Conjoined Public Local Inquiries into the Curraghinalt Project, Strule Arts Centre Omagh

Topic: Strategic Matters & Principle of Development, Wednesday 15th January 2024 (Day 3)

Attendance Note as taken by Cathal Mullan, apprentice solicitor, Harte Coyle Collins

Planning Appeals Commission Inquiry Panel

Commissioner Donaghey (Comm D)	Commissioner McParland (Comm McP)	Commissioner McKeary (Comm McK)

In attendance

Dalradian Gold Ltd Stewart Beattie KC (SB KC) Scott Lyness KC Dr. Michael Gordon – Turley Consulting (MG)	**DFI Planning Service (the Department)** David Elvin KC (DE KC) Barney McKay BL Graeme Walker – DFI Planning Service (GW) Dr David Kroening **[as heard]**	**3rd Parties**
John Merry	**DAERA/NIEA** Andrew Byass BL (AB BL (DAERA/NIEA)) Louise Smith – NIEA Richard Weyl – NIEA	**3rd Parties** Mary Brolly solicitor – Brolly Jameson (MB) Dr. V'cenza Cirefice – CAIM Dr. Damian Gallagher – University of Ulster, personal capacity (DG)
Fermanagh & Omagh District Council (FODC) Conor Fegan BL (CF BL) Paul McDermott – FODC Martin McCarroll - FODC Patricia Brock – AECOM	**NIE Networks** William Orbinson KC (WO KC) Sophie Hunter solicitor – Carson McDowell Seamus Fay – RPS Group Ryngan Pyper – RPS Group	**3rd Parties** Cormac McAleer – Save Our Sperrins Fidelma O'Kane – Save Our Sperrins Dr. Alan Evans – Retired GP Dr. Louise Taylor – SECA Queen's University Belfast (LT)
Derry & Strabane District Council (DSDC)	**3rd Parties** Paul Haughey (PH) Martin Tracey (MT) Cathal Mullan apprentice solicitor – Harte Coyle Collins	**3rd Parties** Gerard Moyne – Defending Environmental Wealth (DEW) Sean Gallagher – Defending Environmental Wealth (DEW)

Time Noted	Speaker	Note
	09:54	**[Commissioners are seated]**
10:01	Comm McP	**[Housekeeping matters]** Commence by taking appearances.
10:10	Comm McP	Yesterday we left off with the Department to come back to us in respect of whether … state that technical error in Regulation 27 of 2015 EIA Regs in relation to mine application, Mr Elvin perhaps you could update us.
	DE KC	Having consulted with the Department and briefed Minister, view of the Dept that should formally notify Dublin government and reconsult Donegal County Council, to ensure that relevant material brought before them and residents of Donegal, may well be that Dublin Minister refers back to Donegal County Council, this may or may not lead to new materials being produced, important to ensure residents of Donegal given fair opportunity to view documentation, we don't consider this necessarily leads to disruption of these proceedings, unclear if anything new arises, let me say this … yesterday with views advance from academic, I have reviewed the authorities referred to and more beside, retrieved many human rights authorities, contrary to what said yesterday … the courts do not require under Aarhus or under human rights convention that there need be an oral hearing, public participation for Aarhus can consist of written representations, **[quotes Aarhus implantation guide]** "no set formula for public participation … effective notice, adequate info. and appropriate taking into the account …" page 154 … page 155 **"…** not the only way public entitled to submit views …. there is no particular format or content required". The authorities that were referred to yesterday, I've looked at for example … *Grimkovskaya* … none require an oral hearing, their content was not properly described yesterday, *Grimkovskaya*, the issue there was lack of right of recourse to challenge decision, paragraph 69 of the judgement … there is the a right of judicial review … see *Re Stewart application for JR* [2003] NI149, applied by then Mr Justice Kerr in *Re Ronald foster JR* [2004] NIQB 1 paragraph 45 – 46, and recently as Mr Beattie will know by Mr justice Scofield in *ABO wind NI limited* [2022] NIQB 3 and indeed *Ronald Foster* was a challenge, where planning decision … administrative decision, no hearing … Justice Kerr said no entitlement to hearing, *Re Stewart* hearing such as this challenged as didn't allow formal examination of witnesses … they applied English and Wales authority as in *Adlard* [2002] 1 WLR 2515

		which Was local planning authority decision without any formal hearing applied by Mr justice Kerr as he then was in *Foster* … London Borough of Camden [2001] EWHC admin 1116 paragraphs 338 to 340 where directed and discussed *Zumtobel v. Austria* [1993] 17 EHRR 116 and finally Runa Begum v Tower Hamlets [2003] 2 Appeal Cases 430 lord Hoffman revisited judgment in Alconbury case found that internal review of suitability of offer of housing by office administrator sufficient for human rights purposes as recourse of court to challenge decision. As Mr Justice Scoffield pointed out in ABO case, even where taking account matters … paragraph 70 of the judgment. Department submit simply this, one shouldn't be overimpressed by submissions made over need for public hearing … in our submission that can be addressed by further representations and views of Minister in Dublin and Donegal …
	Comm McP	Because we consider issues as we go how we meant to consider the transboundary issues per topic, may need review further in process …
	DE KC	Minister may have to redirect opening of hearings … will depend on the circumstances.
	Comm McP	Bring section 2 of the NI planning act that requires the Department to produce statement of community involvement … that dictates the Department sets out a policy in effect a statement of community involvement … in order to consider the representations made to that authority on a planning application it can hold a public inquiry. How does the department envisage the community Interrogating issues that may be raised from people in Donegal when we do not have those before us.
	DE KC	Come before you when they made.
	Comm McP	That would require the Commission to have time and time to consider them, that can't be done in this timetable.
	DE KC	Minister may have to redirect public inquiry.
	Comm McP	Consider best use of public resources.
	DE KC	Yes, that has been done … we don't know if anything new will be raised … given expenses today … public bodies, 3rd parties … not to throw baby out with bathwater … important to ensure fairness to people of Donegal.
	Comm McP	The Commission would have to allow them to submit Statement of Case.
	DE KC	Not necessarily.
	Comm McP	Not giving less to others … For Commission to run inquiry not you …
	DE KC	We the decision make we decide if fair we can't reach decision if there not fair…

10:26		I'm going to **…** third parties **…** who wants to go first.
	DEW	Two matters here one was people along Foyle basis residents in north Donegal not consulted absolutely no consultation only one paper Donegal Democrat.
	Comm McP	Just to clarify after submission date of Statements of Case and Rebuttals.
	DEW	Yes. EIA directive and ESPO **[quotes 2 and 3 of ESPO] …** have to be informed at same time **…** talking about fair procedure and natural justice **…** we have no way to rebut that unless we go and look at them cases and discover whether their relevant.
10:31	DEW	I personally **…** we're not just talking about Donegal by the way it's the Republic of Ireland in its entirety not just a local authority, citizens in the Republic have a right to make submissions **…** I have no doubts that given the opportunity that many organisations and citizens will present to this Commission brand new and authentic information, in absolute fairness for the Commission to proceed without that information and to come back at the at later date **…** pertinent that we get an opportunity to question that and address that.
	MB	In this instance, I would submit that the transboundary consultation is essential, whilst Mr Elvin has referred to matter of representations or attendance at public inquiry in this instance we haven't even allowed a large number of people interested in this too have the full information, written representations or oral representations **…** at the very least we have to go through motions of it, as he says there may be no change, how can that be judged at this case, breached statutory requirement, urged Commission to take view that it cannot proceed, to do so would be completely contrary to legislation and contrary to natural justice **…** unfortunately our expert on human rights had indicated yesterday that she wouldn't be available we didn't invite Commission to make provision for remote evidence **…** that was denied **…** we reiterate that is contrary to natural justice **…**
	MT	Again my point is following on natural justice, we don't have that here when opponents have all the information, the other has none, serious questions about the competence of the Department, going on for years, have had an application, given Dalradian every opportunity, yet they give the people of Donegal four weeks, not only that, previous issue, having this all stopped before, serious questions about this whole process to date, I believe only way for Minister to throw out application, fresh application from beginning and people have the

10:35		opportunity … so disingenuous of Department and minister to make the point that the people of Donegal they won't be able to raise any new information. That is unconceivable, Department fail in own remit and then … other people who would raise concerns … number of material changes in this application … Minister should throw out application and start at day one.
	DG	Point of clarity is Department accepting **[inaudible]** conducted yesterday
	Comm McP	Yes, they accepted yesterday.
	DG	Pause for moment … at the moment consultation only made with DfI and DfI minister, cross cutting element to this decision, in 2020 the Irish government set up Share Island Initiative … encourage dialogue … economic linkages …. Underpinned by the Good Friday Agreement … July of 2024 the budget is 800 million pounds, investment in key infrastructure project … University of Ulster … funding for A5 … improvements in rail services … think it would be important to seek the opinion to seek opinion of other Ministers … implications of this inquiry not to unintentionally to compromise that 800 million euro investment …
10:38	LT	Basically, it is with regard to democracy and importance of trust of community … Whilst I understand language used by Council … language of law is ambiguous … quite surprised using such causal language "baby with the bathwater" … unpaid work, a lot of these people doing … democracy is for the people … representing … respect for these unpaid campaigners …
	David Simpson **[Audience]**	Add to issue of people in Donegal to participate … failure of Department to contact government of Republic of Ireland, because its transboundary, Ireland part of EU, brings in track EU legislation and law, about another government and other state...
	CF BL	The loadstar both for Council and Commission to be fairness, implications to keep in mind, the Council has not endorsed a particular position, here to assist you in making a determination, point to relevant factors to take into account. Start with Section 26 of planning act 26(10), statutory provision under which you here …
	Comm McP	To hear representations.
	CF BL	That is one of the points ... as far as we understand Monday and Tuesday … representations have been made by Donegal ... difficult to understand how you considering …
	Comm McP	I also have concern that they have made number of representations not with full suite of information.

	CF BL	You here to consider representations, other thing here to be … the Department may cause to call public inquiry, its over to you then to decide and determine fairness of procedures … you will of course be informed by representations of the Department and third parties and others … you will make your own decision … to determine if procedures correct … what is the fair way of proceeding … not simply take position that DfI taking … in terms of where we sit, in a position, there is now admitted breach of regulations, been described as technical breach, given what heard by 3rd parties … ultimately what those regulations are aimed at is ensuring public have effective notice, adequate access to information and meaningful ability to engage in decision making process, equally often in the law we speak about technical breach as a breach of no consequence, hear evidence this morning who are explaining the consequence of the breach of the regulations … important that that is properly weighed up … focused on the question of is there a right to a hearing … not really the point … law tells us when decision maker has decided a public hearing should take place, public hearing must abide by principles of fairness … question not should there be a hearing … there is a hearing … question is procedurally fair … the authorities which touch upon issue of is hearing fair … people have to have access to information before decision maker in a reasonable time to prepare, decision maker must approach in even handed manner, one class of participants given advantage over other. Are you satisfied that way this hearing has proceeded procedurally fair, have individuals from Donegal had fair opportunity to proceed to date. By time consultation took place in Donegal Statement of Case and rebuttals date had passed, representations have been made without full access to the information, those ultimate matters you must way decision on, Mr Elvin has presented one way forward, effectively a public consultation would run in parallel, Commission might then ask self how can we properly discharge obligation … Mr Elvin suggests may have to schedule hearings at end … receive representations half way through inquiry, we read and see if they add anything … the other option is as has been floated yesterday and this morning, you have to reach view on whether it appropriate to proceed on public inquiry. Council not approaching one way or another … **[inaudible]**
	Comm McP	I have been notified people in audience with phones on and won't turn off, failure to do so you will be removed from auditorium.
	CF BL	The Council not … to take one view or another on this … setting out what Commission … logically different question … there is a hearing is the hearing currently fair, what fair way to proceed … everyone accepts

		in room that a degree of legal risk to whatever decision Commission decides to reach…. Commission is running the inquiry.
10:50	**[Author failed to identify speaker]**	Underline issue of public informed and fairness **… [inaudible]** if one goes on to the applicant Facebook page at minute, post 8th August 2016, 400 plus jobs to be created **…** amended to 350 jobs **… [inaudible]**
	[Author failed to identify speaker]	People of Donegal and ask them for opinion about information on public domain that is confused, dated **…** got to consider if there too many unsubstantiated claims being made **…** by the applicant **…** influence public opinion.
	Comm McP	Mr Elvin, do you have any idea how long process to comply with reg 27 will take.
	DE KC	I'm afraid not, as you know government in Dublin restricted following election.
	Comm McP	Election in November.
	DE KC	Ministerial post filled later this week or next. Hope can be done in length of inquiry **…** maybe not just them **…** there is no dispute of the need for proper consultation with the Irish government, people Donegal and further people beyond that. Not for us to decide for them **…** I can't give you precise timeframe **… [inaudible]** first part of the inquiry.
10:54	Cllr Eddie Mitchell Leitrim County Council **[Audience]**	Eddie Mitchell, councillor, Leitrim County Council, I have to say I little confused we obviously haven't been informed by executive or Irish government about proceedings here, listing to people in Donegal, we're at a loss I understand I can't review what happened here yesterday **…** What happening in practically in secret, how we able to review what has happened here **…** we need to have same right to access to decision making as well as anybody else **…** you will remember **…** Leitrim people played a big part **…** we want right to be able to participate in this as well **…** we will not allow goldmining **…. [inaudible] …** without our participation **…**
10:56	Comm McP	Mr Haughey.
	PH	Thank you, Commissioner, I'm absolutely shocked as what has happened here today, in Statement of Case from DfI the DfI states that the DfI Minister or Minister for infrastructure wanted robust consultation **…**
	Comm McP	Go to somebody else or come back to you.
	DEW	Is there a representative or observer form Donegal County Council to enlighten us.

	Comm McP	Anybody here from Donegal County Council … it would appear not.
10:58	Sean Clark **[Audience]**	Represent GAA club in Greencastle, wasn't here last couple of days, here at pre-hearing, some things which come to mind … I thought everything should be available long before this not now, people who should have been involved should have been given opportunity to give opinions, surely planning application shouldn't be looked at until properly validated … Goes back to 2017 or somewhere around that … and do we know if we have everything on table yet … large excavation operation on that mountain for many years … no planning.
	Comm McP	Solely planning to transboundary issues
	Sean Clark **[Audience]**	Right well ok I'll move on to discuss … I believe conflict of interest … how can you be part of process that decides on application but is quite evidently siding with the application overlooking and actually tramping over … disregarding other people's opinion … having review of legal opinions coming from God knows where … If part of decision making process you should not be putting forward own … their opinions, this is not the place for it …
11:01	PH	Thank you, Commissioner for coming back to me, I just cannot understand position of the Department, quite clear everybody believes unjust or unfair process, in the Statement of Case the DfI stated Minister wants a fair … public inquiry, if we are pursuing the current public inquiry in the manner in which Mr Elvin is suggesting … we have seen on 15th October DfI have stated in a letter they want the PAC that they are taking a neutral stance, they are totally ignorant views of all 3rd parties, totally unbelievable they able to do that …. In terms of what has happened here … DfI were fully aware of transboundary implication four years ago through application for powerlines, chose not to do this, state at pre-inquiry that no transboundary issues, PAC commissioner stressed point several times … what happened since DfI took upon self after Statement of Case to engage transboundary issues, seemingly done that without any party, they didn't seem to engage PAC … the fact that they didn't do that, demonstrates lack of fairness against the people, also suggested that it is not a neutral stance, information should be available to everyone at same time, quite shocked to hear that Mr Elvin … made presumption that Dublin may have nothing to say … degree of arrogance that I cannot understand the Department cannot make … talk about affairs of other country … once gain unfair to people, not just Donegal, all of Ireland, inform EPA down south, wasn't done I presume, partial information, Belfast gazette in north alone, paper in Donegal for circulation of only portion …

11:08		More to say … in terms of information and fairness and information made available to everyone, we were advised centralised database for information one month after pre-inquiry hearing, that hasn't happened, I believe rebuttal statement of DfI says they are working on this, people of Tyrone and North can't access this … this is a glaring omission … technically malfeasance itself in how this can happen … that is an opinion. In terms of information, this is meant to be open process where we see everything, we still haven't seen Statement of Case entirely of 3rd parties, haven't seen rebuttals.
	Comm McP	Transboundary …
	PH	Basically as far as we're concerned, emphasis should be on Minister … procedural failings, this will go to JR if there is failings … people cannot … there will be a Judicial Review on the abuse of the process … ask to be re-run again … alluded to by guy in Leitrim, we spent months preparing information … we came here in last two days … that information is not available … how can this be a fair process … they cannot go back, what was said, they don't know if material change to this application, doré bars to concrete, fundamental change to everything, even that in itself is potential for judicial review. In terms of natural justice and public consultation we expect a few things, basic things, right to fair hearing, equality of access, most of all we except transparency, in terms of cases and legal precedents, *R Mosely Borough* UKSC 56. The UK Supreme Court emphasised fair consultation … to engage meaningfully … *R v Home Office ex parte doody* 1994 1 AC 531 … case established often necessitated fairness … basically that says individuals affected by decisions are given opportunity to be informed and respond, transboundary impact on river Finn, issue ignored by Infrastructure for last three years, *R v Greenpeace Limited* 2007 EWHC 311, the High Court rules unfair procedure due to inadequate information provision, again this is same thing, not proper information.
	Comm McP	That you finished.
	PH	Another case R on application *LH v Shropshire Council* 2014 EWCA CIV 404 the Court of Appeal found consultation unfair as local authority failed to provide information about alternative options, lack of information provided, basically now principles derived from cases law about this, adequate disclosure, failure to respond, as you said there is finite time to this public local inquiry, people of Donegal don't have opportunity to respond, one of most important things, consideration of

11:16		representations, not only we have opportunity to consult Department, Department should be able to see as well … on behalf of 3rd party objectors we suggest you consider abandoning process, recommendation to Minister to refuse …
	Comm McP	We won't be making any recommendations on an application without conducting public inquiry. Yes, Ms Fyfe
11:16	Marella Fyfe	Occurs to me, listening this morning, Mr Fagan pointed out the Commission, ability to engage is of paramount importance. Really annoyed we've been blindsided, done work, all the preparation, done the work and here we are now, when the gentleman from the Department this morning and started to answer Dr Strecker's argument yesterday evening, we don't have Dr. Strecker here, she can't contribute online … Donegal … seems absolutely ridiculous situation to be in … Commission is responsible for any decision in a court of law, begs the question is the best that democracy can buy.
	Comm McP	Dr Gallagher I have went to you twice. Need you to be concise, have warned Mr Haughey, going to go to Dr. Louise Taylor.
	LT	About public trust, public interest, credibility and integrity… we've got to put this into context, we have seen such incompetence, RHI Moybuoy, would like our Departments show more respect for community to show respect, paying for them to protect environment. When they don't protect the environment …
11:19	Comm McP	Dr. Gallagher.
	DG	Reasonable query whether this falls short of Nolan principles … openness **[quotes] …** thank you.
	DEW	Would Department furnish with transcript of opinion last night.
	Comm McP	Legal opinions are normally privileged, Mr Elvin has shook his head so no.
	DE KC	It comprises what was said this morning.
	MT	Just in relation to transboundary issues, have Dalradian planned to ship ore concentrate in Canada … in relation to that would that also have transboundary issues in regard to cocktail o minerals chemicals that would be dumped on people of Canada, has DfI notified Canadian ministry of EPA or any other significant groups in Canada in regard to possible transboundary applications.
	DE KC	Transboundary requirements only apply to EEA states, reg. 2.2.
	MT	What about human rights of Canadian population should they not also have fair opportunity to concerns … should be … and this is not only going to affect North and whole of Ireland … make representations to this planning inquiry …

11:23	SB KC	Commissioner, listed with very grate care for an hour to submissions, I am bluntly not in position to make representations **…** take instructions.
	Comm McP	That perfectly fine, we are going to have to adjourn, have to go and discuss it ourselves, prior to adjourn **…** point in your proposal that we continue and reconvene **…** oral evidence given now **…** people who wish to partake in the inquiry possibly from Donegal or government departments of south **…** won't be privy … how does Department square that those people don't lose out through oral testimonies or do you propose we rediscuss all topics at end.
	DE KC	The issue that has been raised at oral hearings, if additional oral representations can be made at that time.
	Comm McP	Talking about people who yet to be invited we don't have timeline for when we will know who those people are, very conscious next week we are discussing water, water ecology and peat and that obviously the river Faughan SSE is a massive potential transboundary issue.
	DE KC	Biggest potential transboundary issue.
	Comm McP	Next week.
	DE KC	It is something we have given some thought to, new pieces of information, may be necessary to inform them for that.
	Comm McP	I need to know that information now.
	DE KC	Will discuss that further now if adjourn it now
	Comm McP	We need to know it in order for us to adjourn for us to make decision
	DE KC	Won't **…**
	Comm McP	Two adjournments. Really not beneficial to preceding at all, can only apologies to everybody. Mr Beattie how long will you need, how long is piece of string at this rate.
	SB KC	20 minutes.
	Comm McP	Say half an hour … 12:00. We will reconvene at 12:00.
	PH	Just want to reiterate.
	Comm McP	Sorry can everybody sit down people are speaking, respect please.
	PH	Procures for streaming and transcripts rejected, Mr Elvin suggested is going back to that, that cannot happen **…**
	Comm McP	It's not about recording or transcripts. They would need to be here. Reconvene at 12. 11:29
11:28		**[Adjourned]**
11:59	PAC Admin. Staff	Sorry folks, the Commissioners have advised it will be another ten minutes.

12:09		**Commissioners seated.**
12:10	Comm McP	Apologies for the later return. If everybody could please take their seats, Mr Elvin if in respect to the point I raised before we broke up do you have an answer.
		No, in absence of transcripts or live streaming I think it's going to be difficulty to that, after Mr Beattie I will have something to say.
12:11	SB KC	I've listened very carefully last night yesterday and today I've taken instructions, there are clearly solid points made that you are … of and we … that , we recognise transboundary issues we do have response of Donegal, appendix 3 of the Department clear beyond reasonable sensible doubt they have view on, think transboundary, seems to me how one could sensibly start the water discussion in these circumstances, just think in common sense way, I am conscious I don't want to make any inflammatory comments, conscious people have spent time and money, duplication issue, seems to me that is not capable on proceeding on evidence you have at moment.
12:13	Comm McP	Can we turn off the whatever interference that was please. Go ahead.
	SB KC	In terms, however, of where you go next won't use colloquialisms or be glib … be important that Commission has opportunity to take pause and think about all the issues think at minute there is an obvious risk of a binary decision, collapse or doesn't, transboundary issues in play, at least merit to give time and breathing space to think about timetable and issue, put as neutrally as possible, can clearly issues that not transboundary, site specific, project specific, looking forward beyond next week might be landscape and visual, might by non-water ecology might be mine safety, might be culture, might or might not be climate, might be transport might be … scope for Commission to receive submission on those issues, potentially proceed on non-transboundary, concern today, binary decision, having listened to parties, regarding money time matters that are slotted in, anxiety that frankly I share.
	Comm McP	I understand those anxieties, Commission expense as well, conscious of independent assessor as well, public purse raised at least three occasions … being devil's advocate here would you agree or do you accept the Commission wouldn't know what is deemed non transboundary until receive representations made until we see what people have made representations on those specific topics.
	SB KC	I think the pause is … subsidiary point to pause, of their Minister and Dublin consulted, opportunity to give everybody opportunity to move and manage it, I think there has to be evaluative judgment of topics, mine safety as example, not trying to lead evidence, issue that is

		specific to site, entitled to make judgment, what would transboundary issue be, at that point can deal with this, if issue arose can actually issue process, robust and workable, requires parties to make recommendations that are sensible, may be that people make representations and you have to consider them whether are open or deal with in different way, transboundary issue and question of what is transboundary is something you can make, transboundary issue on, put it bluntly take time today, may come back … we've thought about that and think you talking nonsense, rests with you, you and indeed Department thinking about it, not on hoof, don't in anyway get on, need some time to think about this, not pressing for matters to proceed, what I suggesting is you hold inquiry dates that you have without second guessing decision, give yourselves time to think about and reflect upon, for moment that would at least give opportunity to think about it … not necessarily time that is lost … devil's advocate question … can't say more than anyone else, pause, think about that, some parts could go sensibly ahead, to allow appropriate time for consultation, mummy used to say when your running down street and your trousers falling down pull them up.
	DE KC	I'll tighten my belt on same image, subject to you what you think of Mr Beattie requested, have consulted, having heard concerns of local people and those of Irish Republic, need for fairness, don't think Department cannot ask to continue with hearings or with hearings next week in particular, subject to Mr Beattie suggestion you hold one of dates in March, revised pre-inquiry meeting sense see where we've got to with Dublin, any further response from Donegal, rest of week make sure rest of matters … proper publicity and notification and documentation … sufficient opportunity for people, particular people not consulted yet, people across board to consider detailed information.
	Comm McP	Tor recap Department is asking us to suspend the inquiry.
	DE KC	Subject to Mr Beattie's requests about items that are not transboundary to be time timetabled …
	SB KC	Regulation 27.1, not just freewheeling, opportunity to think about it Commissioner.
12:22	Comm McP	Yes, Mr Tracey.
	MT	To be honest with you this is a farce, this is a comedy show that seems to run and run and run that's not speaking against the PAC, statutory departments and that, dropped trousers at every opportunity …
	Comm McP	Please refrain from, please

	MT	When we start again, in March, what's the next issue, if goes back again, pre-injury meeting, another issue found, opening of other inquiry, second day of another inquiry, another issue, this is our lives, understand and I've said before I'm asking the Minister to revise application and tender completely new one … all information provided at the one time, all the proper consultation processes, everyone has God given right to review … this is on running comedy, my concern another couple of episodes …
12:24	MB	Matter in which the Infrastructure Minister Nichola Mallon announced public inquiry in June 2020, September 2021 Minister Mallon directed public inquiry, pre-inquiry meeting March 2024, incomplete information available, timetable set out adjourned, two days, three days into inquiry, Departmental difficulties, incomplete information in consultation and inadequate … Department has audacity to suggest inadequacy on part of Donegal County Council, appears to be failings of own Department, should actually make decision, what issues would be transboundary, second guess what the public have the right to consider how is that public consultation, we have heard today about costs to public purse, consider cost to private individual, loss of opportunity to all volunteers today, flight charted for experts, accommodation paid for, who will pay for that, Commissioner could refer to public audit committee …
	Comm McP	We have to be independent, seen as taking action against DfI …
	MB	Invite all parties to refer to the PAC. Not only topics to be considered as transboundary, is that not project splitting in essence, how could you actually proceed and hear evidence and parties and issues are raised would that not mean as second public inquiry would have to take place, a duplication, if case, the Commissioner not consider then, that all proceedings are recorded that there is the availability for online or remote evidence to be heard because cost incurred now … we are finding that the volunteers, voluntary organisations, objectors given negative connotation, there are ordinary retired people, housewives, farmers, having to bear that cost, completely unfair, talk about natural justice, something commission has to very much bear in mind, much obliged.
	DEW	It's difficult to understand how this can proceed, if I go into shop to buy cake I don't buy in slice, holistic programme or project, whatever would you wish to assign, in fairness we have to be allowed voice in totality, we can't be like the learned gentleman said, slice and dice it, we will make decision as to what you should know and should not know, takes two hours to drive here, cant arrive and find out this is something you

		have an interest in or not, heartbroken for people here, as compared to what people's motherS may or may not have said to them.
	SB KC	I apologise if offensive, if gentleman from Donegal offended I apologies, I was seeking to reinforce in colloquial fashion which I probably shouldn't have.
	DEW	I accept your apology.
12:31	Comm McP	Gentleman in the audience, Mr Clark I think.
	Sean Clark **[Audience]**	Thank you Commissioner, I sitting here at odds with myself I suppose, we came here with programme outlined for period of time for an inquiry we were here last March, this was nearly twelve months after, mentioned earlier on, I don't think we have complete application here for all processes and the rest of it, I would think and **…** here to deicide was, we don't have proposal fully in place, onus on yourself, declare that this is no longer valid, wee document here refers to planning appeal ref 2015a0059 and was dated 18th February 2016, decision was no valid appeal, right, this was in respect to application that was refused, reason this was refused, it must be concluded the Department purported decision was not valid and therefore no valid appeal to Commission, to me it seems as not validated, we have nothing to discuss.
12:34

		Fegan's opinion here and Dr. Taylor and adjourn again to consider matters.
	DE KC	If that to be achieved, part of discussion with Department tomorrow, to make sure … we also take steps to see if we can find out what dates are going to be relevant and what time scales are involved, report back to you as to timescales …
12:38	CF BL	Now reached effectively common ground position that his inquiry will be suspended … from Council perspective … highly incredible … council had raised transboundary issues previously, pre-inquiry meeting, document, Council has obviously spent significant time and resource, witnesses today, impact to public purse as far as Council … consideration of fairness our loadstar here, position reached following careful reflection by the parties, in terms of way forward, next two weeks seem to be gone, consultation is clearly going to last several weeks …
	Comm McP	Highly likely February weeks gone to …
	CF BL 12:42	Realistically speaking, as Mr Elvin said, looking at March here … question arises can we continue to non-boundary issues. Mr Orbinson right, transboundary not limited to commenting, entitled to comment on project more generally, … in view of one the 3rd parties, risk of project splitting … individuals in republic can comment on transboundary but not non-transboundary issues, if you can exercise judgment on transboundary and what is not, can't see how rationally you exercise judgment without viewing representations … entirely agree with Mr Evlin, pre-inquiry meting we will have to be re-timetabled, inquiry going forward have to set suitable directions in relation to transboundary … received and not received, three markers at this stage if that appropriate to be taken 12:42 in so far as possible preference if we could use one of dates we all already have in diary …
	Comm McP	To be clear, we will try and hold the latest date, in order to give Department, give notice of that now, 26th March, then other point which arises is …
	Comm McP	Just wait … **[consulting with Comm D]** … Go ahead.
	CF BL	During this period of time we would say as well, there were some representations in HRA context, adequate notification to be given to transboundary matters as well, that not lost in next few weeks, does seem to us one of points made, forcibly by some objectors, struggled to access third party statements, DfI previously made promise that website would be set up, use time now sensibly, window for providing that facility, Commissioner might not want to get involved in that, we very anxious to ensure, what this does not turn into in pre-injury

		meeting … we putting marker down now … not opportunity to do is for example just putting out there is to remedy issues which have been identified in first few days … we will make submissions at pre-inquiry meeting …
12:45	SB KC	Sorry Commissioner, can't really have it both ways, people can't give submissions, and we then can't then review them.
	Comm McP	Havet gave an indication of this issue, will come back to you in due course.
	PH	I really don't understand how representative of Dalradian suggesting we pause and continue.
	Comm McP	We've taken note of that, submissions since then, Commission will make judgment call from that.
	PH	People of community … think a week or two, same information is not given to people who need it, Dublin, EPA, people of Donegal not look at this and say we want to put Statement of Case and Rebuttals into this, deliberate attempt to push this through without their input, we cannot relay what has happened in last three days … centralised data base.
	Comm McP	Mr Elvin where are DfI, for sake of the people, where are DfI in relation to the website.
	DE KC	Website up and running now, later than advised, not satisfied with it, that will be remedied, for example the 3rd party statement of case were putting on yesterday.
	[Author failed to identify speaker]	Last night.
	DE KC	Yesterday lunchtime. [**heckling]**
	Comm McP	No heckling.
	DE KC	What is not satisfactory is that they listed by number, don't know who's is who's.
	Comm McP	Change to link essentially.
	DE KC	Not satisfactory, not user friendly, doesn't have DfI Statement of Case, has Turley's, Fermanagh & Omagh … for some reason doesn't have ours. Need sorted out, review what other members of the public have said …
	PH	Essentially their project imposed by four local councils, last thing I going to say to pass to Minister for Infrastructure, ask for resubmission, refusal of … application, resubmission, all information and everything start from beginning … clear issues with basic material changes.

	Comm McP	To be fair Mr Haughey, issue is not Dalradian's fault, they should not be prejudiced for opportunity to have application heard, they paid their fee, they expect a service.
	PH	Department at fault … we should actually looking at project as complete refusal.
	Comm McP	**[inaudible]** Dr. Taylor.
	LT	Basically, like to say, it is slightly disrespectful **…** Council you say**…**
	Comm McP	The Council are not processing this application, no responsibility for transboundary consultation, entirely innocent party.
	LT	Sorry Council, Department delay of pre-inquiry meeting, community more informed, community know their stuff, Department lets us down again, like to bring health, peace and cohesion of community **…** I'm scared for my wellbeing **…** single mum **…** stress and anxiety **…** lack of preparedness compromising health of the community**…**
12:54	MT	Just noted to me their number of community members and others have taken all holidays for this year, if this starts now these people do not have same opportunity to attend, to put across points of view, if correctly done, PAC should turn around and dismiss in entirely and I know they won't do that **…**
	Comm McP	We not decision maker, we have no power to dismiss.
	MT	I understand, at end of day, people have put lives on hold, Jan, Feb March, bent over backwards to accommodate Commission **…** now with this faux pas they are going to be completely disadvantaged, any public inquiry taking place this year, we are not all paid big money to be here like the rest of the people, must be major factor in Planning Commission's rejigging, rerunning of this, be grateful if Commission keep that in consideration.
12:56	P. McAleer	Rebuttals for 3rd party yesterday sometime yesterday.
	DE KC	Yes, Rebuttals were later, was talking about Statements of Case, I can show you.
	Comm McP	If this conversation could be outside.
	DE KC	I agree the rebuttals were late.
	Comm McP	Department to give commitment to sort their house out in respect of the website.
	P. McAleer	Eight months later and incomplete, that failing to do it. Further to Martin Tracey's point, I wasn't here yesterday as I didn't have twenty one day's leave, based on **[inaudible] …** make recommendations to refuse
	Comm McP	Can't do that, can only make recommendations once inquiry closed **…**
12:58	P. McAleer	will there be a summary of that provided at future pre-inquiry**…**

	Comm McP	We will need to reflect on everything that has happened, need to be new timetable … at that juncture that we will clarify that … at the minute I obviously don't know …
	P. McAleer	Crucial that information retained and kept.
	Comm McP	We have our notebooks, and we don't dispose of them … we will review where we are that … we will decide then whether we need to revisit all of it, some of it, none of it, won't know until we in possession of the information.
	E. McAleer	I wasn't here this morning as I was at work, people have other commitments, work other caring responsibilities, heard yesterday from Dr Strecker on legal obligation under Aarhus and ESPO regulations … she not here to be speak for us today … I would hope and plead that is brought into consideration for revised timetable…. Leaving aside practical question or questions … presumably because you have be assigned with this cause, you Commissioner will be presiding over it, secondly, submissions made to it and will form part of that submission, although we haven't got a full picture … Cavan, Leitrim, South of border, submissions to date will be kept as part of overall process.
	[Author failed to identify speaker]	We would hope that would be the case, possibly open up on further … **[inaudible]** … expense to put submissions in, something really needs to consider when in receipt of the requirements of Department in that time. Commission never wants to keep any further information to **[inaudible]** of what it needs to be.
12:02	MB	Following on, urge Commissioner to bear in mind difficulties. Highlight in respect of attendance of members of public and experts for purposes of 2nd pre-inquiry meeting.
	Comm McP	Nearly a third …
	MB	Perhaps a record in itself, not necessarily one to be proud of … not for Commission … responsibility perhaps lies with another body … what are practicalities for those to have access in the past two days … have to be great consideration given to it … reiterate importance of a record being kept … again ask Commission to consider that …
	DEW	I just want to make a point to thank you, I do realise this has been extremely difficult for you.
	Comm McP	It's alright.
	DEW	It's a difficult situation to be in.
	Comm McP	I used to work in Newry Moure and Down District Council, so I'm used to it.
	DEW	Thank you for professionalism.
	PH	Thank you, you were very fair.

	Comm McP	It's not over yet.
	PH	All the Statements of Case and all the information retained, I also believe the people from the south of Ireland … to give new Statements of Case and Rebuttals … should not be confined to transboundary.
	Comm McP	Commission certainly has taken everyone's opinion.
	PH	I've taken 10-15 days last year, this year I have no holidays, we very restricted, I cannot say I can attend another 20 days … if you think readjourning it … has to at least be next year…
13:05	CF BL	Number of tricky issues raised in terms of evidence … we will think very carefully then … seek opinion then … will go away and think about that.
13:06	SB KC	I've heard what everyone has had to say, I await the Commission's ruling.
	DE KC	I echo what Mr Fegan said as … procedure at pre-inquiry meeting … clearly that needs to be determined on merits when we see what they have to say… I certainly understand concerns of website.
13:08	Comm McP	We will reconvene at, give us an hour, if we say, ten past two.

LUNCH

14:06		**[Commissioners are seated]**
14:10	Comm McP	Ok, ladies and gentlemen, just want to go to Mr Byas, NIEA'S Position.
	AB BL (DAERA/NIEA)	WE understand all the points, neutral.
	Comm McP	No objection to suspension.
	AB BL (DAERA/NIEA)	No.
	Comm McP	The Commission has considered all parties comments this morning in respect to suspending these conjoined inquiries going forward, these inquiries have been besieged with difficulties, first and foremost issues with extraction licences, now compliance with EIA, notwithstanding the fact DFI roads have not engaged at all … the cost to the public purse and parties involved is not to be understated … planning department of DfI to follow its own legislative procedures, notwithstanding this having listened to parties on these matters and in light of DfI's request and the applicant and NIEA's acceptance that this is a necessary juncture to reach the Commission has no option to accede to the request from DfI planning given implications to 3rd parties of access to justice and

		rights of people to actively participate … the Commission will hold the date of 26th march for reconvene a mid-inquiry meeting subject to … DFI satisfied its requirements in accordance with EIA regulations, I'm asking the Department to supply the Commission with the relevant transboundary consultation documents including advertisements as they are placed, letters as they are sent and responses as they are received to be with completed no later than 11th March, only when the Commission receives all documentation it will set and confirm dates of 26th March. These inquiries are now suspended. Thank you very much for everybody's participation to date.

Disclaimer: this note of the proceedings before the conjoined public inquiries into the Curraghinalt Project is for general information purposes and does not and is not intended to constitute legal or other professional advice. This record does not represent a verbatim transcription of the proceedings, errors in transcription may be present.