

Dear Sir, Madame,

I am in receipt of your letter dated the 17th of July 2026, in relation to the construction of Dyrick Hill windfarm in Co. Waterford, case number ACP-324420-26 and wish to make the following observations.

The passage of time not only compress's it but grants the gift of hindsight. The initial Dyrick hill inspectors report is dated 31/3/24, the inspectors addendum report is dated 31/7/24 and references the applicants response to observations in the initial report, the applicant's response is dated 20/5/24 and it does reference the climate action plan 2024. This needs restating , the applicants themselves referenced CAP2024 in its response to the planning authority in May 2024.

The climate action plan 2024 was published on the 21/5/24 and is referenced in the applicants response, the inspectors addendum report section 4.2.7 states that...

"I consider the Board is complying with its responsibilities in relation to the Climate Act and associated Climate Action Plan 2024 and all other climate plans in this Assessment, considering all existing relevant legal matters, including the operative Development plan, and all EU directives including the Habitats and Birds Directives. In addition to policy considerations, I am of the view that there are significant issues with the proposed development in relation to biodiversity, Annex I habitats, and birds and I refer the Board to the Inspector's report dated 31st March 2024 for more detail in this regard."

It is a fact that the inspector and the board considered s15 and CAP2024 in the Dyrick hill decision.

The board itself was operating under difficult conditions at this time as it was in August 2024 that Minister O'Brien announced a board increase from 14 to 17 members, with 8 new members appointed in September. It was a difficult period in dealing with applications in a timely manner.

In justice Humphreys Dyrick hill judgement, dated the 14/4/26, in paragraph 2 he states that...

“A declaration that the board, in failing to approve adequate planning applications to meet Ireland’s 2030 renewable energy targets in the climate action plan 2024, is failing to comply with it’s obligations under section 15 of the climate action and low carbon development act 2015.”

Is this statement justified when viewed against the facts of the Dyrick hill application and the Supreme Court judgement? What is the evidence either way?

The phrase “...in failing to approve adequate planning applications...” elevates a singular specific consideration to rank above pari-passu with other considerations. Furthermore the board can only adjudicate on planning applications (PA) presented to it and do so in a fair, balanced and sustainable way as a body obliged to uphold the constitution and the law. There may never be a sufficient quantity of proposed renewable developments to meet targets never mind approved developments.

If the board was refusing all or the majority of wind and solar PA proposals there would be strong merit in this statement, however this is not the case.

A ‘X%’ target of renewable power supply, in an ever increasing overall power demand driven primarily by data centres, is arguably derailing balanced and sustainable development and will drive an unrelenting clerical tick box exercise of granting every renewable development until the mythical X% is achieved – if ever.

The logic itself is questionable, once X% is potentially achieved do all additional renewable PA development proposals cease no matter how suitable or sustainable a proposition the proposed PA development may be. For example, a 12 turbine development outside Aras an Uachtarain in the Phoenix Park would be granted in trying to reach the X% target; a similar development some time later, in say Donegal, would be refused if X% had already been reached. To grant every wind or solar farm PA specifically under section 15 to the exclusion

of all other considerations is neither fair, balanced, or sustainable by a body obliged to uphold the constitution and the law.

Semantics aside the reality exists that the entirety and accumulation of PA renewable proposals may never reach the X% target, the moveable end target with the ever increasing additional data centres energy usage is on an insatiable upward demand curve.

Justice Humphreys Dyrick hill judgement dated the 14/4/26 follows on from the Supreme Court Coolglass judgement dated 2/3/26. The Coolglass Supreme Court judgement follows on from the initial High Court Coolglass judgement dated 10/1/25 by Justice Humphreys in which from paragraph 52 (Pg7) to paragraph 159 (Pg39) he deals with s.15(1). The outline in this high court judgement is as follows in paragraph 60...

"So the way in which I would propose to approach the interpretation of s. 15 in this case is to look at the following headings:

1. The language of s. 15(1);
2. The context of s. 15(1);
3. The purpose of s. 15(1);
4. A conforming interpretation in EU law terms;
5. A conforming interpretation in ECHR terms;
6. Conclusion on interpretation; and
7. Application of the law to the facts here."

In paragraph 164 Justice Humphreys adroitly zeros in on the core of his 32 page reasoning...

"I gave the legislation a reading that would make such necessary action **mandatory** as far as Irish public bodies are concerned, as opposed to something that is to be encouraged or even strongly encouraged;"

How did the Supreme Court subsequently deal with Justice Humphreys High Court judgement. In paragraph 3 of the supreme court Coolglass judgement the 6 panel court adjudged that...

“In its judgment the Court found that the Commission had erred in law in failing to address the implications of s. 15(1) of the Climate Action and Low Carbon Development Act 2015 in the wake of important amendments made to that section which were effected by s. 17 of the Climate Action and Low Carbon Development (Amendment) Act 2021. Specifically, this Court held that the Commission had erred in law in failing to consider whether s. 15(1) of the 2015 Act required it to consider departing from the terms of the Laois Development Plan and to exercise its powers under s. 37G(6) of the Planning and Development Act 2000 for this purpose.”

Section 17(1) of the climate action and low carbon development (amendment)act 2021 states...

“15. (1) A relevant body shall, in so far as practicable, perform its functions in a manner consistent with

(a)the most recent approved climate action plan,

(b)the most recent approved national long term climate action strategy,

(c)the most recent approved national adaptation framework and approved sectoral adaptation plans,

(d)the furtherance of the national climate objective, and

(e)the objective of mitigating greenhousegas emissions and adapting to the effects of climate change in the State.”

Returning to the Coolglass Supreme Court ruling...

Paragraph 14 states that...

“Coolglass agrees in general terms that this is the appropriate order which this Court should now make. It did, however, suggest that we should give specific directions to the Commission regarding the procedure now to be followed. We do not, however, propose to give any such directions. The Commission is a statutory body which is obliged to uphold the Constitution and the law. It must be presumed that the Commission will therefore abide by the principles of fair procedures in arriving at any decision in respect of the remitted matter.”

In it's Conclusions it further states...

“Second, make an order under s. 50A(9A) of the 2000 Act remitting the matter to the planning application process directly after the furnishing of the original Inspector’s Report and immediately preceding the Commission’s decision so that the question of whether the Commission should exercise its powers under s. 37G(6) of the 2000 Act to depart from the terms of the Laois Development Plan in the light of s. 15(1) of the 2015 Act, can now be considered. The Commission will have liberty to appoint an Inspector to prepare a supplemental Report for this purpose.”

The supreme court judgement did not and does not issue specific mandatory directions, rather it says the body should, consider departing from, and that question of whether it should exercise its powers to depart from the terms of the Laois Development Plan in the light of s. 15(1) of the 2015 Act, can now be considered.

The word mandatory in the Coolglass high court judgement is wholly rejected by the 6 panel Supreme Court. The 6 panel supreme judgement wisely states that the board use principles of fair procedures in arriving at it’s decisions. Clearly s.15(1) should be considered along with all other planning considerations using principles of fair procedures, mandatory consideration of one specific direction is wisely not directed by the 6 panel Supreme Court. Great wisdom exists in a 6 panel Supreme Court judgement that allows planning professionals fulfil the entirety of their roles in strategic infrastructure cases in so far as practicable. It allows the national planning authority to consider the wisdom contained in County development plans written in large part by individuals who have great knowledge of their respective Counties and who in most cases and especially in this case allow for a considerable space within the County for wind and solar development and whose County planners have looked favourable towards and granted many such proposed developments already in Co.Waterford.

There exists a simple fact that the inspectors report in the Coolglass PA dated the 16/5/24 did not reference the climate action plan 2024 in section 4.8 or section 11, hence the straight forward and specific Supreme Court ruling that the planning authority had erred in law by not referencing s.17 of the 2021 amendment act, as indeed justice Humphreys high court Coolglass judgement ditto referenced.

Section 4.2.7 of the inspectors addendum report dated 31/7/24 in the Dyrick hill PA however **did** consider the climate action plan 2024. Justice Humphreys Dyrick hill direction may well have differed to and overreached from the specific Supreme Court

Coolglass judgement as the Coolglass inspectors report did not reference the CAP2024 but the Dyrick hill inspectors addendum report **did**.

The Supreme Court judgement did not make the s17 issue a mandatory issue, rather that it had to be considered and as the legislation says, in so far as practicable. However, in the interests of fairness and abiding by the principles of fair procedures section 4.2.7 on the addendum report can be updated along with other considerations in a further supplemental report, Justice Humphreys may well be unnecessarily elongating the process by not having fully absorbed and internalised the 6 panel Supreme Court decision a mere few weeks prior.

In restating my earlier question, "Is this statement (J Humphreys in Dyrick Hill) justified when viewed against the facts of the Dyrick hill application and the Supreme Court judgement?" It's established that S15 was considered in Dyrick hill and further that this in fact was the Supreme Courts Coolglass decision – "to consider". The Supreme Court judgement stated "consider, the planning authority in the Dyrick hill PA had considered. The answer must be "No justice Humphreys statement is not justified".

There exists an oddity in the current planning process that through frequent government updates that decisions can never be fully up to date and an endless cycle of PA consideration and board decision, legal redress and therefore project elongation (as well as swept area turbine PA upgrades), exists; and has resulted in a significant reduction in actual renewable development construction that has the direct opposite effect of what was intended.

Justice Humphreys is perhaps unwittingly contributing to project elongation with mandatory directions, his endeavours may be ultimately more successful restricting the ever increasing data centre electricity demand. There seems to be little awareness that as well as increasing X% renewable the CAP processes also increases the quantity of gas turbines on the grid, gas turbines that burn carbon.

The governmental processes has belatedly realised the erroneous open ended electricity demand requirements with it's in-built X% target is perhaps in reality an in-built target failure mechanism. The governments CAP2026 has been significantly delayed and is not yet published, indeed it is at public consultation stage to mid August, with the government acknowledging that the country will not meet it's 2030 emissions targets under the current framework. How could any framework that

encourages dramatic demand electricity use via data centre increases ever be achievable, no system can cope with this illogicality, a fact very wisely understood by the 6 panel Supreme Court.

The matter is actually in a considerably worse state, for example the critical infrastructure acts 2026 key and controversial provision is the disapplication of section 15 of the climate action and low carbon development act 2015/2021. The stated purpose of this modification is to reduce the grounds for judicial reviews based on national climate objectives - this is a startling government Streisand effect admission. Recent freedom of information releases clearly demonstrate that the Department of Public expenditure wished to revoke section 15 in its entirety in order to remove an "unnecessary layer that is driving a wider increase and risk around judicial reviews".

Government acknowledging that s. 15 is an **unnecessary layer**.

It is perhaps incumbent on the planning authority to follow the wisdom of the Supreme Court judgement, that the Government via the Attorney General was part of. Arguably with the existing Dyrick hill PA inspectors report and decision the planning authority is already far ahead of the curve in this regard.

The eventual legal whirligig choke point, outside of "in so far as practicable", is section 37G(6) of the planning and development acts, on which the departure from a development plan ultimately hinges, uses the word "may" and not "shall".

In addition to the ongoing elongated legal merry-go-around I would ask that my initial observations to the Dyrick hill PA be reconsidered by the planning authority.

If the board departs from WCCC's development plan under s.37g it can also depart from the planning proposal with conditions. The wind guidelines suggest height definitions in the receiving environment that can be adhered to, a turbine tip height of 70 to 80 meters would be more suitable in this particular receiving environment. Development proposers are exercising their right to seek clarity over simple words and omissions in the courts upon which a 6 panel Supreme court has recently

provided simple clarity. To the best of my knowledge no such clarity has been sought on what constitutes a small, medium, or large wind turbine in the wind guidelines.

The definition of large appears to be taken as to what a wind turbine manufacturer can physically make today, for any given today. In trying to maximise energy generation, and revenue, we see countless planning applications by developers seeking increased tip height over the last number of years (from 90, to 120, to 150, to 180 meters). A 150m tip height increase to 180m tip height approximately represents a one and a half acre increase in wind turbine swept area, with increased generation capacity and revenue generation. Tip height is ever increasing with a further 10 years to complete and no actual construction happening – why are developers not bound to action to construct for already granted permissions under climate action plans?

90/120m was considered large when the draft guidelines were written (unimaginable heights when the actual guidelines were enforced in 2006), today it's 180, tomorrow 250m, 330m? The guidelines do suggest a definition of heights, to the best of my knowledge this has been overlooked to-date. It is well past time that obvious but ignored reality is looked at, as it is obvious that large will be ever larger as manufacturing dictates and from which ever increasing PA wind swept upgrades with no planning requirement to actually build exists. The 10 year construction condition means it's better to wait for the next bigger turbine and apply for those particular turbines in 3 or 4 years time.

How will the planning system remedy this situation and get developers to actually build granted renewable developments? Implement actual defined heights for low, medium and high turbines as outlined in the wind guidelines, stick with existing granted PA heights, or refuse permission for PA project extensions where no work has been carried out as detailed elsewhere in section 42 of the planning acts.

The passage of time has also allowed further perspectives to be assessed on the cumulative impact assessment, and/or project splitting in relation to nearby and adjoining wind farms. Ditto on turbine distance proximities with ever increasing heights.

Built so close to each other significantly reduces individual performance, a 2x blade distance from an engineers perspective is laughable but the regulations can't seem to see the accepted published reality that already exists with regard to turbine spacing and performance.

The applicants responses dated 20/5/24 side-stepped most of these issues, especially the cumulative / project splitting issue that can now be fully assessed.

Another gift that the passage of time has presented to the planning authority and the country via the courts is the issue of noise, vibration and shadow flicker.

Defendant Ballyduff wind farm (meenaclohghspar ltd) plaintiffs Webster & Anor, Ms Justice Emily Regan ruled that noise from the 2 turbine wind farm near Enniscorthy caused unreasonable interference with the plaintiffs enjoyment of their homes. This case is appealed.

The defendants Gibbet Hill Wind Farm (ABO Wind/Wexwind), plaintiff Raymond Byrne and Lorna Moorhead, the operators and owners (ABO Wind Ireland Ltd, ABO Wind OMS Ireland Ltd, and Wexwind Ltd) admitted liability for nuisance caused by the six-turbine farm near Bunclody. The High Court ordered the total shutdown of three turbines due to noise nuisance, marking the first such order in Ireland. The court further found the noise, vibration, and shadow flicker had destroyed the plaintiffs' quality of life and caused significant health impacts. This case was not appealed, it's judgement stands.

There are further cases progressing through the courts that will undoubtedly compound these issues.

These Wexford PA, at planning stage, undoubtedly guaranteed that this could not and would not happen and yet here we are. Perhaps building with more suitable (i.e. reduced) tip heights has more advantages than initially realised in comparison to the higher, more revenue, greed approach.

Planning conditions can throttle skewered developer ambition and produce better long term sustainable results that a) get built and b) stay built and not get shut down in the future. When the facts change opinions also eventually change. How can the planning authority ensure that any proposed wind farm will not end up else where in the courts system being shut down because noise, vibration, and shadow flicker were wholly

inadequate, clearly reports presented as facts do change and are proving unreliable both in the real world and in the courts.

Would reduced and more appropriate tip heights make proposals more acceptable to communities, get built quicker, and stay built?

I see no reason why the planning authority should depart from it's original decision dated 3rd of October 2024 as signed by Mr. Chris McGarry, for wind proposals exclusion zone, most sensitive upland area designation, and loss of dry heath habitat reasons. These facts have not altered in any way. Restating my earlier question, "Is this statement (J Humphreys in Dyrick Hill) justified when viewed against the facts of the Dyrick hill application and the Supreme Court judgement?", the answer must be "No justice Humphreys statement is not justified".

Kind regards,

John Cullinan