



South Wiltshire Core Strategy

Matter 12

Climate change and the environment

Ref: RN/NS/SWCS/M12

January 2010

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Question 12.1. Carbon Emissions/Renewable Energy

The CS does not have policies dealing specifically with energy efficiency in buildings; with on site renewable, low carbon and decentralised energy; or with renewable energy/heat. Instead it relies on national and regional targets. Why is this?

- 1.0 Section 7.3 of the Draft Regional Spatial Strategy (“RSS”) (EIP library reference: RPP/02) contains policies and supporting text to address these issues.
- 1.1 Planning Policy Statement (“PPS”) 12: 'Creating strong safe and prosperous communities through Local Spatial Planning' (EIP library reference: NPP/12), states that ‘...there may be local reasons for having greater detail than national or regional policy provides for...Authorities may include such approaches in their plans if they have sound evidence that it is justified by local circumstances’ (paragraph 4.32). Furthermore, the Planning and Climate Change supplement to PPS 1 (EIP library reference: NPP/01 B) specifies that targets should be based on a clear evidence based understanding of local feasibility and potential for renewable and low carbon technologies (paragraph 26).
- 1.2 There is no evidence available at this time to suggest that targets for energy efficient, renewable electricity, renewable heat and/or decentralised and renewable or low-carbon energy supply in South Wiltshire should be any different from that suggested in the RSS.
- 1.3 There is therefore no justification for setting a local target for these matters in the South Wiltshire Core Strategy and, in recognition of paragraph 4.30 of PPS12, no benefit in simply repeating national or regional policy in the South Wiltshire Core Strategy.
- 1.4 A study on these issues has been commissioned for Wiltshire Council, designed to principally meet the requirements of the supplement to PPS 1. The outcomes of this study will be used to inform policy development for the Wiltshire Core Strategy.

Question 12.2. Water Efficiency. *Core Policy 19. Core Policy 19 lays down a minimum requirement for water efficiency in new residential developments. This requirement is more onerous than the national requirement. Has the feasibility and viability of this local requirement been tested?*

- 2.0 The Strategic Sites Viability Overview Assessment (STU/48) takes account of all policies within the South Wiltshire Core Strategy (‘CS’) and incorporates the likely additional costs associated with implementing this policy (para 2.7.1). In addition, the Environment Agency have undertaken work nationally on costing the implementation of the Code For Sustainable Homes (CSFH) with respect to water efficiency. This report is entitled ‘Assessing the cost of compliance with the Code for Sustainable Homes’. To reach CFSH level 3 (105 litre per person per day) equivalent it would cost approximately an extra £189 to £284 per dwelling depending on size of property. Average households in the south west would expect to save between £36 and £62 per year on water bills in a new code level 3 compliant home compared to a new average metered home. This additional build cost could therefore be paid back within approximately 6 years. A summary of this work can be found as **Appendix 1** to this statement. In addition, the Homes and Communities

Agency already require all publicly funded dwellings to be built to CFSH level 3 and therefore it is certainly feasible and commercially viable on this basis.

- 2.1 The rationale for including this policy is provided within Topic Paper 18 (Water Environment, Section 5). The policy is needed in order to meet Habitats Regulations Assessment (HRA) requirements. Paragraph 4.8 of the HRA considers the policy is necessary to provide a means of ensuring that the CS contributes to reducing water demand rather than only relying on Wessex Water's plans to manage the effects of that demand. In doing so, the policy thereby provides some additional certainty that the CS will have no likely significant effect on the River Avon SAC as a result of water demand. Although south Wiltshire does not currently experience problems with water supply stress, it is the international importance of the River Avon and the potential for long term pressure on the system through climate change (e.g. reduced water levels and river flow during summer months) that merits this precautionary approach to water efficiency.

Question 12.3 Phosphate Levels Core Policy 20 *The second paragraph of Core Policy 20 refers to the production of a Phosphate Management Plan to be funded by the developers of various sites. Which sites would be required to fund this plan, on what basis would these sites selected, what are the sort of measures that are likely to be required to ensure that development does not result in the unmitigated addition of phosphates to watercourses?*

- 3.0 The Council has worked closely with Natural England and the Environment Agency in order to develop Core Policy 20, for this reason much of this matter is answered by Natural England's proof submitted to the examination. At an early stage in the preparation of the HRA it became apparent that the river systems in south Wiltshire were experiencing very high levels of phosphates which, in turn, were impacting upon the condition of the River Avon Special Area for Conservation.
- 3.1 It was apparent, through the draft revised Regional Spatial Strategy for the South West incorporating the Secretary of State's Proposed Changes (SWRSS) para 4.1.76 that a solution was needed in order to progress the Core Strategy (CS) and overcome issues arising through the HRA. As a result a 'Water Summit' was organised involving parties from the Council, Environment Agency, Natural England and Government Office. This involved two meetings, on the 5th February 2009 and 26th March 2009 in order for outstanding uncertainties with respect to water efficiency and quality to be discussed and resolved. At the time, these uncertainties prevented the HRA being able to conclude that the proposed scale of new development in the area would not lead to likely significant effects being experienced within the River Avon SAC system (para 4.9 to 4.13 of the HRA (SWCS/02)).
- 3.2 Phosphate management is a complex issue and Natural England considered that new development would still have an adverse effect on the River Avon SAC when combined with other unknown inputs. Natural England commissioned work from David Tyldesley Associates, (**Appendix 2** to this statement), to develop options designed to resolve uncertainties. This work suggested the possibility of a 'Site Action Plan'. As such, Core Policy 20 was introduced in order to meet the 'in-combination' requirements of the HRA. Further information, including minutes of meetings are provided within the HRA report section 4 and appendices 1 and 10.

- 3.3 Overall all development sites will be required to fund the plan. The measures that are likely to be required are detailed within Natural England's statement.

Question 12.4. Core Policy 23. Green Infrastructure. *What is the purpose of the Green Infrastructure Plan which the Council proposes to produce? What is the basis for requiring all developers to contribute towards the implementation of this plan?*

- 4.0 The SWRSS policy GI1 and supporting paragraphs 6.2.16 sets the parameters for Green Infrastructure (GI) across the region and requires councils to develop GI plans and incorporate GI policies into plans as well as integrating proposals to improve GI in the delivery of new development proposals. Policy GI1 also requires Local Authorities to protect the integrity of sites of international importance and provide new areas of appropriate greenspace where development would otherwise cause unacceptable recreational pressures on sites of international ecological importance. The proposed GI plan therefore meets the requirements of regional policy.
- 4.1 The purpose of the Wiltshire Green Infrastructure Strategy (WGIS) is to develop a long term vision and strategic framework for the delivery of green infrastructure across Wiltshire. The strategy will aim to protect, enhance and extend a network of green spaces by enhancing existing assets, creating new green infrastructure and finding suitably resourced mechanisms for the long term management of both.
- 4.2 The WGIS will provide the supporting evidence of the existing type and distribution of GI and also that required to enable urban growth planned through the Wiltshire Core Strategies.
- 4.3 The Strategy will provide the framework for Wiltshire Council and its partners to:
- Design high quality GI that delivers multiple benefits and responds to its location's local distinctiveness and sense of place;
 - Enhance existing GI assets
 - Strengthen the connectivity of Wiltshire's GI network;
 - Work at a landscape scale;
 - Take forward sustainable development principles;
- 4.4 It is proposed that the GI Strategy addresses / delivers the following:
- GI evidence base;
 - GIS based GI mapping tool (for planners and as a wider web-based tool);
 - Green infrastructure standards;
 - GI Policy framework;
 - Identification of gaps in GI provision in existing settlements;
 - Recommendations for high quality GI for proposed housing allocations within the draft Core Strategies and existing communities, where gaps in provision exist;
 - GI mitigation for housing allocations that would potentially adversely affect European sites within Wiltshire and adjacent to Wiltshire's boundary (identified by Habitats Regulation Assessments (HRA) of the Wiltshire Core Strategies), this will include mitigation for areas such as the New Forest and Salisbury Plain N2K sites

- Opportunities mapping for the enhancement of a Wiltshire-wide GI network;
 - GI Implementation Plan, including funding mechanisms and revenue to deliver GI
- 4.5 It is also proposed that Wiltshire Council through the GI plan will review the existing open space provision standards in line with PPG17 and derive one set of standards for Wiltshire as a whole. These will form part of the draft Green Infrastructure Strategy consultation.
- 4.6 The provision and/or delivery of on-site GI needs to be negotiated with the developers through section 106 agreements until such time as the WGIS is adopted. All developers will be required to contribute to the objectives of the WGIS on the basis of Circular 05/05. The South Wiltshire Core Strategy (CS) integrates site level GI not only through Core Policy 23 but also through specific requirement detailed in the site development templates at Appendix A to the CS to ensure delivery of GI prior to the adoption of the WGIS. Some sites may be required to deliver off-site GI, this be dealt with on a site by site basis. Linkages to wider GI will also be explored with site agents. Other than developer contributions a number of other potential funding mechanisms also are available to help deliver the priorities of the GI plan/strategy, some of which include the Wiltshire Council Biodiversity Improvement Grant, Sewing Seeds Leader, Sustain the Plain Leader fund, Cranborne Chase and West Wiltshire Downs AONB SDF, Environmental Stewardship schemes and England Woodland Grant schemes.
- 4.7 In addition saved policy R2 of the Salisbury District Local Plan (SDLP page 104 (LPP/01)) already requires outdoor recreation provision of 2.43 ha per 1000 population as a minimum.
- 4.8 The proposed Green Infrastructure to the northern slopes of Salisbury and the green lung running south from and east of Old Sarum and west of Hampton Park, will be delivered through site masterplanning (as shown in Appendix A, development template for Hampton Park). It will be delivered through the single site of Hampton Park. The planning application has been submitted S/2009/1943 and this important GI component has been committed through this process.
- 4.9 All open space and urban parks are currently protected from other uses through policy R5 and R6 of the saved SDLP, any GI delivered through the CS would also be subject to these policy tests thereby affording protection.

Appendix 1



Assessing the cost of compliance with the Code for Sustainable Homes Summary

Product code: SCHO0107BLTS-E-P

A report commissioned by the Environment Agency to assess the likely costs of complying with the levels of water efficiency set out in the Code for Sustainable Homes. Costs of compliance with the Code levels are compared to the costs of standard water using fittings and appliances in the home, and to a proposed regulatory level of water efficiency. The report also predicts how these costs will change, as products become more widely available.

The report, produced by WRc Swindon, assessed a range of fittings necessary to comply with a proposed regulatory water use target of 130 litres per head per day, and three additional levels of 120, 100 and 80 litres per head per day. These were compared to a baseline of 150 litres per head day.

The water efficient products reviewed were those that held Water Regulations Advisory Scheme (WRAS) approval and where possible, featured on the Water Technology List.

Product information on toilets, taps, baths, showers, washing machines and dishwashers was sourced from manufacturers, suppliers and the House Builders Federation.

Different types of products included single and dual flush WCs; electric and mixer showers; a range of bath, basin and mixer taps with additional fittings to increase efficiency; and rainwater harvesting systems.

To estimate the costs of compliance with different levels of the Code, scenarios for each level were then developed based on an example home with kitchen, bathroom and cloakroom with varying types of water fittings.

Total per household consumption was calculated and converted to per capita consumption (pcc) by dividing by average occupancy (of 2.4).

The report found that the costs (including VAT) of complying with targets of 130, 120, 100 and 80 litres per head per day would be £677, £697, £792 and £3,737 respectively, compared with a baseline cost of £508.

The study also estimated how these costs might reduce in time with a wider take-up of water efficiency measures, based on information on market transformation over the next ten years.

The report found that future best case predicted costs (including VAT), would be the same for the targets of 130, 120 and 100 litres per head per day at £ and for 80 litres per head per day compliance would cost £884.

Rainwater harvesting or greywater systems would be needed to achieve the lowest target of 80 litres per head per day. This accounts for the large step change in estimated costs, given that fitting such a system would be likely to cost several thousand pounds.

This summary relates to:

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Further copies of this summary and related report(s) are available from our [publications catalogue](#) or our National Customer Contact Centre T: 08708 506506 or E: enquiries@environment-agency.gov.uk.

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Appendix 2

Natural England Advice – South Wiltshire Core Strategy Habitats Regulations Assessment

1. Phosphate (P) levels within the River Avon SAC significantly exceed the limit that is required to achieve favourable condition on the site and the measures being taken, under the legislative and policy framework, by Competent Authorities in order to resolve this problem are complex. To assist with this Natural England has commissioned policy advice from David Tyldesley Associates (see Annex 1)

2. Natural England welcomes the significant investment that is to be made at Salisbury STW, through the AMP4 process, to reduce the amount of phosphate being discharged into the River Avon SAC. Based on the information available we estimate that the improvements will reduce the P contributions in the river attributable to the STW from 350 micrograms L to 38 micrograms L. However, even with this reduction, overall, the P target required to achieve favourable condition within the River Avon SAC will still be significantly exceeded, and Salisbury STW will still account for over 50% of the target.

3. In order to progress the Core Strategy housing plans without risk of breaching Article 6.1 of the EU Habitats Directive Natural England advises that there is a need for agencies to begin working together at the earliest opportunity to produce a fully integrated "River Avon Catchment: Phosphates and Flows Action Plan" in order to ensure that there is a focus on continued ecological improvement within the river. In the first instance this will require more detailed study of the other sources of P in the River Avon at Salisbury to ensure that future actions to reduce P levels are supported by a robust nutrient budget. This is likely to require critical review and integration of existing information on upstream P sources, on the ground investigations of particular source types (eg. septic tanks) and further modelling. At a meeting held between the Environment Agency and Natural England on 2 March 2009 it was agreed that a programme of work to meet the needs outlined above should be established to ensure that the requirements of Article 6.1 are met. Natural England has made a commitment of £10K toward the development of the plan and would to see similar resource commitment from the other competent authorities.

4. Natural England advises that the proposed housing growth within the South Wiltshire Core Strategy can be accommodated without significant adverse effect on the integrity of the River Avon SAC, subject to the Environment Agency issuing consent for the amended discharge at Salisbury (after setting out an appropriate audit trail under the Regulation 50 Review of Consents process), and with other competent authorities (inc Natural England, Wessex Water and Wiltshire LPAs) committing to the development and implementation of a "River Avon Catchment: Phosphates and Flows Action Plan" as outlined above.

Mark Jones
Senior Specialist – Planning and Local Government
Natural England

ANNEX 1

Advice to Natural England

Housing Growth and phosphate levels in the River Avon SAC, Hampshire

Introduction

1. I am asked to advise on the implications of housing growth in the South-West RSS for the Hampshire River Avon SAC, related to phosphate levels in the river. A series of questions are posed, which I answer below, but I first set out a summary of the background information provided, and the principles which I believe should be applied.

Background information provided by Natural England

2. The Environment Agency (EA) is carrying out a review of consents (RoC) under regulation 50 of the Habitats Regulations for the Hampshire River Avon SAC. The appropriate assessment is ongoing, though EA has informed Natural England verbally about its plans for licence amendments in Stage 4. The focus of Natural England's attention in this matter is in relation to the Salisbury STW, which will receive the greatest increase in wastewater for processing, if planned housing growth in the RSS goes ahead (Salisbury being an SSCT in the RSS).
3. The P target in the River Avon (60 micrograms/L), agreed between EA and Natural England, and embedded within the Favourable Condition Tables, is exceeded across most of the SAC. This situation will remain, even after proposed amendments to discharge licences through the RoC.
4. The EA has produced a position statement, extracts of which are reproduced below.

"Improvements to reduce phosphorous loadings at 17 Wessex Water (WxW) STW have been secured in AMP4. WxW are required to deliver these improvements no later than 31 March 2010 (6 works need to be completed earlier.)

WxW require the consents to be issued so they have certainty over what they have to deliver.

BAT for phosphorous reduction is 1mg/l for large works and 2mg/l for small works. 15 works are required to improve to 1mg/l.

Contributions of phosphorous from point source discharges and diffuse inputs are approximately equal.

Even if all point source discharges were stopped the river standard would still be significantly exceeded due to diffuse sources.

Our approach for the ROC process is that discharges should remove their proportional contribution. That is to say if a STW discharge contributes to 60% of the river concentration, that STW has to undertake improvements to comply with a standard that is 60% of the receiving water standard.

For WxW discharges the required reduction can be achieved at 14 of the sites by treating to BAT. At 3 sites (Pewsey, Warminster, Salisbury (marginal)) treating to BAT moves a significant way to removing their proportional contribution but does not remove it completely.

The EA position is that as the WxW improvements remove their proportional contribution to over 90% of the designated site, we can conclude that these 3 discharges are not having an adverse effect on the integrity of the site and therefore meet Habitats Directive obligations.

This EA position has caused some tension with NE as they do not agree with our judgement on adverse effect on integrity and believe that either we should issue consents tighter than BAT or revoke the consents forcing WxW to go down the route of overriding public interest for allowing the discharges to continue. This requires Secretary of State approval and WxW would have to carry out compensatory measures.”

5. I have also read a number of other papers generated by the EA, including: *Stage 4 of the Review of Consents for Water Quality Permissions, May 2005 Final*; and *Applying the Habitats Regulations to Water Quality Permissions to Discharge: Review and New Applications, June 2007*
6. Natural England advises that, post P-stripping, the STW at Salisbury will be contributing just over half of the P target to the river at the point of discharge on its own, but overall, the P concentration in the river will still be 2-3 times the P target. Working on the basis that contributors to the P levels in the river should make at least a 'fair share' improvement, within an overall strategy to reach the target, the improvements planned at Salisbury STW fall marginally short of the 'fair share' improvement. The concept of 'fair share' in this context is thought to be based on an EA interpretation of Reg 52[sic](3).
7. Even though the planned improvements at the STWs will significantly reduce the P discharged to the river, Natural England's view is that it is not possible to ascertain no adverse effect on integrity of the SAC for the Salisbury discharge, when the 'in combination' effects are considered, together with prevailing environmental conditions (ie. unconsented sources of P). Natural England argues that a Site Action Plan has to be produced which sets out how other sources of P will be managed to ensure that the P levels are on a trajectory to compliance. For the Hampshire Avon such a plan has not yet been produced.
8. At Warminster STW, we have the situation where the discharge is exceeding the in-river P target on its own, even after P-stripping, potentially affecting 30-40km of river (ie. the 'fair share' improvement has been missed significantly). EA considers that it can still conclude no adverse effect on integrity, as a result of the P-stripping, on the basis that reductions to the P load from STWs across the catchment as a whole are large. Warminster is not an SSCT so RSS development policy B applies (reproduced at the end of this advice).
9. In relation to future growth arising from the RSS, EA has stated that increased flows from the STWs can be accommodated within the limits set out in the licences that will result from the RoC process (ie. the situations set out above

are made no worse). Following on from this, given that it intends to conclude no adverse effect on integrity at Salisbury and Pewsey STWs at the end of the RoC, based on the rationales above, the Agency is also prepared to conclude that the effect of the RSS on P levels in the Hampshire Avon will not adversely effect the integrity of the site.

Questions

I am asked to answer the following questions

1. a. Is the principle of 'fair share' acceptable under the Habitat Regulations?
b. Do the improvements to the STWs on their own mean that it is possible to conclude that they are no longer adversely affecting the integrity of the SAC? The improvements achieved do not necessarily equate to the proportionate reduction required by the Agency from their point sources under the 'fair share' principle.
2. If not, what else is required to achieve this position?
3. Would the establishment of a Site Action Plan, setting out what else has to happen to other sources be the way forward?
4. If 'yes' how much uncertainty in this Plan is acceptable? Presumably there would need to be a high degree of confidence that the measures proposed would allow the target to be met and that the mechanisms/funding are available and secured?"
5. What effect does the greater flexibility of RSS Dev Policy B (see below) compared with the SSCT policy for Salisbury have on the issue? Does it mean that it would be legitimate for the Warminster issue to be tackled at LDF level and the current RSS policies are OK?
6. What is the scope for developer contributions, for example, funding the production and implementation of a Site Action Plan?
7. What are your recommendations for further policy changes to the RSS?

The principles to be applied

10. Initially, it is useful to recap on the obligations imposed by Article 6 of the Habitats Directive, which is the basis for both the RoC and the assessment of plans and projects, such as new housing proposals and new STW projects including applications to vary the discharges from STW.
11. Article 6.1 requires Member States (Government) to establish the necessary conservation measures corresponding to the ecological requirements of the SAC interest features. These include measures to restore the features to favourable conservation status, where not already at this status. The measures must be secured by statutory, administrative, or contractual arrangements and may include the use of a management plan for the site. In the context of the Hampshire River Avon SAC, I am advised that the site interest features (the habitat and the five species) are not considered to be at favourable conservation status, because of the phosphate levels in the river exceeding the water quality guideline standard (60mg/l). This is an agreed threshold derived to assist in judging the ecological condition of the river. The obligation under Article 6.1 is to put in place measures that will achieve favourable conservation status, for the habitat and the five species, but there is no pre-determined timescale for this to be achieved.
12. Article 6.2 requires Member States to take 'appropriate steps' to avoid deterioration of the natural habitat and the habitat of the species for which the river is designated, and to avoid significant disturbance of the species.

Disturbance is not immediately relevant here, so the relevant duty is to avoid deterioration. In my view that is to prevent a deterioration of the habitats compared to the situation at designation. Article 6.2 is not a duty to achieve favourable conservation status *per se*, but, however good or bad the river's habitats may be, steps are taken, whenever necessary, to ensure they do not get worse in ecological terms. There are, of course, parallels with the requirements of the Water Framework Directive, but I will not complicate matters by referring to those requirements further, save to say that they are broadly compatible with the requirements of Article 6.2 of the Habitats Directive in a case such as this.

13. The review of consents process assists the Government to meet the requirements of both Article 6.1 and 6.2. For example, reducing water pollution that affects the interest features, is a conservation measure helping to restore the river's features to a favourable conservation status (6.1). It also has the effect of ensuring that the SAC habitats do not deteriorate, and can be seen as an appropriate step towards that end (6.2).
14. However, the RoC process was never, in my opinion, intended to be the sole mechanism for delivering the obligations of Article 6.1 and 6.2. It is conceivable that in some SACs the modification of some consents may be the only conservation measures and steps necessary, to meet the requirements of the two sub-Articles; but in my experience more is often required, and further statutory, administrative, or contractual arrangements are required, which may include the use of management plans for a site.
15. Furthermore, the RoC must follow the statutory procedures set out in the Habitats Regulations. Here regulations 50, 51 and 85 are most relevant. Regulations 50 and 51 rely heavily on the procedures prescribed in regulations 48 – 49 – 53, which transcribe the requirements of Article 6.3 and 6.4 of the Directive. These sub-Articles set out procedures, regulating proposed plans and projects, to make sure that no such proposal goes ahead that may have an adverse effect on site integrity, except in closely defined and exceptional circumstances, and with necessary compensatory measures. Thus, in the RoC process, the procedures of Article 6.3 / 6.4 are used to reconsider the effects of a plan or project, in order to achieve the aims of Article 6.1 / 6.2. The requirements of regulations 50, 51 and 85 apply the severe testing of regulations 48 – 49 – 53 to the review.
16. It is understandable, therefore, that the Regulations give the impression that the purpose of the RoC is to avoid any adverse effect on integrity potentially caused by the consent being reviewed, rather than contributing to a wider range of conservation measures to achieve favourable conservation status. The Regulations require a reviewer either to take steps to avoid an adverse effect on integrity, or justify the continuing consent on the grounds of the regulation 49 derogations and compensatory measures. However, the effect of regulation 51(3) is critical when ascertaining the effect on site integrity.
17. A competent authority reviewing an outstanding consent that would be likely to have a significant effect on the SAC, can affirm a consent that would otherwise have an adverse effect on site integrity, if it appears to the authority reviewing it that action taken or to be taken by them, or by another authority, will secure that the plan or project does not adversely affect the integrity of the site. Where this object may be attained in more than one way, the least onerous way to those affected should be chosen.

18. The EA appears to approach the RoC in a rigorous way. Where an adverse effect on site integrity cannot be ruled out, the discharge must be subject to options appraisal (4.3 and section 5 of the Stage 4 guide of 2005). The output of stage 4 will be a decision document together with a site action plan.
19. The requirement at stage 4 is to remove the adverse effect on site integrity (2.1), but in ascertaining this a number of matters need to be considered, especially in light of regulation 51(3).
20. Firstly, there is the rigorous reduction of P being achieved through the AMP4 process. Here I detect that there may be a misunderstanding on the part of Natural England. Correspondence about the AMP4 process, in February 2009, appears to imply that NE is assuming that the AMP4 process is applied as part of the RoC. There appears to be insufficient realisation that AMP action is one thing and RoC is another, as explained, in part, by the EA letter in reply. The reductions achieved under AMP4 are to meet the requirements of other Directives (e.g. the UWWTWD etc) and is not actually part of the RoC. NE correspondence seems to be requiring EA to apply regulation 49 to AMP decisions, as if they are regulation 50 RoC decisions. The two processes are clearly separate and AMP is running ahead because of statutory timescales. AMP does not imply that its reductions will be enough to achieve favourable conservation status, or site integrity, or meet the expectations of the RoC.
21. I have sought to ascertain how the EA actually proposes to issue the post-AMP consent, whether by modification of the existing consents or by revocation and issue of new consents, and whether WxW make an application for the new consent etc. Unfortunately in the time available I have not been provided with that information from the EA or Natural England. What is apparent from the papers is that AMP consent modifications and revocations will be made under S.7(2) Sch 10 of the Water Resources Act 1991.
22. In the RoC process, the EA has adopted a starting point of a 'default' position, that consent holders should remove their 'fair share', which actually amounts to a proportional reduction. The EA adopted this proportional reduction approach for the RoC process (not AMP) because of the lack of case law. For a discharge likely to have a significant effect on the SAC and for which the EA cannot ascertain no adverse effect on site integrity, the proportional reduction is the first step that the EA will apply.
23. However, the AMP4 process has required severe restrictions on discharges from the STWs. So, although the EA first applies the proportional reduction approach in the RoC, the AMP reductions have already applied the exacting standard of BAT for P stripping. In some cases this has achieved the equivalent of the proportional reduction objective, in some cases it has exceeded it, in other cases it has not met it. But where it has not met the proportional reduction objective, no more can be done to reduce P discharges, because BAT has already been applied. The EA cannot therefore ascertain that that discharge alone, or in combination with other regulated, post-AMP discharges and unregulated discharges, would not adversely affect the integrity of the SAC. The RoC process must continue to consider what more can be done.

24. Further action on that discharge cannot reasonably go beyond BAT or equivalent if it is not to be revoked. The EA must consider either revocation, which would close the works, or ascertaining no adverse effect on site integrity another way, by putting in place action that would be relevant to regulation 51(3). We know from the EA's own guidance that where action on unregulated sources is also necessary to achieve site integrity it will be in the SAP. We know that they do not regard Stage 4 as complete until there is a SAP, where any further action is necessary (section 6 and Appendix 1 section 2).
25. In this situation, the EA applies an options appraisal. This legitimately includes use of regulation 51(3). The EA is not necessarily reliant on one option to ascertain no adverse effect on integrity. This may be ascertained by the maximum practicable (BAT) reduction in the discharge plus other things in a SAP (see 5.3.1 of the 2005 guide). Multiple options are implicit in the approach on page 6 eg "these" options etc. Flexibility of approach when appraising options is clear, for example at page 7 para 5.3.2 which refers to the EA being able to negotiate with a consent holder as to the steps taken at different STW.
26. It seems to me an appropriate use of the provisions of regulation 51(3) for the EA to conclude that the discharge now regulated to BAT will not adversely affect the integrity of the SAC and the post AMP discharge consent can be affirmed. This is the case even though the action taken at the STW, and indeed all the other STW, will not eliminate the prospect of an adverse effect on integrity. Action taken or to be taken by competent authorities can also be taken into account in ascertaining whether the discharge under review would adversely affect the integrity of the SAC (regulation 51(3)). The critical thing, if this is the course of action to be adopted in the RoC, is that the SAP is put in place promptly and that its provisions are effective and implemented expeditiously.
27. As I understand it the RoC takes the 'worst case' of maximum allowable flow. On the one hand, this is a useful approach because it is consistent with a precautionary approach, but on the other hand, it appears to allow higher than actual discharges where there is headroom between the actual flow and the maximum flow allowed. Thus, whilst at present flows, the approach secures the best achievable reduction, if there is significant headroom in the allowable flow, it could nevertheless allow higher levels of P to enter the river. This is probably only relevant where either the proportional reduction has not been achieved, or there is a significant spare capacity in flow, which can be taken up by new developments. The effects of the new developments adding to the actual discharge to the river will not be separately assessed, because the headroom capacity they are using has already been assessed in the RoC.

Answers to the questions

I would answer the questions as follows.

Q.1 a Is the principle of 'fair share' acceptable under the Habitat Regulations?

A.1a I consider that it is not so much a 'fair share' but more a 'proportional reduction'. It has no legal force but derives from consensus scientific judgement that I understand NE has agreed. It is a pragmatic way of apportioning reductions required. It seems to me to be a legitimate approach as the first step in determining the amount of reduction in the RoC. As part of the AMP process, the EA has decided to reduce down to BAT, in any event.

This may in some cases exceed the proportional reduction target, in other cases it will still not be enough but no more can be done to reduce the discharge, other than close the works. The Agency could equally have decided this course of action after options appraisal and further analysis in the RoC process. Nothing stops the Agency going beyond proportional reduction; the problem in this case is that even BAT does not achieve the full proportion at three of the STW.

Q.1 b *Do the improvements to the STWs on their own mean that it is possible to conclude that they are no longer adversely affecting the integrity of the SAC? The improvements achieved do not necessarily equate to the proportionate reduction required by the Agency from their point sources under the 'fair share' principle.*

A.1b For the reasons explained above, I believe it is legitimate for the EA to conclude no adverse effect on integrity and affirm the new, or soon to be issued, post-AMP consents for the STW where BAT has been applied, by taking account of the actions they and others will take in a SAP under regulation 53(1).

Q. 2 *If not, what else is required to achieve this position?*

N/A

Q.3 *Would the establishment of a Site Action Plan, setting out what else has to happen to other sources be the way forward?*

A.3 Yes, irrespective of the outcome of the RoC and the new discharge consents, more needs to be done to achieve favourable conservation status of all site interest features under the Article 6.1 obligation. Measures need to be put in place which are effective. An administrative measure, such as a Site Action Plan, is capable of being an appropriate measure, whatever one may call it. I see no reason why a SAP cannot be seen as fulfilling in whole or in part the function of a management plan under Article 6.1. It appears to me to be a necessary and appropriate measure if its purpose is to coordinate and motivate action that will eventually achieve favourable conservation status of all site interest features. In any event, it is an essential component of the RoC package that will enable the EA to ascertain no adverse effect on integrity for the STWs. The Agency's own guidance and adopted approach requires a SAP to be in place before stage 4 review is complete. This makes the SAP, or some other management plan to deal with the pollution in the river, an essential requirement, in my view.

Q.4 *If 'yes' how much uncertainty in this Plan is acceptable? Presumably there would need to be a high degree of confidence that the measures proposed would allow the target to be met and that the mechanisms/funding are available and secured?"*

A.4 The provisions of the SAP should be based on sound science, should contain measures which are proven to be successful, or in which we can have reasonable confidence as to their efficacy. There should be a reasonable prospect of reducing P levels in the river and ultimately achieving favourable conservation status of all site interest features. However, there is no time scale in which this must be achieved. It seems to me that in a real world resources and technical know-how must be acknowledged as limitations in

achieving what should be achieved. Measures to achieve the goal will vary in their efficacy and timing and confidence in them will vary. Some are bound to be more certain in their effect than others, but overall it should be the best we can do to achieve favourable conservation status. In resourcing the plan the competent authorities should work together to ensure that all possible measures are taken as soon as possible. See further the answer to question 6 below

Q.5 *What effect does the greater flexibility of RSS Dev Policy B (see below) compared with the SSCT policy for Salisbury have on the issue? Does it mean that it would be legitimate for the Warminster issue to be tackled at LDF level and the current RSS policies are OK?*

A.5.1 In principle, it is my opinion that lower tier assessment 'down the line' can be relied upon in HRA of plans, only where the following criteria are met.

A] The higher tier plan assessment cannot reasonably predict the effects of a plan, alone or in combination with other plans or projects, on a European site in a meaningful way; whereas

B] The Habitats Regulations Assessment of the lower tier plan, which will identify more precisely the nature, scale or location of development, and thus its potential effects, will be able to change the proposal if an adverse effect on site integrity cannot be ruled out, because the lower tier plan is free to change the nature and/or scale and/or location of the proposal in order to avoid adverse effects on the integrity of any European site (e.g. it is not constrained by location specific policies in a higher tier plan, such as the RSS or a core strategy); and

C] The Habitats Regulations Appraisal of the plan or project at the lower tier is required as a matter of law or Government policy.

A.5.2 I understand that Salisbury SWT may have 'headroom' to accommodate the anticipated growth whilst still complying with its new, post-AMP consent. If so, that growth can therefore be allocated in the RSS because it relies on an existing consent which will be affirmed in the RoC process. This may appear to be an anomaly in the sense that the increased level of housing is likely to increase the P discharge to the river above existing post-AMP levels, albeit still within the limit of the consent. The question here is whether all the housing that would be allocated to Salisbury would be accommodated in the discharge consent's headroom; or would a new consent be required? If the housing allocation cannot be accommodated in the headroom, and there is no alternative way of disposing of the effluent other than the River Avon SAC, it seems to me that the RSS could not ascertain no adverse effect on integrity. Thus, the Salisbury allocation should match the headroom capacity, or the RSS HRA will need to identify another practicable way of dealing with the additional waste water, see further A.5.3 below.

A.5.3 It is apparently different at Warminster. I understand there is no 'headroom' in the consent and that any further increase in discharge would adversely affect site integrity. The STW is already operating at BAT. It seems to me that here, and elsewhere there is no headroom, unless:

- a) the EA and other competent authorities are convinced that further improvements to the STW(s) can be made in advance of the new development being occupied, which would effectively eliminate P from the discharge, or reduce it to trivial amounts; or
- b) another catchment is used to receive at least the whole of the discharge of the increased effluent from Warminster, and other places where the STWs have no headroom, arising from new housing and employment development there; or
- c) there is confidence that in a short timescale the SAP for the River Avon SAC will reduce the P level in the river by such a degree that even the additional discharges from new development at Warminster (and elsewhere) will not cause an excess over the 60mg/l standard; or
- d) some other technical solution is found to deliver the development whilst preventing the discharges from new development elevating the existing (i.e. post AMP) levels of P in the river;

the RSS HRA cannot ascertain that there would not be an adverse effect on the integrity of the River Avon SAC as a result of the development allocations currently anticipated. Assessment down the line may not be relied upon because it would not meet the criteria I have set out.

Q.6 What is the scope for developer contributions, for example, funding the production and implementation of a Site Action Plan?

A.6.1 Some plan, whatever it may be called, is required in any event under the obligations of Article 6.1. It is not appropriate to require new housing to fund that plan per se. However, where the new housing would cause a problem that the plan would have to deal with that would not otherwise occur, eg at Warminster or Pewsey, then mitigating the effects of increased housing on the river as a result of these increases would be a legitimate expectation of the new housing. In terms of my advice in respect of resourcing the SAP, in answer to question 4 above, 'all possible measures' may well include financial contributions from future development to expedite the implementation of the SAP. The question is whether the plan could reasonably be expected to eliminate the effects of the increased discharges arising from the new development? That is a technical and ecological judgement that I am not equipped to make.

A.6.2 Given the above scenarios, it would be appropriate, in my view, for developer contributions to be made to the SAP, or other strategic management plan for the SAC, which is designed to reduce pollution in the river, so that the interest features attain favourable conservation status in the long term. It would be appropriate though only if there is a reasonable prospect of the plan achieving that goal in a reasonable period, despite new development proceeding.

Q.7 What are your recommendations for further policy changes to the RSS?

A.7.1 It seems to me that, if doubt remains as to the prospects of preventing new development increasing the P levels in the river, the only effective amendment to policies in the RSS would be along the lines already

considered for the South East Plan and the West Midlands RSS, along the following lines

POLICY NRM5: CONSERVATION AND IMPROVEMENT OF BIODIVERSITY

Local authorities and other bodies shall avoid a net loss of biodiversity, and actively pursue opportunities to achieve a net gain across the region by:

- i) Giving the highest level of protection to sites of international nature conservation (Natura Sites and Ramsar wetlands). Where plans or projects are brought forward which alone or in-combination are likely to have a significant effect on such sites an appropriate assessment in line with the Habitats Directive and associated regulations and guidance is required. Local Authorities are required to test plan alternatives including alternative distributions of the housing allocations in policy H1. In the event that the HRA assessment and the examination of the development plan document concludes that a lower housing allocation is the only effective mitigation then the local authority shall treat that figure as their housing allocation
- ii) Only granting planning permission in areas where it can be demonstrated through appropriate assessment (including in combination effects) that proposals will not have an adverse affect on the integrity of international sites.–

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A.7.2 If a policy of this kind is adopted, together with a SAP in which the competent authorities had confidence, it seems to me that the RSS would be compliant with the Regulations and no change to the Development Policy B as currently modified would be needed.

A.7.3 An alternative, or perhaps even an additional way forward may be to add a caveat to policy B, as underlined below. The reason why this would protect the SAC is that any development would have to be within the capacity of the STW, and additional capacity at the STW could only be permitted by the EA, in accordance with regulation 48 if it did not increase P levels in the river (any increase would have an adverse effect on integrity) or the STW extension met BAT and passed the tests of regulation 49 and compensatory measures were provided by regulation 53. In other words, any development under this policy would rely on STWs either not having an adverse effect on site integrity or meeting the derogations of regulation 49 / 53, which would be compliant with the Directive.

RSS Development Policy B

Development at Market and Coastal Towns

At Market and Coastal Towns that meet all of the following criteria:

- **there is an existing concentration of business and employment and realistic potential for employment opportunities to be enhanced**
- **there are shopping, cultural, faith, education, health and public services that meet the needs of the settlement and the surrounding area–**
- **there are sustainable transport modes that can be maintained or developed to meet identified community needs in the settlement and the surrounding**

provision will be made for housing, employment, shopping and other services within the permitted capacity of water and other infrastructure, that increase their self-containment and enhance their roles as service centres.

David Tyldesley MIEEM FRTPI FRSA
17th March 2009