



Mr. Liam Malone,

22nd December 2025

Subject: Appeal FAC 065/2025 regarding DU02-FL0174

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 14A (1) of the Agriculture Appeals Act 2001, as amended, has now completed an examination of the facts and evidence provided by the parties to the appeal.

DECISION

Having regard to the evidence before it, including the Department of Agriculture, Food, and the Marine (DAFM) record of the decision, the 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 following considerations, the FAC has decided to set aside and remit the decision of the Minister regarding licence DU02-FL0174.

THE LICENCE.

Tree felling licence DU02-FL0174 is for the clear-felling of 5.50 Ha. of recently felled woodland that has naturally recolonised and the replanting of the area at Killakee, Co. Dublin with 30% Other Broadleaves, 30% Birch, 30% Scots Pine and 10% open space as set out in the application.

The application for the licence was published on the Forestry Licence Viewer (FLV) on 05/04/2023. A decision approving the licence was issued on 15/11/2023 subject to conditions including Standard felling & replanting conditions, compliance with mitigation measures in the DAFM Ecology Report, compliance with mitigation measures in the DAFM AAD, compliance with mitigation measures in the DAFM Archaeology report. A previous licence granted for the application was appealed on 04/12/2023, Ref: FAC 087/2023 and was set aside and remitted to the Minister by the FAC on 19/11/2024. A licence was issued on 06/06/2025 and is subject of this current appeal FAC 065/2025.

FORESTRY APPEALS COMMITTEE.

A hearing of appeal FAC 065/2025 was held remotely by the FAC on 20th November 2025 which considered the appeal against the decision DU02-FL0174 as dated 06/06/2025. The FAC members present were:

FAC Members: Mr. Donal Maguire (Chairperson), Mr. Derek Daly, Mr. Iain Douglas, Mr. Luke Sweetman & Mr. Vincent Upton.
Secretary to the FAC: Ms. Aedín Doran.

In the interest of clarity and for the avoidance of doubt this hearing of the FAC considered only appeal Ref: FAC 065/2025 in relation to the licence as issued on 06/06/2025. Only those documents relevant to the appeal under consideration are referred to below.

BACKGROUND.

As noted by the parties, the lands generally form part of the planning permission for the Dublin Mountains Visitor Centre (DMVC) granted by An Bord Pleanála, (now An Coimisiún Pleanála (ACP)) Reference No. 06S.JA0040.

The area subject of licence DU02-FL0174 is described as being entirely covered in recently felled woodland that has naturally recolonised. The application mapping and pre-screening report identify unspecified “*biodiversity features*” in the south-west corner of the site. A number of other features are shown on the mapping, and a recreational trail follows a forest road through the site. The forest road runs northwest to southeast and turns northward on the eastern boundary of the forest and the timber would be extracted in southerly, westerly and northerly directions to stacking areas adjoining the forest road. The forest road connects to the public road east of the site. The maps identify the proposed clear-fell as being located within an existing forestry block bounded by forestry to the southwestern boundary and improved agricultural grassland on the northern, northwest, eastern and southern boundaries.

The soils on the site are described as 96% Podzols (Peaty), Lithosols, Peats, with some outcropping rock and 4% Shallow acid brown earths/Brown podzolics, Lithosols and Regosols with some outcropping rock. The slope is described as Steep 15%, sloping in an easterly direction. The habitat on the site is recently felled woodland that has naturally recolonised Fossitt Code WS5.

The site is located in the Liffey and Dublin Bay Water Framework Directive (WFD) Catchment and the Dodder_SC_010 Sub-catchment and within the Owenadoher_010 River Sub-Basin. The nearest WFD River Waterbody Owenadoher_010 (Segment Ref. 09_341 the Jamestown River, (a 3rd Order stream shown on Ordnance Survey maps as Glendoo Brook) which lies ca. 520m east of the site and which had Moderate Status in the monitoring period 2019-2024, it is identified as being At Risk in the WFD 3rd cycle. Forestry is not identified as a pressure on this river waterbody. The underlying groundwater body is the Kilcullen IE_EA_G_003 which was of Good status in the monitoring period 2019-2024 and is stated as being At Risk in the WFD 3rd cycle.

The application documents before the FAC included an Application Pack consisting of an Application Form dated 24/03/2023, a Felling Licence Location Map, a Felling Licence Application Map, a Harvest Plan Map (Pre-licence) and a Reforestation Map. A separate Pre Screening Report dated 03/04/2023 prepared by the Applicant was also on file. Additional information dated 26/07/2023 was submitted in response to a Further Information Request of 06/06/2023 from the DAFM. Following remittal of the licence under FAC 087/2023 and in response to a Further Information Request dated 25/03/2025 the applicant submitted an updated Harvest Plan Map; Reforestation Maps and a Harvest Plan all undated but uploaded to the FLV on 06/06/2025 and a map showing other felling proximate to the site undated but uploaded to the FLV on 29/10/2025.

The licence application was referred to South Dublin County Council (SDCC) and Inland Fisheries Ireland (IFI) on 12/04/2023. There is no record of a reply from either body. The licence application was referred to the National Monuments Service (NMS) of the Department of Housing, Local Government and Heritage (DHLGH) on 25/10/2023 which replied on 27/10/2023. The licence was referred to the NMS again on 27/05/2025, there is no record of a reply.

The DAFM file on the FLV includes an Appropriate Assessment Screening Report & Determination (AASRD) dated 17/10/2023, an AASRD In-combination Report dated 13/10/2023, an Appropriate Assessment Determination (AAD) and an AAD In-combination Report both dated 09/07/2024, an Ecology Report dated 09/07/2024 an Archaeology Report dated 24/10/2023 a report from the NMS dated 27/10/2023 confirming the DAFM Archaeology Report

Following remittal of the licence under FAC 087/2023 the DAFM prepared an Archaeology Report with revised conditions dated 30/12/2024, issued a Further Information Request on 25/03/2025, prepared an Ecology Report dated 26/05/2025, an Archaeology Report with revised conditions dated 27/05/2025, an AASRD dated 26/05/2025, an AAD dated 26/05/2025, an AASRD In-combination Report dated 22/05/2025, an AASRD In-combination Report dated 26/05/2025 and an AAD In-combination Report dated 26/05/2025

The Applicant's AA Pre-Screening Report identified nine Natura 2000 sites within 15 km of the proposed felling; Ballyman Glen SAC (Site Code 000713), Glenasmole Valley SAC (Site Code 001209), Knocksink Wood SAC (Site Code 000725), Poulaphouca Reservoir SPA (Site Code 004063), South Dublin Bay and River Tolka Estuary SPA (Site Code 004024), South Dublin Bay SAC (Site Code 000210), Wicklow Mountains SAC (Site Code 002122), and Wicklow Mountains SPA (Site Code 004040) and Red Bog Kildare SAC (site Code 000397) and describes the site and operations and considers the possibilities of significant effects arising on the interests of those European sites.

On the basis that there were no hydrological pathways for likely significant effect from the site to any of the European sites within 15km of the project area all sites were screened out. The AA Pre-Screening Report also states that there was no hydrological connection from the site to any European site at a distance greater than 15km. The Report concluded that:

"Following an evaluation of the information set out in this report, it is concluded beyond reasonable scientific doubt, in view of best scientific knowledge, on the basis of objective information and in light of the conservation objectives of the relevant European sites, that the proposed project, individually or in combination with other plans and projects, will not have a significant effect on any European Site.

Based on this information, we contend that the competent authority can determine that there is no requirement for this project to proceed to Appropriate Assessment (Stage 2)."

The DAFM undertook an AASRD dated 26/05/2025. The DAFM recorded a screening in relation to nine European sites, the same sites as the Applicant's AA Pre-Screening Report. The AASRD noted that the lands also form part of planning permission for the DMVC (ACP Reference No. 06S.JA0040) and that the Wicklow Mountains SPA (Special Conservation Interest (SCI) Merlin) and The Wicklow Mountains SAC (Qualifying Interest (QI) Heathland habitats) were subject to AA by ACP by way of a Natura Impact Statement (NIS). The DAFM screened in those two sites to proceed to AA Stage 2.

The DAFM AA screening process also included a record of other plans and projects considered in combination with the tree felling.

The record also includes an AAD dated 26/05/2025 prepared by the DAFM, that identified a number of mitigation measures required in relation to the European sites and concluded:

“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”

The DAFM also recorded an Ecology Report, dated 26/05/2025 that specified a number of measures in relation to other environmental matters. A DAFM Archaeology Report dated 27/05/2025 includes a number of revised archaeological conditions.

The record indicates that the DAFM made a Further Information Request (FIR) dated 25/03/2025 requiring:

- An updated harvesting and reforestation plan/maps using the most recent format.
- That the new harvest plan, harvest plan map and reforestation map should be supplemented with an additional supporting map illustrating the harvesting operation in the context of the other harvesting operations associated with the DMVC project. Supporting text should also be provided describing these forestry operations

An undated Harvest Plan Map (FL Application), Plots Map, Harvest Plan, and a Reforestation Map were uploaded to the FLV on 06/06/2025. An undated map showing licence DU02-FL0174 in the context of the other harvesting operations associated with the DMVC project was uploaded to the FLV on 29/10/2025.

THE APPEAL.

There is one third-party appeal against the decision to approve the tree felling licence application. The Notice of Appeal and full grounds of appeal were provided to the parties. The grounds of appeal are summarised as:

Part 1

- 1& 1(a) 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 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. The public consultation process does not allow for the social function of forestry to be considered.
2. The grounds suggest that the Archaeology Condition lacks clarity as to which Archaeology Report the condition refers to.
3. There was a breach of Section 10(4) of the Forestry Regulations 2017 with reference to the publication of any additional information.,
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 post-dates 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. The grounds submit that there are no seasonal restrictions and that domestic law provides no protection. It is submitted that there is a high likelihood of bird nesting on the site due to the species that have self-seeded.,
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, that each appeal costs €200 and is prohibitively expensive and that each as there is no limit on the number of remittals the legislation regarding fees is possibly contrary to EU law.,
9. That fees to take an appeal have not been prescribed in accordance with the law,
10. That the DAFM Felling and Reforestation Policy has not been subject to Strategic Environmental Assessment.,
11. That 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.,
13. The fact that there are five different licences adjacent and in the vicinity of this site each considered separately represents project splitting.,
14. That there is no management plan for BIO Reforestation Objective.,

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 summarised as follows,

Part 2

1. 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 FLV.,
2. Post-permission surveys are required to determine whether a Derogation Licence is required which is contrary to EUCJ Case 463/20 Namur Est.
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.
- 4,5,6 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.
7. 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.
8. That a Derogation Licence can only be granted for the purpose of protecting flora & fauna and not to facilitate a tourism development.

The Notice of appeal included a Part 3 entitled "Further Grounds and Links to documents and files to be included and used in this appeal." These can be summarised as follows,

Part 3

- 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 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 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-FL0171, DU02-FL0148) represents project splitting.
- Coillte has not disclosed that it is a partner with South Dublin County Council 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.

Part 4

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

The Notice of Appeal also includes a Part 5 which is 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 the description of the licences is contradicted by the map legend.

Part 6

The Notice of Appeal also includes a Part 6 comprising of 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” and are largely a repetition of grounds contained in other sections of the grounds.

Post-Appeal Submissions.

A post-appeal submission dated 02/10/2025 was made by the Applicant in response to the grounds of appeal contesting the grounds and contending that the grounds attempt to conflate a planning permission process and the tree felling process in a number of instances. The post-appeal submission was circulated to the other parties. DFAM responded stating it had no further submission to make. A post-appeal submission dated 12/10/2025 was made by the Appellant responding to Applicant and the DAFM SoF. 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.

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 to the Forestry Appeals Committee (SoF), dated 10/09/2025, providing an overview of the decision and responding to the appeal, a full copy of which was provided to the parties. The statement submits that:

- (a) The decision was made in accordance with DAFM procedures, SI 191 of 2017 and the 2014 Forestry Act (as amended).
- (b) The SoF response to the grounds of appeal is summarised as follows:
 - 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 AAs 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 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.,

- 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 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 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.,
- The appeal fee is appropriate and in keeping with other appeal systems and was created lawfully.
- The Felling and Reforestation Policy (2017) was not required to be subject to SEA.,
- This is a matter for FAC and beyond the remit of a licence application.
- The reference in the Ecology Report is clear.,

Part2

- 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 Dublin Mountains Visitor Centre.

Part 3

- 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 in relation to the licencing process.,
- Other plans and projects were considered in-combination with the proposal and identified within the sub-basin.,
- Recorded monuments are identified in the application mapping and are located outside of the licence area. There is no evidence of unauthorised works that might fall within the remit of the DAFM. 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 AA 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 principals of Government policies, including in relation to climate action.,
- The DAFM rejects the suggestion of procedural errors.
- The DAFM submits that the planning process was subject to significant public consultation.
- The DAFM submits 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 management of the existing forest estate will play a crucial role in achieving any emission reduction targets
- The grounds of appeal referring to the duration of permission and the Habitats Directive is unclear and lacks specifics in terms of what exactly is the Department in breach of.
- All historic documents are held on the FLV and these documents represent the history of the file which is therefore 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.

Part 4

- The DAFM is satisfied with the AA carried out on this site and the determinations provided both at screening and in the AA itself.

The DAFM repeats a number of its positions in relation to repeated matters in grounds of appeal.,

CONSIDERATION BY THE FAC.

At its sitting on the 20th of 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 Statement of Fact (SoF) provided by the DAFM, the post-appeal submissions and all materials on file. The Appellant has 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 South Dublin County Council (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 (now ACP) 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 considered the grounds of appeal under the following headings, Role of the FAC. The Aarhus Convention, Public Notice and Public Participation, Archaeology, Appropriate Assessment, Article 12 of the Habitats Directive (Annex IV species), Article 5 of the Birds Directive, The Water Framework Directive, Forestry Regulations 2017 Regulation 10(4), Project Splitting, DAFM Felling and Reforestation Policy & Strategic Environmental Assessment (SEA), Ecology Report, Montpelier Loop Recreational Trail, Mapping, Licence Conditions 10 & 11, Climate Action Plan & Nature Restoration Law, FSC interim forest stewardship standard for Ireland

Role of the FAC.

The FAC considered the grounds of appeal that referred to the decision of ACP granting permission for the DMVC (Ref: 06S.JA0040). The grounds of appeal made reference to the relationship between tree felling licence application DU02-FL0174 and the permission for the DMVC project.

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 made under Section 7 of the Forestry Act 2014 and the Forestry Regulations 2014.

The FAC considers that its remit does not extend to making a determination on a decision of a planning authority or a decision of ACP. The FAC concluded that it should make a determination of the appeal against this tree felling licence based on its remit as provided in the Agriculture Appeals Act 2001, as amended.

The grounds make a number of claims in relation to the legislation underpinning the appeals regime which are not matters for the FAC to determine.

The Aarhus Convention.

The FAC considered the grounds of appeal that referred to the implementation of the "Aarhus Convention" (taken to be a reference to the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters). In considering this appeal the FAC noted the DAFM response marked as Ground 1 of the DAFM SoF dated the 10/09/2025.

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. Furthermore, the FAC understands its remit does not extend to determining whether the EU and Ireland have correctly implemented the UNECE Aarhus Convention.

Public Notice and Public Participation.

The FAC considered the grounds of appeal that referred to Public Notice and Public Participation and the Aarhus convention which are raised concerning felling licence decision DU02-FL0174. 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) and refer to a previous decision of the FAC on the matter.

In considering this appeal the FAC noted the DAFM response marked as Ground 1 of the DAFM SoF dated the 10/09/2025. The DAFM submits that any public participation obligations that might arise under the Aarhus Convention are met through its procedures which are outlined and that its chosen method of notifying the public of felling licence applications is through the FLV and on its website.

The Aarhus Convention has been transposed into Irish law 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).

In relation to forestry licence applications the Irish Forestry Regulations 2017 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 felling of trees that involves the removal of a proportion of the overall number of trees on site. The decision before the FAC relates to the clear felling and replanting of trees in a managed plantation 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 whether that 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 Forestry Regulations 2017 also 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 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 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 have been previously advised, that such matters would not fall within its jurisdiction to determine.

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 in relation to the AA undertaken by the DAFM.

Archaeology.

The FAC considered the grounds of appeal regarding a lack of clarity to which Archaeological Report the licence condition refers to. In considering this appeal the FAC noted the DAFM response marked as Ground 2 of the DAFM SoF dated the 10/09/2025. The FAC noted that the latest Archaeology Report is dated 27/05/2025 which sets out revised archaeological and built heritage mitigation measures and that it is normal administrative practice that a report of the latest date of is the accepted report unless it refers the contents of a previous report, which it does not in this case. The FAC noted that the DAFM confirmed that the latest Archaeology Report of 27/05/2025 was attached to the licence issued to the Applicant.

The grounds also contended that not all protected structures and national monuments within the site have been identified. The FAC noted that the licence application identified two recorded monuments within the site boundary which were assessed by a DAFM Archaeologist who prepared a report and recommended specific conditions be attached to the licence and the licence was issued with the revised archaeology conditions attached.

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 recorded monuments on the file was not correct. The DAFM Archaeological Report of 27/05/2025 specifies the requirements that should be included as conditions, which include operational setbacks, and agreed the measures with the NMS, which includes notification of the DAFM and the DHGLG.

In relation to recorded monuments, the grounds 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.

The FAC did not consider that there was any basis to conclude that the description of the lands and the proximity to recorded monuments outside of the site 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.

Appropriate Assessment.

The FAC considered the grounds of appeal regarding the DAFM Screening for AA and the AA undertaken by the Minister. In considering this appeal the FAC noted the DAFM response marked as Ground 4 of the DAFM SoF dated the 10/09/2025.

The FAC noted that the title page and section on site location in the Applicant's AA Pre-screening Report refer to the proposal as being in the townland, Dergvone which appears to be located in Co. Leitrim, but that the licence is for felling in the townland of Killakee, Co. Dublin. However, 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 Applicant's AA Pre-screening Report are clearly for the tree felling proposed under DU02-FL0174, it was considered that this was not a significant error in the particular circumstances of this case.

The FAC also noted that the DAFM AASRD dated 26/05/2025 concludes that, having examined the same nine Natura 2000 sites within 15km, the project was required to proceed to AA (Stage 2) for the Wicklow Mountains SPA and Wicklow Mountains SAC.

In reviewing the documentation on file, the FAC noted that at Section 3 of the DAFM AASRD it is stated inter alia that:

"In undertaking this screening for Appropriate Assessment, the following were taken into account:

the proposed felling and reforestation is a component of a permitted development namely, the Dublin Mountain Visitors Centre and all associated works (An Bord Pleanála Reference No.: PL06S.JA0040). The AA Screening, EIAR, Approval and associated documents for these works (as available at <https://www.sdcc.ie/en/services/sport-and-recreation/tourism/dublin-mountains-visitor-centre-dmvc-project/an-bord-pleanala-application/>) were reviewed/considered when screening the current application DU02-FL0174;"

In the case of the Wicklow Mountains SAC the DAFM screened in the project for the following reason:

"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 (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-FL0174 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-FL0714 (sic)."

In the case of the Wicklow Mountains SPA the DAFM screened in the project for the following reason:

"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 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-FL0174 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-FL0174.”

In relation to AA, Part 8 of the Forestry Regulations 2017 provides that where the Minister receives an application for a tree felling licence,

...which is not directly connected with or necessary to the management of a European site, the Minister shall carry out a screening for appropriate assessment of the development, in view of the conservation objectives of the European site, to assess if the development, either individually or in combination with other plans or projects, is likely to have a significant effect on the European site.

The 2017 Forestry Regulations further provide that the Minister may require the provision of a Natura Impact Statement within a specified period and for the Minister to rely on other sources of information to facilitate an AA.

In this instance the FAC considers that the reason given in the DAFM AASRD for screening in both sites was as a result of the fact that they had been screened in for AA in the planning application for the DMVC therefore they should be screened in for licence DU02-FL0174. The FAC considers that it is the tree felling application that is before the Minister for Agriculture, however, the Minister has determined that the tree felling licence proposal 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 of 26/05/2025 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. 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.

The FAC considers that the Minister has not undertaken a screening for AA in keeping with the requirements of the Forestry Regulations 2017 and the FAC is satisfied that this represents a serious and significant error in the making of the decision.

The FAC noted that there is neither a NIS nor an AAR on the tree felling file available on the FLV and the DAFM AAD states, in Section 3 that

"The proposed project is a component of a permitted development namely, the Dublin Mountain Visitors Centre and all associated works (An Bord Pleanála Reference No.: PLO6S.JA0040). The NIS, EIAR, Approval and associated documents for these works (as available at <https://www.sdcc.ie/en/services/sport-andrecreation/tourism/dublin-mountains-visitor-centre-dmvc-project/an-bord-pleanala-application/>) were considered during the Appropriate Assessment for the current felling and reforestation application DU02-FL0174."

The FAC considers that in relying on the NIS submitted by South Dublin County Council (SDCC) for the DMVC and making a determination without a NIS or AAR the Minister did not provide for a period of public consultation in relation to their AA process and the 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 where no joint procedure was initiated 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 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 essentially conditions a tree felling licence on 5.5 Ha. on meeting the mitigation measures related to activities concerning a much larger development. The mitigation measures specified in the NIS relate to visitor numbers and behaviour and the NIS considered the felling of trees across multiple parts of the site in relation to specific conservation interests and concluded that no mitigation measures were required. However, the Minister has conditioned the specific tree felling licence on implementing measures which are not related to tree felling.

In addition, as noted in the grounds, the AAD includes other measures related to potential effects not identified in the screening, which are not included in the NIS and have not been assessed. There is no AA Report prepared by DAFM nor any request for the Applicant to amend the NIS to address these matters.

The FAC does not consider that the Minister has undertaken a screening for AA or an AA of the tree felling licence application that was made to them under the requirements of the Forestry Regulations 2017. The FAC is satisfied that serious and significant errors were made in the making of the decision in relation to the AA screening and 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 and that DAFM procedures are not consistent with the requirement for providing a General System of protection in relation to Article 5 of the Birds Directive.

In considering this appeal the FAC noted the DAFM response marked as Ground 5 of the DAFM SoF dated the 10/09/2025 in which the DAFM contends that there is no basis for the claim.

The grounds submit that there are no seasonal restrictions and that domestic law provides no protection. It is submitted that there is a high likelihood of bird nesting on the site due to the species that have self-seeded.

The FAC noted 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 recipient 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, there is no basis to conclude that such a derogation is required. The grounds contend that the application is predicated on the necessity to carry out surveys (post licence) in order to establish whether there is a necessity for a derogation licence.

The grounds further contend that such post-consent surveys are not compatible with EUCJ Case C-463/20 *Namur-Est Environnement ASBL v Région Wallonne* and O'Donnell v An Bord Pleanála Case 2021/251 JR. The FAC noted that both of these cases deal with Derogation from the Strict Protection for Animals set out in Regulation 54 of the Habitats Regulations for which the Minister for Housing, Local Government and Heritage is responsible.

The Court of Justice of the EU has already issued a ruling on the referral, finding,

Articles 12 and 16 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that a piece of national legislation intended to transpose those provisions into national law cannot be regarded as contrary to that directive on the ground that that piece of national legislation does not provide for (i) a development consent procedure which involves a decision by a competent authority determining whether it is necessary to apply for a derogation under Article 16 of the abovementioned directive because of matters identified following the grant of development consent to a project and/or whether surveys are required to that end or (ii) public participation in that derogation procedure.

The grounds refer to bat surveys carried out for the DMVC planning application and that they are out of date and refer to the information contained in Section 6.5.2.5 of the Final EIAR dated 23.12.19. The FAC noted that in Section 6.5.2.5 the site of the proposed visitor's centre (the site of this felling licence) was surveyed and no bat roosting sites were identified, notwithstanding the bat activity identified in this area. The grounds refer to Massey's wood which is a different location to this tree felling licence application and is comprised of different habitat. The appeal before the FAC relates to a tree felling licence decision on land comprised of recently felled woodland that has naturally recolonised.

The FAC noted that the licence conditions include adherence with the measures in the DAFM Ecology Report of 26/05/2025, 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->

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. However, 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 licence in a meaningful manner. The proposal is for the clear-felling of naturally regenerating woodland which does not contain any aquatic feature and is not proximate to any such feature. This type of forest would not be considered a particularly rare or unusual habitat and would not be considered to contain the type of habitats or features particularly associated with otter or bat habitat.

As previously advised, it is not for the FAC to make a determination on a decision of ACP, nor is it for the FAC to make a determination on a derogation licence.

Article 5 of the Birds Directive.

The FAC considered the grounds of appeal that contend that the DAFM procedures are not consistent with the requirement for providing a General System of protection commensurate with Article 5 of the Birds Directive and that the Wildlife Acts are themselves deficient in relation to Annex IV species and birds. In considering this ground of appeal the FAC noted the DAFM response marked as Ground 6 of the DAFM SoF dated the 10/09/2025

The FAC considered that the Appellant has not substantiated these claims and the FAC does not consider its remit to extend to making a determination of the legality of the Wildlife Acts. The grounds do not engage with the nature of the lands or the proposed actions in any real way. In any case, the conditions on the licence include adherence with the ecology report which includes temporal and other restrictions which the grounds do not engage with in any meaningful way. As previously noted the grounds include a number of incorrect claims and statements in relation to the nature of the lands and the proposal.

The grounds submit that NPWS Guidance for the *"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 Water Framework Directive.

The FAC considered the grounds of appeal regarding compliance with the Water Framework Directive and water quality issues. The grounds make a number of general claims regarding the South Dublin Bay SAC (000210) and South Dublin Bay and River Tolka Estuary SPA (004024) and suggest that these are hydrologically linked to the site. The grounds also make a number of general claims in relation to water quality and the requirements of the Water Framework Directive.

In considering this ground of appeal the FAC noted the responses marked as Ground 7 of the DAFM SoF dated the 10/09/2025.

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 application does not identify any waterbody on or proximate to the site and the Applicant confirmed this position. The grounds contend that there are errors in the identification, mapping and assessment of the hydrology of the site but have put provided no basis for this claim or evidence to substantiate it.

The FAC noted from the publicly available EPA website that the Owenadoher_10 river waterbody is “At Risk” with “Urban Run-off” listed as the Significant Pressure. The FAC noted that the project description for DU02-FL174 indicates that no new drainage is proposed and that Condition 12 of the licence requires adherence to the mitigation measures specified in the AAD and Ecology report which includes the mitigations to protect water quality found in Section 6 of the EIAR and the Schedule of Environmental Commitments (both dated 23rd December 2019) for the DMVC.

While it is well known that tree felling can have a negative impact on water quality this is dependent on a number of factors including the nature of the works, including any good practice measures, its location and the status of any waterbody that might be impacted. In this case the FAC considered that the grounds do not provide any convincing evidence that the proposal might have a significant adverse impact on water quality of the Dodder and Owenadoher catchments. The FAC would understand from the DAFM SoF that it is the general policy of the Minister to Condition felling licences to adhere to the DAFM Standards for Felling and Reforestation (2019) which provides specific measures related to the protection of water. The FAC noted that the licence at Condition 3 requires the Applicant to comply with these standards. The FAC noted that the application was referred to Inland Fisheries Ireland and South Dublin County Council, and no response was received from either consultative body. The application was not referred to Irish Water, but the FAC does not consider that there was any reason why such a referral would be required in this instance.

The grounds claim that felling was not considered in the NIS. The FAC finds that the clearing of vegetation, including the felling of trees, was considered in the NIS. The grounds contend that given the age of the NIS that the findings may not be valid and should be subject to an assessment by a professional ecologist. The FAC noted that the DAFM Ecology Report, the AASRD and AAD all dated 26/05/2025 were prepared by a professional ecologist and that the applicant’s pre-screening report of 03/04/2023 was prepared by a professional ecologist all carried out post approval for the DMVC.

The grounds make a number of general claims that the licence application information was not correct but provide no basis to conclude that the lands are not as described by the Applicant. The application included a pre-screening report prepared by an Ecologist and the DAFM screening was prepared by an Ecologist. The Appellant has not claimed to have any environmental or ecological expertise or to have

engaged such an individual. The grounds make reference to setbacks from waterbodies but there are no waterbodies on or proximate the site.

The FAC did not consider that there was any merit in the grounds that contend that the screening conclusion in relation to South Dublin Bay SAC and South Dublin Bay and River Tolka Estuary SPA was incorrect. The grounds 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. The FAC is not satisfied that an error occurred in the making of the decision in this regard.

Forestry Regulations 2017 Regulation 10(4)

The grounds contend that the DAFM should have published the information provided as part of the FIR and the Ecology Report and provided for public consultation under Regulation 10(4) of the Forestry Regulations 2017. In considering this ground of appeal the FAC noted the responses marked as Ground 3 of the DAFM SoF dated the 10/09/2025. The DAFM contends that such further consultation is provided at the discretion of the Minister.

In relation to the FIR sent to the Applicant on 25th of March 2025, the DAFM requested the Applicant to provide 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 FAC considered that the additional documents submitted by the Applicant on foot of the Further Information Request 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.

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.

The grounds also allege that a management plan was not submitted in relation to the objectives of the tree felling but this is not the case. A number of documents were submitted including a harvest plan that addresses the management of the lands.

Project Splitting.

This ground of appeal contends that there has been “project splitting” (taken by the FAC as a reference to the EIA Directive) and “fragmentation” of the project between the proposed felling subject of his licence application and the permitted DMVC development. The Appellant also refers to the separate licence applications DU02-FL0189, DU02-FL0190, DU02-FL0175, DU02-FL0174, DU02-FL01171, DU02-FL0148 as constituting “project splitting”. In considering this ground of appeal the FAC noted the responses marked as Ground 29 of the DAFM SoF dated the 10/09/2025 and the Applicant’s post-appeal submission of 2/10/2025.

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 other felling and operations proximate to the site and these were considered by the DAFM.

DAFM Felling and Reforestation Policy & Strategic Environmental Assessment (SEA)

The grounds submit that the DAFM Felling and Reforestation Policy has not been subject to a Strategic Environmental Assessment (SEA) and suggests that this was required to have occurred. In considering this ground of appeal the FAC noted the responses marked as Ground 10 of the DAFM SoF dated the 10/09/2025. 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 DAFM Felling and Reforestation 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 DAFM Felling and Reforestation Policy (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 grounds contend that the replanting conditions in Schedule 3 of the licence have not undergone Strategic Environmental Assessment (SEA). The FAC noted that a condition of a licence is not a “plan or programme” within the meaning of S.I No. 456 of 2025 The European Union (Land Use Planning – Strategic Environmental Assessment) Regulations 2025.

The FAC was not satisfied that a serious or significant error or a series of errors was made in the making of the decision in relation to this ground.

Ecology Report

The grounds contend that the Ecology Report references are convoluted and lack clarity. In considering this ground of appeal the FAC noted the responses marked as Ground 12 of the DAFM SoF dated the 10/09/2025. 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 clearly dated on that link and so could be readily followed and understood.

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. The application was for the felling of trees in a managed plantation that does not contain aquatic features and is at a considerable remove from the closest river. The lands are also close to a car park and public road and used for recreation.

The FAC considered that the grounds demonstrated a lack of engagement with the content of the documentation and the conditions placed on the licence. The licence in this instance related to an activity

that formed part of the broader permitted development of the visitor centre, as confirmed by the Applicant, and so the tree felling was part of the assessment undertaken for that development.

However, similar issues, as with the AA, 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 ACP decision on the DMVC dated 26/06/2020. 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.

Montpelier Loop Recreational Trail

This ground of appeal contends that the Montpelier Loop Recreational Trail is not properly shown and that the licence lacks safety conditions for trail users during construction.

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.

Mapping

This ground of appeal contends that deficiencies in the maps accompanying the licence application precludes a complete assessment of this licence. In considering this ground of appeal the FAC noted the responses marked as Ground 21 of the DAFM SoF dated the 10/09/2025.

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 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 is no basis to conclude that the application, including the description of the lands, contained serious errors.

Licence Conditions 10 and 11.

This ground of appeal contends that conditions 10 and 11 of the licence are unenforceable. These conditions relate to the requirement to adhere to the mitigation measures contained in the DAFM Archaeology and Ecology Reports. The FAC does not consider that there is any basis to the claims in the grounds.

Climate Action Plan & Nature Restoration Law

This ground of appeal contends that the Climate Action Plan & Nature Restoration Law have not been considered in the processing of this licence. In considering this ground of appeal the FAC noted the responses marked as Ground 24 of the DAFM SoF dated the 10/09/2025. The FAC noted that the Appellant has adduced no convincing evidence that the Climate Action Plan & Nature Restoration Law and Habitats

Directive have not been complied with, therefore the FAC does not consider that there is any reason to conclude that the decision was deficient in relation to this ground.

FSC Interim Forest Stewardship Standard for Ireland.

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.

CONCLUSION.

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal, the SoF submitted by the DAFM, and the additional submissions from all parties. In accordance with Article 14B of the Agricultural Appeals Act 2001, as amended, the FAC is satisfied that a series of significant or serious errors was made in the making of the decision on licence DU02-FL0174 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 amended application documents should have been subject to a period of public consultation in keeping with Regulation 10(4) of the Forestry Regulations 2017.

Yours sincerely,



On Behalf of the Forestry Appeals Committee