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Our Ref: AE2-23-55095~2
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Dear Commissioner

**ATTENDANCE BY DAERA AT THE DALRADIAN CONJOINED PUBLIC LOCAL INQUIRIES**

The timetable for the conjoined public local inquiries identifies DAERA as an attendee for the hearing sessions relating to climate change matters.

As the Commission is aware, DAERA provided no consultation response on carbon emission related matters in respect of any of the applications being considered at the conjoined public inquiries. It may assist the Commission in advance of the hearing sessions for DAERA to confirm that it was not requested to provide any consultation response on carbon emission related matters. Even if DAERA had been asked, it would not have been appropriate for it to have provided any consultation response, for the reasons set out below, and in the Court of Appeal's recent judgment in the A5 proceedings ([2026] NICA 42]) (the A5 judgment).

**Climate Change Act (Northern Ireland) 2022**

The Climate Change Act (Northern Ireland) 2022 (the Act) sets out key responsibilities for DAERA. These are:

- To review and, if required, update the emissions reduction targets for 2030 and 2040 to ensure they are in line with the 2050 target (s2, s6) and to set carbon budgets in line with the 2030, 2040 and 2050 targets (s23, s25); and
- To prepare and publish climate action plans (CAP) for each carbon budgetary period which sets out policies and proposals for meeting the carbon budget covering the areas of responsibility of each NI department (s29).

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There are a series of issues and principles which DAERA is legally obliged to consider in setting the carbon budgets, including that all budgets must be in line with the 2030, 2040 and 2050 targets as applicable. The carbon budgets are set to provide a legal limit on total emissions over a five-year period. The combination of existing and future activity of any nature across Northern Ireland must respect this legal limit.

There are other statutory requirements for DAERA, including the obligation to specify climate change reporting duties for certain public bodies and to establish a Just Transition Commission.

The Act also sets out the responsibilities of all Departments as follows:

- Ensure that carbon budgets and the 2050, 2040 and 2030 targets are met (s1, s3, s4, s24);
- Develop and publish sectoral plans as specified in the Act setting out how 2030, 2040 and 2050 targets will be achieved;
- Provide policies and proposals covering the areas of responsibility of each Department for inclusion in the Climate Action Plan (CAP) consistent with the carbon budget for that period (s29) across sectors identified in s33 and such other assistance as DAERA needs in preparation of the CAP;
- Ensure that policies and proposals meet the statutory requirements outlined in s30, s34, s35, s36;
- Exercise its own functions, so far as possible, in a manner that is consistent with the achievement the targets and carbon budgets and co-operate with each of the other departments in the performance of such duties (s52, s29(4)).

The Executive Office are required to establish a Climate Commissioner for Northern Ireland.

In the A5 judgment, at paragraph [106], the Court of Appeal helpfully summarised the effect of the Act and s. 52 at [1-6(iii)].

**Draft Climate Action Plan**

Consistent with the responsibilities set out in the Act, DAERA:

- Does <u>not</u> have primary responsibility for development of policies to reduce emissions in sectors where DAERA is not otherwise the lead policy department; and
- Does <u>not</u> have responsibility for determining the appropriateness of the proposals and policies covering the areas of responsibility of other Northern Ireland departments.

In this regard, the first CAP was developed on a sector by sector basis. DAERA is the lead department for the agriculture, land use, waste and fisheries sectors and is responsible for developing the policies and proposals in these areas. The Department for the Economy (DfE) is the lead department for the energy, business and industrial processes and public buildings sectors while the Department for Communities (DfC) leads on the residential buildings sector and the Department for Infrastructure (DfI) is the sector lead for transport. The draft CAP was published for consultation in June 2025, a Summary of Responses to the Consultation on the Climate Action Plan was published in February 2026, and the draft is currently with the Executive for consideration and agreement.

**The A5 judgment**

The A5 judgment stated at paragraph [134] that the Act does not require that the GHG emissions of individual projects be specified upon a precise and quantified pathway to permit authorisation. The terms of [134] and [135] are important:

*"[134] Moreover, the 2022 Act does not require project level emissions to be accounted for in advance within a CAP. Neither does the 2022 Act require that the GHG emissions of projects be specified upon a precise and quantified pathway to permit authorisation. It is therefore argued that the lack of a finalised CAP does not prohibit consent to the authorisation of the scheme. The PAC's recommendation that a decision on the scheme should await publication of the CAP and a quantified policy pathway ultimately exceeded the requirements of the 2022 Act and was a recommendation the appellant was lawfully entitled to reject.*

*[135] It follows that, in our view, the judge proceeded on the erroneous understanding that the CAP ought to include an individual assessment of the effect of the A5 WTC project and that it was necessary to have a CAP for each carbon budget before a decision could be made on any project which would impact upon any carbon budget. He considered that evidence ought to be provided which would address the issues that the court considered should be addressed in a CAP. It was effectively argued that the judge ultimately misunderstood the nature and purpose of the CAP and what it should contain. We accept the appellant's submissions that the judge's conclusions and findings in relation to the interpretation of section 52 and requirements as to the content of the CAP, including his proposed project level approach, are "wrong and unworkable." …*"

DAERA's evidence for the A5 judgment proceedings included that (see paragraph [117]):

*"If the Act is interpreted as requiring that a project such as the A5 WTC can only proceed if its projected emissions are either specifically accounted for in a CAP or, alternatively, DAERA has provided an assurance around the specific implications of the project on Northern Ireland's overall net zero pathway, the inevitable consequence would be that such projects will not be able to proceed in the short to medium term as there is no means of complying with such a prescriptive obligation."*

The Court of Appeal accordingly held at paragraph [135], above, that the CAP is not required to include an individual assessment of the effect of individual infrastructure projects (there the A5) and that it was not necessary to have a CAP for each carbon budget before a decision could be made on any project which might impact upon any carbon budget. The A5 judgment at paragraph [136] concluded that:

*"The correct legal position is that when considering whether to approve a project that will lead to increased emissions, a department does not need to account for same at a project level, within the CAP or some similar exercise as suggested by the judge. It does, however, need to consider whether the proposed function is being exercised, so far as is possible to do so, in a manner that is consistent with the objective described in section 52."*

**Assistance to the conjoined inquiries**

Given both the scope of DAERA's responsibilities under the Act, and the fact that the CAP is not required to (and does not) include an individual assessment of the effect of individual infrastructure projects, it is not appropriate for DAERA to provide consultation responses on

individual projects. To do so would exceed DAERA's statutory responsibilities under the Act. Moreover, DAERA would be unable to include any commentary on the consistency of a project's projected emissions with the CAP (since as set out above there is no means of providing such commentary).

DAERA has acted consistently with the above in not providing any consultation response in respect of the Curraghinalt project. It further follows that any information that DAERA can provide to the Inquiry is likely to be limited to how DAERA is discharging its duties under s2, s6, s23, s25 and s29 of the Act at Northern Ireland level and would not include any assessments of individual projects, including the Curraghinalt Project, nor any assessment of how relevant decision-makers should discharge their functions under s. 52 of the Act.

In so far as it is necessary for the Commission to explore representations regarding the discharge by NIEA of its duties under s. 52, relevant NIEA officials will be in attendance at the hearing sessions.

Yours sincerely

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**Director, Climate Action Delivery**
**Department of Agriculture, Environment and Rural Affairs**