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Planning Appeals Commission
4th Floor
92 Ann Street
Belfast
BT1 3HH

RE: Statement of Evidence, Conjoined Public Inquiries – Curraghinalt Project (Dalradian Gold)

Dear Planning Appeals Commission,

I have already made a submission in respect of the transboundary environmental implications of the Curraghinalt Project ('Dalradian Gold'), both in an individual capacity and in a joint submission together with my colleagues from the [Redacted] University College Dublin. I am submitting this statement of evidence to summarise some of the serious problems posed by this project and its conjoined applications from the perspective of compliance with international and domestic law, as well as to highlight additional issues that were not included in my previous submission. I refer the PAC to the submission of An Taisce (the National Trust for Ireland), the submission from the Environmental Law and Justice Research Group at UCD, my own previous submission, as well as the evidence submitted by Dr [Redacted] attached to CAIM and SOS's submission. These documents are lengthy and detailed as regards the substantive issues that need to be properly addressed at the resumed public inquiry.

1. Procedural issues in the transboundary consultation

As a first point, there are several procedural issues that undermine the legality of the process to date under the Aarhus and Espoo Conventions (detailed in my previous submission and also in the Save Our Sperrins rebuttal report). With respect to the present transboundary consultation, the Espoo Convention requires transboundary screening to identify potential environmental concerns early on, allowing for mitigation strategies and collaboration between the relevant state parties. When the DfI notified the Irish government on 30 January 2025, officials from the Department for Housing, Local Government and Heritage (DHLGH) in Ireland requested a screening document and provided the DfI with a screening template as an example of what they were looking for. Internal communication between DHLGH officials shows that "it wasn't possible to easily discern which documents highlighted and discussed

the potential transboundary environmental impacts.” Accordingly, a response was issued to DfI on Friday 7 February, “requesting DfI to forward the application documentation that clearly identifies what transboundary impacts need to be considered.” On 14 February 2025 the DfI responded to the DHLGH with a table including references to the EIAs for the mine and powerlines applications, but not the four applications relating to water abstraction, impoundment and discharge consents, **i.e. the applications with the most serious transboundary implications.** In its response to the DHLGH, the DfI noted that “there may be other references, related content or synergies and this list is therefore not exhaustive.” As a consequence, the transboundary consultation notice published on 26 February in Ireland referred to the mine and powerlines applications and referred rather ambiguously to the water applications as additional information: “Additionally, further to the three applications detailed above which DfI have decided require transboundary consultation, DfI have also provided links to the five applications below which members of the public are free to review and consider in their submissions.”

The failure to highlight the water applications as part and parcel of the transboundary consultation proper, as well as for the purposes of the present statement of evidence, undermines the credibility and good faith of the public participation process as a whole. This is all the more worrying given the introduction of new plans for discharge in Dalradian’s SoC, which states that for seven years post closure, there would be a discharge of 4,400 gallons per day into the Owenkillew River via the Curraghinalt Burn, and that after seven years, this discharge would increase to 176,000 gallons per day indefinitely. There are several other procedural issues, but I will cut straight to the problems with Dalradian Gold’s application that have material consequences for the legality of the application.

2. Screening out of the Owenreagh River and Pollanroe Burn

The ‘screening out’ of the Owenreagh River and Pollanroe Burn from the Dalradian sHRA is unacceptable given the presence of site selection feature Atlantic salmon, a shared species on the island and a protected species under Annexes II and V of the Habitats Directive which rely on the health of the rivers that will be directly impacted by the water discharge. A Likely Significance Test carried out by the NIEA confirmed the need for an appropriate assessment of the water abstraction and discharge applications because the proposed discharge is likely to have a significant impact on the integrity of the SAC features. The test identified the potential for “significant adverse impacts on the integrity of Owenkillew River ASSI/SAC arising from the discharge into the Curraghinalt Burn” and identified “potential for significant adverse impacts on the integrity of Owenkillew SAC, notably the Atlantic Salmon feature, arising from the proposed discharge into the Curraghinalt Burn”, and that “the proposed discharge is likely to have a significant effect on the key relationships between the fresh water pearl mussel, Atlantic salmon and European Otter”. In addition, the NIEA states that “River Foyle and Tributaries SAC is hydrologically connected approx. 20km downstream and given that salmon are a mobile species and are known to have an extensive range through the connected river

system from headwaters to mouth, it is considered that significant impacts on this selection feature are possible.” It should be noted that the freshwater pearl mussel is classified as ‘Endangered’ (Red List) by the IUCN and is now only found in eight rivers in Ireland, two of which are the Owenkillew and Owenreagh. It is dependent on the Atlantic Salmon to host its larvae in the earliest part of their life cycle before they drop off into the river substrate, so healthy, recruiting salmon populations in those rivers are important. The Dalradian sHRA omitted the Owenreagh River and Pollanroe Burn from the sHRA despite the presence of site selection feature Atlantic salmon.

2. Failure to assess the transboundary impact on sites beyond the River Finn SAC

With regard to designated sites in the Republic, the sHRA TR6 Ecology report identified the following sites which are hydrologically linked with the development site (at 1.56):

- a) River Foyle and Tributaries SAC;
- b) Lough Foyle SPA;
- c) Lough Foyle Ramsar site;
- d) River Finn SAC (Republic of Ireland); and
- e) Lough Foyle SPA (Republic of Ireland).

However, despite the clear hydrological links to Natura 2000 sites in the ROI, the sHRA did not fully assess impacts on downstream SACs, appearing to rely on mitigation measures to screen out the full assessment, with Section 1.142 of the TR6 Ecology report outlining questionable mitigation measures to address potential adverse effects including “waste water treatment including below baseline for key parameters, consented limits on discharges and Betterment proposals which include the removal of existing nitrogen sources from the Applicant’s lands.”

As noted by An Taisce, “there is no apparent further mention or assessment of these European protected sites in the sHRA Ecology report, and the sensitivities of the individual species of QI in both the SPA and the SAC are not assessed at any point. Similarly, the evidence base for why the proposed mitigation measures are to be considered adequate does not appear to be elucidated at any point in the documentation. This is particularly concerning given the widely reported toxic impacts on aquatic organisms and ecosystems. **It is our view that this lack of assessment of Natura 2000 sites further downstream from the development site, including the River Finn and Lough Foyle SPA, contravenes the requirements of the Habitats Directive,** and would compromise the practical effect of the Habitats Directive, as outlined in case C-323/17” (p. 13).

Legal counsel for NIEA found that “The approach of Dalradian Gold in applying generic standards derived for other purposes and not focused on the needs of the SAC features is misplaced” and that “for an SAC in unfavourable condition, there is no scope consistent with the conservation objectives to permit a worsening of water quality in respect of those parameters [...] If the existing poor situation would be made worse by reference to some key parameters that would not be lawful under the Habitats Regulations.”

3. Flawed sHRA methodology used by the Applicant

Loughs Agency, the independent ecologist for FODC, NIEA legal counsel, An Taisce, and UCD legal scholars, among others, have highlighted significant failures and shortcomings in the Applicant's assessment of the impacts of the development on waterbodies. Loughs Agency grouped the problems into several overarching themes including:

1. Factually incorrect information presented as data
2. Outdated survey results and datasets
3. Surveys not carried out using accepted best practice methodologies appropriate for the area
4. Apparent inappropriate application of international standards
5. Failure to appropriately consider impacts on surrounding watercourses, in particular; the Curraghinalt Burn, the Pollanroe Burn and Owenreagh as well as "Un-named watercourse", in the context of salmonid populations.

Added to this list of problems, An Taisce also highlights that "not only has the applicant failed to assess aquatic SACs and waterbodies downstream of the proposed development, but also those which they have assessed rely on outdated data, and make assumptions about ecological quality which do not appear to be backed up by data or evidence, or based on best practice methodology."

5. Failure to account for the destruction of peatlands (carbon sinks) in the Applicant's carbon accounting plans

As noted by Dr [REDACTED], "while Dalradian claims a commitment to carbon neutrality and references legal obligations under the NI Climate Change Act and Peatland Strategy, the technical reports lack any meaningful assessment of carbon emissions from peat excavation. TR7 does not quantify emissions from disturbed or excavated peat, nor does TR3 account for greenhouse gas savings from restoration efforts. This undermines the credibility of the project's carbon neutrality claims and ignores the critical climate function of peatlands. Given the shared ecosystems and climate responsibilities on the island of Ireland, the degradation of peatlands could have direct implications for the Republic's environmental and climate goals."

6. Failure to consider the effects on migratory species in the Republic

The potential risks for protected bird species in the Lough Foyle SPA have not been properly considered. As noted by the National Parks and Wildlife Service of Ireland,

"Lough Foyle SPA is of high ornithological importance as it is part of an internationally important wetland site that regularly supports internationally important populations of Whooper Swan, Light-bellied Brent Goose and Bar-tailed Godwit, and nationally important populations of a further 20 species. Of note is that five of the species

which occur regularly, i.e. Red-throated Diver, Bewick's Swan, Whooper Swan, Golden Plover and Bar-tailed Godwit are listed on Annex I of the E.U. Birds Directive.”

Adequate consideration has not been given to the impact on these bird species from ingesting potentially contaminated prey species as a result of heavy metal toxicity resulting from mine discharge, nor to the impact on their habitats or feeding sources.

7. Lack of a disaster risk management plan and design statement

One of the most concerning aspects of this Application is the lack of any acknowledgement that the tailings facility ('Dry Stack Facility') requires maintenance in perpetuity and a disaster risk management plan. Dalradian proposes a mere 15 year closure plan in their SoC (up from the five years in their planning application) but this plan concentrates only on monitoring the water flooding the mine, and not DSF. As noted by Dr [REDACTED] it is industry standard to provide a design statement and disaster management plan for tailings facilities and yet the Applicant does not provide either. The Society for Mining, Metallurgy and Exploration Tailings Management Handbook notes that “Unfortunately, humans have no experience in designing facilities to last forever, so responsible tailings management is required for as long as the TSF exists”. Dr [REDACTED] demonstrates in his 45-page report (which draws on mining industry standards) that any failure would have considerable potential for detrimental impact on River Foyle, River Finn, and Lough Foyle. In particular, he notes that “Failure of any engineered structure is possible and statements to the contrary by the project proponent should have been grounds for immediate dismissal of the project by the government of Northern Ireland.”

8. Cumulative impact on protected areas

Each individual application is significant, but cumulatively the impact is completely disproportionate to the sensitivity of the Sperrins landscape as recognised via multiple designations. The reality from a broader legal perspective is that the mining site is located in a heavily protected area that is valuable because of those protections. Those protections were enshrined in law to ensure the transmission of the special features of the Sperrins landscape for the enjoyment of present and future generations, and this implies a limitation on land-use decision making. This is the rationale behind the mining ban in World Heritage sites and it is the reason why this application is wholly incompatible with the Sperrins AONB. Any reasonable interpretation of the obligations pertaining to the multiple designations (SACs, ASSIs, ASAs, Ramsar, AONB, Dark Skies) of the Sperrins would require application of the precautionary principle and refusal of the project.

9. Shared cultural heritage and outdated assessment

The cultural heritage impact assessments undertaken by Gahan and Long and RPS use outdated methodology and do not consider the intangible cultural heritage (including ethnography, folklore, associative heritage), social impact, or the impact of the application on the rich cultural landscape (evidenced by Dr [REDACTED] research). In addition, it is much

narrower in archaeological scope than a previous cultural heritage impact assessment carried out by SLR in 2013, which identified **27** cultural heritage sites within the immediate 'project area' and a total of **113** cultural heritage sites within the environs. The number of heritage sites involved contradicts the Applicant's assessment that 'the project will not have any direct impact on heritage assets.' The SLR report is not mentioned in the Applicant's SoC. The assessment carried out by RPS relies on ICOMOS (2011) guidelines to determine the methodology applied to its assessment of the cultural heritage. However, these guidelines were updated and replaced in 2022 to reflect the current legal understanding of cultural heritage the centrality of community participation.

10. No social license to operate & lack of free, prior and informed consent

Dalradian Gold's SoC claims that: "The letters of objection and support are evidence that, certainly at this planning stage, people have different perceptions of the project – some negative, others positive." This is an entirely skewed representation of the facts pertaining to public participation in the planning process, which are included as a mere footnote in the Applicant's SoC. There have now been c. **50,000+ submissions objecting** to the project compared to c. 4,000 letters of support. This is not merely "some positive and some negative" but a **11-1 majority of people expressly opposed** to the project compared to those in favour. These objections include the local community who have to live with the adverse effects of the mining project, statutory consultees, specialist agencies, environmental NGOs north and south, local government, legal experts and the majority of the 1600 people from the ROI who made submissions as part of the transboundary consultation. There is no social license to operate this gold mine.

Dalradian Gold claims that some of the public's concerns have been taken into account, but their SoC has focused disproportionately on the visual and design aspects rather than the substantive issues raised by the public. Furthermore, Dalradian selected a paltry number of quotes from the public submissions in an attempt to rebut these and "close them off". This does not equate to taking the public consultation into account as per Article 6. 8 of the Aarhus Convention. Neither Dalradian's SoC, rebuttals, or its supporting documentation adequately respond to the concerns raised by the local community and other statutory bodies concerning the societal benefit of this project, the impact on human and animal health and well-being, or the legal requirements pertaining to the high value landscape with multiple designations. It is important to remember Article 6. 8 of the Aarhus Convention, which stipulates that parties must ensure that a decision takes due account of public participation, and that the reasons and considerations on which a final decision is based should provide evidence of how due account was taken of public participation.

To conclude, there is no overriding public interest in the present application that would justify the degradation of this landscape and the violation of several international agreements binding on the UK, all the while ignoring the democratic consensus. The individual and

cumulative risks of this project are manifold, and no amount of environmental management plans or mitigation can ensure the level of safety and integrity required, especially considering the outdated and flawed methodologies used by the Applicant to date. I am in no doubt that this project will be the subject of multiple judicial reviews, international complaints, and investigations should this application be granted. For these reasons, the only viable option is to refuse planning permission for this mining project.

Yours sincerely,

