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11 August 2026

Ms Cathy Carleton

Executive Officer

An Coimisiún Pleanála

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AN COIMISIÚN PLEANÁLA	
LDG-	_____
ACP-	_____
12 AUG 2026	
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Time: 9:15	By: Post

RE: Response under Section 131 of the Planning and Development Act 2000 (as amended) — Application for Substitute Consent, Murray Brothers Tarmacadam Ltd., Ardcahan Quarry, Dunmanway, Co. Cork

Case reference: ACP-324277-26

Section 131 notice dated: 21 July 2026

Response deadline: 17 August 2026

Dear Ms Carleton,

We refer to your Section 131 notice of 21 July 2026 in the above matter. We are grateful for the opportunity to make further observations in relation to the material lodged on the file since our submission of 22 May 2026, and set out our response below.

We have reviewed the following documents lodged on the case file:

- The observation of Mr Patrick Hayes and Ms Alice Hayes of 'Teach Tobar', Knockduff (29 June 2026), which runs to 15 pages and 12 grounds of objection with full legal citation and documentary reference;
- The observation of Mr Timothy Baker and Mrs Kathleen Baker of Knockduff (8 June 2026, lodgement number LDG-088360-26), which encloses contemporaneous documentation dating from 1998;

- The response of Transport Infrastructure Ireland dated 3 July 2026 (reference TII26-136667), also filed under the “Observation” folder on the case file;
- The response of the Planning Authority (Cork County Council) dated 13 July 2026, filed under the “Responses” folder on the case file. Although this Planning Authority response is in a separate file folder and may fall outside the strict scope of the observations to which the Commission’s Section 131 notice refers, it is part of the public case file and, as it materially reinforces the case for refusal, we have referenced it briefly in Section 4 below.

This response is confined to matters arising from those documents, in accordance with the scope set out in the Commission’s notice. It is made cumulatively with, and in support of, our original submission of 22 May 2026, which we respectfully ask the Commission to consider alongside this response.

1. Overview of our position

The material lodged since our original submission does not, in any respect, cure the fundamental deficiencies in the application for substitute consent. On the contrary, it reinforces the case for refusal from multiple independent directions:

- The Hayes observation of 29 June 2026 supplies exhaustive legal, documentary and cartographic evidence in support of refusal, drawn from parties with an unbroken involvement in the planning history of this quarry since 2011, including the successful judicial review (*Hayes v An Bord Pleanála* [2018] IEHC 338) that quashed the previous grant of permission under PL88.245174;
- The Baker observation of 8 June 2026 supplies contemporaneous documents from 1998, including the original Notification of Decision to Grant Permission W/98/0294, the withdrawn appeal PL 04.106466, the Harry Dixon mitigation agreement of 8 May 1998, and an independent expert geological report by Mr Timothy R Baker BSc (Sheffield);
- The Transport Infrastructure Ireland response of 3 July 2026 records that TII has no observations to make. That is consistent with TII’s remit being confined to the national road network. The absence of TII input does not amount to a positive assessment of the traffic implications of the development;
- The Cork County Council response of 13 July 2026, while formally a recommendation for further information rather than outright refusal, contains internal officer reports (Ecology, Environment/Air and Water, Environment/Noise, and Archaeology) which on the substantive environmental issues in the case align with the objections advanced by us, the Hayes and the Bakers.

We fully endorse and reciprocally adopt the Hayes observation and the Baker observation. We do not repeat the legal grounds advanced there; we would only weaken them by attempting to do so in shorter form. We instead confine ourselves to (i) formal reciprocal

adoption of the Hayes and Baker observations, and (ii) brief observations on the Cork County Council and TII responses.

2. Reciprocal adoption of the Hayes observation of 29 June 2026

At page 1 of their observation, Mr and Mrs Hayes state:

"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."

We reciprocate that adoption in full. We adopt each of the twelve grounds of objection set out in the Hayes observation, together with the specific document-level observations at Section 5 and the concluding relief sought at Section 6. In particular, we draw the Commission's attention to the following matters raised in the Hayes observation, which are of especial force:

(a) Ground 1 — the 2020 leave grant must be disregarded

The Hayes observation records, on the basis of their own extensive litigation history with this site, that the 2020 grant of leave (BD-005246-20) escaped quashing only because Murray Brothers had not then confirmed whether they would proceed with a substitute consent application. It was accepted by both An Bord Pleanála and the State in the consolidated proceedings before Simons J in *Friends of the Irish Environment v An Bord Pleanála* [2021] IEHC 234 that such stage-one leave decisions "cannot be relied upon for any legal purpose." Section 177K(1A)(b) of the Planning and Development Act 2000 (as amended) requires the Commission to disregard the 2020 leave finding. Exceptional circumstances fall to be decided afresh, on the totality of the now-available evidence, and are not made out.

(b) Ground 2 — the rNIS defeats itself

As the Hayes observation demonstrates, the applicant's own rNIS at Section 7.1.2.2 concedes that the quarry "likely did contribute to a certain extent" to cumulative silt loading, 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". That admitted adverse contribution to the very attribute on which the population's survival depends cannot be reconciled with the same rNIS reciting the Waddenzee/Sweetman standard at Section 8 and concluding no adverse effect "with no reasonable scientific doubt". On that standard, an Appropriate Assessment must remove all reasonable scientific doubt and "cannot have lacunae" (Cases C-127/02 *Waddenzee* and C-258/11 *Sweetman*). An assessment that concedes a lacuna while reciting the no-lacuna standard is one which, as a matter of law, cannot support a favourable AA conclusion.

(c) The Freshwater Pearl Mussel evidence

The Hayes observation places on the record a series of independent findings that are decisive against the application:

- The NPWS site-specific Conservation Objectives for the Bandon River SAC (002171, 6 August 2019) record the FWPM population as “unsustainable owing to lack of survival of juvenile mussels”, and identify increased fine sediment as “contributing to the unfavourable status of freshwater pearl mussel in the Bandon system”;
- The EPA classifies the receiving waterbody Bandon_020 (into which the boundary stream drains) as “At risk” under the Water Framework Directive, with ecological status having declined from Good to Moderate over successive assessment cycles, as recorded by the EPA’s monitoring station RS20B020150;
- Cork County Council’s Heritage Officer Sharon Casey found on 25 July 2012 that there was “a high potential that activities at this quarry could give rise to impacts” on FWPM and that significant impacts “cannot be screened out” and that “all post 01/07/1999 activities at this site are subject to Appropriate Assessment”, none of which was ever completed;
- Triturus Environmental, acting for Cork County Council in July 2023, could not screen out six-to-ten week non-instream repair works at Ardcahan Bridge, requiring Stage 2 Appropriate Assessment on account of FWPM sensitivity. If such works could not be screened out, twenty-four years of unauthorised quarrying discharging to the same reach plainly cannot;
- The Applicant’s own 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. This concerns the possible unauthorised handling of a strictly protected species and warrants investigation.

(d) Ground 5 — impermissible project-splitting

The Hayes observation demonstrates in detail that the excluded 5.9 hectares said in the application to be “principally occupied by an existing macadam plant” in fact exceeds the 5.2 hectares the Applicant admits to having extracted. The Applicant’s own 1998 plant-application drawing (P.D. Lane Associates, M-79-2, received by Cork County Council on 27 January 1998) labels the southern ground as “Existing Quarry Face” and records an “Existing Level of Quarry Floor — Av. 94.0 m O.D.”. The ground now excluded from the substitute consent boundary is documented worked quarry, not a non-quarry place. Cork County Council itself found in refusing Reg. Ref. 11/00317 (13 July 2011) that the development required assessment “in combination with those of the existing adjoining quarry” under Class 13 of Part 2, Schedule 5 of the EIA Regulations, not Class 2 (“greenfield”). The exclusion of the macadam plant is impermissible project-splitting contrary to Article 2(1) of the EIA Directive and the CJEU authorities 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 *Hayes v An Bord Pleanála* at paragraph 66.

(e) Ground 8 — belief in authorised status is untenable

The Hayes observation records that on 18 October 2013 the quarry manager confirmed to Cork County Council that the quarry was operational with blasting planned for spring 2014 (Senior Planner's report, 4 November 2013). This was after the Section 261A determination, after the refusal of Reg. Ref. 11/00317, and during the currency of the Section 154 enforcement notice (SKBE/13/7). Any quarrying carried out between July 2011 and October 2014 was carried on with full knowledge that the quarry was unauthorised. Section 177K(1J)(b) of the Planning and Development Act 2000 cannot operate in the applicant's favour for that period. The High Court in *Hayes v An Bord Pleanála* held, at paragraph 84, that the past unauthorised development "remains unauthorised."

(f) Ground 11 — material inconsistencies undermining the rEIAR

The catalogue of inconsistencies in the rEIAR identified by the Hayes observation is, in our view, on its own sufficient basis for refusal:

- The Applicant's own public site notices for the substitute consent and the future-development application both refer to the macadam plant permission as "98/284", whereas the rEIAR itself refers to "98/294". The public statutory notices by which participation is invited therefore misdescribe the permission on which the application depends;
- The two public notices give materially different site areas (approximately 19.1 ha for substitute consent, approximately 10.4 ha for the future-development notice);
- The extraction area is stated variously as 4.85 ha, 6 ha, 8.9 ha, 5.67 ha, 5.2 ha, 5.4 ha and 5.94 ha across successive descriptions and, within rEIAR Chapter 1 itself, as 5.2 ha in the text against 5.4 ha in the same page's figure legend;
- Blasting frequency is described in the project description as "4 to 6 blasts per annum" and in Chapters 6 and 7 as "bi-annually", while the applicant's own blast record (Table 8.10) shows an irregular non-bi-annual pattern;
- The Section 37L EIAR Volume III lists in its contents Appendix 11.1 (Ardcahan Quarry Regeneration / S37L Plan) and Appendix 12.1 (Traffic Modelling Report), yet both appendices are absent from the report as lodged on the public file;
- Statutory references are made to a "Planning and Development Act 2001" (no such Act) and the "Planning and Development Act 2024."

The public participation right under Article 6 of the EIA Directive requires clear, accurate and consistent information about the project. On the Applicant's own documents, that requirement is not met.

3. Adoption of the Baker observation of 8 June 2026

We similarly adopt the Baker observation of 8 June 2026 in full. Mr and Mrs Baker have placed on the case file:

- The original Notification of Decision to Grant Permission W/98/0294, showing that the correct reference for the tarmacadam plant permission is 98/294 (not 98/284 as stated

in the Applicant's public notices), and its 15 conditions including blasting notification, noise limits, air overpressure limits, hydrocarbon interceptor requirements, and baseline macrophyte and macroinvertebrate stream survey requirements;

- Mr Harry Dixon's contemporaneous notes of a meeting with Cork County Council Planner Bob Gunkel on 8 April 1998;
- Mr Dixon's written complaint to the Council's Enforcement Section and the Council's acknowledgement;
- Mr Dixon's Appeal to An Bord Pleanála (PL 04.106466) and its grounds;
- The Agreement of 8 May 1998 between Mr Dixon and Murray Brothers, obtained in consideration of the withdrawal of the appeal, requiring (a) noise monitoring, (b) ongoing pollution monitoring of the boundary stream, (c) construction of a silting pond or appropriate measures against hydrocarbons entering the stream, and (d) installation of a bollard preventing left turns onto the L4621;
- The confirmation from An Bord Pleanála of the withdrawal of the appeal (20 May 1998);
- The 1998 Air Emission Licence draft, including Conditions 1.5 (public information programme), 10.2 (retention of monitoring records for 10 years) and 10.3 (annual summary reports by 15 January each year);
- An independent expert geological report by Mr Timothy R Baker BSc (Sheffield), explaining that the rock at Ardcahan is Graywacke of the Caha Formation containing a matrix of clay, micaceous and chloritic minerals, and that the glacial overburden contains kaolinitic White Marl, all of which are highly mobile and provide the physical mechanism by which silt inevitably reached the boundary stream and thence the Bandon River SAC.

We adopt each of these matters and rely on them cumulatively with the Hayes observation and our own submission.

4. Response of Cork County Council (Planning Authority), 13 July 2026

Although the Cork County Council response of 13 July 2026 is filed on the case file under "Responses" rather than "Observations" and may therefore fall outside the strict scope of the Commission's Section 131 notice, it is now part of the public case file and we respectfully draw the Commission's attention to the following features of that response which reinforce our objection and the observations of the Hayes and the Bakers:

- **Ecology Officer:** The Council's Ecology Officer (Ms Sharon Casey) records that "development which has been undertaken at this site has resulted in extensive significant effects on habitats of national importance and likely their associated species" and that the "current proposals for remediation are limited in scope and have not been demonstrated to provide sufficient compensation for the damage which has incurred at this site since 1990." She estimates the extent of loss as approximately 4.5 ha of Oak Woodland and approximately 13.5 ha of Heath/Exposed Rock/Wet

Grassland habitat. She recommends that no decision be taken on the linked Section 37L future-development application "until such time as adequate and appropriate compensatory mitigation is proposed and agreed in respect of the substitute consent application."

- **Environment Officer (Air and Water):** The Council's Environment Officer (Mr Alan Costello) records that "the site has never enjoyed the benefit of a discharge licence, which would have assessed the impact and likely rejected, the use of a coagulant in such an environment." This is a direct expression of professional planning opinion that PAC use of the kind carried out on this site would, on an application for a discharge licence, likely have been refused. The Environment Officer also records that the submitted documents on the impact of the site on receiving waters are "a rather confusing and a contradictory hodgepodge of reports and assessments," and requires that the Applicant submit an Article 27 notification to the Environmental Protection Agency in respect of the PAC sludge, which had not previously been done.
- **Environment Officer (Noise and Vibration):** The Council's Environment Officer for noise records that the rEIAR gives materially different figures for the proximity of the nearest dwellings across Chapters 3, 5 and 10, and confirms that "it cannot be determined if other receptors located closer to the blast site were exposed to peak levels greater than those permitted."
- **Archaeological Officer:** The Council's Archaeological Officer (Ms Annette Quinn) records that the effects on any archaeology within the substitute consent area "is unquantifiable," that the Cultural Landscape identified as dense woodland on the 19th century Ordnance Survey maps "has been lost irreversibly," and that "any damage to same is irreversible and no remedial action can address this impact."
- **The 98/284 error appears in the Council's own report:** The Council's Executive Engineer report (Ms Cait Lehane, Roads Directorate) refers to "Planning Reg No. 98/284" as the reference for the tarmacadam plant permission. This is the same erroneous reference used throughout the Applicant's public notices. The error identified by the Hayes observation at Ground 11 has thereby been perpetuated into the Council's own statutory report to the Commission. This confirms the seriousness of the mis-citation and the extent to which the incorrect reference has entered the paper record on which the application depends.
- **Senior Planner's conclusion:** The Senior Planner (Ms G. O'Mahony) concludes that "further information is required in order to enable further assessment of the proposal," and lists eight specific items on which further information is required, including a revised remediation plan, a Water Framework Impact Assessment, groundwater monitoring records, and the outstanding Article 27 EPA notification. That the Planning Authority itself does not recommend grant of consent on the material before it is a matter to which the Commission is entitled to give weight.

In summary, on every substantive environmental issue in the case, the professional planning views of the Cork County Council internal officers align with the case advanced by the objectors. The only positive recommendation in the Council's report is confined to roads

matters and even that report perpetuates the 98/284 mis-citation. The Planning Authority does not recommend grant.

5. Response of Transport Infrastructure Ireland

Transport Infrastructure Ireland (TII), by response dated 3 July 2026 (reference TII26-136667), acknowledged receipt of the referral of the application and stated that “in the case of this development application, Transport Infrastructure Ireland has no observations to make.” That is consistent with TII’s primary focus on the national road network. The site is accessed via the local road L4621-9 and thereafter the regional road R587. The absence of TII observations does not indicate any positive assessment of the traffic implications of the development, which fall to be considered by the Commission on the evidence before it, including the matters raised in the Hayes observation at Ground 5 concerning the unauthorised widening of the L4621 access and the removal of the bollard originally installed under the 1998 Dixon agreement.

6. Conclusion

For the reasons set out in our original submission of 22 May 2026, and in the Hayes and Baker observations which we adopt in full, and having regard to the response of the Planning Authority and the response of Transport Infrastructure Ireland, the material lodged on the case file reinforces rather than diminishes the case for refusal.

In particular:

- The 2020 leave finding is not open to the Applicant to rely on, and exceptional circumstances under Section 177K(1A)(a) fall to be decided afresh on the current evidence, and are not made out;
- The Applicant's own rNIS admits a likely adverse contribution to the Freshwater Pearl Mussel qualifying species of the Bandon River SAC and admits the contribution cannot be quantified. That is fatal to the Appropriate Assessment under Article 6(3) of the Habitats Directive;
- Two Annex I habitats have been permanently and irreplaceably destroyed on the Applicant's own admission, and the proposed remediation over a 60 to 100 year horizon does not constitute meaningful remediation under Section 177K(1J)(e);
- The exclusion of the operationally integrated macadam plant is impermissible project-splitting and remains uncured from the earlier refusal under ABP Ref. 302158-18;
- The rEIAR contains material inconsistencies, mis-citations and missing appendices that fatally undermine its reliability and, in the case of the public site notices, the public participation right under Article 6 of the EIA Directive;
- The Applicant's asserted belief in the authorised status of the quarry is unsustainable after July 2011 and is contradicted by its own confirmation of continued operation to Cork County Council on 18 October 2013.

We respectfully renew our request that the Commission **refuse the application for substitute consent**, with the consequence under Section 37L of the Planning and Development Act 2000 (as amended) that the linked application for future development (Case Reference ACP-324278-26) also falls to be refused.

We confirm that this submission is made within the period specified in the Commission's Section 131 notice of 21 July 2026.

We would be grateful for written acknowledgement of receipt.

Yours faithfully,

A handwritten signature in blue ink, appearing to be 'Norman Berry', written above a horizontal line.

Mr Norman Berry

A handwritten signature in blue ink, appearing to be 'Patricia Berry', written above a horizontal line.

Mrs Patricia Berry