

A statement of evidence for the Curraghinalt Mine Project (LA10/2017/1249/F), statement of evidence for the Curraghinalt 33Kv Project (including both LA10/2019/1386/F and LA11/2019/1000/F

Date 04/12/2025

As recommended by the Planning Appeals Commission, a number of individuals have come together to prepare the attached Statement of Case in respect of the above planning applications. This Statement of Case has been developed collaboratively by the undersigned authors. Each individual requires to be sent correspondence directly to their respective addresses.

We respectfully request that all further correspondence and notices from the PAC in relation to these proceedings be issued in hard copy to each of the following addresses, so that all named authors can remain properly informed and able to participate:

[Redacted list of addresses]

Attending the Conjoined Public Local Inquiry in person for its full duration is not feasible or reasonable for us. The proposed sitting schedule (22 days in Omagh starting April 2026) would require repeated long-distance travel and, in practice, extended periods away from home. Several of the co-authors have significant caring responsibilities (including care for young children and dependent family members), health and medical issues, no access to car with limited public transport provision and limited financial means. The expectation that transboundary objectors from the Republic of Ireland should take weeks off work, fund their own accommodation, and be physically present in Omagh in order to follow or contribute to the CPLI creates an unnecessary and disproportionate barrier to participation.

In our respectful submission, this is incompatible with:

- Article 6(3) and 6(6) of the Aarhus Convention, which require early and effective public participation “when all options are open” and access to “all information relevant to the decision-making process”;
- Article 7 of the EIA Directive (2011/92/EU) and the corresponding provisions of the Planning (EIA) Regulations (NI) 2017, which require that affected public in another State are given an equivalent opportunity to participate; and
- Domestic duties of procedural fairness and “equality of arms” in environmental decision-making.

We therefore formally request that the PAC facilitate remote participation for objectors (for example via Zoom or Microsoft Teams), so that we can attend, observe and, where permitted, be heard without the need for prolonged physical presence in Omagh. Remote access of this kind is now standard across many public inquiries and court proceedings and is often the only practical way to ensure that those with caring duties, health issues, or based abroad can exercise their Aarhus and EIA participation rights.

We also request that all future CPLI sessions are audio- or video-recorded, and that those recordings, or accurate transcripts, are retained and made publicly available as the official record of proceedings. This is particularly important in light of the position apparently taken by the Department for Infrastructure in response to recent FOI/EIR requests: namely, that because there was no live-streaming, recording or transcript of the first 2.5 days of the CPLI in January 2025, there is deemed to be “no official record” of what was said.

Given that:

- Those hearings involved statements by DfI, NIEA and others on matters central to the lawfulness of the project; and
- Transboundary objectors and many members of the public were unable to attend in person,

we respectfully request that the PAC:

1. Provide us with the official record (in whatever form it exists) of what was said, undertaken and agreed during the first 2.5 days of the CPLI; or, if no such record exists,
2. Confirm this in writing, and explain how the absence of any official record is compatible with Aarhus, the EIA Directive, and the basic requirements of transparency, accountability and fair participation in a process of this nature.

Absent a reliable, accessible record of what has already taken place, transboundary objectors are placed at a serious disadvantage in preparing Statements of Case, understanding the issues already canvassed, and deciding how best to participate. This compounds the practical barriers described above and, in our view, risks rendering the CPLI procedurally unfair and unlawful from a participation standpoint.

This statement forms part of our statement of cases.

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Section 1: Executive Summary & Relief Sought

Title:

Transboundary Statement of Case: Dalradian Curraghinalt Project – Unlawful CPLI, Defective Transboundary Consultation, and Absence of Core Environmental Information

Executive Summary

This Statement of Case sets out, in a structured and reasoned way, the factual background and legal grounds on which the transboundary objectors oppose Dalradian Gold Ltd's planning applications for the proposed Curraghinalt mine and associated infrastructure in County Tyrone. It is further intended to challenge the lawfulness of the ongoing Conjoined Public Local Inquiry (CPLI) into those applications. In particular, we contend that the CPLI is being conducted in breach of the procedural and substantive requirements of the Planning Act (Northern Ireland) 2011, the Planning (Environmental Impact Assessment) Regulations (NI) 2017, retained EU environmental law, and binding international obligations under the Espoo and Aarhus Conventions.

Eight years after the application was first lodged, the Department for Infrastructure (DfI), the Northern Ireland Environment Agency (NIEA), and the Department of Agriculture, Environment and Rural Affairs (DAERA) have all confirmed via Environmental Information Regulations (EIR) responses that they do not hold—nor have they assessed—critical environmental information.. This includes:

- The types, quantities, and chemical composition of explosives used in daily blasting;
- Nitrate, nitrite, ammonium and ammonia emissions and groundwater/nutrient mass balance modelling;
- Diesel usage, generator emissions, and predicted NOx and PM2.5 air quality impacts;
- Tailings storage facility failure scenarios, dust dispersion and geochemistry;
- A complete reagent inventory for flotation and their ecotoxicological fate;
- Data on tellurium extraction, processing, radiological risks and transboundary export;
- Full Scope 3 greenhouse gas (GHG) emissions, including shipping and overseas refining.

Under Regulation 2 and Regulation 5(2) of the EIA Regulations (NI) 2017, this information constitutes “environmental information” that is required to be included in the Environmental Statement (ES) submitted at the outset. It is not “further environmental information” (FEI) in the discretionary sense; it is mandatory baseline data without which legal environmental assessment cannot be undertaken.

The landmark rulings of *Berkeley v Secretary of State for the Environment* [2001] UKHL 23 and *R (Blewett) v Derbyshire CC* [2003] establish that a defective or incomplete ES cannot form the basis of a lawful planning decision. In *R (Squire) v Shropshire CC* [2019] EWHC 3203, the High Court confirmed that material omissions from the environmental record invalidate the decision-making process. The Court of Appeal in *Finch v Surrey County Council* [2023] EWCA Civ 187 further held that downstream emissions and impacts must be assessed in full. Mr David Elvin KC, now acting for DfI, was leading counsel in *Finch*, making it inconceivable that the Department was unaware of these obligations when informing the PAC that “no FEI was required” in March 2024.

Despite these clear legal standards, DfI chose to suppress the July 2023 legal advice from Landmark Chambers, which confirmed that the environmental record was materially deficient and incapable of lawful assessment. The report has since been removed from the public portal – included as in Annex B and put on record. When challenged, DfI relied on “prejudice to the

planning process” to withhold Dalradian’s responses—violating Article 4 of the Aarhus Convention and Regulation 10 of the EIRs (NI) 2004. More recently used legal privilege.

In August 2025, NIEA wrote formally to the Planning Appeals Commission confirming that updated flow assessments for the Curraghinalt Burn and associated tributaries showed that, on the current abstraction regime, flows would fall below the Conservation Objective targets for the Freshwater Pearl Mussel SAC. In other words, on the regulator’s own technical analysis, the project as presently designed **cannot meet the site’s conservation objectives** and would give rise to likely significant effects which cannot lawfully be screened out. NIEA expressly characterised this material as Further Environmental Information (FEI) which ought to be considered by the inquiry and made available to other parties. PAC refused to admit that FEI on case-management grounds, directed that it be removed from the portal, and nevertheless decided to proceed towards reconvening the CPLI. (See Annex C). By August 2025, therefore, both DfI’s own counsel (Landmark Chambers – Landmark Chambers report July 2023) and its environmental regulator (NIEA) had confirmed that the existing Environmental Statement and HRA record were incapable of supporting a lawful consent. The decision to continue the CPLI in the face of that knowledge is ultra vires, procedurally unfair, and incompatible with the EIA, Habitats, Espoo and Aarhus regimes.

The transboundary consultation process is likewise procedurally defective. Ireland was only notified of the proposed development between November 2024 and January 2025—after the CPLI had already commenced. No opportunity was given for Irish authorities or the public to assess or comment on the missing environmental data, including blasting residues, nitrate pathways, tailings safety, or the change from gold doré to polymetallic concentrate and transatlantic shipment to Halifax. Donegal County Council was not given the abstraction and impoundment objections, nor was it informed of the legal controversy over FEI and the Landmark advice. This violates:

- Article 7 of the EIA Directive (2011/92/EU);
- Articles 2 and 3 of the Espoo Convention;
- Articles 4, 6 and 9 of the Aarhus Convention.

The domestic parallel is found in *Derry & Strabane DC v Department for the Economy* [2024] NIQB, where the High Court found that failure to consult on environmental impacts rendered the grant of mineral prospecting licences unlawful. The same legal principles apply here. In *R (Kides) v South Cambridgeshire DC* [2002] EWCA Civ 1370, the Court held that a planning authority must revisit consultation and assessment where material changes arise. That standard is plainly breached in this case.

The Planning Appeals Commission (PAC) has confirmed it lacks the statutory power to compel the production of FEI, and therefore cannot lawfully assess environmental effects that DfI and NIEA admit have not been evaluated. The PAC is effectively being asked to conduct a public inquiry on an incomplete and unlawful record. This is procedurally unfair and incompatible with the duty of inquiry under *Secretary of State v Tameside MBC* [1977] AC 1014 and the rule against apparent bias in *Porter v Magill* [2001] UKHL 67.

This is not a case where the process can be “patched”. The defects are structural and fatal. The project has materially changed—both in terms of its operational method (new end product; off-site concentrate export, not on-site cyanide refining) and in substance (the extraction of tellurium and other critical minerals, and the transboundary processing and emissions implications). No revised ES has been submitted. No HRA or Appropriate Assessment has been completed or consulted upon. The transboundary consultation was conducted on a false, outdated basis.

The project has also shifted from producing a limited number of gold doré bars on site to exporting ~65 tonnes per day of polymetallic concentrate overseas for further processing, with no assessment of the concentrate’s hazard classification, radionuclide content, or the

downstream impacts of transatlantic shipment and foreign refining (contrary to Finch, Espoo and Aarhus).

Relief Sought

Accordingly, the objectors respectfully request the following:

1. Immediate suspension and permanent termination of the CPLI on the grounds that it cannot lawfully proceed on the current environmental and procedural record.
2. Formal refusal of all extant planning applications under Article 33 of the Planning Act (NI) 2011 on the basis that:
 - the current ES fails to comply with Regulation 2 and 5 of the EIA Regulations;
 - no lawful HRA has been completed or consulted upon; and
 - the project has materially changed, requiring reassessment and consultation.
3. Declaration that the existing transboundary consultation is invalid under:
 - Article 7 of the EIA Directive;
 - Articles 2 and 3 of the Espoo Convention;
 - Articles 6 and 9 of the Aarhus Convention.
4. Order that any new planning application must:
 - Include a revised and comprehensive ES incorporating all omitted data and material changes;
 - Contain a legally compliant Appropriate Assessment of transboundary and in-combination effects;
 - Be accompanied by a new transboundary consultation conducted at a formative stage.
5. Immediate publication of the suppressed Landmark Chambers advice and all related internal and applicant responses under the EIRs.
6. Referral of the matter to:
 - the Espoo Convention Implementation Committee;
 - the Aarhus Convention Compliance Committee; and
 - the European Commission's DG Environment.

The present process is not legally curable. It must be set aside in its entirety

Section 2: Background and Procedural Context

2.1 Overview

This section summarises, in chronological order, how the Curraghinalt project has evolved from a 2017 cyanide-based gold mine into a materially different polymetallic scheme with major transboundary implications – without any corresponding submittal of a new EIA, HRA or transboundary procedures. It also explains how the Conjoined Public Local Inquiry (“CPLI”) was convened and then suspended, and how the transboundary consultation was bolted on at a late stage, long after key procedural gates had closed.

Taken together, the timeline shows a consistent pattern: core project information (explosives, nitrates, tellurium, overseas processing, tailings risk, climate impacts) has never been properly supplied or assessed, yet the project has been allowed to advance through planning and inquiry stages regardless.

2017–2019: Original Application and Material Changes

- **November 2017 – Original ES and cyanide proposal**
Dalradian submitted its original planning application for the Curraghinalt mine (LA10/2017/1249/F), accompanied by an Environmental Statement (“ES”). The project was described as an underground gold mine with on-site cyanide leaching, a smelting plant producing approximately 24 gold/silver doré bars per year, and a predicted electrical baseload of ~6 MW (subsequently inflated to 7 MW to meet the 33 kV connection threshold).
- **2018–2019 – Growing environmental concerns and PPC withdrawal**
During 2018, DAERA/NIEA advised that the proposed processing plant would require an Industrial Pollution Prevention and Control (PPC) permit. Dalradian lodged, then quietly withdrew, its PPC application. In 2019 the company publicly announced that it would “voluntarily” remove cyanide processing and smelting from the scheme. However, no new planning application or fully revised ES was submitted. Instead, Dalradian filed additional and amended documentation under the existing 2017 application, leaving cyanide-based material still embedded in the planning file.
- **Failure to update EIA for new process and product**
Despite the removal of cyanide and smelting – a fundamental change in both process and end-product – no fresh ES was produced and no new public consultation was undertaken. The project quietly shifted from producing finished doré bars on site to producing 65 tonnes per day of “mineral concentrate” for export overseas for final processing, but the environmental consequences of this change (different reagents, tailings chemistry, shipping emissions, overseas processing impacts, non disclosure of destination) were never assessed in the Environmental statement.

2020–2022: Expansion to a Multi-Application Project

- **2020–2021 – Additional consents**
Dalradian and associated parties submitted a series of further applications:
 - water abstraction and impoundment licences,

- discharge consent(s),
- a 33 kV overhead powerline (37.9 km, Greencastle–Strabane),
- road abandonment and associated infrastructure works.

The project thus expanded to a network of eight interlinked applications, operating under both Planning (Environmental Impact Assessment) NI 2015 and also 2017, each with its own documentation on different platforms (DfI portal, NIEA permitting pages, NIEN planning files), with no single, coherent public “library” of the whole scheme.

- **No SEA or strategic assessment**

At no point was any Strategic Environmental Assessment (SEA) or regional extractive strategy undertaken for the combined effects of mine, powerline, abstraction/discharge and prospecting licences in the Foyle/Finn catchment. The cumulative impact of the applications has not been assessed.

2023: Landmark Chambers Advice and Acknowledged Gaps

- **July 2023 – Landmark Chambers legal opinion**

DfI commissioned Landmark Chambers to review the legality of granting permission on the existing ES. The 31 July 2023 advice concluded that the application could not lawfully be approved without Further Environmental Information (FEI). In particular, this Landmark highlighted :

- nitrates from explosives and BOD from wastewater as *key determining issues*;
- the absence of explosive tonnage (by omission), nitrate/ammonia mass balance, and alternatives assessment;
- unresolved questions about impacts on the Owenkillew SAC and downstream receptors.

Paragraph 54 of the opinion starkly queried why alternative mining methods avoiding nitrate-based explosives had not been assessed.

- **Suppression of the advice**

Although the Landmark opinion is plainly “environmental information” for EIR purposes, it was not disclosed to the public at the time. It appeared on the planning portal only briefly in April 2024 and was then removed

2024: Pre-Inquiry Hearing and Misrepresentations to PAC

- **March 2024 – Pre-Inquiry Hearing**

At the Pre-Inquiry Hearing for the CPLI, DfI informed the Planning Appeals Commission that:

- the environmental information “met the minimum standards”;
- no Further Environmental Information was required;
- there were “no transboundary issues”.

These assurances were given despite Landmark's advice to the contrary and despite the absence of any completed Habitats Regulations Assessment (HRA) or Appropriate Assessment (AA).

- **15 October 2024 – Finch “direction” letter**

DfI wrote to PAC setting out its interpretation of the Supreme Court's decision in *Finch v Surrey* on downstream greenhouse-gas emissions, effectively seeking to confine the scope of climate assessment. This correspondence occurred while critical Scope 3 emissions from concentrate export and overseas processing remained entirely unquantified.

- **Late 2024 – First transboundary steps**

Only in late 2024 did DfI make limited transboundary overtures, first via Donegal County Council and later via Irish central government – seven years after the mine application and after the CPLI machinery had already been set in motion.

- The first instance tellurium was mentioned was in Turley's Statement of Case, citing the Hollis report as the basis of this revelation. During rebuttals Dalradian first mentioned the concentrate export bound for Halifax in the Greenhouse Gas Assessment with no mention of a return backload, all this without any revised ES. It was in this Greenhouse Gas Assessment that Dalradian first mentioned it intends to use \$5m of explosives each year. No ES was ever completed. The use of explosives should be considered core environmental information, an obvious environmental risk, as blasting is an integral element in mining. An oversight of this nature raises considerable alarm bells regarding the regulatory bodies.

January–September 2025: CPLI Opens, Suspends, and Transboundary Consultation Runs in Parallel

- **13 January 2025 – CPLI opens**

The CPLI formally opened at the Strule Arts Centre, Omagh. There was no livestream, recording or transcript. Shortly after opening, Dalradian's counsel stated that the company intended to mine tellurium and “any mineral the customer wants”, despite tellurium never having featured in the 2017 ES or 2019 amendments.

- **15 January 2025 – CPLI suspended**

Within days, the CPLI was suspended when DfI belatedly accepted that transboundary consultation with Ireland was required and that the November 2024 exercise via Donegal County Council had been procedurally flawed.

- **February–May 2025 – Transboundary consultation**

A formal transboundary consultation then ran while the CPLI stood adjourned. Irish authorities and the public were invited to comment on:

- a project whose scope had materially changed (removal of cyanide, introduction of concentrate export and tellurium);
- an environmental record still lacking core data on explosives, nitrates, diesel emissions, flotation reagents, tailings stability and Scope 3 GHGs;
- absent or “draft only” HRA material.

Over 1,600 representations were submitted from Ireland, but these were not published; DfI produced only a topic summary for PAC, with no legal or technical analysis.

- **June–July 2025 – FEI responsibility dispute**

Correspondence between PAC and DfI confirmed that PAC has no power to demand FEI; DfI, however, maintained that no FEI was required, despite Landmark’s advice and its own admissions under EIR that key information was “not held”.

- **June–November 2025 – EIR correspondence confirming core gaps (PAC copied into these emails)**

In parallel, Environmental Information Regulations (EIR) correspondence between June and November 2025 with DfI, DAERA and NIEA confirmed that none of the Departments held fundamental data on explosives, nitrates, diesel emissions, flotation agents, tellurium or associated radiological risks (pointing to planning portal). Those requests and internal reviews – many expressly copied to PAC – established on the documentary record that:

- the competent authorities knew that core environmental information was missing;
- no FEI requests had been issued to obtain it; and
- the application, as it stood, could not lawfully be determined.

By mid-2025, therefore, both DfI and PAC were fully on notice that at the very least FEI was required – and arguably that refusal was the only lawful outcome – yet the CPLI machinery was left in place.

- **September 2025 – NIEA concessions and late publications**

In autumn 2025, Objection letters and internal material relating to the abstraction and impoundment applications (closed August 2024) were finally placed on the record—after the transboundary consultation had closed and months after the CPLI had opened. People from RoI had no opportunity to assess or review.

- **22 August 2025 – NIEA FEI letter to PAC.** NIEA writes to the Planning Appeals Commission providing updated flow assessments for the Curraghinalt Burn and linked tributaries. The letter confirms that, under the proposed abstraction regime, flows would fall below the Conservation Objective targets for the downstream Freshwater Pearl Mussel SAC; NIEA accepts that this is Further Environmental Information (FEI) which it is obliged to take into account and which ought to be made available to “other parties” at the CPLI.

- **23 September & 25 November 2025 – PAC rejects NIEA FEI and requests removal.**

PAC responds that it is “unable to accept” NIEA’s FEI because it falls outside a procedural cut-off (November 2024), and directs NIEA that the material should be removed from the inquiry record. PAC does not adjourn or suspend the CPLI to allow DfI to regularise the environmental record; instead it chooses to proceed towards recommencement of the inquiry while knowingly excluding FEI which shows the project cannot meet Conservation Objectives on the current design

2026: Resumption Plans and Ongoing Defects

- **April 2026 – Proposed 22-day CPLI sitting**

DfI and PAC now propose to resume the CPLI for 22 days in April 2026, again in Omagh, without any commitment to livestreaming, recording or full transcripts, and without curing the foundational defects in the EIA, HRA, PPC and transboundary record highlighted above and in the 2025 EIR correspondence.

In summary, the procedural history demonstrates that the CPLI has been built on an unstable and incomplete foundation: material project changes have been made without new EIA; Landmark's mandatory FEI advice has been ignored; EIR correspondence has confirmed that the authorities do not hold core environmental data; transboundary duties were triggered years earlier but only acted upon mid-inquiry; and Irish participants are asked to engage with a process whose evidential base remains knowingly deficient. The remainder of this Statement of Case explains why, in law, that history leaves only one defensible outcome: the CPLI must be abandoned and the current planning applications refused.

Section 3: Legal Framework (Domestic, EU, International)

The Curraghinalt mine project is subject to a dense and interlocking framework of legal obligations spanning Northern Ireland domestic law, European Union law (still applicable to the environmental assessment of this application due to transitional arrangements), and international treaty commitments. These legal regimes converge on a single foundational principle: that environmental decision-making must be based on complete, accurate, and publicly available information, assessed in a procedurally fair and participatory manner. That standard has not been met here.

3.1 Environmental Impact Assessment (EIA) – UK and NI Law

The statutory basis for Environmental Impact Assessment in Northern Ireland is the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (the “EIA Regulations”). These Regulations implement Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (the “EIA Directive”), as amended.

Key provisions include:

- **Regulation 2 and Regulation 5(2):** require that an Environmental Statement (ES) must contain the information specified in Schedule 4, including a description of the project, likely significant effects, and measures to prevent or mitigate harm.
- **Regulation 21–23:** oblige the competent authority (DfI) to seek Further Environmental Information (FEI) where the ES is inadequate.
- **Regulations 29–33:** set out the requirements for transboundary consultation, aligning with Article 7 of the EIA Directive and the Espoo Convention.

Northern Irish and UK case law reinforce the imperative that environmental information must be intelligible, complete, and sufficient for public and decision-maker scrutiny:

- In **R (Blewett) v Derbyshire CC [2004] Env LR 29**, the Court of Appeal held that an ES must be read with a “common sense approach”, but must also contain “sufficient information to enable the reasonable reader to understand the likely environmental effects”.
- In **Berkeley v Secretary of State for the Environment [2001] UKHL 23**, Lord Hoffmann emphasised that failure to include essential information in an ES could not be rectified post-hoc by general references or later documents.
- In **R (Squire) v Shropshire Council [2019] EWCA Civ 888**, the Court held that mitigation cannot be used as a substitute for impact assessment, and cumulative effects must be explicitly evaluated.
- **R (Finch) v Surrey County Council [2023] EWCA Civ 187**, confirmed that scope 3 emissions (downstream GHGs) must be assessed where they are a foreseeable consequence of the development. Finch is directly engaged by the decision to export concentrate overseas for processing; the downstream refining and waste-disposal impacts have never been assessed. Notably, DfI’s lead legal counsel in the current inquiry (██████████) was also lead counsel in Finch, reinforcing the Department’s awareness of its obligations.

Despite Dalradian's planning application being submitted November 2017, all Dalradian's planning applications, except for the powerlines, work to Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015, despite applications being as recent as August 2025. The 2017 regulations have much stronger powers in relation to biodiversity cumulative effects and transboundary, disadvantaging the people and environment of RoI, by working to the 2015 regulations.

3.2 Habitats Regulations and Natura 2000 Duties

The Habitats Directive (Directive 92/43/EEC) is transposed into NI law via the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995, and remains applicable through retained EU law.

Key legal principles established through case law include:

- **Article 6(3)** of the Habitats Directive requires that “any plan or project not directly connected with or necessary to the management of the site... shall be subject to appropriate assessment of its implications...”
- **Waddenzee (C-127/02)**: Appropriate Assessments must be based on “complete, precise and definitive findings and conclusions”, and must remove “all reasonable scientific doubt” as to adverse effects.
- **People Over Wind (C-323/17)** and **Holohan (C-461/17)** prohibit mitigation being considered at screening stage and require that all aspects of the site's conservation objectives be addressed, including indirect and in-combination effects.

The absence of a final, consulted-upon Appropriate Assessment (AA) for this project—especially in light of transboundary receptors such as the River Finn SAC and Foyle system—is fatal to the legality of any consent.

3.3 Transboundary EIA – Espoo and EIA Directive Article 7

Under **Article 7 of the EIA Directive**, where a development is likely to have significant effects on the environment of another Member State, the affected State must be notified “as early as possible and no later than when informing its own public”.

This obligation is mirrored in the **UNECE Convention on Environmental Impact Assessment in a Transboundary Context** (the “Espoo Convention”), Articles 2–3, to which the UK and Ireland are parties.

Espoo obligations include:

- Early notification;
- Transmission of the full environmental documentation;
- Consultation on the basis of complete and sufficient information;
- And opportunity for the affected public to participate on an equal footing.

These duties are substantive—not merely procedural—and non-compliance has led to findings of breach by the Espoo Implementation Committee in similar contexts (e.g., **Lithuania-Belarus Astravets case, EIA/IC/INFO/20**).

Here, notification of Ireland was delayed until late 2024, seven years after the original application, and after the CPLI had opened. Furthermore, Ireland was not given full documentation—including missing FEI on explosives, ammonia, tellurium, and processing pathways—rendering the consultation legally meaningless under Espoo and Article 7.

3.4 Access to Environmental Information and Public Participation – Aarhus Convention

The UK is also bound by the **Aarhus Convention** (UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters). This is implemented via the **Environmental Information Regulations 2004 (EIRs)** and has direct legal effect in Northern Ireland.

Relevant provisions include:

- **Article 4** – Right of access to environmental information.
- **Article 6** – Right to participate in environmental decision-making “at an early stage, when all options are open”.
- **Article 9** – Right to challenge breaches of environmental law.

The suppression of Landmark Chambers’ advice, refusal to disclose objection letters, and the exclusion of Irish stakeholders from material stages of consultation all constitute prima facie breaches of Aarhus rights. The procedural failings are compounded by the “inequality of arms” between the applicant (who had access to legal advice, internal reports, and inter-departmental correspondence) and public participants (who did not).

These facts may independently ground a complaint before the Aarhus Compliance Committee under Article 15.

3.5 Strategic Environmental Assessment (SEA) and Cumulative Duties

The **Environmental Assessment of Plans and Programmes Regulations (NI) 2004** implement the **SEA Directive 2001/42/EC**, requiring that broader strategies—such as the handling of prospecting licences and regional extractive infrastructure—be assessed for cumulative and cross-border impacts.

The failure to conduct any SEA in relation to:

- The precious metals strategy in Northern Ireland;
- The granting of mineral prospecting licences (MPLs) in the River Foyle and Finn catchments;
- Or the integration of mine, powerline, road, and abstraction consents;

means that the project proceeds in a vacuum, contrary to the cumulative assessment requirements of the SEA Directive and consistent ECJ jurisprudence (see **C-75/08 Mellor**).

3.6 Procedural Fairness and Duty of Inquiry – Common Law Principles

At common law, administrative decision-making is constrained by principles of procedural fairness, rationality, and lawful delegation. Core doctrines include:

- **Duty of inquiry** (*Secretary of State for Education v Tameside MBC* [1977] AC 1014): a public authority must make adequate inquiries before reaching a decision.
- **Appearance of bias** (*Porter v Magill* [2001] UKHL 67): justice must not only be done but must be seen to be done; decision-making tainted by apparent bias is unlawful.
- **Rationality and relevance** (*Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223): failure to consider relevant factors (such as FEI or transboundary objections) invalidates the decision.

The suppression of legal advice, the decision to proceed without FEI, and the misrepresentation of transboundary significance collectively amount to breaches of these common law standards.

3.7 Landmark Chambers Advice: Legal Consequences for EIA, HRA, and Transboundary Law

The 31 July 2023 legal advice from Landmark Chambers (See Annex B – with interpretation in Annex A), commissioned by DfI, exposes critical omissions in Dalradian’s Environmental Statement and confirms that FEI is not optional—it is legally mandatory. The advice identifies nitrate pollution from explosives as a core impact requiring quantification, alternatives analysis, and mitigation—none of which were addressed.

The legal implications are:

- **Under the EIA Regulations:** Landmark confirms that key Schedule 4 information is missing (e.g. explosives tonnage, nitrogen mass balance, NOx emissions), requiring FEI under **Reg. 21**.
- **Under the Habitats Regulations:** FWPM SAC catchments downstream cannot be lawfully screened without nitrate dispersion modelling. EU case law (**Waddenzee, Holohan, People Over Wind**) prohibits proceeding in this vacuum.
- **Under Espoo and EIA Directive Article 7:** Landmark unlocks the transboundary nitrate pathway (mine → Owenkillew → River Finn → Lough Foyle). Ireland was not notified in time or provided data on this pathway. The consultation is therefore unlawful.
- **Under the Climate Change Act (NI) 2022:** Explosives emissions (N₂O, CO₂, NH₃) and diesel use require a full GHG inventory, which the ES lacks. Landmark’s identification of nitrate emissions triggers this legal duty.
- **Under Common Law:** Landmark’s conclusions have been withheld from consultees and the public. The PAC cannot proceed lawfully in light of this material omission.

In sum, the ES is incomplete, the transboundary process is invalid, the HRA is unworkable, and the CPLI must be suspended until FEI is produced and full consultation undertaken. Landmark Chambers’ conclusions are binding in law and must be implemented accordingly.

3.8 Clause 54: Direct Link Between Dfl Awareness and Legal Duty to Act

Clause 54 of the Landmark Chambers advice cannot be interpreted as a passing remark; it is an explicit legal red flag:

"The key issues appear to be nitrates from the explosives and BOD from the sewerage. I am not clear why these issues cannot be resolved by use of other methods for mining other than nitrate-based explosives..." — Landmark Chambers, Para. 54

This passage is legally determinative for several reasons:

- Dfl had already approved a project premised on ammonium nitrate-based explosives, as evidenced by financial declarations indicating over \$5 million in explosives procurement.
- Clause 54 identifies nitrate pollution as the dominant environmental pathway, not a peripheral risk.
- The reference to *"other methods for mining"* confirms that viable alternatives to nitrate-based explosives exist—meaning that under the EIA Regulations and Directive 2011/92/EU, these alternatives must be assessed in the Environmental Statement. They were not.
- Landmark's wording ("I am not clear why...") implies that Dfl failed to provide even internally sufficient justification or impact data, let alone supply such data to consultees or the public.
- The legal threshold under Regulation 21 of the EIA Regulations (NI) 2017—that significant effects are *likely*—was clearly met. Yet Dfl knowingly failed to act.

This establishes a chain of culpability: Dfl was aware, through internal legal advice, that nitrate pollution from ANFO-based explosives was (1) environmentally significant, (2) unassessed, and (3) capable of triggering both FEI and transboundary duties. Yet rather than disclosing this advice, it was suppressed, and Dfl allowed the CPLI and Irish consultation to proceed in its absence.

This is a textbook breach of procedural fairness, Aarhus access rights, and the core statutory duties under the EIA and Habitats frameworks. Dfl's failure to act on its own counsel's warning leaves any final determination vulnerable to judicial review, European Commission enforcement, and formal complaint under the Espoo and Aarhus Conventions.

3.9 Counsel Conflict and Legal Inconsistency – The Finch Precedent and Mr ██████████

The legal position on downstream emissions, alternative assessment, and cumulative environmental impacts is no longer unsettled—it has been clarified by the **Court of Appeal in Finch v Surrey County Council [2023] EWCA Civ 187**. There, the Court ruled that:

"...an environmental assessment must include reasonably foreseeable downstream emissions where these are the likely result of the proposed development."

In **Finch**, the Court found that failing to assess Scope 3 emissions (such as refining and combustion of oil) rendered the Environmental Impact Assessment (EIA) defective. The Court also affirmed that *alternatives*—including cleaner technologies and methods—must be examined where they materially affect environmental outcomes.

Significantly, the lead barrister representing the local authority in Finch was ██████ KC—the same barrister now advising the Department for Infrastructure (DfI) in the Dalradian CPLI.

This dual role gives rise to at least two procedural fairness issues:

1. **Constructive Knowledge:** Mr ██████ KC is professionally aware—indeed instrumental—in articulating the Finch standard, which renders DfI’s position in the Curraghinalt inquiry (“no FEI required; no Scope 3 assessment needed”) legally indefensible. The law is not ambiguous; it has already been argued and decided by the same individual now advising DfI.
2. **Appearance of Conflict and Bias:** The doctrine in *Porter v Magill* requires that “justice must be seen to be done.” Mr ██████ involvement in both establishing the Finch standard and now advising against its application in a live planning inquiry undermines public confidence in the integrity and independence of the process. The public and participants—particularly those from Ireland—have no assurance that legal advice to DfI is being offered in a neutral or consistent manner.

In light of this, DfI’s continued reliance on Mr ██████ KC, while rejecting the very legal standards he helped establish in Finch, gives rise to an untenable contradiction. It also risks judicial review on the grounds of apparent bias, irrationality, and failure to take account of a material legal consideration.

A recusal or at minimum a transparent disclosure is now required to ensure that the process complies with both domestic common law standards and Article 9(4) of the Aarhus Convention, which guarantees access to a fair and impartial tribunal in environmental decision-making

Section 4: Illegality of Running the CPLI on an Incomplete and Unlawful Environmental Record

At the heart of this Statement of Case lies a simple but fatal legal defect: the Conjoined Public Local Inquiry (CPLI) into the Curraghinalt gold mine has been initiated and sustained despite the acknowledged absence of critical environmental information. Neither the Department for Infrastructure (DfI) nor the statutory environmental regulator—the Northern Ireland Environment Agency (NIEA)—holds, or has ever held, the full environmental data necessary to lawfully assess the likely significant effects of the project. This vitiates the entire inquiry.

Crucially, almost all of the information DfI and NIEA concede is ‘not held’ – explosives, nitrate/ammonia mass balances, diesel usage, flotation reagents, tellurium flowsheets, TSF failure risk, Scope 3 emissions – is not ‘further’ information in the ordinary sense. It is the core content of Schedule 4 of the EIA Regulations and therefore should have been provided in the Environmental Statement at the outset.

4.1 Admission of Missing Information by DfI, NIEA and DAERA

The Respondents have, through a series of disclosures under the Environmental Information Regulations 2004 (EIRs), confirmed that they do not hold:

- Specifications or inventory of explosives to be used in daily blasting, including type, chemical composition, initiation methods, and storage regimes;
- Nitrate, nitrite, ammonium, and ammonia emission projections from blasting, wastewater, and tailings;
- Diesel and Stationary Generator usage data, including associated emissions (e.g. NO_x, SO₂, PM2.5/PM10);
- A full inventory of reagents (flotation chemicals) and their toxicological profiles;
- A Dry Stack Tailings Facility failure risk model, and related emergency preparedness planning;
- The grade, tonnage and processing plan for tellurium, a strategic critical mineral introduced post-application;
- A final and consulted-upon Habitats Regulations Assessment, compliant with Article 6(3) of the Habitats Directive;
- A climate impact assessment compliant with *Finch v Surrey CC*, addressing Scope 3 emissions including overseas concentrate processing, export and refining.

The absence of these categories of information is not procedural or semantic—it is substantive and determinative. Without these core datasets, no lawful Environmental Impact Assessment (EIA) or Appropriate Assessment (AA) can be undertaken. This failure is not disputed by DfI or NIEA; rather, they have sought to proceed regardless. None of this information is addressed in the current environmental statements for the planning applications.

4.2 Legal Requirement for a Complete Environmental Statement

Under Regulation 2 and Regulation 5(2) of the Planning (EIA) Regulations (Northern Ireland) 2017, an Environmental Statement (ES) must provide “at least the information reasonably

required to assess the likely significant effects of the development.” Regulation 5 and Schedule 4 require details of the project, emission pathways, likely significant effects, alternatives considered, and mitigation measures.

In *Berkeley v Secretary of State for the Environment* [2001] UKHL 23, the House of Lords held that where material information is omitted from the ES, the entire EIA process is rendered unlawful. Lord Hoffmann confirmed that failure to provide essential information cannot be cured post-hoc or via secondary materials.

In *R (Blewett) v Derbyshire CC* [2004] Env LR 29, the Court clarified that while perfection is not required, the ES must be sufficiently detailed and comprehensible to allow the public and decision-makers to understand and comment on the impacts. That threshold has not been met here.

4.3 DfI’s Own Landmark Chambers Advice: Explicit Confirmation that the ES Is Incomplete and FEI Is Mandatory

The most compelling evidence that the current environmental record is incapable of supporting the CPLI comes not from objectors, but from DfI’s own specialist counsel, Landmark Chambers. On 31 July 2023, DfI commissioned Landmark to advise on the lawfulness of Dalradian’s proposed discharges and associated environmental assessments. That advice – which is plainly “environmental information” – was only belatedly uploaded to, and then removed from, the planning portal, but its legal effect cannot be undone (see Annex A).

Landmark’s central conclusion is that nitrate pollution from explosives and BOD from wastewater are the key environmental issues for this project, and that the current Environmental Statement does not lawfully address them. In substance, paragraph 54 of the advice identifies “nitrates from the explosives and [organic load] from the sewerage” as the determinative pathways and expressly queries why alternative, non-nitrate explosives and off-site sewage treatment have not been assessed or adopted. Once those issues are characterised as “key”, it follows that an ES which contains no quantified explosives tonnage, no nitrogen mass balance, no detonation-efficiency analysis, no groundwater/surface-water modelling and no alternatives assessment is structurally incomplete within the meaning of the EIA Regulations.

Landmark then applies the Water Framework Directive and the NI WFD Regulations. Relying on the CJEU’s judgment in *Bund für Umwelt und Naturschutz Deutschland eV v Germany* (“Weser”), it emphasises that authorisation must be refused where a project may cause deterioration in any relevant quality element, even if the overall status class does not change. On Dalradian’s own modelling, nitrate and BOD levels in the Owenkillew/Strule system – already below what is required for Freshwater Pearl Mussel and salmon recovery – would deteriorate further. In Landmark’s words, tolerating such further deterioration in the circumstances of this SAC would be “contrary to the statutory scheme”. In other words, the application as presently framed cannot satisfy the WFD “no deterioration” rule.

The same logic applies with even greater force under the Habitats Directive. Landmark notes that FWPM SAC features are already in an imperilled condition and that recruitment is highly sensitive to small increases in nitrates, ammonia and BOD. In light of *Waddenzee*, *People Over Wind* and *Holohan*, an Appropriate Assessment must be based on “complete and precise” scientific data which removes reasonable doubt as to the absence of adverse effects on site integrity. Landmark’s analysis is that, without quantified explosives-related nitrogen loading,

dispersion and dilution modelling, and a proper assessment of alternatives, no lawful conclusion of “no adverse effect on integrity” can be reached. In practical terms, the advice confirms that a compliant HRA/AA is impossible on the current record.

Crucially, Landmark also identifies that the nitrate/ammonia pathway does not stop at the mine fence: contaminants enter the Owenkillow, then the Camowen and Strule, and ultimately the River Finn and Lough Foyle. That hydrological chain engages transboundary obligations under Article 7 of the EIA Directive, the Espoo Convention and the Aarhus Convention. Yet DfI has:

- never required Further Environmental Information on explosives, nitrates or downstream transport;
- acknowledged under EIR that it “does not hold” such data; and
- nonetheless conducted a transboundary consultation in which Ireland and its public were invited to comment without access to precisely the information DfI’s own counsel had identified as decisive.

Taken at face value, the Landmark advice therefore establishes that:

1. The Environmental Statement is incomplete in law on the primary risk pathway (explosives-driven nitrates/BOD).
2. Regulation 21 of the 2017 EIA Regulations was triggered; FEI was mandatory, not optional.
3. Without such FEI, neither a lawful WFD decision nor a lawful Habitats AA can be made.
4. Any transboundary consultation conducted on this defective record is inherently misleading and non-compliant.

DfI’s subsequent decision to suppress, downplay, or ignore the advice does not cure these defects; it aggravates them. Proceeding with the CPLI in the face of legal advice that the ES is incomplete, that the “no deterioration” rule is not met, and that further information is required, is irrational, breaches the duty of inquiry (Tameside), and offends basic standards of candour and fairness.

For those reasons, Landmark Chambers’ own analysis – commissioned by DfI – is powerful positive authority that the CPLI cannot lawfully continue and that the current planning application must be refused unless and until a new, complete Environmental Statement and associated assessments are brought forward (see further Annex A).

4.4 NIEA Admissions, PAC Knowledge, and Ultra Vires Continuation of the CPLI

The correspondence between NIEA and the Planning Appeals Commission in August–November 2025 demonstrates beyond doubt that:

1. Decisive Further Environmental Information (FEI) exists,
2. That FEI shows the current proposal cannot meet Conservation Objectives, and
3. PAC nonetheless chose to exclude and suppress that information while pressing ahead with the CPLI.

In its letter of 22 August 2025, NIEA provided updated flow assessments for the Curraghinalt Burn, Pollenroe Burn and a further tributary. On NIEA's own analysis, abstraction under the proposed regime would cause flows to fall below the Conservation Objective targets for the designated Freshwater Pearl Mussel (FWPM) system. In plain terms, NIEA accepted that the scheme, as currently proposed, could not achieve the site's conservation objectives and that likely significant effects on the SAC could not be ruled out.

NIEA expressly acknowledged that this material was Further Environmental Information which:

- it was *legally obliged* to consider in exercising its regulatory functions; and
- in fairness, should also be placed before the Public Local Inquiry so that “other parties” could consider and respond to it.

By doing so, NIEA formally confirmed what third-party objectors and the Landmark Chambers advice had long indicated: that on the present information, the project could not lawfully pass Habitats Regulations scrutiny, and that the EIA/HRA record before PAC was incomplete and defective.

Yet PAC's response was not to suspend or adjourn the inquiry so that DfI could obtain, publish and consult on this FEI, as required by Regulations 21–23 of the EIA Regulations (NI) 2017 and Article 6(3) of the Habitats Directive. Instead, PAC:

- refused to admit the FEI on the basis that it fell “outside” a procedural cut-off date (November 2024);
- directed NIEA that it was “unable to accept” this evidence as part of the CPLI; and
- went further, requesting NIEA to remove the uploaded material from public view on the ground that it might be “prejudicial” to some participants and to the inquiry.

The effect of this direction was threefold:

1. **Substantive non-compliance with Habitats law** – PAC knowingly continued an inquiry on a record that NIEA itself had accepted could not demonstrate compliance with Conservation Objectives for the FWPM SAC. Under *Waddenzee*, *People Over Wind* and *Holohan*, an Appropriate Assessment must be based on “complete, precise and definitive” information, and authorisation is unlawful where reasonable scientific doubt remains. Here, the regulator had expressly signalled that such doubt not only remained but had crystallised into an inability to meet objectives on the current design.
2. **Suppression of environmental information** – By insisting on removal of the uploaded FEI, PAC ceased to be a neutral arbiter and became directly involved in concealing material environmental information from the public, including the transboundary public in the Republic of Ireland. That is incompatible with Articles 4 and 6 of the Aarhus Convention, with the Environmental Information Regulations regime, and with the principle in *Tameside* that a public authority must make (and consider) all relevant inquiries before determining a matter.
3. **Perpetuation of a defective transboundary process** – By August 2025, PAC knew that:
 - Landmark Chambers had already advised DfI (July 2023) that key impact pathways (notably nitrates from explosives) were unevaluated;

- DfI had nevertheless told PAC in March 2024 that “no FEI was required”;
- Irish authorities had been consulted late and without access to a complete environmental record; and
- NIEA now accepted that further information was required and that the scheme, as currently configured, could not meet Conservation Objectives.

Despite this, PAC chose to proceed towards reconvening the CPLI rather than require DfI to regularise the position by obtaining and consulting on FEI, revisiting the HRA, and, if necessary, re-notifying Ireland.

In doing so, PAC treated its own case-management timetable as if it could override statutory duties under the EIA Regulations, the Habitats Regulations, the Espoo and Aarhus Conventions, and the common-law duty of inquiry. It has **no power** to do this. The Commission is a creature of statute: it cannot lawfully decide that decisive environmental information is “out of time” when the governing legislation requires that such information be obtained, disclosed and consulted upon before any recommendation or decision. Nor can it lawfully insist that an inquiry continue on a record which the competent environmental regulator has effectively accepted is incapable of demonstrating compliance with Conservation Objectives.

The position is aggravated by the fact that objectors had been raising precisely these concerns from the outset:

- At the Pre-Inquiry Hearing, multiple third-party participants stressed that the ES was incomplete, that explosives/nitrate pathways had not been assessed, and that FEI was required.
- Those concerns were echoed and crystallised in the Landmark Chambers advice, which DfI suppressed.
- NIEA’s August 2025 letter finally confirmed, in the regulator’s own voice, that the project, on the current information, **could not lawfully proceed**.

Despite this convergence of warnings—public, legal and regulatory—PAC neither halted the process nor insisted that DfI discharge its statutory duties. Instead, it facilitated the exclusion of the very FEI that made the unlawfulness of the current application unavoidable.

In these circumstances, the continuation (and proposed reconvening) of the CPLI is not merely unwise; it is **ultra vires**. PAC is acting outside the limits of its lawful powers by:

- conducting an inquiry on an admitted defective record;
- declining to consider decisive FEI that goes to the heart of Habitats compliance; and
- acquiescing in a transboundary process which it knows is based on incomplete and suppressed environmental information.

The only lawful course is to abandon the CPLI, return the applications to DfI for withdrawal or refusal, and require that any future proposal be subject to a new, legally compliant EIA, HRA and transboundary consultation on a complete and transparent evidential base.

4.5 Misrepresentation of Compliance to the PAC in the Face of Landmark’s Advice

The defects identified in Sections 4.1–4.3 are not the result of oversight or uncertainty. By July 2023, Dfl had in its possession detailed advice from its own specialist counsel at Landmark Chambers confirming that the Environmental Statement was incomplete, that nitrate and BOD pathways from explosives and wastewater were the key environmental issues, and that Further Environmental Information (FEI) was legally unavoidable (see Section 4.3 and Annex X). Against that background, the way in which Dfl then presented the position to the Planning Appeals Commission (PAC) amounts to a serious misrepresentation of the true state of compliance with EIA, Habitats and Water Framework obligations.

At the Pre-Inquiry Hearing in March 2024, Dfl assured the PAC on the public record that “**no FEI is required**”, that the environmental information “**meets the minimum standards**”, and that there were “**no transboundary issues**” requiring further work. Those assurances are flatly inconsistent with Landmark’s paragraph 54 analysis of nitrate pollution from explosives and BOD as decisive issues, with the admitted absence of explosives/nitrate data in Dfl and NIEA’s own EIR responses, and with the clear downstream pathway through the Owenkillew–Finn–Foyle system into the Republic of Ireland. In effect, the PAC was invited to proceed on the basis that the environmental record was complete and compliant when Dfl’s own legal advice said precisely the opposite.

Compounding this, Dfl chose to suppress the Landmark advice – uploading it late to the planning portal and then removing it – and refused to seek FEI from Dalradian, despite Regulation 21 of the EIA Regulations being plainly engaged. The PAC was never candidly told that:

- Dfl’s own counsel had identified nitrates from explosives and BOD as the key environmental issues;
- the Environmental Statement did not contain the necessary data or modelling to address those issues; and
- without FEI, neither a lawful Habitats Appropriate Assessment nor a WFD “no deterioration” decision could be reached.

This combination of omission and positive assurance gave PAC a misleading impression of legal compliance. On any fair reading, it engages the common-law principles in *Tameside* (duty of inquiry), *Blewett* and *Berkeley* (adequacy and completeness of ES), and the test for apparent unfairness and institutional impropriety in *Porter v Magill* [2001] UKHL 67 – namely, whether a fair-minded and informed observer would conclude there was a real possibility that the decision-making process was skewed.

In circumstances where:

- Landmark’s advice confirmed that FEI was mandatory;
- regulators now admit they do not hold the relevant data; yet
- Dfl told PAC that no FEI was required and that the environmental information was adequate,

PAC is being asked to continue an inquiry on a premise that is demonstrably wrong in law and in fact. That misrepresentation goes to the heart of the CPLI’s legitimacy, and is one of the reasons why the inquiry cannot lawfully continue on its present footing.

4.6 Dfl's Refusal to Obtain FEI Despite Known Gaps

Under **Regulation 21** of the EIA Regulations, where the competent authority becomes aware that the environmental information is insufficient, it must request Further Environmental Information (FEI) from the applicant and consult on it under Regulation 23.

Here, multiple internal documents and legal advice confirm that the ES was incomplete. Nonetheless, Dfl refused to request FEI, and in correspondence between June and September 2025, took the extraordinary position that no FEI was required—despite:

- PAC requesting clarification;
- NIEA stating that valuable environmental information existed and should be shared; and
- the transboundary consultation having already closed.

This is in direct contravention of both the **duty of inquiry** (*Tameside MBC v Secretary of State [1977] AC 1014*) and the duty to take into account relevant considerations. Where a planning authority becomes aware of new, significant environmental information, it must reassess the adequacy of the ES. The position adopted by Dfl violates these obligations and renders any consent decision open to judicial review.

4.7 EIA Cannot Be Deferred or Cured During or After the Inquiry

It is now well established that the EIA must be complete before any final determination, and cannot be deferred, patched, or corrected during the course of an inquiry:

- **R (Catt) v Brighton and Hove CC [2013] EWCA Civ 1605**: planning permission cannot lawfully authorise something that was not considered in the EIA.
- **R (Kides) v South Cambridgeshire DC [2002] EWCA Civ 1370**: authorities must take into account all material changes and new information prior to consent.

The material changes in this case—including the introduction of tellurium extraction, the move from dore bars to concentrate export, changes to tailings design and composition, and expanded emissions from diesel, blasting and overseas processing—have never been assessed, reconsulted upon, or included in a revised ES.

To proceed with an inquiry—and ultimately a decision—without this information is a breach of the **EIA Directive (2011/92/EU)** and violates the domestic Regulations.

4.8 Conclusion: The CPLI Is Structurally and Irredeemably Unlawful

The Planning Appeals Commission has, in writing, confirmed that it does not possess the statutory authority to request or compel submission of FEI. Therefore, it cannot lawfully adjudicate on an application that Dfl admits lacks vital environmental data.

The absence of this information, acknowledged by the regulators themselves, renders the entire inquiry incapable of fulfilling its statutory function. As the Court of Appeal made clear in **Finch**, where the competent authority does not have access to sufficient information to assess all significant environmental effects, the consent process is invalid.

It is not open to Dfl or PAC to waive or overlook these deficits. The only lawful remedy is for the current CPLI to be terminated, the current application refused, and a new application submitted, supported by a legally compliant Environmental Statement.

Section 5: Fundamental Defects in the Transboundary EIA Process

Espoo Convention | EIA Directive Article 7 | Aarhus Convention

The transboundary consultation conducted in relation to the Dalradian Curraghinalt project is procedurally defective, legally non-compliant, and incapable of curing the wider unlawful Environmental Impact Assessment (EIA) process. Despite the project's clear transboundary implications—including direct hydrological pathways to the River Foyle and River Finn Special Area of Conservation (SAC), airborne particulate emissions, and climate-related Scope 3 emissions—consultation with the Irish Government and public was delayed by over seven years and launched only after the Conjoined Public Local Inquiry (CPLI) had commenced. Even then, it was incomplete, lacking core environmental information, and excluded key permits and impact pathways.

The result is a process that breaches international law (Espoo Convention), EU law (EIA Directive 2011/92/EU), domestic regulations (Planning (EIA) Regulations (NI) 2017), and the public's rights under the Aarhus Convention.

5.1 Late and Asynchronous Notification – Breach of Espoo and Article 7 EIA Directive

Under **Article 3 of the Espoo Convention**, notification of transboundary impacts must occur “as early as possible and no later than when informing its own public.” This duty is mirrored in **Article 7(4) of the EIA Directive**, which requires that consultation with affected States must be conducted “at the earliest possible stage in the environmental decision-making process and within a reasonable timeframe.”

However, in this case:

- Notification to the Irish Government and Donegal County Council was initiated only in November 2024, seven years after the original application (2017), and after the CPLI had already opened (13 January 2025) and then been suspended (15 January 2025).
- Key procedural stages—including the pre-inquiry hearing, submission of rebuttals, and PAC's environmental scoping—had already closed, precluding meaningful consideration of Irish representations.

This sequence inverts the transboundary process. Instead of allowing early participation when all options remained open, DfI engaged the Irish State and public *after* the domestic inquiry had been fixed, thereby retroactively validating an unlawful process.

Such an approach was expressly condemned by the **Espoo Implementation Committee** in its findings against the United Kingdom in the **Hinkley Point C case (EIA/IC/INFO/14)**, where transboundary notification was delayed until too late in the decision-making process. Similarly, the **European Commission's Guidance on EIA – Article 7** states that “transboundary consultation must begin before consent is granted, and early enough to influence the process.”

5.2 Fragmented and Inaccessible Consultation – Failure to Present the Project as a Coherent Whole

While the transboundary consultation materials eventually referenced all eight of Dalradian’s interrelated applications, only three were clearly identified in the original transboundary notification to the Irish authorities: (i) the mine site and associated infrastructure, (ii) the 33 kV overhead powerline, and (iii) the main EIA documentation. The remaining five—water abstraction, impoundment dam, discharge consent, road abandonment, and waste management—were only belatedly included, buried within poorly signposted repositories and lacking coherent indexing or public access.

In formal terms, this may appear to meet the letter of the EIA Directive. But in substance and practice, the process was fragmented, inaccessible, and procedurally defective, denying Irish consultees and the wider public a meaningful opportunity to understand or respond to the project as a whole.

The legal duties under **Article 3 of the EIA Directive** and **Appendix I of the Espoo Convention** are clear: the environmental assessment must address the entire project, including its interdependent consents and cumulative impacts. Dalradian itself described the mine, powerline, abstraction infrastructure, and waste management as a “single, integrated development”.

Yet, the public presentation of the consultation documents told a different story. Instead of a consolidated application and environmental statement, the record reveals:

- A 2017 planning application comprising over 10,000 pages, with no clear roadmap for navigation;
- 2019 submissions amending certain documents and introducing entirely new ones—without withdrawing the originals;
- Separate, stand-alone applications for the powerline (2020), water abstraction and impoundment (2021, 2025 & 2025), and road abandonment (2022), each with their own documentation and only partial cross-referencing;
- Documents added post-Pre-Inquiry Hearing (March 2024), including Landmark Chambers’ legal advice and DfI’s correspondence with DAERA and NIEA;
- An additional data dump by Dalradian during Statement of Cases and Rebuttals (mid-to-late 2024)—reportedly over 1GB of new information across 200+ files—which does not appear on the planning portal and was never made available to Irish consultees.

This situation was compounded by DfI’s failure to implement the document control commitments it made at the Pre-Inquiry Hearing. In March 2024, DfI publicly committed to providing a centralised, accessible online document library by May 2024. This did not materialise. In practice:

- There is no single portal or document control system covering all relevant files;
- Critical information is dispersed across at numerous locations: the DfI planning portal, the PAC Inquiry site, NIEA’s separate consultation library, and ad hoc disclosures made via FOI or during inquiry sessions;

- Documents are titled inconsistently (e.g., “Appendix C4 – Hydrological Supplement”) and indexed poorly, if at all;
- Submissions continued to be uploaded during the CPLI itself (January 13–15, 2025), in breach of procedural certainty and transparency.

Only parties directly served with rebuttal bundles or represented by experienced legal teams could make sense of this sprawling record. For Irish citizens and local authorities—who were not notified until late 2024, and had to navigate this terrain over a brief consultation window in early 2025—the process was virtually unintelligible.

This constitutes a procedural failure of the highest order, violating:

- **Article 6(6) of the Aarhus Convention:** failure to ensure that “**all relevant information is available in an adequate, timely and effective manner**”;
- **Article 7 of the EIA Directive:** failure to provide Irish authorities and public with the **Environmental Statement and supporting documents in a comprehensible format**;
- **Articles 2 and 3 of the Espoo Convention:** failure to enable “**early and effective participation**” on the **project as a whole**, including cumulative and cross-consent effects.

The European Commission’s 2023 Transboundary EIA Guidance is unequivocal:

“The entire project and its environmental effects should be communicated in a manner that allows the affected State and public to respond meaningfully. Fragmented or excessively technical document repositories may defeat the purpose of consultation, even if formal notice is given.” (Section 4.3.2)

The fragmented, disorganised, and opaque consultation process has materially undermined the legality of both the transboundary engagement and the CPLI itself. This is not merely a matter of presentation—it is a matter of access to justice, procedural fairness, and substantive lawfulness under domestic and international obligations.

5.3 Consultation Without Core Environmental Information – Legal Nullity

Consultation was launched in early 2025—running until May 2025—without provision of the following environmental information to the Irish Government or public:

- The types, quantities and emissions of explosives;
- Nitrogen and nitrate/nitrite/ammonia/ammonium emission pathways and modelling;
- Diesel use, generator emissions, and associated air quality risks;
- Scope 3 greenhouse gas emissions from concentrate export and overseas processing;
- The extraction and processing of tellurium and critical minerals;
- The Hollis Report (tellurium data, commissioned by the Department for the Economy – not officially published but formed the basis for Dalradian’s tellurium mining);
- A complete, consulted-upon Habitats Regulations Assessment (HRA);

- Objection letters to the abstraction and impoundment applications, which were only published by NIEA in September 2025, *after* both the CPLI and the transboundary consultation had closed.

This omission violates **Article 7(1)(b) of the EIA Directive**, which requires the competent authority to transmit “the relevant information on the project, including the Environmental Statement,” to the affected State. It also contravenes **Articles 6 and 4 of the Aarhus Convention**, which guarantee the public’s right to receive “early and effective information” and access to environmental documentation necessary to participate meaningfully.

As the **Court of Justice of the EU** made clear in **Case C-420/11 Leth v Austria**, a procedural failure to provide proper information at the transboundary stage is not curable and renders the authorisation process unlawful.

5.4 Failure to Consider Representations – Breach of Regulation 29(6) and Aarhus Article 6(8)

Over 1,600 submissions were made by Irish citizens and organisations in response to the consultation. However:

- These were summarised by DfI into a high-level “Transboundary Summary Document”;
- No legal or environmental analysis of the representations was conducted;
- The representations were passed to PAC without any FEI decision and without adjustment to the CPLI timeline.

Under **Regulation 29(6)** of the EIA Regulations (NI) 2017, DfI must “take into account the results of the transboundary consultation before determining the application.” This requires active engagement with the content of representations—not mechanical forwarding.

In **R (Morge) v Hampshire CC [2011] UKSC 2**, the UK Supreme Court held that a failure to consider the substance of objections relevant to environmental impacts was unlawful. DfI’s action here—reducing 1,600 transboundary representations to a list of topics and forwarding them without analysis—fails the Morge standard and violates **Aarhus Convention Article 6(8)**, which mandates that “due account shall be taken of the outcome of public participation.”

5.5 Espoo, Aarhus and EU Law Consequences

Taken together, the above breaches justify formal complaints to:

- The **Espoo Implementation Committee** (UN Economic Commission for Europe);
- The **Aarhus Convention Compliance Committee**;
- The **European Commission DG Environment** under infringement procedures.

The **UN ECE’s Guidance on the Espoo Convention** makes clear that failure to notify in time, provide full information, or take account of submissions constitutes a breach in and of itself—regardless of the outcome of the decision.

Moreover, **EU case law** (e.g. **Case C-411/17 Inter-Environnement Wallonie ASBL**) confirms that failure to comply with procedural environmental safeguards—including transboundary consultation—is grounds for annulment of planning consent.

5.6 Conclusion and Legal Consequences

The transboundary consultation in this case was:

- Initiated too late;
- Fragmented and selective in scope;
- Carried out without core environmental information;
- Deprived of lawful assessment of representations.

This process does not satisfy the legal minimum requirements of Espoo, the EIA Directive, or the Aarhus Convention. As such, it cannot lawfully support the grant of planning permission, nor can it serve as the basis for the ongoing CPLI.

The only lawful course of action is to:

1. Declare the transboundary consultation invalid;
2. Terminate the CPLI;
3. Require Dalradian to submit a new application supported by:
 - A complete and revised Environmental Statement;
 - A stand-alone Habitats Regulations Assessment;
 - A new transboundary consultation conducted in full compliance with Articles 2 and 3 of the Espoo Convention and Article 7 of the EIA Directive

Section 6: Unlawful Habitats and Natura 2000 Approach (Transboundary HRA Failings)

The Curraghinalt project lies within the cross-border River Foyle catchment, draining to the River Finn Special Area of Conservation (SAC) and the Lough Foyle Ramsar site. These are internationally protected Natura 2000 sites under the EU Habitats Directive (92/43/EEC), binding on both the UK and Ireland under retained EU law and international commitments post-Brexit. The environmental and legal implications of transboundary habitats impacts are therefore not optional considerations: they are core jurisdictional preconditions to the lawful determination of this application.

Yet no final, standalone, competent authority-adopted **Appropriate Assessment (AA)** exists. All HRA material on the record has either been:

- Applicant-submitted screening reports, marked “shadow HRA” and not adopted by the Northern Ireland Environment Agency (NIEA) or the Department for Infrastructure (DfI);
- Draft AA documents prepared late in the process (autumn 2024–early 2025), but never consulted upon;
- Documents omitted from the Irish transboundary consultation, including the most relevant habitat impact assessments;
- Absent for key project components, including the 33kV overhead line and water abstraction/impoundment consents.

6.1 Legal Requirements Under the Habitats Directive

The legal test for a lawful Appropriate Assessment is clear and settled in EU and UK jurisprudence. Under Article 6(3) of the Habitats Directive, any plan or project likely to have a significant effect on a Natura 2000 site must be subject to an AA of its implications for site integrity. The competent authority must:

1. Base its conclusion on complete, precise and definitive findings and conclusions;
2. Ensure that no reasonable scientific doubt remains as to the absence of adverse effects (Case C-127/02 Waddenzee);
3. Not rely on mitigation measures at the screening stage (Case C-323/17 People Over Wind);
4. Consider all in-combination effects, including from hydrological connectivity, air pollution, and secondary emissions (Case C-461/17 Holohan);
5. Assess transboundary impacts where they arise (Directive 2011/92/EU, Art. 7; Espoo Convention; Habitats Directive and Aarhus Convention principles).

None of these obligations have been lawfully discharged in this case.

6.2 No Adopted or Consulted-Upon Appropriate Assessment

No final, adopted AA prepared by a competent authority has been made public. All HRA documents are either labelled as “shadow” assessments prepared by or with Dalradian, or are internally circulated draft assessments not subject to public consultation or formal adoption.

This procedural void renders the process unlawful. In *R (Champion) v North Norfolk DC* [2015] UKSC 52, the Supreme Court upheld the principle that AAs must be conducted by the competent authority itself and subjected to proper scrutiny, particularly where designated habitats and European sites are involved. Where only draft, unadopted, or developer-led assessments are available, the “decision” lacks the required legal foundation.

6.3 Transboundary Habitat Impacts Not Assessed

There has been no competent authority-led assessment of potential adverse effects on transboundary sites, including:

- **River Finn SAC** (in the Republic of Ireland), downstream of the Curraghinalt mine and abstraction/discharge points (no definitive border agreed);
- **Lough Foyle Ramsar site**, a shared transboundary estuarine system into which cumulative atmospheric and hydrological discharges may enter; (no definitive border agreed);
- **Shared fish and invertebrate species populations**, including freshwater pearl mussel (*Margaritifera margaritifera*), Atlantic salmon (*Salmo salar*), and otter (*Lutra lutra*), all of which are protected under Annex II of the Habitats Directive.

None of these have been the subject of in-combination or transboundary impact assessments. The powerline application includes no air quality dispersion modelling, no peat or land disturbance analysis, and no hydrological or nitrogen deposition modelling. Similarly, the impoundment and abstraction applications (which directly affect river hydrology and temperature) were never referred for transboundary assessment—despite clear linkages to SAC water quality parameters downstream.

As the ECJ held in *Holohan*, the competent authority must “identify and examine the implications of the proposed project for all aspects of site integrity, including all species and habitats for which the site is designated” (para 40). This requirement is plainly breached where major components of the project have not been assessed at all, and transboundary receptors are excluded from scope.

6.4 Additional Risks from Tellurium and Critical Mineral Extraction – Habitats and Transboundary Relevance

In November 2024, for the first time, Dalradian introduced a significant scope change by identifying tellurium as a target extraction material. This shift from a conventional gold-silver-copper project to a multi-metal, critical mineral operation has wide-ranging implications—ecologically, legally, and procedurally.

Tellurium is classified by the European Commission and UK authorities as a Critical Raw Material (CRM) due to its environmental and strategic significance. Its extraction and processing involve high toxicity risk and complex metallurgy, particularly in flotation processes

where hazardous reagents are required. Tellurium-bearing minerals may include selenides and sulfotellurides that introduce additional geochemical burdens. These issues are not addressed anywhere in the Environmental Statement (ES), Appropriate Assessment (AA), or the transboundary consultation record.

The only source of supporting analysis is the *Hollis Report*—a confidential geological report commissioned by the Department for the Economy (DfE), obtained via EIR request and never made publicly available. The Hollis Report concludes that tellurium occurs at Curraghinalt in low concentrations and may not be economically viable to recover. However, Dalradian has stated publicly and to the Planning Appeals Commission (PAC) that it intends to extract approximately 35 tonnes of tellurium over the mine’s lifespan, directly contradicting the report.

Compounding this is the fact that the author of the Hollis Report has prior professional links to Dalradian and was sponsored by the company during parts of their academic work, casting serious doubt on the independence and objectivity of the analysis. The use of this report as evidence to support a novel extraction stream without disclosure of the report’s contents to the public or affected states constitutes a breach of both Article 4 of the Aarhus Convention (access to information) and the Espoo Convention’s requirement to disclose full project information with transboundary implications.

No assessment has been carried out of:

- The ecological effects of tellurium tailings;
- The cumulative impacts on freshwater habitats (e.g., the Owenkillew and River Finn SACs);
- The toxicity of flotation reagents required for tellurium concentration;
- Potential airborne and aqueous emissions arising from tellurium processing and storage;
- The implications of international export and refining, with downstream Scope 3 impacts.

This omission has transboundary repercussions. The tailings management facility (TSF), emissions into shared watercourses, and the lack of emergency planning for a broader suite of metals all render the Habitats Regulations Assessment (HRA) and transboundary screening manifestly incomplete.

Under CJEU rulings in *Holohan*, *People Over Wind*, and *Waddenzee*, any plan or project likely to affect an SAC or SPA must be assessed with “complete, precise and definitive findings.” The absence of tellurium-specific modelling, despite a declared intention to extract it, fatally undermines the legal adequacy of the HRA

6.5 Inadequate Public Participation in the HRA Process

Under both the Aarhus Convention and the EIA Directive, affected persons are entitled to **early and effective participation** on the basis of complete environmental information. In *R (Plan B Earth) v Secretary of State for BEIS* [2020] EWCA Civ 214, the Court held that public participation in environmental decision-making must be “real and not illusory.”

Yet in this case:

- No completed AA was available to the Irish authorities or public during the transboundary consultation window (Feb–May 2025);
- No consultation was conducted on the late-stage “draft AA” circulated internally by NIEA;
- Key species-specific data (e.g. ammonia sensitivity, water quality thresholds for *M. margaritifera*) was either missing, withheld, or redacted.

This renders both the transboundary consultation and the HRA process structurally unfair and legally deficient. As held in *People Over Wind*, an AA process cannot lawfully proceed unless the evidence base is complete and all mitigation measures are explicitly accounted for.

6.6 Regulatory Confusion and Conflict of Responsibilities

Compounding the legal flaws, the Planning Appeals Commission (PAC) has stated in writing that it does not hold the power to require Further Environmental Information (FEI), including on HRA matters. Meanwhile, DfI and NIEA have both issued conflicting statements:

- NIEA has admitted that the application “cannot lawfully be determined on the current information”;
- DfI has refused to seek further HRA documentation or FEI, claiming no duty to do so exists.

This contradiction creates an **accountability gap** whereby **no body accepts responsibility** for delivering a complete, competent authority–led, publicly consulted Appropriate Assessment.

This position is untenable. Under the **Planning (Environmental Impact Assessment) Regulations (NI) 2017**, and the **Conservation (Natural Habitats, etc.) Regulations (NI) 1995**, as retained under UK law, DfI bears the **non-delegable duty** to carry out and consult on a lawful AA. That duty cannot be passed to the PAC, to Dalradian, or simply ignored.

6.7 Material Change in Application, Process and End Product – Tellurium, Polymetallic Scope and Concentrate Export

The project now before the PAC is not the project that was applied for in 2017, nor the project that was described during the original EIA and public consultation. It has undergone a series of **material changes** – in what is to be mined, how it is to be processed, and what the final product is – which together amount to an entirely different operation with a substantially altered environmental and transboundary risk profile.

Originally, the Curraghinalt application was presented as a relatively self-contained **gold–silver mine** with:

- on-site cyanide leach processing;
- on-site production of approximately **24 doré bars** per year; and
- no reference to critical minerals, polymetallic extraction, bulk concentrate export or overseas refining.

By 2019, Dalradian had formally withdrawn the cyanide plant, with the project description shifting to production of a bulk mineral concentrate to be exported for processing elsewhere. The TR3 Carbon Neutrality report now confirms that:

- around 65 tonnes of concentrate per day would be transported 120 km by HGV to Belfast;
- the concentrate would then be shipped approximately 2,662 nautical miles to Halifax, Canada; and
- downstream processing emissions are excluded from the climate assessment on the basis that the refining location is “unknown”.

In parallel, Dalradian has altered the **mineral scope** of the project:

- In late 2024, for the first time, its planning consultants (Turley) stated that the mine would target tellurium as a by-product and that the operation would recover “**any mineral the customer wants**”, not just gold and silver.
- This was supported by an unpublished **Hollis report**, commissioned by DfE, which was provided to Dalradian but not to the public, and only later disclosed to the objectors via EIR. That report is relied on to assert that Curraghinalt could yield c. 35–37 tonnes of tellurium, despite:
 - the author’s historic links to Dalradian and Dalradian sponsorship;
 - the report’s characterisation of Greencastle/Curraghinalt as uniquely significant for tellurium, contrary to wider GSNI/BGS data showing higher or comparable tellurium endowment elsewhere in Ireland; and
 - the fact that, given the much higher unit value of gold and the close spatial association of tellurium with gold, gold will always be preferentially targeted in any economic extraction sequence, making the claimed tellurium tonnage highly speculative.

At no stage has the application form been amended to redefine the proposal as a polymetallic mine, nor has any revised Environmental Statement been produced that:

- sets out an updated mineral inventory (gold, silver, copper, tellurium and other critical minerals);
- discloses the process flowsheet and reagent suites required to recover tellurium and other metals (including additional flotation agents, depressants, collectors and modifiers);
- evaluates changed waste and tailings chemistry, including potential radiological aspects where tellurium occurs in association with uranium or other radionuclides;
- assesses the toxicological and synergistic effects of multiple metals and reagents in air, soil, groundwater and surface water; or
- examines the transboundary consequences of bulk concentrate shipping, hazardous classification, and overseas cyanide-based refining.

The reality is that the project has evolved into an open-ended polymetallic extraction and export operation, with loosely defined end products and an unknown overseas processing chain. This

is illustrated by the historic “bulk sample” shipment of c. 15,000 tonnes of ore to the USA, which:

- was treated as a hazardous material at Eglinton airport;
- required upgraded sealed storage and specialist transport arrangements; and
- generated approximately \$3 million in proceeds retained by Dalradian.

None of the hazardous-substance implications of that shipment – nor of future routine concentrate exports – are reflected in the ES, the HRA, or any PPC analysis.

Crucially, DfI, NIEA and DAERA have all confirmed via EIR responses that they do not hold any core information on:

- tellurium tonnage, grade, mineral associations or geochemical behaviour;
- the reagents, additives and process changes required to recover tellurium;
- the air-emission pathways from tellurium-bearing concentrate handling and drying; or
- any radiological assessment of tellurium ores or co-occurring radionuclides.

Despite this, DfI has effectively accepted the late-stage tellurium and polymetallic narrative and the “any mineral the customer wants” formulation, without insisting on an updated project description, revised ES, or fresh consultation. If that approach were endorsed, it would eviscerate the planning system: any mining applicant could secure permission on a narrow, gold-only description and later expand into polymetallic extraction of unspecified minerals without any further EIA, HRA or public participation.

On any sensible application of the law, these are not minor tweaks that can be addressed through informal clarification or piecemeal FEI. They are fundamental changes to:

- the nature of the project (gold–silver mine → polymetallic mine);
- the process (on-site refining → overseas processing with different chemicals and waste streams); and
- the end product (24 doré bars → 65 t/day concentrate export with unassessed hazardous characteristics).

Accordingly, they satisfy any realistic test of “material change” in both domestic and EU jurisprudence.

6.8 Legal Consequences of Material Change and Non-Disclosure (EIA, Habitats and Transboundary Law)

Under the **EIA Directive 2011/92/EU** (as amended) and the **Planning (EIA) Regulations (NI) 2017**, environmental assessment is not a one-off, box-ticking exercise frozen at the moment of application. The duties are **continuing** and attach to the project **as it actually evolves** up to the point of decision. Where the project undergoes significant alteration in scope, process or impacts, the competent authority must:

1. **Require further information** (Reg. 21, EIA Regs; Article 5 EIA Directive); and

2. Where those changes or new information reveal new significant effects, re-open and re-run consultation, including any transboundary procedures (Reg. 23, Reg. 29; Article 7 EIA Directive; Espoo).

The case law makes this position clear:

- In **R (Kides) v South Cambridgeshire DC** [2002] EWCA Civ 1370, the Court of Appeal held that decision-makers must take into account any new material considerations arising between the original report and the final decision and, where necessary, **re-consult**.
- In **R (Catt) v Brighton & Hove CC** [2013] EWCA Civ 1605, the court confirmed that planning permission cannot lawfully authorise development whose significant effects have **not been assessed** in the EIA.
- The CJEU in **Kraaijeveld** (C-72/95) and **Abraham** (C-2/07) emphasised that authorities must look at the project as a whole and cannot avoid EIA obligations by segmenting or under-describing development that is likely to have significant effects.
- In **Wells** (C-201/02) and **Commission v UK** (C-508/03), the Court held that a failure to carry out an EIA – or to update it when required – is a continuing breach that must be rectified, not simply tolerated.
- **Inter-Environnement Wallonie and Bond Beter Leefmilieu** (C-411/17) confirm that environmental authorisations issued on the basis of partial or outdated assessments are vulnerable to annulment where full and timely assessment has not occurred.
- **Ecologistas en Acción** (C-142/07) further underlines that staged consents or modifications which, taken together, increase the scale or impact of a project cannot avoid EIA scrutiny.

Applied here, those principles mean:

1. Once cyanide was withdrawn and bulk concentrate export to Halifax was introduced, DfI was obliged to re-open the EIA to consider:
 - shipping emissions and maritime risk;
 - overseas refining impacts (likely cyanide-based);
 - hazardous-substance classification and transport risk; and
 - the loss of domestic regulatory control over processing and waste.
2. Once tellurium and other critical minerals were introduced in 2024, DfI was obliged to:
 - require a revised project description and updated ES reflecting the polymetallic scope;
 - obtain and publish the Hollis report and any related Te data as environmental information, and subject it to scrutiny rather than allowing it to operate as undisclosed FEI for the benefit of the developer only;
 - trigger PPC screening under the PPC Regulations / Industrial Emissions Directive for tellurium handling and critical-metal processing (as set out in section 8); and

- reassess Habitats and transboundary implications, given the new metals, reagents and dust/air pathways.
3. Under **Article 6(3) of the Habitats Directive** and the jurisprudence in **Waddenzee**, **People Over Wind** and **Holohan**, the introduction of new pollutants and process streams (tellurium, additional reagents, altered tailings chemistry, new dust emissions) required a fresh **Appropriate Assessment** that:
- considered these new factors expressly;
 - addressed in-combination effects with existing metals (arsenic, cadmium, etc.); and
 - covered transboundary receptors in the River Finn SAC and Lough Foyle system.

No such revised AA exists; there is only a moving patchwork of applicant-driven draft HRAs and NIEA commentary, none of which incorporates a complete and precise analysis of the polymetallic, concentrate-export project now proposed.

4. Under **Article 7 of the EIA Directive** and the **Esppo Convention**, the **transboundary consultation must reflect the true project**. That includes:
- the change to concentrate export / Halifax shipping;
 - the polymetallic scope and tellurium recovery;
 - the altered PPC profile and major-accident/industrial-emission risk; and
 - all associated upstream and downstream GHG emissions (as reinforced domestically by **Finch v Surrey CC**, where DfI's own KC in this case acted as lead counsel).

Yet Ireland was consulted on the basis of a **gold–silver mine with cyanide removed**, not on a polymetallic concentrate-export operation with unexamined tellurium extraction and overseas processing. Irish authorities and the Irish public were never given:

- the Hollis report or any Te-specific information;
- a revised ES or HRA accounting for tellurium, new reagents and altered tailings; or
- any assessment of downstream refining emissions and hazardous shipments.

In that sense, the transboundary consultation is doubly defective: it was both late and based on a misdescribed project.

Finally, the **non-disclosure** of the Hollis report and the treatment of tellurium as a late-stage evidential ambush breaches the **Aarhus Convention** (Articles 4 and 6) and the **Environmental Information Regulations**. Environmental information held “on behalf of” a public authority (here DfE’s commissioned study) must be made available to the public; it cannot be shared selectively with the developer while being withheld from objectors and cross-border participants.

Taken together, these failures have the following legal consequences:

- The 2017 ES is now obsolete as a basis for lawful decision-making;

- The project’s material changes trigger a duty to require a new or substantially revised ES, followed by full domestic and transboundary consultation;
- Any AA or HRA that does not expressly and precisely address the new polymetallic, Te-bearing, concentrate-export proposal is incapable of satisfying Article 6(3); and
- The current CPLI cannot lawfully proceed on a record that omits these fundamental changes and their transboundary implications.

The only compliant course is to treat the tellurium and concentrate-export evolution as a step change that requires:

1. Withdrawal or refusal of the present applications;
2. Submission of a new application based on the true project; and
3. A fresh EIA, HRA and Espoo/Aarhus-compliant transboundary consultation.

6.9 NIEA’s August 2025 Flow Assessment – Consistency with Landmark Chambers Advice and Impermissible Post-Inquiry Rewrite

On 22 August 2025, NIEA wrote to the Planning Appeals Commission providing an updated hydrological assessment of the proposed mine water abstractions, based on a revised Qube Low Flow model using a 1972–2023 baseline. The attached flow report (Document H.10) assesses the predicted flows against the Conservation Objective flow targets for the Owenkillew River SAC. NIEA concludes that whilst impacted flows in the Attagh and Glenelly burns would meet the Conservation Objectives, the Curraghinalt Burn, Pollenroe Burn and an unnamed tributary would not. In NIEA’s own words, the “impacted flows would NOT meet the Conservation Objective Flow Targets” for these three watercourses.

NIEA then states that, in light of this analysis, its “provisional position remains that it is unable to rule out likely significant effect to the SAC.” This is not a marginal or equivocal finding; it is a formal admission that, on the scheme as currently proposed, (i) Conservation Objectives for multiple tributaries cannot be achieved, and (ii) likely significant effects on a Natura 2000 site cannot be excluded.

These conclusions are entirely consistent with the earlier Landmark Chambers advice of 31 July 2023. Landmark identified nitrate pollution from explosives and wastewater as the key environmental pathway, expressly questioning how DfI could lawfully proceed without robust evidence on explosive use, nitrate loading, and alternatives. Landmark’s paragraph 54 – noting that “the key issues appear to be nitrates from the explosives and BOD from the sewerage” and questioning why alternative methods were not assessed – already pointed to the likelihood that the scheme, on its current design, could not meet its ecological obligations. NIEA’s August 2025 flow report confirms that concern in quantitative terms: the hydrology necessary to sustain Conservation Objectives is simply not deliverable on three affected streams.

Under Article 6(3) of the Habitats Directive and the Waddenzee / Holohan / People Over Wind line of authority, this has immediate and unavoidable legal consequences:

- A full Appropriate Assessment is mandatory;
- That AA must be based on “complete, precise and definitive” findings and remove all reasonable scientific doubt as to adverse effect on site integrity; and

- Where, as here, the competent nature conservation body itself says Conservation Objective flow targets will not be met, the project cannot lawfully be authorised on its current parameters.

The 22 August 2025 letter also confirms that NIEA is commissioning an independent water quality modelling expert, and is reviewing its methodology for setting discharge standards to ensure “statutory requirements” and “appropriate levels of environmental protection” are met. Appropriate Assessments for each application are to be completed only after the Commission’s report, with only “draft” AAs to be made available beforehand.

Taken together, the picture is troubling:

- First, NIEA now accepts that the current abstraction regime is incompatible with Conservation Objectives on three tributaries, and that LSE cannot be ruled out;
- Second, the AA is acknowledged to be incomplete and in a state of flux;
- Third, methods for determining consent standards are themselves under review and may change.

From an EIA/Habitats perspective, this is plainly **Further Environmental Information (FEI)** within Regulations 21–23 of the EIA Regulations (NI) 2017 and Article 5 of the EIA Directive: it is new, decisive, and goes to the core question whether site integrity can be protected. It should have been obtained, published and consulted upon **before** any inquiry hearings resumed, and **before** any transboundary process was treated as complete.

Instead, NIEA’s conduct suggests a different trajectory. For years, the Departments were on notice – via Landmark and internal scientific work – that nitrate and flow impacts were likely to be determinative, yet no such material was disclosed at the Pre-Inquiry Hearing, during the original Statement of Case phase, or throughout the transboundary consultation with Donegal and the Irish State. This creates a reasonable inference that NIEA has long understood that the application, in its current form, **cannot meet Conservation Objectives**, but has chosen to crystallise that conclusion only at a very late stage.

Equally disturbing is the apparent sequencing now proposed: the August 2025 flow report is presented to PAC, showing that the scheme fails Conservation Objectives, while NIEA simultaneously indicates that it intends to commission further work and revise its methods, with new reports and “draft” HRAs to follow only after the CPLI has concluded. The practical effect is to put PAC in a procedural trap:

- If PAC accepts the August 2025 evidence as part of the record, it must acknowledge that the scheme as currently framed is incompatible with Conservation Objectives and that LSE cannot be ruled out;
- Yet NIEA signals that it will later produce revised modelling or a “new report” – analogous to the promised “draft HRA” – which may soften or contradict the present flow findings and thereby construct a pathway for approval.

This is the very antithesis of the Habitats and EIA regimes, which require that **environmental information and AA conclusions be settled and consulted upon before authorisation**, not rewritten after an inquiry to retrofit a pre-determined outcome. On any fair reading, this approach:

- Undermines the integrity of the CPLI, by asking PAC to proceed on the basis of *adverse* scientific evidence that may later be “re-optimised” outside the inquiry process;
- Denies Irish authorities and transboundary objectors any opportunity to comment on NIEA’s own admission that Conservation Objectives cannot be met, because this letter post-dates the transboundary consultation and has not been re-notified; and
- Mirrors the Department’s wider pattern: key documents (Landmark, flow analysis, HRA drafts) are withheld or delayed, then “re-issued” in altered form **after** the main participatory stages have passed, creating a vehicle to regularise an unlawful application rather than confronting its defects.

In legal terms, this is not a mere defect of timing; it is a structural breach of:

- Article 6(3) Habitats Directive (no AA on complete, stable data; no certainty of no adverse effect);
- Articles 5 and 7 of the EIA Directive and Regulations 21–23, 29–33 EIA Regulations (NI) 2017 (failure to obtain and consult on FEI before determination, including in transboundary context); and
- Articles 4 and 6 of the Aarhus Convention (withholding decisive environmental information until after the main public and transboundary participatory phases).

Against that backdrop, the only lawful conclusion is that the current CPLI cannot continue and the present application cannot be salvaged by post-hoc reports or draft HRAs. The August 2025 NIEA letter, read alongside Landmark Chambers’ advice, confirms that the project as currently designed cannot meet Conservation Objectives. Any attempt to retrofit a different conclusion after the inquiry – through new modelling or revised “draft” assessments – would not cure but compound the illegality. The CPLI must therefore be abandoned, the application refused, and any future proposal brought forward only on the basis of a new, complete ES and HRA, subject to full domestic and transboundary consultation at a genuinely formative stage.

6.9 Conclusion

The absence of a lawful Habitats Regulations Assessment renders the current CPLI, and any planning decision flowing from it, *ultra vires*. There is no jurisdictional basis to grant consent where:

- No final AA exists;
- No transboundary or in-combination assessment has been carried out;
- Key habitats and species have not been assessed;
- The public has not had an opportunity to comment on a competent authority–led assessment;
- The project’s constituent parts were segmented and not treated as a whole.

Proceeding in the face of such failings would be unlawful under domestic law, EU retained law, and binding international conventions. It would also expose DfI and the PAC to judicial review and international complaint under the Espoo and Aarhus mechanisms.

The proper and only lawful remedy is to abandon the CPLI and require a new application accompanied by a full, final and legally compliant AA, incorporating transboundary receptors, in-combination effects, and public consultation across both jurisdictions.

Section 7: Missing Core Environmental Information – Legal Significance and Evidentiary Basis

This section outlines the extensive environmental information absent from Dalradian’s application record—despite it being legally required as part of the initial Environmental Statement (ES). This is not an exhaustive list, but it captures the core pathways and risks for which no adequate assessment exists. Much of this information cannot lawfully be treated as “Further Environmental Information” (FEI) under Regulation 23 of the Planning (EIA) Regulations (Northern Ireland) 2017. It should have formed part of the original ES, and its absence renders the EIA fundamentally incomplete.

7.1 Legal Duty to Provide Core Environmental Information at Outset

The EIA Directive (2011/92/EU), as transposed in the EIA Regulations, requires that the ES must contain at minimum:

- A description of the project and its physical characteristics (Sch. 4, para 1),
- A description of the likely significant effects of the project on the environment (Sch. 4, para 5),
- A description of forecasting methods and measures to prevent or mitigate those effects (Sch. 4, para 7),
- An outline of reasonable alternatives studied (Sch. 4, para 4).

Case law confirms that this is a mandatory baseline, not a flexible or optional threshold:

- In **R (Blewett) v Derbyshire CC [2004] Env LR 29**, the Court held that an ES must be “reasonably complete” to allow “intelligent decision-making and consultation.”
- In **Berkeley v Secretary of State [2001] UKHL 23**, the House of Lords stressed that failure to assess even a single relevant impact can render the entire EIA invalid.
- In **Finch v Surrey CC [2023] EWCA Civ 187**, it was confirmed that downstream (Scope 3) emissions are part of the “main effects” and must be included.

Dalradian’s documentation—spanning from its original 2017 application to the 2019 updates and the eight planning applications—falls far below this legal threshold.

7.2 Overview of Missing or Inadequate Environmental Information

A. Explosives and Blasting Emissions

Despite blasting being a central part of the mine operation:

- DfI and NIEA admit they do not hold data on explosive types, tonnages, or chemical compositions;
- No mass balance or impact modelling of nitrate/nitrite/ammonium/ammonia emissions is provided;
- No NO_x or PM emissions modelling from detonation gases is included.

This omission undermines assessment of aquatic pollution, eutrophication, air quality, and transboundary deposition.

B. Diesel Usage and Combustion Emissions

- No total diesel usage (estimated ~3.5 million litres annually) is assessed.
- No stationary generator modelling or Medium Combustion Plant (MCP) permitting basis is included.
- No PM2.5 or NOx emissions mapping exists, despite transboundary deposition pathways to SACs and Ramsar sites in Donegal.

C. Flotation Reagents and Processing Chemicals

- The flotation and concentrate-processing route was significantly altered, but no updated reagent inventory has been supplied.
- Toxicity, ecotoxicity, and degradation pathways of chemicals remain unevaluated.
- NIEA has internally requested this information but confirmed via EIRs that it is “not held.”

D. Tailings Chemistry and Radiological Risk

- The Dry Stack Tailings Facility (DSTF) design omits full geochemical characterisation, including arsenic, mercury, antimony, and radionuclides.
- No probabilistic failure risk modelling is presented;
- Emergency Preparedness and Response Plans (EPRP) are either missing or incomplete;
- Radon and gamma emissions from mine workings and tailings remain unassessed.

E. Tellurium and Critical Minerals

- The project now includes tellurium and other critical mineral extraction, yet:
 - There is no reserve or grade data disclosed;
 - No explanation of new process reagents or residues is given;
 - No radiological or export emissions assessment exists.

This represents a new environmental impact stream never considered in the original ES or consulted on transboundary.

F. Overseas Processing and Scope 3 Emissions

- In 2024–25 Dalradian confirmed it no longer plans onsite smelting but will export concentrate for overseas processing.
- No receiving jurisdiction, route, refinery, or emissions profile is disclosed.
- Dfl confirmed it holds no overseas emissions or Scope 3 climate modelling – in breach of Finch principles.
- Essentially this is just transferring the hazards, environmental impact and risk, carbon costs downstream. Dfl seems to insinuate that as the final location has not been declared then the carbon impact cannot be considered, ruling out Finch.

- In reality the product is still Dalradian's. One major concern is who owns the soil? When Dalradian sent 15,000 tonnes of material "sample" to the USA for processing, all material had to be shipped back. Dalradian has not considered this in its calculations.

G. Water Management: Abstraction, Discharge, and Flow Regime

- Integrated hydrological modelling of impoundment, abstraction, and discharge is absent;
- Cumulative impact on River Finn SAC and transboundary Lough Foyle basin is missing;
- Objections to abstraction/impoundment applications (now public) show serious gaps in flow, temperature and sediment impact modelling;
- Yet Irish consultees had no access to these objections during the consultation.

H. Major Accident and Emergency Planning

- No Seveso or Major Accident Hazard assessment for explosives, reagents, or tailings;
- Cross-border emergency planning is not addressed;
- Tailings failure modelling, including transboundary impacts, is missing.

7.3 Evidentiary Support from EIR and Internal Correspondence

This list is not speculative—it is grounded in:

- DfI and NIEA's EIR responses confirming information is "not held";
- Internal reviews in which NIEA staff explicitly requested this information and raised concerns about the environmental record;
- The PAC's correspondence confirming that the inquiry was not provided with this material;
- The withheld Landmark Chambers advice, which confirmed FEI was required.

See Schedules 1 and 3 for full references and citations.

7.4 Legal Consequences

Without this data:

- The ES fails to meet the minimum statutory standards under Schedule 4 of the EIA Regulations;
- The HRA is invalid under Waddenzee, People Over Wind, and Holohan principles;
- The transboundary consultation is unlawful under Article 7 of the EIA Directive, Espoo Articles 2–3, and Aarhus Article 6;
- The entire CPLI is structurally incapable of delivering a lawful consent.

7.6 Pollution Prevention and Control (PPC) – Improper Screening and Regulatory Failure

Despite the scale, complexity, and hazardous profile of the proposed Curraghinalt project, the Department and NIEA have asserted that **a Pollution Prevention and Control (PPC) permit is not required**, on the basis that cyanide processing has been removed from the proposal.

However, this conclusion is fundamentally flawed, and directly undermined by the very absence of core environmental information described above.

Under the **Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013**, a PPC permit is required where a proposed installation falls within the scope of Schedule 1 activities. Specifically:

- **Section 5.1** (Production of non-ferrous metals) and **Section 5.3** (Chemical industry) apply to the use of chemical reagents and thermal/metallurgical processes;
- **Section 5.4** applies to waste disposal and recovery;
- **Section 1.1 and 1.2** apply to the combustion of fuel in stationary plants exceeding thermal input thresholds (e.g. diesel generators);
- **Section 4.2** applies to the disposal of tailings and management of mining waste facilities, particularly those presenting a pollution risk.

The current project meets or exceeds several of these thresholds, including:

- Massive diesel combustion capacity (via generator banks);
- Use of hazardous flotation reagents and other process chemicals;
- Daily use of explosives containing ammonium nitrate and other reactive substances;
- Significant quantities of oils, lubricants, and hydraulic fluids;
- Tailings production with elevated arsenic, antimony, tellurium and possible radioactive content;
- Risk of diffuse air emissions (PM10, PM2.5, NOx, VOCs, dust) and aquatic emissions to River Owenkillew and Finn SAC.

The DfI/DAEARA internal review correspondence confirms that NIEA:

- Made its PPC screening decision without having seen any of the above data;
- Did not possess the reagent inventory, chemical safety data sheets, or full diesel fuel usage estimate;
- Had not assessed the project under the PPC 2013 thresholds for mobile or fixed combustion equipment;
- Did not examine emissions pathways from flotation agents or explosive residues;
- Has since acknowledged that much of this information “is not held” or is “required but has not been submitted.”

In effect, NIEA deemed the project not to require a PPC permit in the admitted absence of the information necessary to make that determination.

This creates a cascading legal problem:

1. **Unlawful EIA segmentation:** The lack of a PPC permit circumvents the inclusion of key industrial emissions in the EIA process.

2. **Failure of duty to investigate:** Under the common law **Tameside principle**, a competent authority must actively inquire into material facts; failure to do so renders the process irrational (*R v Secretary of State for Education and Science ex p Tameside MBC* [1977] AC 1014).
3. **Environmental Risk Concealment:** The absence of a PPC pathway masks the true emissions footprint and waste risks, particularly for tailings, diesel and chemical handling, thus preventing public participation under the **Aarhus Convention**.
4. **Breach of EU Industrial Emissions Directive (IED) 2010/75/EU:** If PPC thresholds are met but no permit is applied for or enforced, the UK remains in breach of its IED obligations (as retained post-Brexit).

Furthermore, the suppression of Landmark Chambers' advice—known to have addressed these issues in July 2023—adds to the appearance that the PPC issue was side-stepped for procedural expedience. As a result, the public, including cross-border stakeholders, were misled about the regulatory framework governing this project.

A valid determination under the PPC Regulations could not lawfully be made on the current record. The decision that a PPC permit is “not required” must be revisited. In law and fact, the scale of emissions, chemical usage, and operational footprint clearly brings the project within PPC scope. Any continued assessment or inquiry without this recognition would be structurally flawed, legally vulnerable, and procedurally unfair.

7.5 Conclusion

The record is clear: these omissions are not technicalities or supplementary matters—they are central to the environmental effects of the project. Their absence renders the EIA legally defective and the CPLI incapable of proceeding lawfully. The only permissible remedy is to terminate the current process, require a new planning application and ES, and re-initiate transboundary consultation based on a complete and lawfully constituted environmental record.

Section 8: Procedural Unfairness, Inequality of Arms, and Regulatory Omission – The Unlawful Exclusion of PPC Controls

8.1 Suppression of Legal Advice and Strategic Information Withholding

The conduct of DfI and its statutory consultees has violated the principles of procedural fairness, transparency, and equality of arms under both domestic administrative law and the Aarhus Convention.

Key procedural defects include:

- **Suppression of Landmark Chambers Advice (July 2023):** DfI commissioned legal advice confirming that Further Environmental Information (FEI) was required on explosives, nitrate emissions, and tailings pathways. That advice was withheld from the public and Planning Appeals Commission (PAC), removed from the planning portal, and mischaracterised during the Pre-Inquiry Hearing.
- **Misleading Statements on Environmental Sufficiency:** At the March 2024 Pre-Inquiry Hearing, DfI asserted that “no FEI was required” and that environmental information “met the minimum standards,” despite internal evidence to the contrary. This is directly inconsistent with Aarhus Article 6(6) and breaches the duty of candour under domestic judicial review principles.
- **Lack of Access to Core Documents:** Irish authorities and the public were denied access to objection letters, key permits, and Dalradian’s technical responses. Internal review correspondence from NIEA (September 2025) shows that material was withheld or omitted even after requests.

These actions violate the principles set out in *Porter v Magill* [2001] UKHL 67 (appearance of bias), *R (Sainsbury’s)* [2016] EWHC 2025 (Admin) (duty of disclosure), and Aarhus Articles 4, 6 and 9 (access to information and justice).

8.2 Inequality of Arms and Regulatory Asymmetry

- **Disproportionate Access and Response Power:** Dalradian and its agents were permitted to upload over 1GB of rebuttal documentation (comprising more than 200 files) in late 2024 and early 2025, after claiming at the Pre-Inquiry Hearing that no further environmental information existed. This volume was not made publicly accessible on the planning portal and appears to have been selectively circulated.
- **No Central Document Index or Systemic Disclosure:** Despite undertakings to create a centralised digital library by May 2024, no such repository was established. Critical documentation was spread across multiple planning files and websites, inconsistently named, and often inaccessible to lay users or cross-border consultees.
- **Disproportionate Burden on Third Parties:** The public and environmental NGOs were forced to operate in a fragmented, inaccessible, and poorly signposted digital environment, in breach of the *Berkeley* [2001] and *Blewett* [2003] standards requiring that environmental information be intelligible and accessible.

8.3 Transboundary Repercussions of Excluding PPC Controls

The most serious regulatory omission is the failure to subject the Dalradian project to **Pollution Prevention and Control (PPC)** permitting under the Industrial Emissions Directive (IED) and domestic transpositions.

This failure has **profound transboundary implications**:

(A) Unlawful Exclusion of Major Emissions from Transboundary Assessment

The PPC regime exists to define, model, control, and mitigate major emissions through binding conditions and Best Available Techniques (BAT).

DfI and NIEA excluded PPC on the grounds that cyanide was removed, but failed to re-evaluate this exclusion when evidence emerged showing the project still includes:

- Explosives generating nitrate, nitrite, ammonia, perchlorates;
- Flotation agents, diesel combustion, oils, lubricants;
- Dust and tailings containing heavy metals and potentially radioactive materials (e.g., tellurium, arsenic, uranium, lead);
- Diesel volumes of over 3.5 million litres per year.

No PPC permit means no:

- Verified emissions inventory;
- Control or modelling of cross-border emissions (e.g. NO_x, PM_{2.5} drift into Donegal);
- Formal obligations on spill prevention, emergency preparedness, or operator liability.

This directly contravenes:

- **Espoo Convention Articles 2(2) and 3** – requiring notification and assessment of all significant cross-border effects;
- **EIA Directive Article 7** – requiring consultation based on the full set of environmental information;
- **Aarhus Article 6(6)** – requiring disclosure of “information relevant to the decision-making process,” including emissions and permit data.

(B) Undermining of Irish Regulatory Competence and Treaty Obligations

By bypassing PPC permitting, the Department:

- Denied Irish statutory bodies (EPA, NPWS, IFI) the opportunity to evaluate cross-border emissions under the **Water Framework Directive** and **Air Quality Directives**;
- Blocked Ireland’s ability to invoke **Espoo Article 5**, which provides for bilateral consultation on mitigation, BAT selection, and monitoring;
- Precluded Irish analysis of cumulative ammonia deposition to River Finn SAC, a designated transboundary Natura 2000 site.

Had the PPC process been lawfully engaged:

- Ireland could have sought **joint monitoring protocols**, mitigations, or thresholds;

- EU oversight under the **Industrial Emissions Directive** could have been triggered;
- Public consultation on BAT and emissions limits could have occurred in both jurisdictions.

(C) Espoo and Aarhus Compliance Consequences

Failure to assess PPC implications invalidates the transboundary process. This is not a hypothetical concern—international compliance bodies have ruled on precisely this issue:

- **Espoo Implementation Committee (Belarus NPP Case, EIA/IC/CI/4)**: Omission of key emission sources or regulatory regimes from environmental assessment invalidates the consultation.
- **Aarhus Compliance Committee (e.g. ACCC/C/2006/17; ACCC/C/2008/24)**: Failure to provide full permit and emissions data breaches public participation rights and renders decision-making unlawful.

The result is **legal exposure** to:

- Judicial review for regulatory failure;
- **Espoo non-compliance proceedings**;
- **Aarhus compliance findings** against the UK and Northern Ireland;
- **European Commission infringement procedures** for failure to implement the EIA and IED Directives.

(D) Required Remedial Action

To rectify this unlawful omission:

1. A **PPC screening and permit determination** must be initiated following Dalradian making a new planning application;
2. A revised Environmental Statement must be produced, integrating PPC-based emissions and controls;
3. The transboundary consultation must be **re-run**, with full access to PPC-related documents and public participation on both sides of the border;
4. Irish authorities should be offered formal consultation under **Espoo Article 5**;
5. These defects are not remediable within the current CPLI. The only lawful course is to refuse the current application and require a fresh application supported by a complete ES and transboundary process

Section 9: Procedural Fairness, Legal Consistency, and Conflict of Interest

9.1 Failure to Act on Landmark Chambers' Legal Advice

The **Landmark Chambers Opinion**, commissioned by the Department for Infrastructure (DfI) and issued on 31 July 2023, identifies fatal omissions in Dalradian's Environmental Statement—specifically the absence of data on explosives and nitrate pollution—and sets out clear regulatory obligations. Paragraph **54** of the advice is the legal fulcrum:

“The key issues appear to be nitrates from the explosives and BOD from the sewerage. I am not clear why these issues cannot be resolved by use of other methods for mining other than nitrate-based explosives and/or why the sewerage cannot be removed by tanker to a suitable discharge location.”

This single paragraph confirms:

- The dominant environmental risk is nitrate pollution from explosives;
- Alternatives to nitrate-based explosives must be assessed;
- The current Environmental Statement is deficient and cannot support lawful decision-making under the EIA Regulations;
- A request for **Further Environmental Information (FEI)** is legally required under **Regulation 21** of the Planning (EIA) Regulations (NI) 2017.

Yet DfI failed to act. The advice was:

- Withheld at the Pre-Inquiry Hearing;
- Uploaded only in April 2024 and later removed without explanation;
- Ignored procedurally, with no Regulation 21 FEI request issued, despite the legal triggers in paragraph 54.

DfI has **not claimed this information is unnecessary**. Instead, in Environmental Information Regulations (EIR) correspondence, it **admits it does not hold** the relevant explosives data—while simultaneously refusing to require it. This is a textbook breach of the **duty of inquiry** (*Tameside* [1977] AC 1014), and a serious violation of transparency and fairness under *Porter v Magill* [2001] UKHL 67.

9.2 Inconsistent Legal Position – *Finch v Surrey* and Mr █████ KC

The Department's legal inconsistency deepens when viewed in light of Mr █████ KC's **dual role**:

- In *R (Finch) v Surrey CC* [2023] EWCA Civ 187, Mr █████ KC successfully argued that indirect (Scope 3) emissions from fossil fuel use must be assessed in the Environmental Impact Assessment;
- Here, in the Curraghinalt CPLI, Mr █████ KC now leads DfI's case, which holds that no FEI is required on downstream emissions from explosives, transport, or overseas ore processing—even after Landmark's paragraph 54 identified the emissions pathway as central.

This creates a profound **conflict of legal principle**, if not of interest. A barrister cannot plausibly argue in one case that indirect emissions demand assessment and then deny that same duty in another, where explosives, nitrate emissions, and transboundary effects are proven to be material by the Department's own legal advice.

Moreover, paragraph 54 not only implicates the need for a GHG inventory, but triggers obligations under the **Climate Change Act (NI) 2022**. Yet DfI's ES contains **no emissions data at all**, and no Scope 3 climate assessment—despite having been legally advised to obtain it.

This is a regulatory double standard of the highest order and legally unsustainable.

9.3 Abuse of Inquiry Process – Inquiry Proceeding on Knowingly Defective Record

The Planning Appeals Commission (PAC) has confirmed that it does not have the legal authority to compel FEI. Thus, it is being asked to adjudicate a project where:

- Core environmental pathways (e.g. nitrate loading, detonation emissions) remain entirely unassessed;
- DfI has acknowledged through EIR responses that the data is missing;
- Dalradian released over 1GB of material during rebuttals, contradicting earlier claims that no new data would be provided;
- The legal advice identifying these omissions was suppressed (Landmark, para. 54).

This inquiry is therefore proceeding on a knowingly incomplete record, contrary to *Wednesbury* principles and *Blewett* [2004] Env LR 29, which require that environmental information be intelligible and complete.

Furthermore, by failing to inform PAC or Irish consultees of the Landmark Advice, DfI has ensured that material legal and environmental information was concealed from both the public and statutory decision-makers—an act contrary to the Aarhus Convention and *Berkeley* [2001] UKHL 23.

9.4 Conclusion

The situation is legally unsustainable.

- Landmark Chambers' paragraph 54 squarely identifies the use of explosives, nitrate pollution, and available alternatives as determinative environmental issues.
- The absence of assessment, despite this advice, renders the Environmental Statement deficient in law.
- The failure to request FEI, despite knowing of these deficiencies, violates Regulation 21.
- The Department's legal approach contradicts its counsel's position in *Finch*.
- The PAC is being asked to determine a project it lacks legal power to scrutinise properly.
- The public and transboundary consultees have been misled and materially disadvantaged.

The continued pursuit of the CPLI under these conditions invites not only domestic judicial review, but serious exposure under international compliance mechanisms of the Aarhus and Espoo Conventions.

The only lawful and procedurally fair outcome is to terminate the CPLI immediately, refuse the current application and require a fresh application supported by a complete ES and transboundary process.

Section 10: Transboundary Participation, Procedural Inequality and the Absence of an Official Record

10.1 No Livestream, No Recording, No Transcript – A Process Closed to Those Across the Border

A core requirement of modern environmental law is that the public must be able to follow, understand and meaningfully engage with the decision-making process in real time, or as near as reasonably practicable. That duty is heightened where, as here, the proposal is of exceptional public controversy (c. 50,000 objections) and has transboundary implications.

In this case, the Planning Appeals Commission (PAC) has chosen to run the Conjoined Public Local Inquiry (CPLI) in a way that effectively shuts out the public in the Republic of Ireland and many Northern Ireland residents as well:

- The CPLI is listed for around 22 sitting days commencing April 2026 at the Strule Arts Centre, Omagh.
- There is no live streaming, no audio or video recording, and no official transcript of the opening January 2025 sessions.
- The decision not to livestream or record was not openly debated; it was buried in internal “guidance” documents obscurely placed on the PAC website and only discovered when third-party objectors requested a link in the week before the CPLI opened.
- Despite repeated ministerial statements that the process would be “fully transparent and accountable”, the practical effect of PAC’s decision is precisely the opposite: anyone unable to be physically present in Omagh is denied access to the largest planning inquiry in Northern Ireland’s recent history.

The situation is even more serious in light of the Department for Infrastructure’s admissions in subsequent FOI/EIR correspondence that, because there was no official recording, there is no official record of what was said during the first 2.5 days of the CPLI. That includes statements made by DfI officials in the hearing room—such as the indication that land with turbary rights would be vested—which DfI now treats as if they were never made.

In other words, the PAC and DfI have created a paradoxical situation:

- The public, including transboundary participants, were told they must attend in person in Omagh if they wished to follow or participate in the inquiry;
- Yet the competent authority now asserts that nothing said there exists in any official form.

This is not just poor practice; it goes to the very lawfulness of the CPLI as a forum for environmental decision-making.

10.2 Aarhus Convention and EU Law – Participation Must Be Effective, Non-Discriminatory and Recorded

The arrangement offends multiple binding standards:

- **Aarhus Convention, Article 6(3)** requires that public participation take place when “all options are open and effective public participation can take place.” Effective participation presupposes that the public can know what is being said, by whom, and on what evidence. Running hearings without any recording or transcript, and then treating those sessions as if no official record exists, is incompatible with this requirement.
- **Article 6(6)** requires that members of the public concerned be given access to “**all information relevant to the decision-making**” as soon as it becomes available. Oral evidence, concessions, and clarifications at inquiry are quintessential examples of “relevant information”. If they are neither recorded nor summarised, they are not available at all to anyone who was not physically present in the room.
- **Article 6(7)** guarantees that the public concerned must be able to “submit in writing or, as appropriate, at a public hearing... any comments, information, analyses or opinions”. That presupposes they know what others have said and can respond in an informed way. Without a record, third-party objectors—particularly those in the Republic of Ireland—are deprived of any meaningful opportunity to follow, analyse or rebut the positions taken by DfI, NIEA or Dalradian.
- **Article 3(9)** of Aarhus prohibits discrimination in the application of these rights “on the grounds of citizenship, nationality or domicile”. By locating the only hearings in Omagh, refusing any remote access or transcript, and then insisting that nothing said is officially recorded, PAC and DfI have effectively privileged local, well-resourced actors (the applicant, Departments, some NI-based objectors) over less-resourced and cross-border participants in Donegal and beyond.

At EU level, **Article 7 of the EIA Directive 2011/92/EU** and the transposing **Regulations 29 & 32 of the EIA Regulations (NI) 2017** require that affected States and their publics be given a “**reasonable time and means**” to participate in the environmental decision-making process **on an equal footing** with the public in the State of origin. The Espoo Convention similarly requires effective public participation in the affected Party.

Requiring people living in the Republic of Ireland to:

- take up to 22 days off work,
- self-fund travel and accommodation in a different jurisdiction,
- attend in person simply to discover what is being said, and
- do so without any official record they can later rely upon,

cannot sensibly be described as providing “reasonable means” of participation. These arrangements are inherently exclusionary, particularly for carers, disabled people, those with limited finances, and those with employment constraints.

The **Aarhus Compliance Committee** has consistently held that participation is not “effective” where the public faces excessive practical obstacles to access information or events (e.g. ACCC/C/2006/17 and ACCC/C/2008/24). It has also criticised procedures where key stages of

environmental decision-making are not properly documented or made accessible to the public, because this undermines both Articles 6 and 9 (access to justice).

10.3 No Official Record = No Accountability, No Access to Justice

Dfl's position that, because there was **no recording**, there is **no official record** of its statements at the CPLI has profound legal consequences:

1. **It undermines the duty of candour and the duty of inquiry.**
 - Under **Tameside** [1977] AC 1014, a public authority must take reasonable steps to acquaint itself with the relevant information before making a decision. If key clarifications and concessions are confined to an unwritten oral record which is later disowned, that duty cannot be properly fulfilled or scrutinised.
2. **It frustrates Aarhus Article 9 (access to justice) and Article 6 ECHR (fair hearing).**
 - Without a reliable record of what was said and what evidence was relied upon, it is practically impossible for objectors to challenge any eventual decision by way of judicial review. Courts cannot examine the lawfulness of a decision-making process if there is no objective record of that process.
3. **It contradicts EIA Directive Article 9 and Reg. 33 EIA Regs (NI)**, which require that, after consent is given, the public must be informed of:
 - the content of the decision;
 - the main reasons and considerations on which the decision is based; and
 - how environmental information and public participation were taken into account. Those obligations cannot be met if there is no documentary trace of the evidence and submissions actually considered by the PAC.
4. **It exposes the entire CPLI to challenge as procedurally unfair.**
 - At common law, decision-making must be fair, transparent, and free from the appearance of bias (**Porter v Magill** [2001] UKHL 67). A "hearing" in which participation is limited by geography and finance, and in which the central government department later claims that nothing it said is on the official record, falls manifestly short of those standards.

In practical terms, if Dfl maintains that nothing said during the January 2025 CPLI sessions exists as an official record, then for legal purposes those sessions may as well not have taken place. The logical consequence is that the CPLI has not lawfully commenced at all. It must be abandoned and, if it is to proceed, reconvened under conditions that guarantee a proper, accessible record.

10.4 Rebuttals, Inequality of Arms and Discrimination Against Transboundary Objectors

The procedural imbalance is compounded by the way PAC has limited **rebuttal rights**:

- In the earlier iteration of the CPLI process, objectors were offered both the opportunity to file a Statement of Case and a rebuttal.

- In the current transboundary phase, third-party objectors (particularly those in the Republic of Ireland) are allowed to submit written Statements of Case, but no formal rebuttal stage is offered to them.
- By contrast, Dalradian and statutory consultees (DfI, NIEA, DAERA) retain the ability to drip-feed additional information and submissions into the record outside any symmetrical rebuttal process.

This creates a classic “**inequality of arms**” situation:

- The developer and Departments may respond to objections and refine their case as new points emerge;
- Transboundary objectors receive no formal opportunity to reply in turn, particularly when they are already hampered by lack of livestreaming, recording and document control;
- Many significant documents (including over 1 GB of rebuttal material submitted by Dalradian) are either extremely difficult to locate or not easily accessible on the planning portal, further weakening the ability of third parties to understand and respond.

This runs counter to:

- **Aarhus Article 6(7)**, which envisages that the public concerned must be able to submit “any comments, information, analyses or opinions” that it considers relevant;
- **Aarhus Article 3(9)** (non-discrimination), because transboundary participants are treated less favourably than earlier participants in the domestic CPLI and less favourably than institutional actors; and
- the common-law principle of fairness and equality of arms, which requires that parties have a fair opportunity to engage with and respond to the material advanced against their interests.

The fact that transboundary objectors were only brought into the process after key stages (scoping, pre-inquiry, early Statements of Case) and are now denied rebuttals, recordings and practical access to hearings means they are participating on a structurally weaker footing than both the developer and NI-based bodies. That is irreconcilable with the notion of a fair, balanced public inquiry.

10.5 Consequences: Why the CPLI Cannot Lawfully Continue in Its Present Form

Taken together, these factors demonstrate that the CPLI, as currently designed, cannot meet the minimum standards of:

- effective, non-discriminatory participation under the **Aarhus Convention**;
- fair and equivalent transboundary participation under **Espoo** and **Article 7 of the EIA Directive**;
- procedural fairness, transparency and rationality under **Northern Ireland common law**; and
- meaningful access to justice under **Article 6 ECHR** and **Aarhus Article 9**.

The key points are:

1. There is no official record of the opening CPLI sessions;
2. There is no livestream or transcript for future sessions, despite the scale, controversy and cross-border impacts;
3. Transboundary objectors are effectively required to attend in person for 22 days in another jurisdiction or accept being uninformed;
4. They are denied any rebuttal stage, while the developer and Departments continue to submit new material; and
5. The entire structure of the inquiry is one which privileges institutional and well-resourced actors over the affected communities, particularly those south of the border.

In these circumstances, continuing with the CPLI would not merely be unwise; it would be unlawful. The only defensible course is:

- to terminate the current CPLI,
- to ensure that any future inquiry is conducted with full remote access (livestreaming, recordings, transcripts) and proper document management, and
- to re-open participation and rebuttal opportunities on a basis that affords transboundary objectors a genuinely equal chance to be heard.

Only then could the inquiry be said to satisfy the standards required by Aarhus, Espoo, the EIA and Habitats Directives, and domestic public law.

10.6 Hard-Copy Requirements and Absence of a Pre-Inquiry Hearing – Additional Barriers for Transboundary Objectors

The obstacles to effective participation for objectors in the Republic of Ireland are compounded by two further features of the current process:

1. the requirement to submit ten physical hard copies of any Statement of Case; and
2. the absence of any pre-inquiry hearing for the 1,600+ transboundary objectors.

First, the PAC has required all participants to provide ten paper copies of their Statement of Case. For domestic, well-resourced parties, this is a nuisance; for individuals and community groups based in the Republic of Ireland it is a real barrier:

- Printing and posting ten bound sets of a detailed legal and technical Statement of Case is expensive and logistically complex, especially cross-border.
- Many of those who lodged objections to the transboundary consultation did so by email; they are now faced with a new, paper-heavy procedural hurdle which will deter participation.
- Given the acknowledged lack of clear, consolidated information (incomplete ES, missing FEI, no HRA, unpublished Landmark and Hollis material), it is entirely foreseeable that very few transboundary objectors will be in a position to prepare, print and dispatch ten full hard-copy bundles to PAC in time.

In practice, this amounts to a form of procedural filter that bears most heavily on those already at a disadvantage: small NGOs, local fishermen, farmers, carers, and individuals with limited resources in Donegal and beyond. The Aarhus Convention compliance bodies have repeatedly criticised procedural and financial obstacles which, while facially neutral, have the effect of discouraging or preventing participation (e.g. ACCC/C/2006/18, ACCC/C/2008/24). The ten-copy requirement, when combined with cross-border mailing and the absence of digital filing alternatives, is precisely such an obstacle.

Secondly, unlike participants in the original, domestically-focused CPLI process, the 1,600+ transboundary objectors were never afforded a Pre-Inquiry Hearing:

- Earlier NI-based participants had the benefit of a pre-inquiry event where they could ask questions about procedure, clarify expectations, and raise concerns about evidence, FEI, and timetable.
- Transboundary objectors received no equivalent forum. There was no dedicated procedural session to explain how they might engage with the CPLI, no opportunity to challenge the lack of livestreaming or the ten-copy requirement, and no chance to request reasonable accommodations for disability, caring duties, or distance.

This asymmetry is not merely unfortunate; it is **legally significant**:

- **Aarhus Article 6(3) and (4)** require that public participation be “early” and “effective”, when all options are open and when the public is able to influence the decision. Denying transboundary objectors a pre-inquiry hearing, while providing one to domestic actors, deprives them of that early procedural voice.
- **Article 3(9)** prohibits discrimination “as to citizenship, nationality or domicile” in the application of participation rights. Providing a pre-inquiry forum to Northern Ireland participants but not to those in the Republic of Ireland is plainly differential treatment on the basis of domicile with respect to the same project and the same inquiry.
- At common law, fairness requires that parties be given a **realistic opportunity** to understand and engage with the process to which they are subject. To bring 1,600 Irish objectors into the process late, burden them with hard-copy formalities, deny them livestreaming, and then refuse them any pre-inquiry procedural forum is the antithesis of fairness.

When seen alongside:

- the lack of livestreaming, recording and transcripts;
- the absence of any official record for the January 2025 sessions;
- the denial of a rebuttal stage to third-party objectors; and
- the chaotic, poorly sign-posted document portals;

the ten-copy requirement and the denial of a pre-inquiry hearing form part of a consistent pattern of procedural exclusion. They render it foreseeable—and indeed likely—that only a tiny fraction of transboundary objectors will manage to participate in the CPLI at all, and that those who do will do so on a materially weaker footing than the developer and Northern Ireland authorities.

This reinforces the conclusion already set out in Sections 10.1–10.5: the CPLI, as presently constituted, cannot be regarded as providing effective, non-discriminatory, or lawful public participation under Aarhus, Espoo, the EIA Directive, or domestic public law. It should therefore be terminated and re-designed from first principles, or replaced altogether by a new, law-compliant process, initiated only when Dalradian’s planning application is refused and a new planning application submitted.

Section 11: Tellurium, the Hollis Report, and Procedural Breach Through Withheld Environmental Information

11.1 Introduction – A Major Scope Change Introduced Without Scrutiny

In November 2024, Dalradian introduced a new narrative into its planning case: that Curraghinalt is not just a gold/silver project but the UK’s most viable future source of tellurium (Te), a critical mineral. This late-stage recharacterisation—based on a previously undisclosed 2023 government-commissioned study—has fundamental implications for process chemistry, waste residues, logistics, transboundary movement, and market claims. Yet this change was never disclosed or assessed through formal Further Environmental Information (FEI), as required under the EIA Regulations (NI) 2017.

11.2 Reliance on Unpublished Government Report (Hollis, 2023)

Dalradian’s Statement of Case cites a “study produced for the NI Department for the Economy” by Dr Steve Hollis, claiming Curraghinalt could produce up to 3–4 tonnes of Te per year (assuming full recovery) and contain as much as 157 tonnes of Te in total. This narrative rests entirely on a DfE-commissioned report that was:

- Never published by DfE;
- Withheld from the public during key consultation phases;
- Only disclosed via EIR following pressure in late 2025;
- Authored by an individual who had prior funding and work relationships with Dalradian.

This represents a textbook breach of the Aarhus Convention: reliance on undisclosed government material to support an applicant’s case while denying public access during the decision-making process.

11.3 No Recorded Environmental Information on Tellurium – DfI and NIEA

In response to Environmental Information Regulations (EIR) requests, both DfI (the competent authority) and DAERA/NIEA (the environmental regulator) confirmed that they hold no recorded information on tellurium, either in relation to environmental risks, toxicology, process residues, or overseas processing.

This means the very departments charged with environmental oversight have failed to assess the implications of this scope expansion.

11.4 Overseas Processing = Transboundary Consequences

Tellurium recovery, by Dalradian’s own case, would not occur in Northern Ireland. It would require:

- Export of flotation concentrate overseas;
- Overseas refining using additional reagents and waste streams;
- Transboundary movements with downstream climate and waste liabilities;
- Full lifecycle assessment under EIA Article 7 and Espoo.

None of these matters have been brought forward as FEI or subjected to public consultation.

11.5 Problems With the Hollis Report

The Hollis Report itself, released under EIR, suffers from several defects:

- **Assay Gaps:** Tellurium was not consistently assayed; results are inferred from proxy correlations with Au/Ag/Bi.
- **Speculative Modelling:** Estimates rely on slope inflation and first-pass regression without validated recovery data.
- **No Metallurgical Evidence:** No locked-cycle testing, no payability schedule, no named refiner.
- **No Mass Balance or Residue Characterisation:** Environmental fate of Te, losses to tailings, or toxicity not assessed.
- **Process Route Undisclosed:** Changes to flotation, reagents, or product transport not disclosed.
- **Author Connections:** Prior support from Dalradian, GSNI, and other actors compromises the appearance of independence.

In short, the Te narrative is a commercial assertion, not an environmental assessment. It must be disclosed, tested, and consulted as FEI before it can lawfully be relied upon.

11.6 Combined With Explosives Gap – Structural EIA Failure

This situation mirrors and compounds the explosives gap highlighted in Section 3:

- DfI has confirmed that it holds no recorded information on the estimated \$5 million/year explosives budget, ammonium nitrate volumes, or detonation by-products.
- These are critical inputs to air and water pollution modelling, COMAH/major accident assessment, and climate impacts (N₂O, NO_x).
- Clause 54 of the Landmark Chambers advice highlighted nitrate pollution from explosives as a key legal trigger for FEI—a point now proven by DfI's own admissions of missing data.

The simultaneous withholding of the Hollis report and absence of explosives data shows a systemic failure to manage the environmental record lawfully.

11.7 Legal Breach Summary

The combination of:

- Reliance on a government report not disclosed to the public;
- Missing environmental information on explosives and tellurium;
- Absence of FEI or consultation;
- Transboundary processing and pollution risks;

amounts to breaches of:

- The EIA Regulations (NI) 2017;

- The EIA Directive (Directive 2011/92/EU);
- The Aarhus Convention (Articles 4, 6, 7);
- Procedural fairness and common law due process.

Proceeding with the CPLI on this basis is unlawful

Section 12: Overseas Processing, Transboundary Shipment of Concentrate, and Regulatory Uncertainty

12.1 From Gold Doré to Polymetallic Concentrate – A Fundamental Change in Project Character

The project now before the PAC is no longer the gold-and-silver mine described in the 2017 Environmental Statement. The original proposal involved on-site cyanide processing and smelting to produce approximately 24 gold doré bars per year. In contrast, Dalradian's current evidence is that the mine would now produce around 65 tonnes per day of bulk polymetallic concentrate (gold, silver, copper and now tellurium and "any mineral the customer wants"), for export overseas to an unspecified processing facility, with Halifax, Canada identified only as a port of landing.

This is not a marginal operational tweak; it is a shift from:

- a relatively self-contained gold-refining project in Northern Ireland, to
- a transboundary extractive operation whose core product is an *in-process* concentrate, dependent on foreign smelters and regulatory regimes.

At the opening of the CPLI, Dalradian's legal counsel went further and stated that the company will mine "whatever minerals the customer wants". That admission destroys any pretence that the project is confined to gold and silver. It converts the application into a de facto polymetallic platform, with indeterminate future customers, commodities and processing pathways. In EIA terms, this is irreconcilable with the requirement that the "project" be clearly defined in terms of its nature, scale, and likely impacts.

It is submitted that planning permission cannot lawfully be granted for such an open-ended, undefined operation. Under the EIA Directive and the 2017 EIA Regulations, the Environmental Statement must describe (i) the project, (ii) its likely significant effects, and (iii) the measures envisaged to avoid or mitigate harm. Where the "end product" has changed from a defined gold doré stream to an undefined polymetallic concentrate (with unspecified critical minerals), and the applicant expressly reserves the right to supply "any mineral the customer wants", there is no stable project description on which a lawful EIA or HRA can be based.

12.2 Transboundary Export of Potentially Hazardous / Radioactive Concentrate – Unassessed Legal and Environmental Risks

The decision to export concentrate overseas rather than refine on-site introduces a new layer of transboundary risk that has not been assessed at all. By Dalradian's own case, the concentrate:

- will be shipped in bulk from Belfast to Halifax (≈2,662 nautical miles), and
- will then undergo further chemical processing, almost certainly involving cyanide or comparable reagents, at an unidentified facility.

Crucially:

- No assessment has been made of the *hazard classification* of the concentrate (e.g. under dangerous-goods transport rules, or as containing naturally occurring radioactive material (NORM));

- No assessment has been made of its uranium, radium, or radon-related content, despite the acknowledged high-radon geology of the Sperrins;
- No assessment has been made of whether exports would trigger licensing obligations under overseas nuclear / hazardous-materials regimes (e.g. for NORM, TENORM, or heavy-metal content);
- No consideration has been given to Basel-type controls on transboundary movements of hazardous wastes or recyclable hazardous material, or to biosecurity controls on contaminated packaging and associated materials.

The reality is that a bulk polymetallic concentrate, containing sulphides, arsenic, possibly uranium-series radionuclides and other critical metals, is not a benign commodity. It is at least *potentially* a hazardous substance and *potentially* a radioactive material within the meaning of international nuclear and environmental law. At the very least, a legally adequate EIA would have:

- characterised the concentrate in full (radiochemistry, heavy-metal profile, NORM content);
- identified the likely hazard classification for sea transport and port handling;
- examined whether overseas import, processing, and waste disposal would be subject to nuclear or hazardous-waste licensing in the receiving State; and
- assessed whether any international notice or consent procedure (e.g. Basel-type or equivalent) would be required.

None of this appears in Dalradian’s Environmental Statement or subsequent documentation. EIR responses confirm that DfI, NIEA and DAERA hold no information on tellurium processing, radionuclides, NORM, or the regulatory status of the proposed concentrate exports. This is not an obscure technical omission; it goes to whether the project is even *deliverable* within international environmental and nuclear law.

12.3 Downstream and Overseas Impacts – Finch, Espoo and the Duty to Assess the Full Life-Cycle

The Court of Appeal in *Finch v Surrey CC* has made clear that reasonably foreseeable downstream environmental effects must be assessed as part of the EIA where they are the likely result of the development. Here, those downstream effects include:

- transatlantic shipping emissions for the life of the mine;
- emissions and risks from overseas chemical processing of the concentrate;
- disposal of processing wastes and tailings in the receiving State; and
- any additional radon / NORM exposures and accident risks in ports and processing facilities.

The Environmental Statement, however, expressly disclaims responsibility for these impacts on the basis that the ultimate processing location is “not yet determined”. Yet in the same breath, Dalradian has specified Halifax as the port of landing and has already exported 15,000 tonnes of a “bulk sample” abroad under hazardous-material protocols. It is therefore foreseeable –

indeed intended – that concentrate will be processed in North America or elsewhere. Under *Finch*, those downstream impacts are not optional: they must be assessed.

Moreover, once the project is recast as a transboundary supply of hazardous concentrate, Espoo and Article 7 of the EIA Directive acquire a new dimension. The “affected Party” is no longer only Ireland but also any State where the concentrate is processed or where the shipping route carries risk (e.g. marine spills, port incidents, NORM exposures). None of those potential impacts have been screened, let alone notified or consulted upon. DfI has simply treated overseas processing as a commercial afterthought, outside the scope of environmental assessment.

That approach is legally untenable. Espoo requires that all likely significant transboundary effects be considered *before* consent is granted. The Aarhus Convention requires public access to all information “relevant to the decision-making” – including information on the nature of the exported product, its hazards, and its environmental footprint overseas. By omitting the entire overseas stage, DfI has unlawfully truncated both the domestic EIA and the transboundary process.

12.4 Regulatory and Commercial Viability – Irrationality and Failure of the Tameside Duty

A further defect is that DfI has not asked – and cannot answer – a basic question: *is the project legally and commercially viable given the nature of the concentrate and the regulatory regimes it must pass through?*

If:

- the concentrate is, or becomes, classifiable as hazardous waste (due to heavy-metal content); or
- its NORM content exceeds regulatory thresholds; or
- foreign nuclear or environmental regulators refuse necessary licences or impose onerous conditions,

then the project as currently described may be undeliverable in practice. Yet no enquiry has been made into these constraints. DfI has simply assumed that export and processing will proceed smoothly, without investigating the legal or environmental realities.

At common law, the *Tameside* duty of inquiry requires a public authority to take reasonable steps to inform itself of relevant facts before acting. Granting permission for a project whose central commercial model depends on unexamined, and potentially unlawful, overseas processing of a hazardous concentrate would be irrational in the *Wednesbury* sense: it would amount to authorising a proposal that may be incapable of lawful implementation.

The same failure infects the Habitats Regulations assessment. If overseas processing residues or maritime transport routes give rise to additional pollutant pathways affecting migratory species or shared marine ecosystems, those must be addressed in the “in-combination” analysis under Article 6(3). DfI cannot lawfully confine its assessment to the minehead while ignoring the rest of the project’s life-cycle, particularly when that life-cycle was fundamentally altered by the shift from doré bars to bulk concentrate.

12.5 Consequences for the CPLI and Transboundary Consultation

In light of the above, the status of the CPLI and the transboundary consultation is untenable:

1. The project description in the current ES (gold-silver, on-site processing) is obsolete and misleading.
2. The true project (polymetallic concentrate export, “any mineral the customer wants”) has never been subjected to a fresh ES, FEI or public consultation.
3. The overseas stage – shipping, processing, waste disposal – has never been assessed, even though it involves reasonably foreseeable emissions and hazards.
4. No attempt has been made to identify or notify potentially affected States beyond Ireland, or to assess their environmental interests under Espoo and Aarhus.
5. The authorities have not informed themselves about basic regulatory constraints on NORM, hazardous-waste movements, or nuclear controls in the receiving State, contrary to *Tameside*.

These are not gaps that can be “filled in” during the CPLI. They strike at the root of the EIA and transboundary processes and at the very definition of the project. It is therefore submitted that:

- the existing CPLI must be abandoned;
- the current planning applications must be refused; and
- any future application must include a new Environmental Statement that fully describes the concentrate, its hazards, its overseas processing route, and its transboundary implications, followed by a fresh, lawfully conducted transboundary consultation.

Only then could the public – in Northern Ireland, Ireland, and any receiving State – have a fair and informed opportunity to participate in decisions about this project’s true environmental footprint.

Section 13: The Powerline Infrastructure and Transboundary Failures

13.1 Overview – Why the 33 kV Powerline Is Central to the Lawfulness of the CPLI

The 37.9 km 33 kV overhead powerline from the Curraghinalt site to Strabane is not a minor or separable element of the project. It is an essential enabling infrastructure without which the mine cannot operate at the scale proposed. The powerline:

- Traverses almost 38 km of the Sperrins Area of Outstanding Natural Beauty (AONB);
- Cuts across hydrological catchments draining to the Owenkillew and Foyle/Finn SAC/River Basin District; and
- Has itself been treated as EIA development, with a stand-alone Environmental Statement and Habitats work.

In law, therefore:

- The mine and powerline form a **single project** for EIA, HRA and transboundary purposes (cf. *Commission v UK* (Delimara Power Station) C-508/03 – prohibition on “salami-slicing” a single project into smaller components to avoid full assessment).
- The lawfulness of the CPLI cannot be considered separately from the legality of the powerline proposals.

Yet the powerline element suffers from the same defects as the main application – compounded by its own irrational justifications and transboundary consequences. On any proper application of the EIA Directive, Habitats Directive, Climate Change (NI) Act 2022 and recent case law (*Finch, A5 Western Transport Corridor*), the powerline scheme cannot lawfully be approved and cannot lawfully proceed within this CPLI.

13.2 Absence of Transparent Baseload Calculations and Energy / Climate-Law Consequences

The pattern of evidence on electrical demand is internally inconsistent and, critically, unsupported by any transparent baseload calculations.

(a) No published load model before and after material changes

The 2017 Environmental Statement and associated NIEN material proceed on the basis of a **6 MW baseload**, uplifted to **7 MW** to meet the minimum import capacity (MIC) threshold justifying a 33 kV connection. That 6 MW figure explicitly included the cyanide processing and smelting plant. When the cyanide plant and smelter were subsequently withdrawn, one would expect:

- a revised, lower baseload model;
- updated hourly/annual load profiles; and
- a reassessment of whether any dedicated 33 kV line was still necessary, or whether connection to Omagh with more modest reinforcement would suffice.

No such revised load modelling has ever been published. On the contrary, Dalradian’s own updated documentation continued to cite a **7 MW** baseload after cyanide removal, and we now

know from the powerline rebuttal material that the company in fact applied for a **12 MW** MIC. There is **no public explanation** of:

- how the original 6 MW figure was derived;
- how, after removal of the most energy-intensive processes, the baseload remained at 7 MW; or
- why a 12 MW connection was then sought.

In EIA terms, that is a material omission. Under the EIA Directive and the Planning (EIA) Regulations (NI) 2017, the description of the project must include “the physical characteristics of the whole project, including... energy demand” and “an estimate, by type and quantity, of expected residues and emissions” (Schedule 4). An industrial load of 12 MW across a 25-year life is not a rounding error: it drives generation, grid reinforcement, and transboundary emissions. Proceeding without a coherent, published load model is inconsistent with *Berkeley*, *Blewett* and *Squire*, all of which confirm that core quantitative inputs cannot be left to inference or hidden in unpublished spreadsheets.

(b) Overstated demand and the true purpose of the 33 kV line

The unexplained escalation from a 6–7 MW cyanide-based scheme to a 12 MW post-cyanide connection raises a reasonable concern that the line is being sized for purposes other than the currently described mine. At minimum, it suggests that **the infrastructure proposal (a 37.9 km 33 kV line across the Sperrins AONB) is no longer proportionate to the actual energy needs of the scaled-back project.**

On the present record, there is no evidence that DfI or NIEN have interrogated or required justification for the 12 MW figure. In correspondence, NIEN has indicated that it simply accepts the applicant’s claimed MIC and prices the connection accordingly, treating the underlying load calculation as the customer’s responsibility. For a development of this magnitude, that approach sits uneasily with:

- the **Tameside** duty of inquiry – a requirement on public authorities to ask obvious questions before acting;
- the **Wednesbury** standard of rationality – it is irrational to approve a major grid connection across an AONB without understanding whether the stated demand is real; and
- the wider obligations under the Climate Change (Northern Ireland) Act 2022, which requires Northern Ireland to reach **80 % renewable electricity by 2030** and net-zero by 2050. [GOV.UK](https://www.gov.uk)

If Dalradian never intended to operate the scaled-back mine at anything like a continuous 12 MW, or if the line is in reality being designed to open up the Sperrins for further high-energy infrastructure (large-scale wind, BESS, or other industrial uses), then the EIA has been conducted on a false premise and **project-splitting / salami-slicing** concerns arise. The Court of Justice has repeatedly condemned such practices, most notably in *Kraaijeveld* (C-72/95), where failure to assess the full real-world project rendered the EIA unlawful.

(c) Energy security, climate budgets and priority of supply

A continuous 12 MW baseload, as shown above, is equivalent to the annual usage of roughly **32,850 homes**. Over the 25-year life associated with Dalradian's own TR3 carbon-neutrality figures (~1.2 TWh), that is equivalent to powering **15,000 homes continuously for the entire life of the mine**. In a system where:

- the law now requires rapid decarbonisation of electricity; [GOV.UK](https://www.gov.uk)
- SONI and DfE have repeatedly warned of grid constraints and the need to prioritise strategic uses; and
- other businesses have reportedly been refused connections or upgrades on capacity grounds,
it is difficult to see how a single speculative mine is afforded a de facto guarantee of such a large baseload without a published, scrutinised justification

Moreover, a dedicated "single-user" MIC agreement of this type inevitably raises questions about **who bears the risk of curtailment and blackouts**. If, as is anticipated, Northern Ireland moves to an 80 % renewables system with greater volatility in generation, the system operator will have to decide whether to curtail industrial users or domestic customers in scarcity events. Approving a bespoke 12 MW line for a 24/7 mine without fully exploring these consequences is, again, inconsistent with the precautionary principle and the Climate Change Act's requirement to integrate climate/energy considerations into all public decision-making.

(d) Scale of electrical demand

Dalradian has now confirmed that it applied for a **12 MW continuous connection**. A continuous 12 MW baseload equates to:

- $12,000 \text{ kW} \times 24 \text{ hours/day} \times 365 \text{ days/year} = 105,120,000 \text{ kWh per year}$, and
- at an average Northern Ireland household consumption of ~3,200 kWh/year, this is $105,120,000 \div 3,200 \approx 32,850$ **homes' annual electricity use**.

Even on Dalradian's own figures in the TR3 *Carbon Neutrality* report, the mine is expected to consume around **1.2 TWh (1,200,000,000 kWh)** of grid electricity over its life. That is $1,200,000,000 \div 3,200 = 375,000$ **"house-years"** of power – in other words, enough electricity to supply **15,000 homes continuously for 25 years**, or to supply all ~8,000 homes in Omagh for over 46 years.

On any view, this is not a marginal industrial load; it is a single user whose electricity demand is of the same order as a substantial town

(e) The missing FEI

At its simplest, this is a **Further Environmental Information** issue: the environmental record does not contain the basic data needed to understand the energy dimension of the project. A lawful approach, consistent with Regulation 21 of the EIA Regulations (NI) 2017, would require DfI to:

1. obtain and publish the detailed pre- and post-cyanide load models;
2. explain the justification for the 12 MW MIC;
3. reassess whether a 37.9 km 33 kV line across an AONB is still necessary or proportionate; and
4. consult both the domestic and transboundary public on that information.

None of this has been done. Instead, the CPLI has been allowed to proceed on the basis of opaque and internally contradictory load figures. That alone is sufficient to vitiate the EIA for the powerlines and to support refusal of the applications, or at minimum to require that the CPLI be abandoned and a fresh, law-compliant process begun.

13.3 Climate Duties, Finch and the A5 Judgment

The **Climate Change (Northern Ireland) Act 2022** imposes legally binding carbon budgets and sectoral pathways. Public authorities, including DfI and NIE, must exercise their functions in a manner consistent with achieving those targets and must have regard to the latest carbon budgets and climate reporting.

Two recent strands of case law reinforce this:

- In **Finch v Surrey County Council [2024] UKSC 20**, the Supreme Court held that downstream greenhouse-gas emissions must be assessed where they are the inevitable or reasonably foreseeable consequence of authorising a fossil-fuel project. climatecasechart.com Although Finch concerned oil extraction, its logic is general: EIA cannot ignore climate effects that are a predictable result of granting the consent.
- In the **A5 Western Transport Corridor** litigation, the High Court in Northern Ireland quashed DfI's decision-making because it had failed properly to integrate the Climate Change (NI) Act 2022 and associated carbon-budget duties into the appraisal of a strategic road scheme. [Judiciary NI](https://www.judiciary.ni) The court made clear that the Act fundamentally changes how infrastructure decisions must be taken.

Applied here:

- A dedicated 12 MW radial line to a 24/7 mine is a **climate-significant decision**. It locks in long-term high electrical demand in a vulnerable rural catchment and may enable additional high-energy uses (wind-export hubs, BESS, or other industrial loads) along the corridor.
- Dalradian's TR3 document claims that all electricity will be procured as "100% renewable" via Power Purchase Agreements (PPAs). Yet no specific generating assets, locations, or additionality are identified, and no assessment is made of whether this demand will in practice crowd out decarbonisation elsewhere in the NI/All-Island system.
- Under *Finch*, decision-makers cannot simply assume that a project is "carbon neutral" because the developer asserts it will purchase green power. They must interrogate whether the demand results in additional emissions in the real world – including construction of new plant, grid reinforcement, and curtailment of other users.

- Under the **A5 reasoning**, DfI must show how authorising a 12 MW mine interconnector is compatible with NI's carbon budgets and sectoral pathways under the Climate Act. No such analysis exists.

In short, the powerline decision is being taken **as if the Climate Change (NI) Act 2022, Finch and A5 did not exist**. That is not legally tenable.

13.4 Failure to Consider Reasonable Alternatives – Omagh Substation and Routing

The ES and NIEN documentation largely dismiss the alternative of connecting to **Omagh substation**, asserting that it lacks 33 kV spurs and would require upgrading. That conclusion is based on data from around 2015–2016 and has never been revisited. In the meantime:

- Strabane substation has been upgraded;
- No transparent explanation has been given as to why Omagh, a major town and logical demand centre, has not been similarly reinforced;
- The chosen 37.9 km route across the Sperrins AONB is significantly longer and environmentally more damaging than a shorter spur to Omagh.

The EIA Directive and domestic case law require rigorous examination of alternatives, especially in sensitive landscapes:

- In *Wealden DC v SSCLG* [2017] EWHC 351, the High Court stressed that alternatives must be genuinely appraised where they could reduce environmental harm.
- In *Holohan* (C-461/17), the CJEU held that environmental assessments must examine alternative solutions where these are relevant to reducing impacts on Natura 2000 sites.

Here, the failure properly to re-assess Omagh in light of project changes (and in light of NIEN's wider obligations on non-discriminatory access to the grid) renders the alternatives analysis defective. It also lends weight to the concern that the 33 kV line is being positioned as **strategic infrastructure** for future developments across the Sperrins, rather than as a proportionate, project-specific solution.

13.5 AONB, Natura 2000 and Transboundary Effects

Routing a 33 kV overhead line almost 38 km across an AONB, over elevated ridges and through hydrologically sensitive catchments, has inevitable implications for:

- Landscape character and visual amenity;
- Hydrology and water quality (construction and maintenance near watercourses);
- Bird collision risk and disturbance;
- Cumulative impacts with existing and prospective wind, BESS and other infrastructure.

The route passes through or close to:

- The Sperrins AONB;

- Watercourses draining to the Owenkillew SAC, Foyle system and ultimately the River Finn SAC in the Republic of Ireland;
- Areas with recognised high radon levels and geotechnical sensitivity.

Under the **Habitats Directive** and **Waddenzee / Holohan** jurisprudence, any plan or project likely to have a significant effect on such sites – alone or in combination – must be subject to an Appropriate Assessment based on complete, precise and definitive findings. That has not happened: the powerline HRA is fragmented, does not properly integrate the mine/abstraction/impoundment, and does not address transboundary implications for the Finn SAC or Lough Foyle.

From a transboundary perspective:

- Technical Report 15 (“Transboundary Considerations”) for the powerline relies almost entirely on Northern Ireland data and concludes there are no significant cross-border effects, despite the clear hydrological and ecological links;
- Donegal County Council and Irish agencies were notified late and without coherent access to the powerline ES, HRA and associated documentation;
- The consultation therefore failed to meet the standards of **Espoo Article 3** and **EIA Directive Article 7**, which require early, effective and information-rich engagement where infrastructure may affect another State.
-

13.6 Document Control, Information Overload and Practical Exclusion

The powerline element exemplifies the broader document-management failures affecting the entire project:

- The original 2017 mine ES (≈10,000 pages), the 2019 amendments, the 2021 powerline documents, and subsequent abstraction/impoundment materials are scattered across multiple portals and poorly sign-posted.
- Dalradian and its consultants submitted almost 1 GB of technical material (over 200 files) during the Statement of Case and rebuttal phases. Much of this does not appear in a coherent way on the public portal.
- At the pre-inquiry hearing in March 2024, DfI explicitly promised a consolidated, accessible online library by May 2024. In reality, uploads continued in a piecemeal fashion into winter 2024/25 and even during the January 2025 CPLI sitting.

For transboundary participants, this is effectively exclusionary. Irish objectors must navigate a fragmented, opaque record while DfI and the developer have full internal knowledge of how the documentation fits together. This runs directly counter to **Aarhus Article 6(6)**, which requires that the public be given access to “all information relevant to the decision-making” in an organised and accessible form.

13.7 Consequences – Why the Powerline Scheme Alone Justifies Abandoning the CPLI

Taken together, the defects in the powerline proposals are so fundamental that they independently require the CPLI to be abandoned and the applications refused:

1. **Irrational demand and climate non-compliance** – A 12 MW baseload and 1.2 TWh electricity use have never been adequately justified or assessed against NI’s climate duties, *Finch* or the A5 judgment.
2. **Failure to assess reasonable alternatives** – The refusal to revisit the Omagh substation or other lower-impact options breaches EIA and Habitats requirements on alternatives.
3. **AONB and Natura 2000 harm** – The route poses unacceptable risks to protected landscapes and habitats, without a lawful, integrated AA.
4. **Transboundary procedural breaches** – Technical assessments understate or ignore cross-border pathways; Donegal and the Irish public were drawn into the process late and without the documentation needed for meaningful comment.
5. **Document-control and participation failures** – The way information has been managed is inconsistent with Aarhus and renders effective public and transboundary participation impossible.

In combination with the wider failures identified elsewhere in this Statement of Case (missing FEI, unlawful HRA approach, defective EIA for the mine itself), the powerline scheme confirms that the project cannot be lawfully salvaged within the present CPLI. The only defensible course is to abandon the CPLI, refuse the current applications, and require any future proposal to begin with a fresh, complete EIA/HRA and transboundary process that fully addresses these issues from the outset

Section 14: Unresolved Ownership of Lough Foyle – Implications for Transboundary Governance and Lawfulness

14.1 Hydrological and Legal Significance of Lough Foyle

The Curraghinalt project drains via the Owenkillew–Camowen–Strule–Finn–Foyle system into Lough Foyle. The Foyle estuary is therefore the ultimate receiving environment for many of the very pathways identified as critical in this Statement of Case: nitrates and ammonia from explosives, metals and metalloids from tailings and dust, and potential contaminants associated with polymetallic concentrate and shipping.

Lough Foyle is not just any receiving water. It is:

- A shared UK–Ireland estuary at the mouth of the River Foyle;
- Part of an international river basin district governed under the EU Water Framework Directive (WFD); and
- Subject to the cross-border governance arrangements of the Foyle, Carlingford and Irish Lights Commission and its executive arm, the Loughs Agency, established under the Good Friday Agreement. [Wikipedia+1](#)

Any lawful assessment of transboundary impacts and any robust Habitats/WFD evaluation must therefore confront not only the environmental status of Lough Foyle, but the unresolved question of who has legal authority over its seabed and resources.

14.2 The Unresolved Sovereignty and Seabed Ownership Problem

For nearly a century, the UK and Ireland have never formally agreed the land and maritime boundary in Lough Foyle. The UK Government maintains that the whole of Lough Foyle falls within UK jurisdiction; the Irish Government disputes this and claims sovereign rights over the lough, though both sides have agreed to “park” the dispute politically. [Wikipedia](#)

Against that diplomatic backdrop, the underlying property rights are even more complex. Historically:

- In 1662, King Charles II granted the waters, fisheries and seabed of Lough Foyle to The Honourable The Irish Society by Royal Charter.
- In 1952, The Irish Society sold the fisheries to the Irish Government and to the Northern Ireland Fishery Board, but returned the seabed itself to the Crown Estate.
- In 2007, correspondence from the Crown Estate (obtained via FOI) explicitly refused consent for certain licensing provisions under the Foyle and Carlingford Fisheries legislation and insisted that its property rights over the seabed be recognised.
- Minutes of the Loughs Agency board from 2007 record Ireland’s Department of Marine paying rent to the Crown Estate for aquaculture operations—implicitly acknowledging Crown Estate ownership of the seabed even while the two States dispute sovereignty.

The result is a layered and unresolved legal position in which:

1. **Sovereignty over the lough is disputed between two States;**
2. **The seabed is asserted to be owned by the Crown Estate;** and
3. **The Loughs Agency exercises regulatory functions under cross-border legislation without having resolved the underlying property and jurisdictional questions.**

This is not a technical historical curiosity. It goes to the heart of who has competence to authorise activities that may damage the marine and estuarine environment into which Curraghinalt-related pollutants will ultimately flow.

14.3 Why Unresolved Sovereignty Matters for Espoo, EIA and Aarhus

Under the Espoo Convention and Article 7 of the EIA Directive, States must notify and consult one another where a proposed activity is likely to cause significant adverse transboundary impact, and must ensure that the public of the affected State has participation opportunities “equivalent to those of the Party of origin”.

Nothing in Espoo allows a Party to avoid or dilute those duties because of an unresolved boundary or sovereignty dispute. On the contrary:

- Espoo is premised on good-faith cooperation across borders;
- The Implementation Committee has consistently stressed that Parties must ensure effective transboundary procedures where significant effects are reasonably foreseeable, irrespective of political disputes; and
- The onus is on both States to agree practical arrangements that protect the shared environment while the legal boundary remains unsettled.

In this context, the unresolved status of Lough Foyle **heightens**, rather than diminishes, the need for robust, transparent transboundary EIA and HRA. It is not open to DfI or PAC to treat Lough Foyle as if it were unilaterally within Northern Ireland’s domestic jurisdiction and to proceed on the fiction that ordinary “internal” EIA and HRA are sufficient.

The current approach—minimalist, late, and incomplete transboundary consultation, with no dedicated assessment of Foyle-scale impacts—is flatly incompatible with:

- Espoo Articles 2–3 (early notification, full documentation, meaningful consultation);
- EIA Directive Article 7 (equivalent information and participation for the affected public);
- Aarhus Article 6 (early and effective public participation “when all options are open”) and Article 9 (access to review of environmental law breaches).

Where the receiving environment is a disputed, jointly used estuary, those duties demand more, not less, transboundary engagement.

14.4 Competent Authority, Accountability and the “Legal Black Hole”

A further difficulty arises from the question: **who is the competent authority for activities affecting the Foyle seabed and waters?**

The Crown Estate’s refusal in 2007 to consent to certain licensing provisions, coupled with rent being paid by an Irish department for aquaculture on Crown Estate seabed, demonstrates that:

- The Loughs Agency does **not** have uncontested authority to license all uses of the seabed;
- Both States have implicitly acknowledged that the Crown Estate’s property interests must be respected; and
- There is no clearly defined, binding legal framework allocating ultimate decision-making responsibility over seabed-affecting activities in Lough Foyle.

From an environmental law perspective, this creates a dangerous “legal black hole”:

- If the seabed is Crown Estate property under UK law, but sovereignty is disputed and the cross-border Agency has incomplete powers, then **no body** has plainly mandated, democratically accountable authority to license or prevent seabed-affecting harms arising from Curraghinalt-related pollution.
- Affected communities and NGOs are left unable to determine which State’s courts, regulators or ombudsmen are ultimately responsible for preventing and remedying damage to this shared ecosystem.
- This uncertainty is compounded by the fact that transboundary objectors have never been given the full environmental record for Curraghinalt, nor access to the key FEI (Landmark Chambers advice; recent NIEA letters) which show that conservation objectives downstream cannot be met.

In **Tameside**, the House of Lords held that a public authority must make adequate enquiries before deciding. Here, DfI and PAC have not even resolved, at a basic level, which public authority or combination of authorities has the legal power to protect Lough Foyle from Curraghinalt-related impacts, let alone ensured that both States exercise those powers coherently.

14.5 Consequences for the Lawfulness of the Curraghinalt Process

The unresolved ownership and sovereignty of Lough Foyle magnify the unlawfulness already identified elsewhere in this Statement of Case:

1. **Espoo and EIA Directive breaches become more acute:** When the ultimate receiving environment is shared and legally disputed, unilateral, minimalist transboundary consultation is inherently inadequate. The failure to engage the Irish State and public early, fully and on the basis of complete environmental information is therefore especially egregious.
2. **Habitats and WFD duties are not properly discharged:** Downstream SACs, estuarine habitats and shellfish waters within Lough Foyle cannot lawfully be screened or assessed when:

- core emission pathways (nitrate, metals, radionuclides) remain unquantified; and
 - competent authority and enforcement responsibility over the seabed are unresolved.
3. **Accountability and remedies are obscured:** Aarhus Article 9 requires that members of the public have access to a fair and effective review mechanism. When it is unclear whether the ultimate decision-maker for Lough Foyle impacts is DfI, DAERA/NIEA, the Loughs Agency, the Irish Government, or some combination of the above, meaningful access to justice is undermined.
 4. **The case for abandoning the current CPLI is strengthened:** It is irrational and procedurally unfair to proceed with a Conjoined Public Local Inquiry into a project whose most significant downstream impacts will occur in a waterbody whose sovereign status, seabed ownership and regulatory jurisdiction remain unresolved. The only lawful course is to halt the CPLI, regularise the transboundary governance framework for Lough Foyle, and then conduct a fresh, joint EIA/HRA process in which both States and their publics participate on an equal footing.

14.6 How Can Transboundary Issues Be Resolved If the Border Is Not Defined?

This Statement of Case does not ask the PAC to resolve a centuries-old sovereignty dispute. It does, however, make a simple legal point:

- **If the UK and Ireland cannot agree who owns and regulates the Lough Foyle seabed, a fortiori DfI and PAC cannot lawfully treat Curraghinalt as if its downstream impacts were a purely internal matter.**

Until a clear, jointly accepted framework is in place for protecting Lough Foyle's environment—and until both States have been fully involved in assessing and consenting to Curraghinalt's downstream impacts—any attempt to proceed with the current planning applications and CPLI is premature, procedurally unfair, and contrary to Espoo, Aarhus, the EIA Directive and the core common-law duties of inquiry and fairness.

Section 15: Relief Sought

In light of the multiple procedural irregularities, legal breaches, and substantive deficiencies documented throughout this Statement of Case, the entire Dalradian Curraghinalt project, as currently presented to the Conjoined Public Local Inquiry (CPLI), is unlawful. The inquiry process is structurally unsound, procedurally unfair, and legally incapable of producing a valid determination under UK, EU, and international law.

Accordingly, we respectfully seek the following relief:

1. Immediate Termination of the CPLI

The CPLI must be formally abandoned by the Department for Infrastructure (DfI) and the Planning Appeals Commission (PAC), as the process is predicated on:

- A materially altered project not subjected to fresh EIA or public consultation;
- The admitted absence of core environmental information, including explosives data, tellurium extraction, tailings risk modelling, and Scope 3 emissions;
- An unlawful transboundary consultation, notified years late and based on incomplete documentation;
- Regulatory omissions including failure to screen for PPC obligations;
- Suppression of critical legal advice and asymmetrical access to documentation.

To continue would compound procedural unfairness and breach the legal rights of the public and statutory consultees across both jurisdictions.

2. Formal Refusal of the Current Planning Applications

Under **Article 33 of the Planning Act (Northern Ireland) 2011**, planning permission must be refused where material considerations have not been properly assessed, or where the application is procedurally defective. These conditions are met in full.

3. Declaration That the Existing EIA and Transboundary Consultation Are Invalid

We request a formal legal finding that:

- The Environmental Statement is incomplete and does not reflect the current project scope;
- The transboundary consultation failed to comply with **Article 7 of the EIA Directive**, the **Espoo Convention**, and the **Aarhus Convention**;
- The absence of PPC screening, emissions inventories, and core risk assessments (e.g. blasting, diesel, tellurium) renders the EIA invalid under **Regulation 5** and **Regulation 23** of the EIA Regulations (NI) 2017;
- The failure to conduct a complete and final Habitats Regulations Assessment (HRA) prior to determination renders the process ultra vires.

4. Order for Resubmission of a New, Lawful Planning Application

The applicant (Dalradian) should be required to submit a fresh planning application that includes:

- A revised and complete Environmental Statement incorporating:
 - Core environmental data (explosives, tellurium, flotation reagents, tailings chemistry, etc.);
 - Full Scope 1–3 carbon emissions, including overseas concentrate processing;
 - An updated project description accurately reflecting the shift from on-site gold refining to polymetallic concentrate export;
 - A new water management and tailings emergency risk model;
- A full Pollution Prevention and Control (PPC) permit screening and, if required, application under the **Industrial Emissions Directive**;
- A final and legally compliant Appropriate Assessment (HRA) under the **Habitats Regulations**;
- A re-run of the **transboundary consultation** at a formative stage, with full access to all core documentation and emissions data by the Irish public and authorities.

5. Immediate Disclosure of Withheld Documentation

This includes, but is not limited to:

- The full text of the Landmark Chambers legal advice;
- Dalradian’s rebuttal submissions and technical appendices (comprising over 1GB of new material);
- All environmental objections submitted to the abstraction and impoundment applications;
- Any Further Environmental Information (FEI) held by DfI, NIEA, or shared internally.

These documents are critical to ensure meaningful public participation and to comply with Aarhus obligations under **Article 4** (access to information).

6. Notification to Oversight Bodies of Procedural Breaches

DfI and the UK Government must be referred to the following oversight mechanisms:

- The **Espoo Convention Implementation Committee**, for breach of transboundary notification and assessment duties;
- The **Aarhus Convention Compliance Committee**, for denial of early, full and effective participation rights;
- The **European Commission**, for infringement of the **EIA Directive**, the **Habitats Directive**, and the **Industrial Emissions Directive**.

Such notifications are both justified and necessary to protect transboundary rights, uphold the rule of law, and prevent environmental harm with international implications.

7. Immediate publication of all transboundary consultation objections, with:

- Full disclosure of the original submissions made by individuals, NGOs, statutory consultees, and public authorities in the Republic of Ireland;

- An indexed, accessible document repository that allows equal access for all stakeholders, not just those affiliated with statutory bodies or the applicant;
- A transparent analysis of the issues raised, as required under both the EIA Directive and Aarhus Convention Article 6(6).

8. Provision of procedural parity and non-discrimination, including:

- Equal rights for third-party transboundary objectors (particularly from the Republic of Ireland) to submit rebuttals or supplementary statements, in the same manner afforded to Dalradian and Northern Ireland departments;
- Recognition that current asymmetries violate Aarhus principles of fairness, equality of arms, and meaningful participation (Aarhus Articles 3(1), 6(4)–(6), and 9).

These failures cumulatively render the CPLI and transboundary consultation procedurally discriminatory and legally non-compliant. Objectors in the Republic of Ireland have been materially disadvantaged: they received delayed notice, were denied access to full documentation, were not given an opportunity to respond to evolving information or rebut applicant claims, and were expected to attend a 22-day in-person inquiry with no remote access, no transcript, and no public record.

The relief sought is not merely a procedural reset—it is a necessary legal safeguard to ensure that the final decision is rooted in the rule of law, environmental justice, and the fundamental rights protected by domestic, EU, and international legal frameworks

Best regards

[Redacted signature block]

Annexes

Annex A: Landmark Chambers Advice (31 July 2023) – Summary and Legal Consequences

Annex B: Landmark Chambers Report

Annex C NIEA letter admitting FEI/failure to meet conservation objectives (22/08/2025)

 NIEA to PAC – 23rd Sept 2025

 PAC to NIEA – 25th Nov 2025

Annex A: Landmark Chambers Advice (31 July 2023) – Summary and Legal Consequences

A.1 Status and Weight of the Advice

On 31 July 2023, the Department for Infrastructure (“Dfi”) commissioned Landmark Chambers, a leading UK environmental planning set, to advise on whether Dalradian’s Curraghinalt proposal complied with the Environmental Impact Assessment (EIA) regime, the Habitats Regulations, and water-environment law.

This was not material produced by objectors or campaigners. It is formal legal advice from Dfi’s own specialist counsel, obtained precisely because the Department was concerned that Dalradian’s Environmental Statement (ES) and associated documentation were legally deficient.

Landmark’s conclusions are unequivocal:

- Key environmental effects (especially nitrate pollution from explosives and BOD from wastewater) have not been properly assessed.
- Alternatives to nitrate-based explosives have not been evaluated.
- Compliance with the Habitats Directive and Water Framework Directive (WFD) cannot be demonstrated on the submitted information.
- Further Environmental Information (FEI) is legally mandatory, not optional.

On the face of Landmark’s own reasoning, Dfi cannot lawfully approve the application, and the CPLI cannot lawfully proceed on the current record.

A.2 Core Factual Findings – FWPM, Water Quality and Explosives

Landmark identifies the Owenkillev and related waterbodies as SAC catchments designated primarily for freshwater pearl mussel (FWPM) and Atlantic salmon. It stresses that FWPM is a “globally endangered” species whose recruitment is critically sensitive to:

- nitrate and ammonia,
- phosphorus,
- suspended solids and metals, and
- organic enrichment (BOD).

The advice notes that existing water-quality status in the relevant water bodies is already unfavourable and that conservation objectives require restoration, not mere avoidance of further decline. Under the NI biodiversity duty (s.1 Wildlife and Natural Environment Act (NI) 2011), public bodies must *further* the conservation of FWPM and salmon, not simply avoid catastrophic harm.

Against that baseline, Landmark pinpoints Dalradian’s proposed use of ammonium-nitrate-based explosives and mine-related wastewater as decisive sources of additional pressure on these already failing systems.

A.3 The “Key Issues” – Paragraph 54 and the Centrality of Nitrate Pollution

The pivotal passage in the advice is paragraph 54, where Landmark states that:

“the key issues appear to be nitrates from the explosives and BOD from the sewerage...”

This does three critical things:

1. **Identifies nitrate pollution from explosives as the dominant environmental pathway** – not a peripheral or speculative concern.
2. **Confirms that viable alternatives exist**, by questioning why non-nitrate explosives and tanker removal of sewage have not been adopted.
3. **Signals that the ES is structurally incomplete**, because it contains no nitrate mass balance, no detonation-efficiency analysis, no groundwater/surface-water transport modelling and no alternatives assessment.

Once DfI received this analysis, the threshold under Regulation 21 of the Planning (EIA) Regulations (NI) 2017 was plainly met: there were “likely significant effects” on water quality and SAC interests which had **not** been assessed. At that point, requesting FEI ceased to be discretionary; it became a legal duty.

A.4 Water Framework Directive, “No Deterioration” and Bund v Germany

Landmark explicitly grounds its reasoning in the Water Environment (Water Framework Directive) Regulations (NI) 2017 (“WFD Regs”). Under Regulation 3(2), DAERA must determine authorisations so as to:

- prevent deterioration of surface-water status; and
- support achievement of the environmental objectives set for each water body.

The advice cites **Bund für Umwelt und Naturschutz Deutschland eV v Germany** (Case C-461/13, “Weser”) as the leading authority. In Bund, the CJEU held that authorisation must be refused where a project:

- may cause deterioration in the status of a waterbody; **or**
- jeopardises the attainment of good status,

and that “deterioration” occurs as soon as *any* quality element falls by a single class, even if the overall classification of the water body remains unchanged.

Applying Bund, Landmark concludes that:

- Dalradian’s discharges and nitrate loading must be tested against FWPM- and salmon-specific conservation objectives, not just generic EQSs;
- any additional loading that risks further deterioration (or prevents recovery to “good” status) precludes authorisation unless a strict derogation case is made;
- no such derogation case has been attempted.

In short, on Landmark’s own WFD analysis, the project cannot lawfully be consented on the water-quality data currently supplied.

A.5 Habitats Directive – AA is Impossible on the Current Record

Landmark emphasises that authorisation of any plan or project with likely significant effects on an SAC requires an Appropriate Assessment (AA) under Article 6(3) Habitats Directive and the Conservation (Natural Habitats, etc.) Regulations (NI) 1995.

It draws directly on ECJ case law:

- **Waddenzee (C-127/02)** – AA must be based on “complete, precise and definitive” findings; any reasonable scientific doubt is fatal.
- **Holohan (C-461/17)** – AA must assess all aspects of site integrity, including indirect, upstream/downstream and cumulative effects.
- **People Over Wind (C-323/17)** – mitigation cannot be relied on at screening stage.

Landmark’s conclusion is that, absent quantified nitrate and ammonia loading, appropriate dispersion and dilution modelling, and a robust alternatives analysis for explosives, no lawful AA can be undertaken. The ES *cannot* support the necessary conclusion of “no adverse effect on site integrity.”

That conclusion goes to the heart of the planning application. A project which cannot, on the information supplied, pass Article 6(3) **cannot be lawfully approved at all**.

A.6 EIA Duties, Alternatives and FEI – Why the ES is Incomplete

Landmark also applies the EIA Directive and the 2017 EIA Regulations to the explosives issue:

- Schedule 4 requires a description of *likely significant effects* and a *description of reasonable alternatives* studied, with reasons for the option chosen, taking into account environmental effects.
- Dalradian’s ES contains **no** alternatives analysis for explosives, **no** quantified explosive tonnage, and **no** nitrate mass balance or dispersion modelling.

On that basis, Landmark concludes that the ES is **incomplete** within the meaning of Berkeley, Blewett and Squire:

- **Berkeley v SS for the Environment [2001] UKHL 23** – fundamental omissions in an ES cannot be cured post hoc; the process is unlawful.
- **R (Blewett) v Derbyshire CC [2004] Env LR 29** – an ES must provide enough information for an intelligent reader to understand impacts; here, the key pathway is unquantified.
- **R (Squire) v Shropshire CC [2019] EWCA Civ 888** – significant impacts and cumulative effects cannot be deferred to later stages.

From the moment Landmark identified explosives and BOD as “key issues”, Regulation 21 EIA Regs required DfI to:

1. request FEI on explosives, nitrates, ammonia and BOD;
2. publish that FEI; and
3. consult the public (including Ireland) upon it.

None of these steps were taken. Instead, DfI told PAC that “no FEI is required” and that the information met “minimum standards,” directly contradicting its own counsel.

A.7 Transboundary Pathway – Landmark’s Analysis and Espoo/EIA Article 7

Although Landmark’s brief was focused on discharge consents and water-quality law, its findings unlock the transboundary dimension:

- Nitrate and ammonium from blasting enter the Owenkillew, then flow via the Camowen and Strule into the River Finn (cross-border into the Republic of Ireland) and onward to the River Foyle and Lough Foyle.

Once this pathway is acknowledged, the project is plainly one which is **likely to have significant effects in another State**. That automatically engages:

- Article 7 EIA Directive 2011/92/EU (as amended);
- Regulations 24–25 EIA Regulations (NI) 2017;
- Articles 2–3 Espoo Convention (early, effective transboundary consultation); and
- Articles 6–7 Aarhus Convention (transboundary public participation).

Yet DfI:

- did not notify Ireland “as early as possible and no later than when informing its own public”;
- did not provide explosives, nitrate, ammonia or BOD FEI to Ireland;
- ran a transboundary consultation on an incomplete and misleading record.

Read together, Landmark’s advice and the transboundary record show that the Espoo and Aarhus duties could never be satisfied on the current information: Ireland was asked to comment without the very nitrate data DfI’s own counsel said was decisive.

A.8 Consequences for the Planning Application and CPLI

Landmark’s advice, taken at face value, has the following legal consequences:

1. Water Framework Directive / Bund

- On the present data, DfI and DAERA cannot demonstrate compliance with the “no deterioration” rule or achievement of good status. Under Bund, authorisation must be refused where a project risks deterioration of any quality element.

2. Habitats Directive

- Without quantified nitrate/ammonia loading and alternatives assessment, no lawful AA can be completed for FWPM and salmon SAC features, contrary to Waddenzee, Holohan and People Over Wind.

3. EIA Regulations

- Key Schedule 4 information (explosives tonnage, nitrogen mass balance, alternatives) is missing. Regulation 21 FEI duties have been triggered and ignored, contrary to Berkeley, Blewett and Squire.

4. Transboundary Law (Espoo / Article 7 EIA Directive / Aarhus)

- The nitrate pathway into the River Finn and Lough Foyle has not been assessed or disclosed to Ireland, rendering the 2024–25 transboundary consultation defective in law.

5. CPLI Procedure

- The CPLI is proceeding on an ES which DfI's own counsel considers incomplete and legally incapable of supporting consent. PAC has no power to cure these omissions and would act unlawfully if it continued on this basis.

A.9 Conclusion – Landmark Chambers as a Positive Case for Refusal

Landmark Chambers' July 2023 advice is, in effect, a detailed legal case **against** granting consent for Dalradian's proposal on the information presently available. It shows that:

- The Environmental Statement is incomplete in law;
- The Water Framework Directive "no deterioration" test (Bund) is not met;
- Habitats Directive Article 6(3) cannot be satisfied;
- EIA, Espoo and Aarhus duties remain unfulfilled; and
- FEI is mandatory before any lawful decision can be taken.
-

DfI's subsequent decision to suppress, downplay or ignore that advice does not diminish its legal force. On the contrary, it compounds the unlawfulness and strengthens the case that:

- the current CPLI must be abandoned;
- the existing planning applications must be refused; and
- any future proposal must be brought forward via a fresh application with a new ES, complete FEI (including explosives/nitrates), a lawful HRA, and a fully compliant transboundary process.

Annex B: Landmark Chambers Report

DEPARTMENT OF AGRICULTURE, ENVIRONMENT AND RURAL AFFAIRS

CURRAGHINALT PROJECT, COUNTY TYRONE

WATER DISCHARGE CONSENTS

ADVICE

1. Dalradian Gold Limited ("DGL") is proposing a gold mine in County Tyrone - the Curraghinalt Project ("the Mine"). The Mine will, if consented, be on former agricultural land¹. The Mine will discharge water from its workings into two burns. Site discharge and reserve capacity for mine water is proposed to be drained to the Curraghinalt Burn ("CB") via the CB Discharge about 90m upstream of its confluence with the Owenkillew river ("OKR"). The main mine water discharge and treated sewerage would drain into the Pollanroe Burn ("PB") via the PB Discharge and then into the Owenreagh river ("ORR") which itself flows into OKR downstream of both discharge points. The OKR is a special area of conservation ("SAC")² along the whole of its relevant length including upstream of the CB/OKR confluence and downstream past the OKR/ORR confluence. The discharges will contain some material which may have potential to pollute the water and impact protected species. On DGL's application for relevant consents for the CB and PB Discharges a dispute has arisen as to the appropriate discharge limits to be imposed. I am asked to advise DAERA as to the legal framework within which the limits in the permits for such discharges must be set.

Statutory Framework

A: Consents Under Art 7A of the Water (Northern Ireland) Order 1999

2. By virtue of article 7 of the Water (Northern Ireland) Order 1999 ("the Water Order") the discharge of any polluting matter into a waterway is an offence. Article 7A(3) provides an exception when the discharge is in accordance with the terms of a consent.
3. Sch 1 para 2(4) provides that the conditions subject to which a consent may be given under this paragraph shall be "such conditions as the Department may think fit...".
4. No guidance is given in the Water Order as to how those conditions should be framed or what they should require to be achieved and the words appear to confer a broad discretion on DAERA to impose conditions subject only to normal public law principles.
5. I can see nothing in the words used or the statutory scheme as a whole to mean that in deciding the appropriate conditions the DAERA is constrained to only impose conditions required to ensure compliance with *other* statutory schemes. Plainly where another more specific statutory scheme addresses matters relevant to the setting of discharge conditions the conditions required to secure compliance with that scheme will be material to the decision making (and, at the least, act as a baseline for what the conditions as a whole must achieve)

¹ An issue which does not appear to have been addressed to date is whether the current agricultural user currently contributes to the relevant exceedances considered below and whether there is any possible offset arising from this development by reason of any such reduction of agricultural pollution.

² Despite the breadth of the Habitats Regulation Assessment (HRA) and its consideration of other SACs I focus just on this SAC because if there is not an adverse effect on its integrity there is no postulated route to such adverse effect on other SACs further afield. Within that I focus on water quality because that is the central issue for the discharge consents

but there is no legal principle which makes such conditions *exhaustive* of what may be imposed under the wide discretion conferred by sch 1 para 2(4). Art 7A concerns consents to discharge and is the only legislation directly concerning such matters and is thus the legislation under which any consent must be granted.

6. There is, of course, a wide range of other legislation concerning water quality and habitats (see below) but none of it purports to amend or override sch 1 para 2(4) and none of it contradicts the wide discretion conferred by it. It seems to me that this is not thus a case where the specific overrides the general where there is a contradiction between the two or where the ambit of considerations for the exercise of sch 1 para 2(4) is *fixed* by the other relevant statutory schemes. In my view, that approach is consistent with the approach of the Supreme Court in *Cusak v. Harrow LBC* [2013] UKSC 40; [2013] 1 WLR 2022.
7. To satisfy general public law principles such conditions will have to be rationally related to the consent sought, the nature of the discharges, the environment into which the discharges will occur and the potential for impacts from the discharges on that environment. Plainly the Planning Appeal Commission ("the PAC") will test the justification for any conditions proposed to be imposed. The stronger the factual, scientific and legal basis for them the more likely it is that the PAC will agree with DAERA in respect of them.
8. I regard the analysis in this section to be fundamental to the correct approach to the setting of conditions. It has not yet been expressly addressed in any of the documents I have seen. It requires a refocussing of the analysis from whether the conditions are necessary under the statutory schemes I turn to below to whether they are justified under the broad discretion to which I have referred above. I therefore recommend that DGL be given an opportunity to comment on the above analysis and to bring to DAERA's attention any contrary legal analysis it wishes to raise.

B: Other Relevant Statutory Schemes

9. Whilst there is a broad discretion as to the conditions to be set under Art 7A as set out above, those conditions *must, at least*, secure compliance with the following statutory schemes (which impose duties rather than conferring discretion as per Art 7A):
 - a. the Water Environment (Water Framework Directive) Regulations (Northern Ireland) 2017 ("the WFD Regs") and the and the Water Framework Directive (Classification etc...) Regulations (NI) 2015 ("the EQS Regs") – collectively the "Water Environment Legislation" originally made pursuant to the Water Framework Directive ("WFD") and the Environmental Quality Standards Directive ("the EQSD") respectively;
 - b. the Wildlife and Natural Environment Act (Northern Ireland) 2011 ("the WNEA 2011");
and
 - c. the Conservation (Natural Habitats and Species) Regulations (Northern Ireland) 1995 ("the Habs Regs").

B1: The Water Environment Legislation

10. Reg 3(1) of the WFD Regs provides that DAERA "must exercise [its] relevant functions in a manner which secures compliance with the requirements of [the Water Framework Directive and the Environmental Quality Standards Directive...". The relevant functions include granting a consent under Art 7A of the Water Order. Given what is said above, I do not think this

provision is exhaustive of the ambit of the Art 7A discretion and the assumption to the contrary appears to be where the erroneous approach to date (which I address below) has arisen from.

11. Reg 3(2) of the WFD Regs provides that DAERA must “determine an authorisation so as, in particular, (a) to prevent deterioration of surface water status of a body of water; and (b) otherwise to support the achievement of the environmental objectives set for a body of water under regs 12 and 13.
12. As to (a), the leading case is *Bund v. Germany* C-461/13 in which it was held that an authorisation must be refused (subject to any derogation) where it may cause a deterioration in the status of a waterbody or where it jeopardises the attainment of good surface water status. There is a deterioration in surface water status as soon as³ the status of at least one of the quality elements fails by one class even if that fall does not result in a fall in classification of the surface water as a whole.
13. As to (b), reg 12(1) of the WFD Regs requires DAERA to prepare proposals for the environmental objectives for each river basin district in accordance with reg 13 and a programme of measures to be applied in order to achieve those objectives under reg 20. The environmental objectives for the OKR and ORR are to achieve “good status”. The draft programme of measures under reg 20 is set out in the 3rd Cycle RBMP for the North West, Neagh Bann and North Easter River Basin Districts and includes (p119): (1) in respect of reducing nutrient pollution from sewage and industry to review consenting decision making processes and to review discharge consents; and (2) to carry out further research and improve the knowledge base to protect and improve fish populations and habitats. I do not think this document (in draft) takes the analysis below any further and so I do not address the reg 12/13 issue further.
14. Under reg 13(6) of the WFD Regs, for SACs, the reg 12 objective “is to achieve compliance with any standards and objectives required by [the Habs Regs] in accordance with which the individual [SAC] is protected”. Whilst not very clearly worded this provides a link between Water Environment Legislation and the Habs Regs.
15. Reg 3 of the EQS Regs require the setting of environmental standards and biological boundary values for each river or part thereof according to its assigned type in accordance with Part 2 and Part 3 of Schedule 1. Certain requirements are fixed by reg 4 in respect of priority substances so far as potentially relevant here cadmium, lead, mercury and nickel.

B2: WNEA 2011

16. Under s.1(1) of the WNEA 2011, it is the duty of every public body, in exercising any functions, to further the conservation of biodiversity so far as is consistent with the proper exercise of those functions. Conserving biodiversity includes restoring populations (s.1(3)). S.3 requires DAERA to publish a list of species of flora and fauna which are judged to be of principal importance for the purpose of conserving biodiversity.

³ Although this does not cover merely temporary impacts – see *R(Misbourne) v EA* [2021] EWHC 3094 (*Admin*)-refusal of permission for JR.

17. The biodiversity strategy (both existing and proposed) identifies freshwater pearl mussels ("FWPM") and salmon as priority species for s.3 purposes.
18. In setting discharge limits, this duty is engaged. This duty is not constrained by the more general water quality duties under the Water Environment Legislation referred to above.

B3: The Habs Regs

19. As is well known, a competent authority may not authorise a plan or project which may have likely significant effects on a special area of conservation ("SAC") unless it has carried out an appropriate assessment ("AA") and ascertained that it will not, in combination with other plans or projects have an adverse effect on the integrity of the SAC.
20. Case law is clear that integrity is to be judged by reference to the published conservation objectives ("COs") objectively interpreted.

Relevant Species

21. There are a range of protected habitats and species in the area particularly FWPM⁶ and Atlantic Salmon in the SAC and a further protected species – Brown Trout - in the PB; and various statutory obligations in relation to water quality designed in part to protect particular species. I focus on those three species because if the discharges are acceptable in respect of those species they will also be for all other protected species and habitats.

The Freshwater Pearl Mussel

22. For reasons expanded upon below, I focus in this Advice on the FWPM. It is the most heavily protected species here and is the core basis of the SAC designation. If the DGL proposals are acceptable in respect of FWPM it appears likely that they will be acceptable in respect of other species. The FWPM are, however, dependent on successful salmonid populations and there is thus a read across both to salmon and, to a lesser extent, brown trout.
23. British Standard EN16859:2017 ("the BS") implements the EU Guidance on monitoring FWPM and their environment. It contains a useful summary of FWPM and their environmental needs. FWPM have a complicated life history. At larval stage, it is dependent on a salmonid host – with the larvae encysting in the gills and growing there over the autumn and winter before dropping off in the spring. Initially they remain buried in the riverbed substrate for several years where they interact with the interstitial water. The early life stages are "more demanding of a high-quality environment than adult mussels emphasising the importance of defining and maintaining appropriate ecological conditions for the young stages". FWPM may live for a very long time.
24. The protection of FWPM and their environment is the subject of extensive and evolving guidance. The BS notes that high water quality is "vitally important" in maintaining FWPM populations. A decline in water quality is often responsible for loss of FWPM recruitment and ultimately the extinction of populations (para 5.1). Their ecological requirements include fish hosts, water quality, water flow and habitat structure. As to water quality, the key issues are

⁶ Ireland's only globally endangered species- it has a complex life cycle – combined with its long lifespan it is especially vulnerable to changes in its habitat and water environment.

phosphorous, nitrates, ammonia, biological oxygen demand ("BOD"), total suspended solids ("TSS") and metal contaminants.

25. Annex C to the BS lists the various contaminants and the academic studies relevant to each ("the FWPM Science Base").

The Current Condition of the Water Environment and SAC

Favourable Condition?

26. The JNCC Common Standards Monitoring Guidance ("CSM") is widely regarded as the core resource for the attributes relevant to assessing favourable condition. I note it is used in England (amongst other purposes) to set conservation objectives for SACs. It is a key resource and, for FWPM, is heavily based on the FWPM Science Base.
27. The CSM for Freshwater Fauna (updated in 2015) provides guidance on the identification of attributes, targets and methods of assessment for FWPM and Salmon (para 1) setting out the mandatory and discretionary attributes which should be assessed for each species (para 4). "A combination of direct (population) and indirect (habitat) attributes have been selected for each species to enable a sound assessment of condition to be made" based on current knowledge. The key components include population dynamics. Para 6 notes that the guidance "recognises that the long term sustainability of freshwater population depends on a range of biological, physical and chemical attributes. The habitat attributes are critical in providing the necessary supporting conditions for the species."
28. The FWPM favourable condition table sets out population, water quality and other attributes. Most are mandatory meaning that they must be met if the species is to be in FC at the site.
29. The population attributes cover spatial extent, density, age structure and the proportion of dead FWPMs – monitoring those attributes indicates how the population is doing and are thus the fundamental starting point. For obvious reasons, the age structure is important – given the high vulnerability of young to poor water conditions, if the water quality is poor the population will have difficulty sustaining itself.
30. The water quality attributes set out the essential features to allow the population to thrive and draw on the CSM for Rivers. Organic pollution, reactive phosphorous, acidification and other nutrients are identified as being particularly important. "These targets are intended to support a healthy, naturally functioning river ecosystem which protects the whole biological community and individual species to a degree characteristic of the river. All chemical targets ...are applicable" but "depending on the circumstance, UKTAG standards for HES under the WFD may be applicable." The relevant habitat targets from CSM for rivers (not covered by the next paragraph) are ammonia at 0.25mg/l and acidification¹⁰.

¹⁰ The standards used are based on the Moorkens research into FWPM in Ireland and is the most up to date research

31. In addition to habitat-based targets some “more stringent targets” are given for FWPM including phosphorous¹¹, nitrate¹² and BOD¹³. These are not ranges but levels not to be exceeded.
32. Targets for the salmonid juvenile hosts are also set.
33. As to salmon, the river water quality targets are as above except that nutrients are replaced with “other pollutants” which includes metals. In any decision DAERA will have to consider whether the proposed discharges comply with those requirements in respect of relevant metals¹⁴.
34. No “more stringent targets” are set. As a result, it is appropriate to focus on FWPM (whilst not ignoring the link between their success and salmon success).
35. The three rivers designated for FWPM were all in Unfavourable Condition (“UFC”)/Declining in 2007. By 2011 the population of FWPM had stabilised and grown slightly. Water quality and other factors resulted in UFC/No change. Nitrates mean level was 0.22 (a strong fail); and the BOD mean of 1.61mg/l was a fail. Suspended solids were generally less than 10mg/l but with some notable exceedances (pass). The population density was a fail, the number of live individuals had increased slightly (pass) but the age structure failed on both counts.
36. The scores for the proposed ORR area of special scientific interest (“the ASSI”) were similar.
37. The exercise was largely repeated in 2017. The FWPM assessment for the OKR SAC remained as UFC – No Change¹⁵. All the FWPM population remained “imperilled”. Water quality improvements were required on all FWPM rivers to address on going chemical water quality issues.
38. It, thus, appears that the population generally and the age structure in particular are of concern and that to improve the position the essential first step is improvement in water quality.
39. From the above it is clear that the CSM addresses the fundamental issue as to what is required for success of the FWPM and to ensure FC for it. That material is, to my mind, necessarily material when considering the conditions to be imposed on a discharge consent which may impact the success of FWPM:
 - a. under the general discretion in art 7A (see para 5-7 above);
 - b. because of the obligation under s.1(1) of WNEA 2011 in respect of FWPM and salmon; and
 - c. potentially under the Habs Regs.

¹¹ If already less than 5 ug/L, the target should be 5ug/l. If river exceeds that, the more stringent of high status values for SRP under the WFD or the SRP target for CSM river habitat

¹² Annual mean of less than 0.125mg/L

¹³ Mean less than 1mg/l

¹⁴ I do not address them further because they do not appear central to the fairly high level analysis in this Advice.

¹⁵ The two other SACs deteriorated further.

WFD Status

40. The Water Framework Directive status does not tell us about the adequacy of the environment for FWPM. However, both rivers are in good ecological status (“GES”) for WFD purposes but poor chemical status. Based on DGL modelling which has not yet been interrogated by DAERA, both would remain in GES with the discharges as proposed by DGL. There would not be any deterioration in chemical status. I return to the position under the WFD Regs for “parts of a stream” separately below.

The Modelling Impacts of DGL’s Proposed Discharge Conditions

OKR

41. DGL has proposed discharge conditions the effect of which has been modelled:
- a. the CSM guideline for BOD is less than 1mg/l for FWPM. Successful FWPM populations consistently have BOD levels of less than 1mg/l and levels above 1.4 mg/l have been associated with poor juvenile survival – as we have seen above the crucial stage for population success and the stage at which FWPM are most vulnerable to inadequate water quality. The current modelled level upstream of the CB is 2mg/l and DGL modelling shows the discharges will increase the concentrations (estimated at 2.3mg/l) making the existing position worse¹⁶;
 - b. the CSM guideline for nitrates for FWPM is an annual mean of less than 0.125mg/l. The current *measured* position is around 0.26mg/l. The DGL modelling shows a deterioration from the current *modelled*¹⁷ position (0.12mg/l) just meeting the guidelines to a modelled position with the discharges of 0.19mg/l - a significant exceedance of the 0.125mg/l.
42. The short and to my mind fundamental point is this. The OKR is already in UFC for FWPM and the population dynamics show an issue with juvenile population which is most vulnerable to water quality. Water quality already does not meet the guidance judged by JNCC to be necessary for FWPM to sustain themselves on a long-term basis and discharge consents with the conditions proposed by DGL *on its own modelling* will make the situation significantly worse in respect of some key parameters.
43. DGL has not addressed that short and central point in its multiple submissions.
44. Where the FWPM population is “imperilled”, it seems to me that, putting it at its lowest and assuming paragraphs 5 – 6 above are correct, DAERA would be entitled to impose conditions which were set at a level which secured no deterioration in water quality in the OKR (in particular in respect of BOD and nitrates).
45. The BOD in the OKR also exceeds that appropriate for salmon (1.5mg/l) already and the discharges will make the position worse. This provides a potential route to harm to the FWPM if the BOD levels impacts the success of their hosts.

¹⁶ There is an unexplained disconnect between the actual measured data and the modelled data for BOD but that does not affect the overall picture. There will clearly be a further deterioration of water quality in the OKR with BOD levels well above the guidance levels.

¹⁷ See above footnote which applies here too.

The ORR

46. The modelled position in the ORR shows the water quality is significantly worse in respect of BOD and nitrates below the confluence with PB with the proposed discharges:
- a. Nitrates increase from 0.24 mg/l upstream to 0.53 mg/l below PB and 0.47mg/l at the ORR when it reaches the OKR. The concentration will be much higher than in the OKR at that point and so the PB discharges will worsen water quality in the FWPM habitat downstream of the OKR confluence; and
 - b. BOD will also increase with the PB discharges although there is no data for the BOD content at the confluence with the OKR (to see the impact of the PB discharge on the OKR downstream of the OKR/ORR confluence).
47. The same overall point therefore applies as for OKR. There will be a deterioration of water quality essential to the recovery of the population dynamics of the FWPM below the confluence of the OKR with the ORR by reason of the PB discharges based upon DGL's modelling.

CB

48. As to the CB, the FWPM requirements are not directly relevant because there is no FWPM population here. Further, whilst the first 40 metres of CB are accessible to salmon and brown trout there is no nursery habitat and "sub-optimal" spawning habitat and I therefore do not consider this aspect further.

PB

49. It seems that PB will not meet GES under the WFD with the discharges. I consider the relevance of this below.

The overall result

50. The existing condition of the OKR and ORR are summarised above. They are not in a state conducive to the success of the FWPM population. That short fact is necessarily material to the exercise of the Art 7A discretion for the reasons set out above.
51. The discharges as modelled by DGL will make matters worse in respect of some of the key water quality parameters which in turn are key to the success of FWPM especially in their early life stages. That is a necessarily central consideration in the determination of the applications.
52. Given the breadth of the Art 7A discretion, the duties on the DAERA and the fundamental core factual matrix set out above, it seems to me clear that DAERA can justify imposing conditions which are designed to ensure that discharges do not result in deterioration of water quality in the OKR or ORR.
53. Those headline conclusions apply whether or not the Habs Regs or Water Environment Legislation dictate such an outcome.
54. I note that the key issues appear to be nitrates from the explosives and BOD from the sewerage. I am not clear why these issues cannot be resolved by use of other methods for

mining other than nitrate based explosives and/or why the sewerage cannot be removed by tanker to a suitable discharge location.

The Habs Regs and the impacts on the SAC

Relevance of WFD Good Status

55. Case law shows that the conservation objectives (“COs”) are fundamental to considering the Integrity Test: *R (RSPB) v. SEFRA [2015] EWCA Civ 227 @ [7]*. I do not understand why the shadow Habitats Regulation Assessment (“the sHRA”) refers in detail to assessments which are not tied to the COs but instead to requirement of, for example, the Water Environment Legislation. The fact that requirements under other statutory schemes may be met does not tell one how the proposals impact the integrity in the light of the COs. The approach of DGL of applying generic standards derived for other purposes and not focussed on the needs of the SAC features is misplaced in principle.
56. For an SAC in unfavourable condition (“UFC”) there is no scope consistent with the COs to permit a worsening of water quality in respect of those parameters which contribute to the UFC. If the existing poor situation would be made worse by reference to some key parameters that would not be lawful under the Habs Regs.

Approach to Interpreting COs

57. The COs are required to be and are here set out in the 2017 document. However, I am told that the water quality section has not been expressly updated “in recent times” to reflect changes in legislation and/or changes in relevant guidance and in particular the relevant CSM.
58. The COs mean what they say and not what they might be amended to say or what DGL or DAERA may wish they had said – see *RSPB @ [21]*:

“[COs] are not enactments and should not be construed as such. However, it was common ground that they mean what they say and do not mean what the Secretary of State, or for that matter, Natural England or the RSPB, might wish they had said”.

The SAC and its Conservation Objectives

59. The SAC comprises a 43km long stretch of the OKR and the first 60m of the CB upstream from its confluence with OKR. The SAC continues past the confluence of the OKR with the ORR such that all discharges from the Mine will ultimately pass through the SAC and potentially impact its water quality.
60. The Habs Regs are therefore engaged. Regulation 43 gives effect to article 6(3) of the Habitats Directive and requires an appropriate assessment of the implications of the proposals for the the SAC in view of its conservation objectives (“COs”). Conditions on a discharge consent must ensure that the proposals will not adversely affect the integrity of the SAC (“the Integrity Test”).
61. As explained in the CO Document the SAC boundary was set by reference to grade A and B features here including the FWPM.

62. The SAC site selection features include an excellent (10,000) population of the rare FWPM graded B and an Atlantic Salmon population of at least national interest graded C.
63. The COs are, so far as relevant, to “maintain or restore” the FWPM and the Atlantic Salmon to FC defined as the target condition in terms of abundance, distribution and/or quality of that feature within the site (see article 1(e) and 1(i) of the Habitats Directive for fuller definition).
64. The FC assessments using CSM (see above) show that the FWPM and its habitat does not currently meet that fundamental headline CO. The water quality, which we know is key to FWPM success will deteriorate with the discharge limits proposed and thus go against restoring the integrity of the SAC.
65. For the COs, a number of component objectives are then set out. For FWPM these include to maintain or increase the population through natural recruitment, to improve water quality and to ensure that the fish population is adequate for recruitment. For Salmon they include to maintain or increase the population, and maintain or enhance the extent and quality of suitable habitat for them in particular the chemical and biological quality of the water.
66. Water quality is described as “probably the most important single factor for the SAC”. The required action is to “reduce enrichment of the water column by minimising point source pollution”.
67. The key attributes for each of the relevant SAC features set out in annex 1 are to be monitored to assess favourable condition (“FC”) as required by the CO. Water Quality is a “primary attribute” with the result that one failure among primary attributes¹⁸ results in unfavourable condition (“UFC”). The water quality primary attributes include biological, ecosystem and suspended solids. The target for the latter is an annual mean of less than 10mg/l. The “Biological Class” and “Ecosystem Class” attributes refer across to Environment Protection’s General Quality Assessment scheme (the EPGQAS). The relevant parameters under that guidance do not equate to those in the CSM. There are not equivalent EPGQAS requirements for BOD and nitrates as in the CSM and the COs have not “caught up” with the CSM guidance. As far as I can tell there are no breaches of the EPGQAS requirements as a result of the proposed discharges and thus no breach of the component objectives used to assess FC. Given that the component objectives are the means to assess FC and given that the CO is FC, I think it follows that there is no breach of the COs at a granular level (notwithstanding the headline point at para 64 above). That arises though only because the COs are out of date. That creates a problem. It is now known from the FC Assessments and from the FWPM Science Base that the FWPM required standards are higher and more wide-ranging than was previously thought and as embodied in the component COs.
68. If one focusses on the fundamental headline CO, whilst unfavourable condition does not normally equate directly to unfavourable conservation status here the CO is favourable condition and that is defined. It is evident that the SAC is not in favourable condition in respect of the FWPM population under the headline CO. The CO which is the articulation of what the integrity of the site means is not currently met.

¹⁸ I understand that for these purposes that each row of annex 1 is a separate “primary attribute”

69. The development will make this situation worse and therefore counts against achieving FC. It is moving in the wrong direction. I note in particular that the development results in a fail for nitrates when avoiding enrichment from point sources is one of the key objectives.
70. However, if one focusses on the component COs, the position is that they are met.
71. I regard the disconnect between the fundamental headline CO and the component objectives as unsatisfactory and the component COs should catch up with current science and the FWPM Science Base as soon as possible. However, adopting a purposive approach, the question is whether given the above facts the decision maker can be satisfied to the requisite high standard that there will not be an adverse effect on the integrity of the SAC. The answer appears to be no because the fundamental headline CO is not met and the proposed discharges would make the existing situation worse. Just looking at the SAC itself, the proposals *with DGL's proposed discharge limits* will result in a deterioration in the water quality in some key respects and contrary to a key part of the CO and will therefore, applying normal principles, result in an adverse effect on the integrity.
72. It is necessary to ensure that the discharge limits do not result in a deterioration of the relevant criteria. It is obviously essential to compare like with like¹⁹(means should not be compared with peaks for example) but it appears that DGL's own modelling of its proposed discharges demonstrate the opposite of that contended for. The fact of this deterioration in condition is masked by the fact that the discharges will not impact the status of the waterbody for WFD/EQS purposes. That is a wrong comparator and is not directly relevant. The EQS/WFD requirements are generic and attach to waterbodies whether or not they are SACs and irrespective of the higher standards required for the SAC features.
73. I accept, of course, that the position is less clear cut here than under the general discretion as to conditions on the discharge consent but I cannot see how the FWPM Science Base is to be ignored in applying the integrity test against the fundamental headline CO.

The WFD - GES

74. In respect of the WFD, the Northern Ireland regulations on their face require the EQS standards to be applied to each part of the surface water including a "part of a stream" and therefore direct attention to the water quality at the discharge points and in CB and PB. This is in contrast to the approach required under the Water Framework Directive which focusses attention on the wider waterbodies. Neither PB nor CB will be in GES with the discharges at the levels proposed and therefore on a black letter reading of the Northern Ireland Regulations the proposed level of discharges will infringe the WFD Regs.
75. I do not know what the reason was for the WFD Regs going further than the Water Framework Directive requirements in this regard.

Overall Conclusion

76. The central question here is what conditions should appropriately be imposed under art 7A. I have concluded above that the current state of the water quality and the FWPM Evidence

¹⁹ I am satisfied that this has been done here for detailed technical reasons that I need not go into and which are in any event for the experts and not the lawyers to be satisfied on.

demonstrate that tolerating a further deterioration in the key components of water quality relevant to FWPM would be contrary to the statutory scheme. The DGL modelling shows that its proposed discharges would have that effect. I therefore conclude that DAERA would be justified in imposing stricter conditions to require no deterioration in the key water quality attributes.

77. That is so despite there being no impact on the WFD status of either water body.
78. As to the Habs Regs, the fundamental CO will be further infringed by the proposed level of discharges and an adverse effect on integrity would necessarily follow. However, the position is less clear cut than that because of the component COs which have not kept up with the FWPM Science Base. I think it is well arguable that the fundamental headline CO prevails over the lower level component COs for the reasons given above. If one knows as against the up to date evidence base that the proposals will adversely impact the FWPM which is already under significant pressure and not in FC then it is difficult to see how that cannot, on a purposive approach be of central importance in the HRA. I do not think the WFD classification is relevant to the Habs Regs issue for the short reason that they are addressing different issues and have different statutory purposes.
79. Under the WFD Regs, as one is required to consider PB/CB in their own right and not only as part of the wider water body, the proposed discharges will result in a breach of those requirements.
80. The precise extent of the breaches is a matter for the experts to consider in the light of the legal framework set out in this Advice.
81. I consider that the material to date has not addressed the correct legal questions. I suggest this Opinion is provided to DGL to ensure that they have an opportunity to: (1) demonstrate why, if so be it, the above analysis is wrong; and/or (2) address the questions which seems to arise on a correct understanding of the statutory scheme.

κ KC

Landmark Chambers

31st July 2023

Annex C



Northern Ireland Environment Agency
Gníomhaireacht Comhshaoil Thuaisceart Éireann
Northern Ireland Environment Agency

Your Reference: 2021/WHR01, 2021/WHR02,
2024/WHR01, 2024/WHR02

Our reference: TC 080/20_1, TC 081/20_1,
AIL 2024/0008, 2024/WHR02

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22 August 2025

Dear Chief Commissioner,

NIEA update: Dalradian Gold Ltd (Curraghinalt Project)

NIEA wish to update the Chief Commissioner on three matters relating to the Water Discharge Consent and Abstraction Applications (the water applications). Those are:

- (1) The outcome of consultation with the Nature Conservation Body for Ireland, the National Parks & Wildlife Services (NPWS).
- (2) Additional information and analysis that has been prepared in relation to the water applications.
- (3) NIEA's proposals in respect of further information and analysis, which will be provided to the Commission in due course.

This letter and the additional information referred to below, which is not under EIA, is available on the [DAERA website Dalradian Page](#) and can be found via the [document index](#).



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(1) Consultation

NIEA provided draft Tests of Likely Significance (TOLs), to the Commission, for each of the applications under consideration. The drafts indicate that likely significant effects on the site selection features of the Owenkillow River SAC and the River Foyle and Tributaries SAC cannot be ruled out.

Given the transboundary nature of the River Foyle catchment, and in an effort to assist the Commission, NIEA wrote to NPWS on 21st February 2025 in order to seek its views on any risk to selection features of SACs in Ireland ([Document H.11](#)). NPWS responded on 29th May 2025 and confirmed that they do not intend to make any comment at this stage ([Document H.12](#)).

NIEA will reconsult NPWS following the outcome of the PLI, in order to inform its preparation of the Appropriate Assessment.

(2) Additional information and analysis

Buried archaeology

Annex 4 of the NIEA Rebuttal Evidence for the Water Abstraction Applications PAC Ref 2024/WHR01 and 2024/WHR02, provided comments from the Historic Environment Division, Department for Communities on the Applicant's Statement of Case. Paragraph 3.3 of those comments confirmed that the Historic Environment Division intended to obtain a specialist assessment to address the potential impacts that the dewatering of bedrock may pose to any buried archaeological structures in the activity zones. That assessment has now been undertaken. Having regard to that assessment, the Historic Environment Division has updated its position on the water applications ([Document H.13](#)).

Updated Assessment of Flow

The NIEA Statement of Case in respect of the Water Abstraction Applications PAC Ref 2024/WHR01 and 2024/WHR02 (NIEA Abstraction SoC) outlined in Section 4 the appropriate standards to be applied when assessing the potential impact of the proposals on in-river flows. At paragraph 7.34, NIEA stated that the Applicant predicted that the proposed mine water



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Equality Impact Assessment

Respondents to the advertisement of applications had queried whether NIEA should have completed an Equality Impact Assessment for the applications for discharge consent and for abstraction. NIEA have undertaken a screening exercise and found that no equality impact assessment is required for these applications at this time. The details of this screening exercise can be found on our website at <https://www.daera-ni.gov.uk/publications/equality-screening-2025>. NIEA will revisit the screening exercise following the outcome of the inquiry.

(3) Further information and analysis to be provided in the future

Condition Assessments of Freshwater Pearl Mussels

NIEA are required to carry out condition assessments of protected site interest features and of European-level priority species. As part of cyclical condition monitoring of Northern Ireland FWPM populations, assessment of the FWPM present in the Owenkillew River and Owenreagh River has been scheduled for 2024/25, subject to suitable low river flows. This work is carried out under contract and NIEA will publish the survey data once received and the following condition assessment report when available. Raw data is currently anticipated to be available in early autumn 2025.

Third party assessment of consent standards calculations

NIEA had commissioned a water quality modelling expert to provide an assessment of the approach and calculations in determining the proposed standards for the discharge consent to provide independent consideration of the NIEA assessment to date, given the applicant appears to wish to challenge key aspects of this, as detailed in their rebuttal evidence. This expert is in the process of drafting a written report. Once completed, we intend to share this report with the Commission and the parties, in an effort to assist the Commission in considering the evidence presented.



Review of Methods for determining consent applications

NIEA is currently undertaking a review of the methods used to assess discharge proposals and the calculation of appropriate consent standards. The review is to ensure that the consenting methods applied are sufficiently robust to meet the statutory requirements and provided appropriate levels of environmental protection.

Whilst the review has not yet completed, once it is, NIEA intends to apply the revised consenting methods to the proposals under consideration. The changes in the consenting methods may result in a change in the standards previously reported in the NIEA Statement of Case section 9: Draft Discharge Consent Standards. These were offered as part of draft conditions, on a without prejudice basis. It was highlighted that they could be subject to change. Any changes in methods or draft consent standards are unlikely to impact on NIEA's current provisional position, i.e. NIEA is unable to rule out a likely significant effect on the features of the designated site arising from the proposed discharge.

Once NIEA have completed the review of methods for determining consents it will publish these on the DAERA website and will also advise the Commission of their release. If the draft conditions change as a result of the review of methods, NIEA will share these with the Commission also, as soon as possible.

Appropriate Assessments

NIEA are currently working on Appropriate Assessments for each application. As previously advised to the Commission, these will not be completed until NIEA has considered the Commission's report on the water applications, and its assessment of the evidence and the representations made by the public and others. In order to assist the Commission in this particular case, and without prejudice to NIEA's approach to other applications, NIEA intend to publish draft Appropriate Assessments shortly and will provide a copy to the Commission once they have been completed.



Next steps

My expectation is that the Applicant and other parties to the inquiry will seek the opportunity to comment on the further material as part of arrangements to be agreed at the mid-inquiry meeting. It is for this reason that the further material is provided now. Once the other material identified above is available, NIEA will also provide that to the Commission and publish it on NIEA's website.

I trust the Commission finds this update helpful.

Yours faithfully,



Chief Executive

NORTHERN IRELAND ENVIRONMENT AGENCY



Northern Ireland Environment Agency
Gníomhaireacht Comhshaoil Thuaisceart Éireann
Northern Ireland Environment Agency

Your Reference: **2021/WHR01, 2021/WHR02,
2024/WHR01, 2024/WHR02**

Our reference: **TC 080/20_1, TC 081/20_1,
AIL 2024/0008, 2024/WHR02**

**The Chief Commissioner
Planning Appeals Commission
4th Floor
92 Ann Street, Belfast
BT1 3HH**

By email to: Dalradian.cpi@pacni.gov.uk

The Northern Ireland Environment
Agency (NIEA)
Chief Executive's Office
17 Antrim Road
Tonagh, Lisburn, BT28 3AL
Telephone: [REDACTED]
Email: [REDACTED]@daera-ni.gov.uk

23 September 2025

Dear Chief Commissioner,

NIEA UPDATE: DALRADIAN GOLD LTD (CURRAGHINALT PROJECT)

Thank you for your letter dated 27 August 2025. We also note your return of our correspondence dated 22 August 2025.

In my letter of 22 August 2025, I outlined the rationale for providing the further information. This was principally due to NIEA being required to consider the most current and relevant information when making determinations of applications for consent to discharge and abstraction. NIEA would be obliged, in this matter, to consider the implications of when underlying data has moved on (or will move on, for example in respect of condition assessments of freshwater pearl mussels). Other information is also now otherwise available, which NIEA considers should be considered as part of its determination.

NIEA consider that it will be fairer to other parties if the information that NIEA would be obliged to consider is also considered as part of the Public Local Inquiry (PLI) process. In this regard, and as our letter also explained under "Next steps", our expectation is that other parties will positively wish to seek the opportunity to comment on this further material, and that arrangements to enable this to take place can be agreed (or directed) at the mid-inquiry meeting.

I acknowledge the Planning Appeals Commission's (PAC) point that the deadline for the submission of evidence was 25 November 2024, and that the PAC is unable to accept late evidence outwith the inquiry processes. Accordingly, we will raise the need for the provision of further information, and the opportunity for other parties to consider and respond to this further information, at the mid-inquiry meeting.

Having regard to the PAC assessment that the release of the updated information in the public domain could be perceived as prejudicial to some individuals and potentially the PLI, the DAERA webpage and the document index has been reviewed to remove the updated information.



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However, I am making you aware that following the publication of your letter on the PAC website, NIEA has received Environmental Information Regulations requests in respect of our letter, and the information referred to in it. NIEA will determine these requests in line with the relevant regulations. If it is not possible to determine that the test has been met for a relevant exception to apply, we will be obliged to release the information.

Yours faithfully,



NIEA Chief Executive



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[REDACTED]
NIEA Chief Executive

[issued via email to [REDACTED]@daera-ni.gov.uk]

Date: 25th November 2025

Dear [REDACTED]

Re: Dalradian Gold Ltd (Curraghinalt Project)

Thank you for your correspondence dated 23rd September 2025.

The Commission notes your reference in this letter to a mid-inquiry meeting. As stated in our letter of 27th August 2025, and for the avoidance of doubt, the mid-inquiry meeting which was to take place to discuss the transboundary consultation had to be cancelled.

The Commission has now put in place arrangements for the re-opening of the inquiries and wishes to avoid any further undue delays.

With that in mind, the Commission notes that your letter refers to some information and analysis being necessary for NIEA to consider the applications for consent to discharge and abstraction. However, the issues requiring further information and analysis raised within your letter dated 22nd August 2025 includes the topics of buried archaeology, updated baseline flow data, and condition assessments of Freshwater Pearl Mussels. These issues are all directly linked to the evidence presented within the Environmental Statement on the main Mine application submitted to DFI Planning to which NIEA is also a statutory consultee.

In this respect, the Commission requests that you raise the need for this information and analysis with DfI directly as they informed the Commission on 1st September 2025 that no further environmental information (FEI) was required. If it is determined that FEI is now required in this regard, then the referring authorities should notify the Commission as soon as possible as this could have implications on the inquiry timetabling, whilst NIEA and DfI Planning undertake their statutory duties.

This letter along with a copy of your correspondence will be uploaded to our website and cc'd to DfI.

Yours faithfully,

A solid black rectangular box used to redact the signature of the Planning Appeals Commission representative.

On behalf of the Planning Appeals Commission