



The City of London Corporation (CoL) as Conservators of Epping Forest *Interim* Response to:

- Epping Forest District (EFDC) Local Plan Habitats Regulations Assessment (HRA) Appropriate Assessment August 2020
- amended Policies DM2 and DM22

A. INTRODUCTION

1. Introduction to The Conservators' interim response

We welcome the opportunity to comment on the HRA-AA update but have to note the limitations constraining our response (below). We recognise the considerable amount of work on mapping and analysing the impacts of nitrogen pollution with which we have assisted by providing information to the consultants. We welcome the direction of travel and acknowledge that further work is being done to develop the strategies for air pollution and recreational impacts.

1a. Limitations

Due to shortage of time, this is an *interim* response to the Epping Forest District Council (EFDC) Local Plan Submission Version (LPSV) Habitats Regulations Assessment Appropriate Assessment 2020 (HRA-AA) and the proposed amended wording to Policies D8, DM2 and DM22. Natural England agreed to provide an interim response, to a short response deadline requested by EFDC, to enable the Council to provide feedback to the Planning Inspector by 11th September 2020.

The HRA-AA was provided to Natural England and The Conservators on Friday 21st August along with its detailed technical appendices on traffic and air pollution modelling. Further GIS information on the air quality isopleths was provided subsequently on 24th and 25th August. This *interim* CoL response is provided on 9th September as a response later but before the required deadline is not possible. **Therefore, the air quality analysis of the HRA-AA and its technical appendices will require further scrutiny and we reserve the right to raise further substantive issues on the HRA.** Having seen the Natural England (NE) response to the Policies DM2 and DM22, in relation to air quality matters, we can confirm that we agree with all NE's comments about the need for greater precision and specificity of those policies and this accords with our comments below on DM2 in relation to recreation impacts.

In addition to this short response deadline, another key limitation is that the HRA-AA has been provided without the complete mitigation strategies upon which it relies for its conclusions. On page 126, the HRA-AA states that with "*the delivery of the urbanisation/recreational pressure and air quality mitigation packages*" a "*sufficient protective framework*" would be provided for the HRA-AA to conclude that "*there will be no adverse effect on the integrity ofEpping Forest SAC*" [our

emphasis]. However, these mitigation packages do not, at the current time, provide any certainty that mitigation can be delivered, in our opinion. A Suitable Alternative Natural Greenspace (SANGS) Strategy has not been set out with any specificity to demonstrate effective mitigation of recreational pressures on Epping Forest SAC. The Air Pollution Mitigation Strategy (APMS) contains commitments but no detailed timetable or clear, deliverable steps for action.

As a result of both of the above limitations, the City Corporation as Conservators of Epping Forest reserves the right to raise further issues in relation to updates of both the SANGS and Air Pollution Mitigation Strategies. In our opinion, therefore, the HRA-AA remains premature in its conclusion of no adverse effect on integrity of Epping Forest SAC because mechanisms for delivery of the required mitigation are not embedded in the Local Plan Policies DM2 and DM22 or the requisite Strategies.

B. POLICIES

2. Policies DM2 and DM22 (and D8)

We welcome the opportunity to comment on the current draft of the amended policies and we acknowledge the work the Council has undertaken to reach this stage and establish mitigation approaches for recreation/urbanisation and for air quality. We are broadly supportive of the general approaches to mitigation. For recreation/urbanisation this approach involves an exclusion zone around the SAC and the commitment to SANG and SAMM. For air quality the mitigation measures involve the commitment to develop a Clean Air Zone and a 30% shift to electric cars by 2033. As Conservators of Epping Forest our concern is to see adequate protection for the Forest and the legislation requires that likely significant effects are accurately identified and then adverse effects on integrity are ruled out.

Given the risks to Epping Forest SAC from the quantum of development contained within the Plan, it is essential that the mitigation is adequate, achievable, effective and timely. We recognise that the strategic nature of the plan has implications for the detail of mitigation that can be provided. The Habitats Regulations Handbook (Tyldesley, Chapman, & Machin, 2020) is clear: *“Because the integrity test incorporates the application of the precautionary principle as a matter of law, and because plan assessments are, by their nature, less precise than project assessments, it is important for the assessment process to eliminate the prospect of adverse effects on site integrity in so far as that is possible at the level of specificity inherent in the nature and purpose of the particular plan”*.

Case law provides precedent that there must be sufficient detail to have confidence that mitigation is practical, can be delivered and that necessary checks or brakes are put in place to ensure development will not proceed if mitigation does not come forward. If mitigation is not delivered when required, then permission should not be given for the development provided for by the plan. For example, in the High Court case of *No Adastral New Town*¹ the Suffolk Coastal Core Strategy was challenged by a local action group on the grounds that it was unlawful for the Council to leave detailed mitigation measures over for assessment at lower tier stages – i.e. area action plan or project level HRA. The leading judgement identified that the *“important question in a case such as this is not whether mitigation measures were considered at the stage of CS in as much detail as the*

¹ NANT v Suffolk Coastal District Council and the Secretary of State for Communities and Local Government (Court of Appeal [2015] EWCA (Civ) 88 17th February 2015

available information permitted, but whether there was sufficient information at that stage to enable the Council to be duly satisfied that the proposed mitigation could be achieved in practice”.

In reviewing the updated policies, it is therefore necessary to ensure that the mitigation is practical and achievable and that there is confidence that the mitigation is fit for purpose and deliverable. This is essential for the Inspector to be able to rule out adverse effects on integrity. In the current version of Policy DM 2 we have particular concerns with respect to:

- The definition of the zone of influence for recreation;
- Lack of clarity on SANGs;
- Lack of detail on SAMM;
- Lack of policy caveats and restrictions to remove the uncertainty in mitigation.

We consider these further below.

While DM2 B2 does refer to a sphere of influence, it simply states that *“all residential developments within the zone of influence identified by visitor survey work are required to be mitigated for through SAMM measures.”* We would advocate that the policy should clearly define where likely significant effects would be triggered and the relevant distance set out, albeit subject to review as further evidence becomes available. The distance is relevant not only for SAMM but also for SANG.

The references to SANGs also lack precision and clarity. For example, DM2 B3 refers to the adopted Green and Blue Infrastructure Strategy. We note that this strategy is yet to be adopted and – as already reflected in our comments on a draft of the strategy (see below and also see attached letter of 8th July) – it is very broad with a lack of detail (based on the first draft that we have seen) to adequately secure viable SANGs. We have been raising the issue of a need for an adequate strategy for 3 years (see CoL letter of 29th January 2018 for example) and note that a strategy was promised at the Examination-in -public hearings in June 2019. Given the time it has taken to get to this point, we raise concerns as to when the strategy might be finalised, adopted and be adequate to provide sufficient SANG. The policy wording in DM2 is vague. Phrasing such as SANGs *“could involve”*; *“development proposals may be required to make a financial contribution”* do not provide the confidence and clarity that we consider is necessary in policy.

In terms of SAMM, there is currently only an interim SAMM approach. The policy wording (DM2 B2), as drafted, simply states that all residential developments in the Zone of Influence are required to be mitigated for through SAMM measures. Policy wording should be clear in how the SAMM strategy is referred to and what measures are required. More critically, the SAMM strategy needs to be further developed and comprehensive, coordinated with other local authorities (such as London Borough of Waltham Forest) given the reliance placed on it to deliver mitigation.

Given the concerns with the current status of the Green and Blue Infrastructure Strategy and the further work needed on the SAMMs, and the vague nature of the wording in the current policy, the mitigation for recreation and urban effects cannot be regarded as secure. For Air Quality mitigation the measures are also complex and extend over a considerable time period, with some like the Clean Air Zone not coming in for many years. Policy wording must reflect the uncertainty and ensure firm policy caveats and restrictions are in place. These will need to be explicit and embedded within policies, ensuring commitment to particular steps by particular times and levels of growth, with brakes applied to growth should mitigation not be delivered.

C. HABITATS REGULATION ASSESSMENT

Our concerns with the policy wording (above) and the lack of certainty feed through into the HRA-AA as set out below.

3. Impact pathways (Section 3)

The HRA-AA fails to fully set out the issues relating to recreation and urbanisation and this undermines the later sections (appropriate assessment). Omissions include wildfire, which can start from nearby gardens/adjacent land or directly from recreation use (barbeques or discarded cigarettes for example). Another omission is the spread of non-native species which relates not just to fly-tipping but from recreation use too (as seeds can attach to clothes and footwear).

4 Recreation/Urbanisation (Section 5 of HRA, appropriate assessment, paragraphs 5.17 to 5.40)

4a. Current baseline of recreational pressure

As paragraph 5.17 of the HRA-AA points out The Conservators have “long-standing concerns” about the increasing recreational impacts on the Forest. The impacts of the recent Covid-19 crisis on visitor numbers have deepened those concerns and demonstrated that the Forest Special Area of Conservation (EFSAC) is already vulnerable, at the current levels of local residential populations, to significant, chronic damage from recreation, including wildfires started deliberately or accidentally by visitors (see Figure 1 below) and soil compaction from increased footfall leading to significant vegetation and soil changes/losses on both grasslands and within the wood-pasture areas.

A brief survey of visitors conducted over June and July this year during the COVID pandemic (Footprint Ecology 2020 commissioned by The Conservators), along with additional observations and counts by our staff, has shown up to a 268% increase in visits across the Forest. There are also many accompanying changes in behaviour from visitors, particularly with the increasing density of people, and this has resulted in some cases of significant damage to the SAC (including wildfires and soil erosion). These problems have been observed with the current residential population and they demonstrate that there is little resilience should such trends continue. Green space alternatives to the SAC are vital as mitigation for its future protection.

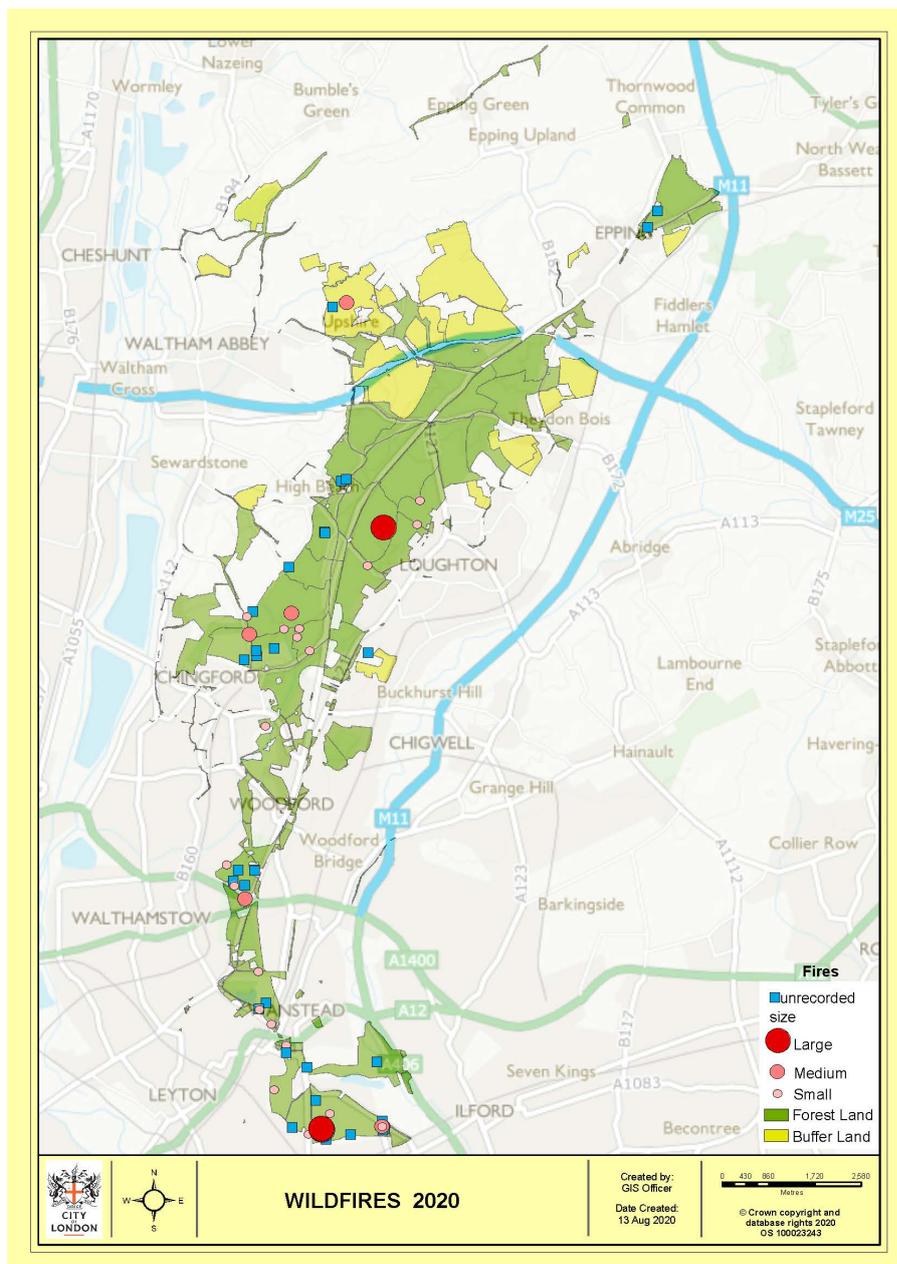


Figure 1: the distribution of wildfires attended by Forest Keepers & Fire Services up to August 2020

These results highlight the current pressures from recreation/urbanisation. The appropriate assessment fails to highlight the current baseline and to adequately set out the impacts arising from the scale of growth proposed. The following key failings in the HRA-AA are identified and discussed in turn below:

- Avoidance and exclusion zone (inadequacy of the avoidance zone proposed and contradictions with Policy DM2);
- SANGs strategy (lack of clear strategy in place and instead draft and muddled overarching GI & BI strategy);
- SAMMs strategy (interim approach incomplete and not sufficient);
- Overall reliance on mitigation to rule out adverse effects.

4b. Avoidance and exclusion zone

As paragraph 5.20 of the HRA-AA states: “*additional recreational activity resulting from new residential development within 3km of the SAC in Epping Forest District would result in an adverse effect ‘in combination’ with growth in adjacent authorities*”. In relation to development between 400m and 1km distant from the SAC (and that equally applies to proposed residences within 400m), the HRA-AA in paragraph 5.22 goes on to add: “*It will generally be more difficult to get people who live this close to the SAC to visit alternative greenspaces as an alternative to (rather than in addition to) the SAC*”.

We fully support the implementation of an exclusion zone as a pragmatic policy response to avoid the complex problems of increased recreational pressure and urbanisation. Ultimately development that is close to the SAC will result in greater risks and is harder or impossible to mitigate. Policy DM2 includes the provision of a 400m zone around the SAC (amended Policy DM2C).

In our response to the Inspector’s MIQs on Matter 16, (25th April 2019 response to Matter 16 Issue 1 MIQ 4a), we proposed an exclusion zone of 800m. The HRA’s admission in para 5.22 that SANG isn’t likely to be effective for development within 1km seems to make the case for just such a larger exclusion zone. However, the HRA-AA also recognises that there is significant growth (7 sites, see para 5.19) proposed within 400m. The conflict with these sites and the policy requirement of DM2C is not adequately addressed in the HRA. In particular para 5.19 seems to suggest that small sites within 400m or those screened by existing housing can be excluded from the policy. This seems to totally undermine the 400m approach and creates considerable confusion. **There is no justification for such a stance. An absence of analysis of this contradiction of policy completely undermines the contention of the HRA-AA in paragraph 5.37 that the policies provide an “appropriate framework” for the protection of EFSAC.**

4c. SANGS strategy (HRA-AA paragraphs 5.26 & 5.27 and see attached letter from Conservators dated 8th July)

In our response to the Inspector’s Matter 1 (Legal Compliance) at the Examination-in-Public, we emphasised the need for adherence to the mitigation hierarchy approach. This approach would emphasise the avoidance of harm, the need for *no net loss* and a *net positive impact* on Epping Forest through the Local Plan. In addition to the choice of site allocations for housing and the avoidance and exclusion zone discussed above, the mitigation hierarchy for recreation requires off-site interventions to reduce the risks of adverse effects on integrity.

Amongst the most effective off-site mitigation measures are suitable alternative natural greenspaces (SANGS) that can attract the increased numbers of residences to other areas outside the EFSAC (and SSSI) boundaries. An effective and clear SANGS Strategy is essential for the Local Plan and we have dealt with this in detail in our response of 8th July to the Council’s Green & Blue Infrastructure Strategy (G&BI Strategy) and, as stated above, we have been advocating this for 3 years.

The HRA-AA does not provide further detail or any proposed enhancement of the measures in the published *draft* G&BI Strategy. Therefore, we do not intend to repeat our response in detail but instead attach our letter of 8th July so that our full response to the G&BI Strategy can be viewed alongside this response to the HRA.

The lack of financial contributions towards SANGS from housing within 3km, although a matter of choice for the Council as competent authority, is of concern to The Conservators. More importantly, the lack of offer of SANGS for these developments (apart from EPP.R1 about which we have commented concerning its quality – see paragraphs 32 and 33 of 8th July letter) does not seem to

meet the requirements of the mitigation hierarchy and the securing of a District-wide network and appropriate quantum and quality of SANGS.

Although we welcome the adoption of the SANGS standard of 8ha per 1,000 population (HRA-AA paragraph 5.29), we take issue with the contention in the subsequent paragraph 5.30 that 8-10ha is a “large” SANG. Given that this kind of hectarage would not be able to accommodate the types of walks taken by most of the visitors to the EFSAC, as evidenced by the Epping Forest Visitor Surveys (2017 and 2019, *Footprint Ecology*), the HRA-AA needs to provide justification for this statement or make a more in-depth assessment of the Visitor Surveys’ evidence.

Therefore, we remain concerned about the lack of a coherent SANGS Strategy with a clear quantum of SANGS and a District-wide network of alternatives to those provided by development sites. The HRA-AA has not examined this in sufficient detail to justify its conclusions in paragraph 5.37. As we stated in our letter of 8th July:

“Our key concerns are:

- i. The G&BIS only sets out a requirement for SANGS associated with the master-planned developments and there is not enough clarity to provide confidence that the mitigation is fit for purpose for these developments on their own;*
- ii. More widely, there is no SANGS provision for housing away from the master-planned developments. A clear, comprehensive strategy that provides effective mitigation for the quantum of housing growth is necessary. A wider range of infrastructure, away from the master-planned developments, is required and needs to be clearly secured;*
- iii. Mitigation measures should be effective, reliable, timely, guaranteed to be delivered and as long-term as they need to be to achieve their objectives. The strategy as drafted does not provide the fundamental information necessary to demonstrate that the Council is able to comply with the Habitats Regulations and would be able to rule out adverse effects on integrity as a result of the housing growth proposed in their plan;*
- iv. There is no clear timetable or governance for delivering SAC mitigation, including SANGS.*
- v. We suggest that the SANGs component should be a separate strategy, ensuring that the measures that are necessary as mitigation are clearly set out for developers and others. These measures need to be separated from more aspirational elements within the G&BIS so that there is no doubt as to how SANGs will be provided, how they will function and how the legal obligations are fulfilled. Such an approach would provide a much better opportunity for SANGs delivery to be joined-up with neighbouring authorities to provide certainty that the in-combination effects of growth on recreation use of Epping Forest SAC are addressed.”*

The City of London Corporation (CoL), as owners and managers of almost the entire SAC area and also managing significant land holdings outside the SAC (and SSSI), is in a unique position to help the Council secure mitigation measures. However, ultimately, CoL as the The Conservators, wants to see adequate protection for the SAC in the long-term, however it is secured. The Conservators want the certainty in the Local Plan that such mitigation measures will be achieved and maintained ‘in perpetuity’. However, given our concerns set out in i to v above, and in more detail in our letter of 8th July, we have little confidence that the G&BI Strategy, in its current guise, will provide effective, long-term mitigation.

4d. SAMMS strategy (HRA-AA paragraph 5.28)

Paragraph 5.28 of the HRA-AA states that SAMMS is necessary “to further address recreational pressure, particularly from those living within 1km of the SAC”. Given the reliance on SAMM, it is clearly necessary to have confidence that the SAMM approach is adequate. The SAMMS proposals contained in the interim SAC Mitigation Strategy published by EFDC in October 2018 were incomplete and did not cover or assess popular areas of the SAC such as Leyton Flats or Chingford Plain in any detail, due to time constraints formulating the proposals at the time, ahead of the EFDC’s intended LPSV submission to the Inspectorate. Therefore, further work has been carried out by The Conservators on the SAMMS measures, since the EFDC LPSV Examination-in-Public, entirely at their cost, as referenced in the HRA-AA at paragraph 5.28.

This work has developed the measures in greater detail allowing the clear ascribing of costs to the separate elements proposed to mitigate potential damage to the SAC’s three most visited areas of the SAC. In addition, a wider framework of costs is in the process of being developed to cover other areas and mitigation measures across the SAC. Both these reports will be presented to The Conservators for approval at their committee meeting in November and to the SAC Oversight Group at a meeting subsequent to this date. **The costs have increased significantly, and the competent authorities will need to review these measures, consider apportionment of costs amongst themselves and adjust SAMMS tariffs accordingly.**

4e. Overall reliance on mitigation to rule out adverse effects

We have highlighted that the HRA-AA has failed to adequately present the baseline condition and range of impacts associated with recreation/urbanisation. Nonetheless, impacts are recognised and a need for avoidance and mitigation agreed. The mitigation strategies (SANG and SAMM) are not currently adequate or sufficiently secured to provide confidence that adverse effects can be ruled out. Mitigation needs to be secured over the necessary timescales and it is necessary to have confidence that the mitigation can be secured in practice. At present this is not the case.

In addition to these concerns, further doubt and confusion comes from reference to various elements of mitigation delivery that are vague and appear to be included in the HRA-AA to bolster the other weaknesses. As an example, para 5.31 suggests that the Council will “work with the Conservators of Epping Forest to explore the potential for introducing parking charges”. **We do not believe parking charges to be effective as mitigation and certainly they should not be relied upon by the Council to provide mitigation.**

Furthermore, the commitment to mitigation appears to be spread across multiple policies (see paras 5.3 and 5.38), with some seven policies cited. This further contributes to the vagueness and lack of certainty.

Para 5.37 relies on the various policies, SANG and SAMM as a “framework”. This framework is at present not sufficient, robust or secured enough to rule out no adverse effect on integrity to Epping Forest SAC from recreation and urbanisation effects. The HRA-AA argues that the framework allows in-combination effects (from other local authority plans) to be ruled out, through joint working as “it is the responsibility of each relevant authority to ensure that they mitigate adequately”. This fails to highlight the current lack of a consistent approach across local authorities, for example in relation to SANG. Given that there are marked differences between neighbouring authorities in how mitigation measures for Epping Forest SAC are being progressed, the in-combination assessment requires more detail and considerably better analysis.

5. Air pollution (Section 6 of HRA)

As stated in the introduction to this response there has not been sufficient time for the air quality section of the HRA-AA to be analysed and commented on in any depth. We, therefore, reserve the right to raise further substantive issues in relation to air quality.

In terms of the HRA-AA we welcome the much more detailed analysis of ammonia that we called for 3 years ago, following the evidence gathered by The Conservators through the PhD work of Gadsdon (2007) and the more recent work of Ben Marner of Air Quality Consultants.

5a. Policy DM22

In terms of Policy DM22, we welcome the reference to the Air Pollution Management Strategy (APMS) and its inclusion of a commitment to explore a Clean Air Zone (CAZ). This accords with our request, in our response (25th April 2019) to Matter 1, MIQ 44, for consideration to be given to “innovative approaches” such as “enlargement of the AQMA” on the roads around the Forest. The innovative proposals – made in outline in the APMS – are a step forward and we recognise the level of commitment and resources that this form of mitigation will require of the Council.

However, as with our comments on Policy DM2 above, and those more detailed comments of NE in its letter of 1st September 2020, the current DM22 Policy wording is not adequate, or indeed appropriate, to provide the certainty required for the HRA-AA to make its conclusion of no adverse effects on integrity of the EFSAC (page 126 of the HRA-AA).

The HRA-AA states on page 116 that there need to be “strong, clear initiatives” for inclusion in the Air Pollution Mitigation Strategy (APMS). The two key initiatives proposed in the APMS, a 30% shift from petrol to electric and a Clean Air Zone (CAZ) are clear in their endpoint. However, the APMS does not set out **how** either initiative would be achieved and nor are there precise timetables with measurable steps.

5b. Deliverability of CAZ

In this interim response, we also wish to register our considerable concern with the deliverability of the CAZ proposals. We are aware of the CAZ proposals elsewhere in the UK, in particular the A10 in Hertfordshire. In the cases of these CAZ proposals, and also this one for Epping Forest, one of the major issues that could be a significant hurdle on deliverability, particularly in the timeframe set out in the APMS (1st draft), is the issue of the diversion of traffic along other routes and the subsequent congestion and pollution impacts. As we stated throughout the EiP and at the hearing on the Transport Policy T1 in particular, the road and junction network does not have the capacity to deal with elevated levels of traffic. Essex County Council Highways in their response at the EiP made this same point. Diversion along roads avoiding the Wake Arms roundabout, for example, such as through Theydon and Bell Common could result in the build-up of queue lengths that impinge on other junctions and feedback into the main Forest roads.

5c. Phased development and mitigation

We remain very concerned that the HRA-AA foresees that the APMS will provide for sufficient mitigation to allow for the phased introduction of housing developments (paragraph 6.75). However, CAZ cannot be phased in and will not appear before 2025. Between 2021 – 2025, the hoped-for shift of 10% of petrol vehicles to electric (ULEVs) (5% of the District “fleet”), described in paragraph 6.75, relies on the uptake of a variety of incentives outlined in 6.67 -6.70 of the HRA. However, this uptake cannot be controlled and may not in any way match the phasing of the many minor developments that make up around 300 housing units currently awaiting planning permission. It is not clear from the HRA-AA how the increased pollution from vehicles potentially emanating from these many small

developments would be mitigated effectively. Currently, neither the HRA-AA nor the 1st draft APMS provide any certainty that such mitigation would be in place and that a significant uplift in nitrogen pollution would be avoided. It is, therefore, unclear to us how the HRA-AA concludes with such confidence that adverse effects on the integrity of the EFSAC would be avoided with certainty. **As stated above, we require further time to assess the air quality and traffic modelling data (and any road infrastructure assumptions lying behind those data).**

6. Governance of SAC Mitigation Strategy

The HRA-AA in paragraph 5.25 describes the governance arrangements as “in place”. However, we do not consider this is the case. Although there have been two meetings of an SAC Oversight Group in 2020 (on 24th February and 5th June), there are no terms of reference and no clear decision-making process by which issues like the Zone of Influence or mitigation tariffs can be agreed. There is no cross-border (London-Essex) framework through which Local Plan policies can be aligned and standardised with respect to the SAC, or through which supplementary planning guidance for developers can be coordinated between the authorities or by which the interim SAC Mitigation Strategy itself can be updated.

Although an apportionment of interim SAMMS tariffs was agreed in 2018, following a meeting of a much wider group of authorities, there is no mechanism or timetable for tariff review and no agreed repository for SAC Mitigation funding, its distribution and the auditing of monies. Of the current constituent competent authorities of the SAC Oversight Group only Essex County Council, Epping Forest District Council and ourselves (CoL as The Conservators) have signed the Memorandum of Understanding. The MoU is itself now out-of-date and requiring review or replacement with a legally-binding agreement such as an SAC Mitigation Framework for supplementary planning guidance.

A written and mutually approved governance structure needs to be in place before the adoption of this Local Plan and the Policy DM2 needs to contain precise wording to ensure that this is the case prior to any developments being approved.

7. Conclusions: - Proposed HRA-AA and Policy reviews

- The HRA-AA needs further work to ensure the full gamut of recreation and urban effects and fully considered and clearly set out.
- The HRA-AA needs to propose clear changes and much more precise wording for both Policies DM2 and DM22, to ensure they are compliant with the Habitat Regulations in relation to both recreational and air quality impacts. Policy wording changes are essential to ensure the Plan overall is sound.
- All mitigation that is referred to needs to be effective, timely, secured for the relevant time period and sufficient to address the impacts identified.
- For the in-combination assessment, other plans need to be considered and the mitigation needs to be effective cross-boundary.

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