

Strategic Infrastructure Development Section,
An Coimisiún Pleanála,
64 Marlborough Street,
Dublin,
D01 V902

10-August-2026

Dear Sir / Madam,

Submission to An Coimisiún Pleanála by the **Knockmealdown Protection Group (KPG)** in Response to the Strategic Infrastructure Development Application under section 37E of the Planning and Development Act 2000, as amended, for the construction of Dyrick Hill Wind Farm Ltd comprising of 12 Turbines (up to 185M overall tip height), turbine hardstands, and foundations, site access and haul route works, a permanent meteorological mast, a 110k substation, internal cabling, a grid connection route of approximately 16km and associated works, in the townlands of Ballymacmague North, Ballymacmague South, Ballynaguilkee Lower, Ballynaguilkee Upper, Broemountain, Carrigaun (Mansfield), and other named Townlands in County Waterford

An Coimisiún Pleanála Reference **PA93.324420**

Procedural History:

Original ACP Reference: ABP-317265-23 – The Coimisiún **REFUSED** permission on 3 October 2024. That decision was subsequently quashed by Order of the High Court and the case was remitted back to ACP for fresh determination under the following case number: Current Reference following reactivation: PA93.324420, lodged 7 July 2026, due to be decided by 9 November 2026. This submission from the Knockmealdown Protection Group is made in the context of that remittal as permitted by Section 130 of the Planning and Development Act, 2000, as amended.

The **Knockmealdown Protection Group (KPG)** is a locally-based association, representing the interests of residents, farmers, small business owners and other persons living in and around the area where the proposed wind turbines would be located, if permitted.

The principal objectives of the **Knockmealdown Protection Group** are:

1. To protect and preserve the natural environment and cultural heritage of the Knockmealdown Mountains and the adjacent regions in Counties Waterford, Tipperary and Cork;
2. To actively oppose the development of industrial or other projects which may cause damage to the environment, or which may alter the natural character of the Knockmealdown Mountains;
3. To communicate as widely as possible all relevant information about the natural beauty and uniqueness of the Knockmealdown mountain range, and the area's vulnerability to industrial-scale wind farming;

The Honorary Secretary of the Knockmealdown Protection Group (KPG) is **Ms. Geraldine Lacey, Coolnacreena, Cappoquin, Co. Waterford, P51 C6F3**

The Honorary Secretary's address may be used by An Coimisiún Pleanála to contact the Knockmealdown Protection Group.

Following the establishment of the Group in March 2023, members examined carefully the planning application and the applicant's supporting documentation, from which they concluded that the proposed development, if permitted, would result in a number of adverse consequences, including damage to the health of residents living close to the proposed wind farm site. Landscape quality, natural heritage, wildlife and property values would also be adversely affected; and the members of the KPG also discovered a significant number of errors and inconsistencies in the applicant's documentation (Refer to original submission – ACP 312765 for more details).

Site Location and Description

The Proposed wind farm site is located in a rural area of considerable natural beauty, in which the principal land types and uses are farmland, forestry and upland heath, with some areas of blanket bog. Forestry and agricultural land uses, including dairy and sheep farming are the predominant land uses within the area in which the proposed wind farm would be located, if permitted.

The site is located approximately 6.0km north-east of the town of Cappoquin (the nearest town to the site) between 12.9 and 13.3 km north-west of the town of Dungarvan and north-west corner of the site is adjacent to the County Waterford Boundary with Tipperary. The proposed site is located at the south-eastern extent of the Knockmealdown Mountains and is surrounded by the three main peaks of Knocknasheehe (428m) west of the site boundary, Broemountain (429m) in the northern extent of the site and Dyrick Hill (286m) within the southern central

portion of the site. The proposed development site is 463ha in area with the wind farm itself extending to 161.88ha. The majority of the lands are in third party ownership, with a part of the land identified as being in commonage (shared land). The commonage land comprises much of the open heath habitat land area to the west of the site.

The proposed site is located at the south-eastern extent of the Knockmealdown Mountains. The Farnane River is a tributary of the Finisk River, it rises near the north-western extent of the site and flows along the western boundary. The Lisleagh Stream, which is a tributary of the Finisk River, rises in the central portion of the site and flows in a south-easterly direction until it merges with the Finisk River north of the townland of Woodhouse. The Aughkilladoon Stream, another tributary of the Finisk River, rises to the south-eastern extent of the site and flows in a south-easterly direction until it merges with the Finisk River, east of the townland of Woodhouse.

Housing density in the area is considered to be “Medium” but there are 112 dwellings within a 2km radius of the proposed turbines, predominantly comprising one-off houses and farm holding.

The site includes approximately 66.7 ha of commercial forestry; and in order to facilitate turbine construction and to provide access roads, the application states that 8.1 ha of forestry would need to be clear-felled (EIAR Chapter 2, section 2.3.2)

The location is extremely unsuitable for the proposed wind farm, for reasons which we will address in our submission and which have previously been addressed in detailed submissions for **ACP 312765** as well.

Summary of the Coimisiún's (ACP) Original Reason for Refusal

The Coimisiún's Order of 3rd October 2024 refused permission under section 37G of the Planning and development Act 2000, as amended on THREE substantive grounds, summarized below.

1. Reason 1 – Material Contravention of the Development Plan wind energy zoning (Policy Objective UTL 13)

The site lies within an area designated as an “Exclusion Zone” for wind energy development on the Renewable Energy Strategy (RES) Wind Energy Strategy Maps forming part of the Waterford City and County Development Plan. The Coimisiún found that, notwithstanding broad policy support for wind energy generally, the specific spatial policy of the Development Plan excluded the site, such that the proposed would materially contravene policy Objective UTL 13. The Coimisiún further recorded that no evidence has been put before it to justify departing from the Development Plan in this instance and concluded that refusal would not comprise the wider ability to deliver the wind energy elsewhere in County Waterford in a manner consistent with the Development Plan and with National policy including the Climate Action Plan.

2. Reason 2 - Landscape and visual impact (Policy Objective L02)

The site lies within and adjacent to an upland area identified as of the highest landscape sensitivity in the Landscape and Seascape Character Assessment informing the Development Plan. ACP considered that the scale and layout of the proposed turbines would materially interfere with the character, integrity and distinctive qualities of the landscape setting, contrary to Policy Objective L02, which seek to protect landscape character and scenic value, particularly in upland areas and to avoid unduly visually obtrusive development.

3. Reason 3 - Biodiversity and nature conservation impact

The Coimisiún found that the development would result in the direct loss of some 3.5 hectares of dry heath (habitat code 4030), an annex 1 habitat under the EU Habitats Directive, forming part of a wider habitat complex used by Annex 1 bird species including hen harrier and golden plover. Having regard to the ecological value of the habitat, the adequacy of survey data and collision and disturbance risk to protected bird species, the Coimisiún was not satisfied that the development would avoid a significant loss of biodiversity. The proposal was found contrary to Development Plan Objective ENV01, BD01 and related biodiversity objectives and contrary to Article 4(4) of the Birds Directive (2009/147/EC), which prohibits deterioration of protected bird species.

Reason 1 – Material Contravention of the Development Plan wind energy zoning (Policy Objective UTL 13) / Reason 2 - Landscape and visual impact (Policy Objective L02) – Protect the landscape and natural assets

The following section considers the policy implication of the proposed development in the context of Policy Objective UTL 13 of the Waterford City and County Development Plan 2022-2028. The objective requires that renewable energy proposal is fully aligned with the Waterford Renewable Energy Strategy (RES) and Wind Energy Designation Map, the Landscape and Seascape Character Assessment (LSCA) and the National Wind Energy Guidelines.

- **Failure to comply with the RES Wind Energy Designation Map**

Policy Objective UTL 13 explicitly requires that wind energy proposals be developed in accordance with the RES and its associated Wind Energy Designation Map. The subject site is located within an **EXCLUSION ZONE**, where new wind energy development is **not permitted**.

The designation is not advisory; it is a **statutory spatial constraint** forming part of the adopted Development Plan. Any proposal within an Exclusion Zone is, by definition **not plan-led** and cannot be considered compliant with UTL 13.

Exclusion Zones are applied to areas where landscape sensitivity is high, cumulative impacts are unacceptable, Environmental constraints are significant. Also, where wind energy developments are incompatible with local or regional planning objectives.

By proposing development within such an area, the applicant directly conflicts with the strategic intent of the RES and LSCA.

- **Policy Objective UTL 13 as a Mandatory Compliance Requirement**

UTL 13 is framed as a facilitative policy for renewable energy **only where** proposals comply with RES and associated mapping. It is not a general endorsement of wind energy development across the county. Compliance with the RES is a **precondition**, not an optional consideration.

The applicant has not demonstrated any basis for departing from the spatial strategy set out in the Development Plan.

- **Lack of Plan-Led Justification**

The Coimisiún correctly concluded that, notwithstanding the general policy support for renewable energy, the proposed development cannot be considered plan-led because it

is located in an area expressly designated as unsuitable for wind energy. It materially contravenes a core spatial policy of the Development Plan. Also, no exceptional circumstances were presented to justify a departure from the plan.

Plan-led development is the cornerstone of Irish planning practice. Proposals that undermine adopted spatial strategies cannot be supported.

- **Proper Planning and Sustainable Development**

The Coimisiúns conclusion that the development would be contrary to the proper planning and sustainable development of the areas is well founded. A development that conflicts with a statutory spatial designation, undermines landscape and environmental protection objectives and contravenes a key renewable energy policy **CANNOT** be considered sustainable or consistent with the development plan framework.

In Summary, the proposed development **materially contravenes policy Objective UTL 13** because it is located within an RES-designated **Exclusion Zone** for wind energy development. The applicant has not demonstrated compliance with the RES, the Wind Energy Designation Map of the LSCA, nor provided any justification for departing from the Development Plan Spatial strategy.

Accordingly, the Coimisiúns decision is consistent with established planning principles and reflects the requirements that renewable energy development must be **plan-led, policy-compliant and aligned with statutory spatial designations**.

The applicant's own EIAR states the position in terms, at §11.3.5.2:

"As per Figure 11.6 below, the proposed development is located in an 'Exclusion Area',

whilst a 'Preferred' area occurs to the south of the proposed development site."

That is not partial non-compliance. It is the inverse of the designation. There is no intermediate gradation between Exclusion and Preferred which the site could be said to occupy.

At §11.3.5.1 the EIAR accepts that the proposed development is located across three sensitivity classifications — Most Sensitive, High Sensitivity and Low Sensitivity — with the Most Sensitive designation applying to the most elevated parts of the site in the surrounds of the summit of Broemountain. The same paragraph accepts that the development straddles landscape character

units 6B Knockmealdown Uplands and 5C Tooraneena Foothills. Table A8.3 of Appendix 8 separately names Dyrrick itself among the designated Hills of High Sensitivity.

As shown in the Developer's EIAR Chapter 11 Landscape & Visual Amenity, Figure 11.5, the proposed Dyrrick Hill Wind Farm development is located across three sensitivity classifications as per the Waterford City and County Development Plan – 'Most Sensitive', 'High Sensitivity' and 'Low Sensitivity'. The most elevated part of the site to the west in the surrounds of the summit of Broemountain have been classified as 'Most Sensitive' designation, while the less elevated eastern parts of the site are classed as 'Low Sensitivity' designation.

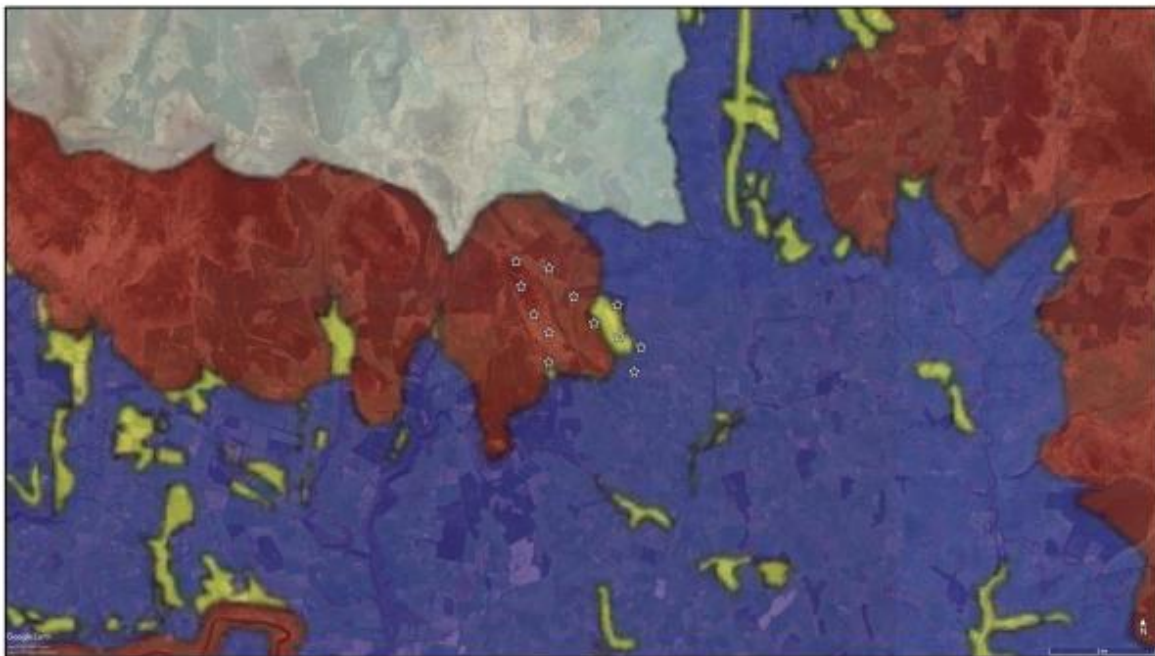


Figure 11.5: Excerpt from the Current Waterford City and County Development Plan 2022-2028 map viewer showing landscape sensitivity classifications in relation to the proposed turbines (Red – Most Sensitive, Yellow – High Sensitivity, Blue – Low Sensitivity)

As you will see, EIGHT of the 12 proposed wind turbines are positioned in an area according to the character assessment as **Most Sensitive** (Very distinctive features with a low capacity to absorb new development without significant alternation of existing character over an extended area) 6.

Appendix 8, paragraph 4.1(a) provides:

"To be considered for permission, development in or in the environs of these areas must be shown not to impinge in any significant way upon its character, integrity or uniformity when viewed from the surroundings."

The following table will prove the contradiction by the applicant:

ElAR ref.	Finding
§11.4.2.3	Landscape impact significance: Substantial-moderate / Negative / Long-term within and immediately around the site.
Table 11.9	Five viewpoints at Substantial-moderate significance (VP11, VP12, VP14, VP16, VP17); VP14 at "High" magnitude of visual impact at 413 m.
§11.4.3.6	Concedes "near-significant residual visual impacts (Substantial-moderate) at the nearest local receptors".
§11.5	No landscape or visual mitigation measures are proposed; none considered necessary or likely to be effective.

Joint Committee Meeting on Climate, Environment and Energy

At a recent Joint Committee Meeting on Climate, Environment and Energy (on the delivery challenges in the Offshore Wind Sector) 26th Nov 2025 the Chief Executive Officer ACP Peter Mullins and the Director of Planning ACP Ciara Kellett were asked to clarify ACPs position on the County Development Plan.



Below is a video link and quotes taken from the public transcript.

Video link 1.44:48

https://www.oireachtas.ie/en/debates/debate/joint_committee_on_climate_environment_and_energy/2025-11-26/

The discussion centred on the role of the Designated Maritime Area Plan (DMAP) as a statutory spatial planning framework for offshore wind and its clear parallel with County Development Plans in the onshore context. Deputy John Clendennen TD sought clarification from An Coimisiún Pleanála as to whether DMAP zones—like County Development Plan zoning—are intended to define where development should and should not occur and whether the Board would depart from such designations.

In response, Peter Mullins emphasised the importance of the question and deferred to planning expertise within the organisation, noting:

“Now, that’s an important question, Deputy... I’m not a planner... ” at which point he deferred to his Director of Planning, Ciara Kellett.

Ciara Kellett Director of Planning then confirmed the structured and plan-led nature of DMAP designations, drawing a direct comparison with County Development Plans and stating:

“These sites have been identified... they have already gone through a process... so it would be **very strange** for us to find something there that would mean we go outside of the areas that have been identified.”

The exchange establishes a clear and authoritative acknowledgment that both offshore (DMAP) and onshore (County Development Plan) frameworks are the product of rigorous spatial planning processes and are intended to guide, and constrain, development within designated areas.

What Waterford City and County Council Submitted

The Council's submission to An Bord Pleanála (**case ABP-317265-23**) was sent on 20 July 2023 and comprised two documents: the Chief Executive's Planning Report dated 14 July 2023, signed by Senior Planner Liam McGree, Director of Services Kieran Kehoe and Chief Executive Michael Walsh; and the minutes of a special meeting of the Dungarvan and Lismore District held on 19 July 2023, submitted under section 37E(7) to record the elected members' views.

The application itself is by Dyrick Hill Wind Farm Limited for 12 turbines of 6.0–7.2 MW with a tip height of 185m (162m rotor, 104m hub), plus a 110 kV substation, a roughly 16 km underground grid connection to the existing Dungarvan substation, access tracks, a borrow pit, a met mast and ancillary forestry felling — seeking a 15-year permission and a 40-year operational life.

The Council's clear recommendation is refusal.

The grounds for refusal

Landscape sensitivity is the central objection. The site sits in an upland area classified as "Most Sensitive" in the Landscape and Seascap Character Assessment — meaning very distinctive features with very low capacity to absorb new development without significantly altering existing character across a wide area.

The site is in a designated exclusion zone. The Renewable Energy Strategy's wind energy designation map (Appendix 2) marks these lands as a "no go area" for new wind energy development. This is arguably the strongest legal point: it's not a matter of degree but of the site being ruled out in principle.

Material contravention of two development plan policies follows from the above — Policy Objective UTL 13 (which supports renewable energy but expressly subject to the wind energy designation map and landscape assessment) and Landscape Policy Objective L 02 (development must not be unduly visually obtrusive, particularly in or adjacent to uplands).

Road network capacity. The Council records "very serious concerns" about the carrying capacity and safety of the local road network for heavy construction traffic and abnormal loads.

Rejection of the EIAR's conclusions. The Council accepts the EIAR is procedurally compliant but strongly rejects its findings on visual impact, on the scale of construction-phase impact on local roads, and on the conflict with adopted policy.

Two further sensitivities are flagged without being framed as refusal reasons in themselves: proximity to the Blackwater River SAC and a "Blue Dot" river subbasin at Scartmountain (Farnane 010), and a significant number of Record of Monuments and Places sites within or near the site.

Tipperary County Council submission — Dyrrick Hill Wind Farm (ABP ref. PA 93.317265)

Submitted 31 July 2023 by Teresa Kiely, Administrative Officer, Planning Section, and acknowledged by An Bord Pleanála on 2 August 2023.

Context: The proposal is a Strategic Infrastructure Development under s.37E of the Planning and Development Act 2000 (as amended) — 12 turbines of 6.0–7.2 MW, tip height up to 185m, rotor diameter c.162m, hub height 104m. The site sits entirely within Waterford County Council's area but adjoins the Tipperary boundary, and it is the scale of the turbines plus that proximity that prompted Tipperary to intervene.

Grounds set out for objection:

- Landscape sensitivity. The site adjoins The Uplands Generalised Landscape Character Area, specifically the Knockmealdown Mountain Mosaic — described in the County Development Plan 2022 as an area of solitude, natural vegetation and harsh climate that

forms the backdrop to almost all of the county's most scenic areas. Table 5.2 (Vol. 3) classes it as a vulnerable landscape; Table 6.2 records low compatibility with multiple-turbine schemes; Table 6.1 seeks to control new development unless it can sustain existing appearance and character.

- Primary Amenity Area designation. The Knockmealdown area is designated a Primary Amenity Area in the Tipperary plan, protected from inappropriate development.
- Wind energy policy conflict. The Renewable Energy Strategy (Vol. 3, Appendix 2) deems the southern Uplands unsuitable for new wind energy development. The Council also points out that the Waterford City and County Development Plan 2022–2028 marks the Knockmealdowns within Waterford's own area as unsuitable for wind energy — i.e. the proposal conflicts with both counties' plans.
- Breach of Policy 11-16. That policy states developments with a significant adverse material impact on visual amenities will not be supported. The Council's core concern is exactly this: significant visual impact on sensitive Tipperary landscapes despite the turbines standing outside its area.
- Roads. Grid connection routes to Dungarvan and haul routes from Belview, plus aggregate suppliers located in Tipperary, mean impacts on the Tipperary road network should be assessed.
- Procedural inadequacy. Jennings O'Donovan's notification went to the Civic Offices in Clonmel generally rather than to the Planning Section, unlike the correspondence sent to Waterford. The Council flags the adequacy of this notification as a concern.

The proposed development should be refused on the grounds that it is located in an area which both relevant statutory development plans (Waterford City and County and Tipperary) identify as **unsuitable for wind energy development**.

Climate Targets Cannot Override Statutory Planning Designations

While national climate policy sets ambitious renewable energy targets, these targets must be delivered **within the framework of statutory planning law**. The courts have already found that ACP failed to approve adequate planning applications to meet Ireland 2023 renewable energy targets under the Climate Action Plan 2024 and failed to comply with obligations under **Section 15 of the Climate Action and Low Carbon Development Act 2015**. However, this obligation **does not permit or justify bypassing County Development Plans (CDPs)** or ignoring wind energy strategy maps and landscape designations.

Ireland's planning system is **plan-led**, and national climate targets must operate in harmony with, not in substitution for, statutory development plans.

CDPs are legal binding instruments. Under the Planning and Development Act 2000, CDPs have statutory force, bind planning authorities and ACP. CDPs also provide the spatial framework for all development decisions.

National climate targets cannot displace these statutory obligations. A CDP is not a policy preference – **it is a legal requirement**. Climate Action Plan (CAP) targets are policy not statutory zoning. CAP sets national goals, guides sectoral action, but does not amend zones and does not override spatial designations.

Therefore, CAP targets must be implemented **through** the planning system, not around it.

Importance of Wind Energy Strategy Maps and Designations

Spatial designations reflect environmental, landscape and community constraints. Wind Energy strategy maps identify exclusion zone, areas of high landscape sensitivity and areas where cumulative impacts are unacceptable. It also identifies areas unsuitable for turbine development. These designations are based on **evidence** including landscape and seascape character assessment, ecological constraints, cultural heritage, residential amenity and grid capacity. Ignoring these maps would undermine the integrity of the plan-led system.

Exclusion Zones are not optional. An Exclusion Zone is a statutory spatial constraint. A proposal within such a zone would materially contravene the CDP. Also, a proposal within such a zone cannot be considered plan-led and cannot be justified by reference to national climate targets alone.

Climate Obligations Must be Balanced with Planning Law

Section 15 obligations do not permit unlawful approvals. Section 15 obligations of the Climate Action and Low Carbon Development Act 2015 require public bodies to perform their functions consistently with climate obligations and support national Climate Targets. However, Section 15 does **not authorise** ignoring CDP policies or approving development in prohibited zones. Also, Section 15 does **not authorise** setting aside and ignoring landscape or environmental protections. Climate Obligations must be discharged **within the limits of planning law**.

The courts have made clear that Climate Obligations are real and enforceable but they must be implemented lawfully. Planning authorities cannot approve developments that materially contravene CDPs unless specific statutory procedures are followed. Thus, climate targets cannot justify unlawful planning decisions.

Why Climate Targets Cannot Ignore CDPs and Wind Energy Maps

Waterford City and County CDP ensures sustainable, balanced developments within the County Waterford region. The CDP incorporates, landscape and seascape character assessments, ecological constraints, community considerations, grid capacity, cumulative impact analysis. Climate targets alone cannot provide this spatial balance. As mentioned previously, Exclusion Zones are evidence based and legally binding. These reflect high landscape sensitivity, Ecological Vulnerability and are unsuitable for turbines. Ignoring them would undermine environmental protection and legal certainty.

Public confidence depends on respecting statutory plans. If climate targets are used to override CDPs, planning would become unpredictable and communities would lose trust. Also, environmental safeguards would be weakened which would result in legal challenges increasing. This would ultimately delay, not accelerate, renewable energy deployment.

Irish Law protects CDP over Government Climate Policy

In summary, Irelands renewable policy targets are legally important, but they cannot override: County Development Plan (CDPs), Wind Energy Strategy Maps, Landscape and Seascape Character Assessments or statutory spatial designations. The plan-led system is protected by the Planning and Development Act 2000, reinforced by case law, and respected by the courts even when climate obligations are at stake. Climate actions must be delivered through the planning system – not in defiance of it.

Landscape and visual impact (Policy Objective L02) – Protect the landscape and natural assets

Section 37G (5) provides that the Coimisiún “may decide to grant a permission for development or any part of a development under this section even if the proposed development or part thereof, contravenes materially the development plan relating to any area in which it is proposed to situate the development. “This is a discretionary power NOT an obligation and its exercise remains subject to the Coimisiúns overriding duty to have regard to the proper planning and sustainable development of the area, as required by Section 37G(2) (a) (i) and the wider scheme of the Act. For the reason set out below, it is submitted that this is NOT a case in which that discretion should be exercised.

The proposed development site is located within and adjacent to an upland area classified as “Most Sensitive” on the Waterford Landscape and Seascape Character Assessment (LSCA), which forms Appendix 8 to the Waterford City and County development plan. The LSCA identifies this classification as reserved for landscape with the low capacity to absorb change without fundamental and irreversible alteration of character.

Dyrick windfarm site would fall within an area of identified scenic value and on information and belief, within or immediately adjacent to an area designated as an “Exclusion Zone” on the wind energy designation map (Appendix 2 of the Waterford Renewable Energy Strategy, which informs Policy Objective UTL13 of the Development Plan.

This is therefore a case of a development which contravenes a policy in some general or incidental respect. It is a development proposed within the specific category of land which the Council's own evidence-based landscape assessment – carried out to inform the Development Plan and adopted following statutory process – has identified as least able to absorb this type of change and which the Council has, through the Renewal Energy Strategy, positively **EXCLUDED** from wind energy development.

Wind energy designation — Exclusion Area

Appendix 2 of the Waterford Renewable Energy Strategy 2016–2030 (Appendix 7 of the Development Plan) classifies the county into Preferred Areas, Areas Open to Consideration, and No-Go / Exclusion Areas. At EIAR §11.3.5.2 the applicant accepts that the proposed development is located in an Exclusion Area, and that a Preferred Area occurs to the south of the site.

The Renewable Energy Strategy records that these classifications were derived by overlaying the LSCA, the Natura 2000 network, urbanised areas, the Airport Masterplan, neighbouring authorities’ wind energy mapping, major road infrastructure and the transmission grid. The exclusion is therefore not arbitrary; it is the product of a documented, multi-layer spatial analysis carried out for the express purpose of identifying where wind energy development should and should not occur.

The LSCA divides the county into seven landscape character types and twenty-eight landscape character units. The applicant accepts, at EIAR §11.3.5.1, that the proposed development straddles the border of both the "Upland" and "Foothills" landscape types and both landscape character units 6B — Knockmealdown Uplands and 5C — Tooraneena Foothills. This is significant as it places the development within the Uplands – the most restrictive treated landscape type in the county.

The relevant Development Plan Policies

The proposed Dyrick Windfarm development is contrary to Policy L02 of the development plan, which provides that the council will protect the landscape and natural assets of the county by ensuring that proposed developments do not detrimentally impact on the character, integrity, distinctiveness or scenic value of their area, and that such proposals are not unduly visually obtrusive in the landscape, in particular in or adjacent to uplands, along river corridors, coastal areas or other distinctive landscape character units.

By virtue of scale and layout, the proposed development would adversely interfere with the intrinsic character, integrity and distinctive qualities of the landscape setting which the development plan identifies as necessary to preserve. The contravention is accordingly material, both in the ordinary legal sense and in the sense that it strikes directly at the core purpose of the policies in question.

Why the Coimisiún SHOULD NOT exercise its section 37G(6) Discretion in this case

The national and regional imperative to deliver renewable energy infrastructure does not, or itself justify permission for a wind energy development of any given site. It is submitted that the applicant has not demonstrated why the Dyrick Windfarm site – one identified by the councils’ own evidence based as most sensitive and excluded from wind development, is required for renewable energy delivery, in circumstances where the Renewable Energy Strategy has identified other areas of the county as suitable for such development without like conflict.

The harm to Landscape Character would be significant and irreversible

Wind turbine development of the scale proposed cannot be reversed or meaningfully mitigated once constructed. Where the harm at issue is to the character of the landscape identified as most sensitive, and that harm is substantially irreversible for the organisational lifetime of the development (and likely beyond, given decommissioning and repowering practice), the precautionary weight to be given to the development plan designation is correspondingly greater.

Precedent – The Dyrick windfarm site has been the subject of a refusal by the Coimisiún

The previous application for the Dyrick Windfarm (ABP Ref-317265) was REFUSED permission with reasons expressly grounded in Policy Objective UTL13, the Wind Energy Designation Map, the LSCA and the site location within an exclusion zone. The application has been remitted back to ACP under reference ACP:324420. In the absence of a materially changed factual or

policy context since that decision, the prior REFUSAL is a significant and directly relevant precedent. Consistency with decision-making and the integrity of the plan-led system, weigh heavily against the Coimisiún now taking the opposite course on materially the same facts.

The Integrity of the plan-led system

The development plans landscape sensitivity mapping was itself produced through a structured evidence-based assessment (the LSCA), adopted following statutory process including public consultation and environmental assessment, for the specific purpose of guiding decisions of this kind. The Coimisiúns discretion under Section 37G(6) exists to accommodate genuinely exceptional cases of overriding public interest; it is not intended to be used routinely to displace considered landscape designations arrived at through the plan-making process. To do so in this case would undermine public confidence in the plan-led system and in the LSCA process specifically and would set an undesirable precedent for other sensitive upland landscapes elsewhere in the county and beyond.

Section 15(1) of the Climate Action and Low Carbon Development Act 2015 Does Not Require or Support a Departure from Policy Objective L02

It is anticipated that the applicant may invoke Section 15 (1) of the Climate Action and Low Carbon Development Act 2015 as amended by the Climate Action and Low Carbon Development (Amendment) Act 2011 (“The 2015 Act”), in support of the Coimisiún exercising its discretion under Section 37G (6). Section (15) provides, in substance, that a relevant public body shall, in so far as practicable, perform its functions in a manner consistent with the state’s climate mitigation and adaptation objectives, approved climate action plans and the national long-term climate action strategy.

The proper interpretation of Section (1) in the planning context has recently been authoritatively settled by the Supreme Court in *Coolglass Wind Farm Limited Vs An Coimisiun Pleanala*, an appeal concerning the refusal of a windfarm on ground of conflict with the county development plan. The Supreme Court unanimously rejected the approach taken at first instance, under the Section 15 (1) has been treated as a formulaic mechanism effectively requiring a decision-maker to grant permission for renewable energy development wherever refusal was not objectively impracticable. The Court held instead that the correct test is whether the exercise of the public body’s functionals falls within the range of outcomes that could reasonably be regarded as consistent, **so far as practicable**, with the climate objectives set out in the section – a considerably broader and more contextual test than a simple presumption in favour of renewable development.

Of particular relevance to the present situation, the Supreme Court held that a decision-maker is entitled to proceed on the basis that an adopted development plan or strategy is itself consistent with the state's climate objectives and that a decision that follows such a plan will, for that reason, ordinarily itself also be consistent with Section 15 (1). The Waterford City and County Development Plan (2022-2028) was adopted following statutory process, including environmental process, including environmental assessment and expressly incorporates a Renewable Energy Strategy, a Wind Energy Designation Map and the LCSA, each of which reflect a considered balancing of the county's renewable energy and climate objectives against landscape, environmental and other planning considerations. Policy Objective L02, Policy Object UTL13 and Exclusion Zone designations are integral parts of that balance. A refusal of permission grounded in policy objective L02, or a decision by the Coimisiún not to exercise its discretion under Section 37G(6) in favour of a development which contravenes it, would therefore be a decision made in accordance with the Development Plan – and, applying the Supreme Court's own reasoning, such a decision is presumptively consistent with Section 15(1), rather than in breach of it.

The supreme court further held that Section 15 will not normally have a decisive bearing on individual planning decision, given that climate considerations already permeate the planning process as a whole and that Section 15 is likely to affect the outcome only in marginal cases. There is no basis on which to contend that the Waterford Development Plan, including its Renewable Energy Strategy, Wind Energy Designation Map and LSCA, fail to meet the State's climate objectives; on the contrary, that Strategy represents the Councils own mechanism for reconciling renewable energy delivery within landscape protection across the county, including by identifying land elsewhere in the county considered suitable for wind energy development without the same degree of conflict.

The supreme Court also confirmed, in addressing a related ground of appeal in the same case, that neither EU law nor Section 15 of the 2015 Act imports any general presumption in favour of granting permission for renewable energy projects. It follows that Section 15 (1) affords no proper basis for the suggestion that the Coimisiún should prefer delivery of this wind energy development over the landscape objective embodied in Policy Objective L02.

Accordingly, Section 15 (1) provides no support for the exercise of the Coimisiúns discretion under section 37G (6) in this case. To the contrary, a decision refusing permission by reference to Policy Objective L02 – itself part of a Development Plan which already reflects a considered balance of climate, renewable energy and landscape protection objectives - is properly to be regarded as consistent with and not in tension with Section 15 (1).

Relevant Case Law

Coolglass Wind Farm Limited V An Coimisiun Pleanala [2026] IESC 5 (Supreme Court, 4 February 2026) is the leading authority on the correct interpretation of Section 15 (1) in the planning context, and is addressed in detail at Section 15. It confirms that a decision-maker is entitled to proceed on the presumption that an adopted development plan is itself consistent with the State's climate objectives, that a decision consistent with such a plan is presumptively also consistent with Section 15 (1), that Section 15 imports no general presumption in favour of granting permission for renewable energy projects and that Section 15 will only have a decisive bearing on individual decisions in marginal cases.

Sherwin v An Coimisiún Pleanala (High Court [2023] IEHC 26, Humphreys J; Supreme Court [2024] IESC 13 Woulfe J) confirms that the Coimisiún is required to make an actual, reasoned determination as to whether a proposed development materially contravenes the relevant development plan and cannot proceed to grant permission without properly engaging with that question; the Coimisiún's permission for a 1,600-unit residential development in Drumcondra was quashed for its failure to do so. Applied here, this confirms that the Coimisiún must, if minded to depart from Policy Object L02, make a clear and reasoned determination that the proposed development materially contravenes the Development Plan, and separately and adequately, explain why, notwithstanding the contravention, permission should nonetheless be granted.

Balz V An Coimisiún Pleanala [2019] IESC 90 confirms that the Coimisiúns treatment of environmental and landscape impacts, arising from wind energy development must be substantive and properly reasoned, and cannot rest on the mechanical application of outdated guidance or a superficial assessment of impact; the Supreme Court quashed the Coimisiún's permission for an 11-turbine wind farm in west Cork on this basis. The Coimisiúns assessment of the landscape, visual and scenic impacts of the proposed development at Dyrick should accordingly be rigorous, evidence-based and responsive to the specific sensitivity of the site identified in the LSCA, rather than deferring generally to the policy objective of the renewable energy delivery.

By contrast, **Nagel View Turbine Aware Group V An Coimisiún Pleanala [2024]** IEHC 603 illustrates what the adequate level of engagement with environmental and technical evidence looks like, upholding a permission where the Coimisiún had genuinely engaged with the relevant evidence rather than proceeding mechanically. Taken together, this case law demonstrates that whichever outcome the Coimisiún reaches, it must be arrived at through genuine and reasoned engagement with the Development Plan, the LSCA and the environmental and landscape evidence and not through any presumption in favour of renewable energy development.

For the reasons set out above, it is submitted that the proposed development materially contravenes Policy Objective L02 of the Waterford City and County Development Plan 2022-2028; No case of overriding need specific to this site has been demonstrated which would justify permission for this development in this location; The harm to the landscape character, integrity and scenic value would be significant and substantively irreversible. It needs to be taken into consideration that the proposed wind farm development would have an adverse visual impact on the Knockmealdown mountain landscape character area, with the proposed development resulting in very significant landscape visual impacts on designated scenic routes and views highlighted in both the Waterford City and County Development Plan (2022-2028) and the Tipperary County Development Plan (2022-2028) that fall inside the zone of theoretical visibility (ZTV).

The Coimisiún had previously refused permission for development on this site on directly analogous grounds and no material change in circumstances has been demonstrated which would justify a different outcome. The Coimisiún is in any event required, per *Shewin v An Coimisiún Pleanála* [2024] IESC 13, to make an actual and reasoned determination on material contravention before granting permission, and per *Balz V An Coimisiún Pleanála* [2019] IESC 90, to substantively and rigorously address landscape and environmental impact rather than deter generally to renewable energy policy.

Sensitivity Classification

Table A8.2 of Appendix 8 of Waterford City and County Development Plan (CDP), defines the "Most Sensitive" classification as denoting very distinctive features with a very low capacity to absorb new development without significant alterations of existing character over an extended area.

Paragraph 4.1(a) of Appendix 8 sets out the operative development management test for such areas:

"Landscape Character Areas and features designated as Most Sensitive represent the principal features which create and sustain the character and distinctiveness of the surrounding landscape. To be considered for permission, development in or in the environs of these areas must be shown not to impinge in any significant way upon its character, integrity or uniformity when viewed from the surroundings. Particular attention should be given to the preservation of the character and distinctiveness of these areas as viewed from scenic routes and the environs of archaeological and historic sites."

Three features of that test should be noted. It applies to development **"in or in the environs of"** Most Sensitive areas — so proximity is sufficient to engage it. The burden is on the applicant: the development **"must be shown"** not to impinge. And the threshold is not **"significant"**

impact" in the EIA sense but impingement "in any significant way" **upon character, integrity or uniformity** — a lower and differently framed threshold.

Paragraph 4.1(b) of Appendix 8 of CDP, identifies the areas designated Most Sensitive. These expressly include "the skylines of upland areas". Table A8.3 then lists the specific upland skyline features to which that designation attaches within the Comeragh and Knockmealdown Mountains, including Knocknafallia, Knockmeal, Knockanask, the southern slope of Sugarloaf Hill, Knockaunabulloga and Knockmealdown itself.

Table A8.3 further designates, within the High Sensitivity class, a schedule of named "Hills" which expressly includes Dyrick. The hill that gives the development its name is therefore itself a designated landscape feature under the Development Plan.

The applicant's admission as to sensitivity

At EIAR §11.3.5.1 the applicant states in terms that the proposed development is located across three sensitivity classifications — Most Sensitive, High Sensitivity and Low Sensitivity — and that the most elevated parts of the site to the west, in the surrounds of the summit of Broemountain, carry the Most Sensitive designation.

There is accordingly no factual controversy. Turbines are proposed on and around land which the Development Plan classifies as having a very low capacity to absorb new development.

The Following are a summary of grounds for refusal

- **Landscape designation.** The site occupies land designated "Most Sensitive" (a classification defined in the Development Plan as denoting a very low capacity to absorb new development without significant alteration of existing character over an extended area) and straddles landscape character units 6B Knockmealdown Uplands and 5C Tooraneena Foothills. Paragraph 4.1(b) of Appendix 8 designates "the skylines of upland areas" as Most Sensitive. "Dyrick" is itself expressly named in Table A8.3.
- **The plan test is failed on the applicant's own evidence.** Paragraph 4.1(a) requires that development in or in the environs of a Most Sensitive area "must be shown not to impinge in any significant way" upon its character, integrity or uniformity when viewed from the surroundings. The applicant's own visual impact assessment records five viewpoints at "Substantial-moderate" significance and a "High" magnitude of visual impact at VP14, and expressly characterises these as "near-significant". No mitigation whatsoever is proposed (EIAR §11.5). The plan's test is not met.
- **Scale and layout.** 185 m tip height on landforms of c. 430 m AOD produces blade tips at approximately 615 m AOD — an elevation exceeding several summits expressly listed in Table A8.3 as Most Sensitive skyline features. The layout straddles two landscape character types within a single visual unit, which the 2006 Wind Energy Development

Guidelines identify as creating visual ambivalence and negative tension. The applicant concedes its spatial extent exceeds what the Guidelines provide for.

- **Policy Objectives L 02, L 04 and UTL 13.** The development is unduly visually obtrusive in and adjacent to the uplands; it detracts from designated scenic routes (SR2 lies c. 1.2 km from the nearest turbine) and protected views; and it is not "developed fully in accordance with" the Renewable Energy Strategy, the Wind Energy Designation Map and the LSCA, as UTL 13 requires.
- **EIAR inadequacy.** Chapter 11 is internally inconsistent as to the number of turbines assessed (12 or 13), and its conclusion of "no significant effects" is irreconcilable with its own significance matrix, which classifies "Substantial" and above as significant in EIA terms while the chapter records Substantial-moderate landscape effects at both construction and operational stages.
- **Section 37G(6) should not be exercised.** The Development Plan does not exclude wind energy from County Waterford; it locates it. Preferred Areas exist, including within c. 2.5 km of this site. The climate contribution asserted is not site-specific and can be delivered from a compliant location. Departure from the plan is therefore not necessary to achieve the s. 15 objectives.
- **Section 15 (1) does not compel a grant.** Coolglass expressly rejected any strong presumption in favour of renewable energy projects and any "traffic light" approach. The duty is to reach an outcome within a spectrum, with a degree of tolerance. Refusal here, where a plan-compliant alternative location exists and where the development would itself destroy carbon-rich upland heath, is comfortably within that spectrum.
- **Article 6(3) of the Habitats Directive is an independent bar.** Neither s. 37G(6) nor s. 15(1) can dispense with an EU law precondition to consent. The Natura Impact Statement does not contain complete, precise and definitive findings capable of removing all reasonable scientific doubt.

The Case Against Is Established by the Applicant's Own Evidence

The following table collates the admissions contained within Chapter 11 of the EIAR.

EIAR ref.	Admission	Significance
§11.3.5.1	Development straddles the Upland and Foothills landscape types and units 6B and 5C.	Places part of the scheme in the Uplands and engages WEDG criterion 4(c) (straddling two-character types).

EIAR ref.	Admission	Significance
§11.3.5.1	Development located across three sensitivity classifications including "Most Sensitive" around the summit of Broemountain.	Engages the §4.1(a) test directly. Burden of proof rests on applicant.
§11.3.5.2	Development located in an "Exclusion Area" under the Renewable Energy Strategy; a "Preferred" area lies to the south.	Material contravention admitted. Also establishes that compliant alternatives exist nearby.
§11.3.4.1	The design "lends itself to a larger spatial extent than is otherwise provided for in the guidance".	Self-declared departure from the s. 28 Wind Energy Development Guidelines on spatial extent.
§11.4.2.3	Landscape impact significance "Substantial-moderate / Negative" at both construction and operational stages within and around the site.	Table 11.3 note: "substantial and above are considered to be significant impacts in EIA terms".
Table 11.9	Five viewpoints (VP11, VP12, VP14, VP16, VP17) at "Substantial-moderate" significance; VP14 at "High" magnitude.	Direct impingement on character and integrity of the setting, contrary to §4.1(a).
§11.4.3.6	There will be "near-significant residual visual impacts (Substantial-moderate) at the nearest local receptors".	An acknowledgment that the effects sit at the significance threshold.
§11.5	No landscape or visual mitigation measures are considered necessary or likely to be effective.	The assessed effects are the residual effects. Nothing is offered to reduce them.
§11.4.5	In the future baseline only 4.9% of the study area would view Dyrick Hill in isolation; 45.6% would afford cumulative views; magnitude of cumulative effect "Medium".	Establishes a proliferation effect across the corridor between the Knockmealdown and Comeragh ranges.
§11.3.4.1	Nearest dwelling is 320 m from a turbine; permission is sought to change its use from residential.	Compliance with setback guidance is achieved by extinguishing the receptor rather than by design.

The Landscape and Visual Case: Layout and Scale

Vertical scale relative to the designated upland skyline - The proposed turbines have an overall tip height of up to 185 m, with a rotor diameter of approximately 162 m and hub height of 104

m. The EIAR records the site as situated across the eastern and southern extents of Broemountain (430 m AOD) and Knocknasheega Hill (430 m AOD).

It follows that the uppermost blade tips will sweep to an elevation in the order of 615 m AOD. That figure warrants emphasis. It exceeds the summit elevation of several of the features expressly scheduled in Table A8.3 as Most Sensitive upland skylines within the Knockmealdown range — including Knockmeal at approximately 560 m AOD — and approaches that of Knocknafallia and Sugarloaf Hill (each in the order of 660–670 m AOD). Only the principal summit of Knockmealdown itself (approximately 794 m AOD) stands materially above the swept path of the proposed rotors.

The practical consequence is that from a very large part of the lowland and foothill landscape to the east and south — including from the settlement of Touraneena, from Scenic Route 8, and from the Sean Kelly Cycle Routes and Comeragh Mountain Drive — the moving blade sets will be read against, and in places above, the designated skyline of the Knockmealdown Mountains. The applicant's repeated assertion that the turbines are "well from the principal ridgeline" addresses horizontal separation while leaving the vertical relationship unaddressed. It is the vertical relationship that determines whether a structure reads as part of, or against, a skyline.

Paragraph 3.2 of Appendix 8 of CDP, anticipates precisely this. It records that skyline ridges, hill and mountain tops are conspicuous features to which the eye is strongly drawn, that new development in the vicinity of such features has significant potential to be conspicuous over a wide area, and that such features have an **extremely low potential to absorb** new development without causing disproportionate visual impacts.

Horizontal extent and the guidance on Transitional Marginal Landscapes

The applicant elects to assess the site against the "Transitional Marginal Landscape" type in the Wind Energy Development Guidelines (2006), while acknowledging that the wider context encompasses characteristics of "Mountain Moorland" and "Hilly and Flat Farmland".

That election is itself open to challenge, since the Development Plan classifies part of the site as Uplands. But taking the applicant's own chosen framework at its height, the Guidelines for that landscape type state that wind energy developments should be relatively small in terms of spatial extent, and that it is important they do not dominate but achieve a balance with their surrounds, especially given the prevalence of small fields and houses.

The applicant's response to that guidance is candid and, it is submitted, fatal. At §11.3.4.1 it states that the broad and open character of the site "lends itself to a larger spatial extent than is otherwise provided for in the guidance associated with the more enclosed 'Transitional Marginal Landscapes'". In other words, the applicant selects the Transitional Marginal landscape type for assessment, and then departs from the very criterion of that type which would constrain the

development. A 463-hectare site accommodating twelve 185 m turbines cannot be characterised as relatively small in spatial extent under any reading of the guidance.

Layout: Straddling two landscapes character types

The Guidelines (WEDG 2006) - 4 (c) for Transitional Marginal Landscapes contain a specific adverse criterion at 4(c): a large wind energy development straddling two landscape character types within the same visual unit can create visual ambivalence and, thus, negative tension between the two-character types involved.

The applicant admits at §11.3.5.1 that the development straddles the Upland and Foothills landscape types and units 6B and 5C. The EIAR nowhere addresses criterion 4(c). This is a material omission. The scheme is the paradigm case the guidance warns against, and the effect described in the guidance — negative tension between two-character types — is precisely what Policy Objective L 02 is directed at preventing when it speaks of proposals being unduly visually obtrusive in or adjacent to the uplands and other distinctive landscape character units.

Adequacy of the EIAR – Inconsistency as to the number of turbines assessed

Chapter 11 is internally inconsistent as to the project it assesses. At §11.1.4 it states that permission is being sought for the construction of 13 wind turbines. The immediately following bullet describes the erection of 12 no. turbines. At §11.4.3.3 it states that all 13 turbines will be visible from parts of Touraneena. The ZTV description at §11.3.7.1 refers to theoretical visibility of "between 10–13" turbines. Table 11.6 and Table 11.9 reference turbine T13 throughout. The statutory notice and the Coimisiún's acknowledgement letter of 3 August 2023 both refer to 12 turbines.

Article 5(1) of and Annex IV to the EIA Directive require a description of the project, including its physical characteristics. An EIAR that is internally inconsistent as to how many 185 m turbines were modelled in the ZTV, the photomontages and the significance judgments do not enable the public concerned, or the competent authority, to understand what has been assessed. This is not a typographical matter: the ZTV bands, the visibility statements and the visual impact magnitudes all depend on the number and position of turbines.

At minimum, ACP should require clarification. If the photomontages depict a 13-turbine layout while permission is sought for 12, the visualisations do not represent the development. If they depict 12 while the text describes 13, the text does not represent the development.

The conclusion of "no significant effects is unsupported

The note to Table 11.3 states that judgments deemed "substantial" and above are considered to be significant impacts in EIA terms. Section 11.4.2.3 then finds the significance of landscape impact to be "Substantial-moderate / Negative / Short-term" during construction and

"Substantial-moderate / Negative / Long-term" during operation within and immediately around the site. Table 11.9 records five viewpoints at "Substantial-moderate".

Sections 11.6 and 11.7 nevertheless conclude that there will not be any significant effects on landscape and visual amenity. The chapter reconciles this only by describing the effects as "near-significant".

A hyphenated straddling category cannot be resolved by assertion into the lower band. Where an assessment produces a rating that spans the significance threshold, the reasoned basis for placing it below the threshold must be stated. **None is given.** The Coimisiún **cannot lawfully** adopt a conclusion of **no significant effects** that is contradicted by the underlying assessment on which it rests, and if it were minded to do so it would be obliged to explain why (**Connelly v An Bord Pleanála [2018] IESC 31**).

To conclude – The proposed development would place twelve turbines of 185 m tip height on and around land which the Waterford City and County Development Plan 2022–2028 designates as Most Sensitive, within landscape character units comprising the Knockmealdown Uplands and the Tooraneena Foothills, within an Exclusion Area for wind energy development, and in the environs of designated scenic routes and protected views. The applicant's own assessment records substantial-moderate landscape and visual effects, offers no mitigation, and concedes that the scheme exceeds the spatial extent contemplated by the relevant national guidance for the landscape type the applicant itself selected.

The Coimisiún is required to engage with the climate benefit of the development and with the s. 37G(6) discretion. Having done so, it is submitted that the correct conclusion is that departure from the Development Plan is neither necessary nor justified. The Development Plan does not stand in the way of Waterford's contribution to national climate objectives; it identifies where that contribution should be made. Refusal at this location is consistent, so far as practicable, with s. 15(1), and is required by the proper planning and sustainable development of the area. Therefore, Permission SHOULD BE REFUSED

Reason 3 - Biodiversity and nature conservation impact

An Coimisiún Pleanála (ACP) refused permission for Dyrick windfarm development (ABP-371265) on the grounds the proposed development would result in the direct loss of 3.5 hectares of dry heath habitat – a habitat type listed at Annex I of Council Directive 94/43/EEC (“The Habitats Directive”) – and that this loss, together with associated disturbance to the wider Broemountain commonage and the Knockmealdown Mountains, would be contrary to objective ENV01, BD01, and BD02 of the Waterford City and County Development Plan 2022-2028 and to Article 4(4) of the Directive 2009/147/EC (“The Birds Directive”)

This submission addresses in turn (i) the correct legal test governing departure from the Development Plan; (ii) Why the presumption established by the Supreme Court in the Coolglass Windfarm proceedings does not assist the appellant here; (iii) the ecological case for refusal, grounded in the habitats and Birds Directives; (iv) The status Objective ENV01, BD01, BD02 as mandatory transpositions of EU law rather than discretionary local preference.

The Statutory Test for Departure from the Development Plan

Section 37G(6) of the 2000 Act empowers ACP, in determining a SID (or an appeal arising from one) to grant permission “even if the proposed development contravenes materially the development plan. This is a discretionary power, NOT an obligation. This is a discretionary power NOT an obligation (as we keep mentioning throughout this submission). The discretion conferred by section 37G(6) is analogous to that under section 37(2)(b) of the 2000 Act and is subject to the same disciplines: It must be exercised rationally, proportionately, on the basis of evidence and in a manner that gives “the main reasons and consideration” for any departure from the plan. It is not a power to override the Development Plan simply because a proposer characterises the project as being of “Strategic” or climate importance. In this case, the refusal were grounded in the State’s obligations under the Habitats Directive and the Birds Directive, the discretion must be exercised, if at all, consistently with those obligations – obligations which are not simply one more ‘material consideration’ to be weighed against renewable energy policy, but binding requirements of EU law with which national law, including the 2000 Act and the Development Plan, must be interpreted compatibly.

Section 15(1) of the 2015 Act Does Not Require ACP to Depart from the Plan

Section 15 (1) of the 2015 Act, as amended, requires a Relevant Body – which include ACP, to perform its functions, in so far as practicable, in a manner consistent with the most recently approved climate action plan, the national long-time climate action strategy, the national adaption framework, the furtherance of the national transition objective and the objective of mitigating greenhouse gas emissions and adapting to climate change.

The Supreme Court's decision in the Coolglass Windfarm litigation (High Court Jan 2025 Supreme Court, Feb 2026) is directly relevant and properly understood, supports refusal in this case rather than undermining it. The Supreme Court rejected the High Court's Characterisation of section 15 as creating a traffic light system of climate friendly 'go' (unless impracticable), and climate unfriendly 'stop' for renewable energy applications. It held that section 15 imposes a real, effective and enforceable obligation as to outcome but on that tolerates a range of possible outcomes and is qualified by practicability; it does not convert into a blanket presumption in favour of granting permission for any development that reduces emissions.

The Waterford City and County Development Plan is itself the Vehicle for Reconciling Climate and Biodiversity Objectives

Critically, the Supreme Court held that a planning authority preparing a development plan is itself obligated by section 15 to do so consistently with national climate objectives and that a decision-maker applying that plan is ordinarily entitled to presume that compliance with the plan is compliant with the climate objectives. That presumption can only be displaced where it is shown that the plan does not, in fact, reflect the climate objectives, or no longer does so, or that particular features of the specific proposal takes it outside the plan's own reconciliation of competing objectives.

The Waterford City and County Development Plan 2022-2028 already performs precisely that reconciliation. It contains renewable energy objectives which actively support wind energy development in appropriate locations, alongside Objectives EN01, BD01 and BD02, which protect Annex I habitats, biodiversity and ecological connectivity and require net biodiversity gain. These objectives are not incidental; they represent the Planning Authority's own considered judgement, arrived at in the course of preparing a statutory plan that is itself subject to section 15, as to where the balance between renewable energy delivery and environmental protection should lie. Broemountain and the wider Knockmealdown commonage were not, on the evidence the planning authority, identified as an appropriate location for wind energy development of this scale precisely because of the sensitivity of the dry heath resource and its bird populations.

Nothing has been advanced by the appellant to rebut that presumption. No case has been made that the development plan reconciliation of renewable energy and biodiversity objectives is itself inconsistent with national climate objectives, or that it has been superseded by a change in those objectives. The appellant's reliance on section 15(1) therefore does not engage the narrow circumstance in which the Supreme Court held the presumption of consistency might be displaced.

The Waterford CDP 2022–2028 is demonstrably climate-consistent

The Plan was adopted after the enactment of the Climate Action and Low Carbon Development (Amendment) Act 2021, was subject to Strategic Environmental Assessment and Appropriate Assessment, and was scrutinised by the Office of the Planning Regulator. It contains:

- Chapter 9, headed Climate Action, Biodiversity & Environment, whose opening Strategic Objective is to “integrate climate change and adaptation considerations into land-use policy objectives and decision-making processes to enhance our resilience to the effects of Climate Change and reducing our carbon footprint”;
- an express recital of the Government’s May 2019 declaration of a Climate Change and Biodiversity Loss Emergency, and of the Climate Action and Low Carbon Development (Amendment) Act 2021, its 2050 emissions target, its five-year carbon budgets, and the requirement on local authorities to prepare Climate Action Plans;
- CA 01, committing the Council to support and implement the Waterford Climate Adaptation Strategy in collaboration with the Climate Action Regional Office, and to “review/replace the strategy pursuant to the provisions of the Climate Action Plan 2021 and Low Carbon Development Act”, varying the Development Plan as necessary;
- a Renewable Energy Strategy with a wind energy designation map (Appendix 2 of the RES / Appendix 7 of the Plan) that positively identifies where wind energy development is acceptable in principle, and
- UTL 13, which facilitates and encourages renewable energy generation — subject to it being developed in accordance with that Strategy and the Landscape and Seascape Character Assessment.

The Plan therefore does not oppose wind energy. **It allocates it.** The exclusion zone designation at Broemountain is not a refusal of the climate transition; it is a spatial allocation decision taken in the exercise of the plan-making function, expressly reconciling climate action with landscape and ecological sensitivity, precisely as the Oireachtas intended.

The national climate objective is not emissions-only: it is expressly biodiversity rich

Section 15(1)(d) requires consistency with the furtherance of the national climate objective. That objective, as amended in 2021, is the transition to a “climate resilient, **biodiversity rich**, environmentally sustainable and climate neutral economy”.

The words “biodiversity rich” were inserted deliberately. They mean that climate action **is not to be pursued at the expense of nature**, and that a decision cannot be rendered section 15(1)-consistent simply by pointing to installed megawatts.

The Development Plan itself records the emergency as one of both climate change and biodiversity loss.

The Dyrick Windfarm proposal would:

- **permanently destroy 3.5 ha of Annex I dry heath** whose national conservation status is assessed by NPWS as **Bad**;
- remove a further **4.8 ha of associated dry acid grassland** (including Nardus grassland, which the Department describes as supporting habitat closely linked to Annex I habitats);
- remove **2.31 km of hedgerow** (1.38 km to infrastructure plus 930 m cleared to create bat buffers), 132.5 m of treeline and 0.26 ha of scrub — in a county whose Development Plan describes hedgerows as “the single most significant habitat supporting plants, invertebrates, birds and mammals in County Waterford”;
- render, on the Department’s assessment, an entire **c.400 m-wide band of hen harrier and golden plover habitat** unusable or severely compromised;
- and do so in a region where the **2022 National Survey of Breeding Hen Harrier in Ireland (2024)** records a **70% collapse in the Knockmealdowns / Kilworth / Comeraghs population since 2015**, against a 33% national decline and a 27% range contraction, **with wind energy development expressly identified as one of the three principal sectoral pressures**

The Applicants EIAR hinterland surveys recorded two sightings of hen harriers carrying prey. The Department states that this is “a strong indication of an active nest in the area”. The EIAR “does not elaborate on this and the information was not followed up on to establish where the nests might be.”

A competent ecological assessment does not record the single most diagnostic field indicator of raptor breeding and then decline to investigate it. The Inspector concluded the EIAR was “deficient in its assessment of the impact of habitat loss and disturbance potential of the windfarm on the hen harrier in the area.

The site carbon balance is itself unevidenced — which undermines the climate case

A section 15(1) case must be evidence-based. Here, the applicant’s own documents are irreconcilable on the presence of peat:

- Chapter 8 (NIS) / Habitat Management Plan (HMP) – Appendix 6.4 - §4.1.2 asserts that **no Peat Stability Risk Assessment** was prepared “due to the absence of observed peat at the site during the site surveys”;

- yet HMP §4.1.1 records that “pockets of peat may exist at the north-western extent of the site”;
- HMP §4.3 states that the Lisleagh Mountain wetland is “underlain by peat substrate”;
- HMP §5.3.4 refers to “excavated peat”; §5.4.3 to “revegetating areas of bare peat” and to avoiding “compaction of underlying peat en route to donor locations”; HMP Action 5 instructs the contractor to “remove peat as turves excavated to a depth of at least 30 cm”; and §7.3 requires the ECoW to agree “drainage management associated with temporary peat storage and reinstatement works”.

Development Plan objective **BD 19** provides that developments sited on peatlands have the potential to increase overall carbon losses, “potentially undermining expected carbon savings (in the case of renewable energy developments)”, and recommends **assessments addressing peatland stability, carbon emissions balance, and hydrology and ecology**. None of those three assessments has been carried out, because the applicant proceeded on the premise that there is no peat — a premise its own Habitat Management Plan repeatedly contradicts.

The Coimisiún therefore has no reliable evidence of the project’s **site-level carbon balance**. It cannot rationally weigh a climate benefit it has not been given the means to quantify, and it certainly cannot use an unquantified benefit to justify departing from a democratically adopted, SEA-assessed development plan

Practicability is inherently Bounded by Other Binding Legal Obligations

Even if the presumptions were displaced, section 15(1) only requires a relevant body to act consistently with the climate objectives “in so far as practicable”. It cannot be practicable, with the meaning of section 15(1) for ACP to grant permission in a manner that would place the State in breach of its obligations under the Habitats Directive or Article 4(4) of the Birds Directive. Practicability must be assessed within the wider architecture of the planning system, including the mandatory requirements of EU environmental law that bind ACP directly as a competent authority. A climate objective CANNOT be pursued by unlawful means; section 15 (1) does not, as a matter of the primacy of EU law could not, authorise ACP to disregard directly applicable nature conservation obligations in order to advance decarbonisation objectives that can, in principle, be met through renewable energy development at less ecologically sensitive locations.

For these reasons, section 15 (1) does not require and cannot lawfully be used to justify, the grant of permission for the proposed development notwithstanding its material contravention of the Development Plan.

The Ecological Case for Refusal

Direct and Irreversible loss of an Annex 1 Habitat – The proposed Dyrick Windfarm development would result in the direct loss of 3.5 hectares of dry heath (EU Habitat code 4030, “European Dry Heath”), a habitat type listed as Annex 1 of the Habitats Directive. This loss is direct, physical and irreversible within any realistic planning timeframe; a dry heath is a slow forming, structurally complex habitat that cannot be recreated through short-term restoration measures, still less within the life of a wind energy consent. The areas affected does not exist in isolation, it forms part of a wider, functionally connected area of upland heath across the Broemountain commonage and the Knockmealdown Mountains, and its loss would fragment and diminish the wide resource, not merely remove a discrete 3.5 ha parcel.

The Annex I dry heath (4030) there is protected not by Article 6(3) of the Habitats Directive but by (i) Article 4(4) of the Birds Directive in respect of the Annex I bird species it supports, (ii) Article 27(4)(b) of the European Communities (Birds and Natural Habitats) Regulations 2011 to 2021 (S.I. 477/2011), (iii) the EIA Directive obligation to assess and take account of effects on biodiversity, and (iv) the objectives of the Development Plan, which are material considerations of considerable weight.

The substantive ecological case for refusal:

The proposed Dyrick Windfarm development will directly and permanently remove 3.5 ha of Annex 1 European Dry Heath, being c.10% of the mapped extend of that habitat within the site, together with associated infrastructure impacts on 4.8 ha of dry acid grassland.

The habitat’s national conservation status is assessed as **Bad**, with the assessment unchanged since 2013 (NPWS, The Status of EU Protected Habitats and Species in Ireland, Vol. 2, 2019). The habitat at Broemountain forms part of the mapped **Article 17 / favourable reference area** resource for the habitat in Ireland — a point the HMP itself expressly acknowledges at §4.3.

The applicant seeks to minimise the effect by expressing the loss as **0.003% of a national “favourable reference area”** of 1,230.01 km². That framing is misleading for three reasons:

- first, the Article 17 reporting has **not specified** a favourable reference area for dry heath; the applicant has simply substituted the reported best single value of surface area for an FRA. That substitution is a methodological invention, not an accepted NPWS position;
- second, assessing significance against the largest available denominator is a dilution fallacy. On that logic no individual loss of any Annex I habitat anywhere in Ireland would ever be significant;
- third, and decisively, the applicant’s own figures demonstrate the opposite of what is claimed. The EIAR records the national reference area as declining at approximately

0.001% per annum since 1994. A single 12-turbine project contributing a loss of **0.003%** is therefore, on the applicant's own arithmetic, **equivalent to three full years of the entire national rate of decline of this habitat.** That is not a de minimis contribution. It is a material acceleration of a nationally declining, Bad-status Annex I resource by one project.

The applicant's own EIAR concedes that, "given the current inadequate status of the reference area for this habitat, any loss of dry heath habitat as a result of the proposed development will have the potential to result in a **significant negative effect**, at the national/international scale." **That concession is fatal.**

Annex I Bird Species and Article 4 (4) of the Birds Directive

The wider heath habitat supports hen harrier (*Circus cyaneus*) and golden plover (*Pluvialis apricaria*), both listed in Annex I of the Birds Directive, together with other bird species of high and medium conservation concern that are nationally declining. Both species are sensitive to habitat loss, fragmentation and disturbance associated with wind turbines construction and operation, including displacement effects that extend well beyond the immediate footprint of the turbines and associated infrastructure.

Article 4(4) of the Birds Directive requires Member States to take appropriate steps to avoid deterioration of habitats relevant to Annex 1 species, including outside formally designated Special Protection Areas, where those habitats are of significant to the species concerned. The proposed development, by removing part of the functional habitat resource on which these species depend and by introducing disturbance across the wider commonage, would be directly contrary to that obligation. This is not a matter of planning preference; it is a freestanding obligation of EU law that ACP, as an emanation of the State and a competent authority for the purposes of environmental assessment, must ensure is respected in its decision making.

Annex 1 bird species, hen harrier, golden plover, merlin

The Broemountain block forms the eastern extent of a larger Knockmealdown unit of important hen harrier habitat. The Department of Housing, Local Government and Heritage recorded that **five breeding pairs nested within that unit in 2015 — between 3.2% and 4.8% of the entire national population —** with one pair recorded **within the application site**, one within 0.5 km and one within 3 km.

The Department further recorded breeding at Broemountain in **2016 (in young forestry)** and at a site 0.5 km away in **2019, producing 4–5 chicks annually.**

The Department's conclusion was unequivocal: the area **"is not a designated SPA but meets the criteria for such an area, as it is used regularly by 1% or more of the all-Ireland population of a species in Annex I of the Birds Directive."** It relied on Court of Justice authority to the effect that areas which have not been classified as SPAs but ought to have been so classified continue to fall under the regime governed by the first sentence of Article 4(4) of the Birds Directive (the principle established in Case C-374/98, *Coimisiún v France (Basses Corbières)*); the Department's submission cites the case number as C-378/98).

Whether ACP applies the first sentence of Article 4(4) (on the de facto SPA analysis) or the second sentence (the obligation to strive to avoid deterioration of habitats outside protection areas), the outcome is the same. The Inspector's conclusion was that *"I do not consider the proposed development will avoid deterioration of Annex I habitats, in that 3.5ha is to be directly removed, alongside removal of associated 4.8 ha of associated dry acid grassland and furthermore Annex I birds are currently utilising this habitat."*

Article 27(4)(b) of the European Communities (Birds and Natural Habitats) Regulations 2011 to 2021 requires public authorities to take steps to avoid deterioration of habitats occurring outside protected areas. The Inspector found that the loss of Annex I habitat here *"directly contradicts this requirement."*

The 2022 National Survey of Breeding Hen Harrier in Ireland (NPWS, 2024) — published after the EIAR — records:

- *a national population of 84 confirmed and 21 possible breeding pairs;*
- *a **33% decline** in the total population since 2015 and a **27% contraction in breeding range**;*
- *within the **Knockmealdowns, Kilworth and Comeraghs** — **historically a stronghold** — a **fall of 70% since 2015**;*
- *three principal sectoral pressures identified by surveyors: **forestry, wind energy development, and agriculture**;*
- *a call for improved spatial planning for wind and solar and for the avoidance of sensitive sites for hen harriers*

It is difficult to conceive of a clearer case of a "sensitive site" for hen harrier than the eastern anchor of a unit that has lost 70% of its birds in seven years. Permitting a 12-turbine wind farm across it, when the national survey identifies wind energy as a driver of that very collapse, would be the antithesis of the survey's recommendation.

Cumulative and In-Combination Effects

The heath habitat on Broemountain does not function as an isolated ecological unit. It forms part of a wider mosaic across the commonage and the Knockmealdown range as a whole, which

support the species referred to above at a landscape scale. The assessment of effects cannot properly be confined to the 3.5 ha footprint in isolation; it must have regard to the cumulative and in-combination effects of habitat loss, fragmentation, edge effects and disturbance across the wider functional unit, including in combination with any other existing or reasonably foreseeable development in the area (**Note no cumulative impact studies performed with Scartmountain Windfarm which is a back to back development which is currently with ACP for determination (PA93.321522))**). No adequate case has been made that these wider cumulative effects on habitat connectivity and on the conservation status of the species concerned would be avoided.

Scartmountain windfarm – a separate 15-turbine wind farm proposal at Knocknanask/Scartmountain adjoins the site that was in the public domain at the time of the application (scartmountainplanning.ie) and is currently with ACP awaiting decision (**PA93.321522**). These two schemes would together propose 27 turbines across what would be described as a single larger ecological unit. ACP stated that bird usage data from the adjoining site would be available to inform this application and that “**an overall ecological assessment needs to be considered to avoid long term very significant and cumulative impacts**”.

No such cumulative ecological assessment was performed. That is a freestanding deficiency in the EIAR under Article 5 and Annex IV of the EIA Directive, which require assessment of cumulation with other existing and/or approved projects. It has not been remedied – therefore planning for Dyrick Windfarm should be refused.

The Precautionary Principle and Absence of a Sound Case for Departure

Where, as here, there remains scientific uncertainty as to the full extent of impact of Annex I Habitat and Annex I species, or as to the efficacy of proposed mitigation, the precautionary principle requires that the benefit of doubt be given to the protected habitats and species, not to the proposed development. No imperative reasons of overriding public interest have been demonstrated that could not be met by way of alternative sites or scaled-down design and no case has been made that alternatives to this particular location were properly considered and discounted only for compelling reasons. In circumstances where direct, irreversible loss of Annex I habitat can be avoided by locating development elsewhere, the precautionary principle and the absence of a sound Imperative Reasons for Overriding Public Interest (IROPI) case both point firmly towards refusal.

Inadequacy of Proposed Mitigation and Compensation

Restoration of “Like-for-Like” replanting proposals for dry heath habitat cannot be treated as equivalent to avoidance of loss. Recreated heath vegetation typically takes decades to develop the structural and floristic characteristics of the habitat it purports to replace and there is no reliable evidence that hen harrier or golden plover would use compensatory habitat in the same way or at the same functional value, as the habitat lost. In the absence of a robust, evidenced compensation package meeting the standard required for Annex 1 habitat and Annex I species loss, mitigation cannot be relied upon to reduce the significance of the impacts identified above.

Objective ENV01, BD01 and BD02 Reflect Mandatory EU Obligations, Not Local Policy Preferences

Objective ENV01, BD01 and BD02 of the Waterford City and County Development Plan are not free-standing local policy choice that can readily be set aside in favour of a competing objective. They exist, in substance, to give effect at local level to the State’s obligations under the Habitats Directive: to protect habitats listed as Annex 1 of the Habitats Directive (ENV01); to protect biodiversity and ecological connectivity, including the functional habitat network relied upon by mobile Annex I bird species such as hen harrier and golden plover (BD01); and to secure a net gain in biodiversity rather than a net loss (BD02)

Because these objectives transpose binding EU obligations, they occupy a different position from ordinary land-use zoning objectives when ACP comes to consider whether to exercise its discretion under section 37G(6). A decision to depart from ENV01, BD01 and BD02 in order to grant permission is not simply a decision to prefer one planning objective over another; it risks placing the State in breach of directly applicable EU environmental law. This a weighty and in the circumstances of this case a decisive, reason not to exercise the discretion to depart from the Development Plan.

It follows that the second and third limbs of the conventional material-contravention test – whether there are conflicting or unclear objectives in the plan or whether departure is justified by regional or national policy – cannot be satisfied here!. ENV01, BD01 and BD02 are clear and mutually consistent with the Plan’s renewable energy objectives read as a whole: renewable energy development is supported by the Plan, but not at any location and not at the cost of Annex I habitat loss. There is no policy conflict for ACP to resolve in the appellant’s favour.

Conflict with the Development Plan

The proposal conflicts with the following objectives of the Waterford City and County Development Plan 2022–2028

Objective	Conflict
ENV01	Failure to contribute cumulatively towards achievement of the regulatory framework for environmental protection, including compliance with the Habitats Directive and Birds Directive.
ENV02	Failure to have regard to SEA-identified sensitivities, expressly including “areas likely to contain a habitat listed in Annex 1 of the Habitats Directive”.
BD01	Failure to protect ecological corridors and networks connecting areas of high conservation value, and failure to protect and enhance biodiversity and ecological connectivity including semi-natural grasslands, hedgerows and wetlands “where these form part of the ecological network and/or may be considered as ecological corridors or stepping stones in the context of Article 10 of the Habitats Directive”. The 400 m Broemountain band is precisely such a stepping stone.
BD02	Failure to achieve “environmental resilience and net gain in biodiversity enhancement and creation”. There is no net gain here — there is net loss, dressed as enhancement.
BD03	Non-compliance with the standards required, including the NRA Guidelines on Ecological Impact Assessment (2009).
BD07	Failure to protect species and habitats identified under the Habitats Directive, Birds Directive, Wildlife Acts and Flora Protection Order.
BD09	Failure to ensure “ecological survey work carried out at optimal survey time to ensure accurate collation of ecological data” — Ornithological baseline is not fit for purpose – Appendix 7.1 does not record start or end times for vantage point watches – This is very important in evaluating potential breeding. Also, only one season of data (2022) is provided which is not sufficient for a project of this scale - This is a direct and demonstrable breach.
BD10/BD11/BD20	Fragmentation of green infrastructure and removal of 2.31 km of hedgerow, 132.5 m of treeline and scrub, contrary to the presumption against the removal of hedgerows.
BD15/BD16/BD18	Effects on the Lisleagh Mountain Waterford Wetland (Site Code 173), a wetland of local biodiversity value of the kind protected under BD 16.
BD19	Failure to undertake peatland stability, carbon emissions balance and hydrology/ecology assessments notwithstanding the repeated references to peat in the applicant’s own HMP.

Climate Benefit Does Not Outweigh the Case for Refusal

It is anticipated that the appellant will point to the contribution that the proposed Dyrick Windfarm development would make to national renewable energy and climate targets. That contribution is not disputed in principle, but it does not, justify permitting the direct and irreversible loss of Annex 1 habitat and deterioration of habitat relied upon by Annex I bird species. Biodiversity loss and climate change are properly understood as interlinked crises, not competing priorities in which one must yield to the other; the loss of functioning peatland and heath ecosystems reduces carbon storage and ecological resilience and is itself contrary to long-term climate adaptation objectives. Ireland's climate objectives are more soundly advanced by directing renewable energy development towards less ecological sensitive sites – of which there is no shortage in the wide region – than by permitting avoidable, irreversible harm to the nationally important area of dry heath and its associated bird populations

To conclude, the proposed Dyrick Windfarm would result in the direct irreversible loss of 3.5 ha of Annex I dry heath habitat and would deteriorate habitat relied upon by Annex I bird species protected under Article 4 (4) of the Birds Directive, contrary to ENV01, BD01 and BD02 of the development plan.

The discretion under section 37G (6) of the 2000 Act to depart from the Development Plan is not engaged on the facts of this case, since the Development Plan's objectives are clear, consistent and reflect binding EU nature conservation obligations rather than a discretionary local preference capable of being displaced by a generic renewable energy or climate justification.

Section 15(1) of the 2015 Act does not require, and on the Supreme Court's reasoning in *Coolglass* cannot properly be relied upon to require, ACP to depart from the Waterford City and County Development Plan in this case, given that the plan itself already reconciles climate and biodiversity objectives and that presumptions of consistency have not been rebutted.

There is NO imperative reason of overriding public interest, no adequate assessment and no adequate mitigation or compensation package have been demonstrated that could justify permitting avoidable, irreversible harm to Annex I habitats and species.

The precautionary principle requires that any residual doubt as to the significance of effects be resolved in favour of the protected habitats and species, not in favour of the proposed development.

Article 6(3) of the Habitats Directive: An Independent Bar

This submission adopts and supports the submission made by Peter Sweetman and on behalf of Wild Ireland Defence CLG dated 31 July 2023 (acknowledged by the Coimisiún on 3 August 2023)

The requirement is settled. In Case C-258/11 Sweetman v An Bord Pleanála the Court of Justice held that an assessment under Article 6(3) 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 proposed works on the protected site concerned. See also Case C-323/17 People Over Wind and Sweetman (mitigation may not be taken into account at screening stage) and Case C-441/17 Coimisiún v Poland.

The Natura Impact Statement does not meet that standard. The following points are of general application:

- The NIS is not self-contained. It relies on measures set out in the CEMP, the Surface Water Management Plan, the Habitat Management Plan and Volume III figures which are not part of the NIS. An assessment that must be assembled from documents outside itself cannot be said to contain complete findings.
- The measures relied upon are heavily qualified: "whenever possible", "generally", "wherever applicable", "to the greatest practical extent", "as soon as is reasonably practicable". Qualified measures are not precise or definitive.
- Design detail is absent. There are no designs or locations for sediment fencing, no design or location for the bunded refuelling area, and the watercourse crossing design is expressly to be agreed after consent ("a confirmatory assessment ... will be carried out").
- The appointment of an Ecological Clerk of Works, water quality monitoring, and mud parameter monitoring are supervisory and monitoring arrangements, not mitigation measures capable of removing scientific doubt.
- Mitigation for special conservation interest species is confined to a 500 m buffer for golden plover. No mitigation is identified for the other qualifying interests of the Blackwater Estuary SPA or Dungarvan Harbour SPA, and none for otter (*Lutra* [1355]), a qualifying interest of the Blackwater River (Cork/Waterford) SAC screened in on hydrological, noise and visual pathways.

The legal significance for present purposes is this: Article 6(3) is a precondition to consent as a matter of EU law. Neither the discretion in s. 37G(6) nor the duty in s. 15(1) can dispense with it. Coolglass confirms that s. 15 confers no additional functions and that there is no EU law presumption in favour of renewable energy consent. However the Coimisiún resolves the climate and landscape balance, it cannot lawfully grant permission unless it can complete an Appropriate

Assessment to the C-258/11 standard on the information before it. It is submitted that on the present documentation it cannot.

Irish Peatland Conservation Council observation

Irish Peatland Conservation submitted on 1 August 2023 to An Bord Pleanála on the Dyrick Hill SID application (Case PA93.317265), signed by Tristram Whyte. It's framed as an observation raising points the planning documents failed to address, rather than a formal statement of grounds for refusal, but three substantive objections emerge.

1. Peat Classification

The IPCC **rejects the claim that no peatland exists** on site. Annex I Dry Heath is present, and depth probes recorded peat of 0–40cm in places. The 30cm threshold used to classify peatland originates from what was economically viable to extract industrially — not from a conservation rationale. Citing the IUCN Peatland Programme (June 2023), the IPCC argues classification should instead rest on organic matter content of at least 30%; of 49 countries surveyed, 17 don't use depth at all, 26 use 30cm or less, and only 6 use 40cm or more. If the peatland is misclassified, the carbon and biodiversity cost of the development can't be honestly estimated, and figures for carbon loss and future sequestration capacity will be wrong. They characterise this as a planning loophole that effectively lets developers determine where globally rare habitats are conserved.

2. Nitrogen deposition

Nitrogen was assessed, but the focus fell on designated sites and human health rather than the undesignated land immediately surrounding the development — even though much of the **site is Annex I Dry Heath (4030)**, a nutrient-poor habitat vulnerable to wet and dry deposition. The IPCC welcomes the investigation of watercourses as deposition vectors into neighbouring fen habitats, but **wants cumulative effects** on the direct receiving environment quantified: increased vehicle movements post-construction, surrounding agriculture, quarrying, peat extraction and mining, new road infrastructure — and how these interact with one another to affect the Dry Heath.

3. Natura Impact Statement

The IPCC's position is that no loss of habitat for Annex-listed or national Red-List species is ACCEPTABLE. The developer treats a 0.1% loss of suitable Golden Plover habitat and a 0.12%

mortality increase as acceptable; the IPCC argues this ignores the biodiversity limb of the emergency declared by Government in 2019 and Ireland's international legal obligations. The assessment also fails on cumulative and synergistic impacts — aggregate mortality across species including Lapwing, habitat loss, barriers to movement, effects on nocturnal migration, foreclosed restoration potential, ongoing drainage and hydrological management, fragmentation and disturbance.

The closing argument is directional: installing renewable infrastructure on wetlands and peatlands, among Europe's and the world's rarest habitats, works against Ireland's own climate goals, and abundant monoculture agricultural land would be better suited at a lower habitat cost.

Refusal is not one of several reasonable conclusions, it is the only conclusion consistent with the law, the evidence, and the statutory mandate of An Coimisiún Pleanála.

Material Changes in the Planning and Environmental Context Since the Preparation of the EIAR

The purpose of this submission is to highlight a significant change that has taken place since the original environmental assessments for this project were completed. Since then, Regulation (EU) 2024/1991 on Nature Restoration has come into force. These developments create a new context for considering large infrastructure projects in sensitive upland landscapes such as the Knockmealdowns. This submission explains why we believe those changes are relevant to the Coimisiun's consideration of this application and why they should be taken into account before any decision is reached, with particular reference to the wider landscape, peatlands, dry heath lands, biodiversity and the new legislative and policy context.

Introduction:

The EU Nature Restoration Regulation introduces a new framework for restoring degraded ecosystems and reversing the loss of biodiversity across Europe. **From the outset, the Regulation recognises that restoring healthy and resilient ecosystems is necessary not only for nature itself, but also to contribute to the European Union's objectives for climate change mitigation and adaptation.** In this sense, nature restoration addresses an aspect of climate action that has not always received the same attention as reducing emissions or developing renewable energy: the protection and recovery of the natural systems that store carbon, regulate water, reduce flooding, support wildlife and help landscapes adapt to a changing climate.

This does not place nature restoration in opposition to renewable energy. Rather, it means that both now form part of the same climate response and should be considered together when decisions are made on major infrastructure projects.

Ireland is currently preparing its first national Nature Restoration Plan under this Regulation, with the draft due to be submitted to the European Coimisiún by 1 September 2026. The Plan should not be viewed as a fixed map of restoration areas, but as the beginning of a long-term programme through which restoration measures will be implemented and refined over time in order to meet the legally binding restoration targets for 2030, 2040 and 2050.

Part 1: Surface areas concerned by the Dyrrick Hill Windfarm project and the potential cumulative Scart Mountain windfarm project in relation to the Nature Restoration objectives.

- The Dyrrick Hill Wind Farm red-line boundary extends to approximately 463 hectares, while the proposed Scart Mountain Wind Farm planning boundary extends to approximately 981.4 hectares. Taken together, the two developments relate to approximately 1,444 hectares (14.44 km²) of the Knockmealdown uplands, close to the surface area of the Burren National Park.

While these figures are referred to within the planning documentation, they are not prominently presented, and the Scart Mountain windfarm figures were not yet known at the time of the Dyrrick Hill windfarm EIAR. **These figures are included here simply to illustrate the scale of the wider upland landscape that may now need to be considered in light of the Nature Restoration Regulation.**

The Nature Restoration Regulation has altered the governing framework since the EIAR was prepared

Regulation (EU) 2024/1991 entered into force on 18 August 2024. The EIAR is dated May 2023. The Regulation is directly applicable and requires Member States not merely to protect what remains but actively to restore ecosystems that are not in good condition, on a trajectory of at least 30 per cent by 2030, 60 per cent by 2040 and 90 per cent by 2050, together with obligations to re-establish habitat where its extent is insufficient and to avoid deterioration of habitat types within its scope.

Annex I dry heath in **Bad** status, with an inadequate and declining reference area, falls squarely within the class of habitat to which those obligations attach. Ireland's draft National Restoration Plan went to public consultation in June 2026 and must be submitted to the European Commission by 1 September 2026. The Coimisiún is not asked to find that the Regulation prohibits development on Annex I habitat. It does not. The submission is narrower

and is made in these terms: the Regulation has changed the governing context from one of passive protection to one of binding ecological recovery, and the avoidable permanent loss of a habitat that the State is under a binding obligation to restore is now a materially weightier planning consideration than it was when this application was assessed. The EIAR contains no assessment against that obligation, for the straightforward reason that the obligation post-dates it. That is a lag rather than a defect of intent, but it is a real gap, and it is the Coimisiún that must now determine the application in the changed context.

Aspects of wider landscapes needed for the restoration of nature as per Regulation (EU) 2024/1991:

- **Connectivity:**

The Nature Restoration Regulation repeatedly highlights the importance of **ecological connectivity** across habitats, forests, watercourses and species. In that context, the overall extent of the diverse landscape affected by the Dyrick Hill and Scart Mountain proposals becomes a relevant planning consideration. When searching for a suitable mate, hen harriers do not see the windfarm(s) boundaries but a suitable area to skydance and later perhaps, or further, settle in.

- **Diversity of landscapes:**

Dyrick Hill windfarm project is described as an area encompassing agricultural lands, bounded by forestry on lower slopes, dry heath land, wetlands, and an (contested by the applicant) area of peatlands. This description generally applies to the wider Knockmealdowns uplands. The Nature Restoration legislation refers to “mosaics” of habitats, and “high diversity landscape features” with hedges, walls, ponds or wetter areas, and reiterates that *“it is important that ecosystems in **all land categories**, including forests, grasslands, croplands and wetlands, are in good condition in order to be able to capture and store carbon effectively.”* (REGULATION (EU) 2024/1991, (19)). Of note, agricultural and forest ecosystems are explicitly acknowledged in the regulation.

- **Freshwater ecosystems and their services:**

Dyrick Hill windfarm’s proposal acknowledges the hydrological connectivity of the site to the Blackwater SAC, in particular via the Finisk river and its tributaries, which rivers and streams flow through the proposed site. Regulation (EU) 2024/1991, (5), asserts the UN Sustainable Development Goals, in particular goals 14.2, 15.1, 15.2 and 15.3 (5) in relation to the *“restoration and sustainable use of terrestrial and inland freshwater ecosystems and their services, in particular forests, wetlands, mountains and drylands.”* Streams are cited in the regulation as potential high-diversity features contributing, beyond their biodiversity value, to filtering air and water. (57)

- Several examples listed in **Annex VII LIST OF EXAMPLES OF RESTORATION MEASURES REFERRED TO IN ARTICLE 14(16) of REGULATION (EU) 2024/1991** fit well into the wider landscapes of the Knockmealdowns uplands.

A few examples are listed below:

- *“(12) Assist migration of provenances and species where it may be needed due to climate change.*
- *(13) Enhance Forest diversity by restoring mosaics of non-forest habitats such as open patches of grassland or heathland, ponds or rocky areas.*
- *(16) Introduce high-diversity landscape features in arable land and intensively used grassland, such as buffer strips, field margins with native flowers, hedgerows, trees, small forests, terrace walls, ponds, habitat corridors and stepping stones, etc.*
- *(22) Improve connectivity across habitats to enable the development of populations of species, and to allow for sufficient individual or genetic exchange as well as for species’ migration and adaptation to climate change.*
- *(23) Allow ecosystems to develop their own natural dynamics for example by abandoning harvesting and promoting naturalness and wilderness.”*

The cumulative assessment contained within the original Dyrick Hill EIAR could not have considered the Scart Mountain proposal because it had not yet entered the planning process. That is no longer the case. The existence of two adjacent wind farm proposals is now part of the current planning context and is relevant to the consideration of the wider landscape of the Knockmealdowns uplands under the Nature Restoration Regulation.

The proposed remedy is compensation, not mitigation, and it is not additional

Section 6.7.1.4 of the EIAR is headed "**Offsetting**". That is the applicant's own characterisation of its measure, and it is the correct one. Measures which compensate for a loss rather than avoid it cannot be taken into account at the assessment stage: Briels (C-521/12); Orleans (C-387/15 and C-388/15); Grace and Sweetman (C-164/17).

A further and distinct objection arises from the post-2024 framework. Restoration of degraded dry heath is something the State is **already legally obliged** to deliver, under Article 4 of Regulation (EU) 2024/1991 and under the commitments of the fourth National Biodiversity Action Plan, which operates within the statutory governance framework introduced by the Wildlife (Amendment) Act 2023. Restoration that the State already owes cannot simultaneously function as a credit against a new and permanent loss. The offset fails the most basic test of additionality: on the applicant's own case the State ends with the restoration it was already obliged to carry out, less 3.5 hectares. That outcome is arithmetically incapable of delivering the net gain in biodiversity required by objective BD02.

Part 2: The renewed importance of the County Development Plan designations in light of the Nature Restoration Regulations:

The Independent Advisory Committee on Nature Restoration was tasked with producing a set of recommendations for the draft Nature Restoration Plan due in September. The published recommendations can be found at the following link:

https://www.restorenature.ie/files/ugd/9a85d8_79109345c92c4a58af2591d10db10ed0.pdf

Recommendation 5 recognises the central role of local authorities in delivering Ireland's nature restoration obligations:

“Ireland’s 31 local authorities play an integral role in shaping how we interact with and experience our local environment. They determine how our local areas are planned and zoned, enforce local laws on waste and pollution, inspect water quality, and oversee the management of parks and other green spaces. Local authorities are often where national policies are put into practice on the ground and the success of high-level objectives frequently depends on decisions made at the local level, including how resources are allocated and how staff are trained and supported.”

Sections 5.1 Mapping Areas for Nature and 5.2 Local Biodiversity Officers and Biodiversity Action Plans emphasize the importance of local authorities in the delivery of the Nature Restoration aspirations for our new legally binding targets.

The Waterford County Development Plan should therefore now be considered not only in the context of renewable energy policy, but also as one of the principal

mechanisms through which Ireland's legally binding nature restoration obligations will be translated into planning decisions at local level.

Consequently, those policies identifying areas as unsuitable for wind energy, particularly on environmental grounds, take on renewed significance in light of the Nature Restoration Regulation.

This is particularly relevant where a planning application seeks to depart from, or attach limited weight to, environmental policies contained within the County Development Plan, as **those policies must now be considered in the context of Ireland's new restoration obligations.**

Part 3: The EIAR Ecological Surveys , Screening for Appropriate Assessment and Natura Impact Statement Require Updating in Light of the Delay and the Nature Restoration Regulation

The ecological surveys and assessments submitted in support of the Dyrick Hill Wind Farm application were largely undertaken between 2020 and 2022, with the Environmental Impact Assessment Report, Screening Report for Appropriate Assessment (AA) and Natura Impact Statement (NIS) completed in May 2023.

The AA and NIS reports:

The EU Nature Restoration Regulation was adopted after these documents had been prepared. While Member States are required to give particular priority to Natura 2000 sites and habitats protected under the Habitats Directive when working towards the 2030 restoration targets, the Regulation establishes binding restoration obligations **extending beyond the existing Natura 2000 network. All ecosystems in need of restoration** should be targeted by 2050 as per the regulation's targets.

It therefore significantly changes the context in which the ecological condition, restoration potential and future management of the Dyrick Hill site and the surrounding uplands must be considered.

Of particular note the following statement in the Dyrick Hill Wind Farm Screening Report for Appropriate Assessment and Natura Impact Statement:

"4.0 IS THE PROJECT NECESSARY FOR THE CONSERVATION MANAGEMENT OF EUROPEAN SITES"

The project has been described in Section 2 of this Screening Report and it is clear from the description provided that the project is not directly connected with or necessary for the future conservation management of any European Sites.”

Indeed, the project is not necessary or desirable for the conservation management of any European site. The project of construction to an industrial scale in that environment with permanent hard standings, foundations and scarring of this landscape is counter to the conservation management of any European site.

Ecological surveys:

The Chartered Institute of Ecology and Environmental Management addressed the continuing reliability of ecological surveys in its 2019 Advice Note on the Lifespan of Ecological Reports and Surveys.

In relation to ecological data more than three years old, the Advice Note states:

“The report is unlikely to still be valid and most, if not all, of the surveys are likely to need to be updated (subject to an assessment by a professional ecologist, as described above).”

The ecological information relied upon for the proposed development includes:

- a bat survey report dated 2020;
- bird surveys and flight-line data from 2020, 2021 and 2022;
- heath-cover-change information covering the period from 2000 to 2023; and
- other ecological surveys and reports incorporated into an EIAR completed in May 2023.

A significant proportion of the underlying ecological survey data is therefore between four and six years old. Even where individual reports are more recent, much of the fieldwork upon which they rely is considerably older.

In accordance with the CIEEM guidance, the continuing validity of these surveys cannot simply be assumed. It requires a clear, survey-specific assessment by a suitably qualified ecologist, and updated fieldwork wherever the existing information can no longer provide a reliable account of present conditions.

This is especially important in an upland environment containing peatland, heath and habitats used by protected bird and bat species. Ecological conditions are not static.

Habitats may have deteriorated, recovered or changed in extent; patterns of bird and bat activity may have altered; and the importance of particular areas for feeding, breeding, roosting, commuting or connectivity may have increased or decreased since the original surveys were undertaken.

Updated information is required not only to assess the effects of the proposed wind farm, but also to understand the area's present ecological condition and its potential contribution to national nature-restoration objectives.

Decisions made now could determine whether habitats remain available for future restoration, rehabilitation or ecological connectivity under Ireland's National Restoration Plan.

The present ecological baseline is therefore inadequate for a fully informed assessment of either of the possible long-term uses of these lands: their use for major wind-energy infrastructure or their retention and management for habitat protection, rehabilitation and restoration.

Given the changes in the ecological, legislative and policy context since the EIAR was prepared, KPG respectfully submits that the following matters merit further consideration before reliance is placed on the existing ecological documentation:

- an assessment by suitably qualified ecologists of the continuing validity of every ecological survey relied upon;
- updated bat, bird, habitat, peatland and vegetation surveys where the existing data are no longer current;
- revised cumulative-impact assessments taking account of changes in the surrounding environment and other proposed developments, including the adjacent proposed Scart Wind Farm; and
- updated ecological and Appropriate Assessment documentation addressing the implications of the Nature Restoration Regulation and Ireland's emerging National Restoration Plan.

KPG respectfully submits that, without this updated information, there is a reasonable question as to whether the existing ecological baseline remains sufficiently current and complete to support a fully informed planning decision.

Part 4: Chapter 4 of the EIAR, Planning Policy context, and new planning circumstances

The applicant's Planning Policy chapter 4 recognises that planning decisions must be informed by the **current** international, European and national policy framework and places considerable reliance **upon developments in climate and renewable energy legislation** to support the proposal. At the time the EIAR was prepared, the Nature Restoration Law was discussed only as a proposal.

Chapter 4 of the EIAR 4.3.3 Biodiversity strategy for 2030 acknowledges the Key Commitments to be implemented by 2030, and the “specific actions and commitments” undertaken by countries of the European Union.

The strategy has since become Regulation (EU) 2024/1991, creating legally binding restoration obligations for Member States.

The planning context has therefore changed in favour **of two equally important public objectives: climate action and nature restoration**. One cannot now be considered in isolation from the other.

To Summarize:

KPG notes that the Environmental Impact Assessment process is intended to ensure that planning decisions are based on the best and most up-to-date environmental information available.

In this regard, the Planning and Development Act, as amended by the European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018 (S.I. No. 296 of 2018), requires the competent authority to be satisfied that its reasoned conclusion on the significant effects of a proposed development on the environment is **up to date** at the time a decision is made¹.

(1- See Article 32 and Article 47 of the European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018 (S.I. No. 296 of 2018), requiring the competent authority to be satisfied that its reasoned conclusion on the significant effects on the environment is up to date at the time of its decision.)

KPG respectfully submits that this obligation is particularly relevant in the present case.

Since the preparation of the EIAR in May 2023, the legislative and policy context has changed significantly through the coming into force of Regulation (EU) 2024/1991.

In addition, much of the ecological baseline relied upon is now between four and six years old.

Taken together, these changes raise a legitimate question as to whether the existing environmental information remains sufficiently current to support an up-to-date reasoned conclusion. In KPG's view, this can most appropriately be established through updated ecological assessment and consideration of the Nature Restoration Regulation within the planning process.

The applicant previously sought to have this proposal considered in light of developments in climate and renewable energy policy since the original application, leading to the quashing of the Coimisiún's decision. It is submitted that the same principle must now apply to developments in nature restoration legislation. A notable change in the planning context cannot be recognised where it favours renewable energy while being disregarded where it favours biodiversity and ecosystem restoration.

For all of these reasons, KPG respectfully submits that the Coimisiún should attach significant weight to the material changes in legislation, policy and ecological context that have arisen since the EIAR was prepared. If the existing environmental documentation cannot be updated to demonstrate that it remains current and capable of supporting an up-to-date environmental assessment in light of Regulation (EU) 2024/1991 and Ireland's emerging National Nature Restoration Plan, KPG respectfully submits that permission should be refused.

Resubmission of the Dyrick Hill Windfarm Planning Application to ACP

The resubmission of the Dyrick Hill Windfarm planning application, appears to limit the ability of the general public to adequately submit their objections to the windfarm project. The applicant has been given the same time to submit their new application, as the public has been given to file their submissions. Meaning nothing in the new application, any added information or changes, will be known by the public, for them to include matters important to them in their submissions.

Also, the fact that submissions can only be made by the people who objected to the original application, is unfair. Many people were initially unaware of the full impact of this development, and the cumulative impact of the subsequent Scart Mountain Windfarm planning application, at the time of filing the original submissions.

Since the original application was filed in 2022, there have been 26 new build dwelling-related planning applications received by Waterford County Council within a 5km radius of the planned development, Tipperary County Council doesn't publish a coordinates layer for planning application, so results there couldn't be confirmed for a 5km radius, but 11 applications were found in the bordering townland (Middlequarter, Newcastle), meaning that there are potentially 37 new properties and home owners, who could be affected by this proposed development and are unable to voice their concerns. This figure doesn't include any properties which may have been sold/changed hands since 2022.

The applicant assumes that the project is necessary to meet Ireland's renewable energy and climate targets.

The applicant's response to submissions appears to rely heavily on the national requirement for renewable energy as justification for the development.

However, national climate policy does not provide an automatic presumption that every renewable energy project is acceptable regardless of location.

The Climate Action and Low Carbon Development Act requires Ireland to achieve climate neutrality, while also protecting environmental integrity and biodiversity.

A development cannot be considered sustainable where it achieves renewable electricity generation by permanently damaging natural carbon stores and sensitive habitats.

The correct question is not "Does the project generate renewable energy?" But "Does this particular project achieve renewable energy generation **without unacceptable environmental damage?**"

The applicant assumes that impacts on ecology can be mitigated through habitat management and reinstatement. Providing alternative areas for biodiversity does not guarantee that the flora, fauna and wildlife affected will successfully establish themselves there. Many species are adapted to the unique environmental conditions of their existing habitat, including soil type, hydrology, geology, altitude, microclimate, vegetation structure and ecological interactions. These conditions cannot simply be recreated elsewhere.

Consequently, the provision of alternative habitat cannot be assumed to compensate for the loss or degradation of an existing natural habitat, particularly where semi-natural, peatland or dry heath ecosystems are involved. Dry heath and peatland habitats are ecosystems which take many decades, and often centuries, to develop. Even where restoration is attempted, the replacement habitat may never achieve the same biodiversity value or support the same

species assemblages. This is recognised in ecological literature and reflected in the mitigation hierarchy, which prioritises avoiding habitat loss over compensating for it.

The proposed mitigation does not address the fundamental issue that construction will permanently alter upland habitats.

Dry heath is a semi-natural habitat that has developed over long periods through specific relationships between:

- vegetation;
- soils;
- drainage;
- geology;
- climate;
- biodiversity.

Reinstatement following construction does not recreate the original ecosystem.

A restored surface following excavation may appear visually similar, but does not represent ecological replacement.

The applicant's proposed mitigation measures reduce construction impacts, but do not remove the permanent loss of habitat function.

The applicant further assumes that the carbon benefit of renewable energy outweighs construction impacts. The carbon assessment must include the full environmental cost of the development.

The assessment should consider:

- loss of existing carbon storage;
- disturbance of upland soils;
- removal of vegetation;
- reduced future carbon sequestration;
- habitat fragmentation.

Climate action requires protection of natural carbon sinks as well as renewable energy generation. A carbon calculation that focuses primarily on avoided fossil fuel emissions risks presenting an incomplete assessment.

The applicant asserts that the site has limited ecological sensitivity.

The location within the Knockmealdown uplands is itself significant.

Upland landscapes provide:

- biodiversity refuges;
- water regulation;
- carbon storage;
- landscape connectivity;

- recreational and cultural value.

The absence of a statutory designation does not mean an area has no environmental importance. Irish and European environmental policy increasingly recognises the importance of protecting wider countryside biodiversity, not only designated sites.

Assuming that landscape effects are acceptable because wind energy infrastructure is temporary.

The temporary nature of planning permission does not remove the significance of the impact. A 40-year operational period represents a substantial proportion of a human lifetime and is an extremely long period in ecological terms. The concrete and steel foundations would remain permanently.

Furthermore:

- turbines cannot be screened effectively;
- skyline effects cannot be mitigated;
- the industrial character remains throughout operation.

The landscape effect is therefore a long-term transformation, not just a temporary visual change.

Assuming that the development complies with national renewable energy policy. The applicant's response must be assessed against the Waterford County Development Plan, not national policy alone.

A key issue is that the EIAR scoping documentation identifies that the site is within an area designated as an Exclusion Zone for Wind Energy under the Waterford City and County Development Plan 2022–2028. As mentioned throughout this submission - this is a significant planning consideration. National policy supports renewable energy, but it does not override the requirement for appropriate siting.

This conclusion depends on accepting that mitigation measures are successful.

However, for irreversible impacts such as:

- habitat loss and fragmentation;
- landscape transformation;
- loss of ecosystem function;
- mitigation cannot eliminate the impact.

The appropriate assessment question is: After mitigation, does a significant adverse effect remain? For Dyrick Hill, the answer is **YES** because the physical presence of the turbines and infrastructure permanently changes the receiving environment.

The applicant's response places significant weight on the benefits of renewable energy, but understates the environmental cost of placing a large industrial development within a sensitive upland landscape.

The proposed development would:

- permanently alter the Knockmealdown upland character;
- remove and fragment semi-natural habitats;
- reduce natural carbon storage capacity;
- create impacts that cannot be fully mitigated.

Renewable energy development is necessary, but the climate transition must not result in avoidable damage to the natural systems that also help address climate change.

In response to the applicant's argument that the Climate Act supersedes the County Development Plan:

The Climate Action and Low Carbon Development Act 2015 does not confer statutory supremacy over the Waterford City and County Development Plan 2022–2028

The statutory hierarchy established by the Oireachtas:

The central error advanced by the Applicant is the proposition that the Climate Action and Low Carbon Development Act 2015 (as amended) confers overriding legal status upon national climate policy, thereby permitting or requiring departure from the Waterford City and County Development Plan 2022–2028. That proposition finds no support in the legislation.

The Planning and Development Acts establish a comprehensive statutory code governing land use planning in the State. Under that code, the Development Plan is the primary statutory planning instrument adopted by the elected members of the planning authority following Strategic Environmental Assessment, Appropriate Assessment, public consultation and democratic deliberation.

Had the Oireachtas intended that the Climate Act would supersede that statutory framework, it would have expressly amended the Planning and Development Acts. **It did not.** It is therefore presumed that both legislative codes are intended to operate harmoniously.

Sustainable development requires reconciliation of competing environmental objectives:

The Applicant proceeds upon the false premise that renewable energy and environmental protection are synonymous. They are not. The Planning Acts recognise that sustainable development requires reconciliation between competing public interests.

Those interests include:

- climate mitigation;
- biodiversity conservation;
- peat land protection;
- water quality
- landscape protection;
- archaeology;
- public health;
- residential amenity.

Where a wind farm would permanently destroy peat land, dry heath or other carbon-rich habitats, the environmental cost itself becomes a material climate consideration.

The applicant has not properly demonstrated that avoiding emissions from renewable electricity outweighs the permanent loss of ecosystem services provided by the upland habitats, the destruction of dry heath and peat-influenced upland habitats; the climate implications of losing natural carbon sinks; cumulative impacts on the Knockmealdown landscape; and the comparison between the project's claimed climate benefits with its environmental costs.

Those ecosystem services include:

- Long-term carbon storage;
- Future carbon sequestration;
- Flood attenuation;
- Water regulation;
- Biodiversity;
- Soil protection;
- Landscape quality.

Accordingly, it cannot be assumed that approval of every wind farm necessarily advances the objectives of the Climate Act. It is recognised that climate and biodiversity are inseparable. Public bodies are expected to pursue climate objectives in a way that is environmentally sustainable.

The same renewable energy could be generated in a location with substantially less ecological damage; the applicant has failed to demonstrate that this site is environmentally justified.

Localisation of national policy

National renewable energy targets are expressed at national level.

Neither the Climate Action Plan nor the Climate Act identifies Dyrick Hill as a location where wind development must occur.

Indeed, national targets can be achieved through numerous combinations of:

- offshore wind;
- repowering existing sites;
- solar generation;
- rooftop solar;
- energy storage;
- demand reduction;
- alternative onshore locations.

Accordingly, refusal of one environmentally unsuitable development cannot rationally be characterised as frustrating national climate policy.

One of the most significant legal issues in the Dyrick Hill appeal is that the Applicant appears to rely on the Renewable Energy Directive III (Directive (EU) 2023/2413) as though it already creates a legal presumption in favour of granting permission. We challenge this assumption.

Response to the Applicant's Reliance on RED III (Directive (EU) 2023/2413)

The Applicant overstates the legal effect of RED III. The Applicant relies on the amended Renewable Energy Directive (RED III) to argue that renewable energy projects should be regarded as being in the overriding public interest and that local planning policies should give way to climate objectives.

This interpretation goes beyond what the Directive actually provides.

RED III encourages Member States to accelerate renewable energy deployment. However, it does not require planning authorities to approve every renewable energy project, regardless of environmental impacts or conflicts with statutory development plans.

The Directive continues to require compliance with EU environmental law, including:

- The Habitats Directive (92/43/EEC),
- The Birds Directive (2009/147/EC),
- The Environmental Impact Assessment Directive (2011/92/EU, as amended),
- The Water Framework Directive (2000/60/EC).

These obligations remain **legally binding** and are not displaced by RED III.

RED III requires implementation through Irish law

A Directive does not automatically replace national planning legislation. Its provisions generally require transposition into Irish law by the Oireachtas before they have full legal effect, except in limited circumstances recognised by EU law. Accordingly, RED III cannot be interpreted as

overriding the Planning and Development Act or the Waterford City and County Development Plan, unless and until the relevant provisions have been implemented in Irish legislation.

Renewable Acceleration Areas have not been designated

One of RED III's principal reforms is the creation of Renewables Acceleration Areas. These are areas that Member States identify, following strategic environmental assessment and public consultation, as particularly suitable for renewable energy development. Ireland has not designated Dyrick Hill as a Renewable Acceleration Area.

In the absence of such designation, the ordinary planning and environmental assessment procedures continue to apply in full.

The Applicant cannot rely upon provisions intended for Renewable Acceleration Areas, where no such designation exists.

"Overriding Public Interest" is not absolute

RED III recognises that renewable energy may, in certain contexts, be considered an overriding public interest. However, this is not an automatic planning permission.

Planning authorities must still determine:

- whether significant adverse environmental effects exist;
- whether less damaging alternatives are available;
- whether mitigation measures are adequate;
- whether the proposal complies with the Habitats Directive;
- whether water quality objectives are protected;
- whether proper planning and sustainable development are achieved.

The Directive does not remove these obligations.

RED III strengthens biodiversity obligations

The Applicant quotes RED III in support of renewable energy, but overlooks the Directive's broader context.

The Directive expressly recognises that renewable energy deployment should contribute to environmental protection and biodiversity restoration.

Destroying extensive areas of peatland and dry heath may undermine these objectives by:

- releasing stored carbon,
- damaging protected habitats,
- fragmenting upland ecosystems,
- affecting water quality,

- reducing biodiversity resilience.

The Coimisiún should therefore consider whether the proposal is consistent with the Directive as a whole, rather than relying on isolated provisions that favour renewable energy.

The County Development Plan remains relevant

Nothing in RED III states that County Development Plans cease to have effect. Development Plans remain the statutory basis for land-use planning in Ireland.

Where a Development Plan identifies an area as unsuitable for wind energy because of landscape sensitivity, ecological value, peatland, hydrology or cumulative effects, those policies continue to carry substantial weight, unless the Oireachtas clearly provides otherwise.

The Applicant places significant reliance on Directive (EU) 2023/2413 (RED III) as though it creates a legal presumption in favour of granting permission for the proposed development. This overstates the legal effect of the Directive.

RED III promotes the accelerated deployment of renewable energy, but expressly preserves the application of EU environmental law and does not displace the Planning and Development Acts or the statutory Waterford City and County Development Plan.

As Dyrick Hill has not been designated as a Renewable Acceleration Area, the proposal must be assessed under the ordinary planning code. The Coimisiún is therefore required to undertake a full and balanced assessment of the proposal against all applicable planning and environmental obligations.

Commonage Land

We object to the proposed Dyrick Hill Wind Farm because the application raises serious concerns about commonage rights, habitat protection, peat and heathland impacts, adequacy of ecological safeguards, and the validity of landowner consent.

The lands proposed for turbines T9, T10, T11, T12 and T13 are on commonage land, which is not ordinary private development land. Commonage shareholders have grazing rights, but those rights do not amount to an unrestricted right to alter, industrialize, or interfere with the land beyond that use.

EU and national environment policy makers are coming to realise the importance of Commonages as a valuable cultural, ecological landscape in themselves. Ireland's Rural Development Plan clearly states that appropriate management of these areas will contribute to meeting priority 4A. This priority involves *'restoring, preserving and enhancing biodiversity*

included in NATURA 2000 areas and in areas facing natural or other specific constraints and high nature value farming as well as the state of European regulations.'

The absence of a Commonage Management Plan from the planning application for Dyrick Hill Wind Farm is a serious flaw. The Habitat Management Plan was prepared by Doherty Environmental. Where a project affects shared upland land of ecological and cultural importance, a proper planning application should clearly show:

- how the commonage will continue to be maintained in good agricultural and environmental condition,
- how the rights and interests of all shareholders are protected,
- how habitat damage, access disturbance, drainage alteration, and fragmentation will be prevented, and
- how long-term restoration and management will be guaranteed.

Without that, the application fails to demonstrate that development on this commonage is appropriate or responsibly planned.

The development threatens a sensitive Annex 1 European Dry Heath habitat

Areas mapped as dry heath habitat within the wind farm site are representative of the Annex 1 Habitat European Dry Heath. In fact, the proposed borrow pit location is situated on Dry Heath, this is a major issue. Page 17 of the Habitat Management Plan (HMP) states “The habitat restoration area includes Dry Heath Plot No. 1 which is the proposed borrow pit location”. Pages 18 and 19 of the HMP does little to preserve the Dry Heath, does less to restore the Dry Heath by suggesting that carefully stripped turf is replaced, yet the plan relies on excavation drivers to be trained, while later in the document the training was reduced to drivers being briefed during a Toolbox Talk (Page 39 of HMP). This does not instil confidence in their Habitat Management Plan. In fact, it could be regarded as the active destruction of the heathland habitat. Functioning peatlands capture carbon from the atmosphere and store it in the form of peat and vegetation. When peatlands are drained or damaged, the peat oxidises and the carbon is released back to the atmosphere. A Dry Heath Restoration plan should preserve biodiversity, maintain the landscape and support the ecological and cultural value of this historic habitat. The proposed wind farm development would put this habitat at high risk.

The destruction of dry heath, through the development of a wind farm, would break up this heathland area through fragmentation. This is where the habitat is split and isolated within its rural landscape, causing the loss of many species, which in turn, affects genetic diversity and long-term viability of species’ populations. Climate change is a growing concern, with warmer temperatures causing grass species to become more dominant, leading to a shift from heathland to grassland. This could impact the amount of carbon stored or emitted from the

heathlands and increase the chance of wildfires. Land changes, especially where industrial areas are developed in close proximity to dry heath, have a negative effect on the wildlife.

Heathland systems are complex, slow to recover, and vulnerable to permanent degradation if disturbed. In practical terms, **this looks less like restoration and more like destruction followed by optimistic assumptions.**

The development does not inspire confidence on peat stability or ecological risk

The Habitat Management Plan submitted with the application not only fails to address the preservation of Breomountain Commonage land, but also fails to carry out a peat stability risk assessment. That is a major deficiency for an upland wind farm proposal. Peatland and upland sites can be highly vulnerable to disturbance from excavation, road building, turbine foundations, drainage alteration, and borrow pits. A failure to properly assess peat stability creates risk not only to habitats and water quality, but also to slope integrity and downstream environments.

The ecological mitigation proposed appears superficial and inadequate

One particularly troubling point is the proposal that an Environmental/Ecological Clerk of Works would be on site only one day per week during construction (7.2 on Page 36 of HMP), combined with only an initial contractor briefing.

That is not proportionate to the ecological sensitivity described. Construction of a wind farm in upland habitat involves repeated, high-risk activities: excavation, haul routes, drainage changes, spoil handling, vegetation stripping, and heavy machinery movement. Sensitive habitats cannot be protected by occasional oversight and a one-off briefing.

This creates the impression that the Habitat Management Plan is a box-ticking exercise, rather than a credible protection framework. If the site is as environmentally sensitive as the application indicates, then ecological supervision should be continuous or near-continuous during critical phases, not intermittent.

The development risks harm to protected bird habitat

The concerns about hen harrier and golden plover are not peripheral. These species are protected under the EU Birds Directive, and protection obligations are not confined only to designated Special Protection Area (SPA) boundaries.

The wider countryside matters because protected bird species depend on movement, feeding, breeding support, and landscape connectivity outside formally designated sites. The legal

obligation on public authorities to strive to avoid pollution or deterioration of habitats outside SPAs is important here.

That means the planning authority cannot treat non-SPA land as ecologically disposable. If the site contributes to the functional landscape used by protected species, then habitat deterioration, disturbance, fragmentation, and construction pressure all become relevant planning concerns.

The hen harrier and golden plover are afforded protections under Annex 1 of the EU Birds Directive (2009/147/EC), with Special Protection Areas (SPAs) designated to protect their breeding habitats. Conservation efforts are ongoing to address its declining population and ensure their survival. The most important factors for these species are appropriate vegetation structure and the availability of a sustainable amount of food resources. Furthermore, the Hen Harrier is afforded a level of protection in the wider countryside by Article 4 (4) of the Birds Directive, which states that, outside SPAs, “Member States shall also strive to avoid pollution or deterioration of habitats”. This requirement is reflective of the fact that, although areas may not be identified as appropriate for classification as SPAs, for particular bird species, birds rely on movement throughout the countryside to support a range of important behaviours and ecological requirements. In its findings against Ireland on the Birds Case (418/04), the European Court of Justice found that Ireland had failed to both transpose and apply this requirement fully and correctly. Since 2011, this obligation has been transposed in Ireland to all public authorities when carrying out their functions or responsibilities through the Regulations (Regulation 27) i.e. to strive to avoid pollution or deterioration of habitats, outside SPAs. Thus, there is an obligation on public authorities to take steps in their decision-making to strive to avoid pollution or deterioration of [Hen Harrier] habitats outside SPAs, when making their decisions and providing consents.

The consent process raises serious questions of fairness and validity

A serious governance issue in relation to Dyrick Windfarm has unfolded around reported concerns requiring investigation that consent from commonage shareholders may have been obtained through pressure, harassment, incomplete information, or from persons lacking capacity.

Serious concerns have been raised by commonage shareholders regarding the manner in which consent was sought and recorded. These concerns include allegations of pressure being applied to vulnerable individuals, claims that relevant documents were not provided before signatures were sought, questions as to whether at least one signature was ever given, and concerns about the capacity of at least one signatory to provide informed consent. Given the

shared and sensitive nature of commonage land, these matters warrant careful scrutiny and weigh against reliance on the purported consent.

If those claims are accurate, they go to the heart of whether the Applicant can rely on the asserted landowner support at all.

Those are not minor procedural imperfections. They raise the possibility that the planning process is relying on contested or defective consent in relation to commonage land. At minimum, that should trigger close scrutiny and caution. A planning authority should be very slow to permit an irreversible development where the underlying land consent process is in dispute.

The cumulative picture is one of uncertainty, not sound planning

Even if wind energy is a legitimate public objective in principle, not every site is suitable. The question is not whether wind energy is good in the abstract. The question is whether this site, on this commonage, with these habitats, under this application, has been shown to be appropriate.

Here, the cumulative picture is troubling:

Issue	Concern
Commonage	Shared land rights and management issues not adequately addressed
Habitat	Dry heath at risk of direct loss and fragmentation
Peat	Alleged absence of peat stability assessment
Bird protection	Potential deterioration of wider countryside habitat used by protected species
Mitigation	Ecological oversight appears weak and intermittent
Consent	Allegations of pressure, lack of informed consent, and capacity concerns

We object to the proposed Dyrick Hill Wind Farm on the grounds that it would introduce major industrial infrastructure onto sensitive commonage land without adequate protection for the ecological, legal, and community interests at stake. The proposal affects Breomountain commonage, including lands identified for turbines T9 to T13, yet no proper Commonage Management Plan appears to accompany the application. That is a serious omission given the

distinct status of commonage land, the rights of shareholders, and the obligation to maintain such lands in good agricultural and environmental condition.

The environmental concerns are equally serious. The application area includes dry heath habitat representative of Annex I European Dry Heath, and the proposed borrow pit is said to be located on that habitat. This raises the prospect of direct habitat loss, fragmentation, hydrological disturbance, and long-term ecological degradation. The suggested mitigation measures, including turf stripping and replacement and limited contractor briefing, do not amount to a credible restoration strategy for a fragile upland heathland system. If anything, they underline the risk that irreversible damage would occur first and restoration would be hoped for later.

There are also concerns that the Habitat Management Plan fails to include a proper peat stability risk assessment. For an upland wind farm development involving excavation, road construction, turbine foundations, and drainage alteration, that is a critical issue. In the absence of robust assessment, the planning authority cannot be satisfied that peat, water, slope stability, and downstream environmental risks have been adequately addressed.

The protections proposed during construction appear weak. The recommendation that an Environmental/Ecological Clerk of Works be present only one day per week does not reflect the sensitivity of the site or the scale of likely disturbance. Such limited oversight does not inspire confidence that habitat protection measures would be properly implemented or enforced.

In addition, the site may form part of the wider countryside used by protected bird species such as hen harrier and golden plover. Public authorities are not free to disregard habitat deterioration, simply because land lies outside a designated SPA. Where protected species rely on the broader landscape for feeding, movement, or breeding support, those ecological functions must be taken seriously in planning decisions.

Finally, serious concerns have been raised regarding the process by which consent from commonage shareholders was obtained. These concerns include reports of pressure being placed on vulnerable individuals, claims that relevant documents were not provided before signatures were sought, questions as to whether some consent was fully informed, and concerns about the reliability of the consent record itself. In the context of commonage land, these issues are highly significant and should weigh heavily against the application.

For all of these reasons, the proposed development has not been shown to be environmentally acceptable, procedurally reliable, or compatible with the proper protection of commonage land. Planning permission should therefore be refused.

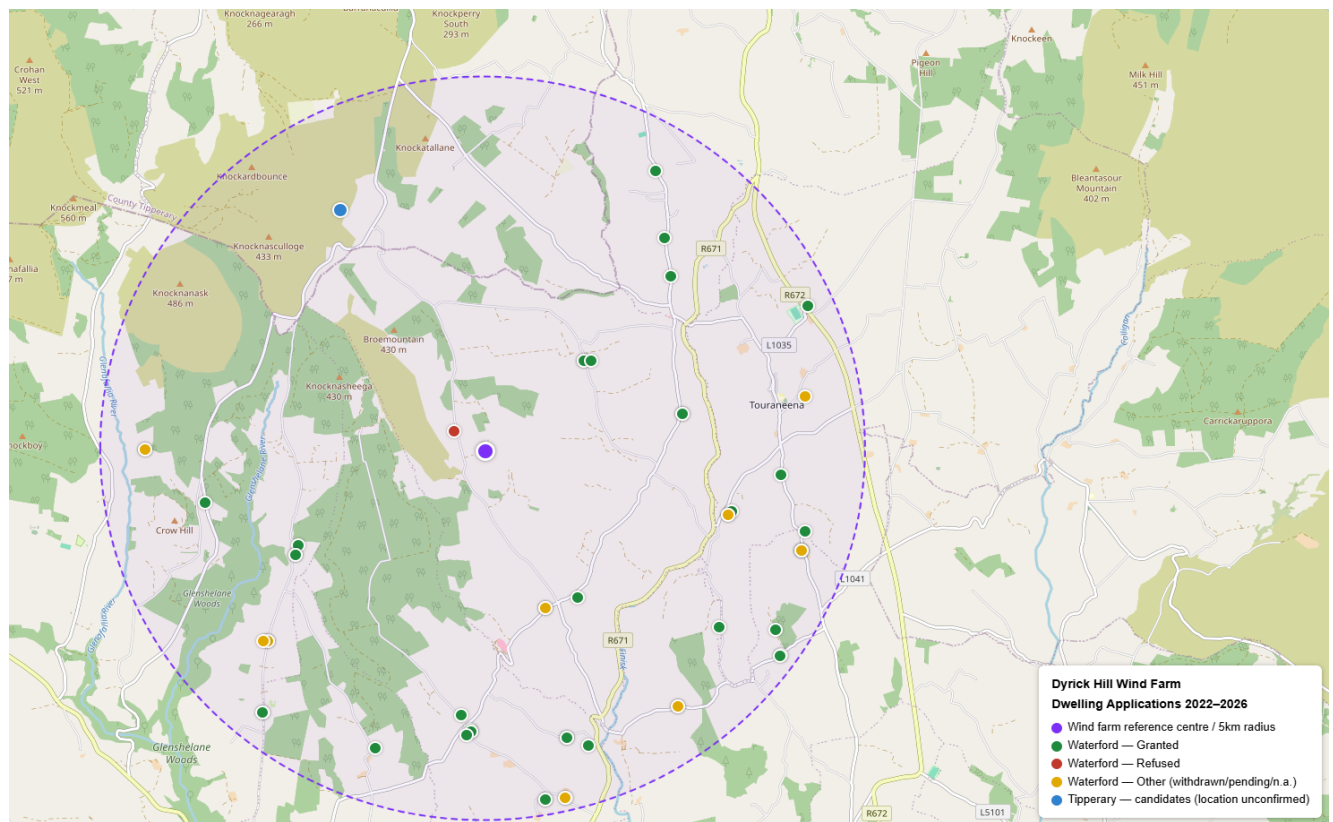
Planning Applications in Dyrick Region since 2022

This submission is made on planning ground of the proposed Dyrick Hill Wind Farm development relating in particular to the following:

- residential amenity;
- settlement pattern;
- rural character;
- cumulative impact on existing and permitted dwellings; and
- the incompatibility of the proposed development with the receiving environment.

This submission relies, in part, on the documented pattern of new dwelling planning applications within 5 km of Dyrick Hill during the period 1 January 2022 to 23 July 2026. **(Appendix A)**. That record demonstrates that the area surrounding the proposed development is an active and

Map below showing Dwelling Applications from 2022-2026



Receiving Environment

The proper assessment of this proposal must begin with a realistic understanding of the receiving environment.

The area surrounding Dyrick Hill is not an unpopulated or weakly settled landscape. On the contrary, the planning record shows a clear and continuing pattern of residential activity in the immediate vicinity of the proposed wind farm.

Within a radius of 5 km of the Dyrick Hill reference point, 26 new dwelling applications were identified for the period from 1 January 2022 to 23 July 2026. Of these:

- 17 applications were granted;
- 2 applications were refused; and
- 7 applications were recorded as other, undetermined, linked, or superseded applications.

The yearly pattern is also significant:

- 2022: 10 applications
- 2023: 3 applications
- 2024: 6 applications
- 2025: 4 applications
- 2026 to 23 July: 3 applications

This is a strong indicator of sustained residential demand and an ongoing pattern of rural settlement in the area surrounding the proposed development.

Established and Emerging Residential Context

The above planning history demonstrates that the environs of Dyrick Hill comprise an established and evolving residential context. The importance of this evidence is that it reflects not merely historic housing stock, but recent and continuing decisions by individuals and families to seek permission for new homes in this locality. The fact that applications were made in each year of the relevant period shows that residential development pressure has been continuous rather than isolated or exceptional. A receiving environment characterised by repeated one-off housing proposals and permissions must be regarded as a sensitive residential landscape for planning purposes.

The Coimisiún should therefore assess the proposed development on the basis that it would be located within a settled rural area where residential amenity is an important and legitimate planning value.

Proximity of New Dwellings to the Proposed Development

The planning evidence is also significant in terms of proximity. A number of new dwelling applications were made at relatively short distances from the Dyrick Hill reference point, including at approximately:

- 2.27 km
- 2.32 km
- 2.85 km
- 3.34 km

Additional new dwelling applications are distributed throughout the 3.5 km to 4.8 km range. This demonstrates that the proposed wind farm would not be remote from residential receptors. Rather, it would be situated in a landscape where existing and permitted dwellings are present at relatively close range. In those circumstances, the Coimisiún must give serious weight to the likely effects of the development on the residential conditions enjoyed by households in the surrounding area.

Impact on Residential Amenity

The proposed development raises serious concerns in respect of residential amenity. A wind farm of the scale proposed has the potential to generate significant adverse effects, including but not limited to:

- visual dominance and overbearing landscape presence;
- noise effects;
- shadow flicker;
- movement effects associated with rotating blades;
- aviation or other night-time lighting impacts, where applicable;
- construction traffic and disturbance; and
- the broader industrialisation of a quiet rural residential setting.

These effects must be considered not in the abstract, but in the context of a real and evidenced residential pattern around the site. The planning history shows that households have continued to secure permission for new dwellings within the 5 km area throughout the relevant period. In our submission, this materially strengthens the weight to be given to residential amenity concerns. The introduction of a large-scale wind energy development into such a setting would give rise to an unacceptable interference with the reasonable enjoyment, outlook, and living conditions of existing and permitted dwellings in the area.

Settlement Pattern and Proper Planning

The pattern of development disclosed by the planning record is one of dispersed but continuing rural settlement. That settlement pattern is a material characteristic of the area and should not be discounted in favour of a simplistic description of the locality as upland or agricultural land.

The issue for the Coimisiún is not whether there are houses somewhere in the wider countryside, but whether the immediate receiving environment exhibits an active pattern of residential occupation and permission. The evidence clearly shows that it does. In that context, the proposed development would represent the insertion of a major industrial-scale project into an area where the established pattern of development is predominantly rural residential in character. Such an outcome would be at odds with the existing settlement pattern and would introduce a land use whose scale and character are not compatible with that pattern.

Rural Character

The area surrounding Dyrick Hill derives much of its character from its function as a rural living environment, with dispersed dwellings, agricultural land use, and a settled countryside landscape. The planning evidence demonstrates that this rural character is not static but continues to support new housing and long-term family occupation. The proposed wind farm would materially alter that character by introducing a highly prominent energy infrastructure development into the centre of that landscape. The effect would not simply be visual. It would alter the overall perception and experience of the area from a rural residential landscape to one significantly influenced, and potentially dominated, by industrial-scale turbine development. That is a material and adverse planning consequence which, in our submission, weighs against the grant of permission.

Cumulative Effect on Existing and Permitted Dwellings

The Coimisiún is required to consider the cumulative impact of the proposed development on the receiving environment. In this case, the relevant cumulative effect is not confined to any one dwelling considered in isolation. Rather, it arises from the combined presence of:

- existing dwellings in the area;
- recently permitted dwellings; and
- the demonstrated continuation of demand for further one-off housing within 5 km of the site.

The figure of 26 new dwelling applications within less than four and a half years, with 17 permissions granted, is highly significant in this regard.

It indicates that the residential context around Dyrick Hill is neither marginal nor incidental. It is substantial, current, and continuing. Accordingly, the likely effects of the proposed wind farm must be assessed cumulatively across this residential landscape rather than by reference to

isolated receptors only. Failure to give proper weight to this cumulative residential context would, in our view, understate the true scale of the proposal's impact on the area.

Risk of Prejudicing Future Residential Development

The planning history also gives rise to a legitimate concern that the proposed development would prejudice future rural housing opportunities in the area. The evidence shows that persons have continued throughout the relevant period to seek permission for new dwellings within 5 km of Dyrick Hill.

If a major wind farm is permitted in this location, it may have the effect of constraining future residential development, either because of amenity impacts, planning policy interactions, or the practical reluctance of prospective applicants to pursue housing in the shadow of such a development.

In that way, the proposal risks sterilising or undermining the future residential function of an area where recent planning history clearly demonstrates continuing housing demand.

That is, in our submission, contrary to the proper planning and sustainable development of a settled rural community.

To Summarize:

The planning record for the period from 1 January 2022 to 23 July 2026 demonstrates a clear and continuing pattern of new dwelling applications within 5 km of Dyrick Hill. The evidence of 26 applications, including 17 granted permissions, shows that the receiving environment is an active rural residential area with ongoing settlement and continuing housing demand. In those circumstances, the proposed Dyrick Hill Wind Farm would constitute an inappropriate form of development in this location.

It would give rise to unacceptable effects on:

- residential amenity;
- the established settlement pattern;
- rural character; and
- the cumulative living conditions of existing and permitted dwellings.

It also risks prejudicing future residential development in the area. Having regard to the established and emerging residential character of the area, and to the likely adverse effects of the proposed development on existing and permitted dwellings, we respectfully submit that the proposal would be contrary to the proper planning and sustainable development of the area and should be refused.

Appendix A

Planning Applications for Dwellings within 5km of Dyrick Hill Wind Farm

Waterford City & County Council — applications received from 1 January 2022 through 23 July 2026, any decision or status.

Wind farm reference point: Dyrick townland centroid, Co. Waterford — 52.1970 N, 7.77234 W. The Dyrick Hill Wind Farm development site spans the townlands of Dyrick, Ballynaguilkee Upper, Broemountain and Lisleaghmountain, so this is an approximate centre of the overall site, not a single turbine location.

Colour key used in the Waterford tables below: green = Granted, red = Refused, unshaded = other status (withdrawn / invalidated / further information requested / decision pending).

Tipperary County Council's ArcGIS "Planning Public View" map application is currently retired/unavailable (the hosted item returns "Replacement not available" as of 23 Jul 2026), so there is no coordinate layer to query as was done for Waterford.

Reverse-geocoding a 5km circle around the wind farm centre shows only three Tipperary townlands clip the boundary: Boolahallagh and Aughavanlomaun (nearest edge ~3km, far edge ~5km) and Middlequarter (~4km-10km+ across its span). Waterford City & County Council — Dwelling Applications (within 5km)

Sorted by distance from the wind farm reference point.

App No.	Received	Applicant	Type of Dwelling	Decision	Dist (km)	Latitude	Longitude
221073	29/12/2022	Declan O'Brien	Existing dwelling — change of use to office (Refused)	Refused 16/02/2023	0.47	52.19932	-7.778072
2360253	16/06/2023	Ciarán Hanrahan	Existing dwelling — front/rear extension + internal alterations (status: n/a, superseded by 2360297)	Other n/a	1.77	52.207806	-7.753309

App No.	Received	Applicant	Type of Dwelling	Decision	Dist (km)	Latitude	Longitude
2360297	06/07/2023	Ciarán Hanrahan	Existing dwelling — front/rear extension + internal alterations (Granted)	Granted (Conditional) 28/08/2023	1.77	52.207806	-7.753309
23134	25/04/2023	Patrick and Miriam Kiely	Existing dwelling — car-port extension to domestic store (Granted)	Granted (Conditional) 15/06/2023	1.84	52.207784	-7.751876
22874	11/10/2022	Shane Kenneally	New dwelling — dormer style bungalow (Outline Perm., Refused)	Refused 27/06/2023	2.27	52.177931	-7.760559
22818	15/09/2022	Shane Kenneally	New dwelling house (Outline Permission, status: n/a)	Other n/a	2.27	52.177931	-7.760559
221046	16/12/2022	James Harrington	New dwelling — single storey + garage (Granted)	Granted (Conditional) 07/02/2023	2.32	52.179214	-7.754538
2360363	14/08/2023	Tina O'Grady & Nicolas Dalton	Existing dwelling — retain mobile home pending main dwelling completion (status: n/a, superseded by 2360389)	Other n/a	2.64	52.201369	-7.734329
2360389	26/08/2023	Tina O'Grady & Nicolas Dalton	Existing dwelling — retain mobile home pending main dwelling completion (Granted)	Granted (Conditional) 20/10/2023	2.64	52.201369	-7.734329
22624	11/07/2022	Nigel and Sharon Williams	Dwelling — log cabin (Retention, Granted)	Granted (Conditional) 22/11/2022	2.75	52.185554	-7.808064
24222	06/11/2024	Leonard Spencer	New dwelling — dormer + garage (Outline, Granted)	Granted (Conditional) 21/03/2025	2.85	52.184329	-7.808524

App No.	Received	Applicant	Type of Dwelling	Decision	Dist (km)	Latitude	Longitude
2560564	15/08/2025	Leonard Spencer	New dwelling — single storey, permission consequent to 24/222 (Granted)	Granted (Conditional) 01/10/2025	2.85	52.184329	-7.808526
22900	19/10/2022	Noreen and Michael McGrath	Existing dwelling — retention of alterations (Granted)	Granted (Conditional) 20/06/2023	3.31	52.189197	-7.725544
22774	01/09/2022	Noreen and Michael McGrath	Existing dwelling — retention of alterations (superseded by 22900)	Other n/a	3.31	52.189184	-7.725544
2660122	05/03/2026	Charles Hennessy	New dwelling — single storey house + garage (Granted)	Granted (Conditional) 20/05/2026	3.34	52.189652	-7.724984
23130	21/04/2023	Stephen and Lianora Coffey	Existing dwelling — renovation + two storey extension (Granted)	Granted (Conditional) 01/08/2023	3.38	52.21799	-7.736583
22568	24/06/2022	Christopher Phelan	New dwelling — single storey (Granted)	Granted (Conditional) 16/08/2022	3.57	52.165012	-7.776783
2360546	14/11/2023	Sean & Sarah Fitzpatrick	New dwelling — two storey + garage (Granted)	Granted (Conditional) 24/10/2024	3.70	52.222659	-7.737844
2360380	22/08/2023	Michael Fenton Aisling Casey	New dwelling — single storey house + garage (Granted)	Granted (Conditional) 11/10/2023	3.73	52.190642	-7.825873
2460464	13/08/2024	Gary Power	New dwelling — single storey (Granted)	Granted (Conditional) 14/01/2025	3.77	52.163157	-7.775098

App No.	Received	Applicant	Type of Dwelling	Decision	Dist (km)	Latitude	Longitude
2460465	13/08/2024	J John Power	New dwelling — single storey (status: n/a, joint filing w/ 2460464/2460494)	Other n/a	3.79	52.162987	-7.774815
2460494	29/08/2024	John Power	New dwelling — single storey w/ attic mezzanine (Granted)	Granted (Conditional) 14/01/2025	3.79	52.162987	-7.774815
23179	07/06/2023	Monika and Stan Dudekova	New dwelling — single storey (Refused)	Refused 18/09/2023	3.83	52.173924	-7.813902
22485	03/06/2022	Caoimhe Joyce Hearne	New dwelling — two storey (Outline Perm., status: n/a)	Other n/a	3.83	52.173924	-7.813902
2460755	12/12/2024	Patrick O'Donovan & Katie Buckley	New dwelling — single storey + garage (Granted)	Granted (Conditional) 11/02/2025	3.83	52.162612	-7.775751
22482	03/06/2022	Muireann Ní Sheoighe Eachthighearn	New dwelling — two storey (Outline Perm., status: n/a)	Other n/a	3.88	52.173891	-7.814769
221003	29/11/2022	Luke Whitmore & Chloe Kiely	New dwelling — single storey w/ attic storage (Granted)	Granted (Conditional) 24/01/2023	3.89	52.175566	-7.727374
2241	24/01/2022	Kevin Sheehan and Aisling Hallinan	New dwelling — single storey (Granted)	Granted (Conditional) 14/03/2022	3.90	52.194038	-7.715475
2660146	11/03/2026	Kevin Dalton	Ancillary — domestic storage garage at existing house (status: n/a, superseded by 2660160)	Other n/a	4.01	52.162273	-7.756477
2660160	13/03/2026	Kevin Dalton	Ancillary — domestic storage garage at existing house (Granted)	Granted (Conditional) 06/05/2026	4.01	52.162273	-7.756476

App No.	Received	Applicant	Type of Dwelling	Decision	Dist (km)	Latitude	Longitude
24235	29/11/2024	Richard Kiely	New dwelling — single storey (Granted)	Granted (Conditional) 18/06/2025	4.19	52.161341	-7.752453
22873	11/10/2022	Michael Burke	Dwelling — plan amendment dormer to storey-and-a-half (Granted)	Granted (Conditional) 22/11/2022	4.25	52.160995	-7.793238
2560844	26/11/2025	David Connors	Existing dwelling — demolition + reconstruction of single storey element (status: n/a)	Other n/a	4.27	52.203554	-7.710818
2660419	12/06/2026	Kim Newham	New dwelling — detached dormer bungalow (Outline, status: n/a, linked to 2660428)	Other n/a	4.28	52.166082	-7.735176
2660428	16/06/2026	Kim Newham	New dwelling — detached dormer bungalow (Outline, status: n/a)	Other n/a	4.28	52.166082	-7.735176
2360536	08/11/2023	Kieran Moynihan	Existing dwelling — renovation + extension (Granted)	Granted (Conditional) 13/06/2024	4.34	52.187154	-7.710929
22545	17/06/2022	Shane Foley & Moira Condon	New dwelling — single storey (Granted)	Granted (Conditional) 09/08/2022	4.37	52.230743	-7.739568
2460428	26/07/2024	Jennifer Moloney	Existing dwelling — retention of as-built position (status: n/a, related to 2460315/2460276)	Other n/a	4.38	52.184834	-7.711464
2460315	07/06/2024	Jennifer Moloney	Existing dwelling — retention of as-built position (status: n/a)	Other n/a	4.38	52.184834	-7.711464
2460276	23/05/2024	Jennifer Moloney	Existing dwelling — retention of as-built position (status: n/a)	Other n/a	4.38	52.184834	-7.711463

App No.	Received	Applicant	Type of Dwelling	Decision	Dist (km)	Latitude	Longitude
2660510	10/07/2026	Micheal Bray	Existing dwelling — renovation + extension (status: n/a, superseded by 2660523)	Other n/a	4.44	52.197134	-7.837324
2660523	15/07/2026	Micheal Bray	Existing dwelling — renovation + extension (status: n/a)	Other n/a	4.44	52.197134	-7.837325
22662	21/07/2022	Patrick McGrath	New dwelling — two storey (Granted)	Granted (Conditional) 13/09/2022	4.52	52.175298	-7.716479
2591	14/07/2025	Marie -Claire O Sullivan	Existing dwelling — alterations (status: n/a, superseded by 2598)	Other n/a	4.57	52.165288	-7.814736
2598	24/07/2025	Marie Claire O Sullivan	Existing dwelling — alterations (Granted)	Granted (Conditional) 15/09/2025	4.57	52.165287	-7.814829
2660288	02/05/2026	Kirsten Scerri	Existing dwelling — single storey extension + entrance porch (Granted)	Granted (Conditional) 19/06/2026	4.66	52.214403	-7.7104
2360551	17/11/2023	Helen Kiely	Existing dwelling — retention of additional bedroom + dormer windows (Granted)	Granted (Conditional) 15/01/2024	4.76	52.172103	-7.715742
2560137	05/03/2025	Marian Troy and Brendan Lynch	New dwelling — single storey + garage (status: n/a, superseded by 2560148)	Other n/a	4.76	52.154787	-7.760678
2560148	07/03/2025	Marian Troy and Brendan Lynch	New dwelling — single storey + garage (Granted)	Granted (Conditional) 27/05/2025	4.76	52.154787	-7.760678
2560513	24/07/2025	Gearóid Hallinan and Sarah McCarthy	New dwelling — change of house design (Granted)	Granted (Conditional) 21/11/2025	4.77	52.172197	-7.715515

App No.	Received	Applicant	Type of Dwelling	Decision	Dist (km)	Latitude	Longitude
2660492	02/07/2026	Sean O Donovan & Niamh Kiely	Existing dwelling — single + two storey extension (status: n/a, superseded/paired with 2660473)	Other n/a	4.79	52.15503	-7.756776
2660473	26/06/2026	Sean O Donovan & Niamh Kiely	Existing dwelling — single + two storey extension (status: n/a)	Other n/a	4.79	52.155028	-7.756783

Tipperary County Council — Candidate Applications

GPS coordinates are not published by Tipperary CoCo for these applications — see notes below.

App No.	Received	Applicant	Location (as filed)	Type of Dwelling	Details link
2260218	11/05/2022	Helen McGrath	Middlequarter, Newcastle, Co. Tipperary E91 HF85	Extension — garage converted to residential use (Granted)	https://www.eplanning.ie/TipperaryCC/AppFileRefDetails/2260218/0
22529	23/08/2022	Samanta O'Donnell & Brendan Byrne	Middlequarter, Newcastle, Co. Tipperary	New dwelling — two storey residence (Granted; design later amended under 2360347)	https://www.eplanning.ie/TipperaryCC/AppFileRefDetails/22529/0
2260563	20/10/2022	Frank Lindsay	Middlequarter, Newcastle, Co. Tipperary	New dwelling — storey and a half + garage (Granted)	https://www.eplanning.ie/TipperaryCC/AppFileRefDetails/2260563/0
2260649	27/11/2022	Ryan Fitzpatrick Rice	Middlequarter, Newcastle, Co. Tipperary	New dwelling — single storey supported residence (Invalidated; resubmitted as 2260670)	https://www.eplanning.ie/TipperaryCC/AppFileRefDetails/2260649/0
2260670	05/12/2022	Ryan Fitzpatrick Rice	Middlequarter, Newcastle, Co. Tipperary	New dwelling — single storey supported residence (Invalidated; resubmitted as 2260701)	https://www.eplanning.ie/TipperaryCC/AppFileRefDetails/2260670/0

App No.	Received	Applicant	Location (as filed)	Type of Dwelling	Details link
2260701	15/12/2022	Ryan Fitzpatrick Rice	Middlequarter, Newcastle, Co. Tipperary	New dwelling — single storey supported residence (Withdrawn; resubmitted 2023 as 2360454)	https://www.eplanning.ie/TipperaryCC/AppFileRefDetails/2260701/0
2260724	19/12/2022	Dermot Fitzgerald	Middle Quarter, Newcastle, Co. Tipperary	New dwelling + garage (Invalidated; resubmitted as 2360033)	https://www.eplanning.ie/TipperaryCC/AppFileRefDetails/2260724/0
2360033	20/01/2023	Susan Hackett & Dermot Fitzgerald	Middle Quarter, Newcastle, Co. Tipperary	New dwelling + garage (Granted)	https://www.eplanning.ie/TipperaryCC/AppFileRefDetails/2360033/0
2360347	22/05/2023	Samantha O'Donnell	Middlequarter, Newcastle, Co. Tipperary	New dwelling — change of design/location of dwelling & garage granted under 22/529 (Granted)	https://www.eplanning.ie/TipperaryCC/AppFileRefDetails/2360347/0
2360454	25/06/2023	Ryan Fitzpatrick Rice	Middlequarter, Newcastle, Co. Tipperary	New dwelling — single storey supported residence (status: n/a; resubmitted as 2360465)	https://www.eplanning.ie/TipperaryCC/AppFileRefDetails/2360454/0
2360465	28/06/2023	Ryan Fitzpatrick Rice	Middlequarter, Newcastle, Co. Tipperary	New dwelling — single storey supported residence (Granted, decided 28/05/2024)	https://www.eplanning.ie/TipperaryCC/AppFileRefDetails/2360465/0

All Tipperary dwelling hits in this window fall in Middlequarter/Newcastle, a large townland. One address in this list (2260218, Eircode E91 HF85) geocodes via Google Maps to approx. 52.2764 N, -7.8270 W — about 9.6km from the wind farm centre, i.e. outside 5km. The remaining addresses have no Eircode published and cannot be reliably placed without site-specific verification.

Several rows are the same physical site refiled multiple times after invalidation, withdrawal, or design change (2260649→2260670→2260701→2360454→2360465) — kept as separate rows since each is a distinct formal application.

Cumulative Effect

We wish to bring to ACP's attention, and request that the following is taken into consideration when formulating a decision on this planning application.

We contend that and bring to ACP'S attention the existence of a notable legal Lacuna in regard to the Environmental Impact Assessment Report (EIAR) and above all in the Cumulative Effects Assessment (CEA) which is mandated by the Environmental Impact Assessment (EIS) Directive (2011/92/EU), as amended by (2014/52/EU).

The material change in circumstances since March 2024

Two applications which were not before the Coimisiún in March 2024 are now lodged with, and under active consideration by, the Coimisiún:

- Scart Mountain Wind Farm (ACP Ref. 321522) — a 15-turbine wind farm in Co. Waterford, submitted directly to the Coimisiún as a Strategic Infrastructure Development in December 2024.
- Scart Mountain Grid Connection (ACP Ref. 323791) — an application under section 182A of the Planning and Development Act 2000, as amended, lodged in October 2025, for the grid connection which will facilitate the connection of the Scart Mountain Wind Farm to the national grid.

Both applications are accompanied by a published Environmental Impact Assessment Report and Natura Impact Statement. The information necessary to assess them cumulatively with the present application is therefore in the public domain and, indeed, in the Coimisiún's own possession.

We note for completeness that the present application is before the Coimisiún on remittal, and that the EIAR on which it rests is now more than three years old.

The two projects are not remote from one another. They share receptors across every principle environmental factor.

European sites and protected species

- Blackwater River (Cork/Waterford) SAC and Dungarvan Harbour SPA — hydrological pathways from both schemes' construction footprints, watercourse crossings and grid connection corridors.
- Hen harrier, an Annex I species under the Birds Directive (2009/147/EC). The Department of Housing, Local Government and Heritage advised in this case that the Knockmealdown

area supports more than 1% of the all-Ireland population. The two schemes overlap the same upland foraging and breeding resource.

- Golden plover and other birds of high and medium conservation concern recorded in the same upland complex.
- Annex I dry heath (4030). The Coimisiún's previous decision identified the direct loss of 3.5 hectares of this habitat at Broemountain, forming part of a wider habitat area extending across the Knockmealdown commonage.

Landscape and visual receptors

- The 'Knockmealdown Uplands' (6B) and 'Tooaneena Foothills' (5C) landscape character units, and the 'Most Sensitive' landscape sensitivity designation, under the Waterford City and County Development Plan 2022–2028.
- Designated Scenic Routes i.e. SR2, SR8 and SR10, and the associated scenic view designations.
- The Comeragh Mountain Drive and the Sean Kelly cycle route network, where sequential and combined visibility of both schemes arises.
- Local community receptors, including the village of Touraneena and the dispersed rural population of the Finisk, Colligan and Glenshelane valleys, who would be exposed to turbines in more than one direction.

THE REASONS WHY

Dyrick Hill Wind Farm proposed site lies adjacent to Scart Mountain Wind Farm, planning reference ACP 321522 which were lodged with ACP in December 19TH 2024. It can be seen to share common environmental receptors with Dyrick Hill Wind Farm.

As of August 2026, it remains under consideration and is listed formally on official documentation as "undecided" and "currently awaiting decision".

For clarity, Pending: this word means that something is awaiting decision or settlement.

In legal terms, pending indicates that the case is still under consideration and no final verdict has been reached. In Irish law saying a matter is undecided and currently awaiting a decision is legally the exact same status as a pending decision.

The Scart Mountain Wind Farm Grid connection application reference, ACP 323791 was lodged on October 2025. It too shares part of the same grid connection and as a result the same Environmental receptors.

As of August 2026, the current status is awaiting a formal decision. An Coimisiún Pleanála has issued a notification extending the revised decision target date to the 2nd July 2026 (Note that

date has passed), meaning a final determination is actively being processed by the Coimisiún planning team. Legally and practically, a planning application that is actively being processed by a Coimisiún is the same as an application with a pending decision status.

Legally and practically awaiting a formal decision and pending decision mean the exact same thing in Irish law. We now contend that legally the planning status Reference ACP 321522 and ACP 323791 are deemed to be decisions pending or pending a decision.

ACP can rightly view or be of the opinion that both the above planning applications as newly pending and as such don't have to be taken into consideration, this is true to a point, but if a newly pending decision or a third-party planning application materially alters the cumulative environmental impact or present a direct conflict with the specific site context under review.

Then this information **must be included** in any decision ACP makes on the matter.

Materially, relevance means that a piece of information or evidence is both logically connected to a planning case and significant enough to influence its final decision and actively matter to the decision-making process.

ACP the decision makers under the duty of proper planning must evaluate the project, (Dyrick Hill Wind Farm) against the contemporary receiving environment, meaning significant changes or new pending contexts cannot be ignored if they materially alter the base line or cumulative impact profile of the project been evaluated.

For context, a pending planning application decision is legally seen as reasonably foreseeable in most planning frameworks.

However, its legal weight changes dramatically, depending on the specific area of law being applied. In environmental impact assessments (EIA) and planning determinations a formally lodged pending application is explicitly classified as a reasonable foreseeable future action.

This means that local authorities, of which ACP is one, and developers must actively evaluate its cumulative impact alongside their own proposals.

A cumulative effect assessment (CEA) is a mandatory legal component of an environmental impact assessment report (EIAR) for planning applications that evaluates how the combined impacts of a proposed project i.e. Dyrick Hill Wind Farm and other nearby developments i.e. Scart Mountain Wind Farm and grid connection effect the same and shared environmental receptors.

In a wind farm application environmental receptors are the specific components of the natural, physical, and human environment that could be affected by the construction, operation or the decommissioning of the project.

The legally protected potential receptors that require assessment in a wind farm application include the following:

- POPULATION AND HUMAN HEALTH.
- BIODIVERSITY, FLORA AND FAUNA.
- SOIL, GEOLOGY AND LAND USE.
- HYDROLOGY AND HYDROGEOLOGY.
- AIR, CLIMATE AND MATERIAL ASSETS.
- LANDSCAPE, VISUAL AND CULTURAL HERITAGE.

Dyrick Hill Wind Farm application and Scart Mountain Wind Farm and Grid application show that all three applications directly influence a broad range of common environmental receptors. Yet, nowhere in Dyrick Hill Wind Farms cumulative environmental assessment does it show that they included the Scart Mountain Wind Farm and Grid connection as part of this assessment.

An Coimisiún Pleanála (ACP) must now legally ensure that a cumulative environmental assessment exists so as to be able to demonstrate that the proposed project Dyrick Hill Wind Farm in combination with Scart Mountain Wind Farm and Grid connection will not breach statutory thresholds imposed by a number of legally protected critical pillars which include:

- EU Habitats Directive 92/43/EEC.
- EU Birds Directive 2009/147/EC.
- EU Water Framework Directive (2000/60/EC)

A cumulative effect assessment (CEA) is a legally binding requirement under the following Irish and European legislations.

- The planning and development regulations 2001 (s.i.no.600/2001). With article 94 of the planning and development regulations mandating compliance with schedule 6 of the regulations which transposed the below EU Directive into Irish law.
- EU environmental impact assessment [EU DIRECTIVE 2011/92/EU AS AMENDED BY DIRECTIVE 2014/52/EU].

A fundamental requirement of undertaking the CEA is to identify those foreseeable developments – Dyrick Hill Wind Farm development and how it impacts on cumulative environmental bases with other adjacent developments that are currently pending a planning application decision.

At §11.8.32 of the 2024 Inspectors Report (ACP 317265), inspector Una O'Neill cited the EC 2021 methodological guidance, under which in-combination covers plans or projects "already

completed, approved but uncompleted, **or proposed (i.e. for which an application for approval or consent has been submitted).**" Scart Mountain now sits squarely inside that definition.

At paragraph 11.8.32 of the Inspector's Report of 31 March 2024, the exclusion of Scart Mountain from the cumulative assessment was justified on two grounds: that the proposal had not been permitted and no planning application had been submitted; and that it would be unreasonable to expect the applicant to assess it because, in the Inspector's words:

"sufficient data is not publicly available, and there is no certainty that development will go ahead."

We respectfully submit that both grounds have since fallen away:

- An application has now been submitted, together with a full EIAR and Natura Impact Statement. Sufficient data is publicly available — it is published on the Coimisiún's own website.
- The project has passed from speculation into the statutory consent process and is under active consideration by the Coimisiún.

Appropriate Assessment – The in-combination test

The position under the Habitats Directive is clearer still, and the Coimisiún has already stated it in this case (as mentioned above). At paragraph 11.8.32 of the Inspector's Report, the Inspector referred to the European Coimisiún's 2021 methodological guidance on Article 6(3) and (4) of Directive 92/43/EEC, and recorded that the in-combination provision concerns other plans or projects which have been:

"already completed, approved but uncompleted, or proposed (i.e. for which an application for approval or consent has been submitted)."

Scart Mountain Wind Farm and its grid connection now fall squarely within the third limb of that definition. On the Coimisiún's own stated approach, they must be taken into account in the in-combination assessment under Article 6(3).

The Inspector went on, in the same paragraph, to observe that any new development at that location would itself be assessed in terms of its cumulative impact on known applications in the system and permissions in place. On remittal, the Dyrick Hill application is now in precisely that position: it falls to be determined at a point in time when Scart Mountain is a known application in the system.

We are not asking the Coimisiún to adopt a new or wider test. We are asking it to apply the test it has already articulated in this case to facts which have since changed.

The EIAR's own methodology defeats it:

Chapter 11, Table 11.8 lists Coumnagappul as "Pre-planning" and then assesses it in full at §11.4.5 as the "Potential Future Baseline." Scart Mountain — closer, sharing a townland, and at the same pre-planning stage in 2023 — appears nowhere in Table 11.8. The applicant applied one screening threshold to a project to its east and a different one to a project to its west, with no stated justification. That is an inconsistency in the applicant's own methodology, and it is free to argue.

Table 11.8: Cumulative Windfarms within the Study Area

Windfarm Name	Number of Turbines	Distance and Direction from the Development Site Boundary	Status
Coumnagappul Wind Farm	11	7.1km east of site	Pre-planning
Tierney Single Turbine	1	3.5km northeast of site	Operational
Woodhouse Wind Farm	8	10.8km south of site	Operational
Knocknamona Wind Farm	8	11.6km south of site	Consented
Barranafaddock Wind Farm	9	20km west of site	Operational
Ballycurreen Wind Farm	2	20km southeast of site	Operational

We note further that Coumnagappul — the very project on which the EIAR's "future baseline" scenario depends — has since been refused permission. The cumulative baseline in Chapter 11 is therefore unreliable in both directions: it includes a project that has been refused, and omits a project that has been lodged.

In Greater Legal Detail - Environmental Impact Assessment

Annex iv(5)(e) of the European Environmental Directive 2014/52/eu requires an environmental assessment report (EIAR) to describe a projects likely significant environmental effects resulting from the culmination of effects with other existing approved or reasonably foreseeable projects.

Failure by the applicant to provide this legally binding element of the (EIAR) opens a legal Lacuna in their application.

Cumulative assessment is a mandatory component of environmental impact assessment. It arises under Article 3 and Annex IV(5)(e) of Directive 2011/92/EU as amended by Directive 2014/52/EU, transposed by section 171A and section 172 of the Planning and Development Act 2000, as amended, and by Article 94 and Schedule 6 of the Planning and Development

Regulations 2001, as substituted by the European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018 (S.I. No. 296 of 2018).

We acknowledge that Annex IV(5)(e) refers to cumulation with “other existing and/or approved projects”. We respectfully submit that Annex IV prescribes the minimum content of the report and does not limit the assessment obligation in Article 3, which is to identify, describe and assess the likely significant effects of the project. Where a full EIAR for an adjacent scheme sharing the same receptors is published and before the same competent authority, likely significant combined effects cannot be left unassessed.

The absence of a legally required complete and up to date EIAR and particularly the cumulative impact assessment element places An Coimisiún Pleanála in a position whereby they are without legally required information and as a result a clear, precise decision that is without doubt cannot be made.

The above assertion is legally framed and enforced by, Article 47(a)(ii) of s.i.no 296 of 2018 (European Union environmental impact assessment) (planning and developments) regulations 2018).

This also legally mandates An Coimisiún Pleanála to ensure that any granted permission must contain a statement that the Coimisiún is satisfied that the reasoned conclusion on the significant effects on the environment by the development was up to date at the time of taking the decision.

With article 32 of s.i. no. 296 of 2018 (European union environmental assessment planning and development regulations 2018) inserting a corresponding requirement into section 172 of the regulations again mandating that the Coimisiún must be satisfied that the reasoned conclusion is up to date when taking a decision to grant or refuse planning permission.

Section 172(1D) of the Planning and Development Act 2000, as amended, provides that where the competent authority considers that an EIAR does not identify or adequately describe the direct and indirect significant effects on the environment of the proposed development, it shall require the applicant to furnish such further information as is necessary to ensure the completeness and quality of the report and which is directly relevant to reaching the reasoned conclusion.

As observers, we contend that the above information may be used in a point of law that dictates a judicial review of this case could positively be applied for if the Coimisiún grants permission.

With the above comment aside and as a result of our information contained in the observation herein, we ask, An Coimisiún Pleanála to refuse planning for application ACP Reference 324420 Dyrick Hill Wind Farm Co. Waterford.

We thank the Coimisiún for taking the time and due diligence to consider this observation when it comes to their final planning decision on this case.

Haul Route and Landowner Consent

The Knockmealdown Protection Group (“KPG”) is a community group formed to protect the landscape, ecology and amenity of the Knockmealdown Mountains and the surrounding communities in County Waterford and County Tipperary. KPG made detailed written submissions to An Bord Pleanála in July 2023 objecting to the above development under its original case reference (317265), including a dedicated submission addressing the proposed haul route and grid connection route. KPG writes now, further to the reactivation of the application under case reference PA93.324420, to reaffirm and strengthen its objection.

Summary

- The legal landscape has changed since 2023, but properly understood it does not assist the Applicant — see Section **“The Changed Legal Context Does not Assist the Applicant”**.
- A landowner at POI 19 (L5071 crossroads south of Touraneena) whose consent was sought for the very road alteration the haul route depends upon, no longer supports the development. Land Registry searches further show that the folio cited in the consent letter for the proposed site entrance itself is registered to an unconnected family and lies in a different part of the county entirely, and that a separate consent cites a folio the signatory did not own — see Section – **“Landowner Consent Along the Haul Route: A Gap the Applicant’s Own Documentation Confirms”**.
- The technical and factual defects identified in KPG's 2023 haul route submission were never addressed by the Applicant or considered by the Coimisiún, whose 2024 refusal turned on landscape policy grounds alone — see Section **“Unaddressed Technical and Factual Defects in the Haul Route Documentation”**.

The Changed Legal Context Does Not Assist the Applicant

KPG is aware that, in the course of re-notifying statutory consultees of the reactivated application, the Coimisiún has specifically asked Waterford City and County Council to comment on whether the Coimisiún should exercise its power to grant permission notwithstanding a material contravention of the Development Plan, having regard to Section 15 of the Climate Action and Low Carbon Development Act 2015. KPG understands that this reflects the reasoning applied by the Supreme Court in *Coolglass Windfarm Limited v An Coimisiún Pleanála* [2026] IESC 5, which held that a refusal grounded solely in material contravention of a development plan's

landscape and wind energy policy must properly engage with the decision-maker's climate obligations under Section 15 of the 2015 Act, and that there is a strong presumption in favour of granting permission for renewable energy projects

KPG respectfully submits that this changed legal context, properly applied, does not support the grant of permission in this case, for three independent reasons.

This is not a case that rests on landscape policy alone

Unlike Coolglass, the objection to this development does not rest solely on conflict with development plan landscape and wind energy policy. It rests substantially on matters that fall outside the Section 15 balancing exercise altogether:

- Unresolved concerns regarding Appropriate Assessment under Article 6(3) and 6(4) of the Habitats Directive, in circumstances where the haul route crosses and runs alongside watercourses tributary to the River Blackwater Special Area of Conservation. The Appropriate Assessment test — whether the Coimisiún can be satisfied, with no reasonable scientific doubt, that the development will not adversely affect the integrity of a European site — is not a policy-weighting exercise capable of being resolved by a general presumption in favour of renewable energy; it is a hard legal threshold that must be met on the evidence, or permission cannot be granted.
- Serious, specific and so far, unaddressed technical deficiencies in the EIAR and its haul route appendices (detailed in Section 4 below), which go to whether the development as described is safe, deliverable and capable of being properly assessed at all — not to the general desirability of renewable energy development in principle.
- As set out in Section 3 below, a change in the availability of private land required to construct the haul route as described, which is a question of the Applicant's legal capacity to carry out the development, not a matter of planning policy weight.

On its own terms, the balancing exercise still favours refusal

Even confined to the development plan question, KPG submits the outcome of a proper Section 15 exercise still favours refusal. Waterford City and County Council's Chief Executive and elected members — expressly informed of, and asked to have regard to, Section 15 of the 2015 Act — unanimously reaffirmed in July 2026 that the site lies within a designated wind energy exclusion zone, that the Council's development plan policies were themselves adopted after, and with regard to, national climate legislation, and that nothing has changed to alter that assessment. Tipperary County Council's neighbouring recommendation of refusal, made on shared landscape and visual grounds, likewise stands unrevised. This is precisely the kind of reasoned, climate-Act-informed local planning judgment that Section 15 requires the Coimisiún to weigh in the balance — it is not displaced by the general presumption identified in Coolglass, which does not convert

the presumption into an automatic entitlement to permission irrespective of the planning authorities considered and un-withdrawn position.

The Inspector's own finding on habitat loss stands

The Coimisiún's Inspector, in the report underlying the quashed 2024 decision, found that the development would result in a significant loss of dry heath habitat (approximately 3.5 hectares). That finding of fact was not disturbed by the High Court, which quashed the Coimisiún's decision on grounds unrelated to that finding. KPG submits the Coimisiún remains entitled, and required, to take that finding into account afresh.

Landowner Consent Along the Haul Route: A Gap the Applicant's Own Documentation Confirms

The haul route described in EIAR Chapter 14 (Traffic and Transport) and Appendix 14.1 (Pell Frischmann Abnormal Indivisible Load Route Survey) depends on the Applicant obtaining access to, and carrying out works within, third-party lands at multiple points along the route — including, on KPG's analysis of the Pell Frischmann report set out in its July 2023 submission, at a minimum the following points of interest: POI 10 (R672 south of Colligan Wood), POI 12 (R672 Colligan), POI 14 (R672 north of Garryclone), POI 15 (R672 west of Colligan), POI 18 and POI 19 (L5071 south-east of, and at the crossroads south of, Touraneena), and POI 25 (Ballynaguilkee Lower). KPG's 2023 submission also noted that the Applicant's own list of contracted landowners did not, at that time, include the owners of a number of these third-party parcels.

The Applicant's own consent bundle confirms the gap

KPG has reviewed a copy of the landowner consent documentation filed by the Applicant as part of the application. The consents in this bundle relate to landowners at Graigue and Graigueavarra (Cappagh), Broemountain, Lickoran, Knocknaskeagh (Cappoquin), Boolahallagh (Ballinamult), Castlevew (Ardfinnan, Co. Tipperary), Clarkstown (Ardmore), Kilmacthomas, Springfield (Dungarvan), Lyrattim and Vicarstown (Modeligo), Church Quarter (Modeligo), Abbeyside (Dungarvan), Moonamelagh (Fenor), and addresses in Julianstown, Co. Meath and Marley Wood, Dublin 16 — that is, landowners whose land lies at or near the turbine, met mast and substation locations themselves.

None of the consents in this bundle relate to land at, or address, the seven haul route points of interest (POI 10, 12, 14, 15, 18, 19 and 25) identified above as requiring third-party land for road widening, verge reprofiling or swept-path oversail along the R672 corridor (south and north of Colligan Wood, at Colligan, and north of Garryclone) and the L5071 (south-east of, and at the crossroads south of, Touraneena), nor the offline track required at the Ballynaguilkee Lower chicane. This is not simply KPG's inference from a gap in a schedule: it is confirmed by direct

inspection of the Applicant's own consent file, which the Coimisiún can independently verify against the case documentation in the same way KPG has done. On its face, the Applicant has not demonstrated that it holds any consent for the third-party works its own chosen haul route design requires.

Landowners who have withdrawn support since 2023

KPG is instructed that, since 2023, at least one landowner along the haul route who had previously been asked for, and whose land was required for, works to the public road no longer supports the proposed development. The registered owner whose land lies at the crossroads on the L5071 south of Touraneena — was asked by the Applicant to consent to alteration of that crossroads to permit the transport of turbine blades, and no longer supports the development proceeding on that basis. This is the same location identified as POI 19 in KPG's July 2023 submission, where the Pell Frischmann Report itself records that “verge to be reprofiled” and “third party land required” — one of the seven points of interest shown in Section “The applicant own consent bundle confirms the gap” above to be entirely absent from the Applicant's landowner consent bundle. KPG submits this is significant for two independent reasons: first, it confirms directly, from the landowner concerned, that the consent gap identified in Section “The applicant own consent bundle confirms the gap” is not a paperwork oversight capable of being remedied by producing an overlooked document, but reflects a genuine absence of support for works the haul route design depends upon; and second, it demonstrates that the position has moved against the Applicant, not merely stayed static, since 2023.

KPG submits this matters for reasons independent of planning policy. An applicant for permission must demonstrate that the development, as described in the application, is one it is legally and practically in a position to carry out. Where the haul route as designed depends on works within third-party land the Applicant no longer has consent to enter or use — or, per Section “The applicant own consent bundle confirms the gap” above, never had consent to enter or use — the application as it stands cannot be implemented as described, and the Coimisiún cannot properly assess — still less grant permission for — a development whose means of construction it cannot be satisfied is available. At minimum, KPG submits this should require the Applicant to demonstrate, by way of further information, current and unconditional written consent from every landowner whose land is required for the haul route as described, before any decision to grant permission could properly be made.

Further irregularities apparent from the Applicant's own consent documentation

KPG's review of the consent bundle also revealed the following matters, which it raises for the Coimisiún's attention as they go to the reliability of the application as a whole:

- **Reduced setback conceded for Turbine T9.** One letter in the bundle, from Elaine O'Grady of Broemountain (Folio 40450F, Eircode E91 H280), records that her dwelling sits 708m from the nearest turbine (T9) — inside the 740m minimum setback (four times blade tip height) recommended by the Wind Energy Development Guidelines 2019 for the 185m tip height proposed. The letter records her consent to this reduced setback on the basis that it is “predicted to be compliant and well within” applicable noise limits, but bears a contemporaneous handwritten annotation on the document itself: “To discuss – this needs to be an objective parameter.” KPG submits this is a significant, self-documented admission by the Applicant of non-compliance with the recommended setback for at least one turbine, resolved only by a private waiver from the one affected landowner, who is also a project participant — and does not address any other, non-participating dwelling that may fall within 740m of T9 or any other turbine without having been asked for, or given, any equivalent waiver. KPG asks the Coimisiún to require the Applicant to confirm, for every dwelling within four times tip height of every turbine, whether its owner has a financial interest in the project and whether an equivalent waiver has been sought and obtained.

Planning Reference: _____
 Date: _____

To Whomever it May Concern:

Dear Madam / Sir,

Consent to planning application

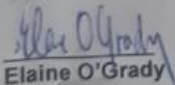
I, Elaine O'Grady of Broemountain, Ballinamult, Co. Waterford am the owner of all the property comprised in Folio 40450F (Eircode **E91 H280**).

EMP Energy Limited, a company registered in Ireland under registration number 630312 and trading as Empower (**Developer**), is developing a wind farm project at Dyrick Hill, Co. Waterford (**Project**). The Developer, or its subsidiary companies, Dyrick Hill Wind Farm Limited, a company registered in Ireland under registration number 688381 (**Subsidiary**), intends to apply for planning permission for the Project.

The Wind Energy Guidelines 2019 recommend all inhabited properties to be minimum setback distance of four times the blade tip height from each turbine. The proposed Dyrick Hill development has a maximum tip height of 185m and a recommend setback distance ($185m \times 4 = 740m$). The properties located in the Folio 40450F (Eircode **E91 H280**) are situated at a reduced setback distance of 708m from the closest turbine (T9) of the proposed Dyrick Hill Wind Farm development.

I have signed an option agreement with the Developer in relation to the Project; and I hereby consent to the Reduced Setback, and note that the Reduced Setback is predicted to be compliant and well within the 2006 noise Guidelines and recent 2022 An Bord Pleanála noise limits; and I hereby also consent to the inclusion of the Property in all planning applications relating to the Project that may be submitted by the Developer or by its Subsidiary, or by any other associated company, or by anyone acting on their behalf.

Yours faithfully,


 Elaine O'Grady

** To discuss – this needs to be an objective parameter*

- **Title of the land at the proposed site entrance: Rita Hickey.** The consent letter relied upon for land at Lickoran — the parcel KPG's 2023 submission understood the new site entrance and access road to run through — is given by Rita Hickey of Lickoran, Ballinamult, Co. Waterford, and describes her, with a qualification added by hand to the letter, as the “person entitled to be registered as owner” of the property comprised in Folio WD9127. KPG has obtained a Land Registry printout of Folio WD9127. It is not registered to Rita

Hickey at all: its registered owners are Patrick Anthony Murphy (from 1977), then Joan Murphy (from 2006), and, since 26 February 2026, Martin Murphy, Matthew Murphy and Esther Murphy as tenants-in-common, and the property it comprises lies in the townland of Faithlegg, Barony of Gaultiere, in the south-eastern part of County Waterford near the Waterford Estuary — a considerable distance from Dyrick Hill and nowhere on or near the haul route.

Planning Reference: _____

Date: _____

To Whomever it May Concern:

Dear Madam / Sir,

Consent to planning application

I, Rita Hickey of Lickoran, Ballinamult, County Waterford am the owner of all the property comprised in Folio **WD9127 (Property)**.

person entitled to be registered as owner

EMP Energy Limited, a company registered in Ireland under registration number 630312 and trading as Empower (**Developer**), is developing a wind farm project at Dyrick Hill, Co. Waterford (**Project**). The Developer, or its subsidiary company, Dyrick Hill Wind Farm Limited, a company registered in Ireland under registration number 688381 (**Subsidiary**), intends to apply for planning permission for the Project.

I have signed an option agreement with the Developer in relation to the Project; and I hereby consent to the inclusion of the Property in all planning applications relating to the Project that may be submitted by the Developer or by the Subsidiary or by any other associated company, or by anyone acting on their behalf.

Yours faithfully,


Rita Hickey

KPG has since obtained Land Registry printouts for all three of Rita Hickey's actual folios (Appendix C). Folio WD34230F confirms her as full registered owner (Title Absolute) of a plot in Lickoran, Ballinamult, since 23 January 2008. Folio WD47490F confirms her as full registered owner (Title Absolute) of two further plots in Lickoran, Ballinamult, since 1 November 2021. Folio WD17148F confirms her as joint full owner, together with Michael Hickey, both of Glen Lower, Modeligo, Cappagh, Co. Waterford, of a separate property in the townland of Glen Lower since 21 August 1996 — a different townland, which KPG does not suggest has any connection to the haul route. This documentary evidence puts beyond doubt that Ms Hickey holds genuine,

absolute registered title to land in Lickoran, and supports KPG's view that the citation of Folio WD9127 on her consent letter is a clerical error rather than a wider irregularity. It does not, however, resolve the underlying difficulty. The consent letter actually executed and filed with the application refers only to Folio WD9127, which is not land Ms Hickey owns; it does not refer to WD34230F or WD47490F, which are the two folios actually capable of being the site entrance parcel. As a matter of documentary record, therefore, the Applicant does not hold any executed consent that correctly identifies the Lickoran land in Ms Hickey's actual ownership. KPG asks the Coimisiún to require the Applicant to (i) confirm which of Folios WD34230F and WD47490F, if either, corresponds to the land actually required for the site entrance and access road, and (ii) file a corrected consent letter properly referencing that folio, before it can be satisfied that valid consent has been obtained for those works.

A land title discrepancy: Michael Coyne. Michael Coyne's 2023 consent letter states that he is “the owner of all the property comprised in Folios WD26176F and WD17414F.” KPG has obtained Land Registry folio printouts for both. Folio WD26176F is registered in Michael Coyne's name, of Boolahallagh, Ballinamult, Co. Waterford, as full owner since 8 July 2003, and remains so registered. Folio WD17414F, however, is registered not to Michael Coyne but to David Coyne, Farmer, of Bullahalla, Newcastle, Clonmel, Co. Tipperary (Appendix B), who has been its full registered owner since 13 October 1994; no subsequent transfer to Michael Coyne appears on the folio as furnished. KPG does not know whether this reflects an unregistered family arrangement, an administrative error in the Applicant's paperwork, or some other explanation, and does not suggest any impropriety on Mr Coyne's part. KPG submits, however, that a consent letter asserting ownership the Land Registry does not, on this record, confirm is a serious enough discrepancy — going directly to whether the Applicant has validly secured the land interests its application depends upon — that the Coimisiún should require the Applicant to produce verified, up-to-date Land Registry folio evidence of title for every landowner relied upon in its consent bundle, rather than accepting landowners' own unverified assertions of ownership at face value.

Age of certain consents. At least three letters in the bundle are dated, or appear to derive from, 2020 (one dated 5 October 2020; two others are undated copies of a 2020 template), predating the original 2023 application by up to three years and now up to six years old. KPG is not aware of confirmation that the underlying option agreements referenced in these letters remain on foot rather than having expired, particularly given the further passage of time since reactivation in 2026.

Deceased landowners. At least two of the landowners whose consents are relied upon in the application bundle have since died. One consent, concerning land held by a person resident in Julianstown, Co. Meath, was originally given by an individual whom the document itself now records as deceased, with the letter amended by hand to substitute his legal personal representative as signatory. More significantly, Michael Coyne — whose consent, and the title discrepancy affecting it, is addressed above — is recorded in a death notice published on RIP.ie (Appendix C) as having died on 2 September 2024, in his 92nd year, at his home at Boolahallagh, Ballinamult, Co. Waterford, before the Coimisiún's original refusal of 3 October 2024, and now

some two years before this reactivated application. Unlike the Meath consent, Mr Coyne's letter has not, so far as KPG has seen, been updated or re-executed by any representative of his estate: the application file continues to rely on it exactly as originally signed, as though it remained a current, valid consent from a living landowner. KPG asks the Coimisiún to require the Applicant to confirm, in respect of every landowner whose consent is relied upon, that the consent remains valid and that, where a landowner has since died, the position of their estate and any beneficiaries has been properly addressed before any decision to grant permission is made.

Unaddressed Technical and Factual Defects in the Haul Route Documentation

None of the following matters, raised in KPG's July 2023 submission, were addressed by the Applicant, referred to by the Inspector, or relied upon in the Coimisiún's 2024 decision, which was determined solely on landscape and development plan grounds. They remain live, un rebutted, and — KPG submits — individually and cumulatively sufficient to justify refusal, or at the very least a requirement for further information.

Incomplete and contradictory route description

- The Screening Report for Appropriate Assessment states that turbine components will be landed at Belview Port and transported via the N29, N25, N72 and R671, but no alternative route is offered in the event delivery is not made through Belview Port, despite the Applicant's own Pell Frischmann Report recording that a full topographical survey and repeat swept-path assessment were still required to confirm the mitigation needed simply to exit the port.
- The Screening Report omits the R672 corridor almost entirely, despite this being a core part of the haul route on which the Pell Frischmann Report itself records 49 locations where overhead power lines cross the road and where trees will need to be removed to achieve blade oversail clearance, in addition to road widening.
- The Screening Report and the Pell Frischmann Report each assert that ten locations on the haul route require works in third-party land, yet the Screening Report's own Table 2.2 identifies only three such locations. KPG's analysis of the Pell Frischmann Report identifies seven further points (POI 10, 12, 14, 15, 18, 19 and 25) where third-party land is expressly stated to be required but which do not appear to have been carried through into the Applicant's landowner consent schedule.

- Appendix B — Land Registry folio printouts, Folios WD26176F and WD17414F, Co. Waterford, referred to in Section **Further irregularities apparent from the Applicant's own consent documentation**
- Appendix C — RIP.ie death notice for Michael Coyne, Boolahallagh, Ballinamult, Co. Waterford (died 2 September 2024), referred to in Section **“Further irregularities apparent from the Applicant's own consent documentation”**
- Appendix D — Land Registry folio printouts, Folios WD34230F, WD47490F and WD17148F, Co. Waterford, referred to in Section **“Further irregularities apparent from the Applicant's own consent documentation”**

Appendix B - Land Registry folio printouts

Land Registry County Waterford Folio 26176F

Register of Ownership of Freehold Land

Part 1(A) - The Property

Note: Unless a note to the contrary appears, neither the description of land in the register nor its identification by reference to the Registry Map is conclusive as to boundaries or extent

For parts transferred see Part 1(B)

No.	Description	Official Notes
1	A plot of ground being part of the Townland of BROEMOUNTAIN and Barony of DECIES WITHOUT DRUM containing 14.0729 Hectares shown as Plan(s) 10 edged RED on the Registry Map (OS MAP Ref(s) 13/5, 13/9). The Registration does not extend to the mines and minerals	From Folio WD1233F
2	One undivided fourth part of the property shown coloured Red as plan(s) 7 being part of the Townland of BROEMOUNTAIN and Barony of DECIES WITHOUT DRUM containing 20.3000 Hectares on the Registry Map (OS MAP Ref(s) 12, 13). The Registration does not extend to the mines and minerals	From Folio WD1233F
3	Description revised Instrument Q2012LR006621X, 17-April-2012. A plot of ground being part of the Townland of BROEMOUNTAIN and Barony of DECIES WITHOUT DRUM containing 21.5393 Hectares shown as Plan(s) 3, 2 edged RED on the Registry Map (OS MAP Ref(s) 12, 13/5). The Registration does extend to the mines and minerals reserved in a Fee Farm Grant dated 25-OCT-1850 or in any superior grant affecting the property	From Folio WD1233F
4	A plot of ground being part of the Townland of BROEMOUNTAIN and Barony of DECIES WITHOUT DRUM containing 2.7569 Hectares shown as Plan(s) 4 edged RED on the Registry Map (OS MAP Ref(s) 13/5). The Registration does extend to the mines and minerals reserved in a Fee Farm Grant dated 25-OCT-1850 or in any superior grant affecting the property	From Folio WD1233F

Land Cert Issued: No

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Collection No.:

Land Registry

County Waterford

Folio 26176F

5	An undivided moiety of the property shown coloured Red as plan(s) 22 on the Registry Map, situate in the Townland of BROEMOUNTAIN, in the Barony of DECIES without DRUM, in the Electoral Division of BALLYNAMULT containing 19.7334 hectares. The Registration does extend to the mines and minerals reserved in a Fee Farm Grant dated 25-OCT-1850 or in any superior grant affecting the property	From Folio WD1233F
6	Description revised Instrument Q2012LR006621X, 17-Apr-2012. A plot of ground being part of the Townland of BROEMOUNTAIN and Barony of DECIES WITHOUT DRUM containing 1.4214 Hectares shown as Plan(s) 21 edged RED on the Registry Map (OS MAP Ref(s) 13/5, 13/9). The Registration does extend to the mines and minerals reserved in a Fee Farm Grant dated 25-OCT-1850 or in any superior grant affecting the property	From Folio WD1233F
7	An undivided moiety of the property shown coloured Red as plan(s) 22 on the Registry Map, situate in the Townland of BROEMOUNTAIN, in the Barony of DECIES without DRUM, in the Electoral Division of BALLYNAMULT containing 19.7334 hectares. The Registration does extend to the mines and minerals reserved in a Fee Farm Grant dated 25-OCT-1850 or in any superior grant affecting the property	From Folio WD1233F
Description revised Instrument Q2012LR006621X, 17-Apr-2012.		

Land Registry

County Waterford

Folio 26176F

Part 1(B) - Property
Parts Transferred

No.	Prop No:	Instrument:	Date:	Area (Hectares) :	Plan:	Folio No:

Land Registry

County Waterford **Folio 26176F**

Part 2 - Ownership

Title of property no. 3 POSSESSORY VO 27-NOV-1973
 Title of property no. 1, 2 ABSOLUTE
 Title of property no. 4, 5, 6, 7 ABSOLUTE See Entry 1
 part 2(b)

No.	The devolution of the property is subject to the provisions of Part II of the Succession Act, 1965
1	08-JUL-2003 MICHAEL COYNE (Farmer) of Boolahallagh, Ballinamult, County D2003CK014241V Waterford is full owner.

1 08-JUL-2003 The possessory title of the property no. 4, 5, 6 and 7 has been
 D2003CK014241V converted to absolute.

Land Registry

County Waterford

Folio 26176F

Part 3 - Burdens and Notices of Burdens

No.	Particulars
1	The property is subject to the provisions prohibiting letting, subletting or subdivision specified in Section 12 of the Land Act, 1965, and to the provisions restricting the vesting of interests specified in Section 45 of the said Act in so far as the said provisions affect same.
2	LR 4034 The property no.1, 2 and 3 are subject to the sporting rights reserved in a Fee Farm Grant dated the 25th of October 1850 or in any superior grant affecting the property.
3	LR 4034 The property No.1 and 2 are subject to the sporting rights within the meaning of the Irish Land Act, 1903, reserved by Order of the Land Commission.
4	LR 8/75766 LR 9/75766 LR 10/75766 The property is subject to the fishing rights and fisheries (if any) reserved by Order of the Land Commission
5	LR 8/75766 LR 9/75766 LR 10/75766 The property No.4, 5, 6 and 7 are subject to the sporting rights within the meaning of the Irish Land Act, 1903, reserved by Order of the Land Commission.

Land Registry

County Waterford

Folio 17414F

Register of Ownership of Freehold Land

Part 1(A) - The Property

Note: Unless a note to the contrary appears, neither the description of land in the register nor its identification by reference to the Registry Map is conclusive as to boundaries or extent

No.	For parts transferred see Part 1(B) Description	Official Notes
1	A plot of ground being part of the Townland of BONATOUK or MONATOUK and Barony of DECIES WITHOUT DRUM containing 9.3020 Hectares shown as Plan(s) 3, 2, 1 edged RED on the Registry Map (OS MAP Ref(s) 13/5, 13/9). The Registration does not extend to the rights reserved in a Fee Farm Grant dated 25/10/1850 or in any superior grant or lease	From Folio WD1234F
2	A plot of ground being part of the Townland of BROEMOUNTAIN and Barony of DECIES WITHOUT DRUM containing 0.9400 Hectares shown as Plan(s) 5 edged RED on the Registry Map (OS MAP Ref(s) 13/9). The Registration does not extend to the rights reserved in a Fee Farm Grant dated 25/10/1850 or in any superior grant or lease	From Folio WD1234F
3	An undivided moiety of a plot of ground being part of the Townland of BROEMOUNTAIN and Barony of DECIES WITHOUT DRUM containing 3.8698 Hectares shown as Plan(s) 22A edged RED on the Registry Map (OS MAP Ref(s) 13/5, 13/9). The Registration does not extend to the rights reserved in a Fee Farm Grant dated the 25th October 1850 or in any Superior Grant or Lease.	From Folio WD1234F
4	An undivided 4th part of a plot of ground being part of the Townland of BROEMOUNTAIN and Barony of DECIES WITHOUT DRUM containing 20.3001 Hectares shown as Plan(s) 7 edged RED on the Registry Map (OS MAP Ref(s) 12, 13). The Registration does not extend to the rights reserved in a Fee Farm Grant dated the 25th October 1850 or in any Superior Grant or Lease.	From Folio CK1234F
5	A plot of ground being part of the Townland of BONATOUK or MONATOUK and Barony of DECIES WITHOUT DRUM containing 7.1700 Hectares shown as Plan(s) 5 edged RED on the Registry Map (OS MAP Ref(s) 12, 13). The Registration does not extend to the rights reserved in a Fee Farm Grant dated 25/10/1850 or in any superior grant or lease	From Folio WD1234F

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6	An undivided 4th part of a plot of ground being part of the Townland of BROEMOUNTAIN and Barony of DECIES WITHOUT DRUM containing 20.3001 Hectares shown as Plan(s) 7 edged RED on the Registry Map (OS MAP Ref(s) 12, 13). The Registration does not extend to the rights reserved in a Fee Farm Grant dated the 25th October 1850 or in any Superior Grant or Lease.	From Folio WD1234F
7	A plot of ground being part of the Townland of BONATOUK or MONATOUK and Barony of DECIES WITHOUT DRUM containing 0.7330 Hectares shown as Plan(s) 4 edged RED on the Registry Map (OS MAP Ref(s) 13/5). The Registration does not extend to the rights reserved in a Fee Farm Grant dated 25/10/1850 or in any superior grant or lease	From Folio WD1234F
8	A plot of ground being part of the Townland of BONATOUK or MONATOUK and Barony of DECIES WITHOUT DRUM containing 2.0740 Hectares shown as Plan(s) 8A edged RED on the Registry Map (OS MAP Ref(s) 13/5). The Registration does not extend to the rights reserved in a Fee Farm Grant dated 25/10/1850 or in any superior grant or lease	From Folio WD1234F
9	A plot of ground being part of the Townland of BONATOUK or MONATOUK and Barony of DECIES WITHOUT DRUM containing 2.2250 Hectares shown as Plan(s) 8 edged RED on the Registry Map (OS MAP Ref(s) 13/5). The Registration does not extend to the rights reserved in a Fee Farm Grant dated 25/10/1850 or in any superior grant or lease	From Folio WD1234F

Land Registry

County Waterford

Folio 17414F

10	An undivided moiety of a plot of ground being part of the Townland of BROEMOUNTAIN and Barony of DECIES WITHOUT DRUM containing 3.8698 Hectares shown as Plan(s) 22A edged RED on the Registry Map (OS MAP Ref(s) 13/9). The Registration does not extend to the rights reserved in a Fee Farm Grant dated the 25th October 1850 or in any Superior Grant or Lease. Property descriptions amended see D2005CK008842E.	From Folio WD1234F
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Land Registry

County Waterford

Folio 17414F

Part 1(B) - Property
Parts Transferred

No.	Prop No:	Instrument:	Date:	Area (Hectares):	Plan:	Folio No:

Land Registry

County Waterford

Folio 17414F

Part 2 - Ownership

Title ABSOLUTE

No.	The devolution of the property is subject to the provisions of Part II of the Succession Act, 1965
1	13-OCT-1994 P 2657/95 D2005CK008842E DAVID COYNE (Farmer) of Bullahalla, Newcastle, Clonmel, County Tipperary is full owner.

Appendix C

A portrait of an elderly man with white hair, wearing a dark suit, a blue patterned tie, and a white shirt. He is smiling slightly and has a white flower pinned to his lapel. The background is green foliage.


Print


Share


Save

The death has occurred of
Michael Coyne

Boolahallagh, Newcastle, Tipperary / Ballinamult,
Waterford

COYNE; Boolahallagh, Newcastle, Clonmel, Co. Tipperary. On 2nd September 2024, peacefully, at his home, surrounded by his loving family, **Michael**, in his 92nd year,

Source: Rip.ie

Appendix D – Land Registry Folio printouts

Land Registry

County Waterford

Folio 34230F

Register of Ownership of Freehold Land

Part 1(A) - The Property

Note: Unless a note to the contrary appears, neither the description of land in the register nor its identification by reference to the Registry Map is conclusive as to boundaries or extent

No.	For parts transferred see Part 1(B) Description	Official Notes
1	The property shown coloured Red as plan(s) BUG6B on the Registry Map, O.S. 5834/C, situate in the Townland of LICKORAN , in the Barony of DECIES-WITHOUT-DRUM , in the Electoral Division of BALLYNAMULT . The Registration does not extend to the mines and minerals	From Folio WD9217N

Land Cert Issued: No

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Collection No.:

Land Registry

County Waterford

Folio 34230F

Part 1(B) - Property
Parts Transferred

No.	Prop No:	Instrument:	Date:	Area (Hectares):	Plan:	Folio No:

Land Registry

County Waterford

Folio 34230F

Part 2 - Ownership

Title ABSOLUTE

No.	The devolution of the property is subject to the provisions of Part II of the Succession Act, 1965
1	23-JAN-2008 RITA HICKEY of Licoran, Ballinamult, County Waterford is full owner. D2008CK002644D

Land Registry

County Waterford

Folio 34230F

Part 3 - Burdens and Notices of Burdens

No.	Particulars		
<u>1</u>	12 MAY 2009	Charge for present and future advances repayable with interest.	
	D2009LR092159N	IRISH LIFE & PERMANENT plc is owner of this charge.	
		Cancelled	E2020LR024745J 27-AUG-2020

Land Registry

County Waterford

Folio 47490F

Register of Ownership of Freehold Land

Part 1(A) - The Property

Note: Unless a note to the contrary appears, neither the description of land in the register nor its identification by reference to the Registry Map is conclusive as to boundaries or extent.

For parts transferred see Part 1(B)

No.	Description	Official Notes
1	The property shown coloured Red as plan(s) D72A3 on the Registry Map, situate in the Townland of LICKORAN, in the Barony of DECIES without DRUM, in the Electoral Division of BALLYNAMULT. The Registration does not extend to the mines and minerals	From Folio WD9217
2	The property shown coloured Red as plan(s) D72AQ on the Registry Map, situate in the Townland of LICKORAN, in the Barony of DECIES without DRUM, in the Electoral Division of BALLYNAMULT. The Registration does not extend to the mines and minerals	From Folio WD704F

Land Registry

County Waterford

Folio 47490F

Part 1(B) - Property
Parts Transferred

No.	Prop No.	Instrument	Date	Area(Hectares)	Plan	Folio No.

Land Registry

County Waterford

Folio 47490F

Part 2 - Ownership

Title ABSOLUTE

No.	The devolution of the property is subject to the provisions of Part II of the Succession Act, 1965
1	01-NOV-2021 RITA HICKEY of Lickoran, Ballinamult, County Waterford is full owner. D2021LR150499R

Land Registry

County Waterford

Folio 47490F

Part 3 - Burdens and Notices of Burdens

No.	Particulars
1	LR 162/62482 The property is subject to the fishing rights and fisheries (if any) excepted by Order of the Land Commission

Land Registry

County Waterford

Folio 17148F

Register of Ownership of Freehold Land

Part 1(A) - The Property

Note: Unless a note to the contrary appears, neither the description of land in the register nor its identification by reference to the Registry Map is conclusive as to boundaries or extent

For parts transferred see Part 1(B)

No.	Description	Official Notes
1	The property shown coloured RED as Plan(s) 1E on the Registry Map, situate in the Townland of GLEN LOWER, in the Barony of DECIES-WITHOUT-DRUM, in the Electoral Division of MODELLIGO. The registration does not extend to the mines and minerals.	From Folio WD10634

Land Registry

County WaterfordFolio 17148F

Part 1(B) - Property
Parts Transferred

No.	Prop No:	Instrument:	Date:	Area (Hectares):	Plan:	Folio No:

Land Registry

County Waterford

Folio 17148F

Part 2 - Ownership

Title ABSOLUTE

No.	The devolution of the property is subject to the provisions of Part II of the Succession Act, 1965	
1	21-AUG-1996 P5074/96	RITA HICKEY of GLEN LOWER, MODELIGO, CAPPAGH, COUNTY WATERFORD and MICHAEL HICKEY of GLEN LOWER, MODELIGO, CAPPAGH, COUNTY WATERFORD are full owners.

Hydrology, Hydrogeology and Aquatic Environment

Introduction – An increasingly outdated environmental baseline

In our original submission (ABP-317265) on the proposed Dyrick Hill Wind Farm, the Knockmealdown Protection Group raised substantial concerns regarding the adequacy of the hydrological, hydrogeological and aquatic ecological information provided by the applicant. We reiterate those concerns.

However, there is now an additional and fundamental difficulty. The environmental information before the Coimisiún was prepared predominantly during 2021–2023 and must now be considered in 2026, within a materially changed environmental, legislative and policy context.

Chapter 9 of the EIAR states that its purpose is to characterise the hydrological and hydrogeological regime of the site, establish baseline conditions, identify likely impacts and assess residual effects following mitigation. Yet the fieldwork used to establish that baseline consisted of surveys on 12–13 July 2021, 1–2 July 2022 and 2–3 December 2022. Two of the three rounds were therefore undertaken during July, with only one winter survey.

The issue is not simply the passage of three further years. Since preparation of the EIAR:

- Ireland has adopted its final third-cycle River Basin Management Plan, **Water Action Plan 2024**, whereas the applicant relied upon the then **draft** 2022–2027 River Basin Management Plan;
- the EU Nature Restoration Regulation, Regulation (EU) 2024/1991, has entered into force;
- Ireland is preparing its first National Restoration Plan under that Regulation;
- substantial new national water-quality monitoring information has become available;
- and in May 2026 a further EU Directive revising aspects of the Water Framework Directive, Groundwater Directive and Environmental Quality Standards Directive entered into force.

The Coimisiún is therefore not being asked merely to assess a 2023 application using data that are now several years old. It is being asked to determine the proposal within a significantly altered legal and policy framework.

We submit that the hydrological baseline, impact assessment, mitigation measures, cumulative assessment and "Do Nothing" scenario should not simply be assumed to remain valid without substantive review and updating.

Limited hydrological field investigation and uncertainty regarding the natural drainage regime

The applicant's three hydrological survey rounds consisted principally of walkover identification of rivers, drainage patterns, ditches, wetlands and flow directions, field hydrochemistry measurements, and collection of surface-water samples.

This provides a snapshot of conditions but does not amount to long-term characterisation of a complex upland hydrological system.

The applicant's own field observations demonstrate why this distinction matters. Chapter 9 records a mapped stream which could not be found during any survey visit, including following heavy rainfall. The applicant itself suggests that land drainage or construction of an unpaved road may have resulted in the removal of that stream or alteration of its course.

This is important. It demonstrates that the present drainage network may already have been substantially altered by human activity and that mapped watercourses do not necessarily represent either the natural or historical hydrological regime.

The applicant also identifies areas of poor drainage and potential wetlands. It refers to two possible wetland areas and relies upon their presence, together with poor drainage, when selecting groundwater recharge assumptions. However, the assessment does not appear to provide a detailed investigation of the hydrological functioning of those wetlands: whether they are rainfall-fed, groundwater-fed, supplied by shallow subsurface flow or seepage, seasonally connected to streams, or dependent upon upslope peat or soils.

These questions have become substantially more important since 2023 because restoration policy now requires consideration not merely of existing drainage and water quality but of **natural hydrological functioning and the restoration potential of degraded ecosystems**.

It is particularly noteworthy that the EIAR (Chapter 9, Section 9.2.5.1) itself cites EPA guidance recognising that:

"As surface water and groundwater are part of a constantly moving hydrological cycle, any assessment of significance will require evaluation beyond the development Site boundary."

In our view, the current information does not provide the level of hydrological understanding now required to determine the consequences of permanently introducing roads, drainage infrastructure, hardstands, turbine foundations, cable trenches and associated earthworks into this upland system.

The aquatic ecological baseline was already inadequate and is now substantially out of date

Our 2023 submission raised particular concern regarding the lack of contemporary fisheries surveys.

The fisheries information for the Finisk River relied substantially upon an Inland Fisheries Ireland survey conducted on **30 August 2017**, at five locations.

That survey is significant not merely because of its age. It demonstrated that the Finisk supported salmon and brown trout and that portions of the river were already failing to attain Good ecological status. In 2017 one survey site was classified as **Poor** and two as **Moderate**. A site which had been assessed as Good in both 2010 and 2014 had deteriorated to Moderate by 2017.

In our original submission we further identified that no equivalent on-site fish surveys had been undertaken on the Farnane, Lisleagh and Aughkilladoon streams through electrofishing or other direct fish sampling, despite these streams being the immediate receiving watercourses associated with the development.

The applicant's evaluation of salmonid suitability cannot substitute for actual contemporary investigation of the species present.

The situation is now still more problematic. A fisheries assessment undertaken in 2017 is almost nine years old. The applicant's own hydrological surveys are now four to five years old.

Where the available older data already indicate ecological pressures within the receiving catchment, the correct response should be to establish **current conditions**, not to assume that conditions remain unchanged.

The Farnane River and downstream aquatic receptors

Particular attention should be given to the **Farnane River (Farnane_010)**, which the applicant identifies as a **High-status WFD waterbody**, for which the objective is no deterioration.

The applicant's own WFD assessment identifies viable surface-water pathways from the proposed works to the Farnane and predicts that, **in the absence of mitigation, its status could deteriorate from High to Good during construction**.

Runoff from turbines and associated hardstands and access roads on Broemountain is directed towards the Farnane, in several cases across steep to moderately sloping upland heath and field drainage, while groundwater beneath this part of the site is expected to circulate rapidly towards and discharge to the Farnane.

The Farnane subsequently drains to the Finisk, which forms part of the **Blackwater River (Cork/Waterford) SAC**, providing a hydrological pathway to a European site containing sensitive aquatic qualifying interests including Atlantic salmon, lamprey species and **White-clawed Crayfish** (*Austropotamobius pallipes*).

Although Chapter 6 asserts that White-clawed Crayfish do not occur in the vicinity of or downstream from the development, it does not appear to support this conclusion with a dedicated crayfish survey, while the biosecurity measures described are principally directed towards invasive plant species.

Given that maintenance of the Farnane's High status depends, on the applicant's own assessment, upon the successful operation of mitigation measures, we submit that its current ecological condition and its downstream relationship with the qualifying interests of the Blackwater SAC require particular scrutiny in any updated hydrological assessment.

Blackwater River SAC and Freshwater Pearl Mussel

The applicant accepts that the Finisk is a major tributary of the Blackwater and that its main channel forms part of the Blackwater River (Cork/Waterford) SAC. It further acknowledges that the Farnane, Lisleagh and Aughkilladoon streams draining the proposed development are hydrologically connected to the Finisk and ultimately to the SAC.

Nevertheless, connectivity is repeatedly described as "tenuous".

Our original submission challenged the adequacy of the assessment of the Freshwater Pearl Mussel (*Margaritifera margaritifera*), a qualifying interest of the Blackwater SAC. That concern remains.

Freshwater Pearl Mussel is particularly sensitive to deterioration of water quality and sedimentation of the riverbed, and its complex lifecycle also depends upon salmonid host fish.

The absence of a recent direct fisheries baseline for the immediate receiving streams, combined with reliance upon much older Finisk fisheries records and the absence of an appropriately detailed assessment of potential Freshwater Pearl Mussel effects, creates continuing uncertainty.

The passage of time strengthens rather than resolves that uncertainty.

We do not suggest that distance alone establishes an adverse effect. Rather, our concern is that where a development is demonstrably connected through surface waters to an SAC containing highly sensitive aquatic qualifying interests, conclusions of no significant adverse effect must rest upon a sufficiently current and complete ecological and hydrological baseline.

Peat, soils and hydrology remain inadequately resolved

Our 2023 submission also questioned the applicant's conclusion regarding the apparent absence of peat at turbine locations.

The information supplied showed that some ground investigations could not be undertaken at the actual turbine locations due to steep slopes, trees, wet ground or access difficulties. Alternative investigation points were in some instances approximately **98 m, 148 m, 28 m and 200 m** from the proposed turbine locations.

We repeat our concern that absence of peat at a substitute investigation point cannot establish with confidence that peat is absent at the actual location of proposed excavation.

This issue must now also be considered from a hydrological and ecological-restoration perspective, rather than solely in terms of peat-slide risk.

The applicant's own assessment recognises substantial variation in drainage and groundwater recharge conditions across the site. Recharge coefficients considered included 22.5%, 60% and 85%, with the lowest figure ultimately selected for the site-level estimate because much of the land was considered poorly drained.

Such site-level averages do not necessarily describe the shallow, localised water movement upon which peat, wet heath, wet grassland, flushes and wetlands may depend.

The EIAR also expressly acknowledges that increased hardstanding:

"will likely impact on groundwater and hydrogeological flow regimes at a localised scale"

although it then classifies the effect as **imperceptible/not significant**.

Under the current Nature Restoration framework, the fact that an alteration is "localised" cannot automatically make it ecologically unimportant. Local alteration of the water table or shallow subsurface flow may be highly significant where the affected locality supports, feeds or could be restored to peatland, wet heath, wet grassland or another water-dependent ecosystem.

Nature Restoration Regulation – a material change in the assessment context

Regulation (EU) 2024/1991 on nature restoration was adopted after preparation and submission of the EIAR.

The Regulation establishes binding restoration obligations extending beyond preservation of existing designated habitat. It is directed toward the recovery of degraded ecosystems and

requires Member States to plan restoration at landscape and ecosystem scale. Ireland is required to submit its draft National Restoration Plan by **1 September 2026**.

This has particular significance for hydrology.

The Regulation expressly recognises **rewetting of drained peatlands, restoration of wetlands and improvement of hydrological conditions** as restoration measures.

The implications for Dyrrick Hill are not that Regulation 2024/1991 automatically prohibits renewable-energy development or establishes that this particular site will necessarily be selected for restoration.

The relevant point is different.

The EIAR assesses primarily whether development would cause unacceptable deterioration of the hydrological environment as characterised in 2021–2022. It does **not** answer the additional question which now arises:

Could permanent roads, turbine foundations, hardstands, drainage infrastructure, cable trenches, forestry works, culverts and dewatering constrain the future restoration of natural hydrological processes within this upland peat–heath–grassland system?

This is particularly relevant because the Irish Peatland Conservation Council had already, during the original consultation process, raised concerns regarding interference with peatland hydrology, alteration of the water table, drainage and cumulative effects.

Those concerns therefore do not arise retrospectively from the Nature Restoration Regulation. They were identified before the Regulation existed. The subsequent Regulation gives them materially increased legal and policy significance.

The present ecological classification of land should also not automatically be treated as synonymous with its restoration potential. Agricultural grassland, wet grassland, degraded heath or apparently dry areas may form part of the same hydrological system as adjoining peat and wet heath, may influence water supply to those habitats, or may themselves represent historically modified ecosystems.

The applicant's "Do Nothing" scenario is no longer an adequate future baseline

Chapter 9 of the 2023 EIAR states:

"If the proposed wind farm development does not proceed, current land use practices such as agricultural grazing will continue. There are no significant impacts to the hydrological and hydrogeological environment in the do-nothing scenario."

This assumption now requires reconsideration.

The proposed development seeks a 40-year operational life. Over that timescale it is no longer reasonable to regard continuation of the current drainage, grazing, forestry and land-management regime as the only plausible future environmental baseline.

Ireland is now legally required to implement ecosystem restoration under Regulation (EU) 2024/1991. Its National Restoration Plan is presently being prepared. Hydrological restoration, rewetting, changes in drainage and restoration of degraded terrestrial ecosystems are now matters of national legal and policy relevance.

Accordingly, the 2023 assumption that the absence of the wind farm would simply result in continuation of existing conditions for the foreseeable future no longer adequately reflects the current planning and legislative context.

A contemporary "Do Nothing" assessment should consider the reasonable possibility of restoration or altered land management over the proposed operational period and whether permanent development infrastructure could constrain future restoration options.

Water Framework Directive – the applicant relied upon a draft plan which has since been superseded

The applicant's WFD assessment was prepared in March 2023 and expressly relied upon Ireland's **Draft River Basin Management Plan 2022–2027**.

That is no longer the operative policy document.

In September 2024 the Government adopted **Water Action Plan 2024: A River Basin Management Plan for Ireland**, Ireland's final third-cycle River Basin Management Plan. The Plan sets out the measures required to protect and restore water quality and expressly places emphasis on restoration of natural ecosystem functions as part of water management.

This is a straightforward but important change.

The WFD assessment before the Coimisiún was prepared against a **draft River Basin Management Plan**. It should not simply be assumed that the conclusions reached in 2023 satisfy the policies, priorities, targeted measures and current waterbody information contained in the subsequently adopted final Plan.

At minimum, the applicant should demonstrate that its WFD assessment remains consistent with Water Action Plan 2024 and the current Programme of Measures.

This is especially important because the WFD requires not only prevention of deterioration but protection and, where necessary, restoration of water bodies to Good status.

Current EPA evidence reinforces the need for updated information

The national water-quality evidence available to the Coimisiún has also changed materially since preparation of the EIAR.

The EPA's **Water Quality in Ireland 2019–2024** assessment reports that only 52% of Irish surface water bodies are in Good or High ecological status, leaving 48% in unsatisfactory condition. The EPA identifies excess nutrients as the greatest challenge, followed by changes to physical habitat conditions.

More recently, in June 2026, the EPA reported that there had been **little overall improvement in water quality during 2025**, that water quality remained unsatisfactory in many areas and that the pace and scale of measures to protect and restore water quality needed to increase.

We do not rely upon these national figures as evidence that the Finisk itself has deteriorated since 2023. That would require current local monitoring information.

Rather, they demonstrate precisely why contemporary local evidence is required.

In a national context in which water quality objectives remain difficult to achieve, the Coimisiún should not assume that a several-year-old baseline continues accurately to represent the present condition of the affected water bodies.

Further change to EU water legislation since the EIAR

There has also been a further legislative development in 2026.

On 11 May 2026, a new EU Directive revising the lists of pollutants under the Water Framework Directive, Environmental Quality Standards Directive and Groundwater Directive entered into force. Among other matters, it addresses additional PFAS, pesticides and pharmaceuticals, sensitive groundwater ecosystems, effect-based monitoring and a revised definition of non-deterioration. Member States are required to transpose the amendments by 22 December 2027.

We recognise that the transposition period has not yet expired and do not suggest that the applicant's 2023 assessment can simply be judged against standards which were not then in force.

The relevance is instead that **the EU water-policy framework itself has continued to evolve materially since preparation of the EIAR**. This further reinforces the need for a contemporary

WFD review rather than reliance upon a document frozen in the legislative and monitoring context of early 2023.

Mitigation measures require reassessment

Our original submission raised extensive concerns regarding the precision and completeness of proposed hydrological mitigation measures. Those concerns remain.

The applicant acknowledges that significant potential construction effects include sediment-laden runoff, increased hydraulic loading, cementitious materials, hydrocarbons and other chemical pollutants.

Yet important elements of the monitoring and mitigation regime remained to be agreed after consent.

For example, Chapter 9 states that the parameters and frequency of water-quality monitoring **"should be agreed"** with Inland Fisheries Ireland and Waterford City and County Council prior to construction, while monitoring locations would remain flexible and could be moved during construction.

Our original submission, together with the independent submission made by Wild Ireland Defence CLG, identified numerous similar formulations including "where possible", "reasonably practicable", "suitable for construction" and arrangements or detailed designs which were to be determined at a later stage.

The concern is not that adaptive management is always inappropriate. It is that mitigation relied upon to exclude significant adverse effects must be sufficiently clear, effective and assessable when development consent is being determined.

Furthermore, measures designed around a hydrological and ecological baseline established primarily in 2021–2022 cannot automatically be assumed to remain adequate in 2026.

Hydrology must now be considered as ecosystem function, not merely pollution control

A recurrent feature of the applicant's WFD and Hydrology assessments is that effects are considered principally through the lens of:

- sediment release;
- contamination;
- increased runoff;
- chemical spills;
- cementitious material;
- groundwater contamination; and
- WFD-status deterioration.

Those are important issues.

However, the current legislative context requires a broader question.

Natural hydrology is itself an ecological function.

A road can alter a wetland or peatland hydrologically even if no pollutant enters a stream. A drainage ditch can intercept shallow subsurface flow. A culvert can concentrate diffuse runoff. A cable trench can form a preferential drainage pathway. Excavations can intercept seepage or groundwater. Hardstanding can change infiltration and runoff patterns.

The applicant acknowledges that construction involves new and upgraded access roads "**and all associated drainage**", a site drainage network, turbine foundations, hardstands, underground cables, forestry felling and substantial excavation.

The question is therefore no longer adequately framed as:

Can pollution from these works be mitigated sufficiently to prevent WFD deterioration?

It must also include:

What permanent alteration will these works make to water movement across the site, and could that alteration prejudice ecological restoration or restoration of natural hydrological processes during the proposed 40-year operational period?

The 2023 EIAR does not satisfactorily answer that question because it was not prepared in the legal context in which that question now arises.

Cumulative effects require renewed assessment

The applicant's cumulative hydrological assessment was narrow. It largely dismissed cumulative effects from Coumnauppul Wind Farm because of distance and its location within different catchment/groundwater-body areas. Nevertheless, the EIAR simultaneously acknowledges that the development would "contribute to and add to the cumulative nature of adverse impacts" upon the surface-water network before ultimately relying upon factors including the Finisk's volume and assimilative capacity to conclude that significant cumulative effects were unlikely.

The cumulative development context has, however, changed materially since that assessment was prepared. In particular, the **Scart Mountain Wind Farm** proposal emerged after the Dyrick Hill application and is directly adjacent to the Dyrick Hill and Broemountain area. Scart Mountain comprises 15 turbines together with extensive associated infrastructure, including approximately 11.9 km of new internal roads, 7.2 km of upgraded roads, drainage and

sediment-control systems, forestry felling, turbine foundations, hardstands, borrow pits and other excavation works.

Importantly for hydrology, the Scart Mountain documentation identifies the **Farnane, Finisk and Glenshelane systems and ultimately the Blackwater River (Cork/Waterford) SAC** as part of its receiving hydrological environment. It also acknowledges numerous existing forestry drains and the need to integrate the proposed development drainage with both the existing forestry drainage and the natural drainage system.

Scart Mountain itself now recognises Dyrick Hill as its **nearest proposed wind farm** and as a significant component of its future cumulative development scenario. The position is therefore materially different from that assessed in the 2023 Dyrick Hill EIAR: Scart Mountain has been assessed with knowledge of Dyrick Hill, whereas Dyrick Hill's original cumulative hydrological assessment could not assess the detailed Scart Mountain proposal because that information was not then available.

The cumulative assessment should therefore now consider more than simultaneous pollution incidents from separate developments. It should address the combined effects of **Dyrick Hill and Scart Mountain**, together with existing forestry drainage, agricultural drainage, roads and historic hydrological modification, on surface-water drainage, groundwater, sediment mobilisation, peat and soil disturbance, watercourse crossings and the downstream Finisk/Blackwater system.

Under the current restoration framework, the further question also arises as to how the combined developments could affect the **future restoration of natural hydrological functioning** across this upland landscape. An assessment based substantially upon the cumulative development context existing in 2023 can no longer be regarded as representing the present baseline.

Request for independent hydrological review of any new information

In light of the fact that further information is now to be submitted by the Applicant, and that interested parties have not yet had an opportunity to examine or comment upon that material, we respectfully request that An Coimisiún Pleanála ensure that any new hydrological, hydrogeological or drainage information is subject to independent review by a suitably qualified hydrologist.

We ask that such a review consider the new material together with the hydrology, hydrogeology, Water Framework Directive and drainage information submitted with the original application and provide a clear assessment of the implications for the receiving water environment, including the Finisk River system, the Blackwater River (Cork/Waterford) SAC and

all relevant hydrological pathways connecting the proposed development to those protected waters.

This is particularly important in circumstances where the original assessment could not fully address the cumulative hydrological implications of the subsequently proposed Scart Mountain Wind Farm, directly adjacent to the Dyrick Hill/Broemountain area. Any current review should therefore consider the combined effects of both developments, including cumulative drainage, excavation, road construction, alteration of surface and subsurface water movement, sediment mobilisation, watercourse crossings and implications for downstream aquatic receptors.

Given the environmental concerns already associated with the original application, together with the materially changed legal, policy and cumulative development context described above, we consider an independent hydrological review to be of particular importance before any determination is made.

We make this request because members of the local community cannot reasonably be expected to assume the technical, financial or professional burden of independently assessing complex new hydrological information submitted at this late stage. The responsibility for ensuring that the Coimisiún has access to sufficiently complete, current and expert hydrological advice should rest with the decision-making process itself.

Where significant new hydrological information is submitted, it should not be accepted without independent technical scrutiny, particularly where the original baseline and cumulative assessment are already disputed and where the receiving environment includes waters connected to the Blackwater River SAC.

CONCLUSION

The application and supporting documentation have been examined in detail. Having regard to the matters set out above, it is respectfully submitted that the proposed location is unsuitable for the development proposed, and that the application as lodged is deficient, containing a substantial number of errors and omissions together with numerous internal inconsistencies.

It is further submitted that the deficiencies now identified are, in material respects, the same deficiencies identified in the Inspector's report prepared in respect of ACP 317265, in which **REFUSAL** was recommended. The applicant has not, in the documentation now before the **Coimisiún**, remedied those deficiencies. The reasons for refusal identified in that report therefore continue to apply with equal force to the application as it now stands.

GERALDINE LACEY

Honorary Secretary

On behalf of

Knockmealdown Protection Group (KPG)

Signed by:
Geraldine Lacey
D63382461E6648B...