

Karen Byrne

From: Phoebe Duvall <Phoebe.Duvall@antaisce.org>
Sent: Tuesday 28 July 2026 16:48
To: Appeals2
Subject: Ref. 324277
Attachments: 20260728-ACP-324277.pdf

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A Chara,

Please find attached a submission from An Taisce in relation to Ref. 324277.

Best regards,

Phoebe Duvall

Senior Planning and Environmental Policy Officer
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An Taisce

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20260728-ACP-324277

An Coimisiún Pleanála,
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Dublin 1,
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Sent by email to: appeals@pleanala.ie

28th July 2026

Ref: 324277

App: Murray Brothers Tarmacadam Ltd

For: Application for Substitute Consent pursuant of Section 177E of the Planning and Development Act 2000 (as amended) consisting of the quarrying of rock that took place between February 1990 and October 2014, along with all associated site development works. The application is accompanied by a remedial Environmental Impact Assessment Report (rEIAR) and a remedial Natura Impact Statement (rNIS)

Site: Ardcahan, (townland), Dunmanway, Co. Cork.

A Chara,

Thank you for referring the above application for substitute consent to An Taisce for comment.

1. Preliminary Matter: Definition of Exceptional Circumstances

Section 177K(1J) of the Planning and Development Act 2000 (as amended) states the following with regard to defining exceptional circumstances:

"In considering whether exceptional circumstances exist the Board shall have regard to the following matters:

(a) whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;

(b) whether the applicant had or could reasonably have had a belief that the development was not 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

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Company Limited by Guarantee no. 12469 | Charity CHY4741 | Charity Regulator no. 20006358 | EU Transparency Register no. 473905437651-60

Directors: Stuart McCaul (Chair), Trish O'Connell (Vice Chair), Laura Segura Gutierrez (Hon Secretary), John Conroy (Treasurer)
Olivia Rogers, Rónán O'Brien, Finbarr Murray, Helen Shaw, Terri Morrissey, Sinead Mercier, Phil Doyle

Second, the definition in s.177K(1J) gives the Board exceptionally broad discretion to consider any issue it so chooses when determining whether or not exceptional circumstances exist (per s.177K(1J)(g) "*such other matters as the Board considers relevant*").

We would highlight that neither *An Taisce v An Bord Pleanála* (neutral citation [2020] IESC 39)² nor *Friends of the Irish Environment CLG v Minister for Communications, Climate Action and the Environment & Others* (neutral citation [2019] IEHC 646)² actually examined the adequacy of the definition of exceptional circumstances in s.177K(1J) in comparison with the CJEU's judgements in c-215/06, etc. The Supreme Court judgement in [2020] IESC 39 only compared the checks in the leave application process against the requirements of exceptional circumstances in s.177K(1J). Similarly, in [2019] IEHC 646, the High Court was comparing new regulations with the existing definition in the Act at the time.

We therefore submit that An Coimisiún Pleanála should seek a referral to the High Court on the proper definition of exceptional circumstances as laid out in s.177K(1J) of the Planning and Development Act 2000 (as amended) and its alignment with the standards of exceptionality set out by the CJEU in c-215/06 and others.

2. Remedial Environmental Impact Assessment and Impacts to Water

In the first instance, while we recognise the value in requiring the remediation of the subject site, which can only be mandated through a grant of substitute consent, this does not negate the need for a thorough and legally compliant rEIA and rAA.

As noted in the application documentation, there is a direct hydrological link between the subject site and the Bandon River SAC via a watercourse that bounds the subject site. This connection existed during the substitute consent period. Both the Bandon and its tributary in the area of the subject site, the Caha River, are classed by the EPA as moderate water quality status per Water Framework Directive (WFD) requirements and as at risk of not meeting the legal obligation to achieve and maintain at least good status by 2027. The subject site is also located in area of extreme groundwater vulnerability.

The rEIA identified the following as potential impacts of historic quarrying on the local aquatic environment: ammonia from blasting, silt and clay loading in watercourses, hydrocarbon spills or leaks, contaminated surface water runoff from hardstanding, and faecal coliforms from on-site facilities. It also states in section 7.2.3 that there were five discharge points from the site to the boundary stream that were used over the course of the substitute consent period. The rEIA then concludes that: "*Any of these impacts would have been temporary to short term with a longer term cumulative effect.*" However, we consider there to be a general lack of historic surface and groundwater monitoring data presented to support this conclusion. We recommend that further information is sought in this regard. We concur with the recommendations made by the Cork County Council Environment Officer (Air and Water) in their report's conclusion regarding additional information that should be sought from the applicant (page 37 of the PDF of the Planning Authority report, page 33 of the report itself).

While we recognise that historic data and records can be hard to find or non-existent, gaps in the information make conducting a legally compliant remedial assessment very difficult. It also makes it difficult to establish an adequate and thorough remediation regime. Where information is unavailable,

² https://www.courts.ie/acc/alfresco/1cca7ae8-4d3b-4529-8126-20158df62867/2019_IEHC_646_1.pdf/pdf#view=fitH

effective, with medium to long-term negative effects on the quality of juvenile pearl mussel habitat with in the Bandon River SAC'. However, in absence of surface water quality data, it is difficult to confirm those conclusions.

Similarly there is a lack of information supporting the conclusions that, for example,:

- the drainage/settlement ponds (such as ponds F,G,L) had negligible effects on water quality;
- blasting effects would have been damped by water browsers or intercepted by settlement ponds (are there records confirming the use of such mitigation?);
- hydrocarbon spills would not have occurred or would not have a water quality impact (are there records confirming the use of bunds for fuels, use of designated areas for refuelling?).

While we recognise that historic data and records can be hard to find or non-existent, the gaps in the information make conducting a legally compliant remedial Appropriate Assessment very difficult, if not impossible. It also makes it difficult to establish an adequate and thorough remediation regime.

We recommend that further information be sought by An Coimisiún. Where information is unavailable, this must be clearly noted and the limitations on the assessment discussed. Where assumptions, estimates or predictions are made, the reasoning behind them should be more clearly explained.

4. Cumulative Assessment and the Adjoining Tarmacadam Plant

The subject quarry supplied aggregate to the adjoining tarmacadam plant, and the rNIS confirms that the majority of the quarried material was used in this plant following its completion in 1999. While the plant is not included in the substitute consent area as it appears to be planning-compliant (we recommend An Coimisiún confirm this), it is correct that potential impacts arising from the adjoining tarmacadam plant have been assessed cumulatively with the historic quarrying given the clear and direct functional interdependence between the two. To not assess them cumulatively would constitute project splitting, which is not permissible.

Regarding potential cumulative siltation impacts on the River Bandon, the rNIS states the following section 6.2

Dry periods where erodible material had time to accumulate on the Site's surfaces, followed by heavy rainfall, had the potential to enter the boundary stream onsite. It is likely that several such runoff events occurred each year from this source. These are believed to have only minor and short-lived effects on most aspects of the receiving environment. Specifically, they are not expected to have lowered water quality, cause mortality or significant effects to habitats for fish (including salmonids), lamprey or FWPM.

However, these events could have previously contributed to the accumulation of silt in areas where FWPM may have occurred or could have potentially survived, particularly in slow-flow marginal zones. In these locations, while the physical habitat may appear suitable, the presence of silt could have reduced habitat quality below the threshold needed for survival.

The extent and severity of this historical potential effect are difficult to determine, as such silt deposits are likely to have been dispersed, and no records have been kept of sediment releases into the boundary stream or condition assessments of the stream. Any potential effect is considered to be localised and would have extended no more than a few hundred metres downstream of the quarry stream confluence due to the volume of water within the Bandon River SAC.

A third issue raised relates to the concurrent application for further development of the quarry under s.37L which is currently before An Coimisiún Pleanála. It is the Planning Authority's view that adequate and appropriate compensatory mitigation is required to be proposed and agreed in respect of the substitute consent application prior to any decision being made on the application for further development. Further habitats of high ecological value are proposed to be removed for which insufficient detail has been provided in relation to post works remediation. In addition, land proposed for further development of the quarry may be required to be incorporated into the remediation plan, together with proposals for active restoration of damaged habitats in this area, in order to achieve meaningful compensation for the extent of (at least) nationally important habitat which was removed from the site during the substitute consent period (between 1990 and 2014).

Please acknowledge this submission and advise us of any decision made.

Is mise le meas,

Phoebe Duvall
Senior Planning and Environmental Policy Officer
An Taisce – The National Trust for Ireland