

Your ref: **ACCC/C/2013/90**

Date: 7 April 2019

Ms Fiona Marshall
UNECE - Palais des Nation

Room 429-4 CH-1211

GENEVA 10

Dear Ms Marshall

Communication to the Aarhus Convention Compliance Committee concerning compliance by the United Kingdom with the Convention on public participation in connection with the River Faughan (ACCC/C/2013/90)

I wish to draw to the attention of the Aarhus Convention's Compliance Committee (ACCC) a very recent development which, I consider, clearly and further undermines the Party's erroneous defence of defective negative Environmental Impact Assessment (EIA) screenings for planning permission A/2008/0408/F.

The ACCC is aware of the Party's resistance to accepting the fundamentally inadequate and incomprehensible nature of the negative EIA determinations, including where the Schedule 3 criteria were meaninglessly addressed by use of either the letters "Y", "N" or "N/A". Similarly, the ACCC is aware of the Party's inability to explain what these letters meant at the hearing conducted on 12 December 2017.

Recent development

On 6 June 2018, Derry City and Strabane District Council (DCSDC) presented a recommendation to the Planning Committee (PC) to approval planning application A/2011/0115/F for minerals extraction which had been submitted back in 2011 but remains undetermined. RFA raised the concern that the negative EIA determination on which the decision makers relied, was inadequate in terms of how it assessed the Schedule 3 criteria.

On the 4 June 2018, prior to the PC meeting, I requested that the competent authority provide me with an explanation of the meaning of the letters "Y", "N" and "N/A". Ten (10) months later, I eventually elicited the reply (received on 5 April 2019) after raising the refusal to provide me with an explanation as a formal complaint.

Attached, for the attention of the ACCC, is a copy of:

- (i) the negative EIA determination relied on by the competent authority in June 2018 in support of approving A/2011/0115/F, and

- (ii) the letter I received on Friday 5 April 2019 from the competent authority.

Significance of this documentation

Specifically, I would draw the Committee's attention to the third last paragraph of the letter which states:

*"It is appreciated by Council that we consider that now it is **not** sufficient to record that the selection criteria have been taken into account and it is now best practice in this Council for the officer to record his / her overall judgement and brief reasons for this judgement"* [my emphasis].

Here, the competent authority is confirming the inadequacy and inappropriateness of using the letters "Y", "N" and "N/A" to assess the schedule 3 criteria of the EIA Directive. Furthermore, it is confirming a change in practice of how it assesses Schedule 3 criteria. This is because, like the Department for Infrastructure and the Party, it has been unable to adequately and credibly explain what these letters mean in the context of a negative EIA screening, or how this meaning has been consistently applied.

Indeed, if the explanation it provides in its letter of 5 April 2019 is the correct and consistent approach, then it creates further confusion for and makes a nonsense of the EIA screenings which are the subject of complaint ACCC/C/2013/90.

The importance of this admission by the competent authority that its past approach was "*not sufficient*" is made more significant in that the DCSDC planning authority is, essentially, the former Department of the Environment, Northern Planning Division (NPD) which transferred across to the council (staff, skills, knowledge, practices, behaviours, etc.) as part of Local Government Reform on 1 April 2015.

The DCSDC planning authority's Head of Planning was previously the Area Planning Manager in charge of NPD and was the most senior officer to attend Court in defence of impugned planning permission A/2008/0408/F and the disputed negative EIA determinations which are currently being considered by the ACCC. This officer has consistently declined to provide a professional opinion / explanation in respect of the negative EIA determinations under consideration by ACCC/C/2013/90.

The author of the DCSDC letter dated 5 April 2019 denouncing the practice of how schedule 3 criteria were previously assessed, is the same official who authorised the planning report recommending approval for planning permission A/2008/0408/F currently being considered by the ACCC [See "Development Control Officer's Professional Planning Report" dated 24 August 2012, page 980 in "annexes", posted 4 June 2013].

Both these senior planning officers (the highest and second highest professional grades within the local planning authority) would have been instrumental in delivering this practice change to address what the competent authority now accepts as inadequacies in how the Schedule 3 criteria were previously assessed (and obviously not understood).

This recent acceptance of the inadequacy of the past approach to assessing the Schedule 3 Criteria by the very same professional planning officer who authorised the permission which is the subject of complaint ACCC/C/2013/90, further undermines and compromises the UK Member State's, spurious defence of the adequacy and lawfulness of conducting the negative EIA determinations associated with A/2008/0408/F. Something no professional planner within the Department for Infrastructure, Northern Ireland is prepared to justify or express a professional opinion on.

I apologise for the introduction of new evidence at this stage of the process, but hope you will appreciate how recent this acknowledgement and acceptance of the past inadequacies of the EIA screening process by the competent authority has been.

Yours sincerely

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