



Tir Alainn LLC

2nd April 2026

Subject: FAC Ref No 033/2025 regarding TFL01042824

Dear Tir Alainn LLC,

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 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 and Decision

Having regard to the information before it and the particular circumstances of the appeal, the FAC considered that it was not necessary to conduct an oral hearing in order to properly and fairly determine the appeal. The FAC considered appeal FAC033/2025 during a sitting of the FAC held remotely on the 9th December 2025.

In attendance:

FAC Members:

Mr. Donal Maguire (Deputy Chairperson), Mr. Luke Sweetman, Mr Iain Douglas and Mr. Derek Daly. Mr. Edward Carroll (Chairperson – non-participating)

Secretary to the FAC:

Ms. Aedin Doran.

Having regard to the evidence before it, including the record of the decision, the notice of appeal, the Statement of Fact (SoF) from the Department of Agriculture, Food, and the Marine (DAFM), and submissions received, the FAC has decided set aside and remit the decision of the Minister for Agriculture, Food and the Marine to grant felling licence TFL01042824. The reasons for this decision are set out hereunder.

Background

A felling licence (TFL 01042824) for approximately 11.70 hectares at Knockacullion, Co. Leitrim was issued by the DAFM on the 31/03/2025, subject to conditions.

The application was for sixteen plots comprising of Norway Spruce, Japanese Larch, Sitka Spruce and Lodgepole Pine (North Coastal) species and replanting with a species mix of Additional Broadleaves, Sitka Spruce, Norway spruce and Lodgepole Pine (North Coastal) as stated on the felling licence application.

Documentation submitted included mapping and details relating to the felling schedule and that the project area consists predominantly of WD4 forest. There are no aquatic features located the site itself but there is a watercourse in very close proximity to plot 7. Site is accessed from the public road

network. The project area is described in the documentation as underlain by Blanket Peats {41%} & Peaty Gleys {13%} & Surface water Gleys, and Ground water Gleys {45%} and the average slope across the site is stated as moderate, at 7% and ranges from 0% to 20%.

In the course of the assessment DAFM requested further information and a harvest plan schedule and associated mapping was submitted.

The project site is located on EPA mapping as the Aghacashlaun_010 river sub basin. The DAFM's Appropriate Assessment screening document states that the Ecological Status of this waterbody under the current WFD Cycle is 'Good'.

DAFM Assessment

DAFM documentation states that the date of publication for public consultation was 12/07/2024.

There is an Appropriate Assessment Screening Report & Determination (AASRD) dated 21/03/2025 on file prepared by the DAFM and published as "AA Screening Determination" on the FLV on the 31/03/2025. The AASRD examines European sites within a 15 km radius, Cuilcagh - Anierin Uplands SAC IE0000584; Cuilcagh Mountain SAC UK0016603 Boleybrack Mountain SAC IE0002032 and Lough Oughter and Associated Loughs SAC IE0000007, the latter located just outside of the 15 km radius. All sites were screened out with reasons provided for the screening conclusions reached for each of the European Sites examined and DAFM has determined that there is no likelihood of the Felling and Reforestation project proposed under TFL01042824 having any significant effect, either individually or in combination with other plans or projects, on any of the European sites and as such, the project does not advance to the appropriate assessment stage in relation to these European Sites.

The AASRD states that in undertaking the screening for Appropriate Assessment, the following were taken into account:

- the initial application, including all information submitted by the applicant, information available via iFORIS (including its GIS MapViewer) and input from the District Inspector (including information following field inspection);
- responses from consultation bodies and submissions from 3rd parties;
- any subsequent supporting documentation received from the applicant;
- any other plan or project that may, in combination with the plan or project under consideration, significantly affect a European Site;
- any information or advice obtained by the Minister;
 - Conservation Objectives, Natura 2000 forms, site synopsis and supporting documents for each relevant European site, available from National Parks & Wildlife Service (www.npws.ie);
 - available ecological and environmental information including aerial imagery, historical OS maps, DAFMs iFORIS system, QGIS and ArcGIS applications and data available at National Parks & Wildlife Service (npws.ie), EPA Maps, GeoHive, Data and maps (gsi.ie), Biodiversity Maps (biodiversityireland.ie);
 - any other relevant information.

and combined with the project details and site characteristics summarised above, there is sufficient information within the application and available from elsewhere to form a sound judgement regarding the likelihood of the project having a significant effect on a European site.

On file is an Appropriate Assessment Screening Report Appendix A: In-combination report for Felling and Reforestation project TFL01042824 and uploaded on the FLV as "Incombination screening stage" on the 31/03/2025. This report refers to consulting various online databases on the 21/03/2025 in order to identify other plans and projects including the County Leitrim Development Plan 2023-2029 which are also located in the general vicinity of the project area in the River Sub-Basin AGHACASHLAUN_010. The report concluded;

"that there is no likelihood of the proposed Felling and Reforestation project TFL01042824 when considered individually, having a significant effect on the relevant European Site(s), as described elsewhere in the Screening Report. The relevant Qualifying Interests / Special Conservation Interests and Conservation Objectives, as listed elsewhere in the Screening Report, have been taken into consideration in reaching these conclusions. Furthermore, it is considered that the regulatory systems in place for the approval, operation (including any permitted emissions) and monitoring of the effects of other plans and projects are such that they will ensure that they do not have any significant effect on those same European Site(s). 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".

Also, on file is the following DAFM documentation;

Inspector's Certification Report, dated 31/03/2025 with Date Inspection Certified as 21/03/2025 and uploaded on the FLV 31/03/2025 2025 with a recommendation to approve with conditions.

Inspector's Project Description, Environmental and Social Considerations Report, dated 31/03/2025 with Date Inspection Certified as 21/03/2025 and uploaded on the FLV 31/03/2025 and referred to as Assessment for EIA on the FLV. In this assessment the Inspector recorded a consideration of the application across a range of criteria relevant to the proposed felling, including water, soil, designated areas, landscape, amenity and recreation, transfrontier, cumulative effects and referrals and submissions. In relation to landscape it indicates that the project is not within a prime scenic area in the County Development Plan or within an area listed in the Inventory of Outstanding Natural Landscapes or in a Landscape Conservation Area or within any other High Amenity Landscape and that comments from the Local Authority were received and examined.

Also on file is an Inspector's Appropriate Assessment Screening Report, dated 31/03/2025 with Date Inspection Certified as 21/03/2025 and uploaded on the FLV 31/03/2025 and referred to two sites, Boleybrack Mountain SAC 002032 and Cuilcagh - Anierin Uplands SAC 000584 which are screened out with reasons stated with an overall Conclusion: Screen Out: No likelihood of a significant effect on any European site, and Appropriate Assessment not required.

Referrals

The FAC noted, based on documentation submitted, that the application was referred to the National Parks and Wildlife Service (NPWS) and Leitrim County Council.

NPWS in a response dated 23/08/2024 refers to

- recommending waiting until the 1st of September before starting the felling on site if possible, to allow for the Hen Harrier breeding season to end.

- A stream runs adjacent to part of the felling area from the Cuilcagh - Anierin Uplands Special Area of Conservation (SAC)(Site Code: 000584)/Cuilcagh - Anierin Uplands Special Protection Area (SPA) into the Aughacashel River and through a number sub-catchments, which eventually connects to the River Shannon. Maintaining the correct buffer zones is important to ensure no sedimentation/acidification downstream of the felling site.
- A site downstream of this area was recently part of the National Otter Survey.
- All recommendations as stated in the Forestry and Water Quality guidelines should be strictly adhered to.
- Where certain soil types (e.g. peat) and steep slopes occur together, there is a greater risk of soil erosion and subsequent sedimentation. It should also be noted that subsoils may be more prone to erosion than the associated topsoil. In such areas, due care should be taken when planning all forest operations.
- Correct buffer zone management will help reduce the risk of sedimentation. Sensitivity to acidification or erosion can be local or confined to a sub catchment. These sub-catchments may be identified by their particular geology, soil and terrain.

Leitrim County Council in two submissions refers to;

Firstly, an engineering report dated 01/08/24 which indicates no objections subject to conditions.

Secondly, a general report dated the 01/08/2024 which refers to the engineer's report but also indicates *whilst the Planning Authority has no objection in principle to the proposed clear felling, significant concerns remain in this designated Area of Outstanding Natural Beauty in relation to any replanting proposals. The Planning Authority strongly objects to the replanting of these lands due to the sensitivities of the landscape to commercial forestry. Any replanting scheme shall incorporate broadleaf species only.*

The submission also refers to;

Should the proposal proceed, the following conditions should be included as part of an approval:

- 1. Prior to the commencement of any works, a Forest Service representative shall liaise with the District Engineer's Office and shall satisfy any conditions and address any issues of the District Engineer.*
- 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.*

Decision

The decision to approve the licence was issued on the 31/03/2025 subject to standard conditions, along with specific conditions related to the protection of the environment, notification prior to commencement of operations, and replanting setback differences.

Appeal

There is one appeal against the decision to grant the licence. The full grounds of appeal were considered by the FAC and are to be found on file. The Notice of the appeal and full grounds of the appeal were provided to the relevant parties.

In summary, the grounds of appeal refer to;

- Inadequate and ineffective public notice in contravention of Article 6(2) of the Aarhus Convention; unfair procedure and requirements in relation to public participation and refers to the approach taken by FAC and the need to identify that DAFM procedures in relation to public notices is fair.
- There is failure to have regard to the social function of forestry;
- There is a breach of Section 10(4) of the Forestry Regulations in relation to the publishing of documentation and timelines for responses.
- Contention that the lands were not afforested in accordance with the law..
- The licence conditions are not adequately reasoned and there are conflicting conditions reference to powerlines, setbacks and when felling commences.
- The assessment for this project under Article 6 (3) of the Habitats Directive does not contain precise and definitive findings as to the effects of the proposed works and DAFM do not have a fundamental understanding of what is required by in-combination assessment.
- Inadequate assessment under Article 12 of the Habitats Directive (Annex IV species) and reference is made to bat and other species.
- DAFM procedures are not consistent with the requirement for providing a general system of protection commensurate with Article 5 of the Birds Directive. There is reference to the project being within the range of the Hen Harrier species.
- The pollution impact potential of the project was not considered or assessed (Water Framework Directive) with a failure to assess water quality. No silt traps indicated.
- Mapping submitted is inaccurate and examples of this are outlined including inaccuracies in relation to hedgerows.
- The determination of the Environmental Impact Assessment Screening is inadequate in particular regarding the absence of an ecological input and that the landscape assessment is incorrect with reference to the submission of Leitrim County Council.
- The decision is invalid because the Minister failed to consider certain submissions and reference is made to the County Council submission in this regard and the absence of why DAFM has not adopted the recommendations of the County Council.
- Access issues to various plots is raised.
- The decision is flawed as it has not had regard to the provisions of the Leitrim County Development Plan 2023-2029.
- The restocking is not consistent with the principle of Sustainable Forest Management.
- The Minister has not followed good forest practice and reference is made to restocking on deep peat soils.
- That 'Access to Justice' is prohibitively expensive and the issue of fees is raised.
- The Appellant also made a submission that Stika Spruce be classified as an Invasive Alien Species of Member State concern under Article 12 of the Invasive Alien Species Regulations.

DAFM Statement (SoF) to the FAC

A Statement of Fact (SoF) was received by the FAC from the DAFM in response to the appeal against TFL01042824 and was provided to the parties to the appeal. In summary, the SoF outline the procedure adopted by the DAFM in processing the application, the related dates and the final decision. It is submitted (among other matters) that the decision was issued in accordance with DAFM procedures, SI 191/2017 and the 2014 Forestry Act.

The SoF also in the response from the forestry Inspector refer to matters raised in the grounds of appeal to the FAC asserting that DAFM have assessed the matters as raised and complied with obligations and requirements. The submission contends that;

- The Department is in full compliance with the Aarhus Convention, as it relates to forestry licencing.
- The Department's website and the Forestry Licence Viewer notify the public of an application of a felling licence. Both meet the requirements of public consultation. The forestry licencing process is very accessible to applicants, the wider public and to environmental NGOs. The Department has a transparent process for publishing information relating to forestry licencing, namely the website and Forestry Licence Viewer.
- 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).
- In relation to the allegation of a breach of Section 10 (4) of the Forestry Regulations When the Department reaches a final decision regarding the licence application (be it approved, approved with conditions, or refused), this decision is posted on the FLV in the form of the letter sent to the applicant informing them of the outcome.
- In relation to the assertion that the lands were not afforested in accordance with the law It is not clear what specific environmental issues are being referred to in this ground of appeal. The grounds do not identify any significant effects on the environment that have occurred since the establishment of the forest nor a basis for assuming that the original planting was regulatorily deficient.
- In relation to the assertion that licence conditions are not adequately reasoned and specifically to ESB Corridors / windblow, DAFM's Forestry Standards Manual sets out the agreed procedure with regard to setbacks from power lines. Setbacks are also outlined in relation to roads and dwellings. Specifically in relation dwellings 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 TFL01042824.
- Referrals to statutory consultees forms part of the Department's consultation process.
- In relation to Areas of outstanding Natural Beauty DAFM as a competent authority for forest policy, does not consider deforestation of forests located in 'Areas of Outstanding Beauty' as one that warrant deforestation. The assessment of landscape character areas is concerned with evaluating the sensitivity of each of the landscape character types with regard to its capacity to accommodate further commercial forestry in the future.
- In relation to assertions around the assessment for this project under Article 6 (3) of the Habitats Directive DAFM disagrees with the contention that mitigation is not precise enough for this particular site and the SoF outlines the steps and procedures followed.
- Otters were considered and in relation to Bats and 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.

- DAFM disagrees that its procedures are inconsistent with Article 5 of the Birds Directive. An Appropriate Assessment was carried on the felling licence application TFL01042824 prior to the licence being issued.
- In relation to the allegation that the pollution impact potential of the project was not considered or assessed (Water Framework Directive) The DAFM applies a wide range of checks and balances during its evaluation of felling licence applications in relation to the protection of water, as set out in the DAFM document Forests & Water: Achieving Objectives under Ireland's River Basin Management Plan 2018-2021). There are a number of conditions specifically targeted at protecting water quality included in the licence.
- In relation to mapping, a public road clearly dissects the forest property, setbacks are also clearly delineated. Proposed forest roads should be included in a harvest plan, without a proposed access route clearly mapped it is difficult, if not impossible in most cases to properly assess the harvesting operation. The standards for felling and reforestation states that the managing of extraction routes should not break through existing hedgerows or stone walls on site, but instead, utilise existing gaps.
- TFL01042824 was screened out as it was determined in the AA Screening Determination that the project will not adversely affect the integrity of any European sites.
- It is not a requirement to have a forest road in situ when submitting a felling licence application.
- In relation to access issues Forest Roads have been mapped on the harvest plan map. It is unclear from the grounds of appeal as to what specific rights of way issue needs to be addressed.
- Sitka spruce is the predominant species used in Irish forests, the species is extremely well adapted to growing in Irish conditions.
- The Forest Service promotes sustainable forest management as a central principle of Irish forest policy, whereby forests are managed to provide economic, social and environmental benefits on a sustainable basis for both current and future generations. Reforestation after felling is essential to prevent deforestation, which would otherwise counteract the benefits of the initial afforestation.
- 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)
- The case made to classify Sitka Spruce (*Picea sitchensis*) as an invasive alien species of Member State concern under Article 12 of the Invasive Alien Species Regulations is outside the scope of this Appeal process.

Additional Submissions

The Applicant made a submission requesting the FAC to vary the licence in relation to the issue of restocking and to allow the site to regenerate as open pasture and this aligns with the position as set out in Leitrim County Council submission on the landscape. In summary the submission infers varying the licence addresses many of the issues raised in the grounds of appeal. The Applicant's submission was circulated to the parties to the appeal. The Appellant responded and welcomed the Applicant's submissions. The Appellant also noted the Applicant's reference to seasonal restrictions on the felling licence and highlighted that, while proposed by the NPWS, there are no licence conditions which reflect the recommendation from the NPWS.

The Appellant made two additional submissions on this appeal. First, they made a submission prior to the DAFM issuing their SoF. This submission related to the grounds of appeal regarding the

reafforestation of the proposed felling site. In a separate submission, the Appellant responded to the DAFM's SoF in a document titled "Critique of DAFM's Statement of Facts in Response to the Grounds of Appeal for TFL01042824 (Knockacullion, Co. Leitrim)". This document largely restates the Appellant's position and responds to the position as outlined by the DAFM in their SoF. The FAC noted that this submission included reference to Grounds numbered 16 – 21 which were not included in the grounds of appeal, nor referenced by the DAFM in their SoF.

All submissions were circulated to the other parties to the appeal.

Considerations of the FAC

As alluded to earlier in this letter and having regard to the particular circumstances of the appeal, the FAC considered that it was not necessary to conduct an oral hearing in order to properly and fairly determine the appeal. 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 for Agriculture, Food, and the Marine, 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.

In addressing the grounds of appeal, the FAC considered the completeness of the assessment of the licence application and an examination of the procedures applied which led to the decision to grant the licence. The FAC also had regard to the documentation provided through the DAFM's FLV as notified to the parties, the notices of appeal, and the statements provided by the DAFM, and all additional submissions.

In relation to public participation and notices which is raised in the grounds of appeal, the FAC considered the contentions raised in relation to public notice and public participation specific to the Aarhus Convention. The grounds contend that there has been inadequate and ineffective public notice in contravention of Article 6 (2) of the Aarhus Convention and that, relatedly, the Minister had failed to have regard to the social function of forestry. The grounds reference comments of the Court of Appeal in McCaffrey (McCaffrey v Minister for Agriculture Food and Marine [2017] IECA 247). The grounds make reference to a previous decision of the FAC on the matter. The DAFM submit that any obligations that might arise under the Aarhus Convention are met through its procedures which are outlined.

The FAC understands that publication through the map-based FLV is the form of publication chosen by the Minister for Agriculture to inform the public and to make the application and decision freely available and accessible and to facilitate submissions and the FLV procedure of informing the general public and interested parties post-dates the Court of Appeal judgement.

The FAC understands the "Aarhus Convention" to be a reference to the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. The FAC understands the Aarhus Convention to be a convention under the UNECE and that it does not form part of domestic legislation as such. The Aarhus Convention has been transposed through a number of pieces of EU legislation, including the EU EIA Directive (Directive 2011/92/EU as amended by Directive 2014/52/EU).

The EU EIA Directive defines an Environmental Impact Assessment (EIA) and identifies the projects which are required to be subject to EIA. The Directive sets out in Annex I, a list of projects for which EIA is mandatory. Annex II contains a list of projects for which member states must determine, through

thresholds or on a case-by-case basis (or both), whether or not EIA is required. Neither afforestation nor deforestation, or a class of development related to the proposal under appeal, are referred to in Annex I. Annex II contains a class of project specified as “initial afforestation and deforestation for the purpose of conversion to another type of land use” (Class 1 (d) of Annex II) and “Any change or extension of projects listed in Annex I or this Annex, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment.” (Class 13 (a) of Annex II).

The Irish Forestry Regulations 2017, in relation to forestry licence applications, require the compliance with the EIA process for applications relating to afforestation involving an area of more than 50 hectares, the construction of a forest road of a length greater than 2000 metres and any afforestation or forest road below the specified threshold where the Minister considers such development would be likely to have significant effects on the environment. The Forestry Regulations 2017 do not provide for the Minister to undertake an EIA in relation to a tree felling licence application. The current project subject of this appeal does not fall within the projects listed for mandatory EIAR. The FAC does not consider that there was a requirement to undertake a screening for Environmental Impact Assessment or an Environmental Impact Assessment in processing the tree felling application.

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

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

This is reflected in the consultation requirements provided for under Article 6 which is required after the competent authority has determined that a development is subject to an EIA. The procedure adopted in this case provided for a public consultation period in keeping with the requirements of the Forestry Regulations 2017 (SI 191 of 2017). The application was subject to public consultation. The FAC considered that the comments attributed to the Court of Appeal and the Aarhus Convention Compliance Committee (ACCC) are referenced to a period prior to the current Forestry Regulations 2017 and procedures of the DAFM, including the availability of the FLV.

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

The grounds refer to the requirements under the Forestry Regulations 2017 to erect a site notice in relation to tree felling licences but in the regulations, this is stated to occur when operations commence and after the licence has issued.

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

Specific to the matter of Appropriate Assessment (AA), in making a decision on the proposed felling, the Minister is required to undertake a number of processes and to have regard to certain matters. This includes, in keeping with Article 6 of the EU Habitats Directive, considering the likelihood of significant effects of a proposal itself or in-combination with other plans and projects on European sites, Special Areas of Conservation and Special Protection Areas, having regard to the conservation objectives of those sites and determining whether an AA is required.

In relation to AA, the FAC finds that the DAFM, in its processing of the application which led to the decision subject of this appeal, carried out an AA screening of the proposal under Article 6(3) of the EU Habitats Directive. Accordingly, the FAC considered if the procedures leading to the making of the decision to grant the licence for the proposed development were consistent with the Habitats Directive. The FAC finds that the DAFM prepared the following documents / reports:

- An Appropriate Assessment Screening Report (AASRD) dated 21/03/2025 on file.
- An Appropriate Assessment Report Appendix A: In-combination report for Forest afforestation project TFL01042824 which is itself undated, is on file and refers to various online resources, datasets and DAFM's own databases being consulted on the 21/03/2025 in order to identify other plans and projects which are also located in the general vicinity of the project area in the River Sub-Basin Aghacashlaun_010.

The application was subject to a period of public consultation when the application was made. Specific to AA, the DAFM undertook its own screening and the FAC noted that three European sites are recorded in the AASRD as lying within 15km of the project area and one site in excess of 15 km of the project and that all sites were screened out with reasons provided for the screening conclusions reached for each of the European Sites examined concluding that the project does not advance to the AA stage in relation to these European Sites.

The FAC also noted that the proposed project is not within a European site nor is it required for the management of a European site and that identified European sites were subjected to the AA process in relation to the likelihood of significant effects arising from felling project TFL01042824. The FAC noted that the AASRD concludes that "For the purpose of compliance with Section 42(16) of the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011), as the project will not have any significant effect, alone or in combination with other plans and projects, on the European Sites listed above, DAFM also determines that the project will not adversely affect the integrity of these European Sites.

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 Appropriate Assessment of the implications of the project and such effects on the European site, having regard to the conservation objectives of the sites concerned.

In the In-Combination assessment, it is concluded that there is no likelihood of the proposed Afforestation project TFL01042824 when considered individually, having a significant effect on the relevant European Site(s), as described elsewhere in the Screening Report and that the relevant Qualifying Interests / Special Conservation Interests and Conservation Objectives, as listed elsewhere in

the Screening Report, have been taken into consideration in reaching these conclusions. The DAFM stated that:

It is concluded that there is no likelihood of the proposed Felling and Reforestation project TFL01042824 when considered individually, having a significant effect on the relevant European Site(s), as described elsewhere in the Screening Report. The relevant Qualifying Interests / Special Conservation Interests and Conservation Objectives, as listed elsewhere in the Screening Report, have been taken into consideration in reaching these conclusions. Furthermore, it is considered that the regulatory systems in place for the approval, operation (including any permitted emissions) and monitoring of the effects of other plans and projects are such that they will ensure that they do not have any significant effect on those same European Site(s). 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.

In relation to the procedures followed and the conclusion the FAC does not consider that DAFM erred in its processing of the application in relation to AA.

The FAC considered the submission in the grounds that there is a breach of section 10(4) of the Forestry Regulations in regarding the right of the public to make submissions or observations within 30 days of the publication of any additional information. The documents published by the DAFM at the time the decision was made includes a number of documents generated by the DAFM in their consideration of the licence application. The FAC would understand 10(4) of the Forestry Regulations to primarily relate to the public consultation process in relation to the application for a licence and that the Minister might, at their discretion, provide for further periods of public consultation.

The FAC considered that the majority of the documents referred to in the grounds do not form part of the application. However, the FAC consider that the Harvest Plan and associated maps, which were submitted by the Applicant following a further information request from the DAFM, do form part of the licence application and the Minister did not publish these until the date the licence decision was published. In the particular circumstances of this case, the FAC considered this to be a significant error in the Minister's processing of the licence application.

Reference is made in the grounds of appeal to breaches of the Habitats Directive in relation to Otter and Bat species and that the procedures required by the Birds Directive were not adhered to but the grounds of appeal do not specifically indicate how the directives were breached and that the screening process identified species of a Qualifying Interest (QI) impacted by the project. The FAC is not aware of any report, survey, or any other documentation from an Ecologist or any other suitably qualified individual which has been submitted by the Appellant.

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 TFL01042824 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.

In these circumstances, the FAC considers that the Appellant has not adduced any convincing evidence in support of their grounds relating to potential impacts on birds and wildlife. Based on the evidence before it, the FAC is not satisfied that the DAFM have erred in relation to these grounds of appeal.

The FAC noted the submission of the NPWS and the recommendation that the licence conditions include seasonal restrictions in relation to Hen Harrier. The FAC also noted the DAFM's statement in the SoF that the NPWS referral response was as follows "no comment and please refer to general observations document as advertised of the felling licence viewer 24/04/2025". The FAC noted that the DAFM's SoF did not address the NPWS' recommendation for seasonal restrictions on the licence. In its response to Ground 7 in their SoF, the DAFM stated that "The Department relies on the NPWS for its information on the protected (sic) of species and receives regular updates from the NPWS". In the particular circumstances of this case, the FAC considered that the licence conditions should have included seasonal restrictions, prohibiting felling and replanting operations within the Hen Harrier breeding season.

In relation to the Appellant's submission that lands (subject to the application TFL01042824) were not afforested in accordance with the law the FAC notes that the grounds do not provide evidence that the afforestation of the lands has led to a significant effect on the environment. 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.

The grounds of appeal have made specific reference to the issue of landscape and the FAC noted that the DAFM Project Description, Environmental and Social Considerations report in relation to landscape does not identify the project site as within a prime scenic area in the County Development Plan or within an area listed in the Inventory of Outstanding Natural Landscapes or in a Landscape Conservation Area of any other High Amenity area. The FAC also noted the response of Leitrim County Council that *whilst the Planning Authority has no objection in principle to the proposed clear felling, significant concerns remain in this designated Area of Outstanding Natural Beauty in relation to any replanting proposals. The Planning Authority strongly objects to the replanting of these lands due to the sensitivities of the landscape to commercial forestry. Any replanting scheme shall incorporate broadleaf species only.*

DAFM in response to this considers that as a competent authority for forest policy, it does not consider deforestation of forests located in 'Areas of Outstanding Beauty' as one that warrants deforestation and also that there is a distinction between existing forestry and the capacity to accommodate further commercial forestry in the future and this is not a study about existing forestry and the capacity of the landscape to accommodate reforestation after clearfell with the same species.

The response does appear to accept that the project is within a designated area in relation to visual quality but deforestation and reforestation will not affect landscape quality. It is noted that the reforestation incorporates a high degree of conifer species and not solely broadleaf species. It is also noted that the applicant in a submission on this appeal requests the FAC to vary the licence in relation to the issue of restocking and to allow the site to regenerate as open pasture.

In relation to the FAC varying the licence to exclude reforestation there is a requirement in the felling licence to replant forests as stated in the DAFM response in a managed manner to provide economic, social and environmental benefits on a sustainable basis for both current and future generations and that reforestation after felling is essential to prevent deforestation, which would otherwise counteract the benefits of the initial afforestation. The question of species mix at replanting stage is a matter for the Applicant and the DAFM's Forest Service in the event of felling and not for the FAC to determine. The FAC noted that the species to be felled are 100% coniferous and the proposed replanting species include between 20-100% broadleaves across 12 of the 16 plots to be reforested. The four plots which are 100% coniferous species amount to 3.55ha of the 11.70ha licenced. In addition to the unplanted setbacks to be installed (e.g., along roads and watercourses) the FAC considered that the reforestation proposal represents a significant reduction in the coniferous forestry cover within the footprint of the proposal. In addition to the foregoing, in relation to deforestation, the FAC noted that Standards for Felling & Reforestation state, in Appendix F that forest removal "may be pursued where specific case-by-case justification is presented to, and accepted by, the Forest Service". As with species selection at replanting stage, the FAC considers an Applicant's reforestation objectives to be an issue to be resolved between the DAFM and the Applicant.

In relation to water quality and the contention that the licence conditions are not adequately reasoned and there are conflicting conditions in relation to setbacks from watercourses and that the pollution impact potential of the project was not considered or assessed in relation to the Water Framework Directive with a failure to assess water quality.

The FAC noted that the issue of watercourse protection and water quality generally was considered in the assessment of the project, that the NPWS indicated that maintaining the correct buffer zones is important to ensure no sedimentation/acidification downstream of the felling site and that all recommendations as stated in the Forestry and Water Quality guidelines should be strictly adhered to. It is also noted these matters were considered as part of the application process and that there are specific measures set out in the Environmental Requirements for Afforestation (ERA) and the Standards for Felling & Reforestation in relation to drainage and water setbacks which serve to protect water quality and restrict the operations of drainage works on site.

The grounds at various points suggest that the proposal would result in significant effects on water and would breach the Water Framework Directive (WFD). The FAC does not consider that the grounds provide any basis for considering that the felling as proposed with standard setbacks and water protection measures would impact on water quality to the extent that it might be considered to be in breach of the WFD.

The FAC also noted that the licence conditions require that the tree felling project and all associated operations shall be carried out and completed in accordance with the measures set out in the ERA and the Standards for Felling & Reforestation. The conditions provide for protecting water quality and include the establishment of undisturbed water setbacks along the aquatic zone of 20m, restrictions on machine movement, daily monitoring of on-site conditions, all of which are aimed at protecting water. The FAC concluded that the DAFM has not erred in its processing of the application in so far as these grounds of appeal are concerned.

The Appellant contends that the licence conditions are not adequately reasoned. This ground makes reference to 'Good Forestry Practice' in the context of raising matters to do with, inter-alia, setbacks from electricity lines and support structures and the proposed restock species. 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 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 noted the submission in the SoF that the matter of 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 and power lines 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.

In relation to mapping, the FAC noted that in the course of their assessment the DAFM requested further information and a harvest plan schedule and associated mapping was submitted. The mapping outlines public roads and existing forest roads, watercourses, powerlines, hedgerows and other features associated with the felling and reforestation operations. The FAC noted the DAFM's response in their SoF regarding mapping but the FAC considered that the harvesting and reforestation maps could be improved by the addition of more detail. For example, not all of the relevant setbacks are included. The FAC noted that while the underlying aerial photography shows the location of hedgerows and dwellings, some of these features are not annotated and included in the legend. However, the Harvest Plan records adjoining dwellings and indicates that a dwelling setback will be applied. In the circumstances that the licence is being remitted for other reasons, the FAC considered that the DAFM should request new harvesting and reforestation maps which clearly show the location and relevant setbacks of all the relevant features, and are in line with the requirements for Harvest Plan maps as outlined in the Standards for Felling and Reforestation.

In relation to the matters raised in the grounds of appeal regarding the condition attached to the decision which states that the replanting setback distance from dwelling houses and associated buildings is 30 metres the FAC finds that this is at variance with section 14.5 of the Standards for Felling & Reforestation which require that the setback for Dwelling houses is 60m 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 did

not specify a dwelling setback distance at application stage but stated, in the Harvest Plan, that dwelling setbacks will be installed. As stated previously, the standard setback is 60m and there is nothing in the record provided to the FAC that indicated that the Applicant 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 & 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 considers 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 serious and significant error in the processing of the application as the DAFM had amended the application and had not complied with the standards it has set for itself with regard to such setbacks and had provided no reasons for this. The FAC considered that in different 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 this case the licence is being set aside and remitted for other reasons and so the FAC consider that any new decision should have regard to the requirements of the Standards for Felling & Reforestation as they relate to dwelling setbacks.

In relation to powerlines, it is noted that transmission lines are recorded on the submitted mapping and setbacks are indicated, but not clearly shown. The FAC noted that setbacks for power lines are set out in Section 7 of the Forestry Standards Manual but that adherence to the Forestry Standards Manual has not been conditioned on this licence. The FAC considered that the licence conditions of any new decision should include a requirement for adherence to the Forestry Standards Manual 2024 (insofar as it relates to the licenced reforestation operations) and in particular Section 7, which relates to overhead power lines.

In relation to traffic the project has access to the public road network and in relation to impact on the road network is noted that there is a requirement to contact the local authority in advance of works commencing which was specifically requested by the local authority. The FAC does not consider issues arise in relation to traffic hazard or adverse impact on the road network.

In relation to access to justice and that it is prohibitively expensive matters relating to fees for appeals is not a matter for the FAC and the issue of fees are determined by the Minister.

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal, the DAFM's SoF, and the additional submissions received. Based on the information before it, as outlined above, the FAC is satisfied that the Minister made significant errors in the making of the decision to issue TFL01042824. The FAC is thus setting aside and remitting the decision in accordance with Section 14B of the Agriculture Appeals Act 2001, as amended so that the Minister can publish all of the relevant application documents and allow an additional period of public consultation as per Section 10(4) of the Forestry Regulations 2017. The FAC finds that, prior to opening an additional period of public consultation, the DAFM should require updated harvesting and reforestation maps as outlined previously in this letter. In the event that a new decision is issued, the FAC finds that the dwelling setback applied to the proposal should be in line with the requirements of the Standards for Felling & Reforestation. The FAC also finds that any new decision should include a condition which prohibits felling and reforestation operations within the Hen Harrier breeding period, as per the referral response from the NPWS.

Yours sincerely,

Derek Daly On Behalf of the Forestry Appeals Committee