An Coiste um Achomhairc Foraoiseachta
Forestry Appeals Committee

Mr. Damien Brophy,
[redacted]

23rd October 2026

Subject: Appeal FAC 103/2025 regarding TFL01145525

Dear Mr. Brophy,

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. The Agriculture Appeals Act 2001, as amended, and the Forestry Appeals Committee Regulations 2020 provide the statutory basis for the functioning and operation of the FAC.

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 TFL01145525.

THE LICENCE.
Licence TFL01145525 is for the Clearfelling of 62.2 Ha (divided into 7 plots) of Sitka spruce & Lodgepole Pine (South Coastal) and the replanting of same with Sitka spruce & Lodgepole Pine (South Coastal) and Additional Broadleaves.

The application for licence TFL01145525 was published on the Forestry Licence Viewer (FLV) on 03/03/2025 and advertised for public consultation on the same day. The licence was advertised for a second period of public consultation on 06/06/2025. A decision approving the licence was issued on 16/10/2025 subject to a number of standard felling and replanting conditions, and Compliance with the Harvest Plan, compliance with the Standards for Felling & Reforestation, the Felling & Reforestation Policy & the Environmental Requirements for Afforestation, and compliance with the Appropriate Assessment Determination mitigation measures.

The licence was suspended on 24/10/2025 however an appeal against the licence proper was submitted on 01/11/2025, which was within the statutory appeal period and was deemed to be valid.

FORESTRY APPEALS COMMITTEE.
Appeal Reference: FAC 103/2025 against the decision to grant licence TFL01145525 as dated on 16/10/2025 was considered by a division of the FAC at a hearing held remotely on 10/09/2026. The FAC members present were:

FAC Members: Mr. Liam Ward (Deputy Chairperson), Mr. Vincent Upton & Mr. Iain Douglas.
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, a SoF provided by the DAFM and a post-appeal submission by the Appellant in response to the DAFM SoF.

BACKGROUND.
The site is located some 6.6 Km north-west of the village of Mountrath Co. Laois. The site is contained within a larger area of coniferous forest. Extraction of the timber will be via a proposed forest road and access onto a local public road, L1005. The site is bounded on the north by a Relevant Watercourse, a separate Relevant Watercourse runs along the southern site boundary, this Relevant Watercourse flows south from the public road forming the north-western site boundary.

The soils on the site are described as being 87% Peaty gleys and 13% Blanket Peats. The average slope of the site is described as moderate (5%) and varies between 0% and 23%. The habitat on site is described as 100% Conifer Plantation (Fossitt WD4).

The site lies in the Nore 15 Water Framework Directive (WFD) Catchment, the Nore_SC_030 Sub-catchment and the Mountrath_010 River Sub-basin. The nearest WFD River Waterbodies are (1) Mountrath_010 (EPA Name Mountainfarm 15) 344m South of the site which was of Moderate Status in the 2019-2024 monitoring period and is Not at Risk, (2) Mountrath_010 (EPA Name Drim 15) 368 SE of the site which was of Moderate Status in the 2019-2024 monitoring period and is Not at Risk, (3) Mountrath_010 (EPA Name Killinure Stream) 459 West of the site which was of Moderate Status in the 2019-2024 monitoring period and is Not at Risk, (4) Mountrath_010 (EPA Name Mountrath 15) 713 NE of the site which was of Moderate Status in the 2019-2024 monitoring period and is Not at Risk, and (5) Delour_10 (EPA Name Inchanisky) 617 NW of the site which was of High Status in the 2019-2024 monitoring period and the Risk is Under Review. The site overlies two Groundwater Bodies, the Camross IE_SE_G_027 Groundwater Body in the northern part of the site which was of Good Status in the 2019-2024 monitoring period and is Not at Risk and the Coolrain IE_SE_G_047 Groundwater Body in the southern part of the site Good Status in the 2019-2024 monitoring period and is Not at Risk.

The forestry comprising of this licence TFL01145525 was the subject of a previous felling licence TFL00321519 which was refused on 28/06/2024 for the reason that *"the current licence is not reflective of the current situation on the ground,"*.

The application documents before the FAC on file on the FLV included; a Replanting Map and Species Map both dated 18/02/2025, a Bio Map, Harvest Plan Map Location Map all dated 23/02/205, and an undated Harvest Plan and undated Felling Submission Report. All documents were uploaded to the FLV on 03/03/2025

The licence application was referred to Laois County Council, the National Parks & Wildlife Service (NPWS) and Inland Fisheries Ireland (IFI) on 28/02/2025. No response from the county council or IFI is recorded.

The NPWS responded on 21/03/2025 indicating (i) Appropriate Assessment was required for the Slieve Bloom Mountains Special Protection Area (SPA) (Site Code: 004160), (ii) that proposed works should take place from August 15th to the 28th of February of the following year to avoid disturbance to breeding and

nesting birds and that if works are to take place outside these dates an Appropriate Assessment Screening should be undertaken as per Forest Service guidelines, (iii) that all appropriate measures should be incorporated into the clearfelling programme to ensure that the potential for runoff and resultant deterioration of the receiving waters quality is eliminated, in adherence with Forest Service guidelines (iv) that the site presents significant issues in relation to runoff from the site and the potential impact on any receiving waters downstream and that the Forest Service is advised to seek all relevant information from the Applicant on measures to mitigate against such outcomes and ensure that best practice is adhered to.

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 14/04/2025, an AA Report and AAR In Combination Report both dated 06/05/2025 all uploaded to the FLV on 05/06/2025, an AA Determination 22/09/2025 and AAD In Combination Report both dated 22/09/2025, an Appropriate Assessment Screening Report Inspectors Certification Report Project Description, Environmental and Social Considerations Site Plots Report (Felling) all dated 16/10/2025 all uploaded to the FLV 16/10/2025

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

APPROPRIATE ASSESSMENT.
The DAFM AASRD screened seven Natura sites found to be within 15 Km of the site of the proposed felling licence; Slieve Bloom Mountains SAC (Site Code 000412), Knockacoller Bog SAC (Site Code 002333), Coolrain Bog SAC (Site Code 002332), Clonaslee Eskers and Derry Bog SAC (Site Code 000859), Slieve Bloom Mountains SPA (Site Code 004160), River Barrow & River Nore SAC (Site Code 002162), River Nore SPA (Site Code 004233).

The DAFM AASRD concluded that Slieve Bloom Mountains SPA, River Barrow & River Nore SAC, and the River Nore SPA should proceed to Appropriate Assessment Stage 2. Under the provisions of the Forestry Regulations 2017(as amended) the DAFM prepared an AAR to assess the potential impacts of the likely significant effects of the proposed felling and replanting on those three Natura 2000 sites.

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 62.2 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 DAFM completed a procedure in a document titled *"Project Description, Environmental and Social Considerations"*, certified on 16/10/2025, in which the proposal was considered across a range of criteria and this concluded that on the basis of an examination the application was not subject to an EIA process.

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:

1. The assessment for this project under Article 6(3) of the Habitats Directive does not contain precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works on the protected area concerned.
    - The mitigation measures set out in the AAD are not consistent with the mitigation measures of the AAR.
    - The In Combination Report is descriptive, not analytical; and relies on other regimes.
    - The AAD uses generic templates, and conclusory assertions are given in place of objective scientific analysis.
    - The AAR does not link to Site Specific Conservation Objectives.
    - The AAD statement is flawed
    - The AAD In Combination Statement is unattributed.
    - There is an absence of detail on the replanting.

2. DAFM procedures are not consistent with the requirement for providing a General System of protection commensurate with Article 5 of the Birds Directive (2009/147/EC)
    - There is no lawful assurance against felling during the breeding/rearing period with reference to the decision of the Court of Justice of the EU (CJEU) case C-784/23.
    - There is an absence of a site-specific breeding bird assessment and receptor mapping.
    - There is no reasoning on the file for a derogation under Article 9 of the Birds Directive.
    - There is no assessment in the context of the Hen Harrier Threat Response Plan.
    - There is a misinterpretation of Article 5 of the Birds Directive, the protections apply to all wild birds.

3. The project cannot be demonstrated to be compliant with 'Good Forestry Practice' unless the significant legacy effects resulting from the 1994 planting are addressed.
    - The project area was established in 1994 as part of afforestation of 100 Ha+ under licence no. CA610. No EIA screening was undertaken before that project was approved.

- The DAFM must remedy the failure to carry out an EIA for an afforestation project that exceeded 100 Ha in 1994

4. There is no determination that the project is compliant with the Water Framework Directive.
   - Authorisation for an individual project where it may cause a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status must be refused.
   - There is no assessment of the risk to water quality from windthrow.
   - There is no reference to the Environmental Protection Agency's Pollution Impact Potential screening for forestry (nutrients/sediment risk) for the site.
   - The DAFM standard setbacks do not address windthrow situations.
   - The DAFM standard setbacks are not verified by scientific evidence.
   - There is no Water Framework Directive compliance statement (Status & Risk) for receiving waters.
   - There is no Water Framework Directive / Pollution Impact Potential analysis of pesticide pressures (acetamiprid) and the is no mapped mitigation.

5. Compliance with S.I. 155 of 2012 has not been demonstrated
   - Regulation 12 sets a default presumption against pesticide use within a "specific area" (which includes European sites). The project does not preclude the use of pesticide.

6. The licence has been signed by a party who is not an Authorised Officer of the Minister
   - M. Cleary and S. Knightly are not Authorised Officers (AIE 25-310)

7. Perceived Bias
   - Concerns regarding the impartiality of the Forestry Appeals Committee are exemplified in recent decisions of the Committee.

The grounds include the following summary
- The DAFM has made multiple errors in reaching its decision.
- All components of a notification of appeal have been met.
- There is an objection to any preliminary screening of the grounds of appeal by the Minister's staff.
- There is an objection to any of the Minister's staff sitting on the panel that hears the appeal.
- A revolving door appeal system for forestry licences is not consistent with the legislative principle that Access to Justice should not be prohibitively expensive
- The €200 fee in itself is prohibitively expensive.
- The FAC is required to issue a decision on each element of this appeal.
- The FAC is required to address the appeal in full, not in part.
- There is a request that costs be awarded in the matter of this appeal.

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:

Ground 1. Assessment for this project under Article 6(3) of the Habitats Directive.

- Referrals to statutory consultees are automatically triggered according to interactions with certain spatial rules, while others are triggered following manual checks against certain rules, or on a discretionary basis. All referrals and responses (where received) are posted to the FLV. A referral was issued to the Local Authority and no response was received.
- DAFM disagrees with the contention that mitigations provided are not effective or precise enough for this particular site. The mitigations included in DAFM's AAD are sufficient to meet the strict test of Article 6(3).
- DAFM outlines its procedures under Article 6(3).
- DAFM submits that the in-combination effects of adjacent plans and projects have been considered and DAFMs maintains that water quality and water body status will be maintained through best practice onsite during Clearfell and Thinning operations and adherence to licence conditions.
- DAFM submits that the procedures that determine timing restrictions for Hen harrier within SPA's where Hen Harrier is listed as a qualifying interest, is described in the 2015 publication '*Hen Harrier Conservation and the Forestry Sector in Ireland*'.
- DAFM acknowledges the anomaly between the AAR and AAD regarding timing restrictions for Hen harrier and that the appeal on the licence precluded DAFM's ability to correct the anomaly.

Ground 2. DAFM procedures and Article 5 of the Birds Directive (2009/147/EC).

- The licence sets out that the granting of a felling licence does not exempt the holder from meeting any legal requirements set out under the Wildlife Acts 1976 – 2000.
- DAFM disagrees that its procedures are inconsistent with Article 5 of the Birds Directive.

Ground 3. 'Good Forestry Practice' and 'legacy effects' resulting from the 1994 planting.

- DAFM sets out the benefits of Sitka spruce forest as a significant carbon store and sustainable wood products replacing the use of carbon intensive products, such as concrete and steel.
- DAFM Sets out the role of forestry in terms of carbon sequestration and rural employment.
- Government policy in Ireland is tasked with developing forestry and related industry in a manner that is in keeping with the principles of sustainable forest management (SFM) and the protection of the environment.
- The grounds do not identify any significant effects on the environment that have occurred since the establishment of the forest nor a basis for assuming that the original planting was regulatorily deficient.
- Clearfelling and replanting of an already established plantation forest is a standard operational activity and fall within the specified forestry activities or projects in the EIA Directive.

Ground 4. Water Framework Directive.

- Compliance with the Standards for Felling and Reforestation which set out a wide range of operational measures to prevent direct and indirect impact on water quality arising from the operation is a condition of the licence.
- Standards for Felling and Reforestation stipulate water setbacks adjoining aquatic zones, which together with the silt control measures, introduce a permanent undisturbed semi-natural buffer along the watercourse, developed primarily to protect water. These mandatory safeguards are strengthened further by Mitigations listed in the licence itself under the Section 'Inspectors Conditions', in relation to this specific site.
- There are a number of conditions specifically targeted at protecting water quality included in the licence.
- Windblow damage caused by Storm Éowyn was unavoidable for forests in its path and therefore windblow damage caused by Storm Éowyn is not an indicator that the forest was not suited to that particular site.
- The benefits of clearing windblow and replanting are set out.
- Conditions 23 – 32 refer to chemical usage aimed at protecting the environment including aquatic habitats.
- Setback distances used in the licence were based on findings from the HydroFor project. The HYDROFOR project (EPA Research Report No. 169), supported by Ireland's Environmental Protection Agency (EPA) and the Department of Agriculture, Food and the Marine (DAFM), investigated the impacts of forestry operations on the ecological quality of water in Ireland.

Ground 5. Compliance with S.I. 155 of 2012.

- Users of Plant Protection Products (PPPs) are required to comply with the principles of Good Plant Protection Practice (GPPP), as provided for in S.I. 155 of 2012 as amended by S.I. No. 438 of 2019. These are published by the DAFM and provide the basis for the proper and appropriate use of these products.
- There is no legal requirement for forest owners to inform adjacent landowners of their intention to spray nor is there a need for animals in adjacent properties to be moved as the application of any pesticide will be by hand in a very targeted manner that minimises exposure of the environment.
- The use of acetamiprid is limited to dipping offsite, at the forest nursery , not on this site
- The same standards and mitigation measures to protect water prevent any transfer of the chemical across the site.

Ground 6. Authorised Officers.

- The Appellant does not refer to any legal basis for their assertion with regard to this ground.

Ground 7. Breach of Constitutional right to fair procedure: Objective or Apparent Bias : Institutional Bias.

- This ground does not raise any environmental impacts that may be caused by the operation, nor does it raise any issue with regard to the actual decision of the Minister.
- The claims contained in this ground are not relevant to the decision on an individual forestry licence.

POST-APPEAL SUBMISSION.
A post appeal submission was received from the Appellant in response to the DAFM Statement of Fact (SoF) and circulated to the parties. The FAC considered the post-appeal submission to be an elaboration of matters raised in the appeal proper.

CONSIDERATION BY THE FAC.
At its sitting on the 10/09/2026, the FAC considered appeal FAC 103/2025 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, the SoF provided by the DAFM and the post-appeal submission made by the Applicant.

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: Article 6(3) of the Habitats Directive, Article 5 of the Birds Directive, 1994 Afforestation, Water Framework Directive, S.I. No. 155/2012 - European Communities (Sustainable Use of Pesticides) Regulations 2012, Authorised Officers, Perceived Bias, Summary.

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 1 of the DAFM SoF dated 25/11/2025 and the Appellant's response to the same.

With regard to the contention that the mitigation measures specified in the AAD are is not consistent with those contained in the AAR, the FAC noted that the mitigation measures in bullet point one (site-specific contingency plan for all machine operators and other site personnel) and bullet point two (the restriction on operations during the period 1st March to the 15th August, inclusive) of the AAR and are not included in the AAD mitigation measures and that their omission from the AAD is not explained.

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, the differences between the mitigation measures in the Stage 2 AAR and the final AAD should be explained and assessed. In the particular circumstances of this case, the FAC agrees with the Appellant a serious and significant error was made in the Appropriate Assessment process and the making of the decision.

The FAC noted that the DAFM in its SoF did acknowledge it was aware of this error in AA process after the licence was issued and suspended the licence but was precluded from correcting the error by the submission of the appeal.

The FAC noted that the ground makes a number of general statements and suggestions that the DAFM's AAR and AAD were deficient. The information before the FAC is that in this case, both the AAR and the AAD were prepared/signed off by an ecologist and these documents prescribe mitigation measures to ensure that the proposed felling and reforestation project will not adversely affect the integrity of the three Natura sites subject to AA Stage 2, Slieve Bloom Mountains SPA, River Barrow & River Nore SAC,

River Nore SPA. The Appellant adduces no evidence that the basis for the AA conclusion was incorrect except in relation to Slieve Bloom SPA as previously noted.

With regard to the submission of the NPWS the FAC noted the opposite views taken between the NPWS and the DAFM regarding as to whether the site is within an HLNA for Hen Harrier. The DAFM should confirm the HNLA Layer of May 2025 is the most up to date version available to it.
With regard to the NPWS statement that the *"The Forest Service should consider refusing reforestation on this site due to the overriding environmental consideration of the site."* The FAC noted that the DAFM is the competent authority for issuing forestry licences and that consideration of responses from consultation bodies is a matter for the DAFM, the application before the Minister is for a tree felling licence made under the provisions of the Forestry Act 2014 and the Act does not provide for a reforestation licencing process.

With regard to the contention that the AAR does not link to Site Specific Conservation Objectives, the FAC noted that in undertaking an Appropriate Assessment, the Minister is required to have regard to the conservation objectives of the European site. The FAC further noted that in the tables for each Natura 200 site in Section 3 of the AAR *"Identification and assessment of potential adverse effects arising from the project itself (i.e. individually)"* the Site-Specific Conservation Objectives for each Qualifying Interest (QI) and Special Conservation Interest(s) (SCI) are identified.

The FAC also noted the mitigation measures in the AAD were a direct response to the matters raised in the second paragraph of the NPWS regarding protection of water quality.

With regard to the contention that the In-combination Report for this Felling and Reforestation project is deficient as the assessment is confined to the Delour_010 and Mountrath_010 River Sub-Basins. The FAC noted that the spatial criteria used by the DAFM for the identification of other plans and projects located in the general vicinity of the project area for the purpose of in-combination impacts is the river sub-basin and is 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 also noted that the In-combination Reports are an appendix to the AASRD, AAR, and AAD and as such it is attributable to the person who signed those documents.

With regard to the contention that there are no details of the replanting in the AASRD. The FAC noted that the details of the proposed replanting are contained in the application documents titled Felling Submission Report, Harvest Plan and Replanting Species Map and that the AASRD specifically states that *inter alia* the *"the initial application, including all information submitted by the Applicant"* was taken into account in the AASRD and that number of measures identified in the AAR related to the replanting process.

The FAC is satisfied that a serious or significant error 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 AAR and AAD for this proposal in view of the conservation objectives of the European sites.

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 (2009/147/EC). In considering this ground of appeal the FAC noted the DAFM response marked as Ground 2 of the DAFM SoF dated 25/11/2025 and the Appellant's response to the same.

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.

With regard to the Hen Harrier Threat Response Plan the FAC noted that DAFM has a map-based methodology and an agreed procedure with the NPWS to determine whether further assessment is required for the Hen Harrier. As previously noted the NPWS and the DAFM appear to have differing views as to whether the site is within an HLNA for Hen Harrier and that the DAFM should confirm the HNLA Layer of May 2025 is the most up to date version available to it.

The FAC considers that its remit does not extend to making a determination as to whether Ireland has correctly transposed into national law the requirements of the Birds Directive 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 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 this ground except in the context of the errors identified in relation to the Appropriate Assessment process.

1994 Afforestation.

The FAC considered the ground of appeal which contends that project cannot be demonstrated to be compliant with 'Good Forestry Practice' unless the significant legacy effects resulting from the 1994 planting are addressed. In considering this ground of appeal the FAC noted the DAFM response marked as Ground 3 of the DAFM SoF dated 25/11/2025 and the Appellant's response to the same.

The FAC noted that under the EIA Directive 85/337/EEC on 25/07/1987(as amended) "initial afforestation" is and always has been an Annex II project. The Felling Submission Report on file indicates that the initial afforestation on the lands subject of this felling was been undertaken in 1994 which predates the amendment of the original EIA Directive by Directive 97/11/EC (which introduced the requirement for member states to set thresholds for those activities set out in Annex II of the original EIA Directive or to assess projects on a case-by-case examination) on 03/03/1997 and its transposition into Irish Law by S.I. No. 538/2001 - European Communities (Environmental Impact Assessment) (Amendment) Regulations, 2001 on 04/12/2001.

The ground contends that the current EIA related legislation and thresholds established in the Forestry Regulations 2017 should be retrospectively applied to an afforestation development from 1994. The FAC does not consider this to be reasonable. Since 1989, EIA legislation has changed both at EU and domestic levels and the thresholds and national competent authorities have also changed on a number of occasions.

The FAC notes that the Appellant has adduced no evidence of "significant legacy effects" of the afforestation having regard to the statutory requirements which were in place at the time of its planting.

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 implementation of the EIA Directive by national government *"The State must remedy past Environmental Impact Assessment failures."* the FAC considers that this is not a matter that falls within its remit under the Act. The FAC considers that its remit is to make a determination on the decision under appeal in accordance with the requirements of the Agriculture Appeals Act 2001, as amended.

The FAC 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 of appeal.

Water Framework Directive.
The FAC considered the ground of appeal which contends that there is no determination that the project is compliant with the Water Framework Directive. In considering this ground of appeal the FAC noted the DAFM response marked as Ground 3 of the DAFM SoF dated 25/11/2025 and the Appellant's response to the same.

The FAC noted that the Appellant refers to the Court of Justice of the European Union Judgment in Case C-461/13 (the Weser Case) which states that Member States are required to refuse authorisation for an individual project where it may cause a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status, unless a derogation granted under Article 4(7) of the Directive.

The FAC noted that the project area does not contain a Water Framework Directive surface water body. The biomap shows a relevant watercourse draining to the Killinure Stream River, a WFD river waterbody some 459 m from the site and separated from the site by existing forestry and open agricultural land. The biomap also shows a relevant watercourse draining to the Mountrath 15 WFD river waterbody some 713 m from the site and separated from the site by existing forestry. Both WFD waterbodies connect to the River Barrow and River Nore SAC

The FAC noted that the Harvest plan includes for the provision of silt traps and setbacks from the relevant watercourses in order to protect water quality. The FAC further noted that the licence requires the harvesting and replanting to be carried out in accordance with the Standards for Felling & Reforestation and the Environmental Requirements for Afforestation both documents set out measures for the protection of water quality.

The FAC noted that the River Barrow and River Nore SAC was subject to Appropriate Assessment and it was determine that, subject to a number of mitigation measures relating to the protection of water quality, there would be no impact on the Qualifying Interests of the SAC in particular the aquatic species. The implementation of the AAD mitigation measures is a condition of the licence.

The FAC considered that there was no basis to conclude that the proposal would result in the deterioration of any waterbody or impede any waterbody from reaching a good status or any other requirement or objective of the WFD.

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 of appeal.

SI No. 155/2012 - European Communities (Sustainable Use of Pesticides) Regulations 2012.
The FAC considered the ground of appeal which contends that there was no assessment that ensured compliance with Regulation 12 of SI 155 of 2012 - European Communities (Sustainable Use of Pesticides) Regulations 2012. In considering this ground of appeal the FAC noted the DAFM response marked as Ground 5 of the DAFM SoF dated 25/11/2025 and the Appellant's response to the same.

The FAC noted that the granting of a felling licence does not remove the obligation on the licensee to abide by and fulfil the requirements of any other legislation which would include. SI No. 155/2012 - European Communities (Sustainable Use of Pesticides) Regulations 2012.

The FAC noted that the Appellant quotes Regulation 12(1) of SI 155 of 2012 which itself is subject to paragraph 2 of the same Regulation. Paragraph 2 permits the use of pesticide in a Natura 2000 site subject to a risk assessment.

The FAC noted that Regulation 12 of SI 155 of 2012 in its entirety pertains to the person applying the pesticide and that paragraph 2 of that Regulation requires a person obliged to apply a pesticide in a Natura 2000 site to complete a risk assessment when applying the pesticide. The FAC further noted that only DAFM-registered professional users who have undergone the appropriate professional training can apply Plant Protection Products that are authorised for professional use and that the DAFM maintains a Register of Approved Pest Management Trained Professional Users, and as such the persons applying the pesticide have been assessed. The FAC understands that the granting of the licence does not remove any obligations on the licence holder or their agents in regard to the use of pesticides.

The FAC noted that there are additional mitigation measures in the DAFM AAD to protect the environment including aquatic habitats.

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 of appeal.

Authorised Officers.
The FAC considered the ground of appeal which contends that the Felling Licence and Appropriate Assessment Determination have been signed by parties who are not Authorised Officers of the Minister under the Forestry Act, which the FAC takes this to mean the Forestry Act 2014 (as amended). In considering this ground of appeal the FAC noted the DAFM response marked as Ground 6 of the DAFM SoF dated 25/11/2025 and the Appellant's response to the same.

The FAC noted that the powers of Authorised Officers are set down in Section 24 of the Forestry Act 2014 (as amended) and more particularly Section 24(1)(a-l) and do not include a power to sign licences or Appropriate Assessment Determinations. The effect of Section 24(1) therefore, is that one does not have to be an Authorised Officer of the Minister appointed under the Forestry Act to sign licences or Appropriate Assessment Determinations. The section relates to specific powers of inspection and other activities that might be carried out by an Authorised Officer under the Act. The FAC understand that employees of the DAFM are entitled to act on behalf of the Minister for Agriculture, Food and the Marine.

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 of appeal.

Perceived Bias.
The FAC considered the ground of appeal which contends that the Minister having instructed the FAC to prioritise the hearing of appeals against decisions on windthrow sites negates the independence of the FAC and creates a perception of bias, furthermore the appointment of two members of staff of his own Department to the FAC constitutes institutional bias. In considering this ground of appeal the FAC noted the DAFM response marked as Ground 7 of the DAFM SoF dated 25/11/2025 and the Appellant's response to the same.

Section 14D of the Agriculture Appeals Act 2001, as amended, provides for the Minister to issue a directive as to policy, including the prioritisation of classes of appeals to be heard, that section does not provide for the Minister to interfere with the decision-making process itself. The FAC operates under the Agriculture Appeals Act 2001 as amended and its members were duly appointed by the Minister. The FAC is required by the legislation to act independently and impartially in the performance of its functions.

The matters raised in this ground of appeal are not concerned with whether a serious or significant error or a series of errors was made in the making of the decision on TFL01145525 or that the decision was made without complying with fair procedures, but rather with the provisions of the Agriculture Appeals Act 2001, and as such cannot be considered by the FAC under the Agriculture Appeals Act 2001 (as amended) and related legislation.

Summary.

The FAC noted that the summary at the end of the grounds of appeal is largely comprised of a series of statements and opinions of the Appellant some of which do not require a response.

With regard to the Appellant's contention of bias by the FAC see above.

With regard to the Appellant's contention that the Forestry Appeals system is prohibitively expensive and that the legislation governing appeals to the FAC is possibly contrary to European Law. 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 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.

With regard to the fee for an appeal itself, the FAC noted that the said fee is prescribed in Article 10 of the Forestry Appeals Committee Regulations 2020 and was paid in this instance. The Agriculture Appeals Act 2001 empowers the Minister to set fees for the making of an appeal.

The FAC was satisfied that the matters raised in the summary did not fall within its remit to determine and that its determination in relation to appeal FAC103/2025 was properly made in keeping with the Agriculture Appeals Act 2001 and the Forestry Appeals Committee Regulations 2020.

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 and the submission made by the Appellant. 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 TFL01145525 was made. The FAC is satisfied that a serious 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 and complete a new Appropriate Assessment of the project under the Forestry Regulations 2017 and in keeping with Article 6 (3) of the EU Habitats Directive.

Yours sincerely,



On Behalf of the Forestry Appeals Committee.