

Cathy Carleton

From: Appeals2
Sent: Tuesday 18 August 2026 09:53
To: Cathy Carleton
Subject: FW: Section 131 Submission — ACP-324277-26 (SU04.324277) — Ardcahan, Dunmanway, Co. Cork
Attachments: S131 Submission - ACP 324277-26 SU04.324277 - P&A.Hayes.pdf
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From: Alice Hayes <alice@carrollhayesconsulting.ie>
Sent: Monday 17 August 2026 11:34
To: Appeals2 <appeals@pleanala.ie>
Subject: Section 131 Submission — ACP-324277-26 (SU04.324277) — Ardcahan, Dunmanway, Co. Cork

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Dear Sir/Madam,

I refer to the Commission's notice under section 131 of the Planning and Development Act 2000 (as amended) in the above case, and to the written ruling of the Processing Section confining the section 131 matter to the four observations received.

I attach my submission in response, made within the period allowed.

I should be grateful for acknowledgement of receipt.

Yours faithfully,

Patrick & Alice Hayes
Observer, ACP-324277-26 (SU04.324277)

SUBMISSION UNDER SECTION 131 OF THE PLANNING AND DEVELOPMENT ACT 2000 (AS AMENDED)

An Coimisiún Pleanála reference: ACP-324277-26 (SU04.324277)

Application for substitute consent under Part XA of the Planning and Development Act 2000

Applicant: Murray Bros (Tarmacadam) Ltd

Site: Ardcahan (Clashnagallagh Wood), Dunmanway, Co. Cork

Observers: Alice Hayes and Patrick Hayes, Teach Tobar, Knockduff, Dunmanway, Co. Cork, P47 PX73

Date: 17 August 2026

PART A — PRELIMINARY AND SCOPE

1. We refer to the Commission's letter of 21 July 2026, served by registered post and received on 22 July 2026, requesting submissions or observations under section 131 of the Planning and Development Act 2000 (as amended) in relation to the observations lodged on the above application, to be received on or before 17 August 2026.
2. This submission is made in response to that request. It is confined to the four observations lodged, namely our own observation of 30 June 2026, the observation of Mr and Mrs Baker (LDG-088360-26), the observation of Mr and Mrs Berry, and the response of Transport Infrastructure Ireland. It comments on the other observations lodged and maintains our own. It advances no new ground of objection.
3. We understand the matter in question under section 131 to be confined to the observations lodged, and that the report of Cork County Council under section 177I(1) of the Act, dated 13 July 2026, falls outside the scope of the request. This submission is confined accordingly and makes no comment upon that report. Nothing herein is to be taken as accepting that report, or any part of it, and we reserve our position in respect of it for such stage of the process as may be appropriate.
4. Our observation of 30 June 2026 stands as lodged and is not repeated here. Where a ground is referred to below, the reference is to the numbering used in that observation.
5. No corresponding request under section 131 has been issued to us in respect of the concurrent application under section 37L, ACP-324278-26 (FD04.324278). We note that the material lodged by the Bakers under LDG-088360-26 on this application includes their observation on that concurrent application. Nothing in this submission is a waiver of any entitlement to be heard in that case, and we reserve our position accordingly.

PART B — COMMENT ON THE OBSERVATIONS LODGED

B.1 — The observation of Ms Kathleen S Baker and Mr Timothy R Baker (LDG-088360-26)

6. The Baker observation is of particular value because it reproduces, as its documents 1 to 20, the contemporaneous 1998 file relating to the macadam plant on the adjoining lands. That file comprises the grant of permission W/98/0294 by Cork County Council on 2 April 1998, subject to fifteen conditions (documents 2 to 8); the note made by Mr Harry Dixon, then the occupier of the Bakers' house at Knockduff, of his meeting with the planning authority on 8 April 1998 (document 9); the acknowledgement of his written complaint by the enforcement section (document 10); the appeal to An Bord Pleanála, reference PL 04.106466, lodged on his behalf by Noonan Linehan Carroll Coffey, solicitors, and the grounds of that appeal (documents 11 to 14); the agreement of 8 May 1998 between Mr Dixon and the applicant, under which the appeal was withdrawn (documents 15 to 18); the Board's letter of 20 May 1998 confirming the withdrawal (document 19); and the bollard diagram (document 20).

7. These are primary, contemporaneous documents, and we draw the Commission's attention to them for the reasons which follow, each bearing on a matter already before it on the observations.

8. First, they establish that the macadam plant and the quarrying are, and were treated at the time as, functionally connected activities on a single landholding sharing a single access. That bears directly on the project-splitting objection raised in our own observation (Ground 5) and in the Berry observation: the substitute consent application excludes from its red line the very plant which the quarry exists to supply.

9. Two features of the 1998 file put that beyond argument. Condition 10 of permission W/98/0294 purported to regulate blasting operations for the removal of rock, restricting peak particle velocity, requiring notification of all householders within 300 metres, confining blasting to specified hours, and requiring monitoring of noise and vibration by an approved independent specialist contractor at the request of the planning authority.

10. Blasting for the removal of rock is a quarrying operation. It formed no part of the development applied for under W/98/0294, which was for a tarmac and asphalt manufacturing plant, ancillary buildings and works, storage bays, a weighbridge and a septic tank, and it was not described in the notices given of that application. A condition cannot authorise development which was not applied for and of which no notice was given.

11. Nothing in this submission is therefore to be taken as suggesting that quarrying at this site has at any time held the benefit of a planning permission. The position is as pleaded at Ground 8 of our observation of 30 June 2026. The quarry stands deemed to be unauthorised development by virtue of section 261(10) of the Act by reason of the failure to register. Cork County Council refused permission under Reg. Ref. 11/00317 on 13 July 2011 on the express basis, among others, that it was not satisfied that the development would not form an extension to an existing unauthorised quarry and that it was therefore precluded from considering a grant of permission. Compliance with the plant permission neither rehabilitates the unauthorised quarrying nor supports any belief that it was authorised.

12. The significance of condition 10 is accordingly the opposite of any suggestion of consent. The only control ever imposed upon rock extraction on this landholding was a condition attached to a permission for a different development on an adjoining part of it, and the planning authority confirmed thirteen years later that the extraction remained unauthorised. That confirms both the functional inseparability of the two activities and the absence of any consent directed to the extraction itself.

13. Second, ground (f) of the 1998 grounds of appeal objected that the site layout drawing "does not satisfactorily indicate the extent of the proposed use in that the planning submission documentation site only incorporates a small portion of the overall intended operation", the submission showing a larger site outlined in blue and a smaller site outlined in red, and that "the intended maximum site is that one outlined in blue". That is, in substance, the objection now made to the red line drawn around this application, made in 1998 in respect of the same landholding and the same operator. It is not a new complaint.

14. Third, the 1998 file records monitoring obligations attaching to the plant and to the receiving stream. Condition 15 of W/98/0294 required a baseline macrophyte and macroinvertebrate survey of the stream flowing adjacent to the site, to be carried out before development commenced and at subsequent times agreed with the planning authority, extending a minimum of 80 metres upstream and 50 metres downstream, with results to be submitted within fourteen days. Condition 12 required all water contaminated with hydrocarbons discharging to the stream to pass through a silt trap and hydrocarbon interceptor. Condition 14 imposed a deposited-dust standard at the site boundaries. Condition 9 provided that production should not commence unless a licence under the Air Pollution Act 1987 had issued.

15. The agreement of 8 May 1998 records, at clause (b), an undertaking by the applicant "to carry out ongoing pollution monitoring of the stream abutting adjacent to the plant from the date of production onwards", the results to be conducted in an acceptable scientific manner and furnished on request "together with all other emission data collected by the company relating to water, air and

noise discharges". We do not put that agreement forward as an obligation enforceable by us; we draw attention to it as evidence that the need for continuous monitoring of the receiving stream was recognised, and undertaken, from the outset of production.

16. These obligations are material because they are continuous and independent of the consent status of the quarry. To the extent that they have not been discharged, that is a compliance failure and not a neutral evidential gap. Their significance is that, if the baseline survey required by condition 15 was not carried out, there is no contemporaneous record of the condition of the receiving waters before quarrying and plant operation, and the assertion that significant effects upon the Bandon River Special Area of Conservation and its freshwater pearl mussel qualifying interest may be excluded is made without the baseline against which it would fall to be tested.

17. Fourth, the Bakers enclose with their observation a draft air emission licence under the Air Pollution Act 1987 in the name of the applicant, the conditions of which include emission monitoring (condition 8), an ambient air monitoring programme with deposited-dust standards at the site boundaries (condition 9), monthly submission of monitoring results, ten-year retention of records and an annual summary report certified by the plant manager before 15 January each year (condition 10), and an annual contribution towards the cost of monitoring by the licensing authority (condition 11). The Bakers state that they do not have the licence reference and cannot determine whether the licence issued in respect of the Ardcahan plant or the applicant's former plant at Dromleena.

18. We are able to assist the Commission on that point. Grounds 3 and 5 of our observation of 30 June 2026 plead the record-keeping, monitoring and annual-reporting obligations arising under the Air Pollution Act 1987 licence in conditional terms, that conditionality having been adopted because the licence had not then been seen. Cork County Council, as licensing authority, has since confirmed to us on foot of a request under the Access to Information on the Environment Regulations that air pollution licence reference A.P. 01/98 was granted on 30 March 1998. A further request, for the emission and ambient monitoring results, the monitoring returns and the annual summary reports made under that licence, remains outstanding: the licensing authority notified us on 13 August 2026 that the time for its decision has been extended under Article 7(2)(b) of those Regulations to 15 September 2026. That date falls in advance of the date indicated for the determination of this application. We accordingly maintain Grounds 3 and 5 in the conditional terms in which they were pleaded, and reserve the right to make a short supplemental submission, should the Commission be prepared to receive it, if and when that material issues.

19. Fifth, the Baker observation raises the applicant's use of poly aluminium chloride as a flocculating agent in the treatment of sediment-laden wash water, and the absence of any consideration of alternatives or of industry best practice in its use in a hydrologically connected and sensitive receiving environment. That is a matter going directly to the sufficiency of the appropriate assessment in respect of the freshwater pearl mussel, which is a filter-feeding species, and we adopt and endorse it.

20. We adopt the Baker observation to the extent, and only to the extent, indicated above. As indicated in our own observation, we draw upon the Baker documentary material but do not otherwise adopt the Baker grounds, which are differently framed from ours. We maintain that position.

B.2 — The observation of Mr Norman Berry and Mrs Patricia Berry

21. The Berry observation raises concerns which overlap materially with our own, in particular as to the integrity of the Bandon River Special Area of Conservation (site code 002171) and the sufficiency of the appropriate assessment carried out in respect of the freshwater pearl mussel as a qualifying interest. That is the subject of Ground 2 of our observation, which we develop more fully. To the extent the Berrys raise the same concern, we adopt and endorse it; that it is raised independently, on distinct standing, goes to the seriousness of the point rather than to its mere repetition.

22. The Berry observation also characterises the concurrent section 37L application as incompatible with the substitute consent application, the applicant seeking, in the one breath, to regularise past quarrying and to authorise its continuation. We adopt that characterisation. It is reinforced by the

applicant's own remedial documents, which confirm that the quarry exists to supply the plant and that the two applications share hydraulic and access infrastructure.

23. We do not, in adopting the overlapping Berry grounds, adopt any matter on which our observation and the Berry observation differ, and we maintain the distinct position taken in our own observation where the two diverge.

B.3 — The response of Transport Infrastructure Ireland

24. The submission of Transport Infrastructure Ireland of 3 July 2026 (reference TII26-136667) acknowledges the referral and states that it has no observations to make. We note two things about it.

25. First, a statement that a body has no observations to make is not an endorsement of the application. It records only that the application does not engage that body's particular statutory remit, in the case of Transport Infrastructure Ireland, the national roads and light rail network, and says nothing about the matters in issue on this application.

26. Second, and for the avoidance of doubt, that remit does not extend to the Bandon River Special Area of Conservation, to the freshwater pearl mussel qualifying interest, to the adequacy of the remedial environmental impact assessment report or Natura impact statement, or to the project-splitting question. A nil response is therefore of no assistance to the Commission on any of the matters raised in the observations, and is not to be read as diminishing them.

PART C — MATTERS PARTICULAR TO OUR OWN OBSERVATION

27. Two of the grounds in our observation of 30 June 2026 are not raised in the other observations on this application. We note them here only to record their present standing on the observations lodged, and not by way of any new or further argument.

C.1 — Ground 10: breeding Peregrine Falcon and Kestrel

28. Ground 10 of our observation records the breeding presence of Peregrine Falcon and Kestrel on the site and contends that the applicant's disturbance assessment omits both species notwithstanding that its own drawings impose a breeding-season buffer. Peregrine Falcon is an Annex I species and Kestrel is Red-listed; both are protected at the nest under the Wildlife Acts.

29. The ground is independently corroborated by the Bakers in their observation on the concurrent section 37L application, lodged as part of the same material. They record that the applicant's own ecological surveys noted a Peregrine pair calling and displaying in May 2023, with the nest visible and adults feeding two chicks in June of that year; that the National Parks and Wildlife Service reported two chicks raised in 2024; that the survey of April 2025 recorded substantial Peregrine activity and recorded Kestrels nesting in a cleft in the rock face which is due to be destroyed in the first phase of the proposed expansion; and that Peregrine was heard on 26 May 2026. They further contend that the buffer of 50 metres is inadequate as a separation between a Peregrine nest and blasting, crushing, washing and heavy vehicle movement. That corroboration, from observers on distinct standing and drawing on the applicant's own survey record and on the National Parks and Wildlife Service, reinforces the ground. We maintain it in full.

C.2 — Ground 11: material inconsistencies in the application documents

30. Ground 11 of our observation sets out a schedule of internal inconsistencies across the applicant's documents, in the extraction-area figures, the ownership and plant-operational dates, and the identification of the macadam plant permission. These go not merely to tidiness but to the reliability of the material upon which the appropriate assessment and the environmental impact assessment must be carried out.

31. The central inconsistency is corroborated by the Baker observation and by the documents it exhibits. The applicant's public notices and application form cite "98/284" as the permission held by the macadam plant. The permission exhibited at documents 2 to 8 of the Baker observation is

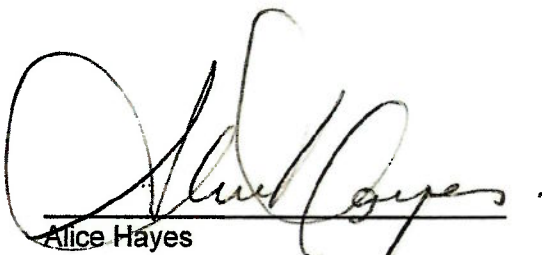
registered as W/98/0294, and is cited by An Bord Pleanála in its letter of 20 May 1998 as W/98/294 under appeal reference PL 04.106466. There is no permission bearing the reference 98/284. The Bakers state the position in terms: the plant does not have permission under reference 98/284, and the quarry does not have permission under reference 98/294. The error is therefore not ours alone to identify, and it remains uncorrected. We maintain the ground in full.

PART D — CONCLUSION

32. Nothing in the other observations lodged, or in the response of Transport Infrastructure Ireland, resolves the matters raised in our observation of 30 June 2026. The overlapping grounds, the integrity of the Bandon River Special Area of Conservation and its qualifying interest, and the relationship between this application and the concurrent application for further development, are reinforced by their being raised independently by more than one observer. The Baker observation places contemporaneous documentary material on the file which supports those grounds, and which shows that the exclusion of the plant from the area now in issue, and the absence of monitoring of the receiving stream, are matters raised in respect of this landholding since 1998. Our observation of 30 June 2026 is maintained in full.

33. We reserve our position in respect of the report of the planning authority referred to at paragraph 3 above, in respect of the concurrent application referred to at paragraph 5 above, and in respect of the material sought under the Access to Information on the Environment Regulations referred to at paragraph 18 above.


Patrick Hayes


Alice Hayes

