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## 1. Purpose and scope

- 1.1 The purpose of this note is to provide guidance on the approach that we will take when dealing with hydropower development management consultations. We welcome the opportunity to comment on hydropower proposals early in the planning process including during pre-application discussions and Environmental Impact Assessment (EIA) scoping. The information we require to be submitted with hydropower planning applications, either within the supporting information or Environmental Statement (ES) where appropriate, is set out in Table 1 below. We will assess hydropower planning applications in line with the procedures set out within LUPS-GU1 [SEPA's role in development management and similar consultations](#) and LUPS-GU15 *Planning guidance in relation to SEPA regulated sites and processes*. How we deal with hydropower in development planning is set out in LUPS GU11 [Guidance on SEPA engagement with the development plan process](#). The feedback received from recent sharing good practice workshops with industry has been taken into account in preparing this document.

## 2. SEPA's role in hydropower and planning

- 2.1 The Scottish Government Energy Consents and Deployment Unit (ECDU) will consult us on proposals which have the capacity to generate 50MW or more under Section 36 of the Electricity Act 1989 (S36); permission under this Act gives deemed planning permission. In such cases we will respond directly to the ECDU and copy the response to the appropriate planning authority for information. A scoping template for S36 applications has been developed by the ECDU in consultation with relevant key agencies for this purpose. Local authorities will consult us on proposals which have the capacity to generate less than 50MW. For the avoidance of doubt, this guidance note applies to both planning applications and applications under the Electricity Act 1989.
- 2.2 SEPA's position on hydropower developments accords with the Scottish Ministers [policy statement](#) which was issued in January 2010 and which sets out the Scottish Government's objectives in relation to achieving the right balance between the protection of the water environment and renewable energy generation. Greater emphasis has been put on supporting larger schemes with a generating capacity of 100 kW or more which will make an important contribution to renewables targets whilst minimising any impact on the water environment. Small schemes with a generating capacity of less than 100 kW will only be supported where they can be shown to have no adverse impact on the water environment.
- 2.3 The issues which we require to be addressed at the planning application stage and the CAR application stage are inextricably linked. The level of detail required for the two processes does however differ. Given that the issues which require to be addressed are so interlinked we will advise applicants to twin-track their planning application with their application for CAR authorisation. This reduces the commercial risk resulting from potentially significant changes to the scheme required at the CAR licence stage. We will encourage developers and planning authorities to enter into processing agreements to enable CAR applications and planning applications for hydropower schemes to be twin-tracked efficiently, taking account of the differing timescales for determination.

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- 2.4 Should the applicant wish to establish planning permission in principle before applying for CAR, then we will advise the planning authority on the land use planning aspects that fall within our remit and the potential consentability of the proposal if possible at the planning stage. We will inform the applicant through our planning response of the commercial risk involved for them if the corresponding CAR licence is later refused and that any necessary changes may require additional planning permission to be sought.
- 2.5 We will refer applicants to the [Guidance for applicants on supporting information requirements for hydropower applications](#) which provides details of the full information required for CAR authorisation, and the [Guidance for developers of run-of-river hydropower schemes](#) which provides criteria for identifying when small schemes with a generating capacity of less than 100 kW are likely to be acceptable.

### 3. Environmental Impact Assessment (EIA)

- 3.1 Screening  
The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 establish the need for EIA of some hydropower schemes. Schemes falling under planning legislation must be considered by the planning authority in the context of their likely impact on the water environment and / or impact on sensitive areas. Planning authorities may consult us to assist them in making their decision on whether or not EIA is required; we will respond using our standard screening template.
- 3.2 Scoping  
Where EIA is required, the planning authority will usually consult us on the issues we wish to see addressed within the ES in order that they can issue a scoping opinion. We will respond with our standard scoping template which sets out the general environmental considerations of relevance to our interests with hydropower schemes highlighting any specific issues of concern with the proposals. We will request that only key issues are assessed within the ES and will highlight any issues that we feel can be scoped out of requiring detailed consideration. Where the applicant is able to scope out an issue the rationale for this must be set out within the ES.

### 4. Section 36 applications (S36)

- 4.1 All S36 hydropower applications require EIA under The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000, as amended. The Scottish Government ECDU require the CAR authorisation process to be completed prior to their making a recommendation on the application to Scottish Ministers. Guidance on these regulations is available [here](#). We will respond using the standard scoping template which has been developed by the ECDU in consultation with relevant key agencies.
- 4.2 Where an appropriate assessment is required under The Conservation (Natural Habitats, &c.) Regulations 1994 in relation to a development which will require S36 consent, it has been agreed with the Scottish Government that S36 and regulatory applications for proposals will be twin-tracked. We can undertake our part of this assessment only when an application for authorisation has been submitted by the applicant. Early pre-application engagement should ensure that all the relevant

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information required for the appropriate assessment is submitted as part of the Environmental Statement, and any issues are adequately addressed.

## 5. Issues of relevance to SEPA's interests for hydropower planning applications

- 5.1 In order to fulfil the requirement set out in PAN 51 paragraph 38 for us to assess the land use aspects of the planning application to clarify whether, on the information available at the time the proposed development is potentially capable of being consented under the licensing regime we require information on the issues set out in Table 1 below to be submitted at the planning stage.

**Table 1: Issues on which we require information at the planning stage**

### (a) Location of built elements

**We require** detailed site layout plans which illustrate the location of all built elements, including access roads, crane hardstanding, construction compounds, welfare facilities, oil storage, cabling and substations, together with details as to whether these elements will be permanent or temporary, and relevant construction details.

Where other engineering activities in the water environment are proposed **we require** the following information to be submitted:

- a table systematically detailing the justification for each activity along with proposed mitigation;
- an indication of the proposed design e.g. bridge, bottomless culvert, arched culvert, floating road;
- a photograph of each affected water body and its dimensions;
- a flood risk assessment (only required where flooding may be an issue).

If other development projects are present or proposed within the same water catchment then the applicant should consider whether the cumulative impact upon the water environment needs to be assessed.

**We require** the planning submission or ES to demonstrate that the standard practice of a minimum buffer of 10m between construction works (new access tracks, penstock and construction compounds) and watercourses (except in the immediate vicinity of the intakes or watercourse crossings where there is an obvious need to access or cross the watercourse) can be accommodated. With respect to the penstock, we expect a 10m buffer to be maintained wherever possible. If this cannot be achieved **we require** the planning submission or ES to contain justification for this and detail the proposed mitigation measures.

### (b) Sensitive water uses, water dependent species and ecosystems

**We require** the following sensitive receptors of relevance to our interests to be clearly mapped onto the detailed site layout plans, showing their location in respect of the proposed built elements:

- Wetlands and Peatlands

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(Note: if there are wetlands or peatland systems present a Phase 1 habitat survey for the whole site should be undertaken, including the identification of all wetland areas using the guidance [A Functional Wetland Typology for Scotland](#). Results of these findings should be included in the planning submission or ES. **We also require** mapped National Vegetation Classification data to be submitted for any wetlands identified. Where groundwater dependent terrestrial ecosystems are located within a radius of (i) 100m from roads, tracks, and trenches or (ii) 250m from borrow pits and foundations, the likely impact on these features will require further assessment. This assessment should be carried out whether or not the features in (i) and (ii) occur within or outwith the site boundary in order that the full impacts on the proposals are assessed. **We require** the results of this assessment and the proposed mitigation measures to be included in the ES or planning submission);

- Watercourses;
- Lochs;
- Water supplies (public and private) within the catchment;
- Groundwater;
- Coastal waters;
- Abstractions

(Note: **we require** a list of groundwater abstractions both within and outwith the site boundary, within a radius of (i)100m from roads, tracks and trenches and (ii) 250m from borrow pits and foundations to be included in the ES or planning submission. Where groundwater abstractions are identified within these buffer areas **we require** the ES to demonstrate that the route or location of engineering operations avoids these areas or alternatively to set out the further information and investigations that will be required to demonstrate that the impacts on abstractions will be acceptable);

- Water-dependent species and habitats, including bryophytes.

Detailed guidance on undertaking a water features survey can be found in [An applicants guide to water supply boreholes](#). Information on bryophytes can be found in [Guidance for applicants on supporting information requirements for hydropower applications](#).

**We require** details of how the site has been selected to avoid adverse impacts on ecological interests relevant to us and how all built elements have been located so as to avoid these sensitive receptors and thereby minimise pollution risks.

### **(c) Compensation flow**

**We require** information on:

- Minimum and maximum abstracted flow for each intake, including minimum river flow at which generation will commence;
- The Hands-off-Flow proposed and the residual flow at maximum abstraction;
- Photographs of the river taken from the same point near the proposed impounding works at low flows after at least two days of dry weather at medium flows and at high flows. The date and time of each photograph should be indicated.

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#### **(d) Fish passage**

Although the detailed design of any fish pass will be considered under CAR **we require** justification of the ability of the flow regime downstream to support fish passage to be included in the planning submission or ES. The timing of works should also be considered in this regard.

#### **(e) Disturbance and re-use of excavated peat**

Where the proposed infrastructure will impact upon peatlands, **we require** a Peat Management Plan to be included in the planning submission or ES setting out the principles of how any surplus peat will be managed within the site. Opportunities to minimise peat disturbance should be considered in the site design and acceptable proposals to re-use any surplus peat should be accommodated within the site layout without significant environmental impact.

The Peat Management Plan should include:

- A detailed map of peat depths (this must be to full depth) with all the built elements overlain so it can clearly be seen how the development avoids areas of deep peat. The peat depth survey should include details of the basic peatland characteristics, including a breakdown of acrotelmic, catotelmic and amorphous peat.
- A table showing (a) where surplus peat will be generated and the quantities involved, (b) a breakdown of quantities of surplus peat into catotelmic and acrotelmic, and (c) the principles of peat re-use in terms of type of peat, location, and approximate width and thickness.
- A map showing where any temporary peat storage areas will be located and how these storage areas, along with any associated access roads, avoid any watercourses, groundwater dependant terrestrial ecosystems or other sensitive areas. We also require details of (a) how the storage areas will be constructed, (b) calculations demonstrating the need for these storage areas, (c) the thickness at which the peat will be stored, (d) the types of peat that will be stored and (e) how the peat will be maintained fit for re-use.

Detailed guidance can be found in [Guidance on the Assessment of Peat Volumes, Reuse of Excavated Peat and Minimisation of Waste](#) and our [Regulatory Position Statement – Developments on Peat](#). The latter also sets out important waste management implications of measures to deal with surplus peat.

#### **(f) Pollution Prevention and Environmental Management**

At scoping and pre-application stage, we will advise that the applicant should, through the EIA process or planning submission, systematically identify all aspects of site work that might impact upon the environment, the potential pollution risks associated with the proposals and the principles of preventative measures and mitigation. This will establish a robust environmental management process for the development.

A draft Schedule of Mitigation and draft Environmental Management Plan should be produced as part of this process and be submitted in support of the planning application. This should cover all the environmental sensitivities, pollution prevention and mitigation

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measures identified to avoid or minimise environmental effects.

Details of the specific issues that we expect to be addressed are available on the Pollution Prevention and Environmental Management section of our [website](#).

### **(g) Proposed borrow pits**

**We require** detailed investigations in relation to the need for and impact of such facilities to be contained in the ES or planning submission. Where borrow pits are proposed, information should be provided regarding their location, size and nature. In particular, details of the proposed depth of the excavation compared to the actual topography and water table should be submitted. In addition details of the proposed restoration profile, proposed drainage and settlement traps, turf and overburden removal and storage for reinstatement should be submitted.

The impact of such facilities (including dust, blasting and impact on water) should be appraised as part of the overall impact of the scheme. Information should cover, in relation to water, at least the information set out in [Planning Advice Note PAN 50 Controlling the Environmental Effects of Surface Mineral Workings](#) (Paragraph 53). In relation to groundwater, information only needs to be provided where there is an abstraction or groundwater dependent terrestrial ecosystem within 250m of the borrow pit (PAN 50 paragraph 52).

## **6. How we will respond to hydropower consultations**

- 6.1 All hydropower developments will require authorisation under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended) (CAR) for the abstractions, impounding works (weirs and dams) and any other engineering works directly associated with the scheme.
- 6.2 We will consult our Hydro Permitting team (VPT-Hydro), and relevant local Operations and Ecology teams on the information we receive at the planning stage. Their responsibilities are as follows:
- **VPT-Hydro** – will advise on potential consentability of the hydropower element and the stage and timing of any CAR application already received using the relevant standard paragraph set out in Annex 1;
  - **Operations Team** – will advise on waste peat, RBMP opportunities, the construction and location of the pipeline, borrow pits, construction compounds, turbine house and access roads, and environmental management considerations;
  - **Ecology specialists** – will advise on avoidance and mitigation of impacts on sensitive habitats such as GWDTEs.
- 6.3 We will also liaise with Scottish Natural Heritage if the development is likely to affect a designated site.
- 6.4 In our response to the planning authority we will:

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- confirm that a CAR licence is likely to be required for the activities set out in the planning application;
- advise whether or not a CAR application has been submitted and the status of any such application using one of the standard paragraphs in Annex 1; and
- clearly identify to the planning authority and the developer that there could be impacts on planning if the developer requires to alter the design in order to obtain a licence at a later stage and that it will be at the developer's own commercial risk if these aspects are not addressed at the planning stage.

6.5 We will inform the planning authority that conditions will be attached to the CAR authorisation to control the following aspects and that no planning conditions in relation to these issues will be required:

- the location at which water may be impounded and abstracted as well as where it is returned to the water environment. This includes the weir, intake, tailrace and outfall;
- the rate at which water may be abstracted, the release of compensation or hands off flows, fish passage; and
- the timing of works which are likely to impact on the water environment.

6.6 We will also inform the planning authority that the CAR authorisation does not cover the following aspects and therefore relevant planning conditions may be required to address:

- the visual appearance of the impounding structure;
- the construction and location of the pipeline, borrow pits, construction compounds, turbine house and access roads; and
- impacts on terrestrial ecosystems.

6.7 SEPA is required to carry out a derogation on any CAR applications where proposals would have a significant adverse impact on the water environment i.e. breach an environmental standard, or cause deterioration in status of a water body, or prevent the future achievement of an objective in the River Basin Management Plan. We consider that it would be inappropriate for a planning authority to approve a planning application prior to the derogation test being carried out by SEPA. This is because the planning authority is a Responsible Authority under the Water Environment and Water Services (Scotland) Act 2003. We will advise planning authorities to defer planning decisions on any development proposal where a CAR derogation will be required until the derogation test has been carried out by SEPA.

6.8 We will respond to the planning authority in one of the ways set out in Table 2 below:



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**Table 2: SEPA response to planning authority**

<b>Information submitted in relation to Table 1</b>	<b>Overall response to planning authority</b>	<b>We will inform the planning authority that:</b>
The minimum information is submitted, found to be satisfactory, and it is clear that the proposal is potentially capable of being consented under CAR	No objection	<ul style="list-style-type: none"> <li>The proposal is potentially capable of being consented under CAR.</li> </ul>
The minimum information is submitted, found to be satisfactory, and it is clear that the proposal is potentially capable of being consented under CAR	No objection subject to conditions	<ul style="list-style-type: none"> <li>The proposal is potentially capable of being consented under CAR; and that</li> <li>Conditions will be required to complement regulatory controls (include details of the conditions required in the response).</li> </ul>
The minimum information is not submitted	Objection due to lack of information	<ul style="list-style-type: none"> <li>We consider this level of information appropriate at the planning stage, and appropriate to EIA if it is an EIA development, in order to determine whether the proposal is potentially capable of being consented; and</li> <li>We advise that the planning authority should defer determination until the required information is provided.</li> </ul>
The minimum information is submitted, but it is still not clear if the proposal is potentially capable of being consented under our legislation (e.g. derogation may be required)	<p>Objection due to lack of information</p> <p>Please note this type of response will require additional liaison between the case officer and VPT-Hydro to obtain the results of the derogation process. A follow-up letter will need to be sent to the planning authority advising them of the outcome of the derogation process and removing the objection.</p>	<ul style="list-style-type: none"> <li>We cannot determine at this stage if the proposal is potentially capable of being consented; and</li> <li>We object to the proposal until the derogation process is complete, or our regulatory colleagues have confirmed that the proposal is potentially capable of being consented; and</li> <li>We advise that the planning authority should defer determination until the CAR application has been determined as the planning authority is also a responsible authority under WFD.</li> </ul>
The minimum information is submitted and it is clear that the proposal is not potentially capable of being consented under CAR	Objection in principle as the proposal is not potentially capable of being consented	<ul style="list-style-type: none"> <li>The proposal is not potentially capable of being consented under CAR; and</li> <li>We will inform the developer that they continue to pursue the planning application at their own commercial risk</li> </ul>



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### 6.9 **Section 36 (S36) consultations**

The Scottish Government ECDU requires the CAR authorisation process to be completed prior to determination for S36 consultations. We will advise the applicant to (a) refer to the detailed technical guidance available on our [website](#) in preparing their development proposal and (b) liaise with the VPT-Hydro regarding the CAR authorisation.

- 6.10 We will consult the VPT-Hydro on any S36 consultation for confirmation that CAR authorisation has been granted. If at the time of consultation this is unknown then the VPT-Hydro will undertake to inform the relevant planning team when this has been resolved and we will advise the ECDU accordingly.

## 7. **Sources of further guidance**

- [Scottish Planning Policy](#)
- [Scottish Planning Advice Note 51](#) Planning, Environmental Protection and Regulation
- Scottish Government Online renewables advice – [Hydro schemes](#)
- [Water Environment and Water Services \(Scotland\) Act 2003](#)
- [Water Environment \(Controlled Activities\) \(Scotland\) Regulations 2011](#)
- [The Water Environment \(Controlled Activities\) \(Scotland\) Regulations 2011: A Practical Guide](#)
- [Guidance for applicants on supporting information requirements for hydropower applications](#)
- [Guidance for developers of run-of-river hydropower schemes](#)
- [River basin planning](#) – Scotland RBMP and Solway Tweed RBMP
- [LUPS GU4](#) Planning guidance on windfarm developments (contains general advise on peat, wetlands and private water supplies)
- [SEPA guidance on surplus peat management](#)

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## Annex 1: Standard paragraphs in relation to CAR

### 1. A CAR licence has been issued by SEPA

The applicant has submitted an application for authorisation under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended) (CAR) for the hydropower element proposed within this planning application. We have approved this CAR application and issued a licence with relevant conditions attached to ensure the protection of the water environment. We therefore advise that we consider the impact of the hydropower element of this planning application acceptable.

### 2. A CAR application has been received by SEPA and guidance\* met

The applicant has submitted an application for authorisation under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended) (CAR) for the hydropower element proposed within this planning application. We have not yet determined this CAR application. However, from the information supplied we have assessed that the hydropower proposal is potentially capable of being consented and would intend to attach relevant conditions to protect the water environment. We therefore advise that we consider the impact of the hydropower element of this planning application likely to be acceptable.

### 3. A CAR application has been received by SEPA but guidance\* not met

The applicant has submitted an application for authorisation under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended) (CAR) for the hydropower element proposed within this planning application. We have not yet determined this CAR application. However, from the information supplied we have assessed that the hydropower proposal is potentially not capable of being consented unless it is modified in order to comply with our guidance. We will be contacting / have contacted the applicant regarding this. We consider the impact of the hydropower element of this planning application unlikely to be acceptable. We therefore advise that you should defer determination of this application until the CAR application has been determined as the planning authority is also a responsible authority under WFD.

### 4. A CAR application has been received by SEPA and requires a derogation assessment to be carried out

The applicant has submitted an application for authorisation under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended) (CAR) for the hydropower element proposed within this planning application; we have not yet determined this CAR application. The proposal would result in a deterioration of ecological status and therefore must be assessed under Water Framework Directive Article 4.7 to determine whether or not it is consentable under CAR. In order to determine consentability SEPA will require to consult with public authorities and seek the view of the wider public. Having regard to the planning authority's duties under the Water Environment Water Services (Scotland) Act 2003, we therefore advise that you should defer determination of this application until this process has been carried out.

### 5. No CAR application has been received by SEPA

The applicant has not submitted an application for authorisation under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended) (CAR) for the hydropower element proposed within this planning application. We are therefore unable to say whether or not the proposal is potentially capable of being consented. We cannot advise at present if we consider the impact of the hydropower element of this planning application likely to be acceptable or not. We therefore advise that you should defer determination of this application until the CAR application has been determined as the planning authority is also a responsible authority under WFD.

\* [Guidance for applicants on supporting information requirements for hydropower applications](#) and / or the [Guidance for developers of run-of-river hydropower schemes](#) as appropriate