

Statement of Case Water Abstraction and Impoundment 1. 2024/WHR01 2. 2024/WHR02

Executive Summary

My Statement of case is based on my objection letters for abstraction and impoundment of water, particularly the objection letter submitted 28/08/2024 acknowledged receipt of by the PAC – with supporting documentation detailed throughout this document. The document titled **Curraghinalt Project CPLI rev1** (my source document containing supporting information) that [REDACTED] sent to PAC, NIEA, DfI (Planning), and DAERA [REDACTED] [REDACTED] also forms the basis of my statement of case. This document outlines numerous failures and the absence of essential documentation that prevent adequate public participation in the inquiry process. This entire contents of this document forms my statement of case. I have named a number of them here.

In addition, DfI Planning in a letter to PAC 15th Oct, has admitted to **not meeting legal requirements** in relation to key assessments, such as the Habitats Regulations Assessment (HRA), which it now seeks to introduce as a draft document after the rebuttal stage. This belated action, seven years after the initial planning application, further demonstrates the procedural irregularities that have plagued this inquiry. This entire process must be aborted. This department has shown gross incompetence and negligence throughout. In this letter of 15th Oct the tone and manner it was written in demonstrated a “bullying” tactic. It demanded that the PAC should inform all that it was independent and take a neutral stance – despite going on to dictate how the PAC should conduct its business and even interpret legal precedence.

This document highlights several key documents have either been withheld, not provided, or not yet written, breaching the Aarhus convention and EIR 2004 regulations

A central library, which was promised by DfI to be operational by the end of April, remains non-functional. This critical failure by the statutory bodies represents a significant breach of their duties of transparency, undermining the entire conjoined public local inquiry. The fact this is not up and running and the unavailability of key documents means it is impossible to write a project specific statement of case.

The rapid recommendation by NIEA to proceed to a public local inquiry for the abstraction and impoundment applications, within just one week of the objection period closing, raises serious concerns about the premature and politically motivated nature of this inquiry process. It is clear that the integrity of the inquiry has been compromised, and as such, it is impossible to prepare a full and fair Statement of Case under the current circumstances

It has become evident that the conjoined public local inquiry, led by the Planning Appeals Commission (PAC), is procedurally, regulatory, administratively, environmentally, and potentially legally flawed, making it unsuitable for a project of such regional and environmental significance.

Given these serious issues, I am calling for the entire portfolio of planning applications relating to this project to be refused and quashed, and for Dalradian to submit a new standalone planning application. This new application should fully address the cumulative environmental impacts of the entire project, prevent project splitting, and correct the procedural failings and irregularities that have occurred.

Allowing this project to reach its current stage, let alone proceed further, given these gross procedural flaws, is tantamount to maladministration, malfeasance, dereliction of duty, waste of public funds, and failure to comply with planning and environmental regulations.

This Statement of Case opposes Dalradian Gold’s planning applications for water abstraction and impoundment on the grounds of severe environmental risks, procedural failings, and legal violations. Drawing from expert reports, international environmental regulations, and precedent court rulings, this document will demonstrate that the project presents unmitigated threats to sensitive ecosystems, public health, and protected habitats, including Special Areas of Conservation (SACs), Areas of Special Scientific Interest (ASSIs), and the Black Bog Ramsar site. Additionally, the project’s water abstraction figures are based on outdated and flawed data, failing to consider the removal of the cyanide processing plant, which fundamentally alters the justification for the project.

Procedural Failings of Statutory Bodies

The issues outlined below clearly demonstrate that the Department for Infrastructure (DfI), Department of Agriculture, Environment and Rural Affairs (DAERA), and Northern Ireland Environment Agency (NIEA) should not have permitted these planning applications to progress. Their responsibility as statutory bodies is to protect the environment. Instead, they have facilitated the developer throughout the process and failed to apply the precautionary principle or comply with current legislation, particularly the Planning (Environmental Impact Assessment) Regulations (NI) 2017.

The Project Splitting and the Flawed Conjoined Public Local Inquiry

What is most troubling is that the DfI has failed to recognise the glaring issues of project splitting. Instead of addressing the project as a unified whole, they allowed Dalradian to split the project into various applications—such as for water abstraction, impoundment, powerline, and discharge consents—thus fragmenting the environmental assessment. The PAC compounded this problem by developing the unprecedented “conjoined public local inquiry,” giving the illusion of a unified process but allowing the fragmented project to proceed.

Landmark Chambers Report and the Withholding of Key Information

DfI, DAERA, and NIEA have further breached their statutory obligations by withholding Dalradian’s response to the **Landmark Chambers Report**, under the pretext that releasing it would be prejudicial to Dalradian’s application. This demonstrates a blatant bias toward the developer, prioritising its interests over those of the environment and the public.

Recent Judicial Review and High Court Ruling

The recent High Court ruling (15th October 2024) concerning the Department for Economy’s mineral licensing regime declared the process unlawful and in breach of the **Habitats Directive** and public consultation requirements. This ruling is critical and directly impacts Dalradian’s entire planning application. Despite knowing this was pending, the PAC, under the influence of DfI, chose to proceed with the inquiry. At the pre-inquiry hearing, Councillor Paul Gallagher specifically requested that the conjoined public local inquiry be suspended until after this Judicial Review, but the PAC, guided by legal counsel from DfI, DAERA, and NIEA, dismissed this request.

This High Court ruling is fundamental to the current planning process, and the conjoined public local inquiry must be halted immediately to account for its findings. The disregard shown by the PAC and statutory bodies for such a critical legal ruling is further evidence that this process is both procedurally and legally unsound.

Flawed Habitats Regulations Assessment (HRA)

After almost seven years of Dalradian’s application being lodged, DfI is only now seeking to produce a “draft” Habitats Regulations Assessment (HRA), clearly intended to be rushed through in response to public objections. This is entirely inappropriate and demonstrates further procedural failings. This draft HRA is not only late but likely being designed to counter the Landmark Chambers report’s criticisms. A proper and independent HRA should have been completed long before this stage, not introduced after the rebuttal stage.

Conclusion: Halt the Conjoined Public Local Inquiry

The cumulative effect of these procedural failings, undue influence, and statutory breaches has irreparably undermined the integrity of the conjoined public local inquiry.. A **judge-led public inquiry** is essential to ensure transparency, accountability, and the necessary scrutiny required for a project of this scale. The minister and departments must abort the conjoined public local inquiry immediately and require Dalradian to submit a new, unified planning application that addresses the cumulative environmental impacts in compliance with current regulations.

Allowing this process to continue in its current form would be an unforgivable breach of public trust and environmental duty, and it risks setting a dangerous precedent for future planning applications of this scale and significance.

This conjoined public local inquiry should be abandoned, and why Dalradian should submit a new, unified planning application which when time appropriate be recommended for an independent judge-led public inquiry.

1. Introduction

Dalradian Gold's planning applications for water abstraction and impoundment are integral to its proposed mining operations in the Sperrins Area of Outstanding Natural Beauty (AONB). However, the project presents significant risks to the environment, protected species, and public health. This Statement of Case focuses on key issues related to environmental degradation, legal non-compliance, health risks, and procedural irregularities, all of which justify the refusal of these applications.

2. Legal Non-compliance and Environmental Violations

2.1 Water Framework Directive (2000/60/EC)

The **Water Framework Directive (WFD)** mandates that all member states prevent the deterioration of the ecological status of water bodies and protect aquatic ecosystems. The proposed water abstraction poses direct risks to the Owenkillew and Foyle Rivers, both of which are SACs. The project risks breaching WFD obligations by contributing to the degradation of these critical watercourses.

- **Precedent:** In *R (on the application of Mott v Environment Agency)* (2016), the High Court ruled that the Environment Agency had breached the WFD by permitting activities that would lead to the deterioration of water quality. The same principle applies to the Dalradian project, where water abstraction could lead to a reduction in water flow, thereby harming aquatic species such as the freshwater pearl mussel.

2.2 Ramsar Convention and Black Bog Ramsar Site

The Black Bog Ramsar site, an internationally important wetland, is at significant risk from the proposed water abstraction and impoundment. The **Ramsar Convention (Article 3.2)** obligates contracting parties to notify the Ramsar Secretariat of any development that could alter the ecological character of a Ramsar site. To date, this notification has not been made, violating the UK's international obligations.

- **Precedent:** The *Sweetman* case (C-258/11 ECJ) reinforced the precautionary principle, requiring that projects which threaten protected areas must be rejected unless there is certainty that no harm will occur. In Dalradian's case, the uncertainties around hydrological impacts on the Black Bog justify halting the project.
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3. Inadequate Hydrological Modelling and Underestimation of Water Usage

Professor Emerman's report highlights several critical flaws in Dalradian's hydrological assessments. The predicted water usage for the mining operation is less than 10% of the industry standard for gold mining, leading to concerns that the water abstraction figures have been grossly underestimated.

- **Expert Testimony:** Emerman's analysis shows that Dalradian has not properly accounted for seasonal variability in water flows, nor has it provided accurate models for the cumulative impacts of water abstraction on local watercourses. This underestimation is particularly concerning in light of the area's high groundwater vulnerability.

3.1 Groundwater Vulnerability

The region is classified as having the highest groundwater vulnerability in Northern Ireland, yet the proposed water abstraction fails to adequately assess the risks to local aquifers. The extraction of water from already vulnerable aquifers could lead to long-term depletion and contamination of local water supplies.

- **Precedent:** The *Weser ruling* (C-461/13) by the CJEU established that projects likely to cause the deterioration of water bodies should not be authorized. Given the high groundwater vulnerability in the area, the failure to address this issue in Dalradian's application makes it legally untenable.
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4. Impact on Protected Habitats (SACs and ASSIs)

4.1 Special Areas of Conservation (SACs)

The Owenkillev and Foyle Rivers are designated SACs under the **Habitats Directive (92/43/EEC)**. These watercourses are home to several protected species, including the freshwater pearl mussel and Atlantic salmon. The abstraction of water from these rivers will reduce water flow, leading to sedimentation and chemical changes that will harm these species.

- **Precedent:** The *Waddenzee* case (C-127/02 ECJ) applied the precautionary principle to SACs, ruling that planning permission should only be granted if there is absolute certainty that the integrity of these habitats will not be compromised. The hydrological uncertainties associated with Dalradian's project mean that this standard has not been met.

4.2 Areas of Special Scientific Interest (ASSIs)

The Owenkillev and Owenreagh Rivers are designated as ASSIs due to their ecological importance. These rivers are highly sensitive to changes in water quality and flow. The abstraction of water from these sources risks causing sedimentation, increased pollution, and habitat destruction, all of which contravene protections under the **Nature Conservation and Amenity Lands (Northern Ireland) Order 1985**.

5. Health and Safety Concerns (Radon and Arsenic)

5.1 Radon Exposure

The region is known for having some of the highest levels of naturally occurring radon in the UK. Mining activities, particularly water abstraction, could exacerbate the release of radon, posing significant health risks to local communities and mine workers. Prolonged exposure to radon is a leading cause of lung cancer, as documented by multiple studies, including research published in the **British Journal of Cancer**.

5.2 Arsenic Contamination

The geology of the Sperrins region contains high levels of arsenic. Water abstraction and impoundment activities risk releasing arsenic into local watercourses, potentially contaminating drinking water supplies and posing long-term health risks. The failure to assess these risks constitutes a violation of the **Environment (Northern Ireland) Order 2002**, which mandates the protection of public health from environmental hazards.

6. Procedural and Consultation Failings

6.1 Aarhus Convention Violations

The **Aarhus Convention** guarantees the public's right to access environmental information and participate in decision-making processes. However, Dalradian has failed to provide updated information on water abstraction figures following the removal of the cyanide plant. This lack of transparency prevents meaningful public participation, violating both the Aarhus Convention and domestic planning regulations.

6.2 Project Splitting and Cumulative Impact

Dalradian has engaged in "project splitting," whereby different aspects of the project (e.g., water abstraction, tailings, and mine development) are submitted separately, making it difficult to assess the cumulative environmental impact. This approach undermines the comprehensive environmental assessment required under the **Environmental Impact Assessment (EIA) Regulations (Northern Ireland) 2017**.

- **Precedent:** The case *R (HS2 Action Alliance Ltd) v Secretary of State for Transport* established the importance of assessing cumulative impacts in large infrastructure projects. Dalradian's failure to do so leaves significant environmental risks unaddressed.
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7. Transboundary Impacts and Breach of International Law

The River Finn, which lies within the project's impact zone, is a **Special Protection Area (SPA)** that extends into the Republic of Ireland. Transboundary environmental impacts must be assessed under the **Espoo Convention** and **EU law**, yet Dalradian's application contains no reference to potential cross-border impacts.

- **Precedent:** The *Brian Holohan and Others v An Bord Pleanála* case (C-461/17) emphasizes the obligation to assess and mitigate transboundary environmental impacts. The failure to include these assessments makes the application procedurally defective and vulnerable to legal challenge.
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Conclusion

Given the overwhelming evidence of environmental degradation, health risks, legal violations, and procedural failings, Dalradian's water abstraction and impoundment planning applications must be refused. The project fails to meet the necessary legal and environmental standards required for development in such an ecologically sensitive area.

References and Supporting Information for this section

1. **Water Framework Directive (2000/60/EC).**
2. **Habitats Directive (92/43/EEC).**
3. **Ramsar Convention.**
4. **Environmental Impact Assessment (EIA) Regulations (Northern Ireland) 2017.**
5. **Professor Emerman's Report.**
6. **Landmark Chambers Report.**
7. **Key Legal Precedents:**
 - *Waddenzee (C-127/02).*
 - *Sweetman (C-258/11).*
 - *Brian Holohan v An Bord Pleanála (C-461/17).*
 - *R (on the application of Mott v Environment Agency).*
 - *HS2 Action Alliance Ltd v Secretary of State for Transport*

Key Findings from Professor Emerman's Report

1. Gross Underestimation of Water Usage

- **Issue:** ██████████ found that Dalradian's predicted water abstraction for the Curraghinalt gold mine is significantly lower than industry standards, estimating that the project's proposed water usage is less than 10% of what is typically required for a gold mining operation of this size. This raises questions about the accuracy and integrity of Dalradian's water use projections.
- **Impact:** If Dalradian's water abstraction figures are underestimated, it could lead to far more extensive water extraction than currently approved, severely impacting local watercourses, SACs, and other sensitive ecological sites.
- **Precedent:** Projects relying on flawed or incomplete environmental assessments have been stopped in cases such as *R (on the application of HS2 Action Alliance Ltd) v Secretary of State for Transport*. This case shows that project approval should be halted if environmental data are insufficient.

2. Inadequate Hydrological Modelling

- **Issue:** ██████████ criticized Dalradian's hydrological modelling, noting that it fails to account for seasonal variability in water availability and does not include a comprehensive assessment of long-term water impacts. He emphasized that watercourses in the area experience fluctuating water levels, particularly during dry periods, making them more vulnerable to the impacts of large-scale water abstraction.
- **Impact:** Without accounting for these seasonal fluctuations, Dalradian risks causing significant degradation to local rivers, especially during the summer months when water flow is at its lowest. This could lead to a decline in water quality and increased sedimentation, violating the **Water Framework Directive (2000/60/EC)**.
- **Legal Precedent:** The *Weser ruling* (C-461/13) by the CJEU established that projects likely to cause deterioration of water bodies should not be authorized.

3. Risk of Hydrological Disconnect

- **Issue:** ██████████ noted that water abstraction could lead to a hydrological disconnect, meaning that reduced water flow in key rivers like the Owenkillev could disrupt the connection between surface and groundwater systems. This would not only degrade the river ecosystems but also affect aquifers and groundwater-dependent habitats, including SACs.
- **Impact:** A hydrological disconnect could lead to long-term damage to ecosystems reliant on steady water flow, such as those housing the freshwater pearl mussel, a species highly sensitive to changes in water flow and quality.
- **Relevant Legal Principle:** The **Habitats Directive (92/43/EEC)** mandates strict protections for habitats reliant on specific environmental conditions. Failing to maintain appropriate hydrological conditions would likely violate these protections.

4. Impoundment Safety Concerns

- **Issue:** ██████████ raised serious concerns about the design of the water impoundment structures. His analysis suggested that the current design is inadequate to prevent overflow or failure during extreme weather events, which are likely to become more frequent with climate change.
- **Impact:** A failure of the impoundment could lead to catastrophic flooding, erosion, and pollution of downstream ecosystems. Such an event would severely affect both human populations and wildlife, including the Black Bog Ramsar site.
- **Precedent:** The failure of water impoundments in mining projects has led to significant environmental disasters in the past, such as the *Teton Dam disaster* in the U.S. These precedents emphasize the need for stringent design and safety measures for impoundments.

5. Cumulative Impact and Project Splitting

- **Issue:** ██████████ also pointed out that Dalradian's environmental assessments do not adequately account for the cumulative impacts of water abstraction, impoundment, and mining activities combined. This is

exacerbated by the company's tactic of splitting the project into separate applications, preventing a holistic view of the overall environmental impact.

- **Impact:** The failure to assess cumulative impacts is a violation of the **Environmental Impact Assessment (EIA) Regulations (Northern Ireland) 2017**, which require the assessment of all potential environmental impacts in combination. This is especially important in fragile ecosystems like those found in the Sperrins.
- **Legal Precedent:** The case *An Taisce v An Bord Pleanála* (2015) stressed the necessity of considering cumulative impacts when assessing environmental applications, particularly in ecologically sensitive areas

Further Supporting Information

1. All my objection letters for abstraction and impoundment of water, particularly the objection letter submitted 28/08/2024 acknowledged receipt of by the PAC - Supporting documentation is detailed throughout this document
2. **Curraghinalt Project CPLI rev1** (my source document containing supporting information) sent [REDACTED] PAC, NIEA, DfI (Planning), and DAERA [REDACTED]. Supporting documentation is detailed throughout this document

Legal Precedents:

3. **Harris & Anor v. Environment Agency (2022)** – This landmark case set an important precedent by reaffirming that European environmental protections, including the **Habitats Directive**, remain enforceable in the UK post-Brexit. The case focused on water abstraction in the Norfolk Broads, and the court found that the Environment Agency failed to adequately protect SACs (Special Areas of Conservation) from water abstraction impacts. The court also ruled that the lack of agency funding could not justify non-compliance with environmental obligations
4. **Freeths LLP's Judicial Review of the Environment Agency** – In this case, Freeths successfully challenged the Environment Agency over its failure to protect rare wetland species in the Norfolk Broads from water abstraction. The court recognized that despite Brexit, rules from European Directives (like the **Habitats Directive**) remain enforceable against public authorities if previously recognized by UK courts

.R (on the application of WWF-UK) v. Secretary of State for Environment – This case involved the failure of the UK government to adequately safeguard rivers from unsustainable abstraction, leading to significant environmental degradation. It highlights the necessity for robust scrutiny of water abstraction projects and demonstrates how regulatory bodies can be held accountable for failing to protect environmental resources

5. **Waddenzee Case (C-127/02, ECJ)** – A landmark ruling that emphasized the **precautionary principle** in environmental law. The court ruled that any project that could have significant environmental effects on protected habitats should not proceed unless there is certainty that it won't cause harm.
6. **Sweetman Case (C-258/11, ECJ)** – This case reaffirmed that projects which potentially harm habitats protected by EU directives must be evaluated rigorously, and planning should be rejected if any doubt remains about their impact.
7. **Timothy Charles Harris v. Environment Agency and Natural England** – A UK-based ruling that stressed the importance of preventing deterioration in water quality, especially in Special Areas of Conservation (SACs), and placed obligations on public authorities to take necessary steps to protect these areas.
8. **R (Wildlife Trusts) v. Secretary of State** – This case highlights the need for strict protection of Ramsar sites and emphasizes that developments threatening these areas must undergo thorough scrutiny.
9. **Section 24 of the Northern Ireland Act 1998** – This section of the Act ensures human rights compliance, which could be invoked in cases where public consultation and environmental concerns are not adequately addressed

Technical Reports:

1. **Landmark Chambers Report** – This detailed legal opinion addresses Dalradian’s failure to meet environmental standards for water abstraction and impoundment. It highlights risks to local SACs and watercourses, emphasizing how the proposals violate **EU Water Framework Directive** standards. This report underscores the need to reject the planning applications based on environmental protection and legal obligations.
2. **[REDACTED] Report** – This technical analysis points out the critical flaws in Dalradian’s water abstraction figures and the potential consequences of impoundment failure. It highlights the underestimated water usage and the long-term risks to hydrology and ecosystems
3. **[REDACTED] Report (2) – Judicial Review**
4. **Environmental Statement for the Curraghinalt Gold Project** – This document evaluates the environmental risks associated with Dalradian’s proposal, particularly concerning water quality degradation, pollution risks, and the long-term sustainability of the project
5. **Environmental Statement for Curraghinalt Gold Project** – This report evaluates the potential environmental hazards, including water pollution and risks from tailings dams, providing a technical basis for the rejection of the project

Regulatory and Legislative Frameworks:

1. **The Water Framework Directive (2000/60/EC)** – This key European directive mandates that water bodies achieve “good status,” and any activities likely to degrade water quality should be strictly regulated. Dalradian’s project risks violating this directive, as it poses significant risks to local watercourses and SACs
2. **Ramsar Convention on Wetlands** – The Black Bog Ramsar site could be impacted by Dalradian’s proposals. Under **Article 3.2**, the UK is required to prevent degradation of wetlands, and failure to comply with this international obligation could be used as a basis for legal challenge
3. **Water (Northern Ireland) Order 1999** – The regulatory framework for water pollution and abstraction in Northern Ireland. Past cases, such as the prosecution of Sacyr Wills Bros Ltd for pollution during road construction, show the risks of failing to manage water abstraction properly and the legal recourse available under this legislation
4. **Equality Act 2010 and UN Convention on the Rights of Persons with Disabilities (CRPD)** – These legal frameworks mandate accessibility in public spaces, and the failure to account for people with disabilities in the proposed project can be considered a violation

Environmental and Health Concerns

1. **Case against Sacyr Wills Bros Ltd & Somague (A6 Dual Carriageway)** – This case involved water pollution offenses under the Water (Northern Ireland) Order 1999, where pollution from road construction affected sensitive watercourses. This precedent could be directly relevant to the risks associated with the Dalradian project
2. **Public Health (Control of Disease) Act 1984 and Clean Air (Northern Ireland) Order 1981** – These provide grounds for concerns about air pollution risks, particularly for vulnerable populations such as children, the elderly, and those with respiratory conditions