

# Planning Statement – Substitute Consent

Substitute Consent – Quarry Development at  
Ardcahan, Dunmanway, Co. Cork.

on behalf of Murray Brothers Tarmacadam Ltd.

February 2026



McCutcheon Halley  
CHARTERED PLANNING CONSULTANTS

# Document Control Sheet

<b>Client</b>	Murray Brothers Tarmacadam Ltd.	
<b>Project Title</b>	Application for Substitute Consent	
<b>Document Title</b>	Planning Statement – Substitute Consent	
<b>Document Comprises</b>	<b>Volumes</b>	1
	<b>Pages</b> (Including Cover)	56
	<b>Appendices</b>	7
<b>Prepared by</b>	Saoirse Kavanagh	
<b>Checked by</b>	Tom Halley	
<b>Office of Issue</b>	Cork	
<b>Document Information</b>	<b>Revision</b>	
	<b>Status</b>	Final
	<b>Issue Date</b>	February 2026

**CORK**

6 Joyce House  
Barrack Square  
Ballincollig  
Cork  
P31 YX97

T. +353 (0)21 420 8710

**DUBLIN**

Kreston House  
Arran Court  
Arran Quay  
Dublin 7  
D07 K271

T. +353 (0)1 804 4477

[www.mhplanning.ie](http://www.mhplanning.ie)

## Table of Contents

List of Figures .....	3
List of Tables.....	3
List of Appendices.....	3
1. Introduction.....	4
2. Development Overview .....	5
3. Legislative Context - Substitute Consent.....	10
4. Planning History .....	13
5. Planning Policy.....	22
5.1 Overview .....	22
5.2 National Planning Framework.....	22
5.3 Regional Spatial and Economic Strategy (for the Southern Region 2020-2032) .....	23
5.4 Quarries and Ancillary Activities Guidelines for Planning Authorities (2004) .....	24
5.5 Quarries and the Local Authority Development Plan (May 2025) .....	25
5.6 Cork County Development Plans (covering from 1990).....	26
5.6.1 1986 Cork County Development Plan .....	26
5.6.2 1996 Cork County Development Plan .....	26
5.6.3 2003 Cork County Development Plan .....	27
5.6.4 2009 Cork County Development Plan .....	27
5.6.5 2014 Cork County Development Plan .....	28
5.6.6 Cork County Development Plan 2022-2028 .....	28
5.7 Local Area Plans (from 1990).....	30
5.7.1 Skibbereen Local Area Plan 2005.....	30
5.7.2 Skibbereen Electoral Area Local Area Plan 2011 .....	30
5.7.3 West Cork Municipal District Local Area Plan 2017 .....	31
6. Statement of Exceptional Circumstances.....	32
7. Assessment .....	45
7.1 Contribution/Importance of the Quarry in Ardcahan.....	45
7.2 Compliance with National and Local Planning Policy .....	47
7.3 Site Suitability .....	48
7.4 Remediation and Mitigation Measures.....	50
7.5 Remedial NIS and Associated Mitigation Measures.....	51
7.6 Importance of Securing Substitute Consent .....	52
7.7 Development Contributions.....	54
8. Conclusion.....	55

## List of Figures

Figure 1: Aerial image of Ardcahan Quarry and macadam plant within the applicants landholding (outlined in blue). Extraction area and macadam plant also shown inset .....	5
Figure 2: Substitute Consent Application area (outlined in red) .....	7
Figure 3: Extract of Table 1.2 from Cork County Development 1996 (Source Cork County Council, 1996).....	27
Figure 4: Extract of Zoning Map taken from Skibbereen Electoral Area LAP 2011 .....	30
Figure 5: Extract of Zoning Map taken from Skibbereen Electoral Area Local Area Plan 2017 .....	31
Figure 6: Extract from Remediation Plan by Cathal O'Meara Landscape Architects .....	40

## List of Tables

Table 1: Overview of Quarrying/Extraction Area 1990 to 2014.....	7
--	---

## List of Appendices

1. Copy of enforcement notice and correspondence issued by Cork County Council.
2. Aerial photography showing extent of quarrying/extraction that took place between 1990 and 2014.
3. Permission granted under 98/294 (including Planners Report)
4. 261A notice and reports from the Council's Executive/Senior Planners and Heritage Officer reports prepared under the Section 261A process.
5. Section 177C application and An Bord Pleanála (ABP) decision under ABP Ref. 305621-19.
6. Submission made to in response to CCC's 261A Public Notice.
7. ABP Correspondence dated 26<sup>th</sup> May 2022 (including High Court Order dated 3/12/2020) & Withdrawal Confirmation

# 1. Introduction

McCutcheon Halley Planning Consultants have been appointed by Murray Brothers Tarmacadam Ltd. (MBTL) to prepare this Planning Statement to accompany a planning application to An Coimisiún Pleanála (ACP) for substitute consent, in accordance with Section 177E of the 2000 Planning and Development Act, as amended (PDA), in respect of an existing quarry at Ardcahan (Townland) Dunmanway, Co. Cork.

This SC application is submitted in conjunction with a simultaneous application for future quarrying development at the Ardcahan site in accordance with section 37L of the PDA<sup>1</sup> which allows ACP to assess the SC application and the application for future development at the same time or as soon as possible after the decision on the SC application.

Under the amended Part XA of the PDA, substitute consent (SC) procedures for SC applications regularising developments requiring a retrospective EIA and/or AA, have also been streamlined to provide a single-stage application process and removing the initial leave to apply stage.

As the leave to apply stage has been removed, the definition of ‘exceptional circumstances’ has also been amended to reflect the movement of the exceptionality criteria to the substantive application stage.

This Planning Statement focuses on the SC application only and provides an assessment under the following headings:

- Development Overview
- Planning History
- Legislative Context
- Planning Policy Context (National and Local)
- Statement of Exceptional Circumstances
- Assessment
- Conclusion

It is accepted that the quarry was established pre-1963 and was owned and operated by Cork County Council, before the applicant acquired (in the late 1990’s) and operated the quarry up until quarrying ceased in 2014.

As this SC application provides a pathway to a prospective permission for the applicant to recommence quarrying at the Ardcahan site, it is obviously of significant importance to our client, but is also important to the wider area as it has the potential to have a significant positive impact on the local economy and environment through the proposed remediation outlined in the remedial Environmental Impact Assessment (rEIA) and remedial Natura Impact Statement (rNIS), which accompanies the SC application.

---

<sup>1</sup> The amendments introduced under the new legislation widen the availability of the future development to all types of development (not just for future quarrying as was previously the case).

## 2. Development Overview

The applicant in this case is Murray Brothers Tarmacadam Ltd. (MBTL), who are the owners of Ardcahan Quarry, located approximately 3.5km north-east of Dunmanway in West Cork. The quarry is accessed off the L4621-9 local road ('Hospital Road'), approximately 300m east of its junction with the R587 regional road, which links Dunmanway and Macroom.

The overall landholding (outlined in blue below) measures approx. 25 hectares (ha) and is located in a rural area characterised by undulating topography, agricultural grassland, scrub, woodland and some low density rural housing.<sup>2</sup> There is a macadam production plant located on the southeastern part of the overall landholding which was permitted/constructed in the late 1990's.



Figure 1: Aerial image of Ardcahan Quarry and macadam plant within the applicants landholding (outlined in blue). Extraction area and macadam plant also shown inset

This substitute consent (SC) application relates to the quarrying/extraction development and ancillary areas included within our clients ownership including the following:

- Quarry development which took place between February 1990 and October 2014<sup>3</sup> with an extraction area of 5.2 ha and where environmental impact assessment would have been required under the EIA Directive;
- Quarry development which took place between February 1997 and

<sup>2</sup> The nearest dwellings to the quarry site (red line boundary) are located approximately 300m south; 275m west; 450m north and 400m east of the site.

<sup>3</sup> When the Council closed its enforcement case under SKBE/13/7.

October 2014<sup>4</sup>, where appropriate assessment would have been required under the Habitats Directive.

The SC application site (outlined in red in Figure 2) has a total area of c.19.1 ha and includes the quarry and ancillary areas (based on the definition of quarry from the EIA and Habitats (No.2) Regulations, 2011 - SI 584 of 2011)<sup>5</sup> and includes the quarrying development that took place between 1990 (when the EIA Directive came into force) and 2014 (when quarrying ceased).<sup>6</sup> This approach is in line with *JJ Flood and Sons (Manufacturing) Ltd and David Flood v An Bord Pleanála* [2020] IEHC 95.<sup>7</sup>

The SC area includes the extraction area worked between 1990 and 2014 which measures 5.2 ha and the area to the north which includes ancillary areas associated with the quarrying activities e.g. tracks, storage areas etc.

The macadam plant and associated development permitted under Cork County Council Ref. 98/294 (hatched green) is excluded from the red line SC boundary.

---

<sup>4</sup> When the Council closed its enforcement case under SKBE/13/7.

<sup>5</sup> The European Union (Environmental Impact Assessment and Habitats) (No.2) Regulations, 2011 (SI 584 of 2011), which came into operation on 15 November 2011, amended Section 2 of the PDA, 2000 to provide the following the definition “quarry” which means an excavation or system of excavations made for the purpose of, or in connection with, the getting of minerals (whether in their natural state or in solution or suspension) or products of minerals, being neither a mine nor merely a well or bore-hole or a well and borehole combined, and shall be deemed to include— (i) any place on the surface surrounding or adjacent to the quarry occupied together with the quarry for the storage or removal of the minerals or for the purposes of a process ancillary to the getting of minerals, including the breaking, crushing, grinding, screening, washing or dressing of such minerals but, subject thereto, does not include any place at which any manufacturing process is carried on; (ii) any place occupied by the owner of a quarry and used for depositing refuse from it but any place so used in connection with two or more quarries, and occupied by the owner of one of them, or by the owners of any two or more in common, shall be deemed to form part of such one of those quarries as the Minister may direct; (iii) any line or siding (not being part of a railway) serving a quarry but, if serving two or more quarries shall be deemed to form part of such one of them as the Minister may direct; (iv) a conveyor or aerial ropeway provided for the removal from a quarry of minerals or refuse.”

<sup>6</sup> This is consistent with a previous direction from ABP (note 2) under ABP Ref. 302158-18 and ABP’s decision to grant leave to apply for substitute consent under ABP Ref. 305621-19, and incorporates the area included in the Council’s enforcement ref. SKBE/13/7 (see Appendix 1).

<sup>7</sup> [https://www.courts.ie/acc/alfresco/2f37dddc-413b-4465-8c8c1751b3c2e4ed/2020\\_IEHC\\_195.pdf/pdf#view=fitH](https://www.courts.ie/acc/alfresco/2f37dddc-413b-4465-8c8c1751b3c2e4ed/2020_IEHC_195.pdf/pdf#view=fitH)

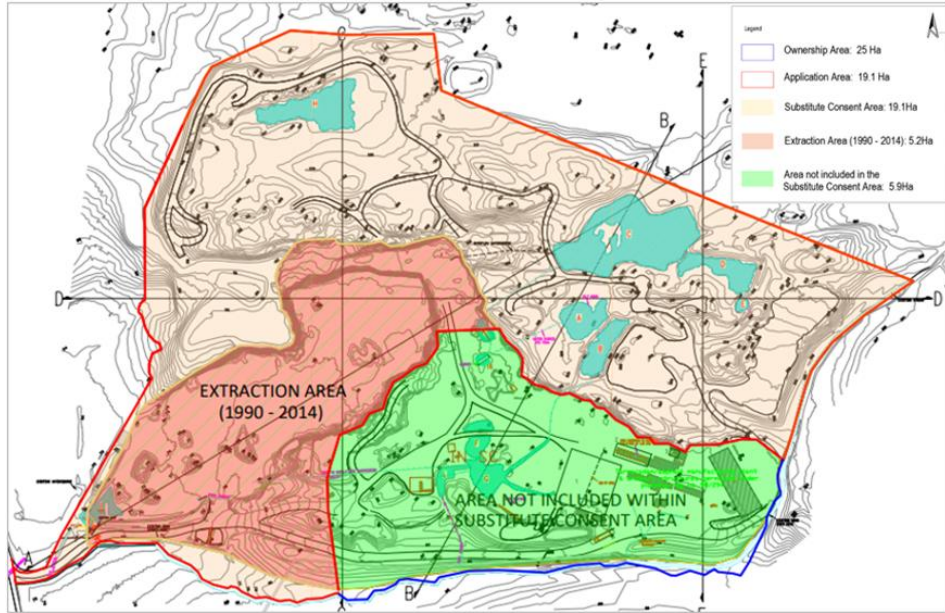


Figure 2: Substitute Consent Application area (outlined in red)

The extent of the extraction area between 1990 and 2014, has been ascertained using Ordnance Survey aerial photography for the years 1995, 2000, 2005, and 2014 and from information provided by the applicant.<sup>8</sup> The aerial images are shown Appendix 2 and in Figures 3-6 to 3-9 of the rEiAR inclusive and summarised below.

Year	Total Extraction Area (Ha)	Increase in Extraction Area within the Period (Ha)	Cumulative Increase in Total Extraction Area (Ha)
1990	5.1	-	-
1995	6.42	1.32	1.32
2000	7.49	1.07	2.39
2005	9.26	1.77	4.16
2014	10.3	1.04	5.2

Table 1: Overview of Quarrying/Extraction Area 1990 to 2014

As shown in the aerial images and in Table 1 above, the extent of the extraction area progressively increased from approximately 5.1 ha in 1990 to c. 10.3 ha in 2014. This represents a total increase of 5.2 ha during the period, comprising the extraction/quarried area subject of the SC application.<sup>9</sup> It is notable that post 2005 (i.e. post Section 261 registration process), the total

<sup>8</sup> Aerial photography is not available for the baseline year, so the size of the extraction area in 1990 has been established using information provided by the quarry operators.

<sup>9</sup> The information presented in Table 2-1 indicates the total extraction area for the period 1990 to 2014 was 5.2 ha, triggering the relevant threshold of 5 ha for mandatory EIA.

additional extraction area is just 1.04Ha i.e. less than the mandatory EIA threshold.

It is important to note that some of the areas which on the face of it appear as 'worked' or quarried/extraction areas e.g. to the north of the macadam plant, were used for stockpiling material or other ancillary use, but were not extraction areas, i.e. development use was present post 1990 but not development works. These areas are not included in the 'extraction area' calculations in Table 1: Overview of Quarrying/Extraction Area 1990 to 2014 (i.e. for the purposes of establishing whether there is a mandatory EIA requirement) but are included in the 'quarrying development' area for which leave to apply for substitute consent is sought. There are also areas that were quarried/extracted that later became recolonised with vegetation and appear as 'green' or unquarried areas in the aerial photography but are included in the extraction areas in Table 1: Overview of Quarrying/Extraction Area 1990 to 2014.

Also, as there was no aerial photography available for the baseline year of 1990, the extent of the extraction area at this time has been determined based on information made available from the operators of the quarry from that time, verified/overlain on the 1995 aerial photography.

Between 1990 and 2014, it is estimated that the total amount of rock excavated equates to c.2.2 million tonnes or an average of 93,083 tonnes of stone per annum over that 24-year period.<sup>10</sup>

The quarried aggregate/material contributed to the construction sector during this period, supplying aggregates to local road projects in Counties Cork and Kerry, as well as the macadam plant owned/operated by the applicant.

While it was operational, the quarry employed an average of seven full-time staff members, and the crushing contractors employed an average of six people on-site.

In terms of mandatory EIA requirements, Article 93 and Schedule 5 of the Planning and Development Regulations 2001 – 2018 set out the classes of development for which a planning application must be accompanied by a mandatory EIA. Part 1 of the Schedule's prescribed classes of development which, due to their nature, will always have significant environmental impacts which includes: "quarries and open-cast mining where the surface of the site exceeds 25 hectares." Part 2 of the Schedule's prescribed classes of development relates to development which requires an EIA, not due to the nature of the projects themselves, but rather having regard to the scale of development. In the context of our client's quarry proposal the most relevant provision is included under 2(b) which requires the preparation of an EIA for the following:

*"Extraction of stone, gravel, sand or clay, where the area of extraction would be **greater than 5 hectares**"* (emphasis added – please note

---

<sup>10</sup> On average, 93 no. truckloads (20 tonne) of aggregate left the site weekly, over the 24-year period.

that as the EIA requirement is based on area of extraction, Table 1 and the aerial photos included in Appendix 2 are based on extraction areas).

As the extraction area exceeds the threshold set out in Part 2(b), our client's development during this period would have required a mandatory EIA. The mandatory requirement for an EIA is outlined above, is also supported by the assessment of both the Council's Executive and Senior Planners in their reports prepared as part of the Council's Section 261A assessments. In the Executive Planners report dated 20/07/2012 (see Appendix 4), which was prepared as part of the Council's Section 261A process, it is stated that:

*"This is a Category 1 quarry where it is considered that EIA would have been required due to breaching the thresholds for mandatory EIA and where an EIA was not carried out."<sup>11</sup>*

The above conclusion in relation to a mandatory EIA is also supported by the Council's Senior Planner in his 261A report dated 08/08/2012 (see Appendix 4), where he concludes that the quarry is above the mandatory EIA requirement.

Notwithstanding the clear procedure set out in the Section 261A Guidelines (2012) which sought to assess for possible determinations of EU offences on sites following an examination of development post 1990 minus those areas developed under an authorisation, the decision in *JJ Flood and Sons (Manufacturing Ltd. v An Bord Pleanála* [2020] IEHC 195 has suggested the need to examine all EIA activity post 1990 and this judgement has been followed in this case, hence the greater extraction area in this application than new works developed status post 27<sup>th</sup> April 2005 (after the last day to register the quarry under Section 261), when the site became unauthorised.

The significance of the effects<sup>12</sup> of the development at Ardcahan Quarry have been assessed according to the EIAR guidance and with the professional judgement of the competent experts who assisted in preparing the rEIAR (the study team are presented in the rEIAR).

This SC application provides an opportunity to regularise the quarry activity that took place between 1990 and 2014 and to provide mitigation/remediation measures that would not otherwise be required.

---

<sup>11</sup> Cork County Council - Executive Planners Section 261A report dated 20/07/2012

<sup>12</sup> Significance of effects is usually understood to mean the importance of the outcome of the effects (the consequences of the change). Significance is determined by a combination of (objective) scientific and subjective (social) concerns.

### 3. Legislative Context - Substitute Consent

Section 2(1) of the 2000 Planning and Development Act, as amended, (PDA), provided a definition for a quarry as follows:

*“quarry” means an excavation or system of excavations made for the purpose of, or in connection with, the getting of minerals (whether in their natural state or in solution or suspension) or products of minerals, being neither a mine nor merely a well or bore-hole or a well and bore-hole combined, and shall be deemed to include—*

*(i) any place on the surface surrounding or adjacent to the quarry occupied together with the quarry for the storage or removal of the minerals or for the purposes of a process ancillary to the getting of minerals, including the breaking, crushing, grinding, screening, washing or dressing of such minerals but, subject thereto, does not include any place at which any manufacturing process is carried on;*

*(ii) any place occupied by the owner of a quarry and used for depositing refuse from it but any place so used in connection with two or more quarries, and occupied by the owner of one of them, or by the owners of any two or more in common, shall be deemed to form part of such one of those quarries as the Minister may direct;*

*(iii) any line or siding (not being part of a railway) serving a quarry but, if serving two or more quarries shall be deemed to form part of such one of them as the Minister may direct;*

*(iv) a conveyor or aerial ropeway provided for the removal from a quarry of minerals or refuse.”<sup>13</sup>*

While the 2000 Act will be replaced in full by the recently enacted Planning and Development Act 2024 (the 2024 Act), due for phased commencement over the coming months, the definition relating to a quarry remains substantially the same.<sup>14</sup>

A key feature of the 2000 PDA was the requirement relating to the control of quarries set out under Section 261. This section obliged planning authorities to enter quarry information, located within their functional areas, into their register.

Environmental Impact Assessment (EIA) as provided for in Part X of the PDA and Schedule 5 of the Planning and Development Regulations 2001, as amended (the 2001 Regulations), include the following relevant criteria/thresholds for mandatory EIA:

<sup>13</sup> Section 2(1), Interpretation, of the 2000 PDA, as amended.

<sup>14</sup> Section 353(9) of the 2024 Act.

- Quarrying and open-cast mining where the surface of the site exceeds 25 hectares;<sup>15</sup>
- Extraction of stone, gravel, sand or clay, where the area of extraction would be greater than 5 hectares; and <sup>16</sup>
- All extraction of minerals within the meaning of the Minerals Development Acts, 1940-1999.<sup>17</sup>

Part XA of the PDA governs substitute consent (SC), a process for regularising developments that should have undergone an Environmental Impact Assessment (EIA) and/or an Appropriate Assessment (AA), prior to development. SC applications are made directly to An Bord Pleanála rather than a local planning authority. The process often involves a "remedial" Environmental Impact Assessment Report (rEIAR) and/or a remedial Natura Impact Statement (rNIS) to address past impacts.

On the 1st of July 2020, the Irish Supreme Court made findings relevant to the SC process (*An Taisce v An Bord Pleanála* [2020] IESC 39)<sup>18</sup> where Mr. Justice McKechnie found that there were breaches of the requirements of the EIA Directive on two grounds, namely that of exceptional circumstances and the inability of members of the public to participate in the process at the initial stage:

*"...that section 177C(2)(a) and its corresponding provision, section 177D(1)(a) are inconsistent with the EIA Directive as interpreted by the Court of Justice, in that they fail to provide adequately for the exceptionality test as demanded by that court;"* and

*"...given the structure of s. 177, the failure to make provision for public participation at the leave application stage for substitute consent is inconsistent with the public participation rights conferred by and outlined in the EIA Directive;"*

The Planning and Development and Residential Tenancies Act 2020 (No. 27 of 2020) directly addressed shortcomings in the substitute consent process by introducing provisions for public consultation and "exceptional circumstances":

- **Public Participation:** The 2020 Act amended Section 177H of the PDA 2000 to explicitly allow any person to make submissions or observations to An Bord Pleanála regarding the existence or absence of "exceptional circumstances" during the SC application phase.
- **"Exceptionality" Test:** Section 8 of the 2020 Act amended Section 177K to preclude ACP from granting substitute consent unless it is satisfied that exceptional circumstances justify it. Under Section 177K(1A)(a) of the PDA, *"the Board shall not grant substitute consent*

<sup>15</sup> Planning and Development Regulations, 2001 (as amended), Schedule 5, Part 1, Class 19.

<sup>16</sup> Planning and Development Regulations, 2001 (as amended), Schedule 5, Part 2, Class 2(b)

<sup>17</sup> Planning and Development Regulations, 2001 (as amended), Schedule 5, Part 2, Class 2(c)

<sup>18</sup> This involved three joined cases - *An Taisce v An Bord Pleanála*, *An Taisce v An Bord Pleanála*, and *Sweetman v An Bord Pleanála*. [https://www2.courts.ie/acc/alfresco/80f2cbbf-4f1e-4065-8ca3-f8c14308035b/2020\\_IESC\\_39.pdf/pdf#view=fitH](https://www2.courts.ie/acc/alfresco/80f2cbbf-4f1e-4065-8ca3-f8c14308035b/2020_IESC_39.pdf/pdf#view=fitH)

*(whether subject to conditions or not) unless it is satisfied that exceptional circumstances exist that would justify the grant of such consent by the Board."*

The SC process was further modified under the 2022 Planning and Development, Maritime and Valuation (Amendment) Act, to provide a 'Single-Stage Process' by removing the initial "leave to apply" stage, moving the entire consideration of exceptionality and public consultation to the single substantive SC application stage.

Section 37L of the PDA 2000 was amended under the Planning and Development, Maritime and Valuation (Amendment) Act 2022, to enable an SC application to run simultaneously with an application for permission for future development. Key provisions of Section 37L include:

- **Integrated Assessment:** ACP is required to decide on the future development application either at the same time or as soon as possible after the decision on the substitute consent application.
- **Dependency on Substitute Consent:** If the application for substitute consent is refused, the application for future development must also be refused.

In accordance with the new legislative provisions, this SC application is submitted in conjunction with a simultaneous application for future quarrying development at the Ardcahan site in accordance with section 37L of the PDA which allows ACP to assess the SC application and the (Section 37L) application for future development at the same time or as soon as possible after the decision on the SC application.

## 4. Planning History

The quarry in Ardcahan, Dunmanway, Co. Cork owned by Murray Brothers Tarmacadam Ltd. (MBTL) was purchased from Cork County Council (CCC) in the 1990's. An overview of the planning history of the quarry is provided below.

### Pre-1963 Quarry Status

The pre-1963 status of the quarry has been previously accepted by CCC and An Bord Pleanála (ABP).<sup>19</sup> This was documented during the Section 261A<sup>20</sup> process (see Appendix 4), where it was explicitly stated that quarrying commenced prior to 1963 (i.e. prior to the commencement of the 1963 Planning and Development Act):

*"The quarry operating on this site commenced prior to the enactment of the 1963 Planning and Development Act. The site has been incrementally excavated since that time..."*<sup>21</sup>

The pre-1963 status of the quarry was again acknowledged under the CCC Ref. 98/294 application (see below and Appendix 3) and the CCC Ref. 11/317 application where both the Area and Senior Planners acknowledged the 'pre-1963' status of the quarry:

*"The site forms part of a larger landholding containing an existing and established pre-63 quarry..."*<sup>22</sup>

The pre-1963 status of the quarry was again acknowledged by Cork County Council in their submission to ABP Ref. 305621-19 where Section 4.1 of the Inspectors Report (which summarised the submission by Cork County Council) confirmed that the quarry was a 'pre-1963' quarry and was purchased from Cork County Council:

*"The planning authority [Cork County Council] is satisfied that the applicant could reasonably have held the belief that the quarry was authorised as it was a **pre-1963 quarry purchased from the Council**" (emphasis added).*<sup>23</sup>

The pre-1963 status of the quarry has therefore been comprehensively documented and accepted by both CCC and ABP.

<sup>19</sup> On June 18, 2025 An Bord Pleanála's name officially changed to An Coimisiún Pleanála following the commencement of Part 17 of the Planning and Development Act 2024. This report refers to both An Bord Pleanála's and An Coimisiún Pleanála depending on the relevant time period (i.e. pre and post June 18, 2025).

<sup>20</sup> As the quarry was not registered under the Section 261 process, there are no reports filed by CCC under the initial 261 registration process.

<sup>21</sup> Case Planners (Section 261A), report dated, p.7.

<sup>22</sup> Area Planners Report dated 11/07/2011, p.2.

<sup>23</sup> ABP Ref. 305621-19, Inspectors report, p. 9, Section 4.1.

### **Cork County Council 98/294**

In 1998, Cork County Council granted planning permission for a macadam / asphalt manufacturing plant permitted under Council Ref. 98/294 (see Appendix 3). The permitted development included prefabricated office building/toilet/canteen, laboratory, mixing plant, storage silos, bins for plant, covered aggregate storage bays, storage shed, bitumen tanks, well/pumphouse, weighbridge and car parking area for staff and visitors.

The authorised status of the quarry was confirmed by the permission granted for the macadam / asphalt manufacturing plant under Council Ref. 98/294 – this permission relied upon the works carried out to establish the quarry and the continuation of quarry operations.

As part of the assessment of the proposed development, the strengths of the quarry and its location were identified in the planners report as follows:

*“Site is located in a rural area about 3 miles north of Dunmanway and the macadam plant is located on the floor of a large quarry. The site is well screened ... access is very good with a short stretch of Council road leading to the Coppeen-Dunmanway Regional Route. Given the adequacy of the road network I do not consider a contribution to be appropriate.”*

In addition to the above, during their assessment of the 98/294 application, the Council again accepted that the pre-1963 status of the quarry had been established and that the quarry was authorised and included conditions regulating quarrying operations/activities as part of the 98/294 permission (see Appendix 3).

This macadam / asphalt manufacturing plant continues in operation today and is located to the east of the SC area.

### **Quarry Registration Process under Section 261**

The obligation to register quarries came into force in 2005 pursuant to Section 261 of the PDA. Unfortunately the applicant did not comply with this statutory obligation and as such, the quarry at Ardcahan became unauthorised from 28<sup>th</sup> April 2005 (the day after the last date for Section 261 registration).

The applicants failure to register the quarry under the Section 261 process was based on incorrect advice from a third party that the pre-1963 status of the quarry confirmed the authorised status of the quarry. Had our client been correctly advised and had they known the importance of the Section 261 registration process, there would have been no hesitation in registering their quarry under the Section 261 process in 2005 which, of itself, was a simple process to fulfil.

The implications of the failure to register the quarry only became apparent after CCC refused permission under planning application ref. 11/317 on the grounds that the development would comprise an extension of an existing unauthorised quarry that was not registered under the Section 261 process (see below).

The failure to register the quarry under Section 261 of the PDA automatically deemed the quarry at Ardcahan an unauthorised development, however the CCC did not issue an enforcement notice following the 261 registration process and therefore MBTL only became aware of the unauthorised status of the quarry after CCC's decision to refuse permission under planning application ref. 11/317.

### **Section 261A Review (2011 - 2012)**

On the 7/12/2011, CCC issued a public notice stating that it was their intention to examine every quarry in its administrative area to determine whether development was carried out which would have required EIA, a determination as to whether EIA would have been required, or AA under the Habitats Directive. The public notice also stated that where the Council determined an AA, EIA or a determination as to whether an EIA was required, but was not carried out, and also concluded that the requirements to register under Section 261 of the PDA were not fulfilled, the notice stated that the Council would issue a notice to the owner or operator of the quarry informing him or her that it intends to issue an enforcement notice under Section 154 requiring the cessation of the operation of the quarry and the taking of such steps as it considers appropriate.

In January 2012 the Department of the Environment, Community and Local Government issued Guidelines for Planning Authorities dealing with Section 261A of the PDA. Much of the Guidelines related to the possible requirements for EIA and AA for quarries where permission was granted or where the quarry had commenced operation prior to 1 October 1964, and where the quarry was registered under section 261 PDA. However, the Guidelines also dealt with quarry operations which failed to register under Section 261:

*“while the immediate priority for the planning authority will be the implementation of section 261A, the planning authority should also ensure that unauthorised quarries, even if they do not require EIA / appropriate assessment, are regularised.”<sup>24</sup>*

MBTL did engage in the 261A review and made a submission to the review process (see Appendix 6) in January 2012, outlining the context of the quarry in quarry at Ardcahan which has long been recognised as being of significant value containing high quality resource.

On the 23<sup>rd</sup> of August 2012 a formal determination was made by CCC which concluded that development had been carried out at the Ardcahan quarry/site since the 1<sup>st</sup> of February 1990 which the Council considered would require an EIA, and since the 26<sup>th</sup> of February 1997 which would require an AA, and that neither form of assessment had been carried out. As

---

<sup>24</sup> Department of the Environment, Community and Local Government, Section 261A of the Planning and Development Act, 2000 and related provisions, Guidelines for Planning Authorities, January 2012, p.11.

the quarry had not been properly registered under Section 261, the 'sunset clause' provision (which provided access to the new mechanism of Substitute Consent in response to the State's part in errors of transposition of EU law) was not available at that time and it was determined by CCC that the quarry was an unauthorised development.

On the 25<sup>th</sup> of November 2013 the Council issued an enforcement notice (SKBE/13/7 - see Appendix 1) to MBTL pursuant to Section 154 of the PDA which required the cessation of quarrying at the site within a six-month period in accordance with the procedures mandated by Section 261A of the PDA. The quarry then ceased operations in line with the 6 month time frame included in the notice.

On the 17<sup>th</sup> of October 2014, the Council wrote to the applicant stating that the enforcement notice had been complied with, and that the enforcement case was closed (see Appendix 1).

While it is acknowledged that officially the unauthorised status of quarry was established from April 2005 onwards, it is worth noting that extraction between 2005 and 2014 was limited to 1.04 ha and as soon as our client was made aware of the implications of the failure to register the quarry under the Section 261 process, they complied fully with the Council's enforcement notice (see Appendix 1) and the quarry has remained inactive from 2014 to the present.

### **Cork County Council Ref. 11/317**

As already alluded to, MBTL was unaware of the implications of the failure to register the quarry under the Section 261 process in 2005 and were not issued with an enforcement notice in the years after 2005 (the enforcement notice issued on 25<sup>th</sup> of November 2013).

In 2011 the applicant wanted to extend the extraction area of the quarry and submitted a planning application under CCC Ref. 11/317 for this extension. This was refused on the grounds that the development would comprise an extension of an existing unauthorised quarry, as the quarry had failed to register under the Section 261 process:

*"On the basis of the documentation submitted with the application, the planning history of the landholding, the site inspection carried out and the requirements of S.261 of the Planning and Development Act 2000 (as amended), the Planning Authority is not satisfied that the proposed development would not form an extension to an existing unauthorised quarry and is therefore precluded from considering a grant of permission for the proposed development in such circumstances."*

Additional reasons for the refusal CCC Ref. 11/317, included the absence of the application being supported by an Environmental Impact Assessment and Appropriate Assessment.

While permission was refused, under 'Planning History' both the Area and Senior Planners again acknowledged the 'pre-1963' status of the quarry:

*“The site forms part of a larger landholding containing an existing and established pre-63 quarry...”<sup>25</sup>*

#### **Cork County Council ref. 14/616/An Bord Pleanála Ref. PL88.245174**

After the Council wrote to the applicant on 17<sup>th</sup> of October 2014 stating that the SKBE/13/7 enforcement notice had been complied with, and that the enforcement case was closed, MBTL submitted a new application for quarrying of stone with an extraction area of 6 hectares and to ground level of 77 metres (O.D.) in 2014.

Planning permission was initially permitted by Cork County Council ref. 14/616<sup>26</sup> and was also permitted on appeal under ABP Ref. PL88.245174.

A subsequent Judicial Review (JR) of the PL88.245174 permission [2016 No. 499 JR] granted certiorari of the decision.

While the JR focused on future quarrying development, the judgement did nonetheless provide an opinion in relation to the option of substitute consent being available to address the particular issues relating to our client’s quarry:

*“It is not entirely clear to me that the Developer was in fact excluded from, and could not have submitted an application pursuant to, Section 177(D) for substituted consent, as distinct from the invitation to apply for substitute “gateway” under s.261A from which regime he was clearly excluded. It appeared to be the assumption of the parties in the case that the Developer could not make any application under s.177D(2)(b), which refers to the developer’s belief as to the whether or not the development was unauthorised. However, this factor is only one of a number of factors to be considered by the Board under a s.177D application for permission; another factor is, for example, the actual or likely significant effects on the environment resulting from the carrying out or continuation of the development. Is it a foregone conclusion that the application must necessarily be refused simply because he engaged in unauthorised development in the past? I am not entirely convinced that a developer in the position of the Developer in the present case is definitively precluded from making an application under s.177D.”*

Paragraph 81 of Ms. Justice Ni Raifeartaigh’s Judgement also dealt with the possibility of applying for both substitute consent and planning permission in respect of future development, under Section 37L:

*“Let us take first the position of a registered quarry owner who applies for both substitute consent and planning permission in respect of future development. Prior to 2015, as I understand it, these applications would have to be consecutive, but now they can be carried out simultaneously because of the insertion of the new **Section 37L**. Whether the applications*

---

<sup>25</sup> Area Planners Report dated 11/07/2011, p.2.

<sup>26</sup> An EIS was submitted with the application and an NIS at further information stage.

*are sequential or simultaneous the important point is that, by the end of the entire process, the decision-maker will have reached its decision on the basis of a full range of information - retrospective and prospective-before deciding what to do. It might be said that the developer's applications, and the Board's decisions, are Janus-faced in this regard; that is to say, both forward- and backward-looking as regards the environmental impact on the site. The purpose of the process is to ensure that any past adverse effects on the environment are ameliorated or mitigated as much as this can now be done, as well as future adverse effects being prevented as far as possible."*

While SC was presented as a possible solution by Justice Ni Raifeartaigh, it was not an option for MBTL to use section 37L in addition to section 177E at the time of the judgement, as Section 37L was limited under section 37L(1) to those who arrived at an SC application through the section 261A process (i.e. under section 261A(3) of the PDA to allow SC application).

The section 37L option only became available to MBTL after this section of the PDA was amended under the Planning and Development, Maritime and Valuation (Amendment) Act 2022, to enable an SC application to run simultaneously with an application for permission for future development.

### **An Bord Pleanála Ref. 302158-18**

Following the grant certiorari of the ABP PL88.245174 decision, an application for leave to apply for substitute consent under Section 177C was submitted to ABP on the 16<sup>th</sup> of July 2018. This leave request was refused on the 23<sup>rd</sup> of May 2019 for the following reasons:

*"Having regard to the documentation submitted with the application to apply for substitute consent, it is considered that the provisions of Section 177C cannot apply to the area of the quarry site that was the subject of the planning application 14/616 (An Bord Pleanála reference number PL88.245174) and in respect of which the permission was quashed by order of the High Court, because such permission was for the carrying out of future quarrying development, and leave to apply for substitute consent can only be considered for development that has already taken place.*

*Furthermore, because the area, as outlined in the submitted application for leave to apply for substitute consent, does not include all of the former quarry that is unauthorised development, pursuant to Section 261(10) of the Planning and Development Act, 2000, as amended, and does include areas of land that have not been developed, the Board is not in a position to assess whether exceptional circumstances as set out in Section 177D(2) apply, as these circumstances can only relate to the quarry development that has taken place since the 1st day of February, 1990, where environmental impact assessment would have been required under the Environmental Impact Assessment Directive, and to the quarry development that has taken place since the 26th of February, 1997, where appropriate assessment would have been required under the Habitats Directive, and where neither form of assessment had been carried out."*

The ABP Direction also included the following notes:

*“Note 1: In making its decision, the Board had regard to the drawings submitted with the application for leave, specifically drawing numbers 2546-01a and 2546-01. These drawings show areas of the applicants’ lands in which quarrying development had not taken place, and do not correspond to the area in which quarrying development had taken place between 1990 and 2014, and which was referred to in the judgement of the High Court. The submission also refers to “pre-1963” quarrying, which is not relevant, in the light of Section 261(10).*

*Note 2: It is considered that any further application for leave to apply for substitute consent in the circumstances of this case can only be in relation to the quarrying development that took place between 1990 (when the EIA Directive came into force) and 2014 (when quarrying ceased) and can only be made in the context of Section 177C (2)(b), and not Section 177C (2)(a). Accordingly, reference to application 14/616 (An Bord Pleanála reference number PL88.245174) is not relevant in this context, and the environmental impact statement and natura impact statement submitted as part of that application are also not relevant to any such application for leave to apply for substitute consent.”*

Essentially ABP refused permission under 302158-18 for leave to apply for SC under section 177C, as it was considered that the application for leave should have been based on historic development only (without any element or reference to future works) and that any further application for leave to apply for SC, should only relate to the quarrying development between 1990 and 2014.

### **An Bord Pleanála Ref. 305621-19**

Following the ABP Ref. 302158-18 decision, a revised application for leave to apply for substitute consent was made under ABP Ref. 305621-19 (copy of application and decision is included in Appendix 5) and was based on the following:

1. Quarry development that took place between February 1990 and October 2014<sup>27</sup> where an EIA would have been mandatory;
2. Quarry development which took place between February 1997 and October 2014<sup>28</sup>, where an AA would have been required under the Habitats Directive;
3. The inclusion of quarrying (non-extractive) area that was considered unauthorised development under CCC ref. SKBE/13/7.
4. The omission of land quarried prior to 1990 (labelled as “Area not included in Leave to Apply for Substitute Consent – 2” i.e. ALSC-2) and future development/lands that have not been quarried (labelled as “Area not included in Leave to Apply for Substitute Consent – 1” i.e. ALSC-1) on Drawings 2546-S1, 2546-S2 and 2546-S3.

<sup>27</sup> When the Council closed its enforcement case under SKBE/13/7.

<sup>28</sup> When the Council closed its enforcement case under SKBE/13/7.

ABP granted leave to apply for substitute consent under section 177D of the PDA 2000 (as amended) on the 3<sup>rd</sup> of March 2020. The order stated that ABP was satisfied that:

*“an environmental impact assessment and an appropriate assessment was or is required in respect of the development concerned, and*

***exceptional circumstances exist** such that the Board considers it appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent”* (emphasis added).

The Coimisiún also considered that -

- *the regularisation of the development concerned would not circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;*
- *the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment, and to provide for public participation in such an assessment, has not been substantially impaired;*
- *the actual or likely significant effects on the environment or adverse effects on the integrity of a European site, if any, resulting from the carrying out of the development, could likely be substantially remediated;*
- *the applicant has complied with a previous planning permission granted. In deciding not to accept the recommendation of the Inspector to refuse leave to apply for substitute consent, the Board had regard to the full extent of the meaning of ‘quarry’ as set out in section 2 of the Planning and Development Act 2000, as amended by the European Union (Environmental Impact Assessment and Habitats) (No. 2) Regulations 2011 (S.I. No. 584 of 2011), section 3(b), and noted that this meaning is not restricted to areas of extraction. Furthermore, the Board noted that any substitute consent, if granted, 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 that such continuing or future development would require separate planning permission to be obtained following the granting of such substitute consent.*

### **An Bord Pleanála Ref. 313649-22**

Following ABP’s decision to grant leave to apply for substitute consent, an application for SC for quarry development at Ardcahan was submitted by MBTL on 18/05/2022.

In a letter dated 26<sup>th</sup> May 2022, ABP wrote to the applicant stating that by Order dated 3<sup>rd</sup> December, 2020, the High Court placed a stay on the consideration of any SC application lodged with ABP in relation to the quarry

development in Ardcahan and *“as such, the Court Order places a stay on any processing of the application. Once the stay on the application has been lifted by the High Court, processing of the application will commence”* (see Appendix 7).

The SC application (313649-22) was subsequently withdrawn on 13/02/2024 - see Appendix 7).

## Conclusion

As outlined above, there is a long and complex planning history relation to our clients quarry in Ardcahan.

Given the reasons for JR (that affected the 313649-22 SC application) were procedural (later corrected by way of legislation) and **only related to the processing of the 313649-22 SC application** and as this application has been withdrawn, it is submitted that our client is entitled to submit this current SC application in line with current legislation and is not affected by any past planning, legal/procedural issues (i.e. which curtailed the 313649-22 SC application).

This current SC application is not consequent to a section 177C application without the benefit of public consultation on the presence or not of exceptional circumstances. This SC application is based on the amended legislation following the repeal of Section 177C with all aspects are open to public consultation as part of the substantive application.

This SC application is also accompanied by a comprehensive rEiAR and rNIS which is also open to public consultation and is submitted in conjunction with a simultaneous application for future quarrying development at the Ardcahan site in accordance with section 37L of the PDA<sup>29</sup> which also facilitates open public consultation. This allows ACP to assess the SC application and the application for future development, including any third party submissions, all at the same time, allowing for a robust and fully transparent planning process.

---

<sup>29</sup> The amendments introduced under the new legislation widen the availability of the future development to all types of development (not just for future quarrying as was previously the case).

## 5. Planning Policy

### 5.1 Overview

The subject development relating to this application for substitute consent focuses on the period from 1990 to 2014 inclusive. Accordingly, planning policy for the subject development spans the provisions of multiple Development Plans/LAP's and national, regional plans/policies.

Prior to the Planning and Development Act 2000 (PDA) quarrying was primarily managed through local development plans with relatively limited national policy/oversight. The PDA introduced more rigorous requirements for quarries, including a process for quarry registration and regularisation under Section 261 of the PDA.

In 2004, the Ministerial Guidelines for Planning Authorities on Quarries and Ancillary Activities (2004) were published and provided the first comprehensive national framework for environmental impact, noise, dust, and visual impact management.

There is a current/ongoing review of quarrying policy, led by the Office of the Planning Regulator (OPR), which focuses on several key areas, including supply security and the development of a national prediction system for aggregate supply and demand to ensure critical infrastructure projects (like those in the National Development Plan) are not delayed. This reinforces the importance of quarries, such as Ardcahan, play in the wider construction industry, especially in relation of the delivery of infrastructure and housing.

### 5.2 National Planning Framework

In 2018, Project Ireland 2040 integrated mineral extraction into the broader National Planning Framework (NPF), recognizing the essential role of quarries in delivering housing and infrastructure. This role has been elevated even more under the NPF First Revision (April 2025) which focuses on accelerated infrastructure and housing delivery.

Section 9.2 of the NPF highlights the strategic importance of extractive industries in supplying essential materials for construction and supports the identification and protection of key mineral reserves from conflicting land uses to ensure their sustainable use:

*“Extractive industries are important for the supply of aggregates and construction materials and minerals to a variety of sectors, for both domestic requirements and for export. The planning process will play a key role in realising the potential of the extractive industries sector by identifying and protecting important reserves of aggregates and minerals from development that might prejudice their utilisation.”<sup>30</sup>*

<sup>30</sup> National Planning Framework, p.78.

National Policy Objective 23 (NPO 23) of the NPF also acknowledges the importance of quarries/extractive industries in the development of rural economies through supporting the local economy:

*“Facilitate the development of the rural economy through supporting a sustainable and economically efficient agricultural and food sector, together with forestry, fishing and aquaculture, energy and **extractive industries**, the bio-economy and diversification into alternative on-farm and off-farm activities, while at the same time noting the importance of maintaining and protecting the natural landscape and built heritage which are vital to rural tourism” (emphasis added).<sup>31</sup>*

The Revised NPF places particular emphasis on strengthening regional cores such as Cork and its hinterlands, recognising its potential to act as a key driver of economic growth and innovation outside of Dublin. The revised NPF also supports the diversification of Cork’s employment base and the creation of conditions that attract and retain talent, enhancing the region’s competitiveness and appeal to investors. Quarries and the extraction industry in general have a key role to play in this NPF objective.

### 5.3 Regional Spatial and Economic Strategy (for the Southern Region 2020-2032)

The Regional Spatial and Economic Strategy (RSES) for the Southern Region generally supports the necessary role of the quarrying (extractive) industry in providing essential construction materials for development, while simultaneously emphasising the need for careful management, environmental protection, and alignment with national and local planning policies.

Key aspects of the RSES overview concerning quarry development:

- **Essential Resource:** The RSES acknowledges that aggregates (stone, sand, and gravel) are vital for infrastructure development and the construction industry. The strategy recognizes that extraction can only occur where these natural resources are found, making the industry location-specific.
- **Balancing Development and Environment:** The core principle involves balancing the economic and social benefits of extraction against potential adverse effects on the environment (noise, dust, water quality, visual intrusion, habitat loss) and residential amenities. The strategy requires that appropriate mitigation measures be implemented during operational and restoration phases.
- **Policy Alignment:** The RSES serves as a strategic framework to implement the National Planning Framework (NPF) and related national economic policies at a regional level. All City and County Development Plans within the Southern Region must align with the

<sup>31</sup> National Planning Framework, p.78.

RSES, ensuring a consistent approach to managing extractive industries.

- **Protection of Reserves:** The strategy highlights the importance of protecting significant aggregate and mineral reserves from encroaching developments (such as housing) that might prevent their future use, which is a key national planning objective.
- **Sustainable Practices:** The RSES encourages the use of alternative sustainable materials, such as construction and demolition waste, to promote the circular economy.
- **Restoration and Rehabilitation:** Local authorities are encouraged to promote the rehabilitation of disused quarries and extractive sites for potential alternative uses, including habitat restoration, agriculture, recreation, or future commercial/industrial use, subject to planning and environmental considerations.
- **Compliance and Enforcement:** There is an emphasis on ensuring all quarries are authorised, operate to best environmental practice standards, and comply with planning and environmental legislation, including requirements for Environmental Impact Assessments and Habitats Directive compliance (e.g. Substitute Consent applications for older quarries).

## 5.4 Quarries and Ancillary Activities Guidelines for Planning Authorities (2004)

The 2004 Quarry Guidelines provides guidance to planning authorities and developers on the management of the environmental and land-use impacts of quarries, balancing their economic importance with environmental protection.

The guidelines are structured into two main parts<sup>32</sup> and cover several key areas:

- **Part A: Development Plans/Management**
  - **Development Plans/Policies:** Recommends that development plans should acknowledge the economic value of aggregates and include objectives to safeguard valuable deposits while protecting residential and natural amenities (p. 12).
  - **Development Management:** The Guidelines provide advice in relation to the assessment of applications, the requirements for Environmental Impact Assessment and on the specific conditions planning authorities can attach to

<sup>32</sup> To offer guidance to planning authorities on planning for the quarrying industry through the development plan and determining applications for planning permission for quarrying and ancillary activities (**Part A**); To be a practical guide to the implementation of section 261 of the Planning and Development Act, 2000 (**Part B**).

permissions, covering aspects like operating hours, noise limits, blasting controls, water pollution prevention, and waste management (p. 34) and contributions/bonds for road network improvements and site reinstatement (pp. 40, 14).

- **Part B: Implementation of Section 261 of the Act** (p. 43)
  - **Registration:** Detail the process for existing quarry owners/operators to register their operations with the local authority (pp. 6, 44) to regulate quarrying activities and where necessary, impose new or modified conditions or require certain quarries (especially older, larger quarries) to apply for planning permission and undertake Environmental Impact Assessment.

The Guidelines note that that by their nature, aggregates can only be worked where they occur and are a significant natural resource and that the extraction industry makes a very important contribution to economic development in Ireland and that the planning system should ensure an adequate supply to meet construction demands.

## 5.5 Quarries and the Local Authority Development Plan (May 2025)

In May 2025, the Office of the Planning Regulator (OPR) published a Case Study Paper (CSP07): Quarries and the Local Authority Development Plan, in accordance with the OPR's Strategic Planning Research Programme 2023 – 2025.

While the Case Study is not Policy, it does provide an overview of how planning authorities have implemented the 2004 Quarry Guidelines and managed the extractive industry sector in general. The key findings from the OPR include:

- A need to revise and update the Ministerial Guidelines for Planning Authorities on Quarries and Ancillary Activities to reflect the significant evolution of planning and environmental policy and legislation since the publication of the original guidelines in 2004.
- A need for revised Ministerial Guidelines to align with the new National Planning Statement approach provided for under the Planning and Development Act 2024. Key areas to include:
  - Enhanced focus on Appropriate Assessment (AA) and Environmental Impact Assessment (EIA);
  - Promotion of the circular economy principles, particularly the recycling of aggregates;
  - Greater emphasis on climate action;
  - Strengthened provisions for public participation and community engagement; and

- Further advice on the reinstatement and/or future use of quarry sites post-extraction, having regard to local biodiversity.
- Consideration of the location of aggregate reserves/existing quarries in the review of Ministerial Guidelines on Rural Housing (i.e. so that the proliferation of one-off housing does not compromise quarries/resource availability).
- Establishment of a national register of extractive industries in Ireland.
- Development of a national prediction system for aggregate supply and demand.
- An enhanced role for regional assemblies in the extractive industry.
- Implementation of Section 356 of the Planning and Development Act 2024 to establish designated regional enforcement authorities.
- The inclusion of quarry data in development plans.

A key consideration therefore in any new Guidelines/Planning Statement(s) will be the protection of quarries and aggregate resources.

## **5.6 Cork County Development Plans (covering from 1990)**

As the application for substitute consent relates to quarrying that took place from 1990 onwards, it covers multiple County Development Plans (CDP's) i.e. the 1986, 1996, 2003, 2009, 2014 and 2022 CDP's. All of the Cork's CDPs over the years have been supportive of quarrying/extractive industry.

### **5.6.1 1986 Cork County Development Plan**

In relation to quarrying/extractive industry, Section 4.23 of the 1986 CDP states that the Council will endeavour to protect identified deposits for possible exploitation and will co-operate with the industry in this regard.

### **5.6.2 1996 Cork County Development Plan**

In the 1996 CDP, there are no specific objectives included relating to the quarrying/extractive industry. However, Section 1.2 of the 'West Cork' chapter outlines the need for West Cork to overcome the long-term tendency towards static population and declining employment and that a turnaround in employment performance is badly needed. Table 1.2 of the 1996 CDP highlights the overall decline in the 'Agricultural, Fishing and Mining Employment' (Figure 3).

<b>Table 1.2.</b> Agricultural, Fishing and Mining Employment, West Cork, 1971-2001 (000s)			
1971	1981	1986	2001(proj.)
9.1	6.6	5.9	4.2

Figure 3: Extract of Table 1.2 from Cork County Development 1996 (Source Cork County Council, 1996)

### 5.6.3 2003 Cork County Development Plan

In the 2003 CDP, Objective ECO 5-2 'Safeguarding Mineral Reserves' includes the following objective:

*"Where significant mineral resources, such as aggregates, building stone or other minerals have been identified and are suitable for extraction and delivery to industry without undue adverse impact on the environment, on scenic or residential amenity or on transport networks, it is an objective to safeguard the resource by seeking to prevent incompatible land uses, which could be located elsewhere, from being located in the vicinity of the resource."*

In addition, Objective ECO 5-3 'Identification of Strategic Reserves' states:

*"Where appropriate, in the preparation of Local Area Plans, important strategic mineral reserves, particularly aggregates, may be identified and appropriate site-specific policies developed for safeguarding the reserve. This would be based on existing study work already carried out and, if necessary existing work could be updated."*

### 5.6.4 2009 Cork County Development Plan

In the 2009 CDP Objective ECON 5-11 states that where significant mineral resources have been identified and are suitable for extraction, it is an objective to safeguard and optimise the resource so that it can be of benefit to the wider economy:

*"Where significant mineral resources such as aggregates, building stone or other materials have been identified and are suitable for extraction and delivery to industry without undue adverse impact on the environment, on scenic or residential amenity or on transport networks, it is an objective to safeguard the resource by seeking to prevent incompatible land uses, which could be located elsewhere, from being located within the vicinity of the resource"*.

Objective ECON 5-12 of the 2009 CDP (Identification of Strategic Reserves) states that where appropriate, during the lifetime of the plan, important strategic mineral reserves, particularly aggregates, should be identified and appropriate site-specific policies developed for safeguarding the reserves.<sup>33</sup>

<sup>33</sup> 2009 Cork County Development Plan, p.196.

In addition to the above, Section 5.5.25 (p.194) of the 2009 CDP states that it is a “a general objective of this County Development Plan is to ensure that the supply of these resources (i.e. primary aggregates of sand, gravel and crushed rock) is managed in a manner so as to ensure the sustainable extraction of locally sourced aggregates and/or minerals will continue to contribute to the local economy and provide the essential raw materials, necessary for the construction industry.”

### 5.6.5 2014 Cork County Development Plan

In the 2014 CDP, Objective EE 12-1 states that where significant mineral resources have been identified and are suitable for extraction, it is an objective to safeguard and optimise the resource so that it can be of benefit to the wider economy:

*“Protect and safeguard the country’s natural mineral resources from inappropriate development, by seeking to prevent incompatible land uses that could be located elsewhere from being located in the vicinity of the resource, since the extraction of minerals and aggregates is resource based.”*

Chapter 4 of the 2014 CDP sets out the Councils policy and objectives (RCI 5-1 to RCI 5.8) in relation to Greenbelts around the main towns including Dunmanway, which help to restrict one-off housing, maintain the identity of these towns and encourage more development activity (especially housing) within development boundaries. Within these Greenbelts, it is stated that lands will generally be reserved for agriculture, open space or recreation uses.

### 5.6.6 Cork County Development Plan 2022-2028

The Cork County Development Plan (CCDP) 2022-2028 which came into effect on 6 June 2022, serves as a strategic framework to guide the sustainable development of County Cork until 2028, with a focus on balancing economic growth, environmental protection, and community well-being.

Under the CCDP, the application site is situated within lands designated as a greenbelt (‘Greenbelt1’) surrounding Dunmanway, subject to the objectives shown below.

#### **CDP Objective RP 5-16: Long Established Uses**

*Recognise the requirements of long established commercial or institutional uses located entirely within the Greenbelt which may make proposals for expansion / intensification of existing uses. Such expansion proposals of an appropriate scale will be considered on their merits having regard to the overall function and open character of the Greenbelt and where development would be in accordance with normal proper planning and sustainable development considerations.*

#### **CDP Objective RP 5-19: Greenbelts around Settlements**

*(a) Retain the identity of towns, to prevent sprawl, and to ensure a distinction in character between built up areas and the open countryside by maintaining a Greenbelt around all individual towns.*

- (b) Reserve generally for use as agriculture, open space or recreation uses those lands that lie in the immediate surroundings of towns. Where Natura 2000 sites, Natural Heritage Areas, proposed Natural Heritage Areas and other areas of biodiversity value occur within Greenbelts, these shall be reserved for uses compatible with their nature conservation designation and biodiversity value.*
- (c) Prevent linear roadside frontage development on the roads leading out of towns and villages.*

Section 8.17 of the CCDP addresses Mineral Extraction, acknowledging the economic importance of extractive industries as a source of raw materials for the construction sector and infrastructure development.

The Plan provides policy support for the protection of existing quarries and proven aggregate resources and the continued viability of extractive industries in the County, as set out below.

#### *8.17 Mineral Extraction*

*8.17.1 It is important to protect important reserves of aggregates and minerals from development that might prejudice their utilisation. In line with this Cork County Council recognises the economic value and significance of the aggregate and mineral sector to the local, regional and national economy in terms of employment generation and providing raw materials for the construction industry. The Council therefore aims to protect and safeguard the operations of working quarries and proven aggregate resources from incompatible developments to ensure the continued viability of the extractive industry, whilst also ensuring that environmental, rural, scenic and residential amenities are protected.*

*8.17.2 In 2020 the ICF published a document 'Essential Aggregates: Providing for Ireland's Needs to 2040' which is an industry led call for Government to ensure that Ireland's future supply of aggregates (crushed rock, sand and gravel) is planned, monitored and managed in a sustainable manner, to provide for Ireland's future infrastructure development. The document calls for a National Planning Policy for Aggregates which will underpin local and regional planning policy. The Planning Authority recognises the essential role of Aggregates and the need for the preparation of a County Minerals Strategy which will support a sustainable extractive industry during the lifetime of the County Development Plan.*

*8.17.3 There are 230 quarries registered under Section 261 of the Planning and Development Act 2000, as amended, operating within the County, primarily engaged in Sand and Gravel and stone quarrying. There are distinct clusters at locations near Carrigtwohill, Middleton, Ovens, along the Bandon River from Dunmanway to Innishannon and to the east of Kanturk around Cecilstown.*

#### **County Development Plan Objective EC: 8-16 Safeguarding Mineral Reserves**

- a) Protect and safeguard the county's natural mineral resources from inappropriate development, by seeking to prevent incompatible land uses*

*that could be located elsewhere, from being located in the vicinity of the resource, since the extraction of minerals and aggregates is resource based.*

- b) *Prepare a Minerals Strategy Plan to support a sustainable extractive industry during the lifetime of the plan. This strategy will be prepared taking account of environmental, nature, conservation, heritage, landscape, and other planning considerations.*

## 5.7 Local Area Plans (from 1990)

Between 2005 and 2017 Cork County Council prepared three Local Area Plans (LAP's) in 2005, 2011 and 2017. These LAP's are summarised below:

### 5.7.1 Skibbereen Local Area Plan 2005

Section 4.7 of the LAP is entitled Mineral Extraction and refers to the fact that the 2003 CDP contains a number of important objectives relating to mineral extraction. Section 4.7.5. of the LAP states that:

*“The extractive industry makes an important contribution to economic development in the Electoral Area. There are a number of important quarries in the electoral area, where Cork County Council must safeguard the resources. The main quarries in the area are located at Dunmanway, Drimoleague, Skibbereen, Ballineen-Enniskeane and Caheragh” (emphasis added).*

### 5.7.2 Skibbereen Electoral Area Local Area Plan 2011

The subject lands at Ardcahan are partially included within Dunmanway's town greenbelt under the Skibbereen Electoral Area LAP 2011 as shown in Figure 4. The primary objective of the greenbelt was to restrict one-off housing and encourage more housing/population within the development boundary of Dunmanway.

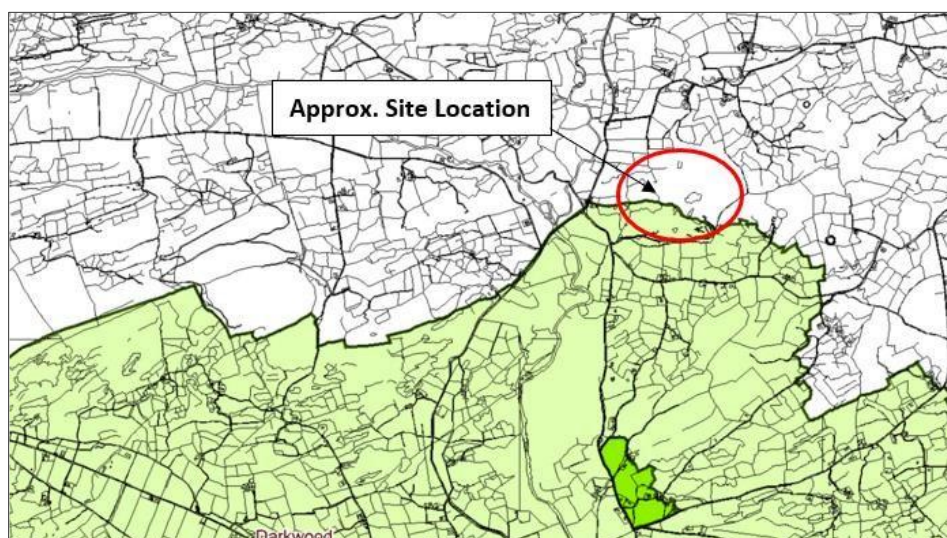


Figure 4: Extract of Zoning Map taken from Skibbereen Electoral Area LAP 2011

Section 1.9.23. of the LAP references the subject quarry:

*“The regional road to Macroom (R587) also follows the Bandon River to the north and the boundary of the green belt is well defined where this road meets the river at the town water treatment works. Fairly close to the water works in the northeast is the Ardcahan quarry, which is well set in a surrounding forested area. There are a number of low hills defining the northeastern boundary and these contain a number of forested and sparsely settled areas in broken lands around the hospital complex.”*

### 5.7.3 West Cork Municipal District Local Area Plan 2017

Section 2.5 of the 2017 West Cork Municipal District Local Area Plan (MDLAP) relates to employment and states that 10.3% of jobs within the Municipal District fall under “Manufacturing, mining/quarrying” and that 10.7% of the population of the area are employed in Manufacturing, mining/quarrying.

The subject lands at Ardcahan are partially included within Dunmanway’s town greenbelt under the West Cork Municipal District Local Area Plan 2017 as shown below in Figure 5. The primary objective of the greenbelt was to restrict one-off housing and encourage more housing/population within the development boundary of Dunmanway.

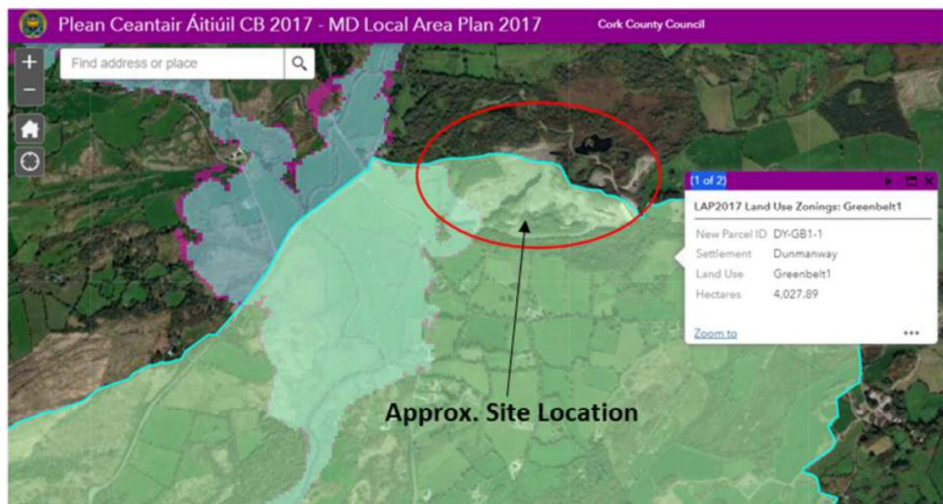


Figure 5: Extract of Zoning Map taken from Skibbereen Electoral Area Local Area Plan 2017

## 6. Statement of Exceptional Circumstances

As outlined in Section 3 of this report, under Section 177K(1A)(a) of the PDA, *“the Board shall not grant substitute consent (whether subject to conditions or not) unless it is satisfied that exceptional circumstances exist that would justify the grant of such consent by the Board.”*

Section 177K(1J) of the PDA states that when considering whether exceptional circumstances exist, ACP shall have regard to the following:

- 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 assessment and to provide for public participation in such an assessment has been substantially impaired;
- d) the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development;
- e) the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated;
- f) whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;
- g) such other matters as the Board considers relevant.

While it is accepted that ACP is not bound by the previous decision under ABP Ref. 305621-19, leave to apply for substitute consent was granted under section 177D of the PDA 2000 (as amended) in 2020 on the basis that, *inter alia*:

*“**exceptional circumstances exist** such that the Board considers it appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent”* (emphasis added).

In its' Direction (see Appendix 5), ABP also considered that -

- *the regularisation of the development concerned would not circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;*
- *the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment, and to provide for public participation in such an assessment, has not been substantially impaired;*
- *the actual or likely significant effects on the environment or adverse effects on the integrity of a European site, if any, resulting*

*from the carrying out of the development, could likely be substantially remediated;*

- *the applicant has complied with a previous planning permission granted.*

Notwithstanding the decision under ABP ref. 305621-19, it is accepted that the “Exceptional Circumstances” has to be considered de novo, and accordingly the criteria relating exceptional circumstances and our client’s quarry are set out afresh below:

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

It is submitted that the regularisation of our client’s quarry would not circumvent the purpose and objectives of the EIA Directive or the Habitats Directive.

In considering whether the regularisation of the quarry would circumvent the Directives, the following factors are relevant:

- Ability to Conduct AA/EIA
- Remediation Potential
- Public Participation

It has previously been acknowledged and accepted by both CCC and ABP that the quarry at Ardcahan is a pre-1963 quarry and was already substantially established and developed by the time of the transposition of the 1990 EIA Directive (i.e. 5.1ha or 50% of the overall extraction area was quarried by 1990). As outlined in Table 1: Overview of Quarrying/Extraction Area 1990 to 2014 the extent of the extraction area progressively increased from approximately 5.1 ha in 1990 to 10.3 ha in 2014.

It is submitted that the regularisation of the quarry development (5.2 ha) that took place post 1990, between 1990 and 2014 through substitute consent, does not inherently circumvent the purpose and objectives of the Environmental Impact Assessment (EIA) or Habitats Directives.

Circumvention only occurs if the quarry development at Ardcahan has reached a stage where a meaningful assessment of its environmental impacts or Appropriate Assessment is no longer possible, and this is not the case here.

The cessation in 2014 has frozen/preserved the 1990-2014 quarry development. This is similar with other quarry sites/developments which had exceeded their authorised status and which have entered the SC process.

As demonstrated by both the rEIAR and the rNIS submitted with this SC application, both provide detailed and comprehensive assessments of the appropriate assessment and the environmental impact assessment of the quarry development.

The rEIAR and rNIS also include comprehensive remediation/mitigation measures including the following:

- Remediation Plan and native woodland protection and management measures, which will be implemented to protect existing woodland, with natural regeneration of habitat and some additional planting.
- Retention of existing long-established woodland areas to be protected and to remain undisturbed.
- Areas adjacent to the existing remnants of woodland are to be planted with a native planting. These shall be planted at a dense spacing to encourage rapid establishment.
- In tandem with the Remediation Plan a Dry Heath Habitat Protection and Management Plan will be implemented to protect the remaining areas of habitat and to implement measures that may help naturally regenerate areas of Dry Heath.
- An Ecologist with experience in Woodland and Peatland Habitat Ecology will be employed regarding implementation of the native woodland protection and management measures and Dry Heath Protection and Management.
- The existing scrub vegetation is developing into a habitat, and this process of habitat colonisation is to be allowed to occur as part of a successional process.
- A similar process of successional development is evident in the existing ponds. This process is to be allowed to occur, and the ponds are to be retained.
- Measures to ensure that peregrine falcon that use the site will be protected.
- No alterations to the existing ponds/waterbodies will take place until amphibians have been confirmed as being absent.
- It is proposed to install artificial bat boxes within the site and bats will be able to use the retained and proposed habitats included in the Remediation Plan for foraging and commuting.
- An Invasive Species Management plan has been developed for the site that includes measures for the remediation of the stands of Japanese knotweed and rhododendron located on the site.

It is submitted therefore that the regularisation of the quarry in Ardcahan will not circumvent the purpose and objectives of the EIA Directive and is in fact fully in accordance with the objectives of the EIA Directive and Habitats Directive. Without a grant of substitute consent, the applicant will not be authorised or obliged to carry out any remediation/mitigation measures outlined in the rEIAR and rNIS (the SKBE/13/7 enforcement notice only required the cessation of quarrying).

This position was also supported by the Inspector in assessing the application for leave to apply for substitute consent under ABP Ref. 305621-19, where it was stated that:

*“It is submitted that the regularisation of the quarry would not circumvent either Directive and that it would be consistent with the*

*purposes and objectives of both. The application for substitute consent would be accompanied by a remedial EIA and NIS. The area to which the application relates is 5 hectares and should have been subject to EIA. The quarry is in close proximity to and has a direct hydraulic link to the Bandon River SAC and, in the absence of mitigation measures, has the potential to give rise to significant effects on the SAC and, thus, an AA/NIS was also required. The regularization of the quarry accompanied by a remedial EIAR and an AA will therefore not circumvent the purpose and objectives of the Directives.”<sup>34</sup>*

It is also important to point out that the Environmental Impact Assessment Directive and/or Habitats Directives will not be circumvented in this instance. This SC application does not impair the public's right to participate in the environmental decision-making process. The ‘frozen in time’ nature of the quarry in Ardcahan has preserved its status and the identification of the planning issues for consideration. This is in common with many quarry sites which were allowed to apply for SC following section 261A in the years following the section 261A review outcome.

As part of the SC process, the public and prescribed bodies will be given the opportunity to participate and comment on the material submitted with the SC application and will have the opportunity to participate in the environmental and appropriate assessments and decision-making process.

It is strongly submitted therefore that the regularisation of the quarry will not circumvent the purpose and objectives of the EIA Directive, and a grant of substitute consent would be fully in accordance with the objectives of the EIA Directive and Habitats Directive.

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

As outlined in the planning history in Section 4 of this Report, the applicant did not realise the seriousness of failing to register the quarry in 2005 and it wasn't until CCC refused permission under Ref. 11/317 (i.e. July 2011)<sup>35</sup> that they became aware of the implications of this failure and the resultant unauthorised status of the quarry.

Up until the CCC Ref. 11/317 decision (i.e. July 2011), MBTL firmly believed that they operated an authorised quarry and this was reinforced by the fact that:

- The quarry was a ‘pre-1963’ quarry.
- The quarry was previously operated by Cork County Council (the planning authority for the area) up until the 1990's.
- The quarry was acquired from Cork County Council who are the planning authority for the area.

<sup>34</sup> ABP Ref. 305621-19, Inspectors Report p.6, Section 3.2.

<sup>35</sup> The decision to refuse permission under CCC Ref. 11/317 was made on 13/07/2011.

- MBTL got permission under 98/294 for a macadam plant within the quarry.
- The permission granted under 98/294 (see Appendix 3) included conditions on the operation of the quarry. There was never any question at that stage that the quarry was unauthorised.

When the Council refused permission under CCC Ref. 11/317 in July 2011 and as this had serious implications for their business, employees and their livelihoods, they got legal advice (from one of the leading planning and environmental legal advisors in the country) and also engaged with Cork County Council's Legal and Planning Departments as part of the Section 261A process.

Following the outcome of the Section 261A process, the Council issued an enforcement notice under SKBE/13/7 to our client on 25<sup>th</sup> of November 2013 requiring the cessation of quarrying at the site within a six-month period. The applicant fully complied with this notice and ceased operations in line with the notice (see Appendix 1).

On the 17<sup>th</sup> of October 2014, the Council wrote to the applicant stating that the enforcement notice had been complied with, and that the enforcement case was closed (see Appendix 1).

This was the first and only enforcement notice issued to MBTL and when it was issued to the applicant, they fully complied with this notice.

Therefore, up until the decision made under CCC Ref. 11/317 (i.e. July 2011), our client fully believed that the quarry was fully authorised. This was noted and accepted by the inspector, in considering the application for leave to apply for substitute consent under ABP Ref 302158-18, where he stated that:

*"The applicant states that he was unaware of the unauthorised nature of the quarry prior to an application for permission in 2011. The planning authority states that it is satisfied that the applicant responded to the enforcement notice to cease quarrying activities and that it is not unreasonable to conclude that the applicant was unaware of the unauthorised nature of the quarry. Having regard to the history of the quarry and the material submitted in relation to this application I conclude that the applicant could reasonably have had the belief that the quarry was authorised."<sup>36</sup>*

While it is acknowledged that officially the unauthorised status of quarry was established from April 2005 onwards, it is worth noting nonetheless, that quarrying/extraction between 2005 and 2014 was limited to 1.04 ha (i.e. significantly less than the mandatory EIA requirement) and as soon as our client was issued with an enforcement notice and order to stop quarrying on-site, they fully complied with this notice and the quarry has remained inactive from 2014 to the present.

---

<sup>36</sup> ABP Ref. 302158-18, Inspectors Report p.9, para. 6.7.

It is submitted that up until the 11/317 decision was made by CCC (July 2011), the applicant fully believed that the quarry at Ardcahan was not unauthorised on the basis that:

- The pre-1963 status of the quarry.
- Up until the 1990's the quarry was operated by Cork County Council.
- Was purchased from Cork County Council a local authority with assumed lawful status.
- CCC granted permission for a macadam plant within the overall quarry area in 1998 and the conditions under this permission confirmed the authorised and pre-63 status and this authorised status remained up until April 2005 when S261 registration was not fulfilled.
- When permission was refused under 11/317, given the serious implications and the complexity of this case, it was reasonable that MBTL sought advice and they did so from one of the leading legal advisors in the country.
- When the enforcement notice was issued by Cork County Council in November 2013. This was the first and only enforcement notice issued by CCC in Ardcahan and was fully complied with and the quarry has remained inactive from 2014 to the present.

It is submitted therefore that up until the 11/317 decision was made by CCC (July 2011) the applicant reasonably had the belief that the quarry in Ardcahan was not unauthorised, and when they were issued with an enforcement notice, they ceased quarrying within the terms/timeframe of that notice.

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

We do not believe that the ability to carry out an assessment of the environmental impacts of the quarry in Ardcahan for the purpose of an environmental impact assessment or an appropriate assessment has been “substantially impaired”.

Both CCC and ABP on appeal were satisfied with the EIA/AA submitted with the 14/616 application (ABP ref. PL88.245174) which by necessity included consideration of the wider historical site.

In accordance with Section 177(E)(2)(b) an application for substitute consent must be accompanied by an rEIAR and in the case of the Ardcahan quarry, an rNIS also.

A comprehensive rEIAR and rNIS have been completed and are submitted with this SC application. This enables ACP to carry out an environmental

impact assessment and an appropriate assessment of the environmental impacts of the quarry development that took place between 1990 and 2014.

Schedule 6 of the EU (Planning and Development) (Environmental Impact Assessment) (Regulations) 2018 (and Annex IX of the EIA Directive) specify the information to be contained in an EIAR. These requirements identify a range of prescribed environmental factors, the significant effects of which have been addressed in the rEIAR. These include population and human health, biodiversity, hydrology, land and soil, air and climate, noise, landscape, cultural heritage and material assets as well as the inter-relationship between the above topics. These topics have all been addressed in the rEIAR.

The rEIAR has also been prepared in accordance with the requirements set out in the PDA 2001 (as amended) and in Council Directive 2011/92/EU as amended by Directive 2014/52/EU (the EIA Directive) and is based on the guidance presented in *Guidelines on the information to be contained in Environmental Impact Assessment Reports*, (EPA Guidelines, 2022). In particular, the rEIAR is prepared in accordance with Section 177F of the Act, with a focus on significant impacts/effects.

The submission of the SC application (and associated rEIAR and rNIS) also facilitates public participation. This opportunity for public consultation would not be available if no SC application was submitted to ACP. It is also important to note that the inclusion of an EIA/NIS in the previous 14/616 application and the associated appeal under ABP ref. PL88.245174 also facilitated public consultation in relation to environmental impact assessment and appropriate assessment and public participation also took place under the S261A in 2012.

As such, it is our belief that the ability to carry out an environmental impact assessment and an appropriate assessment of the quarry development in Ardcahan and the opportunity for public participation have not been substantially impaired and will in fact be facilitated by this SC application which is accompanied by a rEIAR and rNIS.

As it stands, the Council's enforcement notice issued under Council ref. SKBE/13/7 (to cease quarrying) has been fully complied with. The enforcement notice did not (and cannot) mandate an application for permission, so without this SC application, there would be no requirement for MBTL to carry out EIA, AA/NIS (or any mitigation or remedial works in relation to their quarry in Ardcahan) and there would be no opportunity for public consultation.

It is submitted that the ability to carry out an assessment of the environmental impacts of the development for the purpose of an EIA and AA and to provide for public participation, has not been substantially impaired and will in fact be facilitated by this application for substitute consent which is accompanied by a comprehensive rEIAR and rNIS.

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

The actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out of quarrying at Ardcahan (between 1997 and 2014) are assessed in the rNIS submitted with this SC application.

The actual/likely significance of the effects<sup>37</sup> of the development at Ardcahan Quarry have been assessed according to the appropriate guidance and with the professional judgement of the competent experts who assisted in preparing the rNIS and the rEIAR (the study team qualifications/expertise is presented in the rEIAR) and the significance of effects for each discipline is described using the terms provided in the 2022 EPA Guidance document.

The rNIS objectively concluded that no significant adverse effects arising from the quarry development in Ardcahan, are likely to have occurred in relation to a European/Natura 2000 site (i.e. Bandon River SAC) and that the quarry development has not resulted in any significant impacts on the integrity or qualifying interest of any Natura 2000 sites, either on its own or in combination with other plans / projects (including the macadam plant).

As part of the rEIAR a comprehensive suite of ecological surveys and assessments were conducted by Malone O'Regan in line with best practice guidance and it was considered that the main effects of the quarry development on habitats on-site were the removal and reduction of habitats such as deciduous woodland, dry heath, wet grassland and improved agricultural grassland, including the loss of two Annex I habitats listed under the EU Habitats Directive (Oak-Birch-Holly woodland) and Dry Siliceous Heath.

Malone O'Regan also considered any habitats removed over the period of substitute consent which would have been suitable for a number of species, including badger, birds, bats, pine marten, red squirrel, Irish stoat and otter. To ensure a comprehensive assessment of the potential impacts of the development, surveys were undertaken for Freshwater Pearl Mussel, amphibians, bats, birds (including Peregrine Falcon and an invasive species survey).

Overall, it was considered that the site has a local ecological value for fauna due to the presence of established woodland, scrub, heath/wet grassland/dense bracken mosaic, quarry and dystrophic lakes and that the proposed remedial measures on-site will not impact the species currently utilising the site.

No significant negative effects on designated sites, other habitats/flora, aquatic ecology or fauna have been identified as a result of the 1990-2014 quarry development. Remediation/mitigation measures in relation to

---

<sup>37</sup> Significance of effects is usually understood to mean the importance of the outcome of the effects (the consequences of the change). Significance is determined by a combination of (objective) scientific and subjective (social) concerns.

biodiversity<sup>38</sup> including a Remediation Plan (by Cathal O Meara Landscape Architects) and native woodland protection and management which will be implemented to protect existing woodland and optimise the biodiversity of the newly planted native woodland on-site.

This remediation plan involves the following measures:

- Remaining/existing long-established woodland to be protected and remain undisturbed.
- Existing dry siliceous heath to be protected and remain undisturbed. Fencing and signage will be installed on the ground. This habitat is to be managed to allow expansion.
- Existing ponds to be retained to promote biodiversity. and,
- The southwest of the site to the west of the quarry floor is proposed to become an area of wet woodland.

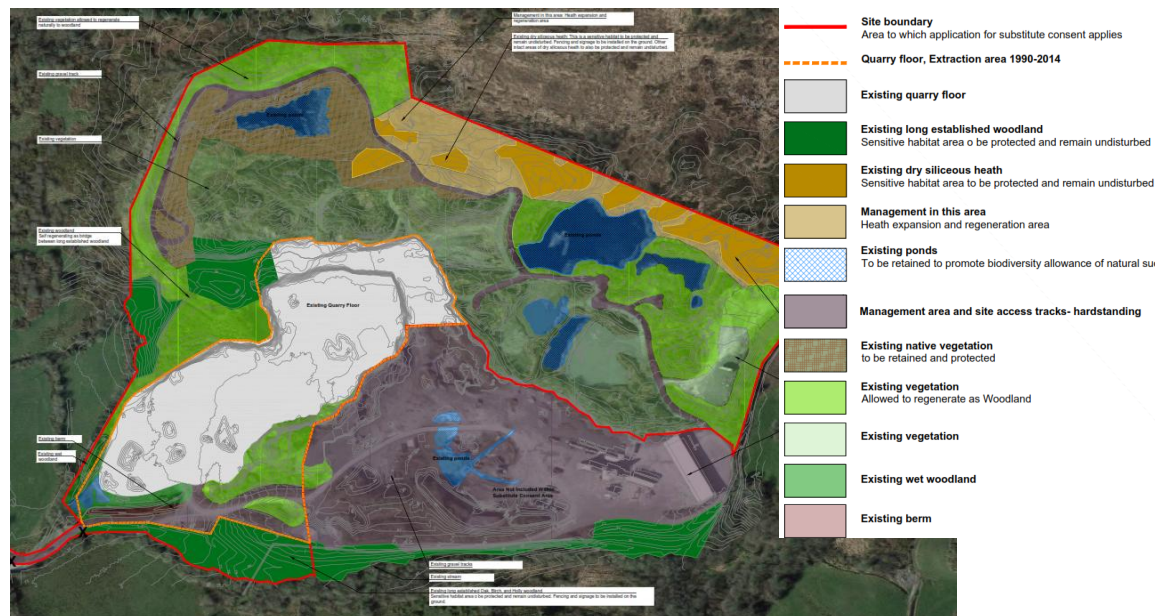


Figure 6: Extract from Remediation Plan by Cathal O'Meara Landscape Architects

Schedule 6 also requires that the following is provided in the EIAR where relevant:

*“(h) a description of the expected significant adverse effects on the environment of the proposed development deriving from its vulnerability to risks of major accidents and/or disasters which are relevant to it.”*

The risk of major accidents and/or disasters is considered in the rEIAR. It is noted that no historic records of major accidents, such as oil spills, major

<sup>38</sup> These are described in full in Chapter 12 Biodiversity and also in Chapter 15 Schedule of Mitigation and Monitoring.

flooding on site, collapse of spoil heaps or berms or resultant fish kills have been identified.

Following comprehensive surveys/assessment in relation to the actual and likely significant effects on the environment and the integrity of the Bandon River SAC resulting from the carrying out the quarry development in Ardcahan, it was objectively concluded that there are no significant adverse effects from the carrying out of the quarry development between 1990 and 2014 and as quarrying ceased in 2014, the continuation of (quarrying) development is not relevant here.

**(e) the effects on the environment site can be remediated and existing environment improved**

As demonstrated in the rEIAR and the rNIS submitted with the SC application, including in particular the Remediation and Woodland Management Plans, the effects of the quarry can be remediated and existing environment improved under this SC application.

Remedial measures are required to reduce, remedy or offset any identified significant negative effects which have occurred on the environment as a result of the development/operation of the quarry between 1990 and 2014.

This SC application allows for the effects on the environment to be remediated and the existing environment improved. The application is accompanied by a rEIAR and rNIS which firstly allow the full environmental effects of the quarry to be assessed and then includes the necessary remediation and/or improvements to be deployed as necessary.

In terms of biodiversity, to remediate the negative effects related to the loss of Woodland and Heath, a Remediation Plan has been by Cathal O Meara Landscape Architects and native woodland protection and management measures to protect existing woodland and optimise the biodiversity of the newly planted native woodland on-site.

In tandem with the Remediation Plan a Dry Heath Habitat Protection and Management Plan will be implemented to protect the remaining areas of heath habitat and to implement measures that will help naturally regenerate the existing areas of Dry Heath.

An Ecologist with experience in Woodland and Peatland Habitat Ecology will be employed regarding implementation of native woodland protection and management measures and dry heath protection and management. The Ecologist will also monitor the Invasive Plant Species Management Plan as part of the invasive plant eradication and management programme for the site.

A full list all of the mitigation measures included in the rEIAR. Both the rEIAR and the rNIS objectively concluded that the effects on the quarry site can be remediated and the existing environment can be improved with the application of mitigation measures where relevant, and that no significant adverse effects arising from the quarry development are likely to have

occurred, including in relation to the Bandon River SAC (to the legal standard as set out in *Kelly v An Bord Pleanála* [2014] IEHC 400).

As it stands there is no obligation on our client to mitigate or remediate the quarry development carried out between 1990–2014 (the 2013 enforcement notice issued by CCC sought the cessation of quarrying only). The implementation of the proposed remediation/mitigation measures included in the rEIAR and the rNIS will ensure that the effects of the quarry can be remediated and improved under this application for substitute consent.

**(f) the applicant has complied with previous planning permissions granted and has not previously carried out an unauthorised development**

It is well documented that the quarry at Ardcahan was established by Cork County Council prior to 1963 (see 261A Registration material in Appendix 4) and was considered an authorised development from the date of commencement of the 1963 Local Government (Planning and Development) Act up to 27<sup>th</sup> April 2005 and the failure to register the quarry under Section 261 of the PDA.

The authorised status was accepted and confirmed by the permission granted for a macadam / asphalt manufacturing plant, and all associated ancillary works under Council Ref. 98/294 which included quarrying related conditions (see Appendix 3) – this permission and conditions were fully complied with by our client.

Our client's failure to register their quarry under the Section 261 process was their first and only failure to comply with their planning obligations and as already stated this was based on incorrect advice from a third party. Had our client been correctly advised and had they known the importance of the Section 261 registration process, there would have been no hesitation in registering their quarry under the Section 261 process in 2005 which, of itself, was a simple process to fulfil.

Following the Council's review of the quarry under Section 261A in late 2012, and the enforcement notice issued to our client requiring the cessation of quarrying at the site (within a six-month period), the Council carried out site inspections and wrote to our client on 17<sup>th</sup> October 2014 stating that the enforcement notice had been fully complied with and that the enforcement case was closed (see Appendix 1). This demonstrates our client's efforts to comply with planning despite the difficult circumstances and consequences for our client and the employees of the quarry e.g. our client owns and operates a macadam plant permitted under 98/294 but must import all material to feed the macadam plant externally.

All the permissions granted to MBTL therefore have been carried out in accordance with the permissions granted. In addition to the developments being carried out in accordance with the relevant permissions, MBTL have also complied with all other notifications/requirements of the Planning

Authority. This demonstrates that the applicant fully respects the planning system.

**g) such other matters as the Coimisiún considers relevant.**

In their attempt to remedy the planning issues associated with the quarry in Ardcahan, our client has suffered significant financial losses and has been forced to import material to their authorised macadam plant, from quarries/sources that are remote from Ardcahan. This is clearly unsustainable on a longer-term basis from an environmental and economical basis. Granting substitute consent to our client would help address this situation and importantly, would further remedy the impacts of our client's quarrying development that took place between 1990 and 2014 and we would urge the Coimisiún to support this application.

The quarry in Ardcahan has also been a valuable resource locally and regionally which, if both applications are successful (i.e. SC and 37L), can recommence operations to best practice and supply the West Cork region into the future. As the site was not a greenfield site, and was authorised up until 2005, it is submitted that the change in cumulative development works has not resulted in a material change in potential environmental impact.

While ACP is not bound by any previous application/decision in relation to leave to apply for substitute consent and/or decision in relation to 'Exceptional Circumstances', it is important to highlight the fact that under ABP Ref. 305621-19 (Appendix 5) ABP granted leave to apply for substitute consent under section 177D of the PDA 2000 (as amended) on the basis that *"exceptional circumstances exist such that the Board considers it appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent."*

The Coimisiún also considered that -

- *the regularisation of the development concerned would not circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;*
- *the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment, and to provide for public participation in such an assessment, has not been substantially impaired;*
- *the actual or likely significant effects on the environment or adverse effects on the integrity of a European site, if any, resulting from the carrying out of the development, could likely be substantially remediated;*
- *the applicant has complied with a previous planning permission granted. In deciding not to accept the recommendation of the Inspector to refuse leave to apply for substitute consent, the Board had regard to the full extent of the meaning of 'quarry' as set out in section 2 of the Planning and Development Act 2000, as amended by the European Union (Environmental Impact*

*Assessment and Habitats) (No. 2) Regulations 2011 (S.I. No. 584 of 2011), section 3(b), and noted that this meaning is not restricted to areas of extraction. Furthermore, the Board noted that any substitute consent, if granted, 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 that such continuing or future development would require separate planning permission to be obtained following the granting of such substitute consent.*

It is submitted that while there have been procedural changes since the previous 305621-19 decision, there has been no significant or material planning changes that have occurred since that would contradict or overturn the decision and outcome of the 305621-19 application, especially in relation to 'Exceptional Circumstances'.

This is a key issue for our client and we would ask ACP to have particular regard to the previous 305621-19 application, assessment and decision when considering the exceptional circumstances that exist in relation to our clients quarry development in Ardcahan.

## 7. Assessment

This application for substitute consent is made in relation to the quarrying development that took place between 1990 (when the EIA Directive came into force) and 2014 (when quarrying ceased) and is made in accordance with Section 177E of the PDA. The relevant section of the Act is set out below:

*177E. — (1) An application for substitute consent in respect of development of land shall be made to the Board.*

- (a) *The Board may, at its own discretion and at the request of a person who intends to make an application for substitute consent, enter into consultations in respect of the application with that person before he or she makes the application.*

*An application for substitute consent shall—*

- (a) *state the name of the person making the application,*
- (b) *be accompanied by a remedial environmental impact assessment report or remedial Natura impact statement, or both,*
- (c) *be accompanied by the fee payable in accordance with section 177M,*
- (d) *comply with any requirements prescribed under section 177N, and*
- (e) *be accompanied by any other document that the applicant considers would be of assistance to the Board in making a decision in relation to his or her application.*

In accordance with Section 177E this application to the Coimisiún for substitute consent is accompanied by a rEIAR and remedial Natura Impact Statement (rNIS) and is also accompanied by a set of drawings (site layout and sections) that outline the extent of quarrying that took place between 1990 and 2014 and this Planning Statement which provides an overview of the quarry development, its planning history/policy context and the ‘Exceptional Circumstances’ that we believe exist that would justify the grant of such consent by ACP.

### 7.1 Contribution/Importance of the Quarry in Ardcahan

While this application is for Substitute Consent and does not approve future quarrying, it does provide a pathway to future quarrying development in Ardcahan under the Section 37L process, and therefore it is important to highlight the existing and historical importance of the quarry and the contribution it has made to the local economy and infrastructure projects in the area, particularly in relation to:

- **Job Creation:** The quarry provided direct employment for the local workforce, including transport and specialized equipment operators.

- **Support for Infrastructure/Construction:** The extractive industry is critical for supplying aggregates, stone, sand, and gravel, required for housing and infrastructure projects e.g. a single average house requires over 300 tonnes of aggregates.
- **Downstream Industries:** The quarry in Ardcahan supported ancillary businesses in West Cork, including in particular the adjoining macadam/asphalt production, and haulage services that transport materials to construction sites.
- **Agricultural Support:** Aggregates from the quarry is also essential for local agriculture to improve existing farms and their infrastructure.

The quarry development carried out in Ardcahan between 1990 and 2014 comprised the extraction of high quality quartzitic sandstone over an area measuring approximately 5.2 ha. It is estimated that the total amount of rock excavated between 1990 and 2014 equates to approximately 2.2 million tonnes or an average of 93,000 tonnes of stone per annum over a 24-year period.

A significant proportion of the quarried aggregate/material was used to supply the macadam plant on site (permitted under Council Ref. 98/294). The remaining aggregate was primarily used for road construction projects in the area.

On average, 93 truckloads of aggregate left the site weekly, carrying an average of 20 tonnes per lorry (estimated weekly average over the 24-year period, based on a 50-week operational year).

Between 1990 and 2014, the quarrying operation employed an average of seven full-time staff members, and the crushing contractors employed an average of six people. Transportation of aggregates was carried out by employees of the quarry and contracted out to haulage companies, as required.

This made a significant contribution to the local economy and employment in a rural area where otherwise there is a low level of indigenous industry and a high level of commuting to larger urban areas such as Cork City.

The provision of aggregates is also an essential building material for the construction industry and facilitates the construction of housing, buildings and infrastructure, which are vital for sustaining economic growth and development.

Crushed and screened aggregates are used in the production of bituminous macadam or asphalt concrete which are used in the construction of roads, airfields, and other trafficked areas such as driveways, car parks and pathways.

Companies rely on the road network to move goods efficiently, and people depend on roads to get around by car, public transport and active travel modes such as walking and cycling.

The network of road infrastructure plays a critical role in economic competitiveness and is a significant factor influencing the decisions of foreign multinational companies about where to locate their operations.

Ardcahan Quarry contributed to meeting the needs of the infrastructure and construction sectors during the relevant period for the substitute consent application, supplying high quality aggregates to local road projects in Counties Cork and Kerry, as well as the macadam plant on site.

The importance of the quarry at Ardcahan and the contribution it has made to the local rural economy, employment and infrastructure projects in the area, particularly in relation to roads, cannot be understated.

## 7.2 Compliance with National and Local Planning Policy

The quarry development that took place between 1990 and 2014 is supported by and consistent with national, regional and local planning policy.

Under the National Planning Framework the essential role of quarries in delivering housing and infrastructure is recognized and this role has been elevated even more under the revised NPF (April 2025) which focuses on accelerated housing and infrastructure.

National Policy Objective 23 (NPO 23) of the NPF also acknowledges the importance of quarries/extractive industries in the development of rural economies through supporting the local economy:

*“Facilitate the development of the rural economy through supporting a sustainable and economically efficient agricultural and food sector, together with forestry, fishing and aquaculture, energy and extractive industries, the bio-economy and diversification into alternative on-farm and off-farm activities, while at the same time noting the importance of maintaining and protecting the natural landscape and built heritage which are vital to rural tourism” (emphasis added).<sup>39</sup>*

The 2004 Quarry Guidelines and the Regional Spatial and Economic Strategy for the Southern Region, supports the role of the quarrying/extractive industry in providing essential construction materials for development. The strategy also highlights the importance of protecting significant aggregate and mineral reserves from encroaching developments (such as one-off housing) that might prevent their future quarrying in line with NPO 23.

In terms of overall national planning guidance, the Case Study Paper (CSP07) issued by the OPR in 2025 identifies the need for a new national planning policy/guidelines in relation to quarrying, and re-states the importance of material/aggregates to the construction industry.

In relation to local (Cork County Council) planning policy the quarry development in Ardcahan, covers multiple Development Plans and Local Area Plans and all of these plans are supportive of the of quarrying/extractive

<sup>39</sup> National Planning Framework, p.78.

industry and emphasised the importance to the local rural economy and the contribution to the delivery of key construction (including housing) and infrastructure projects.

The compliance with planning policy is also confirmed by the Council's decision to permit a provision of a macadam / asphalt manufacturing plant under Council Ref. 98/294 within the confines of the overall quarry in Ardcahan under the 1996 CDP and the decision to grant permission for quarrying by both Cork County Council and ABP under CCC Ref.14/616 and ABP Ref. 88.245174 respectively - while this decision was later quashed by the Courts, this was on procedural grounds, so it is submitted that the planning assessment remains relevant especially in relation to the 'Principle of Development' where the ABP Inspector comments as follows:

*"I would acknowledge Section 6.12 of the Cork County Development Plan, 2014 – 2020, recognises the value of sand and gravel extraction to the local economy and also the importance of identifying sites which will have the least impact on the environment. Policy EE 12-3: 'Impacts of Mineral Extraction' of the County Development Plan outlines the environmental considerations for quarries and these include visual impact, methods of extraction, noise levels, dust prevention, protection of rivers, lakes, European sites, water sources and residential amenities. Also consideration shall be given to the impact on the road network.*

*The national guidelines 'Quarries and Ancillary Activities', 2004, recognise that there is a continuing need for some new or expanded aggregate quarrying operations on land to meet regional and local requirements and to ensure adequate supply of aggregates to meet likely scale of future demand. Although this national guideline document is now 10 years old I would note that the documentation on the file indicates that there is strong demand for the aggregates in question.*

*It is my view based on the policies of the County Development Plan, the national guidelines and the location of the subject development in this rural area that the principle of the subject development would be acceptable."*<sup>40</sup>

Overall, it is submitted that the quarry development in Ardcahan is supported by national, regional and local planning policy, especially in relation to its contribution to rural economy/employment and the delivery of construction, housing and infrastructure projects.

### 7.3 Site Suitability

In the first instance, the location of the quarry in Ardcahan is determined by the existence of high quality resource (quartzitic sandstone), but the site also has multiple attributes which make the quarry a suitable location for development, including:

<sup>40</sup> ABP Ref. PL88.245174, Inspectors Report, pp. 15-6.

- **Resource Availability:** the quarry in Ardcahan provides a large volume of very high quality quartzitic sandstone.
- **Accessibility:** Proximity to existing road networks reduces transportation costs and noise impact.
- **Market Proximity:** Because aggregates are generally considered low-value with high transport costs, sites must be near demand centres to remain economically viable.
- **Visual Screening:** The sites natural topographical means that it is naturally screened, in turn minimizing visual impact.
- **Low Population Density:** the area has a relatively lower population density – these areas are generally more suitable to minimize impact.
- **Zoning/Policy:** The Council's greenbelt policy for this area restricts one-off housing and encourages housing/population within the development boundary for Dunmanway, which in turn minimises conflicts with other uses e.g. quarrying, agriculture.
- **Buffers/Separation Distances:** there are good separation distances to the nearest "noise-sensitive receptors" such as houses, residential settlements, schools, and hospitals. The nearest dwellings to the quarry site are located approximately 300m away. There are no commercial premises or community facilities in the immediate environs.
- **Sustainability:** The existence of a macadam /asphalt production plant within the quarry, makes it the most sustainable source of aggregates for the macadam/asphalt production plant. Without an operating quarry in Ardcahan this material has to be imported from remote quarries/sources.

Ardcahan Quarry is located approximately 3.5km north-east of Dunmanway in West Cork just off the L4621-9 local road ('Hospital Road'), approximately 300m east of its junction with the R587 regional road, which links Dunmanway and Macroom. This makes it located close to a large town for (employment) commuting purposes but separated enough not to have an adverse impact on the town.

The nearest dwellings to the quarry site are located approximately 300m south; 275m west; 450m north and 400m east of the site. There are no commercial premises or community facilities in the immediate environs and therefore limiting the potential impact of the quarry.

The site is located in a rural setting characterised by undulating topography, irregularly shaped fields and clusters of mixed woodland. It is naturally very well screened and has a relatively low visual impact on the wider area.

The suitability of the site for quarrying development was acknowledged under the 98/294 application (for a macadam / asphalt manufacturing plant), where the strengths of the quarry and its location were identified in the planner's report as follows:

*“Site is located in rural area about 3 miles north of Dunmanway and the macadam plant is located on the floor of a large quarry. The site is well screened ... access is very good with a short stretch of Council road leading to the Coppeen-Dunmanway Regional Route” (see Appendix 3).*

The location of an authorised macadam/asphalt production plant on the applicants landholding makes the quarry site even more relevant/suitable and the local provision of aggregates even more important to avoid the unsustainable transport of aggregates over long distances to feed the macadam plant in Ardcahan.

## 7.4 Remediation and Mitigation Measures

This application for substitute consent is accompanied by a rEIAR in accordance with Section 177E(2)(b) of the PDA as stated above and has been prepared in accordance with the requirements set out in the PDA 2001 (as amended) and Council Directive 2011/92/EU as amended by Directive 2014/52/EU (the EIA Directive).

The rEIAR is based on the guidance presented in Guidelines on the information to be contained in Environmental Impact Assessment Reports, (EPA 2022). In particular, the rEIAR is prepared in accordance with Section 177F of the Act, with a focus on significant impacts.

The significance of impacts for each discipline is described using the terms provided in the 2022 Environmental Protection Agency (EPA) Guidance document. A statement of the significant effects on the environment is provided by each discipline.

The risk of major accidents and/or disasters is considered in the rEIAR and it is noted that no historic records of major accidents, such as oil spills, major flooding on site, collapse of spoil heaps or berms or resultant fish kills have been identified in the specified period (1990–2014).

A negative effect has been identified for biodiversity, relating to the loss of Annex I woodland and heath habitats; Annex I Old Sessile Oak Woods with Ilex and Blechnum and Annex I European Dry Heath habitat). No significant negative effects on designated sites, other habitats/flora, aquatic ecology or fauna have been identified as a result of the 1990-2014 quarry development.

Quarrying activity within the substitute consent area during the 1990-2014 period resulted in the permanent loss of established old Oak-Birch-Holly woodland (Clashnagallagh Wood) that likely corresponded to Annex I Old Sessile Oak Woods with Ilex and Blechnum (91A0), along with the loss of Dry Siliceous Heath that likely corresponded to Annex I European Dry Heaths (the extent of loss is outlined in the rEIAR). Both habitats are evaluated as important biodiversity features, but the rEIAR and rNIS also include comprehensive remediation/mitigation measures including the following:

- Remediation Plan and native woodland protection and management measures, which will be implemented to protect existing

woodland, with natural regeneration of habitat and some additional planting.

- Retention of existing long-established woodland areas to be protected and to remain undisturbed.
- Areas adjacent to the existing remnants of woodland are to be planted with a native planting. These shall be planted at a dense spacing to encourage rapid establishment.
- In tandem with the Remediation Plan a Dry Heath Habitat Protection and Management Plan will be implemented to protect the remaining areas of habitat and to implement measures that may help naturally regenerate areas of Dry Heath.
- An Ecologist with experience in Woodland and Peatland Habitat Ecology will be employed regarding implementation of the native woodland protection and management measures and dry heath protection and management.
- The existing scrub vegetation is developing into a habitat, and this process of habitat colonisation is to be allowed to occur as part of a successional process.
- A similar process of successional development is evident in the existing ponds. This process is to be allowed to occur, and the ponds are to be retained.
- Measures to ensure that peregrine falcon that use the site will be protected.
- No alterations to the existing ponds/waterbodies will take place until amphibians have been confirmed as being absent.
- It is proposed to install artificial bat boxes within the site and bats will be able to use the retained and proposed habitats included in the Remediation Plan for foraging and commuting.
- An Invasive Species Management plan has been developed for the site that includes measures for the remediation of the stands of Japanese knotweed and rhododendron located on the site.

Without this SC application, there is no requirement for MBTL to carry out any mitigation or remedial works in relation to their quarry in Ardcahan as the enforcement notice issued under ref. SKBE/13/7 does not require any mitigation and/or remediation.

## 7.5 Remedial NIS and Associated Mitigation Measures

This application for substitute consent is also accompanied by a remedial rNIS<sup>41</sup> in accordance with the decision under ABP Ref. 305621-19 regarding quarry development which has taken place between February 1997 and October 2014, where an AA would have been required under the Habitats Directive (this was determined by CCC under the Section 261A process).

In the context of substitute consent, rNIS is referenced as follows in Section 177G under Part XA of the PDA 2000 as amended:

<sup>41</sup> The rNIS has been prepared by Kelleher Ecology Services.

*(1) A remedial Natura impact statement shall contain the following:*

- a) a statement of the significant effects, if any, on the relevant European site which have occurred, or which are occurring or which can reasonably be expected to occur because the development the subject of the application for substitute consent was carried out;*
- b) details of—*
  - i. any appropriate remedial or mitigation measures undertaken or proposed to be undertaken by the applicant for substitute consent to remedy or mitigate any significant effects on the environment or on the European site;*
  - ii. the period of time within which any such proposed remedial or mitigation measures shall be carried out by or on behalf of the applicant;*
- c) such information as may be prescribed under section 177N;*
- d) and may have appended to it, where relevant, and where the applicant may wish to rely upon same:*
  - i. a statement of imperative reasons of overriding public interest;*
  - ii. any compensatory measures being proposed by the applicant.*

The rNIS prepared as part of this SC application, identified that the study site is not part of or immediately adjacent to any Natura 2000 site, nor does it require resources from any, thereby ruling out any direct habitat loss at such conservation sites. However, it is in close proximity to the Bandon River SAC.

The rNIS submitted with this application provides a comprehensive appropriate assessment of the quarry in Ardcahan and objectively concludes that with the application of mitigation measures, no significant adverse effects arising from the quarry development are occurring or likely to have occurred in relation to the Natura 2000 site, the Bandon River SAC (site code 002171).

## **7.6 Importance of Securing Substitute Consent**

As this SC application provides a pathway to a prospective permission for the applicant to recommence quarrying at the Ardcahan site, it is obviously of significant importance to our client, but is also important to the wider area as it has the potential to have a significant positive impact on the local economy, employment and environment through the proposed

mitigation/remediation outlined in the rEIAR and rNIS, which accompany the SC application.

Having regard to the requirement set down in Section 177K(1A) of the PDA, it is submitted that the quarry development, the subject of this SC application, presents a set of exceptional circumstances that justify a grant of substitute consent.

In terms of quality, the subject quarry is exceptional amongst peers. When the quarry was purchased from Cork County Council it was on the basis that it was a 'pre-1963' and a fully authorised quarry. When the Council granted permission for the macadam/asphalt manufacturing plant under Council Ref. 98/294, again it was accepted that the overall quarry operation was authorised.

Our client's failure to register their quarry under the Section 261 process was based on incorrect advice from a third party. Had our client been correctly advised and had they known the importance of the Section 261-registration process, there would have been no hesitation or difficulty or substantial cost in registering their quarry under the Section 261 process in 2005.

Following the Council's review of the quarry under Section 261A, and the enforcement notice issued to our client requiring the cessation of quarrying at the site within a six-month period, the Council wrote to our client on the 17<sup>th</sup> of October 2014 stating that the enforcement notice had been fully complied with, and that the enforcement case was closed.

As explained in detail in this report, all the permissions granted to MBTL have been carried out in accordance with the permissions granted and they have also complied with enforcement notice ref. SKBE/13/7. This demonstrates that the applicant fully respects the planning system.

This substitute consent application is accompanied by a comprehensive rEIAR and rNIS. The rEIAR is exhaustive in its efforts to obtain evidence of the progression of the development of the quarry, is robust and provides sufficient information to properly inform EIA and a suite of mitigation/remediation measures are included in the rEIAR.

The rNIS objectively concludes that with the application of mitigation measures, no significant adverse effects arising from the quarry development are likely to have occurred in relation to the Bandon River SAC.

The development for which substitute consent is sought is supported by the policies and objectives for the plans adopted for the area by Cork County Council i.e. the CDPs and LAPs that were in force during the period of 1990 and 2014 and the current 2022 CDP.

Having regard to the above and the findings made in respect of the rEIAR and rNIS, it is considered that the subject development did not and does not seriously injure the amenities of the area or of property in the vicinity and was and would be in accordance with the proper planning and sustainable development of the area and we would ask ACP to grant permission for substitute consent.

## 7.7 Development Contributions

Section 48 and 49 of the PDA relates to the preparation of Development Contributions Schemes (DCS) whereby *“a planning authority may, when granting a permission under Section 34, include conditions for requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority and that is provided, or that it is intended will be provided, by or on behalf of a local authority”*.

The DCS prepared by CCC makes provision for General (Section 48 - non-refundable), Supplementary (Section 49) and Special (Section 48(2)(c)) Development Contributions.

Under the Council’s DCS, it is stated that quarries are not specifically included in the General Contribution Scheme, and will therefore be levied by way of special development contribution:

*“Car parking spaces will be charged on a space deficiency basis through a special contribution. Development contributions for windfarms, golf courses, **quarries**, gravel pits and other non-agricultural developments, which are not specifically allowed for in the General Scheme, will be levied as special contributions (however, buildings provided as part of quarries/gravel pits, golf courses and other leisure facilities, etc. will also be levied in accordance with the General Scheme on the gross floor area).”*

In accordance with the provisions of Section 48(2)(c) of the PDA, any special contribution levied must be linked to ‘specific exceptional costs’ and must ‘benefit the proposed development’.

In considering this SC application, it is important to point out that the Council did not levy a development contribution under the 98/294 permission based on the following assessment by the case planner:

*“Access is very good with a short stretch of County Road leading to the Coppeen-Dunmanway Regional Route. Given the adequacy of the road network I do not consider a contribution to be appropriate” (Appendix 3).*

In the 14/616 application (ABP ref. 88.245174) ABP levied a special development contribution of €147,760 for the provision of *“road improvements and maintenance, specifically overlay works for the Local Road L4621-9 and works at the junction with regional road R587”* – this contribution was based on future (not historical) quarrying works.

Subsequent to a grant of substitute consent, MBTL are happy to engage with CCC/ACP further on this matter, if required.

## 8. Conclusion

Our client's quarry at Ardcahan has long been recognised as being of significant value containing high quality quarzitic sandstone resource and for a long period of time provided high quality material to a significant number of clients, including Cork County Council.

In 1999, our client's operation in Ardcahan was supplemented by the addition of a macadam / asphalt manufacturing plant permitted under Council Ref. 98/294 (the macadam/asphalt manufacturing plant continues in operation today).

The enforcement notice under SKBE/13/7 issued to our client in November 2013 requiring the cessation of quarrying and the applicant fully complied with this and ceased operations in line with the notice.

Up until the 11/317 decision was made by CCC (July 2011), our client fully believed that the quarry was fully authorised and when they were issued with an enforcement notice to cease quarrying, they have (to this day), fully complied with this notice.

The failure to register the quarry has had a profound impact on our client, however despite this, the submission of this SC application demonstrates that they are willing to regularise the status of the quarry in Ardcahan and undertake remediation. Without this SC application, there is no requirement for MBTL to carry out any mitigation or remedial works in relation to their quarry in Ardcahan, as the enforcement notice does not mandate an SC application or any mitigation/remediation.

Granting substitute consent to our client would facilitate remediation/mitigation and would also provide a pathway for a prospective application for the recommencement of a quarry which can make an important economic contribution to this rural area and provide a sustainable option for the provision of aggregates for the adjoining macadam plant and construction/infrastructure projects in the area.

The quarry is consistent with national guidelines for the provision of aggregates to meet regional and local construction requirements and local development plan/local area plan policy for the provision of sustainable locally sourced aggregates.

We would therefore ask ACP to grant substitute consent for the proposed quarry and allow our client the opportunity to secure permission for future quarrying under the Section 37L process.

## **Appendices:**

- 1. Copy of enforcement notice and correspondence issued by Cork County Council.**
- 2. Aerial photography showing extent of quarrying/extraction that took place between 1990 and 2014.**
- 3. Permission granted under 98/294 (including Planners Report).**
- 4. Section 261A notice and reports from the Council’s Executive/Senior Planners and Heritage Officer reports prepared under the Section 261A review process.**
- 5. Section 177C application and ABP decision under Ref. 305621-19.**
- 6. Submission made to in response to CCC’s 261A Public Notice.**
- 7. ABP Correspondence dated 26<sup>th</sup> May 2022 (including High Court Order dated 3/12/2020) & Withdrawal Confirmation.**

**Appendix 1**  
**Copy of enforcement notice and correspondence issued by Cork County Council**

**CORK COUNTY COUNCIL**  
**ENFORCEMENT NOTICE**

*Section 154 of the Planning and Development Act, 2000*

**DEVELOPMENT CARRIED OUT WITHOUT A GRANT OF PLANNING  
PERMISSION**

---

**Enforcement Notice Reg. No. SKBE/13/7**

Murray Bros. (Tarmacadam) Limited,  
Droumleena,  
Dunmanway,  
Co. Cork.

**WHEREAS CORK COUNTY COUNCIL** is the Planning Authority for the County of Cork in which are situate the lands at Ardcahan, Dunmanway, Co. Cork in the Townland of Ardcahan in the Electoral Division of Aultagh and more particularly hatched in red on the map, **Schedule 1**, annexed hereto.

AND WHEREAS Quarry development was undertaken on the said lands without a grant of Planning Permission as required under Part III of the Planning and Development Act, 2000 or under Part IV of the Local Government (Planning and Development) Act, 1963 as amended, and in respect of which the owner or operator failed to provide information in relation to the operation of the quarry in accordance with Section 261 (1) of The Planning and Development Act 2000.

**AND WHEREAS** the said development carried out on the said lands constitutes Unauthorised Development

**AND WHEREAS** the said development is not exempted development.

**AND WHEREAS** an investigation in respect of the said unauthorised development was carried out by Cork County Council.

**AND WHEREAS** a Notice was issued on 23<sup>rd</sup> August 2012 by Cork County Council in relation to the Quarry on the said lands under Section 261A(4)(a) of the Planning and Development Act 2000 as inserted by Section 75 of the Planning and Development (Amendment) Act 2010 as amended and no application was made to An Bord Pleanála for a review of the determination made by Cork County Council under subsection (2)(a) of the said Section as set out in that Notice and no application was made to An Bord Pleanála for a review of the decision of Cork County Council under subsection (4)(a) of the said Section as set out in that Notice and the time for making such review applications to An Bord Pleanála has now expired and Cork County Council is therefore obliged by subsection (9) of the said Section to issue an Enforcement Notice under Section 154 of the said Act requiring the cessation of the operation of the quarry and the taking of such steps as Cork County Council considers appropriate.

**TAKE NOTICE** that Cork County Council pursuant to the provisions of Section 154 of the Planning and Development Act 2000 **HEREBY REQUIRES YOU IN RESPECT OF THE SAID LANDS, WITHIN A PERIOD OF SIX MONTHS FROM THE DATE OF SERVICE OF THIS NOTICE TO TAKE THE FOLLOWING STEPS:**

- a) Cease the operation of the quarry.
- b) Refund to Cork County Council the sum of **€776.00** being the costs and expenses of reasonably incurred by it in relation to the investigation, detection and issue of this Enforcement Notice and Notice issued under Section 261A(4) of The Planning and Development Act 2000 as inserted by Section 75 of the Planning and Development (Amendment) Act 2010, including costs incurred in respect of the remuneration and other expenses of its employees, consultants, and or advisors pursuant to Section 154 (5) (d) of the Planning and Development Act, 2000.

**AND FURTHER TAKE NOTICE that if you do not comply with this Notice within the period(s) specified above, or within such extended period (not being more than 6 months as may be allowed by Cork County Council), you may be guilty of an offence, and Cork County Council may take the following actions:-**

- Institute proceedings against you under the Planning and Development Act 2000, as amended, as Cork County Council may decide in its absolute discretion.
- Enter on the said land and take such steps necessary to secure compliance with the steps specified in the Notice including the demolition of any structure and the restoration of land and may recover any expenses reasonably incurred by it in that behalf.

**IN ADDITION** your attention is directed to the **Penalties for Non-Compliance** with the terms of this Enforcement Notice as set out and explained in **Schedule 2** attached hereto.

**Dated this 25<sup>th</sup> day of November, 2013.**

Signed: \_\_\_\_\_

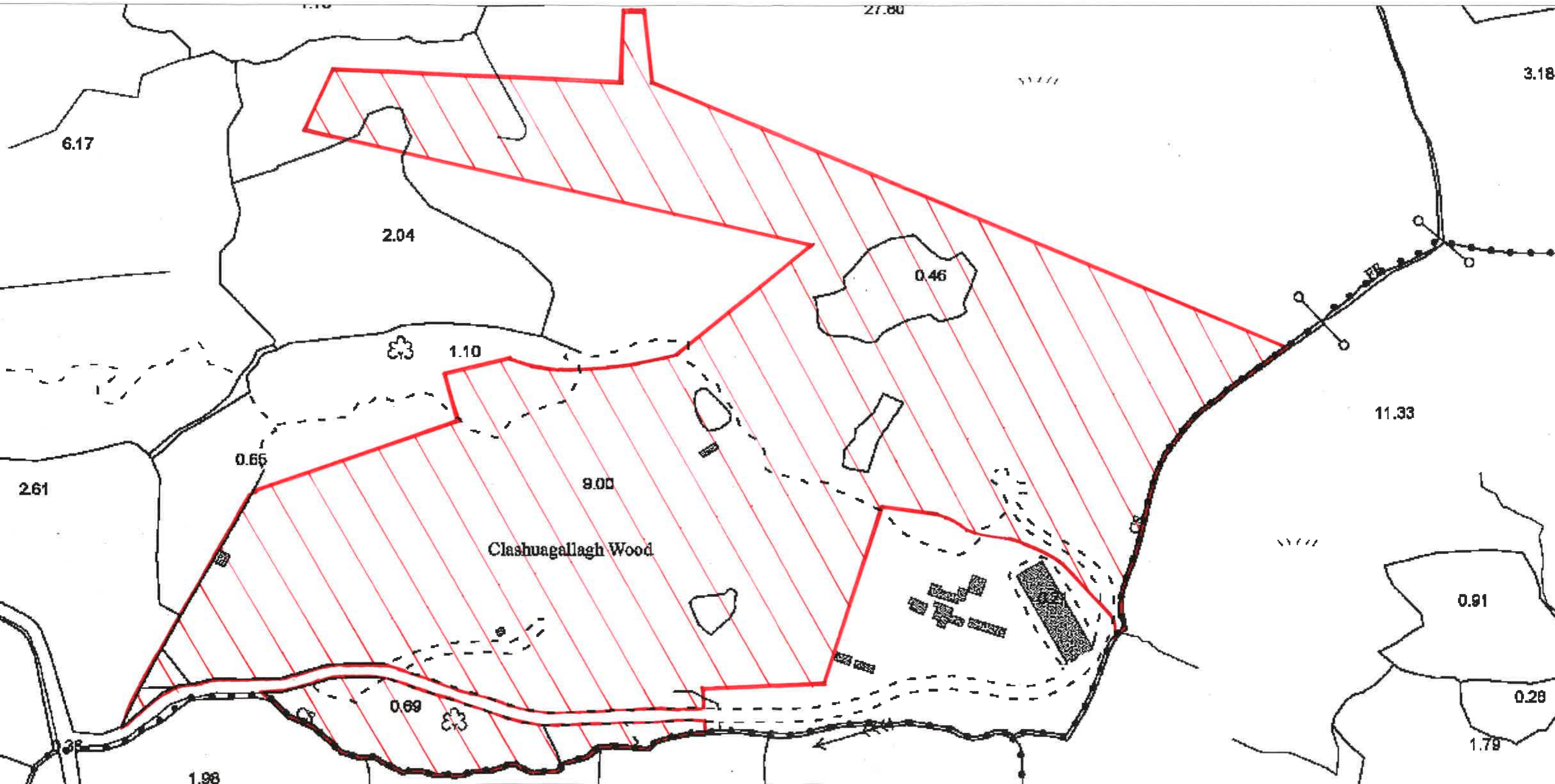
*Bernadette Collins*

**Bernadette Collins,  
Planning Department,  
Cork County Council,  
Norton House, Cork Road,  
Skibbereen, Co. Cork.**

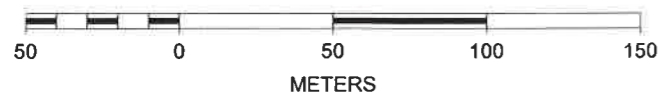
**SCHEDULE 1**

**MAP (OS Map Ref No 108/1)**

*Attached Map referred to in this Enforcement Notice*



SCALE 1 : 2,500



QUARRY AREA HATCHED IN RED

Scale 1:2500  
OS Map No: 108 - 01  
Title: Site Location Map  
Townland: Ardcahan

Prepared By; *B. Buckley*  
Barry Buckley  
Technician



## SCHEDULE 2

### CONSEQUENCES OF NON-COMPLIANCE & PENALTIES FOR OFFENCES PLANNING AND DEVELOPMENT ACT, 2000, as amended by the PLANNING AND DEVELOPMENT (AMENDMENT) ACT, 2010

1. Pursuant to Section 156(1) of the Act a person who is guilty of an offence under Section 154 shall be liable-
  - a) On conviction on indictment, to a fine not exceeding €12,697,380.78 or to imprisonment for a term not exceeding two years, or to both, or
  - b) On summary conviction, to a fine not exceeding €5,000, or to imprisonment for a term not exceeding six months, or to both.
  
2. Pursuant to Section 156(2) of the Act, where a person is convicted of an offence referred to in No. 1 above and there is a continuation by him or her of the offence after his or her conviction, he or she shall be guilty of a further offence on every day on which the contravention continues and for each such offence shall be liable-
  - a) On conviction on indictment, to a fine not exceeding €12,697.38 for each day on which the offence is so continued, or to imprisonment for a term not exceeding two years, or to both, provided that if a person is convicted in the same proceedings of two or more such further offences the aggregate term of imprisonment to which he or she shall be liable shall not exceed two years or
  - b) On summary conviction, to a fine not exceeding €1,500 for each day on which the offence is so continued or to imprisonment for a term not exceeding six months, or to both, provided that if a person is convicted in the same proceedings of two or more such further offences the aggregate term of imprisonment to which he or she shall be liable shall not exceed six months.
  
3. Pursuant to Section 156(3) of the Act, where a person is convicted of an offence referred to in No. 1 above involving the construction of an unauthorised structure, the minimum fine shall be-
  - a) On conviction on indictment, the estimated cost of the construction of the structure or €12,697.38, whichever is less, or
  - b) On summary conviction, the estimated cost of the construction of the structure or €2,500, whichever is less, except where the person convicted can show to the court's satisfaction that he or she does to have the necessary financial means to pay the minimum fine.
  
4. Pursuant to Section 156(8) of the Act, on conviction of an offence under Section 154 of the Act, the court may, in addition to imposing the penalties specified in Nos. 1 and 2 above, order the person convicted to take all or any steps specified in the relevant enforcement notice within such period as the Court considers appropriate.

# Comhairle Contae Chorcaí Cork County Council

Rannóg Pleanála, Teach Norton,  
Bóthar Chorcaí, An Sciobairín,  
Co. Chorcaí.  
Fón: (028) 40340 • Faics (028) 21660  
Suíomh Greasain: www.corkcoco.ie  
Planning Section, Norton House,  
Cork Road, Skibbereen,  
Co. Cork.  
Tel: (028) 40340 • Fax: (028) 21660  
Web: www.corkcoco.ie



Tom Halley,  
McCutcheon Halley Walsh  
Chartered Planning Consultants,  
6 Joyce House,  
Barrack Square,  
Ballincollig,  
Cork

<b>McCutcheon Halley Walsh Received</b>	
Date:	21 OCT 2014
Project:	2546
Action:	SdRive + client

Date: 17<sup>th</sup> October 2014

Ref: SKB120022

**Re: Murray Bros Tarmacadam Ltd  
Enforcement Notice - Register No. SKBE/13/7**

---


Dear Sir,

With reference to the above and previous correspondence thereon in particular your letter dated 12<sup>th</sup> May 2014, I am in receipt of the Senior Planner's report he confirms that the requirements of Enforcement Notice above that issued on 25<sup>th</sup> November 2013 have been complied with, and that no further enforcement action is necessary. Accordingly I am closing my file on the matter.

I am enclosing official receipt no WCP0002243 in respect of cheque in the amount of €776.00 received at this office in respect of requirement b) of the enforcement notice.

Please quote Ref. No. SKB120022 in any correspondence or direct contact with the Enforcement Section.

Yours faithfully,

  
Bernadette Collins  
Enforcement Section  
Planning Department

Murray Bros. Tarmacadam Ltd.  
c/o McCutcheon Halley Walsh  
Planning Consultants,  
6, Joyce House,  
Barrack Square,  
Ballincollig, Co. Cork.

**Cork County Council**  
**County Hall**  
**Cork**  
**Tel - 021 427 6891**  
**VAT Registration No - 0007458M**



14-MAY-2014  
14:58:22

**Receipt : WCP0002243**

**Header Details**

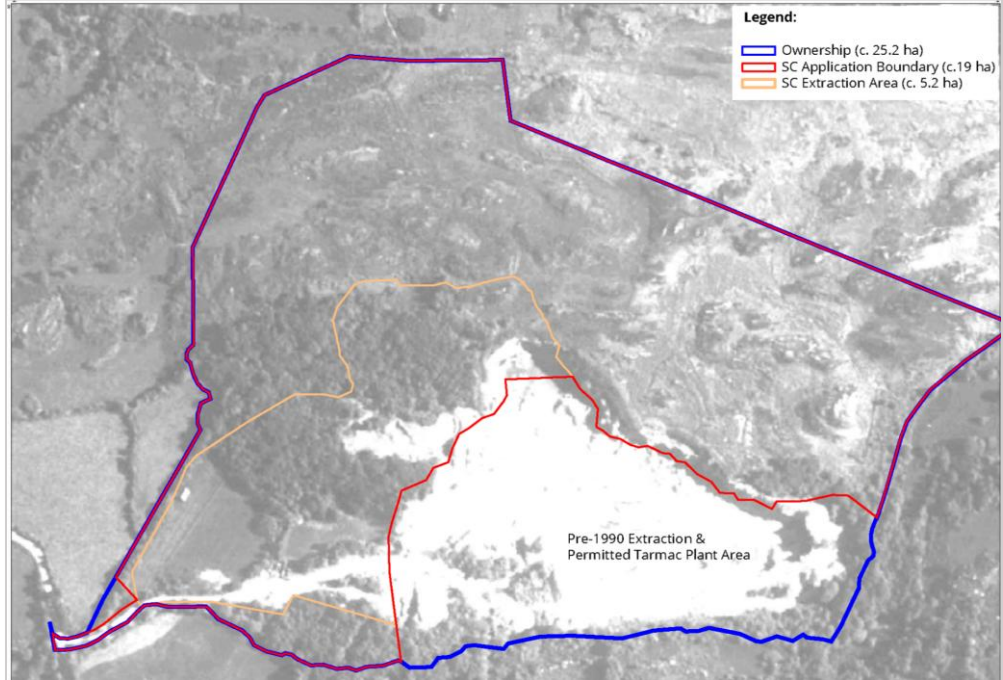
Receipt Reference: WCP0002243  
Received From: Murray Bros. Tarmacadam Ltd.  
Billing Address: c/o McCutcheon Halley Walsh  
Planning Consultants,  
6, Joyce House,  
Barrack Square,  
Ballincollig, Co. Cork.  
Account No.: POS  
7000001  
Amount Paid (EUR): 776.00  
Type: CHEQUE  
Comments: SKB/12/0022- Enforcement Exp.  
Receipt Issued By: ALORDAN  
Receipt Date: 14-May-2014  
Site: 0262 : West Cork Planning Department  
D/N/U: D  
Invoice Reference: 9000046980 : CHEQUE

**Line Details**

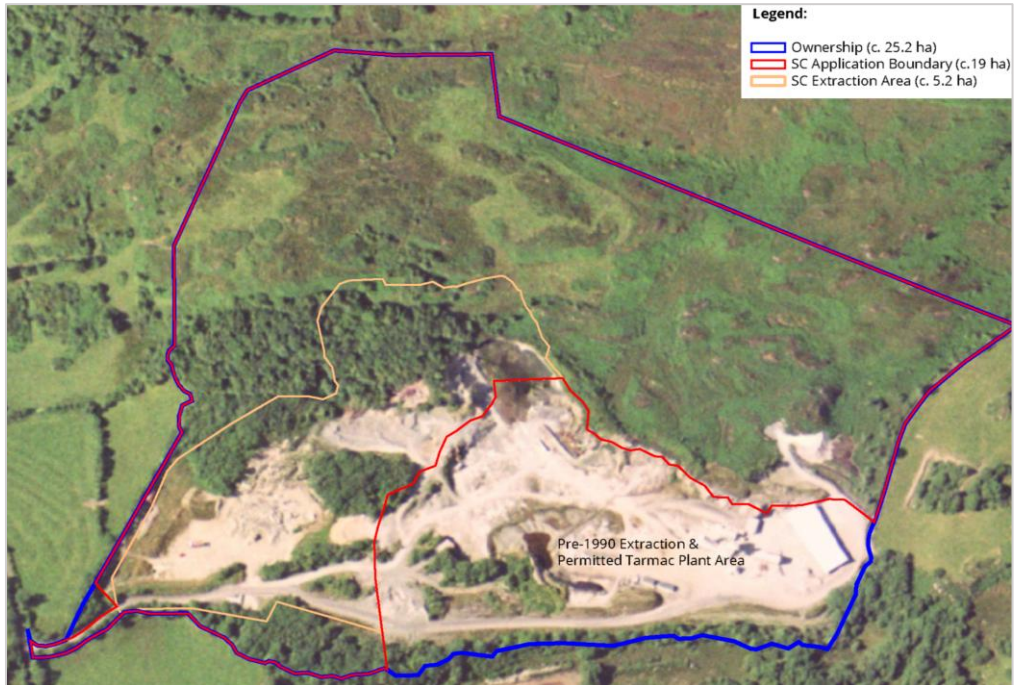
From Reference	To Reference	Transaction Date	Remarks	Amount
WCP0002243	9000046980	14-May-2014	SKB/12/0022 -	776.00

RECEIPT IS ISSUED SUBJECT TO CLEARANCE OF CHEQUE/CREDIT CARD  
ISSUED ON BEHALF OF  
West Cork Planning Department,  
Norton House,  
Skibbereen,  
Co. Cork028-40340

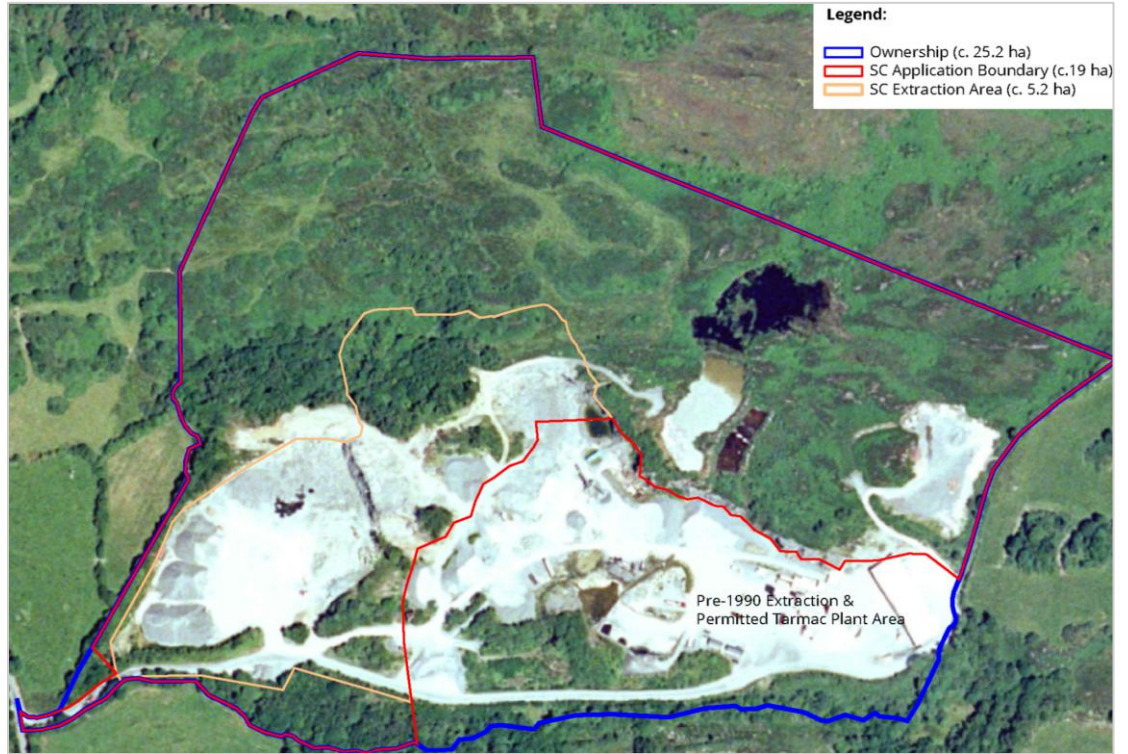
**Appendix 2**  
**Aerial photography showing extent of quarrying/extraction that took place between 1990 and 2014**



Aerial Image 1995



Aerial Image 2000



Aerial Image 2005



Aerial Image 2014

**Appendix 3**

**Permission granted under 98/294 (including Planners Report)**

CORK COUNTY COUNCIL  
LOCAL GOVERNMENT (PLANNING & DEVELOPMENT) ACTS, 1963-1993  
NOTIFICATION OF DECISION TO GRANT PERMISSION (with conditions)

25

Reference No. in Planning Register  
W/98/0294

MURRAY BROS. TARMACADAM LTD  
c/o P.D. Lane Associates,  
1 Church Road,  
Greystones,  
Co. Wicklow

In pursuance of the powers conferred upon them by the above mentioned  
Acts the Council of the County of Cork have by Order dated **- 2 APR 1998**  
decided to GRANT PERMISSION for the development of land namely;

Tarmacadam/asphalt manufacturing plant, ancillary  
buildings & works, storage bays, weighbridge and septic  
tank

AT: ARDCAHAN, DUNMANWAY

in accordance with the plans and particulars submitted by the applicant

On: 04/02/98

And as amended by revised documentation on 12/02/98

and subject to the conditions ( 15 No.) set out in column 1 of the  
Schedule attached hereto. The reasons for the imposition of the  
said conditions are set out in column 2 of the Schedule.

An appeal against a decision of the Planning Authority may be made to  
An Bord Pleanála by any person before the EXPIRATION of the period of  
ONE MONTH beginning on the day of the giving (i.e. Date of Order) of  
the decision of the Planning Authority. (SEE NOTES ATTACHED)

If there is no appeal against the said decision, a grant of PERMISSION  
in accordance with the decision will be issued after the expiration of  
the period within which an appeal may be made to An Bord Pleanála.

It should be noted that until a grant of PERMISSION has been issued, the  
development in question is NOT AUTHORISED.

Planning Department,  
County Hall,  
Cork.

Signed on behalf of the said Council

DATE:

  
- 2 APR 1998

SEE NOTES ATTACHED

SCHEDULE

19

Reference No. in Planning Register: 98/0294

Column 1 - Conditions

Column 2 - Reason

(1)

Percolation tests and Watertable tests shall be carried out in accordance with the provisions of S.R.6 (1991) NSAI Standard Recommendation for Septic Tank Systems to establish the suitability of the site for septic tank drainage and the length of distribution piping required for percolation area.

These tests shall be carried out by a suitably qualified person. The certified results together with site location map showing locations of each of the four percolation test holes and watertable test hole and certification that the site is suitable for septic tank drainage shall be submitted to the Planning Authority for examination before development commences.

To determine the extent of the percolation area required.

(2)

The proposed septic tank drainage system shall be designed, constructed, laid out and maintained in accordance with the provisions of S.R.6 (1991) NSAI Standard Recommendation for Septic Tank Systems of which the following are some of the principle requirements:-

- [a] The septic tank shall be located not nearer than 7m from the dwelling served and shall not be nearer than 20m from the nearest point of any other dwelling.
- [b] Effluent from the septic tank shall be disposed of by means of distribution pipes from a percolation area and not by means of a soakpit. The effluent

To ensure satisfactory design, construction and maintenance of the septic tank drainage system.

SCHEDULE

20

Reference No. in Planning Register: 98/0294

Column 1 - Conditions

Column 2 - Reason

distribution system shall have piping of a minimum length which shall be determined by percolation tests results.

[c] No part of the percolation area shall be closer than 20m to the nearest point of the nearest habitable building.

[d] No part of the percolation area shall be within 10m of the nearest road boundary, stream or ditch, nor within 3m of the boundary of the adjoining sites.

[e] No part of the septic tank or percolation area shall be located within an area that would affect any water source, e.g., a well, spring, borehole etc. The required distances are outlined in detail in S.R.6 (1991) and depend on the type of soil. The distance shall be greater where ground water is used as the source of water for Public supply or for Group Schemes.

(3)  
The developer shall ensure the provision of an adequate supply of potable water to serve the development.

In the absence of a public supply it is the developer's responsibility to provide an adequate water supply.

(4)  
The site shall be landscaped and planted in accordance with a comprehensive scheme to comprise predominantly native species and varieties and to include:

In the interests of visual amenity.

[a] details of screen bund wall including height and species to be planted. A mix of coniferous and deciduous trees are to be

SCHEDULE

21

Reference No. in Planning Register: 98/0294

-----  
Column 1 - Conditions

Column 2 - Reason  
-----

provided.

[b] species, variety, number and locations of trees and shrubs

[c] programme for implementation of the scheme.

Full details shall be submitted to and agreed with the Planning Authority prior to commencement of development.

(5)

Upon cessation of operations the developer shall remove all equipment and landscape the site to the satisfaction of the Planning Authority within 12 month of said cessation.

In the interest of visual amenity.

(6)

All solid wastes arising on the site SHALL BE RECYCLED as far as possible. Materials exported from the site for recovery, recycling or disposal shall be managed at an approved facility and in such a manner as is agreed with the Planning Authority. In any case no such wastes shall be stored on the site except within the confines of the buildings on site.

To safeguard the amenities of the area.

(7)

Noise levels emanating from the proposed development when measured at the site boundaries shall not exceed 55 dBa (15 minute Leq) between 08.00 hours and 20.00 hours Monday to Saturday inclusive and shall not exceed 45 dBa (15 minute Leq) at any other time. Measurements shall be made in accordance with I.S.O. Recommendations R.1996/1 "Acoustics - Description and

To safeguard the amenities of the area.

SCHEDULE

22

Reference No. in Planning Register: 98/0294

Column 1 - Conditions

Column 2 - Reason

Measurement of Environmental Noise, Part 1: Basic quantities and procedures".

If the noise contains a discrete, continuous note (whine, hiss, screech, hum, etc.), or if there are distinct impulses in the noise (bangs, clicks, clatters or thumps), or if the noise is irregular enough in character to attract attention, a penalty of +5 dBA should be applied to the measured noise level and this increased level shall be used in assessing compliance with the specified levels. (Ref. BS 4142 Section 7.2)

(8)

All operations on-site shall be carried out in such a manner as to ensure that no odour or dust nuisance occurs beyond the site boundary because of such operations.

To safeguard the amenities of the area.

(9)

Production shall not commence on site unless a licence under the Air Pollution Act has been issued by the Local Authority in respect of the operations.

To safeguard the amenities of the area.

(10)

Blasting operations for the removal of rock shall be carried out in such a manner as to restrict peak particle velocity below 12 mm/sec measured in any three mutually orthogonal directions at any point on the site boundary.

To safeguard the amenities of the area.

The air overpressure arising from any blast carried out on site shall, when measured at the nearest residence, not exceed 125 dB(linear).

SCHEDULE

23

Reference No. in Planning Register: 98/0294

Column 1 - Conditions

Column 2 - Reason

In advance of blasting operations, the developer shall inform all householders within 300 metres of the site that blasting will take place and for what period of time it is likely to continue. Such notification shall take place within one week of commencement of blasting activities.

Blasting operations shall only take place between the hours of 09.00 and 18.00, Monday to Friday inclusive. Monitoring of noise and vibration arising out of blasting activities shall be carried out by the developer at the request of the Planning Authority. This monitoring shall be carried out by an approved independent specialist contractor.

(11)

All fuel and bitumen storage tank areas and drum storage areas shall be rendered impervious to the materials stored therein. In addition, storage tank areas shall be bunded, either locally or remotely, to a volume of 110% of the largest tank within each individual bunded area. Drum storage areas shall be bunded to a volume equal to 110% of the sum of the volumes of the largest five drums likely to be stored therein. The height of the bund for any drum storage area shall be not less than 300 millimetres.

To safeguard the amenities of the area.

(12)

All water contaminated with hydrocarbons discharging to the stream shall discharge via a grit trap and hydrocarbon interceptor. An inspection

To safeguard the amenities of the area.

SCHEDULE

24

Reference No. in Planning Register: 98/0294

Column 1 - Conditions

Column 2 - Reason

chamber with a sump shall be constructed between the interceptor and the stream. The sump shall be of a minimum size of 500mm square and 400mm deep. The interceptor and sump shall be installed and operated to the satisfaction of the Planning Authority.

(13)

All inflammable substances to be stored in accordance with Fire Officer's requirements.

In the interests of fire safety.

(14)

Soiling levels arising out of activities on the site shall be such that the soiling level of standardised sticky pads shall not exceed 3% EAC/day at the site boundaries. The method of measurement and interpretation shall be as specified by the Planning Authority.

To safeguard the amenities of the area.

(15)

The applicant shall arrange for a baseline macrophyte and macroinvertebrate survey of the stream flowing adjacent to the site of the proposed development. This survey shall be carried out by a suitably qualified person before the development commences and at subsequent times to be agreed in advance with the Planning Authority. This survey shall extend a minimum of 80 metres upstream and 50 metres downstream of the proposed development and any discharges from same.

To safeguard the amenities of the area.

Results of the survey should be submitted to the Planning Authority within 14 days of the survey being carried out.

Name: MURRAY BROS. TARMACADAM LTD

Development: Tarmacadam/asphalt manufacturing plant, ancillary buildings & works, storage bays, weighbridge and oil tank

*21*

Location: ARDCAHAN, DUNMANWAY

Skib 28447

Site is located in rural area about 3 miles north of Dunmanway and the tarmacadam plant is located on the floor of a large quarry. While the site is reasonably well screened it is visible from 3 dwellings to the south which are located on a higher level.

A 8 metre high screening bund wall will be constructed to the south of the plant and will be planted with evergreen trees. It is suggested to intersperse this with broadleaved trees in keeping with the existing woodland to the west.

Applicants operate a similar type of plant to the west of Dunmanway and a relocation of all or some of this activity will reduce the number of truck movements within the town of Dunmanway.

Access is very good with a short stretch of Co. Rd. leading to the Coppeen-Dunmanway Regional Route. Given the adequacy of the road network I do not consider a contribution to be appropriate.

Recommend permission subject to the conditions of CEO and attached schedule.

*Bob Gunkel*

Bob Gunkel  
1/4/98

*1 rec. per. es em*

*Bob Gunkel's  
report*

*MFC Sullivan*

*2.4.98*

**Appendix 4**

**Section 261A notice and reports from the Council’s Executive/Senior Planners and Heritage Officer reports prepared under the Section 261A review process.**

**Quarry Reference: CKQY0118**

**Location: Ardcahan, Dunmanway**

**Quarry Operator: Murray Bros Tarmacadam Ltd**

**Total Site Area: c. 8.1ha (measured on 2005 aerial photograph)**

**Case Planner: Annie O'Keeffe**

**Date of Site Inspection: 25/03/2012**

### **Introduction**

This report is carried out in accordance with the requirements of S.261A of the Planning and Development Act, 2000 (as amended) in order to determine whether development was carried out on this site which would have required:

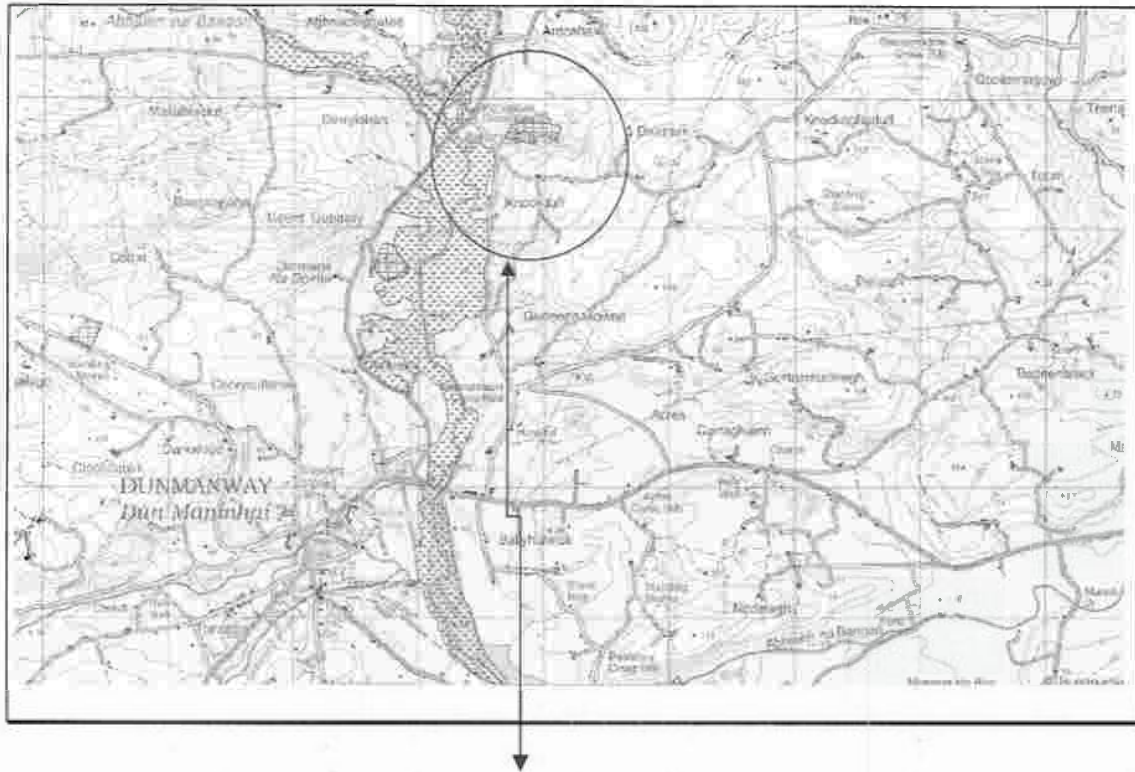
- Environmental Impact Assessment (EIA), or a determination as to whether EIA would have been required (having regard to EIA Directive 97/11/EC), or
- An Appropriate Assessment (AA) under the Habitats Directive

### **Policy Context**

The site is located within the green belt for Dunmanway as designated in the Skibbereen EA LAP 2011 in an area where the predominant use is agriculture. The site is located within the potential zone of impact of the Bandon River SAC, a Natura 2000 site. There are no scenic designations applying to the site.

### **Site Description**

The site is located at Ardcahan, Dunmanway circa 3km north east of Dunmanway town and c. 0.5km east of the Regional Road R587 and is accessed via a local tertiary road L4621-9. The Bandon/Carraha rivers are located to the west of the site. There are views of the quarry from the west and south.



*Site outlined in black on Planning Enquiry map extract*

The overall landholding comprises 3 elements:

- a) existing quarry (approx 8.1ha)
- b) tarmacadam/asphalt manufacturing plant, ancillary buildings and works, storage bays, weighbridge and septic tank permitted under 98/294 (2.4ha)
- c) undeveloped land which on which permission for stone extraction was refused under 11/317 (4.85ha)

**This report deals only with S261 as it applies to the actual quarry on site i.e a) above.**

It is considered that the tarmacadam/asphalt manufacturing plant is not a 'quarry' as defined in the European Union (Environmental Impact Assessment and Habitats) (No.2) Regulations, 2011 (SI 584 of 2011), which came into operation on 15 November 2011, amended section 2 of the principal Act. A quarry is defined in these regulations as:

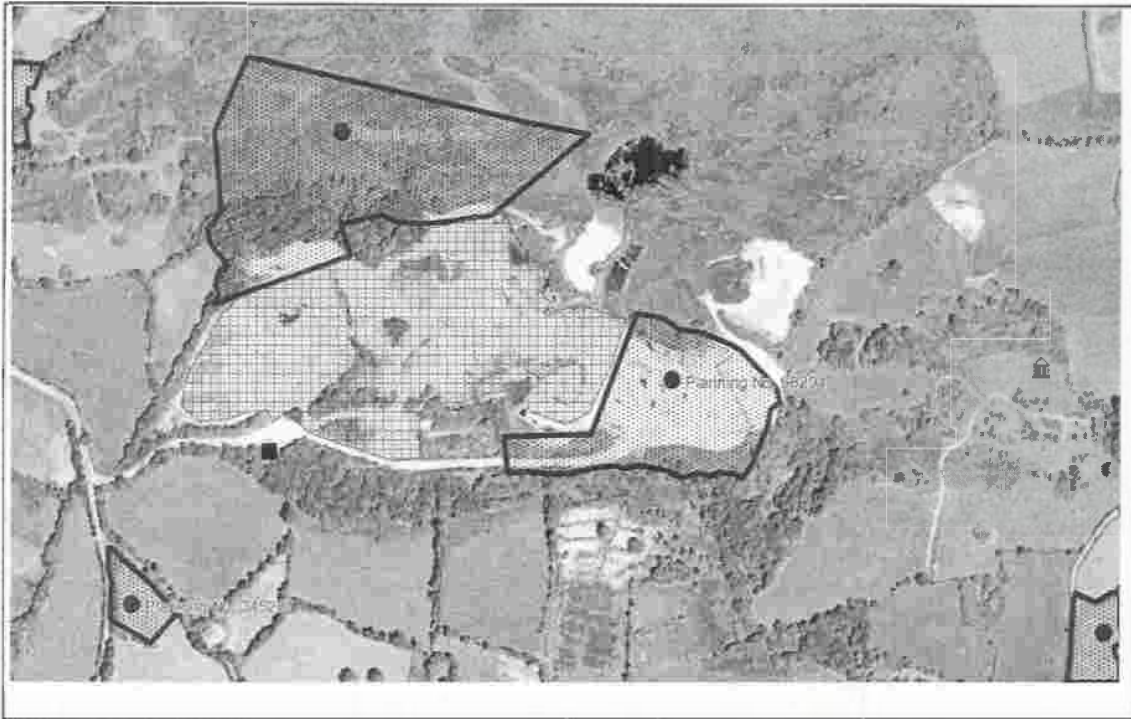
*quarry" means an excavation or system of excavations made for the purpose of, or in connection with, the getting of minerals (whether in their natural state or in solution or suspension) or products of minerals, being neither a mine nor merely a well or bore-hole or a well and bore hole combined, and shall be deemed to include—*

*(i) any place on the surface surrounding or adjacent to the quarry occupied together with the quarry for the storage or removal of the minerals or for the purposes of a process ancillary to the getting of minerals, including the breaking, crushing, grinding, screening, washing or dressing of such minerals but, subject thereto, does not include any place at which any manufacturing process is carried on;*

(ii) any place occupied by the owner of a quarry and used for depositing refuse from it but any place so used in connection with two or more quarries, and occupied by the owner of one of them, or by the owners of any two or more in common, shall be deemed to form part of such one of those quarries as the Minister may direct;

(iii) any line or siding (not being part of a railway) serving a quarry but, if serving two or more quarries shall be deemed to form part of such one of them as the Minister may direct;

(iv) a conveyor or aerial ropeway provided for the removal from a quarry of minerals or refuse."



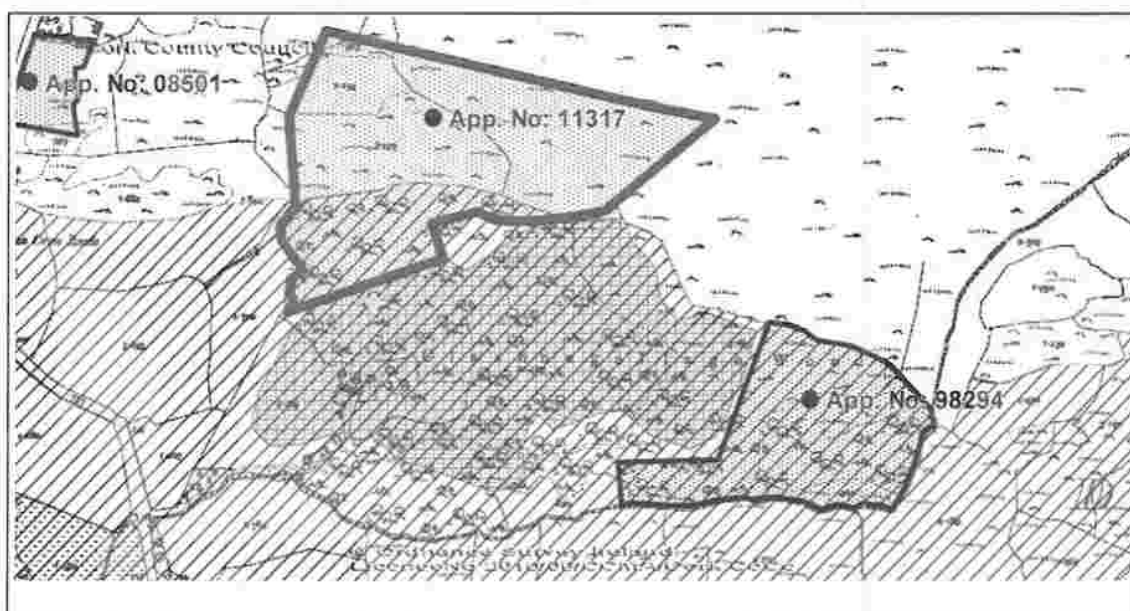
### Planning History

This quarry is a pre-1964 quarry which was sold by Cork County Council in 1999 to Murray Bros. Tarmacadam Ltd.

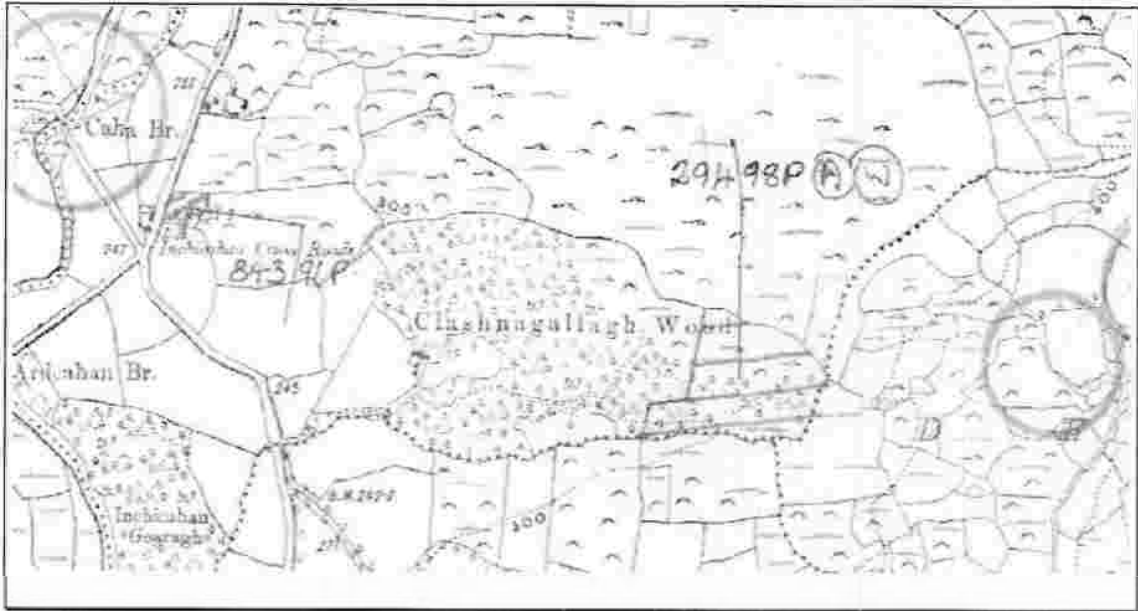
Permission was granted on the lands to the east for a tarmacadam/asphalt manufacturing plant under **98/294** to Murray Bros. Tarmacadam Ltd (the applicant had a contract to purchase the site from Cork County Council at the time of the application).

Permission was refused on lands to the north to Murray Bros. Tarmacadam Ltd for permission for the extraction of stone, to a depth of 77.2m.o.d. (development comprising an overall area of 4.85ha) and all associated site works under **11/317** for the following reasons:

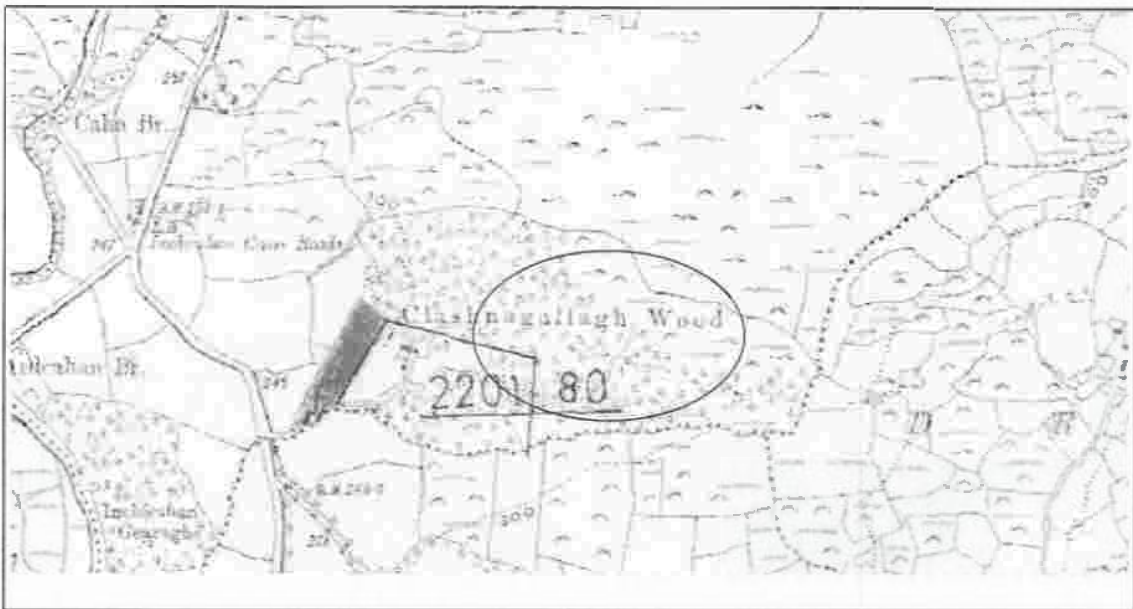
1	<p>On the basis of the documentation submitted with the application, the planning history of the landholding, the site inspection carried out and the requirements of S.261 of the Planning and Development Act 2000 (as amended), the Planning Authority is not satisfied that the proposed development would not form an extension to an existing unauthorised quarry and is therefore precluded from considering a grant of permission for the proposed development in such circumstances.</p>
2	<p>Having regard to the provisions of Schedule 7 of the Planning and Development Regulations 2001 (as amended) and the nature, scale, location and extent of activities associated with the proposed development in combination with those of the existing adjoining quarry, the Planning Authority considers that an Environmental Impact Statement for sub-threshold development would be required in accordance with the requirements of EU Directive 85/337/EEC (as amended) which has not been submitted with the application, therefore the Planning Authority is not satisfied that the proposed development would not be seriously injurious to the environment and amenities of the area and would be contrary to the proper planning and sustainable development of the area.</p>
3	<p>It is an objective of the Planning Authority as set out in OBJ ENV 1-5, of the Cork County Development Plan 2009, to provide protection to all Natural Heritage sites designated in accordance with European Legislation.</p> <p>On the basis of the lack of information submitted with the application for which no Appropriate Assessment has been carried out, the Planning Authority cannot determine that the proposed development would not have a significant impact on the Natura 2000 Site (Bandon River SAC). The proposed development would be in conflict with Objective ENV 1-5 and would therefore be contrary to the proper planning and sustainable development of the area.</p>



Current Register Map Extract



*Post 1990 Register Map Extract*



*Pre 1990 Register Map Extract*

**Registration History**

This quarry did not register under S. 261 of the Planning and Development Act 2000, as amended.

**Enforcement History**

An enforcement file has been opened on foot of a complaint received on 13<sup>th</sup> July 2012 stating that blasting has taken place on 2 recent occasions at the quarry – SKB120022.

The existing pre-1964 quarry is unauthorised on the grounds that it was not exempt from registration under S.261 of the Planning and Development Act 2000, as amended, and did not meet the requirements to register.

### Site Inspection

I inspected this site on 25/03/2012. This is an active quarry with associated permitted tarmacadam/asphalt manufacturing plant to the east of the site.

### Submissions

A submission has been received on behalf of the quarry owner. The main emphasis of the submission is on the local importance of the quarry and the need to regularise the current status of the quarry.

### Mapping

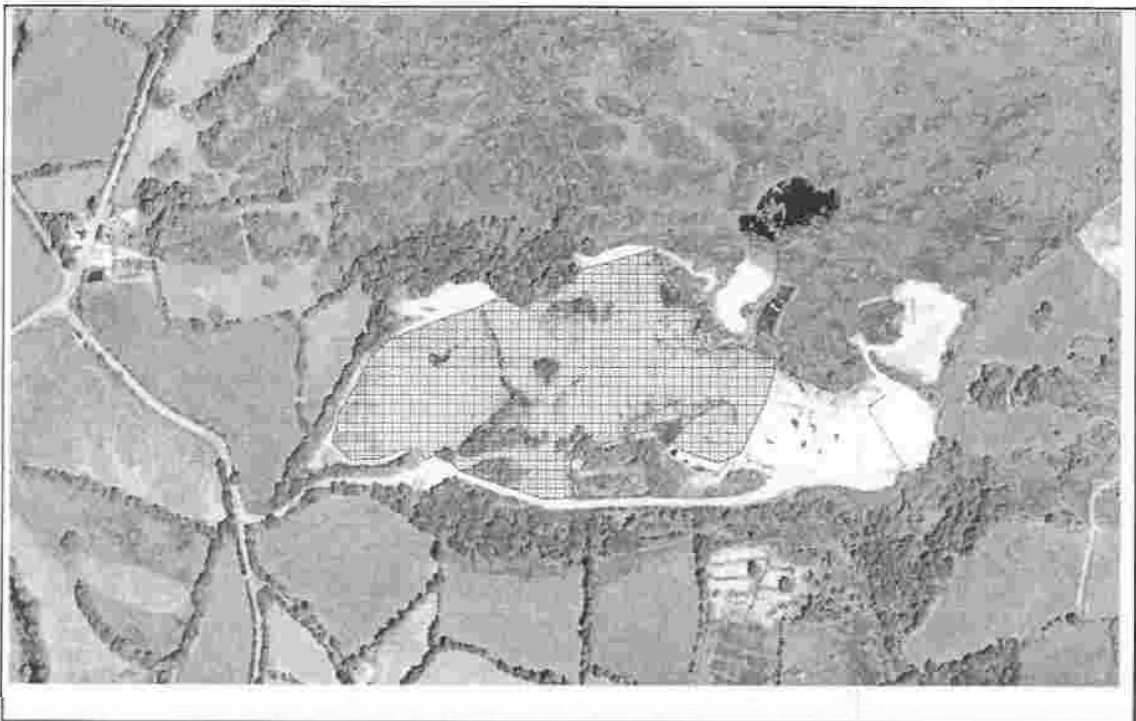
Below are extracts from the OSI aerial photos:



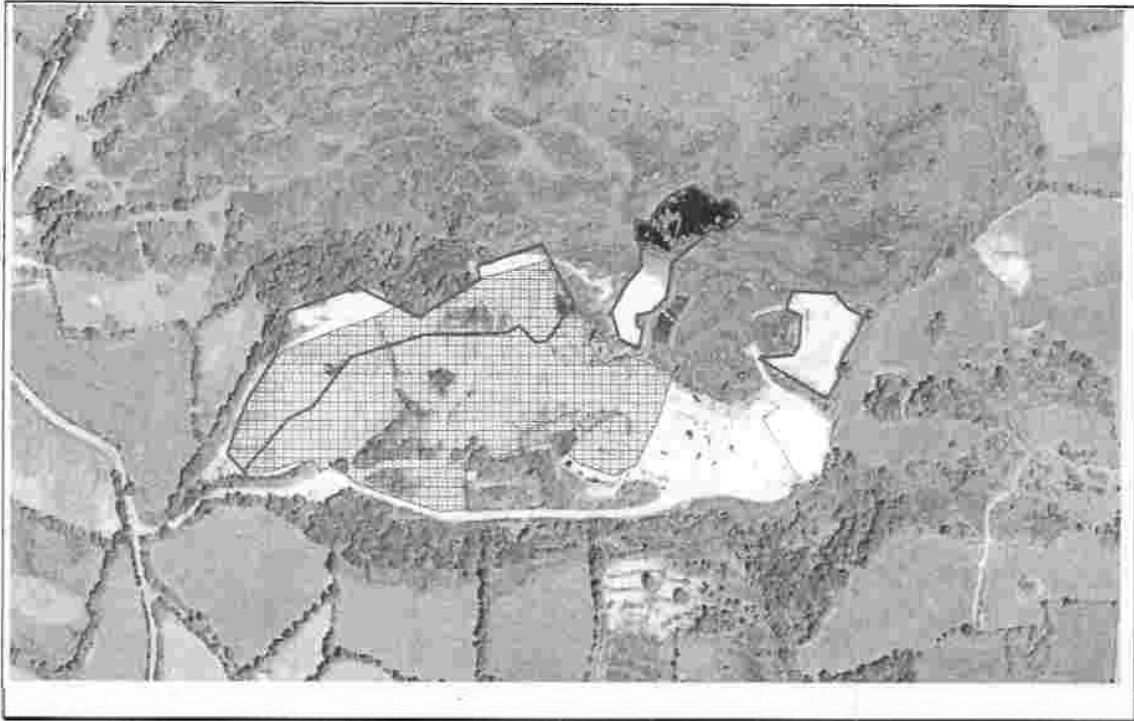
*1995 OSI Aerial Photo Extract*



*OSI Aerial Photo Extract 2000*



*2005 OSI Aerial Photo Extract*



*Areas with heavy red outline show expansion of quarry between 2000 and 2005*

### **Assessment**

#### **a) EIA (applicable after 1<sup>st</sup> February 1990)**

The quarry operating on this site commenced prior to the enactment of the 1963 Planning and Development Act. The site has been incrementally excavated since that time and quarrying activity on these lands has taken place without any grant of permission or registration under S.261 for such activity.

The site area of the quarry is measured at 8.1ha on the 2005 aerial photograph available to me on the quarry digitiser maps (this figure excludes settlement lagoons associated with the quarry). The quarry area is above the threshold 5ha at which point the carrying out of an EIS is a mandatory requirement.

Based on the aerial photos available to me, taken in 1995, 2000 and 2005, I have estimated the following site areas:

1995 – c.3.4ha

2000 – c.6.1ha

2005 – c.8.1ha

By 2000 the site area had increased to more than 5ha and thus the mandatory EIA threshold was breached sometime between 1995 and 2000.

This is a Category 1 quarry where it is considered that EIA would have been required due to breaching the thresholds for mandatory EIA and where an EIA was not carried out.

b) Appropriate Assessment (applicable from 26<sup>th</sup> February 1997)

The subject site is within the potential impact zone of a Natura 2000 site, Bandon River SAC – Site Code 002171. There is evidence of an existing watercourse bounding the quarry and flowing downstream to the nearby SAC.

In this regard it is noted that the Screening Assessment under 11/317 (which sought permission for an extension to the existing quarry) concluded that a Habitats Screening Statement would be required. Reason 3 attached to the decision to refuse permission under 11/317 stated:

*"It is an objective of the Planning Authority as set out in OBJ ENV 1-5, of the Cork County Development Plan 2009, to provide protection to all Natural Heritage sites designated in accordance with European Legislation. On the basis of the lack of information submitted with the application for which no Appropriate Assessment has been carried out, the Planning Authority cannot determine that the proposed development would not have a significant impact on the Natura 2000 Site (Bandon River SAC). The proposed development would be in conflict with Objective ENV 1-5 and would therefore be contrary to the proper planning and sustainable development of the area."*

I recommend that this file is referred to the Heritage Unit to determine whether development which occurred after 26<sup>th</sup> February 1997 would have required Appropriate Assessment. As stated above the closest estimate I can give regarding the level of development is that at least 1.5ha have been excavated since 2000. It is noted that the measurement of site area only does not give any indication of the volume of stone extracted from this quarry since February 1997 however it is reasonable to assume that excavation levels must have increased dramatically during the economic boom between c. 2002 and 2008.

c) ECJ Ruling Retention Permission (applicable from 3<sup>rd</sup> July 2008)

There are no aerial images available to me to determine the level of quarrying activity that has taken place on site since 3<sup>rd</sup> July 2008. However this is an active quarry and the associated tarmacadam/asphalt manufacturing plant uses stone quarried on the site. It is therefore concluded that quarrying has taken place and is taking place since 3<sup>rd</sup> July 2008. In this regard the enforcement representation alleging recent blasting at the site is also noted.

As stated under a) it is also considered that a EIA (and possibly AA) would have been required for such development.

Conclusion

On the basis of the above it is concluded that:

- a) This is a quarry as defined in the European Union (Environmental Impact Assessment and Habitats) (No 2) Regulations, 2011. As such, this site comes within the scope of S.261A of the Planning and Development Act, 2000 (as amended).
- b) This quarry is unauthorised

- c) The quarry area exceeded 5ha post-1990 and mandatory EIA would have been required and was not carried out
- d) There is no evidence to suggest that quarrying has not taken place on these lands since 3<sup>rd</sup> July 2008
- e) Substitute Consent is not an option available to the developer as the requirement to register under 5.261 was not complied with

The issue of whether development was carried out which would have required Appropriate Assessment is being referred to the Heritage Unit.

### Recommendation

It is recommended that this file is referred to the Heritage Unit to determine whether development was carried out which would have required Appropriate Assessment.

On receipt of the report from the Heritage Unit it will be necessary to issue an enforcement notice under S. 261A of the Planning and Development Act 2000 (as amended) as this quarry did not fulfil the requirement to register under S. 261 of that Act.

Annie O'Keeffe

Executive Planner

20/07/201

## Appendix 1 – Photographs





**Quarry Reference: CKQY0118**

**Location: Ardcahan, Dunmanway**

**Quarry Operator: Murray Bros Tarmacadam Ltd**

**Total Site Area: c. 8.1ha (measured on 2005 aerial photograph)**

**Case Planner: Annie O'Keeffe**

I note the detailed report of, Annie O'Keeffe, Executive Planner, and the AA assessment by the Heritage Officer, Sharon Casey.

The quarry satisfies definition for a quarry as set out in E.U. EIA & Habitats (No.2) Regulations 2011 (S.I. S84-2011).

The quarry does not have the benefit of planning permission.

The quarry exceeds the 5 hectare threshold above which a mandatory EIS is required.

The quarry was not registered under S261.

The quarry is unauthorised.

AA screening would have been required.

I note assessment by Heritage Officer, Sharon Casey:

**CONSIDERATION AS TO WHETHER THE REQUIREMENTS OF APPROPRIATE ASSESSMENT APPLY TO QY118 FOR THE BANDON RIVER SPECIAL AREA OF CONSERVATION**

The Habitats Directive was introduced into Irish law on the 26/02/1997, and legal protection has applied to the Bandon River Special Area of Conservation since 01/07/1999. An examination of the aerial photographs that the quarry has been operating since this date. The planner has estimated that the quarry extended by 2.7ha approx between 1995 and 2000 and by approx. 2.0ha between 2000 and 2005. Further expansion of the quarry is evident on Google satellite imagery dating from June 2010, however it was not possible to measure the extent of this expansion. All quarrying activity has continued at the site after the date from whence legal protection applied to the Bandon River SAC to the present date must be assessed to determine whether it would be likely to give rise to impacts on the SAC. This includes at a minimum, all new areas that can be seen to have been opened up on the 2005 aerial photograph (2.0ha), and all new areas that can be seen to have been opened up between 2005 and 2010 as evidenced on the 2010 aerial imagery (area subject to 11/317 planning application, and further areas east of this site - approx. 5ha-7ha).

**Potential Impacts On Bandon River Special Area of Conservation**

The key potential impacts of concern relate to the potential for the quarry to give rise to impacts on habitats or species which require the maintenance of a high standard of water quality. The SAC is designated for two species (Freshwater Pearl Mussel and Brook Lamprey) and for one riverine habitat type (Water courses of

plain to montane levels with the *Ranunculus fluitans* and *Callitriche-Batrachion* vegetation), all of which require the maintenance of a high standard of water quality and all of which could be affected by activities at this quarry site. Consideration of the potential for the quarry to give rise to each of these receptors is set out below. The water quality of this catchment has been assigned moderate status. Key pressures in the catchment which may be affecting water quality include agriculture and forestry. This quarry is one of four which is identified in the Bandon River Sub-catchment Plan as having the potential to be contributing to impacts on the Freshwater Pearl Mussel.

Freshwater Pearl Mussel is very susceptible to elevated levels of silt in watercourses where they occur and to contamination of water caused by the introduction of hydrocarbons or chemicals. These impacts could be caused by activities at the quarry site. The conservation status of this species has been assessed to be bad nationally. Increased levels of surface water run off could also affect the hydrology of the river, and could have impacts on this species. As populations of this species occur in the Bandon River immediately downstream from the quarry, and having regard to the direct hydrological connection between this quarry and the SAC, it is concluded that there is a high potential that activities at this quarry could give rise to impacts on this species.

Brook Lamprey is a widely distributed species in Ireland. It requires good water quality, clean sediments at spawning grounds and the presence of stable sandy silt beds to maintain healthy populations. The conservation status of this species has been assessed to be good nationally, however there is limited information available regarding the status of the Brook Lamprey population in the Bandon River. Having regard to the direct hydrological connection between the quarry and the SAC, I consider that the potential for the quarry to give rise to impacts on this species which could be significant cannot be screened out.

Floating River Vegetation is a widely distributed habitat which occurs in freshwater ecosystems around the country. It is stated that this SAC supports good examples of this habitat type throughout the site. The primary pressures on this habitat type arise from eutrophication of freshwater systems, excessive fertilisation, afforestation and the introduction of invasive alien species. The conservation status of the habitat has been assessed to be bad nationally. Having regard to the direct hydrological connection between the quarry and the SAC, I consider that the potential for the quarry to give rise to impacts on this species which could be significant cannot be screened out.

#### Assessment Of Significance Of Impacts Identified During Screening

I consider that that activity at this quarry has the potential to give rise to significant impacts on the Bandon River Special Area of Conservation.

#### Determination as to whether AA was required

I consider that all post 01/07/1999 activities at this site are subject to Appropriate Assessment in respect of the potential for such activities to give rise to impacts on the Bandon River SAC, and in particular to give rise to impacts on Freshwater Pearl Mussel and Brook Lamprey, two species for which the SAC is designated and on the Annex I habitat type Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachian* vegetation for which this SAC is designated. No such assessment has previously been completed.

Completed By	Sharon Casey, 25/07/2012
--------------	--------------------------

Accordingly, as the quarry does not have planning permission; was not registered under S261; is unauthorised; but would have required both a mandatory EIS and Appropriate Assessment, I recommend enforcement action under S261A.

Kevin Irwin,

Senior Planner,

08.08.2012.

**Review of under Section 261 (2) of the Planning and Development Act 2010, to determine whether Appropriate Assessment was required for Quarry CK QY118, and to determine, where it is concluded that AA was required, whether this was completed as part of the planning process.**

BASELINE INFORMATION	
Quarry Ref	CKQY118
Quarry Location	Ardcahan (aultagh ded)
Quarry Type	<p>No information available</p> <p>8.1ha (2005 aerial), but additional expansion of the quarry is evident on 2010 Google Aerial Imagery.</p>
Quarry Status as per planners report	<p><b>Current Activity</b> The quarry was operating at the time of the site visit.</p> <p><b>Planning History</b> There is no planning permission for quarrying activity relating to this site.</p> <p><b>Quarry Registration Process</b> The quarry is not registered.</p> <p><b>Enforcement</b> There is an enforcement file open on foot of a complaint received on 13<sup>th</sup> July 2012 relating to blasting at the site.</p> <p><b>Pre-64 Activity</b> It is stated in the planners report that there was an active quarry at this site prior to 1964.</p>
Natura 2000 sites within 15km of the quarry	<p>The quarry is located approximately 130m to the east of the <b>Bandon River SAC</b>. This site is designated for the following habitats: Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitricho-Batrachion</i> vegetation; Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, Alnion incanae, Salicion albae);</p> <p>and for the following species:</p> <p>Freshwater pearl mussel (<i>Margaritifera margaritifera</i>); Brook lamprey (<i>Lampetra planeri</i>).</p> <p>Potential for impacts on this SAC are considered further below.</p> <p>There are two other Natura sites located within 15km of this quarry.</p> <p>These are the <b>Gearagh SPA (4109)</b>, which is located 14.56km north-east of the quarry site and the <b>Gearagh SAC (0108)</b> which is located 12.67km north-east of the quarry site.</p> <p>The potential for the quarry to have an impact on the <b>Gearagh SPA (4109)</b>, is screened out, having regard to the qualifying interests of</p>

	<p>the SPA, the distance from the SPA, and there is no direct hydrological pathway between the quarry and the SPA.</p> <p>The potential for the quarry to have an impacts on the Gearagh SAC (0108) is screened out, having regard to the qualifying interests of the SAC, the distance from the sites, and there is no direct hydrological pathway between the quarry and the SAC.</p>
<p>Proximity of quarry to designated sites and watercourses</p>	<p>The quarry is located 345m from the main channel of the Bandon River which forms part of the Bandon River Special Area of Conservation. An unnamed stream runs from the south west corner of the site and joins the main channel of the Bandon River. This stream forms part of the Bandon River SAC 150m downstream from the quarry.</p> <p><b>Proximity to Freshwater Pearl Mussel Populations:</b> The quarry is located within Bandon/Caha Freshwater Pearl Mussel Catchment. A population of this species has been recorded along the adjacent stretch of the Bandon River downstream from this quarry.</p> <p>The quarry is partially located within an area that has been identified to be at risk of flooding.</p>
<p><b>CONSIDERATION AS TO WHETHER THE REQUIREMENTS OF APPROPRIATE ASSESSMENT APPLY TO QY118 FOR THE BANDON RIVER SPECIAL AREA OF CONSERVATION</b></p>	
<p>The Habitats Directive was introduced into Irish law on the 26/02/1997, and legal protection has applied to the Bandon River Special Area of Conservation since 01/07/1999. An examination of the aerial photographs that the quarry has been operating since this date. The planner has estimated that the quarry extended by 2.7ha approx between 1995 and 2000 and by approx. 2.0ha between 2000 and 2005. Further expansion of the quarry is evident on Google satellite imagery dating from June 2010, however it was not possible to measure the extent of this expansion. All quarrying activity has continued at the site after the date from whence legal protection applied to the Bandon River SAC to the present date must be assessed to determine whether it would be likely to give rise to impacts on the SAC. This includes at a minimum, all new areas that can be seen to have been opened up on the 2005 aerial photograph (2.0ha), and all new areas that can be seen to have been opened up between 2005 and 2010 as evidenced on the 2010 aerial imagery (area subject to 11/317 planning application, and further areas east of this site - approx. Sha-7ha).</p>	
<p><b>Potential Impacts On Bandon River Special Area of Conservation</b></p>	
<p>The key potential impacts of concern relate to the potential for the quarry to give rise to impacts on habitats or species which require the maintenance of a high standard of water quality. The SAC is designated for two species (Freshwater Pearl Mussel and Brook Lamprey) and for one riverine habitat type (Water courses of plain to montane levels with the <i>Ranunculion fluitortis</i> and <i>Callitricho-Batrachion</i> vegetation), all of which require the maintenance of a high standard of water quality and all of which could be affected by activities at this quarry site. Consideration of the potential for the quarry to give rise to each of these receptors is set out below. The water quality of this catchment has been assigned moderate status. Key pressures in the catchment which may be affecting water quality include agriculture and forestry. This quarry is one of four which is identified in the Bandon River Sub-catchment Plan as having the potential to be contributing to impacts on the Freshwater Pearl Mussel.</p> <p>Freshwater Pearl Mussel is very susceptible to elevated levels of silt in watercourses where they occur and to contamination of water caused by the introduction of hydrocarbons or chemicals. These impacts could be caused by activities at the quarry site. The conservation status of this species has been assessed to be bad nationally. Increased levels of surface water run off could also affect the hydrology of the river, and could have impacts on this species. As populations of this species</p>	

occur in the Bandon River immediately downstream from the quarry, and having regard to the direct hydrological connection between this quarry and the SAC, it is concluded that there is a high potential that activities at this quarry could give rise to impacts on this species.

Brook Lamprey is a widely distributed species in Ireland. It requires good water quality, clean sediments at spawning grounds and the presence of stable sandy silt beds to maintain healthy populations. The conservation status of this species has been assessed to be good nationally, however there is limited information available regarding the status of the Brook Lamprey population in the Bandon River. Having regard to the direct hydrological connection between the quarry and the SAC, I consider that the potential for the quarry to give rise to impacts on this species which could be significant cannot be screened out.

Floating River Vegetation is a widely distributed habitat which occurs in freshwater ecosystems around the country. It is stated that this SAC supports good examples of this habitat type throughout the site. The primary pressures on this habitat type arise from eutrophication of freshwater systems, excessive fertilisation, afforestation and the introduction of invasive alien species. The conservation status of the habitat has been assessed to be bad nationally. Having regard to the direct hydrological connection between the quarry and the SAC, I consider that the potential for the quarry to give rise to impacts on this species which could be significant cannot be screened out.

#### Assessment Of Significance Of Impacts Identified During Screening

I consider that that activity at this quarry has the potential to give rise to significant impacts on the Bandon River Special Area of Conservation.

#### Determination as to whether AA was required

I consider that all post 01/07/1999 activities at this site are subject to Appropriate Assessment in respect of the potential for such activities to give rise to impacts on the Bandon River SAC, and in particular to give rise to impacts on Freshwater Pearl Mussel and Brook Lamprey, two species for which the SAC is designated and on the Annex I habitat type Water courses of plain to montane levels with the *Ranunculus fluitantis* and *Callitricha-Batrachion* vegetation for which this SAC is designated. No such assessment has previously been completed.

Completed By | Sharon Casey, 25/07/2012

**Appendix 5**

**Section 177C application and ABP decision under Ref. 305621-19**

David Curran,  
Executive Officer,  
An Bord Pleanála,  
64 Marlborough Street,  
Dublin.

09<sup>th</sup> October 2019

**Re: Application for Leave to Apply for Substitute Consent under Section 177C(2)(b) of the Planning and Development Acts 2000 – 2019 in relation to a Quarry at Ardcahan (townland) Dunmanway, Co. Cork.**

Dear Mr. Curran,

We act on behalf of Murray Brothers Tarmacadam Ltd., Ardcahan, Dunmanway, Co. Cork who in accordance with Section 177C of the Planning and Development Acts 2000-2019 (PDA), wish to apply for leave to apply for substitute consent in respect of a quarry at Ardcahan (townland) Dunmanway, Co. Cork. We enclose a cheque for €3,000, the statutory fee.

This submission follows a previous application for leave to apply for substitute consent under ABP Ref. 302158-18 which was refused<sup>1</sup> by the Board on 23<sup>rd</sup> May last. Despite the refusal to grant leave to apply for substitute consent, 'Note 2' of the Board's Direction under ABP Ref. 302158-18 gave some guidance in relation to a further application for leave to apply for substitute consent:

*“any further application for leave to apply for substitute consent in the circumstances of this case can only **be in relation to the quarrying development that took place between 1990** (when the EIA Directive came into force) **and 2014** (when quarrying ceased) and can only be made in the context of **Section 177C (2)(b)**, and not Section 177C (2)(a)”* (emphasis added).

Following the Board's decision and given the particular circumstances of our clients' quarry, clarification was sought on a number of items in a submission to the Board on 22<sup>nd</sup> July last. It was hoped that this clarification would inform this further application for leave to apply for substitute consent, however as we have not yet received a response and due to the urgency of this matter for our client, we are instructed to proceed with an application for leave to apply for substitute consent having regard to the Board's Direction under ABP Ref. 302158-18 (including in particular 'Note 2') and in accordance with Section 177C(2)(b) of the Planning and Development Acts 2000-2019 (PDA).

---

<sup>1</sup> The reasons for refusal under ABP Ref. 302158-18 related to 1) Section 177C cannot apply to the area of the quarry site that was the subject of planning application 14/616 / An Bord Pleanála ref. no. PL88.245174 (quashed by order of the High Court); 2) Leave to apply for substitute consent can only be considered for development that has already taken place; and 3) The application for leave to apply for substitute consent, did not include all of the former quarry that is unauthorised development and included areas of land that have not been developed.

[www.mhplanning.ie](http://www.mhplanning.ie)

McCutcheon Halley is a limited partnership registered under the Limited Partnerships Act, 1907, registration no. LP512. Registered in Ireland No. 326490. Registered office: 6 Joyce House, Barrack Square, Ballincollig, Co. Cork. Directors: Brian McCutcheon, BA(Econ) DipTP DipGIS MIPI (Chairman), Tom Halley, BA(Mod), MRUP BSc ARCH(Hons) Cert. Civil Eng. MIPI.

Also in DUBLIN  
Kreston House, Arran Court  
Arran Quay, Dublin 7  
D07 K271  
T. +353 (0) 1 804 4477  
E. [info@mhplanning.ie](mailto:info@mhplanning.ie)

CORK  
6 Joyce House, Barrack Square  
Ballincollig, Co. Cork  
P31 YX97  
T. +353 (0)21 420 8710  
E. [info@mhplanning.ie](mailto:info@mhplanning.ie)

Under Section 177C(2) of the PDA, a development in relation to which an applicant may make an application for substitute consent, includes a development which has been carried out where an environmental impact assessment (EIA), a determination as to whether an environmental impact assessment is required, or an appropriate assessment (AA), was or is required, and in respect of which—

*(b) the applicant is of the opinion that exceptional circumstances exist such that it may be appropriate to permit the regularisation of the development by permitting an application for substitute consent.*

We will deal with the EIA and AA requirements and the exceptional circumstances that we believe exist in Section 3 of this submission.

## 1. The Applicant & Revised Application for Leave to Apply for Substitute Consent

The applicant in this case is Murray Brothers Tarmacadam Ltd., who are the owners and occupiers of Ardcahan Quarry. The quarry and overall landholding is outlined on the attached site location maps (drawing ref.s 2546-S1, 2546-S2 and 2546-S3 - see Appendix 1). The area to which leave to apply for substitute consent is sought is outlined in red (please note that the area within the red line also includes a red hatch to make the area to which leave to apply for substitute consent is sought, more legible).

The red line/hatched area is based on the quarrying development that took place between 1990 (when the EIA Directive came into force) and 2014 (when quarrying ceased). It is important to point out that the red line/hatched area to which leave to apply for substitute consent is sought, is based on the definition of quarry from the European Union (Environmental Impact Assessment and Habitats) (No.2) Regulations, 2011 (SI 584 of 2011) and amended Section 2 of the PDA i.e. it includes extraction and ancillary uses.<sup>2</sup> So while Section 3.1.1 and Appendix 2 of this submission focuses on extraction areas (to determine the requirement for EIA), the red line/hatched area to which leave to apply for substitute consent is sought, is based on the definition of quarry/quarrying activities under Section 2 of the PDA and includes the extraction areas and ancillary uses such as access roads, plant and stockpile areas etc.

As can be seen from the drawings in Appendix 1, there are two principal areas within our clients ownership which are excluded from the leave to apply for substitute consent. These are future development/lands that have not been quarried (labelled as “Area not included in Application for Leave for Substitute Consent – 1” i.e. ALSC-1) which is located to the northwest of our clients landholding, and the area quarried prior to 1990 (labelled as “Area not included in Application for Leave for Substitute Consent – 2” i.e. ALSC-2) has also been omitted. Both of these areas have been omitted in accordance with the Board’s Direction under ABP Ref. 302158-18.

---

<sup>2</sup> The European Union (Environmental Impact Assessment and Habitats) (No.2) Regulations, 2011 (SI 584 of 2011), which came into operation on 15 November 2011, amended Section 2 of the PDA, 2000 to substitute the following for the definition of ‘quarry’: “quarry” means an excavation or system of excavations made for the purpose of, or in connection with, the getting of minerals (whether in their natural state or in solution or suspension) or products of minerals, being neither a mine nor merely a well or bore-hole or a well and borehole combined, and shall be deemed to include— (i) any place on the surface surrounding or adjacent to the quarry occupied together with the quarry for the storage or removal of the minerals or for the purposes of a process ancillary to the getting of minerals, including the breaking, crushing, grinding, screening, washing or dressing of such minerals but, subject thereto, does not include any place at which any manufacturing process is carried on; (ii) any place occupied by the owner of a quarry and used for depositing refuse from it but any place so used in connection with two or more quarries, and occupied by the owner of one of them, or by the owners of any two or more in common, shall be deemed to form part of such one of those quarries as the Minister may direct; (iii) any line or siding (not being part of a railway) serving a quarry but, if serving two or more quarries shall be deemed to form part of such one of them as the Minister may direct; (iv) a conveyor or aerial ropeway provided for the removal from a quarry of minerals or refuse.”

## 2. Development Context & Planning History

The quarry in Ardcahan, Dunmanway, Co. Cork owned by Murray Brothers Tarmacadam Ltd. was purchased from Cork County Council in the 1990's. The quarry was established by the Council prior to October 1964 and operations had continued up until recently.

When the obligation to register the quarry came into force in 2005 pursuant to s.261 of the PDA, unfortunately our client did not comply with this statutory obligation. This was based on ill-conceived and incorrect advice given to our client at that time, where they were advised that the registration process was not essential and that the quarry could continue to operate regardless of whether it was registered or not.

Unfortunately, our client did not appreciate the seriousness of this failure to register until July 2011 when Cork County Council refused to grant permission under Council Ref. 11/317 on the grounds that the development would comprise an extension of an existing unauthorised quarry, as the quarry had failed to register under the Section 261 process, and as the application was not supported by an Environmental Impact Statement (EIS) or a Natura Impact Statement (NIS).

As part of the subsequent review of quarries under Section 261A of the PDA, the Council again examined the quarry and on the 23<sup>rd</sup> August, 2012 a formal determination was made which concluded that development had been carried out at the quarry/site since 1<sup>st</sup> February 1990 which the Council considered would require an Environmental Impact Assessment (EIA), and since 26<sup>th</sup> February 1997 which would require an Appropriate Assessment (AA), and that neither form of assessment had been carried out. It was also concluded that the quarry had not been properly registered under Section 261 before the deadline of April 2005 and therefore it was determined that the quarry was an "unauthorised development" within the meaning of Section 26(10) of the PDA.

On the 25<sup>th</sup> November 2013 the Council issued an enforcement notice (see Appendix 3) to our client pursuant to section 154 of the PDA which required the cessation of quarrying at the site within a six-month period in accordance with the procedures mandated by Section 261A of the PDA. On 17<sup>th</sup> October 2014, the Council wrote to the applicant stating that the enforcement notice had been complied with and that the enforcement case was now closed.

A subsequent planning permission was granted under Cork County Council ref. 14/616<sup>3</sup> for quarrying of stone with an extraction area of 6 hectares and to ground level of 77 metres (O.D.) and upheld on appeal by An Bord Pleanála under ABP Ref. PL88.245174. A subsequent Judicial Review (JR) of the Boards decision [2016 No. 499 JR] granted certiorari of the decision.<sup>4</sup> While the JR related to a permission for future quarrying development, the judgement did nonetheless provide an opinion in relation to the option of substitute consent being available to address the particular issues relating to our clients' quarry:

*"It is not entirely clear to me that the Developer was in fact excluded from, and could not have submitted an application pursuant to, Section 177(D) for substituted consent, as distinct from the invitation to apply for substitute "gateway" under s.261A from which regime he was clearly excluded.*

<sup>3</sup> An EIS was submitted with the application and an NIS at further information stage.

<sup>4</sup> Paragraph 81 of Ms. Justice Ni Raifeartaigh Judgement also dealt with the possibility of applying for both substitute consent and planning permission in respect of future development, under Section 37L: "Let us take first the position of a registered quarry owner who applies for both substitute consent and planning permission in respect of future development. Prior to 2015, as I understand it, these applications would have to be consecutive, but now they can be carried out simultaneously because of the insertion of the new Section 37L. Whether the applications are sequential or simultaneous the important point is that, by the end of the entire process, the decision-maker will have reached its decision on the basis of a full range of information - retrospective and prospective-before deciding what to do. It might be said that the developer's applications, and the Board's decisions, are Janus-faced in this regard; that is to say, both forward- and backward-looking as regards the environmental impact on the site. The purpose of the process is to ensure that any past adverse effects on the environment are ameliorated or mitigated as much as this can now be done, as well as future adverse effects being prevented as far as possible."

*It appeared to be the assumption of the parties in the case that the Developer could not make any application under s.177D(2)(b), which refers to the developer's belief as to the whether or not the development was unauthorised. However, this factor is only one of a number of factors to be considered by the Board under a s.177D application for permission; another factor is, for example, the actual or likely significant effects on the environment resulting from the carrying out or continuation of the development. Is it a foregone conclusion that the application must necessarily be refused simply because he engaged in unauthorised development in the past? I am not entirely convinced that a developer in the position of the Developer in the present case is definitively precluded from making an application under s.177D."*

In light of the judgement to grant certiorari of the Board's decision an application for leave to apply for substitute consent was submitted to An Bord Pleanála on 16<sup>th</sup> July 2018. The application was refused on 23<sup>rd</sup> May 2019. The full reasons and considerations of the Board's decision were as follows:

*"Having regard to the documentation submitted with the application for leave to apply for substitute consent, it is considered that the provisions of Section 177C cannot apply to the area of the quarry site that was the subject of the planning application 14/616 (An Bord Pleanála reference number PL88.245174) and in respect of which the permission was quashed by order of the High Court, because such permission was for the carrying out of future quarrying development, and leave to apply for substitute consent can only be considered for development that has already taken place.*

*Furthermore, because the area, as outlined in the submitted application for leave to apply for substitute consent, does not include all of the former quarry that is unauthorised development, pursuant to Section 261(10) of the Planning and Development Act, 2000, as amended, and does include areas of land that have not been developed, the Board is not in a position to assess whether exceptional circumstances as set out in Section 177D(2) apply, as these circumstances can only relate to the quarry development that has taken place since the 1<sup>st</sup> day of February, 1990, where environmental impact assessment would have been required under the Environmental Impact Assessment Directive, and to the quarry development that has taken place since the 26<sup>th</sup> of February, 1997, where appropriate assessment would have been required under the Habitats Directive, and where neither form of assessment had been carried out."*

The Board's Direction also included the following notes:

*"Note 1: In making its decision, the Board had regard to the drawings submitted with the application for leave, specifically drawing numbers 2546-01a and 2546-01. These drawings show areas of the applicants' lands in which quarrying development had not taken place, and do not correspond to the area in which quarrying development had taken place between 1990 and 2014, and which was referred to in the judgement of the High Court. The submission also refers to "pre-1963" quarrying, which is not relevant, in the light of Section 261(10).*

*Note 2: It is considered that any further application for leave to apply for substitute consent in the circumstances of this case can only be in relation to the quarrying development that took place between 1990 (when the EIA Directive came into force) and 2014 (when quarrying ceased) and can only be made in the context of Section 177C (2)(b), and not Section 177C (2)(a). Accordingly, reference to application 14/616 (An Bord Pleanála reference number PL88.245174) is not relevant in this context, and the environmental impact statement and natura impact statement submitted as part of that application are also not relevant to any such application for leave to apply for substitute consent."*

In light of the Board's decision under ABP Ref. 302158-18, this revised application for leave to apply for substitute consent has been made based on the following:

1. Quarry development that has taken place between February 1990 and October 2014<sup>5</sup> where the extraction area during this period was 5.67 hectares and where EIA would have been mandatory;
2. Quarry development which has taken place between February 1997 and October 2014<sup>6</sup>, where appropriate assessment would have been required under the Habitats Directive;
3. The inclusion of the former quarry that was considered unauthorised development under Cork County Council ref. SKBE/13/7 (see Appendix 3);
4. The omission of land quarried prior to 1990 (labelled as "Area not included in Application for Leave for Substitute Consent – 2" i.e. ALSC-2) and future development/lands that have not been quarried (labelled as "Area not included in Application for Leave for Substitute Consent – 1" i.e. ALSC-1) on Drawings 2546-S1, 2546-S2 and 2546-S3.

### 3. Grounds for Leave to Apply for Substitute Consent

In accordance with the direction issued by the Board under ABP Ref. 302158-18, this application for leave to apply for substitute consent is made in relation to the quarrying development that took place between 1990 (when the EIA Directive came into force) and 2014 (when quarrying ceased) and is made in the context of **Section 177C (2)(b)**. The relevant section of the Act is set out below:

*177C.— (1) A person who has carried out a development referred to in subsection (2), or the owner or occupier of the land as appropriate, to whom no notice has been given under section 177B, may apply to the Board for leave to apply for substitute consent in respect of the development.*

*(2) A development in relation to which an applicant may make an application referred to in subsection (1) is a development which has been carried out where an environmental impact assessment, a determination as to whether an environmental impact assessment is required, or an appropriate assessment, was or is required, and in respect of which—*

*(b) the applicant is of the opinion that exceptional circumstances exist such that it may be appropriate to permit the regularisation of the development by permitting an application for substitute consent*

We will deal with the EIA and AA requirements and exceptional circumstances that exist to facilitate the regularisation of the development by allowing an application for substitute consent to proceed in Sections 3.1 and 3.2.

#### 3.1 Requirement for Environmental Impact Assessment/Appropriate Assessment

Section 177C(2) of the PDA states that an applicant may apply to the Board for leave to apply for substitute consent where the development that has been carried out is one where an EIA, a determination as to whether an EIA is required, or an AA, was or is required.

<sup>5</sup> When the Council closed its enforcement case under SKBE/13/7.

<sup>6</sup> When the Council closed its enforcement case under SKBE/13/7.

### 3.1.1 Environmental Impact Assessment

In relation to EIA, note 2 of the Board’s Direction under ABP Ref. 302158-18 stated that any further application for leave to apply for substitute consent in the circumstances of this case can only be in relation to the quarrying development that took place between 1990 and 2014. Ordnance survey aerial photography (supported by information from the quarry operators) has been used to establish the extent of quarrying/extraction that took place between 1990 and 2014 - these drawings are included in Appendix 2.

The extent and progression of quarrying/extraction areas between the years 1990 to 2014 is shown in Table 1 based on aerial photography from the years 1995, 2000, 2005 and 2014. It is important to note that some of the areas which on the face of it appear as ‘worked’ or quarried/extraction areas e.g. to the north of the tarmacadam plant, were used for stockpiling material or other ancillary use, but were not extraction areas. These areas are not included in the ‘extraction area’ calculations in Table 1 (i.e. for the purposes of establishing whether there is a mandatory EIA requirement) but are included in the ‘quarrying development’ area for which leave to apply for substitute consent is sought. There are also areas that were quarried/extracted that later became recolonised with vegetation and appear as ‘green’ or unquarried areas in more recent years.

Also, as there was no aerial photography available for the baseline year of 1990, the extent of the extraction area at this time has been determined based on information made available from the previous operators of the quarry from that time overlain on the 1995 aerial photograph.

Year	Composite Extent of Extraction Area (Hectares)	Difference in Area (i.e. 1990 – 2014) (Hectares)
1990	4.99	-
1995	5.86	0.87
2000	7.70	2.71
2005	9.69	4.70
2014	10.66	5.67

**Table 1: Extent of Quarrying/Extraction Area 1990 to 2014**

As can be seen from the information in Table 1 and drawings in Appendix 2, the difference in area in relation to the quarrying/extraction that took place between 1990 (when the EIA Directive came into force) and 2014 (when quarrying ceased) is **5.67 hectares**. In terms of mandatory EIA requirements, Article 93 and Schedule 5 of the Planning and Development Regulations 2001 – 2018 set out the classes of development for which a planning application must be accompanied by a mandatory EIA. Part 1 of the Schedule’s prescribed classes of development which, due to their nature, will always have significant environmental impacts which includes: “quarries and open-cast mining where the surface of the site exceeds 25 hectares.” Part 2 of the Schedule’s prescribed classes of development relates to development which requires EIA, not due to the nature of the projects themselves, but rather having regard to the scale proposed. In the context of our clients’ quarry proposal the most relevant provision is included under 2(b) which requires the preparation of an EIA for the following:

*“Extraction of stone, gravel, sand or clay, where the **area of extraction** would be greater than 5 hectares” (emphasis added – please note that as the EIA requirement is based on area of extraction, the drawings included in Appendix 2 are based on extraction areas).*

As the difference in extraction area between 1990-2014 in Table 1 exceeds the threshold set out in Part 2(b), it is submitted that our client can apply to the Board for leave to apply for substitute consent as the development that has been carried out would have required a mandatory EIA and as long as there are exceptional circumstances in accordance with Section 177D(2) (see Section 3.2).

The mandatory requirement for EIA outlined above, is also supported by the assessment of both the Council's Executive and Senior Planners in their reports prepared as part of the Council's 261A assessments. In the Executive Planners report dated 20/07/2012 (see Appendix 4), which was prepared as part of the Council's Section 261A process, it is stated that:

*"This is a Category 1 quarry where it is considered that EIA would have been required due to breaching the thresholds for mandatory EIA and where an EIA was not carried out."*<sup>7</sup>

The above conclusion in relation to mandatory EIA is also supported by the Council's Senior Planner in his 261A report dated 08/08/2012 (see Appendix 4), where he concludes that the quarry is above the mandatory EIA requirement.

In addition to the above, we note that in accordance with Section 177(D)(7)(b) the Board can request that any application for substitute consent be accompanied by a remedial environmental impact assessment report (EIAR). Having regard to the EIA carried out in respect of the quarry development under 14/616, the willingness of the applicant to comply with the objectives of the EIA Directive and the ability of the Board to request a remedial EIAR to accompany any application for substitute consent, we consider that the regularisation of the quarry will not circumvent the purpose and objectives of the EIA Directive and is in fact fully in accordance with the objectives of the EIA Directive.

### **3.1.2 Appropriate Assessment**

In relation to the requirement for Appropriate Assessment (AA), it should be noted that the quarry is in close proximity to the Bandon River SAC and that a small unnamed watercourse flows southerly along the eastern boundary of the quarry, then turns westerly, towards the L4621-9 public road, along the southern boundary of the landholding/application area. From the public road, this watercourse flows southerly for approximately 350m before joining the River Bandon. The River Bandon is part of the Bandon River SAC and the SAC also encompasses the area just south of where the (c. 350m section of) unnamed watercourse crosses the public road. The watercourses here are part of the Bandon River catchment and the Upper Bandon water management unit. Given the nature of the quarry activities on our clients site and the direct hydrological link to the Bandon River SAC, it is reasonable to conclude that, in the absence of mitigation measures, the quarry had/has the potential to give rise to significant effects on the Bandon River SAC, and that an AA was/is required.

The requirement for AA is also supported by the County Council's Heritage Officer, in her 261A report dated 25/07/2012 (see Appendix 4), where it was considered that the "*activity at this quarry has the potential to give rise to significant impacts on the Bandon River Special Area of Conservation*" and where she concludes that all post 1999 activities at the quarry are subject to Appropriate Assessment:

*"I consider that all post 01/07/1999 activities at this site are subject to Appropriate Assessment in respect of the potential for such activities to give rise to impacts on the Bandon River SAC, and in particular to give rise to impacts on Freshwater Pearl Mussel and Brook lamprey, two species for which the SAC is designated and on the Annex 1 habitat type Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricha-Batrachion vegetation for which this SAC is designated. No such assessment has previously been completed."*

In accordance with Section 177C(2) of the PDA, it is submitted that our client may apply to the Board for leave to apply for substitute consent given the quarrying development that has been carried out between 1990 and 2014 based on both the EIA and AA requirements relating to this development.

---

<sup>7</sup> Cork County Council - Executive Planners Section 261A report dated 20/07/2012, p.

## 3.2 Exceptional Circumstances

Section 177D(2) of the PDA indicates that when considering whether exceptional circumstances exist, the Board shall have regard to the following:

- (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 assessment and to provide for public participation in such an assessment has been substantially impaired;*
- (d) *the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development;*
- (e) *the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated;*
- (f) *whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;*
- (g) *such other matters as the Board considers relevant.*

The exceptional circumstances which we believe are relevant to this case are set out below.

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

It is submitted that the regularisation of our clients' quarry would not circumvent the purpose and objectives of the EIA Directive or the Habitats Directive. On the contrary, the regularisation of the quarry would be entirely consistent with the purpose and objectives of both Directives. An application for substitute consent would be accompanied by a remedial EIA and NIS in accordance with the objectives of the EIA Directive or the Habitats Directive.

The Board will note that in the previous planning application and appeal (PL88.245174 /Cork County Council ref. 14/616) relating to our clients quarrying activities, an EIS and NIS<sup>8</sup> were both prepared and submitted as part of the planning application process. Whilst it is accepted that this related to future development, it does demonstrate our clients' willingness to comply with the purposes and objectives of both the EIA and Habitats Directives in relation to their quarry.

As outlined in Section 3.1 of this submission, the area to which this application relates i.e. the area of quarrying/extraction that took place between 1990 and 2014, is 5.67 hectares, and therefore under the Planning and Development Regulations 2001 – 2018 exceeds the threshold set out in Part 2 (b) and should have been subject to EIA.

---

<sup>8</sup> The EIS and NIS submitted under Cork County Council ref. 14/616/ABP Ref. PL88.245174 related to the 6 ha of the quarry and included some areas of quarry development that has taken place at Ardcahan quarry since the 1st day of February, 1990, where environmental impact assessment would have been required under the Environmental Impact Assessment Directive, and 2014, when the quarrying ceased.

The quarry is also in close proximity and has a direct hydraulic link to the Bandon River SAC and in the absence of mitigation measures, had the potential to give rise to significant effects on the Bandon River SAC and therefore an AA/NIS was also required.

As already outlined in this submission, the Board can also request that any application for substitute consent be accompanied by a remedial EIAR under Section 177(D)(7)(b). The regularisation of the quarry accompanied by a remedial EIAR and AA will not therefore circumvent the purpose and objectives of the EIA Directive and is in fact fully in accordance with the objectives of the EIA Directive and Habitats Directive.

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

When the quarry was purchased from the Council it was on the basis that it was a 'pre-1963' and fully authorised quarry. This was confirmed when the quarry at Ardcahan was reviewed by the Council as part of an overall review of quarries in West Cork (prior to the review under Section 261/261A) and was considered at that time (i.e. pre-2005) to be an authorised quarry. When the Council granted permission for the tarmacadam/asphalt manufacturing plant under Council Ref. 98/294, again it was accepted that the overall quarry operation was authorized.

The quarry was therefore an authorised development before and from the date of commencement of the 1963 Local Government (Planning and Development) Act up until the commencement of Section 261 of the PDA and the applicants' failure to register the quarry in April 2005.

As already outlined in this submission, our client did not appreciate the seriousness of this failure to register the quarry until July 2011 when Cork County Council refused to grant permission under Council Ref. 11/317 on the grounds that the development would comprise an extension of an unauthorised quarry and when an enforcement notice was subsequently issued requiring the cessation of quarrying activities on the site. In October 2014, the Council confirmed that the enforcement notice had been complied with (see Appendix 3).

Up until 2011, our client believed that the quarry was authorized (this was noted by the inspector, in considering the previous application for substitute consent under ABP Ref 302158-18, where he stated that "*the applicant could reasonably have had the belief that the quarry was authorised*"). When our client became aware of the unauthorised status of the quarry in 2011 and were later issued with an enforcement notice, they fully complied with this notice.

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

In our opinion granting leave to apply for substitute consent would not impair the ability to carry out an assessment of the environmental impacts of the quarry at Ardcahan for the purpose of an EIA or an AA or impair the provision of public participation in such an assessment.

In accordance with Section 177(D)(7)(b) the Board can also request that any application for substitute consent be accompanied by a remedial EIAR and NIS, and as such it is our belief that the ability to carry out an assessment of the environmental impacts of the development for the purpose of an EIA or AA and to provide for public participation in such an assessment have not been substantially impaired and would in fact be facilitated by an application for substitute consent, particularly as the area of quarrying/extraction that took

place between 1990 and 2014 is 5.67 hectares, required a mandatory EIA (as set out in (a) above), and as any application for substitute consent will also be accompanied by a remedial NIS.

As it stands, based on the Council's correspondence under enforcement ref. SKBE/13/7, there is no requirement to carry out EIA, AA/NIS or any mitigation or remedial works in relation to our clients quarry in Ardcahan (the enforcement notice required cessation of quarrying and the payment of a refund to Cork County Council only).

It is our opinion therefore that the ability to carry out an assessment of the environmental impacts of the development for the purpose of an EIA or an AA and to provide for public participation in such an assessment has not or would not be substantially impaired by granting leave to apply for substitute.

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

The actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of quarrying at Ardcahan would be subject to remedial EIA and NIS (as it is located close to a SAC).

Any proposed or future quarrying would also be subject to EIA and AA screening/NIS. While it is noted that the previous permission granted under An Bord Pleanála Ref. PL88.245174 (Cork County Council ref. 14/616) was quashed, the EIA and NIS carried out by the applicant and the Council/An Bord Pleanála during the application process concluded that the likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the continuation of the development, would not adversely affect the integrity of any Natura site and would not be likely to have significant effects on the environment.

The actual significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out of quarrying at Ardcahan would be subject to remedial EIA and NIS and any future or proposed quarrying would also be subject to EIA and AA/NIS.

***(e) The effects on the environment site can be remediated and existing environment improved***

An application for substitute consent would allow for the effects on the environment to be remediated and the existing environment improved. As it stands there is no obligation on our client to mitigate or remediate the quarry development carried out between 1990 – 2014 (the enforcement notice issued by Cork County Council sought the cessation of quarrying only). An application for substitute consent accompanied by a remedial EIAR and AA will afford the opportunity to have the full environmental effects of the development that has been carried out between 1990 - 2014 to be assessed, remediated and improved. A detailed restoration can also be prepared for the overall quarry development as part of any application for substitute consent.

Therefore, it is submitted that the effects on the environment can be remediated and existing environment at our clients' quarry improved under an application for substitute consent.

***(f) The applicant has complied with previous planning permissions granted and has not previously carried out an unauthorised development***

As already outlined in this submission, the quarry was established by the Council prior to October 1964 and was considered an authorised development from the date of commencement of the 1963 Local Government (Planning and Development) Act to the date of commencement of Section 261 of the Planning and

Development Act. The authorised status was accepted and confirmed by the permission granted for a tarmacadam / asphalt manufacturing plant, and all associated ancillary works under Council Ref. 98/294 – this permission was fully complied with by our client.

The only blemish on our clients' compliance with their planning obligations, was their failure to register their quarry under the 261 process and as already stated this was based on incorrect advice from a third party. Had our client been correctly advised and had they known the importance of the 261 registration process, there would have been no hesitation in registering their quarry under the 261 process in 2005.

Following the Council's review of the quarry under 261 and 261A, and the enforcement notice issued to our client requiring the cessation of quarrying at the site within a six-month period, the Council wrote to our client on 17<sup>th</sup> October 2014 stating that the enforcement notice had been fully complied with and that the enforcement case was closed.

Furthermore, and despite the fact that the permission granted under An Bord Pleanála Ref. PL88.245174 (Cork County Council ref. 14/616) has since been quashed under 2016 No. 499 JR, it is important to point out that our client submitted a comprehensive compliance to Cork County Council in September 2016, which included inter alia, the payment of development contributions to Cork County Council – i.e. this permission was fully complied with. When the Council granted permission for the tarmacadam/asphalt manufacturing plant under Council Ref. 98/294, again this permission was fully complied with.

All of the permissions granted to Murray Brothers Tarmacadam Ltd. therefore have been carried out in accordance with the permissions granted. In addition to the developments being carried out in accordance with the relevant permissions, Murray Brothers Tarmacadam Ltd. have also complied with all other notifications/requirements of the Planning Authority. This demonstrates that the applicant fully respects the planning system.

## Conclusion

Based on the facts of this case and in accordance with Section 177D(1)(b) of the PDA as outlined above, we consider that the circumstances to which the Board must have regard to are satisfied. In this submission, we have had regard to the Board's decision under ABP Ref. 302158-18 including the Notes which were included in the Board's Direction of 20<sup>th</sup> May 2019, (especially Note 2) and accordingly this revised application for leave to apply for substitute consent has been made having regard to the Board's decision under ABP Ref. 302158-18 and is based on and includes the following:

1. Quarry development that has taken place over an area of 5.67 hectares between February 1990 and October 2014<sup>9</sup> where EIA would have been required under the EIA Directive;
2. Quarry development that has taken place between February 1997 and October 2014<sup>10</sup>, where appropriate assessment would have been required under the Habitats Directive;
3. All of the former quarry that was considered unauthorised development under Cork County Council ref. SKBE/13/7;
4. In accordance with the Board's decision under ABP Ref. 302158-18, it does not include areas of land quarried prior to 1990 or future development/lands that have not been developed.

<sup>9</sup> When the Council closed its enforcement case under SKBE/13/7.

<sup>10</sup> When the Council closed its enforcement case under SKBE/13/7.

It is also submitted that based on the mandatory EIA and AA requirements and exceptional circumstances of our clients' development, an application for leave to apply for substitute consent should be permitted.

As this submission follows a previous application for leave to apply for substitute consent under ABP Ref. 302158-18, we would be very grateful if the Board could prioritise this application for leave to apply for substitute consent.

Please do not hesitate to contact us if you have any queries.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tom Halley', with a long, sweeping flourish extending to the right.

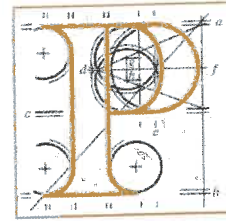
Tom Halley  
McCutcheon Halley

**Appendices:**

- 1) Site Location Maps;**
- 2) Aerial photography showing extent of quarrying/extraction that took place between 1990 and 2014;**
- 3) Copy of enforcement notice and correspondence issued by Cork County Council;**
- 4) Council's Executive, Senior Planner and Heritage Officer reports prepared under the 261A process.**

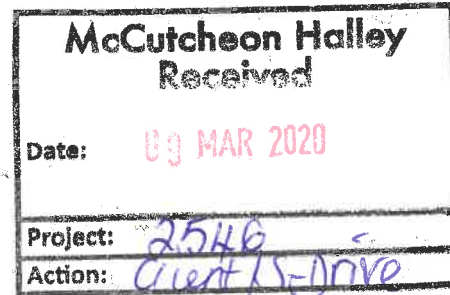
**Our Case Number:** ABP-305621-19

**Your Reference:** Murray Brothers Tarmacadam Ltd



**An  
Bord  
Pleanála**

McCutcheon Halley  
6 Joyce House  
Barrack Square  
Ballincollig  
Co. Cork  
P31 YX97



**Date:** - 5 MAR 2020

**Re:** Leave to apply for substitute consent for a quarry.  
Ardcahan (townland) Dunmanway, Co.Cork.

Dear Sir / Madam,

An order has been made by An Bord Pleanála determining the above-mentioned matter under the Planning and Development Acts 2000 to 2019. A copy of the order is enclosed.

The effect of this order is to direct you to make an application to the Board for substitute consent not later than 12 weeks after the date of the giving of the Board's decision (or such further period as the Board may allow). The application shall be accompanied by a remedial Environmental Impact Assessment Report and a remedial Natura impact statement.

**Please note that the final date for the making of an application for substitute consent is the 29<sup>th</sup> May, 2020.**

Section 177E of the Planning and Development Act, 2000, as amended, sets out the requirements for a valid substitute consent application and your attention is also drawn to Part 19 of the Planning and Development Regulations, 2001, as amended, which requires, inter alia, the applicant to submit to the Board a newspaper/site notice. You are requested to contact the Board at [bord@pleanala.ie](mailto:bord@pleanala.ie) in relation to the wording of the public notice prior to publication of same, or any other matter concerning the making of the application. A fee is also payable to the Board in respect of the substitute consent application.

Separately, it would greatly assist to Board to have a soft copy of the entire application submitted with six hard copies. In this regard, the drawings on the soft copy should be in PDF format.

**Teil  
Glao Áitiúil  
Facs  
Láithreán Gréasáin  
Ríomhphost**

**Tel  
LoCall  
Fax  
Website  
Email**  
(01) 858 8100  
1890 275 175  
(01) 872 2684  
[www.pleanala.ie](http://www.pleanala.ie)  
[bord@pleanala.ie](mailto:bord@pleanala.ie)

64 Sráid Maoilbhríde  
Baile Átha Cliath 1  
D01 V902

64 Marlborough Street  
Dublin 1  
D01 V902

In accordance with section 146(5) of the Planning and Development Act 2000, as amended, the Board will make available for inspection and purchase at its offices the documents relating to any matter falling to be determined by it, within 3 days following the making of its decision. The documents referred to shall be made available for a period of 5 years, beginning on the day that they are required to be made available. In addition, the Board will also make available the Inspector's Report, the Board Direction and Board Order in respect of the matter on the Board's website ([www.pleanala.ie](http://www.pleanala.ie)). This information is normally made available on the list of decided cases on the website on the Wednesday following the week in which the decision is made.

The Public Access Service for the purpose of inspection/purchase of file documentation is available on weekdays from 9.15am to 5.30pm (including lunchtime) except on public holidays and other days on which the office of the Board is closed.

A further enclosure contains information in relation to challenges by way of judicial review to the validity of a decision of An Bord Pleanála under the provisions of the Planning and Development Act, 2000, as amended.

Yours faithfully,



---

Miriam Baxter  
Executive Officer

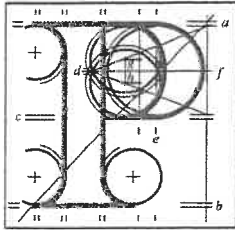
BP100QN

Teil  
Glao Áitiúil  
Facs  
Láithreán Gréasáin  
Ríomhphost

Tel (01) 858 8100  
LoCall 1890 275 175  
Fax (01) 872 2684  
Website [www.pleanala.ie](http://www.pleanala.ie)  
Email [bord@pleanala.ie](mailto:bord@pleanala.ie)

64 Sráid Maoilbhríde  
Baile Átha Cliath 1  
D01 V902

64 Marlborough Street  
Dublin 1  
D01 V902



**An  
Bord  
Pleanála**

**Board Order  
ABP-305621-19**

---

**Planning and Development Acts 2000 to 2019**

**Planning Authority: Cork County Council**

**Planning Register Reference Number: 11/00317**

**Application for Leave To Apply For Substitute Consent**, by Murray Brothers Tarmacadam Limited care of McCutcheon Halley of 6 Joyce House, Barrack Square, Ballincollig, County Cork.

**Development:** Quarry at Ardcahan (townland), Dunmanway, Country Cork.

## **Decision**

**GRANT** leave to apply for substitute consent under section 177D of the Planning and Development Act 2000, as amended, based on the reasons and considerations set out below

## **Matters Considered**

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

## Reasons and Considerations

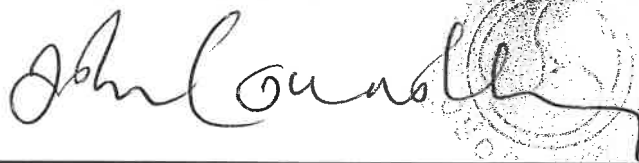
Having regard to section 177D of the Planning and Development Act, 2000, as inserted by section 57 of the Planning and Development (Amendment) Act, 2010, the Board is satisfied that:

- (a) an environmental impact assessment and an appropriate assessment was or is required in respect of the development concerned, and
- (b) exceptional circumstances exist such that the Board considers it appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent.

In this regard, the Board considered that -

- the regularisation of the development concerned would not circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;
- the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment, and to provide for public participation in such an assessment, has not been substantially impaired;
- the actual or likely significant effects on the environment or adverse effects on the integrity of a European site, if any, resulting from the carrying out of the development, could likely be substantially remediated; and
- the applicant has complied with a previous planning permission granted.

In deciding not to accept the recommendation of the Inspector to refuse leave to apply for substitute consent, the Board had regard to the full extent of the meaning of 'quarry' as set out in section 2 of the Planning and Development Act 2000, as amended by the European Union (Environmental Impact Assessment and Habitats) (No. 2) Regulations 2011 (S.I. No. 584 of 2011), section 3(b), and noted that this meaning is not restricted to areas of extraction. Furthermore, the Board noted that any substitute consent, if granted, 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 that such continuing or future development would require separate planning permission to be obtained following the granting of such substitute consent.



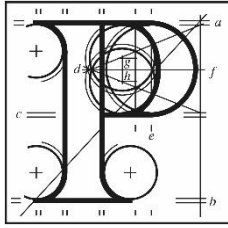
---

**John Connolly**

**Member of An Bord Pleanála**

**duly authorised to authenticate  
the seal of the Board.**

Dated this 5<sup>th</sup> day of MARCH 2020.



An  
Bord  
Pleanála

**Board Direction**  
**BD-005246-20**  
**ABP-305621-19**

---

The submissions on this file were considered at a Board meeting held on 24/02/2020.

The Board decided to grant leave to apply for substitute consent based on the reasons and considerations set out below.

In deciding not to accept the recommendation of the Inspector to refuse leave to apply for substitute consent, the Board had regard to the full extent of the meaning of 'quarry' as set out in section 2 of the Planning and Development Act 2000, as amended by the European Union (Environmental Impact Assessment and Habitats) (No. 2) Regulations 2011 (S.I. No. 584 of 2011), reg. 3, and noted that this meaning is not restricted to areas of extraction. Furthermore, the Board noted that any substitute consent, if granted, 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 that such continuing or future development would require separate planning permission to be obtained following the granting of such substitute consent.

## Reasons and Considerations

Having regard to section 177D of the Planning and Development Act, 2000, as inserted by section 57 of the Planning and Development (Amendment) Act, 2010, the Board is satisfied that:

- (a) an environmental impact assessment and an appropriate assessment was or is required in respect of the development concerned, and
- (b) exceptional circumstances exist such that the Board considers it appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent.

In this regard, the Board considered that

- the regularisation of the development concerned would not circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;
- the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has not been substantially impaired;
- the actual or likely significant effects on the environment or adverse effects on the integrity of a European site, if any, resulting from the carrying out of the development, could likely be substantially remediated;
- the applicant has complied with a previous planning permission granted.

**Note:** The notice to the applicant advising of this decision should also contain a direction –

- (a) to apply for substitute consent not later than 12 weeks after the giving of the notice or such longer period as the Board may, on request, consider appropriate, and
- (b) to furnish with the application a remedial environmental impact assessment report and a remedial Natura impact statement.

**Board Member:**

**Date:** 25/02/2020

---

John Connolly

**Appendix 6**

**Submission made to in response to CCC’s 261A Public Notice**

Quarries Section,  
Planning Department,  
Cork County Council,  
County Hall,  
Carrigrohane Road,  
Cork.

26<sup>th</sup> January 2012

**Re: Submission to Cork County Council under Section 261A of the Planning and Development Act 2000 (as amended) with regard to a quarry at Ardcahan, Dunmanway, Co. Cork.**

Dear Sir/ Madam,

We wish to make this submission on behalf of the Murray Brothers Tarmacadam Ltd., who own and operate a quarry and tarmacadam plant at Ardcahan, Dunmanway, Co. Cork. This submission is made in response to the Council's notice on Section 261A of the Planning and Development Act 2000, which appeared in the Irish Examiner on the 7/12/2011.

We note from the Council's public notice that it is the Council's intention to examine every quarry in its area to determine whether development was carried out which would have required Environmental Impact Assessment [EIA], a determination as to whether EIA would have been required, or an appropriate assessment under the Habitats Directive, and that where relevant, the Council will issue a notice to the owner or operator of a quarry requiring him or her to submit an application to An Bord Pleanala for substitute consent.

We also note that the public notice states that where the Council determines in relation to a quarry that an AA, EIA or a determination as to whether an EIA was required, but was not carried out and also decides that the requirements in relation to registration under Section 261 of the Planning and Development Act 2000 were not fulfilled, the Council will issue a notice to the owner or operator of the quarry informing him or her that it intends to issue an enforcement notice under Section 154 requiring the cessation of the operation of the quarry and the taking of such steps as it considers appropriate.

[www.mcemplanning.com](http://www.mcemplanning.com)

Also in DUBLIN  
Harcourt Centre, Block 4,  
Harcourt Road  
Dublin 2

CORK  
6 Joyce House, Barrack Square  
Ballincollig  
Co. Cork

We note that the recent Guidelines for Planning Authorities in relation to Section 261A issued by the DoEHLG, states that one of the fundamental objectives of the Council's review of quarries is that all quarries be "regularised",<sup>1</sup> so that they can continue to make an important contribution to the local economy.

The purpose of this submission is to highlight the importance of our clients quarry for the Dunmanway and wider area, particularly in relation to the quality of material involved in the Ardcahan quarry and the important contribution that the quarry makes to the local rural economy. It is important that our clients' current operation at Ardcahan is allowed to continue and that any issues or requirements which may arise from the section 261A process, are resolved quickly.

## **Context & Planning History**

Our client acquired the quarry in the 1990's, however at this stage the quarry had been long established [including being previously operated by Cork County Council]. It is a matter of record that prior to the commencement of Section 261, the quarry operation at Ardcahan was reviewed by Cork County Council as part of an overall review of quarries in West Cork. The review concluded that quarry operations had been established by the County Council prior to October 1964 and that operations had continued for many years without any material intensification of use or any materially adverse impact on the environment.

The quarry operation was therefore an authorised development from the date of commencement of the 1963 Local Government (Planning and Development) Act to the date of commencement of Section 261 of the Planning and Development Act. The authorised status was confirmed by the permission granted for a tarmacadam plant under 98/294 which depended on the works carried out to establish the quarry and the continuation of quarry operations. The details of the 98/294 application are outlined in greater detail below

## **Planning Application Ref. 98/294**

Permission was granted in 1998 to our clients, for a tarmacadam / asphalt manufacturing plant, and all associated ancillary buildings and works, including storage bays, a weighbridge and a septic tank. As part of the assessment of the proposed development, the strengths of the quarry and its location were identified in the planners report as follows:

*"Site is located in rural area about 3 miles north of Dunmanway and the tarmacadam plant is located on the floor of a large quarry. The site is well screened ... access is very good with a short stretch of Council road leading to the Coppeen-Dunmanway Regional Route. Given the adequacy of the road network I do not consider a contribution to be appropriate."*

In addition to the above, during their assessment of the 98/294 application, the Council again accepted that the pre-1964 status of the quarry had been established and that the quarry was authorised.

---

<sup>1</sup> Department of the Environment, Community and Local Government, *Section 261A of the Planning and Development Act, 2000 and related provisions, Guidelines for Planning Authorities*, January 2012, p.11.

## **Planning Application Ref. 11/317**

A subsequent planning application was made in May 2011 for permission for the extraction of stone, to a depth of 77.52metres [OS datum] and all associated site works. This application was refused planning permission on the grounds that the Council wasn't satisfied that the requirements under Section 261 of the Act were fulfilled, and on the basis that an Environmental Impact Assessment and Natura Impact Assessment were considered to be required.

From our discussions with the Council's planning officials following the decision issued under 11/317, we were advised that the Council were about to undertake a review of all quarries in their administrative area and that our clients' quarry at Ardcahan would be reviewed under this process and that this would provide a platform to address some of the issues identified under 11/317 and to regularise the status of our clients' quarry.

## **Requirements under 261 and 261A of the 2000 Planning and Development Act [as amended]**

Section 261(1) of the 2000 Planning Act [as amended], initially required the owner or operator of a quarry to submit, within a one-year period, certain information with regard to the operation of the quarry on the date of commencement of Section 261. While some of the required information related to the history of the quarry (e.g. the area of the quarry including the extracted area and the date operations commenced on the land) the historical information was only required to establish the existing use of the quarry in regard to subsection (7)(c).

The recent legislation under Section 261A of the Planning and Development Act 2000 [as amended] relates to further matters in relation to the control of quarries, including quarries which may have required an environmental impact assessment; an appropriate assessment, and quarries which may not have been registered under Section 261 of the 2000 Planning and Development Act. It is noted that the Council's public notice dated December 7<sup>th</sup> 2011, states that in certain cases the planning authority will issue the following:

*“an enforcement notice in relation to the quarry under section 154 requiring the cessation of the operation of the quarry and the taking of such steps as the authority considers appropriate”.*

Since the Council issued the public notice under Section 261A of the Planning and Development Act 2000 [as amended], the Department of the Environment, Community and Local Government, have issued Guidelines for Planning Authorities relating to Section 261A of the Planning and Development Act, 2000.<sup>2</sup> These Guidelines provide further clarity in relation to the options and mechanisms available to Planning Authorities, relating to quarries. In the context of our clients' site in Dunmanway, we have identified some of the relevant sections of the Departments Guidelines below.

---

<sup>2</sup> Department of the Environment, Community and Local Government, *Section 261A of the Planning and Development Act, 2000 and related provisions, Guidelines for Planning Authorities*, January 2012

## **Section 261A of the Planning and Development Act, 2000 and related provisions - Guidelines for Planning Authorities**

The Department of the Environment, Community and Local Government issued Guidelines for Planning Authorities in January 2012, dealing with Section 261A of the Planning and Development Act, 2000. Much of the Guidelines relate to the possible requirements for Environmental Impact Assessment and Appropriate Assessment for quarries where permission was granted or where the quarry had commenced operation prior to 1 October 1964, and where the quarry was registered under section 261 of the Planning and Development Act 2000. However, the Guidelines also make it absolutely clear that other quarry operations [including quarries which may not have registered under Section 261] should also be dealt with in an expeditious and appropriate manner, so that the status of these quarries can be regularised as expeditiously as possible:

*“while the immediate priority for the planning authority will be the implementation of section 261A, the planning authority should also ensure that unauthorised quarries, even if they do not require EIA / appropriate assessment, are regularised.”<sup>3</sup>*

We note from the public notice issued by the Planning Authority on December 7<sup>th</sup> last that the Council will, where relevant, issue a notice to the owner or operator of a quarry informing him or her that it intends to issue a notice under Section 154 requiring the cessation of the operation of the quarry and the “taking of such steps as it considers appropriate”.

In making its determination as to what constitutes appropriate steps, we would ask the planning authority to have particular regard to the development plan and the proper planning and sustainable development of the area.

In relation to the 2009 Cork County Development Plan, objective ECON 5-11 states that where significant mineral resources have been identified and are suitable for extraction, it is an objective to safeguard and optimise the resource so that it can be of benefit to the wider economy:

*“Where significant mineral resources such as aggregates, building stone or other materials have been identified and are suitable for extraction and delivery to industry without undue adverse impact on the environment, on scenic or residential amenity or on transport networks, it is a objective to safeguard the resource by seeking to prevent incompatible land uses, which could be located elsewhere, from being located within the vicinity of the resource”.*

Our clients quarry at Ardcahan has long been recognised as being of significant value containing high quality resource and has for a very long period of time provided material to a significant number of clients, including Cork County Council. In 1999, our clients operation in Ardcahan was supplemented and improved by the addition of a tarmacadam / asphalt manufacturing plant permitted under Council Ref. 98/294. The Ardcahan quarry is a critical component of the continued and successful operation of the tarmacadam / asphalt

---

<sup>3</sup> Department of the Environment, Community and Local Government, Section 261A of the Planning and Development Act, 2000 and related provisions, Guidelines for Planning Authorities, January 2012, p.11.

manufacturing plant permitted by Cork County Council under planning Ref. 98/294. If the supply to the tarmacadam / asphalt manufacturing plant from the adjoining Ardcahan quarry is disrupted for any significant period, the plant could have no option but to source material from an alternative location, which could potentially have significant and unnecessary impacts on the surrounding area.

We would ask the Council to take this submission in to account as part of their review of quarries under Section 261A of the Act. Please do not hesitate to contact us, if any further information is required or if you want to discuss further.

Please do not hesitate to contact the undersigned if you have any queries.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Tom Halley', written over a light blue rectangular stamp.

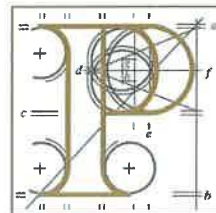
Tom Halley  
**McCutcheon Mulcahy**

**Appendix 7**

**ABP Correspondence dated 26<sup>th</sup> May 2022 (including High Court Order dated 3/12/2020) & Withdrawal Confirmation**

**Our Case Number:** ABP-313649-22

**Your Reference:** Murray Brothers Tarmacadam Limited



**An  
Bord  
Pleanála**

McCutcheon Halley  
6 Joyce House  
Barrack Square  
Ballincollig  
Co. Cork

**Date:** 26 May 2022

**Re:** Substitute Consent for Quarry at Ardcahan (Townland), Dunmanway, Co. Cork.

Dear Sir / Madam,

By Order dated 3rd December, 2020, the High Court placed a stay on the consideration of any substitute consent application lodged with the Board in relation to the rock quarry development at Ardcahan, Dunmanway, Co. Cork.

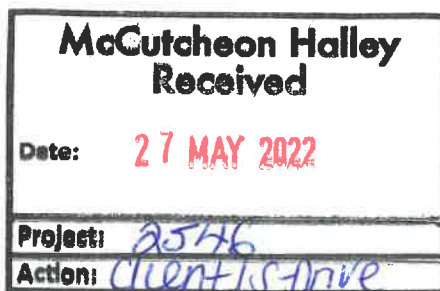
As such, the Court Order places a stay on any processing of the application. Once the stay on the application has been lifted by the High Court, processing of the application will commence.

A copy of the High Court order is attached and the Board apologises for any inconvenience caused.

Yours faithfully,

Sorcha Skelly  
Executive Officer  
Direct Line: 01-8737164

SC01



Teil  
Glao Áitiúil  
Facs  
Láithreán Gréasáin  
Ríomhphost

Tel  
LoCall  
Fax  
Website  
Email

(01) 858 8100  
1890 275 175  
(01) 872 2684  
www.pleanala.ie  
bord@pleanala.ie

64 Sráid Maoilbhríde  
Baile Átha Cliath 1  
D01 V902

64 Marlborough Street  
Dublin 1  
D01 V902

**THE HIGH COURT**

**JUDICIAL REVIEW**

**2020 No 418 JR**

**THURSDAY THE 3<sup>RD</sup> DAY OF DECEMBER 2020**

**BEFORE MR JUSTICE SIMONS**

**IN THE MATTER OF SECTION 50 OF THE PLANNING AND  
DEVELOPMENT ACT, 2000 AS AMENDED**

**BETWEEN**

**ALICE HAYES AND PETER SWEETMAN**

**APPLICANTS**

**AND**

**AN BORD PLEANÁLA**

**IRELAND AND THE ATTORNEY GENERAL**

**RESPONDENTS**

**AND**

**MURRAY BROTHERS TARMACADAM LTD**

**NOTICE PARTY**

Upon Motion of Counsel for the Applicants issued on the 20<sup>th</sup> day of November 2020 made unto the Court this day by way of remote hearing in the presence of Counsel for the First Named Respondent and Counsel for the Second and Third Named Respondents

And on reading said motion and the written submissions of Counsel for the Applicants

And on hearing from said respective Counsel and the Court noting that the Respondents and the Notice Party herein have made no objection to this application

**IT IS ORDERED** that

1. An Bord Pleanála is restrained, by way of a stay, from determining the application for “substitute consent” for the rock quarry development at Ardcahan, Dunmanway, Co. Cork, the subject of the within proceedings, pending the outcome of these judicial review proceedings. For the avoidance of doubt, An Bord Pleanála is permitted to receive and date stamp the application for “substitute consent” but is not to process the application any further. An Bord Pleanála is at liberty to exercise its discretion to issue a direction pursuant to section 177J of the Planning and Development Act 2000 (as amended) notwithstanding this stay.
2. Seisin of the within proceedings be retained by this Court
3. This matter be adjourned for mention to Tuesday the 19<sup>th</sup> day of January 2021 at 10 a.m. when it will be listed to issue directions in relation to the substantive hearing herein
4. In the event that the applicant issues enforcement proceedings pursuant to section 160 of the Planning and Development Act 2000 in respect of the development the subject matter of these proceedings, such an application is to be made returnable before Mr Justice Simons
5. The absence of a direction under section 177J is not a bar to the institution of any such enforcement proceedings
6. Costs be reserved

**ALISON KING**  
**REGISTRAR**  
**Perfected: 3<sup>rd</sup> December 2020**

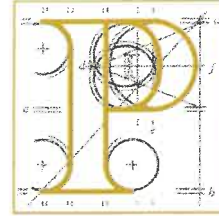
WP Toolan & Co  
Solicitors for the Applicants

Fieldfisher  
Solicitors for the First Named Respondent

Chief State Solicitors Office  
For the Second and Third Named Respondents

**Our Case Number:** ABP-313649-22

**Your Reference:** Murray Brothers Tarmacadam Limited



**An  
Bord  
Pleanála**

McCutcheon Halley  
6 Joyce House  
Barrack Square  
Ballincollig  
Co. Cork

<b>McCutcheon Halley Received</b>	
<b>Date:</b>	14 FEB 2024
<b>Project:</b>	2546
<b>Action:</b>	sherepoint

**Date:** 13 February 2024

**Re:** Substitute Consent for Rock Quarry Development at Ardcahan, Dunmanway, Co. Cork.  
Ardcahan, Dunmanway, Co. Cork.

Dear Sir / Madam,

I have been asked by An Bord Pleanála to refer to your e-mail dated 7th February 2024.

The Board acknowledges that the application for substitute consent lodged by you has been withdrawn.

Yours faithfully,

Dáire Littleton Caden  
Executive Officer  
Direct Line: 01-8737

SC50A

**Teil** (01) 858 8100  
**Glao Áitiúil** 1800 275 175  
**Facs** (01) 872 2684  
**Láithreán Gréasáin** [www.pleanala.ie](http://www.pleanala.ie)  
**Ríomhphost** [bord@pleanala.ie](mailto:bord@pleanala.ie)

64 Sráid Maoilbhríde 64 Marlborough Street  
Baile Átha Cliath 1 Dublin 1  
D01 V902 D01 V902