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Date 19 April 2013  
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Dear Sir

**Sites and Policies DPD (Consultation Draft), February 2013  
Response on behalf of Tarmac Limited**

We are instructed by Tarmac Limited to respond in relation to the consultation on the draft Sites and Policies Development Plan Document ("the Draft Plan"), issued by the Council in February 2013.

We have reviewed the minerals policies contained in the Draft Plan and have fundamental concerns with the content of Policy DM15, insofar as it requires integration of activity between sites operated by the same company, and Policy DM17, to the extent that it requires proposals to demonstrate need at the development management stage. In our view there is no proper planning basis for the inclusion of these elements to the policies and as a result it is highly likely that an Inspector would find the Draft Plan to be unsound. The grounds of our objections are set out in detail below.

**Background**

Policy CS8: Minerals planning contained within the North Somerset Core Strategy, adopted in April 2012, provides that North Somerset should contribute a 40% share of the West of England's crushed rock aggregate requirement during the plan period to 2026, subject to the practicality and environmental acceptability of this being tested through the LDF preparation process. This apportionment equates to a requirement to deliver approximately 36.9 million tonnes of aggregates.

The Council has tested the practicality and environmental acceptability of meeting this apportionment through the Sites and Policies Plan preparation process. In consultation with the minerals industry and other stakeholders the Council has assessed whether there is a requirement to allocate further land for mineral working in addition to the permitted reserves in order to meet the calculated apportionment. The result of this process has been the identification of a shortfall.

In order to address this shortfall, the Council has identified three options, being the allocation of land at The Spinney; allocation of land at Hyattswood Farm; and a "no allocations" option.

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In accordance with section 19(5) of the Planning and Compulsory Purchase Act 2004 and the Environmental Assessment of Plans and Programmes Regulations 2004, the Council has carried out a sustainability appraisal of the three options.

The Council has carried out an assessment of the three options, taking into account the findings of the sustainability appraisal. The conclusion reached is that the most appropriate option would be to allocate The Spinney, which would form a lateral extension to the south of Stancombe Quarry, as a preferred site for mineral working. Details of the assessment carried out were set out in the Minerals Evidence Paper which has informed the preparation of the Draft Plan.

### **Policy DM15: Mineral working exploration, extraction and processing**

Our client objects to the inclusion of the final paragraph of Policy DM15 which states that:

*"The Council will particularly expect companies with more than one site in the area to ensure that activity is suitably integrated between them, with appropriate phasing, to ensure that sites are not left unworked and unrestored for long periods. Appropriate agreements may be sought."*

There is no justification for the inclusion of this policy requirement. In exercising its function as mineral planning authority, the Council has permitted extraction from Stancombe Quarry and, subject to approval of an application to extend the time for working the mineral, permitted extraction from Durnford Quarry. It has also identified The Spinney as a preferred site. These decisions have been made for sound planning reasons regardless of the identity of parties controlling the sites.

The overarching policy requirement under the National Planning Policy Framework ("the NPPF") is to ensure that there is a sufficient supply of minerals to serve the development needs of an area (paragraph 142). There is no justification within the NPPF for imposing restrictions on the manner in which an operator may bring forward that supply. The proposed wording introduces a requirement which could potentially restrict Tarmac's ability to make commercial decisions on the programming of works at each of these sites. The effect could be to force Tarmac to operate from Durnford, incurring greater production costs, requiring the aggregates to be marketed at higher prices. This could significantly reduce Tarmac's ability to compete in the Bristol and North Somerset marketplace. In this way a direct effect of the policy would be to distort the minerals market within Bristol and North Somerset in a way which is anti competitive.

The requirement would unfairly prejudice our client's operations as the only minerals operator with more than one site within North Somerset. Notwithstanding the Council's intention to control activities by our client we doubt that the policy could successfully achieve this result. Although Tarmac is the operator, the sites are held in separate ownerships and commercial terms controlling their operation differ from one site to another.

Working of The Spinney and Stancombe Quarry are inextricably linked. Only 4 million tonnes of reserves at Stancombe are readily available. Extraction from The Spinney will not only realise 10 million tonnes directly, but will "unlock" further reserves from Stancombe of approximately 20 million tonnes. Our client has invested heavily in skilled personnel and modern fixed processing plant in order to work the minerals contained in Stancombe over the next 20-30 years. The ability to secure the total reserves within

Stancombe and The Spinney will require careful programming of continuous work across the combined site over this period.

A decision to recommence quarrying from Durnford will be taken by Tarmac on the basis of specific market demand. Our client forecasts that peaks in demand will occur over the coming years particularly in relation to major construction projects in the Bristol and Weston-super-Mare areas which will not be capable of being met by the planned output from Stancombe and The Spinney. If this demand justifies the investment in personnel and mobile plant our client will recommence quarrying at Durnford to meet this demand.

Put simply, Policy DM15 seeks to restrict supply of mineral from one site, with the intention of increasing the speed of working at another. This is an oversimplification of the economic realities of mineral extraction and even if it were a legitimate objective, would not be effective.

Economic viability is a key theme in the NPPF, which notes at paragraph 173;

*"Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable."*

The policy as drafted fails to consider these factors and would present a serious impediment to the successful operation of the sites by our client, which has no proper planning basis. The policy would fail to deliver a steady and adequate supply of aggregates for the area. Control over Tarmac's ability to choose how to work the quarries would form the type and scale of burden which would threaten viability in contravention of the NPPF policies.

In addition to the fundamental objection to the attempt to artificially manipulate matters of market supply and demand it is also unclear how the Council proposes to lawfully impose new phasing and restoration arrangements on an existing quarry when considering proposals for the extension of an entirely separate proposal. Each proposal must be considered on its own merits and in accordance with paragraphs 204 and 206 of the NPPF, planning conditions and planning obligations may only be imposed where they are relevant to the development to be permitted and necessary to make that development acceptable in planning terms. In this instance, neither of these requirements would be satisfied.

For this reason we consider that an Inspector is likely to find the Draft Plan unsound. Accordingly, the above wording should be deleted from the Draft Plan.

**Policy DM17: Allocation of land at The Spinney, south of Stancombe Quarry, as a preferred area for minerals working**

Our client objects to the inclusion of the following paragraph of Policy DM17:

*"proposals must demonstrate to the satisfaction of the Council, that there is a genuine need to work The Spinney and that it is appropriate to do so at that particular time"*

As indicated above, the adopted Core Strategy sets down the crushed rock aggregate requirement within North Somerset for the period to 2026. The Sites and Policies DPD will test the aggregates apportionment for North Somerset, include policies for mineral extraction and the identification of preferred sites and mineral safeguarding areas, in accordance with the requirements of paragraph 143 of the NPPF.

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The identification of The Spinney as a preferred area for minerals working is one of the outcomes of the preparation of the Sites and Policies DPD which, following its adoption, will have been the subject of sustainability appraisal, public consultation and independent examination to establish its soundness.

The above process incorporates an assessment of the need for The Spinney to form a preferred site. There is no additional statutory requirement to demonstrate need at the development management stage. Furthermore, there is no suggestion in the NPPF, under paragraph 144 which deals with the determination of planning applications, that an applicant should demonstrate need to work a preferred site.

Moreover, the Draft Plan has been prepared during a trough in the economic cycle which has a direct effect upon mineral demand. It is expected that a upturn in the economy in the coming years will result in an increase in this demand. In addition, the potential for working at Stancombe extends well beyond the plan period to 2026. It would be unreasonable to impose a requirement to demonstrate need against the assumptions on need set within the plan in 2013.

Inclusion of the above wording would impose an unnecessary and unreasonable burden upon a mineral operator and our client in particular and has no proper planning basis. Again, we consider that an Inspector is likely to find the Draft Plan unsound in this regard. Accordingly, we submit that above wording should be deleted from the submission draft.

We ask that you acknowledge receipt of this letter.

Yours faithfully



**Eversheds LLP**