

APPEALS TO PLANNING AND ENVIRONMENT DECISIONS WALES
PURSUANT TO SECTION 43 OF THE WATER RESOURCES ACT 1991
REFERENCES CAS-02488-V7M8Q2 & CAS-02489-V6P4R9
BETWEEN

RADNOR HILLS MINERAL WATER COMPANY LTD

Appellant

and

NATURAL RESOURCES WALES

Respondent

APPELLANT'S RESPONSE TO RESPONDENT'S
STATEMENT OF CASE

IN RESPECT OF LICENCES WA/054/0009/0001 AND
WA/054/0009/0002

NB References to [Appendix x Appeal 1] and [Appendix x Appeal 2] are references to the location of the documents in the appendices of the grounds of appeals CAS-02488-V7M8Q2 and CAS-02489-V6P4R9 respectively. References to [SC x] are references to the location of the documents in the bundle that accompanies the Appellant's statement of case. References to [AR x] are references to the location of the documents in the bundle that accompanies this Appellant's Response to the Respondent's Statement of Case. References to [RSC x] are references to the location of the documents in the bundle that accompanies the Respondent's Statement of Case.

Introduction

- 1 This Response addresses the Respondent's Statement of Case ("**SoC**") on the two original Grounds of Appeal which concern the application of an expiry date of 31 March 2031 to two full abstraction licences (licences WA/054/0009/0001 and WA/054/0009/002; together, the "**Licences**"), such expiry date deviating from the Common End Date ("**CED**") duration period provided for in the Teme Abstraction Licencing Strategy 2013 ("**2013 Strategy**") [**Appendix 13 Appeal 1**].
- 2 This Response primarily addresses: (i) the Respondent's reasoning why the expiry date of 31 March 2031 was applied to the Licences; and (ii) the Respondent's comments on the Appellant's Grounds of Appeal. Unless a paragraph in the Respondent's SoC is explicitly addressed in this Response, the Appellant has either already addressed that particular point elsewhere or not considered it necessary to respond to such sections or paragraphs of the Respondent's SoC. In addition, where a point is not expressly addressed, this does not mean it should be taken as agreed.
- 3 As noted in the Appellant's SoC, the documentation evidencing the Respondent's justifications for imposing shorter licence duration periods, including the Habitats Regulation Assessment ("**HRA**") [**SC 6**] and the full decision document ("**Decision Document**") [**SC 5**], were not disclosed by the Respondent until 5 July 2023, despite requests by the Appellant to be provided with the Decision Document and other evidence.
- 4 Accordingly, as the Appellant did not have sufficient time to consider fully and respond in its SoC to the Decision Document, the HRA and other disclosed evidence or documentation disclosed by the Respondent on 5 July, Planning and Environment Decisions Wales ("**PEDW**") agreed that it would accept evidence and/or arguments from the Appellant at 'final comments' stage (i.e in this Appellant's Response to the Respondent's SoC) to address issues raised in Respondent's SoC as well as material disclosed by the Respondent only shortly before the deadline for filing SoCs. PEDW's email of 23 June 2023, which affirms this position, is at **AR 10**.
- 5 As explained in its SoC (at paragraph 68), the Appellant was seeking expert advice on the material provided by the Appellant. The Appellant has now had the opportunity to obtain an expert report from Ecology Solutions to address the

technical points arising from the documentation disclosed by the Respondent on 5 July and also the Respondent's position in its SoC.

Issues

- 6 It is apparent from the disclosure of the documentation that the Respondent's decisions to apply the shorter CED was flawed for the following reasons:
- (a) the published licensing position affirms that abstraction licences will usually be granted to the relevant CED. When determining licence applications for previously exempt abstractions ("**New Authorisations**"), the Respondent was required to take a "*light-touch, risk-based approach*", in accordance with the Government's policy on New Authorisations, as set out in the 2016 Consultation Response published October 2017 (the "**2017 Response**") [**Appendix 12 Appeal 1**]. This prescribed that abstractions should only be "*significantly curtailed to protect the environment from serious damage*". For the reasons identified at page 18 of the Decision Document and as confirmed in the HRA, the Respondent concluded that the Appellant's abstraction would have "*no likely significant effect*" on the relevant designated sites; namely, the River Clun and the Severn Estuary Special Area of Conservation ("**SAC**"). This conclusion has also been reached by Ecology Solutions experts, who carried out a shadow HRA (the "**Shadow HRA**") [**AR 14**] (see paragraphs 7 to 14 below) **and who concluded beyond reasonable scientific doubt that the Appellant's abstractions up to 2037 would not give rise to an adverse effect on the integrity of the River Clun SAC;**
 - (b) the Respondent failed to apply the policies within its own guidance note 'Determining Transitional Water Resources Licence Applications' published November 2020 (the "**NA Guidance**") [**RSC 6.1**];
 - (c) as identified in paragraphs 59 to 64 of the Appellant's SoC and as further particularised in this Response to the Respondent's Statement of Case, the Respondent failed to have regard to the requirements of the Appellant in so far as they appear to be reasonable requirements pursuant to s.38(3)(b) of the Water Resources Act 1991 ("**WRA 1991**"); and
 - (d) the Respondent failed to have proper regard to the 7 well-being goals set out in the Well-being of Future Generations (Wales) Act 2015 ("**WBFG**

Act”) and to the economic consequences of the decision not to grant the Licences for the duration required by the Appellant pursuant to s.108 of the Deregulation Act 2015.

Summary of Ecology Solutions report

- 7 Ecology Solutions experts carried out the Shadow HRA. They concluded that authorising the abstractions permitted by the Licences until 2037 would not result in an adverse effect on the integrity of any European protected sites, either alone or in combination with any other plans or projects. In reaching this conclusion, Ecology Solutions considered the potential impact pathways between the Appellant’s abstraction and the River Teme Site of Special Scientific Interest (“**SSSI**”), the River Clun SAC and the Severn Estuary SAC/Special Protection Area (“**SPA**”)/Ramsar.
 - 7.1 In respect of the Severn Estuary SAC/SPA Ramsar site, Ecology Solutions concludes that, given the site is a considerable distance downstream from the River Clun SAC, any identified potential significant effect on the River Clun SAC could not give rise to significant effects on the Severn Estuary SAC. In light of the fact that any potential local impact upstream becomes ‘vanishingly small’ downstream when the considerable distances are involved, a conclusion of no likely significant effect can be reached in relation to implications for this designated site (paragraph 5.8 of the Shadow HRA).
 - 7.2 In respect of the River Clun SAC, as the designated site is up gradient from the Appellant’s abstraction, there is no direct effect on flow/water levels in the River Clun SAC. Ecology Solutions therefore focuses on the potential impact of the Appellant’s abstractions on the flows of the River Teme downstream of the confluence with the River Clun. This is the pathway by which the Appellant’s abstraction might theoretically have indirect impacts on the migratory passages of salmon and trout, and potential consequent impact on Freshwater Pearl Mussel migration to the River Clun SAC: see paragraph 5.49 and 5.54 of the Shadow HRA. Ecology Solutions concludes that, at the point at which migratory salmonid species will be traversing from the River Teme to the River Clun SAC, the impact on flow from the abstraction becomes nugatory (see paragraphs 5.58 to 5.60 of the Shadow HRA). On this basis, Ecology Solutions concludes that it is beyond reasonable scientific doubt that the Appellant’s abstraction will not affect migratory fish passage to the River Clun SAC (paragraph 5.63 of the Shadow HRA).

- 8 The conclusions set out above are in line with the assessment of the Appellant's agent Envireau Water, the Respondent's stage 1 HRA and the Environment Agency's stage 2 HRA. Critically, Ecology Solutions goes on to consider the concern that Natural England ("NE") raised regarding the longevity of Freshwater Pearl Mussel populations in the River Clun SAC and concerns about the uncertainty of the impact of abstraction to 2037.
- 8.1 Ecology Solutions concludes that because the Appellant's abstraction has a nugatory effect on contribution to the flow regime of the River Teme downstream of the confluence with the River Clun SAC, the potential for adverse significant effect on the integrity of the designated site can be ruled out beyond reasonable scientific doubt, at least to 2037: see paragraph 5.77 of the Shadow HRA.
- 8.2 Ecology Solutions also concludes that the concerns raised by NE relate to external pressures which lied outside of the Appellant's control and on which the Appellant's abstraction bears no relation: see paragraphs 5.73 to 5.74 of the Shadow HRA.
- 8.3 Ecology Solutions concludes that the continuation of the Appellant's abstraction over the period from 2031 to 2037 will have no net effect on the existing / current River Teme baseline downstream of the confluence with the River Clun SAC, and therefore have no effect on the River Clun - see paragraph 6.4 of the Shadow HRA.
- 9 Overall, Ecology Solutions concludes that it can be concluded beyond reasonable scientific doubt that the Appellant's abstractions up to 2037 would not give rise to an adverse effect on the integrity of the River Clun SAC: see paragraph 6.3 of the Shadow HRA.

Response to the Respondent's justifications for implementing an expiry date of 31 March 2031

- 10 At paragraph 6.3 of its SoC, the Respondent lists the following three 'concerns' as the reasons for the application of an expiry date of 31 March 2031 to the Licences. These are:
- (a) that advice from NE indicated that the Freshwater Pearl Mussel populations within the River Clun SAC are in decline and that a time limit of 31 March 2037 could potentially go beyond the time that Freshwater Pearl Mussels remain in the catchment;

- (b) that the absence of long-term flow and groundwater monitoring data meant that assessments were based on flow estimates and conceptual understanding, and that whilst that information was considered sufficient to support the conclusions of the HRA and SSSI assessments in the short-term, confidence in these assessments was more limited in the longer term; and
- (c) that the Teme catchment is '*very dynamic*' and already subject to frequent low flow and drying events. The Respondent also cites 'concerns' raised regarding the potential for an increase in the frequency and duration of low flow and drying events, which it claims would '*make the river more vulnerable to impacts of abstraction in the future*'. In its submissions, the Respondent refers to advice provided by NE to substantiate this claim.

11 The Respondent also refers at paragraph 6.4 to the fact that the groundwater monitoring data provided by the Appellant with its application covered the period 2017 to 2021, which it considered insufficient to provide confidence that data collected over a longer time period would reflect the same results.

12 The remainder of this section addresses each of the reasons relied upon by the Respondent for applying a shorter end date, both by reference to the material relied upon by the Respondent to reach this conclusion as well as the report from Ecology Solutions. The Appellant submits that each of the concerns listed at paragraph 10 above are capable of being addressed and the Inspector is invited to determine that, on the basis that any likely significant effects of the abstraction can be ruled out, the expiry date of the Licences should be varied in line with the CED to 31 March 2037.

13 The Respondent's individual justifications for imposing a shorter time limit than the applicable CED as set out in paragraph 10 are addressed below.

Concerns relating to Freshwater Pearl Mussel populations within the River Clun SAC

14 This limb of the Respondent's justifications under paragraph 6.3 refers to NE's advice of 16 September 2022 [**RSC 12.3**] concerning the decline of Freshwater Pearl Mussels. Specifically, the advice summarises NE's position in respect of this concern as follows:

“The licencing period could well be longer than the pearl mussels (and salmon) remain within the catchment, the licencing period of 15 years;” ... “We cannot rule out an Adverse Effect on Integrity. We are very likely to see the extinction of the pearl mussel in the 15-year licence period. At this stage any loss of water from the system (in the Clun) from abstraction could result in AEOI”.

- 15 The basis for the above concern appears to stem from the Respondent’s Marine Advice Team’s suggestion (as referred to at page 15 of the Decision Document [SC 5]) that potential impacts from the abstractions on the River Teme may affect the River Clun SAC, as the two rivers are considered ‘functionally linked’ due to the River Clun’s role as a migratory route and the fact that Freshwater Pearl Mussels in the River Clun are supported by the salmonid populations within the same.
- 16 It has already been demonstrated that the Respondent’s analysis under the HRA concluded that the flow contribution which the River Teme affords to the River Clun is negligible, and that Envireau Water’s data, which was accepted by the Hydrology and Geoscience Teams, demonstrated that the Appellant’s abstraction represents approximately 0.1% of the total discharge for the River Teme downstream of the confluence with the River Clun. This is supported by the HRA, which recognises at page 15 that the Appellant’s agent’s assessment “was reviewed by NRW and no concerns were raised regarding the methodology used or conclusions reached. It was also reviewed and validated by the Environment Agency as detailed in their Stage 2 HRA for the River Clun SAC”. This is also supported by Ecology Solution’s analysis at paragraph 5 of the Shadow HRA [AR 14].
- 17 The Appellant has considered the EA’s Habitats Regulations Assessment (“**EA HRA**”), comprising of the Stage 1 Severn Estuary SAC [AR 4], Stage 1 River Clun SAC [AR 3], Stage 2 Severn Estuary SAC [AR 6] and the Stage 2 River Clun HRA (“**Stage 2 HRA**”) [AR 5]. The Stage 2 HRA assessed a number of abstractions in the Teme catchment with the potential to impact on the River Clun SAC, including the Appellant’s. The following is drawn to the Inspector’s attention with respect to the consideration of any impact of the abstractions on the River Clun SAC (noting that no reference is made to deficiencies in information or data):
- Appendix 1 (page 35) confirmed that there is no pathway for impact on River Clun as follows: “...the River Clun is up gradient of the Radnor

abstraction and therefore the Radnor abstraction cannot have a direct effect on flows in the River Clun.” (emphasis added)...“However in theory abstraction by Radnor could affect the River Teme, which could impact flow and depth downstream of the confluence and therefore affect migratory fish passage”;

- the Stage 2 HRA concludes in the same section that there is no potential for adverse effects, basing this on an extreme worst-case scenario: “Assuming the extreme worst-case scenario that all abstraction is seen at Leintwardine, then this is a 1.16% impact..”....“On this basis the worst-case theoretical impact downstream of the River Clun influence, at low flow is less than 1% of the 40% contribution to the Teme flows downstream of the confluence of the Clun, which is a net effect of 0.4%”;
- it is stated of flow losses at page 23 that ‘...it cannot therefore be considered that abstraction significantly contributes to such events, and these impacts are more likely attributed to naturally dry weather events, and a loss of resource to underlying gravels’; and
- the conclusion at paragraph 21 concludes that the abstractions do not have any adverse effect on the integrity of the site.

- 18 The Appellant considers the conclusions reached in the EA’s Stage 2 HRA, which align with those reached in the HRA, demonstrate that any significant effects of the abstraction could be categorically ruled out, having been considered on a worst-case scenario basis. Accordingly, any risk to the Freshwater Pearl Mussel populations is not linked to the Appellant’s abstractions. This is not, therefore, a basis for reducing the time limit from the CED.

Concerns relating to lack of confidence in assessments long-term

- 19 The Respondent notes at paragraph 6.3 of its SoC that the initial assumption was that the next CED (31 March 2037) would be applied to the Licences. The HRA will therefore have been carried out on this basis, as it was only following consultation with the relevant Protected Sites advisors that the concerns set out in paragraph 6.3 were raised. Accordingly, there is no basis for the Respondent’s assertion that it could have only ‘limited’ confidence in the assessments which informed the HRA. This point is reinforced by the fact that, prior to external consultation with NE and the Respondent’s Marine Advice Team, the Respondent

was content to accept the conclusions of the HRA and apply the CED to the Licences.

20 Contrary to the Respondent's final position (which is without evidential basis), it is the Appellant's case that all available data (which was produced using different methods of modelling, verified against each other for consistency) demonstrates beyond reasonable scientific doubt that the abstractions would have no material effect on flows on the River Teme downstream of the confluence with the River Clun SAC . This is affirmed at paragraph 9.6 of the HRA [**SC 6**], which recognised that:

- the Respondent's Hydrology and Geoscience Team both acknowledged and agreed that the existing data and information led to the conclusion that significant impacts on the surface water were unlikely as the abstraction was such a small proportion of overall flow in the catchment;
- the Respondent's Geoscience Team also considered any impact on downstream river flows to be 'minimal';
- the Respondent's Fisheries Team considered the evidence sufficient to conclude that it had no concerns the abstraction would cause a reduction in flow significantly impacting fish populations in the River Teme; and
- the Respondent's Geomorphology Team was able to advise that, based on the negligible impact on flows and river water levels, the abstractions would have no likely measurable geomorphological impacts.

21 The conclusions arrived at above were reached by experts in each of the relevant fields. Whilst Hydrology and Geoscience Teams acknowledged that evidence may have been somewhat limited, the Hydrology Team also advised that the impact of the abstraction quantities was '*investigated and expressed in different ways*' independently by themselves, previous EA studies and the Appellant's agent, Envireau Water, and that each of the different methodologies had reached the same conclusion (HRA, page 41 [**SC 6**]). The HRA also later notes at page 44 that the outcomes of all the different methodologies were considered together '*to increase confidence in the final decision*'. This statement is at odds with the Respondent's assertion in its SoC that there was limited confidence in the assessments.

- 22 Paragraph 5.2.8 of the Respondent's SoC states that the officers responsible for the Respondent's appropriate nature conservation body function raised concerns regarding the application of the 2037 CED "*of any licence(s) issued*" within the Teme Catchment. However, these 'concerns' are not particularised and are not referable to the Appellant's applications. Review of the minutes of the meetings referred to at paragraphs 5.2.9 do not identify specific concerns about the Appellant's abstractions. Notes from a meeting between the Respondent, the EA and NE dated 26 May 2022 [RSC 12.2] document that conversations were had around impacts on salmon between the timeframe of the 2037 CED. However, it appears that the reference to impacts is a reference to the impacts of climate change as opposed to abstraction impacts.
- 23 Tellingly, concerns raised by NE were treated by the Respondent and the EA as without foundation. This is illustrated by the response to NE's comments during the meeting on 26 May 2022. An officer from the EA or the Respondent (it is not possible to say due to redactions) responded by recognising that '*we cannot attribute a cause without evidence*' [RSC 12.2]. Therefore, whilst concerns may have been raised about issues between the date of those discussions and the 2037 CED, these are general concerns and are not based on evidence of impact caused by the Appellant's abstractions. Concerns relating to the salmonoid population have been addressed at paragraphs 14 to 18 above.
- 24 Further, internal correspondence within the EA permitting team¹ demonstrates that the EA considered the groundwater data provided by Envireau Water to be the best available:

¹ Whilst these appeals concern the Licences issued by the Respondent, the Respondent and the EA pursued a joined-up approach throughout the determination period, sharing data, attending meetings together and consulting on the respective HRAs and approach to the expiry date of the Licences. The Inspector is referred to the email correspondence between the Respondent and the EA between 11 July 2022 and 28 September 2022 in this regard [AR 7]. Therefore, the EA correspondence cited above is significant and is relevant to these appeals.

- 24.1 An email dated 31 October 2022 acknowledged that the Appellant had ‘the best available local hydrological data for groundwater’, noting that whilst opinions may differ, the EA had to ‘*take a balanced view which we are with the available information*’ [page 18 of AR 8].
- 24.2 Email correspondence from an Environmental Reporting Officer to their colleagues on 23 November 2022 states that ‘*the 2031 time limit is being suggested as a way to address some of NE’s concerns by bringing forward the sustainability assessment*’ and that, although the data obtained as part of the Appellant’s ongoing monitoring would be useful, what was provided with the Appellant’s licence application was ‘*fairly comprehensive*’. The same email goes on to acknowledge that the EA and NE were not ‘*on the same page*’ in respect of conceptualisation of the catchment. [pages 11 to 13 of AR 8].
- 24.3 A later email from the same officer dated 2 December 2022 also quotes another EA officer further down the email chain (but whose original statement appears to have been redacted) as follows:
- ‘As you say Heph, “*I think the other licences (not specifically mentioned here) don’t have a specific reason for a short TL, but could be useful depending on the outcome of the AMP8 investigation, but that doesn’t feel like a significant reason to go with the short TL when we know they aren’t having a large impact in the catchment.*”’ [page 7 of AR 8].
- 25 Not only does this correspondence demonstrate that the EA considered the groundwater data provided by Envireau Water to be the best available, but it shows the decision to impose a shorter licence period was taken in order to appease NE. This is explicitly recognised in the minutes of the meeting between members of the EA on 22 November 2022, where the following is noted of the Appellant’s application: ‘*We’ve gone down the shorter time limit route due to NE’s advise [sic]*’ [AR 9]. Internal EA communications also refer to the shorter time limit as ‘*perhaps over-cautious*’ (11 November 2022) [page 16 of AR 8] and to Envireau Water’s reminder that a light touch approach was required, expressing, ‘*I feel that we are certainly moving well away from this down the HRA/CSMG route with best intentions*’ (31 October 2022) [page 18 of AR 8].

- 26 In summary, the contemporaneous materials show that the concerns by NE are not based on evidence about the impact of the Appellant's abstractions. NE's unevidenced concerns are at odds with the evidence-based conclusions reached by the Respondent's Hydrogeology and Hydrology experts. It is also of significance that those experts did not revise their conclusions following re-consultation in light of the issues raised by NE and the Respondent's Marine Advice Team.
- 27 As demonstrated above, all of the appropriate experts who considered the available data (including both the Respondent's and the EA's experts) agreed that the data (being the best available data at the time) was sufficient to assess potential impacts of abstraction on surface water flows and to conclude that the Appellant's abstractions were unlikely to significantly impact the River Teme flows.
- 28 Addressing further the Respondent's submissions at paragraph 6.3 of its SoC, the Respondent cites concerns raised during the consultation process around the 'longer term' sufficiency of the information used to assess flow estimates in the HRA as a reason for limiting the expiry date of the Licences, although its position is that those same assessments were adequate in the 'short term'. The Respondent has not clarified what timeframe it considers to constitute 'short term'. In any event, the HRA was not conducted in respect of a period shorter than the 2037 CED, which makes the Respondent's justification insupportable. NE and the Respondent's Marine Advice Team were consulted via the HRA on 15 July 2022, at which point in time no consideration of a licence period shorter than the next CED had been given.
- 29 It is submitted that the evidence which was available to the Respondent made clear that adverse effects from the proposed abstractions could be ruled out up to 2037. However, for the avoidance of any doubt, the Appellant obtained the detailed Shadow HRA from Ecology Solutions. The clear and careful conclusions set out in that report put beyond any reasonable scientific doubt that the Appellant's proposed abstractions will not give rise to an adverse effect on the River Clun SAC. For the reasons set out in the Shadow HRA, any question or uncertainty as to whether the data is sufficient to be considered in the longer term (i.e up to 2037) has been addressed and the conclusions show that any adverse effect can be categorically ruled out in the period up to 2037.

Concerns relating to increase in frequency and duration of low flow and drying events

- 30 The Respondent acknowledges at paragraph 2.8 that the River Teme has a history of drying and that this phenomenon occurs '*most years*'. Page 11 of the HRA also recognises that this is a true and accurate position, acknowledging that the natural drying precedes the Appellant's abstraction. This occurrence is disputed by NE in its letter to the Respondent dated 16 September 2022 [**RSC 12.3**], where it states, "*Natural England do not consider the River Teme to be CSMG compliant for flows because we do not consider the river to be naturally drying.*" However, in the same letter, NE admits '*we accept that there may be some natural drying*'. This raises concerns about NE's understanding of the hydrological and hydrogeological process and, absent any evidence to support the first assertion, appears flawed.
- 31 It is apparent that the '*concerns raised regarding the potential for an increase in frequency and duration of drought events*' are general concerns and unrelated to the Appellant's Licences applications. The Respondent has conflated general issues of weather changes and climate change with the impact of the Respondent's abstraction, which is contrary to the legal and policy framework governing the determination of applications for NA licences. This is recognised at paragraph 5.73 of the Shadow HRA, which observes that the concerns raised by NE relate to external pressures to which the Appellant's abstraction bears no relation. The Shadow HRA considers a range of external factors, including climate change and land management practices (paragraph 5.74) and physical modification, siltation and disease (paragraph 5.75), and notes that, when these factors are considered in the context of the Appellant's abstraction, the theoretical impact pathway by which salmonid species and Freshwater Pearl Mussel can be adversely impacted can be ruled out, and so any external pressures cannot be attributed to the Appellant's abstraction.
- 32 It is recognised at paragraph 4.14 of the November 2012 joint Defra and Welsh Government summary of responses and Government response to the consultation on the serious damage principles² [**AR 1**] that '*any licence changes*

² Defra, '[Joint Defra and Welsh Government summary of responses and Government response to the consultation on "the Water Act 2003: withdrawal of compensation on the grounds of serious damage. A consultation on the principles to be used in determining whether a water abstraction may cause serious damage."](#)' (November 2012)

(...) proposed would aim to address the detrimental impacts (including potential impacts) of abstraction primarily, not other environmental factors (emphasis added). This makes clear that the duty on the regulator is to identify detrimental impacts of abstraction only and not to expand that review to impacts of other environmental factors. The Respondent has contravened this duty and failed to distinguish external causes of drying events from the impact of the Appellant's abstractions.

33 In a recurring theme, these concerns were initially raised by NE and are now relied upon in the Respondent's determination of the expiry dates of the Licences despite (a) contradicting the Respondent's initial conclusions; and (b) not being supported by evidence.

33.1 By way of example, when the Respondent and the EA sought supporting data from NE in respect of the alleged increase in frequency and duration of drying events in email correspondence dated 4 October 2022, NE was unable to produce any and referred instead to 'man-made climate change' as the reason for accelerated frequency and severity of heatwaves [RSC 12.4].

33.2 Similarly, in its initial response dated 16 September 2022 [RSC 12.3], NE suggested a correlation between an increased frequency and duration of drying between 2000 and 2015 (and again after 2015) and increased abstraction. It also makes general statements about how certain factors including abstractions lead to more frequent and prolonged drying and asserts that drying of the river for a prolonged period highlights '*the need for precautionary decision making*'.

33.3 However, NE did not produce any evidence connecting the increase in drying to the Appellant's specific abstractions.

34 By contrast, Envireau Water has produced an analysis which models the effects of the Appellant's abstractions on the River Teme flows (using flow assessments software) against the effects of climate change, using projected rainfall data derived from the UK Hadley Centre. The analysis is at **AR 12** and the explanatory note is at **AR 13**. Using assessments at five control points which mark the upstream and downstream boundaries of the SAC and river confluences, the modelling demonstrates that the largest proportion of flows in the River Teme represented by the Appellant's abstraction were produced at the Q95 flows, with the value at the control point just downstream of the confluence between the River Teme and the River Clun being 2.6% of the Q95 flow. By comparison, the value

at the control point upstream of the Severn Estuary SAC was only 0.065%. This analysis therefore further supports and reinforces that even in the worst-case scenario, the Appellant's abstraction will not have an effect on the migratory fish passage to the River Clun SAC.

Justification of a time limit of 2031 to 'gather and assess further data'

- 35 The Respondent further justifies the decision to apply a shorter time limit to the Licences at paragraph 6.5 by reference to the requirement to '*gather and assess further data*' in order to '*refine the information and assessments*' considered when determining the licence applications. The Appellant has already addressed in detail above why the data used to assess the impacts of the abstractions was considered by the relevant experts to be sufficient for the purposes of concluding no adverse effects on the designated sites. In particular, the Shadow HRA produced by Ecology Solutions reaches the clear conclusion that adverse effects can be ruled out up to 2037. To the extent that the bullet points in paragraph 6.5 of the Respondent's SoC are not otherwise addressed, the Appellant responds to the same below.
- 36 The Appellant has engaged proactively with the Respondent in relation to the voluntary monitoring programme and submitted its Scheme of Monitoring report [AR 11] on 11 August 2023 to support any future licence renewal application and to assist the Respondent's wider assessments of the catchment going forwards. However, it should be recognised that the ongoing monitoring is not required by any condition of the Licences, owing to the lack of adverse impact on the designated sites.
- 37 The Respondent refers to the potential installation by the EA of a new flow gauging station on the River Clun to allow previous flow assessments which were carried out as part of the EA's HRA '*to be reviewed, and where necessary, refined, therefore improving confidence in the assessment*'. Whilst these appeals relate to the Licences issued by the Respondent and not the EA, the Appellant reiterates that the Stage 2 HRA [AR 5] concluded that '*based on available information, monitoring and evidence, abstraction is not currently considered to be a major contributor to these existing issues*', and that '*it is possible to ascertain no adverse effect on the integrity of the [River Clun] in combination*'. For the Stage 2 HRA to have reached this conclusion, the degree of confidence in the assessment must have been satisfactory and, for this reason, the Appellant submits that this ground

of justification under paragraph 6.5 is not made out. For the same reasons, the proposed Water Industry National Environment Programme investigations within the catchment area have no bearing on the conclusion of either the Respondent's HRA or the EA HRA, including the Stage 2 HRA.

38 In respect of the reference to the EA's scheduled fish surveys, whilst data collected from the fish surveys due to commence between the present time and 2031 may well provide further information on the migratory fish species populations, this does not alter the fact that the HRA concluded that the Appellant's abstraction would have no adverse effect on migratory fish passage. Moreover, the Shadow HRA has made clear that such adverse effects can be ruled out, beyond reasonable scientific doubt, at least to 2037.

39 The Respondent concludes that the additional data and information gathered between now and 2031 will inform whether the Licences can be renewed or amended in 2031. However, this position is based on a theoretical assumption and is identified in the Shadow HRA as an 'overly precautionary' one on the basis that there is no information which supports the justification for an arbitrary imposition of a 2031 expiry date, as opposed to a 2037 expiry date (paragraph 6.2). As the Shadow HRA has identified that there is no uncertainty over the impact of the abstractions at the point of determination of the Licences, then any additional data collected as part of the processes outlined in paragraph 6.5 of the Respondent's SoC will not change this fact. It cannot therefore form a basis for justifying the shorter time limit.

Expiry date on the EA application form

40 It is also asserted at paragraph 6.6 of the Respondent's SoC that the application for the licence granted by the EA and submitted by the Appellant's agent '*indicated [the Appellant was] happy to accept a time limit of 31 March 2025*' as it was noted that this was the CED for the Teme catchment. It should be noted that these appeals concern the Licences issued by the Respondent and not the EA. Quite apart from that fact, the Respondent's statement does not accurately reflect the position. First, the application was completed by Envireau Water as a pro forma response. The insertion of the time limit was not based on the Appellant's commercial requirements. The inclusion of the 2025 time limit is explained by the fact that the 2013 Strategy, in place at the time that the applications were

submitted, did not explicitly provide a CED beyond 2025. Accordingly, Envireau Water could not have been sure of the subsequent CED at the time of completing the applications. As soon as the Respondent indicated that a shorter time limit may be implemented, the Appellant became aware that there was a risk the 2037 CED would not be applied in the circumstances and engaged fully with the Respondent on the issue. It is not correct to state that the Appellant was 'happy' for an expiry date of 31 March 2031 to be attached to the Licences.

Incorrect application of the 2013 Strategy

- 41 The Respondent refers at paragraph 6.2 to the published position on licence durations as set out in the Teme Abstraction Licensing Strategy (being the 2013 Licensing Strategy at the time, although it was most recently updated in 2023 [RSC 5.4]. The Respondent notes that the CED will usually determine the expiry date of a licence, unless the CED is less than six years away, in which case the subsequent CED is usually applied to a licence. However, the Respondent states that the CED principle '*should only be applied if [we] are satisfied that the abstraction is sustainable*', and that consideration should be given to the application of a shorter time limit if the Respondent is not satisfied that the abstraction is sustainable. There are two problems with this approach.
- 42 First, the 2013 Strategy makes no express reference to a requirement to apply the CED only if an abstraction is sustainable. Paragraph 4.2.1 of the 2013 Strategy sets out the reasons why a licence may be granted for less than 12 years. None of the reasons given under paragraph 4.2.1 apply in the Appellant's circumstances. For completeness, given the conclusions of the Shadow HRA, there is no uncertainty about the impact of the abstractions for the period up to and including 2037; therefore, the 'uncertainty' ground cannot be relied on by the Respondent.
- 43 Secondly, the Respondent fails to apply and give appropriate weight to the NA Guidance. The 2013 Strategy was published four years prior to the Water Abstraction (Transitional Provisions) Regulations 2017 (SI 2017/1047) coming into force. The 2013 Strategy was not prepared for the purposes of providing guidance on, and setting out the process for, determining New Authorisations. By contrast, the NA Guidance was prepared to assist and guide the Respondent in determining New Authorisations [RSC 6.1].

- 44 Part A of the NA Guidance expressly notes (at page 5) that the licensing process for New Authorisations is ‘*different to the process followed for standard (or ‘day job’) water resource licence applications*’, recognising that a separate approach to the usual licensing process should be taken by the Respondent when considering an application for a New Authorisation.
- 45 Part B of the NA Guidance endorses the ‘light touch, risk-based’ approach set out in the 2017 Response and repeats the ‘final policy approach’, being that lawful abstractions should only be significantly curtailed or refused to protect the environment from serious damage (which has not been demonstrated in the Appellant’s case). In ‘exceptional circumstances’, the NA Guidance confirms that abstractions may still be refused or restricted ‘*where the damage does not meet the serious damage criteria, but [our] legal duties require the abstraction to be curtailed or application refused e.g. environmental damage to a SSSI*’.
- 46 The Respondent has failed to demonstrate that the abstraction has or will result in environmental damage to any of the designated sites, and the Decision Document [SC 5] confirms at section 9.7 both that the ‘serious damage criteria’ has not been met and that the abstractions are considered not likely to damage any SSSI features for the purposes of the Wildlife and Countryside Act 1981. Therefore, the Respondent cannot rely on this part of the policy to support its decision.
- 47 Further, when considering cumulative impacts, the NA guidance states at paragraph 7.12 that:

“Where a number of abstractions, including already licensed and previously exempt activities, are acting in combination, it will be necessary to establish the impact of the NA abstraction. If there is no clear evidence of the impact of this, it is unlikely that the abstraction can be curtailed/application can be refused, unless in the case of serious damage”.

Applying the NA Guidance, the Respondent needs to produce “clear evidence” of impact in order to justify a refusal or curtailment of a NA application. Contrary to this requirement, and despite the fact that the HRA concluded that in combination impacts with other abstractions were considered unlikely (HRA, page 25 [SC 6]), the ‘*perceived evidence gaps*’ identified by NE were cited as the reason for applying a shorter time limit to the Licences (see paragraph 53(c) of the Appellant’s SoC).

48 Paragraph 7.3.1 of the NA Guidance states that in respect of New Authorisation licence durations, *'the intention is for the Regulator to grant transitional licences with a time limit to the relevant CED in line with its published licensing position for the catchment'* (i.e. the 2013 Strategy).

49 The same paragraph refers to consideration being given to CEDs when determining timescales in order to 'prevent skipping end dates', but a footnote recognises that whilst the next CED is generally applied where an application is made within six years of the CED, *'if there are sustainability issues identified with an abstraction that can't be addressed at the determination stage'* then the Respondent would *'look to address [sic] ahead of the catchment CED'*. The Respondent made no representations in its Decision Letter in respect of sustainability.

50 Paragraph 7.3.2., which addresses short licence durations, explicitly states:

'Shorter time limits should not generally be applied to Transitional licences. Applying shorter time limits is not part of New Authorisations policy as set out in the Government response document' (emphasis added).

This statement reflects the acknowledgement in Part A that applications for New Authorisations should be treated as separate to standard water resource licence applications. In essence, it is a direction to the Respondent to consider New Authorisations as falling outside of the scope of the 2013 Strategy, save where the *serious damage criteria* is met (in line with the 2017 Response). If the Respondent was required to apply the 2013 Strategy, it would have been directed to do so in the NA Guidance. As confirmed at page 18 of the Decision Document [SC 5], the Respondent acknowledged that the licence applications do not meet the 'serious damage' criteria; likewise and as identified at paragraphs 46 to 47 above, no environmental damage has been evidenced.

51 Accordingly, the Respondent has deviated from its own policy and has imposed an unjustifiable and unreasonable time limit on the Licences, despite their status as New Authorisations.

52 Page 35 of the NA Guidance reminds the Respondent that it is required, via the Decision Document and supporting assessments, to demonstrate that in determining the Appellant's licence applications, it has acted in a way that is logical, robust and consistent with the 2017 Regulations and New Authorisations

policy. In contravention of this obligation, the Respondent has failed to apply the NA Guidance and has taken an overly precautionary approach, given the level of risk identified.

Constraints on the Appellant's ability to abstract water

- 53 The Respondent asserts at paragraph 6.8 that the decision to apply an expiry date to the Licences of 31 March 2031 places no immediate constraint on the Appellant's ability to abstract water as it has done historically. This assertion demonstrates the Respondent's failure to have regard to the reasonable requirements of the Appellant, as required by section 38(3)(b) of the WRA.
- 54 The Appellant has, historically, abstracted free from constraints on both volume of water and any time limitation. It is this security which has allowed the Appellant to make long-term investments and to develop and expand its business, and this type of consideration is expressly recognised in the 2017 Response, which stated that '*exempt abstractors have operated lawfully and rely upon their access to water*' [SC 12]. Therefore, the requirements of the Appellant pursuant to section 38(3)(b) of the WRA include having a degree of certainty as to whether it is able to continue accessing the primary resource which underpins its entire business. This ability in turn influences other key decision-making and investment commitments.
- 55 The Respondent was made aware of the risks to the Appellant's business which emanated from the shorter time limit in October 2022 by Envireau Water [see **Appendix 4, Appeal 1**], and this is particularised in paragraphs 44 to 45 of the Grounds of Appeal and paragraphs 63 to 64 of the Appellant's SoC. Despite it being highlighted to the Respondent that there would be a substantial adverse effect on the Appellant's business if a shorter time limit was implemented, the Respondent chose to impose one.
- 56 The Respondent's position on this point is inconsistent. At paragraph 7.2 of its SoC it states that the abstraction has not been 'curtailed' through the application of a shorter time limit. This contradicts paragraph 4.1.8 of the Respondent's SoC, which refers to section 3.6 of the 2017 Response in reliance of its ability under that policy to '*apply a time limit in accordance with the Regulator's current policy*' where '*refusal or curtailment is necessary*'. The Respondent cannot argue that the time limitation is not a curtailment but then rely on the exemption under section

3.6 of the 2017 Response to justify the application of a shorter expiry date than the CED.

57 For the reasons set out at paragraph 54 above, it is the Appellant's case that the application of a shorter time limit does constitute a curtailment, and for the reasons identified at paragraphs 41 to 52 considered in conjunction with the conclusions of the Shadow HRA, the curtailment is entirely unjustified in the absence of either serious damage or a justified requirement pursuant to the Respondent's legal duties.

Failure to have regard to the 7 well-being goals set out in the Well-being of Future Generations (Wales) Act 2015

58 Paragraphs 7.4 to 7.10 of the Respondent's Statement of Case concern its obligations under the WCFG Act [at **Appendix 14, Appeal 1**], which the Respondent considered it has satisfied in determining the Licences. However, it is the Appellant's case that the Respondent has focussed only on those considerations under the WCFG Act which concern the environment and has neglected to take into account that the '*sustainable development principle*' under section 5(1) of the WCFG Act encompasses a balance of ensuring '*that the needs of the present are met without compromising the ability of future generations to meet their own needs*'.

59 Section 2 of the WCFG Act specifically states that sustainable development means the process of *improving* the economic, social, environmental and cultural well-being of Wales. It is axiomatic that the positive obligation to make improvements requires any decision of the Respondent to have a bettering effect on the respective identified classes of well-being. By constraining the Appellant's ability to undertake long-term investment by applying the shorter time limit in the absence of any justified evidence that this decision will result in improvement to the environmental well-being of Wales, the Respondent cannot demonstrate that it has complied with its duty to carry out sustainable development in accordance with the WCFG Act.

60 A further example of this failure to comply is evident when considering the Respondent's objectives under its own 'Well-being Statement' [**Appendix 16, Appeal 1, page 5**] includes promoting '*successful and responsible business, using natural resources without damaging them*'. Given that no adverse effects of the Appellant's abstraction were identified under the HRA, the Respondent's

restrictive implementation of the time limit can be interpreted as being in contravention of its own well-being objectives.

61 It is also inaccurate of the Respondent to allege that the duty to carry out sustainable development under section 3(1) of the WBFG Act is not an 'absolute duty', but a 'duty to take "reasonable steps" in the context of carrying out its abstraction licensing functions. The duty under section 3(1) that a public body "must carry out sustainable development" is mandatory. This is also supported by the SPSF Core Guidance at page 5 [**RSC 18.1**]. It appears that the Respondent has confused this mandatory duty with the obligation to take reasonable steps (in exercising its functions) to meet the "well-being objectives" under s.3(2) of the WBFG Act.

Comments on the Respondent's Statement of Case

62 Paragraph 2.7: the Respondent's assertion that concerns regarding the potential impact of groundwater abstraction at the Radnor Hills site on flow in the River Teme are 'long-standing' is unsubstantiated. The Appellant is not aware of any long-standing concerns in this regard and neither the Respondent, nor any other third party, has made such representations prior to the Respondent's SoC. Indeed, paragraph 5.2.6 suggests that it was only following screening and consultations which concluded in February 2021 that any concerns about the potential impacts of abstraction were raised.

63 Paragraphs 6.7, 7.3 and 7.15: the Appellant refers the Inspector to paragraphs 41 to 52 above and reiterates that the Licence applications were not 'normal duration licences' and so should not have been treated, nor decided, as such.

64 Paragraph 6.8: the Inspector is referred to paragraphs 54 to 57 above in response.

65 Paragraph 7.11: The Appellant does not dispute that the expiry date of 31 March 2031 may have been applied to other licences granted by the EA in the Teme catchment area. However, by the EA's own admissions on 1 December 2022 [**pages 9 -10 of AR 8**], it was willing to grant licences in line with the 2037 CED where an impact pathway could be ruled out and/or monitoring would not lead to better information or increased certainty as to impacts. The Inspector is referred to the table embedded in the EA email correspondence [**page 10 of AR 8**], which states in a footnote that "*Whilst the shorter time limit would be useful in these cases, given there is no significant reason for it, it is felt on balance that applying*

the CED of 2037 is more appropriate". As the Appellant has demonstrated that there is no uncertainty as to the impact pathway, the 2031 expiry date was not the appropriate time limit for the EA and, for the same reasons, the Respondent, to apply.

- 66 The above is supported by the EA's guidance to NE on 'How the Environment Agency determine water resource licences for New Authorisations' [AR 2], which states the following at paragraph 4.2:

"The significant deviation from the day job process in relation to SSSIs, is that the Environment Agency are directed by the Secretary of State to treat these abstractions as though they are having a "neutral environmental impact", given their historic ongoing use. This means, that we can only refuse or constrain licences (for New Authorisations) where there is evidence of 'serious damage'. Therefore all other applications will be granted as applied for (see 5. Licence conditions for further details). In these situations, where an abstraction may be causing damage (not serious damage) to a SSSI, the Environment Agency will consider the need for further curtailment at the Common End Date renewal stage".

This guidance shows that: (i) the EA reinforced the requirement to provide evidence of 'serious damage' in order to refuse or curtail NA; and (ii) even where an abstraction may be causing damage which is not serious to a SSSI, any further curtailment could only be considered at the CED renewal stage (emphasis added). Notwithstanding the fact that both the HRA and the EA's HRA concluded that all the evidence showed no likely significant effect of the abstractions (and so no damage, serious or otherwise), the Appellant submits that the EA erred in its decision to apply a licence period shorter than the 2037 CED to the English licences, and that for the same reasons, so did the Respondent.

- 67 Paragraph 7.13: the Respondent refers to the correspondence and the meeting which followed after indication was given by both the Respondent and the EA (on 3 November and 25 October 2022 respectively) that a shorter time limit was being considered. During this time period, the EA suggested that a meeting between the Appellant and NE would be beneficial, and correspondence between the EA dated 31 October 2022 expressly states that such a meeting:

"...could result in additional mitigation measures provided by Radnor that go over and above our monitoring requirements as a way to allay the concerns of NE. If Radnor know that a time limit is possible they may be willing to offer more".

Despite the Appellant's willingness to participate in such a meeting (as demonstrated in email correspondence on 31 October and 1 November 2022 [RSC 10.4], it is clear that NE would not participate in discussions with the Appellant and was unwilling to engage in dialogue which could have potentially resolved the issues prior to determination. The Appellant has already made its concerns with NE's understanding of the fundamental issues in dispute clear at paragraphs 30 to 33.3 and it does not therefore intend to repeat them here.

68 Paragraph 7.14: for the reasons set out in this Response, it is the Appellant's case that the decision to apply a shorter expiry date than the CED was not reasonable, did not take account of (or, in the alternative, disregarded) all available evidence and was not taken in compliance with the Respondent's obligations under the WFBG Act.

69 Paragraph 7.16: the Appellant responds to the statements set out in the bullet points below:

- the Appellant had every reason to expect that the Licences would be granted with an expiry date in line with the CED. As noted above, the Appellant was expecting this outcome until October 2022 when the EA (and later the Respondent) indicated that a shorter time limit was being considered. Further, any uncertainty during the determination period does not negate the limitation on the Appellant's ability to abstract water and subsequently plan, invest and make long and short term decisions;
- the Appellant has responded to this point at paragraph 40 above;
- the Appellant has made clear the impacts of the shorter duration on its business, not least because water is the key factor in the Appellant's business, and the Inspector is referred to paragraphs 60 to 64 of the Appellant's Statement of Case in this regard. To the extent that other NA applicants issued with shorter time-limited licences have not raised similar concerns, this is entirely irrelevant to these proceedings and to the Appellant's case. It is also irrelevant that the Appellant's agent represented any other applicants, and the Appellant invites the Inspector to treat the Respondent's submissions in this regard as having no bearing on these proceedings.

- 70 Paragraph 7.17: The Inspector will be aware that at the time the Grounds of Appeal were lodged, the Respondent had not disclosed the Decision Letter, HRA or other associated documentation. Accordingly, it was the Appellant's position that the Respondent had failed to consider the technical report prepared by Envireau Water [**Appendix 5, Appeal 1**]. That report evidenced that there could be no discernible impact to the River Teme, River Clun SAC or wider catchment area. No evidence was put forward by the Respondent to rebut this position.
- 71 Having considered the documents disclosed by the Respondent on 5 July, together with the Respondent's SoC, it remains the Appellant's position (and the conclusion reached in the HRA and the Shadow HRA) that no significant impacts were identified as a result of the abstraction.
- 72 The Respondent's position is that significant consideration was given to the potential (emphasis added) impacts on the River Teme and associated designations. Whilst this consideration differs to that contemplated at paragraph 48(i) of the Appellant's Grounds of Appeal, even the potential impacts of abstraction on a European Site designated under the Habitats Regulations require the serious damage test to be met (the Inspector is referred to paragraph 27 of the Appellant's Statement of Case, which sets out the serious damage criteria). As already addressed in detail within this Appellant's Response to the Respondent's Statement of Case, it has been demonstrated that this test was not met in respect of the Appellant's abstraction.
- 73 Paragraph 7.19: the concerns around longer term uncertainty regarding the Teme catchment area and future potential impacts have been addressed in detail above.
- 74 Paragraph 7.20: With respect to the assertions around longer term uncertainty, the Inspector is referred to the Appellant's response to paragraph 7.19 above. Insofar as any low flow / drying events may be exacerbated by human activity, the Shadow HRA has concluded that the potential for adverse significant effects on the integrity of the designated site can be ruled out beyond reasonable scientific doubt, at least to 2037.
- 75 Paragraph 7.22: to the extent that there is uncertainty regarding the impact of climate change on river flows and groundwater levels, these factors are external to the Appellant's abstractions as identified at paragraphs 31 to 33.3 above and should not have been considered connected to the impact of the Appellant's abstractions.

76 Paragraph 7.23: the Respondent appears to have misunderstood its obligations under the WCFG Act. Whilst the Appellant itself does not have direct obligations under the WCFG Act, the duty on the Respondent to apply the sustainable development principle when considering the Licence applications encompasses a consideration of the Appellant's contribution from a holistic perspective to the economic, social, environmental and cultural well-being of Wales. Clearly, if there is an economic benefit derived from issuing the Licences which does not conflict with other well-being goals, the Respondent should consider this as aligning with its objective to promote successful and responsible business. On this basis, the Appellant's contribution to the well-being goals is wholly relevant to the determination of the Licence applications, and in the absence of evidence that the abstractions will adversely affect the designated sites, the Respondent should have had due regard to the economic benefits of ensuring continuity of the Appellant's business.

77 This obligation is akin to the requirement under section 108 of the Deregulation Act 2015 for the Respondent to have regard to the desirability of promoting economic growth (the Inspector is referred to paragraphs 39 to 41 of the Appellant's Statement of Case in this regard).

78 Paragraph 7.24: The Appellant submits that the raising of examples of potential breaches of the Appellant's Environmental Permits as relevant to its commitment to sustainable abstraction is misconstrued. It is also entirely irrelevant to these proceedings. However, to address allegations on record, the Appellant would invite the Inspector to consider the following examples of the Appellant's commitment to sustainability:

- the Appellant has installed 2 MW of solar panels at its site, which will power its facilities and supply 21% of its annual electricity consumption;
- the Appellant is certified as a Zero Waste to Landfill site;
- all plastic bottles used in the Appellant's packaging are 100% recyclable and constitute 30% of recycled material, with the same statistic applying to the shrink wrap used in production;
- the Appellant's environmental management system and site are ISO14001 accredited, and the Appellant actively maintains a supporting

environmental policy to manage and improve environmental sustainability on site and as part of the wider production standards; and

- the Appellant has been instrumental in formulating the forthcoming Deposit Return Scheme, and its Managing Director, who currently sits as Vice President of the British Soft Drinks Association, is likely to take on further significant roles within the association in the next year. This in turn will increase the Appellant's influence and input in respect of the scheme, which has a primary purpose of encouraging recycling on a national scale, promoting sustainable practices.

79 The above are examples of the actions taken by the Appellant in advancing its sustainable agenda. The Appellant therefore invites the Inspector to treat the Respondent's submissions at paragraph 7.24 of its SoC as having no bearing on these proceedings, and to consider the actual illustrations provided as demonstrating the positive impact of the Appellant's commitment to sustainable development.

Conclusion

80 For the reasons set out above, and in consideration of the conclusions of the Shadow HRA, the Inspector is asked to determine that continuation of the Appellant's abstraction at its current level, beyond 2031 to 2037, cannot result in an adverse effect on integrity of the River Clun SAC and to accordingly vary the Licences to bring the expiry date in line with the CED, namely 31 March 2037.

BURGES SALMON LLP

5 September 2023