



Mr. Liam Malone

19th December 2025

**Subject: Appeal FAC064/2025 against licence decision DU02-FL0171**

Dear Mr. Malone,

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

**Hearing**

Appeal reference FAC064/2025 was considered during a meeting of the FAC held remotely on the 20<sup>th</sup> November 2025. In attendance:

FAC Members: Mr. Donal Maguire (Chairperson), Mr. Iain Douglas, Mr. Derek Daly, Mr. Vincent Upton & Mr. Luke Sweetman.

FAC Administration: Ms. Aedín Doran

In the particular circumstances of this case, the FAC considered that it was not necessary to conduct an oral hearing in order to properly and fairly determine the appeal.

**Decision**

Having regard to the information before it, including the record of the decision by the Department of Agriculture, Food, and the Marine (DAFM) on the Forestry Licence Viewer (FLV), the notice of appeal, the DAFM's Statement of Fact (SoF), additional submissions and responses to same, the FAC has decided to set aside and remit the decision of the Minister to grant felling licence DU02-FL0171 for the reasons set out hereunder.

The FAC is satisfied that serious or significant errors were made in the DAFM's decision to issue DU02-FL0171 in relation to the Appropriate Assessment (AA) screening and Stage 2 AA completed by the DAFM, and the DAFM's failure to publish documentation supplied by the Applicant which the FAC considered to form a material part of the licence application. In these circumstances, the FAC decided to set aside and remit the decision to the Minister to undertake a new screening for AA, and if necessary, complete the AA process while adhering to the relevant public participation requirements. The FAC also found that the revised application documents should have been subject to a period of public consultation in keeping with Regulation 10(4) of the Forestry Regulations 2017. As such, in making a new decision, the Minister should ensure that all relevant documents are published at the time the decision is made in keeping with the Minister's policy.

## **Background**

The licence under appeal is for the clearfell without replanting of 3.22ha of mixed conifer and broadleaf forest aged between 16 – 64 years-old in Killakee, Co. Dublin and was issued on the 6<sup>th</sup> June 2025. According to submissions from the applicant, the site is being felled to facilitate the car park for the Dublin Mountains Visitor Centre project (DMVC). The proposal is on a steep site with predominantly shallow, mineral soil and is surrounded by plantation forestry, agricultural land and, man-made features including the existing Hell Fire car park. A forest road which comprises a section of the Dublin Mountains Way loops through the northern section of the project area and provides access from the forest to the public road network at R115 Killakee Road at a short remove to the east of the proposal site.

The licence was issued with relatively standard conditions as well as site-specific archaeological conditions, and mitigation measures from an Ecology Report and an AA Determination produced by the DAFM.

The proposal is located in the Liffey and Dublin Bay 09 Catchment, the Dodder\_SC\_010 Sub-Catchment and the sub-basin of the Owenadoher\_010 River Waterbody. The DAFM's Ecology Report states that there are no aquatic zones, relevant watercourses, or any water features within or adjacent to the proposed felling project area. Information available online from the Environmental Protection Agency (EPA) shows that there are no EPA-mapped watercourses within or adjoining the proposal area. EPA data states that the Owenadoher\_010 River Waterbody had "Moderate" status during the 2019-2024 monitoring period and that this status is "At Risk" with "Urban run-off" listed as the significant pressure. The proposal is underlain by the Kilcullen Ground Waterbody which had "Good" status in the 2019 – 2024 period but is "At risk" with agriculture, forestry and "Unknown" listed as significant pressures. The nearest EPA-mapped watercourse is the Orlagh, a first-order stream rising approximately 420m northwest of the proposal but within a separate River Sub-Basin, the Dodder\_040. The third-order Jamestown 09 is within the same River Sub-Basin as the proposal and is located approximately 460m to the east, separated by a public road and almost the entire breadth of Massy's Wood.

A licence for this proposal was issued on the 15<sup>th</sup> November 2023 and, following a third party appeal, was set aside and remitted by the FAC in a decision dated 19th November 2024 (FAC086/2023). For the avoidance of doubt the findings and decision of the FAC outlined below relate to appeal reference FAC064/2025 in relation to the DAFM's decision to issue tree felling licence DU02-FL00171 on the 6<sup>th</sup> June 2025.

## **AA**

The Applicant submitted an AA Pre-Screening Report (AAPSR) with the original application which was completed on the 3<sup>rd</sup> April 2023. The AAPSR describes the proposal site and its surroundings, the proposed operations, and details the hydrological connectivity of the project site. Section 3 of the AAPSR screens the proposal for the possibility of significant effects on the following eight European sites, all of which are within 15km:

- Wicklow Mountains SPA IE0004040
- Wicklow Mountains SAC IE0002122
- Glenasmole Valley SAC IE0001209
- Knocksink Wood SAC IE0000725
- South Dublin Bay and River Tolka Estuary SPA IE0004024
- South Dublin Bay SAC IE0000210

- Ballyman Glen SAC IE0000713
- Poulaphouca Reservoir SPA IE0004063

For each European site the relevant Qualifying Interests (QIs) or Special Conservation Interests (SCIs) are listed and the possibility of the project itself (i.e., “alone”) having a significant effect on each site is recorded and the rationale for each decision described. All eight sites were screened out for AA. Section 4 of the AAPSR is titled “In-Combination Plans & Projects on European Sites” and concludes that:

*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.*

On file is a document titled “Appropriate Assessment Screening Report & Determination for felling project DU02-FL0171, at Killakee, Co. Dublin” (AASRD) which was prepared by an Ecologist and dated the 26<sup>th</sup> May 2025. The AASRD was published on the FLV on the 6<sup>th</sup> June 2025, the same date as the licence was issued/published on the FLV.

The AASRD outlines the project details and provides a description of the proposal site and surrounds. Section 3 lists the information that was considered in undertaking the screening for AA and notes that the proposed felling is a component of a permitted development, the DMVC. The AASRD states that the AA Screening, EIAR, Approval and associated documents for the DMVC and associated works were reviewed/considered when screening the application for DU02-FL0171.

The AASRD screened the same eight sites as the AAPSR, reaching the same screening conclusion in relation to six sites but differed from the AAPSR regarding the Wicklow Mountains SAC and the Wicklow Mountains SPA which were “screened in” for the following reasons,

Wicklow Mountains SPA was screened in due to:

*Possible effect. The proposed project is a component of a permitted development (the Dublin Mountain Visitors Centre and all associated works (An Bord Pleanála Reference No.: PLO6S.JA0040)) which has been screened in and considered for potential impacts on Merlin as “any increase in visitors accessing the SPA as a direct result of the proposed development could lead to habitat degradation, either directly through disturbance (visual, noise) or indirectly through a reduction in prey availability”. While in isolation it is not considered that the proposed project DU02-FL0171 would result in significant effects on this European Site, on an extremely precautionary basis given that Wicklow Mountains SPA IE0004040 was screened in for the overall permitted development, this European Site is screened in for DU02-FL0171.*

Wicklow Mountains SAC was screened in due to:

*Possible effect. The proposed project is a component of a permitted development (the Dublin Mountain Visitors Centre and all associated works (An Bord Pleanála Reference No.: PLO6S.JA0040)) which has been screened in and considered for potential impacts on heathland (sic) habitats as “there is potential for a small increase in footfall to lead to braiding and erosion of the habitat along the existing trails, reducing the overall area in the SAC”. While in isolation it is not considered that the proposed project DU02-FL0171 would result in significant effects on this*

*European Site, on an extremely precautionary basis given that Wicklow Mountains SAC IE0002122 was screened in for the overall permitted development, this European Site is screened in for DU02-FL0171*

The AASRD refers to an “Appendix A: In-Combination Report for felling proposed under DU02- FL0171” which is stated to be “on file.” The FAC found on the record of the decision two documents labelled as “Incombination Screening Stage”. Both were published on the FLV on the 6<sup>th</sup> June 2025 and both documents are titled “Appendix A: In-combination report for Felling and Reforestation project DU02- FL0171”. These reports state that they considered the potential for the proposal to contribute to an in-combination impact on European sites and consulted various online planning systems and datasets (including the DAFM’s FLV) on the 22<sup>nd</sup> May 2025 in the first report, and the 26<sup>th</sup> May 2025 in the second. Both reports state that in order to identify other plans and projects, they focussed on the general vicinity of the project area in the River Sub-Basin Owenadoher\_010. Both reports state that they consulted the websites of South Dublin County Council, An Bord Pleanála, the EPA, and include reference to the South Dublin County Development Plan 2022-2028. Both reports concluded that:

*...There is no likelihood of the proposed Felling and Reforestation project DU02-FL0171 when considered individually, having a significant effect on the relevant European Site(s), as described elsewhere in the Screening Report. The relevant Qualifying Interests / Special Conservation Interests and Conservation Objectives, as listed elsewhere in the Screening Report, have been taken into consideration in reaching these conclusions. Furthermore, it is considered that the regulatory systems in place for the approval, operation (including any permitted emissions) and monitoring of the effects of other plans and projects are such that they will ensure that they do not have any significant effect on those same European Site(s). There is no likelihood that the proposed project will have, or contribute to, any significant effect on those same European Site(s), when considered in combination with other plans and projects.*

There is no NIS or AA Report on file. There is an “Appropriate Assessment Determination for felling project DU02-FL0171, at Killakee, Co. Dublin” (AAD) which was prepared by an Ecologist, dated the 26<sup>th</sup> May 2025., and published on the 6<sup>th</sup> June 2025. Section 3 of the AAD – “Appropriate Assessment” notes that the NIS, EIAR, Approval and associated documents for the DMVC were considered during the AA of DU02-FL00171. Section 3 also states that:

*This NIS and associated documents facilitate the Minister carrying out an appropriate assessment. A DAFM Ecologist evaluated the submitted NIS, defined as “a report comprising the scientific examination of a plan or project and the relevant European Site or European Sites, to identify and characterise any possible implications of the plan or project individually or in combination with other plans or projects in view of the conservation objectives of the site or sites, and any further information including, but not limited to, any plans, maps or drawings, scientific information or data required to enable the carrying out of an Appropriate Assessment”.*

Section 4 – “Appropriate Assessment Determination” states that “...The proposed project, individually or in combination with other plans or projects, will not adversely affect the integrity of any of the aforementioned European Sites, having regard to their conservation objectives, provided the following mitigation is implemented” and prescribes measures including adherence to the mitigations detailed in NIS for the DMVC and all associated works.

The AAD refers to "Appendix A: In-Combination Report for Felling proposed under DU02-FL0171 See File". On file is a document labelled "In Combination Report" which was published on the FLV on the 6<sup>th</sup> June 2025 and is titled "Appendix A: In-combination report for Felling and Reforestation project DU02-FL0171". This document states that it consulted various online datasets on the 26<sup>th</sup> May 2025 and concludes that:

*...there is no possibility that the Felling and Reforestation project DU02- FL0171, with the mitigation measures set out in Section 4, will itself, i.e., individually, adversely affect the integrity of those European Site(s) screened in (as listed elsewhere in this AA Report. The relevant Qualifying Interests / Special Conservation Interests and Conservation Objectives have been considered in reaching this conclusion. There is no likelihood of any residual effects that might arise, which do not in themselves have an adverse effect, creating an adverse effect on the integrity of the site(s) in-combination with other plans and projects... It is concluded that this project, when considered in combination with other plans and projects, will not adversely affect the integrity of those same European Site(s).*

#### Referrals & Submissions

There is no record of any third-party submissions on the FLV and the DAFM's SoF states there were "No submissions received". The application was referred to South Dublin County Council, Inland Fisheries Ireland (IFI) and the NMS. There is no response recorded from the Co. Council or IFI. Archaeological conditions were agreed with the NMS via email correspondence which is on the record.

#### Grounds of Appeal

There is one third-party appeal (FAC064/2025) against the decision to grant DU02-FL0171. The grounds of appeal were considered in full by the FAC. The grounds are set out in seven parts as follows:

- **Part 1** – Grounds of Appeal
- **Part 2** – "Grounds we have consistently included – Appellant's grounds and statement that are pertinent to this appeal".
- **Part 3** – Further grounds including links to documents etc.
- **Part 4** – CIEEM document. The environmental information relied upon by the DAFM/Coillte is out of date.
- **Part 5** – Map. Project splitting. Certain licences not included. Description varies between "felling" and "clearfell".
- **Part 6** – Grounds in an email dated 19<sup>th</sup> July 2024
- **Part 7** – Additional grounds

In summary, the grounds of appeal contend that:

#### Part 1

1. There was inadequate and ineffective public notice in contravention of Article 6(2) of the Aarhus Convention and unfair procedures. The grounds make reference to the fact that the application was subject to AA, that the area is used for recreation and that no submissions were made on the application. The grounds also make reference to a previous decision of the FAC and the provisions of the Forestry Regulations 2017.
  - a. The Minister has failed to have regard to the social functions of forestry.

2. The grounds suggest that the Archaeology Report lacks bespoke details and relies on a broader assessment for the associated planning permission.,
3. There was a breach of Section 10(4) of the Forestry Regulations 2017 with reference to submissions from the applicant and DAFM reports.,
4. That the assessment for the project under Article 6(3) of the Habitats Directive does not contain precise and definitive findings and conclusions capable of removing all reasonable doubt as to the effects of the proposed works on the protected area concerned with reference to the screening conclusions in relation to two European sites. That the DAFM screening postdates the NIS, and that the NIS does not address felling works and some of the DAFM mitigation measures and is out of date. That the DAFM consideration of other plans and projects is flawed.,
5. That there has been inadequate assessment under Article 12 of the Habitats Directive (Annex IV species) with reference to bats and an NPWS publication.,
6. That DAFM procedures are not consistent with the requirement for providing a General System of protection commensurate with Article 5 of the Birds Directive. There has been no ornithological survey of the site. The grounds submit that there are no seasonal restrictions, and that domestic law provides no protection. It is submitted that the project area is comprised of Mixed High Forest with mature deciduous native trees. The project should be referred to NPWS and Birdwatch Ireland.
7. It is submitted that the pollution impact potential of the project has not been considered or assessed with reference to the Water Framework Directive.,
8. That access to justice is prohibitively expensive.
9. That fees to take an appeal have not been prescribed in accordance with the law.
10. Felling and reforestation policy has not been subject to Strategic Environmental Assessment.
11. The FAC is structurally biased and breaches the principle of constitutional justice.
12. That references in the Ecology Report are too convoluted and should have included better referencing.

Part 1 also includes a "Summary" section that makes reference to Good Forestry Practice, the Appellant's right to seek a Judicial Review, and makes a number of comments concerning the FAC. The Appellant also requests an oral hearing.

## **Part 2**

1. The Public were not notified of the application as required by the Forestry Act 2014 and the "relevant Regulations". No effective public participation.
2. "The application (both in respect of planning permission and in the licence application) is predicated on the necessity to carry out post-permission surveys in order to establish whether

there is a necessity for a derogation licence.” Contends post-consent surveys are incompatible with EUCJ requirements as per decision in Case C-463/20.

3. The surveys for bats carried out in 2019 are out of date and cannot be relied upon to determine whether a Derogation Licence is required and that the FAC cannot rely on them in reaching a conclusion of no significant effects on the environment or Natura 2000 sites and protected species.
4. Same point RE Otter – obsolete survey data. QI for Wicklow Mountains SAC. Otter given strict protection under Articles 4 & 12 of the Habitats Directive. Contends survey techniques employed were sub-optimal. Refers to the *Ecological Surveying Techniques for Protected Flora and Fauna during the planning of National Road Schemes (NRA, 2008)*.
5. Page 134 of same guidance states: “Otter surveys can be undertaken at any time of year, but are less likely to provide reliable results mid-t-late-summer, when the presence of dense vegetation may make it difficult to find field signs and holts.”
6. Aside from passage of time and sub-optimal survey period “These Guidelines were identified by the Council as *recognised guidance* (6.2.1. EIAR).”
7. “There is no information before the FAC which could allow it to conclude that Board could have concluded that there would be no significant effect on otter. It is the Applicant’s case that the Board’s grant of permission is inconsistent with Annex IV of the Habitats Directive that protects all Annex IV species from *inter alia* disturbance and destruction of breeding and resting places throughout the range of the species (Article 12.)”
8. If the FAC concludes that a derogation licence is required, a derogation licence can only be granted pursuant to Article 16(1)(a) of the Habitats Directive can only be granted for an activity aimed at protecting wild flora and fauna and conserving natural habitats and not for the purposes of facilitating a tourist development...”

### Part 3

- The forestry licence should have been acquired before planning consent granted and should have been part of environmental assessment. Project splitting.
- The 2019 Dublin City Otter Report indicates significant and increasing Otter activity on the Dodder Catchment.
- The Heritage Officer Report RE Taylor’s Lane LRD23A/0002 regarding out-of-date surveys etc. “The same opinion applies in this instance”
- The licence application to facilitate the DMVC works has not assessed the cumulative effects with regards to a list of LRD/SHD etc. BOLAP Scoping Documentation outlines additional tributaries on Hellfire Mountain that were not included in the DMVC surveys.
- No hydrology report that assesses underground lake on Hellfire Mountain and all watercourses that form Dodder Catchment which flow into a Natura site.
- Questions mapping/assessment of forest drains and the hydrological connectivity to the Dodder River Catchment and “the Natura 2000 site.” Also, contends it is not clear if all forest roads were authorised/legally compliant.

- “No assessment to minimise soil disturbance” RE carbon loss, sedimentation, nutrient loss etc has taken place.
- Five other licences applied for (DU02-FL0175, DU02-FL0174, DU02-FL0148, DU02-FL0189, DU02-FL0190) – project splitting to avoid environmental scrutiny and AA. Such a practice is contrary to various EU Directives.
- Non-disclosure by Coillte as co-applicant in the DMVC.
- The applicant has not identified all the protected structures/national monuments within this site. Proper archaeological assessment required.
- Unauthorised works on site and nearby have not been reported to National Monuments/L.A. Forestry works will impact protected structures. No assessment of these risks.
- “The cumulative effects of project splitting facilitates the Applicant to ignore the group significance of archaeological structures and their collective heritage significance within Dublin and Wicklow Mountains.”
  - Refers to damage to a Standing Stone, lack of appropriate conservation plan etc. for national monuments/protected structures before/during/after proposed works. Therefore, failed to assess impact on them and identify mitigation measures etc.
- Any tree removal within the curtilage of a protected structure or national monument will have an injurious impact on its character etc and requires planning permission. “Such tree removal is contrary to the Archaeological Heritage Protection Guidelines.”
- There is non-compliance with the licence for the original planting.
- That there are DAFM errors in the processing of the application regarding (i) EU Habitats Directive, (ii) Harvest Plan Standards, (iii) Protection of Recreational Trail Users, (iv) Unenforceable licence conditions, (v) Inadequate public notice, (vi) Inconsistent wildlife protection, (vii) Lack of assessment for Annex IV species.
- List 11 Key Indicator species and habitats. Contends none of the surveys relied upon assess the proposal’s impact on these receptors with “scientific certainty” and therefore the Applicant has “failed in their statutory obligations.”
- The applicant has failed to carry out a hydro-morphological assessment. Refers to Owenadoher Catchment “being a spawning river for the Dodder.” Contends forestry activity high risk for aquatic life.
- Massey’s Nature Trail—many iconic trees within proposal site, not clear what trees are at risk from this licence and cumulative effect with other felling licences. Risk to natural and built heritage and recreational amenities. Cumulative effects on amenity zone not assessed.
- There is no agreement from Irish Water.
- That the Climate Action Plan & Nature Restoration Law have not been taken into account.
- The licence application and the process to grant it is contrary to the FSC Interim Forest Stewardship Standard for Ireland.

#### **Part 4**

Contains a CIEEM advice note entitled “On the Lifespan of Ecological Reports and Surveys”.

#### **Part 5**

Includes a map of felling in the area that can be found on the record and suggests there has been “fragmentation contrary to EIA Directive” and that descriptions were contradictory.

## **Part 6**

Part 6 includes correspondence between the FAC administration and the Appellant regarding a number of other appeals, including an email of 19<sup>th</sup> July 2024. The grounds are attributed to a WID and are largely a repetition of grounds contained in other sections.

## **Part 7**

1. Issuing five decisions within days of each other equates to project splitting.
2. Cumulative appeal fees are prohibitively expensive.
3. What is the justification for appeal fee after remittal of original decision.
4. How many times can the same licence be appealed to FAC
5. Query why the file for DU02-FL00190 is missing from FLV.

## **Minister's Statement**

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

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

The Minister provided an SoF responding to the grounds of appeal, which was provided to the parties. As the parties were advised, the FAC relied on the record of the decision as provided by the Minister on the FLV. The FAC considered the Minister's SoF in full. The DAFM submitted that the decision to issue DU02-FL00171 his DAFM decision was issued in accordance with DAFM procedures, S.I. 191/2017 and the 2014 Forestry Act, as amended and the following is a brief summary of their responses to the grounds of appeal:

## **Part 1**

1. The public consultation process meets any obligations that might arise under the Aarhus Convention. An overview of the DAFM process was provided. That the DAFM provides for public consultation in relation to applications and, additionally, in relation to AA and that information is published on the FLV.
  - a. The decision was made having regard to the social function of forestry and was in keeping with sustainable forest management. The DAFM refers to the reforestation of the site which is not applicable in this case.
2. The DAFM's case Archaeologist made his own independent assessment and decisions as to the scope and nature of the archaeological and built heritage mitigations measures, adherence to which was required to be attached as a condition to any Licence granted by the DAFM. Prescribed mitigation measures include archaeological monitoring and reporting to the NMS, DAFM, and the National Museum of Ireland in specific circumstances. The DAFM's assessment and the recommended archaeological and built heritage mitigations were notified to NMS, DHLGH, on the 9th May 2025 and a response in relation to the same received on 27th May 2025.
3. Regulation 10(4) provides discretion as to what information should be published and subject to public consultation and that the test is whether a person knows in general terms why the decision was made and to have enough information to inform a challenge of the decision.

4. The DAFM reaffirms its position in relation to the AA and submits that the two European sites referred to in the grounds lack any hydrological connection and that the Applicant's Ecologist reached the same conclusion. The DAFM stated that the mitigations included in the AAD are sufficient to meet the strict test of Article 6(3) and that, as outlined in Section 3 of the AAD, DAFM Ecologists examined the NIS and any additions or differences in mitigations used in the AAD versus those in the NIS are in line with DAFM standards. The DAFM also contended that the measures are effective and precise, and then provided an overview of the assessment process and a list of standards and other documents.
5. The DAFM submits that otter was considered in relation to European sites and that bat species are not listed as an interest of the European sites screened.
6. In relation to the protection of birds, the DAFM submits that the grounds do not refer to any specific adverse effect on the environment and that it disagrees with the contention that its procedures are not consistent with Article 5 of the Birds Directive. The DAFM submits that the issuing of the licence does not exempt the holder from meeting any legal requirement under the Wildlife Acts.
7. That no silt traps are shown as there is no relevant watercourse on site and no hydrological connection to any European site.
8. The appeal fee is appropriate and in keeping with other appeal systems and was created lawfully.
9. "See answer to ground 8".
10. The Felling & Reforestation Policy (May 2017) was not required to be made subject to SEA.
11. "This is beyond the remit of a forestry appeal on an individual licence and has been addressed previously in FAC decisions".
12. That the references in the Ecology report can be clearly followed.

#### **Part 2**

1. The DAFM reiterated its public consultation process.
2. The DAFM contends that there was nothing in the application to indicate that the site area supported a population of bats or otters, that the granting of the licence does not exempt the licence holder from meeting legal requirements under the Wildlife Act, that the DAFM position is consistent with the EIAR and NIS for the DMVC. The EIAR provides for pre-construction surveys to identify roost sites and no signs of otter were recorded on site within 500 metres upstream and downstream.

#### **Part 3**

- The DAFM submit that It is standard and good practice to manage forest stands or plots following individual prescriptions that might be based on the species composition and age of the trees and the overall management objective of the landowner in addition to any regulatory constraints.

"Submitting separate licence applications for the felling of trees in this manner is in keeping with the requirements of the Forestry Act 2014".

- The DAFM are satisfied with the assessments undertaken and reports prepared in relation to the licencing process.
- Other plans and projects were considered in-combination with the proposal and identified within the sub-basin.
- The grounds pertaining to archaeology and built heritage in Part 3, and which substantially but not exclusively repeat rounds raised against a decision on an earlier Licence application for the same area (DU02-FL0190) which was appealed by the same Appellants (FAC Ref. FAC 066/2024) but later withdrawn by the Applicant before the matter was heard by the FAC. The Applicant's "Felling Licence Application Map" and "Harvest Plan Map" clearly identified with red and green crosses respectively the officially recorded locations of the two Recorded Monuments / SMR sites within the site.
  - The DAFM had regard to other proposals in the vicinity including the DMVC and associated works.
  - Vandalism is not a matter that comes within the regulatory remit of the DAFM under the Forestry Acts and Regulations.
- "as part of the application for planning permission for the primary development, an Environmental Impact Assessment Report (EIAR) which included a comprehensive Archaeological and Cultural Heritage Chapter and an Architectural Heritage Chapter, was produced, and pursuant, inter alia, to the requirements of Article 4, paragraph (5) of the EIA Directive, due regard was had by the Department's Archaeology & Built Heritage Section to the same, whilst at the same time making its own independent assessment (and re-assessment) and decision(s) as to the scope and nature of the archaeological and built heritage mitigations measures adherence to which was required to be attached as a condition to any Licence granted by the Department."
- The DAFM contends that their screening for AA and subsequent AA is "fully compliant with Article 6 (3)"
- The DAFM rejects the suggestion of procedural errors and submits that the planning process was subject to significant public consultation. The DAFM also submit that the suggestion of vested interest does not fall within the remit of the FAC.
- The DAFM state that application was referred to IFI and no response was received. Also, that the application was not referred to Irish water as there are no abstraction points located nearby.
- The DAFM contends that the sustainable management of Ireland's forests and woodlands is an important mechanism for achieving the objectives of the Climate Action and Low Carbon Development (Amendment) Act 2021 which requires Ireland to achieve a 51% reduction in emissions by 2030 (relative to 2018 levels) and net-zero emissions no later than 2050.

- The DAFM state that all historic documents are held on the FLV “from the application pack right through to the latest Ground of Appeal” and that these documents represent the history of the file which is available to the public to review if they wish.
- “The appellant provides no legal reason as to why the licence should have been acquired first and been considered as part of the EIAR”.
- The DAFM reiterated a number of its positions in relation to repeated matters in the grounds of appeal.

#### **Post-Appeal Submissions**

A submission was made by the Applicant in response to the appeal that contests the grounds and contends that the grounds attempt to conflate a planning permission process and the tree felling process in a number of instances. The Appellant also made a submission in which they restated their position and contested the response of the Minister. The post-appeal submissions were circulated to the other parties. In the interest of clarity and for the avoidance of doubt, in considering the post-appeal submissions the FAC had regard only to those matters it deemed to be an elaboration or clarification of points raised by the Appellant in the grounds of appeal proper and responses to those grounds.

#### **Considerations of the FAC**

The remit of the FAC, as set out in Section 14B of the Agriculture Appeals Act 2001, as amended, is to consider appeals against specified decisions of the Minister and to determine if a serious or significant error, or a series of errors, was made in making the decision under appeal, and if the decision was made in compliance with fair procedures.

At its sitting on the 20th November 2025, the FAC had before it the full DAFM record of the decision as made available on the FLV, the Notice of Appeal Form and grounds of appeal, the DAFM’s SoF, the post-appeal submissions and all materials on file. For the avoidance of doubt, and as the parties were informed, the FAC considered the documentation related to the decision as provided by the DAFM on the publicly available FLV.

The FAC noted that some of the grounds were of a generic nature and were, as is evidenced in the appeal itself, copies of grounds submitted by other parties in relation to other appeals. The grounds also make reference to previous decisions of the FAC on some of the generic grounds. The Notice of Appeal also includes extensive commentary on the legislative basis and nature of the appeals process and other matters which are clearly not within the jurisdiction of the FAC to determine. It is not for the FAC to make a determination on a decision of An Bord Pleanála nor a previous decision of the FAC. Furthermore, it is not for the FAC to make a determination on the granting or refusal of a derogation licence under the wildlife legislation. The FAC determined that it would consider the appeal in relation to those matters that it considered to fall within its jurisdiction to determine.

#### **The Role of the FAC**

The FAC considered in the first instance the grounds that referred to the decision for planning permission and the transposition of Conventions and Directives. The FAC is an administrative committee established under the Agriculture Appeals Act 2001 to determine appeals against certain decisions of the Minister for Agriculture, Food, and the Marine. The Agriculture Appeals Act 2001, as amended, provides the following:

### ***Establishment of Forestry Appeals Committee and its function***

**14A**

*...(2) The function of the Forestry Appeals Committee shall be to hear and determine appeals specified in subsection (4)...*

*...(4) (a) Where a person is dissatisfied by a decision made by the Minister under an enactment or statutory instrument specified in Schedule (2) (referred to in this section and sections 14B and 14D as a 'decision') he or she may, within a period of 28 days beginning on the date of the decision, appeal to the Forestry Appeals Committee against the decision...*

### ***Schedule 2***

*Section 7 of the Forestry Act excluding grants arising under the schemes mentioned in Schedule 1.*

*The Forestry Regulations 2017 (S.I. No. 191 of 2017) insofar as they relate to a licence for afforestation, felling of trees, forest road construction or aerial fertilisation of forests.*

The FAC considers that its remit does not extend to making a determination on a planning permission application or a decision of An Bord Pleanála. Furthermore, the FAC understands its remit not to extend to the making of a determination as to whether the EU and Ireland have correctly implemented the UNECE Aarhus Convention. All parties noted the general relationship between the tree felling licence application and the project which has attained planning permission, and this was confirmed by the DAFM and Applicant during the application process. The FAC considers its remit to extend only to the decision of the Minister for Agriculture, Food, and the Marine to grant tree felling licence DU02-FL00171 following application by the forest owner. The FAC concluded that it should make a determination of the appeal against the granting of the tree felling licence based on its remit as provided in the Agriculture Appeals Act 2001.

### ***The Aarhus Convention, Public Notice and Public Participation***

The FAC considered the grounds relating to Public Notice and Public Participation and the Aarhus convention which are raised in a number of parts of the appeal. The grounds contend that there has been inadequate and ineffective public notice in contravention of Article 6 (2) of the Aarhus Convention and that, relatedly, the Minister had failed to have regard to the social function of forestry. The grounds reference comments of the Court of Appeal in McCaffrey (McCaffrey v Minister for Agriculture Food and Marine [2017] IECA 247). The grounds make reference to a previous decision of the FAC on the matter. The DAFM submit that any obligations that might arise under the Aarhus Convention are met through its procedures which are outlined.

The FAC understands the "Aarhus Convention" to be a reference to the UNECE Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters. The FAC understands the Aarhus Convention to be a convention under the UNECE and that it does not form part of domestic legislation as such. The Aarhus Convention has been transposed through a number of pieces of EU legislation, including the EU EIA Directive (Directive 2011/92/EU as amended by Directive 2014/52/EU).

The FAC understands that publication through the FLV is the form of publication chosen by the Minister for Agriculture to inform the public and to make the application and decision freely available and accessible and to facilitate submissions. As the Appellant notes in their own grounds, they have pursued a number of appeals. Having taken a previous appeal in relation to this application, the Appellant was clearly aware of the public consultation process and did not make a submission on the application when the opportunity arose.

The FAC considered that this ground of appeal effectively seeks to challenge Ireland's and the EU's transposition of the Aarhus Convention and related questions of law and the FAC considered, as the Appellant has noted that they are aware, that such matters would not fall within its jurisdiction to determine.

The FAC considered that the comments attributed to the Court of Appeal and the Aarhus Convention Compliance Committee (ACCC) are referenced to a period prior to the current Forestry Regulations 2017 (as amended) and procedures of the DAFM, including the availability of the licence application and documentation on the FLV.

The grounds refer to the requirements under the Forestry Regulations 2017 to erect a site notice in relation to tree felling licences. The Forestry Regulations 2017 require a site notice to be erected at the entrance to the lands to advise the public that the felling and extraction being undertaken is in accordance with a licence issued by the Minister. This requirement relates to the undertaking of felling after a licence has issued. The FAC does not consider that the Forestry Act 2014 requires any additional notices to be made in relation to the application as suggested in the grounds.

The FAC was not satisfied that a serious or significant error or a series of errors was made in the making of the decision or that the decision was made without complying with fair procedures in relation to the Aarhus Convention or public notice of the application. However, as noted further below the FAC did determine that a serious error was made in the provisions for public consultation undertaken by the DAFM in relation to the amended application documentation and AA.

#### **EIA**

The EU EIA Directive defines an Environmental Impact Assessment (EIA) and identifies the projects which are required to be subject to EIA. The Directive sets out in Annex I, a list of projects for which EIA is mandatory. Annex II contains a list of projects for which member states must determine, through thresholds or on a case-by-case basis (or both), whether or not EIA is required. Neither afforestation nor deforestation, or a class of development related to the proposal under appeal, are referred to in Annex I. Annex II contains a class of project specified as "initial afforestation and deforestation for the purpose of conversion to another type of land use" (Class 1 (d) of Annex II) and "Any change or extension of projects listed in Annex I or this Annex, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment." (Class 13 (a) of Annex II).

The Irish Forestry Regulations 2017, in relation to forestry licence applications, require compliance with the EIA process for applications relating to afforestation involving an area of more than 50 hectares, the construction of a forest road of a length greater than 2000 metres and any afforestation or forest road below the specified threshold where the Minister considers such development would be likely to have significant effects on the environment. The Forestry Regulations 2017 do not provide for the Minister to undertake an EIA in relation to a tree felling licence application. In this instance, the application is for the felling of trees without replanting as part of a larger project with resulting deforestation and change of

land use type from mixed-species forest to car park for a significant portion of the 3.22ha project area. In this case the potential environmental impact of the felling of trees to facilitate expansion of the existing Hell Fire car park was considered in the EIAR for the DMVC and the DAFM appear to have relied directly on the EIAR for that project in their environmental assessment of the proposal under DU02-FL00171. The EIAR states in section 10.4.4.2 *Access and Parking Improvements* that:

*It is proposed to expand the existing car parking capacity on the Hell Fire property from c. 80 spaces to c. 275 spaces, and to provide some coach parking spaces. This would require the felling of approximately 1.2ha. (3acres) of mature conifer trees above the existing car park, as well as extensive earthworks (as the site is steeply sloped). The existing conifer trees are approaching end of life and due for felling, and would be replaced by new planting/landscaping to integrate the expanded parking area. The entrance to the Hell Fire Forest property will be modified, by a new gateway feature and improvements to the R115 at the site entrance. A new footpath will extend north along the R115.*

The FAC noted that Section 6 of the EIAR for the DMVC proposes mitigation measures aimed at eliminating or minimising the likely effects of the proposed development on its Key Ecological Receptors. These measures include avoidance of particularly sensitive areas, the imposition of seasonal restrictions on certain construction activities and habitat enhancement measures, as well as the implementation of best practice guidance and an Environmental Operating Plan during construction.

The FAC noted that the DAFM's Ecology Report produced in relation to DU02-FL00171 requires adherence to the mitigations detailed in Section 6 of the EIAR and the Schedule of Environmental Commitments (both dated 23rd December 2019) for the DMVC, as well as the conditions attached by An Bord Pleanála to the Conditional Permission for that project. The FAC considered that the record of the decision indicates that the DAFM had regard to relevant environmental information, specifically the EIAR for the DMVC which assessed potential environmental impacts of the felling of trees to facilitate the expansion of the Hell Fire car park, prior to making their decision to issue DU02-FL00171.

The FAC considered that the Minister for Agriculture was not required to undertake a screening for EIA or an EIA in relation to the processing of the tree felling application that was before them. An EIA was undertaken by An Bord Pleanála as noted by the parties and that decision is not before the FAC. The FAC was not satisfied that a serious or significant error or a series of errors was made in the making of the decision or that the decision was made without complying with fair procedures in relation to these grounds.

#### **Archaeology**

The grounds in Part 1 submit that the Archaeology Report on file relies on a broader assessment for the associated Planning Permission and does not contain bespoke details in relation to this tree felling licence application. In considering this ground, the FAC noted the DAFM's response under Ground 2 in their SoF. The FAC noted that the DAFM's Archaeology Report states that "These archaeological mitigation measures take into account and accord with the archaeological conditions attached under Condition No. 8 to the grant of planning permission for the primary development, the Remedial and Mitigation Measures proposed in Section 11.6 of the Archaeology and Cultural Heritage Chapter in the EIAR, and the Schedule of Environmental Commitments Final (dated 23rd December 2019 and provided to An Bord Pleanála in response to a Request for Further Information)".

The Archaeology Report indicates that the area proposed for felling (deforestation) under DU02-FL00171 is over 50m from the nearest Recorded Monuments / SMR sites – a Standing stone (DU025-021001-) and Enclosure (DU025-021002-). The FAC noted that this appears to align with the location of the monuments included on the application mapping for DU02-FL00171. The Archaeology Report states that it remains of concern that there would be an appropriate response should previously unrecorded archaeological remains be discovered during the course of the proposed works and prescribes bespoke mitigation measures to be adhered to during the works as well as referencing the archaeological conditions attached to the grant of planning permission for the DMVC.

Based on the information before it, the FAC is satisfied that, while the DAFM Archaeologist clearly had regard to the relevant archaeological conditions attached to the permission for the for the DMVC, they also completed a bespoke assessment and Archaeology Report for the proposal under DU02-FL00171.

The grounds of appeal contend that the Applicant has not identified all the protected structures/national monuments within this site but fails to adduce any evidence to support this claim. Part 3 of the grounds of appeal appears to include generic grounds relating to archaeology which are common across a number of appeals against felling licences in the vicinity of DU02-FL00171 and do not appear to be specific, or relevant, to the licence under appeal. These relate to the alleged presence of, and damage to, a standing stone and the removal of trees from within the curtilage of a national monument, neither of which submissions appear to be pertinent to the licence under appeal. The Appellant's submission responding to the DAFM's SoF submits that "multiple documents carry the "Archaeology Report" label and the licence text doesn't name which one governs". However, there is only one Archaeology Report on file since the FAC remitted the original decision to issue DU02-FL00171. It is dated the 26<sup>th</sup> March 2025 and was published on the same date as the licence under appeal. The FAC considers that it is clear that this is the relevant Archaeology Report. Based on the information before it the FAC is satisfied that the DAFM did not make a serious or significant error in relation to the archaeological assessment of the application for DU02-FL00171.

#### **Publication**

In relation to Regulation 10(4) of the Forestry Regulations 2017, the grounds contend that the DAFM should have published the information provided as part of the further information request and the Ecology Report and provided for public consultation while the DAFM contend that such further consultation is provided at the discretion of the Minister.

In relation to the Ecology Report, the FAC considered this to be an internal report generated by the DAFM and did not form part of the application and that there would be no requirement to provide for public consultation in relation to such a document.

In relation to the further information request sent to the Applicant on 26th March 2025, the DAFM requested from the Applicant provide an updated harvesting and reforestation plan/map in a new format and an additional map illustrating the location of the proposal in the context of other harvesting operations associated with the DMVC. The FAC considered that such information by its nature formed part of the application and was relied upon by the DAFM in making its decision. The Harvest Plan and map were published on the 6<sup>th</sup> June 2025, after the specified period of public consultation. The map illustrating the proximity of the proposal to other felling projects in the vicinity was not published until the 29<sup>th</sup> October 2025. The FAC considered that the additional submissions from the Applicant formed a material part of the application and were relied upon by the DAFM and that, in that context, the DAFM should have

published this information and provided for an additional period of public consultation under Regulation 10 (4). The FAC was satisfied that this represented a serious error in the making of the decision.

#### AA

The FAC considered the grounds of appeal related to the DAFM's processing of the licence application in relation to AA. As outlined previously in this letter the Applicant submitted an AAPSR along with their licence application, and that the DAFM had regard to the AAPSR in the preparation of their AASRD. The FAC noted that the title page of the AAPSR refers to the proposal as being "located at Boleybaun and Stangaun" which appear to be townlands located in Co. Leitrim, but that the licence is for felling in the townland of Killakee, Co. Dublin. In the context of the overall details of the application and extensive mapping, the voluntary nature of the submission, and the fact that the details contained in the AAPSR are clearly for the tree felling proposed under DU02-FL0171, the FAC considered that this was a typographical error and was not a significant error in the particular circumstances of this case.

Section 3 of the DAFM's AASRD indicates that in undertaking the AA screening, the DAFM took the Applicant's AAPSR into account as well as "The AA Screening, EIAR, Approval and associated documents" for the DMVC. It is not stated that the DAFM had regard to the NIS for the DMVC. The AASRD screened the same eight European sites as the AAPSR but came to different screening conclusions in relation to the Wicklow Mountains SAC and the Wicklow Mountains SPA, both of which were screened in for Stage 2 AA by the DAFM. The screening conclusions recorded for these two European sites in the DAFM's AASRD refer to the fact that they had been screened in for AA in the planning application for the DMVC and therefore "on an extremely precautionary basis" they were screened in in relation to the proposal under DU02-FL0171.

The FAC considers that it is the tree felling application that was before the DAFM, however, the Minister has determined that the proposed felling operation should proceed to AA because a planning application on the same land but for a larger development was subject to AA. The FAC considers that the DAFM AASRD does not, in itself, identify or assess whether the tree felling application, either individually or in combination with other plans or projects, is likely to have a significant effect on a European site. While the Minister is required to consider other plans and projects, the FAC considers that in adopting this approach to screening the Minister has considered matters outside of the scope of the consent application before him. The European Communities (Birds and Natural Habitats) Regulations 2011 to 2021 (SI 477 of 2011) provides the following in relation to secondary consents,

*21 (b) In taking account of a screening for Appropriate Assessment or Appropriate Assessment in relation to a plan or project and of a Natura Impact Statement, the second authority shall consider the extent to which the scope of that screening for Appropriate Assessment or Appropriate Assessment or Natura Impact Statement covers the issues that would be required to be addressed by the second authority in a screening for Appropriate Assessment or Appropriate Assessment of the plan or project in view of the scope of the consent to be given by it, and shall identify any issues that have not, in that regard, been adequately addressed.*

As noted above, the Applicant's AAPSR screened out Wicklow Mountains SAC and Wicklow Mountains SPA. The DAFM considered that significant effects could arise on these two sites and determined that they should be subject to Stage 2 AA. The FAC noted that there is neither an NIS nor an AA Report for DU02-FL00171 available on the FLV, nor does the AASRD identify that the DAFM will be relying on the NIS submitted for the DMVC. In making a determination without an NIS or AA Report the Minister did not provide for a period of public consultation in relation to the DAFM's AA process and the AA screening

undertaken by the Minister was published at the same time as the licence. While the Minister appears to have been acting as a second authority for the making of a consent on an activity that was also considered by the planning authorities, in relation to a much larger development, the FAC does not consider that the Minister was entitled to forego the public consultation in relation to the AA process, and the Minister had undertaken a screening and determined that an AA was required.

The FAC considers that, under such conditions, there could not be effective public consultation in relation to the AA of the tree felling application and the FAC is satisfied that this represents a serious error in the processing of the licence application. The grounds of appeal raise concerns in relation to the AA process, public consultation and the publication of documentation.

The DAFM's AAD requires adherence to the mitigation measures detailed in the NIS for the DMVC. The FAC considers that this requirement further demonstrates the problem with the Minister's approach as it conditions a tree felling licence for 3.22ha of mixed-species forestry on meeting the mitigation measures related to activities concerning a much larger development. Furthermore, the mitigation measures specified in the NIS for the DMVC relate to visitor numbers and behaviour.

As noted in the grounds, the DAFM's AAD specifies measures that were not addressed or assessed in any NIS or AA Report, which the FAC considers would represent a serious error. The grounds also note that a number of habitats are specified for protection from operations but are not mapped. The DAFM position is that there is no requirement to map such habitats. The FAC would understand that as part of an AA the habitats that are protected or associated with protected species should be identified and assessed for potential significant effects. In this instance, no assessment was undertaken as the Applicant's NIS did not consider such effects would arise on these sites and the DAFM relied on an NIS which did not assess the specific tree felling.

The FAC noted that, in considering in-combination effects, Appendix A of the AAD states "there is no possibility that the Felling and Reforestation project DU02- FL0171, with the mitigation measures set out in Section 4, will itself, i.e., individually, adversely affect the integrity of those European Site(s) screened in (as listed elsewhere in this AA Report)". There is no AA Report on file. The FAC considered that "the mitigation measures set out in Section 4" refers to section 4 of the AAD, as opposed to a section in an AA Report that is not on file. In these circumstances, the FAC considered the reference to the AA Report to be a minor typographical error.

The Appellant queries the DAFM's screening conclusions in relation to South Dublin Bay and River Tolka Estuary SPA and South Dublin Bay SAC but the FAC is not satisfied that the grounds provide any basis that the proposal would be likely to have a significant effect on these European sites such that the DAFM's screening conclusions could be considered to contain serious errors. The grounds also make some further general claims in relation to other plans and projects but do not identify any plans or projects not considered by the DAFM that could work in combination with the proposal to result in a significant effect on a European site. In submitting these grounds, the Appellant has not claimed to have any environmental or ecological expertise nor to have engaged such an individual. The FAC is not satisfied that an error occurred in the making of the decision in this regard.

Based on the information before it, the FAC is satisfied that significant errors were made in the making of the decision in relation to AA such that the decision should be set aside and remitted for the Minister to undertake a new screening and AA, as required.

#### **Article 12 of the Habitats Directive (Annex IV Species)**

The FAC considered the grounds of appeal that the FAC has no information to allow it to conclude that the proposed felling will not have a significant effect on otter or other Annex IV species nor have any of the surveys relied upon in the licence application given scientific certainty on the impact of the proposal on 11 key ecological receptors identified in the grounds by photographs. The FAC noted that the photographs were of fauna, habitats, and flora. The grounds also contend that there has been inadequate assessment under Article 12 of the Habitats Directive. In considering these grounds to FAC noted the DAFM's submission that "Otters screened out for Wicklow Mountains SAC. With regard to Bats, none of the European sites screened by DAFM included Bat species as a QI."

The grounds submit that there are no seasonal restrictions, and that domestic law provides no protection. The FAC considered that there is no convincing evidence submitted that any species protected under Annex IV of the Habitats Regulations 2011 (as amended) would be adversely impacted by the proposal. The FAC considers that the granting of a forestry licence does not relieve the licensee of their responsibilities under the Wildlife Acts to obtain a derogation licence where works undertaken may result in the deterioration or destruction of breeding sites or nesting places of Annex IV species, even where such destruction is not deliberate. However, the FAC considered that there is no basis to conclude that such a derogation is required.

The FAC noted that the licence conditions include adherence with the measures in the DAFM Ecology Report, which includes compliance with the measures outlined below:

*Adhere to the mitigations detailed in Section 6 of the EIAR and the Schedule of Environmental Commitments (both dated 23rd December 2019) for the Dublin Mountains Visitors Centre and all associated works - full details available at <https://www.sdcc.ie/en/services/sport-and-recreation/tourism/dublin-mountains-visitorcentre-dmvc-project/an-bord-pleanala-application/>*

The FAC does not agree with the Appellant's contention that the tree felling licence application was predicated on the necessity to carry out post-permission surveys in order to establish whether there is a necessity for a derogation licence. However, by including a condition to adhere with the mitigations in Section 6 of the EIAR and the Schedule of Environmental Commitments for the DMVC and all associated works, the FAC would understand that the Minister has conditioned the undertaking of surveys and checks by an Ecological Clerk of Works prior to the commencement of works as the referenced mitigations include such surveys. The FAC noted that these measures were included after the undertaking of a wide range of surveys to facilitate the undertaking of an EIA and a planning permission application and consent process which did not identify a requirement to attain a derogation licence.

As previously stated, the planning permission decision is not before the FAC and neither is the FAC empowered to issue planning permission or a derogation for the purposes of the wildlife legislation. The FAC are satisfied that the tree felling licence was not issued predicated on the necessity or assumption that the applicant would attain a derogation licence. The FAC does not consider that the grounds engage with the application and the licence in a meaningful manner. The Appellant's submissions make some general references to otter and bats and also refers to Massy's Wood. The FAC noted that Massy's Wood is a separate forest estate located to the east of the proposal under appeal and is separated from the project area by a car park and the R115 County Road. The licence under appeal to the FAC is for the felling 3.22ha of mixed-species plantation forestry comprised predominately of Douglas fir which is heavily frequented by recreational users. The area under appeal is described as not containing any watercourses

or aquatic zones and the nearest EPA-mapped watercourse within the same River Sub-basin is approximately 460m away and the other side of a County Road. The FAC considered the Appellant's submissions regarding potential impact on otter but noted that the Appellant does not identify a reason as to how the felling of the forest as applied for in this case might have a significant effect on the species. Additionally, the FAC understands that the granting of a felling licence does not remove any legal obligations on the licence holder or their agents that are provided for in the Wildlife Acts or other relevant legislation.

The appeal makes a general claim that the hydrology of the site has been described incorrectly but provides no convincing evidence to substantiate this claim nor explains how the proposal might have a significant effect on otter or bat species. The grounds refer to the restrictions on the granting of derogation licences under Article 16(1)(a) of the Habitats Directive, but the FAC has no role in the granting of such licences. The FAC is not satisfied that an error occurred in the making of the decision in regard to these grounds.

The FAC considered the Appellant's submissions related to alleged deficiencies in the Wildlife Acts regarding Annex IV species and birds. The FAC considered that the Appellant did not substantiate these claims in any real way and the FAC considers that its remit does not extend to making a determination of the legality of the Wildlife Acts.

The FAC considered that the grounds demonstrate a lack of engagement by the Appellant with the decision and the conditions that have been placed on the licence including in relation to seasonal restrictions and surveying. The grounds provide no basis for concluding that the application as licenced would have a significant effect on any protected species or habitat. The application was reviewed by a professional Ecologist who prepared an Ecology Report on 26<sup>th</sup> May 2025 which was subsequently conditioned on the licence. The licence would have to be implemented in keeping with the conditions. This includes oversight and input from environmental specialists as required.

The grounds submit that NPWS Guidance titled "Strict Protection of Animal Species. Guidance for Public authorities on the Application of Articles 12 and 16 of the EU Habitats Directive to development/works undertaken by or on behalf of a Public authority" has not been followed, and that the DAFM and FAC should read the document. As the title suggests and as stated in the contents, the document provides guidance to public authorities in relation to development/works undertaken by or on their behalf. Neither the DAFM nor the FAC are undertaking the development, nor have they engaged someone to undertake the tree felling on their behalf. The DAFM was processing a tree felling licence application under the Forestry Act 2014 and the Forestry Regulations 2017 and the FAC is an appeals body operating under the Agriculture Appeals Act 2001, as amended.

#### **Article 5 of the Birds Directive**

The FAC considered the submission in the grounds that DAFM procedures are not consistent with the requirement for providing a General System of protection commensurate with Article 5 of the Birds Directive submitting that the licence contains no seasonal restrictions or mitigation to protect all wild birds during the period of breeding and rearing. The grounds effectively submit that Ireland 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 for activities which will result in outcomes that are contrary to the objectives of the Directive and that this means that licence Du02-FL00171 cannot be considered to have been awarded in a manner that is consistent with European Law.

The FAC noted the content of the SOF responding to this ground of appeal wherein it sets out that the grounds of appeal do not refer to any specific adverse effect on the environment under this heading while disagreeing that its procedures are inconsistent with Article 5 of the Birds Directive. 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 FAC considered that the grounds demonstrate a lack of engagement by the Appellant with the decision and the conditions that have been placed on the licence including in relation to seasonal restrictions and surveying.

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.

#### **The Water Framework Directive**

The FAC considered the grounds of appeal regarding compliance with the Water Framework Directive and water quality issues. The FAC also noted the DAFM's submission responding to this ground of appeal that there are no silt traps shown as there are no relevant watercourses within the project boundaries and that due to at least in part, the scale and absence of a direct upstream hydrological connection, and subsequent lack of any pathway, hydrological or otherwise between the project and European Sites screened by the DAFM, the conditions set out were deemed sufficient to protect the aquatic zone and downstream SAC.

The evidence before the FAC is that there are no EPA-mapped watercourses with 400m of the site and that forestry is not listed as a significant pressure on the Owenadoher\_010 River Waterbody. The Applicant states that there are no relevant watercourses or aquatic zones within/adjacent to the project site and that there is no modification to existing drainage networks. The FAC also noted that the licence conditions require adherence to water protection measures in the AAD and the Ecology Report, as well as to the water protection measures in the Standards for Felling and Reforestation. Based on the information before it, the FAC is satisfied that the DAFM did not make a serious or significant error in the granting of felling licence DU02-FL00171 in relation to the Water Framework Directive and the protection of water quality.

#### **Felling & Reforestation Policy**

The grounds submit that the DAFM's Felling and Reforestation Policy document has not been subject to a Strategic Environmental Assessment (SEA) and suggests that this was required to have occurred. The DAFM contest the grounds. The FAC noted that the grounds have not alleged that any authority has made a determination on the necessity for an SEA to have been conducted in relation to the Policy. The FAC considered that making such a determination might not fall to the FAC to make but that it would consider the matter in the context of the submitted grounds. The Felling and Reforestation Policy (DAFM, 2017) is a broad policy document that contains guidance of a general nature. The FAC would consider that the document was not produced to fulfil a legal requirement and was not mandatory in nature but that the Minister for Agriculture was entitled to produce such a document as guidance in relation to general felling and reforestation policies. Furthermore, the FAC would not understand the document to be binding on landowners in and of itself outside of any specific licence condition. In that context, the FAC would

consider that there was no requirement for an SEA to have been undertaken. The FAC further noted that the Minister is required to undertake a screening for AA and AA, as required, in relation to tree felling licence applications under the Forestry Regulations 2017.

#### **Ecology Report Referencing**

The grounds contend that the Ecology Report references are convoluted and lack clarity. The FAC reviewed the DAFM Ecology Report found that the documents referred to therein, (the EIAR, the Schedule of Environmental Commitments and the planning decision for the DMVC) were easily located through the URL link provided in the report and so could be readily followed and understood.

#### **Other Grounds**

The Appellant submits that access to justice is prohibitively expensive, the appeal fees were not prescribed in accordance with the law, and that the FAC is structurally biased. The FAC considered these grounds to fall outside of its jurisdiction.

The grounds make some general references to the manner in which tree felling licence applications were made in the area and suggests that this constituted project splitting. The FAC understands that the overall planning proposal, including tree felling, was subject to an EIA and as previously noted, the FAC does not consider its remit to include making a determination on the planning decision. In relation to tree felling applications, the FAC considers that it is standard and good practice to manage forest stands or plots following individual prescriptions that might be based on the species composition and age of the trees and the overall management objective of the landowner in addition to any regulatory constraints. In the FAC's view, the submission of separate licence applications for the felling of trees separate from the planning application is in keeping with the requirements of the Forestry Act 2014. The FAC found that the Minister did consider other plans and projects in combination with the proposal in the AA screening. The FAC is not satisfied that an error occurred in the making of the decision in this regard.

The Appellant made further submissions regarding the planning process and the views of the Heritage Officer and IFI but these related to the planning application. The appeal before the FAC is related to the tree felling licence application which does not include any works on any structures by its nature. The tree felling application was referred to the Local Authority, and IFI, neither of whom responded. As stated previously, the FAC would understand that tree felling has the potential to negatively impact water quality, but this is dependent on a number of factors including the nature of the works, the location of the proposal, any good practice measures applied, and the status of any waterbody that might be impacted. The FAC considered that the grounds do not provide any convincing evidence that the proposal might have a significant adverse impact on water quality.

The grounds submit that the forestry licence should have been acquired before planning consent and should have formed part of the planning application and that the failure to do this was project splitting. The FAC would understand the reference to project splitting to relate to a situation where a developer might split a development into separate parts or applications to circumvent a regulatory process. In this instance, the FAC would understand that the landowner was required to attain a felling licence for the felling of trees in keeping with the Forestry Act 2014 and the FAC does not consider that there is any evidence of an attempt to avoid any regulatory requirements or assessments in relation to the decision before it.

The Appellant submitted that the application was deficient regarding the Harvest Plan submitted. The Forestry Act 2014 and the Forestry Regulations 2017 reference the information required to be submitted

with a tree felling licence application and provide discretion to the Minister to prescribe further particulars and to seek further information.

The grounds contend that licence conditions 10 and 11 are unenforceable and restate obligations. The FAC finds that conditions 10 and 11 relate to adherence to the requirements of the Archaeology Report, the AAD, and the Ecology Report and are clearly stated and enforceable.

In relation to recreational users the application maps clearly show the forest road which forms part of the Dublin Mountains Way traversing the site. The Standards for Felling and Reforestation, adherence to which is conditioned on the licence, prescribes measures for managing felling in forest used for recreation. The Harvest Plan map clearly shows the "General Extraction Direction" to the forest road. The stacking area is shown as being within the proposal boundary. The FAC noted that the Standards for Felling and Reforestation state, "locate timber landing bays at least 50 m from the nearest aquatic zone" and this has been complied with in the licence under appeal. The FAC considered that the Standards for Felling and Reforestation prescribe measures to minimise soil disturbance, which would reduce the risk of carbon loss, sedimentation, and nutrient loss. These Standards also address the matter of safety signs and the FAC noted that these Standards have been conditioned. The Appellant suggests that the mapping standard is 1:5,000 and that even this would be deficient based on the size of the site. The FAC noted that the Application included a number of maps at varying scales and that the Harvest Plan Map is scaled at 1:5000, but does not consider, in any case, that the Minister has established an exact legal standard for the minimum scale of such maps. The FAC does not consider that there is any reason to conclude that the application was deficient in relation to these grounds.

The Appellant suggests that the licencing process is contrary to the FSC interim forest stewardship standard for Ireland but the FAC considered that the referenced standard is a voluntary, private, sustainable forest management certification scheme and is not a matter on which the FAC would make a determination.

Based on the evidence before it, as outlined above, the FAC is satisfied that serious or significant errors were made in the DAFM's decision to issue DU02-FL0171 in relation to the AA screening and Stage 2 AA completed by the DAFM, and the DAFM's failure to publish documentation supplied by the Applicant which the FAC considered formed a material part of the licence application. In these circumstances, the FAC decided to set aside and remit the decision to the Minister to undertake a new screening for AA, and if necessary, complete the AA process while adhering to the relevant public participation requirements. The FAC also found that the revised application documents should have been subject to a period of public consultation in keeping with Regulation 10(4) of the Forestry Regulations 2017. As such, in making a new decision, the Minister should ensure that all relevant documents are published at the time the decision is made in keeping with the Minister's policy.

Yours Sincerely,

---

Luke Sweetman on behalf of the Forestry Appeals Committee

