



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Registered Post

Kieran O'Connell
Deel Forrestry Ltd
Ardnaveigh
Rathkeale
Co. Limerick

RL 4096 6292 6IE

29th November 2021

Your client – Geoffrey McMahon

Section 5 referral Reference R21-63 – Geoffrey McMahon

Is the removal of ash trees from a diseased ash plantation and the replanting with Sitka Spruce & Birch considered to be development, and if so is it exempted development?

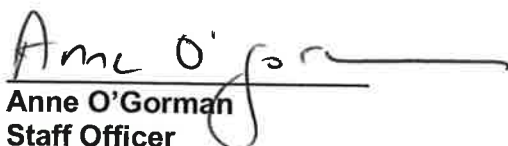
A Chara,

I refer to your application received on 3rd November 2021 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

The Planning Authority has considered the matter and I attach herewith the Council's findings in this matter.

Where a declaration is issued by the Planning Authority, any person issued with a declaration, may on payment to an Bord Pleanála of the required fee, refer a declaration for review by An Bord Pleanála within 4 weeks of the date of the issuing of the declaration. Details on making such appeal are available on the Board's website at www.pleanala.ie

Mise, le meas


Anne O'Gorman
Staff Officer
Planning Department
Economic Development Directorate

An Roinn Pleanála
An Stiúrthóireacht Forbairt Gheilleagrach
Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

Planning Department
Economic Development Directorate
Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2



**DECLARATION ISSUED UNDER SECTION 5 OF THE
PLANNING & DEVELOPMENT ACT 2000 (AS AMENDED)**

Reference No.: R21-63



Comhairle Contae an Chláir
Clare County Council

Section 5 referral Reference R21-63

Is the removal of ash trees from a diseased ash plantation and the replanting with Sitka Spruce & Birch considered to be development, and if so is it exempted development?

AND WHEREAS, Geoffrey McMahon has requested a declaration from Clare County Council on the said question.

AND WHEREAS Clare County Council, in considering this referral, had regard in particular to –

- (d) Sections 2, 3 and 4 (1) (i) and (4A) of the Planning and Development Act, 2000, as amended,
- (e) The provisions of part 3 Exempted Development –Rural- Article 6. Class 16 and associated limitations and conditions,
- (f) The extent of the plantation being 3ha as indicated in submitted documents from the referrer.

And whereas Clare County Council has concluded:

- (a) That the removal of ash trees from a diseased ash plantation and the replanting with Sitka Spruce and Birch, constitutes “works” which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended,
- (b) the said works constitute “development” which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended,
- (c) the said development of clearing the present area of ash trees to progress replanting of 85% coniferous trees and 15% broadleaf trees, complies with the provisions of Class 16 of Part 3, Exempted Development (Rural) of the Planning and Development Regulations 2001 as amended, and the conditions and limitations therein.

THEREFORE: The Planning Authority in exercise of the powers conferred on it by Section 5 of the Planning and Development Act, 2000 (as amended), hereby decides that:

The proposed development consisting of removal of ash trees from a diseased ash plantation and the replanting with Sitka Spruce (85%) and Birch (15%) is considered to be development and development which is exempted development.



Anne O'Gorman
Staff Officer
Planning Department
Economic Development Directorate

29th November 2021

CLARE COUNTY COUNCIL

SECTION 5 OF THE PLANNING AND DEVELOPMENT ACT 2000 AS AMENDED

DECLARATION ON DEVELOPMENT AND/OR EXEMPTED DEVELOPMENT

Chief Executive's Order No: 78819

Reference Number: R21-63

Date Referral Received: 3rd November 2021

Name of Applicant: Geoffrey McMahon

Location of works in question: Ballysallagh West, Newmarket on Fergus,
County Clare

Section 5 referral Reference R21-63 – Geoffrey McMahon

Is the removal of ash trees from a diseased ash plantation and the replanting with Sitka Spruce & Birch considered to be development, and if so is it exempted development?

AND WHEREAS Clare County Council, in considering this referral, had regard in particular to –

- (a) Sections 2, 3 and 4 (1) (i) and (4A) of the Planning and Development Act, 2000, as amended,
- (b) The provisions of part 3 Exempted Development –Rural- Article 6. Class 16 and associated limitations and conditions,
- (c) The extent of the plantation being 3ha as indicated in submitted documents from the referrer.

AND WHEREAS Clare County Council has concluded:

- (a) That the removal of ash trees from a diseased ash plantation and the replanting with Sitka Spruce and Birch, constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended,
- (b) the said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended,
- (c) the said development of clearing the present area of ash trees to progress replanting of 85% coniferous trees and 15% broadleaf trees, complies with the provisions of Class 16 of Part 3, Exempted Development (Rural) of the Planning and

Development Regulations 2001 as amended, and the conditions and limitations therein.

ORDER: Whereas by Chief Executive's Order No. HR 152 dated 9th April 2021, Pat Dowling, Chief Executive for Clare County Council, did, pursuant to the powers conferred on him by Section 154 of the Local Government Act 2001, delegate to Garreth Ruane, Senior Executive Planner, the powers, functions and duties as set out herein,

NOW THEREFORE pursuant to the delegation of the said powers, functions and duties and under Section 5(2)(a) of the Planning & Development Act 2000 (as amended) and having considered the various submissions and reports in connection with the referral described above, I, Garreth Ruane, Senior Executive Planner, hereby declare that the proposed development consisting of removal of ash trees from a diseased ash plantation and the replanting with Sitka Spruce (85%) and Birch (15%) is considered to be development and development which is exempted development.

Signed:



GARRETH RUANE
SENIOR EXECUTIVE PLANNER *A.R.*

Date:

29th November 2021

CLARE COUNTY COUNCIL SECTION 5 DECLARATION OF EXEMPTION APPLICATION PLANNERS REPORT	
FILE REF:	R21-63
APPLICANT(S):	Geoffrey McMahon
REFERENCE:	Whether the removal of ash trees from a diseased ash plantation and the replanting with Sitka Spruce and Birch is considered to be development, and if so is it exempted development.
LOCATION:	Ballysallagh West, Newmarket on Fergus, Co. Clare
DUE DATE:	30 th November 2021

Site Location

The site of the proposed development is located, within a rural area. The referral declaration relates to three separate application sites, one just east of the Motorway and the other two to the west.

Recent Planning Application History

None

Enforcement History

None

Background to Referral

The applicant is seeking a Section 5 Declaration as to Whether the removal of ash trees from a diseased ash plantation and the replanting with Sitka Spruce and Birch is considered to be development, and if so is it exempted development.

Development details and specification

The following has been submitted:

- Ordnance Survey maps that clearly show the location of the site;
- Declaration request form fully completed, with written description of the proposal.

Flood Risk

Following examination of the relevant GIS information in relation to flood risk assessment, it is noted that the proposed development is located outside Flood Zones A and B.

Statutory Provisions

Planning and Development Act, 2000 (as amended)

In order to assess this proposal, regard has to be had to the *Planning and Development Act 2000, as amended*.

S.3.(1) In this Act, “development” means, except where the context otherwise requires, **the carrying out of any works on, in, over or under land** or the making of any material change in the use of any structures or other land.

‘Works’ are defined in Section 2 of the *Planning and Development Act 2000*, as amended as follows:

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 4(1) (i) of the *Planning and Development Act 2000*, as amended states the following shall be exempted development:

development consisting of the thinning, felling or replanting of trees, forests or woodlands or works ancillary to that development, but not including the replacement of broadleaf high forest by conifer species;

Environmental Impact Assessment & Appropriate Assessment

Section 4 (4) states

Notwithstanding paragraph (i) of subsection 1 and any regulation under subsection 2 development shall not be exempted development of an Environmental Impact assessment or an appropriate assessment of the development is required.

Section (4 A) states

Notwithstanding subsection 4 the Minister may make regulations prescribing development or any class of development that is:

(a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and

(b) as respects which an environmental impact assessment or an appropriate assessment is required,

to be exempted development.]

Planning & Development Regulations, 2001, as amended

Article 6 refers to Exempted Development and states that subject to Article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Part 3 Exempted Development- Rural- Article 6

Class 16

The replacement of broadleaf high forest by conifer species.

Conditions and limitations

The area involved shall be less than 10 ha.

Planning and Development Regulations 2001-2021 – Article 8F:

8F. Development (other than the replacement of broadleaf high forest by conifer species) that is licensed or approved under section 6 of the Forestry Act 2014 (No. 31 of 2014) and that consists of –

- (a) the thinning, felling or replanting of trees, forests or woodlands,*
- (b) works ancillary thereto,*

shall be exempted development.

Assessment

Basis of Referral

The applicant is seeking a Section 5 Declaration as to whether the clearing the present area of failed ash trees to progress replanting of 85% coniferous trees and 15% broadleaf trees is considered development and if so, is it exempted development.

Notwithstanding the provisions of Section 4 (4) of the Act and Article 8 F of the Planning and Development Regulations, Section (4A) makes provision for the Minister to make regulations prescribing development or any class of development that is authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and as respects which an environmental impact assessment or an appropriate assessment is required to be exempted development for the purposes of the Planning Acts.

In this instance Part 3 Exempted Development- Rural- Article 6 Class 16 states that the replacement of broadleaf high forest by conifer species is exempted development provided the area involved shall be less than 10ha. The subject referral identifies 4 separate plots:

- Plot 1 – 9.7ha
- Plot 2 – 2.3ha
- Plot 3 – 3ha
- Plot 4 – 2.4ha

The total area therefore is 17.4ha. However it is in plot no. 3 where the replanting will occur (area of 3ha).

In terms of the Article 9 de-exemptions, I note that the site has an existing access and no new access is being created.

I also note that the exclusion area around the recorded monuments is also being retained.

In terms of Appropriate Assessment, it is noted that the proposed planting will require a licence (under the Forestry Act 2014) and the question of Environmental Impact Assessment and Appropriate Assessment in respect of the proposed development is dealt with through the Forestry Licence process. In any event I do not consider based on the details as submitted that an AA is required in this instance.

Conclusion

Having regard to the information provided, it is considered that clearing the present area of failed ash trees to progress replanting of 85% coniferous trees and 15% broadleaf trees under the constitutes both 'works' and 'development'. Regard has also been had to Section (4A) (Planning and Development Act 2000 and class 16 (Part 3 Exempted Development- Rural- Article 6) of the Regulations made there under the replacement of broadleaf high forest by conifer species is exempted development and the area is less than 10 ha.

Recommendation

The following questions have been referred to the Planning Authority:

Whether the removal of ash trees from a diseased ash plantation and the replanting with Sitka Spruce and Birch is considered to be development, and if so is it exempted development.

The Planning Authority in considering this referral had regard to:

- (a) Sections 2, 3 and 4 (1) (i) and (4A) of the Planning and Development Act, 2000, as amended,
- (b) The provisions of part 3 Exempted Development –Rural- Article 6. Class 16 and associated limitations and conditions,
- (c) The extent of the plantation being 3ha as indicated in submitted documents from the referrer.

And whereas Clare County Council (Planning Authority) has concluded:

- (a) That the removal of ash trees from a diseased ash plantation and the replanting with Sitka Spruce and Birch, constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended,
- (b) the said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended,
- (d) the said development of clearing the present area of ash trees to progress replanting of 85% coniferous trees and 15% broadleaf trees, complies with the provisions of Class 16 of Part 3, Exempted Development (Rural) of the Planning and

Development Regulations 2001 as amended, and the conditions and limitations therein.

Now therefore Clare County Council (Planning Authority), hereby decides that the removal of ash trees from a diseased ash plantation and the replanting with Sitka Spruce (85%) and Birch (15%) is considered to be development and development which is exempted development.



Garreth Ruane
Senior Executive Planner
29/11/2021



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Kieran O'Connell
Deel Forrestry Ltd
Ardnaveigh
Rathkeale
Co. Limerick

03/11/2021

Your client – Geoffrey McMahon

Section 5 referral Reference R21-63 – Geoffrey McMahon

Is the removal of ash trees from a diseased ash plantation and the replanting with SS & BI considered to be development, and if so is it exempted development?

A Chara,

I refer to your application received on 3rd November 2021 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

Please note that the Planning Authority is considering the matter and a reply will issue to you in due course.

Mise, le meas

Tadhg Holmes
Tadhg Holmes
Planning Department
Economic Development Directorate

An Roinn Pleanála
An Stiúrthóireacht Forbairt Gheilleagrach
Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

Planning Department
Economic Development Directorate
Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2



P07

**CLARE COUNTY COUNCIL
COMHAIRLE CONTAE AN CHLÁIR**

Planning Department,
Economic Development Directorate,
Clare County Council,
New Road, Ennis,
Co. Clare.
V95DXP2

Telephone No. (065) 6821616
Fax No. (065) 6892071
Email: planoff@clarecoco.ie
Website: www.clarecoco.ie



**REQUEST FOR A DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT
(Section 5 of the Planning & Development Act 2000 (as amended))**

FEE: €80

This following form is a non-statutory form which has been prepared by Clare County Council for the purpose of obtaining the necessary information required for a declaration to be made under Section 5 by the Planning Authority

1. CORRESPONDENCE DETAILS.	
(a) Name and Address of person seeking the declaration	Geoffrey McMahon 16 Castlerock Tulla Road Ennis Co.Clare
(b) Telephone No.:	
(c) Email Address:	
(d) Agent's Name and address:	Kieran O' Connell Deel Forestry Ltd Ardnaveigh Rathkeale Co.Limerick

2. DETAILS REGARDING DECLARATION BEING SOUGHT

(a) PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT

Note: only works listed and described under this section will be assessed.

Sample Question: *Is the construction of a shed at 1 Main St., Ennis development and if so is it exempted development?*

Is the removal of Ash diseased Ash plantation replanted with SS & BI an exempt development?

(b) Provide a full description of the question/matter/subject which arises wherein a declaration of the question is sought.

My plantation at Ballysallagh West, Co Clare has been inspected by the
Forest Service and has been deemed to be infected with Ash Die Back disease
and is currently dying. I am currently applying for Ash Die Back replanting Scheme
and this scheme requires me to remove the infected Ash and replant the area.
I wish to replant the area with SS & BI on foot of advice I received from my
forestry advisor

(c) List of plans, drawings etc. submitted with this request for a declaration:

(Note: Please provide a site location map to a scale of not less than 1:2500 based on Ordnance Survey map for the areas, to identify the lands in question)

Location map x2

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT	
(a) Postal Address of the Property/Site/Building for which the declaration sought:	Ballysallagh West Co Clare
(b) Do the works in question affect a Protected Structure or are within the curtilage of a Protected Structure? If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 (as amended) been requested or issued for the property by the Planning Authority?	No
(c) Legal interest in the land or structure in question of the person requesting the declaration (Give Details):	Own
(d) If the person in (c) above is not the owner and/or occupier, state the name and address of the owner of the property in question: <i>Note: Observations in relation to a referral may be requested from the owner/occupier where appropriate.</i>	N/A
(e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	I am the owner
(f) Are you aware of any enforcement proceedings connected to this site? <i>If so please supply details:</i>	No
(g) Were there previous planning application/s on this site? <i>If so please supply details:</i>	Please see Forest Service Contract
(h) Date on which 'works' in question were completed/are likely to take place:	December 2021

SIGNED: 

DATE: 29/OCT/2021

GUIDANCE NOTES

This following are non-statutory advice notes prepared by Clare County Council for the purpose of advising people what information is required for a decision to be made under Section 5 by the Planning Authority

- (i) The request for a declaration under Section 5 must be accompanied by 2 copies of site location map based on the Ordnance Survey map for the area of a scale not less than 1:1000 in urban areas and 1:2500 in rural areas and should clearly identify the site in question.
- (ii) The request for a declaration under Section 5 must be accompanied by the required fee of €80.00.
- (iii) If submitting any additional plans/reports etc. as part of the request for a declaration, please submit 2 copies.
- (iv) The request for a declaration should be sent to the following address:

Planning Department,
Economic Development Directorate,
Clare County Council
Aras Contae an Chlair,
New Road,
Ennis,
Co. Clare
V95DXP2

- (v) Notwithstanding the completion of the above form, the Planning Authority may require the submission of further information with regard to the request in order to enable the Authority to issue a declaration on the question.
- (vi) The Planning Authority may also request other persons to submit information on the question which has arisen and on which the declaration is sought

FOR OFFICE USE ONLY

Date Received:	Fee Paid:
Date Acknowledged:	Reference No.:
Date Declaration made:	CEO No.:
Decision:.....			



Kieran O'Connell
B.Sc(forestry)M.S.I.F

Ard na Veagh, Rathkeale
Co.Limerick
Mobile: 0872630234
Phone: 06964901
kieran@deelforestry.ie
www.deelforestry.ie


01/11/2021

Clare County Council,
Planning Department
Economic Development Directorate,
Clare County Council
New Road
Ennis
Co. Clare

To whom it may concern,

Please find enclosed Section 5 filled together with Species map, Location Map
and Replanting map

Regards,

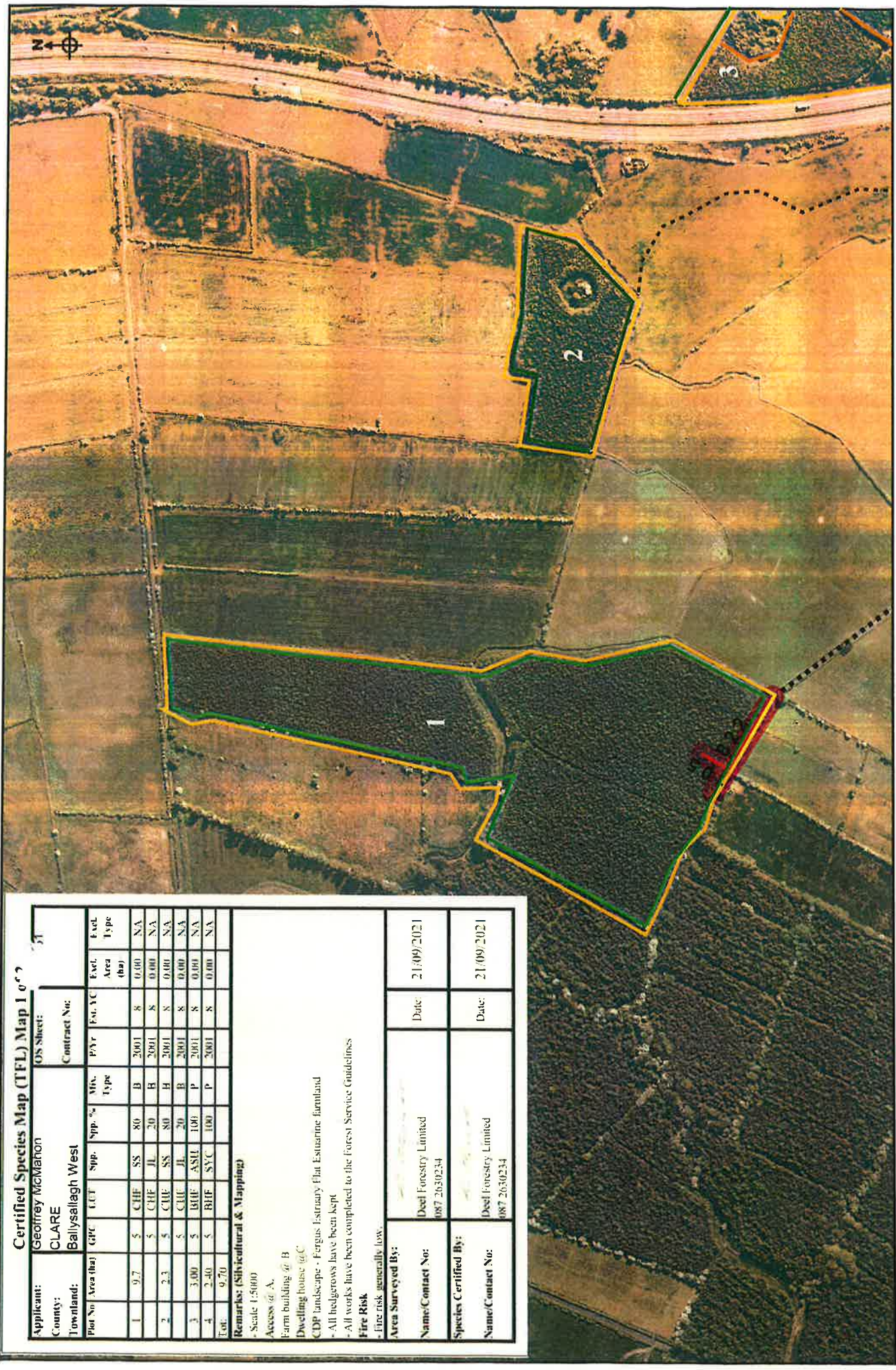
PP. 
Kieran O'Connell BSc. For.Mgt. MSIF

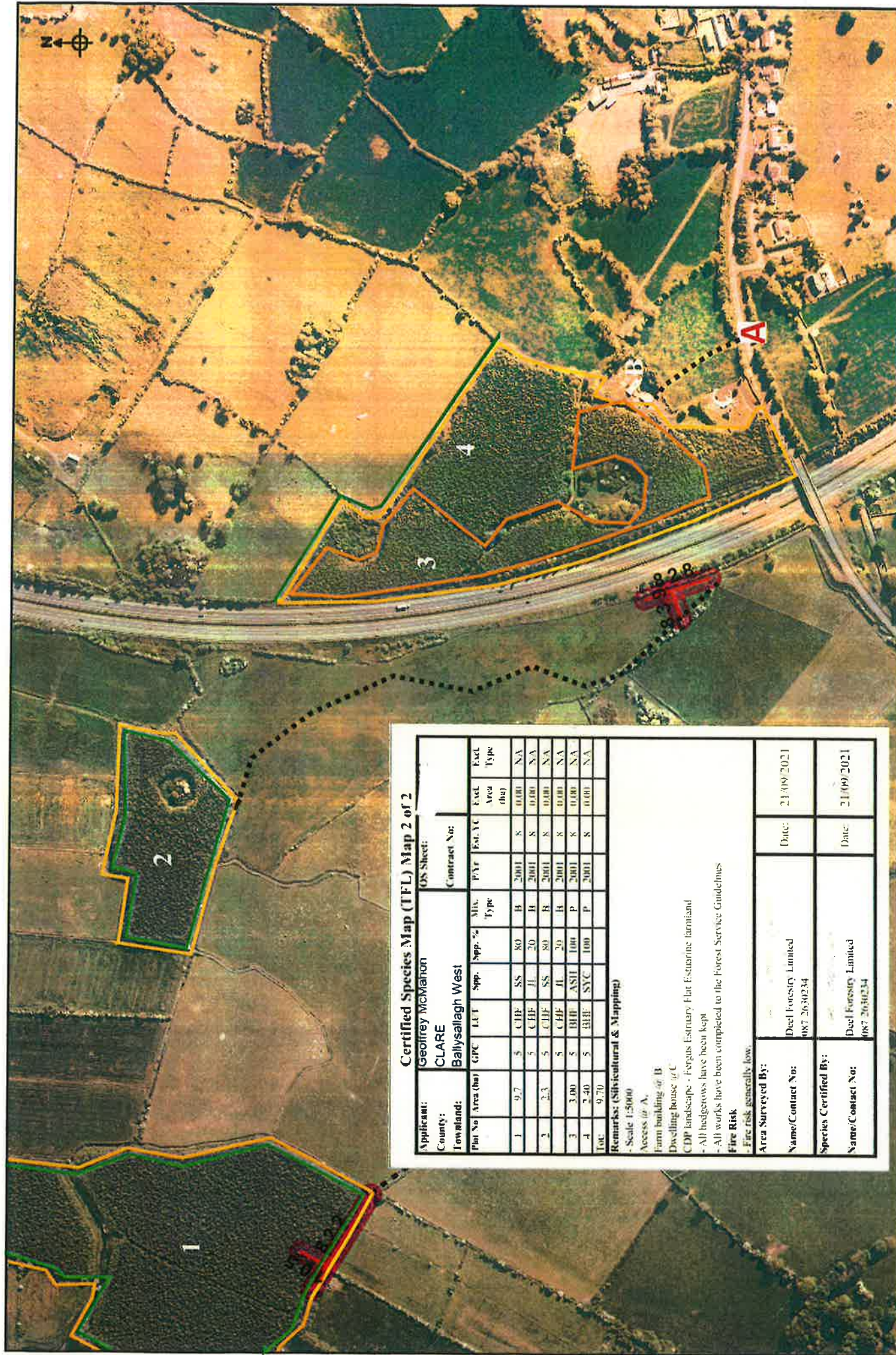
Certified Species Map (TFL) Map 1 of 1

Applicant:	Geoffrey McMahon					OS Sheet:		51		
County:	CLARE					Contract No:				
Townland:	Ballysallagh West									
Plot No	Area (ha)	GPC	CTT	Sup.	Sp. %	Mix. Type	PAY	Est. Yr	Fuel Area (ha)	Fuel Type
1	9.7	5	CHF	SS	80	B	2001	8	0.00	NA
		5	CHF	JL	20	H	2001	8	0.00	NA
2	2.3	5	CHF	SS	80	H	2001	8	0.00	NA
		5	CHF	JL	20	B	2001	8	0.00	NA
3	3.00	5	BHCF	ASH	100	P	2001	8	0.00	NA
4	2.40	5	BHCF	SYC	100	P	2001	8	0.00	NA
Total	9.70									

Remarks: (Silvicultural & Mapping)
 - Scale 1:5000
 Access @ A.
 Farm building @ B
 Dwelling house @ C
 CDP landscape - Fergus Estuary Flat Estuarine farmland
 - All hedgerows have been kept
 - All works have been completed to the Forest Service Guidelines

Fire Risk	- Fire risk generally low.
Area Surveyed By:	
Name/Contact No:	Deel Forestry Limited 087 2630234
Species Certified By:	
Name/Contact No:	Deel Forestry Limited 087 2630234
	Date: 21/09/2021
	Date: 21/09/2021





Certified Species Map (TFL) Map 2 of 2

Applicant: Geoffrey McMahon OS Sheet:

CLARE

Contract No:

Applicant: Geoffrey McMahon 108 Sheet:

COUNTY: CLARE

Plot No	Area (ha)	CPC	Lit	Spp.	Spp. %	Mix. Type	P/A r	Evol. VC	Evol. Area (ha)	Evol. Type
1	9.7	5	CIF	SS	80	H	2001	8	0.00	N.A
2	2.3	5	CIF	JL	20	H	2001	8	0.00	N.A
3	3.00	5	CIF	SS	80	H	2001	8	0.00	N.A
4	3.00	5	BH	JL	20	P	2001	8	0.00	N.A
5	2.40	5	BH	ASH	100	P	2001	8	0.00	N.A
6	9.70	5	BH	SYC	100	P	2001	8	0.00	N.A

Remarks: (Silvicultural & Mapping)

Scale 1:5000

Access (μ) A_i

Farm building or B

Dwelling house (a) C

CDP landscape • Fergus Estuary, Flat Estuarine farmland

- All hedgefunds have been kept

- All works have been completed to the Forest Service Guidelines

Fire Risk

Fire risk generally low.

Area Surveyed By:

Name/Contact No:	Deel Forestry Limited 087 2630234	Date:	21/09/2021
Species Certified By:			
Name/Contact No:	Deel Forestry Limited 087 2630234	Date:	21/09/2021

Clare County Council
Aras Contae an Chlair
New Road
Ennis
Co Clare

03/11/2021 12:24:11

Receipt No. : LICASH/0/324284

GEOFFREY MCMAHON
C/O DEEL FORESTRY LTD.,
ARDNAVEIGH
RATHKEALE,
CO. LIMERICK
R21-63

SECTION 5 REFERENCES	80.00
GOODS	80.00
VAT Exempt/Non-vatable	

Total :

80.00 EUR

Tendered :
CHEQUES

80.00

Change :

0.00

Issued By : LICASH - Noelle Barry