



Mr. Liam Malone
Coillte

6th August 2026

Subject: Appeal FAC111/2024 against licence decision LM06-FL0191

Dear Mr. Malone,

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

Appeal reference FAC111/2024 was considered during a meeting of the FAC held remotely on the 26th February 2026. In attendance:

FAC Members:	Mr. Ed Carroll (Chairperson), Mr. Derek Daly, & Mr. Luke Sweetman.
FAC Administration:	Ms. Aedin Doran

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

Decision

Having regard to the information before it, including the record of the decision by the Department of Agriculture, Food, and the Marine (DAFM) on the Forestry Licence Viewer (FLV), the notice of appeal, the DAFM's Statement of Fact (SoF), the FAC has decided to set aside and remit the decision of the Minister to grant felling licence LM06-FL0191 for the reasons set out hereunder.

Background

The licence under appeal is for the clearfell of 17.42ha of 100% Sitka spruce in Meenymore, Co. Leitrim. The licence was issued on the 25th September 2024. The planned fell year is 2026 and the trees would be 36 – 37 years old. The proposal is comprised of a single plot and the replanting schedule is for 85% Sitka spruce, 10% Other Broadleaves, and 5% "Open Space".

The application documentation describes the predominant soil composition underlying the project area as "Shallow gley soils both surface and ground". The summary of the soil codes on site is listed as 73% Peaty gleys, 11% Podzols (Peaty), Lithosols, Peats, Some outcropping rock, 11% Cutover or Cutaway peats, 4% Blanket peats, and 1% Mineral alluvium. The application documentation contains a detailed description of the hydrology of the site, including that an aquatic zone, the Owenmore [Manorhamilton] River (order 2) flows along the northern boundary of the project area in a north-easterly direction and that there are relevant watercourses traversing and adjoining the proposed project area. The DAFM's Appropriate Assessment (AA) screening documentation indicates that the average slope across the site is "moderate" at 11% and sloping in a north-westerly direction, and the project area lies between 158m and 269m above sea level. The AA screening documentation states that the proposal is within the Owenmore (Manorhamilton)_010 River Sub-Basin, which is described



as having "Good" ecological status under "the current WFD Cycle". Publicly available data published by the EPA states that the confidence level is 'High' and the status was assessed by monitoring. The waterbody is also stated to be 'Not at Risk'. The proposal is underlain by the North Belhavel Lough Ground Waterbody which also has 'Good' status and is 'Not at Risk'.

Appropriate Assessment

The DAFM produced an "Appropriate Assessment Screening Report & Determination for felling and reforestation project LM06-FL0191, at Meenymore, Co. Leitrim" (AASRD) signed by a Forest Inspector and dated the 9th July 2024. The AASRD screened 10 European sites for Appropriate Assessment. Two European sites, Boleybrack Mountain SAC IE0002032 & Lough Gill SAC IE0001976 were screened in for AA, and the remaining sites were screened out, with reasons provided for each screening conclusion

In-Combination Report Screening Stage

The AASRD refers to "Appendix A: In-Combination Report for felling and reforestation proposed under LM06-FL0191" and states "See File". On file is a document titled "Appendix A: In-combination report for Felling and Reforestation project LM06-FL0191". This report states that "Various online resources, datasets and DAFM's own databases were consulted on the 09-JUL-2024 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 OWENMORE (MANORHAMILTON)_010." The In-Combination Report states that online data from Leitrim County Council, An Bord Pleanála, and the EPA were examined along with the DAFM's own database, and also states that "Objectives relating to Natura 2000 sites set out within Leitrim County Development Plan 2015-2021 were consulted..." The report concludes that:

...there is no likelihood of the proposed Felling and Reforestation project LM06-FL0191, when considered individually, having a significant effect on the relevant European Site(s), as described elsewhere in the Screening Report. There is no likelihood of residual effects that might arise from this project, which are not significant in themselves, creating a significant effect in-combination with other plans and projects. The 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. Note that those European Site(s) upon which, a likelihood of a significant effect arises when considering the project individually, are screened in and will be progressed to, and addressed in, Stage 2 Appropriate Assessment.

There is no record of a DAFM AA Report on file.

Applicant Natura Impact Statement (NIS)

On file is a document labelled "Pre-Screening/NIS" on the FLV which is titled "Appropriate Assessment Pre-Screening Report for Clearfell and Reforestation project LM06-FL0191, located at Meenymore, Co. Leitrim". This is signed-off by a team of relevant experts, including a Consultant Ecologist and is dated the 31st May 2024. This document describes the proposal and includes a screening of the surrounding European sites and screens-in the same two European sites as the DAFM's AASRD.



This document contains an NIS for the two screened-in sites which is titled "Natura Impact Statement for Clearfell and Reforestation project LM06-FL0188 and LM06-FL0191, located in the vicinity of Meenymore and Tullysheherry, Co. Leitrim". This is also signed-off by a team of relevant experts and dated the 31st May 2024. The NIS assessed the "Potential Impacts & Proposed Mitigation" in relation to the two European sites. Section 6 of the NIS is titled "Collated Mitigation Measures" and prescribes mitigation measures that are common between LM06-FL0188 and LM06-FL0191 and others which are specific to the licence under appeal.

DAFM AA Determination

On file is a document titled "Appropriate Assessment Determination for felling and reforestation project LM06-FL0191, at Meenymore, Co. Leitrim" (AAD) signed off by a Consultant Ecologist on behalf of the Minister and dated the 9th September 2024. The AAD states that:

...the Minister determined that an Appropriate Assessment of the activity proposed under LM06-FL0191 was required in relation to the above screened in European sites. The applicant submitted a Natura Impact Statement (dated 31/05/2024) to facilitate the Minister carrying out an appropriate assessment. An Ecologist subsequently evaluated the submitted NIS, defined as "a report comprising the scientific examination of a plan or project and the relevant European Site or European Sites, to identify and characterise any possible implications of the plan or project individually or in combination with other plans or projects in view of the conservation objectives of the site or sites, and any further information including, but not limited to, any plans, maps or drawings, scientific information or data required to enable the carrying out of an Appropriate Assessment".

The AA Determination lists the information which was taken into account in "undertaking the Appropriate Assessment". This included "any Natura Impact Statement provided by the applicant on foot of a request by the Minister, or otherwise" and "any supplementary information furnished in relation to any such report or statement;"

Section 4 "Appropriate Assessment Determination" states that:

It was determined that adequate information was available to enable an Appropriate Assessment Determination to be reached for this project. The Minister has carried out the Appropriate Assessment of the potential impacts of the likely significant effects of felling and reforestation project LM06-FL0191 on those European sites 'screened in' (as listed above) and has made certain, based on best scientific knowledge in the field and the European Communities (Birds & Natural Habitats) Regulations 2011 (as amended) and the Forestry Regulations 2017, as amended, and Article 6(3) of the Habitats Directive, that the proposed project, individually or in combination with other plans or projects, will not adversely affect the integrity of any of the aforementioned European Sites, having regard to their conservation objectives, provided the following mitigation is implemented..."

Mitigation measure numbered 1 – 52 are described before the AAD states:

This AAD comprised the thorough examination of the Appropriate Assessment undertaken in the NIS. It is considered that the NIS contains a fair and reasonable assessment forming the basis of the DAFM/Consultant Ecologist's assessment and development of appropriate



mitigation measures as outlined in Section 4 above. Any differences between DAFM and NIS mitigations are necessary to improve alignment with DAFM's Standards for Felling & Reforestation and the current Environmental Requirements for Afforestation (as these refer to reforestation) published by the Department.

The AAD states that:

The basis for this AA Determination is as follows: Conditions for Invasive species have been included as the project area is adjacent to a European Site. These measures are being added in order to prevent the potential introduction/spread of invasives. This 17.42 ha (WD4) proposed clearfell and reforestation project is situated on a moderate 0-15% slope and is comprised of Peaty gleys (73%) soil. The project area (PA) is made up of four sub-compartments which comprise Sitka Spruce, planted in 1989 and 1990. This area will be re-established by Windrow and mounding and then planting with 85% Sitka spruce, 10% Other Broadleaves and 5% Open Space. The south eastern section of the PA overlaps with the Boleybrack Mountain SAC, spatial measures have been set out to protect the terrestrial Qualifying Interest features of this SAC. The harvest block is also located ~870m from the Boleybrack Mountain SAC pNHA. The project area lies within the OWENMORE (MANORHAMILTON)_010 sub-basin in good ecological status, not at risk1. Two relevant watercourses flow north-westerly through the PA, they merge together before splitting again and draining into the Owenmore [Manorhamilton] River. The Owenmore [Manorhamilton] River flows northeast along the northern boundary of the PA. A third relevant watercourse flows northwest along the western boundary of the PA before turning south and draining into an unnamed aquatic zone which flows west and merges with the Owenmore [Manorhamilton] River. The Owenmore [Manorhamilton] River flows northeast, providing hydrological connectivity with the Lough Gill SAC (~ 6.1 km ds). Records of White-Clawed Crayfish were noted ~10km downstream. 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. Therefore, the Minister for Agriculture, Food & the Marine has determined, pursuant to Regulation 42(16) of the European Communities (Birds and Natural Habitats) Regulations 2011 (as amended) and Regulation 19(5) of the Forestry Regulations 2017 (as amended), based on objective information, that no reasonable scientific doubt remains as to the absence of any adverse effect on the integrity of any European site.

The AAD refers to "Appendix A: In-Combination Report for felling and reforestation proposed under LM06- FL0191" and states "See File". On file is a second In-Combination Report titled "Appendix A: In-combination report for Felling and Reforestation project LM06-FL0191" which states that various datasets were consulted on the 9th September 2024. This In-Combination Report 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)..."



Referrals & Submissions

There is no record of any third-party submissions on the FLV and the DAFM's SoF indicates that there were none. The application was referred to Leitrim County Council and the National Parks & Wildlife Service (NPWS). The Council responded with a letter dated the 29th May 2024 which was accompanied by an Engineer's Report. In summary, the Council stated that:

- The lands are designated as an Area of Outstanding Natural Beauty in the Leitrim County Development Plan 2023-2029 (CDP).
- In terms of the Landscape Capacity to Accommodate Forestry the lands are located within both LCT 7 Upland Farmland and Foothills with the east of the subject lands falling with LCT 6 Moorland Hills. Section 3.6.2.5 of the CDP states in relation to LCT 6 Moorland Hills – Sensitivity ranking of the Landscape Capacity Study for Commercial Forestry that:
 - *This LCT is considered to be of high sensitivity to commercial forestry. A large part of this LCT is covered by proposed AONB and AHVA designations and this is reflective of the landscape and scenic quality and its role as the setting for the upland mountain landscapes. The more elevated parts of this landscape are more sensitive than that at lower elevations due to their remote and wild nature with sensitive moorland landcover and their contribution to scenic skylines enjoyed by viewers.*
- Section 3.7.2.5 LCT 7. Upland Farmland and Foothills – Sensitivity ranking of the Landscape Capacity Study for Commercial Forestry states:
 - *This LCT is considered to be of medium to high sensitivity to commercial forestry. A large part of this LCT falls within proposed AONB and proposed AHVA designations and this is reflective of its importance as the setting of the upland areas and mountains. The landscape in its own right is sensitive to further commercial forestry where implemented at a scale that would further erode the farmed landscape pattern. In this regard, there would be limited capacity for further planting in the foothills of Dough Mountain, the Boleybrack Mountains, Slieve Anierin and Bencroy as the underlying key characteristics such as field patterns would be eroded to the extent that the character type would change to commercial forest. which could, in addition to that existing, undermine the character of these hillsides. The Glenade and Glencar valleys to the north west would be highly sensitive to commercial forestry due to their importance as the setting or foreground to the elevated and highly scenic mountain landscapes.*
- The lands identified do not appear to impact any recorded monuments listed for protection under Section 12 of the National Monuments (Amendments) Act 1994 or Tree Preservations Orders in respect of trees on the lands proposed for felling.
- The report from the District Engineer (dated 23/05/2024) notes that no details have been submitted for the access points, with a conditional recommendation that sightlines must be provided from the existing access points to the public road in accordance with the Technical Standard for the Design of Forest Entrances from Public Roads amongst other conditions set out in the report.



- The Planning Authority has no objection to the proposed clearfell but strongly objects to the replanting of these lands and the replanting scheme submitted due to the sensitivities of the landscape to commercial forestry.
- 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.*

The NPWS responded with the following nature conservation recommendations:

The sites potentially impacted by this development include but may not be limited to:

- *Lough Gill Special Area of Conservation (SAC) (Site Code: 001976)*
- *Boleybrack Mountain SAC. (Site Code: 002032)*

The application site is located on the eastern slopes of the Glenboy Valley at Meenymore, County Leitrim. It is noted that the site lies adjacent to the western boundary of the Boleybrack Mountain SAC. There is also a hydrological connection to the Lough Gill SAC via the Scardan River, which runs along the western boundary of the site and downslope the plantation earmarked for felling. The SAC boundary lies approximately 6km downstream. Relevant features of interests, qualifying interests or conservation objectives:

- *Austropotamobius pallipes (White-clawed Crayfish) [1092]*
- *Lampetra planeri (Brook Lamprey) [1096]*
- *Lampetra fluviatilis (River Lamprey) [1099]*
- *Salmo salar (Salmon) [1106]*
- *Lutra lutra (Otter) [1355]*

Potential impacts:

- *Release of significant sediment to receiving waters*
- *Release of significant levels of nutrients into the water*
- *Release of chemicals (e.g. pesticides) into watercourses*

This proposal should be screened for appropriate assessment based on the considerations outlined above as per Regulation 42(1) of the 2011 Birds and Natural Habitats Regulations.

The NPWS also attached an appendix containing more general points that are of relevance.

Grounds of Appeal

There is one third-party appeal against this licence: FAC111/2024. The grounds of appeal were considered in full by the FAC and are summarised briefly below:

1. **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.**



There is no AA Report on file for this project. There is no statement to the effect that the Department accepts the NIS as the basis for the AAD.

The mitigations proposed in the NIS are significantly different to those in the AAD. There is no indication as to the basis for the additional mitigation that appears in the AAD which is not in the NIS.

DAFM's Standards for Felling and Reforestation have not been subject to a high-level AA so cannot be relied upon in any case without the provision of supporting scientific evidence.

The mitigations of the AAD are not sufficient to meet the strict test of Article 6(3). The submitted NIS states that site factors, in-combination, reduce the risk of the movement of sediment into watercourses as a result of forestry operations and also reduces the risk of significant nutrient release to receiving waters. Merely reducing the risk is not the same as the Article 6 requirement to actually rule out adverse impacts beyond reasonable doubt.

The NIS does not provide scientific detail as to how receiving waters will be protected from the effects of chemical inputs to the proposed project area e.g., pesticides/fertilisers.

The mitigations do not reflect the capacity of Sitka Spruce to re-seed/encroach into the SAC.

The Appellant queries the effectiveness of the certain mitigation measures in the AAD to provide the necessary level of protection to "the Natura 2000 site", including the 10m planting setback from heaths, molinia meadows and blanket bogs, the risk of re-seeding by exotic conifers. "A negative impact on the integrity of a European Site cannot be excluded as a consequence of this project".

The Appellant contends that "a number of the mitigating conditions lack precision and site specificity resulting in a lack of clarity. These include No's 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 20, 22, 23, 29, 30, 32, 33, 34, 35, 38, 39, 40, 45, 46 and 48".

The Appellant states in relation to mitigation 5 that control measures are complex and have the potential to have in themselves negative impact, e.g., release of contaminated vehicle wastewater.

The Appellant submitted that the AAD states:

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.

The Appellant contends that the above is an assertion which is not substantiated by any scientific evaluation.

The Appellant contends there is no scientific definition provided to differentiate between relevant 'watercourses' or 'aquatic zones', which has "significant implications" for the



setbacks applied, e.g., the scientific basis is not provided as to why a 'relevant watercourse' only requires a 20m setback in circumstances where an 'aquatic zone' requires a 50m setback.

There is no reference in the mitigation for the setbacks to take account of the flood risk areas of the site.

It is unclear as to how a number of the proposed mitigations actually serve to mitigate against an adverse effect on the Natura 2000 sites concerned. These include No 1.

The FAC has previously "set back" decisions based on mitigation 32 on the basis that it allows too much scope for interpretation by the developer.

Heavy rainfall is not defined (46).

The southerly part of the site is identified by GSI as being of High or Moderately High Landslide susceptibility. This has implications for the risk of silt and sedimentation release and movement. This risk is not identified in the project documentation.

The NIS includes mitigation for "Appropriate control of natural regeneration of non-native tree species will be undertaken where necessary" the mitigation in the AAD states "Control any natural regeneration of non-native tree species in scrub, retained habitat or setback areas within the project until the crop has become established". The potential impact on the Natura 2000 site from the natural regeneration of conifers is not mitigated if control is restricted to within the project area. Coillte do not have the authority to carry out control outside of their own property.

The mitigation of the AAD does not preclude future harm as it permits for natural regeneration that establishes after the crop has become re-established in areas where it would be precluded prior to that. It is mitigation that lacks coherence.

The Appellant submits that in-combination impacts on the two SACs are not limited to plans and projects within the same River Sub-Basin alone. Multiple other River Sub-Basins also drain to Lough Gill SAC. Boleybrack Mountain SAC does not lie solely in a single River Sub-Basin. This project can act in combination with other plans and projects across a much wider geographic area than has been 'considered'.

"The time period for consideration of forestry projects ('past five years') is flawed as licences can be issued for a period of 10 years".

The Appellant questions the nature of the DAFM's in-combination assessment.

The Appellant contends that the In-Combination assessment cannot be relied upon as "it has failed to include Forest Road Works which have been completed by Coillte without seeking development consent".

The AA for LM06-FL0191 contains lacunae and does not contain complete, precise, and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the project on European sites.



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

This licence contains no seasonal protection for Hen Harrier, leaving them and other breeding wild bird species vulnerable to damage and or disturbance. The Irish Raptor Study Group, Birdwatch Ireland and the Golden Eagle Trust were responsible for the 2022 National Hen Harrier Survey. It is our understanding that the final dataset for this project (including High Likelihood Nesting Areas) has yet to be submitted to the NPWS. Therefore, the NPWS was not in possession of the best available data when commenting on this application. None of the groups mentioned, who must be considered to hold the best available data outside of the Special Protection Areas, were consulted on this project. There is no evidence that the developer carried out any surveys or studies in advance of completing the NIS. There is no evidence that the ecologist who completed the NIS visited the project site as part of his assessment. There is no general system of protection in Ireland (applicable to forestry operations) for wildlife, including birds, particularly during the period of breeding and rearing.

3. There is no Strict System of Protection in place under Article 12 of the Habitats Directive (Annex IV species)

The decision provides no evidence of any assessment of the potential impact on bat species which are listed in Annex IV of the Habitats Directive. No broader Ecology Report has been conducted. Six of the nine species of bat native to Ireland (all protected) are within their range in OS square G93.

4. Mapping deficits and omissions

The Harvest Plan submitted with the application does not conform to the requirements of the Standards for Felling and Reforestation.

Incorrect mapping scale. The DAFM requests 1:5000 on the application maps, Coillte submitted 1:10000. 6" detail is not readily visible at 1:10000 scale.

"The following information is missing from the Harvest Plan included in the application pack;

➤ Project area (including ancillary activities, e.g. haulage route) In fact the mapping does not even indicate the public road from which the site will be accessed.

The reforestation map does not include cultivation direction, windrowing and drainage or an overview of post operation works."

FS-DAFM erred in awarding a licence in the face of inadequate information in terms of the mapping.

"The Department should not be applying double standards that allow latitude to Coillte in terms of adherence to the Standards. This is creating a two-tier system which is not consistent with the Standards for Felling and Reforestation or with European Law in terms consumer protection."

5. Inadequate and ineffective public notice in contravention of Article 6 (2) of the Aarhus Convention.



There was no local notification to notify the local community of the application and their right to participate in the consent process. The failure of the Department to ensure adequate and effective public notification of the application for this licence in line with Article 6 (2) of the Aarhus Convention is a serious error in the due process of awarding this licence.

6. Access to Justice is prohibitively expensive.

The Appellant contends that the €200 fee is prohibitively expensive, especially where there is no assessment of the means of the Appellant in a situation where there is a very high percentage forest cover in the area.

7. The decision is invalid because the Minister has failed to evidence consideration of the submission of a prescribed body from whom he sought comment and provide reasons for his actions.

"...The Planning Authority has no objection to the felling, only the re-stocking. The Minister's decision is invalid because the local planning authority raised concerns over the visual impact of re-stocking with 85% coniferous species given the location of the subject lands within a designated Area of Outstanding Natural Beauty and the high sensitivity of the location to commercial forestry and the Minister considered himself competent to substitute his view of what was in accordance with the proper planning and sustainable development of County Leitrim for that of the Council when no provision of the Forestry Acts or the Planning Act gives him the authority to do so..."

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

Coillte intentionally submitted tree replanting proposals to the DAFM which did not adhere to the landscape policies, landscape objectives and landscape requirements of the Leitrim CDP in relation to forestry.

9. The Minister has not followed good forestry 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 sensitive landscapes with 85% coniferous species contrary to the recommendations of the local Planning Authority who objected to the re-stocking of the site as proposed for an area identified as being within an Area of Outstanding Natural Beauty in the CDP.

10. Historical features not identified for protection

"There is a Lime Kiln shown on the second edition Ordnance Survey map within the project area. A second lime kiln which appears on that map, just outside of the project area, appears to have been destroyed in the construction of the forest road which serves the project area".

Minister's Statement

The Minister provided an SoF responding to the grounds of appeal and this was provided to the parties and has been considered by the FAC. The DAFM's SoF responded to the individual grounds of appeal and stated that the decision under appeal was issued "in accordance with our procedures, S.I. 191/2017 and the 2014 Forestry Act, as amended". The following is a brief summary:

1. The DAFM submitted that they have carried out an AA of potential impacts on the likely significant effects of the felling and reforestation project on those European sites 'screened in' (as listed in the AAD) and "has made certain, based on best scientific knowledge in the field



and the European Communities (Birds & Natural Habitats) Regulations 2011 (as amended) and the Forestry Regulations 2017, as amended, and Article 6(3) of the Habitats Directive, that the proposed project, individually or in combination with other plans or projects, will not adversely affect the integrity of any of the listed European Sites. DAFM submits that the in-combination effects of adjacent plans and projects have been considered and DAFM maintains that water quality and water body status will be maintained through best practice onsite during felling and reforestation operations and adherence to licence conditions. The Department further determines that no residual effects exist”.

The DAFM stated that there is no AA Report for this licence as the applicant submitted an NIS. The DAFM disputes that there are lacunae in its AA Process and that DAFM simply relies upon the Applicant’s NIS to complete the AA process. The DAFM stated that the AAD “is finalised following a detailed and thorough process that delivers precise, complete and definitive findings”. The DAFM set out their steps taken in their AA process.

The DAFM stated that “the appellant doesn’t refer to any specific mitigation that is different in the AAD to those presented in the NIS but makes a very general statement in this regard. Water setback distances which have been specified in the AAD for reforestation will create at the outset, a sufficient buffer of natural ground vegetation positioned between defined water features and the forest crop and associated operations and will provide the protection needed to ensure that water quality and aquatic ecosystems are protected from possible sediment and nutrient runoff from the site at reforestation and throughout the remainder of the forest rotation. Conditions in relation to invasive species have been added in the AAD to protect against the potential spread of invasive species given the proximity of the SAC to the south of the project area. The mitigations included in DAFM’s AAD are sufficient to meet the strict test of Article 6(3). As outline (sic) in Section 3 of the AAD a DAFM Ecologists has examined the NIS. Any additions or differences in mitigations used in the AAD versus those in the NIS are in line with DAFM standards which will deliver a robust and comprehensive set of conditions to protect European Sites”.

The DAFM submitted that “The use of plant protection products (PPPs) in Ireland, is governed by Statutory Instrument 155 of 2012 and Statutory Instrument 159 of 2012 as amended by S.I. No. 438 of 2019. Both of these S.I.s are based on, and give effect to, EU legislation on PPPs – respectively Directive 2009/128/EC (concerning the sustainable use of pesticides) and Regulation (EC) No 1107/2009 (concerning the placing of plant protection products on the market)”.

The DAFM outlined how they consider the mitigation measures in the AAD address the issues of the use of chemicals, natural regeneration, Aquatic Zones and Relevant water courses, and the AA in-combination assessment. The DAFM stated that they “disagree with regard to the lack of precision in relation to the mitigation included in the AAD. The mitigations provided are appropriate and contain the necessary level of detail and information to allow these conditions to be implemented in full”.

2. The DAFM explained their hen harrier High Likelihood Nesting Area (HNLA) restriction and stated that “This rule applies where any portion of the project area is located within 1.2km of the most likely location of the hen harrier nest/breeding activity identified”. The DAFM also stated that “It is notable that the Department did not receive any notification of the presence



of breeding pairs in the vicinity of the project area either in the Local Authority response nor in the NPWS response. When checking the site against the Non-Designated Hen Harrier Nest Sites layer with 750m Disturbance Buffer (Ruddock et al 2016)' no overlap occurs." The DAFM submitted that they have implemented the protocol that has been agreed with the NPWS in relation to the protection of hen harrier and that there are multiple conditions contained in the licence designed to protect birds and enhance bird habitats.

3. The DAFM stated that the licencing process administered by the Department represents the system of checks and balances by which the Department exercises its responsibilities with regard to protecting Annex IV species and outlined the opportunity for the public to notify the DAFM about the presence of any such species during the licencing process. The DAFM stated that "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 LM06-FL0191".
4. The DAFM submitted that the outline of forest areas is submitted digitally to DAFM at the application stage and are accessible through GIS systems. These PDF maps are therefore interrogated by GIS systems and considered against various other datasets including EPA rivers, monuments, flood risk layers and the 6" raster maps referred to by the Appellant. The DAFM stated that "Much of the information referred to by the appellant as missing from the harvest plan can be located in the NIS".
5. The DAFM outlined their public consultation process and contended that it fully satisfies any obligations on it arising from Article 6(2) of the UNECE Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters (Aarhus Convention). Regarding felling site notices the DAFM stated that these are "erected in advance of works being undertaken, once a decision on the licence has been made. A site notice, when an application is being made, is not required in legislation or practically, as there is not a change in land use and the thinning and felling is part of the normal cycle of forestry management". Regarding the FLV the DAFM stated that "The reference to a disclaimer on the website is standard wording, used in many other contexts. The appellant has provided no evidence that the disclaimer, as it was worded then, impedes use of the FLV as a documentary source".
6. The DAFM stated that The Agriculture Appeals Act, 2001, was amended by the Forestry Act 2014 to include a new Section 14A which provides for an appeals service against decisions on forestry licence applications made by the Minister for Agriculture, Food, and the Marine (DAFM). S.I. No 418 of 2020 Forestry Appeals Committee Regulations 2020 forms the legislative basis underpinning the €200 fee for each appeal lodged with the FAC.
7. The DAFM stated that the Applicant sought replanting of 85% Sitka spruce, 10% other broadleaves and 5% open space and that the licence approved this species mix along with various planting setbacks and retention of existing broadleaf trees present within the water exclusion zone, where safe to do so, and any existing natural scrub and areas of natural/semi-natural habitat present within the project area.



Regarding deforestation the DAFM submitted, inter alia, that their position (as set out in its Felling and Reforestation Policy document) is that the provisions of the Planning and Development Act and Regulations are to be interpreted such that projects involving deforestation for the purposes of conversion to another type of land use are subject to a planning permission requirement, in addition to any requirement or otherwise for a Tree Felling Licence. The DAFM referenced Sitka spruce's role in the Irish forests and carbon sequestration.

8. The DAFM response to grounds 7 & 8 were combined under number 7.
9. The Department disagrees that replanting this site with Sitka spruce is contrary to good forest practice. The DAFM stated that they are 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 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".
10. Regarding the issue of the potential presence within the project site of a Lime Kiln or remnants thereof, as recorded on the second edition Ordnance Survey (OS) map of the area, and the possible destruction of a Lime Kiln in the course of the construction of a historic forest road just outside the project site, the DAFM stated that "Neither structure nor the locations thereof are either –
 - a) a protected structure under Chapter 1 of Part IV of the Act of 2000,
 - b) a monument or place recorded under section 12 of the National Monuments (Amendment) Act 1994,
 - c) a historic monument or archaeological area entered in the Register of Historic Monuments under section 5 of the National Monuments (Amendment) Act 1987, or
 - d) a national monument in the ownership or guardianship of the Minister for the Arts, Heritage and the Gaeltacht under the National Monuments Acts 1930 to 1994".

Additional Submissions

There were no additional submissions from any of the parties following the circulation of the Minister's SoF.

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.

At its sitting on the 26th February 2026, the FAC had before it the full DAFM record of the decision as made available on the FLV, the Notice of Appeal Form and grounds of appeal, and the DAFM's SoF.



- 1. 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.**

In the first instance, the FAC considered the grounds relating to the DAFM's AA process. As noted previously in this letter, the Applicant submitted an NIS in relation to two European sites, Boleybrack Mountain SAC & Lough Gill SAC. The DAFM completed an AASRD which screened in the same two European sites for AA. The DAFM did not complete an AA Report but appear to have relied on the Applicant's NIS when making their AAD.

The Appellant contends that there is no statement to the effect that the DAFM accepts the NIS as the basis for the Determination. However, the FAC noted that the AAD states that an Ecologist evaluated the submitted NIS and, later states that:

"It is considered that the NIS contains a fair and reasonable assessment forming the basis of the DAFM/Consultant Ecologist's assessment and development of appropriate mitigation measures as outlined in Section 4 above."

Based on the information before it, the FAC considers it reasonable to conclude that the DAFM accepted the Applicant's NIS as the basis for their AA of the proposal. The Appellant submitted that the mitigations proposed in the NIS are "significantly different" to those in the AAD, but they have provided no further detail to support this claim.

The grounds submit that the Standards for Felling and Reforestation have not been subject to a "high level Appropriate Assessment". The Standards for Felling and Reforestation is not a plan or project and accordingly is not subject to Article 6.3 of the Habitats Directive.

The grounds of appeal include numerous submissions regarding the effectiveness of certain mitigation measures in the NIS and the AAD. In considering these grounds the FAC noted that the NIS was prepared by a team of relevant professionals, including several ecologists, and the NIS was evaluated by a separate ecologist on behalf of the DAFM, before the making of the AAD. In submitting their grounds of appeal, the Appellants do not claim to have, or to have engaged the services of a person with, ecological expertise.

In contending that the mitigations of the AAD are "not sufficient to meet the strict test of Article 6(3)" the Appellant submits that the NIS states that "site factors, in-combination, reduce the risk of the movement of sediment into watercourses as a result of forestry operations and also reduces the risk of significant nutrient release to receiving waters". This appears to be a mischaracterisation of the usage of this wording. The FAC noted that the NIS uses the quoted wording when describing the potential threats arising from the project, as opposed to when prescribing mitigation measures. For example, Table 2.1.1 of the NIS lists White-clawed Crayfish as a Qualifying Interest (QI) of the Lough Gill SAC. Table 2.1.1 considers this QI, the Conservation Objective(s) and supporting habitats and species, and the potential for the project to create an adverse effect on this QI and the achievement of the corresponding Conservation Objective. It goes on to describe the nature, severity, mechanism, and timeline of the adverse effect. In doing so the NIS states that (emphasis added):

The proposed project area is approx. 6.1 km upstream of Lough Gill SAC. Potential hydrological connectivity exists between the project area and this QI. Potential threats arising from the project are: a) Release of significant sediment to receiving waters; both project areas are



located on a well-drained, moderate slope (<15%) with a simple topography and drainage pattern. The project area LM06-FL0188 is located on predominantly mineral soils, and the project area LM06-FL0191 is located on predominantly peaty gley soils, which have a mineral subsoil. These factors, in combination, reduce the risk of the movement of sediment into watercourses as a result of forestry operations.

The next question in the Table asks, "If the potential for an adverse effect on this QI / SCI exists, outline the necessary mitigation to avoid, reduce or prevent this potential." The answer provided in the NIS is that (emphasis added) "in order to protect this qualifying interest, the standard mitigation measures that are integral to the project will be adhered to, **in order to ensure no release of silt/sediment, nutrients or chemicals to receiving waters**" and that "Full details on the mitigations for this QI can be found in Schedule 3.1.1 in Section 3." Section 3 *Proposed Mitigation* sets out three pages of detailed mitigation measures for the protection of the White-clawed Crayfish and the other aquatic QIs for Lough Gill SAC, including in relation to the use of chemicals.

The Appellant states that the AAD cannot be relied upon as the Assessment has failed to consider the possible impact on the SAC that can result from the colonisation of its Annex I habitats by natural regeneration from exotic conifers. The Appellant did not specify which SAC is being referred to in these grounds. The DAFM's SoF contends that natural regeneration of conifers was considered, and this is demonstrated by the DAFM's prescription of Conditions number 8 and 26 which relate to the control of natural regeneration of conifers/non-native tree species within scrub, retained habitat or setback areas. The FAC noted that the NPWS, who are the State Body with responsibility for the management of SACs, were consulted on this application and they provided a relatively detailed response which outlined their concerns for potential impacts on both the Lough Gill SAC and Boleybrack Mountain SAC. As outlined previously in this decision, the NPWS highlighted the location of the application site on the eastern slopes of the Glenboy Valley at Meenymore, Co. Leitrim, adjacent to the western boundary of the Boleybrack Mountain SAC. The NPWS also noted the hydrological connection to the Lough Gill SAC, the boundary of which is approximately 6km downstream via the Scardan River. The NPWS listed the "Relevant features of interests, qualifying interests or conservation objectives" which are all aquatic species and lists the "potential impacts" which all relate to potential releases into receiving waters/watercourses. Having considered the application, the NPWS apparently did not consider natural regeneration to be a significant threat in this instance. In the particular circumstances of this case, the species to be felled is 100% Sitka spruce and the trees are approximately 36 years-old in 2026. In Ireland Sitka spruce starts producing seed at approximately 20-25 years-of-age. The FAC noted that the proposal involves the removal of a viable seed source from the area adjacent to the Boleybrack Mountain SAC and the replanting of the application area with 85% Sitka spruce, 10% other broadleaves, and the remaining area as open space, thereby permanently reducing the area of the site capable of producing a seed source in future.

The Appellant states that a number of the mitigating conditions lack precision, resulting in a lack of clarity but do not expand on this point. Instead, the Appellant simply states, "these include" and then lists dozens of conditions by number. In relation to the definition of an 'aquatic zone' and 'relevant watercourse' the FAC noted that these terms are clearly defined in the Standards for Felling and Reforestation. Regarding flood risk, the Appellant has not put forward any argument as to how the proposal will be impacted by flood risk, or how the risk of flooding is relevant to the proposal. They have not referenced a source for their claims in relation to the location of the flood risk or provided any maps in relation to same.



The Appellant states that “the FAC has previously set back decisions based on mitigation 32 on the basis that it allows too much scope for interpretation by the developer.” But has not provided a reference for a relevant FAC decision. In any event, the FAC is required to have regard to the appeal before it and, in the particular circumstance of this case, the FAC considered Condition 32 to be reasonable and clear in its meaning.

However, the FAC found that measure no. 46 in the AAD simply states “Fertiliser should not be applied during or immediately after periods of heavy rainfall”. Neither the licence conditions, the Standards for Felling and Reforestation, nor the Environmental Requirements for Afforestation (June 2024) provide a definition of what constitutes heavy rainfall, and that in the absence of such a definition, this represents a condition of the licence with which the licence holder would be unable to definitively comply. The FAC consider that the absence of such a definition represents a significant error in the licence.

The FAC had regard to the grounds of appeal related to landslide susceptibility. The FAC consulted the publicly available landslide susceptibility mapping produced by Geological Survey Ireland (GSI), and referenced by the Appellant, and noted that the majority of the proposal appears to be within an area classified as low risk. The FAC noted that a small area in the southern part of the site is identified by GSI as being of High or Moderately High Landslide susceptibility. The FAC considered that the Appellant’s submission regarding the absence of any reference to landslide susceptibility within the project documentation is accurate. In the particular circumstances of this case, where the licence decision is being remitted for reasons outlined elsewhere in this letter, the FAC found that the DAFM should record their consideration of the site’s landslide susceptibility before the making of a new decision.

The FAC considered the grounds relating to the DAFM’s AA in-combination assessment. The FAC noted that the DAFM’s SoF states that “The In-combination assessment covers the River Sub-Basin ESKE_010 and not Owenmore (Manorhamilton)_10 as referenced in the grounds of appeal” however, this is not the case. The proposal is located entirely within the Owenmore (Manorhamilton)_10 River Sub-Basin and this is the sub-basin referenced in both in-combination reports on file.

The Appellant contends that the Department’s assessment of the in-combination effects of this project is flawed on multiple grounds, including that the DAFM have restricted their consideration to other plans and projects which are also located in the general vicinity of the project area in the River Sub-Basin Owenmore (Manorhamilton)_010. The Appellant states that “Impacts on the two Special Area of Conservation are not limited to plans and projects in this River Sub Basin alone. Multiple other River Sub Basins also drain to Lough Gill Special Area of Conservation.” As noted previously in this letter, the proposal is within the Owenmore (Manorhamilton)_010 River Sub-Basin and this waterbody has ‘Good’ status and is ‘Not at Risk’. The Appellant has not provided any details to support their contention that the DAFM made a significant error in considering only other plans and projects within the underlying River Sub-Basin. The Appellant has not listed any other sub-basins/waterbodies, their WFD status, significant pressures, or any plans or projects located within those sub-basins which they consider should have been included in the DAFM’s in-combination report. Nor have they provided any reasoning why the absence of same would represent a significant error in the DAFM’s in-combination assessment of the proposal.

Similarly, the Appellant refers to the fact that it is possible for certain forestry license to be issued for a period of 10 years, but they do not refer to any relevant licences which have not been considered



by the DAFM in their assessment. The Appellant also makes reference to alleged forest road works which have “been completed by Coillte without seeking development consent” but does not provide any further detail.

In considering the DAFM’s in-combination assessments, the FAC found that the DAFM’s screening stage In-Combination Report, titled “Appendix A: In-combination report for Felling and Reforestation project LM06-FL0191”, which consulted various datasets on the 9th July 2024 states that “Objectives relating to Natura 2000 sites set out within Leitrim County Development Plan 2015-2021 were consulted”. The FAC noted that the Leitrim County Development Plan 2023-2029 came into effect from the 21st March 2023 and therefore the screening stage In-combination Report refers to an incorrect development plan. The FAC considers that reliance on an out-of-date development plan is a serious error in the processing of the licence application.

The screening stage In-Combination Report concludes that “...There is no likelihood of residual effects that might arise from this project, which are not significant in themselves, creating a significant effect in-combination with other plans and projects.” The FAC noted the DAFM’s use of the word “residual” in its conclusion. The FAC considered that, the term “residual effects” is more commonly employed in relation to the consideration of what effects remain after mitigation measures have been assessed as part of the AA. For example, the Department of the Environment, Heritage and Local Government has published a guidance document on Appropriate Assessment entitled Appropriate Assessment of Plans and Projects in Ireland Guidance for Planning Authorities (DEHLG, 2009). This document states on page 40:

If the competent authority considers that residual adverse effects remain, then the plan or project may not proceed without continuing to stage 3 of the AA process: Alternative Solutions.

The FAC considers that it is not appropriate to consider potential “residual” effects of a proposed plan or project at the AA Screening stage. Further, the FAC consider that this wording is ambiguous as it is not clear whether residual effects are being considered cumulatively in-combination with other plans and projects, or individually in-combination with other plans and projects, and that as a result it is unclear if the proper test has been applied. The FAC considers that the lack of clarity in the wording of the in-combination conclusion is a serious error in the processing of the AASRD in the case of the licence application.

In relation to the second In-Combination Report, which is associated with the AAD that was produced following the DAFM’s consideration of the Applicant’s NIS, as opposed to the completion of an AA Report, the FAC noted that the conclusion of this report states:

there is no possibility that the Felling and Reforestation project LM06- FL0191, 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.

Based on the wording in the foregoing, it would appear that the DAFM’s second In-Combination Report relies on an AA Report that does not exist, however it is clear from reading the overall file that no AA Report was produced in this case as the DAFM relied on the Applicant’s NIS. Given that the



decision is being remitted, the FAC considered that any new decision should ensure that accurate wording is used to describe the AA documents relied upon by the DAFM.

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

The grounds contend that DAFM procedures are not consistent with the requirement for providing a General System of protection commensurate with Article 5 of the Birds Directive submitting that the licence contains no seasonal restrictions or mitigation to protect all wild birds during the period of breeding and rearing, that the Wildlife Acts provide an exemption and that the Birds Directive must be transposed by Member States. The grounds effectively submit that Ireland has failed to transpose into National Law the requirement for a General System of protection for all wild birds consistent with the requirements of Article 5 of the Birds Directive. The FAC considers that its remit does not extend to making a determination as to whether Ireland has correctly transposed into national law the requirements of the Birds directive. The FAC considers its remit to extend only to the decision of the Minister for Agriculture, Food, and the Marine to grant a felling licence following application by the landowner. The FAC concluded that it should make a determination of the appeal against the Felling Licence subject of this appeal only. The FAC noted that DAFM has a map-based methodology and an agreed procedure with the NPWS to determine whether further assessment is required for the Hen Harrier and that procedure appears to have been followed in this instance. The DAFM referred the application to the NPWS, who responded in detail but did not raise the issue of impacts on Hen Harrier.

The FAC noted that the Wildlife Act 1976 (as amended) confers protection to wild birds and their nests and eggs and does not consider its remit to extend to making a determination of the legality of the Wildlife Act. The FAC considers that the granting of a forestry licence does not relieve the recipient of their responsibilities under the Wildlife Act 1976 (as amended) or the Birds and Natural Habitats Regulations. The FAC did not consider that the grounds provided a basis to consider that a bird species might be threatened by the issuing of the licence. The FAC was not satisfied that a serious or significant error or a series of errors was made in the making of the decision or that the decision was made without complying with fair procedures in relation to these grounds.

3. *There is no Strict System of Protection in place under Article 12 of the Habitats Directive (Annex IV species)*

The FAC considered the ground of appeal that contends that there has been inadequate assessment under Article 12 of the Habitats Directive in relation to Annex IV species, notably bats. The ground makes a general unreferenced claim that there are six species of bat native to Ireland in OS square G93. The FAC noted that the Appellant has adduced no evidence as to the presence of bats in the area subject of the proposed felling and reforestation or provided a basis as to how the identified species might be significantly impacted by the licenced activities. The lands are comprised of 100% coniferous plantation which would not be considered to be a particularly rare or valuable habitat. The Appellant has not claimed to have any environmental expertise nor to have engaged such an individual. The FAC noted that bat species are protected under the Wildlife Act 1976 (as amended). The grounds refer to an NPWS Guidance document that relates to activities undertaken by or on behalf of public authorities, the FAC noted that the applicant for the licence is not a public authority. The NPWS Guidance document referred to by the Appellant confirms that the granting of a permission or licence does not remove obligations under the relevant wildlife legislation and describes obligations that are placed on landowners and their agents in undertaking works. The FAC was not satisfied that a serious or significant error or a series of errors was made in the making of the decision or that the decision was made without complying with fair procedures in relation to these grounds.



4. Mapping deficits and omissions

In considering this ground of appeal the FAC noted the DAFM's SoF which stated that maps submitted outside of 1:5000 scale are not rejected as inadequate once the information is clear. The DAFM also stated that they receive a digital copy of the map at application stage which is "interrogated by GIS systems where Foresters and ecologists can zoom in and zoom out at different scales switching on and off various other datasets including EPA rivers, monuments, flood risk layers and the 6" raster maps referred to by the appellant." The FAC noted that the application included a number of maps at varying scales but does not consider, in any case, that the Minister has established an exact legal standard for the minimum scale of such maps.

The FAC considered Section 2 of the Standards for Felling and Reforestation which states that "The Harvest Plan... shall describe the following, *via* written proposals and accompanying maps". The FAC noted that the Application Pack, which includes the Harvest Plan Map, states the area of the proposal, and that the Harvest Plan Map clearly shows the location of the public road in relation to the application area. The FAC noted the DAFM's comments regarding ground preparation and windrowing, and their description in the Applicant's NIS. The FAC considered that it would be beneficial for the cultivation direction to be recorded on the reforestation map, as per Appendix B of the Standards for Felling and Reforestation but did not consider the absence of this detail on the applicant's map to be a serious error.

Based on the information before it, 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.

5. Inadequate and ineffective public notice in contravention of Article 6 (2) of the Aarhus Convention

This ground of appeal contends that there is inadequate and ineffective public notification of felling licences, in contravention of Article 6 (2) of the Aarhus convention. The FAC finds that Article 6(2) of the Aarhus Convention refers to the public notification requirements where development is listed in Annex I of the Aarhus Convention or where an Environmental Impact Assessment (EIA) is being undertaken in accordance with national legislation. The FAC understands that the EU has transposed the Aarhus Convention through a number of Directives including the EIA Directive (2011/92/EU as amended by 2014/52/EU). The FAC further noted that the proposed tree felling and replanting of a commercial forest is not an activity listed in Annex I of the Aarhus Convention nor is it an activity listed in Annex I of the EIA Directive (2011/92/EU) for which EIA is mandatory or Annex II of the same Directive which 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.

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 activities listed in Annex I of the Aarhus Convention, Annex I or II of the EIA Directive and is not covered by national regulations and that sub-threshold screening for significant effects under the EIA Directive was not required in this case. The FAC concluded that this ground of appeal effectively seeks to challenge Ireland's transposition of the Aarhus Convention 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 considering this ground of appeal the FAC noted DAFM's response in their SoF where it sets out that its chosen method of notifying the public of felling licence applications is through the DAFM's website



and the Forestry Licence Viewer. The FAC noted that the application was uploaded to the FLV to allow for public consultation and a further period of public consultation took place when the NIS was published, in accordance with the DAFM procedures and the provisions of the Forestry Act 2014 and Forestry Regulations 2017. No submissions were received as a result of either of the public consultations. The FAC concluded that the advertising of the licence application on the DAFM website was in accordance with the DAFM procedures and the provisions of the Forestry Act 2014 and Forestry Regulations 2017 did not in itself constitute a failure of due process or a failure of fair procedures by the DAFM under the Forestry Regulations 2017 and that national legislation is a matter for the Minister and is not within the remit of the FAC. 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 that such matters would not fall within its jurisdiction to determine.

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 (as amended) and procedures of the DAFM, including the availability of the licence application and documentation on the FLV.

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

The FAC was not satisfied that a serious or significant error or a series of errors was made in the making of the decision or that the decision was made without complying with fair procedures in relation to the Aarhus Convention or public notice of the application.

6. Access to Justice is prohibitively expensive

The FAC considered that the matters raised under this ground relate to issues which fall outside of the jurisdiction of the FAC to determine. Notwithstanding this, the FAC was satisfied that the appeal was conducted and determined in a fair and appropriate manner and in keeping with the Agriculture Appeals Act 2001, as amended, and the Forestry Appeals Committee Regulations 2020.

7. & 8 - The decision is invalid because the Minister has failed to evidence consideration of the submission of a prescribed body from whom he sought comment and provide reasons for his actions & The Minister's decision is flawed as the Department has not had regard to the Leitrim County Development Plan 2023-2029

In considering these grounds of appeal the FAC noted that the DAFM referred the licence application to two consultation bodies (the NPWS and Leitrim County Council) in line with Part 6 of the Forestry Regulations 2017 (S.I. No. 191 of 2017). The County Council's response has been detailed previously in this letter and includes that the application site is part of lands that are designated an Area of Outstanding Natural Beauty as designated in the Leitrim County Development Plan 2023-2029. The Council also described the Landscape Capacity to Accommodate Forestry of LCT 6 and LCT 7, within which the project lands lie. The Council's response requested that, if approval goes ahead, two conditions be added to the licence. The first related to liaising with the District Engineer and the second references the "Best Practice Guidelines produced by the Forest and Wildlife Service with



particular reference to protecting water quality". This appears to be a reference to outdated guidance produced by the now defunct Forest and Wildlife Service. The FAC noted that the DAFM included licence condition 13, requiring that the County Council be contacted at least 30 days prior to the commencement of harvesting operations, and that the felling section of the Forest Service should be copied in on any correspondence. The FAC considered that the inclusion of this condition indicates that the DAFM considered the County Council's response before making a decision on the licence.

The FAC considered that the County Council's response was informed by the "Leitrim County Development Plan 2023 - 2029 Appendix Vi – Landscape Capacity Study for Commercial Forestry – Co. Leitrim". The FAC noted that the objective of this study is to determine the suitability or capacity of landscapes to accommodate "further commercial forestry plantations" i.e., new afforestation and does not relate to the harvesting and replanting of existing forestry. The FAC noted that the presence of the forestry lands to be felled under LM06-FL0191 did not prevent the area being classified as part of an Area of Outstanding Natural Beauty in the first instance, however, the replanting will restructure the existing forest to comprise 15% less conifers and will include additional broadleaf planting and open space. Based on the information before it, the FAC is not satisfied that the DAFM erred in their processing of the licence application in relation to these grounds of appeal.

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

In considering this ground of appeal, the FAC had regard to 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 guidelines which refer only to the prohibition of initial planting on blanket peat and do not prohibit replanting. The FAC also noted 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 have been altered for many decades. 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. As stated in response to the preceding grounds of appeal, the FAC noted that the presence of the forestry lands to be felled under LM06-FL0191 did not prevent the area being classified as part of an Area of Outstanding Natural Beauty in the first instance, and the proposal will increase the amount of broadleaf forestry and open space within the footprint of the project.

10. Historical features not identified for protection

The Appellant contends that there is a Lime Kiln shown on the second edition Ordnance Survey map within the project area and a second Lime Kiln which appears on that map, just outside of the project area, appears to have been destroyed in the construction of the forest road which serves the project area. The Appellant did not adduce any evidence to support this claim. In their SoF the DAFM stated that:

Neither structure nor the locations thereof are either –

- a) a protected structure under Chapter 1 of Part IV of the Act of 2000,*
- b) a monument or place recorded under section 12 of the National Monuments (Amendment) Act 1994,*
- c) a historic monument or archaeological area entered in the Register of Historic Monuments under section 5 of the National Monuments (Amendment) Act 1987, or*
- d) a national monument in the ownership or guardianship of the Minister for the Arts, Heritage and the Gaeltacht under the National Monuments Acts 1930 to 1994.*



In considering this ground of appeal, the FAC noted the DAFM's submission that it is likely that the remnants of a Lime Kiln are still extant within the area to be felled, which was afforested in 1989. The DAFM stated that in that circumstance protection of the same will be catered for by Condition No. 3 of the Licence which requires the Licensee to ensure that all felling and reforestation operations are carried out in accordance with the Standards for Felling & Reforestation and the Environmental Requirements for Afforestation (as these refer to reforestation).

Regarding the second Lime Kiln, the FAC considered the Appellant's contention that this is outside of the licence area and "appears to have been destroyed in the construction of the forest road which serves the project area". The FAC noted the DAFM's submission that it was not that statutory consent authority for forest roads at the time of this road's construction and that had statutory consent been required it would have to have been obtained from the relevant Local Authority, in this case Leitrim County Council." The FAC considered that the construction of a forest road, in an area outside of the application area, and under the responsibility of the Local Authority, almost 40 years ago, has no relevance to this licence application and does not fall under the remit of the FAC which is to consider the appeal against felling licence LM06-FL0191.

In their "Summary" section of the grounds of appeal, the Appellant made a number of submissions relating to the operation of the appeals process and 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 did not consider that the issues raised by the Appellant in the "Summary" section fell under its jurisdiction to determine.

Based on the information before it, as outlined above, the FAC is satisfied that serious or significant errors were made by the DAFM in their decision to issue LM06-FL0191. In accordance with Article 14B of the Agricultural Appeals Act 2001, as amended, the FAC decided to set aside and remit the decision of the Minister, to undertake a new AA of the proposal itself and in combination with other plans or projects in line with the requirements of Article 6(3) of the EU Habitats Directive and the Forestry Regulations 2017, and in doing so address the errors outlined previously in this letter, before the making of a new decision.

Yours Sincerely,

Luke Sweetman on behalf of the Forestry Appeals Committee