



# Hearing Statement

Epping Forest Local Plan: Examination in Public

Matter 1, Issue 5

Iceni Projects Limited on behalf of  
Tele Lands Improvement Limited

April 2019

## Iceni Projects

London: Da Vinci House, 44 Saffron Hill, London, EC1N 8FH  
Glasgow: 177 West George Street, Glasgow, G2 2LB  
Manchester: 68 Quay Street, Manchester, M3 3EJ

t: 020 3640 8508 | w: [iceniprojects.com](http://iceniprojects.com) | e: [mail@iceniprojects.com](mailto:mail@iceniprojects.com)  
linkedin: [linkedin.com/company/iceni-projects](https://www.linkedin.com/company/iceni-projects) | twitter: @iceniprojects



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## CONTENTS

1. INTRODUCTION.....	1
2. MATTER 1: LEGAL COMPLIANCE .....	2

## APPENDICES

A1.	Air Quality Note: Review of the January 2019 HRA (Air Quality Consultants)
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## 1. INTRODUCTION

- 1.1 This Hearing Statement has been prepared by Iceni Projects on behalf of Tele Lands Improvement Limited (Lands Improvement or LI) who has submitted representations to the Epping Forest Local Plan Regulation 19 Consultation and a Hearing Statement in relation to Matters 1, 2, 3, 4 and 7 in January 2019.
- 1.2 This Hearing Statement is made in relation to Matter 1 concerning legal compliance in relation to the Conservation of Habitats and Species Regulations 2017<sup>1</sup> (the 'Habitats Regulations'), the session on which has been postponed to 21 May 2019, (as set out in the note dated 7 February, 2019 (ED11 Matter 1 HRA Note<sup>2</sup>)), due to the publication of a new Habitats Regulations Assessment (HRA) (Document EB209) by the Council.
- 1.3 This Hearing Statement responds to Matter 1, Issue 5 and should be read in conjunction with the Hearing Statement dated January 2019 (19LAD0127). For clarity, this Hearing Statement has been prepared in light of the updated HRA Report (EB209) dated 21<sup>st</sup> January 2019.

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<sup>1</sup> Her Majesty's Stationery Office (HMSO), (2017); The Conservation of Habitats and Species Regulations 2017

<sup>2</sup> Available at: <http://www.efdclocalplan.org/wp-content/uploads/2019/02/ED11-Matter-1-HRA-Note-.pdf>

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## 2. MATTER 1: LEGAL COMPLIANCE<sup>3</sup>

### Issue 5: Have the requirements of the Conservation of Habitats and Species Regulations 2017 been met?

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#### Q1. Is the Council's HRA process consistent with the *People Over Wind*, *Peter Sweetman v Coillte Teoranta* Judgement?

- 2.1 Following the publication of the updated HRA Report in January 2019 (EB209), the HRA process undertaken by EFDC is considered compliant with the judgement of the Court of Justice of the European Union (CJEU) in that an Appropriate Assessment (AA) has been undertaken.
- 2.2 Unlike the previous versions of the HRA Report (EB205 and EB206) which were published prior to the CJEU ruling, the most recent HRA Report (EB209) states that *"the role of avoidance and mitigation measures is now removed entirely from the initial analysis of policies and allocations and is discussed entirely in a subsequent 'appropriate assessment' stage"*<sup>4</sup> to comply with the CJEU judgement, with a separate section entitled 'Appropriate Assessment' for each of the impact pathways identified.
- 2.3 Whilst the process itself is compliant with this judgement in that an AA has been undertaken, the report states that ***"the implications of the ECJ ruling in this case are structural, presentational and terminology-related"***<sup>5</sup>, i.e. no additional assessment has been undertaken. Consequently, the fundamental flaws associated with the assessment approach and evidence base<sup>6</sup> for the previous HRA Reports remain. Furthermore, screening and AA are two distinct stages of the HRA process, and AA requires a significantly more detailed assessment to be undertaken to ensure robust conclusions. Consequently, the AA is considered inadequate in terms of quality and robustness and does not comply with the Habitats Regulations.

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<sup>3</sup> Word Count: 2,834

<sup>4</sup> Paragraph 2.5, page 11 (EB209)

<sup>5</sup> Paragraph 2.5, page 11 (EB209)

<sup>6</sup> Paragraph 2.18 of the Tele Lands Improvement Hearing Statement on Matters 1, 2, 3, 4 and 7. Available at: <http://www.efdclocalplan.org/wp-content/uploads/2019/01/19LAD0127-TeleLands-Improvement-Matter-1-4-and-7-1.pdf>

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**Q2. The Habitats Regulations Assessment of the Regulation 19 Local Plan (EB206 & 206A) identified that, without mitigation, the Plan would result in likely significant effects upon Epping Forest SAC, either alone or in combination with other plans or projects, in respect of recreational pressure; urbanisation and air quality. [Sub-questions 2a-2j(iii)]**

2.4 LI have a number of concerns relating to the approach that EFDC has taken in relation to the Conservation of Habitats and Species Regulations 2017<sup>7</sup> ('the Habitats Regulations') and how this has informed the development of the SVLP. In summary, these concerns are:

- The purpose of the HRA is to inform and support the Local Plan process however, there has not been a review of the SVLP in light of the updated HRA Report (EB209). This is not compliant with the Habitats Regulations process and **therefore the SVLP cannot be considered effective, justified or consistent with national policy**;
- Fundamental flaws with the air pollution and transport methodology, including incomplete and inaccurate modelling of the road network (see **Appendix A1**);
- Inconsistencies between policies and allocations with potential for likely significant effects on Epping Forest SAC at the screening stage and those assessed within the AA (e.g. the omission of policies DM5 and DM6 from the recreational pressure and urbanisation AA). This raises **serious concerns that the development options put forward in this SVLP are the most effective and appropriate** for delivering the Local Plan objectives;
- The flawed nature of the Interim Mitigation Strategy for Epping Forest SAC, including:
  - The apparent lack of cooperation with the London Boroughs of Redbridge (LBR) and Waltham Forest (LBWF) despite all these authorities having a duty as 'competent authorities' under the Habitats Regulations to protect the integrity of Epping Forest SAC. As LBR and LBWF are not signed up to the Interim Mitigation Strategy (IMS) the effectiveness of this Strategy cannot be determined with sufficient certainty;
  - The IMS provides for on-site mitigation only (i.e. Strategic Access Management and Monitoring (SAMMs)) with no consideration of avoidance measures or off-site mitigation (e.g. Suitable Alternative Natural Greenspace (SANGs));
  - Focus on mitigation of recreational impacts only with no reference to addressing air pollution or traffic impacts which require mitigation (see **Appendix A1**); and
  - Lack of clarity, certainty and deliverability of the mitigation measures presented.

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<sup>7</sup> Her Majesty's Stationery Office, (2017); The Conservation of Habitats and Species Regulations 2017

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- 2.5 The HRA should inform and support the Local Plan development process. The latest HRA (EB209) published in January 2019 “*entirely replaces the HRA that was submitted with the Local Plan*”<sup>8</sup> in order to comply with the latest CJEU ruling. However, there appears to be some contradiction over the content and purpose of this document. Within the introductory sections it states that any changes are “*structural, presentational and terminology-related*.”<sup>9</sup> and therefore no updates to the SVLP are required. However, within Sections 5 to 8 of EB209 it is clear that additional information (e.g. visitor surveys) has been considered and consequently there have been fundamental updates to the assessment in addition to the presentational changes set out in paragraph 2.3 above.
- 2.6 Despite the publication of an updated HRA Report there is no evidence to suggest that the SVLP or other supporting documents such as the Sustainability Appraisal (SA) have been reviewed or updated to take into consideration any additional information presented. Although SA and HRA are prepared under different sets of regulations these documents are inherently linked. The purpose of the SA is to evaluate the environmental effects of a Plan<sup>10</sup>, and should therefore be informed by the findings of the HRA (including AA). On this basis, the **SVLP cannot be considered justified or effective** as it fails to consider the most recent information available.
- 2.7 Under Regulation 105(4) of The Habitats Regulations the Local Planning Authority should only implement the Plan “*after having ascertained that it will not affect the integrity of the European sites*”. Where a land use plan is likely to have a significant effect on a European site (either alone or in combination with other plans or projects), the plan making authority must, before the plan is given effect, undertake an AA of the implications for the site in view of the site’s conservation objectives to accurately determine the nature and significance of these effects, taking into consideration mitigation measures as appropriate (Regulation 105 of the Habitats Regulations).
- 2.8 Both the HRA and Local Plan remain reliant on an incomplete evidence base, and therefore it is impossible to undertake a comprehensive AA of the likely significant effects on the integrity of Epping Forest SAC at this stage. For example, the air pollution and traffic modelling does not include the road network as a whole and consequently emissions from traffic sources and the reduction in background deposition rates are likely to have been underestimated. As many roads in the district are either at or over capacity, the SVLP is likely to result in deteriorating air quality, however this has not been reflected within the HRA. The HRA also acknowledges exceedances of the annual mean

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<sup>8</sup> Paragraph 1.3, page 7 (EB209)

<sup>9</sup> Paragraph 2.5, page 11 (EB209)

<sup>10</sup> Paragraph 047, Reference ID: 11-047-20150209 of the National Planning Practice Guidance: Strategic Environmental Assessment and Sustainability Appraisal. Available at: <https://www.gov.uk/guidance/strategic-environmental-assessment-and-sustainability-appraisal>

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critical level for nitrogen oxides (NO<sub>x</sub>)<sup>11</sup> but there is no evidence that this has been assessed within the AA. Flaws within the air pollution assessment are a significant barrier to the identification and implementation of suitable mitigation. The deficiencies in the air pollution assessment are discussed in further detail within **Appendix A1**.

- 2.9 Furthermore, where assessments have been revised on the advice of consultees, the quality and robustness of the assessment remains questionable. The Zone of Influence (Zol) applied within the latest HRA (EB209) increased to 6.2km (previously 4km) on the advice of Natural England (NE) to reflect the latest visitor survey information and to determine likely significant effects on Epping Forest SAC in relation to Recreational Pressure and Urbanisation, following which NE advised that policies and site allocations need to be re-screened<sup>12</sup>.
- 2.10 On review of the updated screening assessment, a number of inconsistencies between the screening tables and policies and allocations assessed within the AA were identified. For example, Policies DM5 and DM6 were omitted from the AA of Recreational Pressure and Urbanisation, despite being identified as resulting in likely significant effects at the screening stage. In addition, many of the site allocations were not explicitly listed within the AA section thereby making it difficult to determine whether these were properly assessed.
- 2.11 Under the Habitats Regulations, the conclusion of an AA may consider proposed mitigation measures provided that there is reasonable certainty that these measures can be secured. In order for such measures to comply with the Habitats Regulations the Local Plan should contain sufficient detail to demonstrate the types of mitigation proposed, mechanisms for implementation and timescales for delivery. The HRA is reliant on such measures to minimise adverse effects on the SAC however, at present, the mitigation measures considered within the HRA are speculative, with limited detail on the mechanisms to be used or timescales for delivery. Consequently, the conclusion that no adverse effects on the integrity of Epping Forest SAC will occur is premature due to the uncertainty regarding the effectiveness and deliverability of mitigation measures.
- 2.12 EFDC published an IMS (EB134) which provides preliminary details of measures designed to minimise adverse effects on the integrity of Epping Forest SAC. The SAC falls within the boundaries of EFDC, LBR and LBWF. All these authorities have a duty, as 'competent authorities' under the Habitats Regulations, to ensure that planning decisions do not result in adverse effects on the integrity of the SAC and comply with the Habitats Regulations. However, there is no evidence to suggest that LBR and LBWF have signed up to the IMS. In order for this (or any related strategy) to

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<sup>11</sup> Paragraph 4.11, page 115 (EB209)

<sup>12</sup> Paragraph 5.4.3 of 19STAT0027 Natural England (available at: <http://www.efdclocalplan.org/wp-content/uploads/2019/01/19STAT0027-Natural-England-Matter-1-.pdf>)



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be effective all three authorities must be in agreement, as advised by NE. Discussions with LBWF confirmed that they are yet to sign up due to concerns regarding the prioritisation and spending of financial contributions. However, due to the cross-boundary nature of the SAC mitigation is only likely to be effective if considered at the strategic level and, until a joint Strategy is agreed with LBR and LBWF, the effectiveness of any mitigation cannot be determined with sufficient certainty to satisfy the Habitats Regulations.

- 2.13 Avoidance of harm should be the first consideration in accordance with national policy and the mitigation hierarchy. However, the HRA Screening Assessments do not provide evidence that avoidance measures have been considered before mitigation or compensation. Whilst it is unlikely that avoidance would have been compatible with the social and economic objectives of the Local Plan, the HRA should have demonstrated that it was considered and provide justification as to why it was not carried forward before advancing to proposed mitigation.
- 2.14 For example, the IMS refers to on-site mitigation only (i.e. SAMMS) with no consideration of the provision for off-site mitigation. The most effective (and most commonly used) off-site avoidance measures would be SANGs with the addition of potential buffer land, however EFDC have not provided a SANGs Strategy as part of their evidence base. The purpose of buffer land is to safeguard the rural environment and therefore should not be considered a primary source of mitigation, although it could be used to support a wider off-site mitigation strategy<sup>13</sup>. However, until sufficient details regarding the deliverability and effectiveness of such a strategy are available, **the SVLP cannot be considered justified or consistent with national policy.**
- 2.15 The IMS provides details for mitigation measures in relation to recreational pressure only, despite air pollution impacts also being identified as requiring mitigation within the HRA Report. The conclusions of the AA are reliant on the pre-amble to policies DM2, DM5, DM21 and DM22 to provide sufficient mitigation to address any adverse effects on Epping Forest SAC in relation to nitrogen deposition, however this is not justified. These policies refer to monitoring of air pollution levels only which, while useful to inform mitigation strategies, is not a mitigation measure itself. In their response to Matter 16, EFDC set out proposed amendments to Policies DM1-DM22 to provide further detail and certainty regarding the mitigation commitments<sup>14</sup>. Whilst these are welcomed, without the supporting documentation these amendments still do not provide sufficient certainty regarding the measures proposed. Consequently, the conclusions of the AA cannot be considered justified as there is no guarantee that the mitigation measures proposed are deliverable or will be effective to the extent to

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<sup>13</sup> Issue 5.2(f) on Page 3 of the Conservators' of Epping Forest representations on EFDC Local Plan MIQs Matter 1 and Matter 4 – January 2019

<sup>14</sup> <http://www.efdclocalplan.org/wp-content/uploads/2019/03/ED29-EFDC-Proposed-Amendments-to-Local-Plan-Schedule-for-Hearing-Sessions.pdf>

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which they are required to ensure no adverse effects. Furthermore, likely significant effects in relation to ammonia concentrations were identified and no mitigation measures proposed.

- 2.16 There is also no reference to the types of transport improvements which could be implemented to support the delivery of the Local Plan and reduce potential air pollution impacts on Epping Forest SAC, e.g. the relief road or use of electric vehicles. The 2018 Air Quality Annual Status Report<sup>15</sup> states on page 6 that, although EFDC have investigated the potential options for the installation of electric vehicle charging hardware, they have been “*unable to commit to progressing with this matter to date*”. Notes from a Cabinet meeting in April 2019 (EB142A) indicate that electric vehicle charging points could be secured via planning conditions<sup>16</sup>, but no further details are provided. Further detailed work on sustainable transport modes to demonstrate how trip rates could be reduced is therefore required, and these should be assessed within the HRA to ensure that these comply with its conclusions. Consequently, this IMS is extremely limited in its effectiveness as it fails to consider the range of mitigation required to ensure the integrity of Epping Forest SAC is protected.
- 2.17 In some instances, there is also confusion over the role and effectiveness of the mitigation identified such as in relation to green infrastructure and its role in mitigating recreational impact on Epping Forest SAC:
- **Policy SP3: Place Shaping** implies that green infrastructure has the potential to divert recreational pressure away from Epping Forest SAC; however
  - **Policy DM5: Green and Blue Infrastructure** implies that increased connectivity and integration of green infrastructure could increase access to, and therefore pressure on, European sites.
- 2.18 This discrepancy undermines the validity and certainty of the AA and needs to be clarified and fully assessed to comply with the Habitats Regulations.
- 2.19 It is understood that the development of the Mitigation Strategy is an iterative process, and the IMS includes a commitment to review this following the results of additional data<sup>17</sup> however no timescales for this review are provided. Furthermore, other measures include traffic management and ongoing monitoring which are anticipated to be financed through Section 106 obligations or Community Infrastructure Levy (CIL) contributions. However, no details on how EFDC will commit to the provision of these, or any other measures, is provided. The absence of such information means that the

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<sup>15</sup> EFDC, (2018); 2018 Air Quality Annual Status Report. Available at: <https://www.eppingforestdc.gov.uk/wp-content/uploads/2019/02/ASR-2018-Submission-version-31-10-2018-FINALv1.pdf>

<sup>16</sup> Paragraph 7 of EB142A

<sup>17</sup> Page 14 of the Interim Mitigation Strategy, under ‘Monitoring and Review’ (EFDC, October 2018)

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Council cannot accurately factor these measures into the Infrastructure Delivery Plan (IDP), and therefore cannot confirm that the site allocations and the Local Plan itself are viable.

- 2.20 The Local Plan cannot be adopted until the final Mitigation Strategy has been formally agreed by all relevant parties, as this is a key document which secures these measures and ensures that there will be no adverse effects on the integrity of Epping Forest SAC. Outstanding measures include those associated with air pollution and urbanisation effects (including a revised Zol<sup>18</sup>) and off-site avoidance. In order to ensure the final Mitigation Strategy is justified a combined monitoring and mitigation approach should be applied with clear definitions to enable effective monitoring to be undertaken.
- 2.21 An outline of the costings for the recreational mitigation elements for allocations within the Zol need to be subject to detailed appraisal to ensure the full costs are robustly assessed. It is recommended that the final Mitigation Strategy is formally adopted as a Supplementary Planning Document (SPD) to provide certainty and clarity in relation to the delivery of mitigation measures in accordance with the requirements of the Habitats Regulations.
- 2.22 As many of the mitigation measures proposed within the Local Plan are still under development it is not clear whether these could be implemented without threatening the delivery of the Local Plan or how the Plan should be modified to ensure the integrity of the SAC is protected. Therefore, **it is irrational to conclude that there is sufficient certainty, beyond all reasonable doubt, that the mitigation identified is sufficient to mitigate the effects.**
- 2.23 The purpose of the HRA is to inform and support the Local Plan process. Although an updated AA has now been undertaken to comply with recent changes in case law the SVLP and other supporting documentation remains unchanged and consequently there is no certainty that the alternatives presented within it will have no adverse effects on Epping Forest SAC, and as such the alternatives should be reconsidered in this context. The lack of robust approach to the alternatives is set out in paragraphs 2.8 to 2.14 of the LI Hearing Statement on Matters 1-4 and 7<sup>19</sup>.
- 2.24 As the SVLP is dependent on the IMS, which cannot be finalised until all outstanding surveys have been completed, the **HRA and Local Plan cannot be considered fully justified or effective.** Once the supporting evidence base is complete and all outstanding surveys and assessments have been undertaken, all documents associated with the Local Plan, including the SA, HRA, Mitigation

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<sup>18</sup> Paragraph 29, page 14 (EB134)

<sup>19</sup> Iceni Projects (on behalf of Tele Lands Improvement) (2019); Hearing Statement Epping Forest Local Plan: Examination in Public: Matter 1, 2, 3, 4 and 7. Available at: <http://www.efdclocalplan.org/wp-content/uploads/2019/01/19LAD0127-TeleLands-Improvement-Matter-1-4-and-7-1.pdf>

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Strategy, Green Infrastructure Strategy and the Infrastructure Delivery Plan should be reviewed and updated to ensure consistency and inform the finalised version of the Local Plan prior to adoption. Further public consultation on these documents will be needed to determine whether these are compliant with the Habitats Regulations.

- 2.25 LI reserves its right to comment on this information once it is available and as above submits that the Examination process should ensure that a proper opportunity is provided to do so in way that can influence the SVLP.
- 2.26 Consequently, the conclusions presented within the HRA are not certain beyond all reasonable scientific doubt and therefore the AA, and by extension the SVLP, cannot be considered compliant with the Habitats Regulations.

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**A1. AIR QUALITY NOTE: REVIEW OF THE JANUARY 2019 HRA (AIR QUALITY CONSULTANTS)**

## **Air Quality Note:** Review of Jan 2019 HRA

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February 2019



Experts in air quality  
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## Document Control

<b>Client</b>	Tele-Lands Improvement Limited	<b>Principal Contact</b>	Viktoria Oakley
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## Document Status and Review Schedule

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**Air Quality Consultants Ltd**  
**23 Coldharbour Road, Bristol BS6 7JT Tel: 0117 974 1086**  
**119 Marylebone Road, London NW1 5PU Tel: 020 3873 4780**  
**aqc@aqconsultants.co.uk**

Registered Office: 23 Coldharbour Road, Bristol BS6 7JT  
 Companies House Registration No: 2814570

## Contents

1	Introduction .....	2
2	Concerns over Technical Aspects of the Modelling and Assessment .....	2
3	Limitations to the Assessment and Conclusions .....	4



## 1 Introduction

- 1.1 This Note is a rapid response to the air quality aspects of the HRA just published by Epping Forest DC.

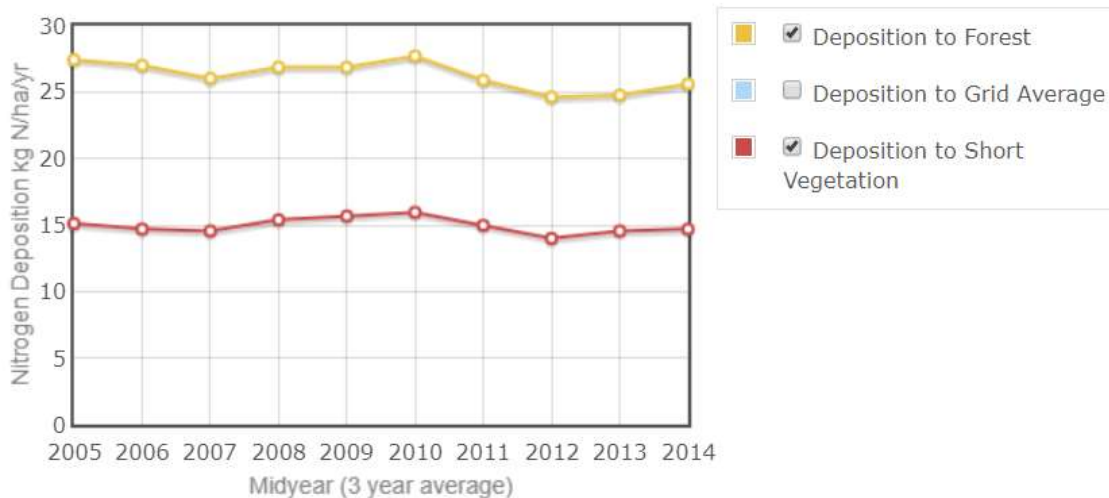
## 2 Concerns over Technical Aspects of the Modelling and Assessment

- 2.1 There are a number of concerns relating to the modelling and the subsequent assessment which are set out below.
- 2.2 The modelling is flawed by not including the whole of the road network affected by the Local Plan. This will have underestimated the changes in NO<sub>x</sub> and NH<sub>3</sub> concentrations and hence N deposition, despite the roads not included being some distance from the transects used in the HRA. Furthermore, the emission factors for NH<sub>3</sub>, which have been derived from the NAEI, and are hence based on COPERT factors, are likely to underestimate emissions<sup>1</sup>.
- 2.3 The methodology exaggerates the reduction in background deposition rates by assuming a 2% per annum reduction for the first part of the plan period, taken to be from 2014 to 2023. This equates to an assumed reduction in N deposition of 18%. In support of this approach, the HRA references the deposition results from the APIS website for the period 2005 to 2014 as set out in Figure 5 (right hand graph) of the HRA (page 20). Misleadingly, the graph does not show the trend in total N deposition, which is the important factor for change in background deposition. The graph below shows the pattern for total N deposition, taken from the same source as used in the HRA. There is essentially very little to no downward trend in N deposition. On the basis of this graph, the HRA is assuming the total N deposition rate in 2023 will be around 20.9 kgN/ha.yr for deposition to forest (cf 25.5 kgN/ha.yr in 2014) and 12.3 kgN/ha/yr for deposition to short vegetation (cf 15 kgN/ha.yr in 2014).

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<sup>1</sup> This is supported by the results of measurements made in the Netherlands, see:  
[http://www.emissieregistratie.nl/erpubliek/documenten/Lucht%20\(Air\)/Verkeer%20en%20Vervoer%20\(Transport\)/Wegverkeer/TNO%20\(2015\)%20NH3%20Emission%20Factors%20for%20road%20transport.pdf](http://www.emissieregistratie.nl/erpubliek/documenten/Lucht%20(Air)/Verkeer%20en%20Vervoer%20(Transport)/Wegverkeer/TNO%20(2015)%20NH3%20Emission%20Factors%20for%20road%20transport.pdf)

### Total Nitrogen deposition



- 2.4 The HRA has underestimated the deposition to the Forest. It has used a single deposition velocity of 0.001 m/s for NO<sub>2</sub> (para 6.4, page 11 of Appendix D). AQTAG's<sup>2</sup>, guidance document for carrying out Appropriate Assessments under the Habitats Directive, recommends use of two separate deposition rates of 0.0015 m/s to short vegetation and 0.003 m/s to forest. As much of Epping Forest is forest, the deposition rate used has underestimated the N deposition from the NO<sub>x</sub> emissions (after translation to NO<sub>2</sub>) by a factor of 3. A similar issue arises in relation to NH<sub>3</sub>. The HRA has used a single deposition velocity of 0.02 m/s. This is the AQTAG 06 recommended value for short vegetation but that for forests is 0.03 m/s, so the HRA has also underestimated the N deposition to the forest from the NH<sub>3</sub> emissions by around 50%. The graph shown above illustrates that the APIS website recognises the need to consider deposition to short vegetation and forest separately.
- 2.5 The HRA has not assessed the impacts on NO<sub>x</sub> concentration, even though it is recognised that the annual mean critical level for NO<sub>x</sub> (of 30 µg/m<sup>3</sup>) is exceeded (para 4.11, page 115). There are direct effects of NO<sub>x</sub> on vegetation, separate to those due to its contribution to N deposition<sup>3</sup>. It is wrong to ignore the role of the Local Plan in increasing NO<sub>x</sub> concentrations and the relationship of future concentrations to the critical level.

<sup>2</sup> Available at [http://bailey.persona-pi.com/Public-Inquiries/A465-English/8%20Air%20Quality/8.2.2%20-%20AQTAG06\\_Technical%20Guidance%20Assessment%20emissions%20to%20air%20Mar2014.pdf](http://bailey.persona-pi.com/Public-Inquiries/A465-English/8%20Air%20Quality/8.2.2%20-%20AQTAG06_Technical%20Guidance%20Assessment%20emissions%20to%20air%20Mar2014.pdf)

<sup>3</sup> See report NECR 199 published by Natural England in 2016 available at: <http://publications.naturalengland.org.uk/file/5064684469223424>

### 3 Limitations to the Assessment and Conclusions

- 3.1 Importantly the HRA now identifies, having carried out an Appropriate Assessment, that there will be an “adverse effect on the integrity of the SAC” due to all development in combination, in relation to nitrogen deposition, that will require mitigation (para 6.10, page 142).
- 3.2 The HRA sets out a mitigation package in para 6.18. Essentially it is argued that the Policies in the LP (DM 2, DM5, DM21 and DM 22) provide the necessary mitigation. However, this is not justified in any detail in the HRA. For instance, the HRA cites DM 22 as requiring “*large developments ... to provide financial contributions towards monitoring of air quality ...*”. Monitoring can help inform mitigation and thus form part of an overall package but is not, itself a mitigation measure. The other Policies are vague statements about encouraging walking, cycling, sustainable transport etc. and requiring electric charging points in all new developments. There is no way of quantifying the effects of electric charging points (in new developments only) on the vehicle mix.
- 3.3 Natural England has recently raised concerns about the mitigation measures being put forward by Wealden DC in relation to the HRA for its Local Plan, saying “*It is our considered opinion that the mitigation measures, as proposed by WDC, do not provide the level of certainty that would be required under the Habitats Regulations. If the measures were needed, the impacts that WDC have identified would need to be negated or reduced to an acceptable level.*”<sup>4</sup> This was based on a more comprehensive set of mitigation measures than is set out in the HRA for Epping Forest DC.
- 3.4 The HRA does not explicitly model this ‘mitigation package’ (mitigation at Wake Arms Roundabout, Robin Hood Roundabout and Honey Lane is specifically modelled, but it is concluded that none of these specific mitigation measures will be sufficient). It does though ‘artificially’ model the mitigation package. How this is done is described in the Table below para 2.21 (page15) as Scenario I or DS5. It is stated that “*a reasonable outcome would be for these interventions (the mitigation package) to result in total NO<sub>x</sub> concentrations ... that better reflected the Defra emission factors for 2030 than those for 2023 ...*”. This is because they used 2023 emission factors to represent 2033 emissions. They have thus assumed that the mitigation package will reduce emissions from ‘all traffic’, not just the additional Local Plan traffic, by an unspecified amount. This is a very strange, and entirely unscientific, way to ‘quantify’ the benefits of the mitigation package.
- 3.5 The DS5 modelling of the mitigation package is used to show that the effects on the SAC will be largely negligible, whereas previously they were not. This allows the HRA to conclude “*it is considered that the delivery of the planned mitigation will ensure that no adverse effect on the integrity of the SAC will arise*” (para 6.24). This conclusion is reached despite the HRA showing in para 6.20 that, even with the mitigation package as modelled (inappropriately) in scenario DS5,

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<sup>4</sup> As set out in para 9 page 736 of the Wealden DC HRA available at:  
<http://www.wealden.gov.uk/nmsruntime/saveasdialog.aspx?IID=25438&SID=6726>

there will still be non-negligible impacts within the SAC arising from NO<sub>x</sub> and *“there will still be an effect on ammonia concentrations”* (para 6.24, page 156).

- 3.6 In summary, the HRA has reached the conclusion that with mitigation there will be no effect on the integrity of the SAC, in a very ad-hoc way and not based on a proper assessment of the mitigation package. There can be no confidence that the mitigation package in the Local Plan will deliver the improvements that are identified in the HRA as being necessary to remove an adverse effect on integrity. It is also clear that there are no specific highways measures in Epping Forest itself that will remove the adverse effect on integrity.