



Irish Forestry Unit Trust

19<sup>th</sup> March 2026

**Subject: Appeal FAC063/2024 against licence decision TFL00961323**

Dear Irish Forestry Unit Trust,

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

**Hearing**

Appeal reference FAC063/2024 was considered during a meeting of the FAC held remotely on the 3<sup>rd</sup> February 2026. In attendance:

FAC Members: Mr. Ed Carroll (Chairperson), Mr. Derek Daly, & Mr. Luke Sweetman.  
FAC Administration: Ms. Aedín Doran

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

**Decision**

Having regard to the information before it, including the record of the decision by the Department of Agriculture, Food, and the Marine (DAFM) on the Forestry Licence Viewer (FLV), the notice of appeal, the DAFM's Statement of Fact (SoF), and all additional submissions, the FAC has decided to set aside and remit the decision of the Minister to grant felling licence TFL00961323 for the reasons set out hereunder.

**Background**

The licence under appeal is for the clearfell and replanting of 10.96ha of Sitka spruce in Drumlaheen, Co. Leitrim. The licence was issued on the 13<sup>th</sup> June 2024. The planned fell year was 2025 and the fell age would have been 36 years. The proposal is comprised of a single plot, and the replanting schedule is for 60% Sitka spruce, 20% Scots pine, 10% Additional Broadleaves, and 10% "Open Space". The licence was issued with relatively standard conditions along with "Inspector's Conditions" which require, *inter alia*, the licensee to contact Leitrim Co. Council prior to commencement of operations, to adhere the DAFM's Archaeology Report, and to adhere to specified environmental protection measures.

The information on file records that the soil type underlying the project area is 93% Basin Peats and 7% Surface water Gleys, Ground water Gleys. The project area lies between 63m - 84m above sea level. The average slope across the site is moderate, at 8% and ranges from 0% to 22%. The project area is crossed by/adjoins a number of aquatic zone(s). The proposal sits on a piece of land which separates the east and west sections of Drumlaheen Lough. An EPA-mapped Order 1 stream named "Drumkirwan" flows

along the southwest boundary of the forest and connects the two sections of the lake. The DAFM's Appropriate Assessment screening documentation records that the proposal lies within the Yellow (Ballinamore)\_020 River Sub-Basin which was recorded as having 'Moderate' ecological status under the Water Framework Directive (WFD) monitoring cycle at the time the proposal was assessed.

In processing the application, the DAFM issued a Further Information Request (FIR) dated 1<sup>st</sup> September 2023 which stated:

*Due to site sensitivity and the heightened risk of siltation mobilization by the forwarding of large volumes of material across open ground, a completed forest road application must be made with the Department of Agriculture food and the Marine. Forest road must span from the existing road to the proposed licence area.*

The FLV shows that forest road licence for CN93298 was issued on the 21<sup>st</sup> March 2024.

#### **Appropriate Assessment**

The DAFM produced an "Appropriate Assessment Screening Report & Determination for Felling and Reforestation project TFL00961323, at Drumlaheen, Co. Leitrim" (AASRD) dated the 27<sup>th</sup> May 2024. The screening was completed by a Forest Inspector and was then subject to an "Expert Review" by an Ecologist which agreed with the screening conclusions reached. The AASRD was published on the FLV on the 13<sup>th</sup> June 2024 (the same date as the licence was issued/published on the FLV). The AASRD screened two European sites, Lough Oughter and Associated Loughs SAC IE0000007 and Cuilcagh - Anierin Uplands SAC IE0000584, and both were screened out with reasons provided. The AASRD determined that:

*Following AA screening, and pursuant to Article 6(3) of the Habitats Directive, the European Communities (Birds & Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011) (as amended) and the Forestry Regulations 2017 (S.I. No. 191 of 2017), as amended by inter alia the Forestry (Amendment) Regulations 2020 (S.I. No. 32 of 2020), DAFM has determined that there is no likelihood of the Felling and Reforestation project proposed under TFL00961323 having any significant effect, either individually or in combination with other plans or projects, on any of the European site(s) listed below, for the reasons set out in the Screening Report.*

- *Cuilcagh - Anierin Uplands SAC IE0000584.*
- *Lough Oughter and Associated Loughs SAC IE0000007.*

*As such, the project does not advance to the appropriate assessment stage in relation to these European Sites.*

The AASRD refers to "Appendix A: In-Combination Report for Felling and Reforestation proposed under TFL00961323" and states "See File". On file is a document titled "Appropriate Assessment Screening Report Appendix A: In-combination report for Felling and Reforestation project TFL00961323". This report states that "Various online resources, datasets and DAFM's own databases were consulted on the 27- May-2024 in order to identify other plans and projects which are also located in the general vicinity of the project area in the River Sub-Basin YELLOW (BALLINAMORE)\_020."

The report states that online data from Leitrim County Council, An Bord Pleanála, and the EPA were examined, and also states that "Objectives relating to Natura 2000 sites set out within Leitrim County Development Plan 2015-2021 were consulted". The report concludes that:

*...there is no likelihood of the proposed Felling and Reforestation project TFL00961323, when considered individually, having a significant effect on the relevant European Site(s), as described elsewhere in the Screening Report. There is no likelihood of residual effects that might arise from this project, which are not significant in themselves, creating a significant effect in-combination with other plans and projects. The relevant Qualifying Interests / Special Conservation Interests and Conservation Objectives, as listed elsewhere in the Screening Report, have been taken into consideration in reaching these conclusions. Furthermore, it is considered that the regulatory systems in place for the approval, operation (including any permitted emissions) and monitoring of the effects of other plans and projects are such that they will ensure that they do not have any significant effect on those same European Site(s). There is no likelihood that the proposed project will have, or contribute to, any significant effect on those same European Site(s), when considered in combination with other plans and projects.*

Also on file is a second, less detailed but more recent, AA Screening Report. This was also completed by a Forest Inspector and is dated 13<sup>th</sup> June 2024 and published on the FLV the same date. This screening report only considered the Cuilcagh - Anierin Uplands SAC 000584 and screens it out for Stage 2 AA with reasons provided.

#### **Referrals & Submissions**

There is no record of submissions from members of the public on the FLV and the DAFM's SoF also indicates that none were received. The application was referred to the Local Authority. Leitrim Co. Council responded in a letter dated the 31<sup>st</sup> July 2024 which was accompanied by a District Engineer's report.

The Council's letter highlights the location of the proposal within Landscape Character Type (LCT) 11 Drumlin Loughs and Stream Margins, as per the Leitrim County Development Plan (CDP) 2023-2029, and which is considered to be of very high sensitivity to commercial forestry. The Council's letter states that the proposal is not designated as an AHVA in the Leitrim CDP 2023-2029. There are no national monuments listed for protection under Section 12 of the National Monuments (Amendments) Act 1994 within the subject forest and there are no Tree Preservations Orders in respect of trees on the lands proposed for felling. The Council's letter refers to the District Engineer's Report, advising of no objection subject to conditions. The Council also proposed licence conditions relating to liaising with the District Engineer's Office prior to commencement of works, and the protection of water quality, to be attached to any approval.

#### **Grounds of Appeal**

There is one third-party appeal against this licence. The grounds of appeal were considered in full by the FAC and are summarised below:

- 1. Inadequate and ineffective public notice in contravention of Article 6 (2) of the Aarhus Convention**

Felling licences fall within the provisions of the Aarhus Convention. The DAFM website is not adequate or effective public notice. The Appellant refers to the requirements for Site Notices as set out in the Forestry Regulations 2017 (in S.I. No. 191/2017).

- 2. Failure of due process**

The FIR and the response dated 16<sup>th</sup> October 2023 were not made available to the public until 13<sup>th</sup> June 2024 which is after the decision to award the licence was made.

- 3. Licence “conditions” are not conditions**  
Conditions (f) and (g) should be removed.
- 4. Insufficient evidence that the access forest road is to Standard and was constructed in accordance with the law.**  
The project is/will be served by two sections of Forest Road. The proposed and licensed (but not yet built) CN93298 links the project area to another section of forest road (over 700m in length) which then leads to the R209. There is no evidence on the file that this section of forest road has been constructed in accordance FS Standards or in accordance with the law.
- 5. Archaeology – failure to seek input from the National Monuments Service (NMS).**  
DAFM should have consulted the NMS. Regarding Condition 2 of the Archaeology Report, the Appellant submits monitoring should take place before reforestation works.  
The Appellant queries the use of the term “rapid walkover survey”.
- 6. AA Screening does not meet the test of Article 6 (3) of the Habitats Directive**  
Wrong CDP in the In-Combination Report.
- 7. DAFM procedures are not consistent with the requirement for providing a General System of protection commensurate with Article 5 of the Birds Directive.**  
There is no general system of protection in Ireland (applicable to forestry operations) for wildlife, including birds, particularly during the period of breeding and rearing.
- 8. Licence application must be refused under Article 4 (1) of the Water Framework Directive**  
The western section of Drumlaheen Lough has not been assigned a WFD status. The eastern basin has an EPA Status of ‘Moderate’, determined by monitoring. However, EPA data indicates that the western portion of the Lough has not been accorded a water quality status. It is of a size which should have required the water quality to have been assessed and a formal Status applied.
- 9. EIA Screening Determination is not adequately reasoned**  
The Inspector incorrectly answered a question in the EIA screening. As the response was in error the EIA Determination cannot be considered to be adequately reasoned.
- 10. Restocking on Deep Peat**  
The proposal site is on deep peat soils with fen peat sub-soil. Afforestation would not be allowed on such a site. This is inappropriate and is contrary to Ireland’s climate ambitions.
- 11. Inadequate water quality protection for extraction from vulnerable area**  
Concern that an area of open space has been identified on the reforestation map because it is particularly wet and unsuitable for planting. “The Licensee has a track record of damaging forestry activities in proximity to this area” – a Water Pollution Notice served by Leitrim Co. Council for an incident at Carrickaport Lough. Bespoke licence condition required to address risk at this point of the site.

### **Minister's Statement**

The Minister provided an SoF responding to the grounds of appeal which was provided to the parties and has been considered by the FAC. The DAFM's SoF stated that the decision under appeal was issued "in accordance with our procedures, S.I. 191/2017 and the 2014 Forestry Act, as amended". The DAFM responded to the individual grounds of appeal as summarised briefly below:

- **Ground 1**  
The DAFM stated that they reject "the assertions made in this section of the appeal and believes that this aspect of the appeal goes beyond the remit of a forestry licence appeal and therefore of the considerations of the FAC. The Minister for Agriculture, Food & Marine is not the Minister responsible for Ireland's compliance with the Aarhus Convention. Indeed, the Aarhus Convention is not directly legally applicable and instead in Ireland is implemented via European Union legislation. However, Ireland, including this Department, are in full compliance with the Aarhus Convention, as it relates to forestry licencing." The DAFM outlined their procedures in relation to public participation.
- **Ground 2**  
The DAFM stated that "While the FIR and response were not available to the public at the time of request/receipt, this was rectified and the documents made available to the public on 13-6-24, along with the other supporting documentation for the licence including the general felling licence, on the day the licence was awarded. The public had 14 working days to view the licence and associated documents and submit an appeal if they wished to do so".
- **Ground 3**  
The DAFM stated that "In more recent licences issued by the Department these paragraphs are not listed under 'Other conditions attached to this licence'. However their positioning here is a minor issue that should not affect the outcome of a decision making process".
- **Ground 4**  
The DAFM submitted that it is not a requirement to have a forest road in situ when submitting a felling licence application and where forest roads do not exist at the time the application is submitted, the proposed forest road is shown on the harvest plan map. The DAFM stated that "construction of a forest road, which, in this case is being licenced under CN93298, is part of a separate licencing process and similar to felling licences the right to lodge an appeal with the Forestry Appeals Committee (FAC), is also available at the time the forest road licence is issued.  
  
The licence has taken into account potential impacts on public roads; this is set out in condition e). Furthermore, the licence also states that the forest owner/Registered Forester must contact Leitrim County Council at least 1 month prior to works commencing. This in fact was specified in the response provided by Leitrim County Council".
- **Ground 5**  
The DAFM submitted an additional statement addressing the archaeological grounds of appeal which is detailed later in this letter.
- **Ground 6**  
The DAFM disputed the Appellant's submission that there is a lacuna in their appropriate assessment process. The DAFM detailed their approach to appropriate assessment screening.

- **Ground 7**

The DAFM stated that they “note that the Grounds of Appeal is not referring to any specific adverse effect on the environment under this heading. Nevertheless, DAFM disagrees that its procedures are inconsistent with Article 5 of the Birds Directive”.

The DAFM submitted that one or more of the licence conditions are designed to protect birds and to enhance bird habitats known to exist, on or near the project area, inter alia, pursuant to Regulation 20(3)(b) of the Forestry Regulations 2017.

The DAFM also stated that the granting of the licence does not exempt the Licensee from fulfilling any other obligations or licensing requirements arising from “the main pillars of wildlife legislation in Ireland, i.e., the Wildlife Acts, 1976 and 2000, as amended”.

- **Ground 8**

The DAFM stated that they apply a wide range of checks and balances during their evaluation of felling licence applications in relation to the protection of water, as set out in the DAFM document Forests & Water: Achieving Objectives under Ireland’s River Basin Management Plan 2018-2021 (2018) and that “Critically, any felling licence issued is conditional on adherence to the Standards for Felling and Reforestation (DAFM, 2019), which set out a wide range of operational measures to prevent direct and indirect impact on water quality arising from the operation”.

The DAFM submitted that there are 19 conditions specifically targeted at protecting water quality included in the licence. The DAFM responded to the Appellant’s submission regarding the WFD status of the adjacent lake and stated that the determinative decision is arrived at by the CJEU in C-301/22. The DAFM stated that “the Appellant relies on the absence of an hoc analysis of the lake as grounds to suggest the Minister is required to refuse authorisation for this project. The Advocate Generals decision is not determinative. The lake referenced by the appellant measures a surface area of less than 0.5 km<sup>2</sup>. Therefore, it is exempt from the requirement to establish a type-specific reference condition or status”. The DAFM contend that rather than an obligation to undertake an ad hoc analysis, the CJEU outlined the requirements for competent authorities when assessing such applications.

“DAFM, as the relevant competent authority, satisfies the requirement set out in answer three of the CJEU in C-301/22. Through DAFM’s assessment procedure, appropriate assessment screening, consequent mitigations and application of standard setbacks, DAFM ensures any such project is not liable to cause deterioration of any surface waterbody, either directly or through knock-on effects. Potential effects on the status of a waterbody are specifically considered during DAFM’s assessment and any decision is considered in the context of competent authorities’ obligations under the Water Framework Directive”.

- **Ground 9**

“It is the position of the Department that clear-felling and replanting an already established plantation forest is a standard operational activity and does not involve an activity or project that falls within the specified categories of forestry activities or projects subject to the requirements of the EIA Directive, as transposed and set out nationally in Schedule 5 Part 2 of the Planning and Development Regulations 2001, as amended, and in Regulation 13(2) of the

Forestry Regulations 2017 (and wherein relevant national mandatory thresholds and criteria for EIA are also prescribed)".

- **Ground 10**

The DAFM submitted that they are the Competent Authority for issuing forestry licences and that the proposal as it stands does not contravene current Forest Service Guidelines which refer only to the prohibition of initial planting on blanket peat and do not prohibit replanting. The DAFM stated that "the carbon balance of afforesting deep peats for the first time clearly differs from the restocking of an existing forest where the drainage system and micro-climate have been altered for many decades". The DAFM also stated that "if the Minister had not placed conditions on the restocking of the site the most likely outcome is that the forest would restock through natural regeneration in an uncontrolled manner given the size of the area, the development of a forest micro-climate and the location within an area with an existing seed supply. The grounds provide no basis for concluding that the licence contradicts climate change policy".

- **Ground 11**

The DAFM referred back to their submission in response to Ground 8.

As previously outlined, in addition to the SoF, the DAFM also submitted a statement from the Archaeologist who processed the application and produced the Archaeology Report. This statement was considered by the FAC and was provided to the parties to the appeal.

#### **Additional Submission Following the DAFM's Statements**

The Appellant submitted a response to the DAFM's SoF in the form of annotations in red text responding to certain statement made by the DAFM. This submission was considered by the FAC and circulated to the parties to the appeal. No response was received.

The Appellant made a further additional submission at a much later stage in the appeals process, on the 30th January 2026. This later submission stated, *inter alia*, that "Evidence now available\* indicates that Drumlaheen Lough is used by Whooper Swan (*Cygnus cygnus*). Whooper Swan is a protected species under Irish and EU law and is a qualifying interest of Special Protection Areas designated under the Birds Directive". The "evidence" referred to by the Appellant was a link to an announcement on the Birdwatch Ireland website, published on the 13<sup>th</sup> December 2025, stating that an "International Swan Census will take place in January 2026". This additional submission was considered by the FAC and circulated to the parties to the appeal to allow for any response. The DAFM responded stating that none of the European Sites that were screened as part of the Department's screening for appropriate assessment included the Whooper Swan as a QI and that the granting of the licence by the Department does not serve to exempt the licensee from fulfilling any other obligations or licensing requirements arising from the main pillars of wildlife legislation in Ireland, i.e., the Wildlife Acts, 1976 and 2000, as amended.

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

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

At its sitting on the 3<sup>rd</sup> February 2026, the FAC had before it the full DAFM record of the decision as made available on the FLV, the Notice of Appeal Form and grounds of appeal, the DAFM's SoF and archaeological statement, the additional submissions made by the Appellant, and all materials on file.

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

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

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

The FAC understands that publication through the FLV is the form of publication chosen by the Minister for Agriculture to inform the public and to make the application and decision freely available and accessible and to facilitate submissions.

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

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

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

The FAC was not satisfied that a serious or significant error or a series of errors was made in the making of the decision or that the decision was made without complying with fair procedures in relation to the Aarhus Convention or public notice of the application.

### **2. Failure of Due Process**

The FAC considered the grounds relating to the publishing of relevant documents and the availability of same to members of the public. The FAC considered the requirements of S.I. 191/2017, the Forestry Regulations 2017, which requires in Section 10(1) that:

*Where the Minister receives an application under Regulations 3, 5, 6 or 7, he or she shall, before making a decision on the matter, publish a notice of the application in a manner determined by the Minister.*

Section 10(4) of the Forestry Regulations 2017 states that:

*The public may make submissions or observations in writing concerning the application to the Minister within 30 days from the date of publication of the notice or whatever longer timeframe is set out in the notice, and where additional information is published, at least 30 days from the date of the publication of that information.*

The FAC considers that Section 10(4) of the 2017 Regulations primarily relates to the public consultation process regarding the application for a licence while the Minister might, at their discretion, provide for further periods of public consultation. In this instance, the FAC is satisfied that the Minister published the licence application on the FLV before the making of a decision and that this was in accordance with the requirements of the Forestry Regulations 2017.

Regarding the FIR and the Applicant's response, the FAC considered that these constitute documentation which was produced as part of the DAFM's assessment of the licence application. The FAC noted that these documents were published on the FLV on the same date as the licence decision, alongside a number of other documents which did not form part of the felling licence application but were generated during the DAFM's assessment of the application.

Based on the information before it, the FAC is satisfied that the DAFM did not err in their processing of the application in relation to these grounds of appeal and that the decision was made in line with fair procedures.

### **3. Licence 'conditions' are not conditions**

In considering this ground of appeal the FAC noted the DAFM's response in their SoF which they stated that the relevant paragraphs are not listed under 'Other conditions attached to this licence'. The FAC considered that the grounds of appeal were correct in that the 'conditions' listed under (f) and (g) in the appealed decision did not constitute actual licence conditions. The FAC considered that the removal of the relevant paragraphs from the 'conditions' section of any future decision would be the correct course of action to take. However, on balance, the FAC did not consider their inclusion in the impugned decision to be a significant error with any real impact as they merely restated existing legal responsibilities incumbent upon the Applicant.

### **4. Insufficient evidence that the access forest road is to standard and was constructed in accordance with the law**

The role of the FAC is to consider whether the DAFM made a serious or significant error, or a series of errors in making the decision under appeal, and whether it was made in compliance with fair procedures. The FAC noted that these grounds relate to a separate proposal, a forest road licenced under CN93298. The FAC considers that its remit is to make a determination on the decision under appeal, felling licence TFL00961323 in accordance with the requirements of the Agriculture Appeals Act

2001, as amended. Notwithstanding this, the FAC noted the DAFM's submission that it is not a requirement to have a forest road *in situ* when submitting a felling licence application.

The FAC also noted that the licence conditions appear to reflect the DAFM's consideration of the proposal's potential impact on the public road network, as set out in condition (e) and also in the requirement that the forest owner/Registered Forester must contact Leitrim County Council at least one month prior to works commencing.

Based on the information before it, the FAC is not satisfied that the DAFM has erred in its processing of the application in so far as this ground of appeal is concerned.

#### **5. Archaeology – Failure to seek the input of the National Monuments Service**

In considering these grounds of appeal, the FAC had regard to the submission from the DAFM's Archaeologist, responding to the grounds. The Appellant queries why monitoring is not required prior to the clearfelling. The FAC noted that the Archaeologist's statement outlines the reasoning for this, outlining that to do so would not accord with the basic criteria published by the Office of the Planning Regulator and heretofore (the Department of the Environment, Heritage and Local Government) to guide decision making on conditions in spatial planning and comparable processes. The Archaeologist stated:

*When recommending archaeological monitoring condition DAFM Archaeology & Built Heritage Section are concerned for sub-surface archaeological structures, features, deposits or artefacts or very low visibility topographical variations that may indicate the presence of the same remains that may survive on site notwithstanding the initial afforestation and if such remains are present these will only be practically discernible once the tree cover has been removed and some clearance or exposure of the underlying soils effected through windrowing or scarification or ground preparation and drainage works for replanting.*

The FAC considered the DAFM's approach to archaeological monitoring to be reasonable.

The grounds indicate that the project was not referred to the National Monuments Service (NMS). The DAFM Archaeologist's response details that the proposal, and the proposed archaeological conditions, were referred to the NMS, and these were agreed before being attached as conditions of the licence. The FAC considered that the DAFM's correspondence with the NMS should have been published on the FLV along with the finalised Archaeology Report on the date that the licence was published. Given that the appeal is being set aside and remitted for reasons outlined elsewhere in this decision, the FAC considered that, in the event that a new felling licence is issued, the DAFM should publish their correspondence with the NMS on the FLV on or before the date that any new licence decision is published.

#### **6. AA Screening does not meet the test of Article 6 (3) of the Habitats Directive**

The grounds state that there should no reasonable doubt as to the absence of likely significant effects in the DAFM's AA screening. However, the Appellant did not put forth any arguments as to why any reasonable doubt remains in the decision under appeal.

The Appellant stated that "the In-Combination Report has referenced the wrong County Development Plan". Having considered the DAFM's AASRD and the associated In-Combination Report, the FAC found the Appellant's submission to be correct; the In-Combination Report dated 27<sup>th</sup> May 2024 states that

“Objectives relating to Natura 2000 sites set out within Leitrim County Development Plan 2015-2021 were consulted”. The new Leitrim County development Plan came into force on the 21<sup>st</sup> March 2023 and should therefore have been consulted and formed part of the assessment of the project.

The FAC noted that the In-Combination Report concludes that “...there is no likelihood of the proposed Felling and Reforestation project TFL00961323, when considered individually, having a significant effect on the relevant European Site(s), as described elsewhere in the Screening Report. There is no likelihood of residual effects that might arise from this project, which are not significant in themselves, creating a significant effect in-combination with other plans and projects”. The FAC considered that, the term ‘residual effects’ is more commonly employed in relation to the consideration of what effects remain after mitigation measures have been assessed as part of the AA. For example, the Department of the Environment, Heritage and Local Government has published a guidance document on Appropriate Assessment entitled Appropriate Assessment of Plans and Projects in Ireland Guidance for Planning Authorities (DEHLG, 2009). This document states on page 40:

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

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

#### **7. 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 contend that DAFM procedures are not consistent with the requirement for providing a General System of protection commensurate with Article 5 of the Birds Directive submitting that the licence contains no seasonal restrictions or mitigation to protect all wild birds during the period of breeding and rearing, that the Wildlife Acts provide an exemption and that the Birds Directive must be transposed by Member States. The grounds effectively submit that Ireland has failed to transpose into National Law the requirement for a General System of protection for all wild birds consistent with the requirements of Article 5 of the Birds Directive by providing exemptions for activities which will result in outcomes that are contrary to the objectives of the Directive and that this means that licence TFL00961323 cannot be considered to have been awarded in a manner that is consistent with European Law.

The FAC considered that the granting of a felling licence does not exempt the holder from meeting any legal requirements set out in the Wildlife Acts which protect all wild animals in Ireland. The FAC considered that the grounds in the main amounted to a challenge in relation to the legality of the Wildlife legislation and Ireland’s transposition of EU Directives and that making such a determination would not fall within the remit of the FAC. Based on the information before it, the FAC is not satisfied that the DAFM erred in its processing of the licence application in relation to these grounds of appeal.

### **Additional Submission Following the DAFM's Statements**

With regard to the additional submission made by the Appellant and responded to by the DAFM in respect of the Whooper Swan it is noted that the Appellant has merely made an assertion that there is evidence available that Drumlaheen Lough is used by the Whooper Swan but has not provided any such evidence. Further, the link to the Birdwatch Ireland website is a link to the announcement that the International Swan Census will take place in January 2026 but there is no evidence of the Whooper Swan using Drumlaheen Lough. At the date of the decision the Birdwatch Ireland website no results have been published for the 2026 survey. In respect of the previous survey in 2020 the Birdwatch website notes:

*The results of the last International Swan Census in 2020 showed an increase in Whooper Swan numbers in Ireland – up 24.9% in the Republic of Ireland and up 32% in Northern Ireland – compared to the previous census in 2015. At 19,111 birds, this was the highest number recorded in Ireland to date (14,467 in Republic of Ireland and 4,644 in Northern Ireland).*

*Nevertheless, the proportion of the overall Icelandic-breeding flyway population of Whooper Swans that winter in Ireland is actually decreasing. This is largely due to an increase in the number of birds at sites in England, where there were rapid rises recorded at some key sites.*

In the circumstances the FAC is not satisfied that this submission or ground has been substantiated.

### **8. Licence application must be refused under Article 4 (1) of the Water Framework Directive**

The grounds of appeal describe the location of the proposal as being on an area of land that subdivides the two halves of Drumlaheen Lough. The grounds state that "The eastern basin has an EPA Status of Moderate, determined by monitoring. However, EPA data indicates that the western portion of the Lough has not been accorded a water quality status. It is of a size which should have required the water quality to have been assessed and a formal Status applied". The DAFM's response contradicts the Appellant's assessment of the size of the western portion of Drumlaheen Lough, stating that "The lake referenced by the appellant measures a surface area of less than 0.5 km<sup>2</sup>. Therefore, it is exempt from the requirement to establish a type-specific reference condition or status".

The grounds submit that "In the absence of a formal water quality status determined by the national competent authority for the western portion of Drumlaheen Lough, DAFM is required to refuse authorisation for this project as it may cause a deterioration of the status of a body of water where there is no benchmark against which water quality status can be compared".

The DAFM's SoF provides a detailed response to these grounds of appeal, outlining the findings of the CJEU in C-301/22 and stating that "DAFM, as the relevant competent authority, satisfies the requirement set out in answer three of the CJEU in C-301/22. Through DAFM's assessment procedure, appropriate assessment screening, consequent mitigations and application of standard setbacks, DAFM ensures any such project is not liable to cause deterioration of any surface waterbody, either directly or through knock-on effects. Potential effects on the status of a waterbody are specifically considered during DAFM's assessment and any decision is considered in the context of competent authorities' obligations under the Water Framework Directive".

The FAC noted that there are 19 conditions attached to the licence which were prescribed for the purpose of protecting water quality. These include the establishment of undisturbed water setbacks, planting of rows of broadleaves, restrictions on machine movement, and monitoring of on-site conditions. The licence conditions also require adherence to the Standards for Felling & Reforestation and the Environmental Requirements for Afforestation (as they relate to replanting operations) and that

both of these documents contain measures for the protection of water quality. The FAC also noted that the DAFM's FIR, was issued "Due to site sensitivity and the heightened risk of siltation mobilization by the forwarding of large volumes of material across open ground".

Based on the evidence before it, the FAC is not satisfied that the DAFM made a serious or significant error, or series of errors in their processing of the licence in relation to these grounds of appeal.

#### **9. EIA Screening Determination is not adequately reasoned**

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

The Irish Forestry Regulations 2017, in relation to forestry licence applications, require compliance with the EIA process for applications relating to afforestation involving an area of more than 50 hectares, the construction of a forest road of a length greater than 2000 metres and any afforestation or forest road below the specified threshold where the Minister considers such development would be likely to have significant effects on the environment. The Forestry Regulations 2017 do not provide for the Minister to undertake an EIA in relation to a tree felling licence application. In these circumstances, the FAC considered that the Minister was not required to undertake a screening for EIA or an EIA in relation to the processing of the tree felling application that was before them. As such the FAC considered that the DAFM did not make a serious or significant error, or series of errors in the processing of the licence application in relation to these grounds of appeal.

#### **10. Re-stocking on deep peat**

The FAC considered the submission that the proposed restocking is "inappropriate and is contrary to Ireland's climate ambitions". The FAC noted that the submission from the DAFM in its SOF which states that the DAFM is the competent authority for issuing forestry licences and that the proposal as it stands does not contravene current DAFM Policy which refer only to the prohibition of initial planting on blanket peat and do not prohibit replanting. The FAC also had regard to the DAFM's submission that the carbon balance of afforesting deep peats for the first time clearly differs from the restocking of an existing forest where the drainage system and micro-climate have been altered for many decades. The FAC concurs with the DAFM's submission in this regard. Based on the information available to it, the FAC finds no reason to conclude that the DAFM has erred in its processing of the application in so far as the matters raised in this ground of appeal are concerned.

#### **11. Inadequate water quality protection for extraction from vulnerable area**

The Appellant contends that an area of open space identified on the Reforestation Map has been so identified as it is particularly wet and unsuitable for planting, and that any timber from the western portion of the site must be drawn through this area. The DAFM's response to this ground of appeal was to refer to their response to the Ground 8 regarding the protection of water quality. The FAC reviewed the Reforestation Map and the Harvest Plan Map on file and the area of open space referred to by the Appellant appears to correlate with a machinery exclusion zone on the Harvest Plan Map. The Appellant

claims that any timber from the western portion of the site must be drawn through this area. The FAC noted that the Harvest Plan indicates the timber extraction direction, annotated with red arrows, and that these indicate that timber extraction will avoid the area in question. Based on the evidence before it, the FAC is not satisfied that the DAFM made a serious or significant error, or series of errors in relation to these grounds of appeal.

The Appellant made submissions in relation to the Licensee's "track record damaging forestry activities" in the area. In the FAC's view, claims of this nature, relating to an apparently separate proposal, are outside of the FAC's jurisdiction to determine. The FAC's consideration is limited to the licence under appeal.

Based on the evidence before it, as outlined above, the FAC is satisfied that a serious or significant error was made in the DAFM's decision to issue TFL00961323. In accordance with Article 14B of the Agricultural Appeals Act 2001, as amended, the FAC decided to set aside and remit the decision of the Minister, to undertake a new Appropriate Assessment of the proposal itself and in combination with other plans or projects in line with the requirements of Article 6(3) of the EU Habitats Directive and the Forestry Regulations 2017 before the making of a new decision.

Yours Sincerely,

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Luke Sweetman on behalf of the Forestry Appeals Committee