Conjoined Public Local Inquiries into the Curraghinalt Project, Strule Arts Centre Omagh

Topic: Strategic Matters & Principle of Development, Tuesday 14th January 2024 (Day 2)

Attendance Note as taken by Cathal Mullan, apprentice solicitor, Harte Coyle Collins

Planning Appeals Commission Inquiry Panel

Commissioner Donaghey (Comm. D)	Commissioner McParland (Comm. McP)	Commissioner McKeary (Comm. McK)

In attendance

Dalradian Gold Ltd Stewart Beattie KC (SB KC) Scott Lyness KC Dr. Michael Gordon – Turley Consulting (MG) John Merry – SRK Consulting	**DFI Planning Service (the Department)** David Elvin KC (DE KC) Barney McKay BL Graeme Walker – DFI Planning Service (GW)	**3rd Parties** Dean Blackwood – The Environmental Gathering (DB) Sean Tracey – Communities Against the Injustice of Mining (ST) Emmet McAleer – Former independent councillor & local resident (EM)
NIE Networks William Orbinson KC (WO KC) Sophie Hunter solicitor – Carson McDowell Nigel Crawford – NIE Networks Seamus Fay – RPS Group (SF)	**DAERA/NIEA** Andrew Byass BL (AB BL (DAERA/NIEA)) Neil McAllister – NIEA Stephanie Miller - NIEA	**3rd Parties** Fidelma O'Kane – Save Our Sperrins Cormac McAleer – Save Our Sperrins (CM) Mary Brolly solicitor – Brolly Jameson (MB) Dr. Damian Gallagher – University of Ulster, personal capacity (DG) Dr Amy Strecker – university College Dublin (AS)
Fermanagh & Omagh District Council (FODC) Conor Fegan BL (CF BL) Paul McDermott – FODC Martin McCarroll - FODC	**3rd Parties** Gerard Moyne – Defending Environmental Wealth (DEW) Sean Gallagher – Defending Environmental Wealth (DEW)	**3rd Parties** Acland Bryant BL (AB BL) Laura Neal solicitor – Friends of the Earth NI Andrew Ryan – TLT LLP
Derry & Strabane District Council (DSDC) Proinsias McCaughey – DSDC (PM) Dermot Colhoun – DSDC Seamus Donaghy - DSDC	**3rd Parties** Paul Haughey (PH) Martin Tracey (MT) Cathal Mullan apprentice solicitor – Harte Coyle Collins	**3rd Parties** Richard Bowman – Gravis Planning UK (on behalf of supporters) (RB) Emma-Lisa Knudsen – Gravis Planning UK (on behalf of supporters)

Time Noted	Speaker	Note
09:54		**[Commissioners are seated]**
10:00	Comm McP	Everybody, good morning, a few housekeeping matters **…** I note that a few people have changed seats to keep me on my toes, anybody new to top table, we will take appearances **…** Just to confirm are you representing DFI planning only?
	DE KC	DfI planning only.
	Comm McP	Is there anybody from roads? **[no response]**
10:09		**[Appearances given]**
	SB KC	Commissioner could I raise three housekeeping matters **…** can I confirm vibration one of subjects is it likely to be tomorrow.
	Comm McK	Thursday.
	SB KC	Flag we have witness for lighting, for medical reasons, we may have to rearrange table, don't want you to find we have moved table and wondering what we doing **…** Mr Bickham, witching hour for getting him away is 4 o'clock **…**
	Comm McK	We are going to try and rearrange topics.
	DE KC	We have spoken to Dr David Kroner **[as heard]**, in respect to public health, he can attend Thursday **…** its Friday he can't do.
	Comm McK	Not intention for Friday.
	Comm McP	Mr Beattie you to come back this morning on whether financial benefit of unauthorised development and on whether your client is of opinion that exploration licences, any extraction and impoundment discharge consents should be projects to be considered in cumulative element of EIA.
	DE KC	I was asking about this last night. The Department investigated import of material on site, investigation closed as authorised and consistent with planning condition, so as far are the Department consent, only building **…**
	Comm McP	Dept not enforcing authority?
	DE KC	DOE was before handover.
	CF BL	DOE had investigated this in 2014, refence K2014 0074 CA and the conclusion that was reached in letter dated 19th Dec 2014 that there was no breach of planning control prior to transfer of powers to Council, prior to that Council had no power to reopen file **…** for you Commissioner to hear evidence of others, that is the position of the Council.

	Comm McP	So, the Department opinion is that it actually had planning permission by virtue of what reference no. Mr McAleer do not interrupt.
	MB	We can't hear, great difficulty.
	DE KC	I'll repeat, I will need to get details and report them to Commission, Ministerial statement to this effect, considered enforcement action not appropriate.
	Comm McP	I would like it by end of **…**
	DE KC	Will get as soon as I can, was decided not to enforce, not authorised was building and its hard standing.
	Comm McP	Mr Blackwood's point yesterday saying fill into site was not part of any assessment.
	DE KC	Was granted over ten years ago, whatever position was, now not open to challenge.
	Comm McP	I would appreciate that, would close off Mr Blackwood's point, if could be furnished with drawings, decision notes and HRA.
	DE	I will see what documents available.
	DB	To be of assistance, reference K20130072F, whilst Department claim was dealt with in planning application, no reference to infill in case report or EIA screening, the infill brought onto site after assessed negative for environmental effects, whilst Mr Elvin says unchallenged, correct, may still give rise to significant effects as never assessed, precautionary approach here, could still cause harm.
	DE KC	Short answer, matter relating to earlier granting of planning permission, that file was closed, not challenged, no longer open to challenge, forms lawful baseline for lawful development.
	[Author failed to identify speaker]	Restoration plan included removal of infill.
	CF	We can provide, don't think removal of fill was mentioned.
	[Author failed to identify speaker]	Correct reference K20140246/F as there was a variation
13:19	Comm McP	That subsequent planning permission, did that mention drawings.
	[Author failed to identify speaker]	Same drawings just been handed copy of actions for restoration and decommissioning and nothing mentioning removal of infill, removal of waste rock at agreed levels.
	Comm McP	So, levels to be agreed with Council?
	[Author failed to	Dealing specifically with waste rock storage.

	identify speaker]	
	Comm McP	That's the mound to west of site.
		As far as building concerns, removal of office building **…** No mention of levels after that, we can provide a copy through **[inaudible]**
	Comm McP	I'm happy to take word.
	CF BL	We will double check over lunch.
	Comm McP	Mr McAleer, yes.
	CM	Commissioner, I'm very familiar with the planning application to which previous speakers spoke, that was planning application that stated to remove the two conditions to protect the SAC and then that somehow that application was subsumed, but because this infill site, 8.500 tonnes hasn't been approved it wasn't recognised when the Council gave response. For planning they obviously have no record of that, that illegal infill still there, never addressed, is it up to public to keep mentioning this, the Department ignoring.
10:24	Comm McP	I have a copy of the application and decision Mr Elvin. The Ministerial statement referred to, I have that in evidence.
	DB	The point I'd make is the first line says pursuant to specifies another question, possibly eight questions that refers to sets out timeline concerns being raised as to how the dept could claim the import of materials that represents operational development could be inherent in planning application without any consideration or any assessment. If helps I could give you list of these questions.
	Comm McP	I am happy enough I have enough evidence.
	SB KC	I thought that was my first piece of homework, one of the objectors statements, Ms Oneill pg. 5, suffice to say we content it did envisage infill, answers by Minister, 13th January 2015, happy anniversary, 10 years ago question made, stated by planning authority to be lawful, in our submission, the end of it, not disaggregated everything, issue witnesses live to **…** waste rock facility that is permitted, that's the baseline as it were, on my second issue, reflected whether start trying to do sums for me or the Commission, make three short points about financial advantage, follow the logic of the Council position, *Ardagh Glass* should have taken down building and rebuilt to remove financial advantage, that didn't happen, wasn't required, context important when waying financial advantage, this not a productive site, a redundant site at the moment, would come forward as part of proposal or would be removed, security or staffing but that's it, nothing really to be gained by it being there ultimately as said yesterday its going to be taken down, if Council wishes to pursue removal before we will section 54, second point **[inaudible]**, third, discharge consents, satisfied contemplated and factored in, question that properly lands with witness, particularly

		in respect to water environment, alerted them, and I think the same applies to the exploration licence, you had raised paragraph 2.2. of Mine Waste Statement, we have asked for instructions on that, I will be on Monday morning at the latest, don't see connection on that particular issue, looking at it, any event will have to be picked up on the water debate.
	CF BL	We have taken note of that on the discharge consent, on financial benefit, *Ardagh Glass*, the debate yesterday was effectively are the sums done, haven't been done, *Ardagh Glass* was very different but principle are of general applicability, set out in DMPM 9A quite clearly benefit financially to be obtained under obligation to restore site, costs money and haven't done, if site restored on time, site would be partially restored site with different habitat value, we say financial advantage test still live, matter for judgment.
	SB KC	On last point we can agree, if that's right has to be taken down and put up again so that is the financial advantage, can't be right way to look at test, back to the, if had significant effect on environment **…** there now, ecologist certainly will, Council looking at site in isolation, note EIA development can't have both ways, its suddenly EIA in its own right because part of bigger development, one has to think of impact of development, extent of development currently unauthorised.
	Comm McP	Mr Beattie's argument that retaining for 28 years and to bring in as wider plan, screening on own merits correct Mr Fegan if I'm owing, screening on own merits would be materially different if applying for exploratory works for 28 years, Council could have taken different screening, anything to say.
10:34	SB KC	If had been application for **…** difficulty is no part of that application starts to sound **[inaudible]** … For 28 years, is irrational and illogical, never in contemplation, if application to put building in situ for 28 years, question of what Council would have done, and hardstanding,
	Comm McP	But not just building.
	SB KC	It is, exploration, waste drop mound, lawful, are done.
	Comm McP	The fencing, explosive store **…** there is a lot more to it.
	SB KC	It seems something we will be debating in respect of baseline. I get your point at vent rises, I dealing with base line, straying into experts.
	CF BL	I don't want to touch on either, comment on duration point to one of factors when screening, duration of project an issue, not irrational, duration is classically a factor that could make difference, not only in respect of vent rises or what happens on site and fact buildings there longer period of time, original permission, one of the factors that was significant in approval was that was only going to be there for very

		short period of time, apple oranges argument, can't compare two, not just vent rise, exploration.
	MT	Thank you Commissioner, just for clarification, the site is not an abandoned site, there are regular deliveries of fuel, digger work last three months, documented, number of incidents with police at it locals saying site illegal, contact PSNI saying they carrying out illegal burying, to say this site is not doing nothing is total farce, we can provide plenty of evidence, generators delivered and taken off, this site has routinely been used last number of years, training people, investment displays, in all honesty Commissioner they may say not working per se, not involved in removal of ore but everything else day to day.
	Comm McP	That's ok Mr Tracey
	CM	The reasons it wasn't considered EIA development,, was for 3 years **…**
	Comm McP	The Council has already noted that, anything above.
	CM	Other point was based on fact, forty four conditions to be strictly enforced, protected river SAC was removed in one year, time period has elapsed, if these offices temporary, company very clearly using the fact that there no enforcement, appears this application is immune from enforcement.
	Comm McP	Mr Elvin.
	DE KC	On issues of Environment Impact Assessment, no surprise approach to temporary form **[compared to]** ultimate, Preston New Road Action Group [2018] EWCA CID 9, Lord Justice Lindblom, and the Lord Justice agreed with the first instance, that you taking different view of environmental effects of temporary exploration licence compared to future work, that case was fracking application, applies to minerals, authority for distinct approach.
10:43	Comm McP	Applicant legal counsel has expressed an opinion on *Finch* case law in legal documentation in rebuttal, FODC and Friends of the Earth and Greencastle Concerned Residents Association have concerns inadequacy.
	DE KC	DfI satisfied with the response of applicant. Evidence for Commission, at first blush yes, Lord Leggatt, the obligation to assess indirect effects of greenhouse gas emissions only arises when there is clear evidence of what there will be, not role of EA to indulge in speculation, paragraph 79, in that case where I acted for producer, in that case was inevitable generation of greenhouse gas, very specific facts.
	Comm McP	The point raised by the objectors, inevitably that the processed ore when transported …
	De KC	I'm getting there.
	Comm McP	Accepted then there has to be further processing.

	DE KC	Accepted in that case of burning of greenhouse gas emissions, different from processing of ore, we have taken view to date, too speculative to assess, subject to what you determine and recommend on the evidence, fact there was intervening processing was held by UK Supreme Court was not relevant assessment, environmental assessment may be needed at processing stage. My point in this was to clarify that DfI was satisfied that no further environmental information was required in line with *Finch*, don't want to get into debate on *Finch*, will take place in climate session.
	CF BL	First, we disagree with the Department's position, second to lay down gentle marker, Mr Elvin confirmed DfI to retain open mind, given its position now,
	DE KC	That is precisely the point, we will obviously have regard to views of the Commission on the evidence,
	CF BL	**[inaudible]**
	AB BL	Placed down marker, we disagree on the interpretation of applicability and should apply and form part of ES, as assessed so far inadequate, happy to debate later.
10:49	Comm McP	Yes, Mr Haughey.
	PH	As objectors we agree that interpretation of *Finch* wrong, more stark that DfI who sent letter on 15th October to yourselves, told public they have neutral stance, carried on to give an interpretation of *Finch*, unquestionably favours applicant, showing beyond reasonable doubt not a neutral Department **…**
	DE KC	That is outrageous
	Comm McP	Mr McAleer there will be no heckling. I've told Mr Elvin to let Mr Haughey finish.
	PH	For somebody who has neutral stance to give opinion of law three days before Statements of Case is outrageous, we are talking here about there is no substantial difference in terms of the product, we don't know what it is, as we talked about yesterday this is material change, this is an unprocessed product, this goes to a company, not open market, totally erroneous, thank you.
	DE KC	It is absolutely wrong to suggest the Department is not taking neutral stance if Mr Haughey had listened, view was taken on information present at the time view at the time, we open to a contrary view, on recommendations to Department on hearing evidence, the Department has not made mind up, seeking assistance of Commission. Can I also draw attention to fact that Lord Leggatt In *Finch* that oil was very difference commodity to other minerals paragraph 121, also 123, oil used in well not used in different type of object.

		I'm sorry I interrupted you earlier Mr Haughey.
10:53	Comm McP	I'm sure Mr Haughey appreciates that.
	CM	Surely the ore that is partly processed is not going to produce any other product.
	Comm McP	Going back to neutral stance. Not hearing evidence on that.
	CM	And also the transboundary, they did not consult with yourselves.
	Comm McP	They didn't have to consult with us.
	CM	After rebuttal stage initiated transboundary approach, that's not neutral.
	Comm McP	We will come down to the information before us when we come to Aarhus.
	WO KC	Seen from our evidence what we think is a *Finch* consistent assessment of emissions, what is the Department's current stance on this issue in respect of the NIE application.
10:56	Comm McP	Mr Orbinson we will ask if ES is adequate and then will ask wholistically, go to the Department and ask on the evidence do you think there is further environmental information required. On transboundary consultation, we note in the Department's Rebuttal statement you have consulted with Donegal County Council in November 2024, the letter was put into to Rebuttal, have you determined reasonable time frame?
	DE KC	Only partial answer, actual consultation on 29th April, the Department sent material, chased three times for response, chased on 18th June, 23rd Sept, 4th November, there had been some error in Donegal Count Council led them to not recognise that they had been consulted even though chased, responded on 22nd Nov., indicated wished to take part in transboundary consultation, ran until 6th Jan, advertised in the Belfast Gazette, received responses on Friday, sent to Commission as we got it.
	Comm McP	Just to go back to your advertisements, advert in Belfast Gazette, DfI had submitted to the Commission just before Christmas it referenced the reference numbers … on planning portal on AIL references, were the two reference numbers for the mine put in the advertisement?
	DFI	**[inaudible]**
10:59	Comm McP	Was advertisement conducted correctly.
	DE KC	The letter form Donegal County Council makes clear that they were consulted on all three matters.
	Comm McP	Not the question.
	DE KC	I aware, just raising.
11:01	Comm McP	Have they seen all material submitted, are they aware that that information exists under that new reference number.
	DE KC	**[inaudible]**

	Comm McP	Mr Tracey.
	ST	Why has Department felt need to only consult Donegal County Council recently.
	Comm McP	New environmental Information submitted.
	ST	Why has it taken until now, was it not always transboundary, how all of a sudden has to be transboundary.
	Comm McP	Any reason why Donegal weren't consulted until April last year, I know ES for mine rules out transboundary, electricity line from memory, it clearly states that prior to mitigation measures there is possibility of significant impact on river Finn, with yourselves some 4 years prior to consultation.
	DE KC	We decided to do it when decided to it, ample time … No time specified in the regulations; ample time given the inquiry was not going … not the Department's fault Donegal County Council has inadequate internal procedures. No time specified in the regulations; ample time given the inquiry was not going … not the Department's fault Donegal County Council has inadequate internal procedures.
	Comm McP	Required to produce Statement of Case by May not September at that stage. Just to carry this on , say hypothetically we didn't have the issue with the water abstraction licences and inquiry had taken place and even now as this consultation has come very late and we don't know if done properly, does that no have implications for people here who have raised transboundary issues not having full suite of information at hand as part of this inquiry.
11:05	DE KC	The water abstraction licences not a matter for the Department.
	Comm McP	That was not the question I asked …. Does the fact is that the material put to Donegal should have been adequate for them to initiate consultation.
	DE KC	Not the Department's fault they have inadequate internal procedures and failed to recognise it.
	Comm McP	Mr Fegan, yes please.
	CF BL	Transboundary consultation an issue we raised, our understanding of 2015 regulations, reg. 27(1), would not agree that doesn't specify trigger point, what says where it comes to attention that proposed development likely to have significant effect on other EEA state the Department shall publish a notice when comes to attention of Department. Comes subject to statutory duty, this Council, applications looked at when they come in, Council consults at point when comes to attention, wouldn't agree that was appropriate time to

		have engaged in consultation. Maybe took place as raised at pre-inquiry meeting, plausible explanation, undertaken after pre-inquiry meeting, rather than Department addressing its mind to the statutory obligations in reg. 27.
	MT	Mr Elvin, the failure now seems to be sitting with Donegal County Council, if I'm correct they have only had since April last year, Department had opportunity to notify up to four years ago, not a case that Department here try and move the block of responsibility onto Donegal County Council when they alone seem to be major failure for this process to be started.
	DE KC	I am satisfied **…** I don't think Mr Elvin is going to add anything further, going to go back to Department.
	Tony Devine **[Audience]**	Ordinary citizen form Inishowen …
	Comm McP	What's your name?
	Tony Devine **[Audience]**	Tony Devine, I first aware on 24th Nov, supporting Save Our Sperrins as we have mining issue, we were sensitive to what was going on here, want to know impact on Foyle, we did not know the content that we needed **…** until 24th November, given until 6th January at 16:30 all consultation papers needed to be with Donegal County Council at space of time Christmas and new year holidays, we did not have enough time to do research to put in a substantive submission and observation, other things to say on the content of my own, do not understand yet, whether my submission or others have reached here, feel aggrieved that would be case.
	Comm McP	Department can you please come back to me about advantage.
	DE KC	I will do.
	Comm McP	I mean now.
	DE KC	I don't have it to hand.
	Comm McP	Does Mr Walker not have it there, either the new reference number is on it or it is not.
	GW	The copy doesn't have the reference.
	Comm McP	The advert does not have reference for the portal?
	[Author failed to identify speaker]	I can assist SBP201712490-F.
	Comm McP	Is the Department satisfied consultation with Donegal County Council had most up to date environmental Information and it line with statutory obligations.
	DE KC	On planning portal, answer is yes, links through to SPD case as well.
	Comm McP	Would a standard lay person know that.

	DE KC	Up to commission to decide, here for commission to …
	Comm McP	Trying to ascertain you abided by procedural requirements …
	DE KC	Regardless of issue of time limits they have responded, there has been public consultation, can provide the lady with documents provided to Mr Moyne last night, certainly if the commission looks at the matters what consultees were aware of, letter from CAIM dated 23rd December, listed all the applications, they included the SPD reference number.
	Comm McP	No but they include individual application numbers. At present you don't know if Donegal County Council has considered it as not referenced in your letter to them or in the advertisement or for that matter anybody in Donegal.
	DEW	I can explain to you a wee bit about process how we are here, advert was put into paper not widely distributed in Donegal, no. of municipal districts in Donegal, divided into three, 2/3 of Donegal could not see notice, Donegal County Council notice was put into obscure area of planning department portal, do have public consultation portal that appears at front of website, no reference to water discharge were on the advertisement, even if went into information available, was not available for us, in respect of Aarhus and ESPO it is the Minister for Housing to be notified of this public consultation, up to Minister to take the lead and distribute the information to authorities they deem to have interest in this, in this case, the Minister, in my best belief was not notified, failures … of member of Donegal County Council staff, we have to deal with as citizen.
	Comm McP	Regulations require you to consult with bodies, have you consulted with Minister for Environment?
	DE KC	Just County Council.
	Comm McP	Do you think sufficient?
	DE KC	Donegal County Council closely concerned with impact.
	Comm McP	Do you not think Department in South with responsibility …
	DE KC	Well clearly not.
	Comm McP	You don't?
	DE KC	We took the view they would have then referred the matter to Donegal County Council.
11:20	Comm McP	Ms Strecker, yes.
	AS	Thank you, Commissioner, sitting here, quite shocked, statutory obligation under ESPO and Aarhus, those are the Department of Environment, Climate and Communications and Department of Housing, Local Government and Heritage, hearing now neither notified, significant application, serious transboundary implications, would like to bring up the Aarhus Convention in respect of transboundary issue and issue of consultation. Will refer to Aarhus Convention that was ratified on 23rd February 2005, article 4 and article 6, it appears from

		applicant Statement and Rebuttals, appears they have not undertaken consultation, applicant Statement of Case, "people have different perceptions of the project", purporting some negative and positive views of public, entirely skewed view of public consultation process, in excess of 40,000 letters of support, 11 – 1 ratio, article 6 of Aarhus Convention parties must give time for informing public and for public to prepare and participate effectively, may not be pro forma, 6.4, required to all concerned access to all information, 6.5, and this information includes inter alia the state of the elements of the environment, factors that affect the environment and importantly decision making processes and the state of human health and safety. From my research this has not happened, so I would like to read you what public participation entails as I think misconception by Department, from Aarhus compliance committee, Chair is Áine Ryall, important to note while developer may hire consultants neither the project proponent nor consultant can ensure the **…** As observed by compliance in ACCC2006-16 reliance solely on the developer is not in compliance with provisions of this convention. The consultation conducted by the applicant were not impartial, painted the project in a positive light and did not provide the public with the full information to contribute effectively as per art. 6 of Aarhus Convention. In respect to the later stages, there have been several contraventions, article 4 and article 6 not least due to prepare and participate effectively, there are people who are materially affected who are not able to contribute at all due to lack of advertising. Statutory bodies with environmental protection remit supposed to be impartial, even more pronounced in this case due to multiple desginations in Sperrins. Duty of care on UK authorities. Almost finished, feel necessary to say, there is legal significance attached to this landscape, relating to its natural heritage, human rights, genuinely concerned to have twenty four toxic chemicals pushed into waters. This application is being watched closely across the border and in Europe and I find very lamentable that experts cannot present online.
11:31	Comm McP	Procedures set. Not raising them.
	ST	Speaking as layman, article ,3 para 1 ESPO [**paraphrases]** notification should be done as soon as possible and no later than public in own jurisdiction, what has changed so significantly.

	DB	The Department couldn't have been ignorant of obligations, ACCC/2/1390 the Department were found to be in breach of Aarhus Convention and subsequently the UN, issued 27th July 2021. Found to be in breach of Article 6, lack of public participation, decision against UK, specifically NI.
	EM	Excuse get of jail card about things being offset by providing public with public consultation period, has to be meaningful, the meaningful aspect of that is missing, can go back to public event hosted by applicant **….**
	Comm McP	I have all that and I have no further queries.
	EM	In relation to Department**…**
	Comm McP	Going to bring people back, was advertisement sufficient for transboundary for EIA.
	PH	Like to note history of publication on PACS, show obvious push By Department stated in number of parts as they said they were happy to proceed with process …
	Comm McP	Mr Haughey, bring you back, is the advertisement in relation to transboundary EIA sufficient.
	PH	I'll give reasons, at pre-inquiry hearing you asked question are there any transboundary issues, Department said no …
	Comm McP	DFI planning said that they hadn't conducted a transboundary consultation, you need to get you notes right, I have reviewed my notes, NIEA did not comment on it. I did raise issue that transboundary issue **[inaudible]** in April consultation, key thing here now they have obviously identified transboundary issue at that stage.
	PH	I did raise issue that transboundary issue … cut … In April consultation, key thing here now they have obviously identified transboundary issue at that stage **…**
	Comm McP	All three planning applications are included in the advert.
	PH	Transboundary issue in April, two subsequent planning applications.
	Comm McP	Not application and not covered on the regulations, this is solely in relation to the ES for the planning applications. Any further concerns?
		Yes, one line letter from Donegal County Council, saying we don't see problem with NIE power lines as compared to main mine.
		That's in the Rebuttals, Commission are yet to see consultation, not looking at yet, don't want to be prejudiced.
	PH	**…** The other thing there **…** I've done an objection, without going into detail, clearly identified number of procedures and legal cases.
	Comm McP	Does the fact that the Donegal applications reference only 3 applications and not SPD means they not aware.
	DE KC	SPD indicates where the materials held **…**

	Comm McP	Have Donegal references subsequent environmental Information in their response, I really need it clarified.
	DE KC	In that case, need to get chapter and verse, can't do that instantly
11:42 11:47	CF BL	Key issues in debate, do you have copy of the regulations, regulation 27, really the first issue is that reg 27.I publication in Belfast Gazette accompanied by ES, that's issue in respect of reference, there are almost one hundred related cases, size of red line, have to scroll, scroll, scroll, needle in hay stack, the prism through which courts normally look at, what would reasonable member of public understand, can't send members of public on paper chase, I don't accept answer to point, regulations, reg. 27.II, paragraph 3 of ES, has Donegal County Council been sent full ES, this includes further environmental issue, that issue two, then under reg. 27.4 the Department shall also arrange for particulars of information and any further information to be made available for … and the public concerned, specific obligation on Department, further information received in process to authorities, note authorities plural, and to persons concerned. Have heard today people not made aware of that. Issue 3 then issue for 4.b given opportunity to forward opinion in reasonable time, didn't go out for consultation until end of November, how can be said that reasonable when important parts of inquiry process had ended, given format we in, Statements of Cases in writing critical, what Commission have said only will be able to raise points if in Statements, that's to say nothing of the fact that individuals from Donegal received information in November, on top of the volume over the festive period … on any analysis can be for reasonable period of time. Take Mr Elvin point, Donegal County Council may have some blame, beside point, not here for blame game, here to ensure regulations in force, objective asking whether this has been properly done, if hasn't quite frankly, places significant degree of risk on this process.
	DEW	In the normal understanding of the process have had a few disasters of Donegal it is normal procedure for document to be made available in hard copy available for people who are not able to go internet to get a link only way to get a view of anything was to click on a link, Donegal County Council did not facilitate anyone to go to their office … had to send any issues to Mr Liam Ward Donegal County Council. Bottom line that is application or process can't go anywhere without consent of people of Donegal which.
	Comm McP	Mr Elvin anything to say in reply.
	DE KC	I've said all I've said.
	RB	Bit of chat in respect of community consultation in general, we represent local community groups in the area, they more than content

		on adequacy of the community consultation as is evidence by level of attendance, to provided balance for you **…**
	Comm McP	Mr Elvin you going to come back to me.
	DE KC	Today.
	Comm McP	Going to say this once ok. Can't be going back to people. People need to make substantive point in one section.
	EM	It's one question.
		[Interruption – inaudible]
11:51	EM	One line from DFI, regardless of the issue of time limits, that's coming from DFI, we had a shocking statement yesterday and that's the shocker today.
	DE KC	I was simply putting aside that issue, wasn't saying you should ignore it, important to listen to everything.
	Comm McP	I've heard enough, two subjective views of what was said, I'm happy **…** what you have said
	EM	Level of process, people not used to this formality, apart from couple throw in at the back … It is a simple question … People have taken time off work, people employed and paid well
	Comm McP	I'm not denying you opportunity to speak, at certain stages I was going back to same person, that is not on.
	EM	But why not?
	Comm McP	Repeating what we have previously said.
	EM	Second issue is we haven't given equal access; people have to take time off work.
	Comm McP	Regardless of online access you would have to take time. You are not being excluded, how are you **…**
	EM	As someone who is employed, how I attend this process every day.
	Comm McP	To be honest that is not a matter for me, this is a local inquiry.
	EM	It affects my home.
	Comm McP	These **…** take place during working hours.
	EM	Can you explain how that is not exclusionary.
	Comm McP	Set out in legislation, there will be a consultation, give views then.
	EM	Will that by end of March.
	Comm McP	Probably not. Mr Tracey unless to do with transboundary issue then not taking it.
11:57	MT	I'm stating here is I'm raising issue of Aarhus, right to fair hearing
	Comm McP	You'll get it, simply saying people need to be concise. 3rd parties have stated environmental data out of date **…** applicant statement of case and rebuttals, any 3rd parties want to make representations as to date on information.

	CF BL	On out of date information, we reserve our position, as we go through each of topic areas, we will ask exerts to express view on this.
11:58	Comm McP	Mr Haughey.
	PH	The upload last night of twenty or thirty documents.
	Comm McP	What are you on about **…**
		They put in 20-30 documents last night **…** thirty six
	DE KC	All we've done is uploading various Statements of Case so visible. There is no new environmental information uploaded that is existing information on planning portal
	Comm McP	Was the applicant's Statement of Case and rebuttal uploaded last night.
	DE KC	I'll check.
	PH	And the other thing, that is new to the process to transboundary consultation, is that correct.
12:01	Comm McP	Going to take peoples opinion on it shortly. Mr Tracey.
	ST	We feel the data out of date, take into consideration the viability of some of the data, a lot of the earlier date, produced by labs independently accredited, precautionary approach, minimum we could ask for.
		You've raised those issue **… [inaudible]**
	DG	I'm having real trouble using hidden hearing, hearing Mr Elvin, ask that he could hold microphone. Was the advertisement in Donegal conducted correctly think response was yes.
	DE KC	Said was coming to back to it later, want to **…** I'll make sure to speak closer to the microphone, I'm sorry about that.
	[Author failed to identify speaker]	Initially indicated that AIL10 reference number it comes up, but Mr Fegan said that produces numbers of documentation.
	SB KC	I'd like to hear the Departments updated position, see where that takes us, regarding surveys as you've seen, monitoring ongoing, Mr Fegan suggestion is only prudent way to do it, in fairness number of experts comments relatively clear, form discrete part of topics.
	Comm McP	Mr Orbinson, your position.
	WO KC	Same.
12:05	Comm McP	We'll move on to, going to leave question for Department in relation to reg. 27 and whether there any further FEI required at that stage. Will move on to principle of development. Within all parties' statements of case, mention of various development plans, can the Department highlight that there satisfied that the Omagh area plan 1987 – 2002, and the Fermanagh and Omagh local development plan 2030 are the relevant plans for the Department.

	DE KC	Yes.
	Comm McP	FODC have listed what they consider the relevant polices **…** before I start are there any designations in Omagh area plan that are relevant to application for mine before and in particular in relation to issues raised in representations? To be helpful going to refer to policies relating consultation features and third parties in relation to the black bog ASSI, are they superseded by what in the plan strategy.
	CF BL	Could you give me page.
	Comm McP	Pg 50 paragraph 192.
	CF BL	So far as ASSI concerned those are designed statutorily under the Order as opposed to policy plan so the policy on ASSI has been updated in that strategy NEO2. I think the up to date policy position in respect of the development plan would be covered by NEO1, Part 2 which is nationally important sites.
12:09	Comm McP	Mr Elvin does the Department concur.
	DE KC	Yes. As you know we've set out what we thought were relevant matters in the Statements of Case and Rebuttals subject to your view.
	Comm McP	Mr Elvin Fermanagh & Omagh considered to be relevant body **[inaudible]**, do DfI agree policies considered in assessing mine application. I think couple points of difference.
	DE KC	Going to take you through those points.
	Comm McP.	**…** Fermanagh & Omagh's list, do any party consider, that there any further policies, Fermanagh & Omagh have listed the most, asking for people's opinion, this is solely for the mine application, any party has any further policies that should be **…** application. Mr Tracey
	MT	Referenced Ramsar site back blog…
	Comm McP	Issues regarding study, we will get that to that in ecology part, trying to ascertain …
	MT	Did not designate in Fermanagh & Omagh …
	Comm McP	Not designated through area plan.
	MT	Sorry, reference, couldn't find it in the local development plan
.	Comm McP	Ok.
	CF BL	Pg 145 – Developing affecting ASSI **… [quotes, reference to black bog]**
	DE KC	Answer to question is we agree **…** looked at notes on matter, difference between Dalradian and Fermanagh & Omagh but agree starting point is the polices in Fermanagh & Omagh.
	Comm McP	In regard to policy 0MIN1 there appears to be common ground between applicant, Department, Council. Parties differ on need for gold or silver. Is there a need test in relation to policy MIN41. If not in PS, the PPS. That is to the Department. While Mr Evans checking**…**

	CF BL	We accept on terms of MIN0 there is no needs test, refer Commissioners to strategic para. 6.5.2 bullet point 1, objective of balancing need for strategic mineral development vs. protecting environment. Original planning statement in Turley's; discussion of need, that's why address need in our Statement, need for minerals in question in part as material consideration to us by the applicant **[inaudible]** that's why thought to address in our Statement.
	DE KC	I agree largely with Mr Fegam, benefits and importance of minerals, not strict requirements, material consideration, if positive in favour of application need to be weighed against environmental impact. Post dates ESP PPS, rare earths, in more recent policy, with regard to net zero and the like, to avoid imports from China or South America.
	MB	Test for need for gold, have we had identified what we are testing for, instead it's a concentrate, various minerals sought, do we know what application is before the commission. The Statement of Case and Rebuttals proceeded on basis that were before and yesterday **[inaudible]** and would ask commission to address.
	Comm McP	C2 OK
12:20	SB KC	Sorry, as just waiting **…**
	MG	References to need in planning statement were in different policy context, when rural strategy was relevant in overall policy matrix, our position is, unlike other land use, no requirement to prove need, in either the local development plan or the DS PPS, effectively the local development plan takes the need for valuable minerals as read in its preamble, obviously the target metal are valuable as they fall within definition in Local Development Plan, consistently set apart from other minerals in planning policy, implicit in that framework of need for them given their rarity and value. Point already in submissions, need for benefits something to consider can be weighed in under overarching policy SPO1 or as separate consideration in its own right. Mr Hunt can speak to those benefits to today.
12:22	Mr Hunt Dalradian Gold Ltd.	Thank you Madam, for the applicant, as Dr. Gordon said and Mr Elvin, economic need a material consideration, grown stronger since application first made, Labour government plan for change and model industrial strategy pits economic growth as main target, defined number of missions, economic growth mission, number one mission, raising living standards in every part of UK, based on economic stagnation **…** written through into Northern Ireland government draft plan, economic growth and productivity **…** theme **…** good jobs **…** decarbonisation **…** regional balance **…** this feeds **…** Fermanagh & Omagh District Council policies, economic growth, product, inward investment and well paid jobs **…** set out in strategic objectives in **[inaudible] …** so it's the applicants case that the project meets this

		urgent economic need, contributes to all four Northern Ireland government economic challenges, one of the biggest investments in the country, 500 million in total over life of mine, 350 well paid jobs, nearly double the prevailing local wages, in relation to foreign direct investment equivalent of couple percent of total foreign direct investment in whole of UK, trade investment summit last year **…** trumpeting **….** this is much more significant investment. I know we **…**
12:26	Comm McP	Bring you back to the need rather than the wider economic.
	Edward Bickham Dalradian Gold Ltd.	Gold, actually provides significant functions and benefits within society, increasingly I think we're seeing in the whole of the financial and central banking structure, increasing role in **[inaudible]** what occurring in last three years, issue of stability for the whole of the economic system increasingly important, growing strength of the gold price, in addition role for **…**
		[Interruption]
	Comm McP	I am asking about the policy test **… [Interruption] …** I'm sorry I've asked the question, I'm taking his answer, Mr Hunt went off I pulled him back **…** sorry for the interruption.
	Edward Bickham Dalradian Gold Ltd.	Particularly in Eastern societies role of gold is fundamental to the welfare of many families, not just the national level, also culturally and economically at family level, gold has variety of other functions that make it significant in relation to health, technology and medicine. I could talk beyond gold, silver, copper and tellurium but I don't want to irritate people.
	Comm McP	Very high level synopsis for the four minerals mentioned in applicant's Statement of Case.
12:30	Edward Bickham Dalradian Gold Ltd.	Silver is increasingly under **[inaudible]**, where we have been used to thinking that silver in usage like coinage and plate, it is now significantly more important as an industrial mineral, industrial uses including use in solar panels, chip sets, switches, disks and films, becoming increasingly important in relation to artificial intelligence and it too has important use in relation to health care. In relation to anti-bacterial properties, in 2022 something in region of **[inaudible]** million because of bacterial infections that couldn't be controlled by ant-bacterial **…** so antibacterial properties increasingly important. In relation to copper, this metal is absolutely fundamental to the transition to a low carbon economy, the big challenge is actually how quickly production can be increased, so as to provide the materials necessary for electrification particularly in relation to electric vehicles. But also looking to developing work there will be huge demand for electricity, all that will require huge amount of copper, very good world

		bank report 2017, tallies that whole **[inaudible**], if going to achieve net zero that will mean huge increase in mining. In relation to tellurium, if I can look up my relevant **[inaudible]** tellurium is in the most recent criticality assessment conducted by British geological survey, ranked highest in terms of vulnerability of supply, fairly narrow band of critical minerals, Curraghinalt is best option. Of tellurium for the next 20 years, the Hollist report for DfE estimates that the mean would be capable of producing 3-4 tonnes annually and the gross value added for the UK economy for application that rely on tellurium amount to over 14 billion pounds. I would say that you've got gold, silver, copper, tellurium is the one designated as a critical mineral.
	CF BL	In Report received from Mr Bickham, quotation in that document page 5, the phrase "spectacular decline in long term" … just Mr Bickham hasn't provided citation for that particular comment, Mr Bickham, in fact not that gold will enter period of spectacular decline, but "secular decline", quite different, traced back to article in World Cold Council in 2018 written by Mark Fellows. Sure, he would want to make that correct on the record.
	Edward Bickham Dalradian Gold Ltd.	Right, I will have drawn on the GFMF quotation there that was the view of Mark Fellow, I wouldn't dispute that we are going into period of significant decline, spectacular is …
	SB KC	We will be able to check and come back.
	Comm McP	The applicant will come back and check the report entirely accurate
	CF BL	The issue of need is one which has to be viewed contextually and Dr. Gordon in initial planning statement had quotes, necessity vs. desirability spectrum, affects issue of weight, something absolutely critical or closer to desirability, from evidence, we have cited from World Gold Council, the applicant has cited from the World Gold Council **…** When go and look at the supply demand figures, it isn't borne out by what the gold council will say, interesting only quote Mr Bickham uses, similarly on silver, look at the foot note references, relies on world silver survey 2024, page 26, what said is that there remains enough silver inventories for gaps that exists … picture is not as clear on silver either. Similar on copper, reference on copper is Word copper fact book 2024, page 8 of the document. Heading in cap locks "ARE WE GOING TO RUN OUT OF COPPPER. It is highly improbably." That site calibration you need to be taking, it appears there would be significant source and supply of these materials, calibrations is important here, aspect tell

		forms part of UK critical minerals policy, way works list of critical minerals currently, then watch list of those under review gold, copper, silver not on watch list at this point. In terms of bits of evidence on economics, we dispute that analysis and will come back to it
	PG 12:45	Agree with Fermanagh & Omagh District Council. Up for case … applicant rightly refers to the value of gold … value can be viewed in terms of economic, aesthetic, use lens, what is this gold going to be used for, medical benefits, and solar energy, well accepted well enough gold in circulation, in respect of used, upcycled those needs could be met, if enough in circulation. What going to be used for, high bar on costs, border line inflation, interest rates rising, this gold will be too expensive to be used by everyday consumer, it adopts a symbolic value, retained as a reserve in the Bank of England, extract from Area of Outstanding Natural Beauty placed in bank vaults in London. When talking about sustainability 12:45 difference in relation to business, real question is economic sustainability, what food for environment, society, economics, talking about net zero, very little detail contained in programme for government, a company, not this particular company, generates a lot of environmental waste and offsets that by some sort of carbon credit scheme but local damage done, shows net zero score, true ethos of economic sustainable not being followed. Does value lie with medical industry, or does it lie with Orien mine finance the private equity firm behind this,
12:46	ST	It isn't recognised that gold is used in solar panels, very rarely used to increase effectiveness, but costly.
	AS	Echo, applicant Statement of Case in TR2 by Dr Bickham, if pronounced correctly, minerals needed for increase in quality of life, challenge this statement, decrease in quality of life for those living near goldmines … individual and institutional investors and technology based users, acknowledges order of preference, jewellery first then investors then central banks … bear in mind whether Sperrins landscape can be sacrificed for supply and demand. Will just mention one more thing, relates to broad research on international investment on mining and extractive issues, often inflated predictions, rarely transpire as predicted, environmental Implications. Often underplayed, when discussing value need to bear these things in mind … can mention several studies support that view. Duty to comply with other legal norms relating to environment, human rights, cultural …
	DEW	Comment in respect of medical uses of silver, as beekeeper, the efficacy of honey as an anti-bacterial is globally well known since time of pharaohs …. So, I would say protect the bees and stop digging silver.

12:51	MT	In relation to need for gold, there is a lot of tag on attachments to production of gold, perceived cost of security …
	Comm McP	Will be covered in socio-economic topics, this is solely in relation to need test.
	MT	I'm aware there is no levy on gold ore in UK but I think there is a system in place where you would incur very attractive tax rebates for capital investments so only money earmarked for money other than shareholders is 4% to Crown Estate, hold licence for gold and silver, that's something that will be raised …
	Comm McK	Taxation, gross value added, economy, after St Patrick's day, 18th March … if you could hold those thoughts to then.
	PH	In terms of valuable minerals, and the term valuable minerals, the strategic planning policy statement …. Only reference in planning law I was see **[quotes source]** other sources talk about aggregates salt …
	Comm McP	We have this in your Statement of Case
	PH	**[Quotes source]** In terms of value of mine want to draw your attention to 2018, value of mine was 1 billion dollars, throughout that time Dalradian has issue with shares, the value went down to next to nothing, shareholders agreed a price, Orien Resources came in … one week before the deal went the value of the company went from 1 billion to 3 billion, it was reported on annual report, what increased it three fold, any extra bore holes, any extra discoveries.
	FOK	Earth works estimates in the bank vaults of the world to meet all needs for minimum 300 years up to 500 years, a lot of leading jewellers globally, they are becoming aware of negative impacts of mining, Argento moved last year to more to use recycled silver, a lot of young people go for cheap fashion, certainly isn't gold or silver, thirdly, you can't eat gold … clean water and fresh air most important for us for health, gold isn't.
	EM	In new updated stronger case that Mr Tracey alluded to factored in …
	Comm McP	We will discuss in March …
12:59	SB KC	We would like to respond … proposition from Dr. Strecker, impact on people completely overlooked, unsustainable, deal with in due course …
	MG	Response to Mr Fegan …. In terms of how we see that spectrum and how we calibrate in planning policy, references in both SPPS, page 76 paragraph 6.148, second sentence there 'minerals industry makes essential contribution' suggest way beyond desirable and also to our quality of life … in the Council's Local Development Plan builds on that in para 7.3 words used is vital, Local Development Plan, characterises as vital … you'll note that Department for the Economy permanent secretary, consultation response 6th September 2019, paragraphs 3, 4 and 5 use similar language, that's how important these minerals are in

		both the regional policy and local policy … that's the reason why there is no policy presumption against extraction of valuable minerals … Dr Gallagher … reference to sustainability, reference 6.1.49 in SPOS that refers back to Sustainable Development Strategy … says does not prevent us from using and developing these resources … Mr Haughey references in terms of legislation … set out in Council's plan …
	Edward Bickham Dalradian Gold Ltd.	Thank you, large no. of points. Put in context gold production we are very likely to see a decline in gold production in the coming years it has **[inaudible]** high in last years because of impact of Covid and catching up thereafter, the strength of price …
	Comm McP	Going to stop you … in socio-economic topic, best placed to consider substantive case …
	SB KC	Can pick up those at that session.
13:05 13:09	Edward Bickham	… Gold fundamentally benign product, very buoyant demand, particular because of global forces in relation to central bank purchases, desire on part of many economies … certain amount of catching up to be done … idea that somehow or other that we have enough gold is just wrong, there is a lot of demand, when the point is made that once gold is minded it is turned in a bar and put in a vault, that isn't inert, that is underpinning an awful lot of economic stability and prosperity which is why central banks in particular hold it, in relation to jewellery … in many cultures hugely valuable … store of value .. moratorium world would become a better place is I think wrong … there is no international convention proposed saying let's stop gold mining … countries depend on production of gold for important taxes and revenues … if said no more gold mining enormous impact on the balance of haves and have nots, price of gold would increase … an efficient and effective gold market with reasonable supply is a major contributor to global economic and strategic stability.
13:10	SB KC	… I note trying to make point, you've asked people to focus in, we will hear what everyone says …
	WO KC	Related question of powerline … in your hands
	Comm McP	Coming to that later on … can you please tell me why you need to come back
13:11	AS	… Misquoted …. Quotes documentation in their own business report. Second statement conflation with first …
	Comm McP	Please tell me what you would wish to say first of all.
	EM	**[Inaudible]**
	Comm McP	You've already had your say on that. Go on.
13:12	EM	… first of all, as a serving councillor during the finalisation of the Local Development Plan, I was taken aback by the then head of planning who

		advised us that sustainable development could be read as something that could be sustainable for the developer **…** sustainable development definition **[quoted from Brundtland Report] …** Comments that gold fundamentally benign **…** outlandish, outrageous statement to make **…** last March I was unable to attend a pre-inquiry meeting **…** in Brussels **…** met representatives from Democratic Republic of Congo **…**
13:16	PH	The record is Dr Gordon said minerals were vital in SPPS the minerals her referring to is aggregates **…**
	MT	Just in relation to the need for gold **…** cites example of other mines. If you went to Cavancaw today or Tynan in Scotland, nothing more than major scrapyard, we don't want Dalradian's major scrapyard **…**
	SB KC	Can I confirm Mr Bickham can leave.
	Comm McP	I do have other questions in relation to planning.
	SB KC	Its 20 past, back here for 5 past.

LUNCH

14:03		**[Commissioners are seated]**
14:06	Comm McP	Ok everybody, need to turn mobile phones off, remind all speakers **…** need to speak into microphone as close as possible **…** Continue on with considering of planning strategy **…** in particular our next question is in relation to policy MIN 01 and my query is whether criterion L must be met as well as criterion J. I notice **…** Fermanagh & Omagh raised this issue, Dr Gordon you gave both alternatives or do you accept that the policy requires you to meet criteria L and J?
14:08	MG	I suppose Commissioner we say it doesn't matter to us either way, so there are some difficulties I think in terms of the plain reading of policy **…** Whether or not additional criteria.
	Comm McP	Use of word 'and' means it does?
	MG	Could read it the other way **…** we made representations to the draft plan **…** why I deal with it in my Statement of Case **…** may or may not apply **…** one for you **…** my answer if it does apply, final analysis it probably does **…** Not sure if you have a follow up question in term of what that means.
	Comm McP	Quite happy on papers what it means is ironed out **…** Just your interruption **…** accept in final analysis it does mean both **…**
	MG	From our view it would be interesting to hear your views, could be construed either way, because of way in which draft plan was aimed and our representation to draft plan.
	Comm McP	Outcome of examination.
	SB KC	Subsidiary point depending on which way you interrupt the weight you give to fourteen year point, paragraph 4.8.1, scenarios where

		policy application **…** criteria those proposals less than 15 years **…** However, during extraction phrase more extensive, Council will consider extension of quarry mine subject to criteria **…** Within application you stumble upon the resource, you happen to come across it you will get an extension of 15 years **…**
	Comm McP	Not 'will', they will consider.
	SB KC	Put it, of relevance to the **[inaudible]** of the 15 years **…** make an application for 15 years, not optimum, as Mr Merry explained yesterday the resource may be taken out quicker, put forward effectively an application to comply with policy better way to deal with it is a 5 years extension to is for **…** area of unreality where stumble upon mine **…** need to make application **…** my respectful submission artificially restrains best way to extract the resource.
14:13	MG	One needs to think of purpose of that limitation in the plan, prevent development going on and on and on in sensitive areas. Bring back to nature of proposal, underground precision minding and above ground **…** dry stack facility **…** is going to reduce impact of proposal overtime in terms of vegetation cover **…** dealt with another day **…** Bringing forward now as Council mentioned it in their rebuttal statements.
	CF BL	Turn to interpretation of policy then weight, interruption clear through addition of word 'and', for clarity, have a look at MIN 01 at page 123 this section of the policy starts with **…** go to page 125 JNA text 4.281 **[quotes]** … that JNA text in sentence one makes quite clear 15 year criterion applies to proposals in SEMD **…** 15 year duration would only apply with criterion K **… [inaudible] …** directly contrary to 4.8.1 **…** provide context as to how this came about the original draft of the plan strategy did not have that particular policy requirement as criterion L just hanging in there directed by Commissioner O'Neill in her report that criterion L was added for readability purposes and to be clear a policy requirement, accepted by DfI, section 12 direction required us to add L criterion, to apply to all SEMDs, we don't accept any uncertainty in interpretation. Weight is concerned, step back here for moment, in substance applicant **[saying]** a development plan recently adopted in context of prevailing regional strategy should be given reduced weight, up to date expression of local planning policy, went through robust examination process, specific arguments we hearing now, truncated arguments that Dalradian ran at independent examination and Commissioner O'Neill roundly recommended **…** considerable time in minerals session **…** Paragraph 6.56 and 6.57 addresses arguments you have heard, headline conclusion, having considered

		representations and evidence I consider the duration of less than 15 years to be appropriate and based upon robust reasoning . Would urge comm to exercise caution in addressing this argument where subject to consideration in recent independent examination. Reason for this policy criterion, Dr Gordon, we say with respect, hasn't got purpose of policy right, purpose not to ensure mineral exploration can go on and on and on, to make sure developments short term in nature and if longer subject to appropriate assessment in 15 year period so appropriate updates can take accounts of baselines … etc. even if you think about changes in planning policy and guidance in last 10 years … Dalradian will say we future proofed this… can't see 10 years in future, paragraph 6.57 in Environmental Impact Report, Commissioner O'Neill **[quotes]** … that is the purpose of the policy and finally it is worth framing Commission's attention to strategic planning policy statement paragraph 6.1.6.4, might be helpful if you have it, this sets out general presumption against mining development in SEMDs with justified exceptions for example … proposed operations limited to short term extraction …. Regional policy goal for that policy … independent examination … in exercising our policy making functions clear reason criterion came up with 15 years conclusion reached 15 year criterion appropriate our judgment that correct interruption, no basis to give limited weight in this case.
14:23	SB KC	The inquiry considered the broad points … in fairness to her said she wouldn't be running planning appeal … if you stumble upon extra resource, you can make application, if you know it is there, do you make is a secret, everyone knows full well extraction of resource in different direction, clear other polices point … as far as Dr Gordon mentioned SPPS. There is no impediment where one mines subject to other factors that pull against …
	MG	Add one final comment … Think Mr Fegan was referring to short term extraction, previous paragraph 6.1.5.7 "there will not be there exploitation" …
	Comm McP	From reading the planning policy, the presumption …
	CF BL	The presumption is disengaged.
14:27	Comm McP	Still permits extraction of valuable material, must be time limits. Mr Haughey from memory you didn't make representations on this.
	PH	Yes, I actually spent two weeks at the public hearing.
	Comm McP	Have you raised a question as to this specific planning policy.
	PH	Are we in position that …
	Comm McP	Purpose of these hearings is that I can question …
	PH	So we not allowed to talk …
	Comm McP	You are allowed to talk. Is it in relation to policy creation L and J.

	PH	I feel as if I'm being totally blocked out here, I don't want to hear about what meeting you went to, must ciretion L and j be met in policu MIN1
		I don't want to hear about what meeting you went to, must criterion L and J be met in policy MIN 01?
		[cross talk]
	PH	The answer to that there is part J is clearly linked to part L this is clearly stated at the local development plan review, no uncertain terms were Dalradian or Turley present, emphatic that the 15 years was 100% the deadline **…** they said this would stop us **…** is what they were saying, my argument if that part wasn't there the mineral is viable and found you could mine in Area of Outstanding Natural Beauty **…** would invert the policy, the policy meant you could mine it, all I'm saying is applicant in no uncertain terms, the actual text meant 'and'. In fairness to Fermanagh & Omagh Council I argued against them too.
14:31	Comm McP	Policy MIN 02 in relation to policy MIN 02 **…** going to iron out as touched on yesterday **…** which public body responsible for pursuing enforcement action if developer fails to implement restoration plan
	DE KC	Same answer I gave yesterday, overlapping enforcement powers, Department would obviously consult with Fermanagh & Omagh.
	Comm McP	Could this not pass to pass the parcel and nobody **…**
	DE KC	The real answer **…** I apologise for being flippant **…** I think unlikely both public authorities wouldn't take action **…** but that's what the legislation says.
	PG	If that responsibility falls on Fermanagh & Omagh, are we being told ratepayer picks up the bill.
	Comm McP	That relates to different issues, bonds, section 76 agreement **…**
	CF BL	When we speaking about policy MIN 02 **…** if there was a failure to restore the bond would kick in, draw down and all that, think intention for section 76 with Department in respect of the bond, if that correct, Fermanagh & Omagh wouldn't have power of section 76, couldn't draw down money, on that analysis, seem to us to fall squarely to the Department, whole point of bond, shouldn't be rate payer paying for enforcement, in that scenario we would be looking squarely at DfI. I agree with Mr Elvin enforcement powers generally, specific context of breach of planning control, restoration or after care **…**
	DE KC	I agree with that.
	CF BL	So, in those situations, bond with the planning should be named as DfI for condition, DE would put primary burden on the dept and not on the ratepayer

	DE KC	That would put primary burden on the Department and not on the ratepayer.
14:36	Comm McP	Mr McAleer.
	EM	That line of questioning very adept … conscious of case of Knock Iveagh, issue for years going between Department and Council so there is historical evidence in that particular issue, just to be mindful. **[inaudible]** Public Accounts Committee as opposed to yourselves.
14:38	PH	Thank you, Chair, the MIN 02 states **[quotes policy**], I notice the bond for 20 million for 5 years, in documentation water could be affected up to 100 years, after 5 years is it public's responsibility … also issue of acid rain.
	Comm McP	We're discussing the actual bond and if appropriate in socio-economic section, this is high level … will address then.
	Comm McP	Anything further.
	SB KC	We agree that the guidance of Commission in terms of responsibility in condition is welcome, section 76 document is a draft … there to inform discussion, will come up in socio-economic.
14:40	Com McP	The council states policy 0LXXXX CAN … I seek the Department's views on that matter.
	DE KC	This is the Waste Management Facility. Given element of waste management I think we agree with the Council…
		If the Commission deems policy WM1 applicable, do the Department believe applicant has provided sufficient justification … does the waste storage facility meet any of the criteria listed in A – F.
	DE KC	On Face of it might not appear to, may be material consideration to take into account, provisional view.
	Comm McP	Going to ask dept serious question Mr Beattie, then turn to you. Does WSF meet criteria G – K, F.
	DE KC	Fall into your assessment of merits … raise matters of substance you are considering later weeks … should be capable of course of achieving practical restoration and after care subject to appropriate conditions.
	Comm McP	Waste Storage Facility of a regional scale?
	DE KC	Of regional significance doesn't mean of regional scale, it seems one shouldn't conflate the two.
14:44	Comm McP	In instance that Commission deem to be of regional scale, has the requirement that its location should relate closely to and benefit from easy access to transport corridors … is that all set out in why this site or the DSF was chosen. Are the Department as deciding

		authority there is sufficient information present to you to make that assessment.
	DE KC	Are question goes back to you … I don't think it appropriate to take any further.
	Comm McP	in relation to Dry stack Facility, I think everybody will concur will involve raising of land, has it been demonstrated that criterion A – B of WM 01
	DE KC	I'm afraid giving same answer, matter we've asked Commission to report on.
	CF BL	You asked the Department a series of questions, might be helpful if you ask me all the questions **…** I am conscious was **…** UMO1 apply, I know that was our case, you've seen Rebuttal Statement that says not …. perhaps better for Mr Beattie to go first
	Comm McP	Would be interesting to know Mr Beattie opinion whether WM01 isn't applicable.
	SB KC	Do not think that this was raised as applicable policy by Department in statement …. will certainly deal with this in this session and Dry stack statement …int terms of our position …
	MG	Set out in Rebuttal Statement, pg. 45, we say it's plain from paragraph 6.7.1 of the plan that the policy is targeted at municipal waste rather than extractive or mine waste, if was to apply to extractive waste would have said so **…** g.
	Comm McP	Is waste not waste, if falls within waste code. Waste in policy have very broad purpose.
	MG	Look back to context **…** this policy draft in context of Council's joint wate management plan doesn't deal with extractive waste **…** reason why if mining and quarrying had to deal with this policy, would never be completed, couldn't satisfy this policy, big problem is that minerals can only be extracted from where they found, of course waste generation by process of extraction, fundamental point here is, wine waste management regulations, reg. 23, states do not apply to extractive waste, pretty standard for quarries to have waste management plan, unreasonable to try and apply this policy … if two policy contexts were related they would cross-reference … PPS11 looked at case officer reports and couldn't find one that reference this, that's why I understand Department's position that this didn't apply within the policy matrix. One more point, monitoring framework at back of plan, page 190, these if you like are the Council's KPIs in relation to monitoring performance of the plan, see column, relevant policies, waste management policies, MIN policies aren't referenced **…** think that squares with my analysis that properly in context **…** this policy does not apply to extractive wastes.

14:55	MG	Just want to give you right reference in respect of regulation … regulation 23 of Management of Waste From Extractive Industries (NI) Regulations.
	DE KC	There is something to be said for argument just heard, duplicating text, waste means waste, one must concentrate on waste management facility, 6.66 talks about waste hierarchy not applicable to extractive waste … matter for municipal and commercial not extractive waste.
	Comm McP	Are DfI not changing opinion.
	DE KC	I think it is, I apologise for that.
		Reference to regional facilities would **[inaudible] …** on that basis
14:57	Comm McP	Mr Fegan.
	CF BL	Again, without saying would good old DfI keep an open mind, so can I direct attention to page 101 of WMO4 **[quotes]**, just wanted to draw that cross-ref, WM1 concerned waste is broadly defined term, no dispute waste will be produced, see WMF for detail on that, now the question is really looking at that policy, why facility managing waste, there is management of waste on that site, why policy MO1 would not apply. There is nothing that disengages it. 6.65, page 178 waste management refers to all activities from inception to final disposal …it squarely falls within context of waste management, to be frank, the interpretation advanced, suddenly read WM01 applying reads word municipal into it where doesn't exist. Respectful submission, interpretation of the policy, nothing in the fact that paragraph 6.71 pointed to by Dr. Gordon and 6.72 is referring or giving examples of municipal waste facilities, not uncommon JANA **[as heard] …** would give example, **…** so turning then to some other arguments, pg. 200 of the plan strategy, draw attention to definition of waste, quotes, unwanted byproduct of industrial facilities **….** Turn to monitoring framework, point by Dr Gordon in respect of monitoring framework, important to read monitoring framework in context, pg. 190, what you have to look at is what the target is **…** the target is to meet targets outlined in Council's waste management plan **…** Council saying we monitoring plan strategy to ensure meeting needs **…** to suggest MIN01 not within **[inaudible]** does not apply to municipal waste is misreading of how monitoring **[inaudible]** works **…** The other points by Dr Gordon is waste can only be extracted is where it is found, does not necessarily follow that minerals from site A is that waste is discarded at Site A, further to apply policy it would be unreasonable **…** falls away **…** general approach of Local Development Plans, does not require cross-reference between policies, all plan strategies have beginning paragraph 1.5 page 8

		whole plan needs to be taken into point don't need to cross-reference all policies **….** Next argument of Dr. Gordon, looked at DfI case officer reports, different policy context, regional not local development plan, irrespective of other applications, we dealing with this application. Under existing PPS 11 para 8.3 specific reference to mineral waste in context of land fill or land raising, the Department itself has regional planning policy, extant across council areas **….** Why they havemt applied policy historically is not business of Council **…** principle of consistency doesn't apply where previous decisions were based on error, DfI view, we say that an error, doesn't need to be perpetuated, point to underscore is, we say a straightforward error of law if decision maker WM 01 doesn't apply, misinterpretation of development plan, evidence today from Dr. Gordon, in effect applicant has proceeded on basis of WM 01 doesn't apply, the answer to your question, it isn't there, why, because they thought it didn't apply. Because those criteria not satisfied on evidence, there is a breach of WM 01.
15:09	EM	Not going to reiterate, summed up well, read whole of application, paragraph **…** that was taken to defend the ignoring of this particular issue, underlines important **…** point 27 on page 190, agriculture on anything else not listed, recurring conflation between quarrying for aggregates and process used for quarrying gravel **…** ploy or PR companies **…** very different processes, we people left with the consequences.
	SB KC	Not going to commit on quarry industry, that for different day.
	MG	Two points first is if you consider what the hypothetical consequence for project likes this mean like all mineral extracted from resource to be trucked off to somewhere else and brought back.
	Comm McP	Those criteria there **…** you have addressed that you can't meet any of those, if hypothetically, if Commission deem policy WM01 relevant, is your, I know you've identified alternatives ruling out quarries in respect to costs, are you satisfied information to date is all you have to offer for you to meet those criteria, hypothetically if we deem the policy as applicable.
	MG	Are you inviting further submission.
	Comm McP	No have you addressed it further in, we would struggle to comply with this policy, fundamental to my position why it doesn't apply

	MG	We would struggle to comply with this policy, fundamental to my position why it doesn't apply. If you believe it does apply, you have to look at whole of development plan, against the others, ability to come to conclusion in overall planning framework and way in the material considerations.
	Comm McP	Place it planning balance.
	MG	Yes.
	Comm McP	Ok.
15:14	Comm D	Reflecting on powerlines, LA112019100F within DSDC area, can Department or this Council outline how this proposed adoption would intersect with this inquiry.
	DE KC	Not at this time.
	SB KC	I think they have issued a direction, feedback was …
	PM	Yes, the new Local Development Plan for the Council has recently received its direction order from the Department on 17th December 2024 and therefore it is a positive direction and directed Council to proceed to adoption subject to normal pre-adoption procedures and tasks, anticipate the adoption will occur in May 2025, therefore the process of when it starts to effect and takes weight has now started, obviously in line with legislation and regional guidance required to give appropriate weight at that time. Council made its original submission to Department in 2021 on basis of designated policies … going forward requirement to wait on new Local Development Plan … we can explain the policies from that if helpful in additional submission or can explain key policies
15:18	Comm D	So, the applicant, particularly the power lines, the applicant has engaged with the policies in their submitted documents and the Department sent out list of policies deemed applicable.
	DE KC	My uncertainty was related to when it was likely to be adopted. Certainly, the draft plan should attract more weight.
	Comm D	Both the Department and applicant have sent list of policies applicable; parties see need of exchange of further evidence on this policy or can be accepted?
	DE KC	You can attach greater weight to them now that a direction has been given.
	WO KC	Address question of weight **... [microphone not working] …** so in context of Department direction our stance that greater weight should be given to content of draft DSDC strategy than to retained policy … bites in relation to PSU8 and need test inter alia, our view greater weight determining weight should be given to DSDC policy than PSU8 specifically policy UT1 in the draft plan 1 than PSU8,

		significance, doesn't contain need test, leaves us with no need test in entire FODC or DCS and effectively retained policy stipulating any test falls away.
	Comm D	Remains obvious to give weight to prevailing regional policies along with emergent local plan strategy.
	WO KC	**…** adoption not taken place, you make choice as to relevancy you give **…** seems highly likely adoption won't have taken place **…** retained policy falls away.
	Comm D	Policy consideration given to both aspect or one over the other.
	WO KC	Ask yourself doe given proposal comply with retained policy, does it comply with draft plan policy, judgment as to giving greater weight.
	Comm D	Particular policies then in respect to powerlines **…** there was consideration then through the submission of the Statements of Case **… [inaudible] …** DE05 and DE06 **…** given for view as to whether applicable.
	WO KC	You have our stance.
	DE KC	Paragraph 51 of our Statement of Case, sets out policies we consider applicable.
	CF BL	Was something I was going to raise, main mine application, argument they don't apply, haven't had chance to come back, something we'd like to raise in due course.
	Comm McP	Going to revert back to EIA regulations. Mr Elvin.
	DE KC	Correct SD reference not given in advertisement or to Donegal, there is a link in the other related document, Mr Fegan is quite right appears at end of long list, although there are suggestions in some representation that some found **…** overflow set of webpages as main webpage had reached capacity.
	Comm McP	As such do the Deptartment feel they've complied with reg. 27 of 2015 EIA Regs.
	DE KC	On face of it, some technical breaches, I'm considering with Department
	Comm McP	For the purposes of this inquiry, does the technical breach of reg. 27 (a) deprive the statutory bodies in the ROI to present evidence and take part in this inquiry and (b) does it deprive the ordinary people of Donegal opportunity to take part and give submissions and have full knowledge of all environmental information.
	DE KC	Whether full knowledge is moot **…** there has been partial information **…** discussing with the Department.
	Comm McP	Requirement that we do have to **…** information to be with public **…** opportunity to make representations to Department, and for those to be heard at this inquiry, going to be very blunt here, is this an impediment to this inquiry going forward.
	DE KC	No … I will inform inquiry tomorrow morning.

15:29	Comm McP	I understand … there is someone higher up the hierarchy.
15:30	AS	Follow that point, procedural and environmental right to consultation that stems from the regulations, Aarhus convention, whose comments not taken into account may challenge in administrative or court proceedings **…** relate to access to information and procedural as well as substantive law but this is also closely related to Aarhus … just refer you to three cases relevant to present application **…** Taskin & Others Application 46117/99, Guerra & Others, Giacomelli v Italy App no 599/09/00 **[quotes source]** also reiterated in case against Italy that Aarhus convention that each party to ensure any threat to human health or the environment, all information to take measures to mitigate or prevent harm arising from the threat and held by a public authority is disseminated immediately to those that may be affected **…** So, it does seriously undermine the application.
	MT	Just for clarification Chair, due to the failures of DfI could there be a significant adverse effect on the public purse if this was delayed or removed, these professional bodies, are well paid individuals, whenever we're hearing that they didn't mention to man down the road **…**
	Comm McP	I understand your concern in respect to public purse **…**
	CF BL	Sitting representing a public authority here, have spent significant public resource, each day individuals are here, that is important, so far as position seems to us, there are admitted technical breaches of regs, exist to ensure fairness and meaningful public engagement, I walked you through earlier regs engaged in this case, Commission has to consider the fairness of these inquiries **…** we are very keen one way or the other a decision made on this as soon as possible.
	Comm McP	Another point in relation to EIA in Fermanagh & Omagh rebuttal, whether the Department would use Commission's report to seek further EIA or whether they would use Commission's report to form final decision, plays into 3rd parities raising Aarhus and access to information, I had previously raised at pre-inquiry meeting the fact the inquiry stage should happen at certain stage of application so all information on the table, note Department's statement of community involvement has been amended, website remains same, Department will produce case officer report and recommend to Minister and after that two option opened (1) a notice of opinion and Minister will hold a hearing (2) public inquiry be held **…** but Omagh have raised the point, would like Department to confirm whether they will base their decision on what we have before us.

	DE KC	Don't think I can confirm that, open to Department to take further information and further consultations following the inquiry … there remains an option, are you talking about reg. 4.
	Comm McP	May well be, reg. 4 of 2015, that solely in relation to granting planning permission.
	DE KC	There are other means to consultation, there are other modes of consultation in *Zumtobel v. Austria* by delivery of documents to relevant government office, early days of article 6 under Human Rights Act whether there needed to be oral consideration in all cases, need to be considered by Department, don't think I can give you answer at this point nor can I tie the hands of the Minister.
	15:42	One of the difficulties, in theory possible fuller consultation may not have thrown up anything you, not saying a good reason for not undertaking appropriate consultation, end of day may make little substantial difference.
	CF BL	Take on board Mr Elvin saying, Council position is Dalradian has had enough opportunity to get house in order, if information lacking, the answer should be refusal of permission, not yet another opportunity for applicant to plug gaps, 2019 addendum, 2020 addendum, in substance two 2024 addendums, everyone here ready to proceeded on what they thought was final proposal, weigh not only peoples resource, various representations of 3rd parties, impact this having for ten years, there is benefit for line being drawn under this. If without prejudice to that position, going to ask Dalradian for more information or seek more information before decision then judgement need to be exercised by Department at that point to determine what fairness requires … may be fairness requires some form of reconvening of public inquiry. Can't say in abstract, matter of evaluative judgment … previous iteration of A5 … that inquiry had to be reconvened … there is precedent but from our perspective would be extraordinarily disappointed … subject to topping and tailing, relevant sign off would expect Minister to not give applicant another bite at the cherry.
	DE KC	Just to be clear was talking about transboundary issue, not giving Dalradian another bite of the cherry … believe me we are discussing it.
	Comm McP	Answer tomorrow morning.
	DE KC	Depends on discussion this evening.
15:47	AS	Could ask for that reference to that case.
	DE KC	*Zumtobel* referenced in Alconbury case in 2001 in House of Lords. Could I ask for reference to cases cited.

15:49	AS	*Disarno & Others v Italy* App 307/65/08, *Grimkovskaya* 38182/03 raising as later and more relevant and make reference to Aarhus. Have to say that it might not add anything new not represent to amount of objection to date, more likely to have more objections.
	MT	In relation to this Commission now, very concerning issue, if this public inquiry stopped or anything else, same police inaction and spurious accusations by PAC staff will continue, not just planning facts must be taken into account …
	Comm McP	Going somewhere we don't know we are going to yet. I'm sure Mr Elvin has noted.
	SB KC	Flatly denied, put that on the record, used expressions that are defamatory.
	PH	Wouldn't advocate correspondence based consultation. Question …
	Comm McP	No, considering compliance with reg. 28. Go to Mr Fegan that you wish to raise development plan policy …
		Yes, the DEO policies, bear with me to get the reference, para 4.70 of Dalradian's' Statement of Case, there is a suggestion made that policies DEO4 and DEO5 were drafted contemplating mineral development, don't think to be fair to Dr Gordon that he saying policies don't apply, that would be error in law, drafted for development proposals generally, there more appropriate for houses in the countryside, it's just not right, not stated in policy, doesn't arise from the context either … If I can with reference to regional policy, two points, DEO policies drafted to give effect to two regional policies that two exists SPPS, one core planning principle of SPPS so DE policies … count against interpretation look at … 21 and SPPS … all proposals have to be integrated into countryside that is to all proposals not just single dwelling suggested that we are right about DE policies, applying unreasonable low bar not right way to look at it, of course might be difficult for mineral development to comply, that the point, because difficult doesn't mean should be given reduced weight, that's not right DEO policies critical, Mr Ingram deals with in his evidence, really goes back to para 1.5, not allowed to cherry pick policies, planning statement from applicant assess everything through MIN01 lens, we say you need to take all policies in the round, same applies to powerline DEO5 or DEO6 don't suggest should apply, weight matters for you don't accept any interaction, in … to NIE Networks they don't suggest doesn't apply.
	WO KC	Going to ask Mr Fay to respond.
	SF	Can understand Dr Gordon assertion as DEO 4 … buildings … DEO 6
	Comm McP	Correct you … 'development' in the countryside … not 'buildings' … understand as Commission gone around in circles with this …

	SF	We are not saying, as Mr Fegan saying these are not material, greater weight should be given to LO1, LO2, apply in balance but greater weigh should be focused on.
	MG	Thinking behind drafting Statement of Case really MIN 01 has policy test has no unacceptable adverse impact **…** which is acknowledging and accepting there is certain amount of harm expected to arise because of nature of operations. References to that in SPPS will come back to in moment. Problem is DE policies have lower threshold of harm which is just adverse, hard to reconcile, potential for mixing and matching of policy tests, challenging, paragraph 4.77, plan there says in relation to mining development. Say to where possible be located to take advantage of exiting land forms and features, example of higher test set out in MIN1 ultimately goes back to what Mr Fay has just said, are overall approach is to start with MIN policies to approach through that lens, its actually one of only land uses in the plan where that policy applies, other two renewables and waste management, those development raise planning issues different to houses in countryside. To finish off from sentiment in SPPS para. 6.1.50 **[quotes]** acknowledgement that there is particular issues in some respects the impact of mineral developments can't be entirely reversed, that is what I was getting at in terms of the applicability of those types of policies.
16:04	CF BL	Position as I understand now is that policies are applicable **….** Weight to be applied **…** MIN01 v other policies **…** just briefly **…** MIN01 page 123, as an example, would support proposal where does have adverse impact on example on natural environment. When you are judging whether of impact on natural, view that through NEO policies, when ask if there is unacceptable on natural environment or beach of NEO policies that focus on natural env, that will inform your conclusion, you might identify impact on natural environmental but **…** to suggest only to look at through unacceptable adverse impact, that there are subject specific policies, what is acceptable in terms of the plan strategy we don't think right way to view, specific issue of policy compliance will raise in the sessions.
	SB KC	If NEO1 was meant to say, MIN01 would have been read subject to NE01, natural environment clearly engaged **…**
	Comm McP	I know **…** Mr Fegan has already given representation on read across.
	SB KC	I do agree with MR Fegan, we will hear more.
	Comm McP	No doubt.
	SB KC	**…** I do work through overall policy matrix in relation to compliance of plan as a whole, I say at the end, deal with the other material considerations, just to make sure that the approach in the Statement of Case has been understood **…**

16:08	PH	Mr Gordon referred to 6.150 there of SPPS, introduction, paragraph is 6.148, **[quotes]**, this is purely about aggregates and sand and gravel, up until now the term valuable minerals did not refer to gold or whatever **…** what we talking about now is this concentrate it, crush it, use chemical, put into dry stack heap, pollute the environment, opposite of what this policy is about **…**
16:09	Comm McP	NIEA there's 3rd parties have raised a number of inaccuracies in relation to extension of time letters, can I clarify from the applicant that you understood those letters were in relation to the discharge applications made on behalf of yourself and you did not treat any of those applications as deemed refused or exercise your right to appeal.
	SB KC	We had not. As simple as that.
	Comm McP	NIEA, 3rd parties have raised obligations within the Water (NI) Order 1999, specifically article 58 in respect to oversight of water and sewers, NI water council, which they state no longer exists, for this application would the water council be required to have oversight of this proposal prior to any decision being made.
	AB BL (DEARA/NIEA)	Water Council has been repealed and doesn't exist. Just for your note, in our rebuttal on the extaction application there is atable within that which deals with various points, provisions were repealed by WATER And Sewarages Order2006
	PH	Yes, but this legislation at that time have oversight, in absence of water council nobody tasked.
	Comm McP	Mr Byass do you want to explain this, has one piece of legislation superseded the other.
	AB BL (DAERA/NIEA)	Don't understand the point, repealed by subsequent legislation, part in the 2006 Order that repeals it. Don't have it to hand.
	Comm McP	We will come back it, Mr Haughey, ok. DfI there is, one of the objections submitted directly to yourselves was an objection from the owner of 232 Crockanboy Road, that states the house located within red line but never served notice under section 42, can Department confirm that they have addressed this, if they haven't, is there any prejudice.
	DE KC	We will double check, satisfied there was notification, given publicity doesn't think any prejudice.
	Comm McP	Fact that the person wrote to you material.
16:17	DE KC	Taking the words out of my mouth.
	Pat McCullough **[Audience]**	Confirm that is my house.
	Comm McP	Your happy you know all about.

	Pat McCullough **[Audience]**	Yes.
	Comm McP	I'm delighted you're here.
	Comm McK	Could you just confirm your name, raised in matter I will be dealing with.
	Pat McCullough **[Audience]**	Pat McCullough.
	Comm McK	It is a house, it is occupied.
	Pat McCullough **[Audience]**	It is not occupied presently **… [inaudible]** animals.
	Comm McK	Does the house have a roof on it, windows and doors.
	Pat McCullough **[Audience]**	Yes.
	Comm McK	Is **… [inaudible] …** family member
	Pat McCullough **[Audience]**	Nobody at present time, but recently **…** 3 years ago.
16:19	Comm McP	Is there a requirement for DfI under section 22 under the Planning Act and General Procedures Order to notify those that turbary rights at the proposed site. General Procedures act says something about occupation **…**
	DE KC	They are right to take fruits of location and not residential.
	MT	As was recently seen in Southern Ireland, turbary rights are non-ending, travel with hearth in the house, they are **…**
	Comm McP	They go the whole way back to 1925 **…**
	MT	As far as I'm aware there is possibility to buy out turbary rights, once use to completion, must be given opportunity to bank again in same area, on deeds of people's homes, some still access that right, it's not something the DfI can remove **…**
	Comm McP	That not what I was asking, asking if requirement under planning legislation, if turbary rights require notification.
	[Author failed to identify speaker]	I happy enough, I have legislation at hand I can answer **…**
	DE KC	No suggestion rights taken away, depending on nature they generally attach to the land.
16:23	Michael Conway **[Audience]**	On the deeds of our own home, we have turbary rights on the mountain, several members of public, will affect that, effect the right

		of way, would like to know where we would stand where this planning would go ahead how we would access.
	DE KC	The planning application would not override 3rd party rights.
	Comm McP	What steps.
	DE KC	Vesting for example.
	Comm McP	A lot of the peat is being removed. Has Department considered.
	Comm McP	It is a civil matter, matter for the parties who cause the interference **…**
	MT	Clarification for, if this application goes ahead, was I correct in hearing the DFI said the land would be vested.
	Comm McP	No civil matter.
	MT	For applicant to take to court.
	Comm McP	Not sure.
	DE KC	**…** not matter for planning, matter for civil **…**
	MT	On of the reasons why I asked to notify those who have turbary rights, there doesn't seem to be anything in planning legislation that I can see, whether in other legislation I not aware of. Just more or less, main problem being the amount of peat this company intends to remove, if peat was removed **…**
	Comm McP	We considering peat next week. Would your solicitor have an idea. The applicant has put forward a peat creation plan, considered next week as … we will not know that to the end. One would assume that once we get to hypothetically peat statement plan was sufficient could determine that **… [inaudible] …**
	MT	Not just matter for removal of peat, history of mountain, Dalradian have really undermined culture and tradition **…** to make some representation to the communities.
	Comm McP	Anything you wish to come back on.
	SB KC	Not today.
	AS	International Covenant on Economic, Social and Cultural Rights **[cited]** General comments **[cited]**. Clearly states culture considered to be way of life, ICCPR, rights of minorities **…** in relation to the right to take part in cultural life, part of report we produced, requires from state party **…**
	Comm McP	You have submitted in evidence.
	AS	Yes. In Statement of Case, Rebuttal. Duty of non-interference by State **…** material consideration.
	MB	Just one clarification, appears we will be waiting on Mr Elvin response until tomorrow morning, clear breach of point of law, in mean time SOS are incurring costs have arranged for witnesses to attend to tomorrow and next week and weeks later, who will be responsible for those costs if the matters don't take place.

	Comm McP	I understand that, significant cost to both the Commission if we end up that we can no longer go ahead, we are sponsored by Government Department, there's a limited budget there also, we literally, I can't Ms Brolly predict the future, independent of Mr Elvin coming back with decision, Department put over the recommendation, we did raise these issues back in pre-inquiry meeting, could see issues coming up, we are where we are.
	MB	I remember raising matters … we second day into it, there me be delay, perhaps not, surely some onus on Commission as to matter of costs.
	Comm McP	We have no power as to costs, power to award costs only relates to some appeals cases.
	MB	Would commission refer to Minister.
	Comm McP	We have no power to do that. Everybody here has option to write to local representatives and Minister himself.
	SB KC	On the evidence given on notification, not responding to submissions today, I have to comments that have been made … will pick them up at the topic stages.
	Comm McP	Tomorrow, I do have some carry over matters, one question on use of Golders to Department, six questions on human rughts, hopefully get that ironed out tomorrow.
	Comm McK	Tomorrow I ident to start with lighting, Thursday noise blasting vibration, potentially air quality Friday radon, compliance and enforcement …
		[Discussion as to schedule for remainder of week]
	MB	Human rights expert available yesterday and today, now it's on tomorrow, she hadn't planned to be here, again I would seek permission for her to be permitted to give her evidence remotely …
	Comm McP	People have to be here, this is why we were trying to keep to certain speed, we have set the timetable to best of our ability, inevitable that people coming with knock on effect.
	Comm McP	**[Discussion as to timetable]** Timetable is set.
	AB BL (DAERA/NIEA)	Reference for water sewerage order 2007 paragraph 296(1)b … there are different oversight bodies … invite gentleman to speak to me.
	AS	Respectfully originally two days planned were advised as opposed to mandated to be present for week …
	Comm McP	I understand that, building closes at five, if we able to set up zoom, there is no remote attendance, would I be able to raise human rights issues, if related to that topic, yes.
	AS	If we able to set up zoom …

	Comm McP	There is no remote attendance.
	AS	Would I be able to raise human rights issues, if related to that topic.
16:44	Comm McP	Yes. Closed, return home.

Disclaimer: this note of the proceedings before the conjoined public inquiries into the Curraghinalt Project is for general information purposes and does not and is not intended to constitute legal or other professional advice. This record does not represent a verbatim transcription of the proceedings, errors in transcription may be present.