Derry City & Strabane
District Council
Comhairle
Chathair Dhoire &
Cheantar an tSratha Báin
Derry Cittie & Stràbane
Destrick Cooncil

Ref: EIR / 6533

12th August 2026

Environmental Information Regulations Request - Review of Old Mineral Permissions (ROMPS)

I refer to your email dated 15 July 2026 requesting information under the Freedom of Information regulations. As your information request relates to environmental information it has been dealt with under the Environmental Information Regulations 2004, as below.

Please provide details of any recorded information held by the Council relating specifically to the Review of Old Mineral Permissions (ROMPS) between 1 January 2022 and the date of this request.

Please include:

1. **Any correspondence between the Council and the Department for Infrastructure regarding ROMPS.**

   Council does hold this information. The information is partly publicly available. At the Planning Committee Meeting on 1st April 2026, a paper was presented at agenda Item 10, providing a draft response to the call-for-evidence from DfI Planning in respect of the Second Review of the Implementation of the Planning Act (NI) 2011.

   You can access agenda Item 10 At the following link on pages 275 to 294

   (Public Pack)Agenda Document for Planning Committee, 01/04/2026 14:00

   The final response was sent to DfI Planning on 02nd April 2026, please see attached.

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98 Strand Road
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Derry City & Strabane District Council
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2. **Any reports, briefing notes, minutes or submissions produced by or provided to the Council where ROMPS was discussed.**

   Council does hold this information.

   The information is partly publicly available at the Planning Committee Meeting on 1st April 2026. A paper was presented at agenda Item 12, regarding Monitoring of LDP Plan Strategy Indicators. With specific reference to ROMPs, see appendix 1 at the end of the paper, row 19, Minerals Development (page 348).

   You can access this paper at the link provided in response to question 1.

   Council has also received some correspondence which references ROMPS and these are attached to this response.

If you are dissatisfied with our response, you have rights of review and appeal; these rights consist of two review processes.

Firstly, our internal review procedure is available by contacting:

John Kelpie
Chief Executive
Derry City and Strabane District Council
98 Strand Road
Derry BT48 7NN
Tel: 028 71253253 or email: john.kelpie@derrystrabane.com

Secondly, you can appeal directly by contacting the Information Commissioner at:

Information Commissioner
Wycliffe House
Water Lane
Wilmslow
CHESHIRE SK9 5AF
Tel: 0303 123 1113 (local rate) or email: casework@ico.org.uk

I would however advise that the Information Commissioner has indicated that a review will not be undertaken unless the Council has first had an opportunity to re-consider its decision.

Yours sincerely

Rosemarie McMenamin
Principal Planning Officer

98 Strand Road
Derry
BT48 7NN

Tel: 02871253253

Rosemary Daly
Chief Planning Officer and Director
DFI Regional Planning Governance and Legislation

Rosemary.daly@infrastructure-ni.gov.uk

Julie.moradi@infrastructure-ni.gov.uk

2nd April 2026

Dear Rosemary

Second Review of the Implementation of the Planning Act (NI) 2011

I refer to your correspondence dated 22nd January 2026, regarding the second review of the implementation of the Planning Act (NI) 2011.

The Planning Committee met yesterday (1st April 2026) and agreed the attached response, on behalf of Derry City and Strabane District Council. The response does reaffirm some previous matters for information again, and as a Council we consider this is important. We look forward to further engagement with DFI on these matters.

Thank you for facilitating this matter to be brought before the committee and accepting this response.

Yours Sincerely

Suzanne McCracken
Head of Planning

DCSDC Response to DFI 1st April 2026

Second Review of the Implementation of The Planning Act (NI) 2011

Part 2 of the Act – Local Development Plans

DFI should review the current legislative requirements for two separate documents and consider the efficiency and effectiveness of a single document LDP, given the difficulties experienced by all Councils in the deliver of the LDP process. This is a fundamental matter that was raised in 2021, and has still not subject to any considered review by DFI, despite the first stage of the LDP process having now been delivered by more than half of the local Councils through the adoption of their Plan Strategy documents.

DFI should further clarify its role in relation to the preparation and adoption of LDP documents, alongside the role of the PAC. The PAC should be able to report direct to Councils following the Independent Examination.

Consultation timescales arrangements throughout the LDP process remain extensive and onerous and should be reviewed and simplified. A focused review of the digitalization of all stages the LDP process is also required, to improve the efficiency of the process, from consultation right through to submission of documents for Independent Examination.

Part 3 and 4 of the Act -Planning Control and Additional Planning Control

Hierarchy of Development **-**DFI should consider a third category of development to separate the current local category of applications. The current local category includes everything from household, advertisements to applications for 49 dwellings. DCSDC has a significant proportion of small housing developments, categorised as local, which regularly take longer than 15 weeks to determine, particularly with the delays in some of statutory consultee responses (NIEA, NIW). The current hierarchy presents Councils with these types of applications in an impossible position to meet the KPI targets.

Call in of Applications **–** A review is required to review and provide a timeline for the consideration by DFI on whether or not to call an application in. The current regulations are not fit for purpose and are creating unnecessary delays for applicants and Councils awaiting to issue decisions.

Third Party Appeals – Council maintains it position on the necessity for a review of the legislation to facilitate third party appeals. The number of judicial review challenges being brought against Councils across NI since transfer in 2015 is significant, as it is the only option available to objectors to applications.

Notice etc. of applications for planning permission and appeals **-** DFI should review the current provisions and consider the option of erecting a site notice as an alternative to neighbour notification in some cases. Site notices can often be more cost effective and reach wider audiences, especially within urban areas. The current requirements should be substituted with a combination of electronic consultation, neighbour notification/and site notices.

Determination of Applications – DFI should review the legislation to consider the requirement to limit the number of revisions to an application.

Review of Old Mineral Permissions (ROMPS) - A fresh review of this power is required to enact the legislation. There has been no progress on this issue since first raised in the 2021 call for evidence.

Part 5 of the Act – Enforcement

Injunctions **-** DFI should review the legislation in relation to Injunctions. At present only Councils are legislated to apply to the courts for an injunction. This should be amended to allow the Department to have legislative powers to apply to the courts for an injunction.

Part 12 of the Act

Correction of Errors – DFI gave an undertaking in the first review to amend the legislation to enable this power to be enacted, but to date there has been no progress. This should be reviewed again.

Rosemarie McMenamin

29 May 2026 14:25

Fw: Fw: URGENT: WFD Compliance Risk – Acknowledged ROMPs Defect (GreenScale / Foyle Port)

Derry City & Strabane District Council
Comhairle Chathair Dhoire & Cheantar an tSratha Báin
Derry Cittie & Stràbane Destrick Cooncil

Sent: 29 May 2026 14:24

Subject: Fw: Fw: URGENT: WFD Compliance Risk – Acknowledged ROMPs Defect (GreenScale / Foyle Port)

Thank you for you email of 28th April 2026 (below). I will respond to each of your queries in the order raised:

For clarity, you request confirmation of the following:

(i) whether the statement that no legal advice was required reflects a recorded legal or officer position adopted by Council.

I can confirm that the statement that no legal advice was required reflects Planning Officers position. As previously advised in my correspondence dated 28 April 2026, legal advice regarding WFD

compliance in the absence of ROMPs, was not required as the position at present is that ROMPs is not enacted.

(ii) whether any discrete WFD "no deterioration" assessment exists separate from consultee responses, standing advice, and the CEMP materials relied upon.

Council does not hold any discrete WFD "no deterioration" assessment.

(iii) whether any independent cumulative or indirect hydrological assessment (including aggregate supply impacts) was undertaken — yes or no.

A cumulative and indirect hydrological assessment of the project was carried out by Shared Environmental Services (SES). Council adopted the SES position. The appropriate assessment is available to view on the planning portal at the following link

https://planningregister.planningsystemni.gov.uk/application/671225

Under Documents Tab; Document Type select consultation responses and selected the response from SES dated 02nd September 2024.

This assessment did not include aggregate supply impacts.

(iv) whether Council's stated refusal to review its position is intended as its final position on the matters raised.

Yes this remains Council's final position.

I trust this is helpful
Kind regards

Principal Planning Officer
Derry City and Strabane District Council
98 Strand Road
Derry BT48 7NN

Tel no: 028 71253253

Derry City & Strabane District Council
Comhairle Chathair Dhoire & Cheantar an tSratha Báin
Derry Cittie & Stràbane Destrick Cooncil

Sent: Tuesday, April 28, 2026 21:05

Subject: Re: Fw: URGENT: WFD Compliance Risk – Acknowledged ROMPs Defect (GreenScale / Foyle Port)

Thank you for your response.

Your reply appears to confirm:

1. Council was aware of the continuing non-commencement of Schedule 3 (ROMPs).
2. Council did not obtain legal advice regarding WFD compliance implications arising from that acknowledged position; and
3. Council does not intend to review its position.

For clarity, I would be grateful if you would confirm the following:

(i) whether the statement that no legal advice was required reflects a recorded legal or officer position adopted by Council.

(ii) whether any discrete WFD "no deterioration" assessment exists separate from consultee responses, standing advice, and the CEMP materials relied upon.

(iii) whether any independent cumulative or indirect hydrological assessment (including aggregate supply impacts) was undertaken — yes or no.

(iv) whether Council's stated refusal to review its position is intended as its final position on the matters raised.

These clarifications are sought for record purposes and in light of potential referral to relevant oversight bodies.

Kind regards,

On Tue, 28 Apr 2026 at 15:07,

Thank you for your email of the 20th March 2026 (below). Points 1-5 of your email are noted. I will respond to your request for clarification under point 6 of your email.

6. Request for clarification

1. **whether the Council obtained any legal advice regarding WFD compliance in the absence of ROMPs.**

   Council did not require to obtain any legal advice regarding WFD compliance in the absence of ROMPs, as the position at present is that ROMPs is not enacted. The responsibility for enacting ROMPS legislation lies with Department for Infrastructure (DFI). I suggest that you bring your concerns regarding enactment of ROMPs to the attention of DFI.

2. **whether any independent assessment of cumulative or indirect hydrological impacts (including aggregate supply impacts) was undertaken.**

   Article 229 of the Planning Act 2011 commits a council to consult before the granting of any permission or consent. Article 13 of The Planning (General Development Procedure) Order 2015 along with Schedule 3 of The Planning (General Development Procedure) (Amendment) Order (Northern Ireland) 2016, sets out the types of development where consultation must take place and the organisation that must be consulted.

   In the case of the IT Data Centre applications, Council complied with its statutory duty to consult NIEA Water Management, NIEA Natural Environment Division; NIEA Regulation Unit Land and Groundwater team. Shared Environmental Services was also consulted in respect of consideration under the Habitats Regulations Assessment. Council is therefore satisfied that hydrological impacts of the development were adequately considered at application stage.

3. **the specific WFD assessment relied upon (if any), including conclusions reached;**

   I attach guidance published by DEARA NIEA on pollution prevention which provides advice to Council to inform decision making and for applicants seeking planning permission for

developments which may impact upon the water environment. This guidance provides information NIEA require for developments with the potential to impact upon the water environment.

It states that effective mitigation measures must be in place to protect the water environment and surrounding water bodies from any discharge into them that may damage ecological status and to ensure that the Water Environment (Water Framework Directive) Regulations (Northern Ireland) 2017 objectives for the water body are not compromised nor the objectives in other downstream water bodies in the same and other catchments.

Water quality issues pertaining to the IT Data centre application were considered by NIEA, Loughs Agency, and Shared Environmental Services during the processing of the IT Data Centre planning applications. The final CEMP required by condition 2 of LA11/2023/1729/RM sets out to the satisfaction of these consultees, the mitigation measures, including standing advice on pollution prevention to be employed to protect the water environment.

Council is satisfied that the mitigation measures set out in the CEMP for the IT Data Centre will therefore ensure that the objectives of the Water Environment (Water Framework Directive) Regulations (Northern Ireland) 2017 are not compromised.

4. **whether the Council will now review its position in light of the acknowledged regulatory deficiency.**

   Council considers it is not necessary to review its position in relation to this case.

Kind regards

Principal Planning Officer
Derry City and Strabane District Council
98 Strand Road
Derry BT48 7NN

Tel no: 028 71253253

Sent: 20 March 2026 23:14

Subject: URGENT: WFD Compliance Risk – Acknowledged ROMPs Defect (GreenScale / Foyle Port)

Thank you for your response. I acknowledge its contents.

However, your reply raises a number of **serious and unresolved legal issues** which now require urgent clarification.

1. Acknowledgement of a defective regulatory framework

You confirm that the Council was aware, at the time of determination, that:

Schedule 3 (ROMPs) had not been enacted and remains uncommenced.

This is a clear acknowledgement that the relevant decisions were taken within a **known incomplete regulatory framework**, particularly in respect of environmental controls linked to mineral-related impacts.

2. Failure to address the implications of that defect

Your response does not identify any step taken by the Council to:

- assess the legal consequences of the absence of ROMPs.
- address the resulting gap in enforceable environmental safeguards; or
- verify that Water Framework Directive (WFD) compliance could still be lawfully ensured.

Reliance on consultation responses does not discharge this obligation. Statutory consultees operate within the same regulatory framework and do not remedy a **structural omission in environmental control mechanisms.**

3. Reliance on post-consent mitigation (CEMP)

The reliance on a condition requiring submission of a Construction Environmental Management Plan (CEMP) appears to defer WFD compliance to a post-consent stage.

This raises a clear legal concern:

- WFD compliance must be established at the point of determination,
- not deferred to future plans or contractor-led mitigation measures.

Please confirm whether the Council considers that this approach is consistent with its statutory duties.

4. Absence of identified WFD assessment

Your response does not identify:

- any formal WFD screening or assessment carried out by the Council.
- the methodology applied; or
- how the “no deterioration” principle was evaluated, including cumulative and indirect impacts.

A general reference to documents on the planning portal does not satisfy this request.

5. Ongoing reliance on the same approach

You indicate that the Council intends to continue determining applications on the same basis.

This raises a further concern that decisions may continue to be taken:

- in knowledge of a systemic regulatory gap.
- without adjustment to ensure lawful WFD compliance; and
- without applying a precautionary approach in light of that defect.

6. Request for clarification

Please confirm, within statutory timescales:

1. whether the Council obtained any legal advice regarding WFD compliance in the absence of ROMPs.
2. whether any independent assessment of cumulative or indirect hydrological impacts (including aggregate supply impacts) was undertaken.
3. the specific WFD assessment relied upon (if any), including conclusions reached; and
4. whether the Council will now review its position in light of the acknowledged regulatory deficiency.

7. Notice of escalation

Given the seriousness of the issues identified, this matter is now under active consideration for escalation to:

- the Office for Environmental Protection (OEP).
- the Northern Ireland Public Services Ombudsman (NIPSO); and
- other relevant oversight bodies.

All rights are reserved.

Kind regards,

On Thu, 19 Mar 2026 at 08:38,

Thank you for your email of 12 February 2026 regarding the above matter. Please accept my apologises for the delay in responding.

I will respond to each of the questions you ask in turn:

- **whether the Council was advised, at the time of determination of the GreenScale/Foyle Port application(s), that ROMPs had not been commenced.**

Council was aware that at the time of determination of the GreenScale/Foyle Port application(s), that ROMPs had not been enacted and that this remains the case.

- **what steps (if any) the Council took to satisfy itself that WFD compliance was not prejudiced by that non-commencement.**

During the processing of the IT Data Centre applications LA11/2019/0431/O and LA11/2023/1729/F, Council consulted with NIEA Water Management Unit; NIEA Natural Environment Division; Loughs Agency; NIWater and Shared Environmental Services. The responses received during the processing of theses application are available to view on the Planning Portal.

During the processing of the applications the agent was requested to address the requirements of the consultation responses. All drawings and reports submitted in support of the application are available to view on the planning portal.

Once the consultees were satisfied that the measures proposed by the agent to ensure protection of the water environment were acceptable, conditions were recommended and subsequently attached to the decision notices.

Condition 2 of LA11/2023/1729/RM required a final construction environmental management plan which identified all potential risks to the existing watercourses within the site and required that all of the pollution prevention measures detailed in the outline CEMP (MCI June 2024, including the Addendum of August 2024 - Appendix 11) were incorporated.

The outline CEMP identifies the guidance for pollution prevention documents and the relevant DAERA Standing advice which the development must comply with including, Industrial and Commercial Developments; Pollution Prevention Guidance; Sustainable Drainage Systems; Discharges to the Water Environment and Abstractions and Impoundments.

These documents state that effective mitigation measures must be in place to protect the water environment and surrounding water bodies from any discharge into them that may damage ecological status and to ensure that the Water Environment (Water Framework Directive) Regulations (Northern Ireland) 2017 objectives for the water body are not compromised nor the objectives in other downstream water bodies in the same and other catchments.

As Council imposed a condition requiring submission of a CEMP to demonstrate compliance with the pollution prevention measures set out in the pollution prevention guidance, it is satisfied that the development can be delivered in a way which ensures effective mitigation measures will be in place to ensure that the WFD is complied with.

- **The WFD screening/assessment and consultee advice relied upon (including DAERA/NIEA and NI Water); and**

As advised above, the consultee responses received for the IT Data Centre applications (Ref: LA11/2019/0431/O and LA11/2023/1729/F) are publicly available on the planning portal

- **whether the Council will review its approach for any further data-centre applications in the pipeline in light of the continuing ROMPs non-commencement.**

Council will continue to comply with its statutory duty to consult with the relevant statutory consultees. Applicants will be required to address any matters raised by the statutory consultees which may affect the water environment.

Kind regards

Principal Planning Officer
Derry City and Strabane District Council
98 Strand Road
Derry BT48 7NN

Tel no: 028 71253253

Derry City & Strabane District Council
Comhairle Chathair Dhoire & Cheantar an tSratha Báin
Derry Cittie & Stràbane Destrick Cooncil

From:
Sent: 12 February 2026 09:41
To: Planning <planning@derrystrabane.com>

Subject: formal notice of a material Water Framework Directive (WFD) compliance risk

Dear Planning Team,

I write to place Derry City & Strabane District Council ("the Council") on formal notice of a material Water Framework Directive (WFD) compliance risk arising from the Department for

Infrastructure's continuing failure to commence and operate Schedule 3 (ROMPs) of the Planning Act (NI) 2011. This failure has direct implications for the lawfulness of development decisions where impacts on surface water and groundwater are in scope, including the GreenScale (formerly Atlantic Hub) data-centre permission at Foyle Port and any further data-centre applications in the pipeline.

1) ROMPs non-commencement creates a WFD legality risk

The non-commencement of ROMPs removes a core regulatory mechanism for reviewing and imposing modern environmental conditions on mineral operations and related aggregate supply chains that materially affect hydrology, sediment load, and downstream water status. In the absence of ROMPs, planning authorities and consultees risk relying on a legally defective regulatory framework when assessing cumulative and indirect pressures on water bodies, contrary to WFD objectives and the "no-deterioration" principle.

2) Material relevance to data-centre permissions at Foyle Port
Large data-centre developments engage WFD considerations through:

- water abstraction and wastewater capacity,
- construction-phase sedimentation and runoff,
- cumulative hydromorphological pressures arising from aggregate extraction and haulage for major civil works (hard standings, access roads, substation platforms), and
- downstream impacts on receiving waters.
  Where ROMPs are not operational, the environmental baseline and enforceable mitigation for these pressures areincomplete, calling into question the adequacy of WFD screening relied upon at decision-stage.

3) Procedural duty on the Council (non-deflectable)
While ROMPs sit with DfI, the Council retains a non-delegable duty to ensure decisions are taken within a lawful framework and that WFD compliance is robustly evidenced. Reliance on a system known to be legally defective exposes decisions to procedural vulnerability and potential challenge. The Council must therefore satisfy itself that WFD duties were not compromised by the absence of ROMPs at the time of determination.

4) Requests for confirmation and records
Please confirm and disclose:

- whether the Council was advised, at the time of determination of the GreenScale/Foyle Port application(s), that ROMPs had not been commenced.
- what steps (if any) the Council took to satisfy itself that WFD compliance was not prejudiced by that non-commencement.
- the WFD screening/assessment and consultee advice relied upon (including DAERA/NIEA and NI Water); and
- whether the Council will review its approach for any further data-centre applications in the pipeline in light of the continuing ROMPs non-commencement.

5) Prospective safeguard
Pending commencement of ROMPs, the Council is requested to adopt a precautionary approach for any further determinations engaging water bodies, including conditioning/deferral where necessary to avoid WFD non-compliance and to ensure cumulative and indirect pressures (including aggregate supply impacts) are lawfully addressed.

Given the public interest and the risk of procedural unlawfulness, please provide the above confirmations and records within statutory timescales. Where information is not held, please confirm this explicitly.

Kind regards,

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