

# **Habitats Regulations Assessments for projects potentially affecting the River Avon Special Area of Conservation**

Procedure for Wiltshire's  
Development Management Teams

## **A. Background**

### **A.1 Preliminaries**

- A.1.1 This document aims to ensure that development management decisions affecting the River Avon Special Area of Conservation (SAC) meet the requirements of the Conservation of Habitats and Species Regulations 2010<sup>1</sup>. It is not intended to substitute for existing government guidance<sup>2</sup> but it will help planning case officers to understand the particular issues relating to this SAC.
- A.1.2 A Habitats Regulations Assessment (HRA) has been undertaken for the Wiltshire Core Strategy Pre-Submission document<sup>3, 4</sup>. The assessment concluded that there should be no adverse effect on the integrity of the River Avon SAC provided measures set out in Core Policy 69 'Protection of the River Avon SAC' are put in place. This procedure aims to ensure that Core Policy 69 is implemented for all relevant planning applications.
- A.1.3 Core Policy 68 'Water Resources', Core Policy 41 'Sustainable Construction and Low-Carbon Energy' and Core Policy 67 'Flood risk' ensure that the combined effects of all development proposed by the Core Strategy will not be significant in most circumstances. This procedure identifies those circumstances where non compliance may have implications for the SAC.

### **A.2 River Avon SAC**

- A.2.1 The River Avon SAC encompasses the five rivers flowing into the River Avon at Salisbury; River Nadder, River Wylde, River Till, River Avon and River Bourne. The extent of the designation is shown in red on Figure 1 below and is accessible on the Geographical Information Systems (GIS) used by case officers. The full extent of the catchment which is drained by these rivers is shown in Appendix 1.
- A.2.2 The SAC has been designated because it contains populations of European importance of the following features:<sup>5</sup>
- River habitat characterised by water crowfoot and starwort
  - Atlantic salmon
  - Bullhead
  - Brook lamprey
  - Sea lamprey
  - Desmoulin's whorl snail

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<sup>1</sup> The Conservation of Species and Habitats Regulations 2010

<sup>2</sup> Biodiversity and geological conservation – statutory obligations and their impact in the planning system. ODPM Circular 2006/05

<sup>3</sup> Working towards a Core Strategy for Wiltshire. Wiltshire Core Strategy Pre-Submission Document. February 2012

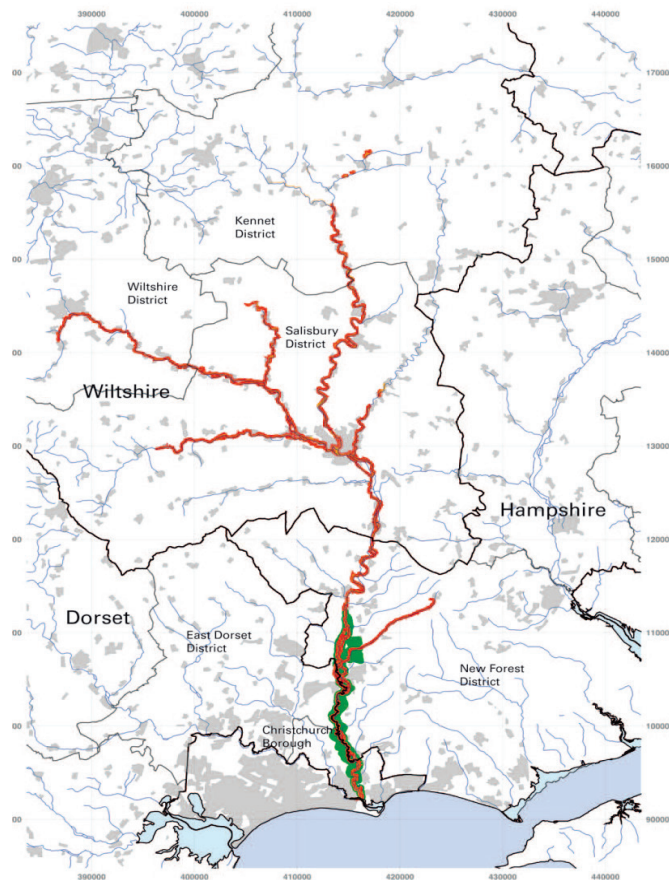
<sup>4</sup> Wiltshire Core Strategy Submission Draft – Assessment under the Habitats Regulations, Wiltshire Council February 2012

<sup>5</sup> Accessed from Joint Nature Conservation Committee website on 11 June 2009 (<http://www.jncc.gov.uk/protectedsites/sacselection/sac.asp?EUCODE=UK0013016>)

A.2.3 When a European site, such as a SAC, is affected by a land use authorisation, it is necessary to consider whether the activity being authorised would impact on any of the designated features. The first five features of the River Avon SAC occur within the river itself and are therefore vulnerable to changes in water hydrology and water quality and also to any activity which affects the river channel. The sixth is a tiny snail which lives on vegetation growing on the banks of the river and potentially other areas in flood zone 3.

A.2.4 This assessment work is governed by the Habitats Regulations 2010 and is undertaken by the “competent authority”, which for planning applications is “the planning authority”.

Figure 1. Extent of the River Avon SAC



### A. 3 Legislation

A.3.1 Regulation 61 of the Habitats Regulations 2010 states the responsibilities for competent authorities thus:

- (1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which—
  - (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and
  - (b) is not directly connected with or necessary to the management of that site,

must make an appropriate assessment of the implications for that site in view of that site's conservation objectives.

(2) A person applying for any such consent, permission or other authorisation must provide such information as the competent authority may reasonably require for the purposes of the assessment or to enable them to determine whether an appropriate assessment is required.

(3) The competent 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 specify.

(4) They must also, if they consider it appropriate, take the opinion of the general public, and if they do so, they must take such steps for that purpose as they consider appropriate.

(5) In the light of the conclusions of the assessment, and subject to regulation 62 (considerations of overriding public interest), the competent authority may agree to the plan or project 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).

(6) In considering whether a plan or project will adversely affect the integrity of the site, the authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which they propose that the consent, permission or other authorisation should be given.

#### **A. 4 What is the Habitat Regulations Assessment?**

- A.4.1 HRA is the process of assessing the effects of a proposed plan or project on the designated features of one or more European sites before giving some form of consent or approval.
- A.4.2 In development management, an initial judgement should be made as to whether a planning application or pre-application is likely to have significant effects on a European site. If the proposal is judged not to lead to likely significant effects alone, then it should be considered whether it could have significant effects in combination with other plans and projects which on their own are not enough to cause an impact. Other plans and projects might include development plan documents, plans produced by utilities companies, other applications and permissions. Ideally the outcome of the judgement of likely significant effects is recorded.
- A.4.3 If significant effects are likely then an "appropriate" assessment must be undertaken to determine whether the proposal will affect the integrity of the European site. The assessment is termed "appropriate" because it should be appropriate to its purpose under the Habitats Regulations, namely to assess the implications of the proposal in respect of the site's conservation objectives<sup>(2)</sup>. The appropriate assessment is documented in a report which must state whether or not the proposal will adversely affect the integrity of the European site either alone or in combination with other plans and projects.
- A.4.5 A list of published guidance for HRA is contained in the references section at the end of this procedure.

## **B. HRA for the River Avon SAC**

### **B.1 Overview**

- B.1.2 Step 1. Undertake the significant effects test in Appendix 2 for the development.
- Step 2. If relevant, undertake a detailed appropriate assessment to determine whether the proposals would adversely affect the integrity of the European site.
- Step 3. Applications which meet the test of no loss of site integrity may be permitted.
- Step 4. If there is a risk of loss of site integrity, alternative solutions must be considered.
- Step 5. If the council is minded to permit an application where there are no suitable alternatives and there is a risk of loss of site integrity, it must first notify the relevant Secretary of State (DCLG) who will consider whether there are imperative reasons of overriding public interest and whether the proposed compensatory measures are adequate to ensure the ecological coherence of the Natura 2000 network.
- B.1.3 Officers should remember to check whether applications could affect other European Sites by checking against GIS constraint layers and any guidance produced by the Wiltshire Council ecologists available for other European sites.
- B.1.4 Applications which are connected with or necessary for the management of the River Avon SAC do not need to go through the HRA procedures.

### **B.2. Step 1: Judgement of likely significant effects**

- B.2.1 This is a screening exercise where a judgement is made as to whether the application is likely to have a significant effect on the River Avon SAC features, either alone or in combination with other plans or projects. This stage should be undertaken by case officers who may wish to involve the Wiltshire Council ecologists if they are unsure.
- B.2.2 Where there is doubt, the precautionary principle applies. The judgement is potentially relevant to all types of application including variations of conditions, prior approval, listed building consent, permitted development and reserved matters applications.
- B.2.3 The assessment in Appendix 2 should be completed for all applications in the River Avon catchment meeting at least one of the criteria below and any application where there is doubt.
- a). Applications which could lead to pollution of groundwater or surface water. Likely applications include those where one or more of the following apply:

- lie within flood zone 3
- have direct linkage routes to the SAC such as roads, surface water drains or ditches and tributaries to the SAC rivers
- affect contaminated land
- affect steeply sloping land

(NB. Appendix 2 does not need to be completed for applications where potential pollution issues relate solely to the construction period and a construction method statement is submitted with the application. Under Core Policy 69 all applications within 20m of the River Avon SAC must submit a construction method statement)

b). Major applications that could lead to large scale increased recreational use along the River Avon SAC

c). Applications not linked to main sewer and lying within 50m of the SAC (for ground water discharge) or 500m of the SAC (for surface water discharge).

d). Large scale major developments (100 dwellings or more) that cannot apply SUDS techniques.

e). Applications for 100 or more dwellings discharging to Warminster STW

f). Applications for poultry rearing units

NB Case officers should exercise caution in respect of referrals for permitted development and certificates of lawful development. It may be necessary to qualify responses with a standard note "The Habitat Regulations may apply to this application if it lies within 20m of the River Avon SAC or within Flood zone 3 of the River Avon"

- B.2.4 The assessment should ideally be completed during or after the site visit so that potential issues can be better considered. It should be conducted by taking into account all information made available by the applicant. Consideration should be taken of any counteracting measures i.e. measures which would avoid, reduce or compensate for impacts. Mitigation measures, i.e. measures which would avoid or reduce impacts, can be taken into consideration for steps 1 and 2 of a HRA, and it must be possible to secure these by conditions or obligations. Compensation measures cannot be taken into consideration.
- B.2.5 The test can be repeated at any time to consider additional information supplied before determination.
- B.2.6 If Appendix 2 is completed for an application, a copy should be retained on file together with a completed copy of Appendix 3. If Natural England (NE) identifies a need for HRA in its consultation response, it is essential that a record of this and any subsequent stages is forwarded to NE allowing at least 21 days for a response.

B.2.7 If any question triggers a “**yes**” then an appropriate assessment must be initiated by the case officer. Where there is doubt, the precautionary principle applies and an appropriate assessment must be undertaken.

### **B.3 Step 2: Appropriate assessment**

B.3.1 The aim of an appropriate assessment is to assess whether an application could adversely affect the integrity of the River Avon SAC, either alone or in combination with other plans or projects. The onus is on the proponent to demonstrate no adverse effects will occur and case law demonstrates that the determining authority must take a precautionary approach. The legislation requires that:

- The assessment must examine the implications for the SAC in view of its conservation objectives.
- Permission can only be granted if it is ascertained that the development will not adversely affect the integrity of the SAC
- Natural England must be consulted on all appropriate assessments and given time to respond before determination. (Wiltshire Council policy is that at least 21 days should be allowed for a response).

B.3.2 In most circumstances a Wiltshire Council ecologist will undertake or act as technical lead on an appropriate assessment. Where a developer has submitted an appropriate assessment to support an application this should be reviewed by a Wiltshire Council ecologist so that the council can come to its own conclusion as a competent authority. Adequate time needs to be allocated for appropriate assessment: consultants may need to be appointed on behalf of the council, the applicant may need to provide further information and site visits/meetings may be required with Natural England.

B3.3 Appropriate assessments will be undertaken following the most up to date and relevant guidance published at the time. Currently this is guidance published by the European Commission (EC)<sup>6</sup> and by the Countryside Council for Wales (CCW)<sup>7</sup>.

### **B4 Steps 3, 4 and 5**

B.4.1 The conclusion of an appropriate assessment will state whether or not there will be adverse effects on the integrity of the River Avon SAC either alone or in-combination with other plans or projects. This judgement must be made by a professional ecologist with experience of conducting appropriate assessments.

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<sup>6</sup> Managing Natura 2000 Sites. The provisions of Article 6 of the Habitats Directive 92/43/EEC. European Communities 2000

<sup>7</sup> Assessing projects under the Habitats Directive, guidance for competent authorities. David Tyldesley and Associates for the Countryside Council for Wales. Revised September 2011

- B.4.2 If there will be no loss of site integrity, permission can be granted subject to any conditions or obligations that are required to secure necessary mitigation measures. The appropriate assessment must be signed off on behalf of Wiltshire Council by a senior Wiltshire Council ecologist.
- B.4.3 Where there is a risk of loss of site integrity, permission may not be granted without going through steps 4 and 5. These are documented in detail in EC and CCW guidance referenced above.



## **C. Consideration of in-combination effects**

“An ‘in-combination’ assessment is required where the project may have an effect on a European site, but on its own the effects would not be significant. The potential effects of the project should be considered in-combination with other plans or projects that similarly may have an effect, but where on their own those effects would not be significant. The combined effects may therefore become significant.”<sup>8</sup>

### **C.1 Wiltshire Core Strategy**

C1.1 A number of potential in-combination effects have been dealt with in the HRA for the Wiltshire Core Strategy and the HRA for the South Wiltshire Core Strategy.

C.1.2 Core Policy 69, “Protection of the River Avon SAC” states:

“In order to avoid and reduce potential environmental effects on the River Avon SAC, development will need to incorporate measures during construction and operation to avoid and prevent pollution and mitigate potential disturbance effects; appropriate schemes of mitigation may include consideration of suitable buffer zones along watercourses, habitat enhancements and river access management measures. All development within 20m of the river banks should submit a Construction Management Plan to the Local Planning Authority to ensure measures proposed during construction are satisfactory.....”

This procedure seeks to deliver this policy at development management level.

C.1.3 The Environment Agency (EA) has advised that all development proposed by the Wiltshire Core Strategy can be accommodated by existing sewage discharge consents. EA has reviewed its consents under the Habitats Regulations 2010 and concluded that only Warminster Sewage Treatment Works (STW) does not meet its target. The EA and NE are currently producing a Nutrient Management Plan to offset phosphate loading from a variety of sources. When this is published and its implications for the EA’s Review of Consents have been considered, Wiltshire Council will consider whether it is appropriate to collect developer contributions to offset increased phosphate levels from new development. This procedure will then be revised accordingly. Until then, NE has asked that it is consulted on significant residential development discharging onto Warminster STW so that they can track the progress of the strategic allocation for Warminster. This procedure has taken the figure of 100 homes as “significant development”.

C.1.4 Under the core strategy, all new homes will be required to meet the water efficiency standards identified in core policy 41, “Sustainable construction and low-carbon energy”. This states:

“New homes (excluding extensions and conversions) will be required to achieve at least Level 3 (in full) of the Code for Sustainable Homes, progressing to Code Level 4 (in full) from 2013 and Level 5 (in full) from 2016.”

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<sup>8</sup> Assessing projects under the Habitats Directive, guidance for competent authorities. David Tyldesley and Associates for the Countryside Council for Wales. September 2008

In addition, all non residential development is required to incorporate water efficiency measures under Core Policy 68, "Water resources" which states:

"Non residential development will be required to incorporate water efficiency measures. Developers will be expected to submit details of how water efficiency has been taken into account during the design of proposals."

The implications of water efficiency for the River Avon SAC does not therefore need to be considered for individual planning applications where these come under the quantum of development proposed by the core strategy.

C.1.5 Core policy 67 "Flood Risk" states:

"Development proposed in Flood Zones 2 and 3 as identified within the Strategic Flood Risk Assessment will need to refer to the Strategic Housing Land Availability Assessment when providing evidence to the local planning authority in order to apply the Sequential Test in line with the requirements of national policy and established best practice.

All new development will include measures to reduce the rate of rainwater run-off and improve rainwater infiltration to soil and ground (sustainable urban drainage) unless site or environmental conditions make these measures unsuitable."

As long as sustainable urban drainage techniques are used for the majority of new developments, the effects of the core strategy on ground water recharge is unlikely to be significant for the SAC. This procedure identifies that only where the largest developments do not meet the policy will there be a need to conduct an appropriate assessment.

C.1.6 The South West River Basin Management Plan identifies the objectives and actions necessary to ensure the requirements of the Water Framework Directive are met for the Hampshire Avon catchment. Core Policy 68 requires that "Development proposals within a Source Protection Zone, Safeguard Zone or Water Protection Zone must assess any risk to groundwater resources and demonstrate that these would be protected throughout the construction and operational phases of development." Appendix 2 ensures that this requirement is also considered in relation to the Habitats Regulations 2010.

## **C.2 Sources of information for in-combination assessments**

C.2.1 In order to assess in-combination effects of major developments reference should be made to the relevant Local Development Plan Documents both within Wiltshire and beyond.

C.2.2 Officers should be alert to local circumstances that may give rise to in-combination effects. Evidence may come from visual inspection during site visits, comments from local residents or information gathered from other local authorities. NE or the EA may also make the council aware of their concerns in particular parts of the catchment. Examples may include:

- several applications occurring close together in space and time, including those from another development control hubs or even outside the county;
- evidence suggesting that Construction Method Statements are not being adhered to and impacts are occurring as a result;
- departures from the core strategy that could affect the conclusions of the core strategy HRA; and,
- local deteriorations in water quality or habitat which would be exacerbated by additional development.

C.2.3 Information from other HRAs should be referred to, for example those prepared for:

- Local Development Documents for Wiltshire and other authorities in the River Avon catchment;
- strategic plans for utility companies
- Other developments in the catchment

C.2.4 ODPM circular 2006/05 advises that in-combination assessments should consider:

- Outstanding consents not fully implemented
- Operations subject to continuing regulation

It seems logical that it should also include validated applications which have not yet been determined.

C.2.5 Further advice on in-combination effects including cumulative effects is contained in a guidance note produced by English Nature <sup>(5)</sup>

## **D. Record keeping**

D.1 A record may be made of Step 1.

D.2 Records must be kept on file of Steps 2 – 5 including the responses of the EA and NE.

## **E. References**

The Conservation of Species and Habitats Regulations 2010 (known as the Habitats Regulations 2010)

Biodiversity and geological conservation – statutory obligations and their impact in the planning system. ODPM Circular 2006/05

Protecting the Hampshire Avon – essential advice notes for forward planners and development control planners, internal document circulated to members of the River Avon SAC Planning Forum in October 2005

Managing Natura 2000 Sites. The provisions of Article 6 of the Habitats Directive 92/43/EEC. European Communities 2000

Working towards a Core Strategy for Wiltshire. Wiltshire Core Strategy Pre-Submission Document. February 2012

Assessing projects under the Habitats Directive, guidance for competent authorities. David Tyldesley and Associates for the Countryside Council for Wales. Revised September 2011

Habitats Regulations Guidance Note 1. The appropriate assessment (Regulation 48), The Conservation (Natural Habitats & c) Regulations, 1994. (English Nature, May 1997)

Habitats Regulations Guidance Note 2. Review of existing planning permissions and other consents. The Conservation (Natural Habitats & c) Regulations, 1994. (English Nature, May 1997)

Habitats Regulations Guidance Note 3. The Determination of Likely Significant Effect under the Conservation (Natural Habitats &c) Regulations 1994 (English Nature, November 1999)

Habitats Regulations Guidance Note 4. Alone or in combination. (English Nature, May 2001)

### **Guidance related to development plans**

Planning Policy Statement 9: biodiversity and geological conservation (ODPM, August 2005)

Revised draft guidance, The Habitats Regulations Assessment of Local Development Documents. David Tyldesley and Associates For Natural England January 2008.

Planning for the protection of European Sites: Appropriate assessment. Guidance for Regional Spatial Strategies and Local development Documents (DCLG, August 2006)

The appropriate assessment of spatial plans in England. A guide to why, where and how to do it. RSPB, August 2007

**Appendix 1:**

**Extent of River Avon SAC Catchment**



## Appendix 2 of River Avon SAC Procedure: Test of Likely Significance

Application No:

Date of assessment:

| Application meets one or more of the following criteria                                   | yes or no | Examples of potential significant effects to consider   | Development could give rise to likely significant effects alone? (yes or no) | If effects are unlikely alone, could it cause effects in combination with other plans and projects? |
|---|-----------|---|--|---|
| 1. Application lies within flood zone 3 or within 20m of a River which is part of the SAC |           | <p>Where application boundary impinges on SAC boundary, direct physical damage could occur to:</p> <ul style="list-style-type: none"> <li>• Bank side vegetation supporting Desmoulins whorl snail</li> <li>• River bed supporting fish spawning habitat and nursery grounds.</li> </ul> <p>Lighting, noise and vibration could also lead to impacts.</p>   |  |   |
|   |           | Desmoulins whorl snail requires wetland conditions found in flood zone 3. The SAC could be affected even if the application affects wetland habitat outside the SAC boundary. Examples of impact could be trampling, direct loss, land drainage, grazing etc.   |  |   |
|   |           | Reduction in floodplain area could affect the river's flow regime. This will only be significant for the largest applications and should have been assessed in DPDs. Check application is consistent with HRA for relevant DPD  |  |   |
|   |           | Alterations to groundwater flows could occur where developments require deep excavations, extensive piling, or water abstraction. Unlikely to be relevant to household or minor applications. EA response may indicate potential for significant effects since it is responsible for permits for water abstraction and any works within 8m of a main river. |  |   |
|   |           | Is there a risk of discharges which do not fall under the EA regulation system e.g. use of detergents, oil storage etc in agricultural apps?  |  |   |
|   |           | CONSTRUCTION phase impacts e.g. surface run-off, solid debris falling into river, damage to banks, water abstraction, soil disturbance, spread of invasive non-native plants. All application within 20m of the SAC to submit a Construction Management Plan.   |  | In combination impacts dealt with in HRA for Wiltshire CS   |

## Appendix 2 of River Avon SAC Procedure: Test of Likely Significance

|   |  |   |  |  |
|---|--|---|--|--|
| <p><b>2. Major applications which could lead to large scale increased recreational use along the River Avon SAC</b></p>                                       |  | <p>This risk was identified in the HRA for the Wiltshire Core Strategy. Applications which could lead to damage of river banks and river bed in upper reaches where fish spawning beds and nurseries occur are those most likely to present a risk, e.g. campsites, activity centres etc.</p>   |  | <p>In combination impacts dealt with in HRA for Wiltshire CS</p> |
| <p><b>3. Applications not linked to main sewer and lying within 50m of SAC (for ground water discharge) or 500m of SAC (for surface water discharge).</b></p> |  | <p>Effluent from septic tanks or package treatment plants may cause pollution to the SAC if it is within 50m of the SAC if it is discharging to groundwater and within 500m of the SAC if it is discharging directly to a watercourse. Consider the EAs response and whether it will be feasible for the development to meet EA requirements.</p> |  | <p>In combination impacts dealt with in HRA for Wiltshire CS</p> |
| <p><b>4. Large scale major developments (100 houses or more) that cannot apply SUDS techniques</b></p>  |  | <p>Where SUDS are not practical, ensure water lost to the system is minimised. Ensure EA requirements are met.</p>  |  | <p>In combination impacts dealt with in HRA for Wiltshire CS</p> |
| <p><b>5. Applications affecting contaminated land</b></p>   |  | <p>Redevelopment of brown field sites may mobilise existing contaminants leading to direct pollution of the SAC or indirect pollution through groundwater flow. Ensure EA requirements can be met.</p>  |  |  |
| <p><b>6. Applications for 100 or more dwellings discharging to Warminster STW</b></p>   |  | <p>Until a Nutrient Management Plan (NMP) has been produced and Wiltshire Council has considered whether it is appropriate to support the plan with developer contributions, consult Natural England over development of 100 dwellings or more which would discharge into Warminster STW.</p>   |  |  |
| <p><b>7. Applications for poultry rearing units</b></p>   |  | <p>For units above a certain size threshold, EA will issue permits for ammonia emissions and treatment of waste. Below this threshold, assume likely significant effects and consider further.</p>  |  |  |

## Appendix 3 of River Avon SAC Procedure: Record of Test of Likely Significance

Application reference .....Date.....

Title of project .....

This is a record of the judgment made by Wiltshire Council as required by Regulation 61 of the Conservation of Species and Habitats Regulations 2010 following an assessment of the above project.

The assessment and mitigation proposals submitted with the project have been considered, and it is ascertained that:

- a) **The project as proposed alone would / would not\* have a significant effect on the site.**
- b) **The project as proposed, in combination with other plans/ projects, would / would not\* have a significant effect on the site.**
- c) **Taking the above into account, a further appropriate assessment will / will not\* be undertaken**
- d) **Conditions and / or obligations will / will not\* be used to secure mitigation to protect the special interests**

\*Delete as appropriate

Completed by:

Wiltshire Council Officer  
(name).....(Signature).....

Authorised by:

Wiltshire Council Manager  
(name).....(Signature).....

For and behalf of Wiltshire Council