

An Bord Pleanála Oral Hearing

Indaver Ireland

Ringaskiddy Resource Recovery Centre

Closing Statement

Rory Mulcahy SC

Thank you Inspector.

When this hearing commenced four weeks ago, we discussed the separate functions of the Board in considering this application. The evidence and information which has been submitted to you over those four weeks now forms part of the material in respect of which the Board must carry out its assessments and will all have to be considered and critically assessed in performing those functions.

In addition to the information which has been submitted by the applicant, you have heard many submissions from observers which both raise queries about the proposed development and which set out their view as to why the proposed development should be rejected by the Board, be it on planning, environmental or ecological grounds. I wish to say one or two things about those observations as a whole before addressing some of the specific issues raised before finally returning to the three functions which the Board must discharge.

At a broad level of generality, the objections raised in the observations break down in to two distinct groups: those which oppose the concept of incineration as a solution to the State's waste management needs and those which oppose the proposed location of any such incinerator. There is of course some overlap between the two.

Dealing with the first of those, a number of the observations have focused on the merits of incineration, or waste to energy, as a solution to a waste management need. Others have questioned whether there is a 'need' at all. In Indaver's view, waste to energy as an element of an integrated waste management strategy – incorporating avoid, reuse and recycle – is sustainable, and that the need for additional capacity over and above that already permitted remains. Crucially, however, that is not simply the view of Indaver, but is the view expressed in national, regional and local policy. Although we have presented our case here based on our own view of the merits of waste to energy and the need for the facility, we have not sought to "reinvent the wheel" and we place reliance on the decisions which have already been made in developing the relevant policies.

Those policies were framed in response to particular needs and, balancing competing demands, waste to energy has been identified as part of the solution for Ireland's waste needs. In our view, the Board cannot lightly disregard the work which has been done in preparing those policies.

It is accepted that in order for this facility to be considered as meeting the relevant policy objectives, it must meet the necessary criteria to be considered a recovery facility. That is

what has been applied for, what it is proposed to build and what, like the facility in Carranstown, Indaver intends to deliver.

Inspector, you will interpret the relevant policies for yourself and make your recommendation to the Board, but in our view the identified need for additional incineration capacity is clear. The experience of exporting and continuing to landfill waste is known. And if policy not alone supports but identifies the need for facilities which address those capacity needs, the question becomes not *whether* to authorise additional waste to energy facilities but *where* to authorise them.

In this regard, it should be noted that the Board can only decide based on the application before it. It is not in fact being asked to choose between a number of alternative fully developed proposals in order to determine which is the best available. So the Board can only ask whether there are good reasons why the facility should be here and, conversely, whether there are good reasons why it should not.

We have identified, again by reference to the relevant plans and policies why we believe a location in Cork is the most appropriate for additional capacity. Put simply, it is the area where the greatest need arises outside the well-served Greater Dublin Area. We have identified by reference to local policy why Ringaskiddy is appropriate. In this regard, though much has been stated about the nature of the Cork Harbour – and it is clearly an impressive resource – its tourism potential, and the inappropriateness of an industrial development at this location, these observations disregard the fact that the relevant lands are zoned not for tourism but for large scale industrial use. The County Development Plan applies to all and Indaver, as much as anyone, is entitled to look to the Plan to determine whether its proposal will be acceptable and to have its proposal judged according to what is actually in the Plan.

If one juxtaposes these two elements – that national and regional policy require that additional waste to energy capacity be delivered *somewhere* and that local policy provides for the delivery of industrial development at this particular location – one can see that the foundations of a case for this development at this location are laid.

Finding an appropriate location for a development such as waste to energy facility, involves a weighing of competing demands – the desire to have a facility as far removed as possible from sensitive receptors balanced with the demand to be proximate to sources of waste and reduce traffic movements; the need not to impact on local amenities must be addressed in light of the necessity to consider potential future users of heat from the plant. There is no perfect site, still less is the perfect site available to a private developer who is necessarily more constrained than a public authority in identifying available lands. In this regard, it is

noted that the relevant policies identify that it is the private sector which will meet the infrastructural needs identified in those policies.

Every site, therefore, involves such a balancing of such factors and it is in that context that the Ringaskiddy site and its selection by Indaver must be assessed. You've heard the evidence in that regard and you'll form your own view but the fact that no clearly better alternative emerges from that evidence tends to support the view that any identified site will have its pros and cons and its constraints which will need to be addressed. And, frankly, any proposed site for such a facility will likely meet local resistance. And, of course, the Ringaskiddy site is the only site which had previously been accepted by both the EPA and the Board as acceptable in principle for a waste to energy facility. In our view, Indaver's selection of the Ringaskiddy site and its decision to go forward with a further planning application for this site was entirely reasonable and ultimately justified having regard to the detailed assessment conducted by it as reflected in the EIS.

Turning to the particular observations made, one of the issues raised in many of the observations related to the traffic impact of the development. In our view, what is proposed to address these concerns is an excellent example of proper planning and sustainable development. As you have heard from the Planning Authority, there is no capacity on the road network at peak times, but more than ample capacity at off-peak. The traffic mobility plan by directing traffic to off-peak times therefore makes use of an existing resource in an entirely sustainable way. This, simply put, is good planning.

There has also been much focus on the health impacts of such a facility. In our view, the evidence supports our contention that well-managed modern incinerators do not have significant adverse health impacts. The fact that national policy provides for the delivery of additional large-scale waste to energy infrastructure serves to support our view. Incineration is, in essence, an industrial process and therefore requires to be regulated like all such processes. The experience of Indaver at the Carranstown plant show that a plant such as the one proposed can be managed well within the limits required by law for such processes.

One particular observation which the Board will no doubt wish to critically assess is the intervention of the Air Corps setting out their concern regarding the effect of the exhaust plume on its occasional helicopter operations at Haulbowline. The expressed concern, of course, was a matter which Indaver took seriously and although it was raised only very late in the process we have sought to comprehensively address it. You have the evidence of Dr Porter and Ret'd Commander Savage in that regard as well as the submissions on behalf of the Air Corps. It will be for the Board to assess what the likely potential impacts and the consequences for the proposed development are, but in our submission, when one

assesses the evidence led in detail, it becomes clear that the potential for impact is very limited indeed. In this regard, you will have noted the evidence from Dr Porter that at a distance of more than 50 metres from the stack, the plume does not pose any risk to helicopters. You will also have noted that Commander Brown stated that the Air Corps helicopters can turn up to 25 degrees out of the wind when in climb out and that a 500 feet separation distance is not required for Air Corps operations. Given the distance between the take off point and the stack, one can readily see why Ret'd Commander Savage continued to express the view that he couldn't see what the difficulty for the Air Corps would be in, in effect, avoiding the small zone of influence of the exhaust plume, irrespective of the conditions.

That said, Indaver has no desire to give rise to any concern on the Air Corps's part regarding any element of its operations and is prepared to put in place a protocol which would allow for the temporary shut-down of the plant should it ever be considered necessary to facilitate the Air Corps' essential operations. Such a protocol could be submitted to the Planning Authority prior to commencement of operations.

For these reasons, Indaver are confident that this facility and the Air Corps operations at the naval base can successfully co-exist thus ensuring that *all* of the relevant strategic goals of the State can be met.

Separately Inspector you'll have to consider the significance of and the necessity for the raw data in relation to the dioxin calculations having regard to the low level of predicted emissions from the facility and decide whether the Board needs the corrected version of the material submitted which formed the basis of the conclusions reached in the EIS in order to complete its assessment.

Another significant intervention was that of the National Parks and Wildlife Service and the estimable Dr Good. Dr Good has clearly analysed the development and the information submitted relevant to his sphere of influence in great detail and has challenged the applicant to address his concerns. Dr Good appears satisfied that we have done so. It is noted that in this area, and also in respect of human health, the discussion was at times somewhat academic in that the discussion was about the hypothetical impacts of hypothetical emissions. As you will know Inspector, the Board's considerations must be somewhat more rooted in the actual environment in which the development is proposed and must focus on the predicted impacts from the facility on, from a Habitats Directive perspective, the conservation objectives of the relevant European site, and more generally, on the environment in which the facility is located.

A significant theme in the observations has been the potential for accidents at the facility and the risk posed to those off-site in the event of an accident. It was surprising then that there were so few who engaged in any meaningful way with the Hazid Report and the conclusions thereof which show that the fears expressed were largely misplaced. Accidents happen, as the experience in Antwerp has shown, and it would be a most imprudent developer who proceeded on any other basis. That is precisely why a Hazid Report is prepared – to identify risks, to seek to mitigate them and to plan for worst case scenarios, however unlikely. And in this case those worst case scenarios are both far less likely and far less significant than has been suggested by those who haven't engaged with the Hazid Report. A fully developed bunker fire – which could only occur if all the systems put in place to prevent it for some reason simultaneously failed – would not require evacuation of even the Hammond Lane facility, let alone further afield and does not pose the risk feared. Though concern was expressed that the L2545 would be unavailable to access the Haulbowline facility in the unlikely event of a fully developed bunker fire, we do not think, in light of the powers available under the Fire Services Acts, that the Board could or should ignore the availability of an alternative route through the Beaufort campus in assessing the merits of any such concern. The HSE has asked that an external emergency plan be developed – something usually only required for a Seveso site – and we are happy to facilitate same. The reality is that insofar as any such plan which engages with local stakeholders and requires access to the Haulbowline site to be maintained in the event that the L2545 is unavailable, it will likely provide for access being made available via this alternative route.

One or two legal issues have arisen in the course of the hearing which have already been addressed, in particular the issue regarding the identity of the applicant. I won't repeat what has been said before here. I will say, however, that the evidence having been heard and with the Board now in a position to examine, analyse and evaluate the application, it is difficult to see how it is anyone's interest to argue that all that has gone to date should be set at naught on the basis of a wholly technical argument. Surely, it is in everyone's interest that this application is now assessed and determined on its merits by you Inspector and the Board.

Inspector, there is a lot for you to consider and on which you must report to the Board. In our view, we have engaged with and addressed the Board's previous reasons for refusal as well as the current context in which the application is made. With regard to the previous reasons for refusal, the relevant policy has entirely changed, the development has been significantly reduced in scale (one third smaller by footprint, two fifths by volume). The concern regarding flooding has been comprehensively addressed and it is clear that coastal erosion will not pose a threat to the facility. Importantly, the existing situation in respect of both flooding and coastal erosion will be improved rather than disimproved by the proposed facility.

In our submission, Inspector, you will be able to report to the Board that the proposed development will not have any adverse effect on the integrity of any European site, that there are no environmental impacts of the development such as to indicate that development consent ought to be refused and that having regard to the conditions which have been suggested in the course of this application and such other conditions as the Board may require, the development of this facility at this location and at this time would be in accordance with the requirements of proper planning and sustainable development and the relevant provisions of local, regional and national policy.

Thank you.