

██████████ – Statement of case 18/10/2024

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Authority Ref: LA10/2019/1386/F	PAC Ref: 2021/C006
-Authority Ref: TrC 081/20_1 LA10/2017/1249/F	PAC Ref: 2021/C006
-Authority Ref: TrC 080/20_1 LA10/2017/1249/F	PAC Ref: 2021/C006
-Authority Ref: IN1-21-5706	PAC Ref: 2021/DR001
-Authority Ref: LA11/2019/1000/F	PAC Ref: 2021/C007
-Authority Ref: LA10/2017/1249/F	PAC Ref: 2021/C005
-Authority Ref: AIL/2024/0008	
-Application Ref: AIL/2024/0009	

Executive Summary

My Statement of case is fully based on the document titled **Curraghinalt Project CPLI rev1** (my source document containing supporting information) that ██████████ sent to PAC, NIEA, DfI (Planning), and DAERA ██████████. 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.

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.

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 procedural breaches begin with Dalradian's material change of operation in 2019, which involved the voluntary removal of the cyanide processing and smelting plant. This substantial change should have triggered a new planning application, yet it did not. This inconsistency not only ignored precedent and procedure but also undermined the legitimacy of the conjoined public local inquiry. DfI, NIEA, and DAERA supported this material change without requiring Dalradian to resubmit the planning application, as would have been required for a lesser amendment in previous cases. This clear departure from regulatory standards has been guiding Dalradian since 2009.

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.

This inquiry, despite its regional significance, has no basis in planning legislation, and there is no legal precedent for conjoining applications in this manner for a project of this scale. The process has been conducted in a way that appears designed to favour the developer, lacking transparency and accountability, and creating unnecessary hurdles for objectors.

An exchange of letters between DfI Planning and the PAC, as referenced earlier, clearly reveals the undue influence exerted by the DfI on the PAC. DfI directed the PAC to declare that it had taken a neutral stance, despite simultaneously exerting control over how the inquiry should be conducted and even how legal interpretations should be made. This is a clear overreach, demonstrating that DfI is no longer acting impartially but is actively attempting to bolster Dalradian's position.

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. Patrick Haughey raised this issue in his detailed objection letter, and yet the PAC has confirmed that they do not possess Dalradian's response to this critical report. This is another example of how the statutory agencies have effectively overruled the PAC's authority, dictating the terms of the inquiry and showing a clear disregard for transparency.

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.

The rushed recommendation by NIEA to proceed to a public local inquiry for the abstraction and impoundment applications within one week of the closing of objections further suggests a politically motivated agenda. These applications are critical to the overall project and should have been subject to much greater scrutiny. The statutory bodies have acted prematurely, ignoring the legal requirements for comprehensive assessments, and the entire process is politically tainted.

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.