Matters concerning question 25

1. Ecology Solutions draws attention to the widely accepted definition of Integrity when applying the tests associated with the Habitats Regulations, which is:

“The coherence of the sites ecological structure and function, across its whole area, or the habitats, complex of habitats and / or populations of species for which the site is or will be classified.”

2. Integrity is the cohesion of all factors which give rise to the special interest of the site and it is the maintenance or restoration of site integrity which is the focus of a European site’s Conservation Objectives (described previously in relation to the Ashdown Forest SAC).

3. It should be noted that in the UK Critical Loads and Levels should be viewed as assessment benchmarks or thresholds. The important point here is that these are thresholds at which empirical evidence demonstrates that below these, adverse effects can be positively screened out. Above these thresholds adverse effects may occur and further detailed analysis is required (e.g. as part of the Appropriate Assessment).

4. Where a site is already exceeding relevant thresholds (Critical Loads and Levels), as is the case with the Ashdown Forest SAC, it is important to consider the extent to which additional deposition arising from (all relevant) plans and projects would undermine the conservation objective to ‘restore’ features at the site.

5. This must however involve a focussed approach and use credible evidence to define whether the emissions resulting from the Local Plan represent a real risk, as opposed to a hypothetical (or fanciful) one.

6. Relevant case law exists in relation to defining what can be considered an adverse effect on integrity and Ecology Solutions is particularly mindful of the Sweetman Judgment1. In that case, the Advocate General’s Opinion as discussed at paragraphs 58 to 61 was that, in her view, a plan or project involving “some strictly temporary loss of amenity which is capable of being fully undone” would not be regarded as an adverse effect on the integrity of the designated site. However, in contrast, the “lasting and irreparable loss”2 of part of the SAC feature should be considered to be an adverse effect on site integrity.

7. Ecology Solutions consider that in applying the integrity test in this instance, detailed consideration must be given to baseline (habitat) feature condition, any robust scientific evidence that the increased traffic emissions represent a real risk to feature condition and whether the ability of initiatives to reduce background levels (outside of any measures brought forward by the Local Plan) will be compromised.

8. In the above, Ecology Solutions is mindful that there is evidence for declining national trends in emissions and there is certainty as to an improving situation in terms of nitrogen deposition. Whilst it would certainly not be appropriate to ‘camouflage’ any

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1 Advocate General Opinion in Case C-258/11
2 Advocate General Opinion in Case C-258/11 – Paragraph 56
potential identified effect on integrity by reference to the improving situation, it is fundamentally critical to the application of the integrity test that any potential/perceived adverse effects are viewed in the context of a realistic (as opposed to fanciful) future scenario. Correctly construed, the robust approach is to determine the affect on integrity with reference to improvements in vehicular technology from the 2015 baseline, whilst still engaging with a precautionary approach to the assessment (as is the case with emissions scenario B).

9. On the latter point, Ecology Solutions highlight that WDC’s emissions scenario B, which correctly accounts for a level of improvement in vehicle emissions, is in itself precautionary. By way of example, it does not assume the use of any electrical vehicles on rural roads. This is clearly not a realistic proposition. However, as discussed elsewhere within this representation, overall, emissions scenario B is considered to be sufficiently representative of a realistic future scenario and scientifically robust for use in the Appropriate Assessment. In terms of its robustness, Ecology Solutions would again highlight that clearly there has been and will continue to be, uptake of cleaner Euro6/IV vehicles (potentially even cleaner vehicles in the coming years, not assessed through scenario B) and that there is a binding legal plan in place, in the form of the NECD which will ensure that the downward trends in emissions will continue into the future.

10. In contrast emissions scenario A (taken forward by WDC in its Appropriate Assessment) is plainly not a realistic future emissions scenario and has no place in addressing the integrity test.