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From: Alice Hayes <alice@carrollhayesconsulting.ie>
Sent: Monday 29 June 2026 11:17
To: Appeals2
Subject: Submission / Observation — FD04.324278 — Murray Brothers Tarmacadam Ltd, Ardcahan Quarry, Dunmanway, Co. Cork
Attachments: Hayes Observation - FD04.324278 - Ardcahan Quarry .pdf

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Dear Sir / Madam,

I enclose a submission and observation by Alice Hayes and Patrick Hayes on the following application.

Application: Future Development (Section 37L)
Reference: FD04.324278 (ACP-324278-26)
Applicant: Murray Brothers Tarmacadam Ltd
Development: Quarrying at Ardcahan, Dunmanway, Co. Cork

The observation is made in writing and within the statutory period for submissions. It addresses both this future-development application and the concurrent substitute consent application; a corresponding copy is being lodged separately under reference SU04.324277.

We would be grateful for written acknowledgement of receipt and confirmation of the reference assigned to our submission.

Yours faithfully,
Alice Hayes and Patrick Hayes
'Teach Tobar', Knockduff,
Dunmanway, Co. Cork,
P47 PX73.
087 948 4150

Mr Patrick Hayes & Ms Alice Hayes
'Teach Tobar', Knockduff,
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The Secretary
An Coimisiún Pleanála
64 Marlborough Street
Dublin 1
D01 V902

29 June 2026

RE: Submission / Observation — Application for Substitute Consent (SU04.324277) and concurrent Future-Development Application under Section 37L (FD04.324278), Murray Brothers Tarmacadam Ltd., Ardcahan Quarry, Dunmanway, Co. Cork

Application references: SU04.324277 / ACP-324277-26 (Substitute Consent) and FD04.324278 / ACP-324278-26 (Future Development, Section 37L)

Site notice date: 6 May 2026

Applicant: Murray Brothers Tarmacadam Ltd.

Applicant's Agent: McCutcheon Halley, 6 Joyce House, Barrack Square, Ballincollig, Co. Cork

Dear Sir / Madam,

We make the following submission and observations on the above application for substitute consent in respect of quarrying development at Ardcahan, Dunmanway, Co. Cork, made under Section 177E of the Planning and Development Act 2000 (as amended) (the "PDA"). For the reasons below, we respectfully request that An Coimisiún Pleanála ("the Coimisiún") refuse the application; by operation of Section 37L of the PDA, the concurrent future-development application must then also be refused.

We are aware that a separate observation has been lodged by Mr Norman Berry and Mrs Patricia Berry of Knockduff. We adopt and support the grounds advanced in that observation, and the grounds below should be read as adopting and developing them, together with additional grounds particular to us as observers. Where our grounds overlap with the Berrys', they are advanced cumulatively.

An observation has also been lodged by Mr Timothy Baker and Mrs Kathleen Baker of Knockduff (LDG-088360-26), addressing both the substitute consent and the concurrent future-development application. That observation places on the file contemporaneous documentation concerning the macadam plant and the site access, including records from 1998, on which we draw at Ground 5 below.

1. Standing and Interest

We are residents in the immediate vicinity of the quarry and are directly affected by the development. We rely on Section 177E(2) of the PDA, Article 6 of Directive 2011/92/EU (the "EIA Directive") and Article 6(3) of Council Directive 92/43/EEC (the "Habitats Directive") to participate in this procedure.

We have a long and direct involvement in this site. We were appellants (through Declan Brassil and Company) in appeal PL88.245174, and we (with Peter Sweetman) were the applicants in the judicial review proceedings (2016 No. 499 JR; Hayes v An Bord Pleanála [2018] IEHC 338, *Ní Raifeartaigh J*, 17 May 2018) that quashed the An Bord Pleanála permission granted under that reference. The matters we raised then, namely the unauthorised status of the quarry, the absence of lawful EIA and Appropriate Assessment, and the impermissible treatment of an extension of an unauthorised quarry as a “greenfield” development, remain directly relevant and are developed below. The Council’s 2011 refusal of permission for quarrying at Ardcahan (Reg. Ref. 11/00317) was notified to Patrick Hayes as a party. Our engagement with the site has been continuous, from that 2011 application through the appeal and judicial review to the present submission.

2. Summary of Grounds of Objection

We object on the following principal grounds, each developed in Section 4:

- Ground 1. Exceptional circumstances under Section 177K are not made out and fall to be decided afresh at this stage: the 2020 grant of leave was made under a regime the Supreme Court condemned (*An Taisce* [2020] IESC 39), cannot be relied upon, and must be disregarded by the Coimisiún under Section 177K(1A)(b); and nothing material has since changed.
- Ground 2. The Appropriate Assessment under Article 6(3) cannot lawfully be concluded in favour of the development: the applicant’s own rNIS concedes a likely contribution to adverse effects on the Bandon River SAC and that the data cannot quantify it, so the required certainty cannot be met.
- Ground 3. The ability to carry out a meaningful EIA and AA, and to provide for public participation, has been substantially impaired (Section 177K(1J)(c)): the rEIAR rests on an admitted Schedule 6 project-description deficiency and on post-hoc reconstruction.
- Ground 4. The development has permanently destroyed two Annex I habitats, Old Sessile Oak Woods (91A0) and European Dry Heath, which the applicant’s own rEIAR concedes are irreplaceable; the proposed remediation cannot mitigate that loss.
- Ground 5. The application excludes the operationally integrated macadam plant from the project assessed, amounting to impermissible project-splitting for EIA and AA purposes.
- Ground 6. The use of polyaluminium chloride (PAC) in on-site water management presents a named, plausible and unquantified toxicity pathway to qualifying species of the SAC, including Freshwater Pearl Mussel.
- Ground 7. Cumulative and in-combination effects, with the macadam plant, the other Bandon Sub-Catchment quarries, forestry and agriculture, and the concurrent Section 37L application, are not adequately assessed.
- Ground 8. The applicant’s asserted belief in the authorised status of the quarry is unsustainable, given the s.261(10) determination, the 2011 refusal, the enforcement notice (SKBE/13/7), and its own prior position that substitute consent was not the appropriate route.
- Ground 9. Quarry expansion after 26 February 1997, the date from which Appropriate Assessment was required, as confirmed by the High Court (2016 No. 499 JR, para 44), was undertaken without Appropriate Assessment.

- Ground 10. The quarry is an active breeding site for the Annex I Peregrine Falcon and the red-listed Kestrel (both recorded breeding in 2024); the constraint this places on the remediation and the Section 37L works is unassessed, and the applicant's surveys did not cover 2024.
- Ground 11. The rEIAR contains material inconsistencies, as to ownership, tonnage, extraction area, blasting frequency, assessment period and statutory citation, that undermine its reliability.
- Ground 12. By operation of Section 37L, refusal of substitute consent requires refusal of the concurrent future-development application.

3. Legal Framework

Section 177K(1A)(a) of the PDA provides that the Coimisiún shall not grant substitute consent unless satisfied that exceptional circumstances exist. Section 177K(1J) sets out the matters to be regarded, including: (a) whether regularisation would circumvent the purpose of the EIA or Habitats Directive; (b) the applicant's belief as to unauthorised status; (c) whether the ability to carry out EIA or AA and to provide for public participation has been substantially impaired; (d) the actual or likely significant effects on the environment or on the integrity of a European site; (e) the extent to which significant effects can be remediated; and (f) whether the applicant has complied with previous permissions or carried out unauthorised development. Section 177K(1A)(b) further directs that, in deciding whether to grant substitute consent, the Coimisiún shall not be bound by, take account of, or otherwise have regard to any earlier decision as to the existence of exceptional circumstances.

The Appropriate Assessment threshold under Article 6(3) is settled by Case C-127/02 Waddenzee, Case C-258/11 Sweetman, Case C-323/17 People Over Wind and Case C-461/17 Holohan: consent may be granted only where the competent authority has made certain, beyond reasonable scientific doubt, that the project will not adversely affect the integrity of the European site. Conjecture, generalised reassurance or reliance on natural regeneration cannot meet that standard. Substitute consent does not displace it: *An Taisce v An Bord Pleanála* [2020] IESC 39 and Case C-215/06 *Commission v Ireland* confirm that retrospective EIA is exceptional and narrowly construed.

4. Grounds of Objection in Detail

Ground 1 — Exceptional Circumstances Are Not Made Out

The 2022 reform of Part XA removed the former two-stage procedure, under which exceptional circumstances were screened at a separate leave-to-apply stage, and provides instead that a substitute consent application is made directly and that exceptional circumstances fall to be determined by the Coimisiún as part of the substitute consent decision itself, under Section 177K. The removal of the leave gateway did not lower the substantive threshold; it raised the stage at which it is decided. Exceptional circumstances therefore fall to be assessed afresh, in full, at this stage, on the totality of the now-available evidence, with no gateway finding for the applicant to rely upon.

That is not merely the general position; it is the specific outcome of these observers' own litigation. Leave to apply for substitute consent was refused in 2018 (ABP-302158-18). A later grant of leave (ABP-305621-19, BD-005246-20, 25 February 2020) was made against the recommendation of the Board's own Senior Planning Inspector (17 February 2020), and under

the leave regime that the Supreme Court had already, on 1 July 2020, held to be inconsistent with the EIA Directive (*An Taisce v An Bord Pleanála* [2020] IESC 39). These observers challenged that grant by judicial review (2020 No. 418 JR), among the consolidated proceedings determined by the High Court (Simons J) in *Friends of the Irish Environment v An Bord Pleanála* [2021] IEHC 234 (23 April 2021). It was common case in those proceedings, accepted by An Bord Pleanála and the State, that such stage-one leave decisions “cannot be relied upon for any legal purpose” (para 17), and the Court made orders of certiorari quashing the materially identical decisions in the related proceedings. The present applicants’ proceedings were adjourned generally, with liberty to re-enter, for the single reason that the developer had not then confirmed whether it would pursue a substitute consent application (paras 11 and 36). It now has, in this application; the 2020 grant therefore escaped quashing only on the footing of the very application now before the Coimisiún.

The applicant cannot, in any event, rely on the 2020 leave finding, because the Coimisiún is required by statute to disregard it. Section 177K(1A)(b) provides that, in deciding whether to grant substitute consent, the Coimisiún shall not “be bound by”, “take account of”, or “otherwise have regard to” any earlier decision as to the existence of exceptional circumstances. The question falls to be decided afresh, at this stage, with the public participation that the Supreme Court in *An Taisce* held the earlier regime had unlawfully denied, and which this observation now supplies. The 2020 findings would not assist the applicant even if they could be relied upon: they were preliminary findings at a low-threshold gateway stage, made on material predating the present rNIS and rEIAR, and heavily hedged, the Board finding only that the ability to carry out EIA and AA “has not been substantially impaired”, and that adverse effects on the integrity of a European site, “if any”, “could likely be substantially remediated” (BD-005246-20).

Each of those findings has since been contradicted by the applicant’s own documents. The finding that the ability to assess “has not been substantially impaired” cannot stand against the rEIAR’s admission that the information required under Schedule 6 could not be compiled and that the 1990 to 1999 quantities were estimated “in the absence of records” (Ground 3); and the finding that effects “could likely be substantially remediated” cannot stand against the rEIAR’s own concession, at §14.5.1, that the lost Annex I habitats are “irreplaceable” and recoverable, if at all, only over a 60 to 100 year horizon (Ground 4). A hedged gateway finding, made on superseded material and against the inspector’s advice, cannot survive the applicant’s own subsequent concessions. The exceptional-circumstances question is accordingly wholly at large and falls to be decided by the Coimisiún de novo, on the current evidence, and not by adoption of the Board’s earlier approach.

On the current evidence it is not made out. Nothing material has changed: this remains the same unauthorised quarry, with the macadam plant still carved out (Ground 5), the discharges to the Bandon River SAC still unmonitored (Ground 3), the Annex I habitats still permanently lost (Ground 4), and, on the applicant’s own rNIS, a contribution to Freshwater Pearl Mussel mortality still conceded and still unquantified (Ground 2). The applicant’s own 2023 and 2024 Freshwater Pearl Mussel surveys, which post-date the 2020 findings, disclose the loss of the recorded mussels at Ardcahan Bridge and the absence of juvenile recruitment, so the position is worse, not better, than when leave was last considered. To grant substitute consent in these circumstances would regularise by procedure what could not be achieved on the merits, and would circumvent the purpose and objectives of the EIA and Habitats Directives within the meaning of Section 177K(1J)(a); retrospective regularisation must remain the exception and

must not afford an opportunity to circumvent the rules of EU law (Case C-215/06 Commission v Ireland; Case C-196/16 Comune di Corridonia). Exceptional circumstances are not established.

Ground 2 — Appropriate Assessment Cannot Lawfully Be Concluded in Favour of the Development

The rNIS confirms a direct hydrological pathway from the site to the Bandon River SAC via the boundary stream, which enters the SAC approximately 350–375m downstream, and screens into Stage 2 the Freshwater Pearl Mussel (*Margaritifera margaritifera*), Brook Lamprey, the Annex I floating river-vegetation habitat (3260) and the priority Annex I Alluvial Forests (91E0).

The rNIS defeats itself. At §7.1.2.2 the applicant's own consultants concede that the quarry "likely did contribute to a certain extent" to the cumulative silt load, with "a slight to moderate effect, with medium to long-term negative effects on the quality of juvenile pearl mussel habitat within the Bandon River SAC", while accepting that the contribution cannot be confirmed or quantified. Yet at §8 the rNIS concludes that the development did not adversely affect the integrity of the SAC "with no reasonable scientific doubt", expressly reciting the Waddenzee/Sweetman standard that an Appropriate Assessment must remove all reasonable scientific doubt and "cannot have lacunae". On its own terms the assessment (i) concedes an adverse effect on juvenile FWPM habitat it cannot quantify, (ii) leaves the residual aluminium (PAC) pathway unquantified (Ground 6), and (iii) screens the Annex I alluvial forest (91E0) into Stage 2 but never concludes upon it. A report that recites the no-lacunae standard while leaving a screened-in feature unassessed and a conceded adverse effect unquantified cannot satisfy that standard, and the Coimisiún is required to refuse consent.

The applicant's evidential position has only worsened over time. In the (now quashed) appeal PL88.245174 the Board adopted a finding that the development "will not adversely affect the integrity" of the SAC. Earlier, in the s.261A determination (Cork County Council Order No. 10,012, 22 August 2012), the Council's own Heritage Officer (Sharon Casey, 25 July 2012) screened the quarry against the SAC and found "a high potential that activities at this quarry could give rise to impacts" on the Freshwater Pearl Mussel, that significant impacts "cannot be screened out", and that "all post 01/07/1999 activities at this site are subject to Appropriate Assessment", none having "previously been completed". The applicant nonetheless screened the SAC out at Stage 1 in 2014. The sequence is therefore: the competent authority requires AA and finds impacts that cannot be ruled out (2012); the applicant screens the SAC out (2014); and the applicant now concedes a likely but unquantified adverse contribution while still concluding no adverse effect (2026). At no stage has the standard been met.

The benchmark is fixed by the NPWS site-specific Conservation Objectives for the Bandon River SAC (002171, 6 August 2019). The objective for the Freshwater Pearl Mussel, the floating river vegetation (3260) and the priority Alluvial Forest (91E0) is in each case to restore favourable condition, all three being currently unfavourable. The FWPM targets require water quality at Water Framework Directive high status (applied by the Conservation Objectives to the whole of the SAC) and a substratum with "no artificially elevated levels of fine sediment", increased fine sediment being expressly identified as "contributing to the unfavourable status of freshwater pearl mussel in the Bandon system". Two features are decisive against the rNIS. First, the Conservation Objectives record the population as "unsustainable owing to lack of survival of juvenile mussels", recruitment being the attribute it "consistently fails", so the rNIS's conceded contribution to juvenile mortality strikes the precise attribute on which the

population's survival depends. Second, they direct (Note 3) that an attribute cannot be assessed "in isolation from the others"; the rNIS's method, conceding a localised contribution to one attribute while concluding no adverse effect overall, is the very compartmentalisation those objectives forbid.

That the receiving water is degraded is confirmed by the State's own agencies. The quarry drains, via the boundary stream, to the Bandon mainstem waterbody Bandon_020 (EPA Catchments IE_SW_20B020200), from which the Bandon flows into the SAC reach a short distance downstream. The EPA classifies Bandon_020 as "At risk" under the Water Framework Directive, and its ecological status has fallen from Good (in the assessment cycles to 2018) to Moderate (in 2016 to 2021 and, on the most recent 2019 to 2024 assessment, again Moderate), with high confidence. The monitoring station that defines that status, RS20B020150, is located at Ardcahan Bridge: at the quarry itself, at the location of the boundary-stream outfall and of the bridge repair works discussed below. The Caha tributary (Caha_020), which the EPA records as an inputting waterbody to Bandon_020 immediately upstream, is itself only of Moderate status, so the reach receiving the quarry's discharge already carries a degraded upstream input. The rigour the receiving environment demands is illustrated by the competent authority's own consultant: in July 2023 Triturus Environmental, for Cork County Council, could not screen out minor six-to-ten-week repair works at Ardcahan Bridge (no instream works, no excavation) and required a Stage 2 Appropriate Assessment, precisely because of the location's Freshwater Pearl Mussel sensitivity. If those works could not be screened out, twenty-four years of unauthorised quarrying discharging to the same reach cannot be found to have no adverse effect without the most rigorous assessment.

The contradiction also runs across the applicant's own documents: while the rNIS (§7.1.2.2) concedes a likely adverse contribution to the Freshwater Pearl Mussel, the rEIAR (§14.5) states there are no significant adverse effects on designated sites. The applicant's EIAR and NIS for the same development thus reach opposite conclusions on the same question.

The pollution-control infrastructure relied on is, finally, neither demonstrated nor robust. Under the bundled Section 37L application the proposed surface-water attenuation is the existing Ponds I and J in the south-western corner, the lowest ground on the site, discharging via the boundary stream to the SAC at Ardcahan Bridge under a penstock that, "in the absence of a power supply", is operated manually (s.37L NIS §3.4.7.1). The appendix presented as the "Main Attenuation Pond & Discharge Design" (s.37L EIAR Vol III, Appendix 7.11) contains no dimensioned pond design, storage volume or discharge rate; its substance is manufacturer's product literature for an off-the-shelf penstock and interceptor. And the applicant's own EIAR concedes, at §7.3.12, OPW-registered historical flooding (February 1991 and February 2007) "in the Ardcahan Bridge area" within one kilometre of the site, contradicting its blanket assurance that the site has no "history of flooding". A manually operated, brochure-specified pond system discharging to a flood-prone reach at the very Freshwater Pearl Mussel location cannot establish, beyond reasonable scientific doubt, that the discharge will not adversely affect the integrity of the SAC.

Finally, the two Natura Impact Statements lodged for the same lands cannot be reconciled. The substitute consent rNIS concedes a likely adverse contribution to the Freshwater Pearl Mussel (§7.1.2.2); the concurrent Section 37L NIS, by the same consultants, contains no such concession and concludes no adverse effect "with no reasonable scientific doubt" (§8), the more emphatic assurance attaching to the larger prospective operation (175,000–225,000

tonnes per annum). The rNIS concession is itself reasonable scientific doubt fatal to the certainty asserted in the Section 37L NIS.

Ground 3 — Substantial Impairment of EIA and AA (Section 177K(1J)(c))

The development took place over approximately 24 years (February 1990 to October 2014). The rEIAR and rNIS rely substantially on historical aerial photography, post-hoc surveys and reconstructed assumptions because contemporaneous monitoring data is, for the most part, absent. The applicant expressly concedes this at Chapter 1, recording that “difficulties were encountered compiling the information prescribed under Schedule 6 of the Regulations as it relates to the Project Description”, and that “in the absence of records, estimates were made regarding the quantities of material extracted between 1990 and 1999.” The specific impairments include:

- no contemporaneous surface-water quality monitoring of the boundary stream or the River Bandon, and no contemporaneous monitoring of residual aluminium from PAC use, over the relevant period;
- no contemporaneous biodiversity baseline surveys before or during the destruction of the Annex I habitats (91A0 and European Dry Heath);
- operational noise not meaningfully modelled (Chapter 10), the applicant stating the calculations “would not provide any meaningful insight”; yet the same consultants modelled operational noise (Table 8.9) and held a historic blast record (Table 8.10) for the forward-looking 2014 EIS, showing such assessment is not, in principle, impossible;
- blasting vibration monitoring data exists only for 2009 to 2014, five of the twenty-four years, and the rEIAR (Chapter 10) concedes that the monitoring locations “do not represent the nearest noise sensitive location to the blast area in each case” and that “it cannot be determined if other receptors located closer to the blast site were exposed to peak noise levels greater than those permitted”;
- the central silt-control mitigation, the settlement-pond system, did not exist for much of the relevant period (the rNIS records it as functional from around 2000), yet approximately 1,000,000 tonnes were extracted between 1990 and 1999, before it existed, and that decade is folded into the same no-adverse-effect conclusion;
- the rEIAR imports the 2014 noise survey from the EIS for the quashed permission PL88.245174, notwithstanding the Board’s direction (Note 2, BD-003064-19) that the EIS and NIS for that application “are also not relevant to any such application for” substitute consent.

The absence of contemporaneous data is not, moreover, a neutral evidential difficulty. The applicant was subject to noise limits under the planning conditions governing the macadam plant (Reg. Ref. W/98/294); to record-keeping and annual-reporting obligations under the Air Pollution Act 1987 licence held by the applicant (to the extent that licence attaches to this site, monitoring records being retained for ten years and an annual summary report submitted); and, by agreement of 8 May 1998, undertook to carry out noise and ongoing stream-pollution monitoring and to furnish the results to Cork County Council. No such monitoring records have been produced with this application, nor, so far as appears, were any before the planning inspectors in 2011, 2016, 2018 or 2020. The data on which a lawful retrospective assessment depends is therefore absent not because it could not have existed, but because the monitoring the applicant was required to carry out and to report was, on the available material, not carried

out. A developer cannot rely on the absence of records it was obliged to keep, and to furnish to the planning authority, to discharge the burden that rests on it at this stage (a matter also relevant under Ground 8).

In Case C-215/06 *Commission v Ireland* the CJEU held that retrospective EIA may only be available in narrowly exceptional circumstances and cannot undermine the effectiveness of the EIA Directive. The standard against which impairment falls to be measured is that identified by the High Court in our proceedings (2016 No. 499 JR, paras 79 and 83): applying *Comune di Corridonia*, the baseline is the date the assessment should originally have been carried out, here 1 February 1990 (EIA) and 26 February 1997 (AA), and a regularising assessment confined to future impact is unlawful. An assessment resting on post-hoc estimates, and on a silt-control system that post-dated much of the relevant period, does not meet that standard.

Ground 4 — Irreversible Loss of Annex I Habitats

The quarrying has permanently destroyed two protected habitats on the site, and the applicant accepts the loss cannot be undone. At §14.5.1 the applicant's own ecologists state that "historical quarrying has led to the permanent loss of nationally important Annex I habitats, specifically Old Sessile Oak Woods with *Ilex* and *Blechnum* (91A0) and European Dry Heath, which are irreplaceable." The Remediation Plan offers protection of remaining areas and planting that, on the applicant's own admission, is "expected to mature into a mixed broadleaved woodland of notable local importance within 60–100 years." A 60–100 year horizon cannot rationally constitute remediation of a significant adverse effect within Section 177K(1J)(e): under the mitigation hierarchy, avoidance and minimisation were never undertaken, restoration is impossible (as the applicant accepts), and offsetting on that horizon does not meet the principle of no net loss.

The loss is independently corroborated. The Inspector in PL88.245174 observed that the appeal site "was previously a woodland, known as Clashnagallagh Wood"; and the Schedule 1 map to the Council's Section 154 enforcement notice (SKBE/13/7, OS Map 108/01) hatches the unauthorised quarry area in red and is captioned "Clashnagallagh Wood", the file's pre-1990 Ordnance Survey register-map extract depicting that ground as established woodland before extraction. The cartographic record confirms the worked area was wooded, corroborating the applicant's own concession of the permanent loss of the 91A0 habitat.

Ground 5 — Impermissible Project-Splitting: Exclusion of the Integrated Macadam Plant

The red-line boundary excludes the macadam/asphalt plant, permitted by Cork County Council under P.A. Reg. Ref. W/98/294 (the appeal against which, *An Bord Pleanála* Ref. PL 04.106466, was withdrawn in May 1998), which is operationally integrated with the quarry: on the same landholding, sharing the same access road, the same hydrological pathway to the Bandon River SAC, the same workforce and the same operator, the quarry having supplied the plant. Assessing the quarry in isolation is impermissible project-splitting, contrary to Article 2(1) of the EIA Directive and the principles in Case C-72/95 *Kraaijeveld*, Case C-2/07 *Abraham* and Case C-275/09 *Brussels Hoofdstedelijk Gewest*, the last expressly noted by the High Court in our proceedings (2016 No. 499 JR, para 66), under which a project may not be subdivided so as to avoid assessment of its true effects. The unit of assessment under the EIA and Habitats Directives is the "project", a concept determined by functional integration, not the domestic label; the applicant's reliance on the section 2 definition of "quarry", as amended by S.I. No. 584 of 2011, regulation 3, which "does not include any place at which any

manufacturing process is carried on", cannot remove a functionally integrated plant from the project.

The applicant's own documents establish the integration it now denies. Its statutory site notice (6 May 2026) states that the site "shares an access with the adjacent macadam production plant" and that "the macadam production plant is not included within the substitute consent application", admitting both the shared access and the deliberate exclusion. The 2014 EIS recorded the single shared access and that the quarry supplied stone to the plant; and the applicant's 2014 Appropriate Assessment Screening Report identified the plant as the one significant existing development for in-combination purposes and recorded (§3.2.8) that surface water from the plant yard "is discharged into the adjoining unnamed tributary of the River Bandon (and associated SAC) at one location". Having itself linked the plant to the very SAC pathway on which Ground 2 turns, the applicant cannot now exclude it from the project assessed.

The rEIAR's stated rationale does not bear the weight placed on it. At §1.3 the 19.1-hectare application area is said to capture the extraction area and adjoining ancillary land, while approximately 5.9 hectares is excluded as "principally occupied by an existing macadam plant". But the manufacturing-process proviso in section 2 qualifies only the deemed inclusion of ancillary places, not the primary limb of the definition, an excavation for the getting of minerals, so worked quarry ground is not removed from the meaning of "quarry" merely because a plant stands on it; the applicant's own "principally" concedes the parcel is not exclusively plant; and the excluded 5.9 hectares exceeds the 5.2 hectares the applicant admits to having extracted (Site Layout 4597-03-SC). That the excluded ground is worked quarry is confirmed by the applicant's own 1998 plant-application drawing (P.D. Lane Associates, M-79-2, received 27 January 1998), which labels the southern ground "Existing Quarry Face" and records an "Existing Level of Quarry Floor — Av. 94.0 m O.D.". The exclusion cannot be reconciled with the application's temporal scope: the parcel was quarried within the 1990–2014 period, yet before the plant existed (permitted 2 April 1998; lands acquired 1999) no manufacturing process was carried on it. A remedial EIA must, under section 177F, address the effects that "have occurred"; excluding worked quarry ground leaves the effects on that ground unassessed.

The characterisation the applicant avoids was the competent authority's own. In refusing Reg. Ref. 11/00317 (13 July 2011) Cork County Council found the development to be an extension of an existing unauthorised quarry (Reason 1) requiring assessment "in combination with those of the existing adjoining quarry" (Reason 2); and its s.261A determination (Order No. 10,012, 22 August 2012) recorded that "EIA is required under Class 13 of Part 2, Schedule 5", the class for the extension of an existing development, not the "greenfield" Class 2. The carve-out is further contradicted within the rEIAR itself, which excludes the plant from the "quarry" (§1.3) yet assesses that same plant as a separate existing development for cumulative-effects purposes (§1.14, §14.4.6): a component cannot be both inside the assessment as a cumulative project and outside it as a non-quarry place.

A further element of unauthorised development is omitted altogether. The rEIAR's traffic chapter (Chapter 12, page 25) records HGV access "solely from the R587 with a prohibition of HGV's on the minor L4621 Hospital Road south of the site entrance location", and the same prohibition is restated in the Section 37L EIAR (Vol II, §12.4.1.3); yet the L4621 access has within recent years been widened to facilitate HGV turning, works for which, to the observers' knowledge, no permission was sought or granted and which are not included in this application.

The history of that access underscores the breach: the entrance was originally controlled by a bollard, required under the 1998 agreement precisely to prevent vehicles turning left onto the L4621, which stood for some years and was removed when the entrance was widened, since when large vehicles have been able to exit left onto the hospital road. The very control by which left turns onto the L4621 were prevented has thus been removed by the unauthorised works. That widening is itself unauthorised development, neither regularised here nor separately permitted, and is difficult to reconcile with the constrained access regime the applicant describes in both applications (this Ground; Ground 8).

There is, finally, a regulatory dimension to the exclusion. The macadam plant is the only part of the operation that ever held a planning permission, and with it the principal monitoring and reporting obligations that attached to this site: the noise conditions of W/98/294, any air emission licence held under the Air Pollution Act 1987, and the 1998 undertaking to monitor the boundary stream and furnish the results to Cork County Council. Whatever its stated rationale, the effect of excluding the plant is to place the one permitted, licensed and monitored component of the operation, and the clearest record of whether those obligations were met, outside the Coimisiún's assessment. The compliance inquiry under Section 177K(1J)(f) cannot be confined in that way; and the obligations so excluded are the very obligations to monitor the discharge to the boundary stream and the Bandon River SAC whose absence defeats the Appropriate Assessment (Grounds 2 and 3).

Ground 6 — Polyaluminium Chloride (PAC): A Named, Plausible and Unquantified Toxicity Pathway

The on-site water treatment used a chemical that is toxic to the river's protected mussels, and the quantity reaching the river over the relevant period was never measured. Section 7.1.2.3 of the rNIS discloses that PAC was used in the on-site water management process. The applicant's own report acknowledges that, in certain conditions, PAC residuals can cause fish mortality and can cause oxidative stress and increased mortality in mussels and snails, filter-feeders being more sensitive; and that toxicity varies with pH, hardness and dosage. Freshwater Pearl Mussel is a filter-feeding qualifying species of the SAC. No data quantifying residual aluminium in discharges to the boundary stream over 1990–2014 is provided. PAC is not a new issue: in PL88.245174 Cork County Council sought further information on "a quantification in relation to polyaluminium chloride added to the wash water". That the residual aluminium loading to the SAC remains unquantified a decade later is itself probative of substantial impairment of the AA, and confirms that adverse effects cannot be excluded beyond reasonable scientific doubt.

Ground 7 — Inadequate Cumulative and In-Combination Assessment

The quarry's effects must be assessed together with the other pressures on the same river, not on their own, and they have not been. Article 6(3) requires assessment of a project's effects "in combination with other plans or projects." The Freshwater Pearl Mussel (Draft) Bandon Sub-Basin Management Plan (NS2 Project / DEHLG, March 2009) identifies four quarries adjacent to pearl-mussel-bearing reaches of the Bandon and records quarry dust and effluent as a silt (and, in some cases, lime) pressure on the species (§4.4; Figure 4.11), and Cork County Council's 2012 s.261A screening identified Ardcahan as one of those four. The rNIS does not adequately assess the cumulative loading from those quarries, the integrated macadam plant, forestry and agricultural diffuse pollution; the carve-out of the plant (Ground 5) compounds this, removing the plant's silt and hydrocarbon loading from the project. The

applicant's own 2014 Appropriate Assessment Screening Report at least addressed the plant in-combination (§3.2.8), so the 2026 treatment has regressed even as the SAC's condition has deteriorated. The deficiency is the more striking because the EPA's Cycle 3 characterisation already records multiple significant pressures, including agriculture, forestry, hydromorphology and extractive industry (mines and quarries), acting together across this part of the Upper Bandon, including on the Caha_020 tributary that inputs to the receiving reach; the in-combination question is therefore not speculative.

The defect is compounded by the applicant's own Section 37L Natura Impact Statement, whose in-combination analysis (§6.2, §7.2) screens out unrelated permissions but does not assess the concurrent substitute consent application, notwithstanding its own record (§1.1) that the substitute consent lands are folded in "to accommodate ancillary quarrying activities associated with the Proposed Development". The applicant runs two concurrent applications, by the same operator, on the same landholding, draining to the same SAC, while assessing each in isolation. That is impermissible on either view: if the historic and prospective quarrying are one project, the division is itself unlawful project-splitting (Ground 5); if they are two projects, each was required to assess the other in-combination, which neither does.

Ground 8 — Applicant's Asserted Belief in Authorised Status Is Not Sustainable

The applicant's case under Section 177K(1J)(b) and (f) cannot be reconciled with the documented planning history:

- An Bord Pleanála itself recorded, in PL88.245174, that the quarry "has been deemed, by virtue of section 261(10), to comprise unauthorised development by reason of the failure to register under section 261", that an enforcement notice had been served, and that the planning authority was satisfied it had been complied with. The unauthorised status was known to the applicant.
- Reg. Ref. 11/00317 (refused 13 July 2011) informed the applicant that the quarry was an extension of an existing unauthorised quarry, that permission could not even be considered while it remained unauthorised, and that both an EIS and Appropriate Assessment were required.
- An enforcement notice (CCC Ref. SKBE/13/7) required cessation of quarrying, yet quarrying continued until October 2014; on 18 October 2013 the quarry manager confirmed to the Council that the quarry was operational with blasting planned for spring 2014 (Senior Planner's report, 4 November 2013), that is, after the s.261A determination and throughout the enforcement process.
- In PL88.245174 the applicant's own agent contended that substitute consent "was not appropriate"; the applicant now relies on the very route it then disclaimed.

Any quarrying carried out between July 2011 and October 2014 was undertaken with full knowledge that the quarry was unauthorised, so Section 177K(1J)(b) cannot operate in the applicant's favour for that period. The High Court recorded this chronology (2016 No. 499 JR, paras 6–9) and held, at para 84, that the past unauthorised development "remains unauthorised". The Board's leave finding that "the applicant has complied with a previous planning permission granted" can only refer to the tarmacadam-plant permission (W/98/294); compliance with the plant permission neither rehabilitates the unauthorised quarrying nor supports any belief that it was authorised.

Ground 9 — Quarry Expansion Post-1997 Without Appropriate Assessment

Once the Bandon River became a protected European site, any further expansion of the quarry required an Appropriate Assessment, and none was carried out. In ABP-302158-18 the Board identified the governing dates: 1 February 1990 (EIA) and 26 February 1997 (AA). The applicant's own extraction records and aerial-photography analysis (Volume II, Chapter 6) record continued expansion of the extraction area after 1997. All such expansion, given the direct hydrological pathway to the SAC, required Appropriate Assessment under Article 6(3); none was undertaken at the time. To grant substitute consent for such development would, in the words of Section 177K(1J)(a), circumvent the purpose of the Habitats Directive. The High Court confirmed these dates at para 44 of 2016 No. 499 JR.

This was the competent authority's own conclusion. In the s.261A review, Cork County Council determined (Senior Planner's report 8 August 2012, adopted in Order No. 10,012) that the quarry "involved development which would have required both mandatory EIA and Appropriate Assessment", and that "all post 01/07/1999 activities at this site are subject to Appropriate Assessment" with "no such assessment ... previously ... completed". The Council measured the expansion at approximately 2.7 ha (1995–2000), approximately 2.0 ha (2000–2005) and further to 2010, with the site at approximately 8.1 ha on 2005 aerial photography. The failure to assess that expansion is therefore established on the competent authority's own measured findings.

Ground 10 — Active Annex I Peregrine Falcon and Red-Listed Kestrel Breeding

Protected birds of prey breed in the quarry face, yet the applicant's own surveys missed the very year that breeding was recorded. The application documents (the NPWS/Development Applications Unit response at rEIAR Appendix 1.1, and the Bird Survey Report at Appendix 14.4) establish that the quarry is an active breeding site for the Annex I Peregrine Falcon: the NPWS Ranger recorded two Peregrine chicks in the 2024 breeding season, and the red-listed Common Kestrel breeding in a crevice of the quarry face in 2024. Two difficulties follow. First, the applicant's own Peregrine surveys were undertaken in 2023 and 2025, but not in 2024, the year breeding was recorded, so the assessment does not capture the established interest. Second, the rEIAR characterises the quarry faces as "created habitat" for Peregrine, yet the remediation works and the concurrent Section 37L development would disturb those very faces; the disturbance of an active Annex I breeding site and of a red-listed breeding species is unassessed, and the prohibitions on disturbance of protected birds and their nests are not addressed.

The applicant's own Section 37L documents confirm both the constraint and its omission. The Section 37L wash-plant drawing (Figure 3-2) and the landscape and restoration plan (2009_LA002) each impose a "50m Buffer Zone to all processing equipment to be observed during peregrine breeding season", accepting that the quarry supports active Peregrine breeding requiring operational mitigation. Yet the Section 37L NIS does not assess disturbance to the Peregrine at all: its disturbance screening (§4.2.4) addresses only otter and waterfowl and scopes the SAC out on the footing that its qualifying species are "entirely aquatic". The applicant cannot mitigate for a breeding interest in its drawings while omitting that interest from the disturbance assessment of the very works that would affect it.

Ground 11 — Material Inconsistencies Undermining the Reliability of the rEIAR

The rEIAR is internally inconsistent as to several of the most basic facts of the development, in a manner that undermines its reliability as the basis for a lawful retrospective EIA:

- Ownership / acquisition date: variously 1996 (PL88.245174), 1997 (Vol II, Ch. 6) and 1999 (Vol II, Ch. 1). The Council's enforcement file records that the quarry "was sold by Cork County Council in 1999 to Murray Bros. Tarmacadam Ltd", confirming 1999; the 1996 and 1997 dates are inconsistent with that record.
- Records availability: Chapter 1 estimates 1990–1999 quantities "in the absence of records", while Chapter 6 relies on "available quarry records from 1990 to 1995"; the two cannot both be correct.
- Blasting frequency: "4 to 6 blasts per annum" in the project description, but "bi-annually" in Chapters 6 and 7; the 2014 EIS likewise described blasting as "bi-annually" (§2.1.2) while its own blast record (Table 8.10) shows an irregular, non-bi-annual pattern.
- Extraction area: across the applicant's own successive descriptions the headline figure has been stated as 4.85 ha (2011), approximately 6 ha proposed and 8.9 ha quarried (2014), 5.67 ha (2019/2020 leave application) and 5.2 ha with variants in 2026; and within rEIAR Chapter 1 itself as 5.2 ha in the text (§1.3, §1.4) against 5.4 ha in the Figure 1-1 legend on the same page; Chapter 6 contains a further figure (approximately 5.94 ha), and an application area of approximately 15.2 ha against 19.1 ha elsewhere.
- Assessment period: the Cultural Heritage and Significant Interactions chapters assess "construction works within the SCA between 1994 and 2014", against the 1990 baseline used elsewhere, a four-year discrepancy in the discipline that records a significant adverse effect.
- Statutory citation: references to the "Planning and Development Act 2001" (no such Act) and the "Planning and Development Act 2024", not reflecting the regime governing this application.
- Macadam-plant permission reference: the official record (An Bord Pleanála Ref. PL 04.106466, 20 May 1998) confirms the Cork County Council reference for the adjacent plant as W/98/294. The applicant's public notices for both the substitute consent and the future-development application nonetheless cite it as 98/284, while the rEIAR cites 98/294; the applicant thus mis-cites its own permission in the very statutory notices by which the public is invited to participate.
- Public-notice site area: the two paired public notices describe the same quarry but state materially different overall site areas, approximately 19.1 ha in the substitute consent notice against approximately 10.4 ha in the future-development notice, a discrepancy left unexplained in the notices by which public participation is invited.
- Section 37L documents: the Section 37L NIS states (§1.3) "there are no new access roads / tracks or settlement ponds proposed", yet proposes (§3.4.7.1) a new north-western access and new discharge infrastructure; gives the catchment as 8.3 ha (§7.1.3.1) and approximately 8.5 ha (§3.4.7.1); and dates the quarry as "prior to October 1964" (§1.1) and "since pre-1963" (§1.3). The Section 37L EIAR adds a 10.4 ha application area (Vol II §1.3) and replicates the 8.3 ha (Appendix 7.10) versus 8.5 ha (Table 7.9) catchment discrepancy internally.

Individually and cumulatively, these inconsistencies show that the rEIAR does not present the clear, precise and reliable description of the development required to support a lawful EIA, and reinforce Ground 3.

Ground 12 — Section 37L: Refusal of Substitute Consent Requires Refusal of the Future-Development Application

Section 37L of the PDA (as amended by the Planning and Development, Maritime and Valuation (Amendment) Act 2022) provides that if substitute consent is refused, the linked future-development application must also be refused. The appropriate course is for the Coimisiún to refuse the substitute consent application on the merits, with the consequence that the future-development application falls; the Section 37L mechanism does not lower the bar for substitute consent. That substitute consent is backward-looking is confirmed by the Board's own characterisation in granting leave (BD-005246-20), that it "would regularise previous development and, save as regards the taking of remedial measures, would not allow for continuing or future development of the quarry", and by the High Court (Barrett J in *An Taisce v McTigue Quarries*, cited at paras 47–49 of 2016 No. 499 JR).

The applicant's own documents confirm the overlap between the two applications: the rEIAR (§1.1) records that the Section 37L lands are included to "accommodate ancillary quarry activities (aggregate processing, internal roads, settling ponds, stockpiling etc) associated with the proposed future extraction"; the Section 37L NIS (§1.1) records that the substitute-consent lands "are included ... to accommodate ancillary quarrying activities" and that the development "will supersede the previous permitted developments"; and the Section 37L EIAR (Vol II, §1.3) records that the ancillary area "substantially overlaps with the area of the aforementioned substitute consent application". Each application treats the other's lands as part of one continuous quarrying operation, which both reinforces the project-splitting objection (Ground 5) and confirms that the two applications stand or fall together. The applicant's treatment of aggregate processing as "ancillary quarry activities" for the Section 37L application is, moreover, difficult to reconcile with its exclusion of the macadam-plant parcel from the quarry for the substitute consent.

5. Specific Observations on the Application Documents

The grounds above are anchored in the application documents themselves. We note the following document-specific points that warrant separate emphasis:

- rNIS (Malone O'Regan, March 2026): the direct pathway (§4.1); the four qualifying features screened into Stage 2 (§6.3/Table 6-1); the conceded but unquantified contribution to juvenile FWPM mortality (§7.1.2.2); the PAC disclosure (§7.1.2.3); the alluvial forest (91E0) screened in but never concluded upon; and the §8 no-adverse-effect conclusion reciting the no-lacunae standard (Grounds 2 and 6).
- rEIAR Volume II (February 2026): the Schedule 6 project-description concession (Chapter 1); an inadequate "Do Nothing" / alternatives treatment for an unauthorised development (Chapter 4); the §14.5.1 irreplaceable-habitat concession (Ground 4); and the inconsistencies at Chapters 1, 6, 10, 14 and 15 (Ground 11), including the Cultural Heritage chapter's record of a significant, long-term adverse effect.
- rEIAR Volume III: Appendix 1.1 (NPWS/DAU response recommending a dedicated FWPM survey and recording 2024 Peregrine and Kestrel breeding, Ground 10). Appendix 14.2 (FWPM survey) records fourteen Freshwater Pearl Mussel bedded under Ardcahan Bridge in 2022, surveyed with a view to relocation, for which no licence appears to have followed, and their absence on inspection in September 2024, linked by the surveyor to the stream from the quarry; the same survey records an unexplained downstream increase (148 in 2023 to 1,008 in 2024) outside the normal margin of error.

The fate of the fourteen mussels, and whether any works affecting them proceeded without licence, should be put to the Coimisiún and the relevant authorities.

- Planning Statement (McCutcheon Halley, February 2026): the applicant's reliance on "pre-1963" / pre-1964 status does not assist it; the Board held (Note 1, BD-003064-19) that pre-1963 status "is not relevant, in the light of Section 261(10)", and the s.261A determination found a pre-1964 use to co-exist with an unauthorised, assessable extension requiring EIA and AA. The Statement's account of compliance is incomplete: it does not address the refusal of Reg. Ref. 11/00317, the quashing of PL88.245174, the refusal of leave in ABP-302158-18, or the withdrawal of the previous substitute consent application (ABP-313649-22).
- Section 37L application (Malone O'Regan NIS / McCutcheon Halley EIAR, April 2026): the bundled future-development application, addressed at Grounds 2, 5, 7, 10, 11 and 12. Two appendices listed in the Section 37L EIAR Volume III contents, Appendix 11.1 (Ardcahan Quarry Regeneration / S37L Plan) and Appendix 12.1 (Traffic Modelling Report), are absent from the report as lodged on the An Coimisiún Pleanála public file, the volume passing directly from Appendix 8.1 to Appendix 14.1. An EIAR which omits appendices listed in its own contents does not contain the information required by Article 5(1) and Annex IV of the EIA Directive, and the absence impairs the public-participation right under Article 6.

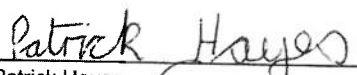
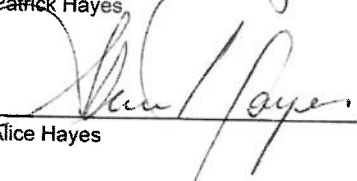
6. Conclusion and Relief Sought

For the reasons set out above, the application does not satisfy the threshold of exceptional circumstances under Section 177K(1A)(a) of the PDA; and, on the applicant's own evidence, the Appropriate Assessment cannot lawfully conclude that the development has not adversely affected, and does not continue to adversely affect, the integrity of the Bandon River SAC. To grant substitute consent in these circumstances would circumvent the purpose and objectives of the EIA and Habitats Directives.

We therefore respectfully request that An Coimisiún Pleanála refuse the application for substitute consent, with the consequence under Section 37L that the concurrent future-development application is also refused.

We confirm that this submission is made within the statutory submission period. We would be grateful for written acknowledgement of receipt and confirmation of the assigned case reference.

Yours faithfully,


Patrick Hayes

Alice Hayes