



The Conservators of Epping Forest Representations on the Inspector's Matters, Issues and Questions (MIQs) for Epping Forest District (EFDC) Local Plan 2011-2033

Further to the Conservators' Regulation 20 response (Document **19STAT0035**) to the Local Plan Submission Version (LPSV – **EB114**) and following the publication of the updated Habitats Regulations Assessment (**EB209** HRA January 2019) and the Transport Assessment Report (**EB503** TAR January 2019), we now make further representations in response to the Matters, Issues and Questions (MIQs) raised by the Inspector in relation to **Matter 1, Issue 5**. In addition to the summary and MIQ-specific representations below, we also attach an appendix for Matter 1 as Appendix 1 with parts 1A, 1B and 1C.

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Matter 1: Legal Compliance

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

SUMMARY of CONSERVATORS' RESPONSES to ISSUE 5

1. No. The Conservators consider that the HRA does not comply with the Habitats Regulations and that the adoption of the plan in its current form without further HRA work and avoidance/mitigation proposals would be unlawful.
2. The Conservators' position is supported by three expert reports which are appended to this hearing statement (**Appendix 1: 1A, 1B, 1C**). This statement addresses the Inspector's specific questions, but, first, our overall position on legal compliance is summarised below.
3. An Appropriate Assessment must not have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the plan on the designated site. Authorisation for a plan or project may be given only on the condition that the competent authority is certain that the plan or project will not have lasting adverse effects on the integrity of the site concerned – i.e. where no reasonable scientific doubt remains as to the absence of such effects (*Commission v Poland*, C-441/17 at [114] - [117]). In this respect, it is perverse to conclude that further additional (or prolonged) exceedances will not have an adverse effect on the integrity of a site because that site has already been compromised by existing exceedances. This has been recently emphasised by Advocate General Kokott's Opinion in the Netherlands cases (C-293/17 and C-294/17). At paragraphs 62 – 63 of her opinion AG Kokott observed, in the context of nitrogen deposition, that:

“...it seems difficult, if not impossible, to accept values that are higher than the critical loads. These are intended to define scientifically-based load limits for vegetation types or other protected assets, compliance with which means that pollutant deposition is not expected to have significant harmful effects even in the long term...”

63 Furthermore, it would also appear to be necessary to consider to what extent the individual protected habitats have been exposed to an overload of nitrogen deposition for a considerable time...It might therefore be necessary, until the removal of existing nitrogen reserves, to permit even less additional nitrogen deposition than envisaged in the critical loads."

4. The 2019 HRA identified the potential for significant effects on the Epping Forest SAC from two impact pathways: (i) disturbance from recreational pressure and urbanisation; and (ii) atmospheric pollution from Nitrogen Oxides (NOx) and Ammonia (NH3). Accordingly, an Appropriate Assessment was carried out to assess the effects of these impact pathways on the site's conservation objectives and identify any avoidance and/or mitigation measures that would be required to neutralise these effects. Having carried out the Appropriate Assessment, the HRA concluded that the proposed urbanisation/recreational pressure and air quality mitigation packages will result in no adverse effects on the integrity of the Epping Forest SAC. These conclusions are not supported by the evidence and are perverse in light of the relevant legal principles which must be applied for the reasons summarised below and expanded upon in the appended reports.
5. First, even on its own terms, the HRA identifies that the plan will give rise to adverse air quality effects on the Epping Forest SAC that cannot be mitigated:¹
 - i. The HRA recognises that concentrations of ammonia in all scenarios will continue to exceed critical loads.² However, there has been no assessment of what effect this will have on the integrity of the SAC. Reliance is placed upon the fact that there is already an existing exceedance and the fact that any harm would be offset by a reduction in nitrogen deposition and the proposed loss of agricultural land, but this conclusion is not supported by any quantitative assessment.³

¹ See section 3 of the Baker Report.

² See para. 3.3.1.2 of the IDOM Report.

³ See para. 3.4.5 of the IDOM Report and para. 36 of the Baker Report.

- ii. The HRA also recognises that the plan will delay compliance with critical loads for nitrogen deposition by up to 8 years.⁴ No analysis has been given to whether the additional loading as a result of development proposed in the plan will have an adverse effect on the integrity of the SAC.
- 6. Second, when concluding that the identified adverse effects can be adequately mitigated, the HRA relies upon air quality mitigation measures which are entirely based upon aspirational policies which seek to reduce traffic emissions.⁵ No assessment into the potential effectiveness of these measures in mitigating the air quality impacts on the SAC has been carried out.⁶ Instead, the HRA simply relies upon DEFRA's 2030 emission factors as a 'proxy' for the potential reduction in emissions.⁷ Given that there has been no assessment of the effect of the actual mitigation measures relied upon, it is unlawful to take these proxy benefits into account as 'mitigation' because there can be no certainty beyond all reasonable scientific doubt that the actual mitigation will make the anticipated contribution towards avoiding harm to the integrity of the SAC (per the CJEU's judgement in the *Netherlands Case* at [126] – [130]).
- 7. Third, the Appropriate Assessment for air quality effects contains the following material flaws which mean that it has not been carried out on a precautionary basis:
 - i. The HRA has applied deposition velocities for grassland and not woodland. The deposition velocities use in the HRA are three times lower than those recommended in the EA's AQTAG06 guidance for forests.⁸
 - ii. The modelling appears to have assumed a reduction in ammonia emissions from road traffic to 2023 despite there being no scientific evidence to

⁴ See p. 139 of EB209.

⁵ See paras. 18 – 19 of the Baker Report.

⁶ See p. 11 of Appendix C to the HRA, where Jacobs did not make any adjustments to account for sustainable transport improvements to ensure that the forecasts provided a robust worst-case analysis in accordance with the precautionary principle.

⁷ See paras. 3.4.6 – 3.4.8 of the IDOM Report.

⁸ See para. 3.1.4.4. of the IDOM Report.

support this, and contrary to the approach which is stated to have been taken in the Appropriate Assessment.⁹

- iii. The HRA relies upon autonomous improvements in air quality and does not provide any sensitivity test in the event that the anticipated improvements in vehicle emissions do not materialise.¹⁰ Historically, these predicted improvements have been shown to be overly-optimistic.

- 8. Fourth, in terms of recreation pressure, the appropriate assessment does not assess the relative roles of on-site access management measures (SAMMs) and SANGs in delivering an overall mitigation approach. The effectiveness of the interim mitigation strategy (delivering access management measures) to address recreational effects is not discussed, and the nature, extent and locations for SANGs has not been assessed through the Appropriate Assessment. The four development sites which have been selected for SANG delivery (see HRA (EB209), paragraph 5.22) have not been assessed to see whether they would be able to deliver SANGs (for example in terms of capacity within the allocated site) and SANGs delivery elsewhere has not been considered. Furthermore, the potential effects of the loss of existing green space have not been assessed, nor has any mitigation been proposed to address this.
- 9. Fifth, the output of the 2019 HRA has not fed into any further sustainability appraisal work. There has therefore been no consideration of whether reasonable alternatives to the spatial strategy or site selection process that were previously discarded should be reconsidered in order to avoid the adverse effects that have been identified in the HRA. In essence the HRA has been retrofitted onto an existing strategy, resulting in an over-reliance on the need for mitigation (which cannot be guaranteed), and has not informed the development of the plan in an iterative way.

[Issue 5 Summary of MIQ responses: 1,283 words]

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⁹ See para. 3.2.4.2 and 3.2.3.2 of the IDOM Report.

¹⁰ See paras. 3.1.5.1 and para. 3.2.5 of the IDOM Report; and para. 20 of the Baker Report.

RESPONSES to SPECIFIC MIQs for MATTER 1, ISSUE 5

Issue 5.Q1

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

10. Assessments have now been carried out for the identified likely significant effects that were previously screened out due to reliance upon mitigation measures. However, for the reasons summarised above, the assessments are not adequate to qualify as "Appropriate Assessments" in law. They do not contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the plan on the SAC (cf. *Sweetman* at [38]). They are not legally compliant.

[Issue 5.Q1: 78 words]

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Issue 5.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 the Epping Forest SAC, either alone or in combination with other plans or projects, in respect of recreational pressure; urbanisation; and air quality.

Issue 5.Q2b

Both Natural England and the Conservators of Epping Forest have raised concerns about how the "Baseline", "Do Minimum" and "Do Something" scenarios have been compared in the HRA process to identify likely significant effects. What is the relevance of these terms and is the HRA methodology valid in this respect?

11. The changes to the HRA between 2017 (**EB206**) and 2019 (**EB209**) have attempted to address the concerns raised about these scenarios. However, problems remain in the data presented. From the scenarios modelled, the total increase in traffic associated with the Local Plan Submission Version (LPSV **EB114**) from the start of the plan period (from 2011 or 2014 to 2033) cannot be calculated as the modelled scenarios split the increase into those developments with planning permission and those without. Only the 'in combination' impacts have been presented in the HRA (see **Appendix 1B** of this Representation, IDOM Statement, paragraphs 3.1.1.2 to 3.1.1.7).

12. In addition, the “worst case” scenario, Do Something 2 (DS2) remains problematic. In assuming autonomous decreases in NOx emissions to 2023 it may be questioned whether DS2 can truly be considered ‘worst-case’. AECOM do not appear to have modelled a scenario which assumes no autonomous decreases in future NOx emissions as a sensitivity test, which Air Quality Consultants (AQC) did in the case of Ashdown Forest (Air Quality Consultants (2018) Ashdown Forest SAC Air Quality Monitoring and Modelling Volume 1 (Section 10.1).

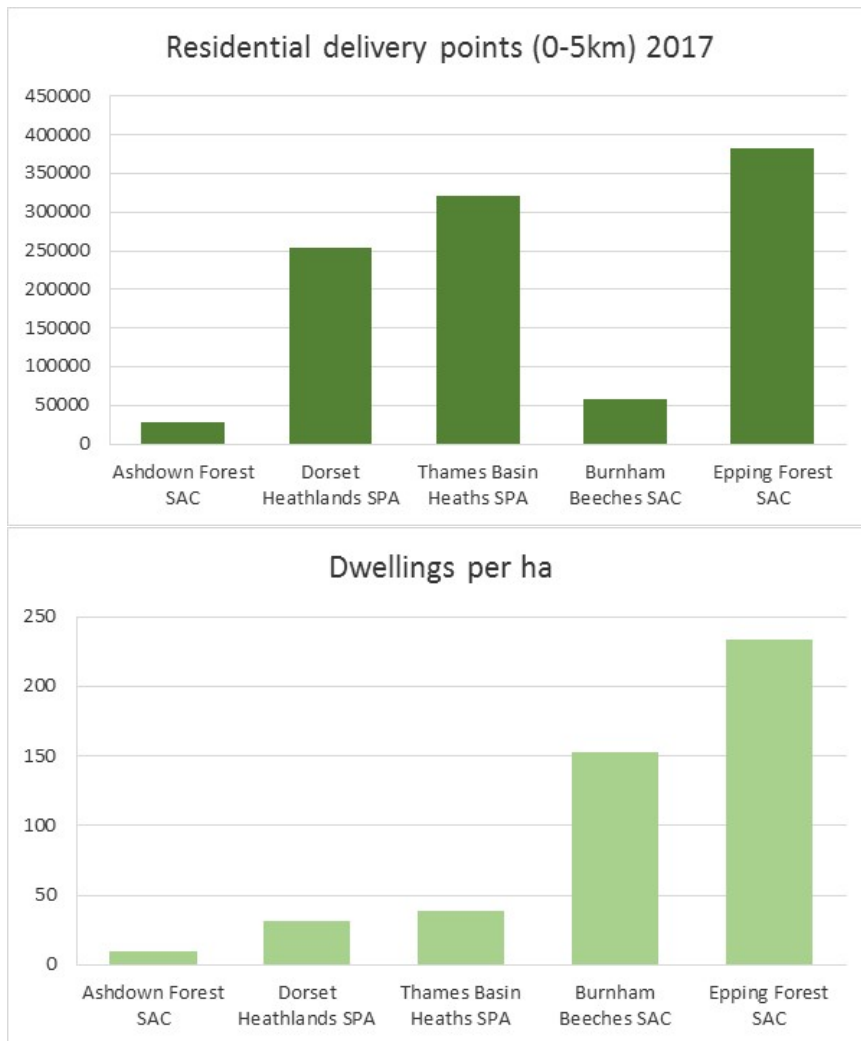
[Issue 5.Q2b: 184 words]

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Issue 5.Q2c

***Does the HRA process for screening Plan policies in or out of the assessment remain valid in light of up to date and emerging evidence on visitor behaviour and traffic impact? For example, recent visitor survey information seems to indicate that the Zone of Influence for recreational pressure on Epping Forest SAC is larger than was thought when the Plan was submitted. Has this resulted in any policies and/or site allocations being wrongly screened out of the assessment?
If so, what should be done?***

13. The HRA is inadequate for the reasons given in this statement. Moreover, given that the current level of development around the Forest, is already significantly higher than other internationally-important sites proportionate to its size, avoidance of adverse impacts on Epping Forest SAC (see below under Question 2e (5.Q2e)) should be a keystone of the LPSV (EB114) policy.



Figures above show comparison between Epping Forest and selected other European sites showing number of dwellings (in 2017) within 5km radius per ha of European site and the number of residential delivery points (in 2017) within 5km. (figure taken from Footprint Ecology report to the Conservators of Epping Forest).

14. The visitor survey work (**EB715**) to inform a Zone of Influence (Zoi) is critical evidence in understanding likely significant effects (LSEs) from recreation on Epping Forest SAC. However, the LPSV and its Site Selection Methodology (SSM – **EB805 & EB805AK**) were drawn up without this evidence base in place. This evidence informs mitigation requirements and the relative roles of access management and SANGs provision in a full SAC mitigation strategy. Although an Interim Mitigation Strategy (**EB134**) covering recreational impacts, with significant detailed input from The Conservators, has been approved by Epping Forest District Council (EFDC) this only covers the on-site mitigation or Strategic Access Management & Monitoring Measures (SAMMs). Consideration of off-

site measures such as Sustainable Alternative Natural Greenspaces (SANGs) has not progressed. In our view there needs to be a SANGs Strategy (see our response to Question 2f (5.Q2f) below). This Strategy is required to have certainty that green space of sufficient size, quality, accessibility and attractiveness can be delivered over the plan period to provide a realistic alternative to the Forest SAC areas.

15. EFDC responded at the Examination-in-Public (EiP) Hearing on 26th March that a Green Infrastructure Plan, incorporating a SANGs Strategy, is in preparation. The Conservators welcome this and look forward to working with the Council to incorporate this into the full SAC Mitigation Strategy. However, the current iteration of the HRA has not been able to assess this strategy and its likely effectiveness in avoiding adverse impacts. This is contrary to the *People over Wind* Judgement (see para 38 of C-323/17), as mitigation measures have not been subject to the required level of testing in the HRA (see 5.Q1 above also). Whilst it is recognised that there is a level of detail in relation to mitigation measures that is not necessarily appropriate for plan level HRA, the mitigation measures secured within the plan must be fit for purpose in terms of capacity, location, deliverability and compatibility with the plan policies and allocations.
16. Furthermore, the HRA is imprecise in applying the ZoI (**Appendix 1C** Footprint Ecology Statement, paragraphs 2.2 to 2.6) and in splitting the ZoI into 0-3km and a 3-6.2km areas (**Appendix 1C**, Footprint Ecology Report, paragraphs 2.7 to 2.10) without clear evidence to justify this. It is also unclear about the balance between, and relative contributions of, SAMMs and SANGs. Examples of this lack of clarity are provided in the Appendix to this Representation (see **Appendix 1C**, Footprint Ecology Statement, paragraphs 2.11 & 2.12).

[Issue 5.Q2c: 467 words]

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Issue 5.Q2d

For each likely significant effect identified for Epping Forest SAC, has an Appropriate Assessment been carried out to ascertain that its integrity will not be adversely affected?

17. An assessment for each likely significant effect has been undertaken. However, the assessment is not a legally compliant Appropriate Assessment. It lacks clarity and does not provide the necessary confidence to rule out adverse effects on the integrity of the SAC from either recreational pressure or air quality impacts. Accordingly, we believe that the AA is fundamentally flawed and does not meet the legal tests set out in the Habitats Regulations.

Air pollution/air quality

18. In terms of air pollution, the AA does not adequately assess the impacts of additional Nitrogen (N) loading on the SAC from the increases in development sites and road traffic. Firstly, short-term Critical Loads do not seem to have been considered, while Critical Levels not seem to have been properly assessed (**Appendix 1B**, IDOM Statement, paragraphs 3.1.2.1 to 3.1.2.2, page 3). Secondly, the HRA has underestimated the N deposition to the Forest by up to a factor of 3 (see **Appendix 1B**: IDOM, paragraph 3.1.4.4, page 5). Thirdly, the HRA assumes a year-on-year 2% decrease in background nitrogen (N) deposition, despite the fact that the evidence demonstrates that nitrogen deposition has been increasing across Epping Forest SAC (see **Appendix 1B**, IDOM Statement, paragraphs 3.2.5.3 to 3.2.5.4).

[Issue 5.Q2d: 201 words]

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Issue 5.Q2e

In preparing any appropriate assessment, has avoidance of harm been considered before mitigation or compensation? If not, should it have been?

19. We do not consider that avoidance of harm has been considered early enough, or sufficiently well, by the LPSV (**EB114**) in relation to transport and air pollution or SANGs. The fact that the current HRA has been produced long after the LPSV has meant that there has been an inevitable emphasis on retrofitting assessment and mitigation, which is constrained by the late stage of the plan, rather than an iterative development of the plan with

avoidance and mitigation measures more effectively integrated. In our response to this question recreation is considered first and then air pollution/traffic separately.

Recreation

20. We have worked positively with the Council, providing detail for on-site SAMMs. However, as only one part of the required approach, we now await the proposed Green Infrastructure Plan, with SANGs Strategy) (5.Q2c above). The HRA does not currently provide certainty that adequate SANGs can be secured. The capacity for SANGs is not assessed. The HRA contains contradictions, for example in paragraphs 5.22 & 5.23 and 5.26 & 5.27 (for further discussion of these see **Appendix 1C**, Footprint Ecology Statement, paragraphs 2.13 to 2.16). It fails to make clear how SANGs and SAMMs type measures fit together, and what might be a “meaningful proportion” (quoting from the LPSV) of SANG (**Appendix 1C**, paragraph 2.16)

Air quality/traffic

21. As with recreation, the HRA does not provide certainty, contradicts itself in relation to proposed mitigation (see **Appendix 1B**, IDOM Statement, paragraph 3.5.1) and contradicts the Transport Assessment Report (TAR - **EB503**) by discounting physical mitigation measures (e.g. the Wake Arms Roundabout). Furthermore, mitigation measures in Scenario DS5 (Section 6.20 of **EB209**) remain uncertain and aspirational only (see **Appendix 1B**, IDOM Statement, paragraphs 3.4.6 to 3.4.8).

22. The mitigation measures are not modelled by the HRA and the efficacy of the listed policies for Scenario DS5, including DM22, cannot be assessed (**Appendix 1A**, Baker Consultants Statement, paragraph 18). Policy DM22 also relies on contributions to monitoring which, as stated by us at the February EiP Hearing, cannot be considered a form of mitigation (see also **Appendix 1B**, IDOM Statement, paragraph 3.5.4).

23. The HRA does not provide a clear assessment of a hierarchical mitigation strategy.

[Issue 5.Q2e: 361 words]

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Issue 5.Q2f

For the purpose of any appropriate assessment, is it justified to defer consideration of the implications of allocated sites to the planning application stage, as suggested by Policy DM2? For example, how will any new green spaces required be found and secured if not through the plan-making process (e.g. in a SANG Strategy)?

24. As made clear in our Regulation 20 letter (Paragraphs 8.1.2.1 and 8.2.2.1 of **Document 19STAT0035**), we do not consider that deferment of critical risks to project-led HRA is justified in Policy DM2. We set out extensive changes (table on page 10 of our letter) that we consider would make Policy DM2 justified, effective and compliant with a strategic approach. The changes proposed to DM2B in EFDC's Matter 16 Statement (**HS16 EFDLP - Appendix 2, Policy DM2-B**) concerning developments "*requiring to demonstrate.... measures....*" set out in "*.... Mitigation Frameworks*" strengthen policy wording in relation to the issue of development sites adhering to a strategic approach to the protection of the SAC. Our further comments on this are provided in relation to Matter 16 (see below).

Recreation

25. The current iteration of the HRA has not been able to consider a SANGs Strategy, which is critical to having certainty in mitigation delivery. Other LPSV policies on which the HRA is reliant, such as DM5 (Green & Blue Infrastructure) and DM6 (Designated Open Space), do not mention the SAC, nor even refer to it in their supporting text (see **Appendix 1C**, Footprint Ecology Statement, paragraphs 2.17 to 2.19). This is contrary to CJEU Judgements including *People over Wind* (C-323/17).

Air quality

26. A second element of a strategic approach is to deal with the 'in combination' effects of increased traffic, and the concomitant air pollution, that could be generated through the Forest SAC. It is not sufficient to rely on individual transport or air quality assessments for each development (see **Appendices 1A and 1B**) and defer consideration of these matters to the planning application stage because this is likely to lead to sites being promoted that

could not comply with the emerging mitigation strategy and that, as a result, would not be deliverable.

[Issue 5.Q2f: 300 words]

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Issue 5.Q2g

For the purpose of any appropriate assessment, is it justified to rely upon the forthcoming Mitigation Strategy to conclude that the integrity of the relevant sites will not be adversely affected given that the effectiveness of the Strategy cannot yet be fully appreciated?

27. No. We do not consider that this approach is justified for the reasons summarised below and set out in the appended reports. There are three key elements to the forthcoming Mitigation Strategy, namely SANGs, SAMMs, and an air quality/traffic component. Also, a fourth should be added concerning avoidance of impacts from urbanisation through the use of an exclusion or buffer zone to development around the SAC. We shall deal with the expected effectiveness of these in turn. The issue of a buffer around the SAC will be dealt with separately under Matter 16.

SANGs

28. There is a need for a SANGs Strategy as discussed. We have key concerns about some chosen housing allocations, which, in the absence of assessment, call into question the effectiveness and deliverability of SANGs. For example, the allocation at Epping South seems to have no space or design concept for a SANG on site, and given the proximity to the M25, any such SANG is likely to be of insufficient quality. North Weald Bassett (**Policy P6** of LPSV (**EB114**) and site allocations **NWB. R1 – R5**) does not seem to accommodate quality green space despite its size. The loss of a significant part of Jessel Green at Loughton (LPSV **Policy P2** and site reference **LOU.R5**) adds to the pressure on Epping Forest, situated nearby. A coherent catchment area for accessible off-site SANGs for any residents of this proposed allocation, including alternative large development sites where greenspace might be offered close by, does not seem to be identified (see also **Appendix 1C**, Footprint Ecology Statement, paragraph 2.20).

29. As made clear in our Reg 20 response letter (**Document 19STAT0035, page 17, paragraphs 12.1.6 to 12.1.8**), and in our representations under Matter 15 (Places), the Epping Forest Buffer Lands area at Great Gregories is not suitable and does not have the capacity to act as a SANG. So, for this allocation, and the other allocations, there remains uncertainty whether a Strategic SANGs network would be effective. This uncertainty would need to be addressed by the SANGs Strategy.

SAMMs

30. Implementation of the SAMMs set out in the interim mitigation strategy (**EB134**), should enable the management of recreational pressures on site and we welcome the District Council's approval. However, more detailed cost assessments work for these SAMMs is required. The Conservators are putting further resources into this work at present.

31. We re-emphasise the need for SAMMs to be complemented by a full Plan-level SANGs Strategy. (see the Conservators' letters of 23rd July and 14th September 2018 in **Appendix to our earlier Matter 1 representations**). Where other European site mitigation strategies in other parts of the country, are reliant upon both SAMM and SANGs, such as the Thames Basin Heaths, the Dorset Heaths and in South-east Devon, the complementary delivery of both aspects is included in HRA, policy and delivery mechanisms such as the tariffs charged for each.

32. Also, the agreement of other competent local authorities to the Interim Mitigation Strategy is still required. Their participation is essential to the development of a full overall Strategy, supported both by LPSV Policies and secured by a Supplementary Planning Document (SPD) that is consistent across the relevant authorities.

Air Quality/traffic

33. The mitigation currently offered for the impacts of air pollution from cars and increasing levels of traffic congestion is contained in the Do Something Scenarios 3, 4 and 5 (**DS3, DS4, DS5**) in the HRA (**EB209, page 126, paragraph 6.7**). In Scenarios DS3 and DS4 the

proposed mitigation would lead to direct loss of habitat within the Epping Forest SAC. These have been discounted by the HRA, in contradiction to other parts of the LPSV's evidence base.

34. For example, this proposed physical loss of habitat around junctions remains an “essential” (Wake Arms Roundabout) or “desirable” (Robin Hood Roundabout on the A104 road) component in the traffic mitigation package in the Infrastructure Development Plan (IDP – **EB1101B**) and that this mitigation package is still “considered as a minimum” in the updated January 2019 (TAR) Transport Assessment Report (**EB503, page 104, paragraph 13.4.7**, and see also **Appendix F** of the same report).

Mitigation Package DS5

35. The HRA, therefore, in contrast to the TAR (**EB503**), proposes the Do Something Scenario DS5 (**EB209, page 154, paragraph 6.18**) as the favoured mitigation package. DS5 proposes non-physical measures drawn from a mini-constellation of LPSV policies connected to transport and air quality. As stated above, the effectiveness of DS5 as mitigation, including LPSV **Policy T1**, has not been assessed in any way and to consider it as mitigation could be deemed misleading (see **Appendix 1A**, Baker Consultants Statement, paragraphs 18 and 19 and **Appendix 1B**, IDOM Statement, paragraph 3.4.7).

Autonomous “mitigation”

36. In addition to Mitigation Package DS5, the HRA in its Appendix D also takes account of autonomous reductions in nitrogen emissions from the overall vehicle fleet, as a kind of quasi-mitigation. However, reliance on such reductions by the HRA (and LPSV) lacks the certainty of “beyond all reasonable scientific doubt” that is required by the Habitats Directive for the reasons explained in the appended reports (see **Appendix 1A**, Baker Consultants Statement, paragraphs 20 & 21 and **Appendix 1B**, IDOM Statement, paragraph 3.2.1 to 3.2.4.4).

[Issue 5.Q2g: 862 words]

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Issue 5.Q2h

What is the scope of the forthcoming Mitigation Strategy and what type of mitigation is envisaged for each type of likely significant effect? How is this/could this be secured in the Plan? What progress has been made with the Mitigation Strategy and when will it be completed?

Issue 5.Q2h How is this/could this be secured in the Plan?

37. In our suggested changes to Policy DM2 of the Local Plan (see **paragraph 8.2.3.7.** of Conservators' Regulation 20 response, **Document 19STAT0035**) we are clear that there should be a European site SPD and we would welcome the opportunity to work with all the competent authorities to produce this. We consider that this must be a joint SPD, which would be able to deal with the cross-border/trans-authority issues of the Forest and would ensure clarity for developers and all other stakeholders. This is vital for the SANGs aspect of the overall Strategy to provide a coherent network of sites and could also help to coordinate biodiversity net gain measures and any biodiversity offsetting required by developments, especially those in the London Boroughs where open land is scarce.

38. Currently, the avoidance and mitigation measures are not embedded in the Policies of the LPSV and the Memorandum of Understanding for the protection of the SAC (MoU - **Document EB1200**) is not legally binding. Also, the London Boroughs are not signatories to the MoU. A Joint SPD approach is required to ensure an integrated approach across the Local Plans.

Issue 5.Q2h – progress with the Mitigation Strategy (MS)

39. Please see our representation for **Issue 5.2g** above.

Issue 5.Q2h- when will MS be completed?

40. Mitigation, to be strategic and effective, needs to be in place and working prior to occupation of new sites and there needs to be confidence of this at the planning permission stage.

[Issue 5.Q2h: 226 words]

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Issue 5.Q2i

Might certain proposals within the Mitigation Strategy itself, such as those for Wake Arms Roundabout, themselves have potentially significant effects upon designated sites which require appropriate assessment? If so, how and when will this be done?

41. Yes, as currently proposed the expansion of Wake Arms and the future proposed modification to Robin Hood Roundabout (see IDP **EB1101B** and Appendix F of **EB503**), as well as other road modifications within the Forest, would physically damage and adversely impact the SAC and the Forest as a whole. These road improvements cannot be considered as mitigation for the SAC under the Habitats Regulations, leaving only the general policy mitigation under scenario DS5. Accordingly, there are no specific air quality mitigation measures provided. Given that the effectiveness or the mitigation promoted under scenario DS5 remains uncertain, additional specific measures will be required. This could include securing financial contributions to fund specific air quality improvement measures and the designation of an air quality improvement zone within the vicinity of the SAC.

[Issue 5.Q2i: 130 words]

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Issue 5.Q2j. In the absence of a final Mitigation Strategy at this stage:

i. Is it necessary to modify the Plan to require development proposals to comply with its recommendations?

42. Yes, see comments in 5.2jiii below.

Issue 5.Q2j In the absence of a final Mitigation Strategy at this stage:

ii. Would this course of action be justified and effective, or is it essential for the Strategy to be completed before the Plan is adopted? Is it clear that the necessary mitigation could be implemented without threatening the delivery of the Plan's strategy?

43. Without the full Mitigation Strategy there would be uncertainty about the impacts on the Forest, the deliverability of the proposed mitigation and, therefore, about the soundness the Local Plan.

44. The mitigation for air pollution and highways impacts is essential. In addition, the avoidance measures for recreational pressure require a plan-led approach for Sustainable Natural Greenspace (SANGs) provision.

Issue 5.Q2j In the absence of a final Mitigation Strategy at this stage:

iii. If it would be necessary, justified and effective to address the absence of the Mitigation Strategy through modifications to the Plan, what changes are needed? (In responding, the Council should have full regard to the representations of Natural England [19STAT0027] and the Conservators of Epping Forest [19STAT0035]).

45. The first change, as proposed above in response to Issue 5.Q2h, we would request is that a Joint SPD on SAC Mitigation is written to ensure that an overall Strategy is completed and agreed across multiple authorities. The Policies within one local plan are not sufficient in isolation and there needs to be shared policies with a clear mechanism for connecting and coordinating them. In our view, this would give the confidence in the avoidance measures (e.g SANGs, modal shifts) being secured, clearly communicated and the mechanisms for delivery clearly set out.

[Issue 5.Q2j: 156 words]

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