



Coillte Teoranta
Dublin Road
Newtownmountkennedy
Co. Wicklow

14th November 2025

Subject: Appeal FAC062/2025 regarding DU02-FL0197

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 FAC062/2025 was held remotely by the FAC on 21st October 2025. In attendance:

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.

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 following considerations, the FAC has decided to set aside and remit the decision of the Minister regarding licence DU02-FL0197.

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.

Background

Tree felling licence DU02-FL0197 is for the thinning of trees on 2.43 hectares at Killakee, Co. Dublin. The thinning would occur on two occasions, in 2026 and 2031, and involve the removal of a proportion of the trees on site comprised of Douglas fir, Ash, Birch and Oak.

The application for the licence was dated 20/12/24 and published on the Forestry Licence Viewer (FLV) on 09/01/2025. A decision approving the licence was issued on 05/06/2025 subject to conditions including adherence to the measures set out in an Appropriate Assessment Determination (AAD), an Ecology Report and an Archaeology Report.

The application for the tree felling licence included operational and environmental information and a number of maps. The maps identify the forest as being bounded by the public road to the east and other forest to the north and west. Farmland and a number of dwellings are located to the south. The DAFM wrote to the Applicant on the 26th March 2025 requesting further information and mapping concerning the application and other felling proximate to the site. The record includes maps describing other tree felling operations in forests adjoining DU02-FL0197 and their purpose. The record also includes a Harvest Plan and map.

The forest is comprised of young trees, 19 and 20 years old, at the first thinning intervention, of Douglas fir, Ash, Birch and Oak. A number of features are shown on the mapping and a recreational trail crosses the site in the northern half. A forest road runs to the north and west of the forest and the timber would be extracted westerly to a stacking area adjoining the forest road. The forest road connects to the public road at the north-eastern corner of the site.

In addition to the application and mapping, the applicant submitted a document titled Appropriate Assessment Pre-Screening Report for thinning project DU02-FL0197, located at Killakee, Co. Dublin dated 10th December 2024. This describes the site and operations and considers the possibilities of significant effects arising on the interests of European sites. The specific European sites considered were Ballyman Glen SAC (000713), Glenasmole Valley SAC (001209), Knocksink Wood SAC (000725), Poulaphouca Reservoir SPA (004063), South Dublin Bay SAC (000210), South Dublin Bay and River Tolka Estuary SPA (004024), Wicklow Mountains SAC (002122), and Wicklow Mountains SPA (004040). The document provides a conclusion and reason in relation to each interest and records other plans and projects considered in-combination with the proposal. The document concludes,

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 a screening for Appropriate Assessment dated 28th May 2025. The DAFM recorded a screening in relation to nine European sites, the same sites as the Applicant and also Red Bog, Kildare SAC (000397), and “screened in” two European sites to proceed to Appropriate Assessment. The screened in sites were the Wicklow Mountains SPA due to the potential for impacts on Merlin on the basis that “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” and the Wicklow Mountains SAC due to the potential impacts on heathland habitats on the basis that “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”. The screening document notes that the lands also form part of planning permission (An Bord Pleanála Reference No. 06S.JA0040) for the Dublin Mountains Visitor Centre (DMVC) and that the Merlin and heathland habitats were subject to AA by An Bord Pleanála by way of a Natura Impact Statement (NIS) and that “on an extremely precautionary basis given that the overall permitted development was screened in, this European Site is screened in” the DAFM determined that AA Stage 2 was required for both sites. The screening process also included a record of other plans and projects considered in-combination with the tree felling

The record also includes an Appropriate Assessment Determination, dated 28th May 2025, that identifies measures that are required in relation to the European sites 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 also recorded an Ecology Report, dated 28th May 2025, that specified a number of measures in relation to other environmental matters. The DAFM prepared an Archaeological Report, dated 9th May 2025, that addresses a number of archaeological matters and includes operational buffers around a levelled enclosure which coincides with the corner of the site.

The record indicates that the DAFM opened the application for public consultation on 12th April 2023 and that no submissions were made by members of the public. The application was referred to Inland fisheries Ireland which did not make a submission and the National Monuments Service, DHLGH which it is recorded responded on 27th May 2025.

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. 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, 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 grounds suggest that the Archaeology Report lacks bespoke details and relies on a broader assessment for the associated planning permission.,
- 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. That the DAFM screening postdates the NIS and that the NIS does not address felling works and some of the DAFM mitigation measures and is out of date. That the DAFM consideration of other plans and projects is flawed.,
- 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.,
- 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 the Windthrow risk has not been assessed and there are inadequate setbacks.,
- 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.,
- That references in the Ecology Report are too convoluted and should have included better referencing.,
- 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 EUCJ 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 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 Woodtown 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) represent 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.

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 and are largely a repetition of grounds contained in other sections.

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 Forestry Licence Viewer (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 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 relatively early thinning of a low volume of timber represents good forest management.,
- 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.,
- The reference in the Ecology Report is clear.,
- 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.
- 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 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 principals of Government policies, including in relation to climate action.,
- The DAFM rejects the suggestion of procedural errors and that the 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 post-appeal submission was circulated to the other parties. DFAM responded stating it had no further submissions, the Appellant made a submission on 12th October 2025. This was after the period specified by the FAC but having regard to the specific circumstances of the appeal the FAC considered the submission and noted that it was primarily a re-stating of the position of the Appellant. The FAC shared the submission with 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 21st October 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 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 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 many 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 generic nature of some of the grounds was further evidenced by a number of inaccurate references in the grounds including in relation to the nature of the application and the species identified on site. 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. The FAC therefore considered whether the appeal might be considered vexatious and an abuse of process such that the appeal should not be considered. The FAC considered that a number of grounds were specific to the decision of the Minister in relation to DU02-FL0197 and that having regard to the legislative regime under which the appeals process was established that it could not be reasonably determined that the appeal was vexatious such that the appeal might not be determined. 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. 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-FL0197 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, including the constitutionality, of the appeals process or of legislation.

In relation to the grounds of appeal concerning felling licence decision DU02-FL0197, the FAC considered in the first instance the contentions in relation to Public Notice and Public Participation and the Aarhus convention which are raised in a number of parts of their 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 Forestry Licence Viewer (FLV). The FAC understands that this 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. 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 that involves the removal of a proportion of the overall number of trees on site. The decision before the FAC relates to the felling of a number 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 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 four periods of public consultation one at application stage, one at the initial Appropriate Assessment stage, one in relation to the further information submitted by the Applicant and one in relation to the Appropriate Assessment. 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 Forestry Licence Viewer.

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 Appropriate Assessment undertaken by the DAFM.

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 there are no recorded monuments on the 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 recorded monuments on the file was not correct. 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 DHGLG. The FAC consider it clear that the DAFM undertook a bespoke report for the application.

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.

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.

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

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

In relation to the further information request sent to the Applicant on 26th March 2025, the DAFM requested from the Applicant 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. This was evidenced, amongst other documents, in the inclusion of the additional maps in the Archaeological Report. The FAC considered that the additional submissions from the Applicant formed a materially 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 10th December 2024, having assessed 8 Natura 2000 sites within 15km of the site, concludes that the proposed thinning will not have a significant effect on any European Site, and contends that there is sufficient information for DAFM to determine that there is no requirement for this project to proceed to Appropriate Assessment (Stage 2).

The FAC also noted that the DAFM Appropriate Assessment screening Report & Determination (AASRD) dated 28th May 2025 concludes that, having examined the same 8 Natura 2000 sites within 15km, and one other site Red Bog, Kildare SAC, the project was required to proceed to AA (Stage 2). In reviewing the documentation on file, the FAC noted that at Section 3 of the DAFM AASRD it is stated that the AASRD considered the NIS, EIAR, Planning permission (Approval) and associated documents for the Dublin Mountain Visitors Centre (DMVC) and all associated works (An Bord Pleanála Reference No.: 06S.JA0040) as the proposed felling is a component that permitted development.

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-FL0197 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-FL0197.”

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 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-FL0197 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-FL0197.”

In relation to Appropriate Assessment, 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 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 appropriate assessment.

In this instance the FAC considers that the AA screening undertaken does not 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 it is the tree felling application that is before the Minister for Agriculture. The Minister has determined that the tree felling licence proposal should proceed to appropriate

assessment as a planning application on the same land, but for a different and larger development, was subject to appropriate assessment. However, the FAC considers that in adopting this approach the Minister has considered matters outside of the scope of the consent application before them. 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 appropriate assessment 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 Natura Impact Statement nor an Appropriate Assessment Report on the tree felling file available on the Forestry Licence Viewer nor does the AA screening document identify that the DAFM will be relying on the NIS submitted by the Applicant in relation to a planning permission or direct the public to that document. According to the DAFM statement and the record of the decision, the Minister did not provide for a period of public consultation in relation to their Appropriate Assessment 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 understand that the Minister was entitled to forego the public consultation process in relation to the Appropriate Assessment process where no joint procedure was initiated and the Minister had undertaken a screening and determined that an Appropriate Assessment was required.

The FAC considers that, under such conditions, there could not be effective public consultation in relation to the appropriate assessment of the tree felling application and the FAC is satisfied that this represents a serious error in the processing of the licence application.

The AA Determination requires adherence to the mitigations detailed in NIS for the Dublin Mountains Visitors Centre and all associated works. The FAC considers that this requirement further demonstrates the problems with the Minister's approach as it essentially conditions a tree felling licence on 2.43 hectares on meeting the mitigation measures related to activities concerning a much larger and different 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 AA Determination 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 Appropriate Assessment 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 Appropriate Assessment or an Appropriate Assessment 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 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 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 that the proposal in relation to water quality, aquifers and underground waterbodies, and the requirements of the Water Framework Directive.

The Applicant describes the site as follows,

There are no aquatic features located within or in close proximity to the project area that lies within the OWENADOHER_010 river sub-basin.

The closest aquatic feature to this section of the project area within this river sub-basin is the unnamed aquatic zone visible on the historical 6- inch map which is located approx. 190 metres south of the project area. However, there is no clear flow path from the project area to this aquatic zone. A buffer of improved agricultural grassland habitat, mixed woodland and conifer plantation, artificial surfaces and buildings and a regional road, occur between the project area and this aquatic zone.

Therefore, due to no aquatic features being located within or in close proximity to this section of the project area, the closest aquatic feature being located approx. 190 metres away, no clear flow path from the project area to this aquatic feature, a improved agricultural grassland, mixed woodland and conifer plantation, artificial surfaces and buildings and a regional road occurring between the project area and this unnamed river, the small overlap size with this river sub-basin (2.43 ha) and as the project area is located on peaty gley soils, which have a mineral subsoil, there is no potential for significant effect on any European sites within this River Sub Basin.

The grounds provide no basis on which it could be concluded that the Applicant's description of the site was incorrect or how the thinning of a young mixed forest in this location could impact on a waterbody whether above or below ground. The grounds also make some general claims regarding the ownership of the lands and declarations of interest. The Applicant has identified themselves as the owner of the lands

in making the application and the FAC does not consider that there is any evidence before it to conclude that this was incorrect or that the Applicant was not entitled to apply for the tree felling licence.

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 but, as noted, a professional ecologist did undertake the Appropriate Assessment and prepare an ecological report. The grounds make a number of general claims that the 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 inadequate setbacks from waterbodies but there are no waterbodies on or proximate the site. The grounds also submit that Sitka spruce is “the main species identified for this project” and refers to the planting of species but there is no planting and the forest does not contain this species. The grounds also claim that there are mature broadleaf trees on site which is not the case. 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 (000210) and South Dublin Bay and River Tolka Estuary SPA (004024) 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.

This ground of appeal contends 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 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. The DAFM contends that there is no basis for the claim.

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 application was made with input from a number of technical and professional staff and the DAFM decision was made with input from a number of technical and professional staff. The Appellant does not claim to have any environmental or ecological expertise nor to have engaged such an individual.

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 Masseys wood which is a different location to the tree felling licence application and comprised of different habitat. The appeal before the FAC relates to a tree felling licence decision on land comprised of young mixed plantation.

The FAC noted that the licence conditions include adherence with the measures in the ecology report, a report which include adherence with the measure,

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

The FAC does not agree with the Appellant's contention that the tree felling licence application was predicated on the necessity to carry out post-permission surveys in order to establish whether there is a necessity for a derogation licence. However, by including a condition to adhere with the mitigations in Section 6 of the EIAR and the Schedule of Environmental Commitments for the Dublin Mountains Visitors Centre 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 Appellant has mis-characterised the nature of the lands and the proposal in a number of instances in the grounds and the FAC does not consider that the grounds engage with the application and licence in a meaningful manner. The proposal is for the thinning of a young mixed managed forest and 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. The proposal is for the thinning of the forest without clearfell.

As previously advised, it is not for the FAC to make a determination on a decision of An Bord Pleanála, nor is it for the FAC to make a determination on the granting or refusal of a derogation licence.

This ground of appeal contends 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-FL01171, 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-FL0197 that is before the FAC and the subject of this determination.

In relation to the Appellant’s stated ground of appeal 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. The FAC noted 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 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 contend that windthrow risk has not been assessed. As noted by the DAFM early thinning of low levels of timber volume is recognised as providing benefits in relation to windfirmness. The COFORD Windthrow model is a general and indicative model which does not take account of local conditions. In particular, the model uses a very broad climate specification and does not take account of local topography. The grounds mis-specify the nature of the lands and operations and it is clear from the grounds that the Appellant has not engaged with the actual application and licence.

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 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 in a young forest without replanting.

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.

The grounds contend that the Ecology Report references are convoluted and lack clarity. The FAC reviewed the report and the references contained therein which could be readily followed and understood and found the report to be clear. These include clear references and links to publicly available documentation.

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 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.

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 conditions 10 and 11 of the licence are unenforceable. These conditions relate to the DAFM reports and adherence with the measures contained therein. The FAC does not consider that there is any basis to the claims in the grounds.

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 and Habitats Directive have not been complied with, therefore 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 young plantation forest which would be thinned in keeping with standard forest practice.

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 and 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-FL0197 was made.

Having considered appeal FAC062/2025, 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 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 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.

Yours sincerely,

Vincent Upton on behalf of the Forestry Appeals Committee

