



Mrs. Margot Ann & Mr. Vincent Melvin

5th February 2026

Subject: Appeal FAC134/2024 against licence decision TFL00718621

Dear Mr. & Mrs. Melvin,

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 FAC134/2024 was considered during a meeting of the FAC held remotely on the 20th November 2025. In attendance:

FAC Members: Mr. Donal Maguire (Deputy Chairperson), Mr. Iain Douglas, Mr. Derek Daly, Mr. Vincent Upton & Mr. Luke Sweetman.
FAC Administration: Ms. Aedín 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), and additional submissions and responses to same, the FAC has decided to affirm the decision of the Minister to grant felling licence TFL00718621 for the reasons set out hereunder.

Background

The licence under appeal is for the clearfell and replanting of 12.16ha of mixed conifer (Sitka spruce, Norway spruce, Japanese larch) and broadleaf (Ash) species in Corraclona, Co. Leitrim and was issued on the 13th November 2024. The proposal is comprised of seven plots and the replanting schedule for each is a mixture of 85% Sitka spruce and 15% additional broadleaves. The soil type underlying the project area is a mixture of mineral and organic soils, predominantly gleys. The slope is predominantly flat to moderate (averaging 8%) and the project area is crossed by / adjoins an aquatic zone(s). An Order 1 stream (EPA Name: Kiltyclogher, river waterbody code: UKGBNI1NW363602092) arises within the plantation and flows north-northwest for approximately 300m from the edge of the forest to a small Lake.

The proposal is located in the Erne Catchment, the MacneanLoughsconnector_SC_010 Sub-Catchment, and the sub-basin of the Belcoo River River Waterbody, which has 'Good' ecological status under the current WFD cycle, according to the DAFM's Appropriate Assessment (AA) screening determination.

A licence for this proposal was originally issued on the 19th September 2023 and, following a third-party appeal, was set aside, and remitted by the FAC in a decision dated the 22nd May 2024 (FAC052/23). The reasons for remittal were related to the AA Screening and contradictions within the archaeological conditions attached to that licence. For the avoidance of doubt the findings and decision of the FAC outlined below relate to appeal reference FAC134/24 against the DAFM's decision to issue tree felling licence TFL00718621 on the 13th November 2024.

Appropriate Assessment

The DAFM produced an "Appropriate Assessment Screening Report & Determination for Felling and Reforestation project TFL00718621, at Corraclona, Co. Leitrim" (AASRD) signed by a Forest Inspector and dated 12th September 2024. The AASRD was published on the FLV on the 13th November 2024, the same date as the licence decision was made and published. The AASRD screened the following 11 European sites, and all were screened out with reasons provided:

- West Fermanagh Scarplands SAC UK0030300.
- Boleybrack Mountain SAC IE0002032.
- Lough Melvin SAC IE0000428.
- Lough Gill SAC IE0001976.
- Corratirrim SAC IE0000979.
- Lough Melvin SAC UK UK0030047.
- Arroo Mountain SAC IE0001403.
- Largalinny SAC UK0030045.
- Monawilkin SAC UK0016619.
- Cuilcagh Mountain SAC UK0016603.
- Cuilcagh - Anierin Uplands SAC IE0000584.

The AASRD refers to "Appendix A: In-Combination Report for Felling and Reforestation proposed under TFL00718621" and states "See File". On file is a document titled "Appropriate Assessment Screening Report Appendix A: In-combination report for Felling and Reforestation project TFL00718621". This report states that "Various online resources, datasets and DAFM's own databases were consulted on the 12- SEP-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 Belcoo River."

The report states that online data from Cavan and Leitrim County Councils, An Bord Pleanála, and the EPA were examined, and also references the Leitrim County Development Plan 2023-2029. The report concludes that:

...there is no likelihood of the proposed Felling and Reforestation project TFL00718621 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 a second, less detailed but more recent, AA Screening Report. This was also completed by a Forest Inspector and is dated 13th November 2024. This screening report only considered the following six European sites, and they were all screened out for AA with reasons provided:

- Arroo Mountain SAC 001403
- Boleybrack Mountain SAC 002032
- Corratirrim SAC 000979
- Cuilcagh - Anierin Uplands SAC 000584
- Lough Gill SAC 001976
- Lough Melvin SAC 000428

Referrals & Submissions

There is no record of submissions from members of the public on the FLV and the DAFM's SoF also indicates that none were received. The application was referred to Leitrim County Council (LCC), the National Parks & Wildlife Service (NPWS), and the National Monument Service (NMS).

LCC's response (dated November 2021) stated that the lands in question are not located within any designated area identified in the County Development Plan 2015-2021. In terms of the Landscape Capacity to Accommodate Forestry, the lands are stated as being within a High-Capacity area. There are no Tree Preservations Orders in respect of trees on the proposal lands and the lands identified do not appear to impact any recorded monuments listed for protection under Section 12 of the National Monuments (Amendments) Act 1994. LCC requested that should the proposal proceed; a condition be attached to the approval requiring that the forestry company representative liaise with the District Engineer's Office prior to the commencement of any works and shall satisfy the conditions and address the issues as referred to in "the attached District Engineer's report."

The NPWS response stated that they had no comment to make on the application, and they attached an appendix containing "general points that are of relevance and will hopefully be of assistance to you in your consideration of this matter."

The DAFM referred the application along with the Archaeology Report and recommended archaeological conditions to the NMS, with an invitation for comments/observations in respect of the same. The NMS responded, agreeing with the recommended archaeological conditions.

The licence was granted on 13th November 2024 subject to conditions.

Grounds of Appeal

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

- 1. Inadequate and ineffective public notice in contravention of Article 6 (2) of the Aarhus Convention; unfair procedure.**
 - 1a. Failure to have regard to the social function of forestry**

Felling licences fall within the provisions of the Aarhus Convention. The DAFM website is not adequate or effective public notice. The Appellant refers to the requirements for Site Notices as set out in the Forestry Regulations 2017 (in S.I. No. 191/2017). The Appellant made submissions in relation to previous decisions of the FAC.

2. Undue process / lack of fair procedure

There has been a single public consultation period for this application for 30 days from the 1st October 2021. There are now many more documents on the FLV and many of these were not available to the public at the time that the public had an opportunity to comment on this application. In particular, the amended Archaeology Report which was published after the Licence was previously remitted, partly on the basis of errors in the licence conditions related to archaeology.

3. Lands were not afforested in accordance with the law

The lands at Corraclona were afforested under licence CN13602 (OP11187). There were administrative issues with the awarding of the licence due to permissions required from the OPW. Information acquired through an AIE request indicates that there was no Environmental Impact Assessment Screening for the afforestation of the lands at Corraclona.

The afforestation licence holder planted trees within 10m of the Black Pigs Dyke earthworks, as indicated on the 2nd edition (6") Ordnance Survey map. In doing so they did not conform with the conditions of the afforestation licence.

4. Archaeology – Failure to seek the input of the NMS

It is unclear why this project was not referred to the NMS and was only assessed by a DAFM in-house Grade 3 archaeologist.

The Archaeology Report does not confirm or disaffirm whether this monument is subject to a preservation order. If there is a preservation order on the monument then the licence conditions are in conflict with the National Monuments (Amendment) Act (2004).

The use of the Temporary Bridging Point over the linear earthwork (LE009-001) depicted on the Harvesting Plan Map is permissible contingent on –

a. the crossing point across the linear earthwork being confined to that one indicated Temporary Bridging Point.

b. the specifications for any engineered response needed in relation to this Temporary Bridging Point being included in the Archaeologist prepared plan required to outline the most appropriate means to fell and remove trees from on and around the monument for the consideration and approval of the Forest Service, DAFM, in consultation with the NMS; and the details of any other archaeological safeguards required in the opinion of the Archaeologist to protect the linear earthwork from timber forwarding over and in proximity to this Temporary Bridging Point also being set out in the same plan.

This licence is compounding the original error of a lack of planning as regards the afforestation of the lands whereby trees were planted which were effectively landlocked by the National Monument.

Please note that the map in the Archaeology Report with the area highlighted in yellow with red hatching is not drawn to scale. A full Archaeological Impact Assessment Report should have been required before authorising this project.

5. AA Screening does not meet the test of Article 6 (3) of the Habitats Directive

The new Appropriate Assessment Screening still fails to pass the test of Article 6(3) of the Habitats Directive. It is acknowledged that the project area is part of the Erne catchment. As too is the Black River to which the West Fermanagh Scarplands are hydrologically connected. Otter is a Qualifying Interest of this SAC.

Otter have a wide range of travel and it cannot be excluded that this project cannot contribute to an In-Combination effect on the Conservation Objectives of the West Fermanagh Scarplands. The AASRD for TFL00718621 has only considered possible In Combination effects of the Belcoo River. The Harvest Plan Map indicates that there are Forest Roads that do not exist, and no permission has been sought to construct them. This is project splitting in the context of the In-Combination Assessment for this project.

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

Notwithstanding Ground 5, relating to Otter, which is a species listed in Annex IV, at least three of the nine species of bat native to Ireland are within their range within OS square H04. As a significant proportion of this square is within Northern Ireland it is highly probable that this does not represent the full extent of bat species which are within their range in this square.

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

The licence contains no seasonal restrictions or mitigation to protect all wild birds during the period of breeding and rearing. This is of particular significance given the potential impact on a protected species of bird.

8. Hen Harrier

The assessment of this application has failed to identify that the project area is within an Important Breeding Area outside of the six Hen Harrier SPAs. No assessment has been conducted to ensure that there is no pollution or deterioration of habitats on which this species depends. There has been no assessment for the possibility that works on this project may cause a disturbance to breeding or roosting Hen Harrier.

9. Licence application must be refused under Article 4 (1) of the Water Framework Directive

This ground of appeal is being re-iterated as the FAC's decision at the previous appeal was based on a flawed interpretation of the law. There is no evidence that the FAC sought legal advice in coming to their conclusion. Part of the project area drains to a small unnamed Lough identified on Ordnance Survey mapping as being c. 7 acres in area.

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

The Minister has failed to assess the potential for impact to water quality as a consequence of overland flow. Publicly available information indicates flow paths and delivery points for pollution impact which have not been addressed by the DAFM in the mitigation for this project.

The project cannot be assured to be compliant with the requirements of the Water Framework Directive.

11. EIA Screening Determination is not adequately reasoned

The EIA Screening on file indicates that the project is

- a) within 3km upstream of the border with Northern Ireland, and
- b) within 500m of an international boundary.

The EIA Screening questions highlighted a potential for impact. The Inspector has provided no rationale to validate his response that there will be no significant transfrontier impact and it appears that the FAC are content to rely on an assertion from the Inspector without any rationale. This is unacceptable.

DAFM have erred in issuing a Determination on an Environmental Impact Assessment Screening which lacks adequate reasoning as to why an Environmental Impact Assessment is not required.

12. Indicated Forest Roads do not exist

The Harvest Map indicates four sections of Forest Road. None of these roads exist. Development consent has been sought for two sections of Forest Road under CN91324, but these do not align with those indicated on the Harvest Road Map for TFL00718621.

Project documentation for CN91434 suggests that there will be issues with achieving sightlines without entering the archaeological exclusion zone. It cannot be assumed that consent will be awarded for CN91434.

The Harvest Map does not indicate the Forest Roads are prospective roads. The Forester has made a false declaration relating to the infrastructure on the site in his application. See also ground 6 on project splitting.

There is no indication as to how timber will be extracted and hauled from the areas where Forest Roads were indicated to exist but do not exist.

13. Inadequate consideration of the natural environment

New information has just been brought to our attention by ecologists who lived locally to the site up until quite recently.

Red squirrels (protected species under the Wildlife Act) are active in the area and there has been no consideration of the impact of the project on them. Bats (protected under the Habitats Directive) are active in the area. There has been no survey for bats. Woodcock (breeding) and Curlew (breeding and wintering) are on the red list of Birds of Conservation Concern in Ireland. They are both present in the area of the project application, but they have not been considered in the assessment of the project. Curlew are present during the Summer at the sand where the Black Rivers enter Upper Lough MacNean. This is well within the 1.5km disturbance distance applied by DAFM.

There is a sinkhole, locally referred to as Pollawaddy, to the East of the site. This suggests a karst landscape which has not been considered in the assessment of the application.

14. Access to Justice is prohibitively expensive

The Appellant made submissions generally outlining their contention that the fee to submit an appeal to the FAC is prohibitively expensive.

Additional Submission Prior to Provision of the Statement of Fact (SoF) by the DAFM

In addition to submitting the above grounds of appeal, the Appellant made another submission prior to the DAFM providing an SoF. This submission included species data, a series of CatchmentCARE information panels, information regarding the proximity of Lime Kilns to the proposal, and a statement, said to be authored by two Ecologists who had been living in the area of the proposed felling until recently. This submission has been considered by the FAC and was provided to the parties of the appeal to allow for a response. Neither the Applicant nor the DAFM responded to this submission directly, but the DAFM addressed the submission in their SoF.

Minister's Statement

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

- (a) a statement showing the extent to which the facts and contentions advanced by the appellant are admitted or disputed, and*
- (b) information, documents or items in the power or control of the Minister that is relevant to the appeal.*

The Minister provided an SoF responding to the grounds of appeal, and a separate statement from their Archaeology & Built Heritage Section, responding to the grounds relating to archaeology. Both statements were provided to the parties and have been considered by the FAC. The DAFM's SoF 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 DAFM also responded to the individual grounds of appeal and the following is a brief summary:

• Ground 1

The DAFM outlined "the practical steps taken to fulfil the Department's obligations with regard to public consultation". "For felling, pursuant to Section 17(4)(a) of the Forestry Act 2014 and Regulation 4 of S.I. No. 191 of 2017, the site notice only needs to appear in advance of the works beginning. The Department is therefore in full compliance with the legislation in this regard."

• Ground 2

The DAFM disputes the Appellant's contention that the DAFM's AA procedure is unfair. The DAFM outlined their procedure for public consultation, highlighting that the Department's chosen method of advertising is their website, including the FLV, and that any member of the public can check the FLV for any harvesting activity in their area whenever they wish and as often as they wish. The DAFM stated that licence applications are also advertised on the DAFM's website where location information at a Townland level is provided to assist the public in locating any felling licence application for any given month and that forestry stakeholders and members of the public have 30 days to lodge a submission on any applications falling within a Townland of interest. The DAFM submitted that all documents are available to the user associated with the decision of interest on the FLV and that the onus is on an interested party to observe the licence applications on that site. The DAFM stated that they are not responsible for whether a person has access to the internet.

- **Ground 3**

"The grounds of appeal submitted is in respect of the felling licence TFL00718621 and not the afforestation licence".

- **Ground 4**

"All appropriate referrals were carried out".

- **Ground 5**

The DAFM disputes the Appellant's contention that there are lacunae in the AA process. The DAFM contend that the AA Determination is created "following a detailed and thorough process that delivers precise, complete and definitive findings" and then set out the steps taken in the AA procedure applied". The DAFM stated that "Evidence of the process above having been carried out is shown in the FLV where the documentation listed includes the in-combination assessments, AA Screening determination report and the AA Determination".

- **Ground 6**

The DAFM referred to NPWS publications which "set out the system of Strict Protection for animals as described in Regulation 51 of the European Communities (Birds and Natural Habitats) Regulations, (Annex IV animals)" and contend 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". The DAFM stated that the Applicant, members of the public, or statutory consultees can make submissions on a licence application when the application is advertised for 30 days at application stage, and that in the case of TFL0071862, no populations of protected species were confirmed in the project area or in the vicinity of the project area.

- **Ground 7**

The DAFM submitted that the grounds of appeal relating to the Birds Directive do not refer to any specific adverse effect on the environment and that, notwithstanding this, the DAFM disagrees that its procedures are inconsistent with Article 5 of the Birds Directive. The DAFM stated that the granting of TFL00718621 does not serve to exempt the licensee from fulfilling any other obligations or licensing requirements arising from "the main pillars of wildlife legislation in Ireland, i.e., the Wildlife Acts, 1976 and 2000, as amended".

Regarding bats, the DAFM stated that none of the European sites screened in the AASRD include bat species as a QI and that the response received from the NPWS did not include any reference to bat species. The DAFM stated that there were no submissions made by the public to indicate that there were bat populations that could be impacted by any operations described in the felling application TFL0071862 that could be impacted by any of the licenced operations.

In relation to otter, the DAFM submitted that the potential impact of the project on otter was considered during the licencing process and that, in general, otters do not have a preference for forestry habitat. "Mature conifer plantations without a shrub layer do not provide suitable resting places for otters. There will be no alteration of watercourses and forestry machines will not be traversing close to stream sides, so direct impacts on otter habitat are considered unlikely". The DAFM also stated that the response received from the NPWS did not include any reference to otter.

• **Ground 8**

The DAFM stated that TFL0071862 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 and that there are no SPAs located within 15km of the project area. The DAFM detailed the Hen Harrier procedure involving “Red” and “Green” areas as agreed with the NPWS. They also noted that the project area did not overlap with the “Non- Designated Hen Harrier Nest Sites layer with 750m Disturbance Buffer (Ruddock et al 2016)”.

• **Ground 9**

The DAFM stated that the Appellant relies on the absence of *ad hoc* analysis of the lake as grounds to suggest the Minister is required to refuse authorisation for this project. The DAFM contend that the Advocate General’s decision is not determinative and submit that the lake referenced by the Appellant measures a surface area of less than 0.5 km² and contends that the DAFM, as the relevant competent authority, satisfies the requirement set out in answer three of the CJEU in C-301/22. “Through DAFM’s assessment procedure, Appropriate Assessment screening, consequent mitigations and application of standard setbacks, DAFM ensures any such project is not liable to cause deterioration of any surface waterbody, either directly or through knock-on effects. Potential effects on the status of a waterbody are specifically considered during DAFM’s assessment and any decision is considered in the context of competent authorities’ obligations under the Water Framework Directive”.

• **Ground 10**

The DAFM stated that they apply a wide range of checks and balances during their evaluation of felling licence applications in relation to the protection of water, as set out in the DAFM document Forests & Water: Achieving Objectives under Ireland’s River Basin Management Plan 2018-2021 (2018). They highlighted that any felling licence issued is conditional on adherence to the Standards for Felling and Reforestation (DAFM, 2019), which set out “a wide range of operational measures to prevent direct and indirect impact on water quality arising from the operation”.

• **Ground 11**

“There is no hydrological connection with any European site located in Northern Ireland. 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)”.

• **Ground 12**

“CN91324 is an application to thin broadleaves under DAFM’s Woodland Improvement Scheme and is located in Co. Meath. It is not a requirement to have forest roads in place as part of a felling licence application. The Department is satisfied with the quality of the Harvest Plan map”.

• **Ground 13**

“Any information relating to the site can be given to DAFM during the public consultation period. No such information relating to woodcock, squirrels or Karsk (sic) features were submitted either by the NPWS, members of the public or ecologists (see previous sections on otter and bats). In

relation to curlew the project area was cross checked against the Department's curlew layer which includes a 1.5km buffer. There was no intersection with this layer".

The DAFM reiterated their position that "the granting of a felling licence does not exempt the holder from meeting any legal requirements set out Wildlife Acts 1976 - 2000 which protects all wild animals in Ireland. Therefore, it is the responsibility of the landowner to ensure that where species are known to exist, on or near the project area and which are listed under the Wildlife Acts of 1976-2000, that these species are not impacted by the proposed forestry operations associated with this licence".

- **Ground 14**

Regarding the grounds related to the appeal fee, the DAFM stated that they consider that this aspect of the appeal "goes beyond the remit of a forestry licence appeal and therefore of the considerations of the FAC". However, the DAFM set out their reasoning for disagreeing with the Appellant's contention in relation to this ground of appeal, including that "The fee regime is fully compliant with DAFM's obligations under the Aarhus Convention and the ruling of the CJEU in Case C-216/05".

DAFM's Archaeology Statement

The DAFM provided a statement responding to the grounds of appeal relating to archaeology. This statement was signed by the same archaeologist who had assessed the application and produced the Archaeology Report on file for the licence decision. The statement notes the presence of one Recorded Monument / SMR site that traverses through the area proposed for clear felling and replanting and that this is a linear earthwork (LE009-001), known as the Worm Ditch or The Black Pig's Race, running in a west-northwest/east-southeast direction through Plots 3, 4, 5, and 6.

In their statement, the archaeologist states that having read the relevant Grounds of Appeal and considered the points raised in relation to each, "in particular those concerning the location and nature of the Recorded Monument, and informed by my own site inspection of 25th May 2023, I am firmly of the view that as regards protection of the archaeological resource there is nothing therein that would warrant a reconsideration of the decision made to approve the TFL or would change the specific archaeological conditions recommended for attachment to the TFL or the wording thereof". The statement lists the seven grounds relating to archaeology and responds to each in turn, setting out the DAFM's reasoning for their decision-making regarding the archaeological features on site. The statement concludes that in this case, the DAFM is of the view that the archaeological conditions it has devised, including the use of a temporary bridging point over the Recorded Monument to affect the Licence, based on professional Archaeologist's knowledge, expertise, and that expert's own site inspection, and which were referred to and agreed with by the NMS, are appropriate and proportionate to the circumstances.

Additional Submission Following the DAFM's Statements

The Appellant submitted a response to the DAFM Archaeologist's statement. This response was in the form of an annotated version of the archaeology statement and was considered by the FAC and circulated to the parties to the appeal and no further response was received.

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 20th November 2025, 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, the DAFM's SoF and archaeology statement, the additional submissions made by the Appellant, and all materials on file.

1. The Aarhus Convention, Public Notice and Public Participation,

The FAC considered the grounds relating to Public Notice and Public Participation and 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 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 FAC understands that publication through the 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.

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 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 as suggested in the grounds.

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.

2. Undue process / lack of fair procedure

The FAC considered the grounds relating to the publishing of relevant documents and the availability of same to members of the public. The Appellant raises the Archaeology Report as especially significant in this regard. The FAC considered the requirements of S.I. 191/2017, the Forestry Regulations 2017, which requires in Section 10(1) that:

Where the Minister receives an application under Regulations 3, 5, 6 or 7, he or she shall, before making a decision on the matter, publish a notice of the application in a manner determined by the Minister.

Section 10(4) of the Forestry Regulations 2017 states that:

The public may make submissions or observations in writing concerning the application to the Minister within 30 days from the date of publication of the notice or whatever longer timeframe is set out in the notice, and where additional information is published, at least 30 days from the date of the publication of that information.

The FAC considers that Section 10(4) of the 2017 Regulations primarily relates to the public consultation process regarding the application for a licence while the Minister might, at their discretion, provide for further periods of public consultation. In this instance, the FAC is satisfied that the Minister published the licence application on the FLV before the making of a decision and that this was in line with the requirements of the Forestry Regulations 2017.

Regarding the Archaeology Report, the FAC considered that this constitutes an internal advisory report, produced as part of the DAFM's assessment of the licence application and that conditions prescribed in the report were attached to the felling licence. The FAC noted that this report was published on the FLV, alongside a number of other documents which did not form part of the felling licence application but were generated during the DAFM's assessment of the application. The FAC noted that the Archaeology Report was available to the Appellant during the period in which it was open to the Appellant to submit an appeal and that the Appellant submitted detailed grounds of appeal regarding the archaeological assessment of the proposal. Further grounds of appeal relating to archaeology will be addressed later in this letter.

Based on the information before it, the FAC is satisfied that the DAFM did not err in their processing of the application in relation to these grounds of appeal and that the decision was made in line with fair procedures.

3. Lands were not afforested in accordance with the law

The role of the FAC is to consider whether the DAFM made a serious or significant error, or a series of errors in making the decision under appeal, and whether it was made in compliance with fair procedures. The FAC notes that the afforestation of this forest occurred approximately 30 years ago, and that the Appellant contends that the planting operations did not comply with the conditions of the original licence. It may be the case that the non-compliance alleged by the Appellant is so historical as to be considered unreasonable for the relevant authority to deal with approximately 30 years later.

Notwithstanding this, the FAC is not the competent authority with the responsibility for issuing afforestation licences or for enforcement of afforestation licence conditions. The FAC understands that the process of consent for afforestation, including enforcement of licence conditions, has gone through a number of changes in legislation, including 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, felling licence TFL00718621, in accordance with the requirements of the Agriculture Appeals Act 2001, as amended. The FAC is therefore not satisfied that the DAFM has erred in its processing of the application in so far as this ground of appeal is concerned.

4. Archaeology

The grounds contend that the DAFM did not seek input from the NMS. The record of the decision before the FAC shows that the DAFM did in fact seek input from the NMS but that this email correspondence was not published on the FLV until the 13th December 2024. Notwithstanding the timing of the publication of this correspondence, the FAC noted that the DAFM emailed the NMS on the 24th May 2024 with a set of revised draft archaeological and built heritage conditions (following the FAC's decision in FAC052/2023 against TFL00718621). Mr. John Olney, Archaeologist, NMS responded on the 20th June 2024 stating that:

"...I've conferred with NMS colleagues on this referral and on the whole, I agree with your recommended conditions relating to this application. I note there is precedent for introducing a temporary bridging point over the Black Pig's Race/Dyke, as at Lattone (TFL00746221). The ASI file indicates that this part of the overall monument (LE009-001----) appears to be represented by a shallow ditch with no above ground trace of associated embankment/s. Notwithstanding, all due care and consideration should be given to the possibility of associated sub-surface features in both the design and installation of any bridging point and subsequent felling/replanting works.

My colleague C il n has carried out extensive research of the monument on a regional scale, including some excavation at Lattone...

We await submission of the Archaeologist prepared plan for further specific detail on the bridging point design and proposed works methodologies.

The FAC notes the Appellant's submission regarding the publication date of the above correspondence. In the particular circumstances of this case, the above correspondence was published on the FLV following the submission of the Appellant's grounds of appeal. The DAFM also produced a specific statement responding to the grounds of appeal related to archaeology. The Appellant has had the opportunity to respond to all the relevant archaeological information on file. The FAC has considered these submissions along with the original grounds of appeal relating to archaeology, and the Appellant has not been disadvantaged in this instance.

Based on the information before it, the FAC considered that the application has been subject to expert archaeological assessment by the DAFM and the proposed conditions arising from this assessment were agreed with the NMS. These include the requirement that, prior to the felling of any trees, a thorough field inspection be completed by a suitably qualified archaeologist and a plan prepared outlining the most appropriate means to fell and remove trees from on and around the monument for the consideration and approval of the Forest Service, DAFM, in consultation with the NMS. At reforestation stage, the conditions require a 30m replanting setback and in addition, a structured programme of archaeological monitoring by a suitably qualified archaeologist for all ground preparation and drainage works undertaken as part of the reforestation works in Plots 3, 4, 5, and 6, within 70m of the 30m archaeological exclusion zones/setbacks.

The FAC notes that the Appellant does not claim to be an expert in the field of archaeology, nor that they have engaged a relevant expert in preparing their submissions. There is no professional opinion before

the FAC to support the Appellant's view that the prescribed approach to the archaeology on site is deficient.

The FAC noted that the archaeologist who dealt with the approval of the application is the same person providing a response to the points raised in relation to the archaeological assessment of the application. The FAC is not satisfied that this disadvantages the Appellant but that rather the information and reasoning available on file are enhanced due to the input of the relevant decision maker.

Based on the information before it, 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 of appeal.

5. AA Screening does not meet the test of Article 6 (3) of the Habitats Directive

The grounds contend that the AA Screening does not meet the requirements of Article 6 (3) of the Habitats Directive as the project area is part of the Erne catchment, as too is the Black River to which the West Fermanagh Scarplands SAC is hydrologically connected. The Appellant states that Otter is a Qualifying Interest of this SAC. The Appellant states that Otter have a wide range of travel and "it cannot be excluded that this project cannot contribute to an in-combination effect on the Conservation Objectives of the West Fermanagh Scarplands SAC".

Article 6 (3) of the Habitats Directive does not provide for a screening process but such obligations do arise in domestic legislation including the Forestry Regulations 2017. Regarding the West Fermanagh Scarplands SAC, the FAC noted that the DAFM's AASRD lists "Lutra lutra (Otter) [1355]" as a Qualifying Interest (QI) for this SAC, and the grounds of appeal also describe this species as a QI of the SAC. The SAC is located within the jurisdiction of Northern Ireland which, as is well documented, is no longer part of the EU.

The FAC consulted publicly available information on the Joint Nature Conservation Committee (JNCC) website¹, as referred to by the DAFM in the AA screening document. The JNCC information on the West Fermanagh Scarplands SAC includes listing the "Annex I habitats that are a primary reason for selection of this site" along with the "Annex I habitats present as a qualifying feature, but not a primary reason for selection of this site". The JNCC site does not list any species under the headings "Annex II species that are a primary reason for selection of this site" and "Annex II species present as a qualifying feature, but not a primary reason for site selection" but, in both cases, states "Not Applicable".

The information regarding the West Fermanagh Scarplands SAC on the Department of Agriculture, Environment, and Rural Affairs (DAERA) website² states that the "Protected area type" is "Special Areas of Conservation" and the "Feature type" is "Habitat". Under "Guidance and Literature" available on the DAERA website³ is a document titled "Reasons for designation as a Special Area of Conservation". This document lists "the habitats and/or species for which this area has been designated as a SAC" and includes nine habitat types. There is no reference to otter or any other species in this document. Also published on the DAERA website³ is a document titled "West Fermanagh Scarplands SAC UK0030300 Conservation Objectives". The Conservation Objectives for the SAC are recorded as to maintain (or restore where

¹ <https://sac.jncc.gov.uk/site/UK0030300>

² <https://www.daera-ni.gov.uk/protected-areas/west-fermanagh-scarplands-sac>

³ <https://www.daera-ni.gov.uk/publications/west-fermanagh-scarplands-sac>

appropriate) the nine listed habitat types to favourable condition and do not refer to otter or any other species.

The West Fermanagh Scarplands SAC is approximately 4.9km east-northeast of the proposal. The screening conclusion in the DAFM's AASRD for this site states that "it can be ruled out, based on objective scientific information, that the project itself (i.e., individually) will have a significant effect on this European Site, in light of the above information and the following rationale: Due to the absence of a direct upstream hydrological connection, and subsequent lack of any pathway, hydrological or otherwise". The AASRD lists the nearest EPA water features and records the Black River as being approximately 500m north-northeast of the proposal. There are no EPA-mapped watercourses which would provide a hydrological connection between the proposal site and the Black River. The FAC considered that the Appellant has not submitted any evidence to contradict the DAFM's screening conclusion or to indicate that there is a direct hydrological connection between the proposal and the Black River.

The Applicant raises the issue of forest roads and "project splitting". The licence decision before the FAC is for a felling licence, the granting of which by the DAFM does not remove the requirement for the Applicant to acquire any necessary forest road licences. The FAC noted that CN91434 is a forest road licence serving the proposal which has been approved by the DAFM. Based on the information before it, the FAC is not satisfied that the DAFM erred in relation to these grounds of appeal.

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

In considering this ground of appeal, the FAC also noted the additional submission by the Appellant which included information which the Appellant states was gathered by two Ecologists who had carried out surveys "around the area of Corraclona". The FAC noted that the species information submitted is not claimed to be from surveys of the project area itself. The statement attributed to the Ecologists contends that replacement of deciduous trees such as Ash and Larch with Conifers is short-sighted when native woodland and other schemes are lucrative and much more suited to various native and non-native deciduous species. The licence under appeal is for the felling of 12.16ha of mixed conifer and broadleaf species but most of the species to be felled are conifers, namely Sitka spruce, Norway spruce, and Japanese larch. Only 1.4ha of the area to be felled consists of Ash, located in plots 2 & 5. The FAC noted that the proposed replanting species will comprise 85% Sitka spruce and 15% Additional Broadleaves across all seven plots. This will result in a net increase of broadleaf species within the footprint of the project area following replanting operations. The FAC also noted that the licence conditions require the creation of a 20m unplanted setback from the aquatic zone, to be adjoined by five rows of native broadleaf species. A 10m public road setback is also required, to be adjoined by 10 rows of native broadleaves. The FAC considered that these measures would contribute to an increase in the protection of water quality, visual amenity, and biodiversity value of the site. The application concerned the felling of trees and not afforestation nor an application for grant aid.

The FAC considered the Appellant's submissions regarding potential impact on Bats but noted that the Appellant does not identify a reason as to how the felling of the forest as applied for in this case might have a significant effect on the species. Furthermore, the licence application was referred to the NPWS who stated that they had no comments to make. Additionally, the FAC considers that the granting of a felling licence does not remove any legal obligations on the licence holder or their agents that are provided for in the Wildlife Acts or any other relevant legislation. The application is for the felling of trees in a managed plantation forest. The FAC considers that the grounds provide no basis for concluding that the proposal as licenced would have a significant effect on any protected species or habitat. The FAC was satisfied that the DAFM did not make a serious or significant error or a series of errors in the making of

the licence decision or that the decision was made without complying with fair procedures in relation to these grounds.

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

The FAC considered the submission in the grounds that the licence contains no seasonal restrictions or mitigation to protect all wild birds during the period of breeding and rearing and that “this is of particular significance given the potential impact on a protected species of bird”. The FAC noted the content of the DAFM’s SoF responding to this ground of appeal wherein it sets out that the grounds do not refer to any specific adverse effect on the environment under this heading. The DAFM also disputes that its procedures are inconsistent with Article 5 of the Birds Directive.

The FAC considered that the granting of a felling licence does not exempt the holder from meeting any legal requirements set out in the Wildlife Acts which protect all wild animals in Ireland. Based on the information before it, the FAC is not satisfied that the DAFM erred in its processing of the licence application in relation to these grounds of appeal.

8. Hen Harrier

The Appellant has not adduced any evidence to support their claim that the proposal is within an important breeding area outside of the six Hen Harrier SPAs. The Appellant has also provided no evidence as to how the licenced operations might pollute or cause the deterioration of habitats on which the Hen Harrier depends, or that the proposal will disturb breeding or roosting Hen Harrier. The FAC understands that the DAFM apply procedures agreed Hen Harrier with the NPWS when processing forestry licences, as referenced by the DAFM in their SoF. In their response to this ground of appeal, the DAFM stated that “for project areas located outside an SPA designated for breeding hen harrier, and outside any part of a ‘Red Area’ (High Likelihood Nesting Area) that extends beyond the SPA, the standard ‘Red Area’ restriction is applied where hen harrier breeding activity is confirmed. This rule applies where any portion of the project area is located within 750m of the most likely location of the hen harrier nest/breeding activity identified. The location of this point can be established when breeding behaviour has been confirmed by a recognised ornithologist. Red area restrictions are also used within the *‘Non- Designated Hen Harrier Nest Sites layer with 750m Disturbance Buffer (Ruddock et al 2016)’*.”

The information before the FAC is that the application underwent a 30-day period of public consultation prior to the original issuance of TFL00718621 in September 2023. Concerns in relation to Hen Harrier were not expressed prior to the appeal. The FAC noted that the project site does not fall within the *Non-Designated Hen Harrier Nest Sites layer with 750m Disturbance Buffer (Ruddock et al 2016)* and that the NPWS were consulted in relation to this application and stated that they had no comments to make. Based on the evidence before it, the FAC is not satisfied that the DAFM erred in their processing of the licence in relation to this ground of appeal.

9. Licence application must be refused under Article 4 (1) of the Water Framework Directive

The FAC considered the grounds of appeal submitted by the Appellant in relation to Article 4 (1) of the Water Framework Directive (WFD). The FAC also had regard to the DAFM’s response in their SoF. The grounds of appeal make numerous references to the decision of the FAC in FAC052/2023 and state that “this ground of appeal is being re-iterated as the Forestry Appeal Committee’s decision at the previous appeal was based on a flawed interpretation of the law”. The remit of the FAC is to consider appeals against certain forestry licence 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 considered that the Appellant's grounds under "9. Licence application must be refused under Article 4 (1) of the Water Framework Directive" predominantly relate to the decision of the FAC in FAC052/2023 as opposed to the licence under appeal and do not fall to be determined by the FAC. The decision relates to the granting of a licence for the felling of trees in a managed plantation, which is spatially and temporally limited, and must be undertaken in keeping with the required conditions which include measures related to the protection of water quality. The FAC considered that there was no basis to conclude that the decision made was not in keeping with the objectives and requirements of the Water Framework Directive.

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

These grounds refer to flow paths and delivery points for pollution impact which have not been assessed by the DAFM. The grounds also state that these flow paths and pollution delivery points are indicated in publicly available information but provides no details as to what flow paths or pollution delivery points are being referred to, nor do they provide a reference for the source of the publicly available information.

In relation to impacts on water quality, the FAC noted that the licence conditions require 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). The reason provided for attaching this licence condition is "in the interest of protection of the environment during harvesting and where applicable, replanting of the felled area". Both documents include numerous measures for the prevention of pollution and the protection of water quality, including water setbacks, machine exclusion zones, restrictions on chemical inputs, and the use of silt fences to block the pathway for silt in areas where overland flow is possible.

The licence conditions require that all protective measures be inspected and maintained (as necessary) in the interest of the protection of the environment, and particularly water quality, and aquatic ecosystems. The licence conditions also prescribe unplanted water setbacks at reforestation, in part for the protection of water quality. Based on the information before it, the FAC is satisfied that the DAFM did not err in relation to this ground of appeal.

11. EIA Screening Determination is not adequately reasoned

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 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. In these circumstances, the FAC considered that the Minister was not required to undertake a screening for EIA or an EIA in relation to the processing of the tree felling application that was before them. As such the FAC considered that the DAFM

did not make a serious or significant error, or series of errors in the processing of the licence application in relation to these grounds of appeal.

12. Indicated Forest Roads do not exist

The licence under appeal is for the felling of trees under TFL00718621. The proposed fell year in the licence application is 2029. Table 1 in the licence decision letter states that the Harvest Year is 2029. The Forestry Act 2014 and Forestry Regulations 2017 provide for a separate licencing process for forest road works which include provisions for Appropriate Assessment and Environmental Impact Assessment. As previously outlined in response to Ground 5, the FAC is of the view that the granting of a felling licence by the DAFM does not remove the requirement for the Applicant to acquire any necessary forest road licences. Based on the information before it, the FAC is not satisfied that the DAFM erred in their decision-making process in relation to this ground of appeal.

13. Inadequate consideration of the natural environment

The FAC considered the Appellant's submissions regarding potential impact on various species under this ground of appeal. The Appellant does not identify a reason as to how the felling of the forest as applied for in this case might have a significant effect on these species. The Appellant submits that the species referred to are "in the area" of the proposal but have not provided any evidence to support this claim. Furthermore, the licence application was referred to the NPWS who stated that they had no comments to make. In relation to Curlew, the DAFM's SoF states that the project site does not intersect with the DAFM's Curlew layer, which includes a 1.5km buffer.

The FAC considers that the granting of a felling licence does not remove any legal obligations on the licence holder or their agents that are provided for in the Wildlife Acts or any other relevant legislation. The FAC considers that the grounds provide no basis for concluding that the proposal as licenced would have a significant effect on the species referred to. The FAC is not satisfied that the DAFM made a serious or significant error or a series of errors in the making of the licence decision in relation to these grounds of appeal.

14. Access to Justice is prohibitively expensive

The FAC considered that the issues raised under this ground of appeal and the related commentary was seeking to challenge the legislative provisions of the appeals process itself and that this falls outside of the jurisdiction of the FAC to determine. 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.

Based on the evidence before it, as outlined above, the FAC is not satisfied that a serious or significant error, or a series of errors were made in the DAFM's decision to issue TFL00718621 or that the decision was made in contravention of fair procedures. Therefore, in light of the provisions of the Agriculture Appeals Act 2001, as amended, the FAC decided to affirm the decision of the Minister to issue felling licence TFL00718621.

Yours Sincerely,

Luke Sweetman on behalf of the Forestry Appeals Committee