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16th September 2015

Mr Bernard McCabe
Investigator
Office of the Commissioner for Environmental Information
18 Lower Leeson Street
Dublin 2

Dear Mr McCabe

RE: AIE Appeal Case CEI/14/0011

1. Further to your correspondence of 26th August 2015. We note your opinion that the information that we sought from Coillte is not environmental information in the meaning of the regulations. We disagree with your opinion.
2. However, before we set out why we believe that the information is environmental information under the AIE regulations, we would first like to comment on the recent information that you reviewed from Coillte and was sent to us by Coillte on 19th August 2015 in relation to information sought in point 8 regarding the proposed development of Kilcooley Abbey and as expanded to include the environmental & social impact of the sale of the land and forest.
3. We would argue that the documents supplied by Coillte do not relate to Coillte's sale of the land at Kilcooley Abbey Estate and the sale of the timber harvesting on 16th December 2013. These documents appear to have been compiled for the sale of the land to the previous owner of the freehold title, Mr McCann. This assumption is based on the information contained in Document 4 General Project Information and the appendix 1 & 2 EIA. Particular attention is drawn to the redacted dates, we can see no reason why the dates were redacted other than to disguise when the document was produced and therefore we would request that the documents are supplied to us without the dates redacted.

4. Furthermore Document 4 ‘General Project Information’ we believe that we should be entitled to see the whole document and all the information contained in this document. Our understanding is that this document falls under the interpretation of environmental information section 3 (1) (e) (c) (a) in that this document is used to inform the bases on which Coillte used to provide a cost-benefit and economic analysis in the sale of the land and the forest namely that it is a:

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements,

(a) the state of the elements of the environment, such as land, landscape and natural sites including biological diversity and its components and the interaction among those elements

5. In relation to your opinion that points 3 to 8 of the information sought in our AIE request does not constitute environmental information in the meaning of the regulations, as stated above we disagree with this view.
6. The information sought although stated in points 1 through to 8 were put in this format for ease of reference. Although set out in points the information sought is not a hierarchical order, all the information sought is related to each other and each point should not be read in isolation when applying a test of whether they constitute environmental information or not. The AIE request should also be read in the context of the environmental information sought and how it relates to measures and activities that affected or likely to effect the environment. The measures or activities performed by Coillte was:

the sale of 950 acres of land which was sold for purposes other than forestry, the sale of 950 acres of forest and the sale of the harvesting rights to 950 acres of forest and that this sale was so large that it is likely to effect the state of the land, landscape and natural sites, biological diversity and its components, as an element of the environment and the interaction among those elements. There was no public participation in the sale of the land, forestry or harvesting rights

7. Coillte’s policy for land sales as set out in numerous documents and policy statements produced by the company including Coillte’s Consultation Policy (review date 31/12/12) *Section 5.5 Other uses for our land (see below)*

5.5 Other uses for our land

Coillte's practice is to sell, lease or develop a limited amount of non-strategic land for purposes other than forestry. These activities represent a key part of Coillte's business, and deliver benefit to individuals and communities at local and national levels. The greatest number of sales are made in response to local demand and typically comprise house sites, isolated dwelling houses, sections of recently acquired farms, small outlying forest properties and gravel pits. Consultation is carried out on these sales, leases or developments.

8. Coillte's policy is to sell, lease or develop a limited amount of non-strategic land for purposes other than forestry. This would indicate that Kilcooley Abbey Forestry was sold for purposes other than forestry and that this sale would deliver benefit to individuals and communities at local and national level.
9. Therefore given that the land could only have been sold for purposes other than forestry it is not good enough that Ms McCarthy, Coillte Head of Legal and Governance Services, can make a statement that *'I can also advise in relation to point 8 of your request that we have no information on or involvement in the proposed development at Kilcooley Abbey Estate'* (see correspondence to us on the 16th July 2014 in relation to our request for an internal review decision). This statement at best shows complete indifference to the company's legislative and certification responsibility to the environment.
10. We would argue that in relation to our points 6 and 7, *provide details of who valued the leased lands/forestry and how the valuation was compiled and what was the valuation of the leased land/forest as per section 3 (1)(e) is a cost-benefit and other economic analyses and assumption used within the framework of the measures and activities referred to in (c)*
 - (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements,*
 - (a) the state of the elements of the environment, such as land, landscape and natural sites including biological diversity and its components and the interaction among those elements*
11. We would therefore argue that point 6 & 7 meet the criteria for environmental information as set out in the AIE Regulations as this information would have provided a cost-benefit and other economic analysis and assumptions used by the company in the sale of the land and forest at Kilcooley Abbey Estate and therefore we are entitled to this information and documentation.
12. Similarly we would also argue that our point 4 *what price was paid to Coillte for the leasehold of the forestry land or other leases at Kilcooley Abbey Estate* also forms part of the cost-benefit and other economic analysis as set out in 3 1 (e), (c) & (a) above. We would put it to you that without the information on what price was paid

for the land and forestry it is difficult to make an informed decision on whether the cost-benefit and economic analysis and assumptions use in the sale of the land and forestry were actually met.

13. Public knowledge would suggest that this sale did not deliver benefit to individuals and communities at local and national level as reported in the Irish Examiner article 'Newry businessman is major Tipperary estate buyer' of 17th April 2014 which states that the purchase price paid for the forestry in December was €1.5 million and that the value of the forestry and Kilcooley Abbey Estate has now increased considerable to €10 million in four months. This would suggest that the valuation of the property and the sale price of the property were not correctly evaluated. We would therefore argue that it is in the public interest to disclose this information.
14. We also refer to a Dail Written Answer (**number 241 of 23rd September 2014**) from the Minister for Agriculture, Food and the Marine (Deputy Simon Coveney) to a question by Deputy Richard Boyd Barrett.

Coillte Teoranta Harvesting Rights Sale

241. Deputy Richard Boyd Barrett asked the Minister for Agriculture, Food and the Marine if Coillte sold the harvesting rights for the 950 acres of public forest at Kilcooley abbey estate to the new owner; if so the price paid for this sizable amount of forest; the reason for same when Coillte are unable to increase its afforestation plans in order to support our 17% tree cover targets within the last national forestry plan; and if he will make a statement on the matter. [35490/14]

Minister for Agriculture, Food and the Marine (Deputy Simon Coveney): Coillte Teoranta was established as a private commercial company under the Forestry Act 1988 and day-to-day operational matters, such as the management of their forest estate, are the responsibility of the company. The company has, however, advised that Coillte has disposed of its interest in the leasehold of 402.92 hectares of land and trees at Kilcooley Estate, County Tipperary. As Coillte is a private commercial company, they do not disclose the price of individual property transactions for commercial reasons. The company also advised that the reason for the sale was that, in addition to being an attractive commercial proposition, sale of this leasehold interest meant that Coillte would no longer have to comply with onerous conditions relating to upkeep of walls, roads and buildings on the estate which are a feature of long leases of these old estates.

15. In the statement made by the Minister for Agriculture, Food and the Marine he refers to 'the reason for the sale was that, in addition to being an attractive commercial proposition, sale of this leasehold interest meant that Coillte would no longer have to comply with onerous conditions relating to upkeep of walls, roads and buildings on the estate which are a feature of long leases of these old estates'. Presumably the onerous conditions referred to include upkeep of the 10km boundary wall which is a protected structure and the protection of the many archaeological sites on the land and

in and around the land. Whilst not stated in the Ministers statement we would also assume that the onerous conditions that Coillte had to comply with was the protection of an old woodland area with continuous forest cover dating back to the 1830s, with a biological diverse range of plants and animals including the protected the fresh water pearl mussel.

16. Coillte as a state body with legislative and industry certification has a responsibly to protect the environment. The justification for the sale of Kilcocoly Abbey Forest and land would have to be set out in an environmental cost-benefit as well as an economic cost benefit analysis to justify Coillte relinquishing their environmental responsibility and protection of the area to ensure that this onerous responsibility for the protection for the environmental area, cultural sites and the built structures would be provided by a private individual(s) who purchased the forest and land. However give that Coillte's policy is only to sell land for non-forestry purposes it is not clear how this protection of the sites was passed on.
17. The price paid to Coillte for the land and the forestry must in some way compensate for the loss of this environmental area, cultural sites and build structures so that it *would deliver benefit to individuals and communities at local and national level.* Without having access to the information sought in our points 4, 6 & 7 it is not possible to make an assessment on whether the sale of the land and forest meets these criteria.
18. In relation to the information we sought in point 5 - *What other parties and legal representatives were involved in transferring the lease to the new owner,* Coillte as a state body have legislative and administrative measures and policies that form part of the checks and balances for selling land. For ease of reference the various process and sign off for the sale of land is outlined in a question put to the Minister for Agriculture, Food and the Marine through the Written Answer process by Deputy Pearse Doherty on 11th November 2014 (see below). We believe that this is environmental information under the meaning of the AIE Regulations in Section 3 (1) (e) as it relates to 3 (1) (c) and (a) as they provide the oversight and checks and balances to ensure that the cost-benefit and other economic analysis and assumptions used within the framework of the measures and activities referred to in paragraph (c) and as it relates to paragraph (a) are carried out correctly. Therefore we are entitled to see this information.

Written Answer from the Minister for Agriculture, Food and the Marine to a question put to him by Deputy Pearse Doherty on 11th November 2014 (Written Answer 263):

Coillte Teoranta Lands

253. Deputy Pearse Doherty asked the Minister for Agriculture, Food and the Marine the procedures Coillte follows to ensure its lands or leaseholds are sold in an open and competitive process. [42936/14]

Minister for Agriculture, Food and the Marine (Deputy Simon Coveney): *Coillte Teoranta was established as a private commercial company under the Forestry Act, 1988 and day-to-day operational matters, such as land transactions, are the responsibility of the company. I understand that Coillte's practice is to sell, lease or develop a limited area of non-strategic land, for purposes other than forestry. Notwithstanding that land transactions are operational matters for the company, the company has outlined the procedures it follows in relation to the sale of lands. I am advised that all sales must be approved by Coillte's General Manager Operations with potential sales also discussed with the Head of Property Sales and consideration given to a number of factors. The company advise me that the property is valued internally to establish its forestry value and by a competent auctioneer and valuer to establish its commercial valuation in order to determine the Advised Minimum Value prior to offering the property for sale and that the method of sale appropriate to the property is also selected – tender, auction or negotiation - which is designed to ensure that Coillte can maximise the value received. The company further advise that all sales (except cases where there is no independent access and the only potential purchasers are adjoining landowners) are advertised. I am advised that the next stage in the process is that proposed sales are presented to an internal Signing Off Committee which determines the reserve price and confirms the method of sale with any sale greater than €2m needing Board approval. Such sales are discussed and approved initially by the Signing Off Committee. I understand that all sales of property to current or retired Coillte staff members must be approved by the Chief Executive in addition to the normal signing off procedure. When negotiations with the potential purchaser are completed, the sale is returned to the Signing Off Committee for price agreement and "Signing-Off". I am advised that the negotiations are monitored by Head of Property Sales and monthly reports, listing properties sold and relevant details, are prepared for senior management.*

I note that the Deputy also refers to the sale of leaseholds. I understand that while these principles and procedures are generally applicable to sales of land and leaseholds, the actual process may vary depending on the circumstances of the case.

19. We also believe that we should be entitled to know what other parties and legal representatives as these other persons or bodies were performing public administrative functions in relation to the environmental measures and activities specified with Section 3 (1) (e) as it relates to 3 (1) (c) and (a) of the AIE Regulations.
20. As a state body Coillte is subject to the Department of Finance 'Code of Practice for the Governance of State Bodies 2009, Section 18.7 and 18.8 sets out Coilltes responsibility for reporting compliance in relation to land sales to the Minister for Agriculture, Food and the Marine. As the forestry was not sold through public

auction or competitive tendering as set out in Section 18.1 of the Code of Practice for the Governance of State Bodies the Chairperson has to report the sale to the Minister as per section 18.7 and 18.8 of the Code of Practice (see below). We believe that this is environmental information under the meaning of the AIE Regulations in Section 3 (1) (e) as it relates to 3 (1) (c) and (a) as it justifies the cost-benefit and other economic analysis and assumptions used within the framework of the measures and activities referred to in paragraph (c) and as it relates to paragraph (a) and falls with point 5 and 8 of our AIE request and therefore we are entitled to see this information.

Code of Practice for the Governance of State Bodies 2009, Section 18.7 and 18.8

18.7 Details of and explanations for the disposals of assets or grants of access to property or infrastructure for commercial arrangements with third parties above the threshold of €150,000 which have not been subject to auction or competitive tendering process should be included in the Chairperson's annual report to the relevant Minister (see paragraph 13.1).

18.8 The Chairperson, in the annual report to the relevant Minister (see Paragraph 13.1), should affirm that the disposal procedures, as outlined above, have been complied with.

21. In relation to point 3, *who purchased the Coillte land/forestry at Kilcooley Abbey Estate*, given that the sale was not by public auction or competitive tendering, that there was no public participation in the sale of the land and forestry at Kilcooley Abbey Estate and that this person(s) would have know that they were not following measures or activities set out in 3(1) (c) it is in the public interest to have this information made available. Also given that Coillte only sell land for non-forestry purposes and that the sale will *deliver benefit to individuals and communities at local and national level* disclosure of the buyer is an important factor in the understanding how 3(1) (e) (c) and (a) were complied with. Therefore we are entitled to this information under the AIE Regulations.

If you require any further information or clarification of any of the points raised in this letter please do not hesitate to contact us.

We would be grateful if you would acknowledge receipt of this letter and we look forward to hearing from you in the near future.

Yours sincerely

Jim & Mary Redmond