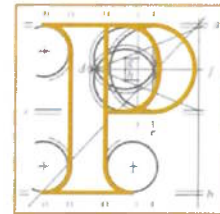


Our Case Number: ABP-318446-23



An
Bord
Pleanála

An Taisce
5 Foster Place
Dublin 2
D02 V0P9

Date: 31 January 2024

Re: Proposed construction of Coumnagappul Wind Farm consisting of 10 no. turbines and associated infrastructure.
In the townlands of Coumnagappul, Carrigbrack, Knockavanniamountain, Barricreemountain Upper and Glennaneanemountain, Skeehans, Lagg, Co. Waterford. (www.coumnagappulwindfarmSID.ie)

Dear Sir / Madam,

An Bord Pleanála has received your submission in relation to the above mentioned proposed development and will take it into consideration in its determination of the matter.

The Board will revert to you in due course in respect of this matter.

Please be advised that copies of all submissions / observations received in relation to the application will be made available for public inspection at the offices of the local authority and at the offices of An Bord Pleanála when they have been processed by the Board.

More detailed information in relation to strategic infrastructure development can be viewed on the Board's website: www.pleanala.ie.

If you have any queries in the meantime, please contact the undersigned officer of the Board or email sids@pleanala.ie quoting the above mentioned An Bord Pleanála reference number in any correspondence with the Board.

Yours faithfully,

PP HCM

Niamh Hickey
Executive Officer
Direct Line: 01-8737145

PA09

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64 Sráid Maoilbhríde
Baile Átha Cliath 1
D01 V902

64 Marlborough Street
Dublin 1
D01 V902

Niamh Hickey

From: Phoebe Duvall <Phoebe.Duvall@antaisce.org>
Sent: Monday 29 January 2024 16:33
To: SIDS
Subject: Ref. 318446
Attachments: 20240129-ABP-318446.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Hello,

Please find attached a submission from An Taisce in relation to Ref. 318446.

Kind regards,

Phoebe Duvall

Senior Planning and Environmental Policy Officer
An Taisce - The National Trust for Ireland
5 Foster Place, Dublin 2, Ireland
Phone: 01 454 1786
www.antaisce.org

Company Reg. No. 12469 | Charity Ref. No. CHY4741 | Charity Regulator No. 20006358
An Taisce is a membership-based charity
Join at www.antaisce.org/membership

Please note that I work Monday through Thursday.



An Taisce

The National Trust for Ireland

5 Foster Place

Dublin 2, Ireland

D02 V0P9

20240129-ABP-318446

64 Marlborough Street,
Rotunda,
Dublin 1,
D01 V902

Sent by email to: sids@pleanala.ie

29th January 2024

Ref: PA93.318446
App: Coamnagappul Wind Farm Limited; EMP Energy Limited
For: Proposed construction of Coumnagappul Wind Farm consisting of 10 no. turbines and associated infrastructure.
Site: In the townlands of Coumnagappul, Carrigbrack, Knockavanniamountain, Barricreemountain Upper and Glennaneanemountain, Skeehans, Lagg, Co. Waterford.

A Chara,

An Taisce would like to make the followings observations on the proposed Strategic Infrastructure Development outlined above.

Infringement on Wind Exclusion Zones

The proposed development is located within the Wind Exclusion Zones outlined in the Waterford City and County Development Plan 2022-2028. In section 3.3.2 'Strategic Site Selection' of EIAR Chapter 3: Site Selection Alternatives, the proposed development relies on an older iteration of the Waterford County Council Wind Energy Strategy from 2011-2017 when determining a site for the windfarm. It uses the categories of potential areas for development taken from the older strategy document, 'Strategic', 'Preferred' and 'Open for Consideration', in which the current development would fall under the 'Open to Consideration' category. It is acknowledged that the subject proposal was developed while the previous strategy was in force, however, the updated Renewable Energy Strategy 2016-2030 and its associated wind energy strategy clearly delineates the subject site as within an exclusion zone for development, and it is this strategy against which the application should be assessed. The placement of the turbine sites inside the current exclusion zone has not been adequately justified. An Taisce recommends that an alternative site outside of any current exclusion zone be selected.

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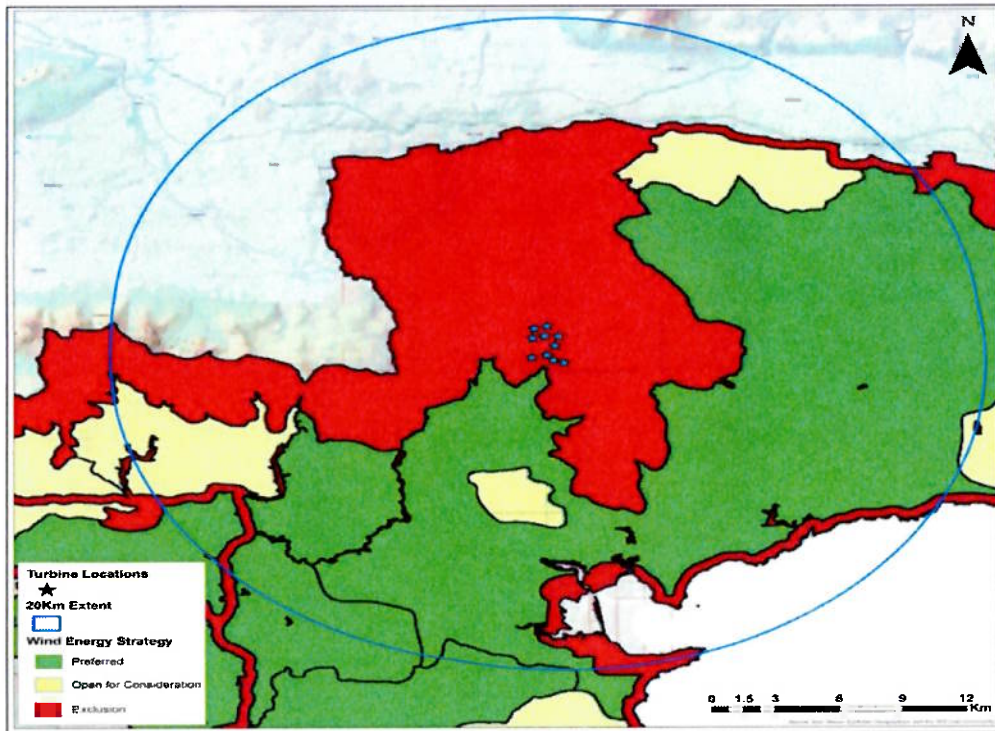
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Registered Office: Tailors' Hall, Back Lane, Dublin, D08 X2A3, Ireland | www.antaisce.org | +353 1 707 7076 | info@antaisce.org

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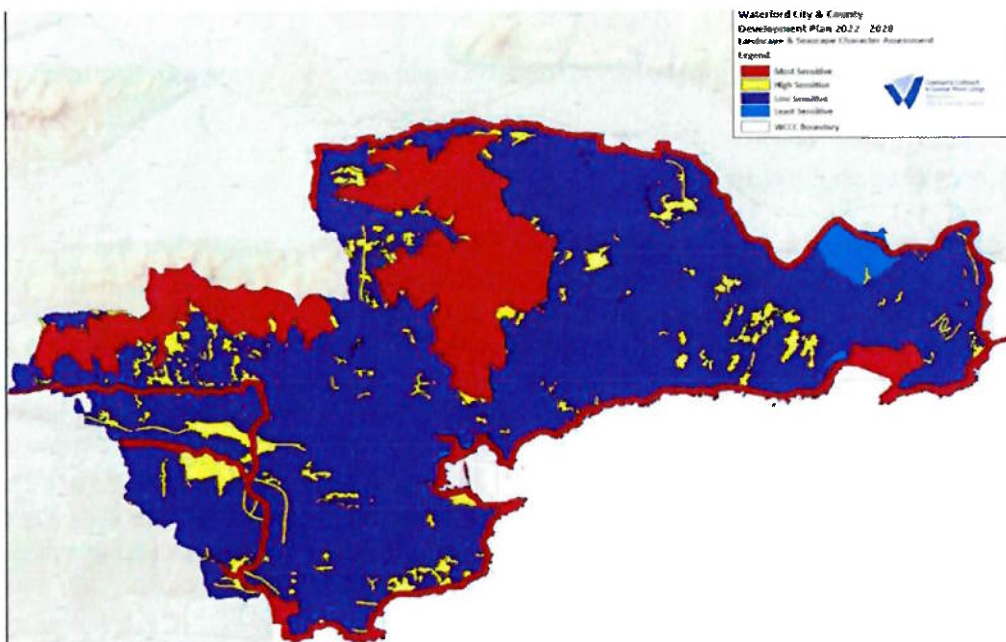
Directors: Stuart McCaul (Chair),

Trish O'Connell (Vice Chair), John Conroy (Treasurer), Olivia Rogers, Rónán O'Brien, Finbarr Murray



EIAR Chapter 16: Landscape and Visual Impact

Furthermore, according to the Waterford Landscape and Seascape Character Assessment, the clearly delineated wind energy exclusion zone is also a sensitive landscape zone where a development could easily change the character of the landscape over a wide area. This proposed development lies within a 'Most Sensitive' zone, where the Comeragh mountains are listed as 'Skylines of Upland Areas'. Therefore, development permission requires that the development must not impinge significantly on the surrounding character, integrity and uniformity of the landscape. These concerns must be considered by the planning authority.



Waterford City and County Development Plan 2022-2028: Landscape and Seascape Character Assessment

Proximity to Watercourses

We would highlight that the proposed development lies in close proximity to a network of waterbodies, namely tributaries of the River Colligan, which have been designated as "good" status, and tributaries of the River Nier designated as "moderate" and "good" status, respectively and "at risk" of not meeting WFD requirements. The WFD obligation to achieve and maintain "good" quality water status by 2027 needs to be considered when assessing this proposed development. The proposal should therefore be assessed against **Article 4** of the WFD to determine whether the project may cause a deterioration of the status of a surface or ground water body or if it may jeopardise the attainment of good surface or ground water status or of good ecological potential and good surface or ground water chemical status. To safeguard these objectives, the proposed construction of a river crossing as part of internal turbine access roads and the grid connection needs to be carefully assessed to ensure that sediment runoff and disturbance to the rivers does not occur during the construction and operational phases.

Development in Areas of Upland Peat Soils

The proposed infrastructure will largely be located on blanket peat soils, and the combination of sensitive peatland and the placement of turbines on slopes should be assessed carefully. We would highlight the incident which occurred in 2020 at the 19 turbine Meenbog site in County Donegal, where a significant peatslide occurred and caused damage to nearby rivers.

Section 11.5.2.3 of EIAR Chapter 11: Soils, Geology and Hydrogeology asserts that a *"peat stability analysis is not warranted"*, due to the blanket peat deposits across the site being shallow and the fact that there was *"no evidence of recent or historic landslides."* EIAR Section 11.3.11.3 Peat Stability Assessment states that:

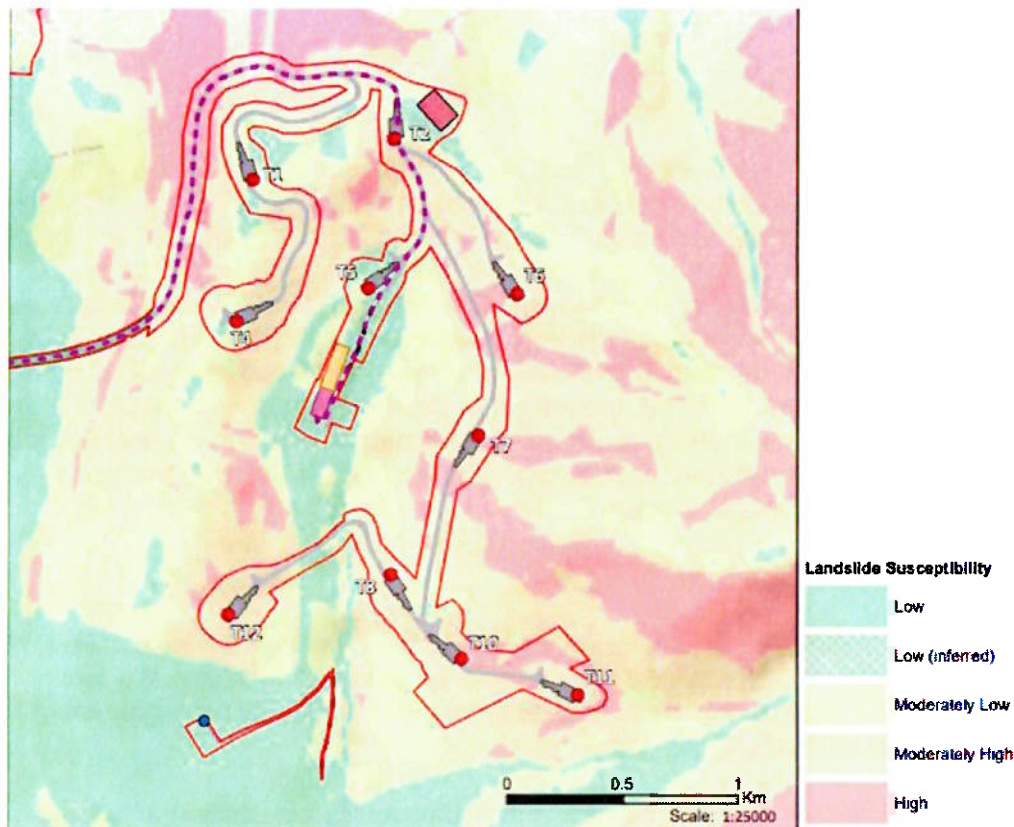
"Results from the survey indicate that peat depths were generally very thin and characteristic of a highly organic Topsoil with a Peaty appearance. Depths ranged from 0.05 to 0.6m with mean and median values of 0.12 and 0.10m respectively.

The deepest deposit (0.60m) was encountered in the banks of a stream at ITM coordinates E 624238, N 608607 and is immediately flanked by shallow deposits to the east and west of 0.25 and 0.0m respectively. The survey results show this to be an outlier and not representative of peat depths across the Site. It will therefore be discounted. The next deepest deposit encountered was 0.40m.

As such and in accordance with the Scottish Executive Best Practice Guide for Proposed Electricity Generation Developments (2017), as peat deposits at the proposed turbine locations were <0.5m in depth a peat stability assessment was not warranted."

While most of the sample sites indicated depths of less than 0.5m, some areas of deeper peat were indeed found and risks cannot be excluded. Notwithstanding EIAR Section 11.6.2.5 which mentions that *"a detailed assessment of the stability of conditions at proposed infrastructure locations will be undertaken by a suitably qualified and experienced geotechnical engineer prior to the commencement of all excavations to ensure these activities do not result in or contribute to slope failure"*, we recommend that a peat stability assessment be sought prior to any grant of permission, taking into account the upland sloped nature of the site and the determination of the impact on soils and geology receptors as being *"of moderate significance"*.

We would also highlight Figure 11-3 Landslide Susceptibility (below) which indicated that the majority of the proposed turbines are located in areas with a 'moderately high' to 'high' potential for landslides. This underscores the need for the soil stability and the landslide risks to be fully assessed.



ETAR Figure 11-3 Landslide Susceptibility

We also note the proposed borrow pit near turbine 2, which will facilitate the extraction of 239,580m³ of rock, much of which will be used to construct the internal surface access tracks to the turbine sites. The potential ecological impacts of intensive extraction should be fully assessed by the Board.

Habitats Directive Legal Obligations

We note that the subject site is in close proximity to the Comeragh Mountains SAC (site code: 001952). It is now well established in law that approval can only be granted for plans and projects when it has been established beyond all reasonable scientific doubt that the subject proposal will not adversely impact any Natura 2000 sites.

In Case C-258/11, *Sweetman & Others v An Bord Pleanála & Others*, it was held that the provisions of Articles 6(2)–(4) of the Habitats Directive must be interpreted together *“as a coherent whole in the light of the conservation objectives pursued by the directive”* and that they impose a series of specific obligations necessary to achieve and maintain favourable conservation status. A plan or project will negatively impact upon a site if it prevented the *“lasting preservation of the constitutive characteristics”* of the site for which it was designated, with reference to the site’s conservation objectives. Significantly it was determined that *“authorisation for a plan or projectmay therefore be given only on condition that the competent authoritiesare certain that the plan or project will not have lasting adverse effects on the integrity of the site. That is so where **no reasonable scientific doubt remains** as to the absence of such effects”* [emphasis added].

The competent authority must therefore refuse authorisation for any plans or projects where there is uncertainty as to whether the plan or project will have adverse effects on the integrity of the site. It was also held in paragraph 44 that:

*“So far as concerns the assessment carried out under Article 6(3) of the Habitats Directive, it should be pointed out that it **cannot have lacunae** and **must contain complete, precise and definitive findings** and conclusions capable of removing all reasonable scientific doubt as to the effects of the*

works proposed on the protected site concerned (see, to this effect, Case C 404/09 Commission v Spain, paragraph 100 and the case-law cited)..." [emphasis added].

In *Kelly v An Bord Pleanála & Others*, [2013 No 802 J.R.] with reference to *Commission v Spain* c-404/09, the High Court held in paragraph 36 that the competent authority must carry out an Appropriate Assessment for a plan or project in light of the best scientific knowledge in the field. It was also held that the competent authority must lay out the rational and reasoning which was used to arrive at the determination.

The case repeated the conclusion of the CJEU at paragraph 44 in the aforementioned Case C-258/11, namely that an AA *"cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt."* Consequently, it was held that an AA must include *"examination, analysis, evaluation, findings, conclusions and a final determination."*

The Kelly Judgement has provided a very helpful clarification of the requirements of an AA and in particular in paragraph 40, a summary of what must be delivered by the process in order to be lawfully conducted:

"(i) Must identify, in the light of the best scientific knowledge in the field, all aspects of the development project which can, by itself or in combination with other plans or projects, affect the European site in the light of its conservation objectives. This clearly requires both examination and analysis.

(ii) Must contain complete, precise and definitive findings and conclusions and may not have lacunae or gaps. The requirement for precise and definitive findings and conclusions appears to require analysis, evaluation and decisions. Further, the reference to findings and conclusions in a scientific context requires both findings following analysis and conclusions following an evaluation each in the light of the best scientific knowledge in the field.

(iii) May only include a determination that the proposed development will not adversely affect the integrity of any relevant European site where upon the basis of complete, precise and definitive findings and conclusions made the Board decides that no reasonable scientific doubt remains as to the absence of the identified potential effects."

If uncertainty exists regarding the potential impact of any proposed development full account should be taken of the precautionary principle, and the development should be refused.

Please acknowledge our submission and advise us of any decision made.

Is mise le meas,

Seán O'Callaghan
Planning Officer
An Taisce – The National Trust for Ireland

Phoebe Duvall
Senior Planning and Environmental Policy Officer
An Taisce – The National Trust for Ireland