

1. INTRODUCTION

This Rebuttal Statement (RS) addresses the main Statements of Case and submissions made regarding this aspect of the conjoined Inquiry. It is noted that there are various references to the issue of the road abandonment in other Statements of Case that made a number of objections to various aspects of the conjoined Inquiry. There are also legal submissions that have been considered and are responded to in this RS to assist the Commissioner.

Consequently, this RS comprises the following:-

- a. Rebuttal Report (RR) from Kevin McVitty at Appendix 1;
- b. RR from Martin Hoy and Karl Dorman at Appendix 2;
- c. Rebuttal note on amenity prepared by Michael Gordon at Appendix 3;
- d. Rebuttal comments at Appendix 4 from other witnesses to the Inquiry responding to issues relating to mine waste, cultural heritage, air quality, noise, peat and tourism
- e. Legal submissions at Appendix 5.

By way of introductory comment, there is significant on-going confusion with use of the terms “green road”, “the green road” and the Crockanboy Road. This confusion also arose in the course of the Court proceedings where the FODC sought unsuccessfully to assert a public right of way. A copy of that judgment is attached at Appendix 5.

The stretch of adopted track to be abandoned is known as Crockanboy Road, and is so named in the application. It is referred to in this RS as “the adopted track” for consistency.

The asserted public right of way was a broadly straight line from Rouskey towards Greencastle, where it met the 90 degree bend of the existing Mullydoo Road. Many people confused this asserted straight line with the adopted track that is the subject of the abandonment inquiry.

For consistency, the adopted track is used to describe the section of the Crockanboy Road to be abandoned; green road is used to describe the area which is the subject of the failed public right of way assertion proceedings.

Dalradian Gold Ltd

Public Inquiry

**Curraghinalt Project –
Abandonment Application
(Proposed New Road Design)
(PAC Ref: DR001))**

Rebuttal Report

November 2024

HoyDorman

Document Information

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1 Introduction

This Rebuttal Report (RR) addresses issues raised in the Councils & third parties Statements of Case (SoC) specifically in relation to the Proposed Road Abandonment due to the proposed Curraghinalt Project, in particular it addresses matters relating to the Proposed New Road Design.

The respective SoCs this RR refers to are listed below for ease of reference.

- FODC
- Save our Sperrins
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

This RR should be read in conjunction to the Road Abandonment Technical Report (TR) dated October 2024.

2 Road Abandonment

The issues raised relating to the Road Abandonment and technical and design issues are addressed in this section of this RR.

a) FODC

Section 7	7 The abandonment of this road as part of that proposal has not been justified as being necessary to facilitate the development	The evidence in the SOC addresses this. The professional judgement is that the abandonment is necessary. The issue of “justification” engages the discretionary function of the Dfl Roads and is a matter for submissions made already.
Para 7.1	7.1. It is not obviously the case that if the mine proposal goes ahead that this road should be abandoned. No development seems to be proposed on the stretch of the road to be abandoned. It appears, from the General Site Layout Plan (2016021-P-CIV-004 (A)) (Rev FEI_2), that it will be retained for use principally as a “haul road”. It is not evident why the mine could not be designed and operated so as to also retain this existing road.	The road referred to will no longer exist under the proposal
Para 7.2	The need for this stretch of road to be abandoned has not been justified as being necessary as part of the wider development. Whilst some of the documents describe the abandoned road as “being] incorporated into [the] Gold Mining site” (2020-11-20 Modified Submission for Abandonment), it is not clear that this is the case; or, if it is, that there is no other alternative to this. The burden of justifying this, again, rests with the applicant.	The road referred to will no longer exist.
Para 8.12 - 8.15		
	8.12. The main argument advanced in response to this appears to be that the	The Proposed New Road is similar but designed to a higher standard to published

	loss of the current route will be adequately offset through the provision of the new road around the eastern and southern perimeter of the main mine site. This argument is not, however, accepted. The new road is not a like for like replacement and is less favourable than the existing road.	design standards as set out in The new road will be pothole free, blacktopped and safer than the existing road it is replacing with the introduction of passing bays & intervisibility visibility, forward sight distance etc. It is more favourable will be a high-quality road safer for pedestrian use given. Please refer to C22 Transport Assessment Addendum Appendix 6 Scheme Design Overview.
	8.13.: The proposed new road would run around the eastern and southern perimeter of the proposed main mine site. The character of the new road would be fundamentally different to that of the existing road and is considered to be less favourable for pedestrian use.	See above
	8.14.: The construction of the road would be metalled with regular passing bays creating a wider road than the current single track lane. Along its entire length there would be a utilitarian and unattractive palisade security fence on the inside to prevent access into the main mine site. It is likely that this fencing would be retained even after closure due to the proximity of the SuDs ponds immediately adjacent to the road. Along part of the diverted road on the southern side of the main mine site, there would be palisade fencing on both sides of the road (i.e. in the vicinity of the water treatment plant).	See above

	8.15.: Immediately alongside the new road on the eastern side of the dry stack facility there would be a parallel haul road along which there would be frequent movement of HGVs and other vehicles. Along the southern side of the dry stack facility this haul road would cross over the diverted road at the junction of which there would be signage, road marking, lighting, and security gates.	With regards to vehicles crossing the Proposed New Road this junction has been designed safely, to appropriate design standards, has been subject to a Roads Safety Audit and will have very little apposing traffic. Construction traffic will not be permitted to use the Proposed New Road when complete
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b) Save Our Sperrins

Page 2 Para 2	The alternative route proposed by Dalradian is not reasonable. (3) Dalradian proposed alternate road would be intersected by an industrial scale access road to a new tunnel into the hillside with continual heavy lorries usage - with all the amenity loss. dust, noise, disruption, health and safety risks for people walking along it.	In terms of the Site Access Road crossing the Proposed New Road, this junction has been designed safely, to appropriate design standards, has been subject to a Roads Safety Audit and will have very little apposing traffic. Construction traffic will not be permitted to use the Proposed New Road when complete
	It seems irrational to propose abandonment of a public amenity and ruin a quiet, scenic, healthy roadway in return for a noisy, dangerous road, the construction of which would do major damage to the environment as well as the toxic impacts on people's health from inhaling the air alongside the 17-storey high waste dump. Such action is in direct opposition to the public interest and well-being.	The Proposed New Road is significantly safer than the 'Adopted Road to be Abandoned' including but not limited to the road alignment design, bound blacktop surfaced material, forward sightlines, intervisible passing bays, verges, roads restraints systems, drainage and attenuation storm storage systems.

c)

Para 2	There is evidence in abundance as to why the planning applications of Dalradian Gold, to include the abandonment of historic Green Road should not be passed. I should not need to repeat it here, but it will be an utter shame and loss to the public, and historians if the abandonment of this road is to come to fruition. On a personal note, I will have nowhere to walk with my children from my home, the gradient in the other direction is too steep for a buggy and too difficult for young children not in a buggy. If this were to go ahead, I would have to drive somewhere else to go for a walk with them, this idea really beggars belief.	This objection is also addressed by Mr McVitty separately regarding use for walking etc. The proposed new road is significantly safer than the 'Adopted Road to be Abandoned' including but not limited to the road alignment design, bound blacktop surfaced material, forward sightlines, intervisible passing bays, verges, roads restraints systems, drainage and attenuation storm storage systems. Proposed New Road Gradients A maximum of 10% which is a gradient of 1:10 i.e. 1 meter height gain for every 10m distance travelled. This is standard roads design. However, this is only over relatively short sections the average is 4% which is 1:18 gradient i.e. 1 meter height gain for every 18m distance travelled. Of the 1.385km Proposed New Road length the maximum 10% gradient is only over approximately 0.146km or 146m.
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d) [REDACTED]

Page 1 para 3	The Mullydoo Road Abandonment of the Mullydoo Road: this is a Council maintained road which I use numerous times a week, to go work and to attend the local community centre (Greencastle GAA). The abandonment of this road will cause a lot of hardship for me personally, for example, the flood and adverse weather experienced in the summer of 2017 resulted in the washing away of the road (I will attach a video of damage to the road), which gives me access to the Crockanboy Road, therefore, my only way to the main arterial routes was via the Mullydoo Road towards Greencastle football field. It took the Council over 2 weeks to finally open the road and the only way to access my home was by foot.	Mr McVitty deals with the very considerable confusion regarding road names in this area. They are not repeated here. The proposed new road is significantly safer than the 'Adopted Road to be abandoned' including but not limited to the road alignment design, bound blacktop surfaced material, forward sightlines, intervisible passing bays, verges, roads restraints systems, drainage and attenuation storm storage systems.
Page 1 para 4	I also use this road for approximately 2 weeks of the year due to snow and bad weather associated with the winter months; due to the steep nature of the road, vehicular access is not possible in these conditions; therefore, the Mullydoo road is vital to me attending work and for general daily use. The road proposed by Dalradian as a replacement is of no use to me as it too will have steep gradients and therefore will also be unpassable during times of snow and ice. This will leave my family will no access to our home by vehicle.	Proposed New Road Gradients A maximum of 10% which is a gradient of 1:10 i.e. 1 meter height gain for every 10m distance travelled. This is standard roads design. However, this is only over relatively short sections the average is 4% which is 1:18 gradient i.e. 1 meter height gain for every 18m distance travelled. Of the 1.385km Proposed New Road length the maximum 10% gradient is only over approximately 0.146km or 146m. Furthermore, this is very similar to the existing Mullydoo Road (north south

		direction) and other access road to the west (unnamed).
	Increased Traffic The increase in volume and nature of traffic which would result from this proposal will be unacceptable. The road infrastructure is already inadequate struggling to handle the existing traffic; the proposal will certainly make this worse. There are serious concerns for road safety with large HGV traffic encroaching onto the opposite side of road when turning. The lorries cannot turn left when exiting from the Camcosy Road as the junction is too sharp. Dalradian have attempted to mitigate against this by ensuring Lorries exit to the right and then turn at Lenagh Road. The Lenagh Road / Drumlea Bridge (Grade 2 Listed) turn is equally as sharp a junction, which has restricted views and poor site lines and this extra traffic will affect a greater area.	In terms of road capacity, the Crockanboy Road has significant residual capacity, please refer to my Technical Report TR20 page 13. The current vehicles per day using the Crockanboy Road is around 1,200vpd to 1,470vpd at the proposed site entrance, an increase of some 272vpd. This would be considered light in terms of road capacity on a B class road. (See Appendix 1 for ease of reference) A series of Professional Road Safety Audits have been undertaken and accepted by DfI Roads in support of the road improvements in relation to the proposed scheme. C22 Transport Assessment Addendum Appendix 7a Proposed New Road, Appendix 7b Crockanboy Road Right Turn Lane & Appendix 7c Camcosy Road Passing bays Road Safety Audits and Designers Comments Road safety and large vehicles addressed in TR20 Pages 15-17 3rd party responses. The illustrations at the bottom of this RR will show traffic use over a 24hour period.
	The road network cannot safely absorb the proposed increase in vehicle trips including large HGVs associated with the gold mine. The level and volume of traffic on small rural roads will make it unsafe.	The issues of safety and increased trips is referred to above.

	The Transport Assessment states that 85% of the journeys will be 'new' to the adopted road network (1.11). Overall, this comprises 260 vehicle trips per day attending the site. This increase of vehicles on narrow country roads is unacceptable. This proposal is contrary to the PSRNI as in this case the mineral resource - gold - is in an area Edward McCullagh 208 Crockanboy Road Drumlea Omagh Co Tyrone BT797RT where the public road network is unsuitable for the volume of heavy traffic which mineral developments will generate. The proposal will certainly prejudice road safety and inconvenience road users.	Regarding the 85% of the journeys will be new this was amended within the TA Addendum to show 100% of vehicles tested were new to surrounding road network to ensure a complete worst case traffic assessment scenario. "To further demonstrate robustness of assessment the reasonable reduction for pass-by trips of 15% has been removed" C22 Transport Assessment Addendum, Revised Junction Operational Assessment, point 8-page 2
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e) [REDACTED]

Page 1 para 3 & 4	Can the Department please explain to the public its seemingly irrational and vindictive proposal to abandon, remove as a public amenity and ruin a scenic, inviting, healthy roadway in return for a pathway that is much narrower and the construction of which would do major damage to the environment? Such action is in direct opposition to the public interest and well-being.	The Proposed New Road is significantly safer than the 'Adopted Road to be Abandoned' including but not limited to the road alignment design, bound blacktop surfaced material, forward sightlines, intervisible passing bays, verges, roads restraints systems, drainage and attenuation storm storage systems.
	Can the Department please explain to the public why we the public, and the people of Greencastle and surrounding districts, who by right are entitled to pass and repass by this public roadway should be condemned to abandon our rights to such an important 'access to the countryside' in return for a random line on a map that fails to identify or explain that this entire area would, if Dalradian got its planning permission, be a one kilometre long dangerous,	The construction site will not be dangerous to the general public, its traffic impacts on the local surrounding road network have been assessed with the results accepted by DfI Roads. In terms of the Site Access Road crossing the Proposed New Road, this junction has been designed safely, to

	noisy construction site of a multi-storey waste dump containing mine tailings, toxic waste and crushed rock ground to dust being constructed continually for the next 15 to 20 years? Further, the proposed alternate path would be intersected by a large roadway and an industrial scale access road to a new tunnel into the hillside with continual heavy lorries usage – with all the amenity loss, dust, noise, disruption, health and safety risk, etc? Yet none of this is material in the considered view of DfI? How is this not noted in the Rural Needs Impact Assessment?	appropriate design standards, has been subject to a Roads Safety Audit and will have very little opposing traffic. Construction or operational traffic will not be permitted to use the Proposed New Road when complete.
Page 2 para 4		
	Can the Department please explain to the public its seemingly irrational and vindictive proposal to abandon, remove as a public amenity and ruin a scenic, inviting, healthy roadway in return for a pathway that is much narrower and the construction of which would do major damage to the environment? Such action is in direct opposition to the public interest and well-being.	The Proposed New Road is significantly safer and of similar width than the 'Adopted Road to be abandoned' including but not limited to the road alignment design, bound blacktop surfaced material, forward sightlines, intervisible passing bays, verges, roads restraints systems, drainage and attenuation storm storage systems.

f) [REDACTED]

Para 3.1 and 4.1	3. Health and Safety Concerns	
	3.1 Risk to Road Users Moreover, the current road offers a safe, level surface that is accessible to people with mobility issues. The alternative road, however, includes significant elevation variations that make it unsafe and unsuitable for individuals with disabilities.	Proposed New Road Gradients A maximum of 10% which is a gradient of 1:10 i.e. 1 meter height gain for every 10m distance travelled. This is standard roads design. However, this is only over relatively short sections the average is 4% which is 1:18 gradient i.e. 1 meter height

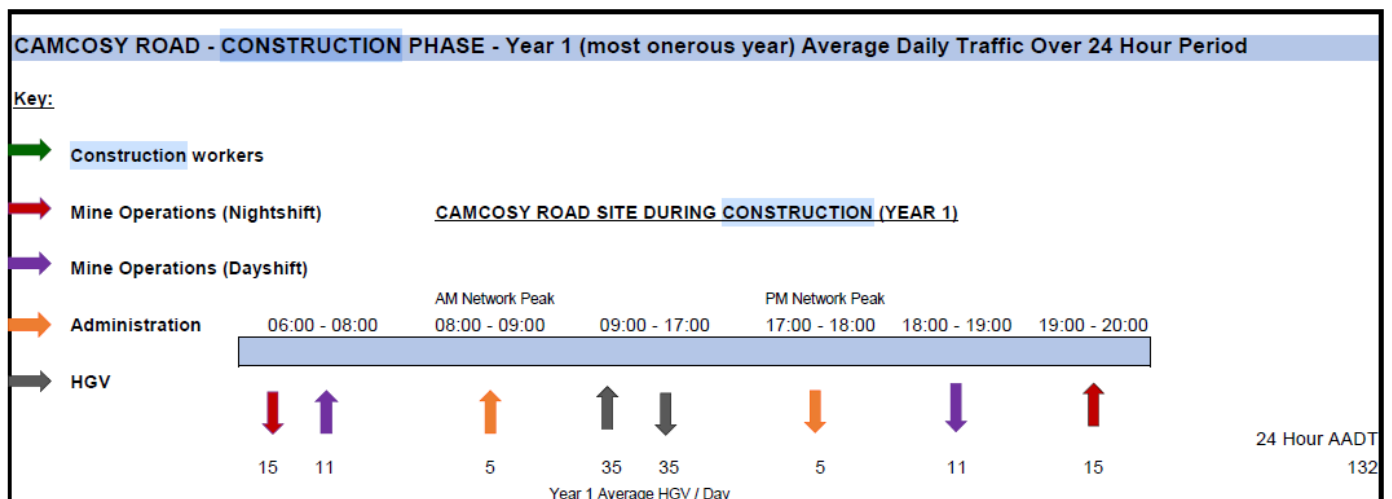
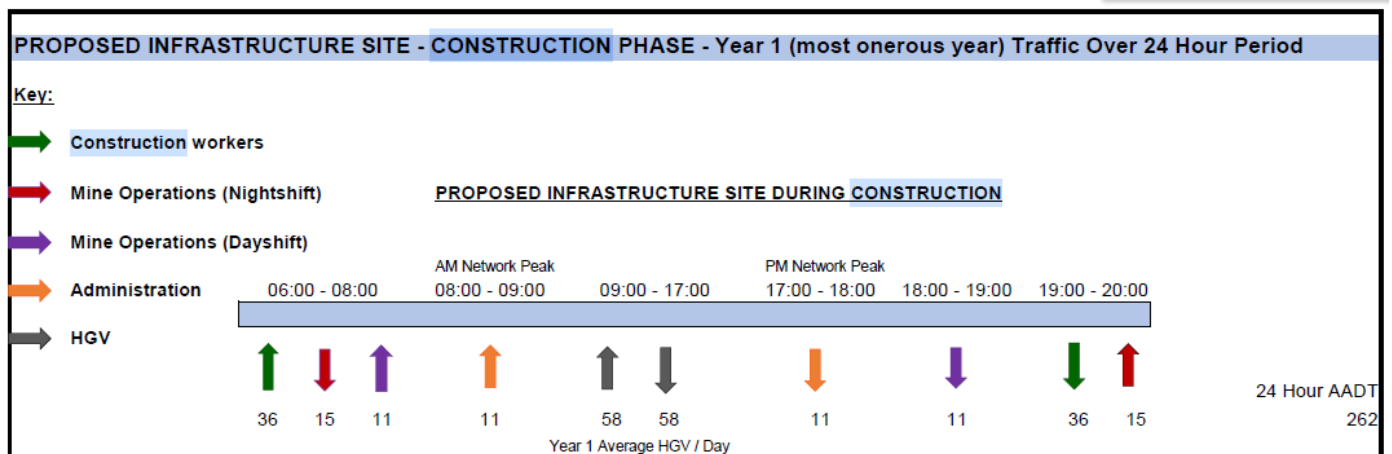
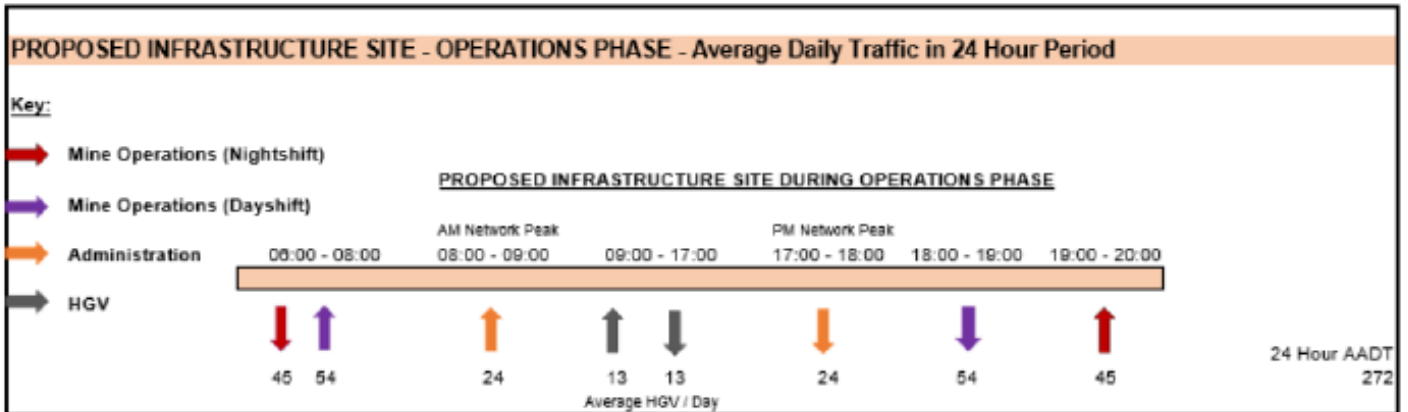
		gain for every 18m distance travelled. Of the 1.385km Proposed New Road length the maximum 10% gradient is only over approximately 0.146km or 146m. Furthermore, this is very similar to the existing Mullydoo Road (north south direction) and other access road to the west (unnamed).
	4. Accessibility Issues for Disabled Individuals	Please refer to above regarding roads design and gradients for all users. Furthermore, there will be a significant increase in access for disabled as the road will be blacktopped rather than an upbound track covered with wheel rutting and potholes.
	4.1 Impact on Disabled Community	Crockanboy Road has long been a vital route for individuals with disabilities, providing access to the countryside for recreational and mental health benefits. The road's consistent elevation and smooth surface make it ideal for people with mobility challenges, including wheelchair users. In contrast, the proposed alternative road, with its steep gradients, would be inaccessible to many people with disabilities, effectively excluding them from using this important public space. The existing road surfaces re on the road to be abandoned are pitted with potholes, loose bound material with no formal passing bays for interaction of vehicles. The Proposed New Road is significantly safer and of similar width than the 'Adopted Road to be abandoned' including but not limited to the road alignment design, bound blacktop surfaced material, forward sightlines, intervisible passing bays, verges, roads restraints systems, drainage and attenuation storm storage systems.
	The abandonment of this road would violate the rights of disabled individuals	Road is compliant with roads design standards.

	under both the Equality Act 2010 and the United Nations Convention on the Rights of Persons with Disabilities (CRPD), which mandate equal access to public spaces. Failure to provide a comparable, accessible route would constitute discrimination against disabled individuals, exacerbating feelings of isolation and exclusion.	
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Appendix 1

Figure 6 - Operations Phase Traffic Generation

(Ref –FEI 1; 2019 ES Addendum Volume 3; Appendix C22; TA Addendum; PDF Page 4.)



23 November 2024

**THE CROCKANBOY ROAD GREENCASTLE COUNTY TYRONE (ABANDONMENT) ORDER
(NORTHERN IRELAND) 2021**

1.0 INTRODUCTION

INSTRUCTIONS

- 1.1 I have reviewed the Statements of Case from Fermanagh and Omagh District Council (FODC0, Save Our Sperrins (SOS) and nine members of the public, and set out below comment on issues raised therein that fall within my area of expertise and knowledge of the local physical environment.

2.0 *FERMANAGH AND OMAGH DISTRICT COUNCIL (FODC)*
STATEMENT OF CASE

- 2.1 Paragraph 1.1; FODC invites the Planning Appeals Commission to recommend that 1.1.1 the draft order should not be made; or 1.1.2 in the alternative, that it should be modified in terms stated.
- 2.2 Paragraph 2.1; FODC acknowledges that a “replacement” road will be constructed, the alternative route.
- 2.3 Paragraph 8.2; FODC relies on third party representations, claiming the current road is a popular recreational route for the local community.
- 2.4 In my opinion, the alternative route proposed provides no less amenity than the existing and all the natural attributes of the surrounding landscape apply equally to the alternative route.
- 2.5 Paragraph 8.5; the alternative route has been designed to closely follow existing field boundaries adjoining the surrounding countryside, the mosaic of pasture will remain so.
- 2.6 Paragraph 8.6; This appears to describe the green road, which is misleading.
- 2.7 Paragraph 8.7; views across the Owenreagh River valley will remain visible from the alternative route.
- 2.8 Paragraph 8.8; the claim that the road to be abandoned forms part of the Greencastle 5-mile run is wrong. This adopted track forms no part of the run and never has, from my investigations. I am surprised to see this assertion made again by FODC because it was addressed in the County Court proceedings as well. I append a plan showing the 2024 route of the run. It follows the course of the Mullydoo Road, and specifically turns away from the adopted track to be abandoned.

- 2.9 Paragraph 8.10; I'm not sure what is meant by "*valuable green infrastructure*" as the adopted track to be abandoned is an unbound metalled road, with many potholes, requiring maintenance.
- 2.10 Paragraph 8.11; The adopted track to be abandoned has no historic association with the cultural past.
- 2.11 Paragraph 8.12; Here the council asserts that the new road is not like for like replacement and less favourable, without any reasoning.
- 2.12 Paragraph 8.13; "*less favourable for pedestrian use*" – The alternative route is safer, better laid out, it has better visibility than the adopted track to be abandoned and designed to withstand the local environment.
- 2.13 Paragraph 8.18; The basis of the foregoing points. That comes back to the infrequency of use and the dilapidated condition of the adopted track.

SAVE OUR SPERRINS (SOS) SOC

- 2.14 Introduction; Claims that the road to be abandoned has, for example, a connection with the Flight of the Earls [1607]. Once again, there is very considerable confusion here. The failed asserted right of way that is referred to as the green road was the subject of detailed consideration by the County Court.
- 2.15 The County Court, having examined the evidence, and heard from expert witnesses, determined that the failed asserted right of way comprising the straight line from Rousky towards the existing Mullydoo Road was constructed sometime between the mid to late 1700s. That failed asserted public right of way therefore could have nothing to do with events in 1607. The adopted track to be abandoned is not part of that either.
- 2.16 With specific regard to the adopted track to be abandoned, in the County Court proceedings, I identified a number of public roads in the

area. That included a number of "contour roads" being (as the term says) roads that were constructed following the contours of the landscape. The adopted track, the subject of this enquiry, is just a contour road that crosses the failed asserted right of way. That was a new road constructed in the 1800s, and the Court expressly referred to it as "the 1854 New Road". The adopted track can have nothing whatsoever to do with events in the 1600s.

- 2.17 Community and Cultural Impact; *"Local people have asserted the Right of the Community to pass and re-pass along this stretch of road..."*
- 2.18 This again seems to confuse the failed asserted public right of way and the adopted track that is simply a public road, constructed sometime between 1833 and 1854, adopted and maintained by DfI.
- 2.19 Human Rights; Right to Property; *"The road abandonment and new construction could affect local landowners' access to their property"*
- 2.21 Regarding local landowners' access to property, 80 Mullydoo Road is a vacant residential property now owned by Dalradian Gold Ltd. It was the only property that would have benefitted from the adopted road to be abandoned, out of necessity, for access to and from the Mullydoo Road, and so today the need for the road to be abandoned is nil.
- 2.20 Right to Freedom of Movement; The alternative route ensures the public would have the benefit of uninterrupted access throughout the surrounding public road network.

██████████ SOC

- 2.21 Mr ████████ again makes a claim that the road to be abandoned has, for example, a connection with the Flight of the Earls. As explained above that assertion is unfounded.

2.22 The alternative route ensures interconnectivity of the otherwise undisturbed public road network.

██████████ SOC

2.23 Ms ██████████ refers to walking with children and a gradient. I am not sure which route Ms ██████████ refers to as "*the other direction*". Below, I refer to various points identified in Appendix 5 in my Technical Report (TR) dated 01 October 2024.

2.24 To resort to the adopted track to be abandoned, Ms ██████████, describes walking from point W where one would first have to ascend north up the existing public track, for a distance of approximately 190m at an average gradient of around 1 in 9.5 to reach the contour road at point O.

2.25 Thereafter, once at point J, Ms ██████████ would now have to descend to point P where she would encounter the alternative route, referred to as "PROPOSED NEW ROAD" in my Appendix 5. The alternative route here follows a contour, dipping only where it crosses the Pollanroe Burn and on to point Q. From point Q to point B, where the alternate route rejoins the adopted track, there is a steady incline.

2.26 At no point is the gradient on the alternative route as steep as between W and O, in fact, there are but two sections of the alternative route where the gradient is approximately 1 in 10, separated by easier gradients, and these are only around 35m and 45m in length. The result is the alternative route is less steep than other parts of Ms ██████████'s preferred route.

2.27 The technical details of the roads and gradients can be seen in the adopted road cross sections in the planning application drawings.

██████████ SOC

2.28 Mr ██████████ says he uses the road to be abandoned numerous times a week to go to work and to attend the local community centre. This route

can only be from Point W (208 Crockanboy Road) up to Point O and then along the gradient to Point J.

- 2.29 My TR, Fig. 33 on page 14 demonstrates that the vehicle movements into and from point W (208 Crockanboy Road) are predominantly if not exclusively to and from the downhill Crockanboy Road, not uphill from Point W to the road to be abandoned. This is inconsistent with claim "*this is a Council maintained road I use numerous times a week*".

██████████ SOC

- 2.30 Mr ██████████ appears critical of the proposed alternative route as "*...a pathway that is much narrower...*". The alternative route proposed is 3.0m wide, with passing points and has been designed to satisfy the requirements of DfI.

- 2.31 Mr ██████████ refers to "*The historic Green Road Public Right of Way*" (the direct alignment road) referring to the Flight of the Earls. Both these statements are wrong. The Court has expressly rejected the assertion of a public right of way. That route was constructed in the mid to late 1700s and is not a public right of way. The adopted track to be abandoned was constructed sometime between 1833 and 1854 (para 30 of the Court judgement).

██████████ SOC

- 2.32 Mr ██████████ refers to "*The historic Green Road, a Public Right of Way as asserted by Fermanagh and Omagh District Council*" For the reasons set out above, that assertion is wrong.

██████████ SOC

- 2.33 Paragraph 2.1; the issue of the asserted flight and construction are addressed above.

- 2.34 Paragraph 2.2; ██████████ assertion that the abandonment would disrupt access to lands where historical turbary rights exist is wrong.

Access to the areas in the vicinity where turbary rights are exercised will not be removed. Routes are available via adopted roads.

- 2.35 Paragraph 3.1; Mobility issues. The alternative route has been designed to satisfy the requirements of DfI as a public road providing safe access to all.
- 2.36 Paragraph 4.1; Impact on Disabled community – see rebuttal to paragraph 3.1 above.

██████████ SOC

- 2.37 Vital role of recreational spaces; the road to be abandoned will be replaced by an alternative route in what is essentially the same locus.
- 2.38 Social connection and community cohesion; Again, the road to be abandoned will be replaced by an accessible public road/alternative route in what is essentially the same locus.

██████████ FAMILY SOC

- 2.38 Supporting documentation reference Flight of The Earls. This is addressed above. It is unfounded.
- 2.40 Safe space, free from heavy traffic; the adopted tract is used by vehicular traffic including large tractors and agricultural machinery. The alternative route has been designed to satisfy the current requirements of DfI as a public road and as a result will provide safe access to all and a safer route.
- 2.41 The images are not of the adopted track.

██████████

- 2.42 Ms ██████████ asserts that the family has turbary rights in the mountain on the Green Road and they have always cut their turf there and closure of the road will extinct (*sic*) this.

2.43 Access to the areas in the vicinity where turbary rights are exercised will not be removed. Routes are available via adopted roads.

2.44 Mr [REDACTED] states that he will have no access to his turbary rights which he uses the Mullydoo Road to access (or access the mass rock).

2.45 Access to the areas in the vicinity where turbary rights are exercised will not be removed. Routes are available via adopted roads.

2.46 The issue of the mass rock is addressed by Chris Long.

23 November 2024

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- 2.7 Paragraph 8.7; views across the Owenreagh River valley will remain visible from the alternative route.
- 2.8 Paragraph 8.8; the claim that the road to be abandoned forms part of the Greencastle 5-mile run is wrong. This adopted track forms no part of the run and never has, from my investigations. I am surprised to see this assertion made again by FODC because it was addressed in the County Court proceedings as well. I append a plan showing the 2024 route of the run. It follows the course of the Mullydoo Road, and specifically turns away from the adopted track to be abandoned.

- 2.9 Paragraph 8.10; I'm not sure what is meant by "*valuable green infrastructure*" as the adopted track to be abandoned is an unbound metalled road, with many potholes, requiring maintenance.
- 2.10 Paragraph 8.11; The adopted track to be abandoned has no historic association with the cultural past.
- 2.11 Paragraph 8.12; Here the council asserts that the new road is not like for like replacement and less favourable, without any reasoning.
- 2.12 Paragraph 8.13; "*less favourable for pedestrian use*" – The alternative route is safer, better laid out, it has better visibility than the adopted track to be abandoned and designed to withstand the local environment.
- 2.13 Paragraph 8.18; The basis of the foregoing points. That comes back to the infrequency of use and the dilapidated condition of the adopted track.

SAVE OUR SPERRINS (SOS) SOC

- 2.14 Introduction; Claims that the road to be abandoned has, for example, a connection with the Flight of the Earls [1607]. Once again, there is very considerable confusion here. The failed asserted right of way that is referred to as the green road was the subject of detailed consideration by the County Court.
- 2.15 The County Court, having examined the evidence, and heard from expert witnesses, determined that the failed asserted right of way comprising the straight line from Rousky towards the existing Mullydoo Road was constructed sometime between the mid to late 1700s. That failed asserted public right of way therefore could have nothing to do with events in 1607. The adopted track to be abandoned is not part of that either.
- 2.16 With specific regard to the adopted track to be abandoned, in the County Court proceedings, I identified a number of public roads in the

area. That included a number of "contour roads" being (as the term says) roads that were constructed following the contours of the landscape. The adopted track, the subject of this enquiry, is just a contour road that crosses the failed asserted right of way. That was a new road constructed in the 1800s, and the Court expressly referred to it as "the 1854 New Road". The adopted track can have nothing whatsoever to do with events in the 1600s.

- 2.17 Community and Cultural Impact; *"Local people have asserted the Right of the Community to pass and re-pass along this stretch of road..."*
- 2.18 This again seems to confuse the failed asserted public right of way and the adopted track that is simply a public road, constructed sometime between 1833 and 1854, adopted and maintained by DfI.
- 2.19 Human Rights; Right to Property; *"The road abandonment and new construction could affect local landowners' access to their property"*
- 2.21 Regarding local landowners' access to property, 80 Mullydoo Road is a vacant residential property now owned by Dalradian Gold Ltd. It was the only property that would have benefitted from the adopted road to be abandoned, out of necessity, for access to and from the Mullydoo Road, and so today the need for the road to be abandoned is nil.
- 2.20 Right to Freedom of Movement; The alternative route ensures the public would have the benefit of uninterrupted access throughout the surrounding public road network.

██████████ SOC

- 2.21 Mr ████████ again makes a claim that the road to be abandoned has, for example, a connection with the Flight of the Earls. As explained above that assertion is unfounded.

2.22 The alternative route ensures interconnectivity of the otherwise undisturbed public road network.

██████████ SOC

2.23 Ms ██████████ refers to walking with children and a gradient. I am not sure which route Ms Graham refers to as "*the other direction*". Below, I refer to various points identified in Appendix 5 in my Technical Report (TR) dated 01 October 2024.

2.24 To resort to the adopted track to be abandoned, Ms ██████████, describes walking from point W where one would first have to ascend north up the existing public track, for a distance of approximately 190m at an average gradient of around 1 in 9.5 to reach the contour road at point O.

2.25 Thereafter, once at point J, Ms ██████████ would now have to descend to point P where she would encounter the alternative route, referred to as "PROPOSED NEW ROAD" in my Appendix 5. The alternative route here follows a contour, dipping only where it crosses the Pollanroe Burn and on to point Q. From point Q to point B, where the alternate route rejoins the adopted track, there is a steady incline.

2.26 At no point is the gradient on the alternative route as steep as between W and O, in fact, there are but two sections of the alternative route where the gradient is approximately 1 in 10, separated by easier gradients, and these are only around 35m and 45m in length. The result is the alternative route is less steep than other parts of Ms ██████████'s preferred route.

2.27 The technical details of the roads and gradients can be seen in the adopted road cross sections in the planning application drawings.

██████████ SOC

2.28 Mr M ██████████ says he uses the road to be abandoned numerous times a week to go to work and to attend the local community centre. This route

can only be from Point W (208 Crockanboy Road) up to Point O and then along the gradient to Point J.

- 2.29 My TR, Fig. 33 on page 14 demonstrates that the vehicle movements into and from point W (208 Crockanboy Road) are predominantly if not exclusively to and from the downhill Crockanboy Road, not uphill from Point W to the road to be abandoned. This is inconsistent with claim "*this is a Council maintained road I use numerous times a week*".

██████████ SOC

- 2.30 Mr ██████████ appears critical of the proposed alternative route as "*...a pathway that is much narrower...*". The alternative route proposed is 3.0m wide, with passing points and has been designed to satisfy the requirements of DfI.

- 2.31 Mr ██████████ refers to "*The historic Green Road Public Right of Way*" (the direct alignment road) referring to the Flight of the Earls. Both these statements are wrong. The Court has expressly rejected the assertion of a public right of way. That route was constructed in the mid to late 1700s and is not a public right of way. The adopted track to be abandoned was constructed sometime between 1833 and 1854 (para 30 of the Court judgement).

██████████ SOC

- 2.32 Mr ██████████ refers to "*The historic Green Road, a Public Right of Way as asserted by Fermanagh and Omagh District Council*" For the reasons set out above, that assertion is wrong.

██████████ SOC

- 2.33 Paragraph 2.1; the issue of the asserted flight and construction are addressed above.

- 2.34 Paragraph 2.2; ██████████ assertion that the abandonment would disrupt access to lands where historical turbary rights exist is wrong.

Access to the areas in the vicinity where turbary rights are exercised will not be removed. Routes are available via adopted roads.

- 2.35 Paragraph 3.1; Mobility issues. The alternative route has been designed to satisfy the requirements of DfI as a public road providing safe access to all.
- 2.36 Paragraph 4.1; Impact on Disabled community – see rebuttal to paragraph 3.1 above.

██████████ SOC

- 2.37 Vital role of recreational spaces; the road to be abandoned will be replaced by an alternative route in what is essentially the same locus.
- 2.38 Social connection and community cohesion; Again, the road to be abandoned will be replaced by an accessible public road/alternative route in what is essentially the same locus.

██████████ FAMILY SOC

- 2.38 Supporting documentation reference Flight of The Earls. This is addressed above. It is unfounded.
- 2.40 Safe space, free from heavy traffic; the adopted tract is used by vehicular traffic including large tractors and agricultural machinery. The alternative route has been designed to satisfy the current requirements of DfI as a public road and as a result will provide safe access to all and a safer route.
- 2.41 The images are not of the adopted track.

██████████

- 2.42 Ms ██████████ asserts that the family has turbary rights in the mountain on the Green Road and they have always cut their turf there and closure of the road will extinct (*sic*) this.

2.43 Access to the areas in the vicinity where turbary rights are exercised will not be removed. Routes are available via adopted roads.

2.44 Mr [REDACTED] states that he will have no access to his turbary rights which he uses the Mullydoo Road to access (or access the mass rock).

2.45 Access to the areas in the vicinity where turbary rights are exercised will not be removed. Routes are available via adopted roads.

2.46 The issue of the mass rock is addressed by Chris Long.

Abandonment Rebuttal

FODC AMENITY CONCERNS

1. FODC at paragraph 8.11 describe the section of the route to be abandoned as *‘a very pleasant and peaceful route which appears to the visual senses and has cultural, historic and recreational values associated with it. The Council affords very substantial weight to the complete loss of the existing route as a result of the adverse impact it will have on these interests.’*
2. FODC at paragraph 8.13 describe the character of the new road as fundamentally different and less favourable for pedestrian use. Paragraphs 8.14 describes fencing along it as utilitarian and unattractive. Paragraph 8.15 makes reference to nearby frequent HGV and other vehicle movements and signage etc. Paragraph 8.16 suggests the DSF will tower over it, dominating the pedestrian experience, continuous movement of vehicles working on the DSF for at least 20 years. Paragraph 8.17, referencing the northern end of the new road, suggests there will be open views of activity within the plant site, which would also be audible when passing along the road.
3. Paragraph 8.18 states that, taken together, *‘the visual impact of the immediately adjacent mine site would render the diverted route an unattractive route along which to walk...’* It goes on to say that *‘it would be impossible to enjoy the peace and tranquillity experienced along the existing road.’* *‘In short, the amenity experienced by users of the diverted road would be significantly diminished to that which they value and enjoy at present.’*
4. Paragraph 8.19 sets out FODC’s overall position that the replacement road *‘does not offset or mitigate the harms identified’* which the Council affords very substantial weight to given the AONB location and the value placed on the existing route as evidenced through representations.
5. Other parties make similar points.

RESPONSE

6. The development of the surface infrastructure site means it will not be possible to fully replicate the characteristics of the section of road to be abandoned. The Council is wrong to assert that the replacement road does not offset or mitigate the harms it identifies. In addition to offering the replacement road to maintain continuity of access – which is, fundamentally, intended to offset the loss of the section of adopted road - care has been taken to mitigate and minimise the impact of the new road and achieve as much public benefit as possible.

Mitigating factor 1: Improved safety & accessibility

7. The new road will be more favourable for pedestrian, and cyclists and other non-vehicular users, in relation to its safety. It will be much better than the existing road in terms of surface condition, which will also provide for better accessibility for those who were unable to access the existing road because of its condition. This is an amenity improvement.

Mitigating factor 2: Appropriate design – not overengineering

8. In terms of its character, whilst designed to appropriate standards, it is not overengineered, so for example, the carriageway of the replacement road is not of sufficient width to allow two cars to pass – hence the passing bays. It will present as a new narrow country road, rather than a wide access road. Contrary to the Council’s understanding of the fencing arrangements, the fence to the south of the new road will be stockproof fencing, as presently exists in the area. Planting will soften its edges.

Mitigating factor 3: Longer length to appreciate the principal view

9. A benefit of the new road is the availability of a longer stretch of road from which the view to the south can be appreciated. At paragraph 8.7 the Council make the point that the character of the section of road to be abandoned changes about halfway (when travelling east to west) as one emerges from the tree belts, with the views opening up. The new road would double the length of road available from which to appreciate the view, excluding the section travelling north.
10. In reference to its route, having made the decision to offer a replacement, there is no better alternative to it. By traversing around the southern and eastern edges of the surface infrastructure site it will have a rural aspect and outlook. Whilst the elevation will be lower, the amenity of this outlook over the valley and towards Mullaghcarn, will continue to be available.

Mitigating factor 4: Ability for those interested to get close to the mine

11. The new road will provide a unique opportunity for those who are curious to get close to the mine. It has the potential to have a different type of amenity value, attracting visitors who wish to see the mine site. There is the potential for it to accommodate information/interpretation about the area and the project.
12. The ability to achieve easy access to views of the activity at the mine site will also be of benefit to regulators and individuals interested in monitoring compliance with conditions.

Overall balance

13. FODC at paragraph 4.9.1 (and before) refer to a balance and at paragraph 8.19 invites the decision maker to agree that very substantial weight should be attached to the harms it identifies in light of the location of the existing road in the AONB and the value placed on it in representations. In exercising this balance, the decision maker should attach weight to the offer of the replacement road and the mitigating factors set out herein.
14. The Council is correct to highlight the inextricable link between the mine proposals and the abandonment proposal. The mine proposal will bring very substantial benefits (as set out elsewhere). If, as is recommended elsewhere, having regard to the limited harm to the AONB and the value attached to it in representations, the Commissioners are satisfied that the overall balance weighs in favour of the mine application, which includes the replacement road, it should recommend that the abandonment order is confirmed.

Contact

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25 November 2024

DALB3001

ROAD ABANDONMENT
APPENDIX 4
Rebuttal comments – Witness team

THIRD PARTY	COMMENT	WITNESS	RESPONSE
██████████	Toxic nature of the ponds	Jamie Spiers	The Surface Water Ponds are fully lined with composite geomembrane liner system which mitigates the risk of seepage flows to the environment (SLR, 2024). Seepage flows from the ponds have been estimated and incorporated in groundwater modelling to predict potential impacts on environmental receptors (SRK, 2020d). A water treatment plant will be installed to treat all water which collects in the surface water ponds prior to discharge to environment.
Multiple	Flight of the Earls and Cultural Heritage comments Mass rock	Chris Long	Reference is also made within many of the third-party representations to the relationship between the “historic road” and the Flight of the Earls in 1607 with the assertion that this was the route used by Hugh O’Neill when he travelled from Tullyhogue to Rathmullan. This is addressed within App C15 (section 2.1, pages 6-7 and section 3.5, pages 16-17) of the mine Environmental Statement. In addition, evidence presented to the County Court of Northern Ireland in relation to the claimed public right of way here, demonstrated that the “historic road” was constructed within a narrow time frame between 1759 and 1765, some 150 years after the Flight of the Earls. This evidence was accepted by the Judge (paragraph 41 of the Judgement, Appendix 1). The adopted route post-dates the “historic road” and as such cannot have been used by Hugh O’Neill. Private individuals have referred to the potential impact of the application on access to a “mass rock” located adjacent to the site boundary. As noted in App C15 (section 2.1, page 7) there is no historical, church or academic record of such a feature in this area and no evidence to support its status as a cultural heritage asset. The location of the rock lies outside the perimeter fence of the infrastructure site and as such there will be no physical impact upon it. The subject of mass rocks has been assessed in this area. Significantly, and consistent with the findings in App C15 noted above, this site is not identified.
SOS ██████████ ██████████ family	Air Quality	Mervyn Keegan	The potential air quality impact on the surrounding sensitive receivers has been assessed in the AERMOD air dispersion model and air quality impacts have been addressed in detail.

			The AERMOD air dispersion model has taken account of the proposed phasing of the dry stack from Year 1 – 20 as well as emissions from vehicular movements on site and the proposed conveyors. Crushing and screening activities will take place underground and internally in the processing building. The external movements on the dry stack of excavators, dumper trucks, bulldozers and water bowers to suppress dust (if and when required) will take place during daytime hours only, as stated in the ES. Also, there will not be continuous movement of excavators, dumper trucks, bulldozers and water bowers to suppress dust. Daily activities on the dry stack will entail periodic dumper truck movements from the processing building to the dry stack and from the waste rock deposited from the conveyor system. In turn, this will require periodic excavator and bulldozer operations on the dry stack to distribute and compact the tailings and waste rock. There will only be occasional use of a water bower to suppress dust during periods of dry weather conditions with higher wind speeds, due to the prevalence of rainfall and the moisture content of the tailings.
Save Our Sperrins	Contravention of the NI peatland strategy amongst other issues	Greg Lewsley and Sarah Ross	With regard to the adopted track the risk of settlement and instability due to weak peat being left in place would create long term engineering challenges and ultimately pose a risk to workers and public accessing these roads.
██████	Negative impacts associated with removing stretches of bog to build a road	Greg Lewsley and Sarah Ross	All effects relating to the construction of the Proposed New Road have been assessed as part of the EIA for the mine planning application.
FODC	8.16, for at least twenty years there would be continuous earth movements and grading works taking place on the mound. This would involve the almost continuous movement of excavators, dumper trucks, bulldozers and water bowers to suppress dust.	Mervyn Keegan	The external movements on the dry stack of excavators, dumper trucks, bulldozers and water bowers to suppress dust (if and when required) will take place during daytime hours only, as stated in the ES. Also, there will not be continuous movement of excavators, dumper trucks, bulldozers and water bowers to suppress dust, as suggested by FODC. Daily activities on the dry stack will entail periodic dumper truck movements from the processing building to the dry stack and from the waste rock deposited from the conveyor system. In turn, this will require periodic excavator and bulldozer operations on the dry stack to distribute and compact the tailings and waste rock. There will only be occasional use of a water bower to suppress dust during periods of dry weather conditions with higher wind speeds, due to the prevalence of rainfall and the moisture content of the tailings.
██████ ██████ ██████ ██████	Noise	Mervyn Keegan	The potential noise impact on the surrounding sensitive receivers has been addressed in detail in the CadnaA noise prediction model and noise impacts have been addressed in detail. The CadnaA noise prediction model has taken account of the proposed phasing of the dry stack from Year 1 –

			20 as well as noise from vehicular movements on site and the proposed conveyors. Crushing and screening activities will take place underground and internally in the processing building. The external movements on the dry stack of excavators, dumper trucks, bulldozers and water bowers to suppress dust (if and when required) will take place during daytime hours only, as stated in the ES. Also, there will not be continuous movement of excavators, dumper trucks, bulldozers and water bowers. Daily activities on the dry stack will entail periodic dumper truck movements from the processing building to the dry stack and from the waste rock deposited from the conveyor system. In turn, this will require periodic excavator and bulldozer operations on the dry stack to distribute and compact the tailings and waste rock. There will only be occasional use of a water bower to suppress dust during periods of dry weather conditions with higher wind speeds, due to the prevalence of rainfall and the moisture content of the tailings.
	Tourism	Andrew Hunt	Pollan Rua cottage has not been used as tourist accommodation since 2016. Its demolition does not affect the supply of accommodation. The lighting assessment concluded that the significance of effect would be negligible during construction and operation. Any visible lighting not within the lighting strategy that informs the lighting assessment would be removed (and this would be enforceable by planning condition). The centre of the proposed infrastructure site is approximately 10km away from the Davagh Dark Skies boundary. The site is not visible from the Davagh Dark Skies boundary unless there are cloudy weather conditions when astronomical observation is not possible. The Dark Skies status is therefore unlikely to be compromised. There is no evidence to suggest that the road itself attracts tourism. As per the surveyor technical report of the Adopted Track, it is currently in poor condition, and there was no evidence of pedestrian or horse activity at the time of the survey. Assuming tourist activity currently takes place on the Adopted Track, there is no evidence to suggest that the Adopted Track is a driver of tourism in its own right. Tourists do not visit the Sperrins in order to use the Adopted Track specifically and will continue to visit the Sperrins following its abandonment. The Proposed New Road would act as an effective mitigation measure against any potential impacts of the abandonment of the Adopted Track on tourism. As per the surveyor technical report, the Proposed New Road will be designed to a higher specification and in keeping with the local area, providing views of and access to the Sperrins AONB. As stated in the report, "The existing

			recreational use of the Adopted Track in the context of the wider landscape, could be enjoyed equally as well from the proposed new road.” Therefore, the Proposed New Road will provide an excellent replacement to the Adopted Track, providing a high-quality (and safer, due to its wider design) tourist experience.
██████████ family	Tourism	Andrew Hunt	There is no evidence to support the assertion that the area immediately around the site has a notable tourism industry. The impacts on characteristics that form tranquillity (noise, landscape and visual, traffic, and air quality) would either be insignificant or not significant enough to have an impact on the area’s tranquillity.
SOS ██████████ family	Loss of physical activity from road abandonment Mental health	Andrew Buroni	All hazards have been addressed through the regulatory planning and permitting process protective of the environment and health. No evidence is provided that would question the information provided to date, or the current position of the HSENI, FODC Environmental Health Department, the DfE and the PHA.

APPENDIX 5

LEGAL SUBMISSIONS

Fermanagh and Omagh District Council

Regarding the decision of *Vassiliou*, it is noted that the issues to be addressed and balanced are disadvantages or losses, either

(a) to members of the public generally; or

(b) to the persons whose properties adjoin the highway being stopped up or are sufficiently near to it that.

It is noted that “members of the public generally” is not defined, and that is unsurprising. The framework of s.68 makes no such distinction.

Moreover, in exercising its discretion the decision maker must also take into account any advantages under heads (a) or (b) flowing directly from a closure order. Again, there is nothing that seeks to constrain the “advantages”, and again that is entirely consistent with the absence of restraining language in s.68.

FODC links the road abandonment to the construction of the mine (SoC para 5.1.2), and that is correct. However, *a fortiori*, it flows that the abandonment order is expressly to facilitate the mine proposal, and as a result the economic and other benefits that flow from that proposal must be taken into account by the decision maker in the context of the advantages to members of the public generally.

The advantages to members of the public generally are engaged in other SoCs and RRs, and most particularly in the assessments undertaken by QUOD regarding economic advantages. FODC fails to address these advantages in the context of the balancing exercise.

The issue of persons adjoining the adopted track to be abandoned and those sufficiently near to it have been considered in the SoC, and this Rebuttal Statement and other appendices address issues raised in other SoCs. The issue of access to turbary rights is also addressed in the RR from Mr McVitty.

The issues of s.6 of the Human Rights Act, equality screening and rural need are for the department, but it is not accepted that there are any breaches and issues have been comprehensively addressed in the materials before the Inquiry.