

Objection No. 1.

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2012-05-30

RE: P0516-03 Boliden Tara Mines Limited

Knockumber, Navan, County Meath

Dear Sir/Madam

We have been instructed by the Directors of the Swans and the Snails Ltd c/o Monica Muller, Rosspoint South, Ballina, County Mayo to appeal the above Proposed Determination.

In this appeal we will show without fear of rebuttal that no Environmental Impact Assessment has been carried out on this plan/project.

The case law of the European Court of Justice makes it clear that administrative bodies such as planning authorities, An Bord Pleanála, and the Environmental Protection Agency being emanations of the State, are bound to comply with Community law and if necessary to disapply national law.

Therefore any reference to Irish regulations as an excuse is also invalid.

The Environmental Protection Agency must refuse this licence and ask the developer to resubmit an appellation which is fully compliant with the findings of the European Court of Justice in Case C - 50/09.



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## THE FACTS

The Environmental Protection Agency inspector in the report states;

*Environmental Impact Assessment Directive (85/337/EEC)*

*Two Environmental Impact Statements (EIS) were submitted with the licence review application. The details are as follows:*

*(i) TMF extension (planning Ref. No. NA 901452)*

*(ii). Mining extensions in Liscarton and Rathaldron areas (planning Ref. No. NA 10 1 054).*

*Planning permission has been granted in both cases. I have considered the EIS's, planning permissions and planning Inspectors Reports. I have assessed the EIS's in relation to the environmental impacts of the operations of the activities and consider that, in each case, they identify, describe and assess in an appropriate manner the direct and indirect effects of the projects on the factors as required in Article 3 of the EIA Directive. I am also satisfied that they comply with the EPA (Licensing) Regulations (S.I. No. 85 of 1994, as amended).*

The addendum to the Inspectors report states:

*(vi) Planning and EIA*

*Reference is made to the planning approval granted for the extension of mining operations into the Liscarton and Rathaldron areas and also to the finding against Ireland by the ECJ in relation to the implementation of the EIA Directive (Case C50-09). It is requested that the implication of this judgement be addressed in the case of the proposed mining extension.*

### **Comment:**

*As discussed in the Inspectors Report, an EIS for the proposed mining extensions was submitted with the licence review application. I have considered the EIS, the planning permissions and the planning Inspectors Report. I have also assessed the EIS in relation to the environmental impacts of the operations of the proposed activity and consider that it identifies, describes and assesses in an appropriate manner the direct and indirect effects of the proposed mining extensions on the factors as required in Article 3 of the EIA Directive.*

*I am also satisfied that they comply with the EPA (Licensing) Regulations (S.I. No. 85 of 1994, as amended)..*

Meath County Council planning reference NA101054 Granted permission 29/06/2011 is for:

*involves the mining of the current uninterrupted ore body into a new area of Liscarton and Rathaldron solely by underground means. The development would use similar mining methods to those currently being employed. The proposed extension of the underground mining operations into the application area, located to the northwest of the main ore body would be accessed from the existing underground workings. The surface characteristics and features of the application area will not be altered by mining activity and there will be no surface development associated with this proposal. The necessary mining infrastructure for its operation is already in place. This includes administration, processing, tailings storage, ventilation, effluent discharge and road/rail links to Dublin Port. An Environmental Impact Statement (EIS) will accompany the Planning Application. All operations will be carried out under the existing conditions of the Company's Integrated Pollution Prevention Control License (IPPCL No.P0516-01) issued by the Environmental Protection Agency (EPA)*

**Meath County Council planning reference NA901452** Granted permission 12/05/2010 is for;

*the stage 5 development, will consist of a 4 metre vertical extension delivering an additional 5.6 million cubic metres of storage capacity. The stage 5 development is for the purpose of extending the life of the mine and will be constructed on the footprint of the existing facility, which occupies an area of 170 hectares. The glacial till material to be used in construction of the vertical extension will come from two immediately adjacent areas of 52 hectares and 18 hectares located in the townland of Randalstown. Planning permission for the 52 hectare area was granted in the previous stage 4 development, ref. No. 96/919. An environmental impact statement (EIS) has been prepared and will accompany the planning application. This proposal will require a revision of the company's integrated pollution prevention control license (IPPCL No. P0516-01) by the environmental protection agency (EPA). The development is a vertical extension to the existing tailings storage facility. Significant further information/revised plans submitted for this application*

W attach the Planners two reports on this application;

In NA101054 8-11-2010 the only references to either Environmental Impact Statement or Environmental Impact Assessment in this report are:

***Environmental Impact Statement:***

*An Environmental Impact Statement is required to be submitted by the applicants as per Local Government (Planning and Development) Regulations 2001 as amended- Schedule 5 Part 2 Section 2. The applicants have submitted the EIS as per the legislation above.*

There is no mention of the Environmental Impact Assessment which is required by law in this report.

In NA101054 22-6-2011 the only references to either Environmental Impact Statement or Environmental Impact Assessment in this report are:

***8.0 Environmental Impact Statement:***

*An Environmental Impact Statement is required to be submitted by the applicants as per Local Government (Planning and Development) Regulations 2001 as amended- Schedule 5 Part 2 Section 2. The applicants have submitted the EIS as per the legislation above. The Environmental Impact Statement has been prepared using the grouped format structure where each subject area as set down within the Planning & Development Regulations is addressed with separate descriptions provided for the proposed development, existing environment, impacts and mitigation measures. The EIS, its appendices and supplementary information have been examined.*

*An assessment of the EIS was conducted within the previous planning report dated 8/11/2010. As part of the further information response the applicants highlighted certain sections of the EIS, which are summarized below.*

*Therefore having regard to the applicants having submitted a planning application with adequate environmental assessment to accompany it including setting out of mitigation factors to be implemented, the PA are satisfied that the proposed underground mine would accord with the proper planning and sustainable development of the area.*

**It is our submission that the Planner did not understand the basics of Environmental Impact Assessment according to The Planning & Development Act 2000 as amended and to the Directive and the decisions of the European Court of Justice.**

The Environmental Protection Agency inspector states the following;

*I have considered the EIS, the planning permissions and the planning Inspectors Report. I have also assessed the EIS in relation to the environmental impacts of the operations of the proposed activity and consider that it identifies, describes and assesses in an appropriate manner the direct and indirect effects of the proposed mining extensions on the factors as in Article 3 of the EIA Directive.*

Considering the reports submitted it is impossible to fathom how the inspector came to the conclusions above.

**It is our submission that the Inspector did not understand the basics of Environmental Impact Assessment according to The Planning & Development Act 2010 and to the Directive and the decisions of the European Court of Justice.**

## **ENVIRONMENTAL IMPACT ASSESSMENT AS PER THE DIRECTIVE 85/337/EEC AS AMENDED BY 97/11/EC AND 2003/35/EC AND THE PLANNING & DEVELOPMENT ACT 2010.**

Article 3 is now clarified in Irish law by the 2010 Planning & Development Act 2010 by the insertion of;

**4.----**

*'environmental impact assessment' has the meaning given to it by section 171A;*

**53.---***The Principal Act is amended in Part X by the insertion of the following section before section 172:*

*"171A.—(1) In this Part—*

*'environmental impact assessment' means an assessment carried out by a planning authority or the Board, as the case may be, in accordance with this Part and regulations made thereunder, that shall identify, describe and assess in an appropriate manner, in light of each individual case and in accordance with Articles 4 to 11 of the Environmental Impact Assessment Directive, the direct and indirect effects of a proposed development on the following:*

- (a) human beings, flora and fauna,*
- (b) soil, water, air, climate and the landscape,*
- (c) material assets and the cultural heritage, and*
- (d) the interaction between the factors mentioned in paragraphs (a), (b) and (c).*

*(2) Subject to this Part, a word or expression that is used in the Part and that is also used in the Environmental Impact*



*Assessment Directive has, unless the context otherwise requires, the same meaning in this Part as it has in the Environmental Impact Assessment Directive.”.*

The European Court of Justice found in case C-50/09 on the 3rd of March 2011(which predates both the planner's report and the report of the inspector of the Environmental Protection Agency;

*36 Article 3 of Directive 85/337 makes the competent environmental authority responsible for carrying out an environmental impact assessment which must include a description of a project's direct and indirect effects on the factors set out in the first three indents of that article and the interaction between those factors (judgment of 16 March 2006 in Case C-332/04 Commission v Spain, paragraph 33). As stated in Article 2(1) of the directive, that assessment is to be carried out before the consent applied for to proceed with a project is given.*

*Case C- 332/04 Commission v Spain, paragraph 33 states;*

*33 It should be noted, first, that Article 3 of Directive 85/337 as amended refers to the content of the assessment of environmental impacts, which includes a description of direct and indirect effects of a project factors listed on the first three indents of this article and the interaction between them. It is the competent environmental authority to carry out such an assessment.*

*40 However, that obligation to take into consideration, at the conclusion of the decision-making process, information gathered by the competent environmental authority must not be confused with the assessment obligation laid down in Article 3 of Directive 85/337. Indeed, that assessment, which must be carried out before the decision-making process (Case C-508/03 Commission v United Kingdom [2006] ECR I-3969, paragraph 103), involves an examination of the substance of the information gathered as well as a consideration of the expediency of supplementing it, if appropriate, with additional data. That competent environmental authority must thus undertake both an investigation and an analysis to reach as complete an assessment as possible of the direct and indirect effects of the project concerned on the factors set out in the first three indents of Article 3 and the interaction between those factors.*

*Case C- 508/03 Commission v United Kingdom [2006] ECR I-3969, paragraph 103),states;*

*103 In those circumstances, it is clear from Article 2(1) of Directive 85/337, as amended, that projects likely to have significant effects on the environment, as referred to in Article 4 of the directive read in conjunction with Annexes I and II thereto, must be made subject to an assessment with regard to their effects before (multi-stage) development consent is given (see, to that effect, Case C-201/02 Wells [2004] ECR I-723, paragraph 42).*

The European Court of Justice found in case C-50/09 Commission v Ireland

*On those grounds, the Court (First Chamber) hereby:*

**1. Declares that:**

**– by failing to transpose Article 3 of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997 and by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003;**

**– by failing to ensure that, where Irish planning authorities and the Environmental Protection Agency both have decision-making powers concerning a project, there will be complete fulfilment of the requirements of Articles 2 to 4 of Directive 85/337, as amended by Directive 2003/35;**

## CONCLUSION


We have shown above without fear of rebuttal that no Environmental Impact Assessment has been carried out on this plan/project.

The case law of the European Court of Justice makes it clear that administrative bodies such as planning authorities, An Bord Pleanála, and the Environmental Protection Agency being emanations of the State, are bound to comply with Community law and if necessary to disapply national law.

Therefore any reference to Irish regulations as an excuse is also invalid.

The Environmental Protection Agency must refuse this licence and ask the developer to resubmit an application which is fully compliant with the findings of the European Court of Justice in Case C - 50/09

Yours faithfully



Peter Sweetman and  
on behalf of the  
Swans & The Snails Ltd.

We understand the Phillip Cantwell has applied for an oral hearing, we believe that the Environmental Protection Agency would be well served by holding an hearing so as to fully understand the law as is.

## Planning Report

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**To:** Fiona Redmond, Senior Executive Planner

**From:** Fergal O'Bric, Executive Planner

**File No:** NA-101054

**Applicant:** Boliden Tara Mines Ltd

**OS No:** 25

**Road No:** N3

**Date** 22/6/2011

**Townland:** Rathaldron and Liscartan

**Description of Development:** Planning permission is sought for mining of the current un-interrupted orebody into a new area of Liscartan and Rathaldron solely by underground means. The development would use similar underground methods to those currently being employed.

The proposed extension of the underground mining operations into the application area located to the northwest of the main orebody would be accessed from the existing underground workings. The surface characteristics and features of the application area will not be altered by mining activity and there will be no surface development associated with this proposal. The necessary mining infrastructure for its operation is already in place. This includes administration, processing, tailings storage, ventilation, effluent storage and road/rail links to Dublin Port.

An Environmental Impact Statement accompanies this planning application. All operations will be carried out under the existing conditions of the company's Integrated Pollution Prevention Control Licence (IPPC No. P0516-01) issued by the Environmental Protection Agency (EPA).

**Notice on Site:** yes, on 4/11/2010

**Date Decision Due:** 30/6/2011

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This planning report should be read in conjunction with the previous report prepared by the Planning Officer and dated 8/11/2010 where further information was sought.

### **1.0 Site Location and Description:**

Tara Mines Ltd is the largest Lead-Zinc mine in Europe and its base is located at Knockumber circa 2km from Navan. Planning permission is sought in this application for an extension to existing mining operations. The application site is underground and encompasses a surface area of circa 57 ha of land, in agricultural use (arable) at present in the townlands of Rathaldron and Liscartan. The lands are located to the north west of Navan (north of the existing mine) and are bound by unzoned agricultural lands to the north, the mine itself and a large number of individual one off dwellings to the south, the River Blackwater traverses the proposed extension area in the eastern section of the site. The expansion of Navan in recent years has resulted in residential development to the east, closer to mine lands. The proposed development at Liscartan and Rathaldron will involve the mining of a current uninterrupted orebody by underground means only and represents a natural and logical extension of the existing ore body. The River Blackwater

passes over the ore body which forms a surface intersection feature between what is referred to as the main ore body and the Rathaldron & Liscartan ore bodies.

## **2.0 Planning History**

The previous planning report dated 8/11/2010 detailed the planning history pertaining to the full land holding within the ownership of Boliden Tara Mines. No planning applications pertaining to these lands have been received subsequent to the report of 8/11/2010.

## **3.0 FI Request & Responses**

- 1(a) The applicants are requested to provide details on what surface subsidence and geotechnical monitoring will be undertaken (particularly in respect of areas of poor ground), and to give a clear commitment that all appropriate measures will be employed to reduce the risk of ground subsidence. Where monitoring points are to be installed on lands not in the ownership of the developer, the necessary consents from landowners should be submitted as well as a map to accompany the consent and illustrating to which precise area of land the consent pertains to.

**Applicants Response:** The applicants have stated that subsidence monitoring has been conducted at the existing mine operations for many years and a database has been established detailing the relevant measurements. The precise levelling network is extensive and measurements are taken annually. This is the recognised approach to monitoring of surface settlement and is common practice within the mining industry.

Section 5 of the Environmental Impact Statement (EIS) recommends the extension of subsidence monitoring network to cover Liscartan and Rathaldron and this extension to the network into these new areas has now been developed. The applicants state that *“The proposed extension to the precise levelling network will provide good coverage over the areas of interest”*.

Section 5 of the EIS also recommends the use of extensometers to monitor ground behaviour immediately above underground stoping, installed from hanging wall development, particularly in any areas of poorer ground conditions. This is a typical monitoring response and is used extensively within the existing Tara Mines development. To date the drilling densities are too wide to identify any poorer ground conditions. However this is the normal level of information required at pre-mining stage and the later underground drilling will provide a much greater level of detailed geological information.

*“The design and operational philosophy of the mine is to maintain stable excavations at all stages of the mining process, and the use of tight filling maintains stability on a larger scale as mining progresses. The stope design process includes progressively tighter-spaced diamond drilling as design moves from conceptual to final stages. This drilling identifies any areas of poorer ground conditions and the mine can then implement various responses such as*

*modifying stope designs, or using grouted cable bolts in the hanging wall for additional support of the rockmass.....specific monitoring requirements can only be identified with more detailed information, during the final stages of the design process once the positions of all excavations are fixed, and local ground conditions determined”.*

- (b) The applicant’s should be requested to clarify which methods of mining will be employed within the proposed mine extension.

**Applicants Response:** The applicant’s state that Section 5 of the EIS describes three different mining methods that they propose would be used within the extended mining areas of Liscartan and Rathaldron. The three in question are Bench (longhole) stoping with backfill, drift and fill and room and pillar, all depending on the thickness of the ore. The applicants state that *“It is likely that the majority of the thinner areas of ore will be mined using drift and fill methods. Bench (longhole) stoping with fill will remain the principle method for thicker ore”.*

- (c) The applicants are requested to demonstrate that its water monitoring wells have sufficient distribution and that these include the Liscartan/Rathaldron area. If not, then additional monitoring wells may be required to be put in place.

**Applicants Response:** The applicants have stated that the data gathered and collated to date in addition to their extensive working knowledge of the area has provided adequate information in order for them to characterise the overall groundwater conditions within the proposed extension area of Liscartan and Rathaldron. However, a number of potential risk areas have been identified. A monitoring programme has been developed to address current operations and to allow for future mitigation of future mining and environmental risks.

At present, inflows to the underground workings are monitored which has provided excellent data to assess groundwater conditions and a similar programme of assessment will continue within Liscartan and Rathaldron.

*“Flows and pressures will be monitored in geology holes drilled from underground. Routine monitoring will be carried out in all holes that remain open and flowing”.* Selected holes will be completed with valved collars to allow for measurement of shut-in pressure.

The monitoring plan for the proposed Liscartan/Rathaldron extension includes monthly water level monitoring of surface holes (or more frequently where deemed necessary). There are nine existing surface observation points. Monitoring of these will continue once production mining has commenced in the proposed extension area, additional surface holes will be required. The applicants have provided approximate locations for the proposed monitoring points, however the precise location of these new holes will be determined once the detailed



mining sequence has been finalised. The applicants will provide a map to the Planning Authority at that time illustrating same. This is a matter that can be dealt with by means of an appropriate planning condition in the event that a grant of planning permission is recommended.

- (d) The applicant is requested to verify and demonstrate that the Randalstown Fault is a sealing fault and that appropriately placed monitoring wells are, or will be, installed.

**Applicants Response:** The applicants state that they do not anticipate that mining of the Liscartan/Rathaldron extension will cross any major bounding structures that are not already dewatered on their footwall side. The Randalstown fault zone cuts the base of the Pale Beds about 75 metres to the west of the current application site area. The fault zones do not intersect the orebody, so it is expected that the fault will not be intersected during mining of the extension.

The throw on the Randalstown fault zone is about 200 metres or more and the fault is inferred to have a strike-slip component. It is not known whether the fault carries significant groundwater, but holes drilled in the north western part of the extension area suggest that it is probably a tight shear zone, rather than an open transmissive fault zone. A considerable amount of drawdown is already observed on the west side of the Castle-Liscartan fault Complex. Additional drawdown is likely to occur locally to the west of the Castle-Liscartan fault Complex (to the east of the Randalstown Fault zone).

The potential for additional drawdown to the west of the Randalstown Fault Zone is considered to be low. This will be confirmed by the planned new Pale Beds observation hole immediately to the east of the fault zone (immediately to the west of the planned western extent of the Liscartan mining area). If additional drawdown on the west side of the Randalstown Fault were to occur, it is expected that the incremental increase from current conditions would be marginal.

- (e) The applicants are requested to provide additional information on the area of the River Blackwater relevant to the hydrology which demonstrates the hydrological similarity of conditions to the south, given that the overburden is thinner in the area under the current application site than it was in the area to the south.

**Applicants Response:** The applicants state that mining has been carried out in proximity to or beneath the River Blackwater for over twenty years. They claim that *“virtually all stope blocks in the vicinity of the river are mined with no significant leakage of water from the river, or from the shallow alluvial water table of the floodplain. Extensive monitoring of the Nevinstown and the main mine inflows and water chemistry over the past 5-6 years has confirmed that most of the water entering the main mine and Nevinstown workings is the result of district scale groundwater flow within the Pale Beds. As inflows have been encountered due to opening up of the Nevinstown workings, there has been a*



*general decrease in the magnitude of inflows down-dip in the main mine. A similar situation is expected for the Liscartan/Rathaldron extension”.*

At present a significant amount of drawdown is observed in all holes monitored in the Liscartan/Rathaldron area. The area has become dewatered as a result of inflows to the main mine and Nevinstown. Water level monitoring data suggests that the drawdown in the Pale Beds in the vicinity of the River Blackwater at Rathaldron is of the order of 30 metres. Therefore, there is already a significant vadose zone thickness developed beneath the area of the river and the floodplain. As a result, when incremental drawdown occurs within the Pale Beds due to mining in the Liscartan and Rathaldron areas, the downward leakage from the alluvium is not expected to increase. As the bedrock water level is already below the base of the alluvium, the generally thinner nature of the alluvium in the new mining areas is not expected to be of concern.

Given the knowledge gained from monitoring to date, there is no indication that conditions beneath the river will be any different in the proposed Liscartan/Rathaldron extension to those in Nevinstown or the main mine. This will be confirmed by the planned new monitoring holes described in the response to 1(c) above. The main potential for increased future inflows is likely to be associated with differential movement across structural zones underlying the floodplain.

The applicants understand that mining adjacent to or beneath any watercourse needs to be conducted with absolute care and attention. As mining is extended into new areas, the data from existing and new monitoring holes needs to be carefully assessed. The inflow chemistry will be carefully monitored to detect any signatures similar to river water or shallow alluvial groundwater.

- (f) The applicants are requested to provide clarification as to whether any water supplies, and in particular, domestic water supplies, will be affected by mining in the area under application. If water supplies will be affected by the proposed development, appropriate mitigation measures should be submitted in order to address same.

**Applicants Response:** The applicants state that the only deep water supply borehole that will be affected by the proposed Liscartan/Rathaldron extension is the Rathaldron Castle well. This well has already been impacted upon by existing mining at Nevinstown and the main mine. As a result Boliden Tara Mines has replaced this borehole water supply with a mains water supply. However, the applicants have stated that should any domestic shallow groundwater supply be affected by the mining of the extension that mitigation measures would be put in place with immediate effect including making available an alternative water supply with the full cost of these measures borne by Boliden Tara Mines. This is a matter that can be addressed by means of an appropriate planning condition.

- (g) The applicants are requested to liaise with the Department of Communications, Energy and Natural Resources with regard to the matters raised above.

The applicants have stated that they have liaised with a number of personnel from the Department of Communications Energy and Natural Resources and this has been confirmed within the response from the Department.

- 2(a) The applicants are requested to confirm if there will be additional water demand from the public water supply generated by the proposed development. If there will be additional water demand, the applicants shall quantify and identify where the additional water will be used.

**Applicants Response:** The applicants have stated that *“there is no additional water demand from the public water supply anticipated”*.

- (b) The applicants are requested to confirm if there are proposals to extend their on-site water mains networks. If there are proposals to extend their on-site water mains networks, the applicants should submit full details of the extent and materials proposed.

**Applicants Response:** The applicants have confirmed that *“there are no proposals to extend its on-site water mains networks at the present time”*. They also state that in an attempt to improve the level of water conservation that they have replaced their 37 year old potable water pipe network with a new water pipe network and this project was completed in early 2011.

- (c) As per Meath County Council Water Bye-Laws 2007 Part 3 Water Conservation, the applicants are requested to submit a comprehensive Water Management and Conservation Plan with the planning application, for the entire development site. The Plan should identify and quantify all water uses. The plan should identify all existing metering arrangements in place and proposed metering arrangements. The plan should identify monitoring arrangements in place to identify high usage areas and potential leakage. The plan should identify and detail all existing and proposed water recycling arrangements. The plan should identify and detail any proposed upgrading/rehabilitation of existing distribution water mains and water supply pipes within the development site. The plan should set out details of how best practice in water conservation would be applied in respect of the entire development site to include water mains and internal plumbing and how water usage, leaks or excessive consumption may be identified and remedied. The applicants should demonstrate and quantify how the measures outlined in the said Water Management and Conservation Plan will reduce the potable water demand of the development site.

**Applicants Response:** The applicants have replaced the 37 year old potable water network of cast iron pipeline as there were a number of leakages detected along its length. The old network of pipeline has been replaced with a high density

polyethylene pipeline with online metering. The highest usage of potable water on site results from shower usage and washing of coveralls.

The applicants also state that there is a high level of water usage in the processing of ore, however this water and that used in drilling is entirely sourced from water drawdown in the mining operation, rainfall collection in the Tailings Storage Facility (TSF) at Randalstown and water gathered from the surface area of the mine site. The process/drilling water is recycled in the mine and TSF water management system where it is recycled and reused a number of times. Any excess water in the system is discharged to the Boyne as permitted under their IPPC licence which is monitored by the Environmental Protection Agency.

The applicants have put/are putting a number of ameliorative measures in place with regard to water conservation/monitoring including the following:

- Installation of flow meters on the water intake to the site with flow meters on the main distribution points on site.
- Computer based online flow monitoring.
- Push button flow controls on shower units and taps.
- Centralised temperature control thermostats system for all hot water usage on site.

With the introduction of the ameliorative measures outlined above the applicants estimate that the quantity of potable water usage will be significantly reduced from a historical daily average of 440 cubic metres per day to 215 cubic metres per day.

- (d) The applicants are requested to liaise with Mr Pat Kinsella, Senior Executive Engineer Environment (Water Services Section) Department of Meath County Council in relation to the matters outlined above.

The applicants state that they have liaised with the Water Services Section of MCC regarding the matters outlined above. The Water Services Section of MCC have made the following comments in terms of the applicants further information response:

*“The applicants, in their Further Information submission, state that –*

- *their leaking cast iron watermain network has been replaced with a polyethylene pipeline*
- *additional metering has been installed*
- *push button flow controls will be installed on shower unit and taps*

*and that, as a result, their estimated potable water demand will be reduced from 440m<sup>3</sup>/day to around 215m<sup>3</sup>//day.*

*The applicants state that the main potable water usage is primarily domestic and that almost 70% of this is used for showers and machine washing of coveralls.*

*We acknowledge that there has been a significant reduction in the public potable water supply going into the Tara Mines site.*

*This has been verified by the recorded flow data which is transmitted daily by telemetry from the data logger attached to the bulk water meter on the supply into the Tara Mines site to our Telemetry Master Station in the Water Conservation Office.*

*Acknowledging that their projected reduction from 440m<sup>3</sup>/day to around 215m<sup>3</sup>/day is significant, it still appears quite sizeable for what they state is primarily domestic usage.*

*We have no objections to the proposed development subject to the following being conditioned –*

*Within 3 months of a grant of permission, the applicants to liaise with the Water Conservation Office of Meath County Council Environment & Water Services Directorate to identify and implement further water saving measures and devices to reduce the potable water demand from the public water supply. The timescale for the implementation of the agreed water saving measures and devices to be agreed with the Water Conservation Office of Meath County Council Environment & Water Services Directorate”.*

- 3(a) The applicants are requested to submit a detailed summary of the current/proposed usage of public roads by Tara Mines. The applicants are requested to liaise with Mr Jim Gibney, Senior Executive Engineer Infrastructure (Road Design Section) Department of Meath County Council in relation to the matters outlined above.

**Applicants Response:** The applicants have stated that “No increase of usage of public roads by Tara Mines is envisaged by any aspect of this proposed development”. The Road Design Section of MCC have issued a response where they state that they have no objections to the proposed development. They recommend that a special contribution of 50,000 euros be attached to any grant of planning permission.

4. If any submission resulting from the above request alters your original proposals requiring the submission of additional data which would be considered significant you are required to publish a notice in an approved newspaper. This notice must contain as a heading the name of the Planning Authority, and be marked “Further Information” or “Revised Plans”, as appropriate. Please ensure that the format of your notice complies with Articles 35 (1) (a) of the Planning and Development Regulations 2008. You are also required to erect a site notice on the land or

structure to which the further information relates, and submit a copy to the Planning Authority . Your response to the above request must be accompanied by an original full page of the newspaper to this office as soon as it is published. If the planning application fee ha increased, due to any changes made, please submit the balance of the fee.

**Applicants Response:** The further information response was not deemed to have contained significant or material information/modifications that would warrant a re-advertisement and therefore revised public notices were not deemed necessary in this instance.

#### **4.0 Referrals**

##### **4.1 External Referrals**

- ❑ Dept of Communications, Marine and Natural Resources- reports received in relation to the initial information submitted by the applicant and a subsequent report received by the PA on 23/6/2011 in relation to the further information response –No objections subject to a number of conditions in relation to establishing a monitoring group and the detailed location of additional surface holes for water level monitoring. ✓
- ❑ EPA-Verbal comments received by telephone from Inspector Mr Niall Horgan prior to fi request being issued (on 1/9/2010) and subsequent to the fi response (on 21/6/2011) where they advised that environmental aspects of the EIS will be considered as part of the formal process of review of the IPPC licence. ✓
- ❑ HSE-No comments received.
- ❑ National Parks & Wildlife Section of Dept of Environment, Heritage and Local Government- No comments received.
- ❑ Archaeology Section of Dept of Environment, Heritage and Local Government- No comments received.
- ❑ OPW: Report returned, no observations on this development.
- ❑ Inland Fisheries Ireland- Comments received subsequent to the request for further information being issued. The main issues raised related to maintaining the integrity of watercourses, that the Tailings Storage Facility has adequate capacity to cater for the slimes generated by the propose extension and that there are emergency systems in place in case of harmful discharges to watercourses.

##### **4.2 Internal referrals**

- ❑ SEE Infrastructure (Road Design)- Report received-no objections subject to a special Roads contribution being attached in the event that a grant of planning permission is recommended.
- ❑ SEE Environment-Water Services-No objections subject to a condition being included regarding submitting further water conservation measures within three months of the granting of planning permission
- ❑ Assistant Scientist Environment Section--No objection consequent to fi submission. ,
- ? \* ❑ CFO, report outstanding.
- ❑ Heritage Officer-MCC-Report received-No objections.
- ❑ SEE Navan Area Office- No comments received.

## **5.0 Submissions**

No 3<sup>rd</sup> Party submissions received with regard to the planning application.

## **6.0 Development Plan Policy**

In all of the documents referred to below I am selecting what I consider to be the most relevant sections.

Meath County Development Plan 2007-2013 (MCDP) Section 6.6 of the Meath County Development Plan (CDP) 2007-2013 deals with Extractive Industry and Building Materials Production.

This section of the Meath CDP acknowledges that the county contains a variety of natural resources such as building materials products in the form of sand, gravel, stone reserves including high purity limestones and shale used in cement and magnesia manufacture and base metal deposits. The potential of these resources to underpin construction output and provide employment and economic growth in the local and regional economy is recognised as is the need to exploit same in an environmentally sound and sustainable manner. The CDP acknowledges that by their nature, aggregates can only be worked where they occur.

The CDP includes a number of policies which are considered relevant to the consideration of the current application. These were outlined within the previous planning report dated 8/11/2010.

### **6.1 Development Assessment Criteria**

It shall be required therefore that development proposals are framed to address in an authoritative manner issues such as:

- The extent of the land ownership and nature of the deposits;
- The protection or conservation of water resources whether above or under ground;
- Effective control of gaseous emissions and dust;
- Noise, vibration and subsidence;
- Transportation impacts;
- Restoration and landscaping;
- Protection of identified geological or geomorphological heritage features;
- Provision of adequate securities to “self police” compliance, and;
- Assessment of impact on existing rights of way and traditional walking routes.

### **6.2 Navan Development Plan, 2009-2015**

The application site is located outside the identified development boundary of the said plan.



## **7.0 Planning and Development**

Planning permission is sought in this application to carry out an extension to the long established practice of underground mining of lead and zinc minerals on lands under the control of Boliden Tara Mines within the townlands of Rathaldron and Liscartan. Further information was sought with regard to a number of items relating to hydrology and hydrogeology, water conservation and traffic and these items and the applicants responses to same were addressed earlier within this planning report.

The PA note that under NA/30126 which was subsequently appealed under PL. 17204034, PP was granted for an underground extension within Nevinstown but the area applied for in Liscartan was not permitted due to licensing issues. It is noted that the licensing issue has been overcome within Liscartan as verified in correspondence received from the Department of Communications, Energy and Natural Resources dated 8/12/2006.

It is considered that as the lands are identified as an operating mine and related facilities in the MCDP 2007-13, the sites are contiguous to the existing established and operating mine. Tara have mined successfully in the area for 33 years and have mining rights to the property, detailed consideration of alternative sites does not arise in this context. It is considered that the issue of alternatives has been well documented with the extensive planning history files by way of background on this issue and further discussion on this matter within this EIS is not merited.

### **7.1 Project Description- Mine Workings**

Rathaldron and Liscartan will be mined over a period of approximately 5 years at an average rate of 210,000 tonnes per annum. It is noted that no surface workings are proposed as part of this development. The lands have historically, and are being operated as agricultural (arable) land (above ground) and will continue to do so in spite of the extensive proposed mining works beneath the ground where workings take place at levels varying between 150 metres and 575 metres beneath ground levels. Access to the orebody will be obtained by an existing portal access (underground road from surface) on the Knockumber site. A vehicle route will then be provided via the existing orebody to the new ore body. Underground mining methods will be used with no surface access is proposed or required to mine either of the proposed Rathaldron or Liscartan extensions. Underground infrastructure including existing lunchrooms, fuel stations and ore passes will be used where possible. All ore produced will be transported by scoop and/or truck underground back to the existing mine for crushing and hoisting. In a typical full production year Liscartan and Rathaldron is expected to produce 170,000 tonnes of production ore and 40,000 tonnes of development ore. As the tonnage of ore coming from the existing mine will be reduced in the coming years the existing facilities will be capable of accommodating the proposed expansion. Waste rock will be either placed underground in the main mine; placed underground in new stopes, hauled to surface for temporary storage or redirected to be crushed prior to removal to surface for temporary storage. All existing mine equipment to load and haul waste rock will have the capacity to accommodate the proposed extension. Ventilation requirements will be met by the

existing mine ventilation system, fresh air will enter through existing fresh air routes, air will flow through the main working levels of the mine before rising to upper dedicated drifts which will carry the exhaust air back to existing underground and surface fan stations. Existing fan stations will remain unaltered in terms of air flows and overall performance. No ventilation related connections to surface other than those already established at the main mine site are required for the proposed Liscartan and Rathaldron extensions.

Backfilling will occur with sand fraction mill tailings and cement through an underground pipe network connected to the existing mine back filling facilities. Stopes (underground opening from which ore is extracted) will be backfilled through holes drilled down into the roof of the excavations and backfill poured down into the void over an extended period until the stope is filled. There will be no backfill related connections to surface in the Rathaldron/Liscartan or adjacent areas. In respect of dewatering, underground water will be collected at a central underground pumping station and piped back to the existing mine. Additional dewatering flow from Liscartan and Rathaldron is estimated at 15-30% of the current inflow of 11,979 m<sup>3</sup>/d which equates to approximately between 1,797 m<sup>3</sup>/d and 3,594 m<sup>3</sup>/d. The existing mine facilities have capacity to address this as the existing capacity is 21,600 m<sup>3</sup>/d approx. almost twice the current total flow intake. All mine drainage is treated and discharged under the conditions as set down within their IPPC License.

Tailings arising from the proposed Liscartan and Rathaldron operations (approximately 0.5 million tonnes) will be sent by pipeline to the Randalstown Tailings facility. This facility has been sized as per its grant of p/p (P96/919 and PL 17.104373 refer and as per its recently permitted surrounding wall height increase under NA-901452) to accept tailings from the mine areas. The recently permitted extension to the TSF will increase its capacity by a further 7.9 million tonnes so therefore adequate capacity is and will be available to cater for the tailings generated by proposed mining at Rathaldron and Liscartan. The IPPC licence includes provision for tailings from Liscartan and Rathaldron (as per the comments of Mr. Niall Horgan, Inspector with the EPA in comments made over the phone on 1/9/2010 and again on 21/6/2011). Mr. Horgan also stated that the EPA are constantly reviewing the IPPC licence and the Closure and Restoration plan for the full mine operation but are satisfied in principle that the proposed underground extension is acceptable

### **8.0 Environmental Impact Statement:**

An Environmental Impact Statement is required to be submitted by the applicants as per Local Government (Planning and Development) Regulations 2001 as amended- Schedule 5 Part 2 Section 2. The applicants have submitted the EIS as per the legislation above.

The Environmental Impact Statement has been prepared using the grouped format structure where each subject area as set down within the Planning & Development Regulations is addressed with separate descriptions provided for the proposed development, existing environment, impacts and mitigation measures. The EIS, its appendices and supplementary information have been examined.

An assessment of the EIS was conducted within the previous planning report dated 8/11/2010. As part of the further information response the applicants highlighted certain sections of the EIS, which are summarized below.

#### 8.1-Geotechnical Study-

This section was prepared by Australian Mining Consultants (AMC). An investigation of all geotechnical and mine design aspects of the proposed extension were examined and a detailed investigation of the hydrological aspects (by Water Management Consultants Ltd) of the proposed development as pertaining to the geotechnical study was undertaken. AMC have used extensive data held by Tara and includes work carried out for Bula.

The main feature of the geology in this area is the existence of the Castle-Liscartan fault Zone or complex, the eastern boundary of which represents the western boundary of the current Tara Mine. As a consequence of normal displacement on this fault zone some rock units lie stratigraphically above the Navan group beds but these exist above the level of the orebody.

The total reserves within Liscartan and Rathaldron amount to 1.1 million tonnes and this is further broken down into 0.9 million tonnes of inferred resources with a grading of 7.71% Zn and 1.53 % Pb and 0.2 million tonnes of indicated ore reserves grading 6.81%Zn and 1.48% Pb.

It is considered unlikely, given the geology in the area, that there will be any significant increase in the scheduled tonnages, although the figure outlined above may be upgraded with further drilling and evaluation.

The geological and geotechnical conditions in both Liscartan and Rathaldron are very similar to those in the main areas of the existing mine, including the Nevinstown area (formerly Bula) which lies immediately adjacent and to the east of Rathaldron. The only significant difference is the existence of the Liscartan-Castle Fault Complex which passes through the centre of Liscartan.

The EIS contends that it is very unlikely that underground mining would result in any discernable surface subsidence impact in the Liscartan and Rathaldron areas. This is due to a number of factors which include:

- The proposed depth of the mining.
- The limited ore thickness.
- The limited extent of individual stopes.
- The use of tight backfilling and a primary/secondary sequence in open stoping extraction.
- The limited stoping spans and the use of sequential backfilling in thin ores where “drift and slash methods” will be used.

- The use of cable bolt support in areas of poorer stope roof conditions.

In respect of ore recovery it is proposed to use the same system as currently operates within the mine which is longhole open stoping where a series of chambers are opened and when complete the chamber is backfilled with conditioned mine waste and the infilling chamber is allowed to gain strength before the adjoining chamber is mined. No reliance is placed on over burden strength. Resistance to settlement is based on the twin concepts of back filled stopes and crown pillars having a minimum thickness of 30m of rock, this 30m excludes the overburden. It is predicted that insofar as surface settlement occurs, it will be the result of overburden deforming to follow rock deformation without any thickness change. It is also confirmed that the overburden comprises of glacial tills and river alluvium deposits, materials which are relatively dense and tightly packed. Cemented backfill will be used for initial primary stoping and a mixture of cemented and uncemented backfill for later (secondary) stoping. Longhole open stoping is sequential, that is, stopes are mined in sequence and each stope is filled before mining of adjacent stopes is commenced.

#### 8.1.2 Comments from Referral Bodies:

This response was referred to the Department of Communications, Energy and Natural Resources for comment and they made the following observations

*"The Department acknowledges that the proposed extension to mining in the two townlands is a relatively minor development in the context of the larger mining programme that is under way at Navan, and that there should not be any impact at surface in the area for which permission is being sought".*

#### 8.2 Hydrology/Surface Water

In respect of water the principal issues arising include an assessment of any potential impacts on wells in the vicinity, will there any River Blackwater leakage down into the proposed mine areas, effects of dewatering, any impacts on surface water quality etc. All water used in plant operations is either sourced from the Boyne; from mine dewatering or precipitation. The maximum rate of abstraction from the River Boyne is 13,000m<sup>3</sup>/day. Water from the mine, surface run-off and water from the process plant passes through three stages of clarification before discharge to the Boyne. This discharge, in particular the quality of the discharge, is managed by the Environmental Protection Agency by means of the IPPC licence.

Within the EIS Tara Mines note the relevance of:

- Tara's extensive experience in a similar strata south of the river including management of water infiltration which averages 7,500 m<sup>3</sup>/day;
- Measurement of on site rainfall for over 35 years at a station recognised by Met Eireann;

- River Blackwater flow measurement by the OPW (over 50 years);
- Identification and characterisation of overburden soil units;
- Identification and characterisation of bedrock units;

The following issues were addressed:

- The stability of the strata beneath the River Blackwater and potential for water ingress into the mine workings beneath;
- The extent of dewatering which can be expected as a result of mining in Liscartan & Rathaldron and the impact of this;
- Definition of a detailed monitoring strategy to be implemented at the mine.

The area around the mine comprises flat undulating agricultural land. Levels along the Blackwater are recorded at 62m OD as it flows through the area of the Liscartan/Rathaldron application area. The levels of the land rise away from the Blackwater, reaching a level of 75 m OD in the centre of Rathaldron and 93 m OD southwest of Liscartan.

The River Blackwater defines the boundary between Liscartan and Rathaldron. This watercourse is a tributary of the River Boyne.

The Navan orebody extends to within a few metres of the Nevinstown orebody and to below 150 metres of the ground surface in the Liscartan and Rathaldron areas where it is covered by variable glacial drift. The mineable ore thickness ranges from 4 metres, the height of a drift to 80 metres. The thicker ore is generally found in the east of the deposit. The plan view dimensions of the orebody as currently defined are 5.7km (NE-SW) by 1.9km (NW-SE).

The deposit is hosted in limestones and dolomites of lower Carboniferous age. The Pale Beds are often permeable and cavities are present in certain areas. Drill holes may lose water to fractures when penetrating the Pale Beds due to the presence of a vadose zone within the Pale Beds resulting from dewatering of the mine workings. The principal unit overlying the Pale beds is the Upper Dark Limestones (UDL), which tend to be strongly bedded and contain abundant shaley horizons. In general, the UDL is considered to form a low permeability roof to the Pale Beds.

Most of the economic mineralization occurs within the Pale Beds as complex, strata bound tabular lenses. The lenses strike between NE and ENE, parallel to the major faults. The lenses are frequently dislocated by faulting. The ore occurs within the lenses as high grade massive sulphides or lower grade disseminated sulphides. The degree of mineralization is generally greatest close to the base of the Pale Beds, within a basal micrite and associated dolomites.

Groundwater inflows to the Tara workings are derived from the following sources:



- District scale lateral groundwater flow in the pale Beds.
- Downward leakage of groundwater from the UDL.
- Recharge derived from precipitation.
- Leakage from the River Blackwater.

Most of the inflow to the workings occurs via discrete, fracture controlled inflow zones. Their location is determined by a combination of structure, local jointing and lithology contrasts. The UDL sequence tends to inhibit the downward movement of groundwater into the Pale beds over these areas.

The solid geology at Liscartan/Rathaldron comprises Lower Carboniferous rocks, cut by the NE to ENE trend faults and fault zones. Variable thickness of glacial till and alluvial deposits blanket the area. The superficial deposits attain thickness in excess of 30 metres in the buried Whistlemount Channel to the south of Rathaldron. A variable overburden thickness of between 5 and 30 metres covers the Liscartan and Rathaldron areas.

Current in-flows of water to the mine are virtually all derived from district scale flow. Monitoring data would indicate that the Pale Beds is the main groundwater bearing unit in the main mine, Nevinstown and within the current application site areas of Liscartan and Rathaldron. The overlying UDL contributes a minor amount of water, but mostly as a result of vertical downward leakage as the underlying Pale Beds become dewatered.

Dewatering of the Liscartan/Rathaldron application area will be carried out in a similar manner to that used within the existing mine areas. All new inflows will be collected and managed similar to present operations. It is estimated that approximately 2-3 million cubic metres of groundwater may need to be removed to allow mining of the proposed extension. There is sufficient flexibility and storage in the current water management system to accommodate all anticipated additional water collected and pumped from underground.

Predicated groundwater inflow chemistry for the Liscartan/Rathaldron application area is similar to that presently experienced within the Navan mine and at Nevinstown. There is virtually no chemical signature of river water in the underground water.

Under the current water management system, water from underground is pumped to the Tailings Storage Facility (TSF) where it is reclaimed for use in the mine and mill. Surplus water is discharged to the River Boyne through a storage pond regulated under the Tara IPPC licence. No significant changes to the water quality is anticipated following the proposed expansion into the Liscartan/Rathaldron area.

A programme of borehole drilling was carried out which comprised over nearly 50 boreholes both on surface and underground. As is stated above the overburden comprises of low permeability brown and grey glacial till containing more permeable but isolated lenses of sand and gravel. Till thickness varies between 0-27m with a 6-7m average. Beneath the river the overburden is part eroded away completely while in other places the



river silts and gravels overlie the remaining till. The applicants suggest that significant porosity is probable within the overburden. Groundwater levels in the till are generally 1-5m below ground in areas unaffected by mine draining but within the zone of depression arising from dewatering inevitably fall to much deeper levels. Cross sections accompany the application which map the current ground water line. There are no projected future variations in the level over time as a consequence of development in Rathalron/Liscartan. The Upper Dark Limestone (UDL) layer has relatively low permeability. It lies between the overburden and the Pale Beds beneath much of the river and shows no significant cavity development in the Liscartan/Rathalron area. Tara Mines experience to date has been that ground water inflows are generally only encountered in structures (fractures, joints and fissures) in the Pale Beds and not along primary bedding planes. The majority of ground water inflows are associated with structural features as all ground water movement in the Upper Dark Limestone and Pale Beds is structurally controlled.

Hydrochemical measurements indicate that there is no chemical signature of river water inflows to the main mine near the river pillar or in other areas of workings. This indicates that the river water does not contribute a significant component of water to the mine. The flow path for the river water to enter the mine would result in water firstly percolating through overburden and bedrock. It is expected that the chemistry of infiltrating river water would be altered along the flow path. The overall rate of leakage is expected to remain consistent with time, even as the Liscartan/Rathalron mine develops and as development occurs perpendicular to the river channel and the area of working below the river will remain relatively constant. The EIS states that statistically there is no correlation between monthly rainfall and average monthly mine groundwater pumping.

A biological assessment of the river was carried out in 2001 to establish if the mining activity was having any adverse impacts on the aquatic environment. The study concluded that aquatic life had remained relatively stable at four sites on the river Blackwater during the study period.

Currently the mine pumps up to 11,929 m<sup>3</sup>/day to dewater the workings. Inflows from discrete flows and general seepage are routed to a general sump from where the water is pumped to surface. Inflows are regularly mapped, sampled and measured by Tara. The water is discharged to the river and the rate of discharge to the river is subject to a condition of the IPPC license. Liscartan/Rathalron would add 2,642 m<sup>3</sup>/day to the overall total discharge. The addition of Liscartan/Rathalron to the overall dewatering discharge is not significant having regard to the mean flows in the river and the discharge is subject to IPPC licensing.

Any additional groundwater flow from the proposed extension is not expected to alter the overall chemistry of the discharge. It is demonstrated in table 8.3 of the EIS that the existing effluent discharge system to the Boyne is not affecting the chemistry of the water downstream of the discharge diffuser.

The orebody at Liscartan/Rathalron is geologically and geochemically identical to the ore body in the main Tara Mine and therefore there will be no significant difference in

the water chemistry. It is therefore predicted that there will be negligible impact associated with discharge of water resulting from this development.

The existing groundwater monitoring programme will be extended into Liscartan/Rathaldron to examine if there is risk of greater than expected risk of water inflow to the proposed mine areas, although this risk is presented as being of low grade.

The outputs indicate that the mining operations would not significantly alter groundwater levels and flow when pre and post mining predicted conditions are compared.

There will be a long period of infiltration of rainwater to groundwater with a projected residence time of up to 10 years in the over burden which sustains the near surface groundwater level regardless of draw down in underlying bedrock,

#### 8.2.2 Comments from Referral Bodies:

This application was referred to the Department of Communications, Energy and Natural Resources for comment and they made the following observations in relation to hydrology and monitoring:

*"In its response to the request for further information, the developer says that, once production mining has commenced in the application area, additional surface holes will be required for water level monitoring and identifies five currently planned general locations for these holes. It should be a condition that exact locations for these, and timing of their installation, should be discussed and agreed with the local authority as soon as possible prior to the commencement of production."*

*It is strongly urged that, as a condition of the Planning Permission, an environmental monitoring group be established, with the agreement of the Planning Authority as to its composition, to ensure a satisfactory overview of the progress of the development, both in the application area and at the rest of the mine. Such a group should include representation from this Department and the EPA, as is the case with other base metal mines".*

The further information response was also referred to the SEE Environment (Water Services Section) Department of MCC and he has no objections to the proposed development subject to a condition being attached in relation to the applicants submitting further water conservation measures within three months of the final grant of planning permission in the event that a grant of planning permission is being recommended.

#### **9.0 IPPC Licence**

As outlined previously, the application site is subject to a reviewed IPPC licence which is managed by the EPA. Section 34(2)(c) of the Planning & Development Act 2000, as amended, states that "Subject to section 98 (as amended by section 256 of this Act) of the Environmental Protection Agency Act, 1992, and section 54 (as amended by section 257

*of this Act) of the Waste Management Act, 1996, where an application under this section relates to a development which comprises or is for the purposes of an activity for which an integrated pollution control licence, or a waste licence is required, a Planning Authority shall take into account that the control of emissions arising from the activity is a function of the Environmental Protection Agency”.*

Under the terms of the Act, the Environmental Protection Agency cannot issue a licence unless it is satisfied that

- i.) Any emissions from the activity will not result in the contravention of any relevant air quality standard specified under section 50 of the Air Pollution Act, 1987, and will comply with any relevant emission limit value specified under section 51 of the Air Pollution Act, 1987;
- ii.) Any emissions from the activity will comply with, or will not result in the contravention of any relevant quality standards for waters, trade effluents and sewage effluents and standards in relation to the treatment of such effluents prescribed under section 26 of the Local Government (Water Pollution) Act, 1977;
- iii.) Any emissions from the activity or any premises, plant, methods, processes, operating procedures or other factors which affect such emissions will comply with, or will not result in the contravention of any relevant standard including and standard from an environmental medium prescribed under regulations made under the European Communities Act, 1972, or under and other enactment;
- iv.) Any noise from the activity will comply with, or will not result in the contravention of, any regulations under section 106;
- v.) Any emissions from the activity will not cause significant environmental pollution;
- vi.) The best available techniques will be used to prevent or eliminate or where that is not practicable, generally to reduce an emission from the activity;
- vii.) Having regard to Part III of the Act of 1996, production of waste in the carrying on of the activity will be prevented or minimized or, where waste is produced, it will be recovered or, where that is not technically or economically possible, disposed of in a manner which will prevent or minimise any impact on the environment;
- viii.) Energy will be used efficiently in the carrying out of the activity;
- ix.) Necessary measures will be taken to prevent accidents in the carrying on of the activity and, where an accident occurs, to limit its consequences for the

development is located between 150-575 metres beneath ground level and the report from the Heritage Officer does not identify any particular areas of concern in this regard. In terms of monitoring, significant monitoring is conducted by the applicants in terms of noise, vibration, dust, water etc and these results are all submitted to the relevant licensing authorities for examination. Given that the proposed mine extension is underground there is no impact upon rights of way or walking routes.

Therefore having regard to the ~~fact that the~~ applicants' <sup>submission of</sup> ~~have submitted~~ a planning application with adequate environmental assessment to accompany it, including setting out of mitigation factors to be implemented, the PA are satisfied that the proposed underground mine extension would accord with the proper planning and sustainable development of the area.

#### **14.0-Conclusion and Recommendation**

Having regard to the designation pertaining to the application site i.e. 'mining and related facilities' in the Meath County Development Plan 2007-13, the site's location contiguous to the existing mine, the experience that Tara Mines Ltd have accumulated in successful mining in the area for in excess of 30 years and Boliden Tara Mines Ltd mining rights to the property, I consider that the principle of the proposed development to be acceptable. Having regard to the comments received from the various internal and external bodies/departments, I consider that the proposed development would not be prejudicial to public health, would accord with the proper planning and development of the area and the policies and objectives of the current Meath County Development Plan 2007-13. I therefore recommend that a grant of planning permission be issued subject to the following conditions:

- 1 The proposed development shall be constructed, operated, decommissioned, rehabilitated and closed in accordance with the complete documentation submitted as part of the planning application including drawings together with the contents of the Environmental Impact Statement as submitted 16<sup>th</sup> September 2010 and 6<sup>th</sup> May 2011, except as otherwise required by conditions hereunder.

Reason: To clarify the detailed development proposals, methods of operation and proposals for final closure authorised by this permission.

- 2 This grant of planning permission provides for mining and all associated activities limited to the Liscartan and Rathaldron areas identified within Figure 1.1 of the Environmental Impact Statement and within the plans, particulars and Environmental Impact Statement as submitted to the Planning Authority on 16<sup>th</sup> September 2010 and 6<sup>th</sup> May 2011

Reason: To clarify the extent of permission.

- 3 Prior to the commencement of operations on site the developer shall draw up and submit for the written agreement of the Planning Authority an updated Closure

Restoration and Aftercare Management Plan for the Liscartan and Rathaldron Extension Area;

- (a) In respect of closure of the mine, the following shall apply:
- i) The developer shall notify the Planning Authority when closure is imminent (within 12 months) and when it has commenced.
  - ii) Within 12 months of closure and for every 12 month period thereafter, until otherwise agreed in writing with the Planning Authority, the developer shall submit a report to the Planning Authority containing the following information:
    - The nature and extent of rehabilitation work carried out during the past year
    - The nature and extent of the rehabilitation work to be carried out during the coming year
    - Any changes in conditions of the project that may affect the closure plan during the next three years.
    - The results of all monitoring described in the closure plan
  - b) Arising from the reports and monitoring, in the event of the licensing authorities deeming that the mine closure plan, including the financial assurance requirement, is inadequate to properly rehabilitate the site due to changed conditions, then the Planning Authority shall direct the developer to submit proposals for an increase in the amount of financial assurance as appropriate, for the agreement of the Planning Authority, or in default of agreement, shall be as determined by An Bord Pleanála. (29)
  - c) In the event of the developer wishing to amend and/or alter the mine closure plan, then the developer shall formally submit complete details of such proposed amendments / alterations for the agreement of the licensing agencies, or in default of agreement as shall be determined by An Bord Pleanála. The licensing agencies shall be empowered to require changes to the proposed amendments / alterations. The mine closure plan shall not be deemed to be altered until the Planning Authority formally notifies the developer of the acceptability of the alterations / amendments. in writing (29)

Reason: In the interest of proper planning and sustainable development and in the interest of good mining practice, that phased, satisfactory closure, and rehabilitation of the underground mine workings within the Liscartan and Rathaldron Extension area, should take place on completion of ore extraction there.

- 4 The developer shall furnish the Planning Authority with an independent annual groundwater monitoring report for the life of the development, which shall detail changes in groundwater level over the year and trends over time. The report shall also include details of the following:
- (i) Water levels in the monitoring wells shall be measured at monthly intervals for the first twelve months after completion; thereafter, monitoring shall take place at least two monthly intervals.
  - (ii) A map showing the extent of the Cone of Drawdown for the Liscartan and Rathaldron ore bodies shall be drawn up, based on data collected, at the end of



January and August for two years from the date of this grant of permission. Thereafter, it shall be drawn up at the end of August each year.

- (iii) Groundwater samples for analysis shall be taken from at least nine of the wells in the monitoring network to characterise groundwater chemistry of the site. Sampling shall take place on stabilisation of the wells after completion. The samples shall be analysed for PH, electrical conductivity, suspended solids, the major anions and cations, ammonia, iron, manganese, lead and zinc. The analyses shall be repeated every five years.
- (iv) The developer shall record the daily volume of water abstracted from the Liscartan and Rathaldron extension. That volume shall be differentiated from the abstraction for the existing mine at Tara.
- (iv) The geological logs and completion details of the wells drilled for the groundwater monitoring network,
- (v) The results of the monitoring of underground flows and quality.
- (vi) The results of the groundwater modeling
- (vii) The results of the annual water balance.

Subsequent reports on groundwater monitoring shall be produced every two years after the initial report. A groundwater model of the Liscartan and Rathaldron areas shall be developed in order to be better able to predict the amount of dewatering required, the resulting increase in the size of the cone of drawdown over the life of the proposed ore extraction and any potential impacts. The model shall cover the full extent of the Liscartan and Rathaldron areas and include the following information:

- (viii) Geological and hydrogeological information from the boreholes drilled for the groundwater monitoring network shall be included as part of the input to the model.
- (ix) The groundwater modeling study shall be completed within one year from the date of this grant of permission. The model shall be revised every five years. The model output in time shall form an integral part of the closure plan for the Liscartan and Rathaldron orebodies.
- (x) A comprehensive mine water balance shall be computed for present and future operations. The computation shall be done on a monthly basis.

The report shall be interpretative and provide a non-technical summary of the data and trends, to the satisfaction of the Planning Authority. This condition together with others under the heading of groundwater may be combined in to a single annual report.

Reason: To provide comprehensive base data on groundwater within and in the vicinity of the development site and to provide prediction of the future core of draw down and any related impacts which may occur.

- 5 The developer shall furnish the Planning Authority with an independent annual water balance report for the site and its operations for the life of the development. The reported data should include, but not be limited to, the following: rainfall; daily



estimated infiltration; daily estimated surface water run off; daily estimated evapotranspiration; daily records of abstraction from and discharge to the river; daily records of river flow upstream of the site abstraction; daily water pumped from the mine and estimated contribution of various sources including river water, groundwater storage, groundwater transmitted and river leakage to the site water budget. The report shall be interpretative and provide a non-technical summary of the data and trends, to the satisfaction of the Authority. This condition together with others under the heading of groundwater may be combined in to a single annual report.

Reason: In the interests of proper planning and sustainable development and to facilitate ongoing monitoring of the development

- 6 The developer shall furnish the Planning Authority with an independent annual groundwater quality report for the life of the development, which shall detail changes in groundwater quality over the year and trends over time in the mine workings and adjacent areas. The report should provide details of the quality assurance and sampling methodologies. The report shall be interpretative and provide a non-technical summary of the data and trends, to the satisfaction of the Authority. This condition together with others under the heading of groundwater may be combined in to a single annual report.

Reason: In the interests of proper planning and sustainable development and to facilitate ongoing monitoring of the development

- 7 The developer shall make such provision as is necessary to ensure immediate mitigation of any water supplies that may be adversely affected during all stages of the development, with the full cost of all such measures to be borne by the developer. In the event of disruption all operations causing such disruption shall be immediately reduced or ceased as appropriate until the water supply affected has been restored or replaced.

Reason: To ensure the maintenance of continuous adequate potable water supply in the interests of public health and agricultural land use.

- 8 Prior to commencement of operations at Liscartan and Rathaldron, the developer shall, in association with its consultants, carry out a range of verifiable tests to determine laboratory and insitu strength of the backfill as a function of its ordinary Portland cement content, relevant sand size, water content and curing time for the range of stope backfill heights and imposed loads projected for Liscartan and Rathaldron. The insitu tests shall be carried out on extracted core samples of appropriate age. The results of such tests shall be notified to the Planning Authority via a detailed report including non technical summary.

Reason: In the interest of proper planning and sustainable development and ensuring short and long term surface stability and safety of mine backfill structures.

- 9 Prior to the commencement of development the developer shall establish a fund dedicated to providing for the full costs of the Closure, Restoration and Aftercare Management Plan as set out in the existing CRAMP or any updated version thereof.

This fund shall include but shall not be limited to, provision for:

- (a) The closure and rehabilitation of the entire mine site in the event of any of the enforced closure scenarios as set out in the Closure, Reclamation and Management Plan.
- (b) The planned final closure and restoration of the entire mine site as set out in the Closure, Restoration and Aftercare Management Plan.

The amount of the fund shall, at all times, be sufficient to meet the costs of rehabilitation of all extant works and impacts (whether existing or predicted) to the satisfaction of the licensing agencies, being the Planning Authority, the Environmental Protection Agency and the Department of Communications, Energy and Natural Resources.

The fund shall be sufficient without reliance on the value of plant, equipment or other such assets.

The developer shall provide security in order to guarantee the availability of the fund in the event of financial failure or any other default. The type of security and its means of release/recovery shall be agreed with the Planning Authority in consultation with the Environmental Protection Agency and the Department of Communications, Energy and Natural Resources. It shall be irrevocable and it shall be expressly designate to the Planning Authority as beneficiaries in the event of the developer being unable to implement the Closure Restoration and Aftercare Management Plan or any of the enforced early closure plans envisaged therein. The security shall be maintained for the duration of the development including final rehabilitation and closure of the site as certified in writing by the Planning Authority, the Environmental Protection Agency and the Department of Communications, Energy and Natural Resources.

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The amount of the fund shall be agreed in writing with the Planning Authority in consultation with the Environmental Protection Agency and the Department of Communications, Energy and Natural Resources ~~within six months of the final date of this grant of planning permission.~~ and updated in line with the financial provisions in the CRAMP or any revision thereof. 72.

In default of agreement with regard to the amount of the fund the amount of the fund same shall be determined by An Bord Pleanala.

Reason: To ensure satisfactory completion of the development and to provide for the proper rehabilitation of the site in the event of early closure and in the long term.

10

- (a) Slimes arising from the processing of tailings at Liscartan and Rathaldron shall be disposed of and managed within the Randalstown Tailings Management Facility, permission for which was granted by An Bord Pleanála under Planning 17.104373.
- (b) The developer shall within one year of commencement of development at Liscartan & Rathaldron and thereafter over the life of the proposed development submit for the written agreement of the Planning Authority annual returns showing:
  - (i) The volumes of slimes arising from processing of tailings from Liscartan & Rathaldron which have been disposed of to the Tailings Management Facility.
  - (ii) Cumulative volumes of slimes arising from the processing of tailings from Liscartan & Rathaldron and other Tara Mine areas which have been disposed of to the Tailings Management Facility.

Reason: To ensure proper disposal and management of slimes arising from tailings associated with the proposed development and to ensure that ongoing capacity for disposal of slimes at the Tailings Management Facility can be provided over the life of the development.

- 11 Any changes in the characteristics of the slimes associated with the processing of tailings from Liscartan & Rathaldron which results in those characteristics being materially different from those described in the Environmental Impact Statement and which are likely to impact on the drainage/structural stability of the Tailings Management Facility and on the deposition rates shall be the subject of a further application for permission to the Planning Authority.

Reason: To enable the Planning Authority to reassess and control any material changes in the predicted impact of the development and to reassess the Closure Plan for the Tailings Management Facility.

- 12 The proposed development shall take place in accordance with a Mine Design & Development Plan which shall be submitted for the written agreement of the Planning Authority and consist of the following:
- (a) Initial Phase: Within 3 months from the date of this grant of permission the Developer shall prepare and submit to the Planning Authority, the following information:
    - i) The mine design criteria to be adopted for detailed mine planning and design (to ensure stability during mine development, ore extraction and post-closure). These criteria shall include provisions for surface crown pillars; stopes and backfilling operations (to include proposed type(s) of backfill material).

- ii) A geotechnical risk assessment of potential water and mud inflows into the mine and the mitigation measures to be implemented, if any, arising from this assessment.
- iii) Confirmation of the strength and stiffness of the proposed backfill materials, including the results of laboratory and insitu tests on the type(s) of proposed backfill materials. The report submitted shall include details of the proposed backfill materials; the testing methods adopted for the strength and stiffness measurements; the accredited laboratory used to carry out the testing; the testing certificates;
- (b) Initial Phase: Within 6 months from date of grant of this permission, and before commencement of extraction of ore, the Developer shall submit to the Planning Authority the following investigation results; the results shall also be incorporated into the review of the mine design.
  - i) A detailed investigation of the potential occurrence of cavities in the Pale Beds and the Upper Dark Limestone Formations; (The scope and extent of this investigation shall be agreed in advance with the Planning Authority); related issues of surface stability, sinkhole development groundwater inflows and expansion of the cone of drawdown shall also be addressed.
- (c) Initial Phase: Within 3 months from date of grant of this permission the Developer shall submit detailed proposals to the Planning Authority for surface and underground monitoring of the proposed mine extension. *These proposals shall also include but not be limited to:*
  - i) Surface precise leveling: station locations, base station locations, survey methodology (accuracy and frequency).
  - ii) Displacement monitoring across significant fault structures: locations, methodology (accuracy and frequency).
  - iii) Stress measurements at a number of selected pillars: locations, methodology (accuracy and frequency).
  - iv) Displacement measurements within the hanging walls of selected stopes, and convergence measurements within selected stopes: locations, methodology (accuracy and frequency)..
- (d) Detailed Review Process: First Year: Within one year from the date of grant of this permission, the Developer shall submit to the Planning Authority (in an agreed format) a detailed review of the mine design criteria; the geotechnical risk assessment; surface subsidence; and surface and underground monitoring. This review shall present proposed modifications, if any, to the design and monitoring of the workings, and the basis for such modifications, and shall include:
  - i) Copy of a mine plan at an agreed scale, showing the extent of the mine workings, backfill areas, surface features and all geotechnical monitoring locations.
  - ii) Precise leveling results for each survey station
  - iii) Displacement and stress monitoring results
  - iv) Results of strength and stiffness tests carried out on backfill materials, referenced to backfill locations.
  - v) Plan showing a comparison of the predicted vs. measured surface subsidence.
  - vi) Review of the mine design criteria
  - vii) Review of the geotechnical risk assessment

- viii) An outline mine development plan for the subsequent two years (to include inter alia plans and sections (at an agreed scale) of the mine development infrastructure; the pillar and stope layout, and backfill areas.)
- (e) Rolling Review: Every two years, from the date of the first review, the Developer shall submit updated information, as outlined at (d) above, for review by the Planning Authority. Submissions by the Developer shall include proposed modifications, if any, to the design and monitoring of the workings, and the basis for such modifications.

Reason: It is considered reasonable in the interests of proper planning and sustainable development that the developer shall provide a Mine Design and Development Plan which shall incorporate Mine Design and Development parameters, details of surface and underground monitoring infrastructure, results of monitoring and provision for a detailed review process to facilitate modifications to the mine design and monitoring infrastructure, over the life of the proposed development.

- 13 The developer shall facilitate the Planning Authority in preserving, recording or otherwise protecting archaeological materials or features that may exist within the site. In this regard, the developer shall -
  - (a) Notify the Planning Authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,
  - (b) Employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and
  - (c) Provide satisfactory arrangements for the recording and removal of any archaeological material which may be considered appropriate to remove.
  - (d) The developer shall be prepared to be advised by the Development Applications Unit with regard to any necessary mitigating action (e.g. preservation in situ or excavation) and should facilitate the archaeologist in recording any material found.
  - (e) The Planning Authority and the Development Applications Unit shall be furnished with a report describing the results of the monitoring. .

Reason: To ensure the continued conservation/preservation (either in situ or by record) of places, caves, sites, features or other objects of archaeological interest.

- 14 (a) Any changes to the method of mineral extraction and processing which result in a material change to the characteristics of the tailings shall be subject to an approval of the Planning Authority prior to those changes being made.
- (b) Any material changes in the properties of the ore shall be notified to the Planning Authority.



Reason: In the interest of development management and protection of the environment.

- 15 Where the Planning Authority considers that mining within the main mine and/or proposed extension within Liscartan and Rathaldron has ceased for a period of in excess of six months and where the developer can offer no reasonable grounds to dispute this opinion, then the Planning Authority shall be empowered to notify the developer of their intention to activate the appropriate Closure, Restoration and Aftercare Management Plan and of their intention to call upon the financial guarantees offered within sixty days.

Reason: In the interest of orderly development.

- 16 Prior to the commencement of development a certificate from a suitably qualified independent consultant engaged by the developers confirming the structural soundness and stability of the proposed mine extension at Liscartan and Rathaldron, the subject of this permission shall be furnished to the Planning Authority. This certificate shall be based on an independent audit of the design, construction and operation of the proposed mine extension. This audit shall be carried out in line with best practice procedures for mining.

Reason: To provide for independent certification of the proposed dam in the interest of public safety and public health.

- 17 The developer shall submit to the Planning Authority at six monthly intervals a schedule of production output for the previous six months and projected production output for the following two years. The schedules shall include as a minimum, value for ore mined, total lead and zinc concentrate produced and total tailings generated.

Reason: To provide assistance to the Planning Authority in planning for management and monitoring resources and for likely changes in physical and environmental impacts.

- 18 Prior to the commencement of development, the developer shall pay to the Planning Authority the sum of 50,000 Euro as a special contribution towards the expenditure to be incurred by Meath County Council in respect of the cost of works necessary for the maintenance of the local road infrastructure approaching the mine which allow for deliveries, machine transfer and maintenance off site to/from the main mine site. The charge herein referred to shall apply for the period from the date of this permission to the 31 st December 2011 and will be subject to review on that date and to annual review thereafter unless previously paid.

In the case of expenditure that is proposed to be incurred, the requirement to pay this contribution is subject to the provisions of Section 48 (2) of the Planning and Development Act 2000 as amended.

Reason: It is considered that the developer should contribute towards the expenditure that was and/or that is proposed to be incurred by the Council in respect of the provision of road improvement works facilitating the proposed development.

- 19(a) All monitoring shall be undertaken in accordance with the most up to date international scientific methods and to the satisfaction of the Planning Authority
- (b) The developer shall keep records<sup>1</sup> of all monitoring carried out on foot of this permission of all relevant permits/licences under other statutory instruments until final closure and restoration of the tailings facility and mine site has been achieved. These records shall be submitted to the Planning Authority on a quarterly basis and as soon as is practicable after the relevant period to which they relate. All records shall be available for inspection at the offices of the Planning Authority during normal opening hours.
- (c) The applicant shall submit to the Planning Authority a summary report on an annual basis of all monitoring carried out in the previous year.
- (d) The developer shall pay an annual sum to be agreed in writing with the Planning Authority within three months of this grant of planning permission as a contribution towards the cost of evaluating the monitoring required under this permission. This sum shall be paid quarterly with the first payment being made not later than three months after the commencement of development. The amount of the contribution shall be reviewed annually and agreed with the Planning Authority.

Reason: To ensure satisfactory monitoring of the development.

- 20 All mitigation measures as proposed within the Environmental Impact Statement submitted to the Planning Authority on 16/9/10 and on 6/5/2011 regarding the proposed development both during the construction, operation and closure periods shall be fully implemented.

Reason: To minimize nuisance to the public.

- 21 All temporary berms and temporary stockpiles of overburden materials which are to remain intact for periods of greater than six months shall be graded, top soiled and grass seed as soon as practicable after being constructed. Dust suppression sprays shall be used during periods of dry weather until a stable grass covering has been established.

Reason: To minimize nuisance to the public from dust

- 22 In the event of the quantities of water ingress into the proposed mine extension exceeding those predicated in the Environmental Impact Statement to the extent that in the opinion of the Planning Authority remedial measures are necessary, such measures shall be implemented without delay as shall be agreed in writing with the Planning Authority.

Within three months of the commencement of development the developer shall submit to the Planning Authority for written agreement an action plan to be implemented in the event of excessive water ingress. Such a plan shall include but shall not be limited to proposals for an alarm system to alert the developer of excessive water ingress.

Reason: In the interest of prevention of pollution.

- 23 All vehicles carrying inert material, rubble or soil on the public roads shall be suitably covered.

Reason: In the interest of amenity.

- 24 Prior to the commencement of development the applicants shall pay to the Planning Authority the sum of 50,000 euros as a contribution towards the expenditure to be incurred by Meath County Council in respect of the cost of the provision of an art feature or other social amenities/infrastructure

Reason: It is considered that the developer should contribute towards the expenditure that was and/or that is proposed to be incurred by the Council in respect of the provision of social infrastructure works.

- 25 All service lines and cables servicing the proposed development shall be located underground except where otherwise agreed in writing with the Planning Authority.

Reason: In the interest of orderly development and visual amenity.

- 26 In the event of the failure of any tailings retaining structure, any delivery or return pipeline, all mining operations shall cease and production shall not be

recommended until such time as satisfactory arrangements for disposal of tailings have been provided and agreed in writing with the Planning Authority.

Reason: To minimize the risk of pollution and in the interest of public health.

- 27 All oil and fuel storage tanks, chemicals and all other materials that pose a risk to waters if spilled, shall be stored in designated storage areas, which shall be bunded to a volume of 110% of the capacity of the largest tank or container within the bunded area(s). Filling and draw-off points shall be located entirely within the bunded area(s). Drainage from the bunded area(s) shall be diverted for collection and safe disposal. The use of bunded pallets for storage of drums etc is acceptable.

Reason: In the interest of public safety.

- 28 The developer shall prepare a waste management plan for the development phase, to maximise reuse or recycling of waste and minimise the amount of waste consigned to landfill. Priority shall be given to re-use or recovery of waste in preference to disposal. This shall be submitted for the written agreement of the Planning Authority.

The plan shall as a minimum address the following:

All demolition and construction waste arising on the site shall be segregated into different clearly marked skips (such as canteen waste, timber, plastics, plaster board, waste solvent tubes, blocks, etc). All surplus demolition waste, construction waste and clean soil to be removed off-site shall be brought to permitted site or facility.

A register shall be maintained of the movement of waste off-site, to include an estimation of the quantities of waste removed, name and waste collection permit number of the Contractor/s engaged to collect the waste, details of the recovery or disposal facility or facilities used. The developer shall retain all recovery or disposal receipts. A prohibition on the burning or burying of waste on the site.

Reason: In the interest of proper planning and sustainable development.

- 29 Within 3 months of the final grant of planning permission, the applicants shall liaise with the Water Conservation Office of Meath County Council Environment & Water Services Directorate to identify and implement further water saving measures and devices to reduce the potable water demand from the public water supply. The timescale for the implementation of the agreed water saving measures and devices shall be agreed with the Water Conservation Office of Meath County Council Environment & Water Services Directorate”.

Reason: In the interest of proper planning and sustainable development and water conservation.

30 Prior to the commencement of development the applicants shall submit precise details of a monitoring plan for the proposed Liscartan/Rathaldron extension which shall include monthly water level monitoring of surface holes (or more frequently where deemed necessary). The applicants shall submit a map illustrating the precise location of the additional monitoring surface holes to the Planning Authority and details of the timing of their installation for the written agreement of the Planning Authority.

Reason: In the interest of proper planning and sustainable development

(179) 31 Prior to the commencement of development an ~~E~~ Environmental ~~M~~ Monitoring ~~G~~ Group shall be established, with the written agreement of the Planning Authority as to its composition, to ensure a satisfactory overview of the progress of the development, both in the application area and at the rest of the mine. Such a group ~~shall~~ <sup>should</sup> include representation from Department of Communications, Energy and Natural Resources and the Environmental Protection Agency ~~and~~ <sup>Meath County Council</sup>

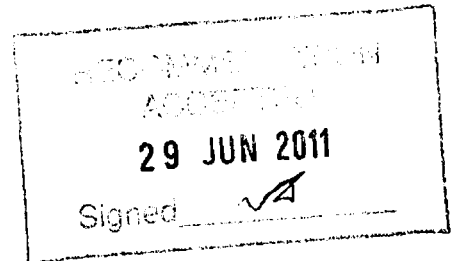
Reason: In the interest of proper planning and sustainable development ~~and~~ <sup>to facilitate effective monitoring procedures.</sup>

Fogel & Briu  
23/6/2011

Richard S.V.  
24/6/2011

Agreed

P. Gallagher S.P. 26/6/2011





## Planning Report

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**To::** Fiona Redmond, Senior Executive Planner

**From:** Fergal O'Bric, Executive Planner

**File No:** NA-101054

**Applicant:** Boliden Tara Mines Ltd

**OS No:** 25

**Road No:** N3

**Date** 8/11/2010

**Townland:** Rathaldron and Liscarton

**Description of Development:** Planning permission is sought for mining of the current uninterrupted orebody into a new area of Liscarton and Rathaldron solely by underground means. The development would use similar underground methods to those currently being employed.

The proposed extension of the underground mining operations into the application area located to the northwest of the main orebody would be accessed from the existing underground workings. The surface characteristics and features of the application area will not be altered by mining activity and there will be no surface development associated with this proposal. The necessary mining infrastructure for its operation is already in place. This includes administration, processing, tailings storage, ventilation, effluent storage and road/rail links to Dublin Port.

An Environmental Impact Statement accompanies this planning application. All operations will be carried out under the existing conditions of the company's Integrated pollution Prevention Control Licence (IPPCL No. P0516-01) issued by the Environmental Protection agency (EPA).

**Notice on Site:** yes, on 4/11/2010

**Date Decision Due:** 10/11/2010

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### Site Description

Tara Mines Ltd is the largest Lead-Zinc mine in Europe and is located at Knockcumber circa 2km from Navan, planning permission is sought in this application for an extension to mining operations. The application site comprises of circa 57 ha of land in agricultural use at present in the townlands of Rathaldron and Liscarton. The lands are located to the north west of Navan (north of the existing mine) and are bounded by unzoned agricultural lands to the north, the mine itself and a large number of individual one off dwellings to the south, the River Blackwater traverses the proposed extension area in the eastern section of the site. The expansion of Navan in recent years has resulted in residential development to the east closer to mine lands. The development at Liscarton and Rathaldron will involve the mining of a current uninterrupted orebody by underground means only and represents a natural and logical extension of the existing ore body. The River Blackwater passes over the ore body which forms a surface intersection feature between what is referred to as the main ore body and the Rathaldron & Liscarton ore bodies.

### **Planning History**

In this part of the report, below are what is considered to be the principal planning applications pertinent to the current planning application site: .

- Parent planning permission P73/1325 p/p was granted for mining facilities in the townlands of Knockcumber, Randallstown, Whistlemount and Townpark. This decision was upheld by the Minister on appeal reference 17/5/24044.
- P74/732, p/p granted for the construction of dykes for the disposal of tailings;
- P83/464, p/p was granted for modifications and extensions to the mine tailings facility at Randallstown;
- P83/537a and 83/537 granted an extension to original grant of p/p and a limited permission was granted for construction work at the tailings facility
- P96/919 and PL 17.104373, p/p granted for a vertical extension to the TSF subject to 40 no. conditions;
- NA30126 p/p granted for extraction of Newinstown ore body (granted p/p by An Bord Pleanála PL 17.204034 refers)
- NA40005, planning permission granted for mining under lands at Betaghstown, Boyerstown, Commons, Irishstown, Mullaghmore or Allenstown, Neillstown and Ongenstown, Navan and the provision of a fresh air raise and return air raise with associated works to accompany an extension to the existing underground mining operations to the south west of the existing mine, an Environmental Impact Statement accompanies this application. This application is covered by IPC License number 516, SWEX ore body extension.
- NA 40383, planning permission was granted for an extension to an existing mill building at the Knockcumber site to house an upgrade to the mine backfill plant, the development is subject to IPC license No 516.
- NA50378, planning permission granted for the construction of a new canteen building, connect to existing sewage treatment system and services with ancillary site works.
- NA801280, planning permission granted for 110kv electrical transformer station consisting of 110 kv busbar, portal structure, switchgear, 110kv to 6.6kv power transformers, 1 no building 6.825 m high containing control cabinets. Site works will consist of development of concrete bases, transformer bunding and associated oil/water interceptors, site grading and the erection of 2.6m high palisade fence and gates.

- NA801570, planning permission granted for new grinding hall adjacent to the existing grinding hall building to house a new autogenous grinding mill. The development was subject to an Integrated Pollution Control (IPC) licence - no 516. The IPC licence provided for control of all waste management, air borne emissions, water borne emissions and noise levels.
- NA-901452-PP granted to the applicants for a vertical raise of the Tailings Storage facility.
- NA-100796- Boliden Tara Mines Ltd sought planning permission for mining of the current uninterrupted orebody into a new area of Liscarton and Rathaldron solely by underground means. The development would use similar underground methods to those currently being employed.

The proposed extension of the underground mining operations into the application area located to the northwest of the main orebody would be accessed from the existing underground workings. The surface characteristics and features of the application area will not be altered by mining activity and there will be no surface development associated with this proposal. The necessary mining infrastructure for its operation is already in place. This includes administration, processing, tailings storage, ventilation, effluent storage and road/rail links to Dublin Port.

An Environmental Impact Statement accompanies this planning application. All operations will be carried out under the existing conditions of the company's Integrated pollution Prevention Control Licence (IPPCL No. P0516-01) issued by the Environmental Protection agency (EPA).

This application was subsequently withdrawn.

#### **Development Plan Policy/Other relevant policy**

In all of the documents referred to below I am selecting what I consider to be the most relevant sections.

Meath County Development Plan 2007-2013 (MCDP) Section 6.6 of the Meath County Development Plan (CDP) 2007-2013 deals with Extractive Industry and Building Materials Production.

This section of the Meath CDP acknowledges that the county contains a variety of natural resources such as building materials products in the form of sand, gravel, stone reserves including high purity limestones and shale used in cement and magnesia manufacture and base metal deposits. The potential of these resources to underpin construction output and provide employment and economic growth in the local and regional economy is recognised as is the need to exploit same in an environmentally sound and sustainable manner. The CDP acknowledges that by their nature, aggregates can only be worked where they occur.

The CDP includes the following policies which are considered relevant to the consideration of the current application.

- RD POL 11** To facilitate the exploitation of the county's natural resources and to exercise control over the types of development taking place in areas containing proven or potential deposits, whilst also ensuring that such industries are carried out in a manner which would not unduly impinge on the visual amenity or environmental quality in the area.
- RD POL 12** To protect the finite aggregate resources, in such areas of known or potential aggregate sources, whereby only development compatible with mining or quarrying activities shall be permitted in areas being or likely to be used for these purposes.
- RD POL 13** To ensure that extractive industries do not adversely affect the environment or adjoining existing land uses.
- RD POL 14** To ensure that the extractive industry minimises adverse impacts on the road network in the area and that the full cost of road improvements which are necessary to facilitate extractive industries are borne by the industry itself.
- RD POL 15** To ensure that the extraction of minerals and aggregates minimise the detracting from the visual quality of the landscape.
- RD POL 16** To ensure that all existing workings shall be rehabilitated to suitable land uses and that all future extraction activities will allow for the rehabilitation of pits and proper land use management. The use of land filling with inert material is the preferred method. However, each planning application shall be considered on a case by case basis and where relevant will be dealt with under the Waste Management Strategy.
- RD POL 17** To ensure that development for aggregates / mineral extraction, processing and associated concrete production does not significantly impact in the following areas:
- i. Existing & Proposed Special Areas of Conservation (SACs);
  - ii. Special Protection Areas (SPAs);
  - iii. Proposed Natural Heritage Areas (pNHAs);
  - iv. Other areas of importance for the conservation of flora and fauna;
  - v. Areas of significant archaeological potential;
  - vi. In the vicinity of a recorded monument, and;
  - vii. Sensitive landscapes.

#### Development Assessment Criteria

It shall be required therefore that development proposals are framed to address in an authoritative manner issues such as:

- The extent of the land ownership and nature of the deposits;
- The protection or conservation of water resources whether above or under ground;
- Effective control of gaseous emissions and dust;
- Noise, vibration and subsidence;
- Transportation impacts;
- Restoration and landscaping;
- Protection of identified geological or geomorphological heritage features;
- Provision of adequate securities to “self police” compliance, and;
- Assessment of impact on existing rights of way and traditional walking routes.

### **Navan Development Plan, 2009-2015**

The application site is outside the identified development boundary.

### **Referrals**

For Application number: NA101054

Consultant's Name	Status	Required Date	Requested Date	Returned Date	Notifications
Dept of Communications, Marine & Natural Resources	RETURNED	25/10/2010	30/09/2010	3/11/2010	
Mr Pat Kinsella	RETURNED	25/10/2010	01/10/2010	28/10/2010	
Gerry Lynn	RETURNED	25/10/2010	01/10/2010	29/10/2010	
Inland Fisheries Ireland	External Request	25/10/2010	01/10/2010		
Engineer Navan Area	Internal Request	25/10/2010	01/10/2010		
Environmental Protection Agency	External Request	25/10/2010	01/10/2010		
Jim Gibney	Internal Request	25/10/2010	01/10/2010		
Office of Public Works,	RETURNED	25/10/2010	01/10/2010	15/10/2010	
Planning Officer,	Internal Request	20/10/2010	01/10/2010		
Heritage Officer - Loreta Guinan	Internal Request	20/10/2010	07/10/2010		

- ☐ Dept of Communications, Marine and Natural Resources- report received- clarification sought on a number of matters relating to monitoring of water infiltration, method of mining proposed, hydrology and some of the terms used within the documentation submitted.
- ☐ EPA-Verbal comments received where they advised that environmental aspects of the EIS will be considered as part of the formal process of review of the IPPC licence if necessary.
- ☐ HSE-No report received ;
- ☐ SEE Navan Area Office- No comments received.



- ❑ National Parks & Wildlife Section of Dept of Environment, Heritage and Local Government- No comments received.
- ❑ Archaeology section of Dept of Environment, Heritage and Local Government- No comments received.
- ❑ SEE Infrastructure ( Road Design)- Report received-no objections subject to summary of current/proposed usage of roads by Tara Mines
- ❑ Environment, Report received-no objections.
- ❑ CFO, report outstanding.
- ❑ Heritage Officer-MCC-Report received-No objections.
- ❑ OPW: Report returned, no observations on this development.
- ❑ Inland Fisheries Ireland: No comments received

### **Submissions**

No 3<sup>rd</sup> Party submissions received.

### **Planning and Development**

P/p is sought in this application as per the public notices to carry out underground mining in the townlands of Rathaldron and Liscarton.

The Environmental Impact Statement has been prepared using the grouped format structure where each topic as listed in the regulations is addressed with separate descriptions provided for the proposed development, existing environment, impacts and mitigation measures. The EIS, its appendices and supplementary information have been examined. I propose in this report to assess each section of the EIS under various headings, due to the volume of material, much of the information will be summarised. Scoping with MCC and various bodies took place.

It is considered that as the lands are identified as an operating mine and related facilities in the MCDP 2007-13, the sites are contiguous to the existing established and operating mine. Tara have mined successfully in the area for 33 years and have mining rights to the property, detailed consideration of alternative sites does not arise in this context, It is considered that the issue of alternatives has been well documented with the extensive planning history files by way of background on this issue and further discussion on this matter within this EIS is not merited.

### **Project Description- Mine Workings**

Rathaldron and Liscarton will be mined over a period of approximately 5 years at an average rate of 210,000t per annum. It is noted that no surface workings are proposed as part of this development. The lands have historically and are being operated as grazing land (above ground) and will continue to do so inspite of the extensive proposed mining works beneath the ground where workings take place at levels varying between 150 metres and 575 metres beneath ground levels. Access to the orebody will be obtained by an existing portal access (underground road from surface) on the Knockcumber site. A vehicle route will then be provided via the existing orebody to the new ore body. Underground mining methods will be used with no surface access proposed or required to

mine either Rathaldron nor Liscarton. Underground infrastructure including existing lunchrooms, fuel stations and ore passes will be used where possible. All ore produced will be transported by scoop and/or truck underground back to the existing mine for crushing and hoisting. In a typical full production year Liscarton and Rathaldron is expected to produce 170,000 tonnes of production ore and 40,000 tonnes of development ore. As the tonnage of ore coming from the existing mine will be reduced in the coming years the existing facilities will be capable of accommodating the proposed expansion. Waste rock will be either placed underground in the main mine; placed underground in new stopes, hauled to surface for temporary storage or redirected to be crushed prior to removal to surface for temporary storage. All existing mine equipment to load and haul waste rock will have the capacity to accommodate the proposed extension. Ventilation requirements will be met by the existing mine ventilation system, fresh air will enter through existing fresh air routes, air will flow through the main working levels of the mine before rising to upper dedicated drifts which will carry the exhaust air back to existing underground and surface fan stations. Existing fan stations will remain unaltered in terms of air flows and overall performance. No ventilation related connections to surface other than those already established at the main mine site are required for the proposed Liscarton and Rathaldron extensions.

Backfilling will occur with sand fraction mill tailings and cement through an underground pipe network connected to the existing mine back filling facilities. Stopes (underground opening from which ore is extracted) will be backfilled through holes drilled down into the roof of the excavations and backfill poured down into the void over an extended period until the stope is filled. There will be no backfilling related connections to surface in the Rathaldron/Liscarton or adjacent areas. In respect of dewatering, underground water will be collected at a central underground pumping station and piped back to the existing mine. Additional dewatering flow from Liscarton and Rathaldron is estimated at 15-30% of the current inflow of 11,979 m<sup>3</sup>/d which equates to approximately between 1,797 m<sup>3</sup>/d and 3,594 m<sup>3</sup>/d. The existing mine facilities have capacity to address this as the existing capacity is 21,600 m<sup>3</sup>/d approx. almost twice the current total flow intake. All mine drainage is treated and discharged under IPPC License. .

Tailings arising from the proposed Liscarton and Rathaldron operations (approximately 0.5 million tonnes) will be transported to the Randalstown Tailings facility. This facility has been sized as per its grant of p/p (P96/919 and PL 17.104373 refer and as per its recently permitted increase under NA-901452) to accept tailings from the mine areas. The recently permitted extension to the TSF will increase its capacity by a further 7.9 million tonnes so therefore adequate capacity is and will be available to cater for the tailings generated by proposed mining at Rathaldron and Liscarton. The IPPC license includes provision for tailings from Liscarton and Rathaldron (as per the comments of Mr Niall Horgan, Inspector with the EPA in comments made over the phone on 1/9/2010).

#### **Environmental Impact Statement:**

An Environmental Impact Statement is required to be submitted by the applicants as per Local Government (Planning and Development) Regulations 2001 as amended- Schedule 5 Part 2 Section 2. The applicants have submitted the EIS as per the legislation above.

## Section 4-Human Beings

The underground mine will run perpendicular to the M3 and will run under the R147 (formerly the N3) and under the River Blackwater. It also avoids many one off rural dwellings north of Navan and only running underneath just two dwellings and within the cartilage of a third located along the R147(formerly the N3) and a number of these appear to be uninhabited at present. The applicants have examined relevant Regional and Local Plans i.e the MCDP 2007-2013 in preparing the EIS. It is considered that impact on Human Beings will be minimal, the economic benefits of the mine will be significant in terms of providing employment and generating significant expenditure (58 million euro annually is their wage bill) in the local economy. The mine presently employs 680 people directly and a further three persons are employed indirectly supporting each job at Tara i.e approximately 2,000 persons employed indirectly. Other agencies benefit from the operation of the mine and these include Iarnrod Eireann (transporting zinc concentrate to Dublin Port), Dublin Port Company (from where the zinc is exported to the Netherlands for smelting) and the Revenue Commissioners in the form of taxation receipts.

Anglers rights in terms of accessing the Blackwater will not be affected by the proposals which will occur at least below 150 metres ground level. The proposed extension to the mine is crucial to its sustainability and in order to extend the life of the mine to at least 2018. This is fundamental in terms of the employment created and the significant flow of finances within the local economy.

## Section 5 Geotechnical Study-

This section was prepared by Australian Mining Consultants (AMC). An investigation of all geotechnical and mine design aspects of the proposed extension were examined and a detailed investigation of the hydrological aspects (by Water Management Consultants Ltd) of the proposed development as pertaining to the geotechnical study was undertaken. AMC have used extensive data held by Tara and includes work carried out for Bula.

The main feature of the geology in this area is the existence of the Castle-Liscarton fault Zone or complex, the eastern boundary of which represents the western boundary of the current Tara Mine. As a consequence of normal displacement on this fault zone some rock units lie stratigraphically above the Navan group beds but these exist above the level of the orebody.

The total reserves within Liscarton and Rathaldron amount to 1.1 million tonnes and this is further broken down into 0.9 million tonnes of inferred resources with a grading of 7.71% Zn and 1.53 % Pb and 0.2 million tonnes of indicated ore reserves grading 6.81%Zn and 1.48% Pb.

It is considered unlikely, given the geology in the area, that there will be any significant increase in the scheduled tonnages, although the figure outlined above may be upgraded with further drilling and evaluation.

The geological and geotechnical conditions in both Liscarton and Rathaldron are very similar to those in the main areas of the existing mine, including the Nevinstown area

(formerly Bula) which lies immediately adjacent and to the east of Rathaldron. The only significant difference is the existence of the Liscarton-Castle Fault Complex which passes through the centre of Liscarton.

The EIS contends that it is very unlikely that underground mining would result in any discernable surface subsidence impact in the Liscarton and Rathaldron areas. Due to a number of factors which include:

- The proposed depth of the mining.
- The limited ore thickness.
- The limited extent of individual stopes.
- The use of tight backfilling and a primary/secondary sequence in open stoping extraction.
- The limited stoping spans and the use of sequential backfilling in thin ores where “drift and slash methods” will be used.
- The use of cable bolt support in areas of poorer stope roof conditions.

In respect of ore recovery it is proposed to use the same system as currently operates within the mine which is longhole open stoping where a series of chambers are opened and when complete the chamber is backfilled with conditioned mine waste and the infilling chamber is allowed to gain strength before the adjoining chamber is mined. No reliance is placed on over burden strength, resistance to settlement is based on the twin concepts of back filled stopes and crown pillars having a minimum thickness of 30m of rock this 30m excludes the overburden. It is predicted that insofar as surface settlement occurs it will be the result of overburden deforming to follow rock deformation without any thickness change. It is also confirmed that the overburden comprises of glacial tills and river alluvium deposits, materials which are relatively dense and tightly packed. Cemented backfill will be used for initial primary stoping and a mixture of cemented and uncemented backfill for later (secondary) stoping. Longhole open stoping is sequential, that is, stopes are mined in sequence and each stope is filled before mining of adjacent stopes is commenced.

#### **Comments from Referral Bodies;**

This application was referred to the Department of Communications, Energy and Natural Resources for comment and they made the following observations in relation to hydrology:

*“It is recommended that the applicant be requested to provide details on what surface subsidence and geotechnical monitoring will be undertaken (particularly in respect of areas of poor ground), and to give a clear commitment that all appropriate measures will be employed to reduce the risk of ground subsidence. Where monitoring points are to be*

*installed on lands not in the ownership of the developer, evidence that the necessary consents from landowners have been obtained to allow them to be installed and accessed.*

*A number of mining methods are proposed, some conceptual. The applicant should be requested to clarify which methods will be employed."*

### **Hydrology- Section 6 & Section 8 Surface Water**

In respect of water the principal issues arising include an assessment of any potential impacts on wells in the vicinity, will there any River Blackwater leakage down into the proposed mine ares, effects of dewatering, any impacts on surface water quality etc. All water used in plant operations is either pumped from the Boyne; mine dewatering or precipitation. The max abstraction from the Boyne is 13,000m<sup>3</sup>/day. Water from the mine, surface run-off and water from the process plant passes through three stages of clarification before discharge to the Boyne, this discharge, in particular the quality of the discharge, is controlled by the EPA by means of the IPPC licence.

Within the EIS Tara Mines note the relevance of:

- Tara's extensive experience in a similar strata south of the river including management of water infiltration which averages 7,500 m<sup>3</sup>/day;
- Measurement of on site rainfall for over 35 years at a station recognised by Met Eireann;
- River Blackwater flow measurement by the OPW (over 50 years);
- Identification and characterisation of overburden soil units;
- Identification and characterisation of bedrock units;

The following issues were addressed:

- The stability of the strata beneath the River Blackwater and potential for water ingress into the mine workings beneath;
- The extent of dewatering which can be expected as a result of mining in Liscarton & Rathaldron and the impact of this;
- Definition of a detailed monitoring strategy to be implemented at the mine.

The area around the mine comprises flat undulating farm land. Levels along the Blackwater are recorded at 62m OD as it flows through the area of the Liscarton/Rathaldron application area. The levels of the land rises away from the Blackwater, reaching a level of 75 m OD in the centre of Rathaldron and 93 m OD southwest of Liscarton.



The River Blackwater defines the boundary between Liscarton and Rathaldron. This watercourse is a tributary of the River Boyne.

The Navan orebody extends to within a few metres of the Nevinstown orebody and to below 150 metres of the ground surface in the Liscarton and Rathaldron areas where it is covered by variable glacial drift. The mineable ore thickness ranges from 4 metres, the height of a drift to 80 metres. The thicker ore is generally found in the east of the deposit. The plan view dimensions of the orebody as currently defined are 5.7km (NE-SW) by 1.9km (NW-SE).

The deposit is hosted in limestones and dolomites of lower Carboniferous age. The Pale Beds are often permeable and cavities are present in certain areas. Drill holes may lose water to fractures when penetrating the Pale Beds due to the presence of a vadose zone within the pale Beds resulting from dewatering of the mine workings. The principal unit overlying the pale beds is the upper dark Limestones (UDL), which tend to be strongly bedded and contain abundant shaley horizons. In general, the UDL is considered to form a low permeability roof to the Pale Beds.

Most of the economic mineralization occurs within the Pale Beds as complex, strata bound tabular lenses. The lenses strike between NE and ENE, parallel to the major faults. The lenses are frequently dislocated by faulting. The ore occurs within the lenses as high grade massive sulphides or lower grade disseminated sulphides. The degree of mineralization is generally greatest close to the base of the Pale Beds, within a basal micrite and associated dolomites.

Groundwater inflows to the Tara workings are derived from the following sources:

- District scale lateral groundwater flow in the pale Beds.
- Downward leakage of groundwater from the UDL.
- Recharge derived from precipitation.
- Leakage from the River Blackwater.

Most of the inflow to the workings occurs via discrete, fracture controlled inflow zones. Their location is determined by a combination of structure, local jointing and lithology contrasts. The UDL sequence tends to inhibit the downward movement of groundwater into the Pale beds over these areas.

The solid geology at Liscarton/Rathaldron comprises Lower Carboniferous rocks, cut by the NE to ENE trend faults and fault zones. Variable thickness of glacial till and alluvial deposits blanket the area. The superficial deposits attain thickness in excess of 30 metres in the buried Whistlemount Channel to the south of Rathaldron. A variable overburden thickness of between 5 and 30 metres covers the Liscarton and Rathaldron areas

Current in-flows of water to the mine are virtually all derived from district scale flow. Monitoring data would indicate that the Pale Beds is the main groundwater bearing unit

in the main mine, Nevinstown and within the current application site areas of Liscarton and Rathaldron. The overlying UDL contributes a minor amount of water, but mostly as a result of vertical downward leakage as the underlying Pale Beds become dewatered.

Dewatering of the Liscarton/Rathaldron application area will be carried out in a similar manner to that used within the existing mine areas. All new inflows will be collected and managed similar to present operations. It is estimated that approximately 2-3 million cubic metres of groundwater may need to be removed to allow mining of the proposed extension. There is sufficient flexibility and storage in the current water management system to accommodate all anticipated additional water collected and pumped from underground.

Predicated groundwater inflow chemistry for the Liscarton/Rathaldron application area is similar to that presently experienced within the Navan mine and at Nevinstown. There is virtually no chemical signature of river water in the underground water.

Under the current water management system, water from underground is pumped to the Tailings Storage facility (TSF) where it is reclaimed for use in the mine and mill. Surplus water is discharged to the River Boyne through a storage pond under the Tara IPPC licence. No significant changes to the water quality is anticipated following the proposed expansion into the Liscarton/Rathaldron area.

A programme of borehole drilling was carried out which comprised over nearly 50 boreholes both on surface and underground. As is stated above the overburden comprises of low permeability brown and grey glacial till containing more permeable but isolated lenses of sand and gravel. Till thickness varies between 0-27m with a 6-7m average. Beneath the river the overburden is part eroded away completely while in other places the river silts and gravels overlie the remaining till. The applicants suggest that significant porosity is probable within the overburden. Groundwater levels in the till are generally 1-5m below ground in areas unaffected by mine draining but within the zone of depression arising from dewatering inevitably fall to much deeper levels. Cross sections accompany the application which map the current ground water line. There are no projected future variations in the level over time as a consequence of development in Rathaldron/Liscarton. The upper dark limestone (UDL) layer has relatively low permeability. It lies between the overburden and the Pale Beds beneath much of the river and shows no significant cavity development in the Liscarton/Rathaldron area. Tara Mine experience to date has been that ground water inflows are generally only encountered in structures (fractures, joints and fissures) in the pale beds and not along primary bedding planes. The majority of ground water inflows are associated with structural features as all ground water movement in the upper dark limestone and pale beds is structurally controlled..

Hydrochemical measurements indicate that there is no chemical signature of river water inflows to the main mine near the river pillar or in other areas of workings. This indicates that river water does not contribute a significant component of water to the mine. The flow path for the river water to enter the mine would result in water firstly percolating through overburden and bedrock. It is expected that the chemistry of infiltrating river water would be altered along the flow path. The overall rate of leakage is expected to

remain consistent with time, even as the Liscarton/Rathaldron mine develops and as development occurs perpendicular to the river channel and the area of working below the river will remain relatively constant. The EIS states that statistically there is no correlation between monthly rainfall and average monthly mine groundwater pumping. A biological assessment of the river was carried out in 2001 to establish if the mining activity was having any adverse impacts on the aquatic environment. The study concluded that aquatic life had remained relatively stable at four sites on the river Blackwater.

Currently the mine pumps up to 11,929 m<sup>3</sup>/day to dewater the workings. Inflows from discrete flows and general seepage are routed to a general sump from where the water is pumped to surface. Inflows are regularly mapped, sampled and measured by Tara. The water is discharged to the river and the rate of discharge to the river is subject to a condition of the IPPC license. Liscarton/Rathaldron would add 2,642 m<sup>3</sup>/day to the overall total discharge. The addition of Liscarton/Rathaldron to the overall dewatering discharge is not significant having regard to the mean flows in the river and the discharge is subject to IPPC licensing (report of the EPA is relevant here).

Any additional groundwater flow from the proposed extension is not expected to alter the overall chemistry of the discharge. It is demonstrated in table 8.3 that the existing effluent discharge system to the Boyne is not affecting the chemistry of the water downstream of the discharge diffuser.

The orebody at Liscarton/Rathaldron is geologically and geochemically identical to the ore body in the main Tara Mine and therefore there will be no significant difference in the water chemistry. It is therefore predicted that there will be no negligible impact associated with discharge of water resulting from this development.

The existing groundwater monitoring programme will be extended into Liscarton/Rathaldron to examine if there is risk of greater than expected risk of water inflow to the proposed mine areas, although this risk is presented as being of low grade.

The outputs indicate that the mining operations would not significantly alter groundwater levels and flow when pre and post mining predicted conditions are compared.

There will be a long period of infiltration of rainwater to groundwater with a projected residence time of up to 10 years in the over burden which sustains the near surface groundwater level regardless of draw down in underlying bedrock,

#### **Comments from Referral Bodies:**

This application was referred to the Department of Communications, Energy and Natural Resources for comment and they made the following observations in relation to hydrology:

*“The applicant should be required to demonstrate that its water monitoring wells have sufficient distribution and that these include the Liscarton/Rathaldron area. If not, then additional monitoring wells should be put in place.”*

*The applicant should be requested to verify and demonstrate that the Randalstown Fault is a sealing fault and that appropriately placed monitoring wells are, or will be, installed.*  
Ref: Section 6.4.5.3-

*The applicant should be requested to provide additional information on the area of the River Blackwater relevant to the hydrology which demonstrates the hydrological similarity of conditions to the south, given that the overburden is thinner in the area under application than in the area to the south.*

*The applicant should be requested to provide clarification as to whether any water supplies, and in particular, domestic water supplies, will be affected by mining in the area under application. In the event that planning permission is granted, it should be a condition that any adverse impacts on water supplies be immediately mitigated”.*

These are matters that can be addressed by means of an fi request.

The application was also referred to the SEE Environment (Water Services Section) Department of MCC. And the following observations were made:

*“The applicants shall confirm if there will be additional water demand from the public water supply generated by the proposed development. If there will be additional water demand, the applicants shall quantify and identify where the additional water will be used.*

*The applicants shall confirm if there are proposals to extend their on-site watermains networks. If there are proposals to extend their on-site watermains networks, the applicants shall submit full details of the extent and materials proposed.*

*As per Meath County Council Water Bye-Laws 2007 Part 3 Water Conservation, the applicants shall submit a comprehensive Water Management and Conservation Plan with the planning application, for the entire development site. The Plan shall identify and quantify all water uses. The plan shall identify all existing metering arrangements in place and proposed metering arrangements. The plan shall identify monitoring arrangements in place to identify high usage areas and potential leakage. The plan shall identify and detail all existing and proposed water recycling arrangements. The plan shall identify and detail any proposed upgrading/rehabilitation of existing distribution watermains and water supply pipes within the development site. The plan shall set out details of how best practice in water conservation shall be applied in respect of the entire development site to include water mains and internal plumbing and how water usage, leaks or excessive consumption may be identified and remedied. The applicants shall demonstrate and quantify how the measures outlined in the said Water Management and Conservation Plan will reduce the potable water demand of the development site”*

These are matters that can be addressed by means of an fi request.

## Section 7-Vibration and Air Over Pressure

The EIS states that blasting at Tara is designed to take account of the most up to date technology available. Ground vibrations for each blast are recorded at four locations and continual monitoring occurs using portable vibration monitors where ever the need arises. At present there are also 5 temporary vibration monitoring points. The proposed underground mining methods to be used will be similar to those used in the main mine, therefore surface blasting will not be used and air over pressure effects can be ruled out. The mine development progression north west will increase the distances from blasting vibration sources for the more populated residential areas to the east and south east of the mine. Blasting ground vibration will be controlled by adhering to control regime currently in place-sequential detonation, control of maximum instantaneous charge of explosives used and continuous measurement of ground vibration to ensure compliance.

The vibration/noise limits will be similar to those existing as laid out in the IPPC license ie no blast or combination of simultaneous blasts shall give rise to a vibration level at any noise sensitive location which exceeds the following limits:

Time	Peak Particle Velocity (ground)	Overpressure (Air)
- Day time	8mm/sec	125 dB (Lin.) max. peak
- Nighttime	4mm/sec	105 dB (Lin.) max. peak

These are well established limits and the use of portable vibration monitoring equipment will provide information to prompt changes to charges if necessary. A study review and analysis of over thirty years of vibration monitoring data has shown that Tara's ground vibration limit compliance has exceeded 99.9%.

## Flora and Fauna- Section 9

A baseline habitat, flora and fauna survey was undertaken in the townlands of Liscarton & Rathaldron and within the townlands in their vicinity over a period of two periods of days each in January and June 2010. A desk top study was also conducted to determine the extent of designated habitats and/or protected species recorded within a 10 square kilometre radius of the application site. The applicants also reviewed data held by the National Parks & Wildlife Service (NPWS) of the Department of Environment Heritage and Local Government (DoEHLG). This information highlighted the fact that a significant portion of the site is affected by the river Blackwater & Boyne candidate Special Area of Conservation (Site Code 2299), making it a Natura 2000 site. The features of the site that afford its protection include "alkaline fen and alluvial woodlands", both of which are habitats listed within Annex I of the EU Habitats Directive.

Other Annex 2 species that can be found within the cSAC include "Atlantic Salmon, Otter and River lamprey".



The survey area mainly comprises of semi-improved agricultural grassland, tillage with associated hedgerow and treeline habitat. No rare/protected species of flora was observed during the course of the surveys. The most significant ecological feature of the survey site is the river corridor and the presence of the otter on the river bank of the Blackwater is considered likely given that Otter spraint was found on both sides of the channell. The presence or likely presence of the fox, rabbit, rat hare, badger, hedgehog, grey squirrel and common frog within the survey area is of note as these species are protected under the Wildlife Act. Five species of Bat were recorded during the June surveys. The EIS concludes that as there are no surface structures proposed and as mine operations will be well below root depth of plants, there are no impacts at surface level and therefore no predicted impacts upon the ecological interests of the area including the flora and fauna. As is confirmed above the land will remain in agricultural use and operations will take place far below the zone of biological interaction with the surface.

#### **Appropriate Assessment:**

The applicants have submitted a copy of an AA screening document which concludes that a full AA is not required.

This application was referred to the Heritage Officer of MCC who has made the following observations in this regard:

*"I am satisfied that the proposed development, alone or in combination with other plans or projects, will not have a significant effect on the qualifying interests of the Natura 2000 site – River Boyne and River Blackwater cSAC (site Code: 2299) as the proposed development will not result in any disturbance to the surface of the site, and operations will take place below the zone of biological interaction with the surface. In addition there will no surface structure infrastructure facilitates in the area.*

*All mitigation measures outlined in the EIS should be adhered to".*

#### **Section 10-Landscape and Visual Impact-**

As there is no surface structures or infrastructure required for the extension into Liscarton/Rathaldron, the applicants have deemed that there is no need for further descriptions on visual impacts on the existing landscape.

#### **Air- Section 11**

All air intake/output required for the extension of the mine into Liscarton/Rathaldron will be from existing facilities and there will be no additional structures required nor air emission sources. All access to the proposed development will be underground via the Knockumber mine site. Accordingly, no like ly impacts upon air quality are anticipated. Furthermore, no odour sources are anticipated.



Ambient air quality and dust deposition has been monitored on site since 1973 and the monitoring of such environmental emissions will continue as per their current IPPC obligations.

As there is no surface development associated with the proposed extension it is therefore deemed that there is no need for further descriptions of impacts on the air quality.

### **Material Assets- Section 12**

An archaeological assessment of the application site was conducted. The subject site comprises primarily of agricultural land. There are 3 dwellings within the site area at surface level fronting onto the R147(formerly the N3), which have the appearance of being uninhabited. The Liscarton/Rathaldron area is described as being "*rich in archaeological monuments*", however there is just one recorded monument located within the application site area, ME025-012-a mound, though this feature is not situated directly over the orebody. Given that there were some archaeological findings in previous Tara Mine extensions within Randalstown, Nevinstown and Simonstown, there is a strong likelihood of archaeological findings within the current application site area even though there are no indications at surface level.

Given that there is no surface activity proposed within the current application and activities will occur at a level of below 150 metres below ground level, the proposed development should not have any impact upon the archaeological heritage/recorded monument(s) of either Liscarton or Rathaldron.

The applicants are aware of their obligations as set down under the 1994 National Monument (Amendment) Act whereby the applicants are required to give two months notice to the DoEHLG of any work proposed at such monuments or places.

### **Section 13 Roads & Traffic**

The applicants have stated that access to the Liscarton & Rathaldron will be from within the existing main mine site. They have also clarified that there will be no other access point from the surface to the proposed development. They further clarify that no additional transportation is required and that the proposed development will not lead to any additional surface traffic.

A report was received from the SEE Infrastructure (Road Design Section) Department of MCC who has no objections in principle but requires a summary of the current usage of roads by Tara Mines in order that a roads contribution can be included by means of condition.

### **Closure and Financial Surety**

After mining is finished the pumps in the underground workings will be shut off and water will accumulate in the mine and eventually all underground workings will fill with water. Dewatered rocks above mine workings will re fill with water and groundwater levels in dewatered areas will progressively recover back towards pre mining levels. The

closure plan (CRAMP) as submitted to the EPA as compliance is presently being examined by the EPA who have sought clarification from Boliden Tara Mines on a number of matters. The CRAMP for the main mine will be adapted to include Liscarton & Rathaldron. This matter can be conditioned if necessary.

### **Conclusion and Recommendation**

Having regard to the designation pertaining to the application site ie 'mining and related facilities' in the Meath County Development Plan 2007-13, the site's location contiguous to the existing mine, the experience that Tara Mines Ltd have accumulated in successful mining in the area for in excess of 30 years and Boliden Tara Mines Ltd have mining rights to the property I consider that the principle of the proposed development to be acceptable. However there are a number of matters relating to hydrogeology, methods of mining and some anomalies contained within the EIS that would require clarification prior to a grant of permission being recommended. This information is required in order that the Planning Authority can make an informed decision having regard to the proper planning and sustainable development of the area and the policies and objectives of the current Meath County Development Plan, I therefore recommend that further information be sought with regard to the following matters: ✓

- 1(a) The applicants are requested to provide details on what surface subsidence and geotechnical monitoring will be undertaken (particularly in respect of areas of poor ground), and to give a clear commitment that all appropriate measures will be employed to reduce the risk of ground subsidence. Where monitoring points are to be installed on lands not in the ownership of the developer, the necessary consents from landowners should be submitted as well as a map to accompany the consent and illustrating to which precise are of land the consent pertains to. ✓
- (b) The applicant's should be requested to clarify which methods of mining will be employed within the proposed mine extension. ✓
- (c) The applicants are requested to demonstrate that its water monitoring wells have sufficient distribution and that these include the Liscarton/Rathaldron area. If not, then additional monitoring wells may be required to be put in place. ✓
- (d) The applicant is requested to verify and demonstrate that the Randalstown Fault is a sealing fault and that appropriately placed monitoring wells are, or will be, installed. ✓
- (e) The applicants are requested to provide additional information on the area of the River Blackwater relevant to the hydrology which demonstrates the hydrological similarity of conditions to the south, given that the overburden is thinner in the area under the current application site than it was in the area to the south. ✓
- (f) The applicants are requested to provide clarification as to whether any water supplies, and in particular, domestic water supplies, will be affected by mining in the area under application. If water supplies will be affected by the proposed development, appropriate mitigation measures should be submitted in order to address same. ✓

The applicants are requested to liaise with the Department of Communications, Energy and Natural Resources with regard to the matters raised above.

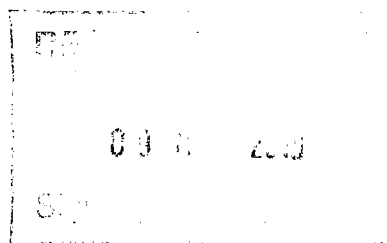
- 2(a) The applicants are requested to confirm if there will be additional water demand from the public water supply generated by the proposed development. If there will be additional water demand, the applicants shall quantify and identify where the additional water will be used. ✓
- (b) The applicants are requested to confirm if there are proposals to extend their on-site watermain networks. If there are proposals to extend their on-site watermain networks, the applicants should submit full details of the extent and materials proposed. ✓
- (c) As per Meath County Council Water Bye-Laws 2007 Part 3 Water Conservation, the applicants are requested to submit a comprehensive Water Management and Conservation Plan with the planning application, for the entire development site. The Plan should identify and quantify all water uses. The plan should identify all existing metering arrangements in place and proposed metering arrangements. ✓ The plan should identify monitoring arrangements in place to identify high usage areas and potential leakage. The plan should identify and detail all existing and proposed water recycling arrangements. The plan should identify and detail any proposed upgrading/rehabilitation of existing distribution watermain and water supply pipes within the development site. The plan should set out details of how best practice in water conservation would be applied in respect of the entire development site to include water mains and internal plumbing and how water usage, leaks or excessive consumption may be identified and remedied. The applicants should demonstrate and quantify how the measures outlined in the said Water Management and Conservation Plan will reduce the potable water demand of the development site

The applicants are requested to liaise with Mr Pat Kinsella, Senior Executive Engineer Environment (Water Services Section) Department of Meath County Council in relation to the matters outlined above.

- 3 The applicants are requested to submit a detailed summary of the current/proposed usage of public roads by Tara Mines ✓

The applicants are requested to liaise with Mr Jim Gibney, Senior Executive Engineer Infrastructure (Road Design Section) Department of Meath County Council in relation to the matters outlined above. ✓

- 4 Fi13(b).



Agree

Sally. S.P. 9/11/2012

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## Meath County Council Planning Report

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**To:** Tom Dowling, Meath County Manager  
**From:** Fergal O'Bric, Executive Planner  
**Date :** 03/11/2009  
**File No:** NA901452  
**Applicant:** Boliden Tara Mines Ltd.  
**Location:** Randalstown, Simonstown and Siloge  
**Description of Development:** Permission for stage 5 development which will consist of a 4 metre vertical extension delivering an additional 5.6 million cubic metres of storage capacity. The stage 5 development is for the purpose of extending the life of the mine and will be constructed on the footprint of the existing facility, which occupies an area of 170 hectares. The glacial till material to be used in construction of the vertical extension will come from two immediately adjacent areas of 52 hectares and 18 hectares located in the townland of Randalstown. Planning permission for the 52 hectare area was granted in the previous stage 4 development, ref no. P96/919.

An Environmental Impact statement (EIS) has been prepared and will accompany the planning application. The proposal will require a revision of the company's Integrated Pollution Prevention Control licence (IPPC Licence No. P0516-01) by the Environmental Protection Agency (EPA).

**Decision Due :**

8/11/2009

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### Site Description

Boliden Tara Mines Ltd is the largest Lead-Zinc mine in Europe and is located at Knockumber circa 2km west of Navan. The application site which encompasses the tailings pond comprises an area of approximately 170 hectares. The subject site is located approximately five kilometres north west of Navan town and approximately five kilometres north of the existing mine site at Knockumber. The site the subject of this application is located within the townlands of Randalstown, Simonstown and Siloge.

### Planning History

In this part of the report what are considered to be the principal planning applications are detailed.

- Parent planning permission P73/1325 p/p was granted for mining facilities in the townlands of Knockumber, Randallstown, Whistlemount and Townpark. This decision was upheld by the Minister on appeal reference 17/5/24044.

- P74/732, p/p granted for the construction of dykes for the disposal of tailings;
- P83/464, p/p was granted for modifications and extensions to the mine tailings facility at Randallstown;
- P83/537a and 83/537 granted and extension to original grant of p/p and a limited permission was granted for construction work at the tailings facility
- P96/919 and PL 17.104373, p/p granted for a vertical extension to the TSF subject to 40 no. conditions;
- NA30126 p/p granted for extraction of Nevinstown ore body (granted p/p by An Bord Pleanála PL 17.204034 refers)
- NA40005, planning permission granted for mining under lands at Betaghstown, Boyerstown, Commons, Irishstown, Mullaghmore or Allenstown, Neillstown and Ongenstown, Navan and the provision of a fresh air raise and return air raise with associated works to accompany an extension to the existing underground mining operations to the south west of the existing mine. an Environmental Impact Statement accompanies this application. This application is covered by IPC License number 516, SWEX ore body extension.
- NA 40383, planning permission was granted for an extension to an existing mill building at the Knockumber site to house an upgrade to the mine backfill plant. the development is subject to IPC license No 516.
- NA50378, planning permission granted for the construction of a new canteen building, connect to existing sewage treatment system and services with ancillary site works.
- NA801280, planning permission granted for 110kv electrical transformer station consisting of 110 kv busbar, portal structure, switchgear. 110kv to 6.6kv power transformers, 1 no building 6.825 m high containing control cabinets. Site works will consist of development of concrete bases, transformer bunding and associated oil/water interceptors, site grading and the erection of 2.6m high palisade fence and gates.
- NA801570, planning permission granted for new grinding hall adjacent to the existing grinding hall building to house a new autogenous grinding mill. The development was subject to an Integrated Pollution Control (IPC) licence - no 516. The IPC licence provided for control of all waste management, air borne emissions, water borne emissions and noise levels.

## Submissions and Observations



Ten submissions/observations have been received with respect to the proposed development. The salient issues raised relate to the following matters:

- The information submitted contains contradictions e.g between the development description and information contained within the EIS.
- The vertical raising of the tailings storage facility will be visually prominent within the local landscape especially to the dwellings immediately adjacent to the facility.
- That the applicants have failed to fully comply with conditions set down under P96/919 re; replanting, sprinkler system (condition no 23)
- The current proposal will result in the removal of 1.800 metres of hedgerow from the borrow areas, will this hedgerow be replaced.
- Concern that local groundwater and domestic wells will be impacted upon by unacceptable levels of sulphur and zinc plume.
- The danger from dust blows, a severe one occurred in May 2008 and the sprinler system failed to operate which was a requirement of their P96/919 permission.
- It is contended that noise levels have exceeded those set out in planning permission and within their IPPC licence.
- They are seeking strict working hours for the construction of the proposed extension i.e 8-5.30 Monday to Friday, 9am -1pm on Saturday and no work on Sundays or bank Holidays.
- Why were other options such as "pasting" or "a lateral extension" not being considered within the alternative options?
- Effects on locals health through breathing in chemicals, and through the drinking of water and eating food grown in the local contaminated soils.
- That all archaeological sites (known and unknown) be preserved.
- That the proposed vertical raise will impact upon the sunlight enjoyed currently by adjacent residents
- Concern regarding the structural stability of the tailings storage facility as it is built on a fault line.
- Fear and anxiety at the thought of a leak from the facility
- That the applicants have not adequately consulted with adjacent residents/landowners.
- That the impact of construction traffic will be unacceptable especially along minor county roads such as the Milestown Road.
- That the applicants have a poor record of environmental management in Ireland and at other operations in Europe.
- That the extension of the operation will unduly impact upon existing adjacent working farms in terms of affecting animals and crops.
- Concerns that the heavy machinery used in the construction period may impact upon the stability of adjacent dwellings.

The Planning Authority note that a number of these issues are not ones which are appropriate to be considered by the planning process and that such matters are clearly within the remit of other fora. However some of the foregoing matters are very much

planning related and will be addressed in terms of the proper planning and sustainable development of the area.

### Referrals

The application has been referred to the following ;

For Application number : NA901452

Consultant's Name	Status	Required Date	Requested Date	Returned Date	Notifications
Mr Pat Kinsella	Internal Request	28/10/2009	30/09/2009		
Gerry Lynn	Internal Request	28/10/2009	30/09/2009		
Eastern Regional Fisheries Board	RETURNED	28/10/2009	28/09/2009	04/11/2009	
National Roads Authority	RETURNED	28/10/2009	28/09/2009	02/10/2009	
N2/N3 DESIGN TEAM	RETURNED	28/10/2009	30/09/2009	07/10/2009	
Heritage Officer - Loreta Guinan	Internal Request	28/10/2009	30/09/2009		
Environmental Protection Agency	External Request	28/10/2009	28/09/2009		
Dublin Transportation Office	External Request	28/10/2009	28/09/2009		
Heritage Council	External Request	28/10/2009	30/09/2009		
Do EHLG Dev Apps Unit (Archaeology)	RETURNED	28/10/2009	28/09/2009	19/10/2009	
Jim Gibney	Internal Request	28/10/2009	30/09/2009		
Principal Environmental Health Officer,	External Request	28/10/2009	30/09/2009		
Office of Public Works.	RETURNED	28/10/2009	28/09/2009	14/10/2009	
Conservation Officer Chadwick Jill	Internal Request	28/10/2009	30/09/2009		
Executive Engineer - Andrew Bagnall	Internal Request	28/10/2009	30/09/2009		
Comhairle Ealaíon	External Request	28/10/2009	28/09/2009		

An Taisce - Brian Taylor	External Request	28/10/2009	28/09/2009
Planning Officer,	Internal Request	28/10/2009	28/09/2009

No reports have been received from the CFO, the Navan Area Engineer, Heritage and Conservation Officers of Meath County Council. The application has been referred to the HSE, the EPA, the Heritage Council and An taisce and no reports have been received at the time of writing.

The OPW have reminded the applicants of their obligation in relation to arterial drainage channels and that they require a maintenance strip. The width of this strip can vary between 6-10 metres.

The Department of Environment, Heritage and Local Government (Archaeological Section) have noted that included within the area of proposed works is a recorded monument ME018-026-Earthwork site at Randalstown which is located to the east of the site. They have noted the archaeological Section of the EIS submitted, specifically section 13 and as a result they consider that an archaeological impact assessment should be requested as further information.

The NRA have responded and simply stated that they will rely on the Planning Authority to abide by National policy in relation to development on national roads.

Sanitary Services have made a verbal response wherein they require information on what contingency measures are there in place/proposed in the event of a leakage to the watercourses which ultimately would find their way to the Blackwater from which the Nyan water supply is sourced at Liscarton.

The Environment section has returned a very detailed assessment where they point out that matters pertaining to control of emissions will be dealt with under the IPPC licence review which is required to facilitate the proposed development. However they have raised concerns regarding the lack of detail regarding proposed drainage works within the borrow areas and that this detail would be required in order to determine that the level of suspended solids entering adjacent watercourses is at an appropriate level.

The Infrastructure (Road Design) Section of MCC have submitted a report and they are not satisfied that the Traffic Impact Statement (TIS) submitted does not give AADT or % of traffic that traverse on the various roads of the proposed haul route i.e., the Donaghpatrick/Milestown Road, the regional roads R162 and R163, the N51 (Section 2A) and the N3. The SEE states that the applicants would be required to make a pro-rata

contribution towards the overlay of these roads, which would vary from a significant contribution on the Donaghpatrick/Milestown Road as most of the HGV traffic on the road would serve the proposed development to a small contribution towards overlay on the N3 as the % of overall HGV traffic on this route related to the proposed development would be modest in scale.

### **Development Plan Policy**

Section 6.6 of the Meath County Development Plan (CDP) 2007-2013 deals with Extractive Industry and Building Materials Production.

This section of the Meath CDP acknowledges that the county contains a variety of natural resources such as building materials products in the form of sand, gravel, stone reserves including high purity limestones and shale used in cement and magnesia manufacture and base metal deposits. The potential of these resources to underpin construction output and provide employment and economic growth in the local and regional economy is recognised as is the need to exploit same in an environmentally sound and sustainable manner. The CDP acknowledges that by their nature, aggregates can only be worked where they occur.

The CDP includes the following policies which are considered relevant to the consideration of the current application.

- RD POL 11 To facilitate the exploitation of the county's natural resources and to exercise control over the types of development taking place in areas containing proven or potential deposits, whilst also ensuring that such industries are carried out in a manner which would not unduly impinge on the visual amenity or environment quality in the area.
- RD POL 12 To protect the finite aggregate resources, in such areas of known or potential aggregate sources, whereby only development compatible with mining or quarrying activities shall be permitted in areas being or likely to be used for these purposes.
- RD POL 13 To ensure that extractive industries do not adversely affect the environment or adjoining existing land uses.
- RD POL 14 To ensure that the extractive industry minimises adverse impacts on the road network in the area and that the full cost of road improvements which are necessary to facilitate extractive industries are borne by the industry itself.
- RD POL 15 To ensure that the extraction of minerals and aggregates minimise the detracting from the visual quality of the landscape.
- RD POL 16 To ensure that all existing workings shall be rehabilitated to suitable land uses and that all future extraction activities will allow for the rehabilitation

of pits and proper land use management. The use of land filling with inert material is the preferred method. However, each planning application shall be considered on a case by case basis and where relevant will be dealt with under the Waste Management Strategy.

RD POL 17 To ensure that development for aggregates / mineral extraction, processing and associated concrete production does not significantly impact in the following areas:

- i. Existing & Proposed Special Areas of Conservation (SAC's);
- ii. Special Protection Areas (SPAs);
- iii. Proposed Natural Heritage Areas (pNHAs);
- iv. Other areas of importance for the conservation of flora and fauna;
- v. Areas of significant archaeological potential;
- vi. In the vicinity of a recorded monument, and;
- vii. Sensitive landscapes.

#### Development Assessment Criteria

It shall be required therefore that development proposals are framed to address in an authoritative manner issues such as:

- The extent of the land ownership and nature of the deposits;
- The protection or conservation of water resources whether above or under ground;
- Effective control of gaseous emissions and dust;
- Noise, vibration and subsidence;
- Transportation impacts;
- Restoration and landscaping;
- Protection of identified geological or geomorphological heritage features;
- Provision of adequate securities to "self police" compliance, and;
- Assessment of impact on existing rights of way and traditional walking routes.

#### **Proposed Development**

In the current application planning permission is sought to construct a 4 metre vertical extension delivering an additional 5.6 million cubic metres of storage capacity. The stage 5 development is for the purpose of extending the life of the mine and will be constructed on the footprint of the existing facility, which occupies an area of 170 hectares. The glacial till material to be used in construction of the vertical extension will come from

two

immediately adjacent areas of 52 hectares and 18 hectares located in the townland of Randalstown. Planning permission for the 52 hectare area was permitted in the previous Stage 4 Development, ref no. P96/919.

An Environmental Impact statement (EIS) has been prepared and accompanied the planning application. The proposals will require a revision of the company's Integrated

Pollution Prevention Control licence (PPCL No. P0516-01) by the Environmental Protection Agency (EPA).

The tailings facility was first commissioned in 1977 under P74/732 to contain waste, known as tailings, from the ore processing business carried out at the mine head. Stages 1-3 of this facility are fully developed and it is anticipated that stage 4 will be filled by the year 2013. The capacity of the proposed Stage 5 Development will allow for an additional 5.6 million cubic metres of tailings to be stored and will be sufficient to allow for the processing of ore from all known reserves and resources with an estimate for future discoveries.

It is thus estimated, using current production levels, that Stage 5 will allow for mining to continue until at least 2018.

It is proposed to provide the extra capacity by extending the existing dam facility by means of a vertical raise i.e a 4 metre high dam set inside the existing dam, over the full perimeter of stages 1-4 and constructed on the existing deposited tailings. It is proposed to commence construction of Stage 5 in 2010 for completion at the end of 2017.

This application is accompanied by an EIA. The proposal is subject to an IPPC licence which is issued by the EPA. This means that in the event of permission being granted for these proposals that the Planning Authority would not impose conditions in relation to environmental matters such as noise, dust etc as such matters are within the remit of the IPPC licence mechanism.

The application documentation also includes, in addition to drawings and the EIS, a Stage 5 raise design report, a probabilistic risk assessment study and a reclamation and closure plan. The reclamation and closure plan provides for the final closure and reinstatement of the entire Randalstown Tailings Facility and seeks to set out a plan for the long term "walkaway" closure of this site.

This application has been referred to all statutory bodies as required under the Planning and Development Regulations 2001 as amended and to various Departments of Meath County Council as outlined in the referrals table on Pages 3 & 4 of this report. This report should be read in conjunction with the reports received from the Environment section of Meath County Council as well as reports from the external agencies such as the ERFB, the NRA, etc.

This application sets out in clear terms a description of the proposed development, its likely significant impacts, proposals for amelioration and mitigation and long term plans for the environmental rehabilitation of the site and the surrounding receiving environment.

#### **Environmental Impact Statement:**

An Environmental Impact Statement (EIS) is required for certain types of development including the current proposals as prescribed under Article 93 and schedule 5 of the



planning and Development Regulations 2001- as amended, although tailings storage facilities are not specifically mentioned within these regulations, an EIS has been submitted similar to that under the previous vertical extension applied for under P96/919.

The first three sections of the EIS give an introduction and historical context to the proposal. The proposed development, known as Stage 5, will be 4 metres higher than the height of the existing Stage 4 raise permitted under P96/919. The present average height of the wall is 20 metres above ground level and the proposed development will result in an average proposed height of 24 metres above ground level. The raise will be implemented in 2 phases over a 5/6 year period. The first phase will comprise the construction of the stage 5A wall within the existing Stage 4A facility which it is planned to commence in early 2010 and to complete it by the end of 2012. The second phase would involve the construction of Stage 5B wall within the existing Stage 4B facility and it is planned to commence in 2015 and to complete by 2017. The design for the Stage 5 construction is based on the proven design developed for the stage 4 vertical extension.

The extension will be constructed using a low permeability glacial till, which will be sourced from the existing and proposed borrow areas to the north. Preloading the footprint of the wall will be carried out to reduce settlement beneath the embankment wall and to increase the strength of the foundation tailings. The material required for this process will be imported from the surplus rock stockpile at the mine site.

Access to the borrow areas and the tailings facility for plant and contractors will be from the R163-Kells to Kilberry Road.

Hours of construction are proposed from 0730am to 0800pm, however compacting will continue until 0900pm. On Saturdays it is proposed to work from 0730am to 0500pm and compacting until 0600pm. They may envisage workings on Sundays and Bank Holidays if there is a delay in construction due to bad weather etc.

Temporary haul roads will be constructed for the movement of material from the borrow areas to areas adjacent to but inside the existing tailings storage facility perimeter embankment.

A scoping process was entered into in relation to the salient matters to be addressed within the EIA process. This exercise was conducted having liaised with Meath County Council and Engineering Consultants and following on discussion with local residents/landowners.

The main areas addressed within the EIS include the following:

- Landscape
- Spills/Vegetation and land use
- Hydrology and Hydrogeology
- Terrestrial Ecology and Wildlife
- Aquatic Ecology

- Animal health
- Air quality
- Noise
- Roads & Traffic
- Human beings
- Material Assets

### **Landscape:**

This is dealt with within Section 4 of the EIS. As per the Meath County Development Plan 2007-2013 Landscape Character Assessment (LCA) the application site is located within the south western corner of the North Navan Lowlands and the boundary adjoins the River Blackwater character area to the west and south

The landscape includes large opens fields, small pastures with plenty of hedgerow. Hedgerows comprising blackthorn and hawthorn are predominant.

Twelve viewpoints were chosen from adjacent areas including Randalstown, Tatestown, Silloge, Proudstown and Simonstown and the existing and proposed scenarios are presented in photomontages as well as a description of the likely impacts. It is noted that there are a lot of existing mature natural vegetation that screens many of these sensitive areas from the Tailings Storage Facility (TSF). However it is also noted that some dwellings will have a very prominent view of the TSF. Given that this is the case at present it is arguable that an extra 4 metre raise will so significantly increase this visual impact. The separation distances from the perimeter raise to dwellings is considerable in many cases but the nearest dwellings being 100 metres from the borrow areas at Silloge and this increases to 400 and 500 metres from the perimeter embankment at Simonstown and Randalstown.

In the Meath CDP 2007-2013 the only designated viewpoint is at Hays townland which is 7km east of the TSF and the visual impact from here is negligible given the 7kilometre separation distance.

The applicants recognize that 1800metres of hedgerow will be removed from within the borrow areas, however in mitigation the applicants propose to contour these areas and install drainage and return to agricultural use, whereby trees and field boundaries will be reinstated to the pre-existing arrangement. The final level within these borrow areas will be 1.5 metres below the existing current ground level.

In terms of the visual impact of the proposed new perimeter bank, this can be reduced by seeding the new embankment which would also reduce the potential for surface runoff erosion.

These are all matters that are conditionable.

### **Soils, Vegetation and land use:**

These areas are covered in Section 5 of the EIS. The predominant land use around the TSF is agricultural with small areas of woodland. In the proposed borrow areas the soils are generally well drained and productive with no serious limitations in terms of pasture/grazing. The trace metal (lead, zinc and Cadmium) concentrations in the soils surrounding the TSF are generally within a normal range quoted for a wide spectrum of soils although in some cases marginally exceed maximum concentrations quoted for typical Irish soils. Samples of vegetation would indicate concentrations of trace metals in herbage consistent with recordings from other uncontaminated locations are all below the levels likely to give rise to adverse effects in grazing animals.

The borrow areas to the north will be returned to agricultural use or forestry upon completion of the Stage 5 vertical raise.

It is recognized that dust blow could represent an issue, however mitigation measures in the form of the establishment of vegetation, maintaining a moisture content within the soil and the use of the sprinkler system. Other specific mitigation measures will include 24 hour CCTV manned surveillance from the Mine Control Room, vegetation of areas more susceptible to dust blow and the availability of a Mine Rescue Team on a 24 hour call out basis.

Environmental monitoring of soils, vegetation and land use in the vicinity of the TSF will continue and monitoring results are submitted to Meath County council, the HSE and the EPA for examination and where acceptable levels are exceeded appropriate sanctions are applied.

#### **Hydrology and Hydrogeology:**

These areas are addressed in Section 6 of the EIS. The applicants contend that as the Stage 5 extension is similar in design to the previous Stage 4 extension that many of the hydrological and hydrogeological issues identified in the 1996 EIA remain the same. Since the completion of the Stage 4 extension a water monitoring programme has been implemented at the TSF whereby annual water quality monitoring reviews are conducted independently. This monitoring has illustrated that the interceptor channel outside of the perimeter embankment is effectively capturing almost all seepage from the tailings pond through the embankment walls.

A vertical chimney drain within the Stage 5 embankment will intercept seepage and depress the phreatic surface within the embankment. A blanket drain will be located at the toe of the Stage 5 embankment to collect flow from the chimney drain and additional seepage through the embankment wall. Wick drains will also be installed at the base of the chimney drain to reduce pre pressures and seepage forces in the foundation tailings of the embankment. A French drain will collect flow from the drainage blanket and direct it to the upstream French drain collector chamber. This flow is then directed across the stage 4 dam crest to the downstream collector chamber, and subsequently to the existing stage 4 collector chamber via a pipe connection. Seepage from stages 4 & 5 will then be discharged to the interceptor channel via existing chutes.

The TSF is bounded by the Yellow River to the west, the Simonstown stream to the east and the Blackwater River to the South. There are also two smaller streams, the Duog to the south east and Blake's Stream to the north.

Groundwater within County Meath is entirely hosted by bedrock in keeping with most of the ERBD and the aquifer in the vicinity of TSF is classified as "poorly productive".

Any water seepage through the embankment wall is trapped in the interceptor channel and pumped back in to the operational stage of the tailings facility. As this water is then recycled back into the TSF, effectively a closed water recycle system is in operation.

Sulphate is the element that is used as the key indicator of water quality around the TSF. Concentrations appear to have stabilized over time. There is a general decrease in sulphate concentration with increasing distance from the TSF. At a distance of 350 metres, the average sulphate concentration has met with water quality standards at all times.

The main risk to the water environment at construction, operation and closure continue to be from seepage through the embankment walls of the TSF and the associated elevated concentrations of sulphate and other parameters in groundwater to the south west of the site.

Seepage is predicted to decrease with the increased height of the perimeter wall, therefore there will be no deterioration in circumstances than was identified in the 1996 planning application or indeed monitored over the last decade or so. Elevated concentration levels of sulphate in the groundwater are not expected to extend beyond 200 metres of the the TSF.

Within the closure plan it is illustrated that that the surface will be profiled so that the water decants from a structure at the south east corner of Stage 5B into the interceptor channel. Subsequent to the aftercare the period pumps will cease and the water will drain naturally by gravity to the south east of the channel. It will then discharge through a passive treatment system (PTS) (wetlands) to the River Blackwater. There will be an overflow route to the Simonstown Stream at times of high flow when dilution is adequate for discharge without treatment.

The applicants recognize that design would will be required when Stage 5A is capped at which stage water flows and quality will be determined with greater certainty.

Monitoring will continue during construction and operation and well as after closure whereby the effectiveness of the PTS will be confirmed.

It is noted that the applicants engage in significant monitoring of groundwater in numerous adjacent private domestic wells, as well as monitoring of water in the adjacent watercourses, as well as bedrock and overburden borehole monitoring and monitoring within the interceptor channel.

In terms of water levels those within adjacent domestic supplies have remained relatively constant over the last decade, displaying a typical seasonal fluctuation of approximately 1 metre.

Aquifer vulnerability mapping by GSI indicates that the area surrounding the TSF has an interim classification of "moderate" to "high" vulnerability. Land directly to the north, west and south of the TSF is classified as being of "high" vulnerability. With a hotspot of "extreme" vulnerability to the west.

In terms of water quality the EPA has classified the surface water bodies as being "not at risk" and the groundwater bodies as being "probably at risk".

### **Terrestrial Ecology & Wildlife:**

These areas are addressed in Section 7 of the EIS. The proposed seven field borrow areas have hedgerows which are considered to be of local conservation value. Blake's stream passes through the site and joins the Yellow River to the west which then flows into the River Blackwater which is identified as a Special Area of Conservation (SAC). A badger sett is in existence along the eastern boundary of the seven field borrow areas as well as bats but no protected bird species. The badger and three protected species of bats are protected under the Wildlife Acts of 1976 & 2000.

The habitats within the already worked northern borrow areas are classified as disturbed with none of particular conservation value. However there are a number of protected species including the hare, some protected birds such as the Kestrel, Mute Swan, little Grebe, Skylark and Linnet and the frog.

In terms of mitigation the applicants say that they will apply best practice standards in terms of protecting the various protected species on site. However further detail would be required in terms of what specific measures the applicants. These matters can be addressed in the

### **Aquatic Ecology:**

This area is dealt with in Section 7 of the EIS. In the monitoring of the adjacent watercourses the applicants recognize that there has been a general deterioration in water quality both upstream and downstream of the TSF. Any increase in heavy metal concentration has not exceeded the EPA Guideline value for lead and zinc. No major impacts on aquatic fauna have been detected relating to mining activity over the last decade of monitoring. It is envisaged that there will be no impacts upon the aquatic life in the adjacent watercourse as a result of the proposed development, providing that the mitigation measures are applied as recommended in the EIS.

### **Animal Health:**

This area is dealt with in Section 8 of the EIS. Monitoring has been ongoing in order to quantify any changes on the adjacent study farms that could be attributable to their proximity to the TSF and to assess whether the proposed extension would have any

impact upon the same farms in the future. Each study involved the testing of soil, herbage and livestock from six adjacent study farms for heavy metals including lead, zinc and cadmium. The results showed no evidence of an increase in heavy metals on the farms that could be attributed to the proximity to the TSF.

The findings concluded that the operation of the TSF had no demonstrable effect on the health or productivity of livestock on adjacent farms and that the TSF has not resulted in the accumulation of heavy metals in the soil, herbage or livestock on the farms and that there is no indication that the proposed extension will change this situation.

#### **Air Quality:**

This matter is addressed in Section 9 of the EIS. Currently the air quality is classified as being "average to good" with levels of criteria for pollutants for traffic, industrial and residential derived pollution below the relevant Irish and EU standards. The main source of air pollution in the area is derived from motor exhaust, construction and industrial activities, heating and associated urban and farming emissions. There is a risk that emissions from dust from the facility could result in air quality impacts and nuisance in the vicinity of the existing and proposed development during the construction and operation phase. Dust control will be minimised and mitigated by means of maintaining moisture levels, using a spray irrigation system and establishing vegetation on the slopes of the perimeter embankment.

#### **Noise:**

Noise is addressed in Section 10 of the EIS. The normal operation of the existing facility does not generate any discernable noise and the proposed Stage 5 raise when completed and operational will similarly not generate any discernable noise. The main noise sources will be those associated with the construction phase. Construction work will be seasonal to coincide with dry weather conditions out over a period of 5/6 years in two separate phases of 2/3 years each.

Glacial till will be excavated from the adjacent borrow areas and hauled to the perimeter embankment and placed using excavators and bulldozers. Increased traffic flow will be generated on the local road network during the construction period which is anticipated over a period of 28 weeks per annum.

The applicants contend that the maximum noise levels predicted will pertain for short periods only during the construction of the acoustic berms which will be 4 meters high and constructed between the nearest residents and nearest zone of excavation activity. Precise details of the acoustic berms would be required in terms of their precise location. The applicants have referred to the construction noise levels used by the NRA as road construction as there are no national standards for construction noise. The applicants contend that predicted maximum noise levels will not exceed the standards as set down by the NRA in terms of construction noise levels during the construction period and these levels will significantly reduce during the operational phase.



In terms of mitigation measures, the acoustic berms, silencers on exhausts, noise awareness will be included in induction for contractors and that the noise levels stipulated within the IPPC licence will be adhered to.

### **Roads and Traffic:**

These issues are addressed in section 11 of the EIS. The main access to the facility is via the local road known as the Milestown road in Silloge townland. Traffic monitoring entering and existing the site has taken place over the last decade. The applicants have stated that HGV traffic entering and existing the site will do so by turning right onto the Milestown road and travel to the R162 (linking Kilberry with Gibbstown). HGV traffic will turn right at this junction as far as Kilberry X where a right turn will be taken to take HGV traffic into Navan. The Milestown road has a carriageway width of approximately 6 metres and with soft margins may make it difficult for two HGV's to pass simultaneously. It is estimated that the proposed extension works will generate a maximum of an additional 10 HGV's per hour, it is not clear if this figure represents total movements of actual HGV's. This is a matter that will need clarification. It is noted that an additional 34 staff will be employed during the construction phase which will generate significant additional traffic over the 5/6 year construction period.

The roundabout at the "Round O" public house is operating at above the minimum ratio of flow and does not have the capacity to cater for the additional traffic generated by the construction traffic. The applicants would be required to outline a suitable alternative route or else to submit proposals whereby the capacity at this junction could be increased to serve the proposed construction related traffic. The applicants also state that vegetation at the entrance point will have to be trimmed back in order to achieve adequate sight/stopping distances and that appropriate signage will have to be erected to warn road users of the construction traffic.

The report from the SEE Infrastructure (road Design) was referred to earlier in this report and he is seeking that the TIA submitted be revised to provide accurate AADT and % HGV traffic figures on the haul route in order that a pro-rata contribution can be calculated towards the overlay of the haul route from the local Milestown/Donaghpatrick road to the N3 via the R162/3 and N51.

### **Human Beings:**

This section is addressed in Section 12 of the EIS. The applicants point out that the areas adjacent to the TSF comprise farmland, farm dwellings and residential dwellings. They also contend that there are no designated walkways or cycle routes adjacent to the TSF although the PA are aware that there many of the adjacent lands are used as unofficial and undocumented walkways by local residents. Boliden contend that as the TSF is not located in proximity to any designated settlement in the form of a town or Village that the proposed extension will not negatively impact upon any such areas. They also contend that the TSF will operate under strict guidelines in order to ensure that the residential amenities of adjacent residents is respected and maintained. The development of the extension will ensure that direct and indirect employment is maintained.

**Material Assets:**

These are dealt with in Section 13 of the EIS. In terms of archaeology the applicants recognize that several archaeological excavations have taken place within the TSF compound. These excavations were carried out at St Anne's Church at Randalstown and Simonstown Ringfort. Up to 2004 several other sites, mostly of pre-historic date were uncovered in the course of monitoring of topsoil stripping within and on land adjacent to the proposed development area. The applicants further recognize that there is a strong likelihood that further archaeological material will be uncovered during the course of the proposed stage 5 development works. Six known archaeological are located within the overall development area, 5 of which are within the permitted northern borrow area and another "Earthwork Site" revealed as a cropmark on an aerial photograph is designated as a recorded monument ME018-026 in the RMP. It is acknowledged by the applicants that the proposed development works will have a direct impact upon the known recorded monument and on other archaeological sites that may be present.

They are recommending that geo-physical surveying and archaeological test trench monitoring be conducted as mitigation measures.

**Alternatives:**

Four options have been considered so as to provide for continued mining. They include:

1. A further lateral extension.
2. An extension by way of a vertical raise.
3. The provision of a new tailings facility at a location remote from Randalstown.
4. A reduction in the quantity of tailings.

A further option i.e the "do nothing" option has also been elulated.

The "do nothing" option would result in the premature closure of the Tara Mine and would represent an underutilization of a proven natural resource. It would thus be contrary to National Development Policy and the provisions of the Meath County Development Plan 2007-2013 specifically Section 6.6 which includes policies to facilitate the exploitation of natural resources including base metal deposits.

A reduction in the amount of tailings needed to be stored is not available as alternative uses cannot be found. This option would lead to the premature closedown with the same effects as would follow from the "do nothing" option.

A new tailings facility at a remote site would only serve to duplicate existing environmental impacts and would require the uneconomic provision of duplicate services like access roads, pipelines etc.

A lateral extension extends the area of land to be covered by tailings and hence increases the area for generation of impacts and in particular in relation to leachate dispersal and contamination of groundwater. It would also use up valuable agricultural land.

The Planning Authority are satisfied that the vertical raise extension offers the best available means with which to provide extra tailings storage capacity for the Tara Mine. Given the established use of this site as a tailings disposal facility and subject to the proviso that the extended facility is strictly engineered and operated to the highest environmental standards so as to minimize adverse impacts on the environment, the proposed development appears to be acceptable in principle. However there are various matters in relation to habitats, drainage, traffic, danger of leakage etc would have to be addressed satisfactorily before a conclusive recommendation could be issued.

### Assessment

The application has been accompanied by an EIS which provides an assessment of the likely significant effects of the proposed development on the receiving environment.

As outlined previously, the subject site is subject to a reviewed IPPC licence. Section 34(2)(c) of the Planning & Development Act 2000, as amended, states that "Subject to section 98 (as amended by section 256 of this Act) of the Environmental Protection Agency Act, 1992, and section 54 (as amended by section 257 of this Act) of the Waste Management Act, 1996, where an application under this section relates to a development which comprises or is for the purposes of an activity for which an integrated pollution control licence or a waste licence is required, a planning authority shall take into account that the control of emissions arising from the activity is a function of the Environmental Protection Agency."

Under the terms of the Act, the Environmental Protection Agency cannot issue a licence unless it is satisfied that

- i.) Any emissions from the activity will not result in the contravention of any relevant air quality standard specified under section 50 of the Air Pollution Act, 1987, and will comply with any relevant emission limit value specified under section 51 of the Air Pollution Act, 1987;
- ii.) Any emissions from the activity will comply with, or will not result in the contravention of any relevant quality standards for waters, trade effluents and sewage effluents and standards in relation to the treatment of such effluents prescribed under section 26 of the Local Government (Water Pollution) Act, 1977;
- iii.) Any emissions from the activity or any premises, plant, methods, processes, operating procedures or other factors which affect such emissions will comply with, or will not result in the contravention of any relevant standard including and standard from an environmental medium prescribed under regulations made under the European Communities Act, 1972, or under and other enactment;

- iv.) Any noise from the activity will comply with, or will not result in the contravention of, any regulations under section 106;
- v.) Any emissions from the activity will not cause significant environmental pollution;
- vi.) The best available techniques will be used to prevent or eliminate or where that is not practicable, generally to reduce an emission from the activity;
- vii.) Having regard to Part III of the Act of 1996, production of waste in the carrying on of the activity will be prevented or minimized or, where waste is produced, it will be recovered or, where that is not technically or economically possible, disposed of in a manner which will prevent or minimise any impact on the environment;
- viii.) Energy will be used efficiently in the carrying out of the activity;
- ix.) Necessary measures will be taken to prevent accidents in the carrying on of the activity and, where an accident occurs, to limit its consequences for the environment and, in so far as it does have consequences, to remedy those consequences;
- x.) Necessary measures will be taken upon the permanent cessation of the activity (including such a cessation resulting from the abandonment of the activity) to avoid the rise of environmental pollution and return the site of the activity to a satisfactory state; and;
- xi.) The applicant or licensee or transferee, as the case may be, is a fit and proper person to hold a licence, and, where appropriate, the Agency shall attach conditions relating to the matters specified in the foregoing subparagraphs to the licence or revised licence.

Under Section 256 of the Planning and Development Act, 2000, where a Planning Authority decides to grant permission to a development which is also subject to IPPC licensing, the Planning Authority is precluded from attaching conditions for the purposes of controlling emissions from the activity. This does not preclude the Planning Authority from refusing permission for a development on environmental grounds, having regard to the proper planning and sustainable development of an area, notwithstanding whether an IPPC licence has been granted or is required. If granting planning permission, the Planning Authority is precluded from attaching conditions for the prevention, limitation, elimination, abatement or reduction of pollution.

## **Conclusion and Recommendation**

The principle of a vertical extension at the TSF has already been accepted by both Meath County Council and An Bord Pleanála. However each planning application has to

be assessed on its own merits. The proposed development accords with many policies contained within Section 6.6 of the Meath County Development plan 2007-2013 regarding the extractive industry. It is also noted that the control of emissions is a matter that will be managed under the IPPC review which will be required if this development is to be permitted. However a number of matters have been raised specifically relating to the protection of the local water supply from a high level of suspended solids, the protection of existing habitats and protected species during the proposed works, the issue of traffic generation and the capacity of the local road network and also the issue of leakage to the local water supply. These are some of the fundamental issues that must be addressed by the applicants in order to facilitate the formulation of a fully informed and comprehensive recommendation by the Planning Authority having regard to the proper planning and sustainable development of the area. Accordingly I recommend that further information be sought with regard to the following matters: ✓

- 1 It is noted that there was a severe dust blow occurred in May 2008 which impacted upon the adjacent lands and residents and exceeded minimum acceptable dust levels. You are therefore requested to clarify why and how the mitigation measures set down in the current proposals were not sufficient in that particular instance and demonstrate that the proposed mitigation measures as part of the Stage 5 vertical raise will be sufficient to cater for any future incidents where such a dust blow would occur. ✓
- 2 It is noted that there are proposals to disturb existing natural habitats within the two borrow areas whereby 1,800 metres of hedgerow will be removed and many protected species will also be disturbed. It is noted that the mitigation measures outline that the protected animal species will be protected, however no precise courses of action have been outlined. You are requested to submit precise details as to how these protected animals namely the badger, three species of bat, numerous bird species, the frog etc will be protected during the extensive works. ✓
- 3 It is noted that the Geological survey of Ireland has classified the underlying aquifer as being of "moderate" to "high" vulnerability. Therefore the applicants are requested to demonstrate that there will be no risk to this aquifer from the proposed development or indeed to any of the adjoining watercourse which are tributaries of the River Blackwater and would impact upon the local town supply which is supplied from the Blackwater at Liscarton. You are requested to liaise with Mr Pat Kinsella of the Infrastructure section of Meath County council in this regard. ✓
- 4 The noise abatement measures include the construction of acoustic berms adjacent to the heavy construction works. The applicants are requested to submit precise details of these acoustic berms in terms of their make up, location and usefulness. ✓
- 5 It is noted that the proposed development will generate a significant amount of Heavy Goods Vehicle (HGV) traffic on the proposed haul route. It is appropriate that the applicant should pay a roads contribution for the overlaying of these roads pro-rata with the level of traffic the proposed development generates. The Traffic Impact Assessment (TIA) does not give AADT or % of HGV traffic for these roads. A revised TIA should be submitted whereby these figures are precisely set

down. You are requested to liaise with Mr Jim Gibney of the Infrastructure Section of Meath county Council in this regard.

- 6 The Planning Authority note that during the construction works a significant amount of extra traffic and in particular heavy traffic will use the specific haul route from the Tailings Storage Facility to the mine itself. The applicants are requested to address the capacity issue at the "Round O Public House" junction which is presently operating at capacity. The applicants should either submit proposals for a more suitable alternative haul route or proposals for the upgrade of the capacity of this junction. You are requested to liaise with Mr Jim Gibney of the Infrastructure Section of Meath county Council in this regard.
- 7 It is noted that the applicants have proposed mitigation measures to deal with the extra traffic proposed during construction in the form of trimming back vegetation and the erection of signage. The applicants are requested to demonstrate that adequate sight and stopping distances are achievable at the entrance on the Milestown Road and in accordance with the NRA document "Design manual for roads and Bridges". Precise details of the type of signage and its location should also be submitted. You are requested to liaise with Mr Jim Gibney of the Infrastructure Section of Meath county Council in this regard.
- 8 The applicants are requested to liaise with the Office of Public Works to ensure that the necessary maintenance strip of between six and ten metres is maintained along all drainage channels. The applicants should also demonstrate that the proposed development will not result in an increased rate of run off from the site and result in flooding of adjacent lands.
- 9 It is noted that that within the site of the proposed works there is an identified recorded Monument, ME018-026 which is subject to statutory protection. The applicants are requested to liaise with the Department of Environment, Heritage and Local Government (Archaeological section) and submit an Archeological Impact Assessment assessing the impact on archaeological remains in the area where development is proposed to take place.
- 10 You are requested to provide a method statement and pollution control plan to cover operations within the borrow areas. This plan should be designed within best practice guidelines to minimise the generation of silty water and provide adequate attenuation and treatment of all surface water run-off from the site. Specific details in relation to all proposed settlement pond(s) should be provided to illustrate that the siting, design, sizing and maintenance will be adequate to provide effective settlement of the run-off waters arising on site, taking account of the volume and physical settlement characteristics of the run-off waters which will require treatment. The pollution control plan should comply with "Requirements for the Protection of Fisheries Habitat during Construction and Development Works at River Sites" issued by the Eastern Regional Fisheries Board. You are requested to liaise with Mr Emmet Conboy of the Environment Section of Meath County Council in this regard.
- 11 The applicants are requested to submit progressive restoration proposals for the borrow areas whereby these areas would be afforested or returned to grazing and including for the replanting of natural field boundaries.
- 12 F113.


Noted + agreed

20/06/2012

Fargal  
20/06/2012



13 Fil5 "Fergal O'Bric".

RECOMMENDATION ACCEPTED 06 NOV 2009 Signed 
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## Meath County Council Planning Report

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**To:** Fiona Redmond, Senior Executive Planner  
**From:** Fergal O'Bric, Executive Planner  
**Date :** 7/5/2010  
**File No:** NA901452  
**Applicant:** Boliden Tara Mines Ltd.  
**Location:** Randalstown, Simonstown and Siloge  
**Description of Development:** Significant further information has been submitted to the Planning Authority in relation to an application for planning permission for stage 5 development which will consist of a 4 metre vertical extension delivering an additional 5.6 million cubic metres of storage capacity. The stage 5 development is for the purpose of extending the life of the mine and will be constructed on the footprint of the existing facility, which occupies an area of 170 hectares. The glacial till material to be used in construction of the vertical extension will come from two immediately adjacent areas of 52 hectares and 18 hectares located in the townland of Randalstown. Planning permission for the 52 hectare area was granted in the previous stage 4 development, ref no. P96/919.

An Environmental Impact statement (EIS) has been prepared and will accompany the planning application. The proposal will require a revision of the company's Integrated Pollution Prevention Control licence (IPPCL No. P0516-01) by the Environmental Protection Agency (EPA).

**Decision Due :** 13/5/2010

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### Site Description

Boliden Tara Mines Ltd is the largest Lead-Zinc Mine in Europe and is located at Knockumber circa 2km west of Navan. The application site which encompasses the tailings storage facility comprises an area of approximately 170 hectares. The subject site is within the bounds of the existing tailings facility. The application site is located approximately five kilometres north west of Navan town and approximately five kilometres north of the existing mine site at Knockumber. The site, the subject of this application is located within the townlands of Randalstown, Simonstown and Siloge.

### Planning History

In this part of the report, below are what is considered to be the principal planning applications pertinent to the current planning application site: .

- Parent planning permission P73/1325 p/p was granted for mining facilities in the townlands of Knockcumber, Randalstown, Whistlemount and Townspark. This decision was upheld by the Minister on appeal reference 17/5/24044.
- P74/732, p/p granted for the construction of dykes for the disposal of tailings;
- P83/464, p/p was granted for modifications and extensions to the mine tailings facility at Randallstown;
- P83/537a and 83/537 granted and extension to original grant of p/p and a limited permission was granted for construction work at the tailings facility
- P96/919 and PL 17.104373, p/p granted for a vertical extension to the TSF subject to 40 no. conditions;
- NA30126 p/p granted for extraction of Nevinstown ore body (granted p/p by An Bord Pleanala PL 17.204034 refers)
- NA40005, planning permission granted for mining under lands at Betaghstown, Boyerstown, Commons, Irishstown, Mullaghmore or Allenstown, Neillstown and Ongenstown, Navan and the provision of a fresh air raise and return air raise with associated works to accompany an extension to the existing underground mining operations to the south west of the existing mine, an Environmental Impact Statement accompanies this application. This application is covered by IPC License number 516, SWEX ore body extension.
- NA 40383, planning permission was granted for an extension to an existing mill building at the Knockcumber site to house an upgrade to the mine backfill plant, the development is subject to IPC license No 516.
- NA50378, planning permission granted for the construction of a new canteen building, connect to existing sewage treatment system and services with ancillary site works.
- NA801280, planning permission granted for 110kv electrical transformer station consisting of 110 kv busbar, portal structure, switchgear, 110kv to 6.6kv power transformers, 1 no building 6.825 m high containing control cabinets. Site works will consist of development of concrete bases, transformer bunding and associated oil/water interceptors, site grading and the erection of 2.6m high palisade fence and gates.
- NA801570, planning permission granted for new grinding hall adjacent to the existing grinding hall building to house a new autogenous grinding mill. The development was subject to an Integrated Pollution Control (IPC) licence - no

516. The IPC licence provided for control of all waste management, air borne emissions, water borne emissions and noise levels.

### **Submissions and Observations**

Two further submissions were received in relation to the further information submitted and this is in addition to the ten submissions/observations received with respect to the original information in relation to the proposed development. The salient issues raised in the additional two submissions relate to the following matters:

- The adverse impacts that the existing tailings facility and the proposed extension will have upon adjacent residents in terms of their health.
- The vertical raising of the tailings storage facility will be visually prominent within the local landscape especially to the dwellings immediately adjacent to the facility.
- That the applicants have failed to fully comply with conditions set down under P96/919 re; replanting, sprinkler system (condition no 23)
- The current proposal will result in the removal of 1,800 metres of hedgerow from the borrow areas, will this hedgerow be replaced?
- Concern that local groundwater and domestic wells will be impacted upon by unacceptable levels of sulphur and zinc plume emanating from tailings seepage.
- The danger from dust blows, a severe one occurred in May 2008 and the sprinkler system failed to operate which was a requirement of their P96/919 permission.
- It is contended that noise levels have exceeded those set out in planning permission and within their IPPC licence.
- They are seeking strict working hours for the construction of the proposed extension i.e 8-5.30 Monday to Friday, 9am -1pm on Saturday and no work on Sundays or bank Holidays.
- Why were other options such as “pasting” or “a lateral extension” not being considered within the alternative options?
- Effects on locals health through breathing in chemicals, and through the drinking of water and eating food grown in the local contaminated soils.
- That further archaeological sites/material would be found and destroyed with the proposed works.
- That the proposed vertical raise will impact upon the sunlight enjoyed currently by adjacent residents
- That the development proposals will result in the spread of TB as badgers are disturbed.
- Concern regarding the Structural stability of the tailings storage facility as it is built on a fault line.
- Fear and anxiety at the thought of a leak from the facility
- That the applicants/PA have failed to consider/assess the environmental/archaeological/heritage/health implications of the proposed development.

- That the EIA submitted is deficient in terms of not addressing all matters as required under planning legislation. .

The Planning Authority note that a number of these issues are not ones which are appropriate to be considered during the planning process and that such matters are clearly within the remit of other fora. However some of the foregoing matters are very much planning related and will be addressed within this report having regard to the proper planning and sustainable development of the area.

## Referrals

### View Consultants

For Application number : NA901452

Consultant's Name	Status	Required Date	Requested Date	Returned Date	Notification
Emmet Conboy	Returned	29/04/2010	23/03/2010	26/4/2010	
Mr Pat Kinsella	Returned	29/04/2010	23/03/2010	5/5/2010	
National Parks & Wildlife Services	External Request	29/04/2010	23/03/2010		
Al Donnelly Environmental Health Officer -	RETURNED	29/04/2010	26/03/2010	23/04/2010	
Office of Public Works,	External Request	29/04/2010	23/03/2010		
Do EHLG Dev Apps Unit (Archaeology)	RETURNED	29/04/2010	23/03/2010	09/04/2010	
Jim Gibney	Returned	29/04/2010	23/03/2010	6/5/2010	
Jim Gibney	RETURNED	28/10/2009	30/09/2009	06/11/2009	
Principal Environmental Health Officer,	External Request	28/10/2009	30/09/2009		
Do EHLG Dev Apps Unit (Archaeology)	RETURNED	28/10/2009	28/09/2009	19/10/2009	
Office of Public Works,	RETURNED	28/10/2009	28/09/2009	14/10/2009	
Conservation Officer Chadwick Jill	Internal Request	28/10/2009	30/09/2009		
Executive Engineer - Andrew Bagnall	Internal Request	28/10/2009	30/09/2009		
Comhairle Ealaion	External Request	28/10/2009	28/09/2009		
An Taisce - Brian Taylor	External Request	28/10/2009	28/09/2009		
Planning Officer,	Internal Request	28/10/2009	28/09/2009		
Heritage Council	External Request	28/10/2009	30/09/2009		
Mr Pat Kinsella	Internal	28/10/2009	30/09/2009		

	Request			
Gerry Lynn	RETURNED	28/10/2009	30/09/2009	06/11/2009
Eastern Regional Fisheries Board	RETURNED	28/10/2009	28/09/2009	04/11/2009
National Roads Authority	RETURNED	28/10/2009	28/09/2009	02/10/2009
N2/N3 DESIGN TEAM	RETURNED	28/10/2009	30/09/2009	07/10/2009
Heritage Officer - Loreta Guinan	Internal Request	28/10/2009	30/09/2009	
Environmental Protection Agency	RETURNED	28/10/2009	28/09/2009	28/04/2010
Dublin Transportation Office	External Request	28/10/2009	28/09/2009	

No reports have been received from the NPWS Section of the DoEHLG and the OPW in relation to the FI received.

The Department of Environment, Heritage and Local Government (Archaeological Section) have noted that included within the area of proposed works is a recorded monument ME018-026-Earthwork site at Randalstown which is located to the east of the site. They have noted the geophysical survey and test excavation report submitted on behalf of the applicants and are satisfied that a condition in relation to archeological monitoring be attached to any grant of planning permission..

Infrastructure (Sanitary Services Section) Department of MCC have given a response in terms of the applicants proposals in terms of ground and surface water and the SEE Mr Pat Kinsella has no objections in this regard.

The Environment Section of MCC has returned a response in terms of the proposed settlement lagoons and are satisfied that their capacity is sufficient to deal with day to day run off as well as a 1 in 30 year flood event.

The Infrastructure (Road Design) Section of MCC have submitted a report and they are now satisfied with the applicants proposals and have recommended that financial contributions be sought towards the strengthening of the Milestown Road and the Regional Roads, the R162 and R163.

The HSE have no objections to the proposed development subject to a significant number of conditions. It is noted that a significant number of these conditions would be outside of the remit of planning and would be dealt with under the IPPC licence review which is required if this development is permitted by the PA.

ERFB: No objections to the proposed development once all mitigation measures proposed are initiated and that any potential emergency spillages are alarmed.



EPA: They have submitted a very detailed response having carried out a site inspection and the Tailings Storage Facility. It is noted that they employed consultants to assess the Closure Residual, Aftercare and Management Plan (CRAMP). The following are the salient observations of the independent professional assessment:

- There was no evidence of seepage through the shoulders, any damp areas observed on the berms being the result of surface runoff from recent rainfall. In summary the TSF appears sound, well maintained and well operated.
- Because the TSF is unlined, and progressive drainage through the embankment drainage system aids consolidation of the tailings. An area of tailings on the completed cell 4A has been sown with grass directly into the tailings and is well established. The tailings were firm and readily accessible on foot (and by machine as previous crops of hay have been cut) and therefore this approach is feasible if carefully controlled.
- The final surface of each cell will allow for the surface runoff to the outlet. Proprietary Pozidrains are intended to be laid beneath the soil layer, leading to each valley to aid drainage and improve pasture.
- The overall conclusion from a review of the Golder TMF closure report and the visual inspection was of a well managed, stable and sound tailings facility. It represents a responsible and pragmatic engineering approach to closure, suited to the particular characteristics of the site, materials and operation.

It is noted that the independent professional assessment includes a number of queries as follows:

- In terms of the proposed capping of the cells it is advised *"if an inert mineral cap is proposed it would be better described as soil-forming material and additional organic matter may need to be added to ensure the productive agricultural pasture after use proposed. An allowance in the costings should reflect this scenario if it is a possibility"*.
- *"Section 6.3.1 of the EIS states that soil conditioners like compost will be used to improve the growing medium but there does not appear to be an allowance for this in the costings in Section 10.2.1."*
- *"There does not appear to be a provision for the restoration of the borrow pits"*.
- *"Details of aftercare operations are provided for in table 10.2 for commercial grassland, grass cutting is only provided for in years 1 & 2, with sheep grazing assumed beyond this period which is cost neutral. This suggests that the operator is confident that a tenant farmer will be available and willing to take on the management costs. Further clarity may be advisable and/or a contingency if no suitable candidates are found."*
- *"There appears to be no allowance made for fertilizer applications, weed control, decompaction or re-seeding. Normal aftercare in the UK would cover 5 years and include these as routine works, being dependant on annual inspections and monitoring/testing"*.

- *"Although reference to possible plug planting or over-seeding of nature conservation grasslands is made in Section 8.2.4 of the EIS, there appears to be no provision for same in Table 10.2" re; costings and aftercare.*
- *"In table 10.2 there appears to be no allowance for replacement of failures (hedgerow and scrub planting). Also, the majority of operations cover the first three years, whilst normal aftercare in the UK would cover 5 years and include spraying and possibly inter row strimming as routine works and an allowance for removal of tree guards at year 5, being dependant on annual inspections and monitoring/testing".*
- *"Although referenced in Section 8.3.2 and table 10.1 as 126,991 sq m of trees and shrubs to be planted on terraced areas of the dam walls, there does not appear to be any provision for their aftercare and maintenance in Table 10.2 of the EIS."*

The observations outlined above are noted and can be allowed for in any sum of monies sought with regard to the implementation of the Closure, Restoration and Management Plan. This is a matter that would be conditioned in the event of a planning permission being recommended.

## **FI Request & Responses**

This planning report should be read in conjunction with the previous report prepared and dated 3/11/2009 where further information was requested with regard to the following matters:

- 1 It is noted that there was a severe dust blow occurred in May 2008 which impacted upon the adjacent lands and residents and exceeded minimum acceptable dust levels. You are therefore requested to clarify why and how the mitigation measures set down in the current proposals were not sufficient in that particular instance and demonstrate that the proposed mitigation measures as part of the Stage 5 vertical raise will be sufficient to cater for any future incidents where such a dust blow would occur.

**Applicants Response:** The applicants acknowledge that a dust blow incident occurred on the 25<sup>th</sup> May 2008 after tailings had been deposited on the south west corner of Stage 4A of the Tailings Storage Facility (TSF). The dust blow incident at Randalstown was associated with coarse sand fractions which were exposed. The area concerned measured 2.0 hectares. Approximately 0.5ha of this area has been re-seeded 5 days prior to the dust blow. The applicants contend that inadequate coverage, inflexibility of piping and exposure of sands meant that the sprinkler system was ineffective in the then strong north-east wind conditions. The dust blow from a north-east direction deposited material into the adjacent stage 4B. The applicants contend that no dust was detected in any of the neighboring farmlands (this is not contradicted in any submissions received). The depositional dust gauges outside of the TSF recorded the levels of dust and these were recorded as being within acceptable emission limit values. This data was

presented to the EPA on the 10<sup>th</sup> July 2008 demonstrating that acceptable standards were not exceeded.

However in order to ensure that there would be no repeat of such an episode a number of measures have been put in place and include the following:

- A new more flexible PVC piping system was put in place to cover the complete area of course sands. Additional spigots and take-off points were installed to facilitate greater mobility/flexibility.
- A more robust pumping system was put in place (new pump installed and relocated to ensure a greater capacity and quality of supply).
- A CCTV system has been installed and is used as an early alert system to any future dust blows. This allows for continuous 24 hour manned surveillance from the Central control Room.
- An emergency call out system involving mine rescue personnel is available with immediate response in the event of any future incident.
- A planned programme of rehabilitation trials is underway to vegetate the areas of the tailings surface most susceptible to diffuse dust emissions. This will be completed in 2010.

- 2 It is noted that there are proposals to disturb existing natural habitats within the two borrow areas whereby 1,800 metres of hedgerow will be removed and many protected species will also be disturbed. It is noted that the mitigation measures outline that the protected animal species will be protected, however no precise courses of action have been outlined. You are requested to submit precise details as to how these protected animals namely the badger, three species of bat, numerous bird species, the frog etc will be protected during the extensive works.

#### **Applicants Response:**

The applicants acknowledge that there will be a gradual loss of habitat, however they will be replaced with disturbed habitats. An existing pond in the south eastern sector of the Northern Borrow Pit area which supports some wetland birds will not be disturbed. .

It is further noted that there are no species of conservation importance (listed in Annex 1 of the Birds Directive) and therefore the only mitigation measure required is compliance with the Wildlife Acts when removing uncultivated vegetation.

In the medium to long term new habitats will develop after works are complete in the borrow areas which will attract new species and could include species such as Skylark and Linnet.

Best Conservation practice will be used in terms of the conservation of species such as bats, badgers and frogs.

- 3 It is noted that the Geological survey of Ireland has classified the underlying aquifer as being of “moderate” to “high” vulnerability. Therefore the applicants are requested to demonstrate that there will be no risk to this aquifer from the proposed development or indeed to any of the adjoining watercourse which are tributaries of the River Blackwater and would impact upon the local town supply which is supplied from the Blackwater at Liscarton. You are requested to liaise with Mr Pat Kinsella of the Infrastructure section of Meath County council in this regard.

**Applicants Response:** The FI response was referred to the Infrastructure (Sanitary Services) Section of MCC. The SEE Mr Pat Kinsella has made the following observations in relation to the applicants FI response in terms of Groundwater and Surface water.

#### Groundwater

*“In the Further Information submission, the applicants state that main potential risk to the water environment is by seepage from the Tailings Storage Facility (TSF) to the underlying aquifer or to watercourses. They state that, overlying the bedrock aquifer and beneath the TSF, is 5m to 10m of superficial deposits made up mainly of Boulder Clay and Boulder Silts to the north, east and south-east of the TSF. These deposits, together with the consolidated tailings, limit vertical seepage beneath the TSF and minimise risk to the bedrock aquifer. To the south and west of the TSF, there are also areas of sands and gravels within the superficial deposits which are water-bearing and constitute aquifers of local importance. The potential for seepage into the sands and gravels was recognised at the time of the Stage 4 raise and measures were taken to minimise the risk to this superficial aquifer by deepening the perimeter interceptor channel. The applicants state that there is an extensive water quality monitoring system in place to monitor the effect of the existing TSF on the water environment. Following the Stage 4 raise, additional monitoring commenced and now takes place at 54 locations. The applicants contend that monitoring results demonstrate that the interceptor channel and drainage arrangements are containing the seepage. Following the Stage 5 raise, the applicants predict that total seepage from the TSF will decrease by 5 – 10%.”*

#### Surface Water

*“The applicants state that monitoring of surface water has shown no adverse impact on surface water. During operation, there will be no direct discharge to surface water from the TSF. The applicants further state that potential impacts, therefore, will be confined to the contribution of seepage to groundwater, which may pass as baseflow to surface watercourses. Seepage to groundwater is controlled. Groundwater baseflow represents only part of the flow in watercourses and as the TSF catchment is small by comparison to the Blackwater River catchment the effect of the proposed raise of the TSF on the River*

*Blackwater at Liscarton and on the Town water supply is considered to be insignificant”.*

- 4 The noise abatement measures include the construction of acoustic berms adjacent to the heavy construction works. The applicants are requested to submit precise details of these acoustic berms in terms of their make up, location and usefulness.

**Applicants Response:** The acoustic berms will be constructed from topsoil excavated from the borrow areas prior to the commencement of stage 5. Following the completion of the Stage 5 raise the topsoil from the berms will be returned to the borrow areas to re-vegetate. The reason for the berms which are to be located along the northern boundary of the borrow areas along the northern perimeter of the site is to protect two dwellings from noise during the development works. All other dwellings are sufficiently removed such that noise attenuation measures are not necessary. A model has been used to illustrate the effectiveness of the berms in protecting the adjacent residents from excessive noise intrusion during the development works. Other measures such as controlling the hours of operations will also be crucial in terms of respecting the adjacent residents amenities.

- 5 It is noted that the proposed development will generate a significant amount of Heavy Goods Vehicle (HGV) traffic on the proposed haul route. It is appropriate that the applicant should pay a roads contribution for the overlaying of these roads pro-rata with the level of traffic the proposed development generates. The Traffic Impact Assessment (TIA) does not give AADT or % of HGV traffic for these roads. A revised TIA should be submitted whereby these figures are precisely set down. You are requested to liaise with Mr Jim Gibney of the Infrastructure Section of Meath county Council in this regard.

**Applicants Response:** The applicants have liaised with the SEE Infrastructure (Road Design) Mr Jim Gibney where it was agreed that a new revised full TIA need not be submitted and that data regarding AADT's and HGV% would suffice. This data has been submitted. The figures show that the %HGV increase in traffic on many of the roads especially the R162 & R163 as being of a modest scale ranging from 0.54% to 3.06%. However the increase in HGV traffic on the Milestown Road will be of a greater magnitude and will increase by to between 15.24% and 21.28%. Mr Gibney has issued a report and has no objections to the proposed development subject to a number of financial contributions being sought towards the upkeep of the Milestown Road and the Regional roads, the R162 and R163.

- 6 The Planning Authority note that during the construction works a significant amount of extra traffic and in particular heavy traffic will use the specific haul route from the Tailings Storage Facility to the mine itself. The applicants are requested to address the capacity issue at the “Round O Public House” junction



which is presently operating at capacity. The applicants should either submit proposals for a more suitable alternative haul route or proposals for the upgrade of the capacity of this junction. You are requested to liaise with Mr Jim Gibney of the Infrastructure Section of Meath county Council in this regard.

**Applicants Response:** The applicants acknowledge that at peak times the “Round O” junction operates at near capacity. However they also state that at the peak of proposed construction works at the TSF 20 additional HGV’s associated with the TSF will use the roundabout which in context represents a modest increase in traffic of approximately 1%.

In order to mitigate against the capacity issue the applicants propose that haulage be programmed such that the peak period of construction will coincide with periods during which the two schools in the vicinity of the roundabout are closed i.e during Summer Holidays). The applicants also state that that they will make efforts to schedule that vehicles do not use the roundabout during peak hours.

- 7 It is noted that the applicants have proposed mitigation measures to deal with the extra traffic proposed during construction in the form of trimming back vegetation and the erection of signage. The applicants are requested to demonstrate that adequate sight and stopping distances are achievable at the entrance on the Milestown Road and in accordance with the NRA document “Design Manual for Roads and Bridges”. Precise details of the type of signage and its location should also be submitted. You are requested to liaise with Mr Jim Gibney of the Infrastructure Section of Meath county Council in this regard.

**Applicants Response:** The applicants have liaised with Mr Jim Gibney of the Infrastructure (Road Design) section of MCC and he has outlined his sightline requirement of 3m x 160m at the entrance to the TSF on the Milestown Road. These sightlines have been demonstrated on a drawing as well as propose locations for signage alerting passing motorist that a site entrance is within 200 metres.

- 8 The applicants are requested to liaise with the Office of Public Works to ensure that the necessary maintenance strip of between six and ten metres is maintained along all drainage channels. The applicants should also demonstrate that the proposed development will not result in an increased rate of run off from the site and result in flooding of adjacent lands.

**Applicants Response:** The applicants have liaised with Mr Jamie Keogh of the OPW and it has been agreed that maintenance strips with a minimum width of ten metres will be maintained along all drainage channels on site both during and after construction. The drainage channels will be maintained by the contractor during the construction works. The two channels in question are the Simonstown Stream and the Yellow River. In the short term surface water run off from the



TSF is pumped back into the TSF, in the long term these will drain naturally to the existing channels which have the capacity to deal with the run off.

- 9 It is noted that that within the site of the proposed works there is an identified recorded Monument, ME018-026 which is subject to statutory protection. The applicants are requested to liaise with the Department of Environment, Heritage and Local Government (Archaeological section) and submit an Archeological Impact Assessment assessing the impact on archaeological remains in the area where development is proposed to take place.

**Applicants Response:** The applicants liaised with Mr Tom Condit of the Archaeological Section of the DoEHLG and they have submitted a response where they state that they are satisfied with the applicants proposals subject to a condition regarding archaeological monitoring being attached in the event that planning permission is granted for the proposed development.

- 10 You are requested to provide a method statement and pollution control plan to cover operations within the borrow areas. This plan should be designed within best practice guidelines to minimise the generation of silty water and provide adequate attenuation and treatment of all surface water run-off from the site. Specific details in relation to all proposed settlement pond(s) should be provided to illustrate that the siting, design, sizing and maintenance will be adequate to provide effective settlement of the run-off waters arising on site, taking account of the volume and physical settlement characteristics of the run-off waters which will require treatment. The pollution control plan should comply with "Requirements for the Protection of Fisheries Habitat during Construction and Development Works at River Sites" issued by the Eastern Regional Fisheries Board. You are requested to liaise with Mr Emmet Conboy of the Environment Section of Meath County Council in this regard.

**Applicants Response:** A report has been received from Mr Emmet Conboy, Executive Scientist within the Environment Section of MCC. He is satisfied with the applicants response and he has noted the following:

*"The applicant confirms that the settlement lagoons to attenuate suspended solids runoff from exposed earthworks on site will be constructed as part of pre-construction works. Drawings and specification are provided for the lagoons. 3 lagoons in series with effective volume 3500 m<sup>3</sup> each giving total effective volume 10500 m<sup>3</sup>.*

*Applicant estimates 9 hrs retention time under flow rates which could arise under a 1 in 30 year storm event, which represents a significant attenuation capacity. Solids build up in the first cell will be monitored monthly and suspended solids concentration in the final outflow will be monitored weekly and then daily during periods of high rainfall.*

*The measures described to manage suspended solids run-off are considered to be satisfactory and address the issues raised in item 10 of the FI request”.*

- 11 The applicants are requested to submit progressive restoration proposals for the borrow areas whereby these areas would be afforested or returned to grazing and including for the replanting of natural field boundaries.

**Applicants Response:** The borrow areas will be restored progressively during the construction of Stage 5A and stage 5B with the final phase being undertaken after the restoration of the surface of the TSF at mine closure. The northern sector of the northern borrow area will commence restoration in 2011/2012 and the seven fields borrow area will be restored following completion of Stage 5B in 2015/2016.

The land will be returned to grazing and field boundaries will be formed from hedgerows. The applicants state that the final plan will be submitted to the PA for approval after completion of borrowing in each phase.

- 12 Fi13.

**Applicants Response:** The further information response was deemed to contain significant further information and revised public notices were received accordingly.

- 13 Fi15 “Fergal O’Bric”.

**Applicants Response:** The applicants liaised with the Planning Officer and sought clarification on some of the matters contained within the further information request.

### **Development Plan Policy**

Section 6.6 of the Meath County Development Plan (CDP) 2007-2013 deals with Extractive Industry and Building Materials Production.

This section of the Meath CDP acknowledges that the county contains a variety of natural resources such as building materials products in the form of sand, gravel, stone reserves including high purity limestones and shale used in cement and magnesia manufacture and base metal deposits. The potential of these resources to underpin construction output and provide employment and economic growth in the local and regional economy is recognised as is the need to exploit same in an environmentally sound and sustainable manner. The CDP acknowledges that by their nature, aggregates can only be worked where they occur.

The CDP includes the following policies which are considered relevant to the consideration of the current application.

- RD POL 11 To facilitate the exploitation of the county's natural resources and to exercise control over the types of development taking place in areas containing proven or potential deposits, whilst also ensuring that such industries are carried out in a manner which would not unduly impinge on the visual amenity or environment quality in the area.
- RD POL 12 To protect the finite aggregate resources, in such areas of known or potential aggregate sources, whereby only development compatible with mining or quarrying activities shall be permitted in areas being or likely to be used for these purposes.
- RD POL 13 To ensure that extractive industries do not adversely affect the environment or adjoining existing land uses.
- RD POL 14 To ensure that the extractive industry minimises adverse impacts on the road network in the area and that the full cost of road improvements which are necessary to facilitate extractive industries are borne by the industry itself.
- RD POL 15 To ensure that the extraction of minerals and aggregates minimise the detraction from the visual quality of the landscape.
- RD POL 16 To ensure that all existing workings shall be rehabilitated to suitable land uses and that all future extraction activities will allow for the rehabilitation of pits and proper land use management. The use of land filling with inert material is the preferred method. However, each planning application shall be considered on a case by case basis and where relevant will be dealt with under the Waste Management Strategy.
- RD POL 17 To ensure that development for aggregates / mineral extraction, processing and associated concrete production does not significantly impact in the following areas:
- i. Existing & Proposed Special Areas of Conservation (SACs);
  - ii. Special Protection Areas (SPAs);
  - iii. Proposed Natural Heritage Areas (pNHAs);
  - iv. Other areas of importance for the conservation of flora and fauna;
  - v. Areas of significant archaeological potential;
  - vi. In the vicinity of a recorded monument, and;
  - vii. Sensitive landscapes.

### **Proposed Development**

In the current application planning permission is sought to construct a 4 metre vertical extension delivering an additional 5.6 million cubic metres of storage capacity. The stage

5 development is for the purpose of extending the life of the mine and will be constructed on the footprint of the existing facility, which occupies an area of 170 hectares. The glacial till material to be used in construction of the vertical extension will come from two immediately adjacent areas of 52 hectares and 18 hectares located in the townland of Randalstown. Planning permission for the 52 hectare area was permitted in the previous Stage 4 Development, ref no. P96/919.

An Environmental Impact statement (EIS) has been prepared and accompanied the planning application. The EIS was assessed in the previous report. The proposals will require a revision of the company's Integrated Pollution Prevention Control licence (IPPC No. P0516-01) by the Environmental Protection Agency (EPA).

The tailings facility was first commissioned in 1977 under P74/732 to contain waste, known as tailings, from the ore processing business carried out at the mine head. Stages 1-3 of this facility are fully developed and it is anticipated that stage 4 will be filled by the year 2013. The capacity of the proposed Stage 5 Development will allow for an additional 5.6 million cubic metres of tailings to be stored and will be sufficient to allow for the processing of ore from all known reserves and resources with an estimate for future discoveries.

It is thus estimated, using current production levels, that the proposed Stage 5 extension will allow for mining to continue until at least 2018.

It is proposed to provide the extra capacity by extending the existing dam facility by means of a vertical raise i.e a 4 metre high dam set inside the existing dam, over the full perimeter of stages 1-4 and constructed on the existing deposited tailings. It is proposed to commence construction of Stage 5 in 2010 for completion at the end of 2017.

This application is accompanied by an EIA. The proposal is subject to an IPPC licence which is issued by the EPA. This means that in the event of permission being granted for these proposals that the Planning Authority would not impose conditions in relation to environmental matters such as noise, dust etc as such matters are within the remit of the IPPC licence mechanism.

The application documentation also includes, in addition to drawings and the EIS, a Stage 5 raise design report, a probabilistic risk assessment study and a reclamation and closure plan. The reclamation and closure plan provides for the final closure and reinstatement of the entire Randalstown Tailings Facility and seeks to set out a plan for the long term "walkaway" closure of this site.

This application has been referred to all statutory bodies as required under the Planning and Development Regulations 2001 as amended and to various Departments of Meath County Council as outlined in the referrals table on Pages 4 & 5 of this report. This report should be read in conjunction with the reports received from the Environment Section of Meath County Council as well as reports from the external agencies such as the ERFB, the NRA, etc.

This application sets out in clear terms a description of the proposed development, its likely significant impacts, proposals for amelioration and mitigation and long term plans for the environmental rehabilitation of the site and the surrounding receiving environment.

**Environmental Impact Statement:**

As per previous planning report dated 3/11/2009.

**Assessment**

The application is accompanied by an EIS which provides an assessment of the likely significant effects of the proposed development on the receiving environment.

As outlined previously, the subject site is subject to a reviewed IPPC licence. Section 34(2)(c) of the Planning & Development Act 2000, as amended, states that "Subject to section 98 (as amended by section 256 of this Act) of the Environmental Protection Agency Act, 1992, and section 54 (as amended by section 257 of this Act) of the Waste Management Act, 1996, where an application under this section relates to a development which comprises or is for the purposes of an activity for which an integrated pollution control licence, or a waste licence is required, a Planning Authority shall take into account that the control of emissions arising from the activity is a function of the Environmental Protection Agency."

Under the terms of the Act, the Environmental Protection Agency cannot issue a licence unless it is satisfied that

- i.) Any emissions from the activity will not result in the contravention of any relevant air quality standard specified under section 50 of the Air Pollution Act, 1987, and will comply with any relevant emission limit value specified under section 51 of the Air Pollution Act, 1987;
- ii.) Any emissions from the activity will comply with, or will not result in the contravention of any relevant quality standards for waters, trade effluents and sewage effluents and standards in relation to the treatment of such effluents prescribed under section 26 of the Local Government (Water Pollution) Act, 1977;
- iii.) Any emissions from the activity or any premises, plant, methods, processes, operating procedures or other factors which affect such emissions will comply with, or will not result in the contravention of any relevant standard including and standard from an environmental medium prescribed under regulations made under the European Communities Act, 1972, or under and other enactment;
- iv.) Any noise from the activity will comply with, or will not result in the contravention of, any regulations under section 106;

- v.) Any emissions from the activity will not cause significant environmental pollution;
- vi.) The best available techniques will be used to prevent or eliminate or where that is not practicable, generally to reduce an emission from the activity;
- vii.) Having regard to Part III of the Act of 1996, production of waste in the carrying on of the activity will be prevented or minimized or, where waste is produced, it will be recovered or, where that is not technically or economically possible, disposed of in a manner which will prevent or minimise any impact on the environment;
- viii.) Energy will be used efficiently in the carrying out of the activity;
- ix.) Necessary measures will be taken to prevent accidents in the carrying on of the activity and, where an accident occurs, to limit its consequences for the environment and, in so far as it does have consequences, to remedy those consequences;
- x.) Necessary measures will be taken upon the permanent cessation of the activity (including such a cessation resulting from the abandonment of the activity) to avoid the rise of environmental pollution and return the site of the activity to a satisfactory state, and;
- xi.) The applicant or licensee or transferee, as the case may be, is a fit and proper person to hold a licence, and, where appropriate, the Agency shall attach conditions relating to the matters specified in the foregoing subparagraphs to the licence or revised licence.

Under Section 256 of the Planning and Development Act, 2000, where a Planning Authority decides to grant permission to a development which is also subject to IPPC licensing, the Planning Authority is precluded from attaching conditions for the purposes of controlling emissions from the activity. This does not preclude the Planning Authority from refusing permission for a development on environmental grounds, having regard to the proper planning and sustainable development of an area, notwithstanding whether an IPPC licence has been granted or is required. If granting planning permission, the Planning Authority is precluded from attaching conditions for the prevention, limitation, elimination, abatement or reduction of pollution.

### **Conclusion :**

The principle of a vertical extension at the TSF has already been accepted by both Meath County Council and An Bord Pleanála. However each planning application has to be assessed on its own merits. The proposed development accords with many policies contained within Section 6.6 of the Meath County Development Plan 2007-2013 regarding the extractive industry. It is also noted that the control of emissions is a matter



that will be managed under the IPPC review which will be required when and if this development is to be permitted. I note the comments received from the various referral bodies and in their professional opinions the proposed development can be permitted subject to certain conditions. These conditions will be attached and will include that all mitigation measures as outlined in the information received be fully implemented and initiated. The Planning Authority are satisfied that the original information submitted by the applicants in addition to the information contained within the response to the further information request will result in a development being permitted with very much accords with the proper planning and sustainable development of the area.

**Recommendation:**

Accordingly I recommend that planning permission be granted subject to the following conditions.

- 1 The proposed development shall be constructed, operated, decommissioned, rehabilitated and closed in accordance with the complete documentation, including the planning application and drawings together with the Stage 5 Raised Design Report, the Close, Recreation and Management Plan, all technical reports and the Environmental impact Assessment submitted to the Planning Authority on 14<sup>th</sup> September 2009 and as amended by further information submitted to the Planning Authority on 19<sup>th</sup> March 2010 except as may otherwise be required in order to comply with the following conditions.

Reason: To clarify the detailed development proposals, method of operation and proposals for final closure as authorized by this permission.

- 2 This development shall be constructed in two phases, the first phase comprising on works within stage 5A. No works on stage 5B shall commence without first having fully completed the Stage 5A works as certified in writing by the Planning Authority. This permission shall have effect for a period of ten years from the date of grant of this permission.

Reason: This extended duration is considered reasonable and necessary to allow for the phased nature of the construction.

- 3 The proposed development shall only be used for the disposal of tailings which result from the processing of ore mined at the Tara Mine unless otherwise permitted by virtue of a separate planning permission.

Reason: In the interest of development management, the proper planning and sustainable development of the area and to define the source of tailings.

- 4(a) Any changes to the method of mineral extraction and processing which result in a material change to the characteristics of the tailings as defined in the Environmental Impact Assessment and the response to the further information

shall be subject to an approval of the Planning Authority prior to those changes being made.

- (b) Any material changes in the properties of the ore shall be notified to the Planning Authority.

Reason: In the interest of development management and protection of the environment.

- 5 The Closure and Reclamation of the tailings facility as set out in the Closure and Reclamation Management Plan submitted to the Planning Authority on 14<sup>th</sup> September 2009 shall be carried out as proposed.

Reason: In the interest of the proper and ordered rehabilitation of the site to a "passive care" and "walk away" state in the interest of the long term environmental protection of the area.

- 6 Notwithstanding the provisions of condition number 5 above the final details of the Closure Plan and of its operation after the cessation of tailings deposition shall be subject to an approval of the Planning Authority. An application for such an approval shall be made to the Planning Authority not later than two years prior to the predicted cessation of tailings deposition as reviewed under the provisions of condition number 12 below.

Reason: To allow for the incorporation of information gained from monitoring of the facility and the surrounding environment in the interim period so as to modify and improve the Closure plan and the long term rehabilitation of the site.

- 7 The final use pattern of the northern and Seven Field borrow areas shall be subject to an approval of the Planning Authority. An application for such an approval shall include, inter alia, proposals for afforestation and/or reinstatement for grazing in a designed field pattern compatible with the surrounding land use. An application for an approval based on this condition shall be made not later than six months prior to the completion of the Stage 5 dam raise.

Reason: To allow for results of monitoring with regard to groundwater levels and groundwater movement to be used in deciding the most beneficial use of the land and in the interest of the proper planning and sustainable development of the area.

- 8 Where the Planning Authority considers that the deposition of tailings has ceased for a period of in excess of six months and where the developer can offer no reasonable grounds to disputer this opinion, then the Planning Authority shall be empowered to notify the developer of their intention to activate the appropriate "Closure, recreation and management Plan" and of

their intention to call upon the financial guarantees offered within sixty days.

Reason: In the interest of orderly development.

- 9 Prior to the commencement of development a certificate from a suitably qualified independent consultant engaged by the developers confirming the structural soundness and stability of the existing tailings dam and its ability to accommodate the proposed vertical raise, the subject of this permission shall be furnished to the Planning Authority. This certificate shall be based on an independent audit of the design, construction and operation of the proposed tailings dam. This audit shall be carried out in line with the procedures included in the UK Reservoirs Act 1975 or other equivalent and the appointed consultant shall be a member of the UK reservoir panel or other equivalent with proven experience in the design, operation and inspection of tailings dams.

Reason: To provide for independent certification of the proposed dam in the interest of public safety and public health.

- 10(a) Within three months of the completion of each phase of the proposed tailings facility extension development the developer shall submit to the Planning Authority a certificate from an independent consultant confirming that the works have been satisfactorily completed or structurally sound and suitable for the purpose for which they were designed i.e to retain tailings from the mine operation. Annual inspection and certification of the continued operations of the tailings dam shall be carried out by the developer's Engineer who shall be a member of the UK Reservoir Panel or equivalent and submitted to the Planning Authority. This certificate shall be based on an independent audit of the design, construction and operation of the proposed tailings dam. This audit shall be carried out in line with the procedures included in the UK Reservoirs Act 1975 or other equivalent and the appointed consultant shall be a member of the UK reservoir panel or other equivalent with proven experience in the design, operation and inspection of tailings dams.
- (b) On each twelve month anniversary of the date of certification referred to in (a) above, a further certificate from an independent consultant engaged by the developer certifying the continued structural stability and suitability for the purpose of the Tailings Storage facility shall be furnished to the Planning Authority. This certification shall be based on an independent audit of the design, construction and operation of the proposed tailings dam. This audit shall be carried out in line with the procedures included in the UK Reservoirs Act 1975 or other equivalent and the appointed consultant shall be a member of the UK reservoir panel or other equivalent with proven experience in the design, operation and inspection of tailings dams.

- (c) In the event of any of the above certificates not being provided within the time specified or such extension thereof as may be permitted by the Planning Authority the developer shall cease the discharge of tailings to the dam pending receipt by the Planning Authority of the appropriate certificate.

Reason: To provide for independent certification of the proposed dam in the interest of public safety and public health

11(a) Prior to the commencement of development the developer shall submit to the Planning Authority a programme for the construction of the dam raise which shall include details of the proposed timing of each element and phase of the construction process.

- (b) The developer shall submit to the Planning Authority at six monthly intervals a schedule of production output for the previous six months and projected production output for the following two years. The schedules shall include as a minimum, value for ore mined, total lead and zinc concentrate produced and total tailings generated.

Reason: To provide assistance to the Planning Authority in planning for management and monitoring resources and for likely changes in physical and environmental impacts.

12 Prior to the commencement of development the developer shall establish a fund dedicated to providing for the full costs of the Closure, Reclamation and Management Plan as set out in this planning application and as modified by these conditions.

This fund shall include but shall not be limited to, provision for:

- (a) the closure and rehabilitation of the tailings facility and the site in the event of any of the enforced closure scenarios as set out in the Closure, Reclamation and Management Plan.
- (b) The planned final closure and rehabilitation of the tailings facility as set out in the Closure, Reclamation and Management Plan.

The amount of the fund shall, at all times, be sufficient to meet the costs of rehabilitation of all extant works and impacts (whether existing or predicted) to the satisfaction of the Planning Authority.

The fund shall be sufficient without reliance on the value of plant, equipment or other such assets.

The developer shall provide security in order to guarantee the availability of the fund in the event of financial failure or any other default. The type

of security and its means of release/recovery shall be agreed with the Planning Authority in consultation with the Environmental Protection Agency and the Department of the Marine and Natural Resources. It shall be irrevocable and it shall be expressly designate to the Planning Authority as beneficiaries in the event of the developer being unable to implement the Closure, Recreation and management Plan or any of the enforced early closure plans envisaged therein. The security shall be maintained for the duration of the development including final rehabilitation and closure of the site as certified in writing by the Planning Authority.

The amount of the fund shall be agreed in writing with the Planning Authority in consultation with the Environmental Protection Agency and the Department of the Marine and Natural Resources within six months of the final date of this grant of planning permission. And it shall be indexed in accordance with the Wholesale price Index-Building and Construction (capital Goods) as published by the Central statistics Office.

In default of agreement with regard to the amount of the fund the amount of the fund same shall be determined by An Bord Pleanala.

Reason: To ensure satisfactory completion of the development and to provide for the proper rehabilitation of the site in the event of early closure and in the long term.

- 13 Prior to the commencement of development, the developer shall pay to the Planning Authority the sum of 100,000 Euro as a special contribution towards the expenditure to be incurred by Meath County Council in respect of the cost of works necessary for the strengthening and widening of the Milestown Road and regional roads, the R162 and R163 to facilitate the proposed development. The charge herein referred to shall apply for the period from the date of this permission to the 31 st December 2010 and will be subject to review on that date and to annual review thereafter unless previously paid.

In the case of expenditure that is proposed to be incurred, the requirement to pay this contribution is subject to the provisions of Section 48 (2) of the Planning and Development Act 2000 as amended.

Reason: It is considered that the developer should contribute towards the expenditure that was and/or that is proposed to be incurred by the Council in respect of the provision of road improvement works facilitating the proposed development.

- 14(a) All monitoring shall be undertaken in accordance with the most up to date international scientific methods and to the satisfaction of the Planning Authority

- (b) The developer shall keep records of all monitoring carried out on foot of this permission of all relevant permits/licences under other statutory instruments until final closure and rehabilitation of the tailings facility and site has been achieved. These records shall be submitted to the Planning Authority on a quarterly basis and as soon as is practicable after the relevant period to which they relate. All records shall be available for inspection at the offices of the Planning Authority during normal opening hours.
- (c) The developer shall facilitate the Planning Authority in the taking of split samples during the monitoring programme for check analysis.
- (d) Before February 15<sup>th</sup> each calendar year, unless specifically requested otherwise, the applicant shall submit to the planning Authority a summary report of all monitoring carried out in the previous year.
- (e) The developer shall pay an annual sum to be agreed in writing with the planning Authority within three months of this grant of planning permission as a contribution towards the cost of monitoring required under this permission. This sum shall be paid quarterly with the first payment being made not later than three months after the commencement of development. The amount of the contribution shall be reviewed annually and agreed with the Planning Authority.

Reason: To ensure satisfactory monitoring of the development.

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15(a) During the construction period, BATNEEC shall be employed by the developer to minimize noise from construction operations and shall have regard to BS 5228:1997 "Noise Control on Open and Construction Sites". Site noise, as defined in BS 5228 1997 shall not exceed, during the construction period, the following criteria:

LAeq (1hour)	Time period.
65 dB(A)	0800 hours- 2000 hours Monday - Saturdays inclusive and excluding public holidays and Sundays.
45dB(A)	At all other times.

(b) There shall be no clearly audible tonal component or impulsive component in the noise emission from the activity.

Reason: In the interests of residential and general amenity.

16(a) During the operation phase of the development activities on site shall not give rise to noise levels at noise sensitive locations, which exceed the following noise pressure limits:

LAeq (1hour)	Time period.
50 dB(A)	0800 hours- 2000 hours Monday -Friday inclusive and 0800-1400 Saturdays
40dB(A)	At all other times and Bank Holidays

(c) There shall be no clearly audible tonal component or impulsive component in the noise emission from the activity.

Reason: In the interests of residential and general amenity.

17 All mitigation measures as proposed within the Environmental Impact Statement submitted to the Planning Authority on 14/9/09 and as amended on 19/3/2010 regarding the proposed development both during the construction, operation and closure periods shall be fully implemented.

Reason: To minimize nuisance to the public and to minimize the risk of pollution to the environment.

- 18(a) All temporary berms and temporary stockpiles of overburden materials which are to remain intact for periods of greater than six months shall be graded, top soiled and grass seed as soon as practicable after being constructed. Dust suppression sprays shall be used during periods of dry weather until a stable grass covering has been established.
- (b) All permanent embankment side slopes shall, unless otherwise agreed with the Planning Authority be top soiled and grass seeded as soon as practicable after their construction. Dust suppression sprays shall be used during periods of dry weather until a stable grass covering has been established.

Reason: To minimize nuisance to the public from dust

- 19(a) An effective water spray system for the control of dust blow from the tailings storage facility shall be provided, details of which shall be agreed in writing with the Planning Authority prior to the commencement of development.
- (b) The extent and details of wind break fencing to be provided to control the emission of dust during the dewatering of Stage 4 and while unvegetated tailings are exposed shall be agreed in writing with the Planning Authority prior to the commencement of development.

Reason: To minimize nuisance to the public from dust and to minimize the risk of pollution to the environment.

- 20 The water levels in the borrow areas standpipes shall be monitored at a monthly frequency and where feasible water quality shall be monitored for the PH, temperature and conductivity. Monitoring under this condition shall continue until an application is made pursuant to the requirements of condition number 7 above.

Reason: To provide for the better long term rehabilitation of the borrow pit areas and in the interest of prevention of pollution.

- 21 In the event of the quantities of seepage escaping to the environment exceeding those predicated in the Environmental Impact Statement to the extent that in the opinion of the Planning Authority remedial measures are necessary, such measures shall be implemented without delay as shall be agreed in writing with the Planning authority.

Within three months of the commencement of development the developer shall submit to the Planning Authority for written agreement an action plan to

be implemented in the event of excessive seepage. Such a plan shall include but shall not be limited to proposals for an alarm system to alert the developer of seepage, deepening or lining of the interceptor channel, construction of a grout curtain and the installation of scavenger wells.

Reason: In the interest of prevention of pollution.

- 22 The developer is required to engage the services of a suitably qualified archaeologist (licensed under the National Monuments Acts 1930 – 2004) to carry out rescue excavations at the site in advance of any construction works.. Rescue excavations will take place at the site of the Recorded Monument (RMP no. ME018-026) and at the locations of the burnt stone spreads in Field no. 1, trenches 4 & 5. No sub-surface work shall be undertaken in the absence of the archaeologist without his/her express consent.

The archaeologist is required to notify the Department of the Environment, Heritage & Local Government in writing at least 4 weeks prior to the commencement of site preparations. This will allow the archaeologist sufficient time to obtain a licence to carry out the work.

Having completed the work, the archaeologist should submit a written report to the Planning Authority and to the Development Applications Unit for consideration.

No site preparation or construction work shall be carried out until after the Archaeologist's report has been submitted and permission to proceed has been received in writing from the Planning Authority in consultation with the Development applications Unit.

The applicant is required to employ a qualified archaeologist under licence to monitor all ground works associated with the development.

Should archaeological material be found during the course of monitoring, the archaeologist may have work on the site stopped, pending a decision as to how best to deal with the archaeology. The developer shall be prepared to be advised by this office with regard to any necessary mitigating action (e.g preservation in situ or excavation) and should facilitate the archaeologist in recording any material found.

The planning Authority and the Development Applications Unit shall be furnished with a report describing the results of the monitoring. .

**Reason:** To ensure the continued preservation (either in situ or by record) of places, caves, sites, features or other objects of archaeological interest.

- 23 A programme of revegetation of the final tailings surface shall be agreed in writing with the Planning Authority prior to the commencement of development and shall be carried out using the Stage 4 tailings surface if necessary.

Reason: To provide further information on revegetation of finer tailings being deposited and in the interest of improving the final rehabilitation of the tailings surface.

- 24 All service lines and cables servicing the proposed development shall be located underground except where otherwise agreed in writing with the Planning Authority.

Reason: In the interest of orderly development and visual amenity.

- 25 The developer shall make such provision as is necessary to ensure immediate mitigation of impacts to water supplies which are adversely affected by the development during all stages of the development with the full cost of such measures being borne by the developer. In the event of disruptions of water supply any operation (s) causing such disruption shall be immediately reduced or ceased, as appropriate, until the affected water supply has been restored or replaced.

Reason: To ensure the maintenance of continuous adequate potable water supply and in the interest of public health.

- 26 In the event of the failure of any tailings retaining structure, any delivery or return pipeline, all mining operations shall cease and production shall not be recommenced until such time as satisfactory arrangements for disposal of tailings have been provided and agreed in writing with the Planning Authority.

Reason: To minimize the risk of pollution and in the interest of public health.

- 27 Maintenance strips of minimum width ten metres shall be maintained along the Simonstown Stream and the Yellow River and any other drainage channels on site both during and after construction. The drainage channels shall be maintained by the contractor during the construction works.

Reason: In the interest of water quality.

- 28 All oil and fuel storage tanks, chemicals and all other materials that pose a risk to waters if spilled, shall be stored in designated storage areas, which shall be bunded to a volume of 110% of the capacity of the largest tank or container within the bunded area(s). Filling and draw-off points shall be located entirely within the bunded area(s). Drainage from the bunded area(s) shall be diverted for collection and safe disposal. The use of bunded pallets for storage of drums etc is acceptable.

Reason: In the interest of public safety.

- 2829 The developer shall prepare a waste management plan for the construction phase, to maximise reuse or recycling of waste and minimise the amount of waste consigned to landfill. Priority shall be given to re-use or recovery of waste in preference to disposal. This shall be submitted for the written agreement of the Planning Authority.

The plan shall as a minimum address the following:

All demolition and construction waste arising on the site shall be segregated into different clearly marked skips (such as canteen waste, timber, plastics, plaster board, waste solvent tubes, blocks, etc).

All surplus demolition waste, construction waste and clean soil to be removed off-site shall be brought to a permitted site or facility.

A register shall be maintained of the movement of waste off-site, to include an estimation of the quantities of waste removed, name and waste collection permit number of the Contractor/s engaged to collect the waste, details of the recovery or disposal facility or facilities used. The developer shall retain all recovery or disposal receipts.

A prohibition on the burning or burying of waste on the site.

Reason: In the interest of proper planning and sustainable development.

- 28 30 Prior to the commencement of development the developer shall submit precise details of design/location for the wheelwash to be agreed in writing with the Planning Authority. The wheelwash shall be of suitable design and fit for purpose and shall include an unobstructed drive through bath with sumps and shaker bars on the entrance and exit ramps, or such other design as shall be agreed with the Planning Authority. Shaker bars shall not be placed in the wheelwash sump. The access road from the wheelwash to the site entrance shall be surfaced with concrete or bituminous macadam and maintained to a suitable standard to prevent mud gathering again on the wheels of trucks as they exit the site after using the wheelwash.

Reason: In the interest of traffic safety.

- 31 30 All vehicles carrying inert material, rubble or soil on the public roads shall be suitably covered.

Reason: In the interest of amenity.

- 31 32 Prior to the commencement of development the applicants shall pay to the Planning Authority the sum of 50,000 euro as a contribution towards the expenditure to be incurred by Meath County Council in respect of the cost of the provision of an art feature or other social amenities/infrastructure

Reason: It is considered that the developer should contribute towards the expenditure that was and/or that is proposed to be incurred by the Council in respect of the provision of social infrastructure works.

Fergal O'Brien  
12/5/10

Agreed.

Michael Gallagher SR.

12/5/2010.

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<b>RECOMMENDATION ACCEPTED 12 MAY 2010 Signed </b>
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JUDGMENT OF THE COURT (First Chamber)

3 March 2011 (\*)

(Failure of a Member State to fulfil obligations – Directive 85/337/EEC – Obligation of the competent environmental authority to carry out an assessment of the effects of certain projects on the environment – More than one competent authority – Need to ensure an assessment of the interaction between factors likely to be directly or indirectly affected – Application of the directive to demolition works)

In Case C-50/09,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 4 February 2009,

**European Commission**, represented by P. Oliver, C. Clyne and J.-B. Laignelot, acting as Agents, with an address for service in Luxembourg,

applicant,

v

**Ireland**, represented by D. O'Hagan, acting as Agent, assisted by G. Simons SC and D. McGrath BL, with an address for service in Luxembourg,

defendant,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, J.-J. Kasel, A. Borg Barthet, M. Ilešič and M. Berger (Rapporteur), Judges,

Advocate General: J. Mazák,

Registrar: N. Nanchev, Administrator,

having regard to the written procedure and further to the hearing on 24 June 2010,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

**Judgment**

- 1 By its action, the Commission of the European Communities requested the Court to declare that:
  - by failing to transpose Article 3 of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), as amended by Council Directive 97/11/EC of 3 March 1997 (OJ 1997 L 73, p. 5) and by Directive 2003/35/EC

of the European Parliament and of the Council of 26 May 2003 (OJ 2003 L 156, p. 17; 'Directive 85/337');

- by failing to ensure that, where Irish planning authorities and the Environmental Protection Agency ('the Agency') both have decision-making powers on a project, there will be complete fulfilment of the requirements of Articles 2 to 4 of that directive; and
- by excluding demolition works from the scope of its legislation transposing that directive,

Ireland has failed to fulfil its obligations under that directive.

## **Legal context**

### *European Union legislation*

2 Article 1(2) and (3) of Directive 85/337 provide:

'(2) For the purposes of this Directive:

"project" means:

- the execution of construction works or of other installations or schemes,
- other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources;

...

"development consent" means:

the decision of the competent authority or authorities which entitles the developer to proceed with the project.

(3) The competent authority or authorities shall be that or those which the Member States designate as responsible for performing the duties arising from this Directive.'

3 Under Article 2(1) to (2a) of Directive 85/337:

'(1) Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue inter alia, of their nature, size or location are made subject to an assessment with regard to their effects. These projects are defined in Article 4.

(2) The environmental impact assessment may be integrated into the existing procedures for consent to projects in the Member States, or, failing this, into other procedures or into procedures to be established to comply with the aims of this Directive.

(2a) Member States may provide for a single procedure in order to fulfil the requirements of this Directive and the requirements of Council Directive 96/61/EC of 24 September 1996 on integrated pollution prevention and control ...'

4 Article 3 of Directive 85/337 provides:

'The environmental impact assessment will identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 11, the direct and indirect effects of a project on the following factors:

- human beings, fauna and flora,
- soil, water, air, climate and the landscape,
- material assets and the cultural heritage,
- the interaction between the factors mentioned in the first, second and third indents.'

5 Article 4(1) and (2) of Directive 85/337 are worded as follows:

'1. Subject to Article 2(3), projects listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10.

2. Subject to Article 2(3), for projects listed in Annex II, the Member States shall determine through:

(a) a case-by-case examination,

or

(b) thresholds or criteria set by the Member State

whether the project shall be made subject to an assessment in accordance with Articles 5 to 10.

Member States may decide to apply both procedures referred to in (a) and (b).'

6 Articles 5 to 7 of Directive 85/337 concern the information which must be gathered and the consultations which must be undertaken for the purposes of the assessment procedure. Article 5 deals with the information which the developer must supply, Article 6 deals with the obligation to consult, on the one hand, authorities with specific environmental responsibilities and the public, on the other, and Article 7 covers the obligation, in the case of a cross-border project, to inform the other Member State concerned. Article 8 of the directive states that the results of those consultations and the information gathered must be taken into consideration in the development consent procedure.

7 Articles 9 to 11 of Directive 85/337, relating to the decision taken at the conclusion of the consent procedure, cover, respectively, informing the public and the Member States concerned, respect for commercial and industrial confidentiality, the right of members of the public to bring proceedings before a court and the exchange of information between Member States and the Commission.

8 Under Article 12(1) of Directive 85/337, in its original version, the Member States were obliged to comply with that directive's provisions by 3 July 1988 at the latest. With regard to the amendments made to it by Directives 97/11 and 2003/35, the Member States were obliged to bring them into force at the latest by 14 March 1999 and 25 June 2005 respectively.

## *National legislation*

### The Planning and Development Act 2000

- 9 The Planning and Development Act 2000, as amended by the Strategic Infrastructure Act 2006 ('the PDA'), lays down the legal framework for issuing development consent for most of the project categories listed in Annexes I and II to Directive 85/337. For some projects, development consent under the PDA, which is termed 'planning permission' and granted, as a rule, by a local authority, is the only form of consent required for a project to proceed. In such cases, the PDA provides that the decisions taken by local authorities may be appealed against to An Bord Pleanála (The Planning Appeals Board; 'the Board').
- 10 Part X of the PDA, comprising sections 172 to 177, is devoted to environmental impact assessments. Section 176 provides for ministerial regulations to identify projects requiring such an assessment. Section 172 provides that, for projects covered by regulations made under section 176, applications for planning permission are to be accompanied by an environmental impact statement. Under section 173, where a planning authority receives an application for planning permission accompanied by an environmental impact statement, that authority and, on appeal, the Board must have regard to that statement. Section 177 provides that the information to be included in such a statement is to be prescribed by ministerial regulation.
- 11 Detailed measures for the implementation of the PDA are set out in the Planning and Development Regulations 2001, as amended by the Planning and Development Regulations 2008 ('the PDR'), which were adopted pursuant to, among others, sections 176 and 177 of the PDA.
- 12 Part 2 of the PDR concerns projects which are exempt from an environmental impact assessment. Article 6 thereof refers in that regard to Part 1 of Schedule 2 to the PDR, which, in Category 50, refers to 'the demolition of a building or other structure'. Articles 9 and 10 of the PDR lay down the conditions under which a project as a rule exempted must none the less be made subject to a consent procedure.
- 13 Part 10 of the PDR is devoted to environmental impact assessments. Article 93 thereof, in combination with Schedule 5 thereto, defines the categories of projects for which such an assessment is required. Article 94 of the PDR, which lists the information that should be found in an environmental impact statement, is worded as follows:

'An environmental impact statement shall contain:

- (a) the information specified in paragraph 1 of Schedule 6,
- (b) the information specified in paragraph 2 of Schedule 6 to the extent that
  - (i) such information is relevant to a given stage of the consent procedure and to the specific characteristics of the development or type of development concerned and of the environmental features likely to be affected, and
  - (ii) the person or persons preparing the statement may reasonably be required to compile such information having regard, among other things, to current knowledge and methods of assessment, and,

(c) a summary in non-technical language of the information required under paragraphs (a) and (b).'

- 14 Schedule 6 to the PDR specifies the information to be contained in an environmental impact statement. Paragraph 2(b) of Schedule 6 stipulates that it must contain:

'A description of the aspects of the environment likely to be significantly affected by the proposed development, including in particular:

- human beings, fauna and flora,
- soil, water, air, climatic factors and the landscape,
- material assets, including the architectural and archaeological heritage, and the cultural heritage,
- the inter-relationship between the above factors.'

- 15 Under Article 108 of the PDR, the competent planning authority is obliged to establish whether the information contained in an environmental impact statement complies with the requirements laid down in the PDR.

The Environmental Protection Agency Act 1992

- 16 The Environmental Protection Agency Act 1992 ('the EPAA') introduced, among other things, a new system of integrated pollution control under which many industrial activities require a licence granted by the Agency. Where the activity is new and/or involves new construction, it must also obtain planning permission as provided for by the PDA.

- 17 Section 98 of the EPAA, which precluded planning authorities from taking into consideration aspects connected with pollution risks in considering an application for planning permission, was amended by section 256 of the PDA to the effect that, whilst it precluded planning authorities from including any pollution control conditions in planning permissions for activities also requiring a licence from the Agency, they could nevertheless, where appropriate, refuse to grant planning permission on environmental grounds. Section 98 of the EPAA, as amended, provides that planning authorities may ask the Agency for an opinion, in particular on an environmental impact statement. However, the Agency is not required to respond to such a request.

- 18 Under the Environmental Protection Agency (Licensing) Regulations 1994 ('the EPAR'), the Agency may notify a planning authority of a licence application. There is, however, no obligation on the planning authority to respond to such a notification.

The National Monuments Act 1930

- 19 The National Monuments Act 1930 ('the NMA') governs the protection of Ireland's most culturally significant archaeological remains, which are classed as 'national monuments'. It was amended by the National Monuments (Amendment) Act 2004, to relax the constraints imposed under earlier legislation concerning proposals to alter or remove national monuments.

- 20 Section 14 of the NMA confers on the Irish Minister for the Environment, Heritage and Local Government ('the Minister') discretion to consent to the destruction of a national monument. Where a national monument is discovered during the carrying out of a road development which has been subject to an environmental impact assessment, section 14A of the NMA provides that it is, in principle, prohibited to carry out any works on the monument pending directions by the Minister. Those directions can relate to 'the doing to the monument of [various] matters', including its demolition. There is no provision for any assessment to be made, for the adoption of such directions, of the effects on the environment. However, section 14B of the NMA provides that the Minister's directions must be notified to the Board. If those directions envisage an alteration to the approved road development, the Board must consider whether or not that alteration is likely to have significant adverse effects on the environment. If it is of that opinion, it must require the submission of an environmental impact statement.

### **Pre-litigation procedure**

- 21 Following the examination of a complaint regarding Ireland's transposition of Directive 85/337, the Commission took the view that Ireland had failed to ensure its full and correct transposition and, by letter of 19 November 1998, gave Ireland formal notice, to submit its observations, in accordance with the procedure for failure to fulfil Treaty obligations. A further letter of formal notice was sent to Ireland on 9 February 2001.
- 22 After examining the observations received in response to those letters, the Commission, on 6 August 2001, sent the Irish authorities a reasoned opinion in which it claimed that Ireland had not correctly transposed Articles 2 to 6, 8 and 9 of Directive 85/337. In reply, Ireland stated that the legislative amendments necessary to bring about the transposition were being adopted and requested that the proceedings be stayed.
- 23 Following further complaints, the Commission, on 2 May 2006, sent an additional letter of formal notice to Ireland.
- 24 As the Commission was not satisfied with the replies received, on 29 June 2007 it addressed an additional reasoned opinion to Ireland in which it claimed that Ireland had not correctly transposed Directive 85/337, in particular Articles 2 to 4 thereof, and called upon it to comply with that reasoned opinion within a period of two months from the date of its receipt. In reply, Ireland maintained its position that the Irish legislation in force now constitutes adequate transposition of that directive.
- 25 The Commission then brought the present action.

### **The action**

*The first complaint, alleging failure to transpose Article 3 of Directive 85/337*

Arguments of the parties

- 26 According to the Commission, Article 3 of Directive 85/337 is of pivotal importance, since it sets out what constitutes an environmental impact assessment and must therefore be transposed explicitly. The provisions relied upon by Ireland as adequate transposition of Article 3 of the directive are insufficient.



- 27 Thus, section 173 of the PDA, which requires planning authorities to have regard to the information contained in an environmental impact statement submitted by a developer, relates to the obligation, under Article 8 of Directive 85/337, to take into consideration the information gathered pursuant to Articles 5 to 7 thereof. By contrast, section 173 does not correspond to the wider obligation, imposed by Article 3 of Directive 85/337 on the competent authority, to ensure that there is carried out an environmental impact assessment which identifies, describes and assesses all the matters referred to in that article.
- 28 As for Articles 94, 108 and 111 of, and Schedule 6 to, the PDR, the Commission observes that they are confined, first, to setting out the matters on which the developer must supply information in its environmental impact statement and, second, to specifying the obligation on the competent authorities to establish that the information is complete. The obligations laid down by those provisions are different from that, imposed by Article 3 of Directive 85/337 on the competent authority, of carrying out a full environmental impact assessment
- 29 With regard to the relevance of the Irish courts' case-law on the application of the provisions of national law at issue, the Commission points out that while those courts may interpret ambiguous provisions so as to ensure their compatibility with a directive; they cannot plug legal gaps in the national legislation. Moreover, the extracts from the decisions cited by Ireland concern, in the Commission's submission, not the interpretation of that legislation but the interpretation of Directive 85/337 itself.
- 30 Ireland disputes the significance which the Commission attaches to Article 3 of that directive. It submits that that provision, drafted in general terms, is confined to stating that an environmental impact assessment must be made in accordance with Articles 4 to 11 of the directive. By transposing Articles 4 to 11 into national law, a Member State thereby, in Ireland's submission, ensures the transposition of Article 3.
- 31 Ireland maintains that Article 3 of Directive 85/337 is fully transposed by sections 172(1) and 173 of the PDA and Articles 94 and 108 of, and Schedule 6 to, the PDR. It points out that the Supreme Court (Ireland) has confirmed, in two separate judgments of 2003 and 2007, namely *O'Connell v Environmental Protection Agency* and *Martin v An Bord Pleanála*, that Irish law requires planning authorities and the Agency to assess the factors referred to in Article 3 and the interaction between them. Those judgments, which, Ireland submits, should be taken into account when assessing the scope of the national provisions at issue, do not fill a legal gap but are confined to holding that the applicable national legislation imposes an obligation on the competent authorities to carry out an environmental impact assessment of a development in the light of the criteria laid down in Article 3 of Directive 85/337.
- 32 In the alternative, Ireland refers to the concept of 'proper planning and sustainable development' referred to in section 34 of the PDA. It is, in Ireland's submission, the principal criterion which must be taken into consideration by any planning authority when deciding on an application for planning permission. That concept is in addition to all the criteria referred to in section 34 of the PDA, as well as in other provisions of that Act, including section 173, the application of which it reinforces.
- 33 Finally, Ireland submits that the Commission does not respect the discretion which a Member State enjoys under Article 249 EC as to the form and methods for transposing a directive. By requiring the literal transposition of Article 3 of Directive

85/337, the Commission is disregarding the body of legislation and case-law built up in Ireland over 45 years surrounding the concepts of 'proper planning' and 'sustainable development'.

#### Findings of the Court

- 34 At the outset, it is to be noted that the Commission and Ireland give a different reading to Article 3 of Directive 85/337 and a different analysis of its relationship with Articles 4 to 11 thereof. The Commission maintains that Article 3 lays down obligations which go beyond those required by Articles 4 to 11, whereas Ireland submits that it is merely a provision drafted in general terms and that the details of the process of environmental impact assessment are specified in Articles 4 to 11.
- 35 In that regard, whilst Article 3 of Directive 85/337 provides that the environmental impact assessment is to take place 'in accordance with Articles 4 to 11' thereof, the obligations referred to by those articles differ from that under Article 3 itself.
- 36 Article 3 of Directive 85/337 makes the competent environmental authority responsible for carrying out an environmental impact assessment which must include a description of a project's direct and indirect effects on the factors set out in the first three indents of that article and the interaction between those factors (judgment of 16 March 2006 in Case C-332/04 *Commission v Spain*, paragraph 33). As stated in Article 2(1) of the directive, that assessment is to be carried out before the consent applied for to proceed with a project is given.
- 37 In order to satisfy the obligation imposed on it by Article 3, the competent environmental authority may not confine itself to identifying and describing a project's direct and indirect effects on certain factors, but must also assess them in an appropriate manner, in the light of each individual case.
- 38 That assessment obligation is distinct from the obligations laid down in Articles 4 to 7, 10 and 11 of Directive 85/337, which are, essentially, obligations to collect and exchange information, consult, publicise and guarantee the possibility of challenge before the courts. They are procedural provisions which do not concern the implementation of the substantial obligation laid down in Article 3 of that directive.
- 39 Admittedly, Article 8 of Directive 85/337 provides that the results of the consultations and the information gathered pursuant to Articles 5 to 7 must be taken into consideration in the development consent procedure.
- 40 However, that obligation to take into consideration, at the conclusion of the decision-making process, information gathered by the competent environmental authority must not be confused with the assessment obligation laid down in Article 3 of Directive 85/337. Indeed, that assessment, which must be carried out before the decision-making process (Case C-508/03 *Commission v United Kingdom* [2006] ECR I-3969, paragraph 103), involves an examination of the substance of the information gathered as well as a consideration of the expediency of supplementing it, if appropriate, with additional data. That competent environmental authority must thus undertake both an investigation and an analysis to reach as complete an assessment as possible of the direct and indirect effects of the project concerned on the factors set out in the first three indents of Article 3 and the interaction between those factors.

- 41 It follows therefore both from the wording of the provisions at issue of Directive 85/337 and from its general scheme that Article 3 is a fundamental provision. The transposition of Articles 4 to 11 alone cannot be regarded as automatically transposing Article 3.
- 42 It is in the light of those considerations that the Court must consider whether the national provisions upon which Ireland relies constitute proper transposition of Article 3 of Directive 85/337.
- 43 It can be seen from the wording of section 172 of the PDA and of Article 94 of, and Schedule 6 to, the PDR that those provisions relate to the developer's obligation to supply an environmental impact statement, which corresponds, as the Commission correctly claims, to the obligation imposed upon the developer by Article 5 of Directive 85/337. Article 108 of the PDR imposes no obligation on the planning authority other than that of establishing the completeness of that information.
- 44 As regards section 173 of the PDA, according to which the planning authority, where it receives an application for planning permission accompanied by an environmental impact statement, must take that statement into account as well as any additional information provided to it, it is clear from the very wording of that article that it is confined to laying down an obligation similar to that provided for in Article 8 of Directive 85/337, namely that of taking the results of the consultations and the information gathered for the purposes of the consent procedure into consideration. That obligation does not correspond to the broader one, imposed by Article 3 of Directive 85/337 on the competent environmental authority, to carry out itself an environmental impact assessment in the light of the factors set out in that provision.
- 45 In those circumstances, it must be held that the national provisions invoked by Ireland cannot attain the result pursued by Article 3 of Directive 85/337.
- 46 Whilst it is true that, according to settled case-law, the transposition of a directive into domestic law does not necessarily require the provisions of the directive to be enacted in precisely the same words in a specific, express provision of national law and a general legal context may be sufficient if it actually ensures the full application of the directive in a sufficiently clear and precise manner (see, in particular, Case C-427/07 *Commission v Ireland* [2009] ECR I-6277, paragraph 54 and the case-law cited), the fact remains that, according to equally settled case-law, the provisions of a directive must be implemented with unquestionable binding force and with the specificity, precision and clarity required in order to satisfy the need for legal certainty, which requires that, in the case of a directive intended to confer rights on individuals, the persons concerned must be enabled to ascertain the full extent of their rights (see, in particular, *Commission v Ireland*, paragraph 55 and the case-law cited).
- 47 In that regard, the judgment of the Supreme Court in *O'Connell v Environmental Protection Agency* gives, admittedly, in the passage upon which Ireland relies, an interpretation of the provisions of domestic law consistent with Directive 85/337. However, according to the Court's settled case-law, such a consistent interpretation of the provisions of domestic law cannot in itself achieve the clarity and precision needed to meet the requirement of legal certainty (see, in particular, Case C-508/04 *Commission v Austria* [2007] ECR I-3787, paragraph 79 and the case-law cited). The passage in the judgment of the same court in *Martin v An Bord Pleanála*, to which Ireland also refers, concerns the question of whether all the factors referred to in Article 3 of Directive 85/337 are mentioned in the consent

procedures put in place by the Irish legislation. By contrast, it has no bearing on the question, which is decisive for the purposes of determining the first complaint, of what the examination of those factors by the competent national authorities should comprise.

- 48 As regards the concepts of 'proper planning' and 'sustainable development' to which Ireland also refers, it must be held that, even if those concepts encompass the criteria referred to in Article 3 of Directive 85/337, it is not established that they require that those criteria be taken into account in all cases for which an environmental impact assessment is required.
- 49 It follows that neither the national case-law nor the concepts of 'proper planning' and 'sustainable development' can be invoked to remedy the failure to transpose into the Irish legal order Article 3 of Directive 85/337.
- 50 The Commission's first complaint in support of its action must therefore be held to be well founded.

*The second complaint, alleging failure to ensure full compliance with Articles 2 to 4 of Directive 85/337 where several authorities are involved in the decision-making process*

#### Arguments of the parties

- 51 For the Commission, it is of the essence that the environmental impact assessment be carried out as part of a holistic process. In Ireland, following the Agency's creation, certain projects requiring such an assessment are subject to two separate decision-making processes: one process involves decision-making on land-use aspects by planning authorities, while the other involves decision-making by the Agency on pollution aspects. The Commission accepts that planning permission and an Agency licence may be regarded, as has been held in Irish case-law (*Martin v An Bord Pleanála*), as together constituting 'development consent' within the meaning of Article 1(2) of Directive 85/337 and it does not object to such consent being given in two successive stages. However, the Commission criticises the fact that the Irish legislation fails to impose any obligation on planning authorities and the Agency to coordinate their activities. In the Commission's submission, that situation is contrary to Articles 2 to 4 of Directive 85/337.
- 52 As regards Article 2 of Directive 85/337, the Commission notes that it requires an environmental impact assessment to be undertaken for a project covered by Article 4 'before consent is given'. The Commission submits that there is a possibility under the Irish legislation that part of the decision-making process will take place in disregard of that requirement. First, the Irish legislation does not require that an application for planning permission be lodged with the planning authorities before a licence application is submitted to the Agency, which is not empowered to undertake an environmental impact assessment. Second, the planning authorities are not obliged to take into account, in their assessment, the impact of pollution, which might not be assessed at all.
- 53 Referring to the Court's case-law (see, in particular, judgment of 20 November 2008 in *Case C-66/06 Commission v Ireland*, paragraph 59), the Commission states that it is not obliged to wait until the application of the transposing legislation produces harmful effects or to establish that it does so, where the wording of the legislation itself is insufficient or defective.

- 54 As regards Article 3 of Directive 85/337, the Commission submits that where there is more than one competent body, the procedures followed by each of them must, when taken together, ensure that the assessment required by Article 3 is fully carried out. The strict demarcation of the separate roles of the planning authorities on the one hand and the Agency on the other, as laid down by the Irish legislation, fails to take formally into account the concept of 'environment' in the decision-making. None of the bodies involved in the consent process is responsible for assessing and taking into consideration the interaction between the factors referred to in the first to third indents of Article 3, which fall respectively within the separate spheres of the powers of each of those authorities.
- 55 In that regard, the Commission, referring to section 98 of the EPAA, as amended, and to the EPAR, observes that there is no formal link, in the form of an obligation, for the competent authorities, to consult each other between the process of planning permission followed by the planning authority and the licensing process followed by the Agency.
- 56 In order to illustrate its analysis, the Commission refers to the projects relating to the installation of an incinerator at Duleek, in County Meath, and to the wood-processing factory at Leap, in County Offaly.
- 57 Referring to Case C-98/04 *Commission v United Kingdom* [2006] ECR I-4003, Ireland contests the admissibility of the Commission's second complaint in support of its action, on the ground that, in Ireland's submission, the Commission has failed to indicate precisely the reason why Ireland's designation of two competent authorities infringes the requirements of Directive 85/337. Ireland submits that the failure has interfered with the preparation of its defence.
- 58 On the substance, Ireland contends that the consequence of involving a number of different competent authorities in the decision-making process, which is permitted by Articles 1(3) and 2(2) of Directive 85/337, is that their involvement and their obligations will be different and will occur at different stages prior to 'development consent' being given. Relying on *Martin v An Bord Pleanála*, Ireland contends that nowhere in that directive is it in any sense suggested that a single competent body must carry out a 'global assessment' of the impact on the environment.
- 59 Ireland denies that there is a strict demarcation between the powers of the two decision-making bodies and submits that there is, rather, overlap between them. The concept of 'proper planning and sustainable development', to which the PDA refers, is a very broad one, which includes, in particular, environmental pollution. Planning authorities are required to assess environmental pollution in the context of a decision relating to planning permission. They are moreover empowered under various provisions to refuse planning permission on environmental grounds.
- 60 Replying to the Commission's argument that it is possible for a licence application to be made to the Agency before an application for planning permission has been made to the planning authority, and thus before an environmental impact assessment has been carried out, Ireland contends that under Irish law 'development consent' requires both planning permission from the competent planning authority and a licence from the Agency. In those circumstances, there is no practical benefit in the developer applying for a licence from the Agency without making a contemporaneous application to the planning authority; such separate applications do not therefore occur in practice.



- 61 In addition, Ireland argues that, contrary to the Commission's assertion that the Agency cannot undertake an environmental impact assessment, there is in several instances an obligation, particularly for waste recovery or waste disposal licence applications and for applications for integrated pollution control and prevention licences, to submit an environmental impact statement to the Agency independently of any earlier application for planning permission lodged with a planning authority. In addition, in such cases the Agency is expressly empowered to request further information from an applicant and may therefore request information which is substantially similar to that contained in an environmental impact statement.
- 62 Ireland submits that an obligation on the planning authority and the Agency to consult in every case would be inappropriate. It would be more appropriate to allow such consultation whilst affording a discretion to the relevant decision-makers as to whether, in each particular case, to undertake such consultation.
- 63 Finally, the judgment in Case C-66/06 *Commission v Ireland*, to which the Commission refers in order to avoid having to adduce proof of its allegations, is not relevant to the present case. In Ireland's submission, the alleged infringement, in that case, concerned the manner in which Directive 85/337 had been transposed into Irish domestic law, whereas the present case concerns the application of the legislation transposing that directive. Whilst a comprehensive scheme has been put in place by the Irish legislation on the environmental impact assessment, the Commission claims that that legislation may not always be applied properly in practice. In that regard, the onus of proof lies with the Commission, which has failed to discharge it. The references to the projects at Duleek and Leap offer no support whatsoever for the Commission's allegations.

#### Findings of the Court

##### – Admissibility of the second complaint

- 64 It is settled case-law that, in the context of an action brought on the basis of Article 226 EC, the reasoned opinion and the action must set out the Commission's complaints coherently and precisely in order that the Member State and the Court may appreciate exactly the scope of the infringement of European Union law complained of, a condition which is necessary in order to enable the Member State to avail itself of its right to defend itself and the Court to determine whether there is a breach of obligations as alleged (see, in particular, *Commission v United Kingdom*, paragraph 18, and Case C-66/06 *Commission v Ireland*, paragraph 31).
- 65 In this case, it is apparent from the documents in the court file that, in the pre-litigation procedure, both paragraphs 3.2.2 to 3.2.5 of the reasoned opinion of 6 August 2001 and paragraphs 2.17 and 2.18 of the additional reasoned opinion of 29 June 2007 set forth the reason for which the strict demarcation between the separate roles assigned to the planning authorities, on the one hand, and the Agency, on the other, does not satisfy, in the Commission's submission, the requirements of Directive 85/337. It is there explained that such sharing of powers is incompatible with the fact that the concept of 'environment', as it must be taken into account in the decision-making process laid down by that directive, involves taking into consideration the interaction between the factors falling within the separate spheres of responsibility of each of those decision-making authorities.
- 66 That complaint is set out in identical or similar terms in paragraphs 55 et seq. of the application in this action which, in addition, contains, in its paragraphs 9 to 20, a summary of the relevant provisions of the Irish legislation.



- 67 It follows from those findings that the Commission's allegations in the course of the pre-litigation procedure and the proceedings before the Court were sufficiently clear to enable Ireland properly to defend itself.
- 68 Accordingly, Ireland's plea of inadmissibility in respect of the Commission's second complaint must be rejected.
- Substance
- 69 At the outset, it is to be noted that, by its second complaint, the Commission is criticising the transposition by the Irish legislation at issue of Articles 2 to 4 of Directive 85/337, on the ground that the procedures put in place by that legislation do not ensure full compliance with those articles where several national authorities take part in the decision-making process.
- 70 Consequently, Ireland's line of argument that the Commission has not adequately established the factual basis for its action must immediately be rejected. As the Commission claimed, since its action for failure to fulfil obligations is concerned with the way in which Directive 85/337 has been transposed, and not with the actual result of the application of the national legislation relating to that transposition, it must be determined whether that legislation itself harbours the insufficiencies or defects in the transposition of the directive which the Commission alleges, without any need to establish the actual effects of the national legislation effecting that transposition with regard to specific projects (see Case C-66/06 *Commission v Ireland*, paragraph 59).
- 71 Article 1(2) of Directive 85/337 defines the term 'development consent' as 'the decision of the competent authority or authorities which entitles the developer to proceed with the project'. Article 1(3) states that the competent authorities are to be that or those which the Member States designate as responsible for performing the duties arising from that directive.
- 72 For the purposes of the freedom thus left to them to determine the competent authorities for giving development consent, for the purposes of that directive, the Member States may decide to entrust that task to several entities, as the Commission has moreover expressly accepted.
- 73 Article 2(2) of Directive 85/337 adds that the environmental impact statement may be integrated into the existing procedures for consent to projects or failing that, into other procedures or into procedures to be established to comply with the aims of that directive.
- 74 That provision means that the liberty left to the Member States extends to the determination of the rules of procedure and requirements for the grant of the development consent in question.
- 75 However, that freedom may be exercised only within the limits imposed by that directive and provided that the choices made by the Member States ensure full compliance with its aims.
- 76 Article 2(1) of Directive 85/337 thus states that the environmental impact assessment must take place 'before the giving of consent'. That entails that the examination of a project's direct and indirect effects on the factors referred to in Article 3 of that directive and on the interaction between those factors be fully carried out before consent is given.

- 77 In those circumstances, while nothing precludes Ireland's choice to entrust the attainment of that directive's aims to two different authorities, namely planning authorities on the one hand and the Agency on the other, that is subject to those authorities' respective powers and the rules governing their implementation ensuring that an environmental impact assessment is carried out fully and in good time, that is to say before the giving of consent, within the meaning of that directive.
- 78 In that regard, the Commission maintains that it has identified, in the Irish legislation, a gap arising from the combination of two factors. The first is the lack of any right on the part of the Agency, where it receives an application for a licence for a project as regards pollution aspects, to require an environmental impact assessment. The second is the possibility that the Agency might receive an application and decide on questions of pollution before an application is made to the planning authority, which alone can require the developer to make an environmental impact statement.
- 79 In its defence, Ireland, which does not deny that, generally, the Agency is not empowered to require a developer to produce such a statement, contends that there is no practical benefit for a developer in seeking a licence from the Agency without simultaneously making an application for planning permission to the planning authority, since he needs a consent from both those authorities. However, Ireland has neither established, nor even alleged, that it is legally impossible for a developer to obtain a decision from the Agency where he has not applied to the planning authority for permission.
- 80 Admittedly, the EPAR give the Agency the right to notify a licence application to the planning authority. However, it is common ground between the parties that it is not an obligation and, moreover, an authority which has received such notification is not bound to reply to it.
- 81 It is therefore not inconceivable that the Agency, as the authority responsible for licensing a project as regards pollution aspects, may make its decision without an environmental impact assessment being carried out in accordance with Articles 2 to 4 of Directive 85/337.
- 82 Ireland contends that, in certain cases, relating particularly to licences for the recovery or disposal of waste and integrated pollution control and prevention licences, the Agency is empowered to require an environmental impact statement, which it must take into account. However, such specific rules cannot fill the gap in the Irish legislation identified in the preceding paragraph.
- 83 Ireland submits also that planning authorities are empowered, since the amendment of the EPAA by section 256 of the PDA, to refuse, where appropriate, planning permission on environmental grounds and that the concepts of 'proper planning' and 'sustainable development' confer on those authorities, generally, such power.
- 84 Such an extension of the planning authority's powers may, as Ireland argues, create in certain cases an overlap of the respective powers of the authorities responsible for environmental matters. None the less, it must be held that such an overlap cannot fill the gap pointed out in paragraph 81 of the present judgment, which leaves open the possibility that the Agency will alone decide, without an environmental impact assessment complying with Articles 2 to 4 of Directive 85/337, on a project as regards pollution aspects.

- 85 In those circumstances, it must be held that the Commission's second complaint in support of its action for failure to fulfil obligations is well founded.

*The third complaint, alleging failure to apply Directive 85/337 to demolition works*

Arguments of the parties

- 86 In the Commission's submission, demolition works may constitute a 'project' within the meaning of Article 1(2) of Directive 85/337, since they fall within the concept of 'other interventions in the natural surroundings and landscape'. However, in the PDR, Ireland purported to exempt nearly all demolition works from the obligation to carry out an environmental impact assessment. After the end of the two-month period laid down in the additional reasoned opinion of 29 June 2007, Ireland admittedly notified the Commission of new legislation, which amended the PDR by significantly narrowing the scope of the exemption for demolition works. However, that legislation cannot, the Commission submits, be taken into account in the present infringement action.
- 87 The Commission claims that Ireland's interpretation that demolition works fall outside the scope of the directive is reflected in the NMA, and refers in that regard to sections 14, 14A and 14B of that Act which relate to the demolition of a national monument.
- 88 By way of illustration of how, in contravention of Directive 85/337, the exclusion of demolition works allowed, by virtue of section 14A of the NMA, a national monument to be demolished without an environmental impact assessment being undertaken, the Commission cites the ministerial decision of 13 June 2007 ordering the destruction of a national monument in order to permit the M3 motorway project to proceed.
- 89 As a preliminary point, Ireland objects that the Commission's third complaint is, in so far as it concerns section 14 of the NMA, inadmissible, since that provision was not mentioned in the additional reasoned opinion of 29 June 2007.
- 90 In Ireland's submission, demolition works do not fall within the scope of Directive 85/337, since they are not mentioned in Annex I or II thereto. In addition, Ireland submits that section 10 of the PDA and Article 9 of the PDR, when read together, make clear that the exemption from the obligation to obtain planning permission in respect of demolition works can apply only if the project is unlikely to have significant effects on the environment.
- 91 As regards the obligation to carry out further assessments, Ireland argues that the essence of Directive 85/337 is that the environmental impact assessment be carried out at the earliest possible stage, before the development starts. The only occasion when it is ever necessary to carry out a fresh assessment is, in accordance with the first indent of point 13 in Annex II to the directive, where the development project has been changed or extended.
- 92 With regard to the scope of ministerial directions issued under section 14A of the NMA, Ireland states that that provision applies only in the context of a road development previously approved by the Board, on the basis of an environmental impact assessment. Only the Board may authorise an alteration to a road development and it must in such a case assess whether that alteration is likely to have adverse environmental consequences. In those circumstances, the Minister's power to issue ministerial directions cannot be equated with the giving of consent for the motorway project. Those directions are issued only, if at all, following the

commencement of the development works and the discovery of a new national monument and are designed only to regulate how the newly discovered national monument is to be dealt with. Also, Ireland denies that a ministerial decision was taken ordering the destruction of a national monument in order to allow the M3 motorway project to proceed.

#### Findings of the Court

##### – Admissibility of the third complaint

93 According to the Court's settled case-law, the subject-matter of proceedings brought under Article 226 EC is delimited by the administrative pre-litigation procedure governed by that article and the application must be founded on the same grounds and pleas as those stated in the reasoned opinion (see, in particular, Case C-340/02 *Commission v France* [2004] ECR I-9845, paragraph 26 and the case-law cited).

94 In this case, it is clear from the wording of the additional reasoned opinion of 29 June 2007 that the Commission, in paragraphs 2.34 to 2.38 thereof, complained that Ireland had excluded demolition works from the scope of the national legislation transposing Directive 85/337. In paragraphs 2.39 and 2.40 of the same opinion, the Commission stated that Ireland's interpretation of that directive was reflected not only in the PDA, but also in other more specific legislative provisions, such as the NMA, and it took as an example the carrying-out of the M3 motorway project.

95 It follows that, while the Commission did not expressly refer to section 14 of the NMA in that reasoned opinion, it none the less referred clearly to the decision-making mechanism laid down by that section as part of its analysis of the deficiencies which, in its submission, that Act entails.

96 In those circumstances, Ireland's plea of inadmissibility against the Commission's third complaint must be rejected.

##### – Substance

97 As regards the question whether demolition works come within the scope of Directive 85/337, as the Commission maintains in its pleadings, or whether, as Ireland contends, they are excluded, it is appropriate to note, at the outset, that the definition of the word 'project' in Article 1(2) of that directive cannot lead to the conclusion that demolition works could not satisfy the criteria of that definition. Such works can, indeed, be described as 'other interventions in the natural surroundings and landscape'.

98 That interpretation is supported by the fact that, if demolition works were excluded from the scope of that directive, the references to 'the cultural heritage' in Article 3 thereof, to 'landscapes of historical, cultural or archaeological significance' in point 2(h) of Annex III to that directive and to 'the architectural and archaeological heritage' in point 3 of Annex IV thereto would have no purpose.

99 It is true that, under Article 4 of Directive 85/337, for a project to require an environmental impact assessment, it must come within one of the categories in Annexes I and II to that directive. However, as Ireland contends, they make no express reference to demolition works except, irrelevantly for the purposes of the present action, the dismantling of nuclear power stations and other nuclear reactors, referred to in point 2 of Annex I.

- 100 However, it must be borne in mind that those annexes refer rather to sectoral categories of projects, without describing the precise nature of the works provided for. As an illustration it may be noted, as did the Commission, that 'urban development projects' referred to in point 10(b) of Annex II often involve the demolition of existing structures.
- 101 It follows that demolition works come within the scope of Directive 85/337 and, in that respect, may constitute a 'project' within the meaning of Article 1(2) thereof.
- 102 According to settled case-law, the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation in that Member State as it stood at the end of the period laid down in the reasoned opinion (see, in particular, Case C-427/07 *Commission v Ireland*, paragraph 64 and the case-law cited).
- 103 Ireland does not deny that, under the national legislation in force at the date of the additional reasoned opinion, demolition works were not subject, as a general rule, to an environmental impact assessment but, on the contrary, were entitled to an exemption in principle.
- 104 It is clear from the rules laid down in sections 14 to 14B of the NMA as regards the demolition of a national monument that, as the Commission claims, they take no account of the possibility that such demolition works might constitute, in themselves, a 'project' within the meaning of Articles 1 and 4 of Directive 85/337 and, in that respect, require a prior environmental impact assessment. However, since the insufficiency of that directive's transposition into the Irish legal order has been established, there is no need to consider what that legislation's actual effects are in the light of the carrying-out of specific projects, such as that of the M3 motorway.
- 105 As regards the legislative changes subsequent to the action for failure to fulfil obligations being brought, they cannot be taken into consideration by the Court (see, in particular, Case C-427/07 *Commission v Ireland*, paragraph 65 and the case-law cited).
- 106 In those circumstances, the Commission's third complaint in support of its action must be held to be well founded.
- 107 Accordingly, it must be declared that:
- by failing to transpose Article 3 of Directive 85/337;
  - by failing to ensure that, where planning authorities and the Agency both have decision-making powers concerning a project, there will be complete fulfilment of the requirements of Articles 2 to 4 of that directive; and
  - by excluding demolition works from the scope of its legislation transposing that directive,
- Ireland has failed to fulfil its obligations under that directive.

## **Costs**

108 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and Ireland has been unsuccessful the latter must be ordered to pay the costs.

On those grounds, the Court (First Chamber) hereby:

**1. Declares that:**

- **by failing to transpose Article 3 of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997 and by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003;**
- **by failing to ensure that, where Irish planning authorities and the Environmental Protection Agency both have decision-making powers concerning a project, there will be complete fulfilment of the requirements of Articles 2 to 4 of Directive 85/337, as amended by Directive 2003/35; and**
- **by excluding demolition works from the scope of its legislation transposing Directive 85/337, as amended by Directive 2003/35,**

**Ireland has failed to fulfil its obligations under that directive;**

**2. Orders Ireland to pay the costs.**

[Signatures]

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\* Language of the case: English.