



Mr. Liam Malone,

20th July 2026

Subject: Appeal FAC 012/2025 regarding WW04-FL0145

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 14A (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.

DECISION.

Having regard to the evidence before it, including the Department of Agriculture, Food, and the Marine (DAFM) record of the decision, the Statement of Fact (SoF) provided by the DAFM, all materials on file, the notice and grounds of appeal and, in particular the following considerations, the FAC has decided to set aside and remit the decision of the Minister regarding licence WW04-FL0145.

THE LICENCE.

Licence WW04-FL0145 is for the Clearfelling of a 5.17 Ha. plot of Sitka spruce, Douglas fir & Japanese larch in the townland of Lugduff Co. Wicklow and its replanting with Sitka spruce and Downy Birch, with 5% of the site remaining as Open Space.

The application for licence WW04-FL0145 was published on the Forestry Licence Viewer (FLV) on 24/04/2024 and advertised for public consultation on 01/05/2024. The licence was advertised for a second period of public consultation on 25/10/2024. A decision approving the licence was issued on 20/01/2025 subject to a number of standard felling and replanting conditions, compliance with the Standards for Felling & Reforestation, compliance with the Environmental Requirements for Afforestation and compliance with the Appropriate Assessment Determination mitigation measures

FORESTRY APPEALS COMMITTEE.

Appeal Reference: FAC 012/2025 against the decision to grant licence WW04-FL0145 as dated on 20/01/2025 was considered by a division of the FAC at a hearing held remotely on 11/06/2026. The FAC members present were:

FAC Members:	Mr. Ed Carroll (Chairperson), Mr. Luke Sweetman & Mr. Iain Douglas (Mr. Liam Ward (Deputy Chairperson) (Non-participating)
Secretary to the FAC:	Mr. Michael Kirwan.

At the sitting the FAC had before it the DAFM record of the decision as published on the FLV, the notice and grounds of appeal, and a SoF provided by the DAFM.

BACKGROUND.

The site is located some 3.3km south-west of the village of Laragh Co. Wicklow. The site is bounded on the south by an unnamed watercourse, on the east by another watercourse (the Lugduff Brook) and is adjoined by conifer forest on the north and west site boundaries.

The soils on the site are described as being 92% AminSRPT (Podzols (Peaty), Lithosols, Peats). 8% AminPDPT (Peaty gleys) and some outcropping rock. The average slope of the site is described as steep (16%). The habitat on site is described as 100% Conifer Plantation (Fossitt WD4).

The site lies in the Ovoca-Vartry 10 Water Framework Directive (WFD) Catchment, the Avonmore_SC_020 Sub-catchment and the Glenealo_020 River Sub-basin. The nearest WFD River Waterbodies are an unnamed stretch of the Glenealo_020 on the southern site boundary which was of Bad Status in the 2019-2024 monitoring period and is At Risk and the stretch of the Glenealo_020 called the Lugduff Brook on the eastern site boundary which also was of Bad Status in the 2019-2024 monitoring period and is At Risk. Forestry is identified as a Significant Pressure on both waterbodies. The underlying Groundwater Body is Wicklow IE_EA_G_076 which was of Good Status in the 2019-2024 monitoring period and is At Risk, forestry is not identified as a Significant Pressure on this Groundwater body.

The application documents before the FAC on file on the FLV included; an Application Pack consisting of an Application Form dated 26/03/2024, a Felling Licence Location Map, a Felling Licence Application Map, a Harvest Plan Map (Pre-licence) and a Reforestation Map uploaded to the FLV on 23/04/2024 and an Appropriate Assessment Pre-Screening Report and Natura Impact Statement (NIS) both dated 05/07/2024 and uploaded to the FLV on 23/10/2024.

The licence application was referred to Wicklow County Council and Inland Fisheries Ireland on 01/05/2024. No response from either consultation body is recorded.

The DAFM documents before the FAC on the FLV included: an Appropriate Assessment Screening and Determination Report (AASRD) and an AASRD In-combination Statement both dated 22/10/2024 uploaded to the FLV on 24/10/2024, an Appropriate Assessment Determination Report (AAD) and an AAD In-combination Statement both dated 11/12/2024 and uploaded to the FLV on 20/01/2025.

SUBMISSIONS.

The FLV records that no third-party submission was received on the licence application.

APPROPRIATE ASSESSMENT.

Both the Applicant's Appropriate Assessment Pre-Screening Report and the DAFM AASRD screened the same five Natura sites found to be within 15Km of the site of the proposed felling licence.; Wicklow Mountains SPA (Site Code 004040) Wicklow Mountains SAC (Site Code 002122) Vale of Clara (Rathdrum Wood) SAC (Site Code 000733) Slaney River Valley SAC (Site Code 000781) Deputy's Pass Nature Reserve SAC (Site Code 000717). Both concluded that Wicklow Mountains SAC should progress to Appropriate Assessment Stage 2.

The Applicant submitted a Natura Impact Statement assessing the potential impacts of the likely significant effects of the proposed felling and replanting on Wicklow Mountains SAC.

The DAFM, as the competent authority determined:

“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:.....”

At each stage of the AA procedure the DAFM prepared a record of other plans and projects which were considered in-combination with the proposed felling for effects on the Natura 2000 sites.

ENVIRONMENTAL IMPACT ASSESSMENT.

The FAC noted that the EU EIA Directive sets out in Annex I a list of projects for which EIA is mandatory. Annex II contains a list of projects for which member states must determine, through thresholds or on a case-by-case basis (or both), whether or not EIA is required. Neither afforestation nor deforestation is referred to in Annex I. Annex II contains a class of project specified as “initial afforestation and deforestation for the purpose of conversion to another type of land use” (Class 1 (d) of Annex II). The Irish Regulations in relation to forestry licence applications, require the compliance with the EIA process for applications relating to afforestation involving an area of more than 50 Hectares, the construction of a forest road of a length greater than 2000 metres and any afforestation or forest road below the specified parameters where the Minister considers such development would be likely to have significant effects on the environment.

The decision under appeal relates to a licence for the felling and replanting of an area of 5.17 Ha. and the FAC does not consider the felling of trees, as part of a forestry operation, with no change in land use, to fall within the classes referred to in the Directive and is similarly not covered by the Irish regulations (S.I. 191 of 2017). The FAC therefore considers that screening for EIA was not required in this case.

THE APPEAL.

There is one third-party appeal against the decision to approve the Felling Licence. The Notice of Appeal and full grounds of appeal were provided to the parties.

The grounds of appeal are summarised as:

- *There was inadequate consideration given to the impact of the proposal on designated areas including the Wicklow Mountains National Park.*
- *The licence contains no protections for users of the Wicklow Way.* - The haulage of the timber will be along forest roads used frequently and regularly by recreational walkers, this creates a hazard to public safety which has not been identified in the assessment process.
- *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 areas concerned.* - The screening out of the Wicklow Mountains SPA from the need for an AA under Article 6(3) of the Habitats Directive is unsound in law. There is no Appropriate Assessment Report on the file. There is no evidence on the file that an AA has been carried out by the Minister. The area for which In-Combination effects considered in the In-combination Report are restricted both temporally and spatially.

- *The proposal constitutes Project Splitting.* - Two adjacent areas of felling in the same ownership have been applied for and licensed separately.
- *There was inadequate and ineffective public notice in contravention of Article 6 (2) of the Aarhus Convention.* - Reliance DAFM's website does not serve for effective notification to the public.
- *The Harvest Plan is not to the requisite standard.* - The mapping scales not adequate and no Haulage Route has been identified.
- *The developer has not demonstrated that they have access to the project area.* - There is a section of property between the public road and the start of Coillte property that is not in the control of the Applicant and over which they have not demonstrated that they have a legal Right of Way.
- *There was insufficient evidence provided to allow licence condition 4 to be implemented.* - No on the ground soil mapping was carried out such that condition 4 can be meaningfully implemented or enforced.
- *The 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.
- *There are inadequate ecological assessment and protection measures, including under Article 12 of the Habitats Directive (Annex IV species).* - Eight of the nine species of bat native to Ireland are within OS square T19.
- *Access to Justice is prohibitively expensive (project splitting).* - The €200 fee is prohibitively expensive and the fact that a fee is required for each appeal means that Access to Justice is prohibitively expensive.
- *The Appellant carried out a Site Survey in January 2025 identified and cites examples of high concern to the Appellant.* - A survey of Lugduff, photographs of raptors, damage to tree guards,

Minister's Statement.

The DAFM submitted a SoF in response to the appeal dated 09/10/2025. The SoF provides an overview of the decision-making procedure and a response to the appeal, a full copy of the relevant SoF was provided to the parties.

In summary the SoF submits that:

- (a) The decision was made in accordance with DAFM procedures, SI 191 of 2017 and the 2014 Forestry Act (as amended).
- (b) The SoF response to the grounds of the appeals is summarised as follows:
 1. *Assertion of inadequate consideration of the impact on designated areas including the Wicklow Mountains National Park.* - The Appropriate Assessment exercise is in compliance with Article 6 (3) of the Habitats Directive. Wicklow Mountains National Park is not designated as an SAC. The boundaries of the project do not overlap with any European Site. Sitka spruce is the predominant species used in Irish forests. DAFM did not consult with the NPWS as there was no overlap with any NHA or European Site.
 2. *Assertion that licence contain no protections for users of the Wicklow Way.* - Coillte has an open forest policy which means everyone is free to visit any of their forests according to the Leave No Trace Principles. Individuals must watch out for signs where Coillte might be working in the forest – people are asked that for safety reasons, you follow all instructions on these signs and Coillte will usually show an alternative route for walking and cycling.

3. *The assessment for this project under Article 6 (3) of the Habitats Directive.* - DAFM AA process is described. DAFM submits that the in-combination effects of adjacent plans and projects have been considered and maintains that water quality and water body status will be maintained through best practice onsite during thinning operations and adherence to licence conditions. The mitigations included in DAFM's AAD are sufficient to meet the strict test of Article 6(3). As outlined in Section 3 of the AAD DAFM Ecologists 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. A list of references.
4. *Allegation of 'Project Splitting'.* - Submitting separate licence applications for the felling of trees is in keeping with the requirements of the Forestry Act 2014.
5. *Public notice and Article 6(2) of the Aarhus Convention.* - The Department rejects the assertions made in this section of the appeal and believes that this aspect of the appeal goes beyond the remit of a forestry licence appeal and therefore of the considerations of the FAC. The steps taken by the DAFM to fulfil the Department's obligations with regard to public consultation are outlined.
6. *Harvest Plan.* - The Standards for Felling & Reforestation include examples of Harvesting and Reforestation Maps presented at 1:5,000 scale. Maps submitted at scales other than 1:5,000 can be accepted by DAFM once the required information is clear. The process for DAFM analysis of the maps is outlined.
7. *Access.* - The DAFM did not receive any correspondence from neighbours in relation to any Right of Way in connection with this licence.
8. *Licence condition 4.* - DAFM undertake routine site inspections of Coillte harvest sites. Compliance with the application of Urea is one of the checks carried out by Inspectors when on site.
9. *DAFM procedures and Article 5 of the Birds Directive.* - DAFM disagrees that its procedures are inconsistent with Article 5 of the Birds Directive. The granting of a felling licence does not exempt the holder from meeting any legal requirements set out under the Wildlife Acts 1976 – 2000, which protects all wild animals in Ireland. the FAC is not the appropriate forum for raising legal matters regarding the transposition of EU law into national legislation.
10. *Ecological assessment and protection including under Article 12 of the Habitats Directive (Annex IV species).* - 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 granting of a felling licence does not exempt the holder from meeting any legal requirements set out Wildlife Acts of 1973-2010, that bat and otter will not be impacted by the proposed forestry operations.
11. *Assertion that 'Access to Justice' is prohibitively expensive.* - The fees for appeals to the FAC are set down in Regulation 10 of the Forestry Appeals Committee Regulations 2020 (S.I. No. 418 of 2020) and are not a subject that applies to the conditions of a licence and appealable. The rationale for the fee is set out. DAFM is satisfied that the fee regime introduced for submissions on licence applications (i.e. €20) and for appeals to the Forestry Appeals Committee (i.e. €200) is legal, fair, equitable and not prohibitively expensive.
12. *Appellant claimed they carried out a Site Survey and identified (January 2025) the following (ground truth) examples of high concern.* - It is unclear if these photos relate to WW04-FL0145.

CONSIDERATION BY THE FAC.

At its sitting on the 11/06/2026, the FAC considered appeal FAC 012/2025 and had before it the DAFM record of the decision as made available on the FLV, the Notice of Appeal Form and grounds of appeal, and the SoF provided by the DAFM.

The FAC, having reviewed all the documentation and submissions, considered that there was sufficient information to enable it to assess and determine the appeal without recourse to an oral hearing.

The FAC considered the grounds of appeal under the following headings, Wicklow Mountains National Park, Wicklow Way, Article 6(3) of the Habitats Directive, Project Splitting, Aarhus Convention, Harvest Plan, Access, Licence Condition 4, Article 5 of the Birds Directive, Article 12 of the Habitats Directive (Annex IV species), Access to Justice & Fees, Appellant Site Survey.

Wicklow Mountains National Park.

The FAC considered the ground of appeal which contends that there was inadequate consideration of the impact on designated areas including the Wicklow Mountains National Park. In considering this ground of appeal the FAC noted the DAFM response marked as Ground 1 of the DAFM SoF dated 09/10/2025.

With regard to the contention that the haulage of timber and the reforestation of this site with non-native commercial afforestation is not consistent with goals, objectives and legal requirements of the National Park, a Special Area of Conservation and a Special Protection Area. The FAC noted that the site will be accessed using existing forest/local road(s) and as such haulage of timber from the site will not require the construction of any new forest roads. The Appellant states in their grounds that existing timber should be removed from the site but also states that the haulage of timber is not consistent with the objectives of several designated sites. The Appellant did not adduce any evidence as to how the proposed timber haulage across an existing road network might impact on the National Park or the Natura 2000 sites. The FAC noted that the application is for the felling and replanting of a 30-year-old commercial forest and that the undertaking of a clear-fell at this age is not unusual for a forest of this type and that Schedule 3 of the licence as issued requires the replanting of the lands and provides for the species and stocking level which are in keeping with the application. The FAC considers that the application is for the felling and replanting of a section of a larger commercial forest complex in keeping with standard forestry practice. The FAC noted the appeal suggested that the site be planted with native species similar to WW04-FL0147, however the replanting proposed by the Applicant in that case was for native species while in this case the proposed replanting is for 93% Sitka spruce and 2% Downy Birch and 5% Open Space. The role of the FAC is to consider the licence and appeal as it stands before it, in this case for the replanting of Sitka spruce.

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 that decision was made in compliance with fair procedures. The FAC could find no significant error or series of errors in the DAFM's decision to issue WW04-FL0146 in relation to the issues raised in this ground of appeal nor that the decision was made without complying with fair procedures.

Wicklow Way.

The FAC considered the ground of appeal which contends that the licence contains no protection for users of the Wicklow Way. In considering this ground of appeal the FAC noted the DAFM response marked as Ground 2 of the DAFM SoF dated 09/10/2025.

The FAC noted that the DAFM has no direct role in the implementation of specific health and safety measures in forestry operations and that such responsibility lies with the Landowner, Forestry Works Management and Contractors. The FAC noted that Condition 3 of the licence requires the licensee to comply with the Standards for Felling & Reforestation and the Environmental Requirements for Afforestation (as they apply to reforestation) and that in the Standards for Felling & Reforestation it is specifically stated that the standards are contingent on health and safety considerations, as set out in the

Health & Safety Authority's (HSA) *Code of Practice for Managing Safety & Health in Forestry Operations* 2009, which provide for protecting public safety and health.

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 this particular ground.

Article 6(3) of the Habitats Directive.

The FAC considered the ground of appeal which contends that assessment for the project under Article 6(3) of the Habitats Directive does not contain precise and definitive findings and conclusions capable of removing all reasonable doubt as to the effects of the proposed works on the protected area concerned. In considering this ground of appeal the FAC noted the DAFM response marked as Ground 3 of the DAFM SoF dated 09/10/2025.

With regard to the contention that the basis for screening out the Wicklow Mountains SPA is flawed. The FAC noted that the appeal refers specifically to the potential for impact on Merlin (*Falco columbarius*) a Qualifying Interest (QI) of the SPA and that the Applicant's Pre-screening Report states that:

"the project area being located approx. 0.2km from this SPA and is therefore located within the disturbance guidance distance of the breeding Merlin (5 km as per SNH, 2016). However, as this project area is located within a larger conifer plantation, a forest edge with adjoining suitable merlin foraging habitat larger than one hectare is not present. Given the expanse of suitable foraging habitat within the Wicklow Mountains SPA, there is no likelihood of significant effects on foraging Merlin from the proposed forestry operations due to its limited extent. Therefore, direct and indirect impacts on this SCI species can be ruled out due to the absence of a complete source pathway-receptor chain for impact."

The Appellant has adduced no evidence that Merlin is nesting on the site or that the above assessment is incorrect.

With regard to the contention that there is no Appropriate Assessment Report on file and that there is no evidence on the file that an Appropriate Assessment has been carried out by the Minister. The FAC noted that the Applicant submitted a Natura Impact Statement (NIS) therefore an AAR was not required and that the Minister had undertaken an AASRD and AAD that referred to the information submitted by the Applicant and other sources of information in carrying out of the AASRD and additionally, in the AAD ,the Applicant's NIS. As noted in the grounds a number of mitigation measures specified as required in the AAD differed from those in the NIS, in particular the AAD does not include the proposed mitigation measures in relation to Otter but requires adherence to the DAFM Forestry and Otter Guidelines 2009). The FAC does not consider that aligning the assessed measures with general standards or requirements of the DAFM is an acceptable reason for altering the specified measures save where such changes might be of a general or clarifying nature that did not change the material effect of the measure.

While the FAC would consider that it is for the Minister to assess the measures required to ensure that a project does not impact on the integrity of a European site, or to proceed as envisaged in Article 6 of the EU Habitats Directive, and that this might differ from those proposed by the Applicant, such differences should be explained and assessed as required. In the particular circumstances of this case, the FAC is satisfied that this represents a serious and significant error in the appropriate assessment process and the making of the decision.

The FAC further noted the licence specified the requirement to comply with the appropriate assessment measures in the following manner:

10) The Applicant must adhere to the mitigation measures specified in the attached Appropriate Assessment Determination document (AAD). With regard to the licence itself and the AAD, conditions affording the greatest protection to water quality and the environment take precedence. Reason: In the interest of sustainable forest management and protection of the environment

The FAC would understand that the purpose of the AA is to determine whether the development would impact on the integrity of a European site, which are designated for specific habitats and/or species, having regard to the conservation objectives of the site rather than the protection of water quality or the environment more generally. The language employed in the condition might allow the licence holder to avoid implementing specified measures that were considered necessary to reach a conclusion that a development would not impact on the integrity of a European site where a conflicting condition was considered to provide greater protection to water quality and the environment. In the current case, the FAC does not consider that there is any real reason to consider that the language poses such a risk and the decision is being set aside and remitted but the FAC considers that the manner in which this condition was specified could constitute an error in certain circumstances.

With regard to the contention that the In-combination Report for this Felling and Reforestation project is deficient as the assessment is confined to 5 years temporally and the Glenealo_020 River Sub-Basin spatially. The FAC noted that the temporal and spatial criteria used by the DAFM are standard across all its In-combination Reports. In implementing its own criteria, the FAC could find no significant error or series of errors in the in relation to this issue raised in the grounds of appeal nor that the decision was made without complying with fair procedures.

The FAC is satisfied that a serious or significant error or a series of errors was made in the making of the decision in relation to this ground such that the decision should be set aside and remitted to the Minister to undertake a new screening for AA of this proposal in view of the conservation objectives of the European site, to assess if the development, either individually or in combination with other plans or projects, is likely to have a significant effect on the European site and an AA of such effects as required.

Project Splitting.

The FAC considered the ground of appeal which contends that there is project splitting in this licence application. In considering this ground of appeal the FAC noted the DAFM response marked as Ground 4 of the DAFM SoF dated 09/10/2025.

With regard to the contention that the proposed felling and replanting of this licence application WW04-FL045 together with a separate and adjoining felling and replanting licence application WW04-FL047 could be construed as project splitting (taken by the FAC as a reference to the EIA Directive). The FAC noted that project splitting is predicated on a project being subject to EIA and as referred to above the FAC does not consider the felling of trees in a commercial plantation which would be replanted to constitute afforestation or deforestation for the purposes of land use change or a change or extension to existing afforestation as set out in the EIA Directive or that there was a requirement to undertake a screening for EIA or an EIAR in processing 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 this particular ground.

Aarhus Convention.

The FAC considered the ground of appeal which contends that there was inadequate and ineffective public notice in contravention of Article 6 (2) of the Aarhus Convention. In considering this ground of appeal the FAC noted the DAFM response marked as Ground 5 of the DAFM SoF dated 09/10/2025.

The ground contains a quotation from which the Appellant states came from a draft of the Philip Lee & Co. Regulatory Review of the Forestry Licencing System in April 2022 regarding the DAFM website as the means of public notification, comments of the Court of Appeal in McCaffrey (McCaffrey v Minister for Agriculture Food and Marine [2017] IECA 247). The ground also makes reference to a finding of the Aarhus Convention Compliance Committee.

The FAC noted that the quotation in the ground does not appear in the final report of June 2022 and therefore cannot be relied upon.

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), which in turn have been transposed through national legislation such as the Forestry Regulations 2017.

The FAC considers that Article 6(2) of the Aarhus Convention refers to the public notification requirements where an EIA is being undertaken and not at the screening stage. One of the requirements is that the public is informed of the fact that a development is subject to an assessment. The public clearly cannot be informed that a development is subject to an assessment before it has been decided that the development is to be subject to such an assessment. The FAC understands that the EU has transposed the Aarhus Convention through a number of Directives including the Environmental Impact Assessment (EIA) Directive (2011/92/EU as amended by 2014/52/EU). The recital of the EIA Directives states:

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

That public participation is not required at the screening stage is confirmed by the decision of the Court of Justice in C-42/24 *Waltham Abbey Residents Association*. This is reflected in the consultation requirement provided for under Article 6 which is required after the competent authority has determined that a development is subject to an EIA. The Forestry Regulations 2017 do not provide for the Minister to undertake an EIA in relation to a tree felling licence application. In this instance, the application is for the clearfelling of trees in a managed plantation that has already been subject to windthrow and would be replanted, with no change in land use, and does not constitute afforestation or deforestation for the purposes of land use change or any change or extension to an existing project. The operations are of a standard nature in the context of ongoing forest management in Ireland and the standards of the DAFM.

As noted above the FAC does not consider that there was a requirement to undertake a screening for EIA or an EIAR in processing the tree felling application.

The procedure adopted in this case provided for a public consultation period in keeping with the requirements of the Forestry Regulations 2017 (Statutory Instrument 191 of 2017). The application was subject to a period of public consultation at application stage and that the Appellant did not make a submission on the application.

The FAC understands that publication through its website and the map-based FLV is the form of publication chosen by the Minister for Agriculture to inform the public of a forestry licence, to make the application and decision freely available and accessible, and to facilitate submissions. The FAC considered that the comments attributed to the Court of Appeal refer to a period prior to the current Forestry Regulations 2017 and procedures of the DAFM, including the availability of the FLV. The FLV is a standalone map-based website that displays information on forestry licences in an accessible manner. The Court of Appeal decision also related to an afforestation project and not the felling of trees in an established, managed plantation and did not result in a decision of the Minister being set aside.

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 considers, that such matters would not fall within its jurisdiction to determine.

Harvest Plan.

The FAC considered the ground of appeal which contends that there are deficiencies in the Harvest Plan and conflicts with licence conditions. In considering this ground of appeal the FAC noted the DAFM response marked as Ground 6 of the DAFM SoF dated 09/10/2025.

With regard to the contention that the Harvest Plan Map submitted with the application is not to the required standard with regard to the scale of the mapping provided. The Forestry Act 2014 and the Forestry Regulations 2017 reference the information required to be submitted with a tree felling licence application and provide discretion to the Minister to prescribe further particulars and to seek further information. The FAC would understand from the Standards for Felling and Reforestation and Felling and Reforestation Policy that the submission of a Harvest Plan is not a requirement to make a tree felling licence application.

The Appellant contends that the Harvest Plan mapping should be 1:5,000 and refers to Section 17 of the Forestry Standards Manual 2024 and goes on to state that even this scale would be deficient based on the size of the site. The FAC noted that Section 17 of the Forestry Standards Manual 2024 makes no reference to Harvest Plan Maps and that while the sample Harvest Plan Map in the Standards for Felling and Reforestation 2019 indicates a scale of 1:5000 no scale is specified for a Harvest Plan Map in the Standards for Felling and Reforestation. The FAC does not consider that the Minister has established an exact legal standard for a Harvest Plan Map. The FAC further noted that the DAFM accepts scales other than 1:5,000 once the required information is clear., licence application WW04-FL0145 included a number of maps at varying scales including 1:10,000, 1:6,001, 1:5,000, and 1:2,101. The FAC does not consider that there is any reason to conclude that the application was deficient in relation to these grounds.

Access.

The FAC considered the ground of appeal which contends that the Applicant has not demonstrated that it has access to the project area. In considering this ground of appeal the FAC noted the DAFM response marked as Ground 7 of the DAFM SoF dated 09/10/2025.

With regard to access to the site, forest roads are marked on the mapping submitted and the application documentation includes a description of access. The following is recorded in the Applicant's AA Pre-Screening Report:

"The project area is accessible via the existing forestry road WW04R0073 located along the western boundary of the project area and WW04R0075, which connect to the existing forestry roads WW04R0067, WW04R0065, WW04R0117 and WW04R0116 north and east of the project area, which ultimately connects to the local primary road L-2083-0 located south-east of the project area."

Disputes regarding the existence, nature and use of rights of way would be considered civil matters that would not fall within the remit of the FAC to resolve. In any case, the Appellant in this instance has not provided any evidence or details of any contested access or rights of way. The FAC would understand that the granting of the tree felling licence does not confer any title or additional rights to any party in relation to a right of way. The FAC is not satisfied that a serious or significant error was made in the making of the decision in relation to this ground.

Licence condition 4.

The FAC considered the ground of appeal which contends that there was insufficient evidence provided to allow licence condition 4 to be implemented. In considering this ground of appeal the FAC noted the DAFM response marked as Ground 8 of the DAFM SoF dated 09/10/2025.

With regard to the contention that there was no on-the-ground soil mapping carried out for this site such that Condition 4 can be meaningfully implemented or enforced. The FAC noted that the soils as classified on the National Soils Hydrology Map are mineral soils, AminPDPT (Poorly drained mineral soils with peaty topsoil derived from mainly acidic parent materials) and AminSRPT (Shallow reasonable drained mineral soil derived from mainly acidic parent materials). The FAC understands that the methodology used for the National Soils Hydrology Map was based on a combination of existing datasets, historical soil survey data, field notes, photographs, and mapping experiences. The FAC understands that the map on which the Appellant relies, the MAES15_ESmap_soilcarbon_Final Peat Map was compiled using GIS techniques. The FAC considers that methodology used for the National Soils Hydrology Map to be a more reliable methodology for establishing on-site soil conditions.

The FAC further noted that the DAFM has stated that it undertakes routine site inspections of Coillte harvest sites and that compliance with the application of Urea, the subject of Condition 4 is one of the checks carried out by Inspectors when on site.

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.

Article 5 of the Birds Directive.

The FAC considered the ground of appeal which contends that the DAFM procedures are not consistent with the requirement for providing a General System of protection commensurate with Article 5 of the Birds Directive. In considering this ground of appeal the FAC noted the DAFM response marked as Ground 9 of the DAFM SoF dated 09/10/2025 .

The FAC considered that the grounds in the main amounted to a challenge in relation to the legality of the Wildlife legislation and Ireland's transposition of EU Directives and that 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 or the legality of the Wildlife Acts. 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 only make a determination of the appeal against the Felling Licence.

The FAC noted that the Wildlife Act 1976 (as amended) confers protection to wild birds and their nests and eggs. 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), nor does it relieve the recipient of their responsibilities under Regulations 51 to 55 of the European Communities (Birds and Natural Habitats) Regulations 2011 as amended.

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.

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

The FAC considered the ground of appeal that contends that there has been no assessment of the potential impact on species listed under Article 12 of the Habitats Directive in relation to Annex IV species, specifically bats and otter. In considering this ground of appeal the FAC noted the DAFM response marked as Ground 10 of the DAFM SoF dated 09/10/2025.

The FAC noted that the Appellant has adduced no evidence as to the presence of otter or bat 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 primarily of mature coniferous plantation which would not be considered to be a particularly rare or valuable habitat and would not have a well-developed understorey. The application is for the felling of trees, and the land would be subsequently replanted.

The FAC noted that bat species are protected under the Wildlife Act 1976 (as amended) and the European Communities (Birds and Natural Habitats) Regulations 2011 as amended and that both otter and bat species are protected under the Wildlife Act 1976 (as amended). The grounds refer to an NPWS Guidance document *"Strict Protection of Animal Species - Guidance for Public authorities on the Application of Articles 12 and 16 of the EU Habitats Directive to development/works undertaken by or on behalf of a Public Authority"*. The FAC noted that the document relates to activities undertaken by or on behalf of public authorities and 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.

Access to Justice & Fees.

The FAC considered the ground of appeal which contends that is prohibitively expensive and that the legislation governing appeals to the FAC is possibly contrary to European Law. In considering this ground of appeal the FAC noted the DAFM response marked as Ground 11 of the DAFM SoF dated 09/10/2025.

The FAC considers this ground of appeal is not related to a decision of the Minister concerning Section 7 of the Forestry Act 2014 nor the Forestry Regulations 2017 but is instead seeking to challenge the provisions of the Agriculture Appeals Act 2001, as amended, and related legislation.

The FAC noted that the said fee is prescribed in Article 10 of the Forestry Appeals Committee Regulations 2020 and has been correctly applied by the FAC.

The FAC is not the correct forum to seek to challenge legislation and the FAC understands that decisions of public bodies may be challenged through the Judicial Review process in line with the Rules of the Superior Courts.

The FAC was satisfied that the matters raised did not fall within its remit to determine.

Appellant Site Survey.

The FAC considered the ground of appeal which contends that the Appellant carried out a Site Survey in January 2025 and identified examples of high concern, a PDF of the Survey area, Photographs of Raptors (Merlin, Red-Kite, Peregrine falcon) in the clearfell Logging area, and Damage to tree-guards planted in previous licences. In considering this ground of appeal the FAC noted the DAFM response marked as Ground 12 of the DAFM SoF dated 09/10/2025.

The FAC noted that the Survey did not include the site of WW04-FL0145, there were no photographs of raptors or of damage to tree guards attached to the Notice of Appeal Form or the Grounds of Appeal nor do the grounds identify the particular "example of high concern" associated with the survey or photographs.

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 this ground.

CONCLUSION.

In considering the appeal, the FAC had regard to the record of the decision, the Notice and grounds of appeal, and the SoF submitted by the DAFM.. The FAC considered the provisions of the Agriculture Appeals Act 2001, as amended, and the Forestry Appeals Committee Regulations 2020 and the relevant legislation under which the decision on licence WW04-FL0145 was made. The FAC is satisfied that a serious or significant error was made in the process of making of the decision, the FAC is therefore setting aside and

remitting the decision of the Minister for Agriculture, Food and Marine to ensure the DAFM carries out a new screening for Appropriate Assessment of the proposed felling and replanting, in view of the conservation objectives of the European site, to assess if the development, either individually or in combination with other plans or projects, is likely to have a significant effect on the European site and an appropriate assessment of such effects as required prior to the making of a new decision.

Yours sincerely,

On Behalf of the Forestry Appeals Committee.