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9 March 2007
Original

8-3-07

Monie

Fehily Timoney Report as
requested.

With Compliments

Regards
Patrick Mulloy

11 Market Street
Monaghan

Tel. (047) 72060

Fax. (047) 72061

Mobile. 087 2438961

e-mail: hugh@QEDeng.ie

website: www.QEDeng.ie

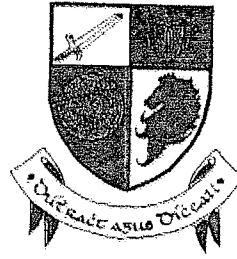
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COMHAIRLE CHONTAE MHUINEACHÁIN MONAGHAN COUNTY COUNCIL

Oifigí Contae,
An Gleann,
Muineachán.

Guthán: 047 30500



County Offices,
The Glen,
Monaghan.

Tel: 047 30500

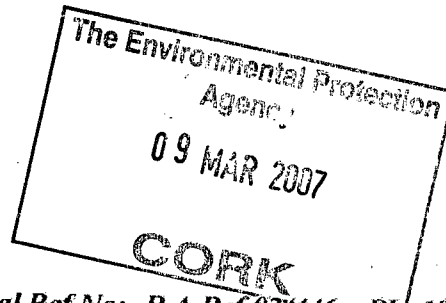
Fax: 047 82739

Email: secretar@monaghancoco.ie

Website: www.monaghan.ie

An Bord Pleanála,
64 Marlborough Street,
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30th March 2006.

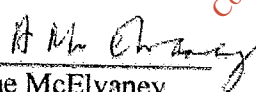


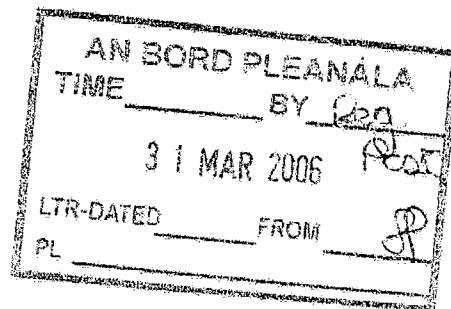
Re : *Planning Appeal Ref No:- P.A.Ref.03/446 - PL: 18.216528
Biomass Combined Heat & Power Plant at Killycarran,
Emyvale, Co.Monaghan - Monopower Ltd.*

A Chara,

I refer to the above appeal and your letter dated the 3rd March 2006 and enclose, as a party to the appeal, under Section 129 of the Planning and Development Act 2000 a submission in relation to the appeal.

Mise le meas,


Anne McElvaney
Administrative Officer



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Monaghan County Council

**Submission to An Bord Pleanála
under Section 129 of the
Planning and Development Act:**

The Killycarran Biomass Combined Heat and Power Plant

Prepared for:

Monaghan County Council
The Glen
Monaghan Town
Co. Monaghan

Prepared by:

Fehily Timoney & Company
Core House
Pouladuff Road
Cork

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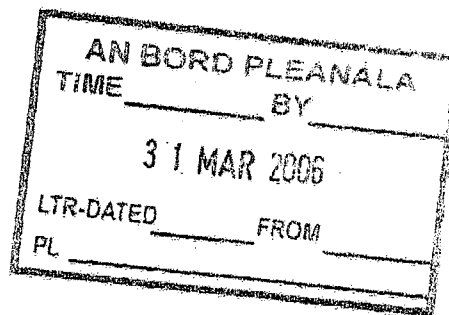


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1. INTRODUCTION

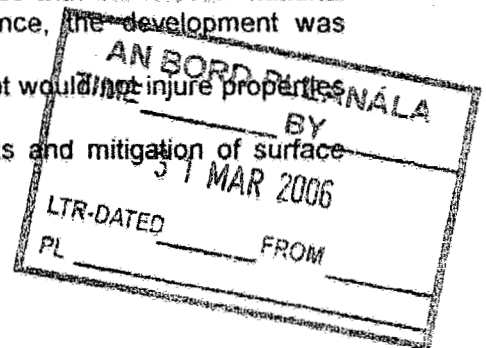
A planning application was made on behalf of Monopower Ltd to Monaghan County Council in June 2003 for what was described by the developer as the Killycarran Biomass Combined Heat and Power Plant. The proposed development has a substantial size, with the plant being fuelled by a maximum of about 350,000 tonnes of mainly spent mushroom compost (198,000 tonnes) and poultry litter waste (155,000 tonnes). About 20 MW of electricity would be generated into the national grid. Given the nature of this development, an Environmental Impact Statement (EIS) was submitted with the application.

Following receipt of the application, Fehily Timoney & Co Ltd was retained by Monaghan County Council to assist in the assessment of the EIS for this proposed facility. That assessment highlighted a series of major deficiencies in the information sent in by the applicant that was contained in the EIS.

These concerns were conveyed to the applicant in a Request for Further Information dated 6 August 2003, which was issued under Article 33 of the Planning and Development Regulations 2001. As a consequence of the incomplete nature of the developer's response to that notice, a Request for Further Information was sent to Monopower Ltd in December 2004. The second request sought information and clarification, under Articles 33, 108 and 128 of the Planning and Development Regulations, 2001, on a number of unresolved issues, many of which related to information supplied in response to the first notice. This second notice resulted in a more lengthy response from the developer, which was received by Monaghan County Council on 26 May 2005.

Having considered this material in detail – and made this information available for public consultation – Monaghan County Council refused planning permission for this application. In summary, the relevant considerations in respect of this decision concerned:

1. the unsuitability of the road network leading to the proposed facility, even after up-grading works proposed by the developer
2. the traffic hazard resultant from vehicles accessing the development
3. an inadequate consideration by the developer of the environmental impacts of road upgrading within the EIS
4. that the developer had failed to demonstrate compliance with the relevant national and EU limits on stack emissions; as a consequence, the development was considered to be prejudicial to public health
5. that the developer had not shown how the development would not injure properties and amenity due to surface water discharges
6. the inadequate consideration in the EIS of the effects and mitigation of surface water discharges.



It should be noted that a number of these reasons relate to the inadequacy of the EIS that accompanied the Killycarran application. The relevant issues all arise from the requirements of the Planning and Development Regulations 2001, which mandate the required scope and content of an EIS.

English case law on EIS content indicates that, where a planning authority considers that issues to do with "main effects" or "likely significant effects" have been omitted from an EIS, a developer should be required to make good these deficiencies¹. Unfortunately, as not all of these matters were clarified in what was submitted to the County Council by Monopower Ltd, they figure in some of the reasons as to why this planning application was refused.

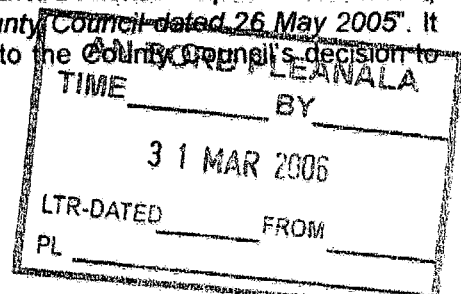
On 2 March 2006, the developer lodged an appeal with an Bord Pleanála. Contained in that appeal was a submission setting out the developer's reasoning for passing the matter to an Bord Pleanála. Also lodged on that date was a separate third-party appeal.

Under Section 129 of the Planning and Development Act, the Monaghan County Council is entitled to make a submission to an Bord Pleanála in respect of the appeal lodged by Monopower on 2 March 2006. This report constitutes such a submission.

This report is structured in the following sequence. It starts by setting out the background to this appeal, to the earlier notices sent to the developer and to the timescale over which this planning decision has been made. It then evaluates the different sections of the developer's submission to an Bord Pleanála. These sub-sections are structured to follow that of the developer's submission and each of the reasons given by Monaghan County Council for the refusal of this planning application.

It should be appreciated that this report does not re-visit all of the issues set down in the earlier notices issued by the County Council. Hence it should be read in conjunction with those documents and the developer's response to them. This document also needs to be read in combination with the report by the Planning Officer of Monaghan County Council on the Killycarran proposal

In particular, an Bord Pleanála's attention also is drawn to Fehily Timoney's report dated January 2006. That report is entitled "Evaluation of Environmental Impact Assessment, including Additional Information sent to Monaghan County Council dated 26 May 2005". It contains key background material that directly relates to the County Council's decision to turn down this planning application.



¹ See John Kent v First Secretary of State & ors ([2005] Env Law Reports 30 at 607) and Hereford Waste Watchers Ltd v Hereford Council ([2005] Env Law Reports 29 at 586). These cases and their ramifications are discussed in pages 4-7 of the report by Fehily Timoney & Co of January 2006 entitled "Evaluation of Environmental Impact Assessment, including Additional Information sent to Monaghan County Council dated 26 May 2005"

While the Fehily Timoney report of January 2006 acknowledges that certain major flaws in the original EIS have been rectified by the additional information submitted by the developer, in other instances significant omissions remain. It is also asserted that, given that these omissions relate to the "main effects" or "likely significant effects" which should have been properly covered in the EIS for this project, the County Council seems to have little choice but to include these inadequacies as part of the rationale behind refusing this planning application. This is because these gaps relate to material which is mandatory information under the Planning and Development Regulations 2001.

1.1. Background to the County Council's Notices and this Appeal

A factor that has led to the complexity of the documentation about this planning application and the need for two statutory notices from the County Council has been the developer's apparent misunderstanding of the role of the planning authority in considering this application. This has led to what seems to be an unwillingness to submit requested items of information to Monaghan County Council. The absence of that information has, in turn, led to concerns about the content and statutory validity of the EIS which accompanied this application. These concerns remain and constitute a background to some of the reasons why this planning application was refused.

From the developer's responses to the two Requests for Further Information, it would seem that the view was taken that matters concerning environmental aspects such as emission management were not a relevant consideration for a planning authority. Instead, it was asserted that these aspects were solely the province of the Environmental Protection Agency (EPA). While this may well have been the situation prior to the Planning and Development Act 2000 entering into effect, since then a local authority is required to consider all environmental aspects in the making of its decision. What a planning authority cannot do is to prescribe conditions on these matters when granting planning permission.

Both of the County Council's notices set out not only what information was requested, but also stated the reasons for the request in some detail. While significant additional information was drawn out of the developer by this process, other issues were not satisfactorily addressed. Fortunately, the second response by the developer was significantly broader in scope, albeit that outstanding issues remained.

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1.2. Allegations about Delay

The County Council does not dispute that the determination of the planning application for the proposed incinerator at Killycarran has taken a significant amount of time. However, what it does contest is the developer's reasons why this has happened. While issues concerning delay are not central to this appeal to an Bord Pleanála, the local authority does feel it to be necessary to address this matter, particularly given this issue's prominence in the developer's appeal documentation. This seems particularly necessary due to the highly selective account given in Section 2 of the developer's submission and the table contained therein (see page 9 of the submission).

The seven-line table set down in Section 2 to the developer's appeal specifies the dates which pertained to the various elements of the County Council's actions. However, what that table does not cover is other County Council-related activity that was going on in parallel. The latter included extensive consultation with the public and stakeholders in Ireland and Northern Ireland and also the obtaining of legal advice. Table 1 is based on the developer's own table, but with an additional column added to show these other elements.

Moreover, even from the information presented by the developer, it can be seen that the developer's response to the first statutory notice took from 6 August 2003 to 5 November 2003 for a reply, with the reply to the second notice taking from 1 December 2004 to 26 May 2005.

Table 1: Killycarran Incinerator – Key Time Lines

Date	Details given in Section 2 of developer's submission	Additional actions not covered by the developer's submission
12 June 2003	Monopower Ltd submit planning application and EIS for Biomass CHP Plant to Monaghan County Council, Planning Ref:03/446	
20 June 2003		Monaghan CC refers application to Planning Service in Northern Ireland (Art 126 of P&D Regs)
16 July 2003		Monaghan County Council receive 510 submissions
6 August 2003	Monaghan County Council request further information on the development	

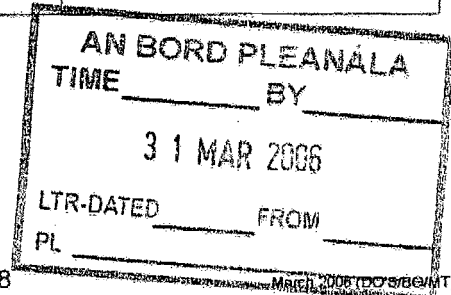


Table 1: Killycarran Incinerator – Key Time Lines Cont'd.

Date	Details given in Section 2 of developer's submission	Additional actions not covered by the developer's submission
5th November 2003	Monopower Ltd reply to further information request of 6 th August 2003	
17 November 2003		Monaghan CC receive 238 additional responses from state bodies & individuals in Northern Ireland
10 Feb 2004		Legal advice sought by Monaghan County Council
26 March 2004		Legal advice received
December 2004	Monaghan Council request further information on the development	
26 May 2005	Monopower Ltd reply to further information request of 1 st December 2004	
2 June 2005		Monaghan County Council notified all objectors previously that significant additional information had been received.
29 June 2005		148 submissions received.
Up to 28 Nov 2005		139 submissions received from state bodies & individuals in Northern Ireland.
12 January 2006		Fehily Timoney submits report on the EIS and the additional information
3 February 2006	Monaghan County Council refuses planning permission for development	

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2. NEW INFORMATION NOT INCLUDED WITH THE APPLICATION

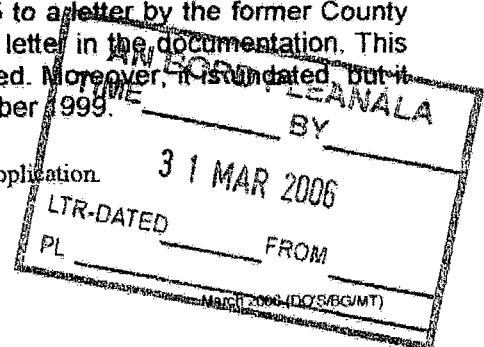
The developer's submission to an Bord Pleanála contains significant new information. Ironically, a substantial amount of this material relates to issues that were raised by the County Council's two Requests for Further Information but which the developer failed to respond to. In most cases, the information submitted relates directly to the reasons given by the County Council in refusing the application. Hence that material will be considered later in this report under the relevant subject headings. However, Section 1 of the developer's submission to the Board contains some wholly new material, a proportion of which is worthy of comment.

What is apparent from Section 1 of Monpower's submission to an Bord Pleanála is that the developer appears to placing significantly more emphasis on the potential of the use of bio-mass fuels at the proposed Killycarran incinerator. Aside from the on-going issue as to whether poultry litter and spent mushroom compost truly fall within the term "biomass", the developer makes mention of the use of wood waste or biomass-derived crops such as willow as being envisaged to be a feedstock. In this context, a sawmill taking waste wood is described on page 3 of the submission. Likewise, the next page of the submission refers to the two UK plants (see page 4), albeit that neither of these take spent mushroom compost at all, being confined to processing poultry litter. Similarly, the second paragraph on page 5 makes mention of willow and short rotation crops that could be produced locally.

In contrast to Monpower's submission to An Bord Pleanála, the original planning application, accompanying EIS and responses to Requests for Further Information did not make clear that wood waste combustion was to be a major feedstock for the proposed development. It was presented only as a long term proposal to supplement the two major fuel sources, spent mushroom compost and poultry litter. Hence these documents submitted by the developer concentrate virtually exclusively on poultry litter and mushroom compost as feedstocks. Accordingly, very little information has been presented to the planning authority about this material, including sources, composition and contamination levels, impacts, emissions, quality control, traffic flows, affects on ash composition, and so on. As virtually no information has been presented on this new fuel source, little assessment work has been done on this aspect of the project. Finally, it has also observed that this new emphasis on wood waste combustion is not reflected in the application to the EPA for a waste licence. Instead, the waste fuel mix specified in the licence application is consistent with the material submitted to the planning authority prior to this appeal².

Within this discussion, the developer refers on pages 4/5 to a letter by the former County Manager, Mr J O Gavin and also presents a copy of this letter in the documentation. This letter was not included in the material previously submitted. Moreover, it is undated, but it appears to have been faxed – the date of faxing is 1 October 1999.

² See for example Table G.1 in Attachment G.1 to the waste licence application.



That date is clearly well before planning permission was submitted for this development in 2003. Given the structural change that has occurred in the mushroom and poultry industries since then, it is doubtful as to whether a letter dated 1999 can pertain to the situation in Monaghan which arises in 2006.

2.1. Roads Issues: Physical Upgrading (Grounds 1 and 2 of Planning Refusal)

An Bord Pleanála should be aware of the very poor quality of the local roads leading up to the proposed location for this incinerator. The result is that Monaghan County Council as planning authority has significant concerns about traffic impacts and road safety issues.

While the initial volumes of the EIS contained very little specific information on the road improvement works necessary to facilitate access to this proposed plant, the material submitted by the developer in May 2005 presented significantly more detailed material. Of note were a series of drawings which indicated where road upgrading was envisaged to need to take place.

Monpower's submission to An Bord Pleanála provides little useful additional information and fails to address the reasons for refusal of permission for the application. Issues of concern include the highly conservative traffic predictions. Moreover, a serious traffic hazard is foreseen by the developer's proposals not to widen two key bridges. In other instances, major gaps in the developer's proposals for road junction improvements remain. A fuller discussion of these issues can be found in the Fehily Timoney report dated January 2006 (pages 10-12). All these matters lead to the first two reasons for the refusal of this planning application.

It also has to be observed that little useful additional information has been provided in the sections of developer's submission to an Bord Pleanála which are intended to respond to the first two grounds for the refusal of this application. Indeed, some of the material submitted seems to suggest that existence of the Killycarran facility will actually cause a reduction in traffic (see page 12 and 14 of the developer's submission). It can only be surmised that this rather bizarre statement arises for the reason that HGV traffic will be taken off other roads, but concentrated on the local roads leading to the proposed site. Whether this provides a net benefit to the community of County Monaghan seems to be a rather moot point.

A second – and even stranger – statistic is given on page 12 of the developer's submission. This concerns the waste tonnage being moved and – presumably – vehicle trip numbers (see the second paragraph in Section 1.1 on page 12). This purports to indicate that the total tonnage of spent mushroom compost passing to the proposed incinerator will be reduced from 198,000 tonnes to 50,000 tonnes. It is also asserted that HGV numbers will drop from 17,650 trucks to 12,500.

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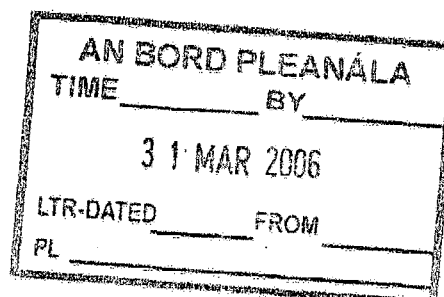
Besides the matter of how this change has come about³ – a matter which the developer does not clearly explain - what seems particularly odd about these figures is the respective ratio of tonnage to truck numbers.

For example, it is suggested that the 198,000 tonnes of waste mushroom compost will involve 17,650 truck movements, giving a ratio of about 11 tonnes per vehicle; whereas the second ratio indicates 50,000 tonnes being accounted for by 12,500 trucks: a ratio of 4 tonnes per vehicle. This seems to make very little sense. Moreover, these figures only relate to spent mushroom compost; there are no equivalent figures for poultry litter.

The developer also states in the submission (p13) that "Monopower Ltd are committed to providing the necessary finance for the road upgrading works". On page 18 the following statement is made "it is not clear why the cost of the proposed road upgrading is of interest to Monaghan County Council". In these respects, it is obvious as to why it is necessary to ensure that the developer has made adequate provision for road improvement costs. Indeed, the County Council is concerned that there seem to be major uncertainties relating to the amounts necessary to achieve this objective. For example, uncertainty remains that the developer has made any provision for the cost of land acquisition. Finally, there is even less certainty that affected land owners will consent to sell their land for road widening purposes.

2.2. Conclusions: Roads Widening

The developer's submission does not provide any information of significance which addresses the County Council's concerns about local road improvements. The improvements proposed will not render the road network suitable for the level of traffic expected to be associated with this Killycarran development. As they stand, these proposals would seem to interfere with the safety and free-flow of local traffic and hence would endanger public safety.



³ The revised waste quantities set out in the developer's submission to an Bord Pleanála also seem to be wholly at odds to what the developer has forwarded to the EPA in respect of the waste licence application. Table G.1 in Attachment G.1 to that application indicates that the quantities of waste to be burnt will be 198,000 tonnes of spent mushroom compost and 155,000 tonnes of poultry litter.

2.3. Roads Upgrading: EIS Issues (Ground 3 of Planning Refusal)

Pages 19 et seq of the developer's submission to an Bord Pleanála contain significant new information on the environmental effects of the improvements envisaged for the local road network. As was pointed out in the report by Fehily Timoney of January 2006 (see Section 3.2(d)), the omission of any assessment of the environmental impacts of road widening seemed to call into question the completeness of the EIS.

This was also the reason why the earlier notices issued by the County Council requested that this information was to be submitted. As is set down in the EPA's guidance document, Guidelines on the Information to be contained in Environmental Impact Statements, it is vital that environmental impacts associated with secondary developments are fully covered in an EIS.

While the additional material contained in this part of the developer's submission to an Bord Pleanála plugs a significant gap in the comprehensiveness of the EIS, two significant aspects are not fully documented. Firstly, the section that is headed "Community" – which looks at the effects of the road widening on the local community – does not address the issue of land-take at all. In other words, what is not made clear is whether negative impacts will arise on local landowners due to the widening envisaged.

Secondly, neither the text and associated drawings submitted by the developer in May 2005 nor the lengthier road widening impact appraisal submitted to an Bord Pleanála sets out location-specific mitigation measures. For example, although the submission contains a hedgerow survey, the issue of hedgerow replacement is dealt with in two short paragraphs which are headed "mitigation" on page 31 of that document. The second of these paragraphs is the most pertinent:

"A shrub and tree border should be planted along the sections of the road that are widened. Firstly, any planting should be linked to the existing hedgerows to fill any gaps created by road widening. Secondly, suitable vegetation species should be planted that represent hedgerow species in the local area."

This paragraph constitutes only a very general statement of what is intended. The use of the verb "should" throughout the above-quoted text does not seem to imply any firm commitment from the developer that these mitigation measures will actually take place.

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2.4. Conclusions: Roads and EIS Issues

Road improvement works is one of the two secondary impacts associated with the Killycarran proposal. Despite information being requested by the County Council's notices, an outstanding issue that remained at the time of the County Council's decision on this planning application concerned the near-total absence of information on the nature of the environmental impacts relating to the road improvement works.

In respect of this omission, the material contained in the submission by the developer to an Bord Pleanála provides significant additional information on the nature of the environment that will be subject to the road improvement works. However, the effects on local landowners are not covered and the language used in the submission does not indicate any form of firm commitment by the developer on the mitigation of identified impacts.

2.5. Air Emissions (Ground 4 of Planning Refusal)

On page 10 of the submission to an Bord Pleanála, the developer states that uncertainty arose as to whether a waste licence or IPC licence applied to this facility when the application was lodged in 2003. This issue is expanded upon on pages 38 et seq of that document, in the context of a discussion about which of two sets of alternative EU-prescribed stack emission limits should apply.

The debate about the correct regulatory control regime for stack emissions has dogged this application since it was submitted. The issue about the stack emission limits arises because there are two quite separate and quite different control regimes that could potentially apply to a facility that utilises combustion processes to generate electricity. Provided that it is sufficiently large, if a plant is to use only "normal" fuels, such as coal, gas oil and so on, it is subject to the air emission limits set down in EU Directive on Large Combustion Plant (2001/80).

However, if the plant centres on the combustion of waste, it will usually fall within the more stringent limits set down in the EU Directive on Waste Incineration (Directive 2000/76: commonly known as "WID").

In the County Council's notice of 6 August 2003 the developer was requested to clarify whether the emissions expected from the Killycarran development complied with WID. In response, the developer explicitly declined to do so. Instead, the developer suggested that the Killycarran development was subject to certain statutory exclusions that dis-applied WID. The second notice from the County Council made quite clear that serious doubt arose about whether these exclusions applied. Indeed, the developer was urged to consider obtaining legal advice on this matter. As a response, the developer reiterated that the statutory exclusions pertained and that WID did not apply. Later on in 2005 the developer wrote to the EPA asking which EU limits applied, as the developer acknowledges in the submission to an Bord Pleanála, the EPA's response confirmed that the much more stringent limits contained in WID applied.

That the more stringent limits contained in WID applied to this proposed plant was apparent to the County Council's consultants in 2003. Despite the developer's protests on page 38 of the submission to an Bord Pleanála that the emission limit values in WID did not become transposed into Irish law until 3 July 2003 (becoming embraced by SI 275 of 2003), the Directive itself was published on 28 December 2000 in the Official Journal of the European Communities. Moreover it specified that member states had to implement its requirements by 28 December 2002, a number of months prior to the submission of the Killycarran planning application.

Moreover, it is a well-recognised principle of EU law that, despite a member state failing to transpose an item of EU legislation into national law by the date specified, state bodies – including Monaghan County Council – must follow the relevant requirements anyway (this is the so-called “direct effect” principle).

This debate affects one of the most fundamental issues relating to the EIS which accompanied this planning application. In the EIS, the developer purports to show that unacceptable air emissions from the plant are mitigated by a combination of the technology used, the stack height and natural processes such as atmospheric dilution. These effects were subject to scientific modelling in order to demonstrate that no significant fall-out will occur within the vicinity of the plant. Moreover, this modelling process was also used to derive the configuration of the stack, with it being determined that a height of 50 m was necessary (confirmed by the penultimate paragraph of page 39 of the developer's submission). In other words, the modelling was used to determine the required height of the most visually significant element of this plant.

Key to all of this analysis are assumptions about the emission performance of the plant and its abatement equipment. These are based on the legal emission limits to be applied at a plant of this nature. However, as the EIS and the supplementary information provided by the developer clearly show, all of this material is founded on emission limit values that relate to conventional power stations. For example, in Section 5.4.2 of the additional information forwarded to the County Council in May 2005 the developer states that “Dispersion modelling was conducted based on concentrations presented in Table 5.5 ...”.

That table sets down the much laxer limits which relate to conventionally-fuelled power stations. The modelling exercise did not reflect the alternative legal limits that relate to combustion processes that use waste materials. As noted, the relevant emission limits set by the EU are much more stringent in respect of facility where waste is to be burnt.

Table 2 makes a comparison between the emission limits which apply to conventional power stations and those that apply to waste activities. It can be seen that the emission limits relating to waste incinerators – which are contained in paragraph (a) of Annex V in the Directive on Waste Incineration – are much stricter than those which pertain to power stations. For example the sulphur dioxide limit is 50 mg/Nm³, rather than 300 mg/Nm³; hydrogen chloride limit is 10 mg/Nm³ rather than 35 mg/Nm³, and so on. As the developer has persisted in founding the atmospheric emission assessment of the Killycarran proposal on the much laxer levels, the whole conceptual basis for air emission modelling in this EIS seems to be fundamentally flawed. This problem also makes it very difficult for the developer to be in a position to justify why a 50m stack is needed for adequate atmospheric dispersion or why a less visually obtrusive stack height might be appropriate.

It also has to be observed that the material submitted to the planning authority on expected emission levels seems markedly different to the emission information contained in the application to the EPA for a waste licence. For example, in both the Non-Technical Summary (Table A1-1 “Predicted Air Emission Details”) and in Table E.1(iii) (“Main Emissions to the Atmosphere”) emission levels for particulates and nitrogen oxides are quoted. These not only exceed the limits set down in ~~WID~~ but also are greater than those specified in the Large Combustion Plant Directive.

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Having said that, it also has to be observed that without the developer providing reference levels for oxygen concentrations in the exhaust gas associated with these emissions, it is very difficult to assess this matter in any meaningful way. For example, Annex VI of WID contains a methodology for normalising these figures, but without the developer providing any indication of oxygen concentrations, the degree of dilution cannot be estimated.

Table 2: Comparison between emission limits set by the EU Large Combustion Plant (LCP) and Waste Incineration (WID) Directives

Parameter	Max Conc. mg/Nm ³ LCP Directive	Max Conc. mg/Nm ³ WID Directive
Nitrogen Oxides-as NO ₂	400	200
Sulphur Dioxide-SO ₂	300	50
Particulates	20	10
Hydrogen Chloride-HCl	35	10
Carbon Monoxide-CO	200	-
Dioxins and Furans-PCDD and PCDF	0.1*	0.1*
Organic Substances-as total C	30	10

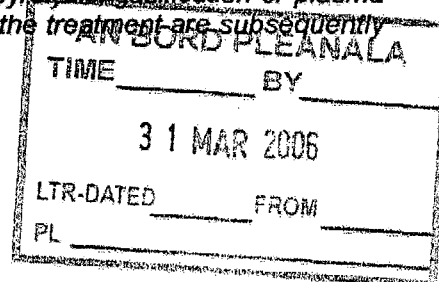
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Besides the serious concerns about the applicability of the air emission modelling carried out for the Killycarran project, one further issue arises from the developer's submission to an Bord Pleanála. Table 1 above is the same table as used in the report by Fehily Timoney dated January 2006 (see page 14 of that document). In the submission to an Bord Pleanála, the developer disputes the use of the figures in the final column of the table (see page 39 of the developer's submission), claiming that they are misleading.

The assertion by the developer that the limits used in Table 2 are misleading seems to be founded on a further misunderstanding of EU environmental legislation. What is significant here is that, while Monopower Ltd appears to finally accept that the Killycarran plant now falls within WID, the developer is now under the impression that the facility constitutes a "co-incineration plant" rather than an incinerator. This distinction is not just a semantic one, as differing provisions in WID apply to these two types of plant.

In the Directive on Waste Incineration, these two terms are defined as follows (see Article 3):

"Incineration plant means any stationary or mobile technical unit and equipment dedicated to the thermal treatment of waste with or without recovery of the combustion heat generated. This includes the incineration by oxidation of waste as well as other thermal treatment processes such as pyrolysis, gasification or plasma processes insofar as the substances resulting from the treatment are subsequently incinerated."



"Co-incineration plant" means any stationary or mobile plant whose main purpose is the generation of energy or production of material products and:

- which uses wastes as a regular or additional fuel, or
- in which waste is thermally treated for the purpose of disposal."

If co-incineration takes place in such a way that the main purpose of the plant is not the generation of energy or production of material products but rather the thermal treatment of waste, the plant shall be regarded as an incineration plant."

What seems to have been omitted from the developers' consideration of these definitions is the fact that the whole purpose of the definition of a co-incineration plant relates to a facility which uses waste as a supplementary fuel. In other words, the term refers to a facility that will burn not only waste but also conventional fuels such as coal.

In this context, what also seems to have passed unnoticed is the significance of two key phrases in the definition of a co-incineration plant set down above. The first refers to a co-incineration plant being a facility "whose *main purpose is the generation of energy ...*" (see line 1/2); with the second comprising the entirety of the final paragraph of the definition: "If co-incineration takes place in such a way that the *main purpose of the plant is not the generation of energy or production of material products but rather the thermal treatment of waste, the plant shall be regarded as an incineration plant.*" [Author's emphasis added].

The two references to the "main purpose" of a co-incineration plant need to be considered in respect of the Killycarran development. Despite the title given by the developer for the development and the other references to electricity generation, it would seem that the "main purpose" of this facility is to act as a disposal route for the highly problematic poultry litter and spent mushroom compost. This seems clear from the EIS and the other planning documentation (including the introduction to the developer's submission to an Bord Pleanála). From this material it seems readily easy to conclude that, in respect of WID, this plant constitutes an incinerator and not a co-incineration facility.

Moreover, the phraseology used in WID can be helpfully interpreted using two important European Court of Justice cases, Commission v Luxembourg (Case C-458/00) and Commission v Germany (Case C-228/00). These cases differentiated the circumstances where a facility using waste as a fuel was classifiable as a disposal process such as incinerator or as a recovery process. The European Court stated that a key issue in making such a distinction revolved around an analysis of the purpose of the plant. Put simply, without the waste input, would the facility exist? Hence it was determined in Commission v Germany that a cement kiln that accepted waste was clearly a recovery process. Using the above-mentioned test, if the waste input was shut off, the manufacture of cement would continue using conventional fuel.

By contrast, the European Court held that if a plant was specifically established to dispose of waste – even where significant energy recovery was envisaged – it was classed as a waste disposal process. Again, the distinction revolved around the fundamental purpose of the plant. The result was that, in Commission v Luxembourg it was held that an incinerator with significant electricity generation capacity was a disposal process.

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The reason why these cases are cited is that the methodology contained within them can be used to readily demonstrate which part of WID embraces the Killycarran proposal. The fundamental purpose of the plant is immediately identifiable via a consideration of the waste inputs. The key issue is this: if the spent poultry litter and mushroom compost waste inputs into Killycarran were somehow curtailed, is it envisaged by the developer that the proposed site would continue to generate electricity via the combustion of conventional fuels? It is absolutely clear from the content of the planning application that the developer's answer to this question would be in the negative.

Accordingly, it follows that this development is classifiable within WID as an "incineration plant", rather than a "co-incineration plant". This also means that the developer's criticism on page 39 of its submission that one of the Fehily Timoney reports is "misleading" is quite incorrect.

2.6. Air Emissions: Conclusion

It remains the position of Monaghan County Council that the treatment of the atmospheric emission aspects in the EIS for the Killycarran development continues to be based on incorrect emission limit values. As the wrong emission limit values have been used, there is no certainty that the atmospheric discharge modelling carried out in the EIS is correct. As it is also based on the results of this modelling, there is also no certainty that the stack height for this development has been calculated properly. These issues all relate to what are considered to be "main effects" of this project in respect of the legislation governing the content and validity of an EIS.

These uncertainties and deficiencies meant that the County Council considered that it has little choice but to refuse the grant of permission for reasons to do with the need to protect public health. In respect of the material contained in the developer's submission to an Bord Pleanála, the analysis above indicates that no new information has been submitted which affects this position.

2.7. Wastewater/Surface Water: Effects & Flooding (Ground 5 of Planning Refusal)

A further major concern about this project arises from the developer's proposed solution for the disposal of plant wastewaters and surface water run-off, which is to a surface water ditch in close proximity to the site. Besides the very limited dimensions of this receiving medium, the documentation submitted with the EIS shows that existing flows in this ditch can be extremely low, with the ditch being dry in the summer. Accordingly, surface water discharges from the roofs and paved areas of the proposed plant will cause significant additional flows, which will be compounded by discharges from the day-to-day operation of the plant itself.

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The analysis by Fehily Timoney concluded that discharges from the development to this ditch fell within the Planning and Development Regulations' term of "a main effect" of the development. Hence full and complete information on the nature and mitigation of this aspect was considered to be essential: not only as part of any decision on the acceptability of the development on land-use planning grounds but also to ensure that the EIS had statutory validity. Hence both notices from the planning authority sought clarification and additional information on this aspect of the Killycarran project.

2.8. The Nature of the Wastewater/Surface Water Treatment Plants

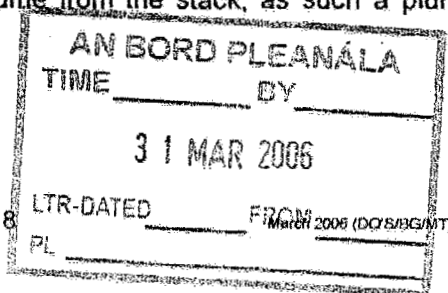
The developer's submission to an Bord Pleanála contains additional information on the treatment of waste waters from the plant (pages 41 et seq). While some of the materials submitted are quite hard to understand, it seems that a reverse osmosis plant is envisaged as providing treatment prior to the use of water within the plant. In respect of the discharge of the waste water into the ditch on the edge of the site, page 44 of the submission refers – very sketchily – to a sedimentation and neutralisation plant using acids or alkalis. What are not specified in the submission are the emission limit standards to be achieved by this unit prior to surface water discharge.

In addition, new information is given about other elements of this surface water discharge plant. For example, the text at the end of page 44 of the developer's submission indicates that 60m³ and 10m³ tanks will be used, while information on page 47 suggests that a 300 m³ storage basin "could" be developed at the site.

Exemplifying the type of problem this planning authority has faced since the original planning application was submitted, the developer indicates that this "could" take the form of an open lagoon or might entail an underground tank. Which option is desired is not clear, nor is it clear whether this is or is not additional to what has been portrayed previously on the plant layout drawings.

2.9. Wastewater Discharges from the Plant

In conjunction with the text and the Table on page 44 of the developer's submission to an Bord Pleanála, it would seem that the principal discharge source from the operation of this proposed incinerator will be condensate from the fuel drying process. While the submission seems to indicate that a substantial amount of excess water needs to be removed from the fuel feedstocks, it is then indicated – but in rather vague terms – that this water will be used in elsewhere in the process. How this is to be achieved is not that clear. But custom-and-practice with plants of this nature would seem to suggest that it cannot be evaporated and emitted as a steam plume from the stack, as such a plume would have a significant visual impact.



Moreover, even in the developer's submission to an Bord Pleanála, there remains significant uncertainty as to the volumetric quantity of the plant waste water discharges. That this is the case will be apparent from the language and phraseology used in pages 43-44 of the submission. Moreover, the data presented seems to be quite different to that presented previously, where a 4.8 m³ per hour discharge rate was given. By contrast, the submission refers to a discharge of between 0.4 to 1.5 m³/h. Why the more conservative numbers contained in the submission are now thought to apply is not justified in any substantial way in the submission.

Moreover, there seems also to be a major inconsistency on how the range for the condensate volume figures in the developer's submission is arrived at. While the table on page 44 indicates that the main waste water discharge source volume will be 0.4 to 1.5 m³/h, the second paragraph on that page indicates that this is derived from a quite different ratio of mushroom compost to poultry litter than that presented heretofore. That paragraph indicates that the plant will be taking only 50,000 tonnes of mushroom compost and 200,000 tonnes of poultry litter. This is not only inconsistent with the total tonnage envisaged to be accepted by the facility as set down in the original planning application and EIS – about 350,000 tonnes – but also is markedly different from the breakdown of that figure in those documents and in the material submitted by the developer subsequently. For example, up to now, it had seemed that a maximum of 198,000 tonnes of spent mushroom compost and 155,000 tonnes of poultry litter were to be accepted. These figures appear confirmed from the material submitted to the planning authority in May 2005 (see, for example, Section 2.1 on Page 10 of the revised non-technical summary). Why there has been such a marked change in these volumes in the developer's submission is not explained or justified.

In addition, if the amounts of poultry litter and mushroom compost are those which are set down in the EIS and original planning application, the text of the second paragraph on page 44 of the developer's submission would seem to imply that waste water discharges of a greater magnitude will occur. This is because the 0.4 to 1.5 m³/h condensate discharge figure is derived from the quite different ratio of mushroom compost to poultry litter set down in the developer's submission to an Bord Pleanála.

2.10. The Environmental Effect of the Discharge

One of the elements contained in Ground 5 of the County Council's notice of refusal to grant planning permission relates to concerns about the environmental effects of the surface water discharge.

Material in respect of flood-related issues is set down on page 47 of the developer's submission to an Bord Pleanála (this aspect discussed in the next section). However, no further information has been submitted to address Monaghan County Council's other concerns about the developer's lack of analysis of the environmental effects of the surface water discharge (see pages 15-17 and 22 of the Fehily Timoney Report dated January 2006). Accordingly, the County Council's position in relation to this aspect of the refusal to grant planning permission remains.

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2.11. Flooding

In the report by Fehily Timoney dated January 2006, a detailed calculation was presented on surface water run-off from the proposed plant (see Section 3.6.2). The amount of water likely to be discharged to the ditch close to this proposed incinerator was considered to be significantly under-estimated by the developer. It was also concluded that, even with present flow levels, flooding may occur downstream in extreme rainfall conditions.

Page 47 of the developer's submission to an Bord Pleanála sets down a calculation of water flows. Rather than address what is said in the Fehily Timoney report of January 2006, an entirely separate and free-standing calculation is used. There is no reference to the Fehily Timoney material, no suggestion that it is incorrect and no explanation why the figure and conclusion given on page 47 of the submission is so markedly different. In the absence of any of the above-mentioned material, it remains the County Council's position that concerns about downstream flooding still arise.

2.12. Conclusion: Surface Water

Unfortunately, the developer's submission does not clarify many of the issues raised in the report by Fehily Timoney of 6 January. It also fails to shed any further light on the environmental impacts of the surface water discharge. Indeed, the material relating to process water flows that is contained in the developer's submission is confusing and seems to contradict, but without any explanation, statements made earlier in the EIS and in response to the County Council's notices.

Despite the County Council's notice requiring that a "full and adequate assessment of this discharge" be completed by the applicant, the report by Fehily Timoney of January 2006 concluded that the material submitted was inadequate. As there is no obvious new information in the developer's submission on the environmental effects of the plant discharges, there appears to be no change in the position. Similarly, as there has been no attempt to engage in any debate about the detailed calculations which form the basis of Fehily Timoney's conclusions about the flooding issue, the County Council's concerns remain. These are that, by failing to clearly demonstrate appropriate mitigation measures in relation to surface water impacts, the Killycarran development would seriously damage the amenities of property neighbouring this facility.

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2.13. Surface Water: EIS Issues (Ground 6 of Planning Refusal)

As set down in Section 3.6 of the report by Fehily Timoney of January 2006, the surface water discharge from the Killycarran plant is a "main effect" in relation to the legislation governing an EIS. Accordingly, it is a matter that must be presented comprehensively, with the environmental effects fully assessed and, where required, clear mitigation measures specified.

As has been described above, major concerns remain about the exact nature of process water discharges, how they are to be treated, surface water control, flooding and other environmental effects. These issues have not been addressed clearly and comprehensively in the EIS submitted with the application, in the responses to the two notices from the County Council or in the developer's submission to an Bord Pleanála. Accordingly, it remains the County Council's position that this planning application should be rejected on the grounds that the relevant material is not sufficient to satisfy the statutory requirements on EIS content as set down in the Planning and Development Regulations 2001.

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