An Bord Pleanála Oral Hearing

Indaver Ireland

Ringaskiddy Resource Recovery Centre

Opening Statement

Rory Mulcahy SC

Introduction

The Board's directions requested that the Developer present a brief overview of the project the subject of this SID application. Before asking Mr John Ahern of Indaver to do so, I will seek to set the context for that presentation and for the evidence to be given thereafter. In that context, I should say that in preparing statements of witnesses, we have sought to adhere to the directions and have sought only to provide responses to issues raised rather than repeat or reiterate the substantial information already provided to the Board.

The Board in considering this application has, in fact, three different functions. Firstly, it must make the planning decision and decide whether the development is in accordance with proper planning and sustainable development; secondly, it must carry out an environmental impact assessment (EIA) in accordance with the requirements of the EIA Directive and Irish implementing legislation; and thirdly, it must carry out an assessment for the purpose of the Habitats and Birds Directive and the Irish implementing legislation. I will touch on each of those in turn presently.

This oral hearing is an important part of each of those three processes. Public participation in environmental decision-making is a cornerstone of EU law. Those who have concerns about the impacts of a proposed development should have a right to make their views known and, more importantly, have those views heard and assessed. We are glad to have an opportunity over the next number of days to seek to address some of the concerns which have been raised. It will be for you Inspector to report to the Board and for the Board to consider all the information before it from the developer, the prescribed bodies and the public and to evaluate that information in making its decision. That is the planning process and it is, of course, the EIA process.

Planning

Turning then to each element of the process, the Board's first function is to make a determination on the basis of proper planning and sustainable development.

The first and most obvious matter to note in that regard is that this is the third time that a planning application has been made for a waste to energy plant at this location. Contrary to what is asserted in many of the observations, those applications were not both refused. In fact planning permission was granted in 2001 though it expired before it could be implemented. The second application was refused but the Board made clear in the course of

that refusal that the development of a hazardous waste to energy facility could be acceptable at this site.

In addition, the EPA has previously granted a licence for both municipal and hazardous waste incineration at the site which it could not have done if it considered the then proposed development could not have been carried out without causing environmental pollution.

Each of those decisions is, in our submission, relevant to the Board's consideration of this application and, in particular, to one of the matters on which the Board has asked us to respond, the suitability of this site for a development of this type. In our view, the previous decisions illustrate the site could be suitable in principle for a development of this type if, in particular, the reasons for refusal in the 2011 decision could be addressed.

In that regard, a very significant factor in the previous decision was that the development of a plant to treat municipal waste did not accord with the relevant policies at that time. In our submission, that has changed completely since the last application and the development proposed is now entirely in accordance with both waste and energy policy at national, regional and local level. This is fairly acknowledged in many of the submissions. It is set out in greater detail in the planning report submitted with the planning application and you'll hear a little further, by way of response from David Coakley of Coakley O'Neill Planning Consultants in due course.

In particular, it is noted that the three regional waste management plans which have been developed by the regional waste authorities each recognize the need for additional thermal treatment capacity for 300,000 tonnes of municipal waste. Having regard to the existing capacity in the east of the country, serving the GDA, it is clear in our view that a significant portion of the available capacity should be met from this region and the next most populous city in the State, Cork.

Those plans also identified the national need for thermal treatment of 50,000 tonnes of hazardous waste. Indaver's experience is that the industrial land uses still in operation in Ringaskiddy and its environs remain a significant source of hazardous waste suitable for incineration with MSW and industrial waste. This site remains, therefore, an appropriate site for the location of the proposed development.

The fact that the proposed development so effectively chimes with relevant policy is reflected in the fact that of the prescribed bodies notified of the proposal none, other than An Taisce, has identified or recommended any reason for refusal. Similarly, the planning authority has not identified any such reason.

Insofar as it is suggested that the first decision should be, in effect, entirely disregarded, it is difficult to see any basis for so doing. That permission was not quashed but rather expired. Insofar as the suggestion may be that Case 50/09 renders the decision a nullity, that suggestion is not, in our submission, correct. The effect of Case 50/09 was not to render any particular decision unlawful but rather to point out shortcomings in the Irish transposition of the EIA Directive and, in particular, the absence of an express requirement to carry out an EIA. Case 50/09 did not have the effect of automatically rendering void any decision made under the then implementing regulations.

In any event, it is accepted that things have changed since those earlier decisions and that neither decision binds the Board as to how it must determine this application. But we do say that those earlier decisions are relevant both to the developer's own determination that this is a suitable site for this type of development and its development of this proposal and also to the Board's assessment of its suitability.

It is noted that one suggestion which has been made in submissions is that Bottlehill would be a more suitable site for this development. I just want to make two points about Bottlehill. Firstly, unlike this site, neither the Board nor the EPA has ever confirmed that Bottlehill is suitable for thermal treatment of hazardous waste. And secondly, Bottlehill not being in an area zoned for industrial development is removed from the type of development which might be able to make use of the energy from this plant in the form of district heating. The Energy Efficiency Directive aims to encourage the greater use of district heating. Installations are directed to consider the district heat network potential of their site.

Environmental Impact Assessment

Turning briefly to the Board's EIA function, the Board well knows its obligations pursuant to the Directive and pursuant to s. 171A of the PDA to carry out an examination, analysis and evaluation of the proposed development and its environmental impacts. For our part, we have produced a detailed EIS which in our submission has sufficient information to enable Board to assess the environmental impacts of this proposal. As the process is an ongoing one, that information will be supplemented by what you have already heard from those who have made observations and by what is said and heard at this hearing. For the developer's part, it has sought to address concerns identified by the Board in its previous refusal decision, in particular, in relation to coastal erosion and flooding but also concerns raised by those with whom it has engaged in the course of public meetings in relation to visual, traffic, flooding, noise and other impacts.

The environmental impacts of such a development are of course the focus of many submissions including, perhaps in particular, the impacts on human health. We have sought to address those concerns in the EIS and appendices. The evidence is that modern incinerators, operated according to BAT can be operated without any of the negative impacts supposed or feared by those who have made submissions.

In this regard, we have the evidence of facility at Carranstown to show that such is achievable. Indaver has invited anyone who wishes to visit; it is always accessible. We repeat that invitation now and invite you Inspector and the Board to visit if you think it will be go assistance.

The Carranstown facility has been operating successfully and in accordance with expectations for five years. The facility is operating in accordance with its licence and is not a source of any of the environmental pollution that objectors to that plant feared or to this plant fear. In this regard, a number of submissions refer to 19 exceedances in 2014. That deserves and requires some explanation.

In relation to CO emissions, there are two ways of assessing whether compliance has been achieved. An operator must comply with the 10-minute value in any 24 hours, 95% of the time, or a higher 30-minute value, all of the time. This is what is required by the Industrial Emissions Directive (See Annex VI, Part 8, 1.1(d)). As far as we are aware, all other licences impose a requirement in accordance with the Directive, *i.e.* to meet one or other standard. However the first iteration of the licence for the Meath plant imposed a requirement to meet both thus imposing far more strenuous obligations than required by the IE Directive. We sought to resolve this with the EPA and were advised that it could be addressed in a licence review. It was so addressed and the two thresholds are now expressed as alternatives. As a result, during the period when this anomalous requirement was operative, there were 19 exceedances of 30-min values of emissions of CO. The EPA confirmed in its annual report that this issue had been resolved and that these exceedances were not considered as environmentally significant .

There are a total of 114,000 measurements taken each year at the Carranstown plant. Emi ssions are available to anyone to view online. This proposed development will require a new licence which the Board can expect will require compliance with all relevant standards. The Board can take the fact that emissions from the development will be regulated by the EPA into account in determining whether the environmental impacts of the proposed development are acceptable. It is noted that the previous licence is referenced in the EIS as are the headings from that licence but as the EPA has confirmed in its submission, that licence has now expired a new one will be required.

Appropriate Assessment

The final aspect of the Board's function is to carry out an assessment in accordance with the requirements of the Habitats and Birds Directives. The developer has carried out a screening assessment and determined that a full AA is required in relation to the Cork Harbour SPA and has therefore produced a Natura Impact Statement as required by law.

That's our conclusion. It is of course for the Board, as with EIA, to carry out its own assessment. In doing so, we believe it should determine that an AA is required for the Cork Harbour SPA. But we also believe that the Board can conclude with the requisite degree of certainty that there will be no adverse impact on the integrity of the SPA and in particular of the conservation objectives for that site.

Miscellaneous Issues

Before handing over to Mr Ahern, there are just one or two issues which have been raised in submissions of a legal nature which I might seek to address at this stage insofar as they are understood at this point but which may require further comment during the course of the hearing.

Right of Way

The first is the submission by An Taisce that there is a right of way over the site which hasn't been addressed in the application. No evidence to support the existence of such a right of way has been put forwa rd by An Taisce, there is no such right of way registered on the land and in our view no such right of way exists. In any event, the existence of the right of way doesn't go to the validity of the planning application since Indaver as owner of the lands plainly has sufficient interest in the lands to make the application.

Waste Transfer Station

There is a suggestion in the submission of Colm MacDowell (on behalf of CHASE) that a waste transfer station is required for this development and that this application therefore constitutes some form of project-splitting per *O'Grianna v An Bord Pleanala* [2014] IEHC 632. There is no current intention to build a waste transfer station at the site and, more importantly, none is required. Insofar as Mr MacDowell suggests otherwise, he is incorrect. There is no waste transfer station at Carranstown for instance where similar forms of waste are being treated. There is, therefore, no functional inter-dependence as was determined to

be the case in *O'Grianna* between the wind farm and the grid connection and no question of project-splitting arises.

Works on the foreshore

The submission of CHASE suggests that it is impossible to carry out the proposed coastal erosion works without being on the foreshore. As appears from the EIS, the proposed measures involve placing shingle as sacrificial material on the beach adjacent to the site. The shingle will all be placed above the foreshore as calculated by reference to the most recent OSI map in accordance with DoE guidance. The evidence will be that all sacrificial material can be placed on the beach without the need to venture beyond the foreshore as shown on this map. We note that the DoE were notified of the proposed development but haven't made a submission.

The medium high water mark (HWM), i.e. the foreshore, is susceptible to change over time and between seasons. We will consult further with DoE before carrying out the works. If it concludes that that the proposed works might affect the foreshore as determined at the relevant time, then we can simply apply less shingle but replenish it slightly more often as determined by the monitoring program, the impacts of which, as you will here have also been appraised.

Even if a foreshore licence were required as suggested in the CHASE's submission, it wouldn't affect the validity of a permission granted on foot of this application, nor does the possibility affect the validity of the application. All works to the foreshore require planning permission, and the developer is seeking that permission here. Whether it requires a foreshore licence as well is a matter for another day. The developer will have to carry out development in accordance with the plans and particulars lodged and it is accepted that it will have to have all necessary consents to carry out all works.

Finally, the Board asked us to highlight any matters which need to be clarified or corrected from the EIS. We have prepared a list of typos and incorrect references. One I should highlight. As appears from the public notice, the applicant for permission is Indaver Ireland which is the owner of the lands. Indaver Ireland is a registered business name of Indaver NV plc, a Belgian company registered in Ireland on the external register. The registration number of the business name is 184192. The registered number of Indaver NV plc, 904443 was shown on the application form. The company representatives of the external company in Ireland were listed on the application form under the heading directors and are, as set out, Conor Jones, Jackie Keaney and John Ahern. We can make available the Irish Company

Registration Office documentation in relation to the registration of the branch and of the business name.

Unfortunately, the name of the company on the application form was given as Indaver Ireland *Limited*. Though there is such a company, and it is wholly owned by Indaver NV plc, by way of clarification, it is Indaver Ireland which should be regarded as the applicant for permission.

Although there is some suggestion in the submission of CHASE that this error goes to the validity of the application, in our submission there is no basis for that contention. The application meets in substance the requirements of both the PDA and the implementing regulations. Furthermore, there is a plethora of authority for the proposition that an error in a planning application doesn't affect the jurisdiction of the Board to make a decision, the validity of the application, or the validity of a decision made on foot of an application unless the planning authority or the public have been deliberately misled. (See for instance *Hynes v An Bord Pleanala* [1998] IEHC 127*, Inver Resources Limited v Limerick Corporation* [1987] 1 IR 159*, State (Toft) v Galway Corporation* [1981] ILRM 439*, The State (Alf-a-Bet Promotions Limited) v Bundoran UDC* 112 ILTR 9). In all those cases, the error – including errors by which permission was granted to entities which didn't exist – was not corrected before permission was given. That is not the case here. We wrote to the Board when the error came to light and were asked to clarify it here. We are doing so now and in the circumstances, there can be no question of anyone being misled whether deliberately or otherwise. The nature of the observations received tend to bear that out.

Confirmation has been sought that the facility will satisfy the R1 criteria necessary for it to be considered as a recovery facility. As set out in the Commission Guidelines on the R1 Energy Efficiency Formula "*energy efficiency is largely dependent on the technical design of the facility and will only change to a limited extent during operation."* The plant has been designed along very similar lines to the Carranstown plant referenced above. Evidence will be given that the EPA has confirmed that that plant has satisfied the condition in its licence that it have an energy efficiency co-efficient above 0.65 (i.e. the requirement for R1) each year post-commissioning. In our view, the Board can be satisfied that this plant, with the same technical design will achieve similar energy efficiency ratings.

Finally, I should say that a number of conditions have been proposed by the planning authority and prescribed bodies. For those part, those conditions are considered appropriate and reflect what is contained in the EIS. There are a number upon which we wish to comment and the appropriate expert will address those.

As I indicated at the start, we have prepared a number of witness statements from expert witnesses across a range of disciplines in response to the issues raised in the observations by prescribed bodies, the planning authority and the public. Before introducing them, I'll hand over to John Ahern, of Indaver, to give an overview of the proposal.