



**Public inquiry under article 130(1)(b) Roads (Northern Ireland) Order 1993**

**In the matter of the draft Crockanboy Road, Greencastle, County Tyrone (Abandonment) Order (Northern Ireland) 2021**

**PAC Ref: DR001**

**Rebuttal November 2024**



Fermanagh & Omagh  
District Council  
Comhairle Ceantair  
Fhear Manach agus na hÓmaí

## **1. Introduction**

- 1.1. This is the rebuttal of Fermanagh and Omagh District Council filed in connection with the inquiry into the draft Crockanboy Road, Greencastle, Country Tyrone (Abandonment) Order (Northern Ireland) 2021 (hereinafter “the draft order”).
- 1.2. The Council in its previously filed statement of case invited the Planning Appeals Commission to recommend to the Department for Infrastructure (‘DfI’) that the draft order should not be made; or, alternatively, it should be modified in the terms set out. The main arguments advanced by the Council were:
  - 1.2.1. the justification for the draft order is inextricably tied up with the main planning application — if the planning application fails, then the draft order should too;
  - 1.2.2. the abandonment of this road as part of that proposal has not been justified as being necessary to facilitate the development;
  - 1.2.3. irrespective of the above, there are good reasons not to confirm the order; and
  - 1.2.4. the statutory impact assessment documents are deficient.
- 1.3. The Council has reviewed the Statement of Case filed by Dalradian Gold Limited dated October 2024 in support of the draft order. Having done so, it remains of the view that the draft order should be refused as set out below.
- 1.4. The Council has not seen any comments from DfI to date on the draft order. It expects the Planning Appeals Commission to explore this with DfI at the public inquiry hearing sessions as the Planning Appeals Commission has previously indicated that it will expect statutory consultees and referring departments to express clear views on the applications which are subject to these inquiries.
- 1.5. Additionally, the Council has not had sight of any statements of case filed by other parties in connection with the draft order. This is prejudicial and contrary to the inquiry procedures. The Council reserves the right to respond as necessary to arguments made by other parties during the hearing sessions.
- 1.6. In light of the foregoing, the Council reserves the right to add to and expand on the points made in this statement at the forthcoming hearing sessions.

## **2. Statutory context**

- 2.1. It appears to be common ground with the applicant that the draft order is being promoted on the basis of article 68(4)(b) which requires it to be shown that an adequate alternative will be provided. The applicant advances this case.
- 2.2. The applicant states that *“the statutory framework engages concepts relating to whether the road is necessary for road traffic, or whether another road is*

*capable of providing alternative facilities*". This is an oblique reference to article 68(4). However, as just explained, it appears that the case made by the applicant is not that the road is unnecessary for road traffic (article 68(4)(a)), but that an alternative road is being offered (article 68(4)(b)).

- 2.3. If and insofar as the applicant is suggesting that the decision-maker is confined to considering the matters set out at article 68(4) and cannot engage in a wider consideration of other material considerations, the Council has explained in its statement of case that this is not correct. The legal framework set out by the Council in its statement of case is not repeated again in this rebuttal.

### **3. Matters not addressed by the applicant in its statement**

- 3.1. The following matters raised by the Council in its statement of case have not, in the view of the Council, been adequately addressed by the applicant to date.

- 3.1.1. The applicant has failed to justify the main mine application and as a result this proposal, which is inextricably tied up with the main mine application, has not been justified on its merits either;

- 3.1.2. The applicant has failed to discharge the burden of proving that the draft order is necessary to facilitate the development;

- 3.1.3. The applicant has failed to address the deficiencies in the statutory impact assessments undertaken to date;

- 3.1.4. The applicant has failed to address the appropriateness of the wording of the draft order.

- 3.2. It is recognised that the burden of completing lawful statutory impact assessments rests with DfI. DfI have failed to address this point to date.

### **4. Response to the arguments made in support of the draft order**

- 4.1. These arguments broadly fall under the third argument made by the Council in its statement of case, namely that there are good reasons not to confirm the order. In its statement of case, the applicant makes the case that there is good reasons to make the draft order. That case is addressed below.

- 4.2. An assessment of the existing condition of the road is set out in Section 2 of Mr McVitty's Technical Report (TR) at Appendix 2. In summary this suggests that the existing adopted track is in poor condition, contains significant potholes, is not designed to any standards, and has limited usage, related to access farmland and sporadic recreational use. It goes on to suggest that a proposed alternative route provides a significantly improved road to adoption standards for all users of the new road.

- 4.3. Poor road surfaces are typical of that experienced in rural areas ([NI roads: Potholes still affecting rural journeys after £500m spend](#)), including within the Fermanagh and Omagh District Council. The Council has expressed concern

about the condition of rural roads in particular potholes on rural roads which DfI has acknowledged (see Appendix 1).

- 4.4. It is therefore clear that the condition of a road would be insufficient justification for replacing the current road, and this matter should be given limited weight in the overall balancing exercise. This is all the more so as there is little evidence presented that the road in its current state is proving to be unsuitable or unsafe.
- 4.5. The applicant also suggests that the proposed alternative route provides a significantly improved road. The Council has set out in its statement why it considers that it is wrong to suggest that this is a like for like replacement.
- 4.6. The applicant within the Technical Report at Appendix 3 provides details of the design of the Proposed New Road. In summary it states that it has been designed to an appropriate standard for a road in this location and will be available for traffic. The applicant suggests that it is a significantly safer design; it will be constructed using a bound material i.e. blacktop, has standard size passing bays that are intervisible, appropriate forward sight distances and an appropriate vehicle restraint system.
- 4.7. The applicant has previously made the point that the road has limited usage and the Council is not aware of any data presented in terms of collisions or incidents that demonstrates a current safety issue on the existing road, within the context of its limited use and use for pedestrians.
- 4.8. Again, the Council would contend that this matter should be given limited weight in the decision making process and indeed would have concerns that the new road, may increase potential conflict with pedestrians as it introduces significant new vehicle movements, not a factor with the current road, with the access to proposed mine dissecting the alternative road.
- 4.9. The Council also has concerns that the design of the road, in particular the formal nature of passing bays is not of a character normally found in these types of rural area.
- 4.10. In relation to recreation, the applicant suggests that the Proposed New Road has been designed with the community's recreational needs in mind. It provides safe access for walking, jogging, horse riding, and other activities. It opens up the views overlooking the valley and adds length for recreational use in terms of wellbeing.
- 4.11. The Council does not accept this argument. The new road is not a like for like replacement and is less favourable than the existing road, for a number of reasons. The new road will not be a pleasant and peaceful route which appeals to the visual senses and has cultural, historic, and recreational values associated with it, which is in direct comparison to the benefits associated with the existing route.
- 4.12. The applicant also suggests that it is highly unlikely that the proposed abandonment of the adopted track will have a significant, negative impact on

the scale of tourism or the tourist experience in the area. The applicant states that as per the evidence at Appendix 2, it is currently in poor condition, and there was no evidence of pedestrian or horse activity at the time of the survey.

- 4.13. The survey undertaken by the applicant is limited and cannot be relied on to draw a blanket conclusion of a lack of tourism value or pedestrian use. It is directly contrary to the public representations which set out a clear picture of the current road as one which is used and valued by the community.
- 4.14. It is clear that the road forms part of the popular annual Greencastle 5 mile run held on Boxing Day each year since 1986 which regularly attracts several hundred participants. The new road is not a like for like replacement and is less favourable than the existing road, for a number of reasons and will not be attractive for this route and its competitors.
- 4.15. The applicant also suggests that the adopted track's abandonment would displace any existing or future tourist use to alternative routes (such as the Proposed New Road). The Council does not accept this argument, as the new road is less favourable than the existing road.
- 4.16. The applicant accepts that the use of the proposed new road by occasional recreational users in proximity to the site may result in very brief and short-term elevated noise level due to passing vehicles on the re-aligned road or in an active area on the Dalradian site. Despite the applicant, previously noting the roads limited usage, it is now suggested that the noise experienced will be "*no different to very brief and short-term elevated noise levels experienced on every road due to passing vehicles on a daily basis*".
- 4.17. The applicant also accepts that the use of the proposed new road alignment by occasional recreational users in proximity to the site may result in very brief and short-term elevated dust levels when in close proximity to passing vehicles on the re-aligned road or an active area on the Dalradian site. Again despite the applicant's previous position of the existing road having limited usage, it suggests that "*this is no different to very brief and short-term elevated dust levels experienced in close proximity to every road due to emissions from passing vehicles on a daily basis*".
- 4.18. The Council does not accept either of these arguments. The new road is not a like for like replacement and is less favourable than the existing road, for a number of reasons, which include — as appears to now be accepted by the applicant — adverse impacts resulting from traffic movements, noise, and dust.
- 4.19. Representations have raised concerns in relation the loss of peatland as a result of the new road. The applicant suggests that the effects relating to the construction of the Proposed New Road have been assessed as part of the EIA for the mine planning application. Whilst this is the case, the loss of peat is an important consideration in its own right in the context of this decision.
- 4.20. The Council shares the concerns of the representations in respect of peat loss and its detailed concerns in relation to peat loss have been set out in its main

statement of case for application LA10/2017/1249/F. The proposed new road will result in the loss of peat and this should weigh heavily against the proposal.

- 4.21. Similarly, wider impacts on biodiversity and climate etc. which arise as part of what is proposed through this application must be weighed in the balance.

## **5. Conclusion**

- 5.1. For all of these reasons, the Council maintains its objection to the draft order and invites the Planning Appeals Commission to recommend to DfI:

5.1.1. the draft order should not be made; or

5.1.2. in the alternative, that it should be modified in the terms set out within the statement of case before being made.