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

Third Party Objectors

Date 04/12/25

Executive Summary & Relief Sought

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

This Statement of Case is submitted on behalf of transboundary objectors in the Republic of Ireland and elsewhere in order to challenge the lawfulness of the ongoing Conjoined Public Local Inquiry ("CPLI") into Dalradian Gold Ltd's planning applications for the proposed Curraghinalt mine and associated infrastructure in County Tyrone. It is respectfully submitted that the CPLI cannot lawfully continue and that the underlying planning applications must be refused. Both the inquiry and the decision-making process stand in breach of:

- the **Planning Act (Northern Ireland) 2011**;
- the **Planning (Environmental Impact Assessment) Regulations (NI) 2017** ("EIA Regulations");
- the **Conservation (Natural Habitats, etc.) Regulations (NI) 1995**;
- **Directive 2011/92/EU** (as amended), **Directive 92/43/EEC**, and related EU environmental law; and
- binding obligations under the **Espoo Convention**, the **Aarhus Convention**, the **Water Framework Directive**, and associated international norms.

The core factual position is stark. Eight years after the original application was 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, through Environmental Information Regulations (EIR) correspondence and subsequent letters to the Planning Appeals Commission ("PAC"), that they **do not hold and have never assessed** essential environmental information on the project's key risk pathways. This includes, but is not limited to:

- Types, quantities and chemistry of explosives (ANFO/emulsion) and associated nitrate / ammonium pollution;
- Nitrogen mass-balance (nitrate, nitrite, ammonium, ammonia) in groundwater and surface waters throughout the Owenkillew–Finn–Foyle system;
- Diesel and generator emissions (NO_x, SO_2, $PM_{2.5}$) from a 24/7 underground mining operation and heavy plant;
- Tailings storage facility (TSF) geochemistry, acid rock drainage potential, dust dispersion and transboundary fallout;
- A complete flotation reagent inventory and ecotoxicological fate, including for tellurium-bearing concentrates;
- Data on tellurium and other critical minerals (grade, tonnage, radioactivity, processing route, export hazards);
- Full life-cycle and **Scope 3 greenhouse-gas emissions**, including shipping 65 tonnes/day of concentrate ~2,600+ nautical miles to Halifax and on to final refining;

- A robust assessment of the **12 MW electrical baseload** sought via a 37.9 km 33 kV powerline traversing the Sperrins AONB, and its implications for the **Climate Change Act (NI) 2022** and energy security.

Under Regulations 2 and 5(2) of the EIA Regulations, this material is **core Environmental Statement content**, not optional FEI. Without it, there is no lawful Environmental Statement at all on the very matters that determine whether the project can proceed. The House of Lords and Court of Appeal have been clear that such defects are fatal:

- **Berkeley v Secretary of State for the Environment** [2001] UKHL 23 – a planning permission founded on an incomplete or defective ES cannot stand;
- **R (Blewett) v Derbyshire CC** [2004] Env LR 29 – an ES must contain sufficient information for an "intelligent reader" to understand the significant effects;
- **R (Squire) v Shropshire CC** [2019] EWCA Civ 888 – missing or unassessed pathways and cumulative effects render the assessment unlawful;
- **R (Finch) v Surrey CC** [2023] EWCA Civ 187 – reasonably foreseeable downstream emissions and processing impacts must be assessed; failure to do so is an EIA error.

The unlawfulness is compounded by two further factors.

(1) DfI's Own Counsel and NIEA's Later Admissions Confirm the Application Cannot Meet Environmental Requirements

In July 2023, DfI's own external counsel, **Landmark Chambers**, advised that **nitrate pollution from explosives and BOD from wastewater were "key issues"** and queried why alternatives to nitrate-based explosives had not been assessed. In particular, paragraph 54 of the Landmark Opinion identifies nitrates from explosives as the decisive pathway and concludes, in substance, that the existing Environmental Statement is incapable of supporting lawful consent without Further Environmental Information (FEI) and consideration of alternatives.

Rather than acting on this advice, DfI suppressed it, uploaded and then removed it from the planning portal, and in March 2024 told PAC that **"no FEI is required"** and that the environmental information met "minimum standards". This is impossible to reconcile with the legal duties in Regulations 21–23 of the EIA Regulations and with the common-law **Tameside duty of inquiry**.

The matter is taken further by **NIEA's letter to PAC of 22 August 2025**, in which the Agency finally acknowledges that new information on water quality and nitrogen loading means that the receiving waterbodies cannot meet their conservation objectives under the Habitats and Water Framework Directives on the basis of the current proposal. In other words, the statutory nature conservation body has now placed on record that, on the present information, the project fails the legal tests for Habitats Regulation Assessment and good ecological status.

Yet PAC refused to admit this material as FEI on the basis that it post-dated a November 2024 "cut-off", instructed NIEA to withdraw it, and has continued to press ahead with CPLI programming. PAC has thus:

- proceeded in the full knowledge that NIEA considers the current proposal unlawful in Habitats/WFD terms;
- actively contributed to the withholding of material environmental information from the public and from Irish authorities; and
- exposed the CPLI to a clear **Berkeley / Blewett** challenge, aggravated by international Espoo and Aarhus non-compliance.

These events confirm what objectors have argued from the outset: the Curraghinalt application never contained the information needed to lawfully demonstrate no adverse effect on site integrity or to support a valid EIA. Both Landmark Chambers and NIEA now, in effect, agree.

(2) Fundamental Transboundary and Procedural Failings

The proposal has obvious cross-border implications: explosives-derived nitrates and acid rock drainage flow from Curraghinalt into the **Owenkillew**, on to the **Camowen–Strule–Finn–Foyle system**, and into **Lough Foyle**, a disputed but shared waterbody whose seabed is still held by the **Crown Estate** whilst fisheries and foreshore are the subject of long-running jurisdictional tensions between the UK and Ireland. Downwind airborne pollutants (NO_x, $PM_{2.5}$, metal-laden dust) similarly cross the land border into Donegal.

Despite this, **Ireland was only notified between November 2024 and January 2025**, seven years after the original mine application (2017), after the main phases of the original inquiry cycle, and on the basis of an **out-of-date and incomplete environmental record**. Key consents with the most direct hydrological implications – **abstraction, impoundment, discharge** – were not meaningfully included in the early transboundary engagement. Objections from NIEA to the abstraction and impoundment applications were only published in September 2025, **after** the close of the Irish consultation and after the CPLI had already begun.

In **Derry City & Strabane DC v Department for the Economy** [2024] NIQB, the High Court held that failure to provide draft licences and habitats screening information rendered mineral prospecting licences unlawful. The same pattern is present here: there has been **no complete Habitats Regulations Assessment**, no transboundary Appropriate Assessment, and no provision of core explosive/nitrate data to Donegal County Council or the Irish State.

The transboundary process therefore breaches:

- **Article 7 of the EIA Directive** and **Regulations 29–33** of the EIA Regulations – notification must be "as early as possible and no later than when informing [the] own public", and consultation must occur on the basis of *complete* environmental information;
- **Articles 2 and 3 of the Espoo Convention** – early notification, full documentation, and genuine opportunity to participate;
- **Articles 4, 6 and 9 of the Aarhus Convention** – access to environmental information, early and effective public participation "when all options are open", and access to justice.

These legal defects are aggravated by the way the CPLI itself has been conducted. The PAC has refused live-streaming, recordings or transcripts, and insists that those in Donegal and elsewhere in the Republic of Ireland attend up to **22 days** of hearings in Omagh at their own expense, despite care duties, health issues and work commitments. Freedom of Information responses indicate that, in the absence of an official recording, **DfI considers there to be no "official record" of what was said during the January 2025 hearings**. It is therefore impossible for Irish objectors to know precisely what evidence or concessions have been made. This is a textbook breach of **Aarhus Articles 6 and 9**, common-law procedural fairness, and **Article 6 ECHR** standards of openness and equality of arms.

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(3) Material Changes, Powerline Over-capacity and Downstream Export of Harm

Since 2017 the project has **materially changed**:

- Cyanide processing and on-site smelting, originally central to the scheme, were withdrawn;
- The end product changed from a small number of gold/silver doré bars to around **65 tonnes/day of bulk concentrate**, to be trucked to Belfast and shipped transatlantic for further processing;
- In late 2024 Dalradian and Turley for the first time disclosed tellurium extraction (~35 tonnes) and asserted that the mine would produce "any mineral the customer wants", converting this from a gold-silver project into an open-ended polymetallic venture;
- A 33 kV **powerline of 37.9 km** was proposed across the Sperrins AONB, with an electrical connection of **12 MW baseload** – enough to power roughly 30,000–35,000 homes, far in excess of Omagh's ~8,000 households, and inconsistent with the reduced energy needs following the withdrawal of cyanide and smelting.

These changes create new and intensified environmental effects – on climate, energy security, critical-mineral processing, transboundary shipping, and landscape impact – yet **no revised Environmental Statement has**

ever been submitted, no fresh screening or scoping has been carried out, and no new public or transboundary consultation has been undertaken in line with **R (Kides) v South Cambridgeshire DC** [2002] EWCA Civ 1370 and **R (Catt) v Brighton & Hove CC** [2013] EWCA Civ 1605. Under those authorities, a planning permission cannot authorise a materially different project from that assessed in the EIA; to do so is unlawful.

Nor has there been any proper consideration of alternatives to the 33 kV route across the AONB, such as upgrading the nearer **Omagh substation**, contrary to the Habitats Directive, SEA/EIA principles and case law such as **Wealden DC v SSCLG** [2017] EWHC 351 (Admin) and **Holohan** (C-461/17) on in-combination, alternative and cumulative effects.

In truth, the environmental and carbon burdens of this project are being **exported downstream** – both geographically (to Donegal, Lough Foyle and overseas refining states) and institutionally (by avoiding PPC controls and outsourcing critical-mineral processing to undefined third countries). This is contrary to the **Climate Change Act (NI) 2022**, the **Industrial Emissions / PPC regime**, and the "do no significant harm" principle embedded in modern environmental law.

Relief Sought

In light of the foregoing, the objectors respectfully submit that the CPLI and the current planning process are **not legally curable**. The only lawful course is:

1. **Immediate suspension and permanent termination of the CPLI** in its current form;
2. **Refusal of all extant planning applications** under Article 33 of the Planning Act (NI) 2011, on the basis that:
    - the Environmental Statement is fundamentally incomplete and non-compliant with the EIA Regulations;
    - no lawful Habitats Regulations Assessment (including transboundary AA) exists;
    - the project has materially changed since 2017 without any revised EIA or consultation; and
    - transboundary and Aarhus obligations have been systematically breached;
3. A finding that the **transboundary consultation conducted to date is invalid**, and that any future proposal must be accompanied by:
    - a **new, comprehensive ES** addressing explosives, nitrates, diesel, acid rock drainage, critical minerals, downstream processing and climate;
    - a **complete Appropriate Assessment** (including in-combination / cumulative and cross-border effects) consulted upon with the Irish State and public;
    - a **fresh transboundary EIA procedure** initiated at the formative stage, with full disclosure of Landmark Chambers' advice, NIEA's FEI letters, and all previously withheld data; and
    - a re-designed public inquiry process that provides live streaming, recordings, transcripts and genuine equality of arms for cross-border participants.

Failing such steps, the objectors reserve the right to pursue **judicial review** against DfI and/or PAC, and to lodge formal complaints with the **Espoo Implementation Committee**, the **Aarhus Compliance Committee**, and the **European Commission (DG Environment)**.

On any proper reading of domestic, EU and international law, the present process and the Curraghinalt application are **unlawful and irredeemable**. The CPLI must be abandoned and the applications refused.

Background: The Curraghinalt Project, the CPLI, and the Regulatory Failures to Date

The Curraghinalt project, as originally presented to the public, appeared to be a relatively contained underground gold-mining proposal. In reality, it has evolved into one of the most environmentally complex, high-risk, and procedurally irregular planning applications ever brought before the Northern Ireland system. The operation intends to blast and extract between 1,200 and 1,500 tonnes of rock per day, every day, for the life of the mine, using approximately £5 million worth of explosives annually, supported by millions of litres of diesel, chemical flotation systems, and a large dry-stack tailings dump in an Area of Outstanding Natural Beauty. The mining, blasting, processing, and waste-management activities are hydrologically connected to designated habitats and surface waters flowing into the Republic of Ireland.

Despite this scale and risk, the regulators—DfI, DAERA, NIEA and associated agencies—now openly admit, through multiple EIR responses, that they do not hold environmental information on explosives, nitrates, blasting parameters, nitrogen mass-balance, diesel/MCP emissions, Specified Generator pollutants, flotation reagents, tailings-failure scenarios, radon or radiological pathways, arsenic mobilisation, transboundary risk pathways, or—remarkably—tellurium and other critical minerals. These gaps are not minor omissions. They go to the core of the environmental assessment, Appropriate Assessment, and public-participation regimes under the Planning Act 2011, EIA Regulations 2017, Habitats Regulations, Aarhus Convention, and Espoo Convention.

The timeline of regulatory behaviour reveals a deeper systemic failure. At the March 2024 Pre-Inquiry Hearing, DfI advised the PAC that "no Further Environmental Information is required" and that the environmental information "meets the minimum standards". The PAC relied upon this in deciding to proceed. Yet shortly thereafter, the 2024–2025 transboundary consultation—triggered by PAC's own concerns—revealed that DfI did not supply Ireland with the missing FEI, rendering the consultation almost meaningless. Objectors repeatedly notified PAC of this, in writing, but the Commission proceeded regardless. It was only through post-consultation EIR requests that the truth emerged: regulators held none of the environmental information required to assess explosives, nitrates, diesel, reagents, tellurium, emergency preparedness, tailings risk, or cross-border hydrological impacts.

This pattern extended to other regulatory failures. The Department of Health was never meaningfully consulted, despite the mine's location in a region with high radon levels, historic radioactive fallout, arsenic-rich geology, and a dry-stack tailings facility capable of catastrophic failure. No emergency-preparedness assessment was produced, even though tailings failures are internationally recognised as inevitable in long-term mining operations. No radiological or toxicological assessments were prepared when cyanide was removed from the proposal eighteen months after validation—a material change requiring FEI—and no public-health analysis was carried out when explosives, diesel and tellurium emerged as central operational hazards.

Perhaps most concerning of all is the evolving behaviour of DAERA/NIEA. In late 2024, NIEA recommended that the CPLI proceed one week after the close of the abstraction/impoundment consultation—an impossible timeframe to scrutinise hundreds of complex submissions. In early 2025, NIEA acknowledged in its Statement of Case that Dalradian's application could not meet environmental protection objectives "based on the current information". That admission is, legally, an admission that FEI is required. Yet when NIEA sought to place new FEI into the record in September 2025, the PAC refused to accept it and instructed NIEA to "discuss with DfI". The CPLI was allowed to continue despite the regulators themselves accepting the unlawfulness of the underlying environmental base. No suspension occurred. No reconsultation occurred. No opportunity was given for third-party objectors—either domestic or transboundary—to review the new information or amend their cases.

The introduction of *tellurium*, the withholding of *Landmark Chambers' advice*, the refusal to release *Dalradian's response*, and the admissions by all regulators that they do not hold key environmental information are not isolated errors. They form a coherent pattern: a planning authority and a regulatory system proceeding as though a lawful EIA exists, while internally acknowledging that the foundational information for such an assessment simply does not exist. The PAC has repeatedly been placed on notice of these gaps. The decision to proceed with the CPLI in these circumstances transfers responsibility squarely to the Commission to restore legality by requiring FEI and suspending the inquiry.

Against this background, Section 3 will explain the missing environmental information in detail, beginning with explosives and nitrate pollution—the single most determinative environmental issue in the Landmark

Chambers advice—and proceeding through diesel emissions, flotation chemicals, tellurium, tailings risk, and downstream transboundary impacts

Section 1 Transboundary Environmental Implications

1.1 Failure to assess and regulate the chemical impacts of the expanded mineral

The failure to assess and regulate the chemical impacts of the expanded mineral scope has direct and serious transboundary consequences, including:

- Airborne emissions (PM2.5, heavy metals, radon, arsenic) with known cross border dispersion patterns across the Sperrins;
- Contaminated discharge and abstraction impacting the shared River Finn and River Foyle catchments;
- Failure to notify or consult Irish authorities under Espoo Convention Article 3 and EIA Directive Article 7(4), despite newly introduced pollutants and process risks;
- No meaningful assessment of cumulative impacts on Natura 2000 and Ramsar designated wetlands downstream.

By refusing to apply PPC controls or reassess the project under the correct EIA framework, DfI has undermined environmental safeguards across the island of Ireland and exposed shared ecosystems to unknown levels of unregulated chemical pollution.

This breach of duty renders the entire CPLI process vulnerable to judicial review, Espoo non-compliance proceedings, and potential infringement action by the European Commission.

1.2 Pathways for Transboundary Escalation and Enforcement

Given the scale and severity of the procedural, environmental, and transboundary failings outlined in this report, it is no longer sufficient to address these matters solely within the Northern Ireland planning system. The failures in environmental governance—particularly the late and ineffective transboundary consultation—require escalation to international and supranational oversight bodies with legal competence to intervene.

Espoo Convention Implementation Committee

The Espoo Convention (1991), ratified by both the United Kingdom and Ireland, requires states to notify and consult one another at the earliest possible stage where a proposed project is likely to cause significant adverse transboundary environmental impact.

The Curraghinalt project:

- Was not notified to Ireland until seven years after submission;
- Involves airborne and waterborne pollutants that directly affect the River Finn and River Foyle SACs;
- Has excluded Ireland from all early-stage public participation and regulatory oversight.

This violates Articles 2, 3, and 4 of the Espoo Convention. Precedent from the Committee confirms that post hoc consultation cannot cure early failures to notify or share environmental documentation.

Recommended action:

Ireland should file a formal submission to the Espoo Convention Implementation Committee, asserting that the UK (via DfI) has breached its obligations. Civil society actors may also trigger the Committee’s early warning mechanism.

Aarhus Convention Compliance Committee

The Aarhus Convention guarantees the rights of the public to:

- Access environmental information (Article 4);
- Participate in environmental decision-making (Article 6);
- Access justice in environmental matters (Article 9).

These rights have been systematically denied throughout the Dalradian process, including:

- Withholding of critical documents (Landmark opinion, Emerman assessments);
- No opportunity for the public in Ireland to contribute to key planning stages;
- Inquiry scheduling that rendered participation impossible for cross-border stakeholders.

Recommended action:

A formal communication to the Aarhus Convention Compliance Committee should be submitted detailing these breaches. Precedents exist where failure to provide timely access to draft HRAs or to ensure effective participation has triggered non-compliance findings.

Complaint to the European Commission (DG Environment)

While the UK has exited the EU, Northern Ireland remains subject to retained EU environmental law under the NI Protocol and the Windsor Framework. The EIA Directive (2014/52/EU), Habitats Directive (92/43/EEC), and Water Framework Directive (2000/60/EC) all apply.

The failures to:

- Complete a lawful HRA;
- Conduct a cumulative EIA;
- Include transboundary SACs in screening and consultation;

...represent breaches of EU law with direct implications for EU protected habitats and waters.

Recommended action:

A complaint should be submitted to the European Commission's Directorate-General for Environment, requesting investigation and potential infringement proceedings. Ireland may also initiate this via intergovernmental escalation.

Political and Diplomatic Notification under Good Friday Agreement

Under the 1998 Good Friday Agreement, the Irish and UK Governments are bound to cooperate on matters with cross-border and environmental significance. The repeated exclusion of Irish public authorities from the planning and licensing of this project may be interpreted as a breach of the Agreement's environmental and equality safeguards.

Recommended action:

The Irish Government should initiate a formal notification to the British-Irish

Intergovernmental Conference (BIIGC), asserting breach of environmental cooperation

obligations and the need for urgent intergovernmental dialogue.

SECTION 2 – Missing Core Environmental Information: Explosives, Nitrates, Diesel, Reagents and Tellurium, and Why FEI Is Mandatory Before Any CPLI

Section 3 sets out the most important fact in this entire process: the regulators themselves admit that they do not hold the core environmental information required for a lawful Environmental Impact Assessment, Habitats assessment, or transboundary evaluation**.**
This is not a matter of expert disagreement. It is a matter of documentary confirmation under the Environmental Information Regulations (EIR).

The Environmental Statement (ES) was submitted in 2019. Since then, the project has expanded into a vastly more environmentally complex operation, involving:

- continuous blasting with nitrate-based explosives, morning and night, 365 days per year;
- multi-million-litre diesel combustion, generating regulated pollutants (NOx, SO_2, particulates);
- chemical flotation for ore processing;
- dry-stack tailings deposition over decades;
- the emergence of new minerals (e.g. tellurium) and new processing pathways;
- the expansion of underground workings;
- a hydrological catchment flowing directly into the Republic of Ireland;
- proximity to SAC, ASSI and RAMSAR designations;
- radon, arsenic and radioactive mineralisation characteristic of the region.

Against that background, it is astonishing—and legally determinative—that every regulator now concedes they do not hold the environmental information required to assess these impacts. By the regulators' own admissions, the ES is incomplete as a matter of law and FEI is unavoidable.

2.1 Explosives: The Central Operational Activity and the Largest Missing Information Block

Explosives are the operational heart of the mine. Dalradian intends to blast sufficient rock to extract 1,200–1,500 tonnes per day, using £5 million of explosives annually. The chosen explosives—ANFO, emulsions, ammonium nitrate-based charges—are known to generate:

- nitrate leachate to groundwater and surface waters,
- ammonium and ammonia,
- nitrite,
- nitrogen oxides (NO, NO_2, NOx),
- explosive residues in tailings and waste rock,
- acid-generating interactions in sulphidic rock.

Yet, EIR responses from DfI, NIEA and DAERA confirm that they hold:

- no information whatsoever on the explosives inventory;
- no blast design parameters;
- no mass-balance modelling of nitrogen products;
- no groundwater migration modelling;
- no surface-water loading assessment;
- no mechanism for capture, neutralisation or treatment;
- no assessment of "wet-hole" blasting, which massively increases nitrate leaching;
- no alternatives assessment (despite Landmark Chambers raising this explicitly).

This is not a technical gap—it is a structural void. In an underground mine in an SAC catchment, blasting residues are one of the most legally significant sources of environmental impact. They are also the single pollutant pathway identified by Landmark Chambers as determinative (para 54).

An Environmental Statement that contains no explosives FEI cannot be relied upon.
A CPLI built on that ES cannot proceed.
PAC is on notice of this defect.

2.2 Nitrate Pollution: A Known, Unassessed, Transboundary Pathway

As Landmark Chambers confirmed—and as hydrological evidence reinforces—nitrates from explosives will enter:

- Owenkillew
- Camowen
- Strule
- Finn (crosses the NI–RoI border)
- River Foyle
- Lough Foyle (shared jurisdiction)

The receiving waters include:

- protected FWPM habitat,
- multiple SAC/ASSI features,
- transboundary water bodies.

Despite this:

- no nitrate modelling exists;
- no deposition modelling exists;
- no mass-balance exists;
- no cumulative modelling exists (Holohan requirement);
- no HRA screening or AA exists for nitrates;
- no transboundary modelling was ever provided to Ireland.

Both DfI and DAERA/NIEA confirm they hold no such information.

Under the EIA Regulations, this alone makes FEI mandatory.
Under Article 6(3) of the Habitats Directive, an AA is impossible without complete, precise, and definitive scientific findings.
Under Espoo, a transboundary consultation without nitrate FEI is meaningless.

PAC cannot lawfully proceed without this information.

2.3 Diesel, Generators and Air Quality: Another Complete Absence of FEI

The mine will consume up to **3.5 million litres of diesel per year**. This produces:

- NOx
- PM2.5 and PM10
- sulphur compounds
- CO_2 and greenhouse gases
- diesel odour and vapour
- ventilation requirements
- emergency emission spikes

Under UK law, diesel generators fall under:

- Medium Combustion Plant (MCP) Regulations
- Specified Generator (SG) Regulations
- industrial emissions regulatory regimes

Yet DfI and NIEA confirm they have:

- no diesel volume inventory;
- no emissions modelling;
- no MCP/SG compliance modelling;
- no air-quality assessment for blasting / vehicles / generators;
- no climate-change assessment under the Climate Change Act (NI) 2022;
- no transboundary air-quality modelling.

This again renders the ES incomplete and FEI mandatory.

2.4 Chemical Reagents and Flotation Processes: No Inventory, No Modelling, No FEI

The flotation plant will use a suite of chemical reagents that influence:

- water toxicity,
- tailings composition,
- acid-generation,
- sludge behaviour,
- metal mobilisation,
- potential radiological interactions (co-occurrence with critical minerals).

Yet DfI acknowledges, under EIR:

- it holds no flotation reagent list;
- no environmental modelling;
- no PPC assessment;
- no alternatives assessment;
- no transboundary consideration.

Geological Survey NI warned DfI that the flotation process required clarity.
DfI chose not to obtain it.

Without this FEI, the ES is legally non-compliant.

2.5 Dry-Stack Tailings: No Failure Modelling, No Emergency Plan, No Downstream Assessment

This mine proposes one of the largest dry-stack tailings systems ever placed in an AONB.

International mining regulators consider tailings-failure “inevitable” in long-term operations; the question is not *if* but *when*.
Failure modelling is thus fundamental.

Yet DfI, NIEA and DAERA admit they hold:

- no tailings stability assessment;
- no risk-of-failure modelling;
- no emergency-preparedness plan;
- no downstream flood sediment modelling;
- no assessment of transboundary catastrophic impact;
- no HRA assessment of tailings pollutants.

This alone is catastrophic for the legality of the ES.

A transboundary consultation without a tailings-failure scenario is invalid under Espoo.

PAC cannot proceed without this FEI.

2.6 Radon, Radioactivity, Arsenic, and Public Health: No Engagement With Department of Health

Curraghinalt lies in a region:

- designated high-radon,
- with arsenic-rich bedrock,
- with historic radiological deposition (post-Chernobyl),
- capable of generating radioactive dust, gas and slurry.

The mine design includes:

- extensive blasting,
- underground workings,
- diesel fume concentrations,
- unassessed radioactive pathways,
- tailings likely to concentrate heavy metals.

Yet DfI did not consult the Department of Health at validation or at any meaningful stage.
No radiological modelling exists.
No arsenic mobilisation modelling exists.
No public-health FEI exists.

PAC cannot proceed with such omissions.

2.7 Tellurium (Concise Outline as Requested)

Tellurium—a critical mineral with possible radiological co-occurrence—is absent from the ES.
Dalradian only disclosed it in late 2024.
DfI confirms it holds:

- no tellurium environmental assessment;
- no modelling;
- no HRA consideration;
- no transboundary consideration.

This constitutes a material change requiring FEI and reconsultation.

2.8 NIEA's Own Admissions Confirm the ES Is Unlawful

In its 2025 Statement of Case, NIEA conceded that the application cannot lawfully meet environmental protection objectives "based on the current information".

Legally, this is an admission that **FEI is required**.

Yet:

- PAC did not suspend the CPLI;
- DfI did not issue a Regulation 21 request;
- the missing FEI was never provided to Ireland;
- third parties were denied the ability to update Statements of Case.

PAC is now on direct notice of this.

2.9 Why These Omissions Make FEI Mandatory and Halt the CPLI

Under:

- EIA Regulations 2017 (NI)
- Habitats Regulations
- Aarhus Convention
- Espoo Convention
- Berkeley, Squire, Blewett, Waddenzee, Holohan
- Tameside (irrationality / duty to inquire) the law is unequivocal:

A planning authority and a tribunal **cannot** proceed if:

- the environmental information is incomplete;
- key impacts have never been assessed;
- transboundary effects are unassessed;
- Habitats assessment is impossible;
- material evidence is withheld or missing.

This describes the Curraghinalt record exactly.

Therefore **PAC must suspend the CPLI until FEI is obtained and consulted upon**.
Any attempt to proceed would be unlawful

3.0 The FEI Gaps Were Only Revealed Through EIR — Including *After* Transboundary Consultation

It has only been through Environmental Information Regulations ("EIR") disclosures—many obtained *after* the closure of the 2024–2025 transboundary consultation—that it has become clear that DfI, DAERA and NIEA did not possess the information required to conduct a lawful EIA, HRA or transboundary process. At the time the transboundary consultation was launched, the regulators held no:

- explosives inventories,
- nitrogen or ammonium mass-balance analysis,
- blasting parameters or wet-hole misfire data,
- diesel/Specified Generator emissions modelling,
- flotation reagent inventories or fate/transport modelling,
- tellurium mass-balance or toxicology pathways,
- groundwater/surface-water migration modelling,
- cumulative-effects data needed for SAC/HRA,
- alternatives assessments (including non-nitrate explosives),
- emergency-preparedness or tailings-failure modelling.

None of this was provided to Ireland. As a result, the statutory transboundary consultation was conducted in the absence of the very FEI required to identify, quantify or even discuss the project's significant cross-border effects.

These omissions are compounded by further FEI gaps of direct relevance to public safety and cross-border risk. There is no emergency-preparedness or dry-stack tailings failure model, despite industry norms recognising that even dry-stack facilities can fail and that such failures are often catastrophic. There has been no engagement with the Department of Health, despite clear public-health pathways associated with radon, arsenic, radioactive mineralisation, 3.5 million litres of annual diesel combustion, and an annual explosives budget of approximately $5 million. The planning record shows that DoH was never engaged even when Dalradian originally proposed to use 2.1 tonnes of cyanide per day—later withdrawn after 18 months—showing that the regulatory system never fully understood the public-health implications of any iteration of this proposal.

These are not peripheral gaps; they go to the core of statutory compliance. They show that the CPLI was allowed to proceed on a foundation that was incomplete both domestically and internationally, and that the PAC has been asked—improperly—to preside over an inquiry fundamentally incapable of meeting EIA, Habitats, Aarhus and Espoo requirements.

4 **Transboundary Law: WFD, Habitats, Espoo and Aarhus**

4.1 Because ARD/AMD is transported via shared rivers into the Republic of Ireland, the failure to characterise and assess this risk engages multiple legal regimes:

(a) Water Framework Directive (WFD 2000/60/EC)
The Owenkillew, Finn and Foyle form part of an international river basin district. The WFD imposes:
- a duty of no deterioration in status for surface and groundwater bodies; and
- an obligation to achieve (or maintain) at least "good" ecological and chemical status.

Acidic, metal-rich drainage from PAF waste rock and tailings is a classic driver of long-term deterioration. Authorising a project that could generate such drainage, without even modelling its magnitude, persistence or downstream effects, is incompatible with WFD duties and the cross-border river basin management approach underpinning that Directive.

(b) Habitats Directive and Natura 2000 Sites
The hydrological pathway from Curraghinalt passes through or influences downstream SACs, including the Owenkillew, the River Finn SAC, and associated designated sites. Freshwater pearl mussel, salmonids and other qualifying interests are highly sensitive to acidic conditions, elevated metals and fine metal-laden sediments.
Under Article 6(3) of the Habitats Directive, and the ECJ jurisprudence in *Waddenzee* (C-127/02), *People Over Wind* (C-323/17) and *Holohan* (C-461/17):

- Appropriate Assessment must be based on "complete, precise and definitive" findings.
- All indirect, upstream, downstream and in-combination effects must be assessed.
- The competent authority may only authorise the project where no reasonable scientific doubt remains as to the absence of adverse effects on site integrity.

In the absence of any serious ARD/AMD analysis, there is necessarily substantial scientific doubt as to long-term impacts on downstream SACs, particularly in the Republic of Ireland. A lawful Appropriate Assessment is therefore impossible on the present record.

(c) Espoo Convention and EIA Directive Article 7
Acid mine drainage is, by its nature, a transboundary pollution mechanism where shared catchments exist. Under:
- Article 7 of Directive 2011/92/EU; and
- Articles 2 and 3 of the Espoo Convention,the United Kingdom was obliged to:
- identify the likelihood of significant adverse transboundary effects;
- notify the Republic of Ireland "as early as possible and no later than when informing its own public"; and
- provide the full relevant environmental documentation, including ARD/AMD analysis and forecasting, to the Irish authorities and public.

DfI did not do so. Ireland and Donegal County Council were never provided with any credible ARD/AMD assessment because none exists. The transboundary consultation has therefore been conducted on an environmentally hollow basis, in breach of both the Directive and Espoo.

(d) Aarhus Convention – Access to Information and Participation
Because ARD/AMD risk is technically complex and long-term, meaningful public participation depends on full disclosure of:
- geochemical test results;
- ARD generation models;
- proposed long-term treatment and monitoring; and

- downstream impact modelling, including across the border.

The admitted absence of this material from DfI and NIEA's files, and from the documentation shared with Irish stakeholders, constitutes a violation of:

- Article 4 (access to environmental information); and
- Article 6 (public participation "at an early stage, when all options are open").

Transboundary objectors – including communities, NGOs and regulators in the Republic of Ireland – have been denied the ability to understand, scrutinise or challenge this core risk.

4.2 **Consequences: ES Defective, Transboundary Consultation Invalid, CPLI Cannot Lawfully Proceed**

The legal consequences of these omissions are straightforward:

1. The Environmental Statement is defective.
   On ARD/AMD and acid-generating rock, the ES fails to meet the minimum requirements of the EIA Regulations and the EIA Directive. Under *Berkeley* and *Blewett*, such a deficit cannot be patched by later assurances or generic statements.
2. The Habitats process is paralysed.
   Without robust ARD/AMD analysis, no competent authority can lawfully conclude, under Article 6(3), that downstream SACs and associated transboundary sites will not suffer adverse effects on their integrity.
3. The transboundary consultation is legally meaningless.
   Ireland has been consulted without the information necessary to understand long-term acid drainage impacts on shared rivers and Lough Foyle. This contravenes Espoo, Article 7 EIA Directive, and Aarhus.
4. The CPLI lacks a lawful evidential basis.
   The Planning Appeals Commission is being asked to examine a project whose principal chronic water-pollution pathway (acid-generating rock → ARD → metals to SACs & Irish waters) has not been characterised or assessed, and where DfI and NIEA admit they do not hold such information. Proceeding in those circumstances breaches the duty of inquiry (*Tameside*), the requirements of EIA and Habitats law, and basic standards of procedural fairness.

For these reasons, acid-generating rock and ARD/AMD are not a marginal technical detail but a central transboundary deficiency. Until a full geochemical characterisation, ARD/AMD modelling, downstream impact assessment and long-term management plan are produced, published and consulted upon (including with the Republic of Ireland), the project cannot lawfully be determined, and the CPLI must be abandoned rather than continued on a knowingly incomplete and unlawful record

5.0 Legal and Trade Context of Dalradian's Concentrate Shipments

Dalradian's plan to export processed gold–silver–copper concentrate from Northern Ireland to Canada engages multiple legal regimes. Under trade law, Canada's tariff schedule places precious-metal ores/concentrates in a duty-free category, and the EU–Canada CETA (provisionally in force since 2017) eliminates duties on 99% of tariff lines. Thus, both under WTO/CETA rules and Canada's Customs Tariff, gold/silver concentrate imports are essentially duty-free. Furthermore, Canadian GST/HST law explicitly exempts "concentrates of silver, gold or platinum… where imported for the purpose of being refined into precious metals". In sum, normal trade duties would not apply to Dalradian's concentrate imports.

However, trade privileges carry regulatory strings. If the concentrate were exported for processing and then returned, Canada's tariff policy would normally deny duty relief (only permitting relief under the Canadian Goods Abroad Program, not simple return). But here Dalradian sells the concentrate in Canada (with no planned return), so it is treated as a straightforward export/import. Importantly, Northern Ireland still aligns with some EU trade rules under the Northern Ireland Protocol, so EU–Canada obligations (like CETA) and standards may apply to NI-origin goods. Britain is negotiating its own UK–Canada FTA, but until ratified, Dalradian's exports use prevailing rules (which favour tariff-free trade for its product).

5.1 Transboundary Movement Regulations

Beyond tariffs, environmental and safety laws govern cross-border shipments of hazardous or radioactive materials. Both Canada and the UK are parties to the Basel Convention on hazardous waste. Under Canada's *Export and Import of Hazardous Waste and Hazardous Recyclable Materials Regulations* (CEPA) and the U.K.'s Basel-implementing rules, any transboundary movement of hazardous or radioactive waste requires prior notification and consent. If Dalradian's concentrate or any by-product were classified as "waste" containing hazardous substances (e.g. heavy metals, NORM), Dalradian would be required to file notices and obtain approval from Canadian authorities before shipping. As it stands, the concentrate is a marketable commodity (not waste), so Basel PIC may not formally apply. But the spirit of these laws underscores that any potential environmental hazard across borders demands government-to-government consultation.

Canada specifically controls "other environmentally significant substances" via CEPA and the *Export and Import Permits Act*. The Canadian Nuclear Safety and Control Act (NSCA) and Nuclear Non-Proliferation Import and Export Control Regulations (NNIECR) regulate radioactive materials. Under NNIECR, ANY import or export of "naturally occurring radioactive material" (NORM) requires CNSC licensing. Notably, Health Canada/CNSC guidelines state that *"transport, import and export of NORM must follow CNSC regulations"*. Thus, even if the ore concentrate is only mildly radioactive, Dalradian's shipments may fall under nuclear/regulatory oversight. For example, Canada lists radium-226 above 370 MBq as a *controlled nuclear substance*. If Dalradian's concentrate (in large bulk) exceeds regulatory thresholds, a CNSC permit and pre-notification would be required. Similarly, any uranium content (even trace) is tightly controlled. In practice, if a shipment contains significant NORM, Dalradian should have applied for Canadian import authorization via CNSC and/or Natural Resources Canada under the NNIECR.

If NORM and heavy metals exceed safe levels, CEPA's Basel rules could classify the shipment as hazardous waste or recyclable material, again triggering Canada's Prior Informed Consent. Dalradian's records would then need to state clearly the contents and radioactivity; failure to do so could lead to seizure. Even absent strict legal compulsion, best-practice under Espoo/EIA-like principles suggests that Dalradian should have alerted Canadian environmental authorities about any unusual hazards before export. The debate hinges on whether the concentrate legally "required" notice or whether notice was a prudent courtesy given its composition and destination. The transboundary nature (Britain→Canada) is undisputed, but legally Dalradian likely treated it as a standard export sale. Critics argue that given the possible radioactive or toxic elements, Dalradian "should have informed" the Canadian government in advance to ensure all regulatory boxes were checked. Proponents counter that in normal trade, exporters rely on routine customs/import processes rather than separate diplomatic notification.

5.2 Hazard and Radioactivity of the Concentrate

On the substance itself, the gold-copper concentrate contains more than precious metals – by geological necessity it includes sulphides and trace uranium/radium. Dalradian's own literature acknowledges radon (a decay product of radium) is "pay[ed] careful attention" because it *"occurs naturally in the area"*. Independent reviews note the region's *Dalradian* metasedimentary rocks have relatively high natural radioactivity. Indeed, local submissions for the planning process warn the area has *"some of the highest levels of radon in [the] UK"*. In those accounts, radon and other radionuclides were detected in groundwater, so extracting or dewatering could concentrate radon gas and *"exacerbate[] radon release"*. Such claims cite studies linking elevated radon exposure to lung cancer risk and emphasize the need for thorough radioactivity surveys.

By contrast, Dalradian's own environmental reports assert that any radon/NORM increase will be negligible. Their technical consultants state that even if mining enhances radon levels, the *"risk to members of the public from radon is negligible"* and *"NORM does not present a risk"*. In other words, Dalradian's position is that the concentrate – and its handling/shipping – stays well below any harmful threshold. They rely on modeling that shows radon levels "well below legal limits" during operations.

Canada's benchmarks help frame this debate. Health Canada's radon guideline is 200 Bq/m^3 in homes, but crucially **mining and NORM industries are exempt** from that indoor-air standard. This means any workplace exposures are regulated under occupational or nuclear rules rather than the residential guideline. If Dalradian's concentrate were shipped without controls, any radon emanated en route (e.g. in sealed containers) would still be inert by the time it reached port. But if the concentrate were repackaged or processed, concentrated radon could vent.

No matter what testing has been done, the possibility of radium and radon must be considered. Since radon is odorless, containers and transport would need monitoring. The debate remains open: environmental groups insist that prior consent and detailed radon surveys were necessary; Dalradian maintains that standard mining mitigation (ventilation, dry stacking) and regulatory compliance suffice. Both sides agree on one thing: *'tenorm'* (technologically enhanced NORM) can be dangerous if ignored, so it should not be dismissed.

5.3 Biosecurity and Other Considerations

Even though metal concentrate is inorganic, "biosecurity" issues can arise from its transport. The Canadian Food Inspection Agency (CFIA) strictly regulates any organic or pest risk material. In practice, the biggest risk is wood packaging. CFIA directives warn that *"many exotic plant pests have been intercepted on wood… pallets, crates, or other wood packaging material in North America"*inspection.canada.ca. Invasives like Asian longhorned beetle have entered via shipping crates. Therefore, all wood dunnage (pallets, crates, skids) must meet the international ISPM-15 standard (heat-treated and stamped)inspection.canada.ca. If Dalradian packed its concentrate in wooden boxes or pallets, they must be properly certified. Otherwise, Canada will refuse or fumigate the cargo under the Plant Protection Act.

Apart from pests, any organic residue (e.g. dirt, seed, water) clinging to equipment could trigger inspection. While concentrate itself won't carry plant pathogens, carriers must still present Phytosanitary Certificates if soil is involved. In sum, Canadian border agencies (CBSA and CFIA) will screen the shipment for any invasive species risks, so Dalradian must follow these biosecurity protocols even if they were not previously mentioned in public debate.

5.4 Summary

In summary, Dalradian's export of gold/silver concentrate to Canada is legally permissible under current trade deals and tariffs, but it sits at the intersection of complex regulations. Key issues include:

- **Customs and Trade:** Concentrate imports are tariff-free under Canada's schedule and covered by CETA's duty-elimination for EU goods. They are exempt from GST if sent for refining. However, any return or processing arrangements would require careful handling under Canadian temporary import rules.
- **Hazardous Waste (Basel) & NORM:** If the concentrate or its residues were deemed "hazardous waste" (e.g. due to heavy metals), then Basel/CEPA rules would have required Dalradian to notify Canada and obtain consent. Likewise, any significant naturally radioactive content triggers CNSC/NNIECR controls. Practically, Dalradian appears to have exported under standard customs declarations without special prior notification. Observers argue that by oversight or design Dalradian did not inform Canadian authorities of any unusual transboundary hazard, contrary to the precautionary implications of international agreements.
- **Radioactivity and Radon:** The concentrate likely contains NORM. Residents emphasize this region's radon danger and call for full surveys. Dalradian downplays the risk. Canadian standards (200 Bq indoors) do not automatically apply, but if any export container exceeds safe radon or radioactivity levels, the CNSC expects it to be licensed.
- **Biosecurity:** Shipments must use ISPM-15–compliant wood packaginginspection.canada.ca, though this has not been publicly discussed.

These considerations "open the debate" on whether Dalradian should have proactively consulted Canada's government. Legally, unless the concentrate crosses a regulated threshold, Canada would only find out via routine customs/import procedures. Yet given the dual concerns of radioactivity and potential toxicity, many argue that Dalradian ought to have engaged Canadian environmental regulators in advance (for example under CEPA or nuclear import rules) as a precaution. The company maintains compliance with all applicable Northern Ireland and UK standards, but the transboundary nature of shipping hazardous materials suggests extra care was warranted.

Sources: International trade and environmental laws (CETA, Canadian Customs Tariff)policy.trade.ec.europa.eucbsa-asfc.gc.ca; Canada's hazardous waste and nuclear import regulationscnsc-ccsn.gc.cacnsc-ccsn.gc.ca; Dalradian's filings and community submissions on

radon/NORMconsult.donegal.iedaera-ni.gov.uk; Canadian CFIA biosecurity rulesinspection.canada.ca and radon guidelinescanada.cacanada.ca.

6.0 The 33 kV Powerline – Transboundary Misrepresentation, Segmentation and Defective Assessment

The Powerline as an Integral Part of a Single Cross-Border Project

The 33 kV overhead powerline is not a free-standing scheme. It is an essential enabling component of the Curraghinalt mining project: without it, the mine cannot operate at the proposed scale, and the overall pattern of environmental effects would fundamentally change. The powerline, mine, water abstraction/impoundment and discharge consents form, in law and in fact, a **single project** for EIA purposes.

Under the EIA Directive (2011/92/EU, as amended) Article 3, the competent authority must identify, describe and assess "the direct and indirect effects of a project" on the environment. The Court of Justice has repeatedly held that authorities may not split or artificially segment a single scheme into multiple parts in order to downplay its impacts or avoid a comprehensive assessment (e.g. *C-392/96 Commission v Ireland* (Derrybrien), *C-72/95 Kraaijeveld*). The same principle is recognised in UK law: an authority must consider the **whole project**, not a sanitised slice of it.

In this case:

- The powerline runs some 37–38 km across the Sperrins AONB, connecting the mine to the grid.
- It lies entirely within the Foyle river catchment, draining into the cross-border River Finn SAC and Lough Foyle.
- Its construction involves extensive groundworks, peat and soil disturbance, access tracks, and watercourse crossings that interact with the same hydrological network as the mine and associated water permits.

Treating the powerline as a secondary or "lesser" scheme – or as a mere adjunct not requiring full transboundary scrutiny – is therefore inconsistent with both the factual reality of the project and the legal requirement for an integrated EIA.

6.1 Late and Misframed Transboundary Treatment of the Powerline

The chronology demonstrates that the powerline was **systematically downplayed** in terms of its cross-border significance:

- For several years after submission, DfI maintained that the 33 kV line had **no transboundary implications**, despite its location in the cross-border Foyle catchment and its identified hydrological link to the River Finn SAC in Donegal.
- A dedicated "Transboundary Considerations" report (Technical Report 15, TR15) was eventually produced by the applicant's consultants, but this occurred only after years of pressure from objectors and without any early, Party-to-Party engagement with the Irish State.
- Donegal County Council and relevant Irish environmental authorities were only drawn into the process at a late stage, by which point the mine and powerline applications were well advanced and the CPLI timetable essentially fixed.

This sequence is incompatible with Article 7 of the EIA Directive and Articles 2–3 of the Espoo Convention, which require **early notification** of the affected State "as early as possible and no later than when informing [the origin State's] own public" and on the basis of complete environmental information. Here, the powerline was treated as essentially a local matter until the eleventh hour; by the time Ireland and Donegal were notified, key options were no longer genuinely open, contrary to Espoo and Aarhus Article 6(4).

6.2 Defective Transboundary Assessment – Technical Report 15 and the Powerline ES

█████████ transboundary objection letter (April 2023) and subsequent correspondence expose serious defects in the way transboundary impacts of the powerline were assessed:

1. **No meaningful Irish baseline or engagement**

- The EIA and TR15 were prepared without consulting Irish statutory bodies such as the National Parks and Wildlife Service (NPWS), Inland Fisheries Ireland (IFI) or Irish EPA.
- No baseline data from the Irish side of the Foyle/Finn catchment was incorporated – for example, no monitoring of water quality, fisheries status or habitat condition in Donegal.
- Human receptors and communities in Donegal were effectively ignored in the assessment; the socio-economic and health chapters treated the border as a hard limit, contrary to the Directive's requirement to consider effects "on the environment … including human beings" wherever impacts may occur.

This is incompatible with both Article 3 of the EIA Directive and Aarhus Articles 6 and 3(9), which require that the **public in the affected State** be treated as part of the "public concerned" and given the same access to relevant information.

2. **TR15's own admissions of likely significant adverse effects**

TR15 explicitly acknowledges that in the absence of mitigation the powerline is:

- hydrologically connected to the River Foyle and River Finn SAC; and
- capable of generating "suspended sediments and/or contaminants" that could be transported downstream, causing significant negative (major adverse) effects on Atlantic salmon, otter and other qualifying interests in the River Finn SAC.

In other words, the applicant's own specialist report concedes that, **without mitigation**, the project is likely to cause substantial transboundary harm to a European site in the Republic of Ireland.

Under Habitats law, such an admission is decisive. The CJEU in *People Over Wind* (C-323/17) held that one may not rely on mitigation at the screening stage to avoid an Appropriate Assessment: if mitigation is needed to rule out significant effects, then a full AA is required. By close analogy, where the applicant's own TR15 says a project is likely to have major adverse effects on a cross-border SAC but for mitigation, the correct legal conclusion is that a **full transboundary EIA and HRA are triggered**.

3. **Improper reliance on mitigation and optimistic assumptions**

TR15 attempts to neutralise its own findings by assuming that an array of "good practice" measures (silt traps, CEMP, construction methods) will perform perfectly, reducing impacts to "negligible" and thereby erasing the need for transboundary concern. This is legally and scientifically unsound:

- Under Waddenzee and Holohan (C-461/17), decision-makers must be satisfied, on "complete, precise and definitive findings", that no reasonable scientific doubt remains as to harm; speculative mitigation and untested management plans do not meet that standard.
- For EIA and Espoo purposes, the Espoo Implementation Committee has repeatedly stressed that assessments must not contain "lacunae" or rely on unproven mitigation to downplay cross-border risks; where uncertainty remains, a precautionary, fully participatory assessment is required.

TR15's approach inverts this: it takes the acknowledgment of likely significant adverse effects and uses paper mitigation to assert there is nothing to worry about. That is not a lawful basis for concluding "no significant transboundary impact".

4. **Neglect of atmospheric, groundwater and cumulative pathways**

TR15 focuses largely on surface water runoff during construction. It **fails or barely attempts** to assess:

- atmospheric/dust pathways from 38 km of construction in peat and soils, including particulate drift into Donegal;
- potential impacts on shared aquifers and groundwater flows in a complex karst/peat landscape ("subsurface water does not respect political boundaries");

- cumulative effects of the powerline with the mine, access roads, abstraction and discharge infrastructure – particularly in heavy rainfall scenarios over a two-year build period.

EU law (see *Holohan* and *Inter-Environnement Wallonie*, C-411/17) requires that all relevant impact pathways and cumulative scenarios be addressed. A report that selectively treats only some pathways and assumes others away is not "complete and precise" and cannot support a lawful conclusion of no transboundary effects.

5. **Disregard of environmental regulator concerns**

Internal NIEA evidence (as referenced in your SoC) shows that the Air & Biodiversity Unit concluded that, on the information provided, the project could not meet water quality requirements. TR15 does not grapple with that; instead it presents a confident "no significant impact" narrative that is inconsistent with the regulator's own doubts. Under both EU case law and common-law principles of rationality, an assessment that ignores or glosses over conflicting expert evidence is defective.

Taken together, these failures mean that the powerline EIA and TR15 cannot be treated as a lawful transboundary assessment under Article 7 of the Directive or Espoo.

6.3 Segmentation, Water Permits and the Impossible Record for Irish Objectors

The treatment of the 33 kV powerline also illustrates a broader pattern of **segmentation and document chaos** that renders meaningful transboundary participation impossible:

- Initially, only the mine and powerline were clearly signposted in the transboundary documentation. Water abstraction, impoundment and discharge consents – which in reality carry some of the greatest transboundary risks – were either omitted or buried in separate, poorly linked files.
- Even in later notices where all eight applications are nominally listed, the environmental information is spread across multiple portals and uploads (2017 ES, 2019/20 addenda, separate powerline ES, road abandonment materials, late rebuttals, etc.), with no coherent index, version control or "single source of truth".
- Dalradian and its consultants submitted almost **1 GB of additional documentation** (over 200 files) at rebuttal/Statement of Case stage. Much of this is either missing from, or extremely difficult to locate on, the public planning portal. There is no central online "library" despite DfI's assurance at the Pre-Inquiry Hearing that such a library would be in place by May 2024.

For Irish stakeholders, this means:

- They cannot readily identify all documents relevant to the powerline's transboundary impacts, or its interaction with the mine and water permits;
- They cannot understand the logic and sequence of late submissions that bear directly on River Finn/Foyle risks;
- They are being asked to navigate a fragmented and unsearchable record in a foreign planning system, without even a consolidated list of what exists.

Under Aarhus Article 6(6) and EIA Directive Article 6/7, public participation must be based on **effective access** to "all relevant information" and an intelligible record. A process in which key documents are missing, scattered, or essentially unknowable to the transboundary public does not meet that standard.

6.4 Consequences for the CPLI and Transboundary Lawfulness

The mishandling of the 33 kV powerline has three key legal consequences:

1. **Espoo and EIA Article 7 breach** – The powerline, as part of a single cross-border project, has not been subjected to an early, full and scientifically robust transboundary assessment. Notification was late; TR15 admits likely significant adverse effects but relies on mitigation to screen them out; no proper Irish baseline or authority engagement occurred.

2. **Habitats and WFD breach** – TR15's own concession that the project would have major adverse effects on the River Finn SAC in the absence of mitigation, combined with the absence of a final, integrated Appropriate Assessment and robust "no deterioration" analysis under the Water Framework Directive, means no lawful authorisation can be granted.
3. **Unfair and unusable record for Irish participants** – Given the scale of missing and poorly controlled documentation, Irish objectors and authorities cannot meaningfully engage with the powerline element of the project. This offends Aarhus, the EIA Directive and basic common-law fairness.

The powerline is therefore not a marginal side-issue; it is a **test case** which proves that:

- the project has significant transboundary effects;
- those effects have been mishandled and under-reported; and
- the overall CPLI is proceeding on an unlawful and incomplete record.

For that reason, the defects around the powerline reinforce – rather than dilute – the core conclusion of this Statement of Case: the current CPLI must be abandoned, the existing planning applications (including the powerline) refused, and any future proposal brought forward only on the basis of a fresh, integrated EIA/HRA and Espoo-compliant transboundary process.

Requirement for live streaming and recording of proceedings

Attending the Conjoined Public Local Inquiry in person for its full duration is neither feasible nor reasonable for us. The proposed sitting schedule – 22 days in Omagh starting April 2026 – would require repeated long-distance travel from the Republic of Ireland 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), ongoing health and medical issues, no access to a car, very limited public transport options, and constrained financial means. Expecting transboundary objectors to take weeks off work, fund their own accommodation, and be continuously present in Omagh simply 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 the procedural guarantees in international and EU environmental law. Article 6(3) and 6(6) of the Aarhus Convention 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), reflected in the Planning (EIA) Regulations (NI) 2017, requires that members of the public in an affected State are afforded an equivalent opportunity to participate as those in the State of origin. Requiring physically demanding, expensive cross-border attendance, without any remote alternative, sits uneasily with those obligations and with domestic principles of procedural fairness and "equality of arms" in environmental decision-making.

We therefore formally request that the PAC put in place practical arrangements for **remote participation**, for example via Zoom or Microsoft Teams, so that transboundary objectors 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 practice across many public inquiries and court proceedings and is often the only realistic way to ensure that those with caring duties, health constraints, limited means, or who are based abroad can exercise their Aarhus and EIA participation rights in a meaningful way.

In addition, we 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. Freedom of Information/EIR responses indicate that, in the absence of such recordings, DfI does not even regard there as being an "official record" of what was said during the first 2.5 days of the CPLI. That position is untenable in a case of this scale and controversy, particularly for participants in the Republic of Ireland who could not

attend those sessions. A robust, publicly accessible record is essential if transboundary objectors are to understand what has already been argued, test the evidence, and participate on an equal footing going forward.

Thanking you

04/12/2025