Inspector where they would be located given the hydrology of the site.,
- That the public consultation process meets any obligations that might arise under the Aarhus Convention. An overview of the DAFM process was provided.,
- Regulation 10(4) provides discretion as to what information should be published and subject to public consultation and that the test is whether a person knows in general terms why the decision was made and to have enough information to inform a challenge of the decision.,
- It is unclear what environmental issues are being referred to in relation to the allegation that the lands were not afforested in accordance with the law and that the appeal should be limited to the licence decision made in relation to the tree felling.,
- The DAFM does not agree with the appellant that the licence conditions are unclear and the DAFM Forestry Standards Manual sets out the agreed procedures with regard to setbacks from power lines and that the ESB is empowered to manage vegetation around powerlines. Grounds of appeal are not the appropriate forum for calls to change existing policy. The revised appeal period supersedes a policy document from 2017. The DAFM disagrees that the setbacks from public roads are contrary to good forestry policy.,
- That the Appropriate Assessment process did not contain lacunae. An overview of the process was provided and it was submitted that an NIS was submitted despite the proposal being screened out. That other plans and projects were considered in the process.

- The Appellant's submission was received and considered.
- That Annex IV species were considered as part of the process and that the granting of a licence does not remove protections under other legislation.,
- In relation to Article 5 of the Birds Directive, the DAFM submits that the grounds do not refer to any specific adverse effect on the environment and the DAFM disagrees that its procedures are inconsistent with Article 5 of the Birds Directive. The granting of a felling licence does not exempt the holder from meeting any legal requirements and the landowner has responsibilities under the law.,
- The DAFM applies a wide range of checks and balances during its evaluation of felling licence applications in relation to the protection of water.,
- The DAFM disagrees with the allegation that the conditions on the Ecology Report lack precision and clarity. That survey, measures and monitoring are clearly set out and the use of plant protection products is governed by statute.,
- The position of the DAFM is that clear-felling and replanting an already established plantation forest is a standard operational activity and does not involve an activity or project that falls within the requirements of the EIA Directive.,
- The DAFM has developed considerable expertise in relation to the protection of water during the forestry licencing process and have actively engaged in the Water Framework Directive process.,
- The DAFM rejects the assertions in relation to access to justice being prohibitively expensive and that appeal fees were not prescribed in accordance with the law.,
- The DAFM does not agree with the submission in relation to the "Felling and Reforestation Policy" and Strategic Environment Assessment and considers the matter to fall outside of the appeals process.

Further submissions

Both the Notice of Appeal and statement from the DAFM were circulated to the parties and they were informed that any further submissions could be made within a stated period of time. The FAC did not receive any further submissions.

Considerations of the FAC

In the first instance, the FAC considered whether an oral hearing was required in the case of appeal FAC50/2025 and having regard to the particular circumstances of the appeal, the record of the decision, notice of appeal and submission from the DAFM the FAC concluded that it was not necessary to conduct an oral hearing in order to properly and fairly determine the appeal. In particular, the FAC was satisfied that all parties were afforded an opportunity to respond to the appeal and the position of each other party.

The FAC noted that a number of grounds and commentary in the appeal related to the legislative provisions underpinning the appeals process and other broader policy matters 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. The appeal makes reference to previous decisions of the FAC on generic grounds that have been pursued in previous appeals. 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 of appeal, the FAC considered in the first instance the contentions of the appellant that the DAFM should not have issued the licence without reassessment following storm damage. The grounds allege that the site has suffered catastrophic windthrow but has provided no evidence of this or the extent of the damage alleged to have occurred. Under the Agriculture Appeals Act 2001, as amended, an appellant is required to submit all of the grounds and evidence on which they wish to rely. The application notes the presence of windblow on site and the Appellant had made a submission on the application that the site had suffered wind damage. That submission was considered by the DAFM as noted on the record of the decision.

The DAFM have stated that the licence conditions remain in place and must be met. The DAFM contends that the application is still valid and that the assessment and measures are appropriate to the site including having regard to the presence of windblow on the site.

Damage by wind is a common feature of Irish forestry. The likelihood of wind damage is influenced by a range of factors including management practices such as thinning and drainage. The Appellant has submitted that the forest was subject to thinning previously which is an activity that can increase the likelihood of wind damage in some circumstances. As noted in the grounds, when the licence application was made the forest had suffered some wind damage. The Natura Impact Statement and mapping and plan submitted by the Applicant notes the presence of windblow on site. The Appellant had also submitted that the site had suffered further wind damage in their submission during the public consultation period. This was considered by the DAFM, as evidenced in the Archaeological report which notes the occurrence of windblow and likely occurrence of further windblow in the future. This was also noted by the Ecologist who addressed the submission in the Appropriate Assessment determination document. The Inspector also recorded that the proposal was silviculturally and environmentally suitable to the site.

The replanting proposed includes some variation in species and more open areas including setbacks from public roads and watercourses. The proposal, the licence decision of which has been appealed, is well setback from any river.

The FAC considered that the grounds in relation to the Applicant not being able to implement the licence conditions are largely speculative and unevidenced and the DAFM have stated that the conditions are in place and must be met. The Applicant might seek to have the licence conditions amended and the Minister is empowered to amend such conditions under the Forestry Act 2014. However, there is no evidence that the Applicant has sought to amend the conditions nor that the Minister has made such amendments.

The grounds allege that the operations do not align with “Good Forestry Practice” and later go on to provide a definition attributed to the Forestry Act 2014. The FAC finds that the definition of ‘Good Forestry Practice’ as quoted in the grounds is provided for in the Forestry Act 2014 at Part 10 Article 32 and that this is specified to be in the context of compensation for refusal of felling licence and for the purposes of the related section of the Act and is not provided as a definition for the purposes of the Act as a whole.

The Forestry Act 2014 provides for the Minister to produce and implement guidelines, codes of practice and standards for good forest practice and, as referred to in the statement from the DAFM, a number of such documents have been produced. The Forestry Regulations 2017 also require the Minister to have regard to such documents in making decisions on licence applications. The Minister has conditioned the licence on compliance with the Standards for Felling and Reforestation amongst other conditions. The FAC does not consider that the decision that was made was not in keeping with the Standards for Felling and Reforestation nor the Felling and Reforestation Policy documents published by the DAFM.

The FAC considered that the presence of windblow on site had been identified in the application, in submissions made by the Appellant as part of the public consultation period, and by the DAFM. The application was considered by the Minister and assessed by a number of the technical staff of the DAFM. The position of the DAFM is that the decision and licence conditions are still in effect. While the felling and extraction of trees from a windblown site can be a more complex and difficult operation the FAC did not consider that there was any convincing evidence before it that the Applicant could not fulfil the requirements of the licence conditions such that the application should have been re-assessed. The nature of the works, involving the felling and extraction of timber remains the same. It is for the Applicant to satisfy the licence conditions and the damage by wind would not allow them to avoid any requirements of the licence. The Applicant might seek to have the licence conditions amended and the Minister might choose to amend the licence, however, according to the record this has not occurred and that matter is not before the FAC.

The forest is comprised of commercially managed plantation which would not be considered a rare or particularly valuable habitat. A forest which has recently suffered the damage described by the Appellant would likely be less suitable as a habitat for a number of species that rely on standing trees. The surveys identified the presence of badger and red squirrel on site and proposed measures to protect these species which were considered and adopted by a DAFM Ecologist. The Applicant has declared the presence of species on the site and undertaken to put in place measures to protect them.

The grounds allege that the ecological reports are no longer relevant given the time period that has elapsed since the submission of the application. However, the DAFM Ecologist prepared an Ecology Report in January 2025 and by relying on the application was clearly satisfied that the information was sufficient. The FAC considered it relevant that surveys were undertaken and submitted voluntarily by the Applicant and identified species on site and proposed measures to protect them. The survey did not claim that these species were absent from the site and the Applicant undertook to put in place measures to protect the species. The FAC considers that this demonstrates an awareness by the Applicant of the protection afforded species under the Wildlife legislation. The lands in question are commercial plantation and the land use and habitat type would not have changed over such a short period even where significant wind damage may have occurred.

The FAC was not satisfied that a serious or significant error or a series of errors was made in the making of the decision or that the decision was made without complying with fair procedures in relation to these grounds.

The FAC considered the contention of the Appellant that the Harvest Plan was deficient and in conflict with the licence. The grounds contend that hedgerows are not correctly identified and that historic mapping indicates that the lands were significantly sub-divided and contains hedgerows that should have been retained but provides no basis for this claim or any evidence to substantiate the grounds.

The DAFM contended that they relied on the Standards for Felling and Reforestation (2019) in considering the application and that the 'Environmental Requirements for Afforestation' are not always directly transferable to felling and reforestation. It is submitted that the mapping of sensitive landscape features is not required.

The grounds refer to a section of the Environmental Requirements for Afforestation (DAFM, 2024) in relation to hedgerows. The FAC considers the term "in general" to not provide a "get out of jail free" card as suggested by the Appellant but does provide some flexibility to landowners in how they approach access within their lands. It would not for example allow significant removals of hedgerows. In any case there is no evidence that hedgerows would be significantly impacted by the proposal. The proposal identifies hedgerows as being present at the boundaries of the site and none are identified within the forest itself and the application does not propose to have a significant effect on any hedgerows.

In relation to silt traps, the Standards for Felling and Reforestation do not require the mapping of silt traps and address the location and management of such measures, which are long established management practices in forestry and other land use management.

In the statement responding to the appeal, the DAFM submits that there is only one aquatic zone connecting to a relevant water course and this is clearly an error as the application and the Applicants ecological survey identify the drainage system of the lands and shows a connection at the east and west. However, the DAFM Ecologist describes the hydrology of the site in detail and identifies that forestry and agricultural drains that cross the site are connected both easterly and westerly to aquatic zones (rivers) and, therefore, demonstrated a clear understanding of the hydrology of the site in specifying the recommended measures to protect water quality. The FAC was therefore satisfied that the error that appears in the statement was not made in the making of the decision.

The FAC finds that the Harvest Plan map shows the existence of hedgerows at the boundaries of the project area and that there is no convincing evidence before it that the maps were deficient. The Natura Impact Statement (NIS) and ecological survey submitted by the Applicant also describe habitats on site following a walkover survey by an Ecologist who recorded the presence of hedgerows at the boundary of the site to the south and east but did not identify hedgerows within the forest. The FAC finds that the submission from the appellant is primarily speculative and reflects suggested historic field boundaries and hedgerow patterns rather than the current state of the land. In addition a number of features that the grounds suggest are hedgerows are shown as relevant watercourses on the mapping and setbacks are

included in the licence conditions. As identified by the Applicant's Ecologist such relevant watercourses are comprised of agricultural and forestry drains.

In relation to the suggestion that extraction routes are precluded by the Archaeological Report, the application maps show the direction of felling and the access to the lands from the public road. The Archaeological Report places specific restrictions in relation to archaeological monuments and possible archaeological and cultural features on site and restrictions in relation to replanting. However, the FAC does not consider that the Archaeological Report places restrictions that would result in the licence being inoperable.

In relation to landscape sensitivity, the application was referred to the local authority which provided a response and submitted that the lands are not located within any designated area as identified in the County Development Plan and are considered to be in an area of high capacity in relation to forestry. The DAFM recorded in the document *"Project Description, Environmental and Social Considerations"* its position that the proposal did not fall within a protected landscape. The grounds provide no basis on which it might be concluded that the proposal might have a significant adverse impact on a protected landscape or amenity area.

The FAC was not satisfied that a serious or significant error or a series of errors was made in the making of the decision or that the decision was made without complying with fair procedures in relation to these grounds.

The grounds submit that there is no requirement to phase works. However, the FAC consider that it is well established that a person applying for a licence, such as a felling licence, would be required to undertake the works in the manner specified in the application, unless the competent authority specifies conditions to the contrary. The FAC would consider that the application details form the basis on which the licence decision is made. The Standards for Felling and Reforestation (DAFM, 2019) state that where a Harvest Plan is submitted it shall form part of the application. The FAC would understand that in this instance there would be a gap between the felling of plots 3, 4, and 5 and plot 2. While the processing of the application and the appeals process has created delays in the planning of the Applicant, the FAC would consider that the felling of plot 2 could not proceed prior to 2027 as this was stated in the application. The licence also states the felling details in table 1 which includes the year of felling.

As noted by the DAFM an Applicant may wish to seek to fell all trees at the same time and this might be the case, in particular, where a forest has suffered or is prone to windthrow. However, there is nothing on the record to indicate that the Applicant has sought to amend the felling periods and this matter is not before the FAC. In any case, in this instance, the entirety of the forest is below the threshold of 25 hectares set as a general size threshold for a single felling coupe in the Felling and Reforestation Policy and Standards for Felling and Reforestation.

The FAC was not satisfied that a serious or significant error or a series of errors was made in the making of the decision or that the decision was made without complying with fair procedures in relation to these grounds.

The FAC considered the grounds that there has been inadequate and ineffective public notice in contravention of Article 6 (2) of the Aarhus Convention and that, relatedly, the Minister had failed to have regard to the social function of forestry. The grounds reference comments of the Court of Appeal in *McCaffrey* (*McCaffrey v Minister for Agriculture Food and Marine* [2017] IECA 247). The grounds make reference to a previous decision of the FAC on the matter and the grounds are largely of a generic nature having been previously pursued by the Appellant and the Appellant has been previously advised of the position of the FAC, as they note.

The DAFM submit that any obligations that might arise under the Aarhus Convention are met through its procedures which are outlined.

The Appellant makes reference to two properties which they allege will be directly impacted by the works but do not claim to occupy either dwelling or to represent the occupiers. The application was subject to four periods of public consultation overall and during the initial stage two submissions were made by members of the public who claimed to live proximate to the site. As noted, a previous decision on the application was appealed. The Appellant has not claimed that they were disadvantaged and, indeed, made submissions on the application as noted by the DAFM in the record of the decision. The proposal includes setbacks from dwellings and would be undertaken within the boundary of the site.

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 defines an Environmental Impact Assessment (EIA) and identifies the projects which are required to be subject to EIA. The 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 Forestry Regulations 2017 do not provide for the Minister to undertake an EIA in relation to a tree felling licence application.

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.

The FAC finds that Article 6(2) of the Aarhus Convention refers to the public notification requirements where an environmental impact assessment is being undertaken and not at the screening stage. One of the requirements is that the public is informed of the fact that a development is subject to an assessment. The public clearly cannot be informed that a development is subject to an assessment before it has been decided that the development is to be subject to such an assessment. The recital of the EIA Directives states,

‘Moreover, taking into account unsolicited comments that might have been received from other sources, such as members of the public or public authorities, even though no formal consultation is required at the screening stage, constitutes good administrative practice’.

This is reflected in the consultation requirements provided for under Article 6 which is required after the competent authority has determined that a development is subject to an EIA. The procedure adopted in this case provided for a public consultation period in keeping with the requirements of the Forestry Regulations 2017 (SI 191 of 2017). The application was subject to four periods of public consultation one at application stage, one at the initial Appropriate Assessment stage, one in relation to the further information submitted by the Applicant and one in relation to the Appropriate Assessment. The FAC considered that the comments attributed to the Court of Appeal and the ACCC are referenced to a period prior to the current Forestry Regulations 2017 and procedures of the DAFM, including the availability of the Forestry Licence Viewer.

The FAC did not consider that there was any evidence that the public consultation was ineffective in this instance and according to the record, members of the public, including the Appellant, were afforded an opportunity to make submissions on the application and took advantage of that opportunity.

The FAC considered that this ground of appeal effectively seeks to challenge Ireland’s and the EU’s transposition of the Aarhus Convention and related questions of law and the FAC considered, as the Appellant has noted that they have been previously advised, that such matters would not fall within its jurisdiction to determine.

The FAC was not satisfied that a serious or significant error or a series of errors was made in the making of the decision or that the decision was made without complying with fair procedures in relation to these grounds.

The grounds allege a breach of Section 10(4) of the Forestry regulations in relation to the provision of documentation for the purposes of facilitating public consultation and submissions. The grounds make specific reference to an Appropriate Assessment Screening Report, an Archaeology Report, an Ecology Report and an Environmental Impact Assessment Screening Determination. The DAFM contested the grounds and submitted that the Regulations provide discretion in relation to the publication of documents and that any interpretation to the contrary would negate the public interest. The DAFM go on to reference caselaw in relation to the tests employed by the courts regarding challenges made by the public on administrative decisions.

The FAC noted that there are a number of Appropriate Assessment screening documents on file and that an Appropriate Assessment Screening Report & Determination dated 29/11/24 was published and subject to public consultation. The FAC understands the grounds to refer to a second shorter document that is also described as an Appropriate Assessment screening that was published on the day of the decision but this document contains the same conclusions and reasons as the document of 29/11/24 and, therefore, the FAC does not consider that the public have been disadvantaged. In relation to the Archaeological and Ecology reports, these are internal DAFM documents that would be advisory reports from technical staff and were not submitted by the Applicant and did not form part of the application. In this instance the DAFM did provide for a period of public consultation in relation to the revised maps and plans in addition to the AA screening. While the DAFM might provide for a period of public consultation in relation to additional documentation, the FAC does not consider that there was a requirement for the DAFM to publish the documents identified in the grounds for the purposes of public consultation.

The FAC reviewed the Forestry Regulations 2017 in relation to decision making by the Minister and the availability of documentation concerning the decision. The Regulations require the Minister to make certain documentation available to the public but do not appear to include a requirement to publish the full file on a website. There are separate requirements in relation to the Appropriate Assessment process and, in this instance, the Minister has published the screening and determination in relation to Appropriate Assessment. The FAC understands that the DAFM have adopted a policy and procedure to publish the documentation related to licencing decisions on a freely available online map to support wide access to information and, as indicated in the statement, to provide for information to be readily available to members of the public who might wish to challenge the decision.

The FAC noted that in the DAFM statement, while not raised in the grounds, it is submitted that, at the time the decision was made, the submission that was made by the Appellant in December 2024 was not published and that this has been rectified since. While this would represent a procedural error it occurred after the decision was made and could not disadvantage the Appellant as they were the author of the submission. The submission is also referenced in the Appropriate Assessment Determination and the fact that the submission was made and much of its contents were clearly recorded in the documentation which was readily available to the public. This issue was not raised in the grounds and the DAFM statement was provided to the parties and no further submissions were received. The FAC did not consider the delay in publishing the submission itself to be an error that would have any impact on the making of the decision.

The FAC was not satisfied that a serious or significant error or a series of errors was made in the making of the decision or that the decision was made without complying with fair procedures in relation to these grounds.

In relation to the Appellant's submission that lands (subject to the application TFL00652821) were not afforested in accordance with the law, the FAC considers that the grounds do not provide convincing evidence that the original planting was regulatory deficient or evidence that the afforestation of the lands has led to a significant effect on the environment. The grounds allege that the lands were part of an afforestation development of 60 hectares but provide no evidence of this. As identified in the application and mapping on the application the forest is generally surrounded by agricultural land. In any case, the grounds are contending that the current EIA related legislation and thresholds established in the Forestry Regulations 2017 should be retrospectively applied to an afforestation development from 1989. The FAC does not consider this to be reasonable. Since 1989, EIA legislation has changed both at EU and domestic levels and the thresholds and national competent authorities have also changed on a number of occasions. The FAC considers that its remit is to make a determination on the decision under appeal in accordance with the requirements of the Agriculture Appeals Act 2001, as amended.

As previously advised, the FAC does not consider that the operations addressed in the licence decision before it fall within the categories of development included in the Annexes of the EIA Directive and are not a form of development identified in the Forestry Regulations 2017 that might be subject to an EIA by the Minister for Agriculture.

The grounds allege that an archaeological site was "planted up". There is only one recorded monument on the site, a ringfort, which was subject to a field inspection by the DAFM which did not record that the monument was planted but rather noted that there were trees windblown proximate to the monument. Additional features have been noted on the site but these have not been classified as recorded monuments.

In any case, the felling licence is conditioned on the undertaking of an archaeological report regarding the felling of trees proximate to the monument which must be agreed with the DAFM and the conditions exclude the replanting of specified areas around the ringfort and a number of other features. The FAC does not consider that there is any reason or evidence that the DAFM should have taken further actions in relation to the protection of archaeological monuments and cultural features on the lands.

The FAC was not satisfied that a serious or significant error or a series of errors was made in the making of the decision or that the decision was made without complying with fair procedures in relation to these grounds.

The grounds allege that the licence conditions are not adequately reasoned. The grounds make reference to section 3.3 of the Felling and Reforestation Policy where it states that "no felling operations may commence until 28 days after the licence issue date" and condition (f) of the licence where it states that at least 14 working days must have elapsed after the date of the licence before felling operations may commence. The Felling and Reforestation Policy document is a broad DAFM policy document from 2017 and would not be directly binding on the licence holder but, in this instance, the licence conditions include

a requirement to carry out and complete the operations in accordance with the Felling and Reforestation Policy.

The section of the policy document referred to in the grounds clearly relates to the appeals process and the appeal period has been amended since the publication of the document. It is for the Minister to attach conditions to the licence and, in this instance, the licence condition includes a stay on operations that generally reflects the relevant appeal period and the objectives of the relevant section of the Felling and Reforestation Policy. The FAC consider that it would be clear that the purpose of the stay is to allow for appeals to be made within the relevant appeal window.

However, the condition, as stated, specifies the appeal period as beginning on the date of the licence decision and does not account for the date of publication of the decision. The legislation specifies that the appeal period begins on either the date the decision is made or its publication, whichever is later. The FAC considered that the licence condition as stated did contain an error in that it did not specify that the period might begin on the date the decision was published but in the case of TFL00652821 the licence decision was made and published on the same date so the error is of no consequence. In any case, there is no suggestion that works commenced prior to the making of an appeal and the matter, and in effect, is of no consequence. The FAC is not satisfied that an error was made in the making of the decision in this regard.

The grounds make further reference to Good Forestry Practice. As previously noted, the definition of Good Forestry Practice attributed to the Forestry Act 2014 has not been specified as a definition for the purposes of the Act as a whole but rather in relation to a specific section that addresses compensation.

The grounds make reference to the Forestry Standards Manual but this document identifies itself as being relevant to support schemes, such as the Afforestation Scheme, and may be employed for some licencing purposes. The Forestry Standards Manual does not appear to have been conditioned on the licence but a number of documents such as the Standards for Felling and Reforestation cross reference some sections of the Forestry Standards Manual.

The Standards for Felling and Reforestation require the mapping of utility lines in the Harvest Plan which was undertaken in this case. The line is identified in a separate plot that bisects plots 4 and 5 and runs parallel to the public road. No operations are proposed within the plot containing the electricity line. Plots 4 and 5 are to be felled and plot 5 which lies in between the public road and the utility line would be replanted with broadleaf trees which are slower growing. Plot 5 is located to the south west of the lands and would face the prevailing winds.

The grounds make reference to Sitka spruce growing to 60 metres but this height would be in relation to trees growing in their natural range over many hundreds of years and the figure has no real relevance in the context of a commercial plantation in Ireland.

The FAC noted the submission in the statement from the DAFM that the matter of management of vegetation from Electricity Transmission lines and public roads are provided for in separate legislation, the enforcement of which falls to other authorities. The DAFM statement asserts that grounds of appeal are not the appropriate forum for calls to change existing national policy, which would involve input from a number of public bodies, and therefore beyond the remit of a forestry licence appeal.

The provision of setbacks in relation to forestry licences have been provided for in a number of DAFM documents and the FAC considered that the Minister had regard to these standards and guidelines in making the decision. As noted in the statement from the DAFM, the management of vegetation around utility lines falls has been designated to an authority other than the Minister for Agriculture. The FAC would agree with this position as any changes to policy would require input from a range of public bodies and competent authorities.

The grounds submit that,

It cannot be considered to be Good Forestry Practice for the Forest Service to create societal problems in terms of creating unnecessary risks to basic infrastructure.

The FAC considers that in these grounds the Appellant is seeking to attribute actions to the Forest Service (DAFM/Minister for Agriculture) where the Forest Service (DAFM/Minister for Agriculture) are not the landowners nor the authorities tasked with maintaining the electricity wires.

In relation to commencement notices the FAC consider this condition to be clearly stated and the licence conditions require contact to be made with both the Felling Section of the DAFM and Leitrim County Council.

In relation to setbacks from public roads these are provided for in the application in addition to broadleaf planting adjacent to the road setback. The FAC considers that the setbacks are in keeping with the published standards of the DAFM. In relation to the Roads Act 1993, the Act addresses the responsibility of landowners in relation to trees and other vegetation and the maintenance of public roads.

The FAC was not satisfied that a serious or significant error or a series of errors was made in the making of the decision or that the decision was made without complying with fair procedures in relation to these grounds.

The FAC considered the grounds that allege deficiencies in the Appropriate Assessment of the proposal for the purposes of Article 6(3) of the EU Habitats Directive. The DAFM described the submission of a Natura Impact Statement by the Applicant as an error. The Appellant contends that this was not an error.

Article 6 of Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora states,

3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

The Forestry Regulations 2017, as amended, provide,

19. (1) Where the Minister receives an application for a licence under sections 17 or 22 of the Principal Act, 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.

(2) Subject to paragraph (8), if following an assessment in accordance with paragraph (1), in the opinion of the Minister the proposed development is likely to have a significant effect, either individually or in combination with other plans or projects, on a European site, or the Minister is unable to determine the likely effects of the proposed development on a European site, at any time following the application for the licence the Minister may require the applicant by notice in writing to furnish a Natura Impact Statement and the applicant is to furnish the statement within the period specified in the notice.

The FAC reviewed the documentation provided and noted the contents of the document referred to as Natura Impact Statement and dated 13/04/21. The document contains a number of sections and describes the lands and operations, its location in relation to European sites and the results of a survey of the lands. The document notes the distances to European sites and states that there are no Annex habitats or species on site and does not find that there are any likely significant effects on European sites arising from the proposal. The document does propose measures in relation to red squirrel and badger but these are species protected under national legislation and are not species for which Europeans sites are designated. This is specified in page 9 of the document,

No European Sites identified as having potential for potential adverse effects therefore no mitigation is necessary in relation to Natura 2000 sites.

The FAC considered that the document was not, what would generally be understood to be, a Natura Impact Statement but is rather a screening for Appropriate Assessment and a report of an ecological survey of the lands. In the context of a screening the FAC considered that the document contained some errors. The FAC would understand that, as has been interpreted by the Courts, a screening for Appropriate Assessment should not limit itself to adverse effects. Furthermore, the document suggests that as no potential likely significant effects have been identified that there is no possibility of in-combination effects with other plans and projects. However, this would appear to be the incorrect test as it would not account for effects of a project which would not be significant in themselves but could contribute to a significant effect in-combination with other plans and projects.

In any case, the Natura Impact Statement document was not requested by the DAFM and the DAFM undertook its own screening for Appropriate Assessment.

The grounds allege that there are two AA screening documents on file which refer to different areas. As previously described the Minister had made a decision on the application which was appealed and remitted to the Minister by the FAC. The Applicant subsequently removed a small plot in the eastern section and amended a number of the documents, which were published for public consultation. The FAC considers it clear that the screening relied upon for the purposes of the licence decision made on 29th April 2025 was the screening of 29/11/2024.

The grounds allege that other plans and projects were not considered in-combination with the proposal but this is documented in the screening and assessment undertaken by the DAFM.

The grounds challenge the section contained in a document entitled Appendix A: In-combination report for Felling and Reforestation project TFL00652821,

It is concluded that there is no possibility that the Felling and Reforestation project TFL00652821, with the mitigation measures set out in Section 4, will itself, i.e. individually, adversely affect the integrity of those European Site(s) screened in (as listed elsewhere in this AA Report. The relevant Qualifying Interests / Special Conservation Interests and Conservation Objectives have been considered in reaching this conclusion. There is no likelihood of any residual effects that might arise, which do not in themselves have an adverse effect, creating an adverse effect on the integrity of the site(s) in-combination with other plans and projects. Furthermore, it is considered that the regulatory systems in place for the approval, operation (including any permitted emissions) and monitoring of the effects of other plans and projects are such that they will ensure that those plans and projects do not give rise to any adverse effect on the integrity of those same European Sites. It is concluded that this project, when considered in combination with other plans and projects, will not adversely affect the integrity of those same European Site(s). Note that this relates to the proposed activities under TFL00652821 only. Any subsequent forestry-related activity shall be subject to the DAFM Appropriate Assessment Procedure, including an in-combination assessment, prior to any future consent being granted

The grounds suggest this is logically absurd and suggest that this would suggest that there is no requirement to consider other plans and projects. However, the grounds do not recognise that this statement was generated after the screening for Appropriate Assessment and the identification of the likely significant effects of the project itself and in-combination with other plans and projects having regard to the conservation objective of a European site. The test required following an Appropriate Assessment is whether the project, taking account of any mitigation measures and the conservation objectives, would impact on the integrity of a European site. the FAC consider that the DAFM have attempted to go beyond this test and to consider whether other plans and projects would give rise to any

adverse effect on the integrity of those same European Sites. The FAC considers that this was unnecessary but does not undermine the basic findings of the DAFM.

The grounds make a general reference to European sites associated with the Shannon which are located a considerable distance downstream. As described on the record, the lands are crossed by a number of drains which flow easterly and westerly to rivers that form part of the Diffagher 010 waterbody. This continues southerly before entering Lough Allen, large lake waterbody, which continues southerly. The proposal is for the felling of trees which is a spatially and temporally limited and defined activity. The FAC considered that the grounds do not engage with the proposal in a meaningful way or the actual findings of the DAFM that there are no likely significant effects arising from the proposal, either individually or in combination with other plans or projects, on European sites in view of the European site's conservation objectives.

While the grounds contain a number of general statements and accusations the FAC did not consider that there was any reason which would allow the FAC to conclude that the DAFM's screening process and conclusion contained errors that might undermine the decision.

The FAC noted, in particular, that, at this stage, the proposal has been subject to screening for Appropriate Assessment by four separate Ecologists. One on behalf of the Applicant, one in relation to the screening dated 05/11/21 and two for the screening of 29/11/24. While the FAC considered that some errors occurred in the Applicant's screening as previously noted, the findings were clear. In addition, the proposal had changed slightly between the screenings undertaken by the DAFM but only in so far as the plot to the east which is closest to a river was excluded. The findings of the four Ecologists were consistent in concluding that an Appropriate Assessment was not required.

On the other hand the grounds make a number of general claims but do not really engage with the substance of the proposal or the screening process. The Appellant has not claimed to have any ecological or environmental expertise nor to have engaged such an individual to support the appeal.

From a procedural perspective, having screened the proposal the DAFM proceeded to conduct another period of public consultation and to prepare an Appropriate Assessment Determination despite concluding that the development, either individually or in combination with other plans or projects, was not likely to have a significant effect on a European site. The DAFM have explained that they considered that a Determination was required as the Applicant had submitted a Natura Impact Statement. The FAC considers this to have been an error in that the document entitled "Natura Impact Statement" was clearly a screening which concluded that Appropriate Assessment was not required and Regulation 19(2) of the Forestry Regulations 2017 require the Minister to proceed to Appropriate Assessment subject to the Minister's own screening under Regulation 19(1) of the 2017 Regulations. The Minister had conducted a screening for Appropriate Assessment and concluded that no Appropriate Assessment was required.

The FAC considered that the consequences of the error were that that the DAFM undertook a further period of public consultation and prepared an Appropriate Assessment Determination. The FAC considered that neither the Appellant nor the public would have been disadvantaged by this. This would have extended the time period in which the application was considered and delayed the issuing of the

licence but ultimately the FAC did not consider that this was an issue that could be addressed as part of the appeal. The FAC did not consider that the error could be considered a serious or significant error such that the FAC might effect any change to the licence decision.

While some of the documentation and reasoning employed by the DAFM is somewhat tortuous as previously described, the FAC was satisfied that the requirements in relation to the Forestry Regulations 2017 and Article 6(3) of the EU Habitats Directive had been clearly met in this instance in the making of the decision in relation to tree felling licence application TFL00652821.

The FAC was not satisfied that a serious or significant error or a series of errors was made in the making of the decision or that the decision was made without complying with fair procedures in relation to these grounds.

The grounds challenge the manner in which their submission made as part of the public consultation process was considered by the DAFM. The Forestry Regulations 2017 require the Minister for Agriculture to have regard to submissions made by the public and prescribed bodies in making a decision on a licence application. The FAC would consider it unreasonable for a member of the public to expect a detailed written response to be recorded in relation to a submission on a licence application and that the purpose of such submissions is not to commence a back and forth interaction.

Nonetheless, the DAFM did in fact record a written response to the submission as part of the Appropriate Assessment as noted in the grounds. The FAC would further consider that a person who made a submission on a licence application should review the totality of the decision-making process and the licence conditions. Under the Agriculture Appeals Act 2001, as amended, it is for the Appellant to submit any grounds and evidence that they wish to rely on. The FAC was satisfied that the Minister had regard to the submission in making a decision on the licence application and as part of the Appropriate Assessment process.

The grounds make reference to the application containing an “BLOW Reforestation Objective” and contends that the application did not contain a management plan. The FAC finds that the application did include a plan and maps that addressed the management of harvesting and replanting on the lands.

The FAC was not satisfied that a serious or significant error or a series of errors was made in the making of the decision or that the decision was made without complying with fair procedures in relation to these grounds.

The grounds contend that there has been inadequate assessment under Article 12 of the Habitats Directive (Annex IV species). The grounds make a general unreferenced claim that there are six species of bat native to Ireland in the general area and also refers to otter. The grounds do not engage with the nature of the lands or the proposal. The lands are comprised primarily of semi-mature/mature coniferous plantation which would not be considered a particularly rare or valuable habitat and would not have large trees or a well-developed understorey. The Application includes an Ecological Survey which was reviewed by a DAFM Ecologist in 2025 and the DAFM Ecologist specified measures in relation to the protection of badger and red squirrel, neither of which are Annex IV species but were identified on site, and in relation

to the protection of water. The Applicant has undertaken to retain existing broadleaves and the licence conditions include protections for hedgerows, archaeological monuments and stone structures on site.

The grounds submit that NPWS Guidance in,

Strict Protection of Animal Species. Guidance for Public authorities on the Application of Articles 12 and 16 of the EU Habitats Directive to development/works undertaken by or on behalf of a Public authority

has not been followed and that the DAFM and FAC should read the document. As the title suggests and as stated in the contents, the document provides guidance to public authorities in relation to development/works undertaken by or on their behalf. Neither the DAFM nor the FAC are undertaking the development nor have they engaged someone to undertake the tree felling on their behalf. The DAFM was processing a tree felling licence application under the Forestry Act 2014 and the Forestry Regulations 2017 and the FAC is an appeals body operating under the Agriculture Appeals Act 2001, as amended. The FAC would understand that the granting of the tree felling licence by the Minister for Agriculture does not remove any protections or legal obligations on the landowner and their agents that are provided under other statute.

The Appellant has not claimed to have any environmental or ecological expertise nor to have engaged such an individual, while the application was assessed by a number of technical staff including Ecologists by the DAFM. The application was referred to the NPWS which had no comment to make on the application.

The FAC was not satisfied that a serious or significant error or a series of errors was made in the making of the decision or that the decision was made without complying with fair procedures in relation to these grounds.

The grounds contend that DAFM procedures are not consistent with the requirement for providing a General System of protection commensurate with Article 5 of the Birds Directive submitting that the licence contains no seasonal restrictions or mitigation to protect all wild birds during the period of breeding and rearing, that the Wildlife Acts provide an exemption and that the Birds Directive must be transposed by Member States. The grounds effectively submit that Ireland has failed to transpose into National Law the requirement for a General System of protection for all wild birds consistent with the requirements of Article 5 of the Birds Directive by providing exemptions for activities which will result in outcomes that are contrary to the objectives of the Directive and that this means that licence TFL00652821 cannot be considered to have been awarded in a manner that is consistent with European Law.

The FAC noted the statement from the DAFM responding to this ground of appeal wherein it sets out that the DAFM consider that grounds of appeal do not refer to any specific adverse effect on the environment under this heading and disagree that DAFM procedures are inconsistent with Article 5 of the Birds Directive. The statement further submits that the granting of a felling licence does not exempt the holder

from meeting any legal requirements set out in the Wildlife Acts 1976 - 2000 which protects all wild animals in Ireland and that it is the responsibility of the landowner to ensure that where species are known to exist, on or near the project area and which are listed under the Wildlife Acts of 1976-2010, that these species are not impacted by the proposed forestry operations associated with this licence. The DAFM go on to submit that the lands do not fall within a Hen Harrier SPA or a non-designated Hen Harrier nest site with a 750 metre disturbance buffer and that no information was submitted to it in relation Hen Harrier.

The FAC considered that the grounds in the main amounted to a challenge in relation to the legality of the Wildlife legislation and Ireland's transposition of EU Directives and that making such a determination would not fall within the remit of the FAC.

The grounds contend that Hen Harrier are present in the general area but provide no basis for how the proposal might impact on the species. The DAFM contend that the species has not been recorded nesting within 750 metres of the land. The FAC would understand that semi-mature/mature coniferous plantation would not be considered as valuable or suitable habitat for the species, although newly planted areas can be utilised as nesting habitat until canopy closure is reached.

The grounds also make reference to Woodcock and suggest that the species are known to utilise this area but provide no evidence or basis for this claim. The grounds make reference to a survey and provide an email address for a named individual but under the Agriculture Appeals Act 2001, it is for the Appellant to provide all of the grounds and evidence on which they wish to rely. The FAC understands the Appellant's reference to the red list of birds of conservation concern to relate to a list generated by BirdWatch Ireland based on work they published in 2021. Woodcock is not listed in Annex I of the Birds Directive which requires the created of Special Protection Areas. The species is listed in Annex II and III which allows for the hunting and sale of the species. The species is one which can be hunted in Ireland under legislation which is the responsibility for the Minister for Heritage.

The Appellant did not make any claims in relation to specific bird species when making a submission during the public consultation period. The DAFM referred the application to the NPWS who had no comment to make. As previously advised, the FAC would understand that the granting of the tree felling licence by the Minister for Agriculture does not remove any protections or legal obligations on the landowner and their agents that are provided under other statute. As previously noted, the Appellant has not claimed to have any environmental or ecological expertise nor to have engaged such an individual, while the application was assessed by a number of technical staff in the DAFM, including the preparation of an Ecology Report in January 2025. The proposal is for the felling of trees in a commercial plantation which all parties agree is subject to ongoing disturbance in the form of windblow. The FAC considered that the Appellant has not provided a basis by which it might be concluded that the proposal as licenced could threaten the protection of any bird species.

The FAC was not satisfied that a serious or significant error or a series of errors was made in the making of the decision or that the decision was made without complying with fair procedures in relation to these grounds.

The grounds submit that the pollution impact potential of the project has not been considered or assessed and references the Water Framework Directive. As previously noted, the hydrology of the site and the potential impacts on water were considered as part of the Ecology Report which specified a number of measures in relation to the protection of water quality and the licence is further conditioned on adherence with the Standards for Felling and Reforestation. The DAFM further recorded that the proposal, with licenced conditions, would not have a significant impact on aquatic zones and their Q value and water quality.

The grounds contend that there are no silt traps indicated in the Harvest Plan but this is not the case, the Harvest Plan does include the use of silt traps. While the location of the silt traps are not marked on the mapping as indicated, the precise location of such would only be decided during operations and would be required to meet the requirements of the licence conditions, including the Standards for Felling and Reforestation. The FAC did not therefore consider that the fact that the silt traps were not mapped would constitute a serious or significant error.

As previously noted, the Appellant has not claimed to have any environmental or ecological expertise nor to have engaged such an individual, while the application was assessed by a number of technical staff in the DAFM.

The FAC was not satisfied that a serious or significant error or a series of errors was made in the making of the decision or that the decision was made without complying with fair procedures in relation to these grounds.

The grounds contend that the conditions on the Ecology Report lack precision and clarity. The DAFM contends that the licence conditions are clear.

The FAC did not consider that the Appellant had engaged with the overall decision that was made. The Ecology report contains a number of requirements and the DAFM is empowered to ensure that the conditions are met and can suspend or revoke the licence if required. The FAC did not consider that the conditions containing language such as "Applicable if aquatic zone present" or that some parts of the report were not numbered, or other matters raised, could be classified as a serious or significant error.

The grounds contend that some conditions cannot be met but provide no evidence of this. As previously stated, it is for the Applicant to fulfil the licence conditions, which remain in place. If the conditions cannot be met the Applicant might request that the conditions be amended, as the Minister is empowered to do, or make a new application. However, this is not before the FAC.

The FAC was not satisfied that a serious or significant error or a series of errors was made in the making of the decision or that the decision was made without complying with fair procedures in relation to these grounds.

The grounds allege that the determination of the Environmental Impact Assessment Screening is based on an inadequately reasoned assessment and is unsound in law. The FAC understand from the grounds that the reference to an "Environmental Impact Assessment Screening" is a reference to a document identified as "Assessment for EIA Requirement" on the Forestry Licence Viewer which is headed "Project

Description, Environmental and Social Considerations". This document includes a consideration of the proposal across a number of criteria and cross-references other aspects of the DAFM's procedures including referrals and submissions. This document concludes that the application was not required to be subject to the EIA process.

As previously described, the FAC would consider that the proposal does not constitute a form of development that falls within the Annexes of the EIA Directive. The Forestry Regulations 2017 do not provide for the Minister to undertake an EIA for the felling of trees nor require a licence applicant to supply the information required for that process. The application and licence involve the felling of trees in a managed commercial plantation with no change in land use and represents a standard practice in the context of the existing land use which is commercial forestry. Accordingly, the FAC would not consider the document referred to in the grounds to constitute an EIA screening for the purposes of the EIA Directive and would not consider that the Minister was required to undertake such a screening for the purposes of that Directive and the undertaking of an EIA screening for a tree felling licence application is not provided for in the Forestry Regulations 2017.

In any case, the grounds refer to the consideration of impacts on water quality but these are addressed in the Ecology Report and through the licence conditions. The other matters addressed in the document constitute part of the procedures of the DAFM and the FAC does not consider that there is a basis to conclude that the responses constitute an error. The submission from the Appellant was recorded and noted in the decision-making process.

The FAC was not satisfied that a serious or significant error or a series of errors was made in the making of the decision or that the decision was made without complying with fair procedures in relation to these grounds.

The grounds allege that there are inadequate setbacks and inadequate risk assessment and makes reference to the Water Framework Directive (WFD). The proposal as licenced does not border a WFD waterbody and is well set back from any such waterbody and no trees that form part of the proposal would overhang a WFD waterbody. There are drains crossing the site which connect to waterbodies to the east and west and these have been described and considered by the Applicant's Ecologist and the DAFM Ecologist. The Ecology Report described the drainage system on site and the connection to waterbodies and specified a number of measures in relation to water quality.

As previously noted, the Appellant has not claimed to have any environmental or ecological expertise nor to have engaged such an individual, while the application was assessed by a number of technical staff in the DAFM who put in place specific measures in relation to water and were satisfied that the proposal as licenced would not impact on the Q values (water quality) of a waterbody. The FAC considered that the decision was made in keeping with the objectives of the Water Framework Directive.

The FAC was not satisfied that a serious or significant error or a series of errors was made in the making of the decision or that the decision was made without complying with fair procedures in relation to these grounds.

The grounds submit that Access to Justice is prohibitively expensive with reference to the appeal fee and nature of the forestry appeals process and that the appeal fee was not prescribed in accordance with the law. As previously noted, the FAC would consider these matters to be challenges against the provisions of the Agriculture Appeals Act 2001, as amended, and related legislation enacted by the Minister for Agriculture and the FAC would not consider these matters to fall within its jurisdiction to determine.

The grounds submit that the Felling and Reforestation Policy has not been subject to a Strategic Environmental Assessment (SEA) and suggests that this was required to have occurred. The DAFM contest the grounds.

The FAC noted that the grounds have not alleged that any authority has made a determination on the necessity for an SEA to have been conducted in relation to the Policy. The FAC considered that making such a determination might not fall to the FAC to make but that it would consider the matter in the context of the submitted grounds.

The Felling and Reforestation Policy (DAFM, 2017) is a broad policy document that contains guidance of a general nature. The FAC would consider that the document was not produced to fulfil a legal requirement and was not mandatory in nature but that the Minister for Agriculture was entitled to produce such a document as guidance in relation to general felling and reforestation policies. Furthermore, the FAC would not understand the document to be binding on landowners in and of itself outside of any specific licence condition. In that context, the FAC would consider that there was no requirement for an SEA to have been undertaken. The FAC further noted that the Minister is required to undertake a screening for Appropriate Assessment and Appropriate Assessment, as required, in relation to tree felling licence applications under the Forestry Regulations 2017.

The FAC was not satisfied that a serious or significant error or a series of errors was made in the making of the decision or that the decision was made without complying with fair procedures in relation to these grounds.

The notice of appeal goes on to make a number of comments and requests in relation to the appeals process and the FAC which the FAC considered did not form grounds of appeal in relation to the decision of the Minister regarding tree felling licence application TFL00652821. Under the Agriculture Appeals Act 2001, as amended, the appointment of the Chairperson, Deputy Chairpersons and members of the FAC are the responsibility of the Minister for Agriculture. The assignment of individuals to divisions of the FAC and of appeals to divisions is a matter for the Chairperson of the FAC.

The Appellant has identified that they have a time period in which they might make an application for leave to apply for Judicial Review of this decision. The consideration of such an application is a matter for the Courts.

In considering the appeal, the FAC had regard to the record of the decision, the Notice and grounds of appeal and submissions made. The FAC considered the provisions of the Agriculture Appeals Act 2001, as amended, and the Forestry Appeals Committee Regulations 2020 and the relevant legislation under which the decision on licence TFL00652821 was made.

The FAC was not satisfied that a serious or significant error or a series of errors was made in the making of the decision or that the decision was made without complying with fair procedures. Therefore, the FAC is affirming the decision of the Minister for Agriculture, Food and the Marine in relation to the granting of licence TFL00652821 in accordance with Section 14B of the Agriculture Appeals Act 2001, as amended.

Yours sincerely,

Vincent Upton on behalf of the Forestry Appeals Committee

