A14 CAMBRIDGE TO HUNTINGDON IMPROVEMENT SCHEME (PROJECT REFERENCE NUMBER: TR010018)

LAFARGE AGGREGATES LTD (INTERESTED PARTY UNIQUE REFERENCE NUMBER: 10030612)

SUMMARY OF ORAL REPRESENTATIONS MADE AT ISSUE SPECIFIC HEARING ON DEVELOPMENT CONSENT ORDER DATED 15 JULY 2015

Our comments below are based on the draft Development Consent Order (**"DCO"**) dated July 2015 which was used as the basis of examination during the hearing dated 15 July 2015.

1.1 **General points made on Articles of DCO**

1.1.1 Lafarge Aggregates Limited (the **"Company"**) has a lease of mineral (sand and gravel), and associated rights to enter the surface of the relevant land to work that mineral, related to significant plots of land along the route of the proposed A14 project. The Company is an expert in the extraction of mineral and road construction, and as a result is willing to commit its resources to the A14 project. The Company therefore does not have an in-principle objection to the A14 scheme overall.

1.1.2 However, compulsory acquisition powers should only be sought where there is no reasonable alternative to the use of those powers. As a result, the Company's mineral interest should not have been included arbitrarily within the schedule of interests intended to be acquired, as the onus is now on the Company to prove why its interests should not be so acquired. The proper and appropriate procedure would have been for negotiations to be opened at an early stage, to ascertain whether land and interests are required to be the subject of compulsory purchase powers.

1.1.3 We are therefore disappointed to note that the proper approach was not adopted by the Applicant and negotiations with the Company (or any Lafarge Tarmac companies) were not commenced prior to the DCO hearing. Without such contact, the Applicant cannot show that negotiations with the Company have failed and, as a result, there is no proper justification for including the Company's mineral interests within the DCO boundary.

1.1.4 We would therefore invite the Applicant to approach the Company, and to use the time between now and the compulsory acquisition hearings in September 2015 to seek an agreement with the Company, with the aim of that agreement being concluded before the end of the examination period in November 2015. *[Since the hearing, the Applicant has made contact with a view to commencing proper discussions, although terms for an agreement have not yet been offered].*

1.2 **Article 7 – Limits of deviation**

1.2.1 The Company is aware of the need for the Applicant to retain some flexibility in advance of bringing forward its detailed design. However the current drafting of Article 7(b)(ii), which allows the Applicant to deviate vertically from the redline of the DCO where borrow pits are being excavated, is too wide. The article currently allows the Applicant to automatically deviate 0.5 metres downwards, and then to any further distance it wishes, so long as there are no additional significant environmental effects.

1.2.2 If there is no real limit on the extent of excavation, this may lead to a significant volume (currently unknown) of mineral being taken. This has implications for compensation. Although we are aware that specific valuation points cannot be made as part of the DCO examination, this is also an important point of principle which touches on the justification for the acquisition itself, as it prevents the Company from understanding what the actual or likely impact will be of the Applicant's works. Furthermore, if an agreement is reached between the Applicant and the Company on the assumption that a certain level of mineral is removed from the Company's ownership, but in the event a significantly higher quantity of mineral is taken, this may prejudice the Company. This issue will also affect other landowners along the route.

1.2.3 We consider that the only way to provide certainty for landowners is for the Applicant to undertake its detailed design immediately where that design impacts on the borrow pits. This would allow these landowners to understand the extent of the mineral required for the project, and to allow the Applicant to at least begin prove that the use of the compulsory acquisition powers is necessary and in the public interest. We also welcome the Examining Authority's suggestion of a possible third-party arbitrator or mediator to deal with any issues which arise from this issue. We look forward to hearing further from the Applicant with their proposals in this respect, at which point we will comment further.

1.3 **Articles 20 and 21 – Compulsory acquisition of land and incorporation of the mineral code**

1.3.1 Our general comments on the compulsory acquisition position are set out at paragraph 1.1 above, and the Company's case is more fully set out in its Relevant and Written Representations.

1.3.2 We understand that the Applicant seeks authority to acquire so much of the Order land as is set out on the land plans accompanying the DCO and set out in the description of the "authorised development" at Schedule 1 of the DCO. Within these land plans, and the definition of the "authorised development", are areas of land which include the mineral over which the Company has an interest. Works numbers 4.1 to 4.15 set out the works which the Applicant is intending to progress which impact and conflict with the Company's interests and our objection primarily relates to the use – and associated acquisition - of the borrow pits (which are also specifically defined in the DCO).

1.3.3 According to Schedules 2 and 3 of the Acquisition of Land Act 1981 the Applicant cannot acquire any mineral unless that mineral is specifically purchased. The Act then creates a statutory presumption against acquisition of that mineral unless there is a compelling case in the public interest to do so and unless it is necessary for the project.

1.3.4 To justify its use and acquisition of the borrow pits, the Applicant has stated in its responses to the Examining Authority's first round of questions (response to question 1.14.4 within "Report 14, Other Matters", document reference REP2-015) that the project requires additional fill materials to enable it to progress, and that there is a shortage of such fill material. According to the Applicant, this will ensure that the scheme is self-sufficient and adopts the most environmentally-friendly option (as, in its view, bringing forward a larger quarry project would not be an environmentally friendly option).

1.3.5 These points are in our view not enough to justify the use of compulsory acquisition powers but in any event any justification falls away when there is another way to secure the mineral sustainably. As previously indicated, the Company is willing to commit its resource to the A14 project and work with the Applicant to ensure that it is furnished with

adequate mineral. In context of this legislation, compulsory acquisition is clearly a matter of last resort. We reiterate that, although we are intending to commence negotiations with the Applicant, at the current time no proper justification for the acquisition of the mineral has been put forward by the Applicant. *[Note: an approach has now been made by the Applicant, with a view to a meeting being scheduled in due course, although as yet no heads of terms have been offered].*

1.3.6 We therefore require that the Company's interests are removed from the land plans and the "authorised development" definition. In summary, the Company does not dispute that the Acquisition of Land Act 1981 can be used, or that there is a general power to acquire mineral in a case such as this. The Company is also not objecting to the scheme in principle, but is seeking deletion of certain elements of the works as are set out in the definition of "authorised development". If there is no justification to acquire these interests, then they should not be included as part of the authorised project.

1.3.7 In addition, the Applicant has undertaken no assessment of the possible sterilisation of the mineral reserve if the A14 scheme does go ahead as planned, which is a material consideration not yet properly assessed. This fundamentally goes against the argument that the use of the borrow pits is the most environmentally-friendly and sustainable approach.

1.3.8 The Applicant acknowledged in the DCO hearing that the DCO as currently drafted provides the Applicant with untrammelled powers to acquire all land within the order limits, but that this power is limited by the safeguards in place when dealing with an organisation such as Highways England, who are under a duty to act responsibly and would only be permitted to acquire land or rights necessary or incidental to the project. We do not consider these safeguards to be adequate as they cannot be enforced by the Company or any other relevant landowner. If further detailed design is needed for the Company and similar landowners to understand the impact on it then this design must be brought forward immediately and in any event prior to the compulsory acquisition hearings.

NABARRO LLP

21 JULY 2015