

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.
- **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

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

- **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 Owenkillev 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

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
- **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

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
- **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

Water Quality and Ecological Risks: Technical Report 7 on water quality indicates that there are concerns regarding the water discharge impacts, particularly on sensitive water bodies like the Owenkillew River, which is part of the Special Area of Conservation (SAC). The report outlines that even with proposed mitigation, there remain residual

risks to water quality and aquatic life, which could be detrimental to protected species such as the freshwater pearl mussel and Atlantic salmon

The High Court ruling in **Mr Timothy Charles Harris and Mrs Angelika Harris vs Environment Agency and Natural England** provides a critical precedent for halting the conjoined public local inquiry into the Dalradian gold mining project. This case reinforces the application of the **precautionary principle** in safeguarding sensitive environmental areas, particularly regarding activities that impact Special Areas of Conservation (SACs), Ramsar sites, and other protected habitats.

Key Legal Points from the Harris Case:

1. Application of the Precautionary Principle:

o The Harris case established that regulatory bodies like the **Environment Agency** must comply with **Article 6(2) of the Habitats Directive** to prevent the deterioration of protected habitats and disturbance of protected species.

o This duty continues to be enforceable in domestic law under **Section 4 of the EU (Withdrawal) Act 2018**, meaning that regulatory bodies like the NIEA must continue to interpret their obligations under the Habitats Directive in line with the **precautionary principle**.

2. Obligation to Review Environmental Impact Across All Sites:

o In the Harris case, the court found that the Environment Agency breached the Habitats Regulations by limiting its review of the environmental impacts of water abstraction to only three sites, leaving other sites within the SAC unreviewed.

o The court ruled that it was **irrational** for the Environment Agency to not conduct a comprehensive review across all relevant areas, highlighting the need for thorough, all encompassing environmental assessments, especially when dealing with protected areas.

3. Failure to Address Cumulative Environmental Impact:

o The Harris ruling pointed out flaws in the review of water abstraction licenses, which failed to consider the broader, cumulative impact on the SAC. This oversight led to a finding that the Environment Agency was in breach of **Regulation 9(3) of the Habitats Regulations**.

Violation of Environmental Impact Assessment (EIA) Requirements

There are serious issues regarding how Dfl, DAERA, and NIEA allowed Dalradian to apply the outdated Planning (Environmental Impact Assessment) 2015 regulations instead of the updated 2017 EIA regulations for Dalradian's various planning applications. This began with the original mine planning application in November 2017, which included a cyanide processing plant and smelting plant. Despite there being separate planning applications (essentially project splitting), the statutory bodies determined that the original environmental statement, based on the 2015 EIA, applied even to the two most recent water abstraction and impoundment applications in 2024. These were new planning applications in 2024, but it was also deemed that these applications were exempt from the Climate Change Bill 2022 or the Reservoirs Act 2015.

This makes a complete mockery of planning laws and legislation, demonstrating absolute favouritism toward Dalradian by allowing statutory departments to determine which legislation should be applied and when. The PAC's decision to proceed with this conjoined public local inquiry demonstrates its endorsement of these decisions, evidenced by its requirement for Dalradian to re-submit two planning applications due to procedural errors, minor in comparison to the failure to apply current legislation.

The 2017 EIA regulations provide considerably more protection for the environment, including stringent provisions for climate change, biodiversity, and cumulative impacts. By permitting the use of the less stringent 2015 regulations and failing to abandon the CPLI, the PAC clearly failed to apply the precautionary principle to this environmentally sensitive and designated area. Established precedent, such as ***Berkeley v Secretary of State for the Environment* [2001] 2 AC 603**, confirms that decisions made based on an incorrect regulatory framework are procedurally invalid, casting further doubt on the inquiry's legal foundation.