

Rebuttal – water abstraction and impoundment – [REDACTED]

Dalradians and NIEA's statement of case are flawed and based on the current application cannot be legal. This is clearly detailed in my letter dated 17th October 2024, 19th November 2024 and my objection letter sent 28th August 2024, all sent directly to the PAC for uploading onto the Conjoined Public Local Inquiry website. I am placing this information into the public realm, in the public interest, Additionally Dalradian cannot meet the environmental standards based upon the Landmark Chambers report and indeed from the findings of the Loughs Agency. Dfl produced a letter, 15th October where to gain compliance they instructed the Dfl to interpret the Finch ruling in a certain way, totally contrary to the actual ruling. Furthermore Dfl insisted that the PAC allows a Draft HRA, two weeks after rebuttals. This is unacceptable and purely designed to benefit both NIEA and Dalradian, both of which referenced the prospect of NEW information.

Based on the review of the Northern Ireland Environment Agency (NIEA) Statement of Case document, it appears that Dalradian's planning applications should not have been recommended to the PAC for a Public Local Inquiry (PLI) due to several substantive issues. Here are the primary reasons supporting this position:

Failure to Meet Environmental and Conservation Standards

- **Impact on SAC and ASSI Features:** NIEA has determined that the proposed water abstraction and impoundment activities by Dalradian will likely have significant adverse effects on the Owenkillew River Special Area of Conservation (SAC) and the adjacent Area of Special Scientific Interest (ASSI), which protect crucial habitats and species, including the Freshwater Pearl Mussel, Atlantic Salmon, and Otter populations. The proposed activities would notably disrupt natural water flows critical for these habitats, a breach that cannot be rectified without an appropriate assessment and satisfactory mitigations, neither of which were provided by Dalradian(NIEA - SOC - AB.PDF Copy).
- **Integrity Test and Lack of Appropriate Assessment:** According to the Conservation (Natural Habitats, etc.) Regulations (NI) 1995, also known as the "Habitats Regulations," projects that could impact a protected site must pass an integrity test and undergo an appropriate assessment. NIEA's analysis revealed that the integrity test could not be met and no appropriate assessment was carried out or substantiated, failing critical legal requirements under both the Habitats Directive and Water Framework Directive (WFD) standards(NIEA - SOC - AB.PDF Copy).

Inadequate Consideration of Cumulative Environmental Impacts

- **Combined Effect of Surface and Mine Water Abstractions:** The combined effect of surface water and mine water abstractions is expected to significantly alter the natural flow regime of the Pollanroe Burn, resulting in substantial flow reductions upstream and potentially excessive increases downstream due to discharge points. This alteration disrupts the river ecosystem, particularly affecting species dependent on consistent flow levels, which NIEA emphasizes could impair both the freshwater habitat and ecological integrity. The NIEA assessment points out that cumulative effects of abstraction and discharge are likely to breach the required environmental standards(NIEA - SOC - AB.PDF Copy).
- **Procedural Shortcomings in Evaluating Groundwater Impacts:** The mine water abstraction will create a substantial drawdown in groundwater, impacting baseflows to multiple tributaries and potentially causing irreversible harm to the Owenkillew River ecosystem. The proposed dewatering process does not align with requirements to maintain "High Ecological Status" as mandated by the 2015 WFD Regulations, making the current application non-compliant(NIEA - SOC - AB.PDF Copy).

Insufficient Information and Lack of Transparency

- **Ambiguities in Flow Regime and Impact Analysis:** Dalradian's submission lacks clear data on the anticipated changes in the flow regime and omits specific assessments of the small

waterways connected to the Pollanroe Burn and unnamed streams. As NIEA noted, no specific survey work was conducted to establish how changes in flow would impact fish populations, spawning grounds, or juvenile habitats, which are integral to sustaining the ecological balance within the SAC. This lack of essential data renders the application incomplete and non-compliant with established environmental assessment standards(NIEA - SOC - AB.PDF Copy).

- **Unresolved Issues Affecting Groundwater Users:** NIEA highlighted concerns raised by its Drinking Water Inspectorate regarding the potential effects on other groundwater users, which remain unaddressed. According to Regulation 10(2)(a) of the Water Abstraction and Impoundment (Licensing) Regulations (NI) 2006, applications must assess impacts on existing water users. Until these issues are resolved, NIEA cannot lawfully proceed with an approval recommendation(NIEA - SOC - AB.PDF Copy).

Significant Legal and Regulatory Violations

- **Non-Compliance with the Habitats and Water Framework Directives:** The proposal's failure to meet the standards of both the Habitats Directive and Water Framework Directive is legally significant. In cases like *Wealden District Council v Secretary of State for Communities and Local Government* [2017], UK courts have held that such regulatory non-compliance invalidates the approval process, requiring rigorous environmental protection measures.
- **Inadequate Adherence to the Conservation of Biodiversity Requirements:** The Wildlife and Natural Environment Act (Northern Ireland) 2011 obligates NIEA to further the conservation of biodiversity. The proposed project threatens biodiversity in the Pollanroe Burn and surrounding waterbodies, in violation of this duty, and constitutes a failure to uphold conservation laws designed to protect Northern Ireland's unique and legally protected ecosystems.

Recommendation for Project Redesign or Alternative Application

- **Failure to Satisfy Regulatory Conditions:** NIEA's conclusion that "the NIEA does not consider that it can lawfully or should on the merits grant the abstraction licences" underscores the extent to which the applications fall short of meeting the necessary legal and environmental standards. Given that mitigation measures, assessments, and appropriate flow modifications were either insufficient or absent, the NIEA should not have recommended the applications for a PLI without significant redesign to align with legal and environmental standards(NIEA - SOC - AB.PDF Copy).
- **Application of Precautionary Principle:** NIEA's application of a precautionary approach reflects the inherent risks and uncertainty posed by the project. Where potential environmental impacts are as severe and uncertain as those identified, the precautionary principle suggests that the project should not proceed without clear evidence of minimal impact, a position supported by European Court rulings (e.g., *Waddenzee* case, C-127/02), which mandate the highest standards for habitat conservation and precaution.

Based on NIEA's assessment and significant procedural deficiencies in Dalradian's submissions, it is evident that the planning applications should not have been recommended for a Public Local Inquiry. The applications contain substantial flaws related to non-compliance with conservation and water regulations, inadequate assessment of ecological impact, and failure to mitigate the detrimental effects on sensitive environments. Given the high environmental and legal stakes, these applications should be revisited, with an emphasis on meeting regulatory standards and safeguarding Northern Ireland's natural resources and protected habitats.

Potential Environmental Impacts and Insufficient Safeguards for Protected Species

- **Owenkillew River SAC Status:** The Owenkillew River Special Area of Conservation (SAC) is reported to be in an "unfavourable" condition. According to DAERA and NIEA, maintaining and restoring favorable conservation status is mandatory. The applicant's approach—setting

discharge limits at levels intended to improve current baseline conditions—does not fully align with the strict precautionary measures required for SAC protection.

- **Freshwater Pearl Mussel and Atlantic Salmon Protection:** These species, which are critical to the SAC's ecosystem, are highly sensitive to changes in water quality, including parameters such as Nitrate, Ammonia, and Phosphorus. Dalradian's approach appears to provide baseline improvement but lacks robust, evidence-backed measures to assure these sensitive parameters remain within safe limits for these species. Without stringent adherence to the JNCC Common Standards Monitoring guidance or an appropriately scoped Habitat Regulations Assessment (HRA), the proposed mitigation measures may fall short of legal and environmental obligations.

Inconsistent Standards and Methodological Issues in Water Quality Management

- **Absence of Northern Ireland-specific Guidance:** Dalradian's methodology relies heavily on standards from other jurisdictions (e.g., Environment Agency methods from England). However, Northern Ireland has unique environmental standards and conditions. The adoption of standards that may not fully consider local ecological sensitivities creates uncertainties about the adequacy of proposed water quality controls.
- **Use of Drinking Water Standards for Pollanroe and Curraghinalt Burns:** The approach of using drinking water standards instead of more rigorous Environmental Quality Standards (EQS) for smaller burns is questionable given these burns' hydrological connection to the Owenkillew SAC. The lack of stringent limits might result in insufficient protection for local fauna, especially given that fish presence has been documented in these burns after the initial baseline studies.

Procedural Shortcomings and Insufficient Environmental Review

- **Baseline Assumptions and Parameter Omission:** The Statement of Case highlights that certain parameters were removed from discharge consent monitoring because initial studies suggested they were not elevated. However, regulatory oversight typically requires continuous assessment, especially with mining activities where chemical concentrations may fluctuate. Dalradian's discharge approach relies on fixed baseline assumptions, potentially overlooking unexpected discharges of harmful substances.
- **Need for Comprehensive HRA:** Given that DAERA has expressed concerns regarding the need to achieve favorable conservation status for the SAC, a comprehensive HRA is essential to ensure no adverse impacts on integrity. The proposal's failure to undergo such an HRA review suggests a breach in procedural rigor and adherence to EU Habitats Directive requirements.

Legal Precedents and Regulatory Concerns

- **Precautionary Principle Application:** According to the Habitats Directive (92/43/EEC), a project that could adversely impact protected sites must either avoid or fully mitigate these impacts. Given the insufficient clarity on how water quality impacts will be consistently mitigated, the application of the precautionary principle suggests that the project should not proceed without further safeguards.
- **Risk of Non-compliance with Conservation Obligations:** Based on the legal precedence set in cases such as *Waddenzee* (C-127/02), any uncertainty regarding potential harm to protected sites warrants withholding approval until all risks are adequately addressed. Dalradian's reliance on "betterment" rather than on fully compliant discharge criteria does not meet the standard of certainty required under EU and UK conservation law.