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*By hand*

17 November 2025  
Our ref: 21407-24/JN/PW  
Your ref: ABP-318802-24

**Re: Proposed development by Indaver NV t/a Indaver Ireland ('Indaver' or 'the applicant')  
of waste incinerator at Ringaskiddy, County Cork**

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A chara,

We act on behalf of Mary O'Leary and others known as Cork Harbour Alliance for a Safe Environment (CHASE) c/o Benreoch, Spy Hill, Cobh, County Cork.

On behalf of our clients we wish to present observations to the Commission in the context of its invitation to respond to significant further information given to the Commission by Indaver ('the Applicant') in August 2025.

We refer to the Commission's letter dated 25 September 2025 and subsequent public notice published on 6 October by the applicant following a direction from the Commission, advising of a 17 November deadline for receipt of observations.

We are aware that other observations are being filed with you asking the Commission to make a decision to refuse permission and our clients adopt, endorse and rely on the additional grounds and material contained in those observations.

JOE NOONAN BCL COMM FOR OATHS EAMONN CARROLL BCL LLM PHILIP COFFEY BCL LLM CLAIRE COLEMAN BCL

TARA O'CONNOR BCL SOLICITOR CLAIRE MCCARTHY BA MA SOLICITOR

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## **Introduction**

This is the latest phase of the Commission's consideration of the third of Indaver's requests for planning permission for waste incineration at this site.

The first application was made by Indaver shortly after it had bought the site in 2000, without planning permission, fully a quarter of a century ago.

The present version of the proposed development has been with the Board for over thirteen years: the SID consultation was opened in May 2012. It remained open for three and a half years, as the Board SID consultation file shows, until, as the Board said to the applicant during that consultation process, *Indaver decided to close it*. They chose to do so in December 2015. They lodged the present planning application in January 2016. The tenth anniversary of the planning application being lodged comes around in a few weeks.

## **History of three applications**

Indaver first sought permission for a hazardous waste incinerator on the site from Cork County Council in 2001. That was refused by the Council in 2003.

Indaver appealed to the Board. A thirteen day oral hearing was followed by a 370 page report from Senior Inspector Philip Jones, who recommended refusal on fourteen grounds. He regarded the site as wholly unsuitable for the proposed development. The development was not in accordance with the proper planning and sustainable development of the area.

Ten days after receiving his report the Board met and at that meeting they decided to grant permission.

That decision was challenged by way of judicial review by twelve individuals, whom we represented. The Board (with Indaver's support) sought and obtained several adjournments of those proceedings. By reason of delay caused by the repeated adjournments, the five year permission came to an end and a hearing was no longer necessary, so our clients' arguments went unheard by the Court.

## **Second attempt**

An application seeking permission for a hazardous and municipal waste incineration plant was made in 2008, this time directly to the Board under the SID regime. A lengthy oral hearing took place between April and June 2009.

In January 2010 the Board sought further information from Indaver, which information to be provided within a set period. That period was extended by the Board at Indaver's request in April. Indaver eventually filed its response in August 2010.

Senior Planning Inspector Öznür Yücel-Finn again recommended refusal. She regarded the site as wholly unsuitable for the proposed development. The development was not in accordance with the proper planning and sustainable development of the area.

In June 2011 the Board refused permission.

In its decision it recognised the important, constructive role played by our clients in the process and therefore directed Indaver to make a payment to us on their behalf, towards expert witness, representation and other costs incurred by our clients. Payments were also directed to be made to certain other third-party participants whose involvement was seen as helpful by the Board.

Indaver applied to the High Court and obtained leave to seek a judicial review of that decision in July 2011.

In October 2012, a few days before the substantive review hearing was about to commence in the High Court, Indaver said it wished to withdraw its application. It denied liability for costs claiming it was entitled to cost protection under S.50B of the Planning and Development Act.

In a judgment delivered in January 2013 the President of the High Court rejected Indaver's attempt to avoid an adverse costs order, describing their conduct beyond a certain point as an abuse of the Court's process. Accordingly he made awards of costs against Indaver in favour of the Board and in favour of our clients. See Kearns P. judgment at **Tab 10**.

## **Third attempt**

In May 2012 Indaver opened discussions with the Board as to whether a further proposed development consisting of an incineration plant and a waste transfer station would be SID. This itself could be seen

as a straightforward matter given the nature of the development and bearing in mind it had already gone via the SID process. However, this discussion proceeded until 23 December 2015, when (finally making its decision *when requested to do so by Indaver*) the Board confirmed the proposed development – by then revised to omit the waste transfer station - was Strategic Infrastructure Development.

Indaver lodged the present planning application in January 2016.

A 17 day long oral hearing took place between April and May 2016.

Senior Inspector Derek Daly recommended refusal. He regarded the site as wholly unsuitable for the proposed development. The development was not in accordance with the proper planning and sustainable development of the area.

The Board decided however to offer Indaver an opportunity to present further information. The Inspector was asked by the Board to consider the matter once more. He did so and again recommended refusal.

It is important to note that as of today's date, much of the material given to the Board during that phase of the process, including Indaver's response received by the Board on 2 October 2017, is not visible on the online file maintained by the Board for the application.

Failure to circulate that Indaver material to our clients and others has already been criticised by the High Court.

The Board decided to grant permission in May 2018.

Our clients challenged that decision by way of judicial review in the High Court. They did so on a number of grounds including objective bias, given that Conall Boland, a Board member dealing with the file, had previously carried out work for Indaver in relation to their Ringaskiddy incineration ambitions in the context of waste management planning in Cork.

Our clients also argued that there was a legally significant discrepancy in the identity of the applicant which had changed without explanation in the course of the SID and planning application process.

The Court found in favour of our clients on both these grounds.

In March 2021 the High Court delivered its judgment which found in favour of our clients and indicated that the Board's permission decision would be quashed. After some further hearings on how it should treat the matter, it formally quashed the Board's permission decision on 18 May 2022 and remitted the matter to the Board.

In January 2024 the file was marked as reactivated by the Board.

In June 2024 the Board invited Indaver to present updated information in relation to EIA, AA and planning matters. That letter did not put any time limit on Indaver's response.

In July 2024 it notified Indaver that the updated information should be lodged with it by 30 June 2025.

In May 2025 Indaver sought and was granted a further extension of time for that purpose, extended out to 29 August 2025. Neither our clients nor the public were asked to comment on that extension request and indeed only became aware of it after it was already granted.

On 29 August 2025 the applicant provided the Commission with over 1200pp of new material.

On 25 September 2025 the Commission wrote to our clients saying it had received this material from Indaver, that it regarded it as significant, and that it had directed Indaver to publish notices to that effect which should also advise people that they had a period of '*not less than 30 days*' to write to the Commission on the matter.

On 6 October 2025 Indaver published notice giving the public and our clients until 17 November 2025. in which to review, analyse, obtain advice and complete and file their commentary on that extensive new material with the Commission.

We enclose (**Tab 9**) a timeline summarising key milestones since Indaver first bought this site in 2000 from Irish Ispat Ltd.

Without prejudice to the jurisdictional and other legal submissions set out later, our clients submit the following materials:

1. Mary O'Leary, B.Sc. Dip.Env.Sc., Chairperson, CHASE
2. Tricia O'Sullivan, BA(Hons), MPlan, MIPI, Planning Consultant
3. Marcia D'Alton, B.E., M.Eng.Sc:
  - a. Assessment of Objectivity in Site Selection, 2001-2025
  - b. Waste Context, Policy Alignment, and Capacity Considerations

4. Cathal Reid-Gannon, B.A., MSc.
5. Con Sheehan, FSCSI, FRICS, Consulting Land Surveyor
6. Dr Peter G Daly B.Sc. Dip Mech Eng, OME (Mil), PhD:
  - a. The Proximity Principle in EU Waste Policy: Overview and Commentary
  - b. Observation on Environmental Impact Statement (EIS) – engage meaningfully with the public
  - c. Observation on EIS in relation to contravention of the national waste management plan
  - d. Observation on Environmental Impact Statement (EIS) – reliance on outdated incineration technology
  - e. Observation on EIA in relation to inadequate baseline monitoring on air quality
7. Observation by Dr Peter G Daly re HSA together with FOI Response from HSA and enclosures
8. Dr Gordon Reid and Dr Dara Fitzpatrick, re NIS and Dr Gordon Reid re EIS together with appendices.

We also **enclose** in a second ring-binder the five reports compiled by the three Senior Planning Inspectors appointed by the Board relating to the applicants' various applications, including this present one. The earlier reports remain relevant, in our submission and our clients adopt their refusal recommendations and refusal reasons. The reports of Derek Daly on file in the current application likewise bear directly on the matter and we adopt his refusal recommendation and refusal reasons. We urge the Commission to accept his recommendation to refuse for the reasons he gives and for the additional reasons advanced on behalf of our clients.

Each of the three Inspectors recommended refusal. Reasons for recommending refusal varied as between them to an extent but all were agreed in forming their professional view that the site was unsuitable for the development.

Our clients share that view.

#### **Documents enclosed and referred to.**

We summarise below some issues discussed in more detail in the documents enclosed with this letter, and also some documents being sent to the Commission by or on behalf of other bodies which our clients have had the benefit of reading, and with which they concur.

### **Letter from Mary O’Leary, Chairperson, CHASE (Tab 1)**

Indaver's proposal contravenes local planning precedents, zoning safeguards, amenity protections, geological heritage, and EU's transformative shift toward genuine circularity. Approving it would undermine Cork's sustainable growth ambitions and expose communities to irreversible harm.

Residents report heightened anxiety over cancer and health risks, with incinerators increasingly being linked to health and respiratory issues and the inequitable burdens on communities. This sentiment and the fact that the people of Cork are angry about this application, was evident in the packed public meetings convened to discuss the revived application.

Planning policy, zoning objectives, local amenity protections, health implications, geological and heritage safeguards, and evolving requirements under national legislation and policy documents, and EU directives, on circular economy and sustainability will be dealt with in more detail by the experts who are submitting material on behalf of CHASE, as well as those doing so for other bodies and organisations.

### **Planning Report by Tricia O’Sullivan, MPlan, MIPI, Planning Consultant (Tab 2)**

Ms O’Sullivan considers that the site is simply the wrong location for the proposed facility. Planning refusal reasons to date have included the lack of a demonstrable need for extensive incineration facilities in an era where waste management is promoting an ethos of reduce, reuse and recycle, together with a reduction in the percentage quantum of need for incineration in waste management and the potential adverse effects on the environment, flora and fauna and population of the immediate and wider area.

The negative planning history coupled with the strength of opposition from the local and wider community have reflected the physical issues with the site which is too small, lacks adequate and future proofed road connections, has no rail connections, and which raises concerns regarding site stability, erosion and public safety in a very constrained area which is at the focus point of the enclosed basin of Cork Harbour, near to one of the largest concentrations of population in the State.

An Coimisiún Pleanála is requested to again refuse permission for the proposed development of the proposed incinerator at this sensitive and vulnerable location.

### **Marcia D’Alton, M.Eng.Sc. Land-use policy assessment (Tab 3a)**

1. The location of this proposed waste-to-energy plant diametrically opposes land-use policy aims for Ringaskiddy, Spike Island, Haulbowline Island, Cobh and for its own site.
2. It is not a Strategic Employment development.
3. It has the potential to negatively impact on the SEA designation of Ringaskiddy.
4. It conflicts with the educational/research zoning aims for the site.
5. It conflicts with the educational/research policy aims for this part of Ringaskiddy.
6. It conflicts with the tourism/heritage destination policy aims for Spike Island.
7. It conflicts with the tourism/heritage policy aims for Cobh.
8. It conflicts with the institutional, educational and recreational policy aims for Haulbowline Island.
9. It is incongruous in what is a transition zone between the designated SEA of Ringaskiddy and the tourism/heritage aims of the Spike/Haulbowline/Cobh area.

Ms D’Alton asks the Commission to accept that “*the likely evolution*” of Ringaskiddy, Spike and Haulbowline Islands, Cobh and this part of Cork Harbour “*without implementation of the project*” asked for by Annex IV(3) of the 2014 EIA Directive is not just set out in policy but is evidenced in real-life, on the ground.

After the decades’ long presence of steelworks at this, the epicentre of Cork Harbour, it is now at last a pride and a joy to behold. Sold to Indaver by Irish Ispat, this site of the proposed waste-to-energy plant is a legacy of that time. Should the Commission consider that its development would not impact on the aim for and progression of this local statutory policy, it would be sorely mistaken.

### **Marcia D’Alton, M.Eng.Sc. Waste context, policy alignment and capacity considerations (Tab 3b)**

Through a range of legislative instruments and policy documents, Ireland has committed to the circular economy concept: maximising resource assets, re-capturing them for reuse, thereby minimising carbon emissions and (finally) implementing the waste hierarchy:

*While the move away from disposal and increased use of recovery has helped Ireland in realising our EU targets, we need to drive on and move up the waste hierarchy with reducing reliance on recovery over the medium term.*

Government of Ireland (2020)

But we have much work to do in the world of waste. Ireland's waste production per capita is higher than the European average. Our use of packaging is the highest in Europe. Our use of plastic in packaging is higher again. A shift from burying to burning in the last decade has helped, at least theoretically, in climbing one rung of the waste hierarchy ladder. But with a stagnating MSW recycling rate, missed 2020 recycling targets and a general trajectory towards missing 2025 and 2030 targets, it is clear that business as usual is no longer good enough.

**Building additional incineration capacity at this point will lock these failures in for the long term.**

Ireland has systemic upstream issues in waste prevention, separation, and sorting. Introducing new incineration capacity before fixing communication and separation issues will undermine participation and send contradictory signals to the public. Providing yet more burn capacity at this stage will disincentivise the upstream infrastructure that is critically needed to improve materials capture.

**A core principle of EU circular economy policy is that capacity expansion for incineration must not undermine higher tiers of the hierarchy.**

In addition:

- exporting recyclable material is normal
- exporting processed MSW as fuel is normal
- Europe has spare, more efficient incineration capacity that Ireland can use during its transition
- the embodied carbon of a new installation cannot be justified when high quality existing facilities elsewhere can meet short-term needs.

**To lock in additional thermal capacity for another 30+ years by permitting the proposed Ringaskiddy facility is, at very best, premature in advance of:**

1. Meeting or even approaching meeting mandated targets for recycling and a reduction in rMSW/person.
2. Application of the waste hierarchy as required by Targeted Policy 11.1 of the National Waste Management Plan.
3. Investment in critical upstream communication, improved collection and significant investment in enhanced sorting facilities, including follow through on Key Deliverables 10, 11, 12, 16, 33, 34, 35, 36 and 37 of the National Waste Management Plan.
4. Clarity on the outcome of the Arc21 planning application.
5. Clarification of the revision of the EU's ETS which may affect have a significant impact on availability of incinerator feedstock.

6. A life-cycle analysis of the overall environmental impacts of the proposed Ringaskiddy facility as compared to the interim use of more efficient spare capacity in existing facilities in Europe.

*The Circular Economy is not just about better waste management or less plastic pollution or better recycling rates. The Circular Economy is about looking at our 'throwaway' economy and recognising that there is a better way, that it is possible to break the cycle of wasteful resource extraction, unsustainable consumption, and unnecessary disposal.*

*Environmental degradation must not be the inevitable consequence of economic growth.*  
Government of Ireland, 2022

### **Report by Dr Gordon Reid and Dr Dara Fitzpatrick (Tab 8)**

Drs Reid and Fitzpatrick address four major themes in their observations on the modelling of dioxin-related toxicity intake in the NIS.

1. Based on published lowest observed adverse effect level (LOAEL) data and the existing modelling, the concentrations of dioxins and furans in cormorant eggs are likely to be above the upper range of the LOAEL for developmental abnormalities. This is even more so when dioxin-like PCBs are included.
2. There are serious gaps and shortcomings in the modelling, the most serious being the modelling only of piscivorous (fish-eating) birds, and the complete omission of all the birds that feed on molluscs, worms and crustaceans on the mudflats; especially in view of the higher biota-sediment accumulation factors (BSAF) in bivalves than fish, leading to possible higher intakes for such species. It is impossible to be sure what their dioxin intake might be, at baseline or with the proposed incinerator.
3. The confusion about sample identification and sample concentrations makes it difficult to have trust in the integrity of the data. Only by going to the original lab reports has it been possible to check on some aspects of the data to verify some of the findings.
4. Beyond the confusion just mentioned, there are also deliberate decisions that in their view are inexplicable in a scientific report. For instance, the choice of a no observed adverse effect level (NOAEL) in gulls, the least sensitive species in the SPA, based on embryo death rather than developmental abnormalities; the failure to use the 500-fold lower LOAEL value that the investigators were given by the Department of Arts, Heritage and the Gaeltacht; the use of

lower bound values to report PCBs, when the upper bound values were up to 150 times higher; and the complete omission of dioxin-like PCBs, which is very hard to justify, especially in a marine context.

In summary, the report is not one on which the Commission could safely base a judgement that the protected bird species in the SPA, or the otters protected under the Habitats Directive, would not come to harm if the proposed incinerator were to be built. On the contrary, it suggests that even at baseline, levels of dioxin-like toxicity are already at or over the limits where adverse effects may be observed.

### **Report on the modelling of dioxins and furans at Ringaskiddy by Dr Gordon Reid (Tab 8)**

Dr Reid's conclusions from this analysis are:

1. Even at baseline, with no incinerator, the dioxin and furan intake modelled for the hypothetical human family in Appendix 6.3 exceeds the EU's permitted limit, the Tolerable Weekly Intake. Appendix 6.3 cites an obsolete higher value for the EU TWI, and uses this to argue that the site is safe for the proposed incinerator. Appendix 8.1 makes a similar mistake.
2. Furthermore, the dioxin and furan intake values modelled in Appendix 6.3 are grossly underestimated. This is partly owing to some remarkable omissions from the model (e.g. assuming a starvation-level diet for the hypothetical family whose intake is modelled, thus understating their food-related dioxin and furan intake, which is by far the main route of exposure), partly to deviations from the standard methodology that the Appendix states is being used (e.g. failing to consider the dioxin and furan intake of a child, which is far greater than that of an adult), and partly to failure to compare like with like (modelling only dioxins and furans, but then comparing with an EU intake limit that also included dioxin-like PCBs). Correct application of the model would result in an intake value that is very substantially above the permitted limit.
3. Comparison with earlier (2008) modelling by the same consultant at the same site, with a modelled incineration plant operating at the same dioxin and furan output concentration and with similar quantities being emitted, shows a remarkable reduction in the stated effect of the incinerator on the family's modelled intake in 2025 compared to 2008. (Lest it be thought that this is due to improved technology, it should be noted that the model simply uses the maximum permitted output concentration, which was exactly the same in 2008 as it is in 2025, so changes in technology do not enter the model at all.)

In the case of the most toxic of the dioxins, the reduction in intake is an incredible 560-fold. Given the similarity in the data on which the modelling was based – the modelled incinerator output, the terrain, and the soil – this discrepancy raises questions about the credibility and reproducibility of the modelling which urgently require clarification.

4. He is also concerned that, although he understands the Directive requires data in the EIS to be the most recent available, substantial parts of the present Appendices he has inspected are based on old data, and other parts that were present in previous versions of the EIS are simply missing now. Although new air dispersion modelling was performed in 2025, this was not used in the dioxin and furan intake modelling, which is simply a re-submission of the 2019 EIA Report for the EPA licence application. It is based on soil samples that were collected in 2015. The air dispersion modelling, although it is new for this EIS, lacks the cumulative analysis of all dioxin and furan sources that was included in previous versions; the apparent reason for this is quite bizarre.

### **Comment by NLCC**

The findings by Dr Reid and Dr Fitzpatrick demonstrate:

- a) Fundamental and fatal errors in the information presented to the Commission and the public in the Environmental Impact Statement from Indaver;
- b) The absence of any safe scientific basis for the Commission to satisfy itself to the standard required under Article 6(3) of the Habitats Directive, as implemented in Ireland.

### **Submission of Cathal Reid-Gannon, B.A., MSc. (Tab 4)**

Mr Reid-Gannon says that the High Water Mark location to the East of the site as asserted by Indaver is inaccurate and demonstrates this. The applicant has presented incorrect maps in this respect. Walking routes to plot the HWM are well within the Indaver boundary and show that their claim to the foreshore based off the 2001 PLACE map is inaccurate.

Using data from 2001 is entirely inappropriate to identify the foreshore. The claim that the shingle will be placed “*above the foreshore on Gobby beach along the eastern boundary of the Indaver site*” is materially incorrect, and the Commission should reject the section about coastal defence plans from applicant Indaver. The eastern site boundary shown in the application is not correct.

### **Report by Con Sheehan FSCSI, FRICS, Consulting Land Surveyor (Tab 5)**

These maps demonstrate that the area of the site claimed by the applicant as being c.13.55 hectares is overstated by 2 hectares. The actual area of the site is c.11.31 hectares when calculated using the applicant's own maps.

This is before the additional loss of area due to the mis-representation of the eastern boundary of the site where it meets the sea, a topic addressed in Cathal Reid-Gannon's report.

### **Comment by NLCC**

Under Regs.22(2) and 22(4)of the Planning and Development Regulations 2001-2025 (unofficial consolidation published by Department of Housing, Local Government and Heritage) the developer is obliged to furnish the Commission with a correct map of the site. This is a mandatory requirement and is a pre-requisite for a valid application. The application is invalid.

### **Observations of Dr Peter G Daly B.Sc. Dip Mech Eng, OME (Mil) (Tab 6 a-e; Tab 7)**

- a. The Proximity Principle in EU Waste Policy: Overview and Commentary  
This paper focuses on:
  - EU Law and Regulation, and Alignment with Irish Law;
  - Issues Relating to Northern Ireland and UK Policy/Law on the Island of Ireland;
  - Defining Proximity in Terms of Waste Distances;
  - Impact on EU Free Market and Competition in Waste Handling;
  - Plans to Increase Waste-to-Energy (WtE) Capacity on the Island of Ireland
  - Types and Amounts of Waste Exported by Ireland (2024-2025 Data)
  
- b. Observation on Environmental Impact Statement (EIS) – engage meaningfully with the public  
Indaver's superficial engagement contravenes EU and Irish mandates for democratic, inclusive environmental governance, rendering the application procedurally flawed—especially given the proposal's reach into Cobh, Carrigaline, Passage West, Monkstown, Aghada, and the harbour.

- c. Observation on EIS in relation to contravention of the national waste management plan  
The Ringaskiddy application, while addressing very short-term hazardous waste gaps, exacerbates Ireland's low circularity (1.8% vs. EU 12.8%) by prioritising incineration over NWMPCE reforms, echoing EU critiques of overcapacity in Member States that stifle recycling and hierarchy compliance.
- d. Observation on Environmental Impact Statement (EIS) – reliance on outdated incineration technology  
Approving Ringaskiddy entrenches toxic, ash-producing tech in a vulnerable SAC-adjacent site, amplifying health/cumulative risks and clashing with EU hierarchy (prevention/recovery first). Redirect funds to 2025 innovations for a true circular future—waste as resource, not relic fuel.
- e. Observation on EIA in relation to inadequate baseline monitoring on air quality  
Chapter 8's of the EIA quality assessment is materially deficient, implying comprehensive coverage while delivering site-centric, partial data that misleads on compliance and risks. This echoes flaws in prior Indaver applications (e.g., 2016 oral hearing critiques on nanoparticle omission) and contravenes EU zero-pollution ambitions (Green Deal, 2019) by inadequately safeguarding human health and Natura sites from PM-driven deposition.

Dr Daly believes (**Tab 7**) that there appears to be a material irregularity in the consultation process with the Health and Safety Authority (HSA), the designated Central Competent Authority for the Control of Major Accident Hazards (COMAH) Regulations 2015, particularly in relation to the consideration of the revisions to the original Environmental Impact Statement (EIS).

The key facts are recited below, drawn from records held by the HSA, and a recent Freedom of Information (FOI) request submitted to the HSA.

In 2016, An Bord Pleanála, as the competent planning authority, correctly sought observations from the HSA on the proposed development, enclosing the original EIS. The HSA responded in writing, stating explicitly that it "did not advise against" the project. This response, while not an unqualified endorsement, constituted important statutory input under the COMAH framework.

An Bord Pleanála granted permission but this was set aside. An Bord Pleanála directed the applicant (Indaver) to submit further information in the form of a revised EIS.

Following An Bord Pleanála's direction, Indaver engaged consultants to prepare and submit the revised EIS. In the course of this process, the consultants contacted the HSA to notify them of the re-opened planning application and to apprise them of the additional information being compiled, including updates relevant to COMAH compliance (e.g., risk assessments for major accident hazards). This correspondence was a prudent step to ensure ongoing expert scrutiny.

Pursuant to an FOI request made to the HSA, the Authority has confirmed that no formal reply or observations were issued in response to the correspondence from Indaver's consultants.

This lack of engagement raises serious questions about the completeness of the consultation process. As the central competent authority, the HSA's input on the revised materials was essential to a robust assessment of the project's safety profile, yet no such input was obtained or documented in the planning file.

Having initially consulted the HSA, An Bord Pleanála ought to have re-engaged with them upon receipt of the revised EIS, particularly given the potential COMAH implications of a Waste-to-Energy facility with on-site storage.

The absence of such follow-up contravenes the principles of proper planning and sustainable development under Section 28 of the Planning and Development Act 2000, as well as the Aarhus Convention's requirements for public participation and access to environmental information.

In their covering letter in the response to the FOI request the HSA stated that the facility is not subject to COMAH regulations and they justify their decision on the fact that it is so stated in the EIS supported by the applicant.

No record seems to be available of the assumed status of the facility as now proposed, being communicated either to An Bord Pleanála nor to the consultants appointed by the applicant.

There is a transparency deficit. The planning file does not reflect any record of the HSA's non-response, nor efforts by An Bord Pleanála to address this gap, thereby limiting stakeholders' ability to fully understand the basis for the decision.

The final determination appears to have proceeded without the benefit of HSA's views on the revisions, potentially leading to an unbalanced evaluation of risks. This is especially concerning in light of the HSA's initial positive stance, which may have been altered (or confirmed) had they formally commented on the updates provided.

These circumstances disclose procedural flaws that may undermine the integrity of An Bord Pleanála's decision-making and show lack of consistency with earlier procedures .

Material supplied by the HSA is included in **Tab 7** behind Dr Daly's submission.

### **Documents submitted to the Commission separately, which our clients endorse and adopt.**

Our clients have had the benefit of reading the submissions made to the Commission by

- Dr Orla Kelleher, Associate Professor, Law Faculty, Maynooth University;
- Mr Joseph Weston;
- Dr Bettie Higgs, Geologist;
- Dr Niamh O'Riordan whose submission is sent through CHASE (East Cork).

Our clients wish to echo and support the views expressed in these submissions.

### **Dr Orla Kelleher of the Law Faculty at Maynooth University.**

Dr Kelleher notes that Ireland is projected to exceed its first two carbon budgets based on both WEM and WAM scenarios. This is significant in the context of the proposed development because it shows that **there is effectively no GHG emissions headroom in the first two carbon budgets to allow for the development of the Ringaskiddy Resource Recovery Centre.**

The EIAR, she notes, selectively quotes from the Waste chapter of the Climate Action Plan 2025 (CAP 2025) to suggest that the proposed development is consistent with it. The EIAR refers to general waste policies like levies on landfill and widespread segregation of waste in CAP2025. However, it omits that **one of the key measures identified as 'critical to success' for delivering the sectoral emissions ceiling for waste ('other')**, the commitment to 'Reduce Waste sent to Landfill and/or **Incineration'** (pg 156 of CAP25). This makes clear that contrary to what the EIAR suggests the proposed development is not compatible with CAP 2025 or Ireland's climate objectives.

She recites Humphreys J.'s identification of what he calls the **three essential steps involved in assessing a project that causes emissions:**

- (i) **identification of net emissions** – the budgetary nature of the process implies a need to quantify net greenhouse gases (GHGs) attributable to the project, including what would be scope 3 in

EIA terms, net of mitigation and offsets (including mitigation/offsets proposed to be conditioned), as compared with a counterfactual baseline scenario of no project (and thus a baseline scenario which may well not involve no emissions but rather an alternative level of emissions);

- (ii) **evaluation against targets** – in the event that there are net GHG emissions, a determination of whether the emissions so identified come within the available headroom both nationally and sectorally as provided for in relevant climate policy instruments; and
- (iii) **evaluation of practicability of compliance** – in the event of any excess of emissions over available headroom, a determination as to whether the noncompliance involved is justified by considerations of practicability, such as for example by imperative needs of energy security’.

The proposed development is not climate neutral nor is it provided for within Climate Action Plan 2025. On the contrary, the only mention of this category of project (incineration) in CAP2025 is to refer to the need to reduce waste that is sent to incineration.

*Friends of the Earth Limited v Secretary of State for Levelling Up, Housing and Communities, West Cumbria Mining Limited, Cumbria County Council* [2024] EWHC 2349 (Admin)

The developer had argued that combustion emissions from Whitehaven coal mine would not give rise to a net increase in emissions because it would replace coal being supplied from US coal mines to the UK and European steel-making market. Holgate J held that the developer would have had to show a very high degree of substitution not far short of perfect substitution and that there would be no demand for US coal substituted by that Whitehaven coal.

The developer does not appear to have discharged the evidentiary burden of showing a very degree of substitution to show that burning waste for electricity would actually reduce emissions from fossil fuel generated electricity.

There has been a moratorium on new incinerators in Wales (since 2021), Scotland (since 2024) and growing pressure to adopt one in England due to concerns that they act as a barrier to achieving zero waste, net zero and a circular economy.

The EIAR states that air quality standards will be under maximum and abnormal operation of the facility, however, it does not benchmark the likely affects of the proposed development on air quality against the WHO 2021 Guidelines which is particularly relevant for air pollutants like particulate matter and nitrous oxide.

## **Mr Weston**

Our clients endorse and adopt the submission of **Mr Joseph Weston** to the Commission, where he concludes as follows:

Based on application of the precautionary principle and inadequacy of the proposed facility design, An Coimisiún Pleanála should refuse planning permission for the Indaver Ringaskiddy facility as currently proposed.

Grounds for refusal include:

1. Failure to demonstrate adequate PFAS destruction capacity at proposed operating temperatures
2. Non-compliance with EU precautionary principle as enshrined in Article 191(2) TFEU
3. Inadequate environmental impact assessment regarding PFAS and PIC formation
4. Inconsistency with scientific consensus on temperatures required for PFAS mineralisation
5. Risk of long-term environmental contamination through PIC emissions

## **Dr Higgs**

Our clients also accept and support the views of **Dr Bettie Higgs** as sent by her directly to the Commission.

Repeated false confidence is found in the Indaver EIS, together with inconsistencies and avoidance of essential detail which undermines the credibility of the application. The identification of cumulative risks is lacking from the EIS, as interacting processes are not assessed.

Climate resilience is not adequately addressed. The proposed development does not comply with the rezoning objectives and the County Development Plan. All available evidence, including that in the Indaver EIS itself, suggests the proposed location of this infrastructure is unsuitable. The application should not be granted.

## **Dr O’Riordan**

In her extensive submission, Dr O’Riordan demonstrates the proposal’s fundamental non-compliance with national and EU policy, its serious technical deficiencies as well as the unsustainability of the project in environmental terms. Its core assumptions, datasets and classifications are obsolete. Her

detailed Technical Submission is supported and adopted by our clients. It also demonstrates that there is no basis on which the proposed development may be viewed as recovery rather than disposal.

Our clients draw the attention of the Commission particularly to her summary conclusion that the application is incapable of lawful approval having regard to the provisions of s37G(2)(b) of the Planning and Development Act 2000 as amended and/or Art. 6(3) Habitats Directive.

### **Further legal issues**

Under Regs.22(2) and 22(4) of the Planning and Development Regulations 2001-2025 (unofficial consolidation published by Department of Housing, Local Government and Heritage) the applicant is obliged to furnish the Commission with a correct statement of the area of the site and correct map of the site. This is a mandatory requirement and is a pre-requisite for a valid application. Without compliance with the Regulations in this regard the application is invalid and must be rejected as such. The Commission has no jurisdiction to entertain it further.

The Commission does not have the necessary evidential basis on which to ground a decision to approve the application having regard to the provisions of Art. 6(3) Habitats Directive for the reasons outlined in the material herewith enclosed or cited, including in particular the reports of Drs Reid and Fitzpatrick, and Dr O’Riordan.

### **Summary rejection by the Commission of our clients’ request for a short extension**

We wrote on behalf of our clients to the Commission by email on 11 November requesting a short additional period of twenty one days for our clients to respond, giving their reasons. We asked for a reply from the Commission to this request to be given to us by close of business on Friday 14 November.

In the absence of any reply we telephoned the Commission at 4pm on that date enquiring as to the position. We were asked to send our letter in once more and we did so by email at 4.10pm. The Commission replied by email at 4.46pm refusing our clients’ request, saying that the deadline had been *‘set by Indaver’*.

That reply evidences a grave failure by the Commission to apply fair procedures, to impartially consider the request and to examine the reasons given in our request letter, or to apply its own discretion in the matter.

This present letter and the enclosed material is therefore lodged with the Commission under protest and reserving our clients' rights in the face of what is in our view an unfair, partisan, objectively biased and oppressive process.

### **ECHR rights: Unfair procedures, unreasonable timeframe**

It is submitted that the Commission must have due regard to Articles 6§1 and 13 of the European Convention of Human Rights [hereinafter the ECHR or Convention] in its consideration of the within submissions, the European Convention of Human Rights Act 2003 conferring an obligation on “*every organ of the State [to] perform its functions in a manner compatible with the State's obligations under the Convention provisions*” pursuant to section 3(1).

Article 6§1 of the ECHR confers the right to a fair trial on citizens whose rights and freedoms are set out in the Convention, including our clients, and reads as follows:

*“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing **within a reasonable time** by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”*

Article 13 of the ECHR confers the right an effective remedy on the citizens whose rights and freedoms are enshrined in the Convention:

*“Everyone whose rights and freedoms as set forth in this Convention are violated shall have **an effective remedy before a national authority** notwithstanding that the violation has been committed by persons acting in an official capacity.”*

On the 26<sup>th</sup> August 2025, the European Court of Human Rights (hereinafter ‘the ECtHR’) ruled that Greece was in breach of its obligations pursuant to Articles 6§1 and 13 of the ECHR in *Vervele v. Greece* (Application no. 34012/20).

Proceedings spanned over 19 years which the ECtHR considered to be inordinately excessive in length, with unwarranted delays in the litigation attributable to the national authorities. In addition, there was an absence of effective remedy, there being no sufficient redress for the applicant.

It is submitted that the within planning permission applications have been ongoing – albeit in varying and in some cases modified guises - since 2001, now some 24 years. The present application has been with the Commission since January 2016, almost a decade. The substantial delay in reaching finality in a matter engaging our clients’ rights must be seriously considered by the Commission in light of its obligations under Article 6§1 and Article 13, as reinforced by the ECtHR’s recent judgment.

We submit that our clients are entitled to finality in the within process and that continued protracted contemplation by the Commission of Indaver’s application (save only in respect of convening an oral hearing in the special circumstances we have set out below) deprives our clients of their entitlement to a fair and timely process for the determination of their civil rights in relation to their neighbourhood and the environment in which they, their families, friends, school- and work-colleagues live.

### **Oral Hearing**

The recommendations to refuse permission made by the three Inspectors in each of the three Indaver applications for development of incineration plant at this site were made to the Board following lengthy oral hearings at which each of the Inspectors had the benefit of having the case for the development fully examined and tested. They heard from all concerned and were able to form views as to reliability and credibility.

The Board has so far declined to accept its Inspector’s refusal recommendation in the present application. The Board’s decision to grant permission was unlawful and was duly quashed by the High Court at our clients’ request, tainted as it was by objective bias.

The material presented to the Commission by Indaver in August 2025 is equivalent in volume to that which would accompany an entirely new development application. It is in no sense to be seen as mere additional information on points of detail or clarifications of matters deemed uncertain.

We submit that as matters now stand the Commission has ample grounds to refuse the application. Indeed we say the Commission has no jurisdiction to grant the application.

Should however the Commission disagree, then and in that event we request an oral hearing, in the interests of natural justice and in the interest of proper assessment and consideration of the revised 'updated' application.

The oral hearing should be conducted by the Inspector who was entrusted with the management of the 2016 hearing as he is best informed of the issues and is therefore best placed to weigh and assess the new material and to consider the arguments relating to it.

An oral hearing would also allow our clients to present any further relevant analysis or reportage from experts who as we described in our letter to the Commission dated 11 November 2025 (**Tab 11**) are currently being excluded from the process, and/or to raise any issues in questioning that may be pertinent once that necessary expert advice is to hand.

We submit (without prejudice to other grounds) that the Commission is precluded from deciding to grant permission on the basis of a review the material before it and in the absence of an oral hearing.

## **Conclusion**

Three Senior Planning Inspectors have advised the Board that this application is entirely inappropriate for this site.

It is time for the Commission to take that advice.

Le meas,

**Joe Noonan**  
**NOONAN LINEHAN CARROLL COFFEY LLP**