



Water Regulation Team,
DAERA

By Email

PROGRAMME OFFICER

██████████
4th Floor
92 Ann Street
Belfast
BT1 3HH

CONTACT

028 90 ██████████
Dalradian.CPI@pacni.gov.uk

OUR REFERENCE

2021/WHR03 – WHR04

DATE

18th April 2024

2021/WHR03 – a Public Local Inquiry under Regulation 17 of the Water Abstraction and Impoundment (Licencing) Regulations (Northern Ireland) 2006 for application AIL 2020 0105 – NIEA, to abstract and impound water on behalf of Dalradian Gold Ltd.

2021/WHR04 - a Public Local Inquiry under Regulation 17 of the Water Abstraction and Impoundment (Licencing) Regulations (Northern Ireland) 2006 for application AIL 2020 0106 – NIEA, to abstract and impound water on behalf of Dalradian Gold Ltd.

Dear ██████████

Thank you for your correspondence dated 15th April 2024.

The Commission is aware of the issues relating to the Dalradian email inbox over the Easter period.

I wish to assure you that appropriate measures are being put in place to ensure that no further issues occur going forward. Furthermore, I can confirm that the Commission received the email titled “*Public Local Inquiry: Curraghinalt Project (Dalradian) Email in response to 20th March Pre-Hearing Action Point 4 (AP4) - Email; 1 of 1*” submitted on 3rd April 2024. However, this email does not appear to include the information requested by the Commission at the pre-inquiry meeting and as subsequently followed up in the Commission’s letter to DAERA dated 11th April 2024. We would appreciate if this could now be regularised.

As you are aware, the main purpose of the pre-inquiry meeting was to outline the arrangements for the conjoined inquiry and to deal with procedural matters. At the pre-inquiry meeting the Commissioner specifically asked the representative of DAERA whether the Department had sought any extension of time with the Applicant to determine the abstraction and impoundment licenses and, if so, directed that a copy of all correspondence clarifying the date of receipt of the relevant applications and all extensions of time agreed by DEARA to be forwarded to the Commission. The Commissioner noted that the DAERA representative specifically confirmed that extensions had been requested and agreed. The Commissioner also recorded that the DEARA representative gave an undertaking, at the invitation of the Commissioner, to provide copies of the relevant documents relating to the agreed extensions to the Inquiry.

As you are also aware, subsequent correspondence was provided to the Commission in relation to the four applications relevant to the Inquiry that fall within DAERA’s remit. It seems that despite the submissions made at the pre-inquiry meeting by the DEARA representative, your Department have

now confirmed to us that in fact no extensions of time letters were ever granted/issued by it in relation to the abstraction and impoundment applications AIL 2020/0105 and AIL 2020/0106. In those circumstances the Commission raises the following concerns which we would now like to be addressed by you.

As you are further aware, the Water Abstraction and Impoundment (Licensing) Regulations (Northern Ireland) 2006 (*the Regulations*) specify a number of legislative requirements which include:

- Regulation 19(1) states that subject to paragraphs (2) and (3), the Department shall determine an application under regulation 8, 13(1)(b), 14(2) or 15(3) within 4 months beginning with the date on which it receives the application or shall determine it within such later period as may be agreed in writing with the applicant;
- Regulation 19(3)(b) states that for the purpose of calculating the periods mentioned in paragraph (1) the following periods shall be disregarded, namely (b) the period beginning with the date on which the Department makes a direction to the Appeals Commission under regulation 17 and ending on the date of receipt by the Department of the report of the Appeals Commission on the public local inquiry to which the direction relates;
- Regulation 19(4) states that where the Department fails to determine the application within the period provided for under this regulation the application shall be deemed to have been refused.

You will agree that the water abstraction and impoundment licences AIL 2020/0105 and AIL 2020/0106 were received by the Department on 30th September 2020. The Commission is of the view that the deadline for determining the applications (without extensions having been agreed) was 30 January 2021. You will also agree that Regulation 19(3) (b) is not engaged as the direction to the Water Appeals Commission under Regulation 17 is dated 5th November 2021 (copy enclosed).

In the circumstances the Commission is further of the view that without the necessary extensions having been granted and recorded as such, the applications were in fact deemed refused at the end of January 2021. As you know, an applicant has 28 days to appeal the deemed refusal under regulation 29. From the Commission's records, no appeal appears to have been lodged with the Commission within the requisite timeframe.

In these circumstances, the Commission is of the view that DAERA appears not to have had the necessary lawful authority to call a Public Inquiry in relation to the Water Abstraction and the Impoundment License applications. Regrettably, it appears to us that the Department's representative may not have given entirely accurate information on this at the pre-inquiry meeting to allow the issues to be addressed in that public forum.

In fulfilment of the Commission's statutory role and terms of reference, the Commission requests the written response of DAERA to this concerning matter by **2pm on 24th April 2024**.

In line with the Commission's policy of openness and transparency, this correspondence will be uploaded to the Commission's website.

Yours sincerely



Programme Officer