

Our reference AE2-23-55095

[REDACTED]
Chief Commissioner
Planning & Water Appeals Commission
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Email only to:
Dalradian.CPI@pacni.gov.uk

03 July 2024

Chief Executives Office
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Dear Chief Commissioner,

RE: Curraghinalt Project (Dalradian)

Thank you for your letter of 27 June 2024.

The Department notes the applicant's letter to you of 1 July 2024, in response to your last letter to the Department.

Like the applicant, and indeed all interested parties, the Department is keen to find a way, without prejudicing any party, to ensure the Commission accepts a Direction on the 2024 abstraction and impoundment licence applications, and to enable the resumption of the inquiry's timetabling.

The Department proposes to continue to accept the applications referred to as AIL 2024 0003 and AIL 2024 0004 as lawfully received and to, again, serve notice requiring the applicant to advertise the applications. The Department seeks the Commission's views on this approach.

The Department also notes that the applicant has sought the Commission's views on an alternative way forward. The Department awaits your views on the suggestions made by the ***Sustainability at the heart of a living, working, active landscape valued by everyone.***



applicant, in their letter of 1 July 2024, and from the Department, set out above, as certainty on an acceptable way forward is critical.

However, on the basis of the view you expressed on 27 June on representations, we understand this to mean that interested parties would be obliged to re-submit all previous representations on the applicant's abstraction and impoundment licence applications, in addition to any additional representations.

The Department is of the view that requiring re-submission of all previous representations on all the applicant's abstraction and impoundment licences is not in accordance with established public law principles on procedural requirements. Case law shows that the central question in any individual case is what was the intention of the legislature in enacting the provision under consideration and what the legislature intends the effect of non-compliance to be. In *Re Duffy's Application* [2022] NICA 34, the Court of Appeal stated that:

In any case where there has been a failure to comply with a statutory requirement in a given process, the court, in the exercise of identifying the intention to be imputed to parliament regarding the consequences of the non-compliance in question, should normally consider and evaluate the nature, gravity and extent of the relevant act and/or omission. The court will consider it more likely that parliament intended total invalidity to be visited upon acts and/or omissions of non-compliance which may properly be considered egregious in nature, deliberate, actuated by impermissible motives or considerations or incompatible with the fundamental rights of affected persons. This, we would emphasise, is not designed to constitute an exhaustive list.

It is the Department's view that the statutory objective of regulation 9(4) is to ensure public participation in environmental decision-making. The Department's decision to give members of the public an additional two weeks to make representations was to further that statutory objective. The 2006 Regulations are silent on the consequences of extending the consultation period. All previous representations were made in good faith with the legitimate expectation that the representations will be considered by the Commission at the inquiry. It is the Department's view that they remain valid for consideration at the inquiry. Not including those representations would cause substantial public inconvenience and prejudice both to

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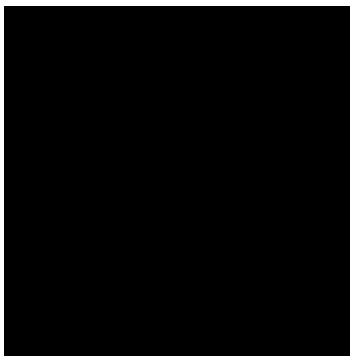


members of the public and the applicant. The Department is of the view that the same principles apply to consideration of representations made on the 2020 applications. The Department acknowledges that the 2020 applications are deemed refused, however, given that the 2024 and 2020 applications are in the same terms and for substantively the same proposal, it is the Department's view that the 2020 representations should also be considered as part of the inquiry. The applicant has specifically sought your urgent views on consideration of representations made in respect of the 2020 applications and has included these as supporting information in respect of their applications made in 2024.

The applicant does not appear to consider that their position is prejudiced should the Commission agree to consider these previous representations, in whatever form they may be presented.

I look forward to hearing from you as soon as possible.

Yours sincerely



Chief Executive

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and Rural Affairs**
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