An Bord Pleanála

Oral Hearing

Senior Inspector Derek Daly

Application Reference PL04.PA0045

Carrigaline Court Hotel – 21 April 2016

Submission on behalf of CHASE

by

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About CHASE

Cork Harbour Alliance for a Safe Environment is a voluntary environmental organisation whose members work to promote positive development in their communities and in the wider harbour area. The Harbour is home to many vibrant communities as well as to enterprise of all shapes and sizes but in particular to large scale industry, as well as the Navy, the Port, the National Maritime College, IMERC, the Beaufort Centre alongside recreational use of the Harbour for sailing, rowing and other water sports, recreational and commercial fishing and a developing tourism infrastructure. CHASE have achieved significant successes over the years notably in helping to shape statutory plans and policy documents and in advancing the idea of the Harbour as an invaluable resource and location for sustainable development.

Chase greatly welcomes and supports the positive policy initiatives as described by Minister Simon Coveney and Minister for State Sean Sherlock to the Board in opposition to this development. They also welcome the very cogently expressed submissions made by Micheál Martin TD, Leader of Fianna Fáil, Michael McGrath TD, Fianna Fáil, Donnchadh O'Laoghaire TD Sinn Féin and the elected members of Cork County Council who unanimously supported a resolution opposing this development. Government policy for Cork Harbour is set on a very definite and positive path. Our clients wish to support that and they ask the Board to respect it.

Nobody chose to come to this oral hearing to support the Applicant. Cork Harbour is a special place. The Harbour communities are people who cherish their place and pull together to protect it. This level of social cohesion is a relatively rare and very precious phenomenon and is an essential component in the proper planning and sustainable development of the area. We ask the Board to recognise and to give this due weight.

Identity of Applicant

The request for consultations with the Board under Section 37B was made in the name of Indaver Ireland by letter dated 30th August 2012. The Board's letter of 23 December 2015 notifying its determination that this Application was SID was addressed to 'Indaver Ireland'.

The SID planning application form submitted names the Applicant as 'Indaver Ireland Ltd'. The public notices published in newspapers and at the site named the Applicant as 'Indaver Ireland'. The Applicant's notices sent to prescribed bodies notifying them of the application named the Applicant as 'Indaver Ireland Ltd'.

The application form gives a company number for the Applicant of 904443 and states that the directors are Conor Jones, John Aherne and Jackie Keaney.

On February 3rd, 2016, Indaver Ireland wrote to the Board to notify the Board of what it called a 'clerical error' in the Application form and said that the use of the name 'Indaver Ireland Ltd' was incorrect and it should have read 'Indaver Ireland'.

In our Observation of 8th March 2016 we identified various issues with the identity of the Applicant and Ownership of the site and said that the application on its face was invalid and should be rejected on that basis.

Our searches in the Irish Companies Registration Office (CRO) disclose the following information:

Indaver Ireland Ltd is an Irish company reg no 59667. There are six directors, three Belgians and the three Irish people named above.

Indaver NV is a Belgian company registered with the Irish Companies Office as an external company reg no 904443. The CRO does not record the names of the current directors. The CRO does record the names of the Irish persons currently named as representing the company for official purposes and these names include the three Irish people named above. None of these people is recorded the CRO as being a director of Indaver NV.

A search in the Irish Registry of Business Names discloses a business name 'Indaver Ireland' and shows the owner of this registered business name to be Indaver NV.

It is important to note that a business name is not a legal entity, is not a person in legal terms and has no legal capacity.

By contrast a company is a legal person and has legal capacity when it acts in its company name.

Until Tuesday afternoon, 19th April 2016, on the first day of this oral hearing, the identity of the Applicant was declared to be Indaver Ireland Ltd on the Application form, Indaver Ireland on the Public Notices and Indaver Ireland Ltd on the notices sent to the prescribed bodies. The Applicant's Counsel's written submission handed in on the afternoon of the 19th April 2016 says: 'The Applicant is Indaver Ireland which is the owner of the lands.' The submission goes on to explain that this is the business name of Indaver NV and also explains that the persons named in the application form 'under the heading directors' are company representatives of the external company in Ireland.

So we are now told that the Applicant is 'Indaver Ireland'. Indaver Ireland is a business name, it is not a legal person.

An applicant for planning permission must be a legal person – see for example:

Section 37B(1): 'a **person** (emphasis added) who proposes to apply for permission for any developments specified in the seventh schedule shall, before making the application, enter into consultation with the Board in relation to the proposed development'.

See further Section 37E(3): 'Before **a person** (emphasis added) applies for permission to the Board under this Section he/she shall –

(a) publish in one or more newspapers circulating in the area or areas in which it is proposed to carry out the development a notice indicating the nature and location of the proposed development and –

(i) stating that –

(I) **the person** (emphasis added) proposes to make an application to the Board for permission for the proposed development…….'

and goes on to list the other applicable obligations.

Indaver Ireland is not a legal person. It cannot make a valid planning application under Section 37E.

There is therefore no valid planning application before the Board. The Board therefore has no jurisdiction to continue with any consideration of this invalid application. We therefore call upon the Board to terminate the process now with immediate effect. Should the Board decline to do so, we expressly reserve our clients' legal rights and any further participation in this process is entirely without prejudice.

Ownership of Main Site

The application form says that the applicant is the owner of the site. Counsel's submission handed in on the afternoon of 19th April says that the applicant and owner of the site is Indaver Ireland.

The relevant Land Registry folio does indeed give the name of the registered owner as 'Indaver Ireland'. This is mysterious as the name 'Indaver Ireland' is not a legal person and has no legal capacity to own land. The consent of the land owner to the planning application is essential and so it is essential to identify clearly the owner of the land. We ask the Board to seek full clarification of the identity of the owner of the land from the applicant, if necessary by way of certified copies of the Instruments lodged in the Land Registry on foot of which 'Indaver Ireland' appears to have become became the registered [Land Registry Instrument Nos: D2005CK027311K and D2009LR099185A on Folio CK113809F]

Three Functions of the Board

The Board has three functions here:

1. Normal planning function
2. Environmental impact assessment function
3. Habitats Directive function which includes appropriate impact assessment function

To whatever extent the Board may seek to adopt all or part of the Inspector's Report and/or recommendations, it will be necessary for the Board to make available to the public documents containing its decision and explaining its decision. The legal test is that what the Board publishes must be capable of being understood by a reasonable interested layperson and if necessary, by a Court, if asked to carry out a judicial review. The published material must address each significant issue raised by the parties. Each such issue must be described, analysed and have a conclusion reached upon it (see Balz v An Bord Pleanála 25 February 2016). That applies across each of the three functional areas even though there will inevitably be some issues which cut across more than one functional area.

This is a major complex development. The voluntary committee whom I represent can do no more than address a limited selection of issues. Each of the issues that they raise is of fundamental importance to them. They rely on the Inspector and the Board to demonstrate that these issues have been understood and considered and that a reasoned conclusion has been reached on each of them.

Site Selection & Site Suitability

The site to state the obvious was selected once and once only in or about 2000 when it was acquired.

Site selection is an essential part of the environmental impact assessment.

Site suitability is a topic that falls to be considered not just under EIA but also under Appropriate Assessment and under the proper planning and sustainable development of the area.

A very close examination of the Applicant's site selection process was carried out during the oral hearing into their first planning application in 2003. This is reflected in Senior Inspector Jones' Report – see Appendix 1 for relevant extracts. Inspector Jones concluded that the site selection process was flawed, did not follow appropriate methodology and that the Board had not been provided with evidence necessary to justify the selection of the site.

Inspector Jones went on to consider the suitability of the site and here he concluded that the site was unsuitable, and he remarked on the fact that the site failed to meet WHO site criteria in several respects.

At this hearing and in the EIS the Applicant has attempted to argue that an objective basis exists on which the site can be regarded as suitable. Site suitability is distinct from site selection. The two must not be confused. This site was selected in or about 2000. It is not possible to re-run the selection process, and so we submit it is impossible for the Applicant to satisfy this aspect of the EIA process.

Assumptions and Accuracy

In our observation letter we asked that every assertion made by the Applicant be tested. That is a big ask and we appreciate that. Nevertheless we stand over it. Already the hearing has learned of numerous errors and inaccuracies in the material furnished by or on behalf of the Applicant. If the Applicant is so inaccurate when it knows it is in the public eye, how can the public rely on its competence when it is not under public scrutiny?

One of the Applicant's experts yesterday (20th April) had the good grace to apologise when further inaccuracies emerged in a document, explaining that they had been 'under pressure' to have it ready on time.

There is a stark contrast in how assertions made or information provided by the Applicant are treated as compared with those made by the public.

A very clear example of this emerged on Tuesday, April 19th, in relation to the communication to the Board by the Southern Region Waste Management Office. You will have seen their submission. It lists in table form criteria for environmental protection that must be met by any such development as this. I ask you to review the criteria in due course. The submission gives the impression that the Office has satisfied itself that the Applicant has met all the criteria. However closer reading discloses the use of the word 'addressed'. The table recites paragraphs numbers from the EIS in which the various criteria have been 'addressed'.

It emerged on Tuesday however that the Office has not in fact tested the accuracy of any of the paragraphs in the EIS at all. It has merely checked that the EIS addresses the criteria. It neither assesses nor verifies what it has been told.

I confess this came as quite a shock to my clients and myself. It may well be that the Board is aware that this is the approach taken by the Office. There is nevertheless the possibility that the Board is not so aware. I ask you to bring this to the specific attention of the Board. I do not want the Board to reach a decision on any mistaken assumption that the Southern Region Waste Management Office has assessed or verified any of the content of the EIS.

For example, the environmental criteria preclude this type of development on sites liable to flooding. The EIS asserts that the site is not liable to flooding. The Office has simply accepted that assertion at face value.

The Office had two remaining areas in which it sought clarification. One was the absence of any evidence in the EIS as to how the Applicant would meet the minimum energy coefficient of 0.65. The Applicant wrote to the Office on 17th April 2016 sending it two letters from the EPA, one for 2014, one for 2015. The Applicant's letter stated 'please find attached letters from the EPA stating the Meath facilities energy coefficient for 2014 (0.667) and 2015 (0.77). You have the correspondence so I will not recite it in full. It asserts that as the Cork facility will be designed to the same standard 'it can be expected that it will similarly meet the minimum energy coefficient of 0.65'.

One must then turn to the EPA letters. Taking the 15 April 2016 letter that the Agency has reviewed licensee return (reference no) which reports the result of the R1 energy efficiency calculation for 2015. It goes on 'the Agency notes that the result of the energy efficiency calculation, as contained in the above licensee return for the facility is 0.678 (0.77 with climate correction factor)'. It continues that the Agency can confirm that the licensee is complying with the requirements of Condition 7.1.2 of its IE Licence.

Yesterday, after I had pointed out that the letter simply recited information which the EPA had been given by the Applicant itself, a witness for the Applicant presented the form of audit which appears to have been submitted by Indaver Ireland Ltd to the EPA. On its face this audit appears to have been conducted by staff members of Indaver Ireland Ltd. Two points arise.

1. At the 2009 oral hearing an expert witness for my clients demonstrated that the calculations presented on behalf of the Applicant to vouch its claim that it would meet the 0.65 standard were not correct. You have more detail on this in my Observation letter and in the Report of Senior Inspect Yücel-Finn. Although the Applicant promised to explain how this had come about after an adjournment of the hearing granted in part for that purpose, it never did so.

   We do not trust the Applicant's numbers as a result of that experience. We submit that it would be entirely inappropriate for the Board, as a quasi-judicial body, to assume that the numbers now presented are correct or have any bearing on the proposed Ringaskiddy development.

2. We as I think you will understand are unable to obtain an immediate expert opinion on the calculation presented yesterday. This is but one example of the procedural unfairness

imposed on my clients by the willingness of the Board to receive highly technical information at this late stage of the process of public consultation.

Your predecessors were vigilant in this respect and their Reports demonstrate the necessity for such a rigorous approach. To mention but one additional area where assumptions must be put aside in favour of objective analysis, I will cite the issue of risk assessment and hazard identification. The Applicant's case has now been completed at this hearing and on the opening day you had invited them to give you further details to substantiate their general assertion that there were material differences between operations at their Antwerp plant, which recently exploded and caught fire, and the proposed plant at Ringaskiddy. One imagines this would not have been a difficult task. However, we have heard nothing further.

I should make particular reference in the context of assumptions to the question of how the Board should address risk to human health. You will hear more about this from the medical witnesses. You will have seen the recent publicity in relation to EU figures showing that over 400,000 people in the European Union die annually prematurely because of air pollution. Sources of air pollution include vehicle emissions, industrial combustion process emissions and domestic fuel burning. All of these sources are regulated to varying degrees.

The more sophisticated looking regulations governing industrial emissions are themselves a compromise between the competing interests of industry lobby medical experts and the public interest. The legislation as a result is typically couched in terms that aspire to protect human health but make no claim to ensure that they achieve that goal. They are an effort not a guarantor. Reliance on such standards does not eliminate the risk to human health, it merely reduces it to some extent.

The sweeping assurances by a medical witness produced by the Applicant are not reassuring. He tells you that, assuming what he has been told by the Applicant is true in every respect and assuming that the applicable legislative standards are met, there will be only 'negligible' impact on human health. This is in our submission does not constitute a reliable basis for the Board to conclude that this development is safe in public health terms for all the people working and living nearby.

Human Health

The Board's position on health risk evidence in 2003 at the first oral hearing was that it was entirely irrelevant. It relented to a small extent part way through the hearing to accept health evidence but only in the context of major accident hazard under the Seveso Directive.

In the 2008 application extensive medical and scientific evidence from renowned national and international experts was presented advising against the proposed development at this site. The Board engaged two medical advisors to consider this issue and the Board concluded that there was no objective evidence of a risk to public health such as would warrant a refusal of permission.

Our clients are again presenting expert medical and scientific evidence which is advising against approval of the development.

We are making a specific submission to the Board that the Board is required to approach the issue of human health impact with at least as rigorous a standard as it would apply to protected species in the nearby Natura site.

The Board will know that it is precluded from approving a development unless it is satisfied that there is no *'reasonable scientific doubt'* over whether the development will have an adverse impact on the integrity of the protected site or species in question.

We submit that the expert medical and scientific evidence before the Board and available in the literature generally at WHO and EU level and elsewhere patently establishes at the very least the existence of a reasonably scientific doubt over the impact of this development on the health of people living working and studying nearby.

We submit that having regard to the constitutional provisions on respect for bodily integrity, Common Law, nuisance and the EU Treaty provisions on maintaining a high standard of environmental protection, it would be irrational as well as unlawful for the Board to afford a lower standard of protection to human beings than to designated protected species.

Local Authority Position re road

The Applicant seeks permission to carry out extensive works on the public road abutting the site. The Council has indicated that it has no objection to what is proposed by the Applicant. However a question arises as to whether the proposed work on the public road engages the statutory scheme governing development by a local authority whether on its own account or in partnership. If those provisions are applicable, what is presently before the Board in the form of correspondence from the Council is not adequate evidence of legal authorisation for the works to be undertaken.

Absence of Key Agencies

Public bodies with remits that cover aspects of this proposed development have chosen not to participate in this oral hearing. This is a matter that concerns my clients greatly. These bodies include the EPA, the HSE, the HAS and the NRA. At previous oral hearings the NRA and the HSA were prevailed upon to attend. The resultant questioning was exceptionally illuminating and informative for the Inspector. If this hearing is to continue we invite the Board through you to take whatever steps are necessary to require the attendance of a representative from each of these bodies.

Flood Risk Management Guidelines

One expert witness for the Applicant strenuously denied that there was any substance to my assertion that the site is affected by flooding each day at high tide. The following day (20th April) another expert witness for the Applicant dealing with coastal erosion gave you a drawing (reference no 238129-M-006) showing the site boundary to the East. The drawing helpfully also shows the high water mark which it explains is taken from OSI Rural Place Map 2001. That coincides with the seaward site boundary. It also shows the current high water mark as estimated by the Applicant's experts. This clearly shows the high tide mark entering into the site along a

substantial portion of its Eastern boundary. This substantiates my assertion that the site is subject to flooding each day at high tide.

The same witness gave evidence of the effects of a recent storm which included confirmation that a section of the cliff to the East of the site had retreated between 2008 and 2016 to the extent of 7-9 metres (in passing this section is close to the corner of the proposed construction area in which the fire water tank and the fire water pump house are to be located.)

Great reliance is placed by the Applicant and its advisors on the Lee Cfram Study Predictive Flood maps published by the OPW. These maps are relied on as evidence to support the Applicant's contention that the site is in flood risk zone C under the Flood Risk Management Guidelines.

However the OPW attaches very detailed and specific disclaimer and conditions of use to these maps. See Appendix 2. A flavour can be seen from the following short extract:

> 'The viewer understands that the Office of Public Works does not guarantee the accuracy or reliability of any of the data shown on the maps and it is the viewer's responsibility, if s/he intends to use this data, to independently verify and quality control any of the data used. The viewer accepts that any data shown on the maps does notapri form the basis for decision-making.
>
> 'The viewer will not pass on any of the maps to any third party without ensuring that said party is fully aware of the statements, disclaimer, guidance notes and conditions of use.'

It is surprising that the conditions of use and disclaimer have not been brought to the attention of the Board or the Hearing.

It is instructive to see the variations between the present map and the version issued with Carrigaline Electoral Area Map (August 2011).

Waste Transfer Station

Looking back at the application in 2008, I see that the waste transfer station was to be built on a platform constructed to a level of 4.5 metres OD. It may be coincidental that the location then proposed for a waste transfer station and now described in this application as 'the Western fields' is to be raised to a level of 4.5 metres OD and otherwise undeveloped. This is an expensive exercise. The applicant denies that it has any intention to come back for a waste transfer station in future. It points to Meath and says there is no waste transfer station there. They have a waste transfer station at Dublin Port. It is interesting that they do not now propose to have one in Cork Port.

Apart from any other planning significance, removal of the waste transfer station may have taken this development out of the strict requirements of the Major Accidents Directive.

Right of Way

The oldest OS map produced by the Applicant during this hearing showed a feature that was not commented by the witness who presented it. That feature was a track running diagonally from the Martello tower to Gobby Beach through the site. While that precise route may have been changed through topographical changes there is still a path running through the site to the Martello tower. This is a public right of way since time immemorial. The Applicant proposes to move the public to a perimeter pathway that will fall into the sea in a few years. That is one way of extinguishing a right of way. The Board should not facilitate this.

Residential Accommodation at Maritime College

The EIS states that there is no residential accommodation at the Maritime College. It does not explain why. At the 2003 oral hearing a Cork County Council planning official explained that planning permission had been refused for a residential component at the College because the Council anticipated an application from Indaver for a hazardous waste incinerator on this site.

Conclusion

In summary at this point we are asking the Board urgently to address the information we have given on the invalidity of the application and to make the appropriate ruling. Pending that ruling, we reserve our clients' position as stated.

So it is in this context that some of our clients will make presentations to you on the matters that concern them always mindful of your reminder that what they have submitted in writing has been read by you and ought not be repeated. Our clients' experts will seek to assist you on certain matters. We regret that resource limitations mean that we are unable to do more than scratch the surface. We appreciate that this places an exceptionally heavy burden on you given the complexity and scale of development and the three distinct functions which have to be performed by the Board.

Appendix 1

Extracts from Report of Senior Inspector Jones

a) Site Selection

I have carefully considered the points raised by the parties in relation to the site selection process undertaken by the applicants in choosing this site, and the applicants' responses, particularly the responses given by Ms L. Burke of Indaver to very detailed questioning by Mr J. Noonan (CHASE Carrigaline) on the matter during the oral hearing.

I feel that, in the absence of national guidelines on the siting of hazardous waste facilities such as this, or indeed incinerators generally, it is appropriate (and indeed essential for objective analysis) to use internationally-accepted site selection guidelines such as those issued by the WHO.

For dealing with what is a national hazardous waste facility, I consider that the necessary and logical first step should have been the identification of the appropriate geographical region in the State in which to locate such a facility. This should be based on objective and verifiable criteria, including the sources of the waste to be treated, the cost-benefit in terms of transportation and property/site costs, and the environmental and social factors listed in the WHO Guidelines. It cannot be left to the judgement of a firm of consultants employed by an applicant to determine what criteria should be used to determine the siting of such a complex and significant development.

However, the applicants' choice of Cork appears solely to have been based on the use of the statistic that 60% of the hazardous waste generated in Ireland is generated in the Co. Cork. Even this criterion was not fully appropriate, as the applicants did not go further than this and determine what percentage of the national quantities of hazardous waste that are exported for disposal are in fact generated in Co. Cork. This is highly relevant because, of course, the intended purpose of the proposed incinerator is not to deal with hazardous waste that is generated *per se*, but only with that portion of the waste which is exported for disposal (approx. one quarter of the amount generated) and which (to use the terminology in the Waste Management Act, "cannot be prevented or recovered". While Cork has the highest concentration of pharmaceutical and chemical industries, this industrial sector is the one that is probably the most efficient at reducing its waste arisings, or treating them on site, and which has the greatest potential for further reduction, due to IPC licensing requirements (a point acknowledged by the EPA in the National Waste Database). I consider this lack of further analysis of the statistics to be regrettable, and the lack of consideration of any other criterion and hence of any other location within Ireland on that basis, to be most unfortunate. In my view, for a national hazardous waste facility, such as is proposed, this represents a very serious flaw in the process.

Within Co. Cork, the site selection process undertaken by the applicants was also seriously flawed. As was clearly evident from the cross-examination of Ms. Burke during the oral hearing, the applicants did not follow the successive step by step procedure set out in the WHO Guidelines, (see pages 26 – 27) of first applying exclusionary factors to screen or filter out unsuitable sites, then secondly applying suitability factors to the areas not excluded so as to highlight potentially promising areas, then thirdly applying community impact criteria and additional environmental criteria to identify a number of candidate sites for consideration and exclude unsuitable sites from the potentially promising areas, and then fourthly using more detailed criteria to rank the remaining candidate sites so as to obtain the preferred site for the development. Nor, evidently, did the applicants involve the public, in any meaningful way whatever, in the site selection process, as the evidence of Mr Ahern at the hearing was that the public consultation process was engaged in after the project was fixed, and the site had been chosen. The public consultation process, in fact, was a public notification process, and was not designed to, nor apparently intended to, alter the selection of the

site. (It should be noted that public "involvement" is specified in the WHO Guidelines for both the "voluntary" and "technical" site selection models.)

Instead, it would appear that the applicants limited their search, as a first step, only to industrially-zoned lands under the Cork County Development Plan. Having initially selected Ringaskiddy as the preferred location and selected four sites within this area, they then looked at other lands in the Cork Harbour area, and then further afield in Co. Cork, using their own criteria, and consultation with the Planning Department of the Council. They then appear to have applied some (but not all) of the WHO criteria from Step 4, in a comparison of the four favoured sites in Ringaskiddy. Even these selection criteria were not ranked in order of significance or importance, and no weightings were given as between the stated criteria.

There is some reason to believe, based on the chronology of the project as outlined in this case, that the location of Ringaskiddy, and possibly the subject site itself, had already been chosen before the applicants even became aware of the WHO Guidelines. Ms. Burke's answers on this matter were, at best, evasive (see oral hearing proceedings for 8/10/03 – tracks NN – VV). It was suggested by third parties during the hearing that the site selection process outlined in the EIS, based on a combination of WHO Guidelines criteria and the applicants' own criteria, selectively used, was subsequently prepared to retrospectively justify the already chosen site. While there is no specific concrete evidence of this supposition either way, I consider that such an inference is reasonable on the basis of the evidence put before me at the oral hearing.

In my view, the initial decision to use industrial zonings as the key selection criterion, apart from this decision not being in compliance with the process of site selection set out in the WHO Guidelines, also has to be questioned. While I accept that the proposed development type would be classified as industrial (a point accepted by the Board in the Kilcock and Carranstown incinerator appeals), it does not follow that it could only be considered on lands zoned for such purposes. Indeed, in both Kilcock and Carranstown, the lands concerned were not zoned at all. There was evidence submitted at the oral hearing by Mr Ahern and Ms Burke that Indaver's initial search began at about the time of the Kilcock oral hearing (January 2000). In addition, there was evidence given by Mr Ahern during the Carranstown oral hearing that he had looked, for that facility, at both industrially-zoned and non-industrially-zoned lands, and had concluded that the non-zoned lands were more suitable.

This fact becomes of much more crucial significance when it is remembered that the applicants were aware that the industrial zonings proposed in the draft Co. Cork County Development Plan specifically excluded "contract incineration", and that therefore there was at the very least the potential that there would be a presumption against the proposed development being permitted in industrial zones. There is clear evidence that they did know this, as they made a formal submission arguing against the adoption of just such a zoning stipulation, during the processing of the Plan.
On this basis, I consider that the applicants have not given the Board (and the public) sufficient evidence to justify the choice of the subject site for the building of the proposed national hazardous waste incinerator.

b) Suitability of the Subject Site

Of course, all of this relates to the accuracy of statements made, and analysis used by the applicants in the EIS and their lack (or alleged lack) of transparency in their justification for the choice of this particular site. The Board must also look at the resultant choice, to see whether, notwithstanding these flaws in the process of site selection, and the subjective use of criteria by the applicants, the site is objectively suitable for the proposed use.

In this regard, there are a number of factors:-

Location at the end of a peninsula, with only one road access.
This factor relates to the fact that the site is not readily accessible from the national road network, and requires that all traffic serving the site, whether for construction materials in the initial stage or hazardous and non-hazardous waste in the operation phase, has to travel in the one direction past residential areas, and return the same way.

I consider that the type of development proposed in this case, which is intended to treat waste that would have in almost all cases to travel some distance (particularly since no local industries have given any indication that they intend to use the facility – and if they had, the applicants would doubtless have indicated so) is not located in a site that is readily accessible to all areas of the State. Even if Co. Cork were to have been the correct location, it is surely the case that a site north of Cork City, with ready access to the national road network, and with access to rail, would have been more suitable.

This single road access also has implications for public safety and emergency planning, which is covered below.

Topography/climate
As noted earlier, the site is located on a north-facing hillside, within a steeply sided valley, and on steeply sloping ground. This has implications both because of the climatic/meteorological conditions, with much more frequent temperature inversions(estimated by Mr Hession, the Council's Fire Officer with extensive experience of the area, at c. 5% of the time), and also turbulent wind conditions, and also because the available area for building on is quite restricted. This restriction is compounded by the presence, in the centre of the site, of the Hammond Lane facility. The net effect is that the main process building is crowded onto the eastern portion of the site, with quite limited room for buffering planting, particularly to the rear (a point acknowledged in cross-examination of Mr Hallinan, the applicant's landscape contractor).

In relation to topography, the contrast with the criterion used by the same applicants in respect of site selection for the Carranstown incinerator in Co. Meath is stark. There, a site that was flat was considered to be a favourable criterion for selection. Here the site is one side of a hill.

Geology/hydrogeology / lack of natural containment
The geology and hydrogeology of the site appears to be such that there is inflow of seawater into the ground water (so stated by the applicants in the EIS). There is also some evidence of flooding of the site in the winter months, due to a combination of poor drainage on the flat land to the front, and the minimal overburden/soil cover on parts of the site. This factor is listed as one of the prime exclusionary factors in site selection by the WHO Guidelines.

The significance of this for the suitability of the site is that the site may not have any natural containment, so that, in the event of a spillage of hazardous chemicals, or waste of some kind from loading and unloading operations (and human error cannot always be mitigated against) there is the very real possibility that there would be contamination of ground water and hence pollution of the harbour waters. The evidence given by Mr Huw Jones, who operates one of two major oyster fisheries, under Government licence, in the harbour, indicates that, were to be such contamination, there would be significant economic implications for his business and employees. In such circumstances, the precautionary principle would dictate that the site is objectively unsuitable and should be excluded from consideration for this type of development.

Risk of erosion

I am satisfied, from my inspection of the area, and the evidence given by the parties, (and in particular by Mrs O'Driscoll) that there is a very real danger of erosion of the eastern side of the site in storm conditions. Reference was made, during the oral hearing, to the recent EPA document "Climate Change: Scenarios and Impacts for Ireland", published in July 2003. This advised that development should be curtailed in areas that are at risk of such erosion, arising from more frequent storm weather conditions that could cause erosion occurrences and flooding. Cork Harbour was specifically identified as being under threat. In my view, this is an objective site suitability problem with the proposed development.

Proximity to High Density Residential Housing Areas

It is stated by the applicant that the proposed development is not proximate, in terms of WHO guidelines, to residential areas. In fact, the WHO criterion that is quoted by the applicants relates not to the text of the guidelines, but rather to an example of the use of such guidelines for a landfill facility in the U.S. And in any event the analysis that was carried out by the applicants in the E.I.S. (Table 2.10), using this criterion, gave a negative rating.

I consider that, with the presence of Ringaskiddy village less than one km away, and Cobh, directly across the harbour water 2 km away, which already has a sizeable residential population, it was objectively inappropriate to locate a development that had the *potential* to cause at best bad neighbour effects and at worst public safety implications. In this regard, the testimony given at the oral hearing in relation to the 1993 Hickson fire was revealing, where a large plume of smoke from the fire travelled across to Cobh, and later, when the wind changed, over to Crosshaven to the south, before eventually dispersing over the East Cork countryside.

It seems to me that, objectively, a development such of the type proposed in this instance should be located as far away from high density housing as possible. The contrast, again, with Carranstown, is illuminating, since one of the site selection criteria used at that time was location away from high density residential areas.

Proximity to sensitive land uses/users

Possibly the most obvious evidence of the unsuitability of the proposed site from this development lies in its proximity to the National Maritime College of Ireland. This development, which has national Government backing via the Department of Education and Science (under a Public-Private Partnership), and involvement by the Department of Defence (via the Naval Service) is located immediately opposite the site, and would be less than 100 metres from the proposed development.

The unsuitability of the proposed site can be readily understood by looking at the issue in reverse – had the proposed development already been erected, whether the Departments involved would have sponsored the development of the National Maritime College on the site in which it is now located. It should be noted that, at the time that the applicants stated that they purchased the subject site, in December 2000, the outline planning permission for the College had been lodged, but not granted. However, it had been long granted by the time the present planning application was submitted. Since it was therefore a *fait accompli*, an objective examination of the situation should surely have cautioned against proceeding.

The criterion of proximity to sensitive receptors and stationary populations, such as educational establishments and prisons, is specifically included in the WHO Guidelines on Site Selection.

Overall, it seems to me that the proposed site, on all these grounds, is objectively unsuitable to accommodate the proposed development. It should, in my judgement, be refused on this ground also.

APPENDIX 2

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