



Irish Forestry Unit Trust,

31st October 2025

Subject: Appeal FAC030/25 against licence decision TFL00946323

Dear Irish Forestry Unit Trust,

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 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.

Hearing

A hearing of appeal reference FAC030/25 was held remotely on the 10th October 2025. In attendance:

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

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

Decision

Having regard to the information before it, including the record of the decision on the Forestry Licence Viewer (FLV), the notice of appeal, the Department of Agriculture, Food, and the Marine (DAFM) Statement of Fact (SOF), and all additional submissions, the FAC has decided to set aside and remit the decision of the Minister to grant tree felling licence TFL00946323 for the reasons set out hereunder.

Background

The licence under appeal was issued on the 25th March 2025 and is for the clearfell of 80.19ha of mostly Sitka spruce (with some Japanese larch) between 2025 – 2035, and the thinning of 7.92ha of Pedunculate oak in 2026. The project area is made up of 23 plots and is located in the Townlands of Cloonbannive, Tullycoly, Co. Leitrim. Across all clearfelled plots the replanting will consist of a mixture of 80% Sitka spruce with 10% additional broadleaves and 10% open space.

The documents on record describe the site as being moderately sloped and the soil type as a mixture of Surface water gleys, ground water gleys (57%), Basin Peats and Blanket Peats (some) (40%), Blanket peats (2%) and Variable (1%). Information available online from the Environmental Protection Agency (EPA) shows that the proposal is in the Cashel Stream (Bonet)_010 River Sub-Basin and that the Cashel Stream (Bonet)_010 River Waterbody currently has "Good status" and is "Not at Risk". The proposal is underlain by the Killarga South Ground Waterbody which also has "Good status" and is "Not at Risk". The DAFM's Appropriate Assessment (AA) documents describe the hydrology of the site, including that the Derrinaher

River flows northwest along plots 11 and 12. The Derrinagher River then flows northeast along plots 12, 13, 23 and 20. The Tullycoly River flows northeast along plots 25 and 24, joining the Derrinagher River. The Flughanagh River flows southeast along plots 28, 27 and 24, joining the Derrinagher River. The Derrinagher River exits the project area and flows northeast, joining the Cashel Stream (Bonet)_010. This waterbody flows northeast, west, and then northwest, before entering the Lough Gill SAC IE0001976 (approx. 8.3km downstream).

DAFM Assessment of the Application

On file is a document titled "Assessment for EIA Requirement" which was certified on the 06/02/2025 and Published on the FLV on 25/03/2025. This document states, *inter alia*, that comments from the Local Authority were received and examined, and that the application should be referred to the Forest Service Ecologist.

Further Information Request (FIR)

Following their review of the application, the DAFM wrote to the applicant on the 28th May 2024 stating that:

The application includes Clearfell of 97.55 ha of Mature forest over an eight year period. As per DAFM standards felling & reforestation for 2019 the maximum allowable for any single coupe is 25ha. Please submit application/maps to reduce the overall felling coupe in any 2 year period to below 25ha. Allow 2 year green up before any adjacent plot is felled

The applicant submitted a revised Harvest Plan and associated documents which reflect the requests made in the FIR and which were published on the FLV on the 18th December 2024.

Appropriate Assessment (AA)

On file is a document titled "Appropriate Assessment Screening Report & Determination for Felling and Reforestation project TFL00946323, at Cloonbannive, Tullycoly, Co. Leitrim " (AASRD). The AASRD was signed off by a DAFM Forestry Inspector on the 5th December 2024 and published on the FLV on the 18th December 2024. The AASRD screened seven European Sites with for AA with the following six sites screened out, with reasons provided:

- Boleybrack Mountain SAC IE0002032.
- Unshin River SAC IE0001898.
- Lough Arrow SAC IE0001673.
- Lough Arrow SPA IE0004050.
- Union Wood SAC IE0000638.
- Cummeen Strand/Drumcliff Bay (Sligo Bay) SAC IE0000627.

Lough Gill SAC IE0001976 was screened in due to "Possible effect due to the direct hydrological connectivity exists between the project area and this European site." The AASRD contains an Appendix A titled *Appendix A: In-Combination Report for Felling and Reforestation proposed under TFL00946323* which states – "See File".

In-Combination Report Screening Stage

On file is a document titled "Appropriate Assessment Screening Report Appendix A: In-combination report for Felling and Reforestation project TFL00946323". This report states "the potential for the proposed Felling and Reforestation project TFL00946323 to contribute to an in-combination impact on European sites was considered by the Department of Agriculture, Food & the Marine." The report indicates that

various online planning systems and datasets (including the DAFM's FLV) were consulted on the 5th December 2024 in order to identify other plans and projects, focusing on the general vicinity of the project area in the River Sub-Basin Cashel Stream (Bonet)_010. The report also consulted the websites of Leitrim Co. Council (LCC), An Bord Pleanála, the EPA, and the Leitrim County Development Plan 2023-2029. The report concluded that:

...There is no likelihood that the proposed project will have, or contribute to, any significant effect on those same European Site(s), when considered in combination with other plans and projects.

AA Report

On file is a document titled "Appropriate Assessment Report for Felling and Reforestation project TFL00946323, at Cloonbannive, Tullycoly, Co. Leitrim" which was prepared by an ecologist "on behalf of the Minister for Agriculture, Food and the Marine" and dated the 12th December 2024. The AA Report relates to Lough Gill SAC IE0001976 states that the site-specific threats, pressures, and activities with the potential to affect this European Site were reviewed and considered in relation to the proposed project. The report states that the potential for the project itself (i.e., alone) to have an adverse effect on the integrity of Lough Gill SAC IE0001976 was identified on a precautionary basis and that site-specific measures were identified to prevent or mitigate against such effects and will be inserted as conditions of any subsequently issued licence. The AA Report prescribed 44 mitigation measures, predominately related to the protection of water quality.

In relation to in-combination effects, the AA Report states that "as set out in Appendix A, it is deemed that this project, when considered in combination with other plans and projects, will not give rise to any adverse effect on the integrity of any European Site." On file is a document titled "Appropriate Assessment Report Appendix A: In-combination report for Felling and Reforestation project TFL00946323" which states that the data contained within was reviewed on the 12th December 2024. This in-combination report concludes that:

"...there is no possibility that the Felling and Reforestation project TFL00946323, 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... 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)..."

AA Determination

There is an AA Determination (AAD) on file, this is titled "Appropriate Assessment Determination for Felling and Reforestation project TFL00946323, at Cloonbannive, Tullycoly, Co. Leitrim" and was signed-off by a consultant ecologist on behalf of the Minister for Agriculture, Food, and the Marine on the 27th January 2025. The AAD prescribes the same 44 mitigation measures as included in the AA Report. The AAD states that:

The basis for this AA Determination is as follows... As shown on the harvest map, a number of relevant watercourses flow through the project area... Lough Gill SAC (approx. 8.3km downstream). Otter is a qualifying interest (QI) feature of the aforementioned SAC. Appropriate

aquatic zone and watercourse measure protections have been set out including specific otter measures and good practice aquatic measures for the relevant designated features.

The above conditions in combination, along with adherence to the guidance cited, will eliminate pathways of impact of significance to European sites. In combination effects were assessed prior to meeting this determination. The mitigations outlined will ensure that the proposed project will not represent a source and, as such, there is no potential for the project to contribute to any significant cumulative effects, when considered in combination with other plans and projects. Therefore, DAFM deems that the proposed project, when considered in-combination with other plans and projects, will not give rise to the possibility of significant effects on any European site... no reasonable scientific doubt remains as to the absence of any adverse effect on the integrity of any European site.

Appendix A of the AAD is referred to as an "In-Combination Report for Felling and Reforestation proposed under TFL00946323 See File". There is a third in-combination report on file which was published on the FLV on the 25th March 2025. This document is titled "Appropriate Assessment Report Appendix A: In-combination report for Felling and Reforestation project TFL00946323" and it states that the data contained within was consulted on the 27th January 2025. This report also concludes that the proposed project, when considered in combination with other plans and projects, will not adversely affect the integrity of the Lough Gill SAC IE0001976.

There is a 2nd AA Screening Report on file which was certified on the 6th February 2025 and published on the FLV on the 25th March 2025. This screening post-dates the AAD and only screens six European sites, it does not include Cummeen Strand/Drumcliff Bay (Sligo Bay) SAC IE0000627 which is further than 15km from the proposal but was screened in in the AASRD due to hydrological connection. As with the AASRD, Lough Gill SAC IE0001976 is the only site screened in. The overall screening conclusion is that "Screen AA Required - Appropriate Assessment is required in relation to one or more European sites. Note: the necessary AA Determination and / or ecology report has been prepared by the DAFM ecologist and scanned to file Contacts."

Referrals & Submissions

The DAFM's SOF indicates that there were no third-party submissions on this application and that the application was referred internally to their Ecology & Archaeology sections. The Archaeology Section consulted with the National Monuments Service (NMS) before producing an Archaeology Report (which includes conditions which were agreed with the NMS).

The DAFM referred the application to the National Parks & Wildlife Service (NPWS) and Leitrim Co. Council. The NPWS response indicated that the proposal should be screened for AA as per Regulation 42(1) of the 2011 Birds and Natural Habitats Regulations. The NPWS also submitted a document titled *Appendix 1: General observations from the National Parks and Wildlife Service of the Department of Culture, Heritage and the Gaeltacht in relation to forestry application referrals.*

The response from Leitrim Co. Council included a letter signed on behalf of the Planning Department and a District Engineer's Report. This report was titled "Assessment of Tree Felling License TF23-61" and appears to mainly address issues relating to roads. This report states that no site notices could be found on 22nd September 2023 and that "no details have been submitted for the access points". The report includes a list of requirements which mainly relate to roads but there is also a requirement that the district engineer's office be informed in advance of any works on the proposed site.

The letter from the LCC Planning Department is in response to the original application, prior to the DAFM's issuing of an FIR, and refers to the clearfell and thinning of a total area of 105.47ha of forestry in the townlands of Cloonbannive, Co. Leitrim. The Council's letter notes that the proposal does not fall within any designated Area of Outstanding Natural Beauty (AONB) or Area of High Visual Amenity (AHVA) as identified in the Leitrim County Development Plan 2023-2029. In terms of the Landscape Capacity Study for Commercial Forestry (March 2022), the Council state that the subject lands are located within Landscape Character Type (LCT) 8 - Valley Farmland as per the Leitrim County Development Plan 2023-2029 and refers to the high sensitivity of this LCT to commercial forestry. The Council state that it does have significant concerns in relation to the existing adverse impacts of the current commercial forestry on landscape and visual amenity within this LCT, given the extent of commercial coniferous plantation *in situ* and "Notwithstanding, the high sensitivity of LCT 8 to commercial forestry, it is acknowledged that the subject lands do not coincide with any AONB or AHVA designations. Whilst the Planning Authority has no objection in principle to the proposed clear felling, significant concerns remain in relation to any replanting proposals, which are absent from the application documentation..."

The Council requested that should the proposal proceed; the following conditions should be included as part of an approval:

1. *Prior to the commencement of any works, Forest Service representative shall liaise with the District Engineer's Office and shall satisfy the conditions and address the issues as referred in the attached District Engineer's report.*
2. *All works shall be carried out in accordance with the Best Practice Guidelines produced by the Forest and Wildlife Service with particular reference to protecting water quality.*
3. *The Forest Service should consult with Development Applications Unit with respect to the Recorded Monument LE015-138 listed for protection under Section 12 of the National Monuments (Amendments) Act 1994.*

Grounds of Appeal

There is one third-party appeal (FAC030/2025) against the decision to grant TFL00946323. The grounds of appeal were considered in full by the FAC and the following is a summary:

1. Inadequate and ineffective public notice in contravention of Article 6 (2) of the Aarhus Convention; unfair procedure.

1 (a) Failure to have regard to the social function of forestry

In failing to provide effective notification to the local community during the process of awarding this licence the Minister has failed to have regard to the social functions of forestry as required under Section 11 (a) of the Forestry Act.

2. Breach of Section 10(4) of the Forestry Regulations.

The Minister has published additional information on the same date as his decision. The public have been deprived of the opportunity to make submissions or observations on that information within the specified timeframe. This is contrary to due process and in breach of the Forestry Regulations.

3. Lands were not afforested in accordance with the law

The lands at Cloonbannive and Tullycoly (and Derrinagher which is also included in the original application) were afforested under a number of licences between 1992 and 1998. Given that the total area afforested

during this period exceeds 100ha (twice the mandatory threshold for the need for an Environmental Impact Assessment) this gives a strong appearance of project splitting.

4. Licence Conditions are not adequately reasoned

Section 3.3 of the Felling and Reforestation Policy states that *"no felling operations may commence until 28 days after the licence issue date."* This is not consistent with condition (f) of the licence. The Regulations may have reduced the appeal window to 14 working days, but the Policy document has not been amended accordingly. The licence refers to the Policy document.

Good Forestry Practice is defined by the Forestry Act (2014). Impacts on the environment include on the human population.

The project area is bisected by a 10-20 kV Power Line. Planting trees that can grow to a height where they can fall on a power line should be considered to be contrary to Good Forestry Practice.

It is not clear whether both email and phone contact is required or just one or the other. The licence condition is unclear. The appellant suggests that email is required such that compliance can be easily verified.

It should be made clear in the licence that a commencement notice is required for each felling intervention.

The condition prescribing *the replanting setback distance from public roads* is not consistent with the principle of 'Good Forestry Practice' as it permits actions which are fundamentally inconsistent with Section 70 of the Roads Act (1993).

The replanting setback distance from dwelling houses and associated buildings is 30 metres. Reason: In the interest of residential amenity.

This is inconsistent with the Environmental Requirements for Afforestation. There is no written agreement to 30m on the file.

Additionally, the setback for "Roofed farm buildings" of just 10m is inadequate and is not consistent with the principle of 'Good Forestry Practice'.

The condition which requires that "The applicant must adhere to the mitigation measures specified in the attached Appropriate Assessment Determination document (AAD). With regard to the licence itself and the AAD, conditions affording the greatest protection to water quality and the environment take precedence." lacks clarity as it requires interpretation on the part of the licensee as to which condition takes precedence.

The map in the Archaeology Report with the area highlighted in yellow with red hatching is not drawn to scale. Condition 10 of the Archaeology Report has not been transferred to the licence. In the interest of "Good Forestry Practice", a full Archaeological Impact Assessment Report should have been required before authorising this project.

5. The assessment for this project 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.

A number of the mitigating conditions lack precision and site specificity resulting in a lack of clarity.

Condition 2 – relating to tree guards.

The location of Silt Traps on the Harvest Plan Map is not consistent with mitigation condition 19.

Condition 20 cannot be guaranteed to eliminate the risk of impact. The use of the expression 'where possible' is not consistent with removing all reasonable scientific doubt as to the effects of the proposed works.

Condition 23 allows for too much scope for interpretation by the developer and is not linked to any measurable soil metrics.

What rutting is Condition 24 referring to? This condition appears to accept soil damage providing it does not result in siltation. This is not consistent with the principle of Sustainable Forest Management.

Condition 26 implies the possibility that what is proposed may be insufficient and 'additional controls' may be required. Who determines this and on what basis? Any additional controls imply a failure to correctly mitigate in the first instance. This is not consistent with a Determination that no reasonable scientific doubt remains as to the absence of any adverse effect on the integrity of any European site.

Condition 30 – what are the implications for the Natura site if it is not possible to safely retain the broadleaf trees in the exclusion zone?

Condition 37 lacks the necessary precision to remove all reasonable scientific doubt as to the effects of the proposed works. The expression "dried out sufficiently" relies on interpretation and lacks the precision required for Appropriate Assessment mitigation.

Condition 38 – heavy rainfall is not defined, and this mitigation allows too much scope for interpretation by the developer.

Condition 41 – there is no scientific data to indicate that it is environmentally safe to plant treated plants within 50 metres of any aquatic zone or 15 metres of any relevant watercourse. The scientific basis for permitting this is not stated. It is inconsistent with condition 37 if the use of dipped plants is considered to be an application of a pesticide – which it is. Additionally, there needs to be specific mitigation for the handling of bags which have contained plants dipped in pesticide prior to disposal.

The in-combination effects and cumulative impacts section of the In Combination Report (27-1-25) only list plans and projects (and is not comprehensive) and does not actually assess the potential effects and impacts of same. The In Combination Determination appears to rely on the assertion that these projects "undergo environmental assessment, including AA screening and appropriate assessment, if necessary", which of itself is not sufficient to exclude an In Combination effect.

DAFM have restricted their "consideration" to the River Sub-Basin CASHEL STREAM (BONET)_010. Impacts on the SAC are not limited to plans and projects in this River Sub Basin alone.

The time period for consideration of forestry projects is flawed as licences can be issued for a period of 10 years. The licence that is being appealed is a 10-year licence. There has been no consideration that

felling licences older greater than 5 years old may still be active which could contribute to an In-Combination effect.

There is no evidence that an actual assessment of In-Combination effects has been undertaken by the Department. There is a list of projects; there is reference to a County Development Plan but there is no assessment.

6. Inadequate assessment under Article 12 of the Habitats Directive (Annex IV species)

There has not been an adequate assessment of the potential impact on species listed in Annex IV of the Habitats Directive – notably bats and otter. The following NPWS Guidance has not been followed: *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* (Mullen, E., Marnell, F. Nelson, B., 2021).

Notwithstanding ground 5, relating to Otter, which is a species listed in Annex IV; At least seven of the nine species of bat native to Ireland are within their range within OS square G82.

7. DAFM procedures are not consistent with the requirement for providing a General System of protection commensurate with Article 5 of the Birds Directive

Although not identified in any of the project documentation this project area is wholly within the Current Range for Hen Harrier, as recorded in the current National Parks and Wildlife Service Article 12 Report. It is also within the range of the Woodcock – a forest nesting bird now on the Red List of Birds of Conservation Concern.

The developer should have provided more information on the potential of this project to impact on breeding birds and in the absence of such information the project should include seasonal restrictions.

8. The Pollution Impact Potential of the project has not been considered or assessed

The Minister has failed to assess the potential for impact to water quality as a consequence of overland flow. No silt traps are indicated for a number of delivery points to watercourses. The project cannot be assured to be compliant with the requirements of the Water Framework Directive. This has implications for the AAD.

9. Hedgerows are not correctly recorded on the Harvest Plan

The Environmental Requirements for Afforestation (which apply to reforestation) state:

All hedgerows must be retained. In general, do not break through hedgerows during afforestation. Similarly, do not use hedgerow trees as makeshift straining posts for fence lines. Furthermore, only plant native broadleaf species suited to the immediate site conditions, within 7 m of all hedgerows. Important hedgerows, as informed by their quality in terms of age, species composition and structure, landscape importance, and other attributes (e.g. townland boundary) must have a 5 m wide habitat setback, as measured from its centre line (and applied on both sides of the hedgerow, if within the proposed afforestation site).

The use of the expression “In general” is too vague to have any real meaning. It serves as handy ‘Get Out of Jail Free’ card but is not consistent with the overall Biodiversity Objectives:

- *To ensure that afforestation does not adversely impact designated conservation areas, protected habitats, breeding waders, High Nature Value farmland, or protected species of fauna or flora and their habitat.*
- *To enhance the biodiversity value of the new forest.*

As the hedgerows have not been correctly identified in the application how can the requirement for native broadleaves to be planted within 7m of hedgerows be enforced meaningfully? It is unclear as to how this project can be implemented using standard forestry machinery without the removal of sections of hedgerows; thereby impacting on hedgerow connectivity and consequently Biodiversity.

10. The determination of the Environmental Impact Assessment Screening is based on an inadequately reasoned assessment and is unsound in law

It should be noted that DAFM have carried out an EIA Screening for this project which is an admission that the Environmental Impact Assessment Directive applies to this activity.

11. The decision is invalid because the Minister has failed to evidence consideration of the submission of a prescribed body from whom he sought comment.

DAFM have provided no rationale as to why they have not implemented the recommendations of Leitrim County Council.

12. Application does not comply with the requirements for BLOW Reforestation Objective

A number of Plots have a Reforestation Objective of BLOW. DAFM's Felling and Reforestation Policy has the following prescription for this Objective:

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

All of the required information has not been provided with the application.

13. Minister's decision is flawed as the Department has not had regard to the Leitrim County Development Plan 2023-2029

The replanting condition in TFL00946323, in terms of tree species, 80% Sitka spruce and 10% Additional Broadleaves. The Planning Authority have significant concerns in relation to the existing adverse impacts of the current commercial forestry on landscape and visual amenity within this LCT, given the extent of commercial coniferous plantation in situ.

The Minister has failed to demonstrate how he has considered and addressed the content of the Leitrim County Development Plan. A significant proportion of the project area is above the 200m contour.

14. Restocking is not consistent with the principle of Sustainable Forest Management

According to the Appropriate Assessment Determination document the site soils include Basin Peats and Blanket Peats (some) (40%), Blanket peats (2%). There has been no assessment of the peat depth and the suitability for replanting this area without drainage as per the ERA. The restocking of this area is not consistent with the principles of 'Good Forestry Practice' or Sustainable Forest Management.

15. Minister has not followed good forest practice in awarding this licence contrary to the obligation on him under the Forestry Act

The appellant does not consider it good forest practice to re-stock any deep peat soils with exotic conifers. The site is indicated to be comprised of Basin Peats, Blanket Peats (some) {40%} & Blanket Peats {2%}.

16. Inconsistency in the project area subject to public consultation

This project was initially published for consultation as a 105.47 ha project on the 6th September 2023. The second-round consultation was for an 88.11 ha project published on 20th December 2024. The project was substantially revised on foot of a Further Information Request issued in May 2024. This warranted a new application or at the very least a new first round consultation on the 88.11 ha project.

17. No requirement for Greening Up

The FIR refers to the issue of Greening Up but there is no condition included in the Licence. The Felling Section of the DAFM have clarified that for 10-year licences, such as this, the trees can be felled at any stage during the 10-year licence whilst adhering to the conditions set out in the licence. The scale of this project demands a Greening Up requirement.

18. Access to Justice is prohibitively expensive

19. Fees not prescribed in accordance with the law

The appellant requested an oral hearing of this appeal.

Minister's Statement

The Minister provided a Statement of Fact (SOF) responding to the grounds of appeal, which was considered by the FAC in full, and the following is a brief summary:

The DAFM stated that their decision was issued in accordance with their procedures, S.I. 191/2017 and the 2014 Forestry Act, as amended.

1. Article 6 (2) of the Aarhus Convention

The Department rejected the Appellants claims and asserts that this aspect of the appeal goes beyond the remit of a forestry licence appeal and therefore of the considerations of the FAC. The DAFM also outlined what they described as the practical steps taken to fulfil the Department's obligations with regard to public consultation.

2. Section 10 (4) of the Forestry Regulations

The DAFM outlined their approach to public consultation for this licence application, stating that the second part of Regulation 10(4) leaves it to the discretion of the Department where additional information is submitted or created as to if or in what circumstances another 30-day period of public consultation is warranted.

The DAFM stated that the first 30 days' notice is in respect of the application itself. The application was advertised and published on the FLV on the 6th September 2023. The second stage advertising which included advertising of the AA Report took place on the 20/12/2024. Two days prior to the beginning of the 30-day consultation period all available information at the time was uploaded to the FLV and made publicly available. The additional information the appellant appears to be referring to are documents that were not available during these two periods of consultation but

were made available at the time the decision was made. Members of the public unhappy with the decision can decide to appeal the licence decision within 14 days of the licence issuing having had access to all available information.

Regarding the Archaeology Report, the DAFM stated that there are no statutory provisions in the Forestry Act 2014 or the Forestry Regulations 2017 requiring the making of such Archaeology Reports available before a final decision is made on an application. Such reports are draft internal advisory reports. The DAFM submitted that, for this reason, an Archaeology Report that is subject to revision/updating contingent on the feedback received during the consultation period(s) remains in draft form until it is adopted as part of the final decision.

3. Initial afforestation

The DAFM stated that It is not clear what specific environmental issues are being referred to in this Ground of appeal and that the DAFM would argue that the grounds of appeal should be limited to the licence decision in respect of TFL00946323 and not decisions that were made some years previously.

4. The licence conditions are not adequately reasoned

The licence clearly states that a notice of appeal can be submitted within 14 working days.

DAFM's Forestry Standards Manual sets out the agreed procedure with regard to setbacks from power lines.

The maintenance of these corridors within forests is provided for under Section 98 of the Electricity (Supply) Act 1927, as amended by Section 45 of the Electricity Regulation Act 1999, the ESB, its authorised undertakers or any other holder of an authorisation under Section 16 of the Electricity Regulation Act 1999, taking due care and attention to avoid unnecessary damage, are empowered to lop or cut any tree, shrub or hedge which obstructs or interferes with electrical wires or to do the same where the tree, shrub or hedge interferes with the erection or laying of any such electrical wires or with the survey of the proposed route of any transmission or distribution lines. Grounds of appeal is not the appropriate forum for calls to change existing policy and therefore beyond the remit of a forestry licence appeal.

The commencement notice condition asks that the licensee sends the commencement notice to the Forest Service by email. An email address is provided for the County Council, therefore the licensee will understand from this that an email should be sent to the County Council.

Requirements in relation to roadside setbacks are set out in Section 14.4 of the "Standards for Felling and Reforestation" and the condition provided for in the licence is consistent with this policy.

Setbacks from dwelling houses for afforestation are treated differently than for existing forests adjacent to dwelling houses that are felled and replanted. DAFM have not received any submissions or an appeal from any individuals living adjacent to the forest defined by TFL00946323.

The setback of 10m from 'Roofed Farm Buildings' is compliant with Section 14.5 of the "Standards for Felling and Reforestation".

The list of archaeology conditions that appear in the licence is consistent with the list in the DAFM Archaeologist's email of the 15th January 2024 which is available on the FLV.

5. Article 6 (3) of the Habitats Directive

The DAFM disagrees with the contention that mitigation is not precise enough for this particular site. The DAFM contend that they utilised standardised measures throughout the licensing process, together with specific mitigation where deemed necessary. Standardised mitigation provides clarity, common understanding and consistency.

The DAFM outlined their AA consultation process, highlighting that the AASRD, and the AA Report with its conclusions, in effect draft conclusions, are put out to public consultation for 30 days. They stated that where the public make submissions or observations in writing concerning the proposed project within those 30 days the Competent Authority (DAFM) is required and does have regard to them. The DAFM then prepares its AAD, informed by any submissions or observations made during the public consultation period or received from another Public Authority.

The DAFM contend that specific measures as described in the application documentation, together with adherence to relevant environmental guidelines/requirements/standards and to the site-specific mitigation measures set out in the AAD and attached as licence conditions, ensure that this proposed project will not result in any adverse effect on any European Site nor on the water quality or the water body status regardless of hydrological connectivity.

The DAFM contend that it is incorrect to state that conditions lack precision and scientific referencing and that the mitigations included in the AAD are sufficient to meet the strict test of Article 6(3). The DAFM stated that the conditions included in felling licences are based on DAFM policies, procedures, guidelines, and standards. Experts within the Department then developed the standard mitigations based on these documents and their own expertise. References and further reading included in 'Forests & Water Achieving Objectives under Ireland's River Basin Management Plan 2018-2021' are listed in detail.

Responding to specific issues raised by the Appellant regarding the mitigation measures in the AAD, the DAFM stated that:

On-going maintenance of tree shelters will be required to ensure stakes and shelters are secure, upright, and adequate weed control is carried out until trees are established. Shelters will breakdown over time and it will be necessary to remove larger pieces of debris to prevent unsightly litter issues post-establishment.

The positioning of silt traps on the harvest plan map is an indication to help DAFM inspectors locate silt traps for inspection it is not meant to be a precise location.

Due to physical constraints of individual sites, it can sometimes be difficult to set specific distances from which to locate stacking areas.

The requirement for daily monitoring of water quality is clear.

The DAFM submit that commercial forest plantations remain undisturbed throughout the significant majority of their 35–45-year rotation. The use of large, specialised vehicles and repeated traffic are activities which are part of the proper management of a forest and therefore constitute a vital part of Sustainable Forest Management.

Forest managers are professionals who are on site and best placed to decide if silt traps require maintenance or if additional silt traps are required.

Removal of broadleaf trees within the water exclusion zone should take place if there is a risk of the tree becoming unstable and prone to windblow after nearby trees have been removed.

The DAFM are satisfied with conditions relating to the use of chemicals. There is no legal requirement for forest owners to inform adjacent landowners of their intention to spray, nor is there a need for animals in adjacent properties to be moved as the application of this PPP is by hand in a very targeted manner that minimises exposure of the environment.

The DAFM referred to the regulatory system for plant protection and biocidal products, which “is based on scientific evidence to ensure that controls on the sale, supply and use of pesticides are effective”.

Assessment under Article 12 of the Habitats Directive (Annex IV species)

The DAFM stated that they carried out two In-Combination assessments. The first was at screening stage, the second took place at the AA stage. The DAFM contend that this demonstrates that “the project in combination with other plans and projects with conditions doesn’t have an adverse impact on any European sites”.

“The incorporation of the In-Combination Report into the AA screening Determination report is testimony to its importance in making the screening decision. By listing all plans and projects, including forestry projects within the vicinity of the project area, the Department is demonstrating that it has taken these projects into account during its In-Combination assessment.”

The In-Combination Report concludes that there is no potential for the proposed project to contribute to any cumulative adverse effect on the integrity of any European Site(s), when considered in-combination with other plans and projects.

The DAFM stated that they occasionally issues licences covering a 10-year period, as catered for under legislation and the standard 5-year look-back period used in the DAFM’s In-Combination assessment identifies planning permissions issued over the past 5 years, which, if not already utilised, may be utilised during the lifetime of the issued licence. Any older planning permissions issued 6-10 years ago will either have been utilised or expired, and it is highly unlikely that any of these would be utilised during the lifetime of the licence, and even less so further in the future, after the licence expired and before year 10.

6. Article 12 of the Habitats Directive (Annex IV species)

The DAFM stated that the licencing process it administers represents the system of checks and balances by which the DAFM exercises its responsibilities with regard to protecting Annex IV species. The DAFM outlined the opportunities for the Applicant, members of the public, and other statutory consultees to make submissions in relation to the presence of Annex IV species in or in

the vicinity of the project area. "In the case of this licence there were no populations of protected species confirmed in the project area or in the vicinity of the project area. "

The DAFM highlighted that the granting of a felling licence does not absolve the applicant from any other legal responsibilities under Wildlife legislation.

The DAFM stated that potential impact of the project on otter was considered during the licencing process and conditions for protecting otter have been added... "In general, otters do not have a preference for forestry habitat. Mature conifer plantations without a shrub layer do not provide suitable resting places for otters. There will be no alteration of watercourses and forestry machines will not be traversing close to stream sides, so direct impacts on otter habitat are considered unlikely. With regard to otter the Appellant does not describe in any detail what impact the forest operations will have on the otter."

With regard to bats the DAFM submitted that none of the European sites screened by the DAFM include bat species as a Qualifying Interest. There were no references to bat species made in the NPWS response and no submissions were made by the public to indicate that there were bat populations that could be impacted by any operations described in the felling application TFL00946323.

7. DAFM procedures regarding Article 5 of the Birds Directive

The DAFM contends that the Grounds of Appeal do not refer to any specific adverse effect on the environment under this heading. The DAFM also disagrees that its procedures are inconsistent with Article 5 of the Birds Directive.

The DAFM stated that it "wishes to reiterate that the granting of a felling licence does not exempt the holder from meeting any legal requirements set out Wildlife Acts 1976 - 2000 which protects all wild animals in Ireland. Therefore, 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 submitted that there are multiple conditions contained in the licence designed to protect birds and enhance bird habitats including additional rows of broadleaves to be planted along aquatic zone and relevant water setbacks. The DAFM stated that the AAD also includes a condition (8) which requires all scrub and areas of semi-natural habitat within the project area to be retained. This is in addition to a condition which requires the retention of existing non-commercial broadleaf trees within the water exclusion zones.

8. Pollution Impact Potential of the project has not been considered or assessed

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

timing operations, monitoring, the preparation, storage and use of potentially hazardous material, and post-operation works. In relation to reforestation, those Standards stipulate water setbacks adjoining aquatic zones, and these, together with the silt control measures, introduce a permanent undisturbed semi-natural buffer along the watercourse, developed primarily to protect water.”

The DAFM submit that numerous licence conditions for TFL00946323 are aimed at protecting water quality against pollution including the establishment of undisturbed water setbacks, planting of rows of broadleaves, restrictions on machine movement, and monitoring of on-site conditions. The DAFM stated that these conditions together with adherence to relevant environmental guidelines/requirements/standards and to the site-specific mitigation measures set out in the AAD and attached as licence conditions ensure that the proposed felling and reforestation project TFL00946323 will not result in any adverse effect on any European Site nor on the water quality or the water body status regardless of hydrological connectivity. The DAFM stated that the in-combination report supports this conclusion by describing the assessment of the project area alone and in combination with other plans and projects with the conditions set out in the AAD and have found there to be no adverse impacts on the European sites screened in for appropriate assessment.

9. Hedgerows

The Standards for Felling and Reforestation state the following ‘Retain existing hedgerows and mature broadleaves onsite, where it is safe and appropriate to do so.’ Felling inspectors have access to orthophotography and therefore can see the location of all hedgerows.

10. The determination of the Environmental Impact Assessment Screening

It is the position of the Department that clear-felling and replanting an already established plantation forest is a standard operational activity and does not involve an activity or project that falls within the specified categories of forestry activities or projects subject to the requirements of the EIA Directive, as transposed and set out nationally in Schedule 5 Part 2 of the Planning and Development Regulations 2001, as amended, and in Regulation 13(2) of the Forestry Regulations 2017 (and wherein relevant national mandatory thresholds and criteria for EIA are also prescribed).

11. The decision is ‘invalid’ because the Minister has failed to evidence consideration of the submission of a prescribed body from whom he sought comment.

The recommendations submitted by Leitrim County Council and referred to by the Appellant in the Grounds of Appeal are more appropriate to the Forest Road application rather than the decision represented by felling licence TFL00946323.

12. The application does not comply with the requirements for BLOW Reforestation Objective

The application together with the specifications containing in the Felling and Reforestation Policy document for the BIO Reforestation Objective, provided DAFM with enough information to satisfy the need for a management plan, and enabled the Department to undertake and complete its Appropriate Assessment with the robustness required under the Habitats Directive Article 6(3).

13. The Minister’s decision is flawed as the Department has not had regard to the Leitrim County Development Plan 2023-2029

Sitka spruce is the predominant species used in Irish forests; the species is extremely well adapted to growing in Irish conditions.

Existing conifer stands managed on a clearfell / reforestation cycle may be dominated by non-native conifers but will typically contain a portion of native broadleaf species that in themselves play an important role in promoting biodiversity. This is primarily due to the micro-habitats on and beneath these trees, and due to their coalescing into edge habitats, if positioned alongside environment setbacks needed for public roads, aquatic zones, and visible external edges. Conditions included in felling licence include this type of planting.

- 14. i) Assertion that restocking is not consistent with the principle of Sustainable Forest Management**
ii) Assertion that the Minister has not followed good forest practice in awarding this licence contrary to the obligation on him under the Forestry Act

DAFM is the competent authority for issuing forestry licences and that the proposal as it stands does not contravene current DAFM Policy which refer only to the prohibition of initial planting on blanket peat and do not prohibit replanting. The carbon balance of afforesting deep peats for the first time clearly differs from the restocking of an existing forest where the drainage system and micro-climate has been altered for many decades. In addition, if the Minister had not placed conditions on the restocking of the site the most likely outcome is that the forest would restock through natural regeneration in an uncontrolled manner, given the development of a forest micro-climate and the location within an area with an existing seed supply. The grounds provide no basis for concluding that the licence contradicts the principle of sustainable forest management or good forestry practice.

- 15.** Addressed above, not addressed specifically in the SOF.

16. Inconsistency in the project area subject to public consultation

All relevant documents have been made available on the FLV. A second consultation process took place on the 20/12/2024 where all details regarding the revised maps were available to the public.

17. No requirement for Greening Up

Licence condition a) states that the licence must comply with the standards for Felling and reforestation. This document states that "The maximum allowable size for any single clearfell coupe is 25 ha. No other coupe within 120 m can be clearfelled until the original coupe has greened up, and no less than 12 months after the completion of felling".

18. Access to Justice is alleged to be prohibitively expensive

The fees for appeals to the FAC are set down in Regulation 10 of the Forestry Appeals Committee Regulations 2020 (S.I. No. 418 of 2020) and are not a subject that applies to the conditions of a licence and appealable.

- 19.** Ground 19 was not Addressed by the DAFM in their SOF.

Additional Submissions

There was an additional submission by the Appellant relating to the timing of the DAFM's publication of the response from Leitrim Co. Council. The submission was considered by the FAC and was circulated to all parties with no response received from the Applicant. The DAFM responded acknowledging that the letter from Leitrim Co. Council was not published on the FLV due to an oversight, but that the District Engineer's Report was published on the 26th September 2023. The DAFM contend that the licence issued with conditions relating to monument reference LE015-138 and included a condition for the licensee to contact the Council's District Engineer 14 days before operations commence. The DAFM contend that the concerns expressed in the Council's letter were adequately taken into account and that the licence remains valid.

The DAFM's response to the additional submission was circulated to all parties and the Appellant submitted a further response in which they contended that the DAFM's failure to publish the Co. Council's letter was an error. They also introduced evidence, arising from a decision of the Office of the Commissioner for Environmental Information (OCEI), which they contend shows that the DAFM cannot verify that the lands were afforested in accordance with the law (regarding EIA screening).

Considerations of the FAC

The remit of the FAC, as set out in Section 14B of the Agriculture Appeals Act 2001, as amended, is to consider appeals against specified decisions of the Minister and to determine if a serious or significant error, or a series of errors, was made in making the decision under appeal, and if the decision was made in compliance with fair procedures. The FAC in the first instance considered whether an oral hearing was required in the case of appeal FAC 030/2025 and, having regard to the particular circumstances of this case, the FAC concluded that it was not necessary to conduct an oral hearing in order to properly and fairly determine the appeal.

1. The FAC considered the appellant submission that there is inadequate and ineffective public notice in contravention of Article 6 (2) of the Aarhus Convention; unfair procedure, that agreements concluded by the Union are binding upon the institutions of the Union and on its Member States and Access to Justice is prohibitively expensive. The grounds also reference comments of the Court of Appeal in *McCaffrey* (*McCaffrey v Minister for Agriculture Food and Marine* [2017] IECA 247).

The FAC considers 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 FAC understands that the EU has transposed the Aarhus Convention through a number of Directives including the Environmental Impact Assessment (EIA) Directive (2011/92/EU as amended by 2014/52/EU). 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 requirement 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 (Statutory Instrument 191 of 2017). The application was subject to two periods of public consultation both at application stage and at AA stage. The FAC considered that the comments attributed to the Court of Appeal are referenced to a period prior to the current Forestry Regulations and procedures of the DAFM, including the availability of the FLV. In this regard the FAC concluded 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. The FAC considered that such matters as raised in these grounds do not fall within its remit as they are not generally considered to fall within the remit of an administrative appellate body.

2. The FAC considered the Appellant's submission that there was a breach of Section 10(4) of the Forestry Regulations regarding the right of the public to make submissions or observations within 30 days of the publication of any additional information. The information published by the DAFM at the time the decision was made includes a second AA Screening Report, a document labelled as "Assessment for EIA Requirement" on the FLV (which is actually titled "Project Description, Environmental and Social Considerations). The Archaeology Report (and associated emails) were published six days before the decision was issued. The FAC accepts with the position of the DAFM as set out in its SOF wherein it states that the Archaeology Report is an internal advisory report. The FAC considers that such reports should be published at least from the date of publication of the decision so that the public can be aware of their content. The FAC considers that Section 10(4) of the Forestry Regulations primarily relates to the public consultation process regarding the application for a licence while the Minister might, at their discretion, provide for further periods of public consultation. The documents referred to in the grounds do not form part of the application. In relation to the second AA Screening Report, the FAC noted that this was clearly not relied upon by the DAFM in its assessment of the application as the AA process of the application was evidenced through an AASRD dated 5th December 2024, an AA Report dated 12th December 2024, and an AAD dated 27th January 2025. The FAC noted that the DAFM provided for a second period of public consultation in relation to the AA undertaken and made available the screening and report relied upon for that process at that time. In these circumstances, the FAC is satisfied that the DAFM did not err in their processing of the application in relation to these grounds of appeal.
3. The FAC considered the grounds which contend that the proposed area to be felled/thinned under TFL00946323 was not afforested in accordance with the law. As outlined previously in this letter, the FAC noted that the Appellant submitted additional information in relation to this ground of appeal. Having considered this additional information, the FAC considered that the absence of records relating to the environmental screening of a number of afforestation projects which were completed between 27 – 33 years ago does not constitute convincing evidence that the original planting was regulatory deficient. The FAC also considered that the Appellant has not adduced evidence that the afforestation of the lands has led to a significant effect on the environment. The FAC noted that the process of consent for afforestation, including environmental screening, has gone through a number of changes in legislation, including thresholds, and designated competent authorities since the period in which the grounds suggest the lands were afforested. Apart from this, 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. The FAC is therefore not satisfied that the DAFM has erred in its processing of the application in so far as this ground of appeal is concerned.
4. The FAC had regard to the grounds highlighting what the Appellant described as deficiencies in the licence conditions.

In relation to the submission in the grounds relating to Section 3.3 of the Felling and Reforestation Policy (as conditioned in this licence) 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, adherence with the document has been conditioned on the licence. The section of the policy document referred to in the grounds clearly relates to appeals 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 the 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 TFL00946323 the licence decision was made and published on the same date (25th March 2025), 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 is, in effect, moot. The FAC is not satisfied that a serious or significant error was made in the making of the decision in this regard.

In relation to the definition of “Good Forestry Practice” in the context of setbacks from electricity lines and support structures and public roads etc. The FAC finds that the definition of “Good Forestry Practice” as quoted in the grounds is provided for in the Forestry Act 2014 at Section 32 and that this is specified to be in the context of compensation for refusal of a 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 Act also 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 FAC considered the grounds regarding power lines, their setback distances, and associated issues. The FAC noted the submission in the SOF that the matter of setbacks management of vegetation from Electricity Transmission lines and public roads are provided for in separate legislation (the enforcement of which is not for the DAFM). 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, with the exception of dwelling setbacks which are addressed below. The SOF asserts 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. Based on the information available to it, the FAC finds no reason to conclude that the DAFM has erred in its processing of the application in so far as the matters raised in these grounds of appeal are concerned.

The grounds also submit that the project area is bisected by a power line. The FAC noted the response to this ground in the DAFM’s SOF which states that the DAFM Forestry Standards Manual sets out the agreed procedure with regard to setbacks from power lines and that the maintenance of these corridors within forests is provided for under Section 98 of the Electricity (Supply) Act 1927, as

amended by Section 45 of the Electricity Regulation Act 1999. The SOF states that the ESB, its authorised undertakers or any other holder of an authorisation under Section 16 of the Electricity Regulation Act 1999, taking due care and attention to avoid unnecessary damage, are empowered to lop or cut any tree, shrub or hedge which obstructs or interferes with electrical wires or to do the same where the tree, shrub or hedge interferes with the erection or laying of any such electrical wires or with the survey of the proposed route of any transmission or distribution lines and that grounds of appeal is not the appropriate forum for calls to change existing policy and therefore beyond the remit of a forestry licence appeal. The FAC finds that the Standards for Felling and Reforestation 2019 sets out the requirements for harvest plans and in so far as Electricity lines are concerned there is a requirement to show features such as overhead and underground utility lines. Based on the information available to it, the FAC finds no reason to conclude that the DAFM has erred in its processing of the application in so far as the matters raised in this ground of appeal are concerned.

The FAC considered that the licence condition requiring contact with the DAFM's felling Section and the Leitrim Co. Council District Engineer 14 days prior to commencement of operations to be sufficiently clear.

The FAC considered the Appellant's grounds regarding the licence condition stating that the setback from dwelling houses at replanting is 30m. The FAC noted the DAFM's response to this ground of appeal in their SOF. However, the FAC consider that this is at variance with Section 14.5 of the Standards for Felling and Reforestation 2019 which requires that setbacks for Dwelling houses is 60 metres unless there is written agreement of the neighbouring dwellers to a lesser setback. The minimum setback that can be applied with consent is 30m. In this case there is no evidence of such a consent on file. The licence applicant had specified 60m setbacks in the reforestation map provided with the application and there is nothing in the record provided to the FAC that indicated that they sought to amend the setbacks. The stated position of the DAFM is that setbacks from dwellings differ for felling and replanting but the FAC considered that this was not reflected in the Standards for Felling and Reforestation which specify a 60m setback at replanting unless written agreement is provided. The Minister is required to have regard to such standards when making a decision on a licence application and the FAC would understands that this provides some flexibility to deviate from the standards. However, in this case the FAC considered that the position of the DAFM does not reflect the Standards and that no reasons have been provided for the deviation. The FAC concluded that this represents a significant error in the processing of the application as the DAFM has not complied with the standards it has set for itself with regard to such setbacks. The FAC considered that in certain circumstances, this could be addressed through the varying of the decision as provided for in 14(B) of the Agriculture Appeals Act 2001, as amended, however, in the particular circumstances of this case, the FAC found that the decision should be set aside and remitted for reasons set out later in this letter regarding the publication of relevant documentation.

The grounds of appeal contend that the manner in which the measures of the AAD were conditioned on the licence contains errors and that there should not be any conflict between the AA and the licence conditions. The FAC considered that the wording employed by the DAFM in the related condition could create uncertainty and conflict in relation to the measures required in the AA and the protection of water quality and the environment but that there is no basis to make such a conclusion in this case. It is evident that the measures specified in the AA relate to the protection of water quality and the environment. The grounds do not identify any actual conflict arising based on the specific decision that was made which is the subject of the appeal. The FAC was not satisfied that serious or significant errors were made in this regard.

In relation to the Archaeological conditions on the licence, the FAC noted that condition 10 from the Archaeology Report was not transposed to the licence conditions as per the other Archaeological conditions. However, the FAC considered that this condition is of a more generic nature and is not site specific. The FAC also noted that the licence conditions direct the Applicant to see the attached Archaeological Report and illustrative map for further details. The FAC considered the Appellant's submission that a full Archaeological Impact Assessment Report should have been required before authorising this project. The Appellant did not elaborate on the reasoning for this contention other than it allegedly being in the interest of good forestry practice. The FAC considered that the application was the subject of an archaeological assessment by the DAFM Archaeology Unit and that site specific measures were agreed with the NMS prior to the completion of an archaeology report, and these measures were also transposed as conditions of the licence. The FAC was not satisfied that serious or significant errors were made in relation to these grounds of appeal.

5. The grounds make a number of general statements and suggestions that the DAFM's AA was deficient but the FAC considers that the appeal fails to consider the assessment and decision as a whole or to provide any real basis that the assessment contained serious or significant errors. The information before the FAC is that in this case, both the AA Report and the AAD were prepared/signed-off by an ecologist and these documents prescribe 44 mitigation measures, the majority of which are related to the protection of water quality. The FAC considered that grounds submitted are generally speculative, and the Appellant does not claim to have any qualifications or expertise in the environment or ecology or to have engaged such an individual.

In relation to In-Combination assessment the FAC would understand that the consideration of other plans and projects should take place as part of the process to ascertain whether the project, either individually or in-combination with other plans or projects, is likely to have a significant effect on a European site and an AA of the implications of the project and such effects on the European site, having regard to the conservation objectives of the site concerned. The FAC have reviewed the documents which comprise the DAFM's processing of the licence in relation to Stage 1 AA screening and Stage 2 AA. The FAC noted that the DAFM produced in-combination reports which formed part of their consideration at the AA screening stage in relation to the screened-out European sites, and at AA stage regarding Lough Gill SAC IE0001976, the only screened-in European site. The FAC are not satisfied that the Minister made a serious or significant error in the AA process.

6. The FAC considered the Appellant's submission that there is inadequate assessment under Article 12 of the Habitats Directive (Annex IV species). The grounds submit that there has not been an adequate assessment of the potential impact on species listed in Annex IV of the Habitats Directive – notably bats and otter. The grounds also submit that it is for the Minister to evidence that the necessary assessment has been conducted, not for the appellants to provide evidence of bats or otters on this site. In the context of this ground the FAC considered the submission made in the DAFM's SOF which sets out that with regard to Otter the potential impact of the project on Otter was considered during the licencing process and conditions for protecting otter have been added. The SOF further states that in general, Otters do not have a preference for forestry habitat and mature conifer plantations without a shrub layer do not provide suitable resting places for Otters. The DAFM submitted that there will be no alteration of watercourses and forestry machines will not be traversing close to stream sides, so direct impacts on Otter habitat are considered unlikely. The DAFM's SOF states "With regard to bats none of the European sites screened by DAFM include bat species as a QI. There were no references to bat species made in the NPWS response and no submissions were made by the public

to indicate that there were bat populations that could be impacted by any operations described in the felling application TFL00946323.” The FAC considered that the Appellant did not provide specific details of species present on the project lands, which are comprised of commercial plantation, or give convincing reasons to show how the proposed development would be likely to give rise to adverse effects on them. Commercial plantation of this age category would not be considered optimal habitat for bats and the licence conditions include protections in relation to existing historic structures on site and hedgerows. The grounds are of a general nature and do not engage with the application and licence in a specific context. In these circumstances, the FAC, based on the information available to it, finds no reason to conclude that the DAFM has erred in its processing of the application in so far as these grounds are concerned.

7. The FAC considered the submission in the grounds 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. 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 TFL00946323 cannot be considered to have been awarded in a manner that is consistent with European Law.

The FAC noted the content of the SOF responding to this ground of appeal wherein it sets out that the grounds of appeal do not refer to any specific adverse effect on the environment under this heading while disagreeing that its procedures are inconsistent with Article 5 of the Birds Directive. It states 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 FAC considered that this ground effectively seeks to challenge Ireland’s transposition of an EU Directive and related questions of law. The FAC considered that such matters do not fall within its remit as they are not generally considered to fall within the remit of an administrative appellate body.

8. The FAC considered the submission in the grounds that the Pollution Impact Potential of the project has not been considered or assessed. In considering this ground the FAC noted the submission made to it in the SOF wherein it is set out that the DAFM applies a wide range of checks and balances during its evaluation of felling licence applications in relation to the protection of water and that any felling licence issued is conditional on adherence to the Standards for Felling and Reforestation (DAFM, 2019), which set out a wide range of operational measures to prevent direct and indirect impact on water quality arising from the operation. It states that these measures cover a wide range of issues, including pre-commencement awareness, contingency plan, exclusion zones, silt and sediment control, temporary water crossings, managing extraction, timing operations, monitoring, the preparation, storage and use of potentially hazardous material, and post-operation works. In relation to overland flow, the FAC noted that Section 7 of these standards stipulates that silt fences should be applied where necessary to block pathways for silt in areas where overland flow is possible.

The SOF also sets out that there are a number of conditions specifically targeted at protecting water quality included in the licence and that these include the establishment of undisturbed water setbacks, planting of rows of broadleaves, restrictions on machine movement, monitoring of on-site conditions, all of which are aimed at protecting water. It states that these conditions together with adherence to relevant environmental guidelines/requirements/standards and to the site-specific mitigation measures set out in the AAD and attached as licence conditions ensure that the proposed felling and reforestation project will not result in any adverse effect on any European Site nor on the water quality or the water body status regardless of hydrological connectivity. The SOF goes on to set out a list of the water-related ecosystem services associated with aquatic zone setbacks.

The SOF also sets out that the numerous measures set out in the Standards for Felling & Reforestation and the Environmental Requirements for Afforestation (regarding reforestation) deal specifically with the protection of water, and these are reinforced by specific measures in the list of mitigations in the AAD. The FAC finds that the DAFM AASRD records that the average slope across the project area is moderate and that the application as submitted provides for water related setbacks and silt traps for sediment control. The FAC also finds that the project area (on the catchments.ie map) is shown to be in the vicinity of the Cashel Stream (Bonet)_010 and that this River Waterbody has a Good Status recorded for the 2019-2024 period which is based on monitoring. The FAC finds that the status of the waterbody is recorded as not being at risk.

The FAC considers that there are numerous conditions attached to the licence for the purpose of protecting water quality and pollution. The FAC considers that these combined with the proposals made in the application afford considerable protection to water quality. The proposal is for the felling of trees which is a spatially and temporally limited activity. Based on the information available to it, including the characteristics of the project area, the proposals made in the application and the conditions of licence, the FAC is not satisfied that the DAFM has erred in its processing of the application in so far as this ground of appeal is concerned.

9. The FAC considered the submission in the grounds that hedgerows are not correctly recorded on the Harvest Plan. In considering this ground the FAC noted the submission from the DAFM in its SOF wherein it sets out that the Standards for Felling and Reforestation states "Retain existing hedgerows and mature broadleaves onsite, where it is safe and appropriate to do so." It also states that felling inspectors have access to orthophotography and therefore can see the location of all hedgerows. The FAC finds that the Revised Harvest Plan map shows the existence of hedgerows within the project area. The FAC considers that the submission from the appellant is primarily speculative and reflects suggested historic hedgerow patterns rather than the current state of the land. The FAC is not satisfied that the DAFM has erred in its processing of the application in so far as this ground of appeal is concerned.
10. The FAC considered the submission in the grounds that the determination of the Environmental Impact Assessment Screening is based on an inadequately reasoned assessment and is unsound in law. The FAC noted the submission made in the SOF that "It is the position of the Department that clear-felling and replanting an already established plantation forest is a standard operational activity and does not involve an activity or project that falls within the specified categories of forestry activities or projects subject to the requirements of the EIA Directive, as transposed and set out nationally in Schedule 5 Part 2 of the Planning and Development Regulations 2001, as amended, and in Regulation 13(2) of the Forestry Regulations 2017 (and wherein relevant national mandatory thresholds and criteria for EIA are also prescribed). Clearfell is not referred to in Annex 1 nor does provision under

Annex 2 allow for EIA assessments for clearfell where the intention is to replant.” The FAC finds, notwithstanding the DAFM position as articulated in the SOF, that an Assessment for EIA Requirement, marked as certified on the 6th February 2025, was completed as part of the processing of the application for licence TFL00946323.

The EU EIA Directive sets out in Annex I a list of projects for which EIA is mandatory. Annex II contains a list of projects for which member states must determine through thresholds or on a case-by-case basis (or both) whether or not EIA is required. Forestry projects are not referred to in Annex I. Annex II contains a class of project specified as “initial afforestation and deforestation for the purpose of conversion to another type of land use” (Class 1 (d) of Annex II). The Irish Forestry Regulations 2017 (S.I. 191 of 2017), in relation to forestry licence applications, require the compliance with the EIA process for applications relating to afforestation involving an area of more than 50 Hectares, the construction of a forest road of a length greater than 2000 metres and any afforestation or forest road below the specified parameters where the Minister considers such development would be likely to have significant effects on the environment. The decision before the FAC relates to a felling licence in the Townlands of Cloonbannive, Tullycoly, Co Leitrim which includes the proposed felling and thinning of commercial forestry between 2025 – 2035. Clearfelled areas are to be replanted. Such activity involves ongoing, standard operations within the same land use. The FAC concluded that the felling and replanting of trees, as part of a forestry operation with no change in land use, does not fall within the classes referred to in the Directive, and is not covered by national regulations and that screening for significant effects under the EIA Directive was not required in this case.

11. The FAC considered the submission in the grounds that the decision is invalid because the Minister has failed to evidence consideration of the submission of a prescribed body from whom he sought comment. The FAC also had regard to the DAFM’s response in their SOF which states that “The recommendations submitted by Leitrim County Council and referred to by the Appellant in the Grounds of Appeal are more appropriate to the Forest Road application rather than the decision represented by felling licence TFL00946323.” This ground of appeal was further addressed in the additional submissions received by the FAC wherein the DAFM acknowledged that the letter from Leitrim Co. Council was not published on the FLV due to an oversight. The FAC finds that the DAFM included conditions on the licence arising from their consideration of the response from Leitrim Co. Council which included a letter and a District Engineer’s Report. The FAC considers that the Minister is the competent authority in relation to the issuing of a licence for the felling of trees as applied for in the decision under appeal. However, in the particular circumstances of this case, the FAC considered that the DAFM’s failure to publish the Council’s letter at the time it made the decision to grant this tree felling licence constitutes a significant error in their decision-making process. This finding was informed by the fact that the response from Leitrim Co. Council was evidently a material factor in the DAFM’s decision-making, including the prescription of relevant licence conditions, and was not available to the public until published on the FLV after the appeal period had elapsed. Additionally, the FAC would understand that the DAFM’s FLV is where the DAFM publish the record of their decision in relation to forestry licences. The “About” section on the FLV states that “Documentation relating to applications will be displayed on the FLV once the application is advertised and open for public consultation.” In this case, the District Engineer’s Report which accompanied the referral response letter from Leitrim Co. Council was published on the FLV on the 18th December 2024. The licence itself was published on the 25th March 2025 but the letter from the Council was not published until the 1st July 2025.

12. The FAC had regard to the Appellant's submission that the application does not comply with the requirements for BLOW Reforestation Objective. In reviewing the information before it, the FAC noted that neither the original felling licence application, or the Revised Part 3 and Part 4 Felling Application, or the Revised Reforestation Map indicate that the reforestation objective for any specific, whole plot is "BLOW". The reforestation objective for all plots in the Revised Part 3 and Part 4 Felling Application document is "CHF". In these circumstances, the FAC is satisfied that the DAFM did not make a serious or significant error in relation to this ground of appeal.
13. The FAC considered the submission in the grounds that the decision is invalid because the Minister has failed to evidence consideration of the submission of a prescribed body from whom he sought comment. The FAC noted the content of the submission made by Leitrim Co. Council during the processing of the application by the DAFM wherein it set out that the subject lands do not fall within any designated Area of Outstanding Natural Beauty (AONB) or Area of High Visual Amenity (AHVA) as identified in the Leitrim County Development Plan 2023-2029 and that in terms of the Landscape Capacity Study for Commercial Forestry (March 2022), the subject lands are located within Landscape Character Type (LCT) 8 - Valley Farmland as per the Leitrim County Development Plan 2023-2029. The submission also sets out that the Planning Authority have significant concerns in relation to the existing adverse impacts of the current commercial forestry on landscape and visual amenity within this LCT, given the extent of commercial coniferous plantation in situ and that notwithstanding, the high sensitivity of LCT 8 to commercial forestry, it is acknowledged that the subject lands do not coincide with any AONB or AHVA designations.

The Council submission states that a designated national monument in the form of a ringfort – rath (NMS Ref. LE015-138) is located within the subject lands, that there are no tree preservation orders affecting the project area, and that the subject lands do not fall within any Natura 2000 or Natural Heritage Area (NHA) designated or candidate/proposed designated areas. The subject lands do not lie adjacent to any Natura 2000 site. The Council's submission states that whilst the Planning Authority has no objection in principle to the proposed clear felling, significant concerns remain in relation to any replanting proposals, which are absent from the application documentation. This appears to be an error on the Council's behalf as the application on file includes detailed replanting proposals. Notwithstanding this, the Council stated that given the sensitivities associated with the receiving landscape of the subject lands to commercial conifer forestry, any replanting scheme should dispense with similar species and look to incorporate broadleaf planting or mix thereof in its place. In this regard, the FAC noted that the proposed replanting of the site will result in the further diversification of trees species present within the forest and the creation of open space within felling coupes and numerous planting setbacks from various features throughout the project lands.

The FAC finds that the DAFM Archaeologist in his covering letter of the 18th December 2023 confirms that he had regard to the submissions made by Leitrim County Council which highlighted the presence of a ringfort – rath (NMS Ref. LE015-138) within the project lands, and that the authors of the DAFM AASRD, the AA Report, and the AAD confirm that responses from consultation bodies were taken into consideration as part of the preparation of the respective reports. The FAC also finds that conditions have been included in the licence as approved reflecting the conditions proposed for inclusion by the Local Authority District Engineer. The FAC accepts that the Minister is the competent authority in relation to the issuing of a licence for the felling of trees as applied for in this case. Based on the information available to it the FAC finds no reason to conclude that the DAFM has erred in its processing of the application in so far as this ground of appeal is concerned.

The FAC considered the submission in the grounds that the Minister's decision is flawed as the Department has not had regard to the Leitrim County Development Plan 2023-2029. In the circumstances of this application, notwithstanding the error in relation to the publication of the referral response letter from Leitrim Co. Council, the FAC found that the DAFM considered the submission from the Planning Authority (which referenced the Leitrim County Development Plan 2023-2029) in its processing of the application. The FAC also finds that the Leitrim County Development Plan 2023- 2029 is specifically referenced in the In-Combination reports to be found on the record of the application file. The FAC considers that the thinning, clearfell and replanting of an existing forest, which does not require a change of land use, does not appear to fall within the remit of the planning process and that the Minister is the competent authority to make a decision on application TFL00946323, and that therefore the Minister is not bound by the provisions of the Leitrim County Development Plan 2023-2029, as it relates to licence TFL00946323. In these circumstances, the FAC found that the DAFM did not make a serious or significant error in relation to having regard to the Leitrim County Development Plan 2023-2029.

14. The FAC considered the submission that restocking is not consistent with the principle of Sustainable Forest Management, and that there is an absence of assessment of the peat depth and the suitability for replanting this area without drainage. The FAC noted that the submission from the DAFM in its SOF which states that the DAFM is the competent authority for issuing forestry licences and that the proposal as it stands does not contravene current DAFM Policy which refer only to the prohibition of initial planting on blanket peat and do not prohibit replanting. The FAC also had regard to the DAFM's submission that the carbon balance of afforesting deep peats for the first time clearly differs from the restocking of an existing forest where the drainage system and micro-climate has been altered for many decades. The DAFM also contend that the grounds provide no basis for concluding that the licence contradicts the principle of sustainable forest management or good forestry practice. The FAC concurs with the DAFM's submission in this regard. Based on the information available to it, the FAC finds no reason to conclude that the DAFM has erred in its processing of the application in so far as the matters raised in this ground of appeal are concerned.
15. The FAC considered the submission in the grounds that the Minister has not followed good forest practice in awarding this licence contrary to the obligation on him under the Forestry Act. The ground also submits that the appellant does not consider it good forest practice to re-stock any deep peat soils with exotic conifers, and that 42% of this site is on basin / blanket peat. The ground also submits that the appellant does not consider it good forest practice to re-stock sensitive landscapes with 89% coniferous species.

The FAC noted the submission in the DAFM's SOF wherein it states that DAFM is the competent authority for issuing forestry licences and that the proposal as it stands does not contravene current Forest Service Guidelines which refer only to the prohibition of initial planting on blanket peat and do not prohibit replanting. The SOF also states that the carbon balance of afforesting deep peats for the first time clearly differs from the restocking of an existing forest where the drainage system and micro-climate has been altered for many decades and that in addition, if the Minister had not placed conditions on the restocking of the site the most likely outcome is that the forest would restock through natural regeneration in an uncontrolled manner, given the development of a forest micro-climate and the location within an area with an existing seed supply. The SOF asserts that the grounds provide no basis for concluding that the licence contradicts climate change policy. Based on the information available to it, the FAC finds no reason to conclude that the DAFM has erred in its processing of the application in so far as the matters raised in this ground of appeal are concerned.

16. The FAC considered the grounds that there was inconsistency in the project area subject to public consultation and that “The scale of the difference between the two projects should have warranted a new application or at the very least a new first round consultation on the 88.11 ha project.” The FAC noted that the phrasing of the grounds appears to imply that two separate projects were applied for and considered by the DAFM. The FAC noted that there was a substantial reduction in total area and restructuring of the approach to the proposal on foot of an FIR (detailed earlier in this letter) issued by the DAFM following their initial consideration of the application. The FAC noted that the revised proposal is for a lesser area, within the footprint of the original area applied for. The FAC also noted that a second consultation process took place on the 20th December 2024 during which all details regarding the revised maps were available to the public. The FAC is satisfied that the DAFM did not err in relation to this ground of appeal.
17. This ground submits that there is no requirement for greening up as part of the licence conditions. The DAFM’s SOF contends that Licence condition a) states that the licensee must comply with the Standards for Felling and Reforestation which requires that “the maximum allowable size for any single clearfell coupe is 25 ha. No other coupe within 120 m can be clearfelled until the original coupe has greened up, and no less than 12 months after the completion of felling.” The FAC noted that the Applicant submitted a Revised Harvest Plan and associated maps and documentation in response to the DAFM’s FIR and that the revised plan was amended to account for the requirements of the FIR. The FAC considers that the Applicant would be expected to complete the proposed operations in adherence to the submitted operational details. In these circumstances, the FAC found that there is a requirement for the Applicant to adhere to the minimum greening up requirements in the Standards for Felling and Reforestation and the FAC does not consider that the DAFM erred in relation to this ground of appeal.

The FAC considered that the issues raised in the grounds of appeal numbered 18 and 19 do not fall within the remit of the FAC as provided for in the Agriculture Appeals Act, 2001 as amended.

Based on the evidence before it, as outlined above, the FAC is satisfied that significant errors were made by the DAFM in their making of the decision under appeal arising from their failure to publish relevant documentation, i.e., the referral response letter from Leitrim Co. Council, on the FLV in line with stated DAFM procedures, and their prescription of a 30m dwelling setback in contravention of the Standards for Felling and Reforestation. In the particular circumstances of this case, the FAC decided to set aside and remit the decision to the Minister to make a new decision and to have regard to the setback from dwellings and associated buildings as proposed in the application and reflected in the Standards for Felling and Reforestation (2019) and to provide reasons where the Minister varies from their policy and to publish that decision on the FLV alongside all of the relevant documentation which informed the DAFM’s decision.

Yours Sincerely,

Luke Sweetman on behalf of the Forestry Appeals Committee

