

Northern Ireland Environment Agency

Our Ref: KLB\JG\48638-1  
Your Ref: TC 80/20 and TC 081/21  
Date: 16 June 2022

**BY EMAIL ONLY**

Dear

**Our Client: Dalradian Gold Limited**  
**Applications for Water Discharge Consents (Reference TC 80/20 and TC 081/21)**

I refer to previous correspondence in particular our letters dated 18 March 2021 and 24 November 2021, further copies of which are enclosed for ease of reference.

Following our recent meeting, we see merit in providing more detail of the relevant legal framework to ensure that a lawful approach to these determinations is taken and this is set out below:-

**1. The Water Environment (Water Framework Directive) Regulations (Northern Ireland) 2017 (the 2017 Regulations)**

The 2017 Regulations apply to river basin districts identified in accordance with Regulation 4(1) and implement Directive 2000/60/EC as amended ("the Directive"), Directive 2008/105/EC ("the EQS Directive") and Directive 2006/118/EEC ("the Groundwater Directive"). The 2017 Regulations set out the Department's duties under the Directives at Regulation 3 and clearly sets out the tests to be applied when the Department is considering an application under the Water (NI) Order 1999 ("the 1999 Order").

Regulation 3(1) provides that the Department must exercise its relevant functions in a manner which secures compliance with the requirements of the Directive, the EQS Directive and the Groundwater Directive.

Regulation 3(2) provides that the Department must determine an authorisation so as, in particular—

- (a) to prevent deterioration of the surface water status or groundwater status of a body of water (subject to the application of regulations 18 and 19); and
- (b) otherwise to support the achievement of the environmental objectives set for a body of water (subject to the application of regulations 16 to 19) and determine an authorisation (including an application under the Water (NI) Order 1991).

Regulation 3(3) confirms that determining an authorisation includes a decision in respect of a consent under the Water (NI) Order 1999 and is therefore directly applicable to our client's applications.

## **2. The Water Framework Directive (Classification, Priority Substances and Shellfish Waters) Regulations (Northern Ireland) 2015 (as amended) (the 2015 Regulations)**

The 2015 Regulations are made under the European Communities Act 1973 and Article 5 of the 1999 Order which enables Regulations which prescribe a system of classifying the quality of waters according to criteria specified in the regulations. They do not address the Department's obligations in respect of determination of applications, which are covered by the 2017 Regulations.

The 2015 Regulations transpose the EQS Directive on environmental quality standards in the field of water policy, Article 3.1 of which is clear that the EQS set out in Annex of the Directive should apply to bodies of surface water. The purpose and terms of the Directive are clearly relevant when applying the implementing national legislation. The application of EQS to bodies of surface water is consistent with the Department's approach to its river basin management obligations.

An application of the 2015 Regulations to determining a consent under the Water (NI) Order 1999, which resulted in a greater level of protection for the Pollanroe Burn and Curraghinalt Burn, which are not surface water bodies, would also be disproportionate and offend a fundamental principle of European law as would a situation whereby the discharge consent levels were below the EQS.

We note that the Department on 5 November 2021 directed the Planning Appeals Commission to consider the representations made in respect of these applications and our client welcomes the opportunity to address any residual technical issues as part of that process. It is clear that the Commission is the appropriate forum for consideration and recommendation. Post Inquiry and subject to the recommendations of the Commission, final determinations as to the actual discharge consent can be made.

However, because of the importance of the Department ensuring a robust legal base for its determination of the applications, we urge that the Department seeks urgent legal input from counsel for the Inquiry on this fundamental issue.

Yours faithfully

*Cleaver Fulton Rankin*

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