Marika Williams

Hi, everyone, and welcome. My name is Marika Williams, and I am an Associate on the Environment and Planning team at A&L Goodbody, and I'm joined today by partner, Alan Roberts.

Alan Roberts

Hello.

Marika Williams

Alan, it's now been around two years since we acted for Statkraft in the original judicial review that challenged the refusal of permission for Coolglass Wind Farm in County Laois, and I think it's fair to say that the landscape for permitting wind farms looked very different in 2024. Would you talk us through a bit of that wider background?

Alan Roberts

Yes, Marika. I think it's really important that we remember back to the perfect storm that faced renewable energy, energy developers in 2023, 2024, and there were two problems that occurred right at the same time.

The first one was in the last development plan cycle, so from 2021 through to 2023, very many counties took what was effectively a hostile approach to the consenting of to the zoning and consenting of wind farms in their development plan. And then at the same time the Board, the old name for the Commission, started to become very reluctant to grant permissions for wind farms that were in material contravention of the development plan, and as a result of which, for the 21-month period from 1 January 2023 right to 30 September 2024, the approval rating from the Commission absolutely plummeted.

Marika Williams

Mm.

Alan Roberts

There were 27 wind farm applications, and there were 14 full refusals, one partial refusal, and only 12 grants of permission, and all of that resulted in 500 megawatts of renewable energy projects being refused permission.

Over that period of time, not one single wind farm was deemed to be of sufficient strategic importance to justify material contravention of any development plan anywhere in the country.

So, on that outcome, the trajectory was, without doubt, that Ireland could not meet its 2030 nine gigawatts onshore target.

Marika Williams

Yeah.

Alan Roberts

So the reason that Statkraft brought these proceedings very much as a last resort was to see whether or not the amendments that had been made in 2021 to Section 15 of the Climate Act could be used to put some bounds on the Commission's refusal rates for wind farms.

Marika Williams

Yeah, and of course, the outcome of Statkraft taking that judicial review was the High Court's ruling in January 2025, which not only quashed the Board's decision to refuse permission for Coolglass Wind Farm, but of course, the judgment was very significant in that it was the first time the High Court had considered the nature and the scope of that climate duty under Section 15, and I think the High Court's judgment is actually a really interesting read. Mr. Justice Humphreys was very focused on the scale and the urgency of the climate crisis, and he quotes directly from the government's own legal submissions, where they acknowledge that climate is the single greatest threat facing humanity and that the amendments to Section 15 of the Climate Act in 2021 were intended to reflect that.

And in his decision, Mr. Justice Humphreys ultimately looked at Ireland's domestic climate change targets and its obligations under EU and international law to support a purposive interpretation of Section 15 in line with what it actually says, namely that the Commission and other relevant bodies must act in conformity with climate change plans and objectives unless it is impractical to do so. And of course, this is a very high standard, and it falls only just short of unconditional compliance, really.

Now, that decision was appealed to the Supreme Court, and the approach that Justice Humphreys took to Section 15 wasn't the same as the one that the Supreme Court ultimately adopted. Would you walk us through a little bit of what the Supreme Court actually concluded instead?

Alan Roberts

For sure. The Supreme Court did uphold the, ultimately, the High Court decision to quash the refusal for Coolglass Wind Farm, but it certainly changed the basis for that decision from the High Court.

The Supreme Court recognised that the changes made to Section 15 through the 2021 amendments strengthened considerably the obligations on public bodies to perform their functions consistently with the climate objectives that are listed insofar as practicable, but the Supreme Court sort of framed that as a statutory reset and a form of climate sense check. I think they probably ... The Supreme Court made three core findings.

The first one is that the obligation the compliance obligation with Section 15 is outcome oriented. It's not just procedurally oriented, and it is an obligation which, in principle, is enforceable by court. So, it's a legal test, not anything less than that. Secondly, though what the Supreme Court held was that it's not simply climate-friendly go versus climate-unfriendly stop test.

Marika Williams

Mm

Alan Roberts

As the High Court judgment has been sort of framed as. So what the Supreme Court held was that the climate objectives are stated at a, you know, high level of generality, for example, in the climate action plans, and therefore, consistency will allow for a range of potential outcomes, and indeed, consistency itself isn't required if it's impractical to achieve that.

And then finally, the Supreme Court made a very interesting observation. What the court said was that climate considerations are already woven into the detail of the planning code and permeate the planning code, including the making of development plans. So what the Supreme Court said was that it can be presumed that development plans made pursuant to planning legislation that is imbued with these climate considerations can be assumed to be consistent with Section 15, and indeed, any planning decision, any refusal or planning grant, can also be presumed to be consistent with Section 15. But the court left open the question, I suppose the key question, which is, well, how many of those development plans actually-

Marika Williams

Exactly.

Alan Roberts

... reflect those climate objectives and circumstances where, um, most development plans predate-

Marika Williams

Mm.

Alan Roberts

... for example, um, the Climate Action Plan of 2024.

Marika Williams

Yeah, that, that really struck me, I think, at the hearing, that the judges just seemed to assume that National Climate Policy would just translate straight down or across local development plans. And I'm sure, like for most of us practicing as environment and planning lawyers, we don't see that actually happen in reality.

And that sort of tension that exists between local and national policy objectives, particularly in relation to climate change, is really hard to reconcile, and that's an issue I've seen come up in New Zealand as well, where I'm from. And I think it's also complicated by the fact that climate change policy evolves really rapidly.

Alan Roberts

Yeah, I think that's absolutely right. We've already discussed that in the current development plan cycle all development plans were made in that period from 2021 through to 2023, and they predate by many years the most recent climate action plans.

Look, put simply, climate policy is evolving a lot faster than local planning policy-

Marika Williams

Mm-hmm.

Alan Roberts

... as enunciated through the development plans. And so it's very difficult for development plans to keep up.

To make the obvious point, climate action plans are published, or at least they're supposed to be- ... published every year, whereas development plans are on a six-year cycle-

Marika Williams

Mm.

Alan Roberts

... moving to a 10-year cycle under the 2024 Planning Acts. And then the obvious point to make is that local planning policy is informed by different and often competing interests compared to national policy.

So, as played out in Coolglass, you know, the amenity value of an area versus the requirement to achieve, national renewable energy targets.

Marika Williams

Yeah, and now, I mean, now we are almost a year on from the Supreme Court's decision, and I just want to turn quickly to some of the High Court's subsequent decisions, which have really operationalised the principles that you have outlined from the Supreme Court. And there have been quite a number of cases really applying Coolglass to both emissions-causing projects and to renewable projects.

We had *Keogh*, we had *Doyle*, the *Friends of the Irish Environment* decision regarding the proposed Shannon LNG power plant, and I think to some degree, the law is now fairly settled in relation to the interpretation of Section 15. But do you think, Alan, that there has also been a corresponding shift at the decision-making stage for these projects in terms of how the Commission applies Section 15?

Alan Roberts

Undoubtedly yes-

Marika Williams

Mm.

Alan Roberts

... is the answer. Again, if we go back to the period immediately preceding when Statkraft brought the, brought these proceedings, the key problem was the approval rate from the Commission for wind farms.

So, for the five-year period from 2017 through to the end of 2022, the average annual approval rate by the Commission for wind farms was running at just around 80%. But in 2023, that dropped significantly down to 60%, and then in the first nine months of 2024, it plummeted to below 30%. So that was the problem that provoked the Coolglass-

Marika Williams

Mm.

Alan Roberts

... challenge, and that was the problem that Statkraft asked us to solve. In 2025, after the High Court judgment, the Commission's approval ratings for wind farms climbed back up to 90%, and then the most recent Commission figures up to September of this year shows that the approval rate for renewables projects is now running at about 85% and at around 75% for onshore wind.

So, Coolglass has certainly done a huge amount to solve the problem that was there.

Marika Williams

Absolutely, and I guess the bigger question, do you think that with approval rates trending upwards, that there is still a possibility that we might achieve nine gigawatts of onshore wind capacity by 2030?

Alan Roberts

You know me, Marika, I'm always the optimist. You know, deployment of renewables in Ireland reached 7.7 gigawatts by the end of 2025, so we're well on target from that perspective.

But now, of course, we're dealing with the out-turn of that reduced approval rate in 2023 and 2024, and so only 200 megawatts of onshore wind was approved since then. It's far below the two gigawatts that, that is generally understood to be required-

Marika Williams

Mm.

Alan Roberts

... because of attrition rates, et cetera to get to the 2030 targets. Another problem we have is that the planning framework, planning policy framework that's supposed to be there it's coming, but it's just coming too slowly. We're still waiting for the national planning statement on wind energy. We're still seeing exact- you know, waiting exactly how Renewable Energy Directive III, RED III, is going to be implemented into Irish law providing for renewable energy acceleration zones, et cetera and we're still waiting to see how the regional spatial and economic strategies, the RSES and the renewable capacity allocations under the national planning framework are actually stepped down into county-by-county development plan levels. So, the policy still hasn't caught up.

And the bottleneck, unfortunately isn't just at the planning stage. It's also in grid, and this is borne out by the wind energy final onshore wind action plan published in September of this year, which shows that more than 3,000 megawatts of wind farms that have already been consented and where those consents are beyond the judicial review period are stuck waiting to be connected to the grid.

Marika Williams

Mm. Yeah.

Alan Roberts

And some projects, particularly in Counties Mayo and Donegal, are being told they're going to have to wait five years for, for connection to the grid. So, insufficient grid capacity and delays in securing grid connections, they're all wider issues that are going to need to be addressed in order to meet those targets.

Marika Williams

Yeah, and I just want to briefly touch on, too, the fact that Ireland's climate policy also is continuing to evolve. You know, we're still waiting on the 2026 Climate Action Plan, with no date from the government yet as to when that will be released, and we're also at, like, a critical juncture in terms of moving into Ireland's second carbon budget, which covers 2026 to 2030 and is much tighter than the first budget, with only 200 megatons of CO_2 that may be released on what is essentially a near economy-wide basis.

And I think there's a bigger question of whether Ireland can even meet its legally binding target of reducing greenhouse gas emissions by 51% by 2030. As you know, the Environmental Protection Agency is predicting that we just won't meet that target.

Alan Roberts

That's true, Marika, but again, I'm going to see- ... can I strike a positive note because this is not just a climate issue. There’s a big opportunity here, too.

Renewables are now the foundation of Ireland's energy-

Marika Williams

Sure.

Alan Roberts

... and security. Last year, the statistics show us that Ireland imported over 78% of our energy needs, so that leaves us hugely, hugely exposed, geopoliti- geopolitically and also to price volatility, which makes affordability, a very pressing social issue, and we can see that playing out across Europe at the moment.

But maybe just to bring it back as we near the end of the podcast to a point that was raised by the Chief Justice in the Supreme Court decision in Coolglass, where he said that it's open to the State to bring forward more granular national climate objectives and if the State did that, that would narrow the range of consistent decisions, you know, ones that are compatible with Section 15.

Marika Williams

Mm-hmm.

Alan Roberts

So, I guess an open question that we have as we look forwards to CAP 2026 and CAP 2027 is-

Marika Williams

Mm.

Alan Roberts

... if they are more granular, more detailed, will the courts have to grapple with *Coolglass* mark two?

Marika Williams

Yeah, there are certainly some big questions outstanding, and for us, a lot to keep an eye on in this area. Thank you so much for joining me today, Alan, and thank you all for listening.

Alan Roberts

Thanks, Marika.