APPENDIX 1

Reference sources

- Duty to Cooperate Background Paper Appendix NE (January 2019) [REF A32, Appendix NE]
- Habitats Regulations Assessment - January 2019 [Ref A35]
- Errata for the Habitats Regulations Assessment - January 2019 [Ref A35a]
- Natural England Discretionary Advice Service – Ashdown Forest SAC: air quality monitoring and modelling -February 2018 [Ref I14]
- Air Quality Consultants Ashdown Forest SAC Air Quality Monitoring and Modelling August 2018 - Part One [Ref I6]
- Air Quality Consultants Ashdown Forest SAC Air Quality Monitoring and Modelling August 2018 - Part Two [Ref I7]
- Ecus Ltd Report Ecological Monitoring at Ashdown Forest: considering the current and future impacts on the SAC caused by Air Quality and Nitrogen Deposition - Appendices - July 2018 [Ref I9]
- Natural England's approach to advising competent authorities on the assessment of road traffic emissions under the Habitats Regulations June 2018 [Ref130]
- Wealden District Council's response to Natural England's Regulation 19 Representation - January 2019 [Ref 143]
- Natural England Commissioned Report NECR 210 - “Assessing the effects of small increments of atmospheric nitrogen deposition (above the critical load) on semi-natural habitats of conservation importance” (2016) [extract included at Appendix 2 of this representation]

Additional Information Question 18

1. A bundle of relevant correspondence [REF A32, Appendix NE] has been provided as part of the evidence base for the Wealden Local Plan Examination. This confirms Natural England's involvement in advising WDC on matters relating to its HRA as far back as February 2013.

2. It is also noted that Natural England provided detailed advice to WDC on matters concerning the Ashdown Forest SAC through its Discretionary Advice Service (DAS)¹ [REF I14].

3. Through the DAS advice [REF I14] its Regulation 19 response, and additional correspondence [REF A32, Appendix NE] Natural England is clear on its position regarding the implications of the Wealden Local Plan for the Ashdown Forest SAC /

¹ DAS is a contractual advice service offered by Natural England. An Officer/s of Natural England provides written or oral advice (as agreed) on matters covered under an agreed scope of work. This can include, for example, review of a Draft HRA and / or any supporting evidence.
SPA. Natural England’s position, as expressed clearly in its Regulation 19 response, is based upon its detailed review of the Wealden Local Plan evidence base and other evidence which it considers material to undertaking the Habitats Regulations Assessment. Its conclusions and advice have been informed by its air quality specialist Susan Zappala.

4. To address the Inspector’s question directly, from the evidence it appears clear to Ecology Solutions that Natural England has been engaged by WDC at appropriate points through the production of the Habitats Regulations Assessment. It is however, plainly the case in view of the evidence, that in some critical instances Natural England’s advice and guidance has not been followed by WDC.

5. Appendix 3 contains a table which highlights what Ecology Solutions consider to be certain key aspects of WDC’s engagement with Natural England, with commentary provided on relevant points to show where a departure from Natural England’s advice arises, how this is justified by WDC (if indeed it is which we doubt) and also whether departure from Natural England’s advice is considered justified and appropriate by Ecology Solutions. It should be noted that the table below is certainly not an exhaustive account of the engagements, as can be seen by reference to “A32, Appendix NE”.

6. Natural England’s letter of 16th February 2018 contains its formal draft DAS advice to WDC following consultation through DAS. That advice includes at Annexes A and B, comments prepared in liaison with Susan Zappala, Natural England’s air quality specialist. The overall conclusion is that from the evidence base and reporting reviewed at that time, “there is sufficient information included within the reports to undertake an AA and further ecological analysis should not be necessary”.

7. Natural England’s advice provided as part of the DAS process, confirmed that in view of the evidence, its conclusion was that an Appropriate Assessment is required since it is not possible to conclude “no likely significant effect” on the SAC / SPA as a result of air quality impacts. However, it also included a number of questions on the approach being taken by WDC in its assessment.

8. Of significant importance, Natural England’s clear position is that the Local Plan should be assessed against an improving background trend. It is stated at Annex B:

“Our advice is that where an existing national, regional or local initiative can be relied upon to lead to the reduction in background levels of pollution at a site, the competent authority should assess the implications of a plan or project against an improving background trend.”

[Emphasis added]

9. Whilst WDC do present assessment information in relation to improving background trends (emissions scenarios B and C), the scenario taken forward in the Appropriate Assessment and used to inform conclusions regarding effects on Integrity does not.

10. Natural England also highlighted empirical evidence which demonstrates that when a site contains habitats that are already subject to high background nitrogen deposition, these habitats can develop an effective tolerance to the effects of further deposition. In this matter, Natural England references NECR210. It is stated:
“Table 21 identifies that where a lowland heath has a background of 20kg/ha then the increase in N deposition required to reduce measured species richness by 1 would be 1.7 kgN/ha/yr. The outputs from the Ashdown Forest modelling have identified that the maximum PC is 0.9 kgN/ha/yr which is well below the level expected to reduce species richness.”

11. Further consideration of the NERC210 report is given at Appendix 3.

12. In its DAS advice Natural England stated clearly that any impacts to habitats which are not qualifying interest features of the designated site (and thus no formal Conservation Objective relates to their maintenance or enhancement), can be disregarded for the purpose of applying the relevant tests of the Habitats Regulations. It is stated:

“As Ashdown Forest contains a mosaic of habitats including woodland which is not a notified feature of the SAC but is a feature of the SSSI designation. Where exceedances are affecting woodland, this should be disregarded in the AA and only exceedances affecting the notified features of dry heath and wet heath should be assessed.”

13. It is also stated:

“As a general point; if, upon closer examination, the qualifying feature which is considered to be sensitive is shown not to be present within an area predicted to be affected by emissions (and Natural England’s advice is that there is no conservation objective to restore the feature to that area), it will be relatively straightforward to ascertain that the plan or project poses no credible risk to it and there is unlikely to be an adverse effect on the site’s integrity.”

14. Key advice provided by Natural England during the course of the production of the Habitats Regulations Assessment prepared by WDC, has clearly not been followed.

15. It is considered by Ecology Solutions that whilst WDC has consulted with the appropriate nature conservation body (Natural England) for the purposes of the assessment (as required by the legislation), it has not had due regard to Natural England’s professional expertise and guidance resulting in a flawed application of the relevant legal tests.

16. Also of significant note is the fact that Natural England’s advice that mitigation measures are not required in order to conclude no adverse effect on the integrity of the Ashdown Forest SAC is entirely consistent with that given to other relevant local authorities in their plan making. Such authorities are understood to include Lewis District Council, the South Downs National Park Authority, Tunbridge Wells Borough Council, Hastings Borough Council and Rother District Council (see footnote 1 at page 2 of Natural England’s Regulation 19 Response to the Proposed Submission Wealden Local Plan).

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2 Removal of one species from the relevant plant community