



**Decision of the Commissioner for Environmental Information
on an appeal made under article 12(5) of the European Communities
(Access to Information on the Environment) Regulations 2007 to 2018
(the AIE Regulations)**

Case: OCE-99843-F6K8M8

Date of decision: 14 April 2022

Appellant: Mr & Mrs Z

Public Authority: Coillte Teoranta (Coillte)

Issue: Whether all information within the scope of the appealed portion of the appellant's request has been disclosed by Coillte in accordance with the AIE Regulations.

Summary: The Commissioner found that Coillte held additional documents within the scope of the appellants' request and directed their release. He upheld Coillte's reliance on article 9(1)(b) as providing grounds for refusal of information within the scope of the appellants' request which was subject to legal advice privilege.

Right of Appeal: A party to this appeal or any other person affected by this decision may appeal to the High Court on a point of law from the decision, as set out in article 13 of the AIE Regulations. Such an appeal must be initiated not later than two months after notice of the decision was given to the person bringing the appeal.



Background

1. The request at issue in this appeal was made to Coillte on 6 July 2020. However, it is necessary to go further back in order to fully understand the circumstances which led to this appeal. This matter has its origins in a request dated 22 May 2014 for information relating to the transfer of Coillte's leasehold interest in lands at Kilcooley Estate, Co Tipperary, in respect of which my predecessor issued a decision on appeal on 2 November 2015. This decision was ultimately the subject of a Court of Appeal judgment of 3 April 2020. That judgment centred on the question of whether information held by Coillte relevant to the request constitutes environmental information under the AIE Regulations.
2. The Court of Appeal's final order in the case was issued on 22 May 2020 on the basis of a draft proposed order agreed between the appellants' legal representatives and those of my Office. It quashed my predecessor's decision of 2 November 2015 on the basis that a new request was to be made to Coillte.
3. Following correspondence with my Office, the appellants made a fresh request to Coillte on 6 July 2020 for the following information, which used the numbering of the May 2014 request:
 - (3) Who purchased the Coillte land/forestry at Kilcooley Abbey Estate?
 - (4) What price was paid to Coillte for the leasehold of the forestry land or other leases at Kilcooley Abbey Estate?
 - (5) What other parties and legal representatives were involved in transferring the lease to the new owner?
 - (6) Provide details on who valued the leased lands/forestry and how the valuation was compiled.
 - (7) What was the valuation of the lease lands/forestry."
4. The appellants also sought unredacted information in response to a modified version of Question 8 of their May 2014 request, which read:

"In Coillte's disposal of its freehold interest in the lands at Kilcooley Abbey it was aware of the proposed development of the land, what I am seeking is for you to provide information on correspondence that you have on the proposed development of the land, forestry etc., and also information you have on access and rights of way to and throughout the land that was formally leased by Coillte. Did you consider the impact ... the disposal of the leased lands would have on the environment and rights of way and can you provide me with information/report on how it was assessed and the finding of that assessment. Would you also provide information on who requested the issue of the Contracts in 2011 and who Coillte issued the Contracts to?"

These requests were subsequently categorised by Coillte as follows and this categorisation has been adopted in this decision:

- (8)(a) In Coillte's disposal of its freehold interest in the lands at Kilcooley Abbey it was aware of the proposed development of the land, what I am seeking is for you to provide information on correspondence that you have on the proposed development of the land, forestry etc.,
- (8)(b) and also any information you have on access and the rights of way to and throughout the land that was formally leased by Coillte.



(8)(c) Did you consider the impact the disposal of the leased lands would have on the environment and rights of way and can you provide me with information/report on how it was assessed and the finding of that assessment.

(8)(d) Would you also provide information on who requested the issuing of the Contracts in 2011 and who Coillte issued the Contracts to?

5. Coillte responded to the appellants on 5 August 2020 seeking an extension of time for the processing of their request. The appellants responded on 6 August 2020 indicating their dissatisfaction with Coillte's approach but no response was received. The appellants emailed Coillte to follow up on their request on 7 September 2020.
6. Coillte responded by email on the same day with its decision on the request. The email attached eight documents. The first attachment, entitled "**Kilcooley information request**" set out responses to the appellants' queries and also referred to additional documents which were provided as attachments to the cover email. Those documents included a contract for the transfer of Coillte's leasehold interest in the lands at Kilcooley, referred to in this decision as the 2011 contract. Coillte's response also noted that "in light of the time that has passed since this transaction was executed and recent rulings it is clear that public interest in this instance outweighs the obvious commercial sensitivity of these documents". Coillte made no argument that the information in question was not "environmental information".
7. Coillte also noted that the original decision maker "might follow up with additional information tomorrow" as he had had "difficulty getting sign off from the various actors in Coillte today".
8. On 8 September, the appellants emailed the original decision maker indicating their dissatisfaction with the information provided. They argued that the information provided did not relate to the sale of Coillte's leasehold interest at Kilcooley, which had completed in December 2013.
9. On 9 September 2020 the original decision maker responded to the appellants by email noting that he had followed up with his colleagues on their query relating to "the existence of a separate contract for sale/transfer of lease interest in 2013....". The original decision maker noted that he had spoken with staff members who were most familiar with the case who had confirmed to him that "the 2011 contract provided is, to their knowledge, the only contract related to this sale" and that they were not aware of any other information which would give a more complete answer to the appellants' queries. The email of 9 September also referred to a query from the appellants relating to a letter "dated 2013, that implied that Coillte had not sold the lease by 2013". The appellants have since confirmed in submissions to my Office that the letter to which they were referring was email correspondence between Coillte's then Head of Legal and an official from the Department of Agriculture, from August 2013, in which the Head of Legal notes his understanding "that NAMA are in the process of selling the freehold interest in the Kilcooley Estate and as such the new owners may become Coillte's landlord in respect of its lease of part of the Estate". The email from Coillte's original decision maker of 9 September notes that he was unable to find a copy of the letter despite having searched the handover files of its author (who no longer worked for Coillte) and the relevant legal files.
10. The appellants made a request for an internal review on 17 September 2020, on the basis that that the original decision did not contain "information relating to the sale that was completed on 16 December



2013”. The request for an internal review also set out particular aspects of each response in the original decision with which the appellants were unhappy.

11. Coillte provided its internal review outcome on 17 October 2020. The internal reviewer informed the appellants that he had “relooked at the questions” and set out updated responses to each question in turn. Coillte clarified that it had not sold land, but a leasehold; set out the price achieved for that leasehold; detailed the parties involved in the transfer of the lease and the valuation of the lands; and provided summaries of those valuations. As part of this response, Coillte provided some additional documentation, stated that other records did not exist and refused access to other information on the basis of article 8(a)(iv) of the AIE Regulations.
12. The internal reviewer sent a further email to the appellants on 23 October to check whether they were satisfied with the response. The appellants responded on 24 October to indicate that they were not, as they were of the view that “there has been nothing supplied to us which proves that the transactions occurred as you have advised us”. The appellants noted a discrepancy in the information about who had purchased the leasehold interest and requested further evidence with regard to payment and registration of the leasehold interest at the Land Registry.
13. Coillte issued a further response to the appellants on 1 November 2020 which dealt with their further queries. Coillte noted that the contract supplied as part of its original decision was the relevant contract, explaining that an assignment of that contract had occurred in December 2013 through which the original purchaser has assigned its interests to the ultimate purchaser. Coillte confirmed the identities of the original purchaser of the leasehold (Mystique Developments Limited), who assigned the contract to Kilcooley Estates Limited (the ultimate purchaser) prior to the closing of the 2011 contract. Coillte stated that it had not been a party to that assignment, but expressed the view that this assignment might account for some of the confusion about the sequence of events surrounding the transfers of the lands. Coillte provided the appellants with the payment schedule received from its solicitors, Arthur Cox, and confirmed which parties had made the payments involved in the transfer. Coillte also set out that the new owners were made aware of their responsibilities and that any actions on the forest were subject to the Forestry Acts. Coillte confirmed that its answers had always referred to the 2011 contract, and that 2013 was when the final proceeds were received allowing the contract to close.
14. The appellants remained dissatisfied with Coillte’s responses and wrote again to the internal reviewer on 6 November 2020 to advise Coillte of this. The appellants’ letter to Coillte is quite lengthy but the crux of their dissatisfaction was that they remained unconvinced that they had been provided with “the full details in relation to the sale process of Kilcooley Forestry leasehold ... initiated in March 2011 and [completed on] 16 December 2013”.
15. The appellants requested:
 - (i) Copies of documents “showing where Coillte signed up to the terms” of the sale.
 - (ii) The Deed of Assignment referred to in the Special Conditions of Sale.
 - (iii) Confirmation from Coillte’s Head of Legal that the 2011 contract was in fact the contract for sale.



- (iv) A copy of the assignment between Mystique Development Limited and Kilcooley Estates Limited and a copy of “the amended original contract as to put such assignment in place the original contract would have to be altered as you cannot contract with one person and finally sell to another”.
 - (v) The agreement between Coillte and the sales agents of NAMA allowing the sale to complete.
 - (vi) An explanation as to why emails (provided by the appellants) from a staff member of Colliers International indicated that the sale was up for negotiation in 2013 if a contract was in place with Mystique Developments Limited.
 - (vii) A copy of the obligation referred to in Special Condition 6 of the 2011 contract (which referred to an obligation on the Purchaser to comply with an existing felling licence) and the felling licence itself.
 - (viii) An explanation of the sanctions in place for non-compliance with Special Condition 6.
 - (ix) An explanation of Special Condition 14, entitled “No Turn”, including an explanation as to how an assignment between Mystique Developments Limited and Kilcooley Estates Limited was in compliance with that clause.
 - (x) Information on any properties transferred with the leasehold interest to the new owner.
 - (xi) Copies of documents referred to in the Documents Schedule of the 2011 contract.
 - (xii) Information on background searches conducted on the purchaser and the results of such searches.
 - (xiii) A copy “of the Minister who signed the agreement for Coillte to sell its lease”.
 - (xiv) Information as to how the new owner was made aware of their responsibilities, in particular with regard to their obligations with respect to felling.
 - (xv) Information on the payment schedule received from Arthur Cox and referred to in Coillte’s response of 6 November 2020 including further explanation of the references to option payments, further detail as to whether and why those option payments were deducted from the agreed purchase price and clarification as to why the payment schedule referred to a deposit of €135,000 when the 2011 contract provided that a deposit of €185,000 had been received. The appellants also requested details of the source of a €300,000 payment referred to in the payment schedule along with “proof of this payment to Coillte” and detail as to how this transaction was recorded in Coillte’s accounts. They also asked Coillte to explain how this payment could have been made by Mr XY (an individual connected with Mystique Developments Limited and the original purchase) and asserted that Mr XY was in financial difficulty at that time. Finally, the appellants’ queried the calculations provided for in the payments schedule.
16. On 15 November 2020, the internal reviewer responded to the appellants’ latest correspondence. He indicated his view that the appellants were seeking “additional information” as well as “an interpretation of some of the information provided”. He therefore set out a further set of responses to the appellants’ original request and suggested that a meeting be arranged to review the queries raised



in the letter of 6 November 2020 on the basis of his view that a further AIE request might be necessary with respect to those queries.

17. The appellants appealed to my Office on 14 November 2020.

Scope of the Appeal

18. The appellants appealed to my Office on the following basis:

“The decision we are appealing is our original questions number 3, 4, 5 and 8 as set out below: -

(3) Who purchased the Coillte land/forestry at Kilcooley Abbey Estate, Co. Tipperary?

(4) What price was paid to Coillte for the leasehold of the forestry land or other leases at Kilcooley Abbey Estate?

(5) What other parties and legal representatives were involved in transferring the lease to the new owner?

(8) Redacted documents

Information requested has not been provided. The internal review letter of the 16th October 2020 Q8(c) and (d).”

19. It is clear to me that the appellants did not appeal Coillte’s decision with respect to Q(6) and Q(7) of their request; this is therefore not within the scope of their appeal. The terms of the appeal made in respect of Q(8) are unclear. My Investigator sought to clarify those terms with the appellants in her initial communication to them on 22 December 2020. She set out her understanding that the appeal insofar as it related to Q(8) sought unredacted copies of documents which had been provided to the appellants in August 2015 (during the appeal taken by the appellants in respect of their May 2014 request), as well as information in response to Q(8)(c) and Q(8)(d). On this basis, my Investigator expressed her understanding that the appellants were “not appealing Coillte’s decision in relation to Q(6), Q(7) and Q(8)(a) and (b)” but asked the appellants to inform her if this understanding was incorrect. It was subsequently confirmed by the appellants in February 2021 that the appeal with respect to Q(8) was with respect to Coillte’s decision on the entirety of that question (i.e. Q(8)(a), Q(8)(b), Q(8)(c) and Q(8)(d)).

20. Coillte’s position is that it has provided the appellants with all information held by or for it within the scope of their request with the exception of three pieces of information:

- (i) The documents listed in the Documents Schedule to the 2011 contract;
- (ii) Legal advice received from Kennedy McGonagle Ballagh (KMB) Solicitors in relation to its legal obligations under the leasehold as referred to in its response to Q(7) of the appellants’ request (the “KMB advice”); and
- (iii) The Indenture of Assignment between the original purchaser and the ultimate purchaser (the “Third Party Assignment”).

Coillte submitted that its failure to provide the documents listed in the Documents Schedule was due to a failure to identify and locate copies of those documents. Coillte identified the documents listed at (ii) and (iii) above when processing the appellants request but withheld them, as Coillte considered



them to be legally privileged and commercially sensitive respectively. The documents listed at (ii) and (iii) are referred to collectively in this decision as the “Refused Documents”.

21. Coillte released 12 documents to the appellant, which I refer to collectively as the “Disclosed Documents”.
22. Consequently, the matters for consideration in this appeal are:
 - (i) Whether Coillte holds any further information within the scope of the appellants’ request (i.e. information other than the Disclosed Documents and the Refused Documents);
 - (ii) Whether Coillte is entitled to withhold the Refused Documents in accordance with the AIE Regulations.
23. I consider it important to mention for completeness that the appellants sought to widen the scope of their appeal considerably during the course of the appeal. In correspondence with my Investigator, they stated: “we ... leave open all other questions that were put forward in 2014”. However, it is not open to the appellants to reformulate their appeal in this manner. My jurisdiction under article 12(5) of the Regulations is to review decisions of public authorities following the receipt of an appeal initiated in accordance with article 12(4). I am therefore bound by the terms of the appeal submitted by the appellants in November 2020 which clearly excluded any reference to Q(6) and Q(7) of their request.
24. It is also important to note that the appellants have challenged the basis on which this appeal comes before me, as this goes to the question of scope. The appellants have argued that para 95 of the judgment of Collins J in the Court of Appeal set out that questions 3-7 ought to be remitted to the Commissioner for reconsideration. While such a remittal was suggested by the Court of Appeal, an order was ultimately perfected on the basis that the matter would not be remitted to me for reconsideration but instead my decision would be quashed and a fresh request submitted to Coillte. The appellants agreed to this course of action. As a result, while the request of 22 May 2014 and the decisions which followed it provide relevant background and context to this appeal, it is the terms of the appeal of 14 November 2020 that determine the scope of my review in this case. It was open to the appellants to include Q(6) and Q(7) in the appeal to my Office but they opted not to do so and those aspects of their request are therefore outside the scope of this appeal.

Preliminary Matters

Delays & Departure from Procedure

25. This appeal is separate and distinct from the one which came before the Commissioner in August 2014. I must nonetheless acknowledge that the appellants have been seeking information on the sale of Coillte’s interests in the lands at Kilcooley since May 2014. I empathise with their frustration at the delays that have occurred to date. The appellants have asserted their belief on a number of occasions that my Office was “deliberately frustrating [their] efforts to get answers”. I think it important therefore to set out the position clearly. I sincerely regret the delay in reaching an initial decision on the August 2014 appeal, which I understand was due to resourcing constraints being experienced by the Office at that time. I also regret that the procedures adopted in seeking to reach an informal resolution during the course of that appeal led to further confusion. However, I must reject in the



strongest terms any assertion that my Office engaged in any deliberate attempt to frustrate a conclusion to the appellants' appeal.

26. I am satisfied that my Office has taken every possible action within its control since November 2020 to progress this appeal in a timely manner. Generally, in cases where I find that information held by or for a public authority comes within the scope of a request, the matter is remitted to the relevant public authority for a fresh decision-making process. The public authority's decision on those points is then appealable to me in the normal course. In this case, in recognition of the time that had passed since the appellants' original request, my Investigator requested that Coillte provide all information held by or for it relating to the sale whether or not it considered that information to come within the scope of the appellants' request. She assessed that information and provided Coillte with a list of information held by or for it, which she considered to come within scope. Coillte were then provided with the opportunity to put forward submissions (i) as to the basis on which it disagreed with her conclusion and (ii) as to whether it considered an exception should apply to such information. Having reviewed the relevant correspondence, I am satisfied that Coillte has had an opportunity to comment on all aspects of the information that may be within the scope of the appellants' request. In this way, my Office has attempted to balance Coillte's entitlement to fair procedures with the appellants' desire to bring the matter to a conclusion as efficiently as possible. Coillte indicated its preference that the usual procedures be followed but did not express any further objections once the proposed approach was explained in further detail.

Allegations of bias and impropriety

27. The appellants have made allegations with respect to the actions of both my Office and Coillte which have been serious in nature. In correspondence with my Investigator, they have accused my Office of "attempting to ... put barriers to [them] achieving disclosure".
28. In separate submissions to this Office, the appellants accused Coillte of presenting documents "to prove a sham sale" and asserted that my Office was "accepting Coillte's version of events without proper scrutiny and investigation".
29. I should make it clear that the appellants are entitled to make submissions as to their view of the legal position with regard to their request and their appeal. They are also entitled to make submissions outlining the basis on which they consider that position was not complied with. However, identifying and acknowledging shortcomings is a separate matter to the making of serious allegations of impropriety, none of which, in my view, have been validated by the evidence and information before me. I feel it necessary to set out clearly that all of the actions of my Office have been undertaken in good faith and in an attempt to achieve an appropriate balance between the requirements of fair procedures and the need to seek an efficient resolution of the appeal.

Third Party Submissions

30. In September 2021, my Investigator considered it necessary to contact particular third parties who might be impacted by the disclosure of certain information under review in this appeal. The purpose of the correspondence was to make those third parties aware of the appeal and provide them with an opportunity to make submissions with regard to the potential disclosure of information which might impact their interests. The appellants took issue with this and sought the grounds on which my Office



contacted the relevant third parties. My Investigator directed the appellants to the procedures followed by my Office, which can be found in the Procedures Manual available at www.ocei.ie.

31. The appellants responded to my Investigator arguing that my Office had no legal basis for requesting, or considering, third party submissions. They also pointed out that Coillte had already disclosed information to them, which mentioned both third parties. As my Investigator explained to the appellants, while the Regulations are silent on the matter of procedures, article 12 confers me with jurisdiction to review decisions of public authorities that are appealed to my Office. Article 12 also provides that I shall be independent in the performance of those functions. I am not persuaded that an absence of an explicit provision in the Regulations prevents me from engaging with those third parties who may be impacted by my decisions as set out in the OCEI's Procedures Manual. In fact, I consider that there is implicit support in both the Directive and the Regulations for such engagement. Article 6(2) of the Directive provides that Member States may provide access to legal recourse for third parties incriminated by the disclosure of information. Article 12(3) of the Regulations provides for an entitlement on the part of a third party to appeal to my Office, while article 13(1) provides that any person affected by a decision of the Commissioner may appeal to the High Court on a point of law. In this case, the appellants are seeking information, which includes a legal agreement between third parties and other documents relating to their legal and commercial affairs. I therefore consider that procedural fairness requires me to allow those parties an opportunity to comment on the potential impact of the release of such information.

Jurisdiction

32. As a final preliminary matter, I wish to be very clear that it is not my function to adjudicate on the propriety of the transfer or the mechanisms by which it occurred and this decision should in no way be read as an attempt to do so. My function is to review the decision taken by Coillte with respect to the portions of the appellants' AIE request, which have been appealed to me. One of the issues within the scope of that appeal is whether Coillte has provided the appellants with all of the information held by or for it in response to Q(3), Q(4), Q(5) and Q(8). Any arguments made by the appellants, suggesting that further information may exist, are relevant only insofar as they raise an issue of whether Coillte has made reasonable attempts to search for information held by or for it.

Analysis and Findings

33. I have now completed my review of this appeal under article 12(5) of the Regulations. In carrying out my review, I have had regard to the submissions made by the appellants and Coillte. I have also examined the contents of the records at issue. In addition, I have had regard to:
- the Guidance document provided by the Minister for the Environment, Community and Local Government on the implementation of the AIE Regulations (the Minister's Guidance);
 - Directive 2003/4/EC (the AIE Directive), upon which the AIE Regulations are based;
 - the 1998 United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention); and



- The Aarhus Convention—An Implementation Guide (Second edition, June 2014) (‘the Aarhus Guide’).

What follows does not comment or make findings on each and every argument advanced but all relevant points have been considered.

34. As outlined above, this appeal is concerned with:

- (i) whether Coillte holds any further information within the scope of the appellants’ request (i.e. information other than the Disclosed Documents and the Refused Documents);
- (ii) whether Coillte is entitled to withhold the Refused Documents in accordance with the AIE Regulations.

Whether any further information within the scope of the appellants’ request is held by or for Coillte

35. The appellants are not satisfied that the information with which they have been provided is all of the information within the scope of their request. They have firstly asserted that the 2011 contract provided by Coillte is not the contract through which the transfer of Coillte’s leasehold interest in the lands at Kilcooley occurred. They have also listed a number of additional items of information to which they say they are entitled in response to their request.
36. The appellants’ submissions at times suggest that Coillte’s obligation as a public authority is to provide it with “proof” that its leasehold interest in lands at Kilcooley were transferred by means of the 2011 contract. However, it is important to be clear that this is not the obligation provided for under the AIE Regulations. Article 7(2) of the Regulations provides that *“a public authority shall ... subject only to these Regulations, make available to the applicant any environmental information, the subject of the request, held by, or for, the public authority”*.
37. It would be contrary to the AIE Regulations were a public authority to fail to provide all information held by or for it which came within the scope of an appellant’s request (unless grounds for refusal provided for by the Regulations apply). For this reason, my Office requires a public authority to demonstrate that it has carried out adequate and reasonable searches to identify all relevant information held by or for it. The purpose of the Regulations is to provide for greater openness and transparency with regard to environmental information. Providing access to information is designed to encourage greater awareness of environmental matters, a free exchange of views and more effective participation by the public in environmental decision making. This may lead to questioning of the accuracy of information held by or for public authorities or of the courses of action adopted by public authorities as demonstrated by the information provided. However, the Regulations do not provide for an obligation on a public authority to prove the veracity of the information, in the manner contended for by the appellants. It is therefore not my function to ensure that the appellants are satisfied by Coillte’s explanation of the sales process.
38. In addressing the question of whether Coillte has provided the appellants with all environmental information held by or for it within the scope of the appealed portion of the appellants’ request, I will consider the following issues:



- (i) whether the arguments made by the appellants suggest that further information is held by Coillte which has not been disclosed to them.
 - (ii) whether Coillte has conducted reasonable and appropriate searches to identify all information held by or for it which is relevant to the appellants' request.
 - (iii) whether Coillte has correctly classified the information identified by it through its searches as within or outside the scope of the appellants' request.
39. I will then go on to consider whether there is a basis for Coillte to withhold the Refused Documents and/or any documents I have found to be within the scope of this appeal, which are held by Coillte and have yet to be disclosed.

Arguments of the parties with regard to the existence of further information

40. The principal point made by the appellants throughout this appeal is that the 2011 contract provided by Coillte is not the contract through which the transfer of Coillte's leasehold interest in the lands at Kilcooley occurred.
41. Before analysing the appellants' arguments in support of their position that the 2011 contract is not "a valid contract in relation to the sale of the leasehold interest", it is useful to set out the background to the transfer. It is accepted by all sides that the transfer of Coillte's leasehold interest which formed the subject of the appellants' request completed on 16 December 2013. Coillte's leasehold interest in the lands at Kilcooley arises from an agreement made by the Minister for Lands with the then owner of the freehold interest in the lands, in 1934, which granted a leasehold interest to the Minister over the lands at Kilcooley. The appellants provided Land Registry documentation to my Office which demonstrates that the freehold interest in the land was transferred to Mr XY, whose absolute title was registered in the Land Registry on 21 April 2007. Mr XY appears to have been involved with a company known as Mystique Developments Limited. Many of the submissions made to my Office in this case have referred interchangeably to Mr XY and Mystique Developments Limited. It is important however to emphasise that Mr XY and Mystique Developments Limited are distinct legal personalities, although both are connected to the sale of Coillte's interest in the lands at Kilcooley.
42. Negotiations for the transfer of Coillte's leasehold interest in the lands at Kilcooley appear to have commenced in tandem with Mr XY's acquisition of the freehold interest. Coillte's submissions indicate that Mr XY contacted Coillte to inquire about purchasing its leasehold interest in or around 2006. In April 2006, Coillte's Property Sign Off Committee (PSOC) agreed that Coillte would engage an auctioneer to value its leasehold interest. The resulting valuation was the Quinn Agnew valuation of 21 April 2006 which was provided to the appellants on 17 October 2020. Coillte submitted that "a non-refundable deposit was paid in April 2009 and a sale was eventually agreed with Mystique Developments Limited (Mr XY's firm) in April 2011".
43. The 2011 contract for the transfer of Coillte's leasehold interest names Mystique Developments Limited as the purchaser. Coillte also appears to have entered into three agreements providing for an exclusive option to purchase its leasehold interest in the lands at Kilcooley, the first being in 2009 (the 2009 Option Agreement) with variations to the original agreement being agreed in March 2010 (the



March 2010 Option Agreement) and December 2010 (the December 2010 Option Agreement). Coillte has not provided executed versions of the 2009 Option Agreement or the March 2010 Option Agreement and has submitted that it does not hold executed copies. The copy of the 2009 Option Agreement provided to my Office does not include details of the party with whom the Option Agreement was entered into. However, the payment schedule provided to the appellants on 1 November 2020 indicates that this Agreement was completed on 7 April 2009 and a non-refundable option fee of €50,000 was paid to Coillte. The March 2010 Option Agreement provided refers to Coillte as the vendor and Mystique Developments Limited as the purchaser but it has not been signed by either party. Again, the payment schedule provided to the appellants indicates that a further €50,000 was paid to Coillte as consideration for an extension of the option period however this €50,000 payment was to be deductible from the ultimate purchase price. An executed copy of the December 2010 Option Agreement was provided to this Office. The December 2010 Option Agreement is a Deed of Variation to the previous option agreements (for which a consideration of €10 was provided). It records the previous option agreements as having been made between Coillte and Mystique Developments Limited. It therefore appears that Coillte's negotiations for the transfer of its interests were with Mystique Developments Limited and not with Mr XY personally. Mr XY was involved in the negotiations but it would appear that such involvement was in the capacity of representative of Mystique Developments Limited rather than on his own behalf. The 2011 contract does however contain a reference to Mr XY. His signature appears on the signature block for Mystique Developments Limited and he is named in Special Condition 14. Through this condition, the 2011 contract provided for an ability to have ultimate ownership assigned to Mr XY or Mystique Developments Limited on completion. However, the fact remains that the original purchaser of the leasehold interest was Mystique Developments Limited.

44. What occurred between signature of the 2011 contract on 10 March 2011 and 16 December 2013 is the subject of debate between the appellants and Coillte. Coillte's position is that the transfer of its leasehold interest was completed on 16 December 2013 by means of an Indenture of Assignment, Surrender and Transfer between Coillte and Kilcooley Estates Limited (the Coillte Assignment) and an Indenture of Assignment, Surrender and Transfer between Mystique Developments Limited and Kilcooley Estates Limited (the Third Party Assignment). Clause 4 of the Coillte Assignment refers to the Third Party Assignment and provides that:

“By assignment dated [blank] day of December 2013 Mystique Developments Limited has assigned all its share estate and interest in the Contract and the Vendor has consented to the assignment of the said contract to the Purchaser as is evidenced by its execution of this assignment”.

45. Coillte provided the appellants with a copy of the Coillte Assignment on 15 November 2020 but it has refused to provide a copy of the Third Party Assignment on the basis that it “contained commercially confidential information and was provided to Coillte to allow it to complete the [Coillte Assignment] which was disclosed”. According to the payment schedule provided to the appellants on 1 November 2020, the remainder of the purchase price (i.e. €864,990) was paid to Coillte by Kilcooley Estates Limited on completion of the sale.



46. The appellants reject the explanation provided by Coillte that the contract was originally entered into with Mystique Developments Limited but that Mystique Development Limited's interest was transferred to Kilcooley Estates Limited, in advance of completion, by means of the Coillte Assignment between Coillte and Kilcooley Estates Limited (which has been provided to the appellants) and the Third Party Assignment between Mystique Developments Limited and Kilcooley Estates Limited (which has not been provided to them). The appellants' position is that a further contract must have been agreed.
47. The appellants firstly rely on the 2011 contract itself in support of this argument, noting that "the special conditions attached or sent as part of the 2011 contract appear to be a copy waiting amendments". They also note that the 2011 contract had a closing date of April 2011. Having examined the 2011 contract, I note that it does provide for a closing date of April 2011 and that it is subject to handwritten mark ups, which have been initialled by Arthur Cox and dated 10 March 2011. I do not think this demonstrates, in and of itself, that a further contract for sale must have been agreed and I note that the document is certified by Arthur Cox as being a true copy of the original document.
48. The appellants also argue that the 2011 contract "has a clause specifically disallowing the sale to be transferred to anyone other than Mr XY". I understand that the appellants are referring to Special Condition 14 of the 2011 contract which provides as follows:
- "The Purchaser shall not assign, novate, sub-sell or otherwise dispose of its interest in the Subject Property or its interest in this Contract otherwise than to Mr XY, should it so wish. The Vendor shall only be required to execute the deed of assignment of the Subject Property in favour of the Purchaser and/or for Mr XY as the case may be not in favour of any other person or body. Any such assignment must be notified to the Vendor at least 14 days prior to completion".
- The appellants argue that on the date of the assignment Mr XY was not part of Mystique Developments Limited and therefore, neither Coillte nor Mystique could consent to this Condition being waved. They also assert that "the 2011 contract was as per the Special Condition no 14 for the benefit of Mr XY".
49. In response to this argument, Coillte points to Condition 4 of the Coillte Assignment which provides:
- "By assignment dated [blank] day of December 2013 Mystique Developments Limited has assigned all its share estate and interest in the Contract and the Vendor has consented to the assignment of the said contract to the Purchaser as is evidenced by its execution of this assignment".
50. The appellants in turn submit that Coillte's argument "in legal terms makes no sense". They argue that the "draft Indenture of Assignment does not provide for the consent to transferring all share estate and interest in the Contract of Mr XY to whose benefit Condition 14 of the Special Conditions refers to". I note firstly that the Coillte Assignment is a fully executed document and not a draft as the appellants suggest. Secondly, Special Condition 14, as I understand it, does not provide that the 2011 contract is for the benefit of Mr XY, it provides that Mystique Developments Limited, as Purchaser, may elect to have the property assigned to Mr XY on completion and that should it do so, then Coillte



will be required to execute a deed assigning the property to Mr XY rather than Mystique Developments Limited.

51. The appellants' argument, as I understand it, is that because Coillte contracted with Mystique Developments Limited to assign its leasehold interest in the lands at Kilcooley to either Mystique Developments Limited or Mr XY, it was contractually bound to transfer only to Mystique Developments Limited or Mr XY. They are therefore dissatisfied by Coillte's explanation that assignment to Kilcooley Estates Limited occurred through the Coillte Assignment and the Third Party Assignment and consider that there must be further documentation providing the legal basis for the transfer. The appellants refer to Special Condition 14 in support of that conclusion. My understanding of the impact of Special Condition 14 is that it would prevent Mystique Developments Limited from requiring Coillte to execute a deed of assignment in favour of any party other than it or Mr XY on completion. However, I cannot see how it prevents Coillte from agreeing to execute such a deed and this is what Coillte subsequently did by virtue of Condition 4 of the Coillte Assignment. Coillte's consent in turn allowed Mystique Developments Limited to assign whatever interest it had acquired in the 2011 contract (which would have included the entitlement to benefit from the part payments already provided under the contract) as opposed to any interest in the lands at Kilcooley (which was not Mystique Developments Limited to transfer as completion had not yet occurred) by means of the Third Party Assignment. Coillte has not provided a copy of the Third Party Assignment to the appellants but it has informed them that such an assignment exists. I therefore see no basis on which Special Condition 14 can be relied upon in support of an argument that a further contract must exist which has not been disclosed to the appellants (other than the Third Party Assignment which is dealt with below).
52. By way of further argument, the appellants queried why Mystique Developments Limited were not registered as owners of the leasehold interest in the Land Registry and note that the "only registration in the land registry was in 2016 to Kilcooley Estates Limited" and that "the land registry documents show that Kilcooley Estates Limited purchased Kilcooley Abbey Estate and the forestry leasehold interest". The appellants also noted that the year-end accounts of Mystique Developments Limited do not show the leasehold as part of the assets of that company. The Land Registry documents provided by the appellants record a transfer of the freehold interest from Mr XY to Kilcooley Estates Limited and an extinguishment of the leasehold interest, the cancellation of which was recorded in the Land Registry on 12 July 2016. The appellants also submit that a felling licence for the lands at Kilcooley was applied for in the name of Mr AB. The appellants argue that if Coillte started a contract with Mr XY of Mystique Development Limited, then it "would have to finalise the contract with the same person/company as a contract cannot be started with one person and completed to another person". The appellants go on to argue that "unless there is a connection shown by Coillte that Mr XY owns Kilcooley Estate Ltd. it cannot be relied upon that the forestry sale started in 2011 and was finalised in 2013". They argue that if the Coillte Assignment has not been signed by Mystique Developments Limited / Mr XY it is not valid as a contract and that "it is not possible for Coillte to allow contracts terms to be dismissed and this contract to be assigned verbally, they would have to provide a copy of the signed agreement by all parties which allows for the terms and conditions to be waived". The



appellants also argue that “if the sale was to a company (ie Mystique Development Ltd.), the sale would have to be open to the public and the Freeholder informed of the potential change of leaseholder”.

53. Again, I do not consider that these arguments provide evidence that further contractual information in relation to the transfer of Coillte’s leasehold interests in the lands at Kilcooley exists which has not been disclosed to the appellants (other than the Third Party Assignment). In reaching this conclusion, I have considered whether the arguments raised by the appellants give rise to a reasonable inference that information held by or for Coillte within the scope of the appeal has not been disclosed. It appears to me that a reasonable explanation exists as to why Kilcooley Estates Limited and not Mystique Developments Limited was registered as owners of the property in the Land Registry. I can see that while Mystique Developments Limited entered into a contract with Coillte for the purchase of its leasehold interest and made part payments in respect of that contract, the contract was not completed with Mystique Developments Limited. Instead, with the consent of Coillte, Mystique Developments Limited assigned its interests in the contract to Kilcooley Developments Limited before completion of the transfer and the transfer was then completed as between Coillte and Kilcooley Developments Limited. Mystique Developments Limited would not have had any leasehold rights in respect of the lands to register with the Land Registry as it was not the party to which those interests were transferred on completion. I note in this regard that the appellants have argued that an assignment can only transfer the benefits of a contract and not the obligations and that this would mean that the re-planting obligations provided for in the transfer documents would be lost. This argument may indeed be correct; however, I remain of the view that the explanation of the transfer as provided by Coillte and evidenced in the information I have examined, is reasonable and more persuasive than that advanced by the appellants.
54. The appellants also raised arguments with respect to the financial position of Mr XY in support of their position that the 2011 contract is not the contract by which the transfer of Coillte’s leasehold interest occurred. They suggest in their submissions that while there may have been an intention to transfer the leasehold interest to Mr XY, Mr XY had financial difficulties and therefore “may have been unable to complete”. They argue on that basis that “there is no evidence the contract completed”.
55. They allege that the 2009 Option Agreement must have been entered into with Mr XY rather than Mystique Developments as Mr XY did not become a director of Mystique Developments Limited until 2010. They assert that it can be seen “from the copy of the draft 2011 contract it was for the benefit of Mr. XY and he signed this draft of the 2011 contract”. The appellants allege that Mr XY was “bankrupt” in July 2012, at the time a €300,000 payment was made to Coillte (according to the payment schedule) and therefore could not have been made by him. Finally, they assert that Mr XY was living abroad in 2013, when the final payment of €864,990 was made in consideration for the transfer of Coillte’s leasehold and “was not the owner of the leasehold lands and forestry at Kilcooley estate as it was taken over by NAMA in January 2013” such that “he could not transfer his interest in the contracts to Kilcooley Estates Limited the title would have remained with Coillte and the contract/option would have been frustrated and thus void due to Mr XY being bankrupt and his assets taken over by NAMA/Bannon. It was not Mystique who took out the option with Coillte therefore unless there is



another assignment by Mr XY to Mystique which we have not had sight of Mystique could not contract with Kilcooley Estates Limited”.

56. In support of their assertions, the appellants refer an email exchange between Coillte’s then Head of Legal and an official from the Department of Agriculture dated 6 August 2013. The appellants submit that “the email states ‘in 2011 Coillte actually agreed in principle to sell the lease term at an unknown – but assumed to be sub-optimal price. The sale was halted by the acquisition by NAMA of the property’”. They argue that “this line of the email seems to suggest that Mr XY was originally going to purchase the leasehold interest but because of the acquisition by NAMA the sale was HALTED and this email is dated July 2013”. The line of the email referred to by the appellants however misses some important context. Although the email in question was written by an official from the Department of Agriculture, it does not represent the views of that official and in fact refers to correspondence received by the Department of Agriculture which advises that “in 2011 Coillte actually agreed in principle to sell the lease term at an unknown – but assumed to be sub-optimal price” and that “the sale was halted by the acquisition by NAMA of the property”. The source of those allegations is unclear although the appellant submits they were made by a member of the local community and provides a letter to the Minister for Agriculture containing similar assertions from the Chairperson of the Slieveardagh Rural Development Community. No further detail is provided however as to the basis for the assumption that the sale took place at a sub-optimal price.
57. In the course of the email exchange, the Head of Legal for Coillte notes his understanding “that NAMA are in the process of selling the freehold interest in the Kilcooley Estate and as such the new owners may become Coillte’s landlord in respect of its lease of part of the Estate”. The Head of Legal also notes that it has “been suggested that the new owner is interested in purchasing Coillte’s leasehold interest and Coillte is happy to consider same”. Coillte also acknowledges that Mr XY was involved in a process with NAMA but submits that it was not privy to that process. Coillte’s position was that while this process might have delayed the completion of the 2011 contract, it did not affect its validity.
58. No evidence is provided to suggest that Mr XY was adjudicated bankrupt and it is not clear whether it was Mr XY personally or Mystique Developments Limited which entered into a process with NAMA (although it appears from the Coillte Assignment that receivers had been appointed over Mr XY’s freehold interest in the Kilcooley property). The appellants have referenced a published judgment in which an individual bearing the same name as Mr XY is listed as a defendant but that does not make any findings as to Mr XY’s financial status. They have also provided an article which suggests that a company in which Mr XY had a significant shareholding had been put into receivership.
59. I am mindful that Mr XY is a separate legal personality to any company of which he was a member. The arguments made by the appellants appear at times to have conflated Mr XY and Mystique Developments Limited but again the financial status of Mr XY is a separate matter to that of any companies of which he is a member. This is significant because the appellants referred to bankruptcy laws in their submissions (including the Bankruptcy Act 1988 and the Deeds of Arrangements Acts 1887) and argued that as a result of Mr XY’s alleged bankruptcy “the contract/option was frustrated and any money due to be refunded to Mr XY should have been the subject of his bankruptcy”.



60. The fact that certain loan transactions to which Mr XY and/or companies of which he was a member were acquired by NAMA and that receivership processes were entered into in respect of those loans does not necessarily mean that bankruptcy proceedings under any of the legislation referred to by the appellants were concluded against Mr XY. I consider it to be a reasonable explanation of the transaction that on purchasing the freehold interest in the lands at Kilcooley from Coillte's original landlord, Mr XY approached Coillte with a view to purchasing the leasehold. It appears that options to purchase the leasehold were entered into on three occasions, April 2009, March 2010 and December 2010. It is not clear from the 2009 Option Agreement who the parties to that agreement were but the executed December 2010 Option Agreement notes that all agreements were entered into with Mystique Developments Limited. It is clear that Mr XY, the owner of the freehold interest in the lands at Kilcooley, was at times a member and company secretary of Mystique Developments limited. It is unclear why Mr XY chose to pursue acquisition of the leasehold through Mystique Developments Limited rather than do so personally but that does not suggest that the contractual documentation provided to the appellants is not the documentation through which the transfer took place. It appears from the 2011 contract that the closing date was intended to occur in April 2011. For whatever reason, the contract did not complete in April 2011 and instead loans entered into by Mr XY and/or companies of which he was a member entered into processes involving NAMA. As part of those processes Mr XY's interest in the freehold was sold by receivers and it appears that as part of that sales process an attempt was made to have Coillte agree to transfer its leasehold interest to the ultimate purchaser of the freehold interest (i.e. Kilcooley Estates Limited) on the same terms as agreed with Mystique Developments Limited. This is plausible given that a property clear of a leasehold interest would presumably attract a higher purchase price than one subject to such an interest. Coillte agreed to the transfer of its leasehold interest to Kilcooley Estates Limited. As a result, a Third Party Assignment was entered into transferring the interest in the 2011 contract to Kilcooley Estates Limited and, it seems that on the same day, Coillte signed the Coillte Assignment transferring the leasehold interest to Kilcooley Estates Limited. That is the transaction reflected in the information provided to the appellants and examined by my Office (although I note again that the appellants have not been provided with a copy of the Third Party Assignment and I will deal with that issue below).
61. I note in this regard that Coillte's position is reflected in the Coillte Assignment, which provides an entire chronology of the existence of the leasehold interest. Clause 1 refers to the original Indenture of Lease between the 1934 owner and the Minister for Lands, Clause 2 refers to the statutory instruments by virtue of which the interest originally held by the Minister for Lands was transferred to Coillte. Clause 3 refers to the 2011 contract in which Coillte agreed to sell its leasehold interest to Mystique Developments Limited for the sum of €1,350,000. Clause 4 notes that Mystique Developments Limited has assigned all of its interests and entitlements under the 2011 contract to Kilcooley Estates Limited. Clause 5 notes that the owner of the freehold, Mr XY, acting through his Receivers has transferred his freehold interest in the lands at Kilcooley to Kilcooley Estates Limited. Finally, Clause 6 notes that Coillte has agreed to assign, transfer and surrender its leasehold interest in the lands at Kilcooley to Kilcooley Estates Limited, the new owners of the freehold interest such that the leasehold interest is extinguished.



62. I accept that there are gaps in terms of the details of how the transaction occurred but I do not consider that those gaps warrant a conclusion that the contractual documentation provided to the appellants is not the documentation through which the 2013 transfer took place.
63. The appellants have also made arguments which relate to Coillte's credibility with regard to the information provided. Firstly, the appellants refer to the original decision issued by Coillte which noted that Coillte were not considered tenants of the leased lands at Kilcooley after 2011 and that "the lease and all associated forestry on the site was transferred to Mystique Developments Limited". They note that this is incorrect and rely on the fact that Mystique Developments Limited were never registered as leaseholders in the Land Registry. Secondly, they note that the information originally provided by Coillte in response to Q(5), which indicated that Arthur Cox acted for the purchasers rather than Coillte, was incorrect as was the assertion that lease and all associated forestry on the site was transferred to Mystique Developments Limited. Finally, they refer to a report of the Forest Stewardship Council submitting that "Coillte informed Woodmark/FSC and provided evidence that the forestry was sold back to Mr. XY not Kilcooley Estates". The relevant extract from the FSC Report, provided by the appellants, states as follows:

"A meeting was held between the Soil Association Woodmark lead auditor and the complainant at Kilkenny on 12th June 2014, where the complainant maintained that Coillte had not followed their consultation procedure, and that the initial sale had fallen through and had therefore not reinitiated their consultation procedure with the new prospective purchaser. Mr [R] provided an emailed copy of a chronology of events (and details of Kilcooley Estate Contacts) which included a claim that the property was subsequently sold to a second purchaser in late 2013. A second meeting was requested with Coillte's sales team, which was held on the 12th June to re-examine the evidence. Following examination of Coillte's policies and practices, Coillte's current and draft policies were found to be compliant with the requirements of Criterion 4.4 and indicators 4.4.1 and 4.4.2 and had followed their procedures and policies in relation to the sale of Kilcooley Abbey. There was no evidence that Coillte had sold to a second purchaser and all the evidence showed that the sale, although protracted has been to the original purchaser".

64. The appellants are correct in their assertions that the information provided by Coillte in the interactions described above was not accurate. I have considered all of the arguments made by the appellants in this regard and I do not consider there to be evidence before me to suggest that the information provided was deliberately misleading but it was nonetheless misleading. I am not persuaded that this undermines the reasonableness of the explanation provided (both by Coillte and in the documents themselves) as to how the transfer of Coillte's leasehold interest occurred. However, I do consider that there were a number of shortcomings with respect to Coillte's handling of this appeal. Had these not occurred, the issues I am now required to consider as part of the appeal may have been reduced and it may have been possible to process the matter more expeditiously.
65. In the first instance, I note that information was made available to the appellants in response to their request as part of the original decision on 7 September 2020, as part of the internal review outcome on 17 October 2020 and again as part of its further responses on 15 November 2020. I appreciate that the appellants' original request was for responses to questions rather than for specific documents and



that the questions asked and issues raised by the appellants varied slightly from one piece of correspondence to the next and that this may have complicated matters. However, if Coillte had provided all of the information, which was ultimately provided to the appellants, as part of its initial response this might have gone some way towards minimising the significant confusion which has permeated this appeal. For example, the response provided to **Q(3)** of the appellants' request (Who purchased the Coillte land/forestry at Kilcooley Abbey Estate?) was subject to additions at each stage of the appellants' interactions with Coillte. It was only in its communication of 15 November 2020 (after the original decision and internal review outcome had been issued) that Coillte informed the appellants that the leasehold interest had ultimately been assigned to Kilcooley Estates Limited. Previous responses indicated that the interest had been sold to Mystique Developments Limited.

66. Coillte should have made it clear to the appellants from the outset that while the initial purchaser was Mystique Developments Limited, the ultimate purchaser was Kilcooley Estates Limited. This is particularly so given that the appellants also asked in Q(5) of their request to be provided with information on "What other parties and legal representatives were involved in transferring the lease to the new owner?".
67. I also note that the original decision maker, at the time of providing his initial decision, outlined that he had had "difficulty getting sign off from the various actors in Coillte today, so I may follow up with additional information tomorrow if that is acceptable". I accept that this was most likely a genuine effort to avoid further delay in responding to the appellant and I must reiterate, in the context of the serious allegations made by the appellants, that there is nothing before me to suggest that Coillte's actions were carried out in bad faith. Nonetheless, it must be said that drip-feeding information in response to an AIE request may undermine trust in the AIE process and result in further queries, as was the case here. Such an approach is therefore, in my view, contrary to the principles of openness and transparency which underpin the AIE Directive.
68. It is also unfortunate that the appellants were provided with incorrect information as part of Coillte's initial response to their request. Following receipt of that response, the appellants contacted Coillte to indicate their belief that Coillte held a further contract relating to its transfer of the leasehold interest, which had superseded the 2011 contract. They also referred to a letter which they said indicated that Coillte had not transferred its leasehold interest by 2013. The original decision maker noted that his searches had not uncovered any further contract nor the letter in question but that he had spoken with "one of [his] legal colleagues on this matter and they were of the understanding based on the 2011 contract that we would not be considered tenants to the leased property after 2011 (excluding the small portion of lands that we spoke of yesterday that was not disposed of in 2011)". Having regard to the further information provided by Coillte (i.e. that the transfer of its interest was not completed until December 2013), this understanding is incorrect. Coillte would in fact have remained tenants of the property in accordance with the lease pending closure of the transaction to transfer. I have no reason to believe that this was anything more than an error on the part of the original decision maker, but it is nonetheless unfortunate. It was also misleading to suggest, as Coillte did in its internal review decision of 17 October 2020 (in response to Q4) that "there is no 2013 contract". The Indenture of Assignment through which Coillte assigned its interest in the lands to Kilcooley Estates



Limited was a contract and was entered into in 2013. Again, there is nothing before me to suggest any deliberate attempt on the part of Coillte to mislead the appellants. However, it is incumbent on a public authority such as Coillte to ensure that it has adequate processes in place to ensure that all information held by or for it is provided to an appellant in response to an AIE request and that such information is, to the best of their knowledge, accurate. I would however note that this is not the same as requiring a public authority to be put “on proof” with regard to the veracity of all information provided by it.

Adequacy of Coillte’s searches

69. I am not satisfied, on the basis of the information before me, that a further contract or contracts exist in relation to the transfer of Coillte’s leasehold interest which has not been provided to the appellants (again with the exception of the Third Party Assignment which is dealt with in further detail later on in this decision).
70. That being said, as outlined by the Court of Appeal at paragraph 51 of its decision in *Redmond v Commissioner for Environmental Information* [2020] IECA 83, article 12 of the Regulations provides me with an inquisitorial remit. Accordingly, my Investigator made enquiries of Coillte so that I could reach a determination as to whether I am satisfied that the appellants have been provided with all of the information held by or for Coillte which is within the scope of their request. Coillte was asked by my Investigator to provide a Schedule of Records detailing the information which had been disclosed in response to the request, the information which had been withheld and the basis for any withholding of information (i.e. the exceptions being claimed under the AIE Regulations). Coillte provided a Schedule of Records, as requested, in an appendix to its initial submissions (Appendix 1). It also acknowledged in its submissions that it held further information which had not been disclosed to the appellant on the basis that Coillte did not consider it to fall within the scope of their request. The Schedule of Records/Appendix 1 therefore contained details of information held by Coillte relating to the transfer of its leasehold interest at Kilcooley which had not been disclosed to the appellants on the basis that Coillte considered it to be out of scope. Appendix 1 also contained details of the Refused Documents which I will deal with further on in this decision. My Investigator obtained copies of the information referred to in Appendix 1 and raised further queries with Coillte so that it could be determined, as part of this appeal, whether that information had been correctly categorised as outside the scope of the appealed portion of this request (an issue I will address in further detail in the next section).
71. During the course of the investigation, questions arose in particular as to whether the following documents were held by or for Coillte:
- (i) The documents listed in the Documents Schedule to the 2011 contract.
 - (ii) The documents listed in the Completion List / Closing List referred to in the 2011 contract.
 - (iii) The documents relating to the provision of an option to purchase Coillte’s interests in the lands at Kilcooley.



72. The appellants have also identified the following documents which they argue should be provided to them and which are not captured in the categories set out above:
- (i) A copy of the payments schedule certified by Arthur Cox.
 - (ii) A stamped copy of the contract from Arthur Cox confirming it a true copy of the original contract.
 - (iii) A copy of the lessor's (Bannon) consent to the sale which was completed in December 2013.
 - (iv) A comprehensive explanation signed by Arthur Cox solicitors which sets out the transactions that have taken place and the funds received.
 - (v) The report of the Property Sign Off Committee in relation to the decision to sell Coillte's leasehold interest.
 - (vi) An explanation as to why Kilcooley Estates Limited is registered in the Land Registry as owner of the lands at Kilcooley.
 - (vii) Confirmation as to whether Coillte informed the freeholder (who the appellants identify as Bannon Receivers) of the transfer of its leasehold interest.
 - (viii) The Deed of Assignment referred to in Special Condition 5 of the 2011 contract which provides that "on completion, the Vendor and Purchaser agree to execute and exchange a deed of assignment to be prepared by the Purchaser in the usual way".
73. In this section I must address whether I am satisfied that reasonable and adequate searches have been carried out by Coillte to identify and locate all relevant information held by or for it which is relevant to the appellants' request including:
- (i) The documents referred to in the Documents Schedule to the 2011 contract and the documents referred to in the Completion / Closing List which itself is referred to in the Documents Schedule;
 - (ii) Documents relevant to the Option Agreements; and
 - (iii) Documents identified by the appellants.

General Searches

74. In her initial correspondence with Coillte, my Investigator asked it to provide detail of the steps taken to search for information held by or for it which related to the appellants' request. This included steps taken by Coillte not only to identify information held by it but also information held for it which would include information held by its solicitors on its behalf.
75. In its initial response, Coillte explained that it treated the request as seeking the records containing the environmental information requested in the defined questions put to it by the appellants. This information was contained within and sourced from the Sale File maintained by Coillte in relation to the transfer. My understanding is that the Sale File is made up of documents provided to Coillte's Property Sign Off Committee (PSOC), an internal committee which must approve all property



transactions entered into by Coillte. Coillte explained that the PSOC reviewed the sale based on general project information, timber and timber revenue information, crop valuation, fencing requirements, direct impact assessments (covering third party rights, designations, biodiversity, old woodland, monuments/archaeological features and other Coillte possibilities), purchaser information, other relevant information and internal approvals and comments. This is therefore the type of information which would have been present on the Sale File. Coillte explained that the property manager responsible for the lands at Kilcooley also maintained a Property File in connection with those lands. Both files were maintained on a Microsoft SharePoint system. Coillte noted that although it knew the location of the specific documents relating to the sale which contained the answers to the questions posed by the appellants, it also conducted a general search of its SharePoint system using the keyword “Kilcooley”. As part of the search query, SharePoint provided a high level summary of the documents and these were reviewed to identify any documents related to the AIE request. Coillte also submitted that internal discussions were held with the manager responsible for the sale to ensure all information requested was identified and disclosed. It submitted that its search identified all relevant documents but that the challenge centred on the appellants request for information relating to a separate sale in 2013 which did not exist. I have dealt with this issue above.

76. Coillte provided my Office with an Appendix (Appendix 1) containing a list of all documents contained on the Sale File and the Property File and noted that it did not hold any further information relating to the sale of the leasehold interest outside those documents identified in Appendix 1. It noted however that its legal advisors might have held further information on its behalf including “ancillary legal documentation, unrelated to the 8 questions posed” and offered to request that Arthur Cox retrieve the conveyancing file from storage. My Investigator wrote to Coillte to request that it provide copies of the information referred to in Appendix 1 which had been deemed out of scope by Coillte as well as copies of any information held for Coillte by Arthur Cox. Coillte subsequently provided additional information to my Office (some of which was not referred to in Appendix 1) and confirmations from its solicitors as to the extent of the information held by it. This is addressed in further detail below.

Information referenced in the Documents Schedule and the Completion List and documents relevant to the Option Agreements

77. One of the issues apparent at the outset of the investigation was that the 2011 contract, provided to the appellants, contained a Documents Schedule, which listed a number of documents that had not been provided to the appellants.
78. In its initial submissions to my Office, Coillte submitted that it had not provided copies of the documents contained in the Documents Schedule as it did not have final copies of them. It noted however that copies of those documents might be held by Arthur Cox for Coillte and submitted that it had made enquiries with Arthur Cox in that respect. In a subsequent submission to this Office, Coillte indicated that the documents held by Arthur Cox “are no longer available”. Coillte attached email correspondence between it and Arthur Cox dating from January 2021 in which Coillte noted that it appeared “to be missing the schedules to the contract” and requested “a copy of the full documentation that issued at contract stage”. The response from Arthur Cox attached copies of the 2011 contract, the Coillte Assignment and the Third Party Assignment and noted that while a copy of



the contract had been located “there doesn’t seem to be any reference to schedules in it”. Coillte submitted that it had located draft copies of certain documents referenced in the Documents Schedule to the 2011 contract on its internal systems and provided my Office with draft copies of five of the documents referred to in the Documents Schedule.

79. My Investigator raised further queries with Coillte as to the steps it had taken to locate the documents referred to in the Documents Schedule. In response to those queries, Coillte explained that it had made further contact with its solicitors seeking copies of those documents. It provided an email exchange in which it provided a list of the documents referred to in the Documents Schedule to its solicitors and received the following response:

“...In terms of the documents in the list below, all would have been handed to the purchaser on completion so it is not unusual that we would not hold copies (it was not standard practice to scan everything at that time). What colour I can provide is:

1. Certified Copy Folio – this is publically available from the Property Registration Authority of Ireland on payment of the relevant fee.
2. 1934 Lease – I don’t believe we have a scanned copy of this though you may have it internally as I understand the sale was an assignment of a part only and Coillte remains tenant of part.
3. Certificate of incorporation of Coillte and devolution of title from the Minister for Lands – This is available on request from the Companies Registration Office in relation to the certificate of incorporation and the devolution of title is a matter of review of the relevant legislation, all of which is publically available. My understanding is that Statutory Instrument Numbers 28/77, 29/77, 30/77, 31/77, 195/78, 40/86, 82/87, 95/87, 96/87 and by virtue of Section 39 of the Forestry Act 1988 are those that relevant.
4. Certificate of Incorporation of Purchaser – again, this is publically available on request from the Companies Registration Office.
5. Copy Felling Licence – I **attach** a copy of what is scanned into our system.
6. Landlord’s First Letter – I understand this to be a letter of consent from the landlord. I don’t believe we have a scanned copy of this.
7. Landlord’s Second Letter – I understand this to be a waiver / release from leasehold covenants. I don’t believe we have a scanned copy of this.
8. Replies to Enquiries – I expect these are responses to standard pre-contract purchaser enquiries. They will have been provided directly to the purchaser on completion.
9. Closing List – copy **attached**.”

80. The Completion List/Closing List in turn referred to a number of documents.

81. A further issue arose in relation to the Option Agreements (i.e. the 2009 Option Agreement, the March 2010 Option Agreement and the December 2010 Option Agreement) which had not been provided by Coillte to the appellants.

82. The Option Agreements were referred to in the original responses provided by Coillte to the appellants on 7 September 2020. Coillte’s response to Q(4) noted that “the purchaser paid an additional €50,000



non-refundable option agreement on the lands”. Coillte therefore made the existence of an option agreement known but it did not provide copies of any such agreement, nor did it include reference to any in the Schedule of Records provided (i.e. Appendix 1). When asked why these documents had not been included in Appendix 1, Coillte’s response was that Appendix 1 only listed the documents maintained on the Sale/PSOC File and the Property File. I do not consider this to be an entirely satisfactory explanation. I accept that Appendix 1 was provided by Coillte in response to a request from my Investigator to provide a Schedule of Records “listing all records held by or for Coillte containing the information requested, including the records containing the answers which Coillte provided within its decision on the request”. It was not clear from the original request that my Office was seeking details of information that Coillte had determined to be out of scope (although such information was sought in later requests to Coillte). However, Appendix 1 did refer to information that Coillte had refused on the basis that it did not consider it to be within the scope of the appellants’ request. In addition, Coillte’s initial submission to my Office noted that “there is no further information held by Coillte relating to the sale of the leasehold interest outside what has been identified in Appendix 1”.

83. Coillte was subsequently asked to provide copies of the Option Agreements to my Office. It provided an executed copy of the December 2010 Option Agreement; however the copies of the 2009 and March 2010 Option Agreements provided were not final copies. Coillte submitted that final copies of those agreements could not be located.
84. In an attempt to clarify any confusion, my Investigator also asked Coillte to set out once again the steps taken to search for the documents referenced in the Documents Schedule and the Completion List and for final versions of the 2009 and March 2010 Option Agreements. In its response, Coillte set out the steps it had taken in searching for documents.
 - (a) It had conducted a search of Sharepoint System specifically its “Kilcooley Abbey” subfolder, its centralised repository for all digital documentation relating to the transaction;
 - (b) It performed specific searches using the following keywords – “Kilcooley”, “Kilcooly”, “Abbey”, “Mystique”, “[Mr XY]”, “Littleton”, “2010-0027”, “licence”, “Deed of Release”, “Deed of Assignment”, “Section 72”, “Family Law Act declaration”, “Deed of Surrender”, “CG50”, “CGT”, “Assignment”, “requisition of title” and “ROT”.
 - (c) It performed searches for the same codewords on its Legal Case Management Software.
 - (d) It requested that any emails relating to the sale be furnished to it by the manager of the sale and that any emails held by any members of staff that were saved from the principal on the sale (who has since retired) be furnished to it.
 - (e) It reviewed the monthly and quarterly commercial (sales) team reports in the period 2 years prior and 1 year in arrears of the transaction to determine whether any reports made reference to the transaction.
 - (f) It reached out to its legal advisors to request that any files held by them in relation to the sale be furnished to them.
 - (g) It consulted the hard copy file for the sale in its storage area.



- (h) It searched its storage area more generally for any unmarked subfiles or folders relating to the transaction.
 - (i) It searched the commercial (sales) team offices to ensure that no relevant documents were being actively consulted (and might therefore be located on active files).
 - (j) It spoke with members of the property sales team and legal teams to ascertain whether there were any other locations which should be searched for relevant documentation.
 - (k) It consulted its corporate tax returns for 2010 to 2013. Coillte noted specifically with regard to the CGT Clearance Certificate referenced in the Completion List that no CG50 clearance certificate was generated by Coillte for the transfer and withholding tax was applied to the final payment.
85. As the documents referenced above were legal documents relating to the transfer of a legal interest in land, my Investigator also asked Coillte to set out its document management policy with regard to documents relating to the transfer of a legal interest in land. Coillte noted in response that it maintains all commercial and ecological information relevant to the transfer of legal interests in property on its SharePoint site, which is cross-referenced with Property Sign-Off Committee approvals for sales. It submitted that all legal documentation is saved to a hardcopy legal file and in its thread case management system. Title documentation is saved in its original physical format in its file storage and its GIS system is updated with new information as acquisitions to and excisions from its estate occur. It noted that its policy was to delete emails by default after 5 years but that emails relevant to the transfer of legal interest in property should be saved to the relevant SharePoint site. Coillte also submitted that it holds information in relation to the transfer of legal interest in property for a minimum of 7 years.

Findings

86. I consider that there were a number of shortcomings in Coillte's approach to the appellants' request, particularly with regard to the identification of relevant documentation held by or for it.
87. I note in the first instance that the initial reason provided by Coillte for its failure to provide the appellants with copies of documents referred to in the Documents Schedule to the 2011 contract was that it did not hold final versions of those documents but that it would make contact with its solicitors to determine whether final versions could be obtained. If it were the case that final versions might have been held for Coillte by its solicitors, those enquiries should have been made at the time of the appellants' request and should not have awaited the involvement of my Office in the course of an appeal.
88. In addition, the failure to locate final versions of all items referred to in the Documents Schedule and Completion List and of all option agreements suggests that Coillte may not have complied with its own document management policy with regard to legal documentation. I note that it could be argued that the minimum 7-year period might have expired with respect to the 2009 and March 2010 Option Agreements in 2016 and 2017 respectively and that the time period with respect to the documents in the Documents Schedule and Completion List might be said to run from 2011, given that the contract



was signed then. However, I note that the policy is to retain documents for a “minimum” of 7 years and it would seem prudent, particularly where the transfer of an interest in land is involved, that the minimum 7-year period would begin to run only from the date the transaction closed. While it is not for me to adjudicate on the internal retention policies adopted by Coillte, I would encourage Coillte to take steps to ensure that those policies comply with the nature and spirit of its obligations under the AIE regime.

89. I accept that an element of opacity has arisen in determining what information is within the scope of the appellants’ request which might explain the failure to identify and provide these documents at an earlier stage. This is particularly the case with the Option Agreements. As the existence of the Option Agreements was disclosed by Coillte in the first instance, I do not consider, as the appellants have submitted, that there is any evidence of a deliberate attempt to conceal information relating to the sale of Coillte’s interest in the lands at Kilcooley. I must say however that it is unfortunate that some of the information provided by Coillte both to the appellants and to my Office has proven to be inaccurate.
90. For example, Coillte initially submitted that it did not hold any further information relating to the sale of the leasehold interest other than that listed in Appendix 1, which was provided in response to a request from my Investigator for a Schedule of relevant records. In my view, information relating to the option agreements does “relate to the sale of the leasehold interest”. On this basis, I do not consider it to have been correct for Coillte to state that “there is no further information held by Coillte relating to the sale of the leasehold interest outside what has been identified in Appendix 1”. That being said, I recognise that the matter of what information relates to the sale of the leasehold interest is open to debate. One could argue that the Option Agreements are not directly related to the sale of the leasehold given that it was the 2011 contract, the Coillte Assignment and the Third Party Assignment which in fact provided for the transfer. Coillte submitted that the Option Agreements fell outside the scope of the appellants’ request as they “pre-date[d] the sale and were superseded by subsequent documentation”, which was provided.
91. On the other hand, a broader view can be taken that the Option Agreements are related to the transfer of the leasehold and to the appellants’ requests, which sought information on the purchaser (Q(3)) and also on the price paid (Q(4)) which included consideration related to the Option Agreements and on the parties involved in transferring the lease to the new owner (Q(5)). I consider that the Recitals to the AIE Directive would lend support to the position that the approach envisaged by the AIE Regulations is that requests should be interpreted broadly rather than narrowly and I consider Coillte’s approach to the appellants’ request to have been overly narrow.
92. While Coillte’s adoption of a narrow approach to the interpretation of requests from the appellants and from my Office was not appropriate, I have no evidence that this represented a deliberate attempt to conceal information. Nor do I consider Coillte’s approach to cast any doubt on the accuracy of the responses provided to my Investigators as part of their queries to ascertain whether reasonable searches had been carried out. That being said, the adoption of such an approach meant that a number of follow up queries from my Investigators were necessary in order to establish whether reasonable and accurate searches had been carried out to identify all relevant information. It is not



desirable that numerous exchanges of correspondence should have to take place between a public authority and my Office to ensure that such searches are conducted and I would encourage Coillte to adopt a broader view when responding to AIE requests made to it in the future.

93. I am therefore satisfied that Coillte has taken reasonable and adequate steps to search for all information held by or for it within the scope of the appellants' request. However, I accept that establishing that such steps had been taken required numerous interventions on the part of my Office to remedy the overly narrow approach taken by Coillte in the first instance. This, in conjunction with the fact that Coillte's responses to many of the queries posed by my Investigators took lengthy periods and multiple reminders from my Office to materialise, has been a significant contributing factor to the delays occasioned in bringing this matter to a conclusion.

Documents identified by the appellants

94. As noted above, the appellants have made specific reference to a number of documents (aside from those captured in the categories dealt with above) which they submit they should have been provided with in response to their request:
- (i) A copy of the payments schedule certified by Arthur Cox.
 - (ii) A stamped copy of the contract from Arthur Cox confirming it a true copy of the original contract.
 - (iii) A copy of the letter providing the lessor's (Bannon) consent to the sale which was completed in December 2013.
 - (iv) A comprehensive explanation signed by Arthur Cox solicitors which sets out the transactions that have taken place and the funds received.
 - (v) The report of the Property Sign Off Committee in relation to the decision to sell Coillte's leasehold interest.
 - (vi) A copy of the Chairman's Report to the Board from 2013 referred to in an email sent to the appellants from an official in the Department of Agriculture.
 - (vii) An explanation as to why Kilcooley Estates Limited is registered in the Land Registry as owner of the lands at Kilcooley.
 - (viii) Confirmation as to whether Coillte informed the freeholder (who the appellants identify as Bannon Receivers) of the transfer of its leasehold interest.
 - (ix) The Deed of Assignment referred to at Special Condition 5 of the 2011 contract which provides that "on completion, the Vendor and Purchaser agree to execute and exchange a deed of assignment to be prepared by the Purchaser in the usual way".
95. I note in the first instance, with respect to the Deed of Assignment sought at paragraph 94(ix), that Coillte have provided the appellants with a Deed of Assignment held by it in connection with the transfer (i.e. the Coillte Assignment). It has not provided a copy of the Third Party Assignment and this issue will be dealt with in further detail below. With regard to the document sought at paragraph



94(ii), I note that the 2011 contract provided to the appellant is certified to be a true copy by Arthur Cox. Copies of the payment schedule, the PSOC report and the Chairman's Report referred to at paragraph 94(i), (iv) (v) were provided to my Investigator in the course of the investigation. Coillte's position is that these documents do not fall within the scope of the appellants' request and this will be considered in further detail in the section below.

96. The documents sought at paragraph 94(iii), (iv), (vii) and (viii) appear from the appellants' submissions to be requested as part of the wider argument raised by the appellants that the documents provided to date by Coillte do not represent the contractual documentation relating to the transfer of its leasehold interest in the lands at Kilcooley. As outlined above, the appellants made repeated assertions that it was Coillte's obligation as a public authority is to provide it with "proof" that its leasehold interest in lands at Kilcooley were transferred by means of the 2011 contract. It is in this vein that the appellants have sought to be provided with explanations from Coillte and its legal advisors as to how certain elements of the sale were carried out and have asserted that it was for me to put Coillte "to proof" as to how the transfer occurred. However, as I have outlined above, it is important to be clear that Coillte's obligation under the Regulations is to "make available to the applicant any environmental information, the subject of the request, held by, or for, [it]". This is distinct from an obligation to provide the appellants with satisfactory explanations as to the operation of various elements of the transfer of the sale of its leasehold interest.
97. As I also have noted above, lack of satisfactory explanations may suggest that the public authority's obligation to provide all relevant information held by or for it in accordance with the Regulations has not been complied with. I have considered the arguments of the appellants on that basis and reached conclusions on those arguments as outlined above. My Investigator has made enquiries with Coillte as to the information held by or for it which relates to the transfer of its leasehold at Kilcooley and as to the steps taken by it to identify and locate such information. The information provided to my Office includes some correspondence between Coillte and its solicitors which will be dealt with in the next section. It might also be said that information as to the involvement of receivers on the part of Mr XY as well as information on the operation of the transaction can be ascertained from the documents provided to the appellants to date, in particular the Coillte Assignment. However, broadly speaking, the information identified in the Schedule of Records provided by Coillte and as a result of further inquiries by my Investigator does not include correspondence of the nature identified at paragraph 94(iii), (iv), (vii) and (viii).
98. As well as referring to a number of additional documents, the appellants have made a number of arguments as to the manner in which I should exercise the jurisdiction conferred on me by article 12 of the Regulations and I consider it important to address those arguments briefly here.
99. The appellants argue in the first instance that the import of paragraphs 86, 87 and 91 of the Court of Appeal's decision in *Redmond* is that I must "actively retrieve information relating to [their] case". They have submitted that it would be remiss of me "to accept anything less than actual copies of documents to provide evidence". They have also argued that I should "make a formal request to Arthur Cox to provide copies of [original documents] and if unable to do so have them explain in writing why". The appellants submit that I have "the power to request these documents and if [I fail]



to do so [I am] failing in [my] duty as an investigator”. They rely on article 12(6) of the Regulations in support of their argument in this regard.

100. As I have previously outlined, my role in this appeal is to determine whether Coillte has carried out reasonable and adequate searches to identify information within the scope of the appellants’ request and whether all such information has been provided to the appellants in accordance with the Regulations. If I consider that information is held by or for Coillte which is relevant to the appellants’ request and in respect of which no exception provided for in the Regulations can be said to apply, article 12(7) enables me to direct Coillte to provide such information to the appellants. However, were I to go any further and direct Coillte to provide information to the appellants beyond that which is held by or for it, I would be in danger of exceeding the jurisdiction conferred on me by virtue of article 12 of the Regulations. In addition, I do not agree with the appellants’ contention that my jurisdiction under the AIE Regulations enables me to issue directions to Arthur Cox. My jurisdiction in this case relates to Coillte, as the “public authority” against whom the appeal has been initiated, although a direction issued to Coillte might include a direction to provide copies of information held for it by a body which is not a “public authority” within the meaning of the Regulations such as Arthur Cox. With regard to the appellants’ reliance on article 12(6), I consider it important to be clear that if I considered that the responses provided by Coillte were inadequate or suggested that information was being deliberately withheld from my Office then I would consider exercising my powers under article 12(6) to do any of the following:

- (a) require a public authority to make available environmental information to the Commissioner and, where appropriate –
 - (i) require the public authority concerned to attend before the Commissioner for that purpose, and
 - (ii) whether the public authority is a body corporate, require its chief officer to attend,
- (b) examine and take copies of any environmental information held by a public authority and retain it in his or her possession for a reasonable period,
- (c) enter any premises occupied by a public authority and there require to be furnished with such environmental information as he or she may reasonably require or take such copies of, or extracts from, any environmental information found or made available on the premises.

101. However, I do not consider that it is necessary to exercise these powers. As I have outlined above, while I consider there to have been a number of shortcomings in terms of Coillte’s handling of the request, I consider that any discrepancies with regard to the disclosure of information have been addressed by the responses provided to the queries raised with Coillte by my Investigators and arose from Coillte’s narrow approach to the determination of the scope of the appellants’ request. I will deal with the question of whether additional documents should be disclosed having regard to my determination as to the scope of the request in the following section. In these circumstances, I do not consider the exercise of the powers conferred on me by article 12(6) of the Regulations to be either necessary or appropriate in this case.



102. As I am satisfied that reasonable and adequate steps have now been taken by Coillte to identify all relevant information relating to the transfer of its leasehold interest at Kilcooley, I will now go on to consider whether all of the information held by or for Coillte within the scope of the appealed portion of the appellants' request has been disclosed to them.

Classification of information as within or outside the scope of the appeal

103. As outlined above, Coillte provided my Office with a Schedule of Records related to the transfer of its leasehold interest at Kilcooley (Appendix 1) which listed a number of documents which had not been disclosed to the appellants on the basis of Coillte's view that those documents did not fall within the scope of the appellants' request. In the course of the investigation, Coillte also provided my Office with a number of documents not listed in Appendix 1 which consisted of draft copies of certain items referred to in the Documents Schedule and Completion List of the 2011 contract, unexecuted copies of the 2009 Option Agreement and the March 2010 Option Agreement, an executed copy of the December 2010 Option Agreement, correspondence with solicitors in relation to the transaction and the Chairman's Report of 2013 referred to by the appellants and referenced at paragraph 94(vi) above.

104. I have analysed all of the information referred to above in order to determine whether it comes within the appealed portion of the appellants' request (i.e. Q(3), Q(4), Q(5) or Q(8)). I have set out below, the information I consider to come within the scope of the appellants request as well as the basis on which I consider it to be within scope. It should be noted that, while I am required by article 12(5)(b) of the AIE Regulations to specify reasons for my decision, I must also be careful not to disclose withheld information in my decisions. This means the detail I can give about the content of the records and the extent to which I can describe certain matters in my analysis is limited. I have not referenced information held by or for Coillte that I do not consider to come within the scope of the appealed portion of the appellants' request but I have considered that information in detail. The documents I consider to be within the scope of the request (and thus disclosable subject to the application of any of the grounds for refusal provided for in the Regulations) are as follows:

- (i) Document "**Folio 12697**" – the document held by Coillte appears to be an uncertified copy of the folio referred to at No 1 of the Documents Schedule to the 2011 contract. I consider this to be within the scope of Q(3) and Q(4) of the appellants' request as it delineates "the Coillte land/forestry at Kilcooley Abbey Estate" which was the subject of the transfer and thus is relevant to the question of who purchased that interest in the land from Coillte and the price paid for it.
- (ii) Document "**SSANTRY_MFP11111811050**" which appears to be a copy of the Original 1934 Lease referred to at No 2 of the Documents Schedule to the 2011 contract. I also consider this to be within the scope of Q(3) and Q(4) of the appellants' request as it provides detail as to the extent of the interest transferred.
- (iii) Document "**AC#3990810.1 - Felling licence**" – the document held by Coillte appears to be that referred to at No 5 of the Documents Schedule to the 2011 contract. I consider this to be relevant to Q8(a) and Q8(c) of the appellants' request as it is listed in the Documents Schedule as outlining "outstanding afforestation/re-planting obligation affecting the Subject Property"



and therefore indicates that the leasehold was being transferred subject to those obligations. Special Condition 6 of the 2011 contract provides that the Purchaser agrees to accept total responsibility for compliance with the afforestation/re-planting obligations under the Felling Licence and indemnifies the Vendor in that respect. I note in this regard that Coillte already accepted that Special Condition 6 was relevant to Q(8) in its letter to the appellant of 19 August 2015 which provided as follows:

“Special Condition 6 of the contract contains information that the purchaser acknowledges that it is on notice that unsatisfied afforestation / re-planting obligations under the Forestry Act 1946 arise and that the purchaser has agreed to accept total responsibility for compliance in place of the vendor. Again this could be considered as information on the future development of the site and accordingly I attach same.”

- (iv) The “Second Landlord’s Letter to be Given on Completion of the Assignment” contained in the document entitled “**Scanned Contract**”. I consider the “Second Landlord’s Letter” to be within the scope of Q8(a) and Q8(b) of the appellants’ request as it may provide insight into any proposed development of the land and arguably constitutes information Coillte has on access and rights of way.
- (v) The **2009 Option Agreement** contained in a document entitled “**Rsf11922.1 Option Agreement – Coillte – Kilcooly 3-4-09**”. I consider this to be relevant to Q(3), which asks for the identity of the purchaser of Coillte’s interest in the lands at Kilcooley. It seems to me to be reasonable to expect that when providing a response to this question, Coillte would include information which sets out that Coillte had agreed to limit the scope of potential purchasers by entering into an Option Agreement. It also appears relevant to Q(4), which asks for information on the purchase price paid. It seems to me to be reasonable to expect that when providing a response to Q(4) Coillte would include the 2009 Option Agreement which refers to the non-refundable option fee of €50,000 paid in respect of the transfer of Coillte’s interest. I am therefore not persuaded by Coillte’s position that the 2009 Option Agreement was not within scope as it pre-dated the sale and was superseded by subsequent documentation.
- (vi) The **March 2010 Option Agreement** contained in a document entitled “**Rsf 12071.1 Coillte Deed of Variation**”. I consider this to be relevant to Q(3) for the same reasons as those outlined above in relation to the 2009 Option Agreement. I also consider it within the scope of Q(4) of the appellants’ request as the further option fee payable under this agreement is deductible from the purchase price.
- (vii) The **December 2010 Option Agreement** contained in a document entitled “**Scanned Deed of Variation of Option**”. Again, I consider this to be relevant to Q(3) for the same reasons as those outlined above in relation to the 2009 Option Agreement. I also consider it to be within the scope of Q(4) of the appellants’ request as it is relevant to the understanding of the ultimate purchase price paid for the transfer of Coillte’s interest and to the understanding of the reference to a €10 option fee in the payments schedule which was provided to the appellants.



- (viii) A **Letter between solicitors for Coillte and the prospective purchaser dated 1 March 2010** entitled “**Letter to [name of solicitor]**”. I consider the information in this letter which explains the effect of the option agreements on the purchase price to come within the scope of Q(4) of the appellants request. The letter also contains information on the legal representatives involved in the transfer of the lease which is information relevant to Q(5) of the appellants’ request.
- (ix) Document “**B26 – Payment Schedule (Coillte payments (4303564_6))**”. The information contained in this document was copied into the letter provided by Coillte to the appellants on 16 October 2020 but the record itself was not provided. I consider this document to be relevant to Q(4) of the appellants’ request which seeks information on the price paid to Coillte for the transfer of its interest in the lands at Kilcooley. I also note that the Aarhus Guide, at page 80, states that rather than summaries or excerpts, public authorities must provide copies of the records containing the information requested. It goes on to explain that “[t]he requirement that copies of actual documents should be provided ensures that members of the public are able to see the specific information requested in full, in the original language and in context”.
- (x) An **email from Arthur Cox solicitors to Coillte dated 20 December 2013** entitled “**Email RE: Kilcooly**”. This is a cover email attaching copies of the payment schedule referred to at (ix) above as well as copies of the Coillte Assignment and the Third Party Assignment. I consider that the cover email itself is also within the scope of Q(3) of the appellants’ request as it explains how the identity of the ultimate purchaser changes. I note that it constitutes correspondence between Coillte and its solicitor but no exception has been claimed by Coillte in respect of it.
- (xi) The copy of the Coillte Assignment attached to the “**Email RE: Kilcooly**” referred to at (ix) above and contained in the document “**_1220150747_001 (11165353_1)**”. I note that a clean copy of the Coillte Assignment has already been provided to the appellants but I consider this document to also come within the scope of Q(3) of the request on the basis that, when read in conjunction with the email referred to at (x) above, it is relevant to Q8(c) as it deals with obligations that Coillte is released from as a result of the transfer.
- (xii) Document “**A1 – Internal approval of Regional Director and Director of Coillte Forest**”. I consider this to be within the scope of the information sought in Q8(c) as it is clear from the emails contained in that document that approval for the transfer is given on the basis of the Summary Report on Kilcooly from B Burke 30_05_08 (referred to at paragraph 104(v) above) which is attached to it. Coillte has also confirmed that this document is the only document held by or for it relating to PSOC approval, which the appellants argued they were entitled to in accordance with Q(5) and Q(8) of their request.
- (xiii) Document “**A5 – Letter to JM re Coillte estate designation**”. I consider this to be relevant to Q8(a) and Q8(c) as it demonstrates that Coillte made environmental designations relating to the lands the subject of the transfer clear to the proposed purchaser.



- (xiv) Document “**A7 – Map with legend**”. This appears to be the same map included as an attachment to the letter at (xiii) above and I consider it should be included for the same reason; i.e. it demonstrates that Coillte communicated environmental designations to the proposed purchaser and is therefore relevant to Q(8).
- (xv) Document “**A9 – Note from J Moore re replacement of Agreed Biodiversity Kilcooly**”. I note that the maps of agreed biodiversity have already been released to the appellants. I consider that the cover email attaching the maps is also within the scope of Q8(c), as it shows, to some degree, Coillte’s consideration of the impact of the transfer of its leasehold interest.
- (xvi) Document “**B5 – Inventory data Kilcooly B Lacey**” which consists of an email from an employee of Coillte attaching a copy of an Inventory List entitled “**kilcooly inventory data**” and a map entitled “**Kilcooly map**”. My Investigator asked Coillte to provide further context to this email for the purposes of determining whether it fell within or outside the scope of the appellants’ request. Coillte explained that the email was sent to an employee of iForUT, an entity with certain felling rights to Coillte property. It noted that there was no record of why the information had been sent to iForUT but it was likely sent to ensure that the transfer of Coillte’s leasehold interest would not impact on iForUT’s existing rights. I consider this email, along with its attachments, to be within scope of Q8(c) as it relates to a consideration of the impact the disposal of the land will have on third party rights and, arguably, the environment.
- (xvii) Document “**B6 – Kilcooly contract progress 12 1 11**” which consists of an email update on the progress of the negotiations. I consider this to be within the scope of Q8(d) of the appellants’ request, as it discusses the progress of the contract to transfer Coillte’s interest in the lands.
- (xviii) Document “**B16 – Public consultation Kilcooly**” which consists of emails from individuals I understand to be employees of Coillte. I consider this to be relevant to Q8(c) as consultation with the local community is relevant to whether and how Coillte considered the impact of the transfer on the environment and rights of way.
- (xix) Document “**B17 – Query re timber sale 16 8 12**”. I consider this email to be relevant to Q8(a) as it includes discussion as to potential use of the property. My Investigator requested a copy of the email in its original form but was informed by Coillte that it was no longer available and that the format provided was the format in which it had been saved and maintained on the SharePoint folder.
- (xx) Document “**B19 – Re Areas Timber volumes and current market value**” which consists of emails between two Coillte staff members and one attachment “**Scanned Document from Castleisland**”. The initial email refers to another attachment and my Investigator requested a copy of this other attachment but was informed that it was no longer held by or for Coillte. I consider the portions of the email which discuss the areas to be retained and harvested by Coillte to be relevant to Q(8)(c) of the appellants’ request. The email also includes information on pricing (which is contained in the “Scanned Document from Castleisland” attachment) but I



do not consider this to be within the scope of Q8(c) or of any other part to the appellants' request which is the subject of this appeal.

105. As outlined above, Coillte has had an opportunity to comment with respect to the release of all of the information set out above. Its comments can be summarised as follows:

- (i) Coillte explicitly indicated that it had no objection to the appellants being provided with copies of the documents referred to at paragraph 104(i) to (ix) and (xiv), (xv) above if those documents were considered to come within the scope of the appellants' request.
- (ii) Coillte did not raise any objection to the release of the documents at paragraph 104(x) and (xi) to (xiii) and (xvi) to (xviii).
- (iii) Coillte seeks to rely on article 9(1)(c) of the Regulations as grounds to withhold the documents referred to at paragraph 104 (xix) and (xx) above. These documents are referred to as the "Additional In-Scope Documents" and are dealt with in the next section, which also considers whether Coillte was entitled to refuse the Refused Documents in accordance with the provisions of the AIE Regulations.

Whether Coillte is entitled to withhold the Refused Documents or the Additional In-Scope Documents in accordance with the AIE Regulations.

106. The Refused Documents are documents identified by Coillte during the course of the search and classed by Coillte as within scope but not provided to the appellants. Those documents are:

- (i) Legal advice received from KMB Solicitors in relation to Coillte's legal obligations, as referred to in its response to **Q(7)** of the appellants' request (the "KMB advice"); and
- (ii) The Indenture of Assignment between the original purchaser Mystique Developments Limited and the ultimate purchaser Kilcooley Estates Limited (the "Third Party Assignment").

107. The Additional In-Scope Documents are documents identified by Coillte during the course of the search and categorised by Coillte as falling outside the scope of the appellants' request, over which Coillte has also asserted grounds for refusal under the AIE Regulations and which I have subsequently determined those documents to be within scope. The Additional In-Scope Documents are:

- (i) Document "**B17 – Query re timber sale 16 8 12**" referred to at paragraph 104(xix) above.
- (ii) Document "**B19 – Re Areas Timber volumes and current market value**" referred to at paragraph 104(xx) above (excluding information on pricing).

108. I will deal with each of these documents in turn.

The KMB advice

109. The KMB advice was originally referred to in response to Q(7) of the appellants' request which sought details as to the valuation of Coillte's interest in the leasehold property. It consists of legal advice addressed to Coillte from its solicitors relating to its obligations under the agreement providing for its leasehold interest at Kilcooley. It appears that the advice provided by KMB as to Coillte's obligations was factored into the valuation of Coillte's leasehold interest (the subject of Q(6) and Q(7) of the appellants' request). As outlined above, Q(6) and Q(7) are outside the scope of this appeal. A question



therefore arises as to whether the KMB advice is within the scope of the appellants' appeal to this Office (i.e. Q(3), Q(4), Q(5) or Q(8)).

110. I consider that advice regarding Coillte's obligations under the lease agreement is also relevant to Q(8)(a), which deals with proposed development of the lands at Kilcooley; Q(8)(b), which deals with access to the lands; and Q(8)(c), which deals with environmental impact in that the transfer of obligations under the lease to a party other than Coillte or the cessation of those obligations by virtue of a freehold reversion might impact the environment. This brings the KMB advice within the scope of this appeal. The next issue to be considered is whether Coillte's refusal to provide the KMB advice was in accordance with the AIE Regulations.
111. In its initial decision, Coillte noted that the KMB advice had "not been released as permitted under article 8(a)(iv) of the AIE regulations as its confidentiality could affect other proceedings unrelated to Kilcooley sale". This reasoning was repeated in Coillte's correspondence to the appellants of 15 November 2020 following their request for an internal review.
112. In its submissions to my Office, Coillte elaborated on this position, submitting that it holds several long-term leases, many of which contain similar covenants and clauses. It submitted that the KMB advice addressed covenants and clauses that were similar to those contained in lease agreements, which were the subject of legal proceedings. However, Coillte submitted that its primary argument was that the KMB advice was confidential advice provided in the context of a solicitor-client relationship created for the purposes of giving and receiving legal advice such that it was governed by legal advice privilege, which it argued was protected by common law and by article 9(1)(b) of the Regulations. Coillte's arguments appeared to rely on both subsets of legal professional privilege, legal advice privilege in the first instance and litigation privilege as a secondary argument.
113. I should note in the first instance that it is not satisfactory that a public authority would assert at appeal stage that the grounds for refusal originally advanced to the appellant were in fact only its secondary grounds for refusal. While I accept that communications between the parties were detailed and covered a number of issues, I also note that very little detail was provided to the appellants as to the basis for refusal of the KMB advice. I would remind Coillte that articles 7(4) and 11(4) of the AIE Regulations require it to provide reasons for refusal both at decision and internal review stage. However, as noted by the High Court in *M50 Skip Hire Recycling Limited v Commissioner for Environmental Information* [2020] IEHC 430, article 12 confers me with jurisdiction to conduct a *de novo* consideration when dealing with an appeal and therefore I will consider whether legal advice privilege and/or legal professional privilege applies.
114. The appellants disputed Coillte's entitlement to rely on legal professional privilege. They requested information as to the identity of the party who had initiated legal proceedings against Coillte. While I do not consider the appellants to be entitled to information as to the identity of the party to these proceedings in the context of this appeal, in order to fulfil my inquisitorial remit, my Investigator did seek further information from Coillte as to the proceedings at issue which concerned the KMB advice. When asked to provide an update as to the status of the proceedings, Coillte responded that the "KMB advice is legal advice and falls within the 'legal advice' limb of the legal professional privilege rule.



Accordingly, the status of the legal proceedings has no basis on the privileged, or other, nature of the advice. In any event, to answer your question, the status of the proceedings is ongoing". In its later submissions to my Office, Coillte appears to have abandoned its argument that litigation privilege should apply. As noted by Finlay Geoghegan J in *University College Cork v the Electricity Supply Board* [2014] IEHC 135, the onus is on the party asserting litigation privilege to prove, on the balance of probabilities that the dominant purpose for which the document was brought into existence was to enable the prosecution or defence of an action (see paragraph 4). Coillte have not established on the balance of probabilities that the KMB advice was prepared in 2003 for the dominant purpose of litigation and thus I am not persuaded that litigation privilege applies to the KMB advice.

115. This leaves the question of whether legal advice privilege applies. The appellants submitted that legal advice addressing what are standard covenants and clauses contained in many of Coillte's long term leases was not specific enough to claim privilege on. They also submitted that if Coillte were relying on legal professional privilege and maintained that its solicitors assisted it in transferring leasehold interest to an individual adjudicated bankrupt, this would contribute to a loss of such privilege. My Investigator wrote to the appellants to clarify that the advice in respect of which Coillte had asserted legal professional privilege was not advice relating to the transaction by which it transferred its leasehold interest but the advice received by Coillte from KMB solicitors in 2003 relating to its obligations under the leasehold agreement in respect of the lands at Kilcooley. In subsequent submissions, the appellants submitted that if the privileged documents are "in the public domain registered and sent to third parties then all rights are lost". They noted in this regard that the Quinn Agnew valuation stated that it had been prepared by reference to "information provided by your company and by your solicitors (KMB solicitors)". They also submitted that interpreting leases "is not giving advice per se it is providing normal legal services" and that legal professional privilege did not cover "communications made to further a criminal purpose; i.e. to enable a client to commit crime or fraud".
116. It is clear from a review of the KMB advice that it was provided to Coillte by a solicitor and that its purpose was to provide Coillte with legal advice. As the Supreme Court noted in *Smurfit Paribas Bank Limited v AAB Export Finance Limited* [1990] 1 IR 469 a distinction is to be drawn between the obtaining of legal advice and legal assistance however what is contained in the KMB advice is advice as to Coillte's obligations under the agreement conferring it with a leasehold interest over the lands at Kilcooley as opposed to legal assistance. I am therefore not persuaded by the appellants' arguments that the KMB advice was not legal advice *per se* and that the advice is not specific enough to claim privilege on. I am also not at all persuaded by the appellants' arguments which rely on assertions of fraud and improper conduct. The final issue raised by the appellants is worthy however of some further consideration. Although I do not accept their assertion that the KMB advice is "in the public domain", the Quinn Agnew valuation does note that the valuation of Coillte's leasehold interest has been carried out by reference to "information provided by your company and by your solicitors". This raises the question of whether Coillte waived its privilege in respect of the KMB advice. However, I note in this regard that the courts are reluctant to infer any implied waiver of privilege where documents are disclosed to third parties and the general rule is that privilege will not be lightly



overturned as a result of disclosure, in the absence of an intention to abandon the privilege (see *Fyffes v DCC* [2005] 1 IR 59). I should also note that the Quinn Agnew valuation refers to information obtained from Coillte's solicitors and not to Quinn Agnew having been provided with the legal advice itself. Coillte has also explicitly stated in its submissions to my Office that it has not waived privilege over the advice.

117. I am satisfied therefore that legal advice privilege does apply to the KMB advice and that the privilege which arises in this case is covered by article 9(1)(b) of the Regulations which allows for the refusal of environmental information where disclosure "would adversely affect...the course of justice". The concept of adverse effect is dealt with in the decision of the Court of Justice of the EU in [C-619/19 Land Baden-Württemberg v DR](#). Although that decision relates to the exception contained in article 9(2)(d) of the Regulations, it contains some useful guidance in relation to the application of exceptions generally. The CJEU noted in particular, at paragraph 69 of its judgment:

"...[A] public authority which adopts a decision refusing access to environmental information must set out the reasons why it considers that the disclosure of that information could specifically and actually undermine the interest protected by the exceptions relied upon. The risk of that interest being undermined must be reasonably foreseeable and not purely hypothetical".

118. The case law on legal advice privilege generally recognises that failure to provide for such privilege may adversely affect the administration of justice such that "where it is established that a communication was made between a person and his lawyer acting for him as a lawyer for the purpose of obtaining from such lawyer legal advice, whether at the initiation of the client or the lawyer, that communication made on such an occasion should in general be privileged or exempt from disclosure, except with the consent of the client" (*Smurfit Paribas* at para 31). In the particular circumstances of this case, Coillte has argued that the disclosure of the KMB advice would prejudice its position in arbitration and litigation proceedings relating to other leasehold interests held by it. I am therefore satisfied that there is a reasonably foreseeable risk that the interest protected by the legal advice privilege which applies in this case would be undermined. However, that is not the end of the matter as I must also consider whether the public interest weighs in favour of withholding the KMB advice having regard to the provisions of article 10(3) and 10(4) of the Regulations.

119. In terms of public interest considerations, Coillte considered the public interest factors in favour of withholding the information to be the ability of Coillte to communicate freely with its legal advisors and the proper administration of justice through ensuring the integrity of the solicitor-client relationship. It submitted that achieving openness and transparency in relation to the proceedings of public authorities was a factor weighing in favour of release of the information in question. However, it argued that there is a strong presumption in favour of withholding information subject to legal professional privilege and that it was only in exceptional circumstances that a client could be forced to disclose legal advice to third parties without voluntarily waiving their privilege and that no such circumstances arose in this case. It argued that there was a clear public interest in maintaining legal professional privilege in respect of the KMB advice, not least by the fact that the contents of the legal advice were relevant to other ongoing legal proceedings.



120. As outlined above, it is recognised that there is a general public interest in protecting the confidentiality of communications between and client and their legal advisor for the purposes of obtaining legal advice as it is considered to contribute to the efficient administration of justice. However, the courts have also recognised that this must be weighed against the public interest in the desirability of full disclosure in the interests of ascertaining the truth and rendering justice (*Smurfit Paribas* at para 26, *UCC* at para 4). This consideration is particularly relevant in the case of an AIE request as Recital 1 of the Preamble to the AIE Directive makes it clear that “increased public access to environmental information and the dissemination of such information contribute to greater public awareness of environmental decision-making and, eventually, to a better environment.” The AIE regime thereby recognises a strong public interest in openness and transparency in relation to environmental decision-making. There is undoubtedly a strong public interest in transparency as to how public authorities, such as Coillte, carry out their functions with regard to environmental factors. That being said, the AIE regime also acknowledges that there may be exceptions to the general rule of disclosure of information, as noted in Recital 16 of the AIE Directive, which provides that “public authorities should be permitted to refuse a request for environmental information in specific and clearly defined cases” and that includes cases where disclosure would adversely affect the course of justice.
121. Having regard to the circumstances of this case and the particular information at issue, as article 10(3) of the Regulations requires, I note that the KMB advice sets out a legal interpretation of the obligations provided for in the 1934 lease by which Coillte held its leasehold interest in the lands at Kilcooley. The public interest in disclosure of that information is that it would provide further detail as to the extent of Coillte’s obligations under the lease (which have an environmental impact) and thus give an idea of the type of obligations which were to be transferred to a new leaseholder or extinguished altogether through a reversion of the leasehold interest to the freeholder. The interest in allowing Coillte to withhold that information is not just Coillte’s private interest in not having its ability to defend or initiate legal proceedings undermined (which in turn has some relevance to the public interest as Coillte is a public authority) but also the general public interest in allowing individuals and entities to remain assured that their communications with legal advisors for the purposes of seeking legal advice will only be subject to disclosure in the most exceptional circumstances. It is in the public interest that public authorities which are subject to the AIE regime should be not be inhibited from seeking legal advice, particularly legal advice as to the extent of their environmental obligations. In addition, the appellants have already been provided with a significant degree of information in response to their request and as I have outlined above, I have found that further information is within the scope of their request and therefore subject to disclosure. In particular, I note that Document “**8(f) Summary Report on Kilcooly from B Burke 30_05_08**”, which has already been disclosed to the appellants, contains details of Coillte’s legal obligations under the lease. The documents I have found to be within scope of the request include a copy of the lease to which the advice relates. On this basis, I do not consider the interest in disclosure of the KMB advice to outweigh the public interest in maintaining the legal advice privilege which applies to that document.



122. I therefore consider article 9(1)(b) of the AIE Regulations to provide grounds for refusal of the KMB advice.

Third Party Assignment

123. The Third Party Assignment was originally refused by Coillte on the basis that it was an agreement between two private parties to which Coillte was not a party.

124. In its submission to my Office, Coillte asserted that the Third Party Assignment contained commercially sensitive information and was provided to it solely for the purposes of completing the Coillte Assignment such that it was not in a position to disclose the Third Party Assignment as it was not a party to it. When asked by my Investigator to clarify its position, Coillte noted that it “has not claimed an exception under either article 8 or 9 of the AIE Regulations in respect of the third party assignment, the existence of which has already been disclosed to the requesters”. However, it is not sufficient for a public authority to respond to an AIE request by advising the requester that information within the scope of the request exists. Article 7(2) of the Regulations requires that the information be made available to the requester. Coillte’s position is therefore unusual in that on the one hand, it does not assert that the Regulations provide it with grounds for refusal but, on the other hand, refuses to provide the document. This is not permitted by the Regulations and Coillte should refrain from adopting such a course of action in the future.

125. However, I do accept that disclosure of the Third Party Assignment might impact the third parties referenced in that assignment. My Investigator contacted both third parties to advise them of the appeal and provide them with an opportunity to make submissions as to the potential disclosure of information which might impact them. No response was received from Mystique Developments Limited. While an initial response was received from Kilcooley Estates Limited, it did not provide submissions to this Office. In those circumstances, I do not consider that there is any basis on which I could or should conclude that the Third Party Assignment should be refused on the basis of any of the grounds of refusal contained in articles 8 and 9 of the Regulations.

The Additional In-Scope Documents

126. As noted above, as part of the investigation my Investigator provided Coillte with a list of documents she considered to be within scope and invited Coillte to make submissions both as to the correctness of her conclusion and as to whether any grounds for refusal provided for under the Regulations applied that would justify withholding a document considered to be within the scope of the appellants’ request. Coillte identified three documents as containing “commercially sensitive information that speaks to the financial and operational processes which inform the valuation and ultimate sales price of Coillte land”. Those three documents were:

- (i) The Third Party Assignment (dealt with above);
- (ii) Document “**B17 – Query re timber sale 16 8 12**”; and
- (iii) Document “**B19 – Re Areas Timber volumes and current market value**”



127. My Investigator wrote again to Coillte to seek confirmation as to whether it was seeking to rely on a ground for refusal under the AIE Regulations with respect to the above documents. She noted Coillte's reference to commercial sensitivity and noted that if Coillte was seeking to rely on article 9(1)(c) of the Regulations, it would need to identify the relevant national or community law which provided for the confidentiality on which it sought to rely and to identify the adverse effects which would be occasioned by release of the information. Coillte was also asked to set out the basis on which it considered the interest in refusal to outweigh the public interest in disclosure and to outline whether partial disclosure would be possible.

128. Coillte's response was as follows:

"Coillte seeks to rely on article 9(1)(c) on the basis that PSOC minutes refer to standard calculations by which Coillte approves minimum level of sales price for lands and the value that Coillte places on standing timber on its estate by which it could be extrapolated what the minimum price that Coillte would be willing to accept for sections of its estate. In a highly competitive forestry and land sales market Coillte has leveraged the geographical and general diversity of its estate to extract a premium from the sale of lands – A minimum guideline sales price ensures that Coillte extracts a fair value from all land sold, even lands that have no current economic value to Coillte – If the minimum value were to enter the public domain it would raise questions as to whether this information was influencing the value achieved for land sales. Coillte attempts to remit a dividend to its shareholders and any effect on the premium achieved for land sales can directly impact the funds available to government. Partial disclosure is not possible in this situation."

129. Coillte's position in this respect is not entirely clear. As outlined above, Coillte's earlier submissions to my Office indicated that it was not relying on any grounds for refusal provided by the Regulations in respect of the Third Party Assignment. In addition, the consideration referred to in the Third Party Assignment would not appear to me to have any more bearing on Coillte's minimum level of sales price for lands than the information already disclosed to the appellants in respect of the purchase price paid for the transfer of Coillte's leasehold interest in the lands at Kilcooley. Document B17 makes no reference to pricing and the portions of Document B19 which are within the scope of the appellants' request do not include information as to pricing. I also note Coillte's position as set out in its original decision of September 2020, which advised the appellants that "in light of the time that has passed since this transaction was executed and recent rulings it is clear that the public interest in this instance outweighs the obvious commercial sensitivity of [the documents provided]".

130. As outlined above, the CJEU in *Land Baden-Württemberg v DR*. made it clear that:

"...[A] public authority which adopts a decision refusing access to environmental information must set out the reasons why it considers that the disclosure of that information could specifically and actually undermine the interest protected by the exceptions relied upon. The risk of that interest being undermined must be reasonably foreseeable and not purely hypothetical".



131. I am not convinced that Coillte has established any reasonably foreseeable risk that disclosure of the Third Party Assignment, Document B17 or the information contained within Document B19 which I consider to be within the scope of the appellants' request (which excludes information on pricing), would specifically and actually adversely affect commercial or industrial confidentiality which is provided for by national or Community law. Therefore, I do not consider article 9(1)(c) to apply in the circumstances. Accordingly, I direct release of these records.

Decision

132. Having carried out a review under article 12(5) of the AIE Regulations, I vary Coillte's decision. I find that Coillte was justified in withholding the legal advice received from KMB Solicitors in relation to its legal obligations under the leasehold (the "KMB advice").

133. I direct that the information contained at the appendix to this decision be released to the appellants in addition to the information already provided to them.

Appeal to the High Court

134. A party to the appeal or any other person affected by this decision may appeal to the High Court on a point of law from the decision. Such an appeal must be initiated not later than two months after notice of the decision was given to the person bringing the appeal.

Ger Deering
Commissioner for Environmental Information

14 April 2022



Appendix: Records to be released

- (i) The Indenture of Assignment between the original purchaser Mystique Developments Limited and the ultimate purchaser Kilcooley Estates Limited of December 2013 (the “**Third Party Assignment**”).
- (ii) Document “**Folio 12697**” – the uncertified copy of the folio referred to at No 1 of the Documents Schedule to the 2011 contract.
- (iii) Document “**SSANTRY_MFP11111811050**” - a copy of the Original 1934 Lease referred to at No 2 of the Documents Schedule to the 2011 contract.
- (iv) Document “**AC#3990810.1 - Felling licence**”.
- (v) The “Second Landlord’s Letter to be Given on Completion of the Assignment” contained in the document entitled “**Scanned Contract**”.
- (vi) The **2009 Option Agreement** contained in a document entitled “**Rsf11922.1 Option Agreement – Coillte – Kilcooly 3-4-09**”.
- (vii) The **March 2010 Option Agreement** contained in a document entitled “**Rsf 12071.1 Coillte Deed of Variation**”.
- (viii) The **December 2010 Option Agreement** contained in a document entitled “**Scanned Deed of Variation of Option**”.
- (ix) The **Letter between solicitors for Coillte and the prospective purchaser dated 1 March 2010**.
- (x) Document “**B26 – Payment Schedule (Coillte payments (4303564_6))**”.
- (xi) The **email from Arthur Cox solicitors to Coillte dated 20 December 2013** entitled “**Email RE: Kilcooly**”.
- (xii) The copy of the Coillte Assignment attached to the “**Email RE: Kilcooly**” contained in the document “**_1220150747_001 (11165353_1)**”.
- (xiii) Document “**A1 – Internal approval of Regional Director and Director of Coillte Forest**”.
- (xiv) Document “**A5 – Letter to JM re Coillte estate designation**”.
- (xv) Document “**A7 – Map with legend**”.
- (xvi) Document “**A9 – Note from J Moore re replacement of Agreed Biodiversity Kilcooly**”.
- (xvii) Document “**B5 – Inventory data Kilcooly B Lacey**” which consists of an email from an employee of Coillte attaching a copy of an Inventory List entitled “**kilcooly inventory data**” and a map entitled “**Kilcooly map**”.
- (xviii) Document “**B6 – Kilcooly contract progress 12 1 11**”.
- (xix) Document “**B16 – Public consultation Kilcooly**”.
- (xx) Document “**B17 – Query re timber sale 16 8 12**”.
- (xxi) The portions of Document “**B19 – Re Areas Timber volumes and current market value**” which discuss the areas to be retained and harvested by Coillte to be relevant to Q(8)(c) of the appellants’ request. I do not direct disclosure of the information on pricing as I do not consider this to come within the scope of this appeal.