

Northern Ireland Environment Agency



Department of
**Agriculture, Environment
and Rural Affairs**

An Roinn

**Talmhaíochta, Comhshaoil
agus Gnóthaí Tuaithe**

Depairtment o'

**Fairmin, Environment
an' Kintra Matthers**

www.daera-ni.gov.uk

Your reference: Dalradian Public Inquiry
Our reference: DAERA 24- 230

Kim McLaughlin

Director of Regeneration and Planning

Fermanagh & Omagh District Council

Email only to:

victoria.kerr@fermanaghpmagh.com

13 June 2024

NIEA

17 Antrim Road

Tonagh

Lisburn

BT28 3AL

Email: NIEACoordination@daera-ni.gov.uk

Dear Ms McLaughlin,

RE. CONJOINED PUBLIC INQUIRIES INTO THE DALRADIAN GOLD MINE APPLICATIONS.

Thank you for your letter, dated 8th May 2024 and letter dated 13th June 2024.

I attach the Department's response to the latest PAC NI letter of the 14th May for your information. **Annex A.**

You have asked for various information in relation to the handling of the Abstraction and Impoundment Applications AAIL 2024/0003 and AIL/2024/0004.

I can advise that the Department has completed its search and can confirm that it holds all of the information you requested however the Department has decided not to disclose some of the information for the following reasons:

- Exemption 12(4)(e) has been engaged as some of your request relates to internal communications.
- Exemption Regulation 12(5)(b) has also been engaged as you have requested information which is legal professional privilege.

In addition, some of the information held constitutes personal data of which you are not the data subject. In these instances, the Department is required to consider if disclosure

would breach the first Data Protection Principle which states that processing must be lawful, fair and transparent.

The Department has considered this element and has determined that no lawful basis for disclosure under EIR exists, bearing in mind that any such disclosure must be considered in terms of disclosure to the “world at large”, and not just you the requester. Consequently, the personal data falling within the scope of this request has been withheld.

Please see attached Public Interest Test and the Lawfulness Test in **Annex B** for details of the tests applied.

I have taken each element of your letter separately below:

Application Processing

I can assure you that appropriate actions have been taken in line with the Abstraction and Impoundment Licensing Regulations 2006 as amended (“the Regulations”).

Please see below clarification and attached documents you have requested in regard to the regulatory requirements:

- NIEA received 2 applications on the 24th April 2024, submitted under Regulation 8 of the Regulations. On receipt of the applications NIEA carried out a basic initial check of the documents provided to ensure sufficient information had been provided and that the correct payment had been made. The initial check found the applications to be incomplete due to the submission of the wrong version of the supporting document. NIEA wrote to the applicant on the 24th April 2024 to advise that incomplete applications had been submitted and therefore could not proceed. On the 26th April 2024 the Applicant submitted the correct version of the supporting document. An internal assessment of the supporting document was carried out resulting in the application being deemed complete on the 29th April 2024.
- Under Regulation 9 (1) the Department considered the applications and made the determination that the applications should be advertised due to the sensitivity of the location of the proposal and that the proposal has the potential to result in significant adverse impact on the water environment on 29th April 2024. **See Annex C for Decision Document under Regulation 9 (1).**
- Under Regulation 9 (2) the Department then issued a notice to the Applicant to advertise the applications on 29th April 2024. The Notice was in compliance with the requirements specified in Regulation 9(3). **Annex D: Regulation 9(2) Notice to Advertise**
- The Applicant provided evidence of advertisement on 2nd of May 2024 and the 3rd May 2024. **Annex E Advertisement Evidence.** Under Regulation 9 representations are to be made within 28 days of the advertisement date. This period started on the 2nd May

and will conclude on the 30th May. A number of respondents have asked for an extension of this time. to respond. Given the position taken by the Commission on the Inquiry timetable, the Department has decided to afford the public more time to respond to the advertisement and has extended the advertisement period to 13th June 2024.

- Under Regulation 9A the Department notified the Water undertaker (NI Water as appointed under the Water and Sewerage Services Order 2006) on 8th May 2024.
Annex F Regulation 9A Notice to the Water Undertaker.

You have also requested all internal correspondence relating to the direction to the Planning Appeals Commission under Regulation 17 of the Regulations. The Department has carried out a search of the documents you have requested. Please see attached briefing provided to the Minister in regard to the direction. In this case the Department has decided to with hold some of the information and engages Exemption 12(4)(e) as your request relates to internal communications. The Department also engages Exemption Regulation 12(5)(b) as you have requested information which is legal professional privilege. ***Please see attached PIT in Annex B for details of the test applied. Please See documents in Annex G for those released in relation to the decision to direct the Appeals Commission.***

Additional Information

The Department agrees with the PACNI that there was a procedural gap, in this case only, in the handling of the previous applications (AIL 2020/0105 and AIL 2020/0106) and are deemed refused under Regulation 19 of the Regulations.

The applicant submitted two new applications in April 2024 which contained the same proposals as previously set out in the 2020 applications. The applications submitted are supported by a technical supporting report (November 2020). The application and the supporting documents were consulted on in 2020/2021.

I can confirm that the proposals submitted in the April 2024 Applications are the same as those submitted in November 2020. In addition to the application and supporting information, the applicant has submitted additional information which was provided in response to information requests on AIL2020/0105 and AIL 2020/0106, where the Department had sought clarification on a number of matters. The additional documents provided do not change the proposals which had been consulted on in 2020/2021. As there was no material change to the proposals, the Department did not seek to readvertise or consult on these additional documents in 2021. The documents in support of the current application include additional information which has not been previously consulted on and will not therefore have been addressed in previous representations are as follows:

- Kaya Letter Dated 17th December 2021
- Kaya Letter Dated 28th January 2022
- Gahan and Long Letter Dated 28th January 2022
- DAERA spreadsheet of responses to 2020 application (ref AIL 2020/0105 and AIL 2020/0106)

I can confirm that all responses received in 2020/2021 and in 2024 in relation to the abstraction and impoundment proposals will be taken into account and forwarded to the PACNI/ WACNI.

Regulation 17 Direction

The Department has responded to the Appeals Commission's latest letter on 10th June 2024 (see attached), confirming the Department's position.

DAERA is of the opinion that its direction to the Commission to consider the new applications for abstraction and impoundment, is indeed valid, and there is no legal impediment to such a referral being made in advance of the receipt of all the representations. As previously advised all representations received in regard to the 2020 Applications have been included in our considerations and will form part of the submission to the PACNI/ WAC. The DAERA Web Page has provided a statement to alert that representations made on the 2020 Applications (reference number AIL/2020/0105 and AIL/2020/0106) will be considered in relation to the new applications and do not need to be repeated.

In our letter to the commission on the 2nd May 2024, the Department outlined an appropriate timetable for the consideration of the new applications. However, the Commission has declined to adopt this approach.

In light of the Commission's position on the validity of the direction made on 2nd May 2024, the Department intends to re-submit its direction to the Commission before 21st June 2024.

Availability and Access to Information

Following the Pre-Hearing event on the 20th March 2024, the Department established an information page in relation to the public local inquiry to facilitate the sharing of information. This can be viewed at:

[Public Inquiry: Dalradian Goldmine Applications for Discharge Consent and Abstraction & Impoundment Licence | Department of Agriculture, Environment and Rural Affairs \(daera-ni.gov.uk\)](https://www.daera-ni.gov.uk/public-inquiry-dalradian-goldmine-applications-for-discharge-consent-and-abstraction-impoundment-licence)

On that page the Department has provided key documents which are relevant to the inquiry. Which includes the following (links have also been provided below):

- [Condition assessment for Northern Ireland's Freshwater Pearl Mussel Margaritifera Margaritifera population Horton, M., Bell, D., Keys, A. & Mitchell, F. \(2018\) . Report prepared by Ballinderry Rivers Trust for the Northern Ireland Environment Agency.](#)
- [Owenkillew and Owenreagh Freshwater Pearl Mussel Survey data Ballinderry Rivers Trust 2021-2022](#)
- [Investigative Electro-Fishing Survey on Curraghinalt Burn and Pollanroe Burn. Loughs Agency for Northern Ireland Environment Agency, 2021](#)
- [Deemed Refused Applications AIL 2020/0105 and AIL 2020/0106](#)

These documents will be referred to and provided as part of the Department's Statement of Case, this will be the mechanism of sharing these documents with the PACNI/WACNI.

I can confirm that in areas where the matters are complex the Department will look to experts to carry out assessment to assist in supporting the decision-making process. In this case the Loughs Agency are the experts in relation to Fish Habitat.

You have requested information relating to the surveys which has not been disclosed – including, but not limited to, any views expressed following the survey work undertaken listed above. In this case the Department will engage Exemption 12(4)(e) as your request relates to internal communications. **Please see attached PIT in Annex A for details of the test applied. Please refer to Annex H for those documents disclosed.** I can confirm that the Department will set out very clearly its position in regards to the findings of the survey work in the Statement of Case for the Discharge Consent Applications.

If you require any clarification, believe that any part of your request has been overlooked, misunderstood or misinterpreted, please contact me in the first instance to see if it is a matter that can be resolved.

If you are unhappy with the manner in which your request for information has been handled or the decision to release/withhold information, you have the right to request a formal review by the Department.

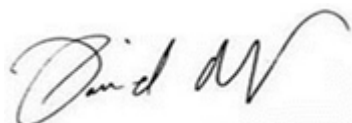
If you wish to do so, please contact The Review Section either by e-mailing daera.informationmanager@daera-ni.gov.uk or by post at The Department of Agriculture, Environment and Rural Affairs, Data Protection & Information Management Branch, Floor 2,

Jubilee House, 111 Ballykelly Road, Ballykelly, Limavady BT49 9HP, within two months from the date of this letter.

If after such an internal review you are still unhappy with the response, you have the right to appeal to the Information Commissioner at Wycliffe House, Water Lane, Wilmslow, CHESHIRE, SK9 5AF, who will undertake an independent review of the Department's decision.

I trust you will find the above information useful.

Yours sincerely

A handwritten signature in black ink, appearing to read "David Reid". The signature is written in a cursive style with a large, stylized 'D' and 'R'.

David Reid
Chief Executive
Northern Ireland Environment Agency