



19th December 2025

Subject: Appeal FAC066/2025 regarding DU02-FL0175

Dear Sir/Madam,

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.

Hearing

A hearing of appeal FAC066/2025 was held remotely by the FAC on 20th November 2025. In attendance:

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

Secretary to the FAC: Ms. Aedin Doran.

Having regard to the particular circumstances of the appeal, 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 evidence before it, including the Department of Agriculture, Food, and the Marine (DAFM) record of the decision, the Statements of Fact (SoF) provided by the DAFM, all materials on file, the notice and grounds of appeal, the post-appeal submissions and, in particular, the considerations described in this letter, the FAC has decided to set aside and remit the decision of the Minister regarding licence DU02-FL0175.

The FAC is satisfied that serious and significant errors were made in the making of the decision in relation to the Appropriate Assessment screening and Appropriate Assessment such that the decision should be set aside and remitted for the Minister to undertake a new screening and Appropriate Assessment, as required. 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. 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. The FAC determined that the direct reliance on the application and assessment documents that related to a separate development was a serious and significant error.

Background

The appeal relates to the decision of the Minister for Agriculture, Food and the Marine to grant a tree felling licence for the thinning of a forest through a Continuous Cover Forestry system on 42.11 hectares at Cruagh, Jamestown (E.D. Whitechurch), Killakee. The application included operational and environmental information and a number of maps related to the forest and surrounds and included details of environmental and operational features. The proposal is for the thinning of the forest and management under a Continuous Cover Forestry regime and a management plan outlining the objectives is included. A number of revised documents were provided following a previous appeal decision of the FAC.

The forest is comprised of mature mixed species high forest comprised primarily of oak, beech, ash and sycamore with smaller proportions of other broadleaves and conifers, including Norway spruce and European and Japanese larch.

The forest is outlined in the application mapping by a red boundary line and is adjoined to the west by a public road with a cluster of dwellings to the north and a river, the Glendoo brook, transects the eastern section, with a tributary crossing the site from west to east. The forest is crossed by a number of roads which are marked as forest roads. The lands lie at the foot of the Dublin mountains and on the outskirts of Dublin with a number of dwellings situated in the vicinity as well as other forest and agricultural land. The mapping marks a number of features including veteran trees and monuments on the lands.

Included in the application is a CCF management plan which provides further information on site and forest characteristics and the nature of the proposed thinning. The plan describes the objectives of the works and identifies the control of invasive species and to selectively thin to favour native species and diversify the forest structure.

The application was accompanied by a document which included a screening of the project in relation to potential significant effects on European sites titled, *Appropriate Assessment Pre-Screening Report for continuous cover forest project DU02-FL0175, located at Dergvone, Co. Dublin* and dated 20th April 2023. This provided further details of the lands, the surroundings and the proposal and considered potential significant effects that could arise on European sites from the proposal itself and in-combination with other plans and projects. Fourteen sites are considered in detail and it was suggested that the proposal should proceed to Appropriate Assessment in relation to North Bull Island SPA (004006), North Dublin Bay SAC (000206), and South Dublin Bay and River Tolka Estuary SPA (004024). The sites that were “screened out” were Ballyman Glen SAC (000713), Dalkey Islands SPA (004172), Glenasmole Valley SAC (001209), Knocksink Wood SAC (000725), Poulaphouca Reservoir SPA (004063), Rockabill to Dalkey Island SAC (003000), South Dublin Bay SAC (000210), Wicklow Mountains SAC (002122), and Wicklow Mountains SPA (004040). Each site is considered in turn with its interests and objectives and reasons are provided for the screening conclusion.

The document also includes a section titled *“Natura Impact Statement For Project comprising of Clearfell and Reforestation DU02-FL0169 and Continuous Cover Forestry DU02-FL0175 and DU02-FL0168, located*

in the vicinity of Faughary, Tawnyfeacle, Dergvone, Laghy Barr, and Meenagh, Co. Dublin" which is also dated 20th April 2023. This describes the screening process and the likely significant effects and the measures proposed to ensure that the proposal would not result in an adverse impact on a European site.

The DAFM undertook a screening for Appropriate Assessment in a document dated 28th May 2025. This described the lands and proposal and considered potential significant effects in relation to European sites. The document identifies the same European sites within 15km of the proposal as in the Applicant's pre-screening and also Red Bog, Kildare SAC (000397). Each site is considered in turn with its interests and objects and reasons are provided. Other plans and projects are also considered. The DAFM determined that the proposal should proceed to Appropriate Assessment in relation to Wicklow Mountains SPA IE0004040 on the basis, "*Possible effect due to the proximity of potential habitat for the species listed as the Special Conservation Interest of this Natura site.*" and Wicklow Mountains SAC IE0002122 on the basis,

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.: PL06S.JA0040)) which has been screened in and considered for potential impacts on heathland 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-FL0175 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-FL0175."

The record also includes an "Appropriate Assessment Determination for felling project DU02-FL0175, at Cruagh, Jamestown (E.D. Whitechurch), Killakee, Co. Dublin" dated 28th May 2025. This provides an overview of the process and the sources of information relied upon and the measures required and concludes,

Therefore, the Minister for Agriculture, Food & the Marine has determined, pursuant to Regulation 42(16) of the European Communities (Birds and Natural Habitats) Regulations 2011 (as amended) and Regulation 19(5) of the Forestry Regulations 2017 (as amended), based on objective information, that no reasonable scientific doubt remains as to the absence of any adverse effect on the integrity of any European site.

The DAFM prepared an Archaeologist report that specified measures to be attached to the licence, including in relation to a wedge tomb on site. The DAFM also prepared an Ecology report with measures related to the protection of species and habitats.

The application was referred to the Local Authority and Inland Fisheries Ireland and the Archaeological conditions were referred to the National Monuments Service which replied in agreement with the proposed archaeological measures.

The licence application had been granted on 15th of November 2023 but was subject to a previous appeal to the FAC and the FAC had determined, on 19th November 2024, that the decision should be set aside and remitted to the Minister for stated reasons. For the avoidance of doubt the determination and reasons contained within this letter relates to appeal FAC066/2024 concerning the tree felling licence application decision of the 10th June 2025 and the associated record.

Appeal

There is one third-party appeal against the decision to approve the tree felling licence application and the Notice of Appeal and full grounds of appeal have been provided to the parties and were considered by the FAC. The grounds of appeal, in brief summary, are as follows:

- There was inadequate and ineffective public notice in contravention of Article 6(2) of the Aarhus Convention and the DAFM public consultation procedures were unfair. The grounds make reference to the fact that the application was subject to Appropriate Assessment, Annex 1 of the Aarhus Convention, that the area is used for recreation and that no submissions were made on the application. The grounds also make reference to previous decisions of the FAC and the provisions of the Forestry Regulations 2017 and SI 293 of 2021. The grounds submit that there has been a failure to have regard to the social functions of forestry and that incorrect publication details were on the FLV amongst other matters.
- That references in the Ecology Report are too convoluted and should have included better referencing.,
- The grounds suggest that the Archaeology licence conditions lack clarity and that it is unclear which reports are being referred to.,
- There was a breach of Section 10(4) of the Forestry Regulations 2017 with reference to submissions from the applicant and DAFM reports.,
- 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. The grounds allege that a hydrological connection is present. That the DAFM screening postdates the NIS, the NIS is out of date and that the NIS does not address some of the DAFM mitigation measures. That the DAFM consideration of other plans and projects is flawed.,
- That there has been inadequate assessment under Article 12 of the Habitats Directive (Annex IV species) with reference to bats and an NPWS publication.,
- That DAFM procedures are not consistent with the requirement for providing a General System of protection commensurate with Article 5 of the Birds Directive. The grounds 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 and has a high likelihood of containing nesting birds.,
- It is submitted that the pollution impact potential of the project has not been considered or assessed with reference to the Water Framework Directive.,

- That licence conditions lack precision and clarity with no context given.,
- That access to justice is prohibitively expensive, that fees to take an appeal have not been prescribed in accordance with the law, that the FAC is structurally biased and breaches the principle of constitutional justice.,
- That the Felling and Reforestation Policy has not been subject to Strategic Environmental Assessment.,
- The grounds include 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.

The Notice of Appeal contains a part 2 which contains further grounds. These can be briefly summarised as follows,

- There was no public notice as required by the Forestry Act 2014 and relevant regulations and that there was no effective public participation on the licence. The appellant only happened to notice when looking at the Forestry Licence Viewer.,
- Post-permission surveys are required to determine whether a Derogation Licence is required which is contrary to EU CJ Case 463/20 Namur Est.
- 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.
- The 2019 survey for otter (a Qualifying Interest of the Wicklow Uplands SAC) is out of date and to be carried out in accordance with the NRA Guidelines on Ecological Surveying Techniques for Protected Flora & Fauna 2008.
- 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.
- That a Derogation Licence can only be granted for the purpose of protecting flora & fauna and not to facilitate a tourism development.

The Notice includes a Part 3 entitled “Further Grounds and Links to documents and files to be included and used in this appeal.” These can be briefly summarised as follows;

- There has been “Project Splitting”, the felling licence should have preceded the planning permission and should have been part of the EIAR for that project.
- The Dublin City Otter Report of 2019 indicated increased otter activity in the Dodder Catchment.
- The comments of the South Dublin County Council (SDCC) Heritage Officer on Taylor’s Lane Large Scale Residential Development (LRD) LRD23A/0002 are out-of-date and IFI reports on that LRD regarding risks to the Owenadoher/Dodder Catchment are relevant to this application.
- A number of specified plans & projects have not been included in the cumulative assessment.
- The Dublin Mountain Visitor Centre (DMVC) got planning permission without tree felling licences, Ballycullen/Oldcourt Local Area Plan (BOLAP) identifies additional tributaries, a vulnerable aquifer

and 2 unauthorised dumps on Hellfire Mountain and that Woodstown Stream and rivers have been omitted from BOLAP.

- There has been no hydrology report on the effect of the proposal on the underground lake on Hellfire Mountain & Dodder Catchment.
- Drains exiting the forestry have not been mapped to ensure there is no impact on the Dodder and the Natura 2000 site into which it flows, from pollution and siltation.
- There has been no assessment to minimise soil disturbance, to address carbon loss, sedimentation risk or nutrient loss.
- Six other felling licence applications in the vicinity of this site (DU02-FL0189, DU02-FL0190, DU02-FL0175, DU02-FL0174, DU02-FL01171, DU02-FL0148) represent project splitting.
- Coillte has not disclosed that it is a partner with SDCC in the DMVC and that SDCC has a vested interest in the project but has been consulted on this licence application.
- The Applicant has not identified all National Monuments or Protected Structure in the site.
- Unauthorised works on-site have not been reported to the National Monuments Service.
- Tree removal within the curtilage of a National Monuments or Protected Structure will impact on their setting and as such requires planning permission.
- 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.
- There has been no hydromorphological assessment of the proposal on the Owenadoher Catchment.
- There has been no assessment of the cumulative impact of this licence and the six other licences on the natural & built heritage of the area, including iconic trees.
- There is no agreement from Irish Water.
- That the Climate Action Plan & Nature Restoration Law have not been taken into account.

The Notice of Appeal also includes a Part 4 containing an 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 includes correspondence between the FAC administration and the Appellant regarding a number of other appeals, including an email of 19th July 2024. The grounds are attributed to a WID, relate to a different felling licence decision and are largely a repetition of grounds contained in other sections.

Part 7 contains a number of questions regarding the application approach, the appeals process and the availability of information.

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 DAFM provided a statement (SOF), dated 10th September 2025, providing an overview of the decision and responding to the appeal, a full copy of 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 online Forestry Licence viewer (FLV). The FAC had regard to the statement and record in full and, in brief summary, the statement submits that,

- The decision was made in accordance with DAFM procedures, SI 191 of 2017 and the 2014 Forestry Act.,
- 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 Appropriate Assessments and that information is published on the FLV. That the DAFM position is that the proposal was not a form of development that was subject to the EIA Directive.,
- The decision was made having regard to the social function of forestry and was in keeping with sustainable forest management.,
- That all documents were correctly provided on the FLV.,
- That the references in the Ecology report can be clearly followed.,
- That the Archaeological report and measures were generated in a DAFM report and were specific to the site and required notification of the DAFM and the DHLGH and the report was appended to the licence and was the most recent report. It is explained that an older report on file is essentially an earlier version of the same report but that a new format had been adopted,
- 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.,
- The DAFM reaffirms its position in relation to the Appropriate Assessment 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 contend that the measures are effective and precise, provide an overview of the assessment process and a list of standards and other documents.,
- 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.,
- 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.,

- That no silt traps are shown as there is no relevant watercourse on site and no hydrological connection to any European site.,
- That conditions 2-9 referred to by the Appellant are general conditions that apply to all licenses and cover a range of issues and reflect DAFM policy. That an AA was undertaken and the 100 metre buffer relates to merlin a qualifying interest of the Wicklow Mountains SPA. That habitats referenced in mitigation number 5 don't need to be mapped and that site inspections will ensure enforcement.,
- The appeal fee is appropriate and in keeping with other appeal systems and was created lawfully. That the nature of the appeals process goes beyond an appeal against a licence.,
- The Felling and Reforestation Policy (2017) was not required to be subject to SEA.,
- Assertions in relation to the FAC goes beyond the remit of a forestry appeal.,
- The DAFM again states its public consultation process.,
- 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.,
- 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.
- 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.,
- That the grounds are substantially but not exclusively a repeat of grounds from the first appeal. That the application mapping clearly identifies monuments on site and that other features are shown in the mapping and that the requirement to provide details of archaeological features only arises if such mapping is requested by DAFM. That the DAFM took account of the DMVC project,
- That the reports of vandalism of monuments, broader conservation plans, and determining planning exemptions were not matters that fall within the remit of the DAFM.,
- The DAFM's Appropriate Assessment process was outlined and it was submitted that the DAFM had access to all relevant information. That the licence and conditions are in keeping with the principles of Government policies, including in relation to climate action.,
- The DAFM rejects the suggestion of procedural errors and submits that the planning process was subject to significant public consultation. It is further contended that the suggestion of vested interest does not fall within the appeals process.,

- The application was referred to Inland Fisheries Ireland and no response was received. The application was not referred to Irish Water as there are no abstraction points located nearby.,
- The DAFM does not consider it was in breach of a requirement of the Habitats Directive in granting the licence, that all relevant documents are available on the FLV and no reason has been provided as to why the felling licence should have been acquired first.,
- The DAFM repeats a number of its positions in relation to repeated matters in 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 responses to their grounds. 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

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 Forestry Licence Viewer (FLV), the Notice of Appeal Form and grounds of appeal, the Statement of Fact (SoF) provided by the DAFM, the post-appeal submissions and all materials on file. The Appellant had suggested that not all the documents referenced in the correspondence have been supplied to them and that all information pertaining to the need for such licenses by Coillte and their partners SDCC and that any other parties in this process have access to, should be made available to them. In the interest of clarity, the FAC confirms that the file record relating to the licence under appeal in this case, as is available to the FAC on the publicly available FLV.

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

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 FAC noted the grounds of appeal 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, as amended, to consider whether the Minister for Agriculture, Food and the Marine 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 in relation to certain forestry licence decisions. The Appellant made reference to the relationship between the tree felling licence application and the project which has attained planning permission. 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, now An Coimisiún Pleanála. 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-FL0175 following application by the forest owner. Furthermore, the FAC understands its remit does not extend to determining whether the EU and Ireland have correctly implemented the UNECE Aarhus Convention or to make determinations on the legality of the appeals process or of legislation.

In relation to the grounds of appeal concerning felling licence decision DU02-FL0175, the FAC considered in the first instance the various grounds that challenged the DAFM's reliance on documents submitted as part of the planning permission application in relation to the DMVC, which includes in relation to the Appropriate Assessment and Ecology Report. Related matters are addressed further in this letter but the FAC considered that a serious error was made in the DAFM understanding itself to be a second authority in relation to this activity, as specified in the appeal statement, and in relying directly on the Natura Impact Statement (NIS) and Environmental Impact Assessment Report (EIAR) related to the DMVC as the Continuous Cover Forestry operations did not form part of the DMVC proposal and so would not have been addressed in that application nor the associated documentation and assessments. In the EIAR of the DMVC the following is provided,

3.3.2 Massy's Wood Property

No significant interventions in the landscape of Massy's Wood are proposed other than (a) the restoration of the area disturbed by construction of the pedestrian bridge, (b) the conservation measures for the walled garden, (c) works associated with the improvement of the trails – particularly the Glendoo Brook trail, and (d) installation of interpretation signage.

The FAC would consider that the licence applicant had confirmed this in the document *Response to Queries on Coillte Clearfell 2023 Batch 1 Application* (26th July 2023) which is on the DAFM file on the FLV, in which it is stated,

DU02-FL0175 – Continuous Forest Cover

This particular license was not subject to the permitted development as this is over in Massy's wood and is thinning as part of Coillte's normal forest operations.

While the DMVC application did include tree felling as part of the development this was specified to relate to defined areas, particularly the Hell Fire property to the west. While DU02-FL0175 falls within the general defined boundary of the DMVC, the specific tree felling activities for which the tree felling licence

application was made did not, based on the evidence before the FAC, form part of the development. Accordingly, the DAFM were not entitled to rely directly on the NIS and EIAR in making a decision on DU02-FL0175 as those assessments did not include or consider the specific activity. While those documents may contain useful and valuable information which would be important to the consideration of DU02-FL0175 and assist the DAFM in considering the application and making a decision, the FAC did not consider that the DAFM was entitled to only rely on the assessments and measures contained therein as the assessments did not consider the specific tree felling activity which was the subject of the licence application.

The FAC was satisfied that this was a serious and significant error that was made in the making of the decision and that the decision should be set aside and remitted to the Minister to make a new decision of the application associated with DU02-FL0175.

The FAC considered the contentions in relation to Public Notice and Public Participation and the Aarhus convention which are raised in a number of parts of the grounds. 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 Appellant contends that it was happenstance that they came across the decisions on the FLV but they had submitted a previous appeal on a decision to grant a licence for the application which was decided on and resulted in a previous decision being remitted to the Minister. As part of the new decision-making process, the DAFM have submitted that a public consultation was open on 12/4/2024 for 30 days and no submissions were received. While the grounds allege that the information displayed on the FLV was unclear, the screengrab of the FLV submitted with the appeal is undated but was clearly taken after the decision was made and so after the period of public consultation and the decision-making process was complete. 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 understands that publication through the map-based 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.

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 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 Environmental Impact Assessment (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 the compliance with the EIA process for applications relating to afforestation involving an area of more than 50 hectares, the construction of a forest road of a length greater than 2000 metres and any afforestation or forest road below the specified 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 thinning of trees through a continuous cover forestry system that involves the removal of a proportion of the overall number of trees on site without clearfell. The decision before the FAC relates to the felling of a number of trees in a managed plantation for the stated objectives of enhancing biodiversity and controlling invasive species with a limited amount of timber production and does not constitute afforestation or deforestation for the purposes of land use change or any change or extension to an existing project. The operations are of a standard nature in the context of ongoing forest management in Ireland. The FAC does not consider that there was a requirement to undertake a screening for Environmental Impact Assessment or an Environmental Impact Assessment in processing the tree felling application.

The FAC finds that Article 6(2) of the Aarhus Convention refers to the public notification requirements where an environmental impact assessment is being undertaken and not at the screening stage. One of the requirements is that the public is informed of the fact that a development is subject to an assessment. The public clearly cannot be informed that a development is subject to an assessment before it has been decided that the development is to be subject to such an assessment. The recital of the EIA Directives states,

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

This is reflected in the consultation requirements provided for under Article 6 which is required after the competent authority has determined that a development is subject to an EIA. The procedure adopted in this case provided for a public consultation period in keeping with the requirements of the Forestry Regulations 2017 (SI 191 of 2017). The application was subject to three periods of public consultation one at application stage, one at the initial Appropriate Assessment stage, and one occurring after the previous

decision was remitted. 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 and procedures of the DAFM, including the availability of the FLV.

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 grounds refer to the requirements under the Forestry Regulations 2017 to erect a site notice in relation to tree felling licences but in the regulations this is required to occur when operations commence and after the licence has issued.

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. 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 Appropriate Assessment.

The grounds contend that the Archaeology Report lacks bespoke details and relies on the broader assessment associated with the planning permission. The FAC reviewed the record of the decision and noted that the DAFM Archaeologist has specified measures in relation to the felling of trees and operations and exclusion zones concerning a wedge tomb and protected structural remains on site. While the grounds make a number of general claims in relation to the content of the application and maps, the FAC does not consider that there is any reason to consider that the information in relation to monuments on the file was not correct. The application included a management plan that, amongst other things, clearly identified the presence of monuments and other structures on site.

The DAFM Archaeological Report specifies the requirements that should be included as conditions, which include operational setbacks, and agreed the measures with the National Monuments Service, which includes notification of the DAFM and the DHLGH. The application is for a tree felling licence and the proposal does not include the undertaking of any alterations to the structures themselves. The FAC consider it clear that the DAFM undertook a bespoke report for the application. While the report makes references to the EIAR and permission in relation to the visitor's centre, the FAC does not consider that the report simply relied on the measures in the EIAR but, instead specified measures related to the tree felling which are in keeping with standards of good practice related to forestry. In particular, specific operational setbacks are stated and the licence holder is required to engage a qualified Archaeologist, where trees are to be removed within the operational setback, to prepare a plan to be agreed with the DAFM and DHLGH. The granting of the felling licence does not remove any legal protections or obligations on the licence holder or their agents provided for under other legislation.

In relation to recorded monuments, the grounds go on to make various claims about vandalism and broader conservation assessments but provide no basis as to how these matters might result in an error having been made in relation to the tree felling licence application decision made by the Minister for Agriculture. The grounds refer to monuments on other lands which are not the subject of the licence and a suggestion that LiDAR analysis should have been undertaken but provide no real basis for this and the grounds do not engage in a meaningful way with the actual measures that are specified in the report. The Appellant has not claimed to have any expertise in this matter and has not engaged such an individual in making the appeal.

The FAC did not consider that there was any basis to conclude that the description of the lands and the description of monuments was inaccurate or that the report prepared by the DAFM and the licence conditions were deficient for any reason.

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.

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 25th March 2025, the DAFM requested from the Applicant an updated harvesting and reforestation plan/maps in a new format and an additional map illustrating the operation in the context of other harvesting operations associated with the Dublin Mountains Visitors Centre project. 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 maps and documents are listed as having been published on 10th June 2025, after the specified period of public consultation. 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.

The grounds at various points challenge the screening for Appropriate Assessment and the Appropriate Assessment undertaken by the Minister. As previously described, the Applicant's AA Pre-screening Report dated 20th April 2023, having assessed fourteen Natura 2000 European sites, concludes that the proposed Continuous Cover Forestry thinning might have significant effects on three European Site, and contends that the project should proceed to Appropriate Assessment (Stage 2). The identified sites are North Bull

Island SPA (004006), North Dublin Bay SAC (000206), South Dublin Bay and River Tolka Estuary SPA (004024). The Applicant went on to prepare a Natura Impact Statement.

The Applicant's pre-screening report concluded that the proposal should proceed to AA in relation to the three sites and the NIS specifies that this is on the basis of a hydrological connection and potential impacts on water quality. The pre-screening report describes the connection as follows,

The Jamestown 09 River (order 3) flows through the eastern section of the project area in a northerly direction. An un-named aquatic zone flows along the southwestern boundary of the project area in a northerly direction before turning and flowing through the southern section of the project area in an easterly direction and merges with the Jamestown 09 River. The Jamestown 09 River continues north to join the Owenadoher River (order 4). The Owenadoher River flows north into the Dodder River (order 5), which continues east. The Dodder River then flows north into the River Liffey (order 6). The River Liffey extends east, providing hydrological connectivity with the South Dublin Bay and River Tolka Estuary SPA (downstream distance: approx. 18.2km), North Dublin Bay SAC (downstream distance: approx. 20.8km), and North Bull Island SPA (downstream distance: approx. 20.8km). The River Liffey ultimately extends east, discharging into Dublin Bay and the Irish Sea approx. 27.5km downstream of the project area.

The grounds make various claims that hydrological features have not been identified properly but provide no evidence to substantiate this. The DAFM screened out the three European sites on the basis of an absence of hydrological connection and restated this in the appeal statement and suggested that this position corresponds to that of the Applicant which is clearly an error. While it is for the DAFM to ensure that an Appropriate Assessment has been undertaken, where the DAFM did not agree with the Applicant's scientific information the DAFM should have requested that the Applicant address any shortcomings or the DAFM should have prepared a report itself which could have addressed the difference in assessment.

Based on the record of the decision, the DAFM did not consider the Applicant's NIS submitted as part of the tree felling licence application and instead relied on the NIS submitted as part of the DMVC. No explanation for this is provided on the record or in the DAFM statement. As previously stated, the FAC would not consider that the NIS submitted as part of the DMVC application addressed the specific tree felling that forms the basis of DU02-FL0175.

At the same time, the Applicant's pre-screening report screened out Wicklow Mountains SAC and Wicklow Mountains SPA and so these are not further addressed in the NIS. The DAFM considered that significant effects could arise on these two sites and determined that they should be subject to Appropriate Assessment. The DAFM did not request that the Applicant amend their NIS to address their concerns nor did they prepare a report but instead relied on the NIS submitted for the DMVC. As previously noted, the FAC considered the direct reliance on this document to be an error.

As noted in the grounds, the DAFM's Appropriate Assessment (AA) Determination 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 Appropriate Assessment 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 further noted that the DAFM did not undertake a period of public consultation in relation to the AA that they undertook and the screening was only published at the same time as the AA Determination.

The FAC was satisfied that serious and significant errors were made in the making of the decision in relation to these grounds.

The grounds make various claims that the Ecology Report of the DAFM was deficient and that there are insufficient protections for birds and species protected under the EU Birds and Habitat Directive. The FAC did not consider that the grounds provide any basis that the proposal would have a significant effect on any bird or protected species and the Appellant has not claimed to have any environmental or ecological expertise nor to have engaged such an individual.

However, similar issues, as with the Appropriate Assessment, arise in the Ecology Report of the DAFM as the DAFM relied directly on measures specified in the EIAR, Schedule of Environmental Commitments and the conditions attached by An Bord Pleanála to the Conditional Permission (dated 26/06/2020) for the DMVC. However, the felling the subject of DU02-FL0175 did not form part of this development and so the FAC does not consider that the measures specified in the permission for the development could be relied upon directly. While such documentation might contain useful and relevant information as it relates to the same footprint, the actual tree felling operations were not considered.

The FAC was satisfied that serious and significant errors were made in the making of the decision in relation to these grounds. The FAC did not accept the contention of the Appellant that the measures are convoluted or lack clear referencing. The FAC would consider the manner in which the measures were specified to be clear but that the DAFM erred in directly relying on assessments which did not consider the tree felling which was the subject of the application. The FAC does not consider that the tree felling licence was granted on the basis that a derogation under the Wildlife Acts was required or would be granted. The proposal is for the management of a mixed species high forest under a Continuous Cover Forestry Regime with management goals related to the control of invasive species and to enhance biodiversity and recreational benefits. The proposal would involve the selective thinning of trees to favour native species and create greater structural diversity in the forest. The FAC consider that there are clear potential environmental benefits, including for biodiversity, associated with the project.

The grounds submit that NPWS Guidance in,

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.

The grounds of appeal contend that there has been “project splitting” (taken by the FAC as a reference to the EIA Directive) and “fragmentation” between the proposed felling and the DMVC granted planning permission by An Bord Pleanála Ref: 06S.JA0040. The Appellant also refers to the separate licence applications DU02-FL0189, DU02-FL0190, DU02-FL0175, DU02-FL0174, DU02-FL0171, DU02-FL0148 as constituting “project splitting”. In considering this ground of appeal the FAC noted the responses from the DAFM and Applicant.

The FAC considers it self-evident that the applications for planning permission and tree felling licences were made to comply with the relevant legislation and would not and could not be considered to be an attempt to avoid any regulatory requirement. The application for a tree felling licence for a specific forest or plot based on its composition and the proposed operations is entirely in keeping with good forest practice and the regulatory regime. The Applicant noted and described other felling and operations proximate to the site and these were considered by the DAFM. While the grounds claim that some other felling applications have been mis-specified the FAC does not agree with this contention as all such licences are for the felling of trees under the Forestry Act 2014 and it is the appeal against decision DU02-FL0175 that is before the FAC and the subject of this determination.

The grounds submit that the DAFM 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 Appropriate Assessment and Appropriate Assessment, as required, in relation to tree felling licence applications under the Forestry Regulations 2017.

The grounds make reference to replanting conditions attached to the licence but there are no such conditions attached and the proposal is for the thinning of trees under a Continuous Cover Forestry system.

The grounds contend that licence conditions 10 and 11 are unenforceable and restate obligations. The FAC finds that conditions 10 and 11 related to setbacks from dwellings and public roads and are clearly stated and enforceable.

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.

This ground of appeal contends that recreational trails are not properly shown and that the licence lacks safety conditions for trail users during construction amongst a number of references to the public use of the lands and social aspects of forestry.

The FAC finds that recreational trails are mapped in the application and the grounds provide no basis for concluding that the mapping is deficient. In relation to recreational users the application mapping identifies forest roads and recreational trails, and the area is a commercial managed forest. The Standards for Felling and Reforestation 2019 address the matter of safety signage, and Condition 3 of the licence requires adherence to those standards. The proposal by their nature would be limited in nature and only relate to the felling of a limited number of trees without a change in land use.

In relation to the scale of the maps, the FAC finds on the record maps of the lands at various scales both higher and lower than the suggested 1:5,000 and one at this scale and does not consider that there is any basis to conclude that the mapping scales are insufficient. The grounds also make various claims about the description of the site being deficient but the FAC found the application to be detailed and to appear to describe the site and operations well. The FAC considered that there was no basis to conclude that the application, including the description of the lands, contained serious errors.

This ground of appeal contends that the Climate Action Plan & Nature Restoration Law have not been taken into account in the processing of this licence. In considering this ground of appeal the FAC noted the response made of the DAFM. The FAC noted that the Appellant has adduced no convincing evidence that the Climate Action Plan & Nature Restoration Law have not been complied with, therefore the FAC does not consider that there is any reason to conclude that the application or decision was deficient in relation to this ground. The forest is comprised of mixed high forest which would be thinned under a Continuous Cover Forestry regime and is in keeping with standard forest practice.

The grounds at various points suggest that the proposal would result in significant effects on water and would breach the Water Framework Directive (WFD). The FAC does not consider that the grounds provide any basis for considering that a low intensity thinning as proposed with standard setbacks would impact on water quality to the extent that it might be considered to be in breach of the WFD. However, as noted the FAC was satisfied that errors were made in the DAFM's reliance on the NIS and EIAR of the DMVC in the Appropriate Assessment and Ecology Report, which also address water quality matters.

This ground of appeal contends that the licencing process is contrary to the FSC interim forest stewardship standard for Ireland. The FAC noted that the FSC interim forest stewardship standard for Ireland is a voluntary, private, sustainable forest management certification scheme and is not a matter on which the FAC would make a determination.

In considering the appeal, the FAC had regard to the record of the decision, the Notice and full grounds of appeal, the DAFM's and all submissions made. The FAC considered the provisions of the Agriculture Appeals Act 2001, as amended, and the Forestry Appeals Committee Regulations 2020 and the relevant legislation under which the decision on licence DU02-FL0175 was made.

Having considered appeal FAC066/2025, the FAC is satisfied that serious and significant errors were made in the making of the decision in relation to the Appropriate Assessment screening and Appropriate Assessment and the consideration and processing of the application such that the decision should be set aside and remitted for the Minister to undertake a new decision under the provisions of the Forestry Act 2014 and Forestry Regulations 2017 addressing the errors identified in this decision as required.

Yours sincerely,

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Vincent Upton on behalf of the Forestry Appeals Committee

