

FAO: Strategic Infrastructure Division
An Coimisiún Pleanála
64 Marlborough Street
Dublin 1, D01 V902

By email to: sids@pleanala.ie

11th August 2026

Re: An Coimisiún Pleanála Ref. 324420-26 (formerly ABP-312434-22) – Proposed Dyrick Hill Wind Farm, Co. Waterford: Observations on the remitted application following the Order of the High Court (Record No. H.JR.2024.0001470)

Dear Sir/Madam

We refer to the above-mentioned SID wind energy application, which has been remitted to An Coimisiún Pleanála (the “Commission”) for further consideration and determination in accordance with law following the Order of the High Court (Humphreys J.) perfected on 7th May 2026. That Order, made by consent, quashed the Commission’s decision refusing permission (Ref. ABP-312434-22) and recorded both that no error of law was admitted by the Commission and that the applicant withdrew Core Ground 4 of its challenge.

FuturEnergy Ireland (“FEI”) made observations on this application, in its capacity as the developer of the adjoining Scart Mountain Wind Farm, by submission dated 2 August 2023 (the “FEI Submission”). A copy of the FEI Submission is enclosed. FEI notes that the nature and extent of the proposed development remain unchanged and **confirms that it maintains in full** the observations set out in that submission and makes the following focused observations in light of the remittal.

1. The Principle of Development, Material Contravention and the Commission’s Obligations under Section 15 of the *Climate Action and Low Carbon Development Act 2015* (as amended)

At the outset, FEI wishes to be clear that it **supports the principle** of wind energy development on lands in this general area. As a developer of renewable energy infrastructure, FEI strongly supports the timely, climate-consistent determination of wind energy applications, and it does not seek to prevent the development of this site in principle.

FEI further considers that, when the operative statutory Development Plan 2022–2028 is read as a *whole*, appropriately sited wind energy development on lands designated as “Exclusion” areas at this general location **need not be regarded as a material contravention** of the Development Plan. Properly configured, such development can be reconciled with the objectives of the Plan rather than set against them. This is particularly pertinent having regard to the new statutory definition of “material contravention” in the 2026 amendment Act.

To the extent that the Commission might consider the question of material contravention to arise, FEI fully recognises the Commission’s power to grant permission under section 37G (6) of the Planning and Development Act 2000 (as amended) (“PDA 2000”), together with its obligations under Section 15 of the *Climate Action and Low Carbon Development Act 2015* (as amended) (“CALCDA”), as clarified by the Supreme Court in *Coolglass Wind Farm Limited v An Coimisiún Pleanála* [2026] IESC 5. FEI does not seek to constrain the Commission in the proper exercise of that discretion.

We would respectfully observe only that, as the Supreme Court confirmed in *Coolglass*, the Section 15 obligation, while substantive and enforceable, is expressly qualified by the words “in so far as practicable” and must be discharged consistently with the Commission’s other

statutory obligations, including those arising under the Habitats and Birds Directives. The route that best honours both the climate objectives of the Plan and its environmental objectives is a layout that respects the setback and environmental requirements addressed below.

2. FEI's Primary Request: Compliance with the WEDG Set-back Distances (Turbines T09–T13)

FEI's **primary request** is that any permission granted requires the development to respect the set-back distances prescribed by the Wind Energy Development Guidelines 2006 ("WEDGs"). Section 5.13 of the WEDGs, as clarified by Departmental Circular Letter PD 6/06, requires a set-back of two rotor diameters (2RD) - in this case 2 x 162m from neighbouring property boundaries in order to protect the wind energy development potential of adjoining lands.

The proposed Turbines T09–T13, on the western boundary of the application site, do not comply with the 2RD requirement in respect of lands over which FEI enjoys exclusive rights and which are the subject of its active Scart Mountain Wind Farm project¹. This issue was also noted in an observation submitted by Coillte. FEI has maintained the required 2RD boundary setback in its proposed layout. The intent of the 2006 WEDGs is to preserve the development potential of neighbouring property for wind farm development. It is of significant concern that the Proposed Wind Farm fails to have regard to these Ministerial Guidelines. This is an unnecessary and wholly avoidable circumstance and is a "*proper planning and sustainable development*" matter to which the Commission must have regard under section 37G of PDA 2000.

In practical terms, achieving compliance with the WEDG set-back distances requires the **removal or relocation of Turbines T09–T13 to respect the 2RD requirement**. FEI respectfully requests that the Commission make this the subject of a condition should it be minded to grant permission.

Importantly, this single measure would also resolve one of FEI's principal environmental concerns. As set out in Section 3 below, the permanent loss of Annex I dry heath habitat is attributable in significant part to Turbines T10–T13. The removal or relocation of these turbines to achieve set-back compliance would **therefore also address the associated loss of Annex I dry heath at those turbine locations** — resolving both the wind-take and the principal habitat concerns together.

3. FEI's Submission on Ref. 312434-22

Subject to the primary setback issue above, FEI also respectfully asks the Commission to give full consideration to the residual matters raised in its enclosed Submission on the original file.

4. Fair Procedures — Opportunity to Comment on Any New Information

Given that the application has been remitted for fresh consideration, and in order that the contents of the file remain current and a robust decision can be reached, FEI respectfully requests that, in the interests of **transparency, fair procedures and natural justice**, it be notified of, and afforded a reasonable opportunity to review and comment upon, any new or further information, revised particulars, plans or drawings submitted in respect of the application before the Commission proceeds to determine the matter. This is of particular importance in circumstances where a revised turbine layout may be submitted in response to the set-back matter raised above.

¹ Live Wind Farm application (Ref 321522) and live Grid Connection application (Ref 322485).

FEI appreciates the opportunity to make these observations and would welcome the opportunity to provide any further information the Commission may require. Should you have any queries, please do not hesitate to contact us.

Yours faithfully,

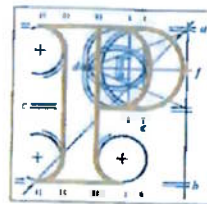
Sent by email – bears no signature

Sinéad O'Malley

**Development Director
FuturEnergy Ireland**

Enc. FEI Submission dated 2 August 2023 (ABP-312434-22)

Our Case Number: ABP-317265-23



**An
Bord
Pleanála**

FuturEnergy Ireland
27/28 Herbert Place
Dublin 2
D02 DC97

Date: 03 August 2023

Re: Construction of Dyrick Hill Windfarm comprising 12 no. wind turbines and related works.
Townlands of Ballymacmague North, Ballymacmague South, Ballynaguilkee Lower, Ballynaguilkee Upper, Broemountain, Carrigaun (Mansfield) and others, Co. Waterford.

Dear Sir / Madam,

An Bord Pleanála has received your recent submission in relation to the above mentioned proposed development and will take it into consideration in its determination of the matter. Please accept this letter as a receipt for the fee of €50 that you have paid.

The Board will revert to you in due course with regard to the 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,


Ashling Doherty
Executive Officer
Direct Line: 01-8737160

PA04

Tell
Glao Áitiúil
Facs
Láithreán Gréasáin
Ríomhphost

Tel
LoCall
Fax
Website
Email

(01) 858 8100
1800 275 175
(01) 872 2684
www.pleanala.ie
bord@pleanala.ie

64 Sráid Maoilbhríde
Baile Átha Cliath 1
D01 V902

64 Marlborough Street
Dublin 1
D01 V902

An Bord Pleanála Ref: No. ABP-312434-22: Dyrick Hill Wind Farm

FuturEnergy Ireland
27/28 Herbert Place
Dublin 2
D02 DC97

2 August 2023

An Bord Pleanála
34 Marlborough Street
Dublin
D01 V902

RE: Proposed Dyrick Hill Wind Farm, County Waterford (Ref. No. ABP-312434-22): A Strategic Infrastructure Windfarm Development consisting of 12 wind turbine generators, 110kv substation, connection to the national electricity grid and associated and ancillary works at Ballynaguilkee Upper, Broemountain, Corradoon, Dyrick, Lickoran, Lickoranmountain, Lisleagh, Lisleaghmountain, Lyrattin and Scartmountain, County Waterford.

Dear Sir/Madam,

I refer to the above-mentioned Strategic Infrastructure Development (SID) planning application and submit the following observations for your consideration. We are making this submission in our capacity as the developer of an adjoining wind farm proposition¹, in respect of which further details are below.

1 Set-back from adjacent lands

The Proposed Dyrick Hill Wind Farm (the Proposed Wind Farm) is located adjacent to lands owned by Coillte Teoranta (Coillte) and on which FuturEnergy Ireland Development DAC (FEI) enjoys land rights and is in the process of developing for a wind farm. Coillte is a 50% shareholder in FEI.

Section 5.13 of the Wind Energy Development Guidelines, 2006 (the 2006 WEDGS) - statutory guidelines made by the Minister of the Environment, Heritage and Local Government (DEHLG) pursuant to Section 28 of the Planning and Development Act - addresses the question of 'wind take'; being the adverse effect of a wind farm development on the development potential of neighbouring lands for wind farm use:

"In general, to ensure optimal performance and to account for turbulence and wake effects, the minimum distances between wind turbines will generally be three times the rotor diameter (=3d) in the crosswind direction and seven times the rotor diameter (=7d) in the prevailing downwind

¹ ABP-315920-23

direction. Bearing in mind the requirements for optimal performance, a distance of not less than two rotor blades from adjoining property boundaries will generally be acceptable, unless by written agreement of adjoining landowners to a lesser distance. However, where permission for wind energy development has been granted on an adjacent site, the principle of the minimum separation distances between turbines in crosswind and downwind directions indicated above should be respected."

The meaning of "...a distance of not less than two rotor blades..." was subsequently clarified by the (then) Department of the Environment, Heritage and Local Government in "Circular Letter PD 6/06", which is attached for ease of reference. The Departmental Circular confirms that the 2006 WEDGS require a set-back distance of two rotor diameters (2RD) from neighbouring properties.

The 2019 Draft WEDGS (published by the Department of Housing, Planning and Local Government) remain in draft form but have retained the language on wind take used in the 2006 WEDGS.

We would note that the intention of this set-back provision of the Ministerial guidelines is to address issues in relation to potential wind take and to protect the potential for wind farm development on adjoining property. As such, where turbines are located less than two rotor diameters from neighbouring properties, but there is no practical development potential on the neighbouring property, we would accept that a breach of this 2RD guidance limit could be acceptable. We therefore have no issue with the siting of the Proposed Wind Farm's T8 and T6 where there are minor 2RD exceedances in relation to Coillte owned lands, on the basis that the scale of these lands would be insufficient to enable development of turbines. However, the 5 No. turbines on the western boundary of the Proposed Wind Farm site (T09 – T13) are all exceeding the 2RD requirement and are adjoining lands which FEI currently enjoys exclusive land rights to, and that are the subject of our active Scart Mountain Wind Farm development project (Refer Figure 1 overleaf).

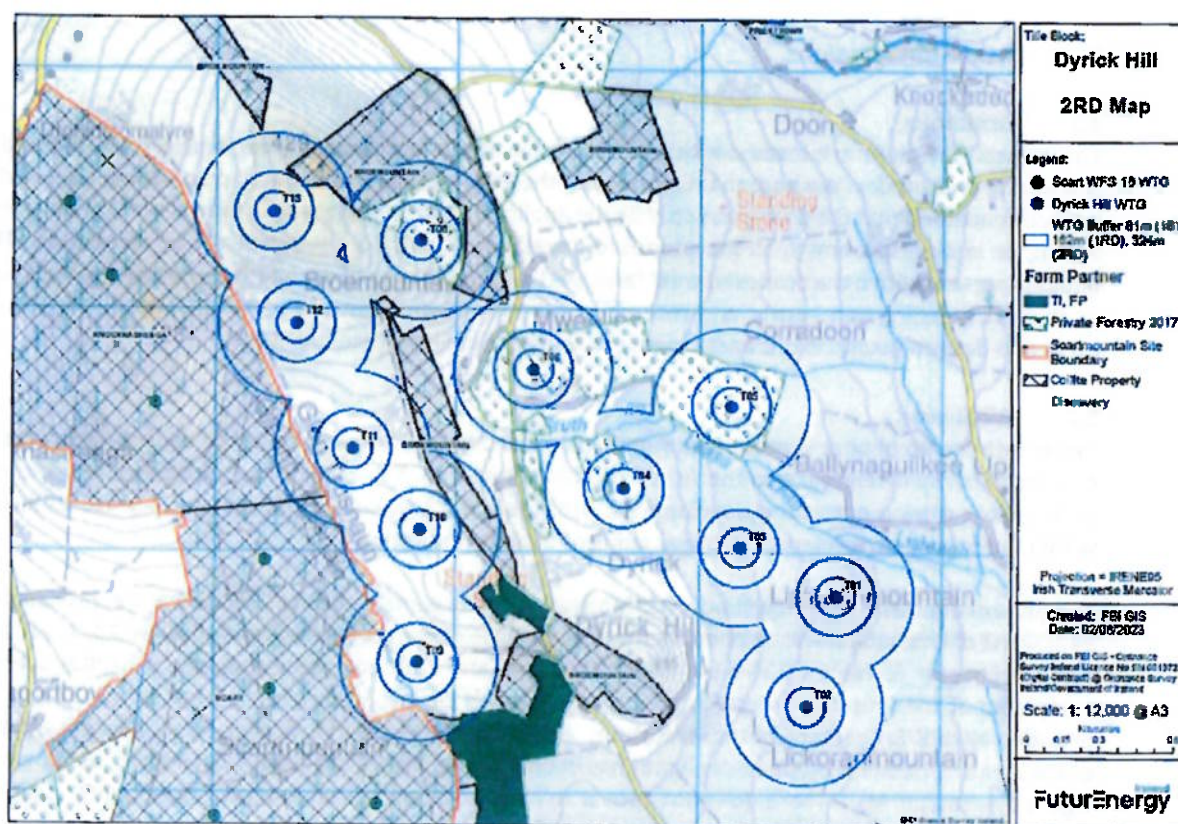


Figure 1: Scart Mountain Wind Farm Site showing 2RD of Dyrick Hill Wind Farm site.

FEI's Scart Mountain Wind Farm project involves a significant financial investment from the shareholders of FuturEnergy Ireland. This investment has been underpinned by an assumption that any potential developments on neighboring lands would be required to follow the Ministerial Guidelines, given the significant wind energy development potential of the Scart Mountain Wind Farm Site. The FEI project has been in design development for several years (originally by Coillte and subsequently since its formation in 2021, by FEI) and was publicly launched in October 2022. The SID pre-application process has been initiated with An Bord Pleanála and a planning application is scheduled for late 2023.

The intent of the 2006 WEDGS is to preserve the development potential of neighbouring property for wind farm development. It is of significant concern that the Proposed Wind Farm fails to have regard to these Ministerial Guidelines.

An Bord Pleanála must have regard to the 2006 WEDGS, as required under Section 37G of the Planning and Development Act, and in circumstances where there is obvious wind energy development potential as is the case on our adjoining lands, Section 5.13 is clearly relevant to its consideration of the Proposed Wind Farm application. We see no objective, reasonable justification for not requiring strict compliance with the set-back prescribed in the 2006 WEDGS.

2 Other observations

2.1 Ornithology

The Proposed Wind Farm is located within an area known to support breeding hen harrier both historically and during present day. We note that Chapter 7 of the EIAR provides some detail on breeding hen harrier but are concerned that the data presented by the applicant is not complete as some known breeding sites within, or in close proximity, to the proposed development site do not appear to be referenced. The habitats present within the proposed wind farm, particularly the area of dry heath, are considered suitable to support breeding hen harrier and records held by NPWS demonstrate that hen harrier successfully bred, and fledged young, in this area for several years including as recently as 2019.

2.2 Biodiversity

Annex I dry heath habitat is present within the Proposed Wind Farm site as stated by the applicant and evidenced by their reference to the Article 17 dataset held by National Parks and Wildlife Service, and survey work carried out at the development site. Table 6.1.1 evaluates the Annex I dry heath habitat within the proposed development site as being of national importance.

The Annex I dry heath habitat will be directly affected by the wind farm infrastructure and approximately 34,000 m² of this habitat will be permanently lost because of the access track and turbines 10, 11, 12 and 13 (See Chapter 6, Table 6.12 of the EIAR). This estimate is based on the findings of habitat surveys completed at the Proposed Wind Farm by the applicant's consultant and not on the Article 17 dataset provided by NPWS. Chapter 6 of the EIAR states that an accurate area of dry heath habitat, representative of the Annex 1 habitat European dry heath has been mapped by the applicant's consultant, as shown on Figure 6.8 Habitat Map. There does not appear to have been any documented consultation or dialogue with NPWS on the extent of dry heath within the proposed development site.

The direct effect of habitat loss due to the Proposed Wind Farm is identified as a significant negative effect at the national/international scale in Chapter 6 of the EIAR. It is further described as *"This extent of loss of an example of Annex 1 habitat that forms part of the national resource of dry heath habitat is representative of a significant, permanent negative impact at the local scale."* [emphasis added]

The proposed approach to compensate the loss of this habitat is through what Chapter 6 describes, under the heading of "offsetting and habitat restoration". This section of the chapter refers the reader to the Habitat Management Plan as follows *"Habitat Management Plan is provided as Appendix 6.4 and all measures set out in this plan will be implemented as part of the Development."* It is not clear following a review of Appendix 6.4 how such measures will be achieved as much of the text appears non-specific to the conditions of the habitats in question and are rather generic in nature. There appears to be a lack of clarity around when the proposed measures will be implemented and when they are likely to achieve their stated aims. It is also not clear what the applicant predicts in terms of residual significant effects as Table 6.15 states that *"The long-term residual impact will be dependent upon achieving the targets set out in the Habitat Management Plan. The successful achievement of the targets set out in this Plan will have the potential to offset the loss of dry heath to the footprint of the proposed wind farm through the provision of a net increase the area of dry heath habitats occurring within the proposed development boundary. The achievement of this aim of the HMP will also have the potential to contribute towards an increase of the favourable reference area of this habitat, with the potential for positive, long-term effects for this habitat"*

at the international scale."

Given the evaluation of the habitat as being of national importance, along with the predicted severity of the effect of the proposed development on Annex I dry heath habitat, it seems likely that long term significant residual effects will remain due to the loss of the dry heath habitat and lack of clarity and detail around monitoring the efficacy of the proposed habitat specific measures for restoration and enhancement. In addition, while timelines for monitoring surveys are proposed there is no timeline provided for implementation of the proposed measures nor are there any milestones or points in time provided for achieving the stated objectives of restoration and enhancement.

2.3 Sensitive Receptor

The Proposed Wind Farm has an occupied residential property within 360m of a proposed turbine (Deed of Covenant Appendix 2.3).

The 2006 WEDGS in Section 5.6, Noise, states that "[i]n general, noise is unlikely to be a significant problem where the distance from the nearest turbine to any noise sensitive property is more than 500 metres". Conversely, a property within 500m could present a significant potential noise nuisance risk to the occupants.

The Deed of Covenant signed by the owner of the aforementioned residential property commits to securing vacant possession of the property from a current tenant, who has had occupancy since 2012. There is also a current planning application for change of use of the property, which has been refused by Waterford County Council (File Reference 221073) and is pending an appeal with An Bord Pleanála (Case 316060).

The current occupation of the residential property and the legal rights of any tenant, including their right to renew their tenancy, raises a question as to whether this property can be confidently excluded as a sensitive receptor, under best practice guidance.

2.4 Availability of Information

Chapter 6 Biodiversity was not available on the Dyrick Hill website <https://dyrickhillwindfarmplanning.ie> until the week commencing 24 July 2023. The chapter is now available on the site (last accessed 28 July 2023).

I trust the above is of assistance to An Bord Pleanála. For any queries, please don't hesitate to contact me.

Yours sincerely,

Paul Blount

Portfolio Director

FuturEnergy Ireland

Cc: Peter Lynch, CEO, FuturEnergy Ireland

9715795.2

Circular Letter PD 6/06

6 September 2006

**Wind Energy Development
Guidelines for Planning Authorities, June 2006**

A chara,

I refer to the above Guidelines following enquiries made to the Planning Section of the Department of the Environment, Heritage and Local Government seeking clarification of the following issue regarding Windtake, and the definition of the distance of "two rotor blades" in the context of the minimum recommended distance between wind energy turbine generators and the boundary of adjoining properties.

In Chapter 2, Section 2.1 of the Guidelines describes the various elements of a wind turbine. The description of blades reads as follows:

"The blades, which capture and are set in motion by the wind, are most commonly made of glass reinforced plastic or wood epoxy but can be made of aluminium or steel. Modern turbines typically have three blades. These may vary in rotor diameter from 35 metres upwards."

The implication of the final sentence is that rotor blades are to be measured according to rotor diameter, and that "a distance of not less than two rotor blades" is therefore equivalent to two rotor diameters. This also applies to Chapter 5 (Environmental Implications), Section 5.13 and Chapter 7 (Planning Conditions), Section 7.17.

If there are any further queries, or if further clarification in relation to the Guidelines is required, please do not hesitate to contact the following Planning Section personnel:

Fergus Doyle: Tel: 01-8882823; E-mail: fergus_doyle@environ.ie
Austin O'Dowd: Tel: 01-8882821; E-mail: austin.o'dowd@environ.ie

Is mise le meas,


Assistant Principal Officer,
Planning Section

To City and County Managers, Town Clerks, Directors of Service (Planning).