



13<sup>th</sup> August 2025.

**Subject:** Appeal Reference: FAC 104/2024 regarding CK26-FL0061.

Dear

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

**DECISION.**

Having regard to the evidence before it, including the Department of Agriculture, Food and the Marine (DAFM) record of the decision, the Statement of Fact (SoF) provided by the DAFM, materials on file as displayed on the Forestry Licence Viewer (FLV), the notice and grounds of appeal and post-appeal submissions and the considerations set out below the FAC has decided to set aside and remit the decision of the Minister regarding licence CK26-FL0061.

**THE LICENCE.**

Licence CK26-FL0061 resulted from an application for the felling of 2.89 Ha. in 2 Plots comprising 100% Sitka spruce and their replanting with 95% Sitka spruce with the remaining 5% of the site kept as Open Space, located in the townlands of Rowls Langford (North) Co. Cork.

The application for the licence as submitted to the DAFM is dated 23/03/2024. A decision approving the licence was issued on 11/09/2024 with conditions including requiring replanting, compliance with the Standards for Felling & Reforestation and the Environmental Requirements for Afforestation (as these refer to reforestation), and adherence to the mitigation measures in the DAFM Appropriate Assessment Determination.

**FORESTRY APPEALS COMMITTEE.**

A hearing was held remotely at a sitting of the FAC held on the 15/07/2025 which considered the appeal and the processing of the licence as it relates to the decision to issue the licence on 11/09/2024.

The FAC members present were: Mr. Seamus Neely (Chairperson), Mr. Vincent Upton and Mr. Iain Douglas.

Secretary to the FAC: Ms. Aedín Doran.

## **BACKGROUND.**

The site is described as being 100% Conifer plantation. The soil types on the site are stated to be Shallow gley soils both surface and ground comprising Peaty Gleys 82%, Podzols (Peaty) 16%, Acid brown earths, Brown podzols 1% and Surface water Gleys/Ground water Gleys 1%. The slope of the site is described as being moderate (15% or less). A relevant watercourse flows from the northern part of Plot 1 in a north easterly direction and discharges into an aquatic zone, the Glashawee (Allow) River (see below).

The site lies in the Water Framework Directive (WFD) Blackwater (Munster) (18) Catchment and the Dalua\_SC\_020 sub-catchment. The site is located in the Glashawee (Allow)\_010 Sub-Basin. The closest River Waterbody to the site is the Glashawee (Allow)\_010 (EPA Name Glashawee (Allow) River). This river is located ca. 10m from the eastern boundary of Plot 1 and follows the boundary of Plot 1 running south where it provides hydrological connectivity with the Blackwater (Munster) River SAC ca. 0.5 km from the site. The Glashawee (Allow) river was of Good Status in the 2016-2021) monitoring period and is Not at Risk in the 3<sup>rd</sup> cycle and Forestry is not identified as a pressure on this river. The underlying Groundwater body is Rathmore West IE\_SW\_G\_070 which was of Good Status in the period 2016-2021 and is Not at Risk in the 3<sup>rd</sup> cycle.

The application documents before the FAC included an Application Pack dated 26/03/2024 (comprising of a tree felling application form, location map, felling licence application map, harvest plan map (pre-licence), reforestation maps and a proposed replanting plan), and a Pre-Screening/NIS dated 11/01/2024.

The licence application was referred to the NPWS, IFI and Cork County Council. NPWS replied on 01/05/2024, no response was received from either IFI or Cork County Council.

On the DAFM file there is an Appropriate Assessment Screening Report and Determination (AASRD) dated 08/07/2024, an In-combination Report marked as an Appendix to the AASRD, an Appropriate Assessment Determination (AAD) dated 12/08/2024, and an In-combination Report marked as an Appendix to the AAD.

The applicant's Pre-screening Report examined 4 sites, 3 within 15km of the site Blackwater River (Cork/Waterford) SAC (Site Code: 002170), Lower River Shannon SAC (Site Code:002165), Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (Site Code:004161) and a fourth, the Blackwater Estuary SPA (Site Code: 004028) is hydrologically connected to the site but at some 86 Km distance. Two sites were screened in for AA, Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA and Blackwater River (Cork/Waterford) SAC.

The DAFM AASRD identified the same three sites within 15 km of the site as the applicant's Pre-screening Report and identified the same two sites as requiring Appropriate Assessment.

The applicant's NIS was advertised for public consultation on 10/07/2024.

The AAD was carried out by a consultant ecologist on behalf of the DAFM which concluded that the proposed felling & replanting, subject to a number of mitigation measures, *"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"*.

## **Submissions.**

There were no third-party submissions on this licence application either prior to or following the public consultation on the applicant's NIS.

## **THE APPEAL.**

There is one third-party appeal against the decision to approve licence application CK26-FL0061.

The grounds of appeal are summarised as follows:

- The AA for this project 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 DAFM procedures are not consistent with the requirement for providing a General System of Protection commensurate with Article 5 of the Birds Directive.
- There is no Strict System of Protection in place under Article 12 of the Habitats Directive for (Annex IV species).
- There are mapping deficits and omissions.
- There is inadequate and ineffective public notice for the project in contravention of Article 6 (2) of the Aarhus Convention.

## **Post-Appeal Submissions.**

The appellant made a post-appeal submission in response to the DAFM Statement of Fact, this was circulated to the other parties. The DAFM indicated it would not be responding to the submission, the applicant did not respond.

In the interest of clarity and for the avoidance of doubt, in considering the post-appeal submission the FAC deemed the matters raised to be an elaboration or clarification of points raised by the third-party in his grounds of appeal proper.

## **CONSIDERATION BY THE FAC.**

At its sitting on the 15<sup>th</sup> of July 2025, the FAC had before it the DAFM record of the decision as made available on the FLV, the notice and grounds of appeal, the Statement of Fact (SoF) provided by the DAFM, post-appeal submission and all materials on file. Having reviewed all the documentation and submissions, including those of the appellant, the FAC considered that there was sufficient information to enable it to assess and determine the appeal without recourse to an oral hearing.

## **DAFM STATEMENT OF FACT**

A SoF dated 11/03/2025 was provided by the DAFM for the appeal. The SoF confirmed the administrative details of the licence application, and states that the decision was issued in accordance with DAFM procedures, SI 191/2017 and the 2014 Forestry Act. The SoF contains specific responses to the grounds of appeal. The FAC noted that in the response to 'ground 2' in the SoF the DAFM quotes CK24-FL0061 whereas the appeal under consideration in this case relates to licence CK26-FL0061. The FAC considered this to be an obvious typographical error.

## **GROUND OFS OF APPEAL.**

**The AA for this project 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.**

This ground of appeal contends that the AA carried out by the DAFM does not contain precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works on the protected areas concerned, in this case the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA and Blackwater River (Cork-Waterford) SAC for reasons including, discrepancies between the mitigation measures between the NIS and the DAFM AAD, a failure to address the issues raised in the NPWS submission on the licence application, a lack of detail on the impact of pesticides on the SAC, that the NIS was not fully

evaluated against the Conservation Objectives of the SPA with particular regard to the reforestation, that the in-combination was simply a list of projects without any evaluation of the in-combination effects and that a number of the AAD mitigation measures are imprecise.

The FAC noted the response to this ground of appeal marked as ground 1 of the DAFM SoF dated 11/03/2025.

The FAC noted that Section 2 the NIS as submitted by the applicant deals with potential impacts of the project on the screened in sites, Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA and Blackwater River (Cork-Waterford) SAC and in Section 3 Mitigation Measures are proposed for each of the Qualifying Interests.

The FAC noted that project area is located wholly within the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA and that its Qualifying Interest and Conservation Objectives are for the bird species *Circus cyaneus* (Hen Harrier, permanent [breeding & wintering]) [A082]

The NIS in considering whether there is a potential for the project to create an adverse effect on the Qualifying Interest in the case of the Hen Harrier states:

*The mitigations are as follows:*

- *The site of this project lies wholly within a Green Area in relation to Hen Harrier, the Special Conservation Interest of the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA. Therefore, potential disturbance operations associated with this project (see below) can take place during the Hen Harrier breeding season (1st March to 15th August, inclusive). However, if the Department of Agriculture, Food & the Marine (DAFM) is notified by the National Parks & Wildlife Service of a new Hen Harrier nesting site, and if the site of the project lies within or partially within 1.2 km of this location, the DAFM will inform the Applicant of this situation and will amend the terms of the licence, with immediate effect, to exclude potential disturbance operations from taking place during the Hen Harrier breeding season (1st March to 15th August, inclusive).*
- *(A potential disturbance operation is a forestry operation associated with a licenced project, which has the potential, through excessive noise, vibration, mechanical movement, artificial lights, etc. to disturb the breeding activity of Hen Harriers. Potential disturbance operations include: timber felling (thinning, clearfell); timber extraction to roadside; timber loading at roadside; aerial fertilisation; mechanical cultivation for both afforestation and reforestation; forest road construction (and associated developments); the driving of fencing posts; and any other operation(s) the Forest Service may deem as potentially creating disturbance.)*
- *Adherence to the Felling & Reforestation Standards.*

The Appropriate Assessment Determination (AAD) recorded by the DAFM specifies the following,

*In relation to Hen Harrier, the following mitigation is required, presented in the form of conditions to be attached to any licence issued:*

1. *The site of this project lies within a Special Protection Area where hen harriers are a qualifying interest. If hen harrier breeding activity is identified within 1.2km of the project area, the National Parks & Wildlife Service should be notified immediately. If this activity is confirmed the Department will be informed and the licence amended to reflect this new status.*

From the procedure adopted in relation to the processing of this application it appears that the NIS was prepared but no Appropriate Assessment Report was prepared by the DAFM before the AAD was undertaken by the Minister. Having regard to the Forestry Regulations 2017, the FAC considers that this may be acceptable in practice where there is a clear consistency in the reasoning in the assessment undertaken by the Minister with that in the NIS, or that any significant inconsistencies are explained and where the assessment and conclusions are clear, definitive and complete.

In this case the FAC considers that the NIS does not deal sufficiently with the suitability of the project area for the Qualifying Interest species (Hen Harrier) and that there is no appreciable assessment of the potential effect of the project on Hen Harrier in the NIS. The NIS primarily provides a general overview of the species and makes a general statement. Neither does the FAC consider it sufficient to have mitigation which is subject to confirmation by DAFM and that no such confirmation is explicitly provided on the face of the record of the file for the application. The FAC considers that the absence of a clear assessment of the potential effect on the species and an absence of clear measures in the NIS that has not been addressed by the DAFM process represents a serious error in the processing of the application in so far as Appropriate Assessment is concerned.

The NIS mitigation measure relies on data from the NPWS whereas the AAD mitigation measure states, that where breeding activity is identified, the NPWS are to be notified who would then confirm the data and, apparently, inform the DAFM. The AAD mitigation measure does not specify if surveying is required or who might identify the activity and notify the NPWS.

The FAC further noted that the NIS mitigation measures with regard to Reforestation and the Blackwater River (Cork/Waterford) SAC aquatic Qualifying Interests & Freshwater Pearl Mussel require:

*Reforestation: Setbacks*

- A setback area of 20m will be applied along the aquatic zone located approx. 10m to the east of the project area.
- A setback area of 5m will be applied along the relevant watercourses present in the project area, as specified in Section 14 of the Standards for Felling & Reforestation (DAFM, 2019).

and

*Reforestation: Setbacks*

- A 20m setback will be applied to aquatic zones. Within this, the 10m zone along aquatic zone will remain uncultivated and unplanted; and the 10m wide section furthest from aquatic zone will be planted with broadleaf trees

Mitigation measure 8 in the DAFM AAD requires

8. Install a 15 m wide undisturbed and unplanted water setback alongside the aquatic zone and plant 5 rows of broadleaves, pit planted, at a spacing of 2 m x 2 m immediately adjacent to this setback. For sites susceptible to deer damage use tree guards and plant at 3.3 m x 2 m spacing (2 Rows). Use a mix of native species appropriate to the immediate site conditions and, where possible, of Irish provenance. For unsuitable sites, instead of planting broadleaves, extend the original water setback by 10m. Reason: In the interest of the protection of water quality.

In relation to the AAD, the measures specified by the DAFM are significantly different from that contained in the NIS and there is no explanation as to how the measures came to be specified or

how they address the requirement to ensure that no impacts on the integrity of the site arise where a licence is granted at the stage that it was. The FAC considers that the overall assessment contains significant lacunae and lacks clarity and precision and that this represents a serious error in the making of the decision.

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

This ground of appeal contends that there is no general system of protection for all species of birds as required by Article 5 of the “Birds Directive” Directive 2009/147/EC and that the provisions of Section 40 and Section 22 of the Wildlife Act 1976 (as revised) exempts forestry operations from such general protection of birds as afforded by that Act. The FAC noted the response to this ground of appeal marked as ground 6 of the DAFM SoF dated 11/03/2025 and to Condition 11 of the licence which deals with the landowner’s responsibility in relation to the protection of wild birds. This ground of appeal is of a generic nature and does not contain specific evidence in relation to the licence decision under appeal. 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.

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

This ground of appeal contends that there is no Strict System of Protection in place under Article 12 of the Habitats Directive (Annex IV species), which the appellant states is an entirely separate procedure to the Appropriate Assessment under Article 6(3) of the Habitats regime. The ground submits that the decision provides no evidence of any assessment of the potential impact on species listed in Annex IV of the Habitats Directive while expressing the view that it is for the Minister to prove that an adequate assessment has taken place rather than the appellant to prove the existence of Annex IV species on the site.

The FAC noted the response to this ground of appeal marked as ground 7 of the DAFM SoF dated 11/03/2025 where it sets out that the system of Strict Protection for animals as described in Regulation 51 of the European Communities (Birds and Natural Habitats) Regulations, (Annex IV animals) is set out in two documents published by the NPWS in 2021, - (i) ‘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 (ii) ‘Guidance on the Strict Protection of Certain Animal and Plant Species under the Habitats Directive in Ireland’.

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 the applicant’s pre-screening report makes numerous references to otter and that the NIS states the following in relation to the Blackwater River (Cork/Waterford) SAC (002170):

*‘In order to protect this qualifying interest, the standard mitigation measures that are integral to the project will be adhered to, in order to ensure no release of silt/sediment, nutrients or chemicals to receiving waters and in order to avoid disturbance to otter.’*

The Sof also sets out that conditions number 7 and 37 of DAFM's AAD refer directly to protection of otter, and in addition the numerous mitigation measures to protect water quality in the AAD will also have an effect of protecting otter by protecting aquatic habitats.

The FAC noted that this ground is of a generic nature and 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. 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 this ground is concerned.

**There are mapping deficits and omissions.**

This ground of appeal contends that the Harvest Plan submitted with the application is incomplete, including that the haulage route is not shown, the stacking area is 20m from an area of predictive flooding, no vehicle inspection site is identified and that the map scales are incorrect. The ground further contends that the Reforestation Map does not include cultivation direction, windrowing, drainage or post-operation works. The FAC noted the response to this ground of appeal marked as ground 8 of the DAFM SoF dated 11/03/2025. The FAC noted that the Harvest Plan Map (pre-licence) submitted with the licence application shows a series of proposed stacking areas and proposed service areas north of the area it is proposed to fell. While these features are located outside of the felling and replanting area subject of this licence, the FAC considers this Harvest Plan Map to be part of the supporting documentation for the licence application and that such features form an inherent part of the activity and therefore these features are part of the project. Both the NIS and the AAD place restrictions on the location of stacking areas and other forestry operations and the grounds of appeal do not provide any real evidence that the assessment was deficient in this regard.

The FAC does not consider that the Minister has established an exact legal standard for the scale of a Harvesting or Reforestation Map. The FAC noted that licence application CK26-FI0061 included a number of maps at varying scales including 1:10,000, 1:6,001, 1:5,000, and 1:2,101 and that while DAFM uses a map at scale 1:5000 as an example it also accepts maps at different scales providing the required information is clear.

**There is inadequate and ineffective public notice for the project in contravention of Article 6 (2) of the Aarhus Convention.**

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

The FAC concluded that the felling and replanting of trees, as part of a forestry operation with no change in land use, does not fall within the activities listed in Annex I of the Aarhus Convention, Annex I or II of the EIA Directive and is not covered by national regulations and that sub-threshold screening for significant effects under the EIA Directive was not required in this case. The FAC concluded that this ground of appeal effectively seeks to challenge Ireland's transposition of the Aarhus Convention and related questions of law. The FAC considered that such matters do not fall

within its remit as they are not generally considered to fall within the remit of an administrative appellate body.

In considering this ground of appeal the FAC noted the response marked ground 9 of the DAFM SoF dated 11/03/2025 where it sets out that its chosen method of notifying the public of felling licence applications is through the DAFM's website and the Forestry Licence Viewer. The FAC noted that the application was uploaded to the Department website on 01/05/2024 and the last date for submissions is stated to be 23/05/2024. A further public consultation took place when the NIS was advertised for public consultation on 01/07/2024 in accordance with the DAFM procedures and the provisions of the Forestry Act 2014 and Forestry Regulations 2017. No submissions were received as a result of either of the public consultations. The FAC concluded that the advertising of the licence application on the DAFM website was in accordance with the DAFM procedures and the provisions of the Forestry Act 2014 and Forestry Regulations 2017 did not in itself constitute a failure of due process or a failure of fair procedures by the DAFM under the Forestry Regulations 2017 and that national legislation is a matter for the Minister and is not within the remit of the FAC.

The FAC considered the contention in the grounds that there is inconsistency in the Forestry Regulations 2017 (as amended) between requirement for a public notice to be erected on-site as part of the licence application for afforestation and forest roads while the on-site public notice for felling is required after the licence has been issued. The role of the FAC is to consider whether there was an error in the application as made or whether the Minister made a serious or significant error, or a series of errors in making the decision under appeal, and whether that decision was made in compliance with fair procedures and that national legislation is a matter for the Minister and is not within the remit of the FAC.

#### **APPLICATION DOCUMENTATION.**

##### ***DAFM In-combination assessment.***

In reviewing the documentation on file, the FAC noted that in the statement in the AASRD In-combination assessment (Appropriate Assessment Screening Report Appendix A: In-combination report for Afforestation project CK26-FL0061) it is stated that *"There is no likelihood of residual effects that might arise from this project, which are not significant in themselves, creating a significant effect in-combination with other plans and projects."*

The FAC noted the DAFM's use of the word *"residual"* in its conclusion. The FAC considered that, the term *'residual effects'* is more commonly employed in relation to the consideration of what effects remain after mitigation measures have been assessed as part of the AA. For example, the Department of the Environment, Heritage and Local Government has published a guidance document on Appropriate Assessment entitled Appropriate Assessment of Plans and Projects in Ireland Guidance for Planning Authorities (DEHLG, 2009). This document states on page 40,

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

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



In reviewing the AASRD In-combination assessment of 08/07/2024 the FAC noted that the report refers to Cork County Development Plan 2014 and further noted that the current Cork County Development Plan 2022-2028 came into effect on 06/06/2022 and therefore the In-combination Reports refer to an incorrect development plan. The FAC considers that reliance on an out-of-date development plan is a serious error in the processing of the licence application.

#### **CONCLUSION.**

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal, the SoF submitted by the DAFM, and the post-appeal submissions from the parties. In accordance with Article 14B of the Agricultural Appeals Act 2001 (as amended) the FAC is satisfied that series of significant or serious errors was made in the making and processing of the application in relation to licence CK26-FL0061. The FAC is, thus, setting aside and remitting the decision of the Minister to undertake a new Appropriate Assessment of the proposal itself and in combination with other plans or projects keeping with the requirements of Article 6(3) of the EU Habitats Directive and the Forestry Regulations 2017 prior to the making of a new decision.

Yours sincerely,

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Iain Douglas,  
On Behalf of the Forestry Appeals Committee

