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31<sup>st</sup> July 2025

**Subject:** Appeals FAC 026 & 028/2024 against licence decision LM06-FL0182

Dear [REDACTED]

I refer to the appeals to the Forestry Appeals Committee (FAC) in relation to the above licence granted by the Minister for Agriculture, Food and Marine (Minister). The FAC established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001 ("The Act"), as amended, has now completed an examination of the facts and evidence provided by the parties to the appeal.

#### **Hearing**

A hearing of appeals FAC 026 & 028/2024 was held remotely by the FAC on 15<sup>th</sup> July 2025. In attendance:

FAC Members:	Mr. Seamus Neely (Chairperson), Mr. Iain Douglas & Mr. Vincent Upton.
Secretary to the FAC:	Ms. Aedin Doran.

Having regard to the particular circumstances of the appeals, the FAC considered that it was not necessary to conduct an oral hearing in order to properly and fairly determine the appeals.

#### **Decision**

Having regard to the evidence before it, including the record of the decision, the notices of appeal, and submissions received, the Forestry Appeals Committee (FAC) has decided to allow the appeals and set aside the decision of the Minister for Agriculture, Food and the Marine to grant licence LM06-FL0182. The reasons for this decision are set out hereunder.

#### **Background**

The decision under appeal relates to the granting of a felling licence at Boggaun, Larkfield, Co Leitrim. The application as submitted is dated 02/10/2023. The application included operational and environmental information and maps outlining the licence area and operational and environmental features. The operations are described as involving the felling in 2025 of an existing plantation on an area of 5.12 ha comprising one plot of Sitka spruce on 4.4 hectares and a second plot of 0.72 hectares described as bare with no canopy cover and no trees to be felled. The felling age of the Sitka spruce is said to be 41 years in 2025. The replanting of the application area is proposed as 70% Sitka spruce, 25% Lodgepole pine, and the balance of the area as open space.

**Appropriate Assessment Pre-Screening Report, dated 07/12/2023 (Applicant's)**

The applicant submitted a document entitled *Appropriate Assessment Pre-Screening Report*, dated 07/12/2023. This report which is marked as being for Clearfell and Reforestation project LM06-FL0182, located at Boggaun and Larkfield, Co. Leitrim, describes the site, including hydrology, and operations in further detail and screens the proposal for potential significant effects on European sites. This document states that the project area consists of a plantation of conifer high forest and bare plantation and that it is made up of two sub-compartments, one of which is comprised of Sitka spruce planted in 1984, forming a closed canopy over the majority of the project area. The remaining sub-compartment is stated to be an area of bare plantation containing bog cotton. A cave is stated to be located within this sub-compartment.

The project area is stated to be located within the BONET\_040 river sub-basin. The report records that there are no aquatic features located within or in close proximity to the project area. The nearest aquatic feature within this river sub-basin is described as an un-named aquatic zone, which is visible on the OSI 6 inch maps which rises approximately 330 metres north-west of the project area. It is stated that there is no clear flow path between the project area and this aquatic zone and that a buffer of open heath habitat and broadleaf woodland occurs between the project area and this aquatic zone.

The report concludes that due to no aquatic features being located within or in close proximity to the project area, the nearest aquatic feature within this river sub-basin being located approximately 330 metres away, no clear flow path existing between the project area and this aquatic zone, a buffer of heath habitat and broadleaf woodland occurring between the project area and this aquatic zone, and as the project area is located on a moderate slope, and is small in scale (approx. 5.12 ha), there is no potential for significant effect on any European Sites within this river sub-basin.

It is stated that the project area is part of a larger conifer plantation of varying age and class to the south. The project area is stated to be bordered by open heath habitat to the north and east. The surrounding area and wider landscape is said to support additional conifer plantations, upland heath and peatland habitats and agricultural grasslands. The project area is said to be located on blanket peat soils (BktPt) and peaty gley soils (BminSRPT) on a moderate slope, sloping in a north-westerly direction.

The report states that there are seven Natura 2000 sites located within 15km of the project area, these are:

- Arroo Mountain SAC (001403)
- Ben Bulbin, Gleniff and Glenade Complex SAC (000623)
- Boleybrack Mountain SAC (002032)
- Glenade Lough SAC (001919)
- Lough Gill SAC (001976)
- Lough Melvin SAC (000428)
- Sligo/Leitrim Uplands SPA (004187)

The project area is stated to be accessible via the existing forest road LM06R0034, which runs along the south-western boundary of the project area. The pre-screening document states that all European Sites within a distance of 15km surrounding the project area were identified and considered in relation to hydrological pathways for likely significant effect and records, that in this case, there are no hydrologically connected European site within 15km of the project area.

The pre-screening also states that in addition, the potential for hydrological pathways for likely significant effect with European Sites at distances greater than 15km was also considered and in this case, there are no hydrologically connected Natura 2000 sites beyond 15km. The report concludes that following an evaluation of the information set out in the report, it is concluded beyond reasonable scientific doubt, in view of best scientific knowledge, on the basis of objective information and in light of the conservation objectives of the relevant European sites, that the proposed project, individually or in combination with other plans and projects, will not have a significant effect on any European Site and that based on this information, it is contended that the competent authority can determine that there is no requirement for this project to proceed to Appropriate Assessment (Stage 2).

#### **DAFM Appropriate Assessment Screening Report & Determination (AASRD) dated 14/02/2024**

An AA screening Report & Determination is to be found on file as prepared by a Forest Inspector, Department of Agriculture, Food and the Marine and dated 14/02/2024 on behalf of the Minister. The screening refers to *felling and reforestation project LM06-FL0182, at Boggaun, Larkfield, Co. Leitrim*. This AASRD states that in undertaking this screening for Appropriate Assessment, the following were taken into account:

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

The report also records that combined with the project details and site characteristics as summarised previously in the AASRD, there is sufficient information within the application and available from

elsewhere to form a sound judgement regarding the likelihood of the project having a significant effect on a European site. The report records considerations of seven European sites namely:

- Lough Gill SAC IE0001976 (1.3 km west northwest of the project area),
- Boleybrack Mountain SAC IE0002032, (2.3 km southeast of the project area),
- Arroo Mountain SAC IE0001403 (9.2 km north of the project area),
- Ben Bulbin, Gleniff and Glenade Complex SAC IE0000623 (10.9 km northwest of the project area),
- Glenade Lough SAC IE0001919 (11.5 km northwest of the project area),
- Lough Melvin SAC IE0000428 (12.3 km north of the project area), and
- Sligo/Leitrim Uplands SPA IE0004187 (12.7 km northwest of the project area).

The AA screening considers each site in turn and records a screening conclusion and reasons for each. The screening document concludes that an AA was not required in relation to the project. This report references an *Appendix A: In-Combination Report for felling and reforestation proposed under LM06-FL0182 'See File'*.

#### **DAFM Appropriate Assessment Screening Report Appendix A: In-combination report for Felling and Reforestation project LM06-FL0182.**

There is an In-combination report for Felling and Reforestation project LM06-FL0182 which includes the following statement. *'It is concluded that there is no likelihood of the proposed Felling and Reforestation project LM06-FL0182, when considered individually, having a significant effect on the relevant European Site(s), as described elsewhere in the Screening Report. There is no likelihood of residual effects that might arise from this project, which are not significant in themselves, creating a significant effect in combination with other plans and projects. The relevant Qualifying Interests / Special Conservation Interests and Conservation Objectives, as listed elsewhere in the Screening Report, have been taken into consideration in reaching these conclusions. Furthermore, it is considered that the regulatory systems in place for the approval, operation (including any permitted emissions) and monitoring of the effects of other plans and projects are such that they will ensure that they do not have any significant effect on those same European Site(s). There is no likelihood that the proposed project will have, or contribute to, any significant effect on those same European Site(s), when considered in combination with other plans and projects. Note that those European Site(s) upon which, a likelihood of a significant effect arises when considering the project individually, are screened in and will be progressed to, and addressed in, Stage 2 Appropriate Assessment'*.

#### **County Council referral**

The application was referred to Leitrim County Council on 13/10/2023 as part of a list of projects and described the project as being at Boggaun, Larkfield. The Local Authority responded in a letter dated 09/11/2023 and set out that the subject lands fall within a designated area of Outstanding Natural Beauty (AONB – A6) as identified in the Leitrim County Development Plan 2023-2029. It also states that in terms of Landscape Capacity to Accommodate Forestry the subject lands are located within Landscape Character Type (LCT) 6 Moorland Hills which it states is described in the Leitrim County Development Plan as follows:



*'The Moorland Hills are generally located between 200 and 300 m AOD and comprise relatively steep sided slopes leading up to the plateaus areas or mountain tops. These comprise marginal land with little or no hedgerow enclosure or field pattern. Hillsides generally allow long views across the surrounding lowlands except where woodland cover is extensive. Land cover is typically upland blanket bog, heather moor and unimproved grassland extensively grazed by free roaming sheep. Some field patterns are discernible as low earth banks and post and wire fences. Large tracts of plantation coniferous forest are dispersed throughout. Some deciduous woodland and scrub occupies the lower slopes. Fast rocky streams draining the upper peat bogs descend down through the hills and offer secluded steep sided valleys and ravines in which scrub and trees can thrive. The moorland hills are generally sparse in terms of settlement although tracks and roads are more frequent in this LCT than in the wilder moorland plateaus. Roads and tracks are often fringed by post and wire fences'.*

The Council submission then quotes from a section 3.6.2.5 LCT 6 however the quote concerned appears to be from section 3.9.2.5 LCT 6 Moorland Hills– Sensitivity ranking and is as follows:

*'This LCT is considered to be of high sensitivity to commercial coniferous forestry. A large part of this LCT is covered by AONB and AHVA designations and this is reflective of the landscape and scenic quality and its role as the setting for the upland mountain landscapes. The more elevated parts of this landscape are more sensitive than that at lower elevations due to their remote and wild nature with sensitive moorland landcover and their contribution to scenic skylines enjoyed by viewers'.*

There is also a copy of an engineer's report appended to the letter which deals primarily with road related matters. The Local Authority submission notes that the proposed clearfell comprises the felling of 5.12ha with replanting comprising of the same site area of conifer plantation and states that the Planning Authority has concerns over the visual impact of this approach given the location of the subject lands within a designated AONB and the high sensitivity of the location to commercial forestry. The submission sets out that it is considered that the proposed replanting scheme should provide for a greater level of broadleaf planting in any revised replanting scheme given the highly sensitive capacity of the receiving landscape to commercial conifer forestry and the location of the subject lands within an AONB.

The submission records that the Planning Authority has no objection to the proposed tree felling and states that should the proposal proceed, the following conditions should be included as part of an approval:

1. Prior to the commencement of any works, Forest Service representative shall liaise with the District Engineer's Office and shall satisfy the conditions and address the issues as referred in the attached District Engineer's report.
2. All works shall be carried out in accordance with the Best Practice Guidelines produced by the Forest and Wildlife Service with particular reference to protecting water quality.

## **The Licence**

The licence was granted with conditions and bears the date 22/02/2024.

## Appeals

There are two third party appeals made against the licence:

FAC 026/2024 – Planning Department, Leitrim County Council. The grounds of this appeal include:

- That the Planning Authority considers that the decision to replant the project area with conifer species is wholly inappropriate due to;
  - The location of the lands within an area of Outstanding Natural Beauty (Boleybrack Mountains) as designated in the Leitrim County Development Plan 2023-2029,
  - The proximity (of the lands) to a designated scenic route (View of Benbo from O'Donnell's Rock) as designated in the Leitrim County Development Plan 2023-2029,
  - The elevated nature circa 280m contour line, and
  - Having regard to the classification of the lands as being of high sensitivity to commercial coniferous forest as detailed in the '*Landscape Capacity Study for Commercial Forestry – Co. Leitrim*'.

The Notice of Appeal Form (NOAF) includes extracts from the Leitrim County Development plan including *FOR POL 1 and FOR POL 3*.

The grounds also states that the Planning Authority has regard to the provisions contained in Section 17(4) of the Forestry Act 2014, as amended, relating to the discretionary function of the Minister to require the replanting of the project area.

FAC 028/2024 – Save Leitrim CLG. The grounds of this appeal include:

- A submission that DAFM procedures are not consistent with the requirement for providing a General System of protection commensurate with Article 5 of the Birds Directive,
- A submission of error in areas applied for and licensed.
- A submission of an unresolved Right of Way issue.
- A submission that the AA Screening does not pass the test required by Article 6(3) of the habitats Directive,
- A submission that no Strict System of Protection is in place under Article 12 of the Habitats Directive (Annex IV species),
- A submission that there are Mapping deficits and FLV omissions,
- A submission that the Environment is threatened as a result of consultation failures and cites,
  - Failure to consult with NPWS,
  - The decision is invalid because the Minister has failed to evidence consideration of the submission of a prescribed body from whom he sought comment,
  - Right to reasons,
  - The Minister has acted outside of his authority.
- A submission that decision to require re-stocking is not justified in the context of the LCC CDP or the Climate Action Plan,
- A submission that the Minister's decision is flawed as the Department has not had regard to the Leitrim County Development Plan 2023- 2029,

- A submission of inadequate and ineffective public notice in contravention of the Aarhus Convention,
- A submission that the Minister has not followed good forestry practice in awarding this licence contrary to the obligation on him under the Forestry Act.

### **Minister's Statements (SOF)**

The Minister provided a statement responding to each of the two appeals which was provided to the parties. These statements set out the relevant processing dates for the application and states that the Department is satisfied that all criteria as outlined in the standards and procedures they follow have been adhered to in making a decision on the application.

In relation to FAC 026/2024 the Department submits that the decision to issue a licence for LM06-FL0182 and to replant was taken after a rigorous consultation process with third party consultees and members of the public and goes on to give details of the process. The DAFM SOF quotes a paragraph from the Local Authority response in relation to the location of the lands, that Appropriate Assessment requirements should be met for the project but does not address a substantive point made on the Local Authority submission regarding the suitability of the planting mix proposed in the application.

The SOF submits that in terms of AA, DAFM carried out a screening exercise for Appropriate Assessment and concluded that the project does not advance to the Appropriate Assessment stage in relation to seven listed European Sites. The SOF submits that given that the Local Authority in their response stated that they have 'no objection to the proposed tree felling' DAFM are surprised by the appeal from Leitrim County Council.

In relation to 'Deforestation' the SOF submits that the permanent removal of trees and forests (without reforestation) where a felling licence is required under the Forestry Act 2014 may be considered under exceptional circumstances and that this includes deforestation to protect habitats and species listed as qualifying interests within SACs and SPAs. It also states that deforestation may also be considered on a case-by-case basis. It submits that given that the applicant sought a felling licence to include replanting for the purposes of timber production, no application was made by the landowner to deforest the site and therefore the Department was not in a position to consider the option of deforestation in this context and notes that the Local Authority does not describe the alternative land use it has a preference for following deforestation. The SOF submits that it is the stated position of DAFM (as set out in its Felling and Reforestation Policy document) that the provisions of the Planning and Development Act and Regulations are to be interpreted such that projects involving deforestation for the purposes of conversion to another type of land use are subject to a planning permission requirement, in addition to any requirement or otherwise for a Tree Felling Licence.

The SOF asserts that the Forest Service promotes sustainable forest management as a central principle of Irish forest policy, whereby forests are managed to provide economic, social and environmental benefits on a sustainable basis for both current and future generations and that reforestation after felling is

essential to prevent deforestation, which would otherwise counteract the benefits of the initial afforestation.

The SOF submits that legally binding international environmental agreements and ‘carbon accounting’ (United Nations Convention on Climate Change (UNFCCC)) have also necessitated a policy to prevent deforestation due to the role forests play as sinks and reservoirs of greenhouse gases (GHG’s). It also submits that the EU Land Use Change and Forestry (LULUCF) Regulation accounts for deforestation emissions and that for these reasons the Department does not routinely licence without a replanting obligation except in exceptional circumstances.

The SOF sets out that Ireland now has for the first time in its history, a Shared National Vision for the role of forests, and trees in Ireland’s future and that if achieved, this ambitious vision will result in a more widely forested country with multifunctional and diverse forests delivering multiple benefits for climate, nature, wood production, people, communities, the economy and rural development. It goes on to set out a series of consultations that informed the Vision.

The SOF submits that it appears that Leitrim County Council is relying on the RPS Groups report entitled ‘Landscape Capacity Study for Commercial Forestry – Co Leitrim’ to support its position not to replant LM06-FL0182 after clearfell. It states that this report is only concerned with evaluating the sensitivity of each of the landscape character types with regard to its capacity to accommodate further commercial forestry in the future and therefore is not a study about existing forestry and the capacity of the landscape to accommodate reforestation after clearfell.

In relation to FAC 028/2024 The Department SOF addresses the appeal grounds under headings 1 – 10. In relation to ground 1 the SOF asserts that the project area defined by licence LM06-FL0182 is not located with (sic) an SPA where Hen Harrier is a qualifying interest, nor does it transact (sic) such an SPA. It states that the Department relies on the NPWS for its information on the location of “High likelihood Nesting Area” or “Red Areas” within HH SPAs and receives regular updates from the NPWS on new ‘Red Areas’ and that these are incorporated into DAFM GIS systems as soon as possible.

It states that the granting of a felling licence does not exempt the holder from meeting any legal requirements set out in the Wildlife Acts 1976 - 2010 which protects all wild animals in Ireland and that it is the responsibility of the landowner to ensure that where species are known to exist, on or near the project area and which are listed under the Wildlife Acts of 1976-2010, that these species are not impacted by the proposed forestry operations associated with this licence.

The SOF sets out that DAFM notes that the Grounds of Appeal is not referring to any specific adverse effect on the environment and birds in particular and that the Departments procedures are consistent with Article 5 of the Birds Directive.

In relation to ground 2 the SOF sets out that it cannot be reasonably argued that the open space identified as plot 2 is not part of the forest being licenced and that this regard this area should be included in any

Appropriate Assessment screening. It states that a Forestry Inspector had inspected the site at pre-screening and mapping was confirmed as correct and on this basis the site was licenced. It also states that the reforestation map also includes the cave, and that it is clearly not the case that trees will be planted here.

In relation to ground 3 the SOF states that based on the information provided there is no reason for DAFM to believe that there is an issue with the right of way and that the grounds of appeal do not provide sufficient information to show that there is an issue in this regard. The SOF goes on to detail the requirements regarding ownership of access as set out in Section 5.2.1 of the Forestry Standards Manual (2024).

In relation to ground 4 the SOF sets out steps taken by the Department underpinning its compliance with article 6(3) of the Habitats Directive.

In relation to ground 5 the SOF states that in 2021 the NPWS published two documents, the first entitled 'Strict Protection of Animal Species - Guidance for public authorities on article 12 and 16 of the EU Habitats Directive to development/works undertaken by or on behalf of a public authority' and a shorter document called 'Guidance on the Strict Protection of Certain Animal and Plant Species under the Habitats Directive in Ireland.' It states that these documents 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).

It also states 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. It states that the Department can be notified by the applicant themselves at the application stage that populations exist in or in the vicinity of the project area and that notification can also be submitted by statutory consultees during the licencing referral process. The SOF further states that the licence application process also provides for ample opportunity for the general public to make the Department aware of protected species in the vicinity and that this can be done at the application stage when the application is advertised and posted to the publicly available Forest Licence Viewer (FLV). The SOF then details the opportunities and time limits to make submissions during the processing of an application.

In relation to ground 6 the SOF sets out that the Standards for Felling & Reforestation include examples of Harvesting and Reforestation Maps presented at 1:5,000 scale and that maps submitted at scales other than 1:5,000 can be accepted by DAFM, once the required information is clear. It states that the outline of the forest area was submitted to DAFM at the application stage as a shapefile and therefore accessible through GIS systems and that the map was subsequently interrogated through a GIS platform by the Forestry Inspector and Ecologist involved, and that this included the overlaying of other datasets and the zooming in and out, to enable the scrutiny of the project at different scales and against various environmental receptors, including EPA rivers, archaeological features, flood risk layers and the 6-inch raster maps referred to by the Appellant. It also states that the project area is included throughout the

documentation and utility hazards and ESB lines are listed in the legend of the harvest and reforestation maps.

In relation to ground 7 the SOF asserts that the Department's decision to issue a licence for LM06-FL0182 and to replant was taken after a rigorous consultation process with third party consultees and members of the public. The SOF then goes on to give a detail the various steps in the processing of the application.

In relation to ground 8 the SOF states that it is noted that the Appellant disagrees with the site being replanted with conifer species but does not make it clear what the alternative land use should be. It states that permanent removal of trees and forests (without reforestation) where a felling licence is required under the Forestry Act 2014 may be considered under exceptional circumstances and that this includes deforestation to protect habitats and species listed as qualifying interests within SACs and SPAs.

It also states that deforestation may also be considered on a case-by-case basis and that given that the applicant sought a felling licence to include replanting for the purposes of timber production, no application was made by the landowner to deforest the site and therefore the Department was not in a position to consider the option of deforestation in this context. The SOF also mentions that the Local Authority does not describe the alternative land use it has a preference for following deforestation and states that this may have implications under Regulation (EU) 2023/1115 on deforestation-free products.

The SOF sets out that it is the stated position of DAFM (as set out in its Felling and Reforestation Policy document) that the provisions of the Planning and Development Act and Regulations are to be interpreted such that projects involving deforestation for the purposes of conversion to another type of land use are subject to a planning permission requirement, in addition to any requirement or otherwise for a Tree Felling Licence. The SOF asserts that the Forest Service promotes sustainable forest management as a central principle of Irish forest policy, whereby forests are managed to provide economic, social and environmental benefits on a sustainable basis for both current and future generations. It also states that reforestation after felling is essential to prevent deforestation, which would otherwise counteract the benefits of the initial afforestation and that legally binding international environmental agreements and 'carbon accounting' (United Nations Convention on Climate Change (UNFCCC)) have also necessitated a policy to prevent deforestation due to the role forests play as sinks and reservoirs of greenhouse gases (GHG's). It states that the EU land use, land use change and forestry (LULUCF) regulation accounts for deforestation emissions and that for these reasons the Department does not routinely licence without a replanting obligation except in exceptional circumstances

The SOF states that the Climate Action and Low Carbon Development (Amendment) Act 2021 requires Ireland to achieve a 51% reduction in emissions by 2030 (relative to 2018 levels) and net-zero emissions no later than 2050. It further states that as part of this process, the Government must implement a carbon budget programme and define Sectoral Emissions Ceilings (SEC) for all sectors of the economy. It also states that in 2022, adopting a sectoral emissions ceiling for the Land Use, Land-use Change and Forestry (LULUCF) sector was deferred pending a review of options, following changes to the sector's baseline in the 2022 National Inventory Report. It submits that there is a high level of uncertainty with setting

emission reduction targets for LULUCF due to continued baseline volatility, changes to the emission factors for drained forested organic soils and further planned inventory refinements and that thus, a LULUCF SEC that is based on a percentage reduction target from a set point is problematic when that point is in flux, as the LULUCF sector's baseline is, and will be.

It states that as an alternative, the LULUCF sector will now pursue an approach that is more aligned to how the EU LULUCF Regulation deals with the fluctuations and limits within the LULUCF sector and that this new approach will set a pathway to achieve emission reduction goals for this sector allowing for the setting of activity targets and annual key performance indicators (KPIs); sectoral accountability; and a 2030 emissions reduction target. It states that the pathway will be subject to future reviews considering the Land-use Review, ongoing inventory refinements, and any future developments in terms of international and national commitments.

The SOF submits that in light of this new approach, the Climate Action Plan 2024 (CAP24) puts in place ambitious activity targets for the sector that will be kept under review in the light of emerging evidence from the inventory refinements and Phase 2 of the Land-use Review. It also states that these activity targets are based on the abatement levers from established research and the LULUCF marginal abatement cost curve (MACC) 2023, published by Teagasc. The SOF states that the socio-economic impacts and feasibility of proposed measures must now be assessed to determine which actions are possible to deliver. The SOF states that the Land-Use Review was commenced by the Department of the Environment, Climate and Communications (DECC) and DAFM and that it is being managed by the Environmental Protection Agency (EPA). The SOF states that in considering Ireland's land use, including forestry, the National Land-Use Review will:

- balance environmental, social, and economic considerations, and involve a process of evaluation of the ecological characteristics of the land;
- gather data and evidence to report on, and determine, the environmental, ecological, and socio-economic characteristics of land cover, land use and land-based activities across Ireland, including how they interact with each other;
- include consideration of emissions to air and water, carbon sequestration, and climate adaptation challenges;
- examine the land availability and suitability for forestry as a land use change taking into account biodiversity and environmental impacts and constraints.

It states that the review is currently underway and being carried out in two phases with phase 1 being an Evidential Review and phase 2 relating to Policies, Measures and Actions. It states that building on the evidence base from phase 1, phase 2 will identify appropriate policies, measures and actions in the context of the Government's wider economic, social and climate objectives.

The SOF states that the new approach for the LULUCF sector will require ongoing review in line with the carbon budget cycle, so as to ensure that the targets remain ambitious and in line with national objectives

and that this would specifically be a review of the proposed approach and activity levels described earlier in the SOF, as distinct from the annual updates of measures and actions in the annual Climate Action Plan. It states that the management of the existing forest estate will play a crucial role in achieving any emission reduction targets that may be set and the policy in relation to the replanting of forests on organic soils will need to be cognisant of the statutory requirement to meet these sectoral ceilings.

In relation to ground 9 regarding the County Development Plan the SOF sets out that DAFM accepts that the most up to date County Development Plan was not considered and that the response from the Local Authority dated the 9/11/2023 made it clear that a large part of this LCT is covered by proposed AONB and AHVA designations and this is reflective of the landscape and scenic quality and its role as the setting for the upland mountain landscapes. The SOF sets out that the decision to licence the applications was taken in this context. The SOF states that DAFM found no material difference in relation to the matters pertaining to this licence that needed to be considered in assessing the application and therefore in DAFMs view there was not a significant error in respect of this matter.

In relation to ground 10 the SOF sets out that the Department rejects the assertions made in this section of the appeal and asserts that this aspect of the appeal goes beyond the remit of a forestry licence appeal and therefore of the considerations of the FAC. It goes on to state that the Minister for Agriculture, Food & Marine is not the minister responsible for Ireland's compliance with the Aarhus Convention and that the Aarhus Convention is not directly legally applicable and instead in Ireland is implemented via European Union legislation. It states that Ireland, including this Department, are in full compliance with the Aarhus Convention, as it relates to forestry licencing.

The SOF states that the Department's website and the Forestry Licence Viewer (FLV) notify the public of an application of a felling licence and asserts that both meet the requirements of public consultation. It states that information on individual licence applications and those already approved (since 2021) is readily accessible on the FLV and that all relevant information at the time is made available to the public when making submissions and all documentation is made available on the FLV or on request. It states that there is no impediment to interested parties making informed submissions as part of statutory process or outside of it. It goes on to describe functionality of the FLV and the documents that would be displayed there relation to felling licences. In relation to the reference to a site notice being put in place in advance of works beginning on a site, the SOF states that this is because the process of obtaining a felling licence is completely transparent and open to extensive public engagement. The SOF also asserts that 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). It states that the disclaimer on the website is standard wording used in many other contexts and the appellant has provided no evidence that the disclaimer as it was worded then, impedes use of the FLV as a documentary source.



### **WFD related**

The project area (on the catchments.ie map) is shown to be in the vicinity of the BONET\_040. The waterbody is shown to have a Good Status recorded for the 2016- 2021 period which is based on monitoring. It is recorded as not being at risk.

### **Post Appeal Correspondence**

The appellant in the case of FAC 028/2024 made a response following circulation of the DAFM SOF. This response received by email dated 21/03/2025 is set out as comments inserted into the SOF document and these have been considered by the FAC. There is also a post appeal submission from the applicant received by email of 24/03/2025 which included a response to the grounds of appeals FAC 026 and 028/2024. The appellant (FAC 028/2024) made a further response by email dated 31/03/2025 in relation to the applicant's post appeal submission which has been considered by the FAC.

### **Considerations of the FAC**

The FAC in the first instance considered whether an oral hearing was required in the case of these appeals and having regard to the particular circumstances of the appeals the FAC concluded that it was not necessary to conduct an oral hearing in order to properly and fairly determine the appeals.

The FAC considered the grounds in the case of FAC 026/ 2024 which submitted that the Planning Authority considers that the decision to replant the project area with conifer species is wholly inappropriate due to;

- the location of the lands within an area of Outstanding Natural Beauty (Boleybrack Mountains) as designated in the Leitrim County Development Plan 2023 - 2029,
- the proximity (of the lands) to a designated scenic route (View of Benbo from O'Donnell's Rock) as designated in the Leitrim County Development Plan 2023 – 2029,
- the elevated nature circa 280m contour line, and
- having regard to the classification of the lands as being of high sensitivity to commercial coniferous forest as detailed in the Landscape Capacity Study for Commercial Forestry – Co. Leitrim.

The FAC noted the content of the submission made by Leitrim County Council during the processing of the application by the DAFM wherein it set out in a letter dated 09/11/2023 that the subject lands fall within a designated area of Outstanding Natural Beauty (AONB – A6) as identified in the Leitrim County Development Plan 2023-2029. It also states that in terms of Landscape Capacity to Accommodate Forestry the subject lands are located within LCT 6 Moorland Hills which it states is described in the Development Plan as follows:

*'The Moorland Hills are generally located between 200 and 300 m AOD and comprise relatively steep sided slopes leading up to the plateaus areas or mountain tops. These comprise marginal land with little or no hedgerow enclosure or field pattern. Hillsides generally allow long views across the surrounding lowlands except where woodland cover is extensive. Land cover is typically upland blanket bog, heather moor and*

*unimproved grassland extensively grazed by free roaming sheep. Some field patterns are discernible as low earth banks and post and wire fences. Large tracts of plantation coniferous forest are dispersed throughout. Some deciduous woodland and scrub occupies the lower slopes. Fast rocky streams draining the upper peat bogs descend down through the hills and offer secluded steep sided valleys and ravines in which scrub and trees can thrive. The moorland hills are generally sparse in terms of settlement although tracks and roads are more frequent in this LCT than in the wilder moorland plateaus. Roads and tracks are often fringed by post and wire fences’.*

The FAC finds that the Council submission then quotes from a section 3.6.2.5 LCT 6 however it appears to the FAC that the quote concerned appears to be from section 3.9.2.5 LCT 6 Moorland Hills– Sensitivity ranking and is as follows:

*‘This LCT is considered to be of high sensitivity to commercial coniferous forestry. A large part of this LCT is covered by AONB and AHVA designations and this is reflective of the landscape and scenic quality and its role as the setting for the upland mountain landscapes. The more elevated parts of this landscape are more sensitive than that at lower elevations due to their remote and wild nature with sensitive moorland landcover and their contribution to scenic skylines enjoyed by viewers’.*

There is also a copy of an engineer’s report dated 02/11/2023 appended to the letter which deals primarily with road related matters and goes on to set out conditions in the event of an approval of the licence.

The FAC noted the submission from Leitrim County Council following a referral of the application to it wherein it states *‘The Planning Authority has concerns over the visual impact of this approach given the location of the subject lands within a designated AONB and the high sensitivity of the location to commercial forestry. It is considered that the proposed replanting scheme should provide for a greater level of broadleaf planting in any revised replanting scheme given the highly sensitive capacity of the receiving landscape to commercial conifer forestry and the location of the subject lands within an AONB’.* The FAC also considered the reference in the grounds that the Planning Authority had regard to the provisions contained in Section 17(4) of the Forestry Act 2014, as amended, relating to the discretionary function of the Minister to require the replanting of the project area.

While the FAC would expect that the DAFM position on a submission such as that made by the Planning Authority would be more clearly stated on the record of the application decision, it remains that the Minister is the competent authority in relation to the issuing of a licence for the felling of forestry as applied for in this case.

The FAC notes the content of the DAFM SOF wherein it accepts that the most up to date County Development Plan was not considered and the assertion that the response from the Local Authority made it clear that a large part of this LCT is covered by proposed AONB and AHVA designations and that this was taken into account by DAFM when approving the licence. The FAC concluded that the consideration of an incorrect version of the County Development Plan in the processing of the application and in the In-Combination assessment is a serious error and this is addressed elsewhere in this letter. The FAC considers

that the clearfell and replanting of an existing forest, which does not require a change of land use, does not appear to fall within the remit of the planning process and consequently the Minister is the competent authority to make a decision on application LM06-FL0182. The remit of the FAC relates solely to certain licencing decisions made by the Minister for Agriculture, Food and the Marine under section 7 of the Forestry Act 2014 and the Forestry Regulations 2017 and it is only the tree felling licence decision LM06-FL0182 that is the subject of this appeal determination. The FAC concluded that the DAFM has not erred in its processing of the application as it relates to the grounds raised in appeal FAC 026/2024.

The FAC considered the grounds of appeal set out in FAC 028/2024 which are summarised in the appeal submission under headings numbered 1 - 11. In relation to the appellant submission that DAFM procedures are not consistent with the requirement for providing a General System of protection commensurate with Article 5 of the Birds Directive the grounds make specific reference to Hen Harrier and submit that the project area lies within a 10km square where Hen Harrier were confirmed to be breeding in 2015 and was seen during the 2022 National Survey. The grounds also submit that there is no evidence that this sensitivity has been assessed and addressed by the Ecology Section and stating that there has been no FS-DAFM ecological input into the assessment of the application and that NPWS and the Irish Raptor Study Group were not consulted on this project. However, the grounds do not provide a basis for how the proposal, which involves the felling of commercial plantation, would impact on Hen Harrier or another species.

The grounds also submit that Ireland PLC has failed to transpose into National Law the requirement for a General System of protection for all wild birds consistent with the requirements of Article 5 of the Birds Directive by providing exemptions which the appellant submits will result in outcomes that are contrary to the objectives of the Directive.

The FAC noted the content of the SOF responding to this ground of appeal wherein it sets out that the project area defined by licence LM06-FL0182 is not located with (sic) an SPA where Hen Harrier is a qualifying interest. The SOF also states that the Department relies on the NPWS for its information on the location of "High likelihood Nesting Area" or "Red Areas" within Hen Harrier SPAs and receives regular updates from the NPWS on new 'Red Areas' and that these are incorporated into DAFM GIS systems as soon as possible.

The grounds submit that Ireland PLC has failed to transpose into National Law the requirement for a General System of protection for all wild birds consistent with the requirements of Article 5 of the Birds Directive. The FAC considered that this ground effectively seeks to challenge Ireland's transposition of an EU Directive and related questions of law. The FAC considered that such matters do not fall within its remit as they are not generally considered to fall within the remit of an administrative appellate body.

In relation to the grounds of appeal relating to error in areas applied for and licensed it is submitted that the application is to fell Plot 1 of 4.40 ha. The grounds further submit that Plot 2 (0.72ha) is identified in the application as BareUP and is indicated to have 0% canopy cover and the number of trees to be felled box is empty. The grounds further submit that aerial imagery indicates that Plot 2 contains trees. The

DAFM in its SOF states that it cannot be reasonably argued that the open space identified as plot 2 is not part of the forest being licenced and that in this regard this area should be included in any Appropriate Assessment screening. It states that a Forestry Inspector had inspected the site at pre-screening and mapping was confirmed as correct and that on this basis the site was licenced.

The FAC noted the response from the applicant dated 24/03/2025 to this ground of appeal wherein is stated that there is no illegal planting in this area and that the area was acquired in 1982 and the entire site was planted in 1984. It states that sub-compartment 61574B-2 [ref: appellants appeal, Plot 2] was created in 1992 as the crop was considered to have failed initially but fertilized in 2002 and the crop grew. It also states that in a subsequent inventory update, sub 2 was classified inaccurately as “BAREUP” in 2018/19. It states that the definition of BAREUP is as follows – *“Land on which a high forest crop could not be established with a maximum yield class of 4, using present techniques”*. *The restock plan is to replant 95% of Sub 2 and 5% open space*. It states that the application is for 5.12ha including the BAREUP and the trees in this area will be felled and restocked. It also states that as is custom at time of forestry re-establishment, the inventory area will be re-classed as sub-compartment 61574B-1, when replanted.

The FAC finds that the application mapping (and project description in the applicants appropriate pre-screening report) shows plot sub-compartment 2 as open space whereas the applicant in its submission of 24/03/2025 confirms that it has been classified incorrectly and now has trees on it. The applicant’s pre-screening document also states that the sub-compartment is “bare plantation”, which also does not reflect the actual composition of the lands. The Forestry Act 2014 sets out the requirements when making a tree felling licence application, which includes the particulars of the trees concerned. The Forestry Regulations 2017 and the DAFM’s felling policy and standards documents further specify requirements in making a tree felling application. The Minister for Agriculture provides for a period of public consultation in relation to licence applications, including felling, and significant errors in a licence application could disadvantage the public. The FAC concluded that the application, as made, contained errors in specifying that a sub-compartment was bare land, and accordingly would not be felled, whereas, in reality, this area contained trees and it was the intention of the Applicant to fell the trees. The FAC was satisfied that this represents a significant error in the application as submitted.

In relation to the grounds of appeal submitting that there is an unresolved right of way the FAC notes that no issue has arisen by way of objection to the application for licence in this connection. The FAC has noted the submission from the applicant in relation to this ground wherein it states that under the Conveyancing Law Reform Act 2021 (the “2021 Act”), there is no justification for the requirement to confirm use of a ROW and that it is long established legal practice that the existence of the ROW, other than by deed, is confirmed by continuous use for a specified period of time. Based on the information available to it the FAC is not satisfied that the DAFM has erred in its processing of the application in so far as this ground is concerned.

In relation to the grounds of appeal relating to Appropriate Assessment the FAC notes that the DAFM AASRD states that combined with the project details and site characteristics summarised in the AASRD, that there is sufficient information within the application and available from elsewhere to form a sound

judgement regarding the likelihood of the project having a significant effect on a European site. The FAC also notes the submission in the SOF wherein it sets out that DAFM accepts that the most up to date County Development Plan was not considered in the processing of the application. The FAC considers that this represents a significant error in the processing of the application in this case.

The FAC finds that the In-combination assessment which is described as an appendix to the AASRD includes the following text in the statement. *‘It is concluded that there is no likelihood of the proposed Felling and Reforestation project LM06-FL0182, when considered individually, having a significant effect on the relevant European Site(s), as described elsewhere in the Screening Report. There is no likelihood of residual effects that might arise from this project, which are not significant in themselves, creating a significant effect in combination with other plans and projects. The relevant Qualifying Interests / Special Conservation Interests and Conservation Objectives, as listed elsewhere in the Screening Report, have been taken into consideration in reaching these conclusions. Furthermore, it is considered that the regulatory systems in place for the approval, operation (including any permitted emissions) and monitoring of the effects of other plans and projects are such that they will ensure that they do not have any significant effect on those same European Site(s). There is no likelihood that the proposed project will have, or contribute to, any significant effect on those same European Site(s), when considered in combination with other plans and projects. Note that those European Site(s) upon which, a likelihood of a significant effect arises when considering the project individually, are screened in and will be progressed to, and addressed in, Stage 2 Appropriate Assessment’.*

In relation to In-Combination assessment the FAC would understand that the consideration of other plans and projects should take place as part of the process to ascertain whether the project, either individually or in-combination with other plans or projects, is likely to have a significant effect on a European site and an Appropriate Assessment of the implications of the project and such effects on the European site, having regard to the conservation objectives of the site concerned. Notwithstanding the significant error identified by the FAC in relation to the consideration of an incorrect version of the Leitrim County Development Plan, it appears to the FAC that it is not clear that the wording in the In-combination statement relating to the screened out sites demonstrates that the potential for significant effects to arise from the proposal in-combination with other plans and projects was considered by the DAFM as the wording refers to consideration on the basis that there is no likelihood of ‘residual effect(s)’ that might arise, which are not significant in themselves, creating a significant effect in combination with other plans and projects.

In the FAC’s view, the reference to ‘residual effects’ in the In-Combination report / assessment on file, creates confusion as it is not clear what effects are being referred to in this instance and there is no explanation as to what gives rise to these effects such that they can be described as being ‘residual’.

The FAC would understand that the term residual is generally used in the context of what remains after an action is undertaken. In the context of Appropriate Assessment (AA) the term ‘residual effects’ is more commonly employed in relation to the consideration of what effects remain after mitigation measures have been assessed as part of the AA. For example, the Department of the Environment, Heritage and

Local Government published a guidance document on Appropriate Assessment entitled Appropriate Assessment of Plans and Projects in Ireland Guidance for Planning Authorities (DEHLG, 2009). This document states on page 40,

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

The FAC considers that this represents a further error in the processing of the application.

The FAC considered the appellant submission that no Strict System of Protection is in place under Article 12 of the Habitats Directive (Annex IV species) wherein it is submitted that the strict protection regime under Article 12 of the Habitats Directive is entirely separate to the Appropriate Assessment procedure under Article 6(3) of the Habitats regime. The grounds submit that the decision provides no evidence of any assessment of the potential impact on species listed in Annex IV of the Habitats Directive while submitting that it is for the Minister to evidence that adequate assessment takes place.

The FAC noted the content of the SOF for FAC 028/2024 where it sets out that in relation to 'protection of Annex IV species (article 12), that in 2021 the NPWS published two documents, the first entitled 'Strict Protection of Animal Species - Guidance for public authorities on application 12 and 16 of the EU Habitats Directive to development/works undertaken by or on behalf of a public authority' and a shorter document called 'Guidance on the Strict Protection of Certain Animal and Plant Species under the Habitats Directive in Ireland'. It states that these documents 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).

The SOF also states that the licencing process administered by the Department represents the system of checks and balances by which the Department exercises its responsibilities with regard to protecting Annex IV species and that the Department can be notified by the applicant themselves at the application stage that populations exist in or in the vicinity of the project area. It also states that notification can also be submitted by statutory consultees during the licencing referral process and that the licence application process also provides for ample opportunity for the general public to make the Department aware of protected species in the vicinity. The SOF asserts that in the case of LM06-FL0182 no populations of protected species were confirmed in the project area or in the vicinity of the project area.

The FAC noted that the appellant did not provide specific details of species present on the project lands or give convincing reasons to show how the proposed development would be likely to give rise to adverse effects on them. The FAC further noted that the document Strict Protection of Animal Species - Guidance for public authorities on application 12 and 16 of the EU Habitats Directive to development/works undertaken by or on behalf of a public authority' is described as being of assistance and guidance to public authorities in undertaking their own works, which does not describe the current licencing decision. In these circumstances, the FAC, based on the information available to it, finds no reason to conclude that the DAFM has erred in its processing of the application in so far as these grounds are concerned.

The FAC considered the appellant submission that the Harvest Plan submitted with the application does not conform to the requirements of the Standards for Felling and Reforestation. The FAC noted the response from the DAFM as set out in the SOF wherein it states that the Standards for Felling & Reforestation include examples of Harvesting and Reforestation Maps presented at 1:5,000 scale and that maps submitted at scales other than 1:5,000 can be accepted by DAFM, once the required information is clear. It also states that the outline of the forest area was submitted to DAFM at the application stage as a shapefile and therefore accessible through GIS systems and that the map was subsequently interrogated through a GIS platform by the Forestry Inspector and Ecologist involved, and this included the overlaying of other datasets and the zooming in and out, to enable the scrutiny of the project at different scales and against various environmental receptors, including EPA rivers, archaeological features, flood risk layers and the 6-inch raster maps referred to by the Appellant. The SOF also sets out that the project area is included throughout the documentation and utility hazards and ESB lines are listed in the legend of the harvest and reforestation maps.

The FAC finds that maps submitted by the applicant show the direction of tree haulage movement within the project area and the line of a proposed roadway travelling approximately south-east from the western end of the project area. The FAC also finds that the applicant's Appropriate Assessment Pre-screening document states that the project area is accessible via the existing forest road LM06R0034, which runs along the south-western boundary of the project area. Based on the information available to it the FAC concluded that the DAFM has not erred in its processing of the application as it relates to this ground of appeal as raised in appeal FAC 028/2024.

The FAC considered the appellant submission that the Environment is threatened as a result of consultation failures citing a failure to consult with NPWS, that the decision is invalid because the Minister has failed to evidence consideration of the submission of a prescribed body from whom he sought comment, and that the Minister has acted outside of his authority.

The FAC considers that the clearfell and replanting of an existing forest, which does not require a change of land use, does not appear to fall within the remit of the planning process and consequently the Minister is the competent authority to make a decision on application LM06-FL0182 and it is only the decision of the Minister that is before the FAC. In these circumstances, and while the FAC has set out elsewhere in this letter that the DAFM has erred in its processing of the application in the context of the Appropriate Assessment and that there was an error in the application as submitted, and based on the information available to it, the FAC finds no reason to conclude that the DAFM has erred in its processing of the application in so far as the matters raised in this ground of appeal are concerned.

In relation to the contention in the grounds that the decision to require re-stocking is not justified in the context of the LCC CDP or the Climate Action Plan (2023) the FAC noted the response from the DAFM in its SOF wherein it sets out that the permanent removal of trees and forests (without reforestation) where a felling licence is required under the Forestry Act 2014 may be considered under exceptional circumstances and that this includes deforestation to protect habitats and species listed as qualifying interests within SACs and SPAs. It also sets out that deforestation may also be considered on a case-by-

case basis. It states that as the applicant sought a felling licence to include replanting for the purposes of timber production, no application was made by the landowner to deforest the site and therefore the Department was not in a position to consider the option of deforestation in this context.

The SOF goes on to state that it is the stated position of DAFM (as set out in its Felling and Reforestation Policy document) that the provisions of the Planning and Development Act and Regulations are to be interpreted such that projects involving deforestation for the purposes of conversion to another type of land use are subject to a planning permission requirement, in addition to any requirement or otherwise for a Tree Felling Licence.

The SOF also states that the Forest Service promotes sustainable forest management as a central principle of Irish forest policy, whereby forests are managed to provide economic, social and environmental benefits on a sustainable basis for both current and future generations. It also sets out that reforestation after felling is essential to prevent deforestation, which would otherwise counteract the benefits of the initial afforestation and that legally binding international environmental agreements and 'carbon accounting' (United Nations Convention on Climate Change (UNFCCC)) have also necessitated a policy to prevent deforestation due to the role forests play as sinks and reservoirs of greenhouse gases (GHG's). It also states that the EU land use, land use change and forestry (LULUCF) regulation accounts for deforestation emissions. For these reasons the Department does not routinely licence without a replanting obligation except in exceptional circumstances.

The FAC also noted the submission in the DAFM SOF wherein it set out the DAFM position in relation to the Climate Action Plan 2024 and the approach to the Land-Use Review which was commenced by the Department of the Environment, Climate and Communications (DECC) and DAFM and is being managed by the Environmental Protection Agency (EPA). The SOF sets out that in considering Ireland's land use, including forestry, the National Land-Use Review will:

- balance environmental, social, and economic considerations, and involve a process of evaluation of the ecological characteristics of the land;
- gather data and evidence to report on, and determine, the environmental, ecological, and socio-economic characteristics of land cover, land use and land-based activities across Ireland, including how they interact with each other;
- include consideration of emissions to air and water, carbon sequestration, and climate adaptation challenges;
- examine the land availability and suitability for forestry as a land use change taking into account biodiversity and environmental impacts and constraints.

The SOF also sets out that the review has two phases with phase 1 being an evidential review which has been completed and provides evidence base to determine the environmental, ecological, and economic characteristics of land types across Ireland. Phase 2 in relation to Policies, Measures and Actions, the SOF



states, will identify appropriate policies, measures and actions in the context of the Government's wider economic, social and climate objectives.

The FAC notes that the SOF acknowledges that the new approach for the LULUCF sector will require ongoing review in line with the carbon budget cycle, so as to ensure that the targets remain ambitious and in line with national objectives and that this would specifically be a review of the proposed approach and activity levels described above, as distinct from the annual updates of measures and actions in the annual Climate Action Plan. The SOF also states that the management of the existing forest estate will play a crucial role in achieving any emission reduction targets that may be set and the policy in relation to the replanting of forests on organic soils will need to be cognisant of the statutory requirement to meet these sectoral ceilings.

As alluded to earlier in this letter the FAC considers that the clearfell and replanting of an existing forest, which does not require a change of land use, does not appear to fall within the remit of the planning process and consequently the Minister is the competent authority to make a decision on application LM06-FL0182. In these circumstances, and while the FAC has set out elsewhere in this letter that the DAFM has erred in its processing of the application in the context of the Appropriate Assessment and that there is an error in the application as submitted, and based on the information available to it, the FAC finds no reason to conclude that the DAFM has erred in its processing of the application in so far as the matters raised in this ground of appeal are concerned.

The FAC considered the contention in the grounds that the Minister's decision is flawed as the Department has not had regard to the Leitrim County Development Plan 2023-2029. The FAC has already set out in this letter that it considers that there has been an error in the application as made to the DAFM and that the DAFM has erred in its processing of the application in so far as it considered a previous iteration of the Leitrim County Development Plan. The FAC considers that the clearfell and replanting of an existing forest, which does not require a change of land use, does not appear to fall within the remit of the planning process and consequently the Minister is the competent authority to make a decision on application LM06-FL0182. In these circumstances, and while the FAC has set out elsewhere in this letter that the DAFM has erred in its processing of the application in the context of the Appropriate Assessment and that there is an error in the application as submitted, and based on the information available to it, the FAC considers that the clearfell and replanting of an existing forest, which does not require a change of land use, does not fall within the remit of the planning process and consequently the Minister is the competent authority to make a decision on application LM06-FL0182 and that therefore the Minister is not bound by the provisions of the Leitrim County Development Plan as it relates to licence LM06-FL0182.

FAC considered the submission in the grounds that there was inadequate and ineffective public notice in contravention of the Aarhus Convention. The FAC finds that Article 6(2) of the Aarhus Convention refers to the public notification requirements where an environmental impact assessment is being undertaken and not at the screening stage. Indeed, 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 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’.*

This is reflected in the consultation requirements provided for under Article 6 which is required after the competent authority has determined that a development is subject to an EIA. The procedure adopted in this case provided for a public consultation period in keeping with the requirements of the Forestry Regulations 2017 (Statutory Instrument 191 of 2017). In this regard the FAC concluded that this ground of appeal effectively seeks to challenge Ireland’s transposition of the Aarhus Convention and related questions of law. The FAC considered that such matters do not fall within its remit as they are not generally considered to fall within the remit of an administrative appellate body.

In relation to LM06-FL0182, the Minister opened the application to public consultation and the information was available on the DAFM website and separately on the DAFM’s map-based Forestry Licence Viewer. The Forestry Regulations 2017 prescribe the requirements for public consultation in relation to the decision making of the Minister on certain applications for licence. Regulation 10 provides for the Minister to publish a notice of the application in a manner determined by the Minister and that the Minister may make the application available to the public.

The activity of tree felling and replanting in a commercial forest without a change in land use such as the subject of the decision under appeal has clear differences from other activities that might require licencing or the attainment of permission. Such activities are not covered by the Annexes of the EIA Directive. Unlike planning matters, the felling of trees in a commercial plantation is an operational decision that does not involve a change in the existing use of the land. The trees in this case have been planted decades previously for the purpose of timber production through felling and trees will be replanted and the forest regenerated. There is no new development but the undertaking of a standard practice in the existing land use. In any case the FAC is satisfied that the public consultation process adopted in the making of the decision was in keeping with the requirements of the Forestry Regulations 2017.

The FAC considered the submission in the grounds that the Minister has not followed good forestry practice in awarding this licence contrary to the obligation on him under the Forestry Act. The FAC notes that the Appropriate Assessment Screening records that responses from consultation bodies were taken into consideration. As alluded to in dealing with the grounds in FAC 026/2024, the FAC noted the submission from Leitrim County Council following a referral of the application to it, wherein it states *‘The Planning Authority has concerns over the visual impact of this approach given the location of the subject lands within a designated AONB and the high sensitivity of the location to commercial forestry. It is considered that the proposed replanting scheme should provide for a greater level of broadleaf planting*

*in any revised replanting scheme given the highly sensitive capacity of the receiving landscape to commercial conifer forestry and the location of the subject lands within an AONB.'*

While the FAC would expect that the DAFM position on a submission such as this from the Local Authority would be more clearly stated on the record of the application decision, the requirement under the Forestry Regulations 2017 is for the Minister to have regard to submissions made on an application but the FAC does not understand that this would remove the authority of the Minister to make decisions on licence applications. While the FAC considered that the DAFM has not erred technically in its processing of the application as it relates to this ground of appeal it would expect that the DAFM position on a submission such as the one made by the Local Authority regarding the replanting mix would be more clearly stated on the record of the application decision.

In considering the appeals, the FAC had regard to the record of the decision, the submitted grounds of appeal, submissions made, and the statements of fact submitted by the DAFM. The FAC is satisfied that a significant error was made in the application as submitted to the DAFM and that a series of errors was made in the processing of the decision LM06-FL0182. The FAC is thus, allowing the appeals and setting aside the decision of the Minister regarding licence LM06-FL0182 in accordance with Section 14B of the Agriculture Appeals Act 2001, as amended.

Yours sincerely,

A large, irregular black redaction mark covers the signature of Seamus Neely.

Seamus Neely

On Behalf of the Forestry Appeals Committee