APPENDIX 4

RELEVANT LEGISLATION

1. The relevant legislation in this instance is contained at Regulations 70 and 105 of the Habitats Regulations 2017 (as amended).

2. In relation to Regulation 70 which relates to the grant of planning permission, this clarifies at Regulation 70(2) that where adverse effects of the plan or project on the integrity of the European site would be avoided through the use of "conditions or limitations", planning permission may be granted subject to the application of those conditions or limitations. It also clarifies at Regulation 70(3) that outline planning permission must not be granted unless the competent authority is satisfied (through the use of conditions or limitations, or otherwise) that no development likely adversely to affect the integrity of a European site could be carried out under the permission, whether before or after obtaining approval of any reserved matters.

3. Of greater relevance is Regulation 105, which sets out the legal mechanism for determining the acceptability of a land use plan / project, insofar as ensuring that an adverse effect on the Integrity of a European site will not arise as a result of the plan / project. Where the plan / project is not directly connected to, or necessary to the management of the European site, in accordance with Regulation 105 (1) it is necessary to ascertain whether the plan / project will result in a likely significant effect on the European site (either alone or in combination with other plans / projects). Where it cannot be ascertained that such an effect will not arise:

"the plan-making authority for that plan must, before the plan is given effect, make an appropriate assessment of the implications for the site in view of that site’s conservation objectives."

4. Regulation 105(2) requires that:

"The plan-making authority must for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specifies."

5. Regulation 105(4) requires that:

"In the light of the conclusions of the assessment, and subject to regulation 107, the plan-making authority must give effect to the land use plan only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be)."

Conservation Objectives for the SAC and SPA

6. The conservation Objectives for the SAC are as follows:

"With regard to the SAC and the natural habitats and/or species for which the site has been designated (the ‘Qualifying Features’ listed below), and subject to natural change;"
Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring:

- The extent and distribution of qualifying natural habitats and habitats of qualifying species
- The structure and function (including typical species) of qualifying natural habitats
- The structure and function of the habitats of qualifying species
- The supporting processes on which qualifying natural habitats and the habitats of qualifying species rely
- The populations of qualifying species, and,
- The distribution of qualifying species within the site.

This document should be read in conjunction with the accompanying Supplementary Advice document, which provides more detailed advice and information to enable the application and achievement of the Objectives set out above.

Qualifying Features:

H4010. Northern Atlantic wet heaths with Erica tetralix; Wet heathland with cross-leaved heath
H4030. European dry heaths
S1166. Triturus cristatus; Great crested newt.

7. Those for the Ashdown Forest SPA are as follows:

“With regard to the SPA and the individual species and/or assemblage of species for which the site has been classified (the ‘Qualifying Features’ listed below), and subject to natural change;

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring:

- The extent and distribution of the habitats of the qualifying features
- The structure and function of the habitats of the qualifying features
- The supporting processes on which the habitats of the qualifying features rely
- The population of each of the qualifying features, and,
- The distribution of the qualifying features within the site.

This document should be read in conjunction with the accompanying Supplementary Advice document, which provides more detailed advice and information to enable the application and achievement of the Objectives set out above.

Qualifying Features:
A224 Caprimulgus europaeus; European nightjar (Breeding)
A302 Sylvia undata; Dartford warbler (Breeding)"
Additional Considerations in relation to the Relevant Legislation

8. To inform its Appropriate Assessment, WDC has reviewed and given consideration to the following:
   
a) The current condition of relevant habitats and species (qualifying interest features);
b) Modelled air quality data;
c) Detailed vegetation mapping / monitoring;
d) Factors affecting the current condition of vegetation / habitats within the site.

9. In the light of its review of the above information, WDC conclude that it cannot be ascertained that an adverse effect on the Integrity of the site does not arise as a result of the Plan. This conclusion is reached by WDC through the adoption of allegedly, a precautionary approach to the assessment. The need for and adoption of (by WDC) a precautionary approach to the assessment is discussed in detail (in this representation), in relation to Question 26.

10. The failure of the Appropriate Assessment in addressing the Integrity test (as required by the relevant legislation) is twofold. First, it fails to robustly assess the likely change to relevant habitats as a result of air quality impacts during the Plan period. Second, it fails to robustly quantify any identified effects in relation to the extent of changes to qualifying features purported to arise from the Local Plan. This means that the actual effects of the Local Plan cannot be properly ascertained and thus, that the conclusions drawn are based upon a hypothetical situation which is itself a wholly unrealistic scenario.

11. From the evidence, whilst still necessarily adopting a precautionary approach and proceeding to place reliance on the realistic emissions scenario B (which includes for a level of improvement in emissions), it can be concluded that changes in air quality at the SAC / SPA as a result of traffic growth will be so small as to render any actual effect on qualifying features immeasurable. Against the background of an improving situation in terms of air quality, the Local Plan would only give rise to a slight retardation of that improvement.

12. It follows therefore, that the type and level of any mitigation purported to be required in order to enable a conclusion that Integrity is not adversely affected, is based on unwarranted conjecture.

13. It cannot be ascertained with the required level of certainty, that the proposed mitigation is proportionate to an identified level of potential harm and further, the mitigation cannot be 'scaled' (up or down) to address effects which (may) arise from a greater or lesser quantum of housing, should the Local Plan Examination process determine that changes to housing numbers are required.