30 March 2026

Mr. Dáire Littleton Caden,
Executive Officer,
An Coimisiun Pleanála,
64 Marlborough Street,
Dublin 1
D01 V902

Re: Drimoleague Concrete Works Ltd.
Ummera Gravel Pit, Ummera, Macroom, County Cork
Application for Substitute Consent
Case Number: ABP-308036-20

Dear Mr. Littleton Caden,

I refer to your letter of 01 October 2025, see attached at Appendix I, in which additional information is requested to enable An Coimisiún Pleanála (the Commission) to determine the above-referenced live application which was submitted to the Commission (the then An Bord Pleanála) in August 2020. The Commission's request relates to Exception Circumstances, Appropriate Assessment and the Water Framework Directive. The specific requests are set out below.

1. Exceptional Circumstances: *An Coimisiún Pleanála has reconsidered its position, as set out in the letter to you dated 19th July 2024, in relation to the matter of Exceptional Circumstances. You are therefore requested to address the matter of Exceptional Circumstances and to furnish to An Coimisiún Pleanála such information as you consider material for the purposes of An Coimisiún satisfying itself that Exceptional Circumstances exist that would justify a grant of substitute consent*.

RESPONSE

The Commission will note that a response to its correspondence of 19 July 2024 was submitted on 15 August 2024. DCWL's response of August 2024 set out its position with respect to Exceptional Circumstances in relation to the changing legislation landscape. It included a Statement of Exceptional Circumstances which was originally submitted to the Commission in August 2021 in response to its request of 09 July 2021 – attached for convenience as Appendix 2.

The amendments to Section 177K of the legislation set out the information to which the Commission shall have regard when considering whether exceptional circumstances exist. These matters are set out below with DCWL's position on same:

a. *Whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive*.

The purpose and objectives of the EIA directive and procedure is to ensure environmental protection and transparency of the decision-making process. It ensures that environmental concerns are fully assessed and considered and it allows active public engagement in the process. The purpose and objectives of the Habitats directive is to protect a suite of flora and fauna species and the habitats they rely upon. It aims to prevent further decline / disappearance, and to maintain or restore to a favourable conservation status these species and habitat types.

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As noted in previous submissions relating to exceptional circumstances, DCWL took over the operation of an existing gravel pit. The pit has operated continuously since the 1940's, proof of which has already been submitted to the Commission and also acknowledged by the Council's senior executive engineer. DCWL engaged with the Section 261 process of the Planning & Development Act and the Ummera Gravel Pit was duly registered in 2006. It was also assessed by Cork County Council in accordance with S261A in 2012.

The Council mis-applied provisions of S261 and S261A putting DCWL in this predicament in error. The Council originally sought '*to modify and add conditions relating to the area covered by the permission granted under Ref. No. 76/375 and to require a planning application and submission of an Environmental Impact Statement on the balance of the total quarry area*'. This is an acknowledgement that the gravel pit has pre-1963 authorisation – i.e., apply for Continuance of Use under S261(7) which is a provision restricted to pre-1963 sites. The misuse of planning reference number 76/375 is discussed below on bullet point 1(b). Having failed to comply with statutory obligations for advertisement and notification, the Council's only option available was to impose conditions and it should have done so using S261(6)(a)(i).

The regularisation of the Ummera Gravel Pit will not circumvent the aims and objectives of the EIA or AA directives. Environmental assessment has been carried out, which included public engagement. Appropriate Assessment has also been carried out as requested by the Commission as has the Section 261 and S261A processes as discussed above. The gravel pit is operating under the conditions of S261.

b. *Whether the applicant had or could reasonably have had a belief that the development was not unauthorised*.

DCWL has worked at the Ummera Gravel Pit since the mid-1970's with the knowledge that it was a pre-1963 development, quarrying activities having taken place at the lands since the 1940's. It leased, operated, secured planning permission for site plant & infrastructure (planning number 78/1365 refers), and eventually purchased the property in good faith with that understanding. The fact that the Council granted permission for the processing plant and infrastructure at the existing pit reinforced DCWL belief that the site had an underlying authorisation, i.e. bonafide pre-1963 authorisation.

In the Supreme Court case of Waterford County Council and J.A. Woods (1999) the extent of a pre-1963 quarry was determined to be that which a reasonable person would expect it to extend to on that date (01 October 1964). At Ummera, one continuous deposit was worked, contained within the same folio, which crossed no physical or man-made barriers. When the Council challenged the planning status of the operations in 2003, DCWL engaged Fehily Timoney & Company (FTC) to investigate the planning status of the quarry. FTC concluded that the Supreme Court definition applied to the deposit being worked at Ummera and this was conveyed to the Council by letter dated 15 March 2004 and in circumstances where no further action was then taken by the Council it was taken that the position presented by DCWL had been accepted. As the Council didn't challenge that position, DCWL continued working the pit with the understanding that it did so with pre-1963 status.

DCWL applied to register Ummera Gravel Pit by application dated 09 September 2004 as a pre-1963 development. A handwritten report was prepared by Mr. O' Sullivan, Cork County Council's S.E.E and it was noted by Mr. O' Sullivan that DCWL had asserted that the site preceded 01 October 1964 and that there had been extraction at the site since the 1940's. The Council indicated its intention to register the pit as such – see press notice dated 18 March 2005. DCWL challenged the Council's approach as it failed to comply with statutory obligations for advertisement and notification pursuant to Section 261 of the Planning and Development Act 2000. Having failed these obligations, the Council's only option available was to impose conditions. Unfortunately, the Council misapplied the application of conditions in that instead of using S261(6)(a)(i) (pre-1963 site), it used S261(6)(a)(ii) (using the limited and unused permission (76/375)

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on a small area of the landholding). This manifested itself in S261A in that it formed the basis for the Council to assert the majority of the site was outside the area subject to the S261 conditions and, therefore, post 64 and unauthorised.

c. *Whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired*.

The ability to carry out environmental impact assessments, an appropriate assessment and to provide for public participation in these assessments has not been substantially impaired. The environmental impact assessments were carried out in 2019 and 2020 and a remedial EIS prepared and submitted. Site notices were erected and public notices were placed in the local newspaper as required under the legislation. On foot of these, the Commission received observations from the public.

It is also noted that the gravel pit has been in operation since the 1940's and by the same operator since the mid-1970's. There have been no material changes in the operation of the gravel pit since DCWL installed the washing plant in the late 1970s. This is a small-scale operation, with one operator running the quarry operations – extracting gravel, loading the washing plant, stockpiling product, loading HGVs and record-keeping. There has been no change in these operations since before the EIA and AA legislation was transposed into Irish law.

d. *The actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development*.

The Ummera Gravel Pit is a small-scale routine-type operation. No significant effects on the environment were identified during the assessment conducted for the remedial EIS or EIS for the further development of the gravel pit. The gravel pit uses a closed-loop recirculation system for the wash-water, which is an industry standard design measure. The gravel pit has no credible hydrological connection to any Natura 2000 site. The remedial Appropriate Assessment Screening, as requested by the Commission, found that '*on the basis of objective scientific information, that the development did not give rise to, and was not likely to have given rise to, significant effects on any Natura 2000 site, either individually or in combination with other plans or projects'*. See bullet point No. 2 below.

e. *The extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated*.

The gravel pit is not located within or adjacent to any European site and there are no pathways linking the quarry with any such sites. As such remedial measures are not required to avoid / reduce / mitigate adverse effects on the integrity of any European site. The gravel pit incorporates industry standard design in the management of wash-water with the use of a closed-circuit recirculation system. No significant effects are identified on the various aspects of the environment assessed. Remediation measures already implemented and recommendations for further avoidance / reduction / mitigation are set out in the remedial EIS submitted with the substitute consent application. Many of these measures have been implemented in the intervening period since the application was submitted.

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f. *Whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development*.

There are two planning applications associated with the gravel pit. One was lodged on 11 February 1976 by the Lordan Brothers. The Council granted permission, subject to 7 No. conditions, on 08 April 1978. The development was not commenced and the permission lapsed on 07 April 1981. The area to which this application related was 3.162 acres (2.49ha). Although this application had lapsed, the Council relied on it to impose conditions, in error, on the gravel pit using S261(6)(a)(ii), instead of permission 78/1365 within the pre-1963 area. DCWL worked the gravel pit from north to south and didn't reach the area subject of the Lordan's application until the 1990's. As noted, in bullet point 1(b) above, it was DCWL's belief that the site (including the area subject of the Lordan's lapsed permission) had an underlying pre-1963 authorisation.

The other was lodged in 1978 by Murnane & O'Shea Ltd (an affiliate company of DCWL) for the erection of a gravel plant in an existing pit. This permission was granted subject to 3 No. conditions. The first two relate to restoration after cessation of quarrying activities, so will be complied with in due course. The third condition relates to prevention of pollution of the adjacent watercourse. DCWL has undertaken several measures during the operation of the gravel pit to prevent pollution of the adjacent stream. These are discussed in the remedial EIS submitted with the application. It includes measures such as relocating the settlement ponds, use of closed-loop recirculation system for wash water, enlarging the settlement ponds on a number of occasions, addition of settlement ponds, monitoring of the surface water bodies, etc.

The gravel pit is operating under the conditions of S261.

g. *Such other matters as the Board considers relevant*.

Without prejudice to bullet point 1(b) above, the Planning Authority on the 23 August 2012 directed DCWL to apply for substitute consent as opposed to DCWL obtaining leave of the Court to apply for substitute consent and this further amounts to exceptional circumstances which ABP should have regard to.

2. Appropriate Assessment: *In accordance with the requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U and 177V of the Planning and Development Act 2000 (as amended), you are requested to submit a Remedial Appropriate Assessment Screening Report, and if deemed necessary, a Remedial Natura Impact Assessment, so as to enable An Coimisiún Pleanála, as competent authority, to determine that the subject development alone or in combination with other plans and projects did not result in likely significant effects on any designated site(s)*.

RESPONSE

The Remedial Appropriate Assessment Screening Report is attached. The report was prepared by JKW Environmental Ltd. The findings of the assessment are that '*on the basis of objective scientific information, that the development did not give rise to, and was not likely to have given rise to, significant effects on any Natura 2000 site, either individually or in combination with other plans or projects'*. It is also noted that Cork County Council's Section 261A assessment in 2012 also concluded that Appropriate Assessment was not required as it was not located within or adjacent to any European site, and further that there were no pathways linking the quarry with any such site.

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3. Water Framework Directive: *In order to determine that the subject development did not result in a risk of deterioration on any water body (rivers, lakes, groundwaters, transitional and coastal) either qualitatively or quantitatively or on a temporary or permanent basis or otherwise jeopardise any water body in reaching its WFD objectives, you are requested to translate any findings in respect of the aquatic environment into a conclusion on the historical effects on the WFD status on the relevant water body(s). This may be by way of a separate report or addendum to one of the other assessments. The historical assessment of the WFD status should examine back to December 2003 when the WFD was transposed by the European Communities (Water Policy) Regulations 2003. into Irish legislation*.

RESPONSE

The Historical Water Framework Directive Compliance Assessment Report is attached. It is concluded in that report that the Ummera Gravel Pit has not put any waterbody at risk of not reaching its WFD objectives.

Yours sincerely,

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Dan Keohane

Encl.

Appendices:

1. An Coimisiún Pleanála letter of 01 October 2025.
2. Statement of Exceptional Circumstances – August 2021.
3. Remedial Appropriate Assessment Screening Report.
4. Historical Water Framework Directive Compliance Assessment Report.

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APPENDIX I
An Bord Pleanála letter of 01 October 2025

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APPENDIX 2
Statement of Exceptional Circumstances – August 2021.

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APPENDIX 3
Remedial Appropriate Assessment Screening Report

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APPENDIX 4
Historical Water Framework Directive Compliance Assessment Report

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