

Regional Planning Policy & Casework



Department for

Infrastructure

An Roinn

Bonneagair

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Your Ref:2021/WHR03-WHR04

Our Ref: LA10/2017/1249/F,
LA10/2019/1386/F &
LA11/2019/1000/F

15 October 2024

Dear Programme Officer

Curraghinalt Project (Dalradian)

I would like to take this opportunity to outline the Department's understanding of some of the key aspects of the process for the upcoming public local inquiry into the Curraghinalt Project (Dalradian Gold Mine) proposal.

As you will be aware, sections 26(10) and 29(6) of the Planning Act (Northern Ireland) 2011 make provision for the holding a public local inquiry in respect of certain developments. The purpose of such an inquiry is to consider representations that have been made in respect of an application for planning permission that will be determined by the Department. The inquiry process is triggered by the Department to provide a forum and an opportunity for the public to raise issues and for those issues to be examined before an independent person.

With that in mind, I would like to set out some of the Department's expectations as to how the inquiry should be administered by the Commission:

1. The purpose of the inquiry, and roles of each party, should be explained clearly at the opening of the inquiry. In particular, attendees should be informed that the Department has taken a **neutral stance** and has called this public local inquiry because it wishes to hear from the public and because it wants an independent person to consider and examine the issues that have been raised.
2. The Commission should establish a timetable for the hearing of the issues which need to be considered and that timetable should be, as far as possible, adhered to. This will allow relevant parties to attend on appropriate dates without posing an unreasonable burden on them.
3. Any questions for the parties that are known in advance of the hearings should, as far as possible, be conveyed to those parties in advance. This will facilitate the preparation of answers, expedite the process and save inquiry time.
4. The Department strongly supports the reintroduction of the facility to enable parties to participate virtually in the inquiry.
5. The Department places on record its support for any reasonable adjustments that allow full participation at the inquiry.

The Department is of course happy to and indeed would welcome further discussion on any of these points. The Department wants to ensure that this process is open, encourages participation, provides a forum for scrutiny of all issues, and supports the Commission in producing a comprehensive report for the Department's consideration.

The Department considers it necessary to highlight the following matters at this juncture of the process.

- The first matter to consider is that, since the initial hearing, the Supreme Court has given judgment in *R (Finch) v Surrey County Council* [2024] PTSR 988 and requires indirect effects resulting from the development which may occur outside the direct scope of the development even if they take place off site and as a result of other operations (in that case the end use emissions from the burning of refined oil as fuel) provided the emissions can clearly be shown to be caused by the instant development and that they are not merely conjectural or speculative. See Finch at §§74-78. The fact that they may also be assessed in the course of another process consent is not itself a reason for not assessing them at this stage. As Lord Leggatt held at §77 that such indirect effects can be required to be assessed

“Only if it is information on which a reasoned conclusion could properly be based. Conjecture and speculation have no place in the EIA process...”

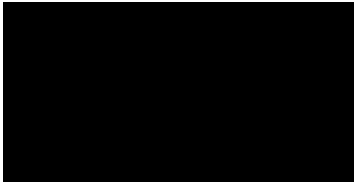
- The applicant may therefore wish to consider whether Finch necessitates the provision of any further assessment of indirect effects/emissions within the Environmental Impact Assessment, which can be presented as part of the evidence pursuant to reg. 23(8)-(10) of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015 “(now reg. 21 (8)-(10) of the

Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017”). The Departmental view is that to determine whether a potential effect is “likely” requires evidence on which to base such a determination and must extend beyond conjecture or speculation.

- The next matter that should be considered relates to a response from the Northern Ireland Environment Agency (“**NIEA**”). NIEA has advised that a Fisheries Report, carried out by Loughs Agency, in respect of the Curraghinalt Burn and the Pollanroe Burn, has identified the presence of salmonids in both Burns. NIEA has noted that whilst the Applicant has classified these waterways as being of low ecological value, no specific survey work has been undertaken as part of the Applicant’s Environmental Impact Assessment to determine if the waterways support fish and their range of habitat needs along the full length of each waterway.
- Furthermore, NIEA has advised that, in light of the identification of fish within the Pollanroe and Curraghinalt Burns, it is not possible to rule out likely significant effects of the proposal on other waterways including, the Unnamed Watercourse, Attagh Burn and the Glenealy Burn and any fish that these Burns may (or may not) support, without a detailed fisheries habitat assessment.
- The Applicant may therefore wish to consider whether to assess the potential likely effects from the proposal on any fish and their habitat in the Burns within its Environmental Impact Assessment.
- The final matter which the Department wishes to raise relates to the Habitats Regulations Assessment (“**HRA**”). In order to determine whether a proposal will have a “likely significant effect” on a European site in Northern Ireland, the competent authority needs to carry out an appropriate assessment before deciding whether to grant permission for the proposal: see regulation 43 of the Conservation (Natural Habitats etc) Regulations (Northern Ireland) 1995 (as amended). The Shared Environmental Service (“**SES**”), on behalf of the Department, intends to produce a draft HRA in relation to the application for the permission for the Mine proposal (ref. LA10/2017/1249/F). which clearly identifies and assesses (in so far as possible) risks to designated sites. SES, however, require time to progress the draft HRA. This is due to information necessary to ensure a robust draft HRA unlikely to being available until the Department is in receipt of rebuttal evidence. In terms of unavailable evidence, the previous paragraph (NIEA & Burns) for example, has the potential to initiate information; in addition consultees, 3rd parties may raise issues that shall require the applicant to address at the rebuttal stage.

Furthermore, on the 25th September 2024, NIEA published revised supporting advice underpinning the conservation objectives for the Owenkillew River Special Area of Conservation (“**SAC**”) and the River Foyle and Tributaries SAC (amongst others). Both SACs are subject to the draft HRA. The conservation objectives are a legal and practical necessity in order to enable compliance with

the Habitats Directives and Regulations and therefore SES need to understand the implications of the revisions for the draft HRA. The Department would therefore propose that a date be agreed of circa **two weeks** post rebuttals to allow SES on behalf of the Department to provide a draft HRA.



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