

COMHAIRLE CONTAE AN CHLÁIR | COUNTY COUNCIL

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Tomas Hanrahan Forestlink Ltd **Toomaline** Doon Co. Limerick

RL 4096 6287 21E

Your Client: Michael J. Eustace

23rd December, 2021

Section 5 referral Reference R21-70 - Michael J. Eustace

Is the conversion of broadleaf high forest to conifer high forest at Kilcloher, County Clare considered to be development, and if so is it exempted development?

A Chara,

I refer to your application received on 6th December 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

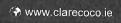
Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2













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

Reference No.: R21-70



Section 5 referral Reference R21-70

Is the conversion of broadleaf high forest to conifer high forest at Kilcloher, County Clare considered to be development, and if so is it exempted development?

AND WHEREAS, Michael J. Eustace 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 –

- 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 8.51 ha as indicated in submitted documents from the referrer.

And whereas Clare County Council has concluded:

- a. That conversion of broadleaf high forest to conifer high forest 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 conversion of broadleaf high forest to conifer high forest, 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 the conversion of broadleaf high forest to conifer high forest at Kilcloher, County Clare <u>constitutes development</u> which is <u>exempted development</u> as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.

Anne O'Gorman

Staff Officer

Planning Department

Economic Development Directorate

23rd December, 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:

78998

Reference Number:

R21-70

Date Referral Received:

6th December 2021

Name of Applicant:

Michael J. Eustace

Location of works in question:

Kilcloher, Kilmaley, Co. Clare

Section 5 referral Reference R21-70 - Michael J. Eustace

Is the conversion of broadleaf high forest to conifer high forest at Kilcloher, County Clare 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 8.51 ha as indicated in submitted documents from the referrer.

AND WHEREAS Clare County Council has concluded:

- (a) That conversion of broadleaf high forest to conifer high forest 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 conversion of broadleaf high forest to conifer high forest, 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 conversion of broadleaf high forest to conifer high forest at Kilcloher, County Clare is considered development and development

which is exempted development.

Signed:

GARRETH RUANE

SENIOR EXECUTIVE PLANNER

Date:

23rd December, 2021

SECT	CLARE COUNTY COUNCIL ION 5 DECLARATION OF EXEMPTION APPLICATION PLANNERS REPORT
FILE REF:	R21-70
APPLICANT(S):	Michael J. Eustace
REFERENCE:	Is the conversion of broadleaf high forest to conifer high forest at Kilcloher, County Clare considered to be development, and if so is it exempted development?
LOCATION: DUE DATE:	Kilcloher, Kilmaley, County Clare 11 th January 2022

Site Location

The site of the proposed development is located within a rural area 1km to the southeast of Kilmaley village and accessed via a private track which runs for c. 500m north of the junction with the public road.

Recent Planning Application History

None on the site.

Enforcement History

None

Background to Referral

The applicant is seeking a Section 5 Declaration as to whether the conversion of broadleaf high forest to conifer high forest at Kilcloher, County Clare is considered to be development, and if so is it exempted development?

Development details and specification

The following has been submitted:

- Map that clearly shows the location of the site;
- Aerial photography showing the location of the forestry plots in question;
- 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 if an Environmental Impact assessment or an appropriate assessment of the development is required.

Section (4 A) states

Notwithstanding subjection 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 conversion of broadleaf high forest to conifer high forest at Kilcloher, County Clare is considered to be 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 2 separate plots where the replanting will occur:

- Plot 1 7.69ha
- Plot 3 0.82ha

The total area therefore is 8.51ha.

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

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 the conversion of broadleaf high forest to conifer high forest is considered to be both 'works' and 'development' under the Planning Act. 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 thereunder, 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 conversion of broadleaf high forest to conifer high forest at Kilcloher, County Clare 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 8.51 ha as indicated in submitted documents from the referrer.

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

- (a) That conversion of broadleaf high forest to conifer high forest 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 conversion of broadleaf high forest to conifer high forest, 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 conversion of broadleaf high forest to conifer high forest at Kilcloher, County Clare is considered development and development which is exempted development.

Assistant Planner

21/12/2021

Garreth Ruane

Senior Executive Planner

22/12/21.



COMHAIRLE CLARE CONTAE AN CHLÁIR COUNTY COUNCIL

Tomas Hanrahan Forestlink Ltd Toomaline Doon Co. Limerick

Your Client: Michael J. Eustace

6th December 2021

Section 5 referral Reference R21-70 - Michael J. Eustace

Is the conversion of broadleaf high forest to conifer high forest at Kilcloher, County Clare considered to be development, and if so is it exempted development?

A Chara,

I refer to your application received on 6th December 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

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

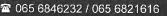
Economic Development Directorate

Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2







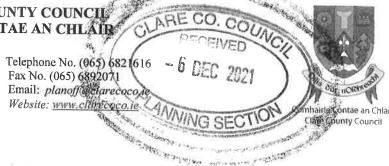




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CLARE COUNTY COUNCIL COMHAIRLE CONTAE AN CHLAIR

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



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 DETA	AILS.
(a) Name and Address of person seeking the declaration	Michael J. Eustace Inisgrove, Lanhinch Road Ennis, Co. Clare
(b) Telephone No.:	
(c) Email Address:	
(d) Agent's Name and address:	Tomas Hanrahan, Forestlink Ltd. Toomaline, Doon Co. Limerick

2. DETAILS REGARDING DECLARATION BEING SOUGHT	1
(a) PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION Note: only works listed and described under this section will be assessed.	IS SOUGHT
Sample Question: Is the construction of a shed at 1 Main St., Ennis development and if so is it exempted a	levelopment?
We require an exemption for the conversion of broadleaf high forest to conifer high forest.	
	×
(b) Provide a full description of the question/matter/subject which arises wherein a declaration of t is sought.	the question
A forest area of 12.76ha was planted in 2010 at the location outlined on the Certified Species n	nap. Plots 1
and 3 were planted with Ash and Alder. The total area of plots 1 and 3 is 8.51 ha.	
The Ash trees which comprise 85% of the area are now heavily infected with Ash Dieback dise	ease. We
now intend to apply for a Reconstitution grant from the DAFM to remove the diseased Ash trees a	and replant
the same area with an alternative species of tree. We wish to replant the area with a conifer specie	s called
Sitka spruce. There are a number of reasons for converting most of the area to conifer forest. Num	nber one is
site suitability. Spruce grows very well on this site and is very productive in timber production ter	rms. Number
two - the DAFM provide no compensation to landowners effected by Ash DB. The last 11 years of	of growth has
come to nothing. So the focus at this point is replanting the area with the most productive species	available
and this is Spruce.	
In line with S.I 45 of 2020 we now require approval for the replacement of broadleaved high f	orest with
conifer species.	
The Restock Map outlines environmental setbacks that will be replanted with Additional Broa	dleaves
(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 Ordnomap for the areas, to identify the lands in question)	ance Survey
Location Map, Certified Species Map, Restock Map	

3. DETAILS RE: PROPERTY/SITE/BUILDING	FOR WHICH DECLARATION IS SOUGHT
(a) Postal Address of the Property/Site/Building for which the declaration sought:	Kilcloher, Co Clare See Location Map
(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?	<u>No</u>
(c) Legal interest in the land or structure in question of the person requesting the declaration (Give Details):	Full owner
(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:	n/a
Note: Observations in relation to a referral may be requested from the owner/occupier where appropriate.	
(e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	Yes
(f) Are you aware of any enforcement proceedings connected to this site? If so please supply details:	No
(g) Were there previous planning application/s on this site? If so please supply details:	No
(h) Date on which 'works' in question were completed/are likely to take place:	Summer 2022

SIGNED: Jours Hanrohen - Agent. DATE: 03/12/2021
Forest link litel.

GUIDANCE NOTES

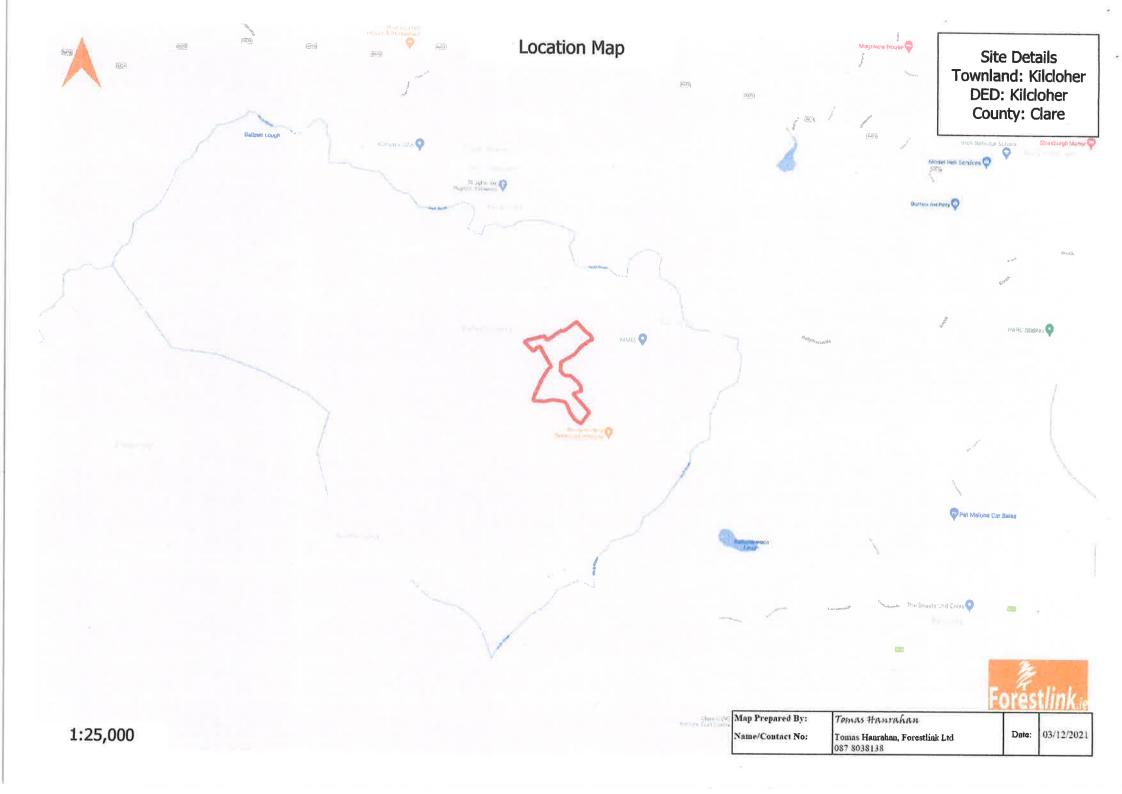
This following are non-statutory advice notes prepared by Clare County Council for the purpose of advising people what information is required for a decision to be made under Section 5 by the Planning Authority

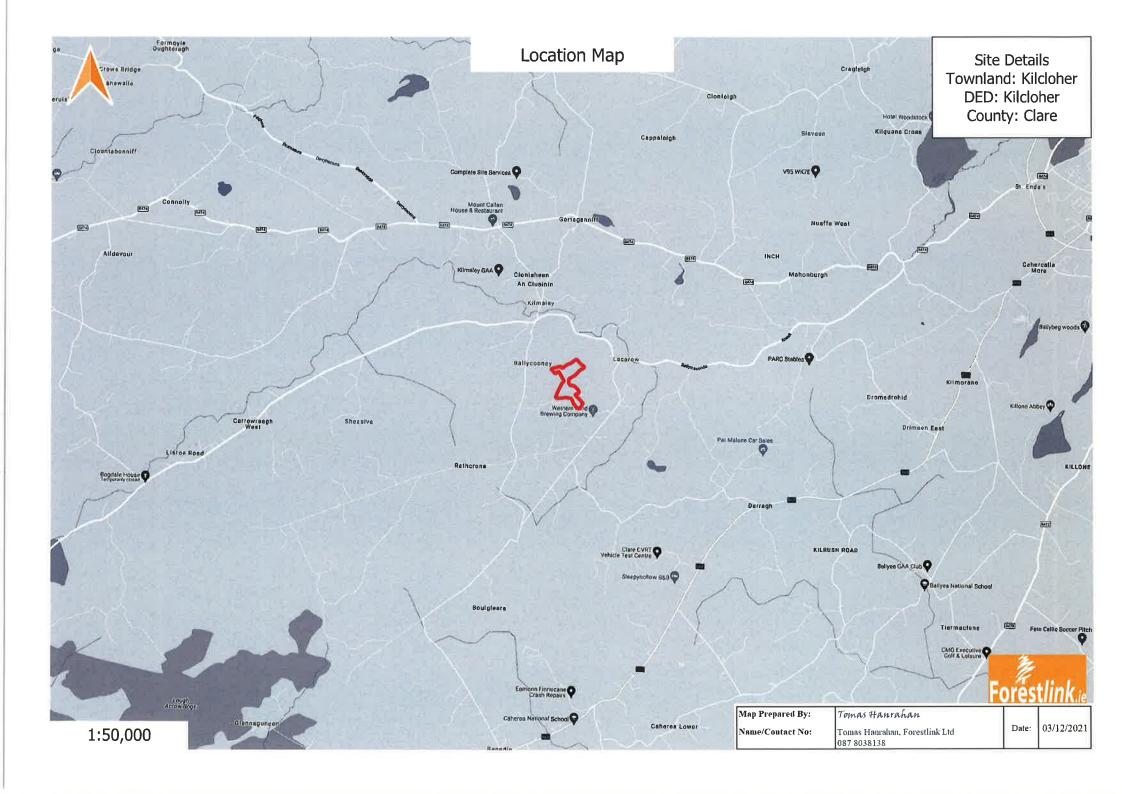
- (i) The request for a declaration under Section 5 must be accompanied by 2 copies of site location map based on the Ordnance Survey map for the area of a scale not less than 1:1000 in urban areas and 1:2500 in rural areas and should clearly identify the site in question.
- (ii) The request for a declaration 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:

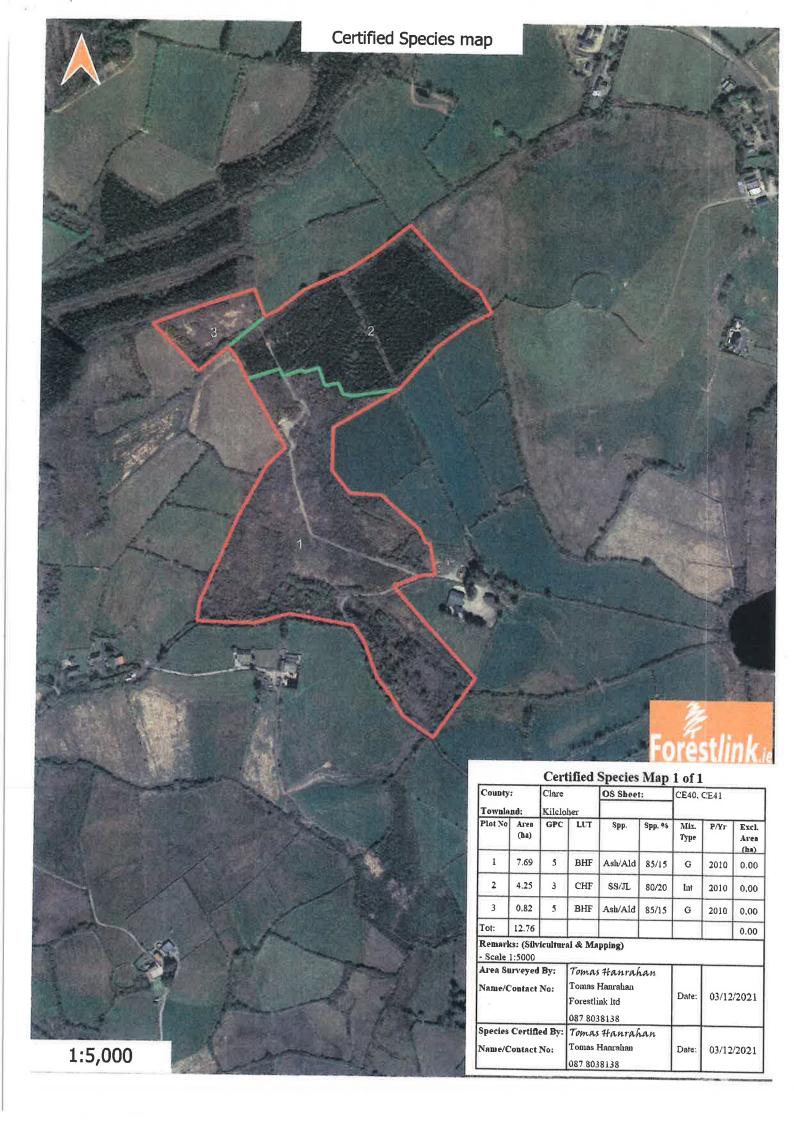
Planning Department,
Economic Development Directorate,
Clare County Countil
Aras Contae an Chlair,
New Road,
Ennis,
Co. Clare
V95DXP2

- (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	6 €		
Date Received:	Termina octorer	Fee Paid:	
Date Acknowledged:		Reference No.:	
Date Declaration made:		CEO No.:	









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

06/12/2021 11:08:08

Receipt No.: L1CASH/0/325691

MICHAEL I. EUSTACE C/O FORESTLINK LTD TOOMALINE DOON, CO. LIMERICK R21-70

80.00 EUR

SECTION S REFERENCES
GOODS 80.00 VAT Exempt/Non-vatable

Total:

Tendered: CHEQUES

Change:

Issued By: LICASH - Noelette Barry
From: MAIN CASH OFFICE LODGEMENT AREA
Vat reg No.0033043E

0,00