An Bord Pleanála

Memorandum
ABP-315173-22

To: Board

From: Mary Mac Mahon, SPI

Re: EIAR Screening

Date: 14th July, 2023

1. This case is a Third Party appeal against the decision by Meath County Council to grant planning permission for a buttress to shore up the stability of the embankment walls of a Tailings Storage Facility (TSF), which is a dam for the storage of mine waste for Tara Mines (Reg. Ref. 22331). The site is subject to an Industrial Emissions Licence (Ref. No. P0516-04). The core of the appeal is that the application should have been accompanied by an EIAR.

2. During the assessment of the application by the planning authority, the EPA was consulted. The EPA considers that the proposed development would trigger EIA and may require review or amendments to the current IEL licence. It considers that the proposed development may require EIA under 2 (c) of Part 2, Schedule 5 of the *Planning and Development Regulations 2001,* as amended, or 11(b) of the same schedule. Project 2 (c) is all extraction of minerals within the meaning of the Minerals Development Acts, 1940 to 1999. The EPA submission refers to considering the activity in its entirety [emphasis by EPA]. Project 11 (b) is installations for the storage of waste within an annual intake greater than 25,000 not included in Part 1 of the Schedule.

3. Under S173B (5) (b) of the *Planning and Development Act*, 2000, as amended, the Board or a planning authority is obliged to make a determination on whether and EIA is required and under S173(5) (c) where the application requires a waste licence under Part V of the Act of 1996, the Board or planning authority shall request observations from the agency to in relations to its determination and take into account the observations when making that determination. Having regard to

the submission on the planning authority file from the EPA, I am satisfied that this requirement has been fulfilled.

4. I consider that the proposed development could come within the scope of Project 2 (c) is all extraction of minerals within the meaning of the Minerals Development Acts, 1940 to 1999, notwithstanding that no extraction is occurring on site. The TSF is a depository for mine waste, but also plays a vital role in the recycling of water necessary for the separation of ore from rock, the process of which occurs in the mine. That is an integral part of the mining activity.

5. The proposed buttress will also be in part formed from rockfill from mine waste. At this point the rockfill changes from being a waste to a byproduct which has a beneficial effect use and so is a recovery activity. Therefore, I do not consider that the proposed development comes within the scope of Project 11 (b) is installations for the storage of waste within an annual intake greater than 25,000 tonnes not included in Part 1 of the Schedule. In addition, as the waste relates to mine waste, which comes under a separate directive – 2006/21/EC on the Management of Waste from Extractive Industry, than the Waste Framework Directive (2008/98/EC).

6. Returning to Schedule 5 of the *Planning and Development Regulations*, 2001 and as amended, another project class is 10 (g) - Dams and other installations not included in Part 1 of this Schedule, which are designed to hold water or store it on a long-term basis, where the new or extended area of water impounded would be 30 hectares or more. The TSF is a dam which involves the holding and storing of water. Dams are projects that come within the scope of EIA. The proposed development will not result in an increase in area. Therefore, no mandatory EIA arises. Project 13 considers changes, extensions, development and testing. The triggers relate to size in terms of the units of measure of the appropriate threshold or extent of demolition.

7. I am satisfied that the proposed development comes within a class of project that is subject to EIA – under 2 (c) mining or 10 (g) dams. As there is no thresholds set in 2 (c) a mandatory EIA is necessary. Should there be any doubt in relation to 2 (c) then a screening for subthreshold EIA for 10 (g) has been undertaken – see below.

8. Should the Board agree, a Section 132 Notice could issue to the applicant requesting an EIAR. Alternatively, the Board could consider upholding the planning appeal and refuse permission planning permission on the basis that the application was not accompanied by an EIAR. The Board could also decide that the file can be assessed without recourse to an EIA, as there are environmental and other reports, including an NIS, which set out mitigation measures. I would

recommend that a Section 132 Notice is issued, stating that as the proposed development relates to the Tailings Storage Facility, which constitutes an integral part of mining activity, under Project 2 (c) of Part 2, Schedule 5 of the *Planning and Development Regulations 2001,* as amended, a mandatory EIA is triggered. In addition, the proposed development would trigger a subthreshold EIA under Project 10 (g) of Part 2, Schedule 5 of the *Planning and Development Regulations 2001,* as amended.

Schedule 7 Screening for Subthreshold EIA

1. *Characteristics of Proposed Development*

(a) Size and Design

The proposed development is the buttressing of sections of the existing TSF dam. The dam is over 200 ha or 2 km^2 in area, with embankment walls to a height of 22 metres. The buttressing will require the importation of up to 1.23 million tonnes of rockfill and soil.

(b) cumulation with other existing development and/or development the subject of a consent for proposed development for the purposes of section 172(1A)(b) of the Act and/or development the subject of any development consent for the purposes of the Environmental Impact Assessment Directive by or under any other enactment,

The importation of soil to the site is underway as part of the restoration works to the site, as part of IEL Licence requirements. There are other permitted EIA developments in the Navan area as well as planning applications that involve EIA.

(c) the nature of any associated demolition works,

No demolition works are involved.

(d) the use of natural resources, in particular land, soil, water and biodiversity,

A significant amount of soil is required to be imported (quantities vary between reports) and there will be stripping of the existing landscaping on the dam, which supports a wide range of biodiversity, including protected species of birds and mammals.

(e) *the production of waste,*

No significant production of waste will arise as existing mine waste will be recovered to provide material for the buttress.

(f) *pollution and nuisances,*

There is the potential for dust, sediment and pollution to enter the watercourses in the vicinity of the site.

(g) the risk of major accidents, and/or disasters which are relevant to the project concerned, including those caused by climate change, in accordance with scientific knowledge, and

The aim of the proposed development is to limit the current risk of a major accident, which could arise if there is a dam breach. The site is founded on an area that has been subject to flooding in the past but watercourses have been since been diverted. A site specific flood risk assessment accompanied the application, which includes the assessment of heavy rain events on the dam during construction.

(h) the risks to human health (for example, due to water contamination or air pollution).

There is a risk to human health should measures to prevent pollution of the watercourses fail, as there is a drinking supply circa 2.4 km downstream in the River Boyne.

2. Location of proposed development

The environmental sensitivity of geographical areas likely to be affected by the proposed development, with particular regard to—

(a) the existing and approved land use,

The existing and approved land use is that of a Tailings Storage Facility, for the storage of mine waste and the physical treatment of water to be returned to the mine. Water discharged to the River Blackwater and River Boyne is subject to a chemical treatment.

(b) the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground,

The area is an agricultural area. The TSF has a number of watercourses adjoining which are tributaries to the Rivers Blackwater and Boyne, which are Natura 2000 sites (both SAC and SPA). The River Boyne is a salmonid river. The Water Framework Directive status of the Yellow River is 'At Risk'. The Ecological Status is 'Poor' (2016-2021) but the Status Confidence is Medium. The Ecological Status of the River Blackwater is the same in terms of the Water Framework Directive. The Ecological Status of the River Boyne is Moderate but the Status Confidence is Low. Groundwater is classified as a poor aquifer which is moderately productive only in local zoned. The TSF supports a wide range of biodiversity, including protected species – mammals and birds.

(c) *the absorption capacity of the natural environment, paying particular attention to the following areas:*

(i) wetlands, riparian areas, river mouths;

The site is adjacent to riparian areas.

(ii) *coastal zones and the marine environment*;

Not applicable.

(iii) *mountain and forest areas;*

Not applicable.

(iv) *nature reserves and parks;*

The Navan to Kingscourt Greenway (a former railway line) adjoins to the site to the east.

(v) *areas classified or protected under legislation, including Natura 2000 areas designated pursuant to the Habitats Directive and the Birds Directive and;*

There are two Natura 2000 sites in the vicinity of the site – the River Boyne and Blackwater SAC (Site Code 002299) and the River Boyne and Blackwater SPA (Site Code 004232). There is a direct connection between the TSF, Yellow River and the River Blackwater. An NIS has been submitted.

(vi) *areas in which there has already been a failure to meet the environmental quality standards laid down in legislation of the European Union and relevant to the project, or in which it is considered that there is such a failure;*

Not applicable.

(vii) *densely populated areas*;

Navan town is downstream of the site (with a population of circa 34,000 persons) and the River Boyne is its source for potable water.

(viii) landscapes and sites of historical, cultural or archaeological significance.

There is Recorded Monument, a Church and Graveyard (ME025-002), which is located between the TSF and the Yellow River. Another Recorded Monument, a Holy Well (M025-045) is southwest of the Windtown Road.

3. *Types and characteristics of potential impacts*

The likely significant effects on the environment of proposed development in relation to criteria set out under paragraphs 1 and 2, with regard to the impact of the project on the factors specified in paragraph (b)(i)(I) to (V) of the definition of 'environmental impact assessment report' in section 171A of the Act, taking into account—

(a) the magnitude and spatial extent of the impact (for example, geographical area and size of the population likely to be affected),

The geographical area of the site is relatively confined. The population directly affected is limited in proximity to the site, but traffic will have to travel through Navan to the site. That population (34,000) might also be affected arising from any risk to the water supply.

(b) the nature of the impact,

The impact on the Natura 2000 sites would be significant if there is failure of mitigation measures. If there is failure of the dam, the consequences would be much more severe.

(c) the transboundary nature of the impact,

Not applicable.

(d) the intensity and complexity of the impact,

The intensity and complexity of the impact would be high.

(e) *the probability of the impact,*

The probability of the impact of the failure of the dam, in the absence of works would be high. The probability of impact from construction works in relation to the proposed development would be significantly less due to mitigation measures.

(f) the expected onset, duration, frequency and reversibility of the impact,

The impacts would be likely to be a one-off event of a dam failure, which would be reversable over time. The impacts arising from a failure in the mitigation measures would be significantly less and would be reversable over time.

(g) the cumulation of the impact with the impact of other existing and/or development the subject of a consent for proposed development for the purposes of section 172(1A)(b) of the Act and/or development the subject of any development consent for the purposes of the Environmental Impact Assessment Directive by or under any other enactment, and

Importation of soil to the site from reclamation purposes is already taking place. The number of traffic movements would significantly increase (the proposed development estimate truck movements between 142 to 270 movements per day),

(h) *the possibility of effectively reducing the impact.*

Mitigation measures can be employed. A number of reports have been submitted with the application indicating how mitigation measures can be implemented.

Conclusion

Having regard to the scale of development, the quantity of traffic movements, the risks arising from construction in relation to the dispersal of dust, sediment and pollution to watercourses, the risk of a major accident, during construction, which could impact on the potable water supply to Navan, Natura 2000 sites and protected species, it is considered that a subthreshold EIA is required under Project 10 (g) of Part 2, Schedule 5 of the *Planning and Development Regulations, 2001* as amended.