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## Decision Statement

Statement of our decision made with respect to an application for a new full abstraction licence under the Water Resources Act 1991 (as amended) and the Environment Act 1995 of an application for a new full abstraction licence.

### Executive Summary

We have decided to refuse this application based on all information provided.

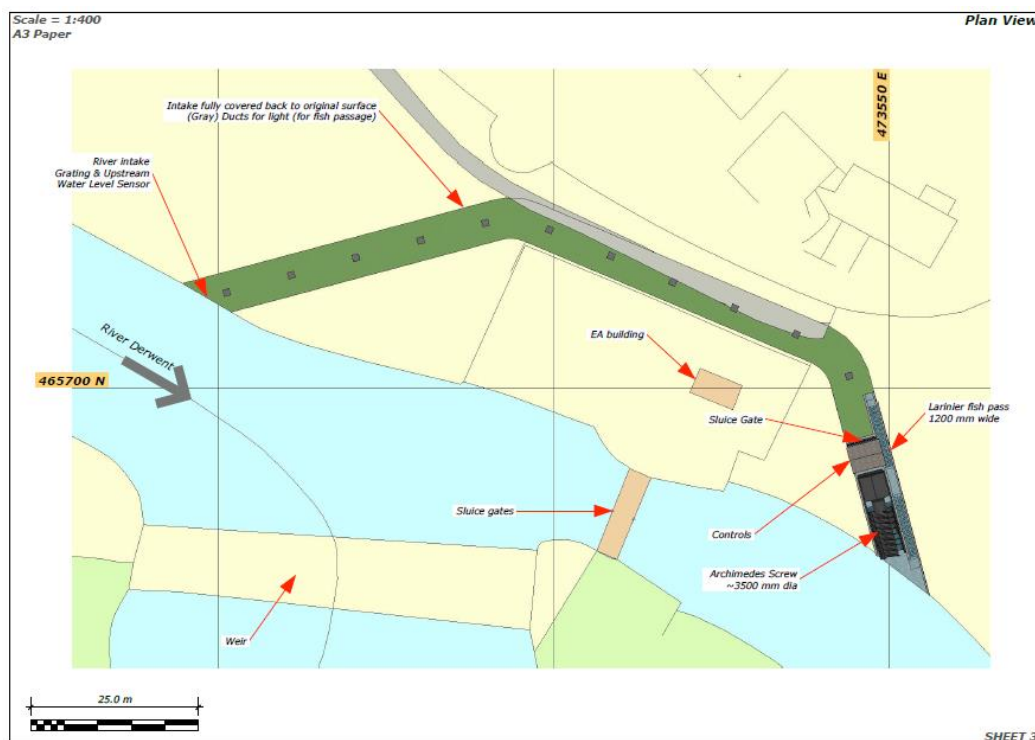
#### 1. Summary of the proposal

The Applicant wishes to develop a hydropower scheme on the River Derwent at Kirkham weir and sluices, roughly 20km northeast of York.

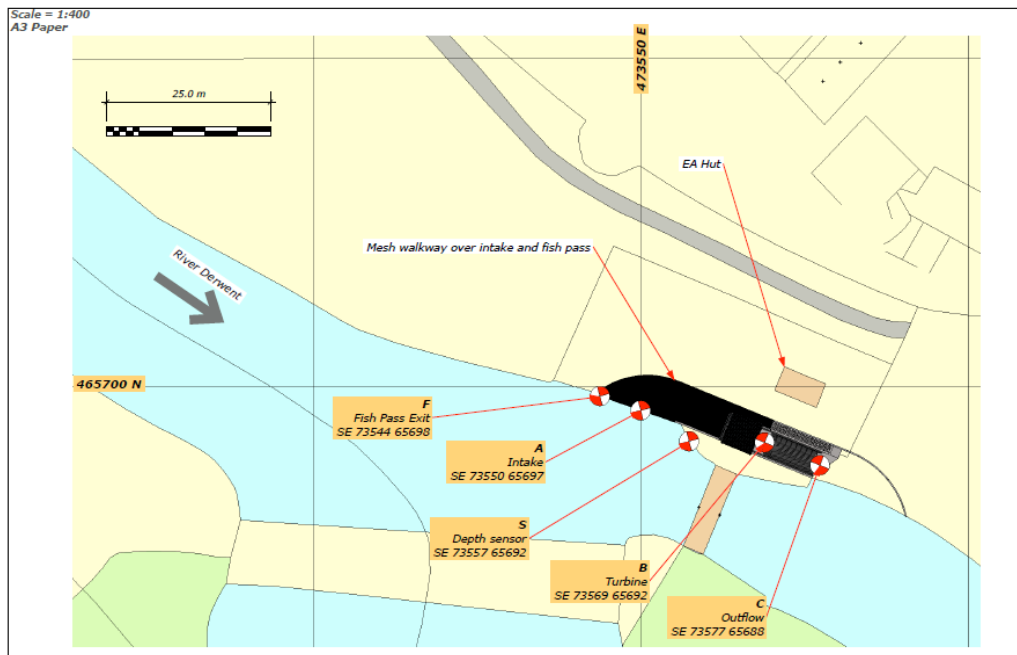
The original scheme layout proposed to bypass the weir and sluices by constructing a new covered channel around land owned by us on the left bank of the river. The channel would supply water to a single 100kW Archimedes turbine and a new fish pass.

This scheme layout was later amended by the Applicant so that the intake channel and depleted reach would be shorter. This put the proposed scheme on land owned by the Agency.

#### 1.2 Scheme layout



Original scheme layout.



Revised scheme layout.

### 1.3 Details of proposal

<b>Administrative details</b>	
New licence number	NE/027/0028/021
Application reference number	NPS/WR/007488
Applicant name and address	Hydrosense Renewables Ltd 26 - 28 Southernhay East Exeter Devon EX1 1NS Company No. 08240953
Application contact details	Dave Mann dave@mannpower-hydro.co.uk
Catchment	Derwent Yorks Middle C027015D
Agency Area	Yorkshire
Administratively complete date	31/03/14
Relevant date	21/04/14
Determination date	21/08/14
Agreed extended determination date	Last extension agreed 21/11/14
Applicant entitled to apply	Yes
Supplementary reports	The Applicant supplied a number of supplementary reports, maps and drawings.

<b>Abstraction details</b>	
Location of abstraction	Inland water known as the River Derwent at Kirkham
Source of supply	River Derwent
Point of abstraction	Amended proposal - NGR SE 73550 65697
Purpose of abstraction	Power generation
Period of abstraction	All year

Quantities and rates	25,200m <sup>3</sup> /hr 604,800m <sup>3</sup> /d 199,584,000m <sup>3</sup> /yr 7,000l/s
Means of abstraction	Gravity flow to an open channel controlled by the operation of a single Archimedes turbine.
Measurement of abstraction	Via reference to the amount of energy generated.
Other details	Amended proposal - all water will be returned to the river at NGR SE 73577 65688

## 2. Advertising

Application was advertised	
Date when advertised	18/06/14
Name of newspaper	Yorkshire Gazette & Herald
One representation was received.	
<p>The representation raised concerns about the scheme both because of its potential impact on the ecology and fish populations of the river, and to also prevent future improvements from taking place within the catchment.</p> <p>As we are refusing the application it is not necessary to specifically address the points raised other than in the general statement on the River Derwent Restoration Project and the River Derwent Special Area Conservation (SAC) &amp; Site of Special Scientific Interest (SSSI) within section 4.</p>	

As the application was advertised, Statutory Notification was served to:

Statutory Bodies	Date
Statutory Water Undertaker (SWU)	10/06/14
Yorkshire Water	

### 2.1. Representations and decision document

As a result of refusing this application a copy of this decision document will be published to the GOV.UK website within 14 days of the date of our decision on the application.

## 3. External consultation

In accordance with our obligations, we have consulted the following bodies about the proposal:

Statutory Consultee	Date
Natural England (NE)	Initial consultation took place on 15/08/14.
English Heritage	Initial consultation took place in August 2014.

#### 4. Technical assessment of the proposal

##### Rights of Access

The Applicant has been unable to provide confirmation that they have a right of access to the point of abstraction.

The Water Act 2003 S.11 (2) specifies that:

- (2) For subsections (2) and (3) there is substituted—
- (2) In relation to abstractions from any inland waters, a person shall be entitled to make the application if, as respects the place (or, if more than one, as respects each of the places) at which the proposed abstractions are to be effected, he satisfies the Agency that—
  - (a) he has, or at the time when the proposed licence is to take effect will have, a right of access to land contiguous to the inland waters at that place (or those places); and
  - (b) he will continue to have such a right for the period of at least one year beginning with the date on which the proposed licence is to take effect, or until it is to expire (if sooner).

For the original scheme layout to demonstrate that the Applicant had a right of access he provided a copy of a lease; however that expired on 31/07/2018.

The revised scheme layout was entirely within our land and this was not deemed to be acceptable. We have not granted any right of access to our land.

On the 31<sup>st</sup> October 2018 we asked the Applicant to provide some other confirmation that he had the necessary right of access but he has failed to do so.

In addition to the Applicant's inability to demonstrate a right of access there are a number of other important unresolved issues upon which the Applicant would have to satisfy us before we might be minded to grant a licence.

However in light of the statutory requirement referred to above we have not pursued those other outstanding matters with the Applicant but would need to do so should he at some time in the future be able to demonstrate the necessary right of access. These outstanding matters are briefly set out below.

##### The River Derwent Restoration Project

The River Derwent has been designated as a nationally important Site of Special Scientific Interest (SSSI) and as a European Special Area of Conservation (SAC) due to its importance in supporting a wide range of plants and animals. However, changes over time to the land and the way the river has been used has resulted in a deterioration in the quality of habitat and conditions which support this wildlife. Natural England's last Condition Assessment in 2009 identified that the River Derwent is in an 'unfavourable' condition. This is mainly related to changes in the river. The degraded conditions have affected many of the main interest features. We are working with Natural England to restore the river towards a 'favourable' condition.

Following survey and analysis, we identified four main issues which affect the condition of the River Derwent SSSI:

- Excess fine sediment and deposition.
- Channelisation and disconnection of the river from the floodplain.
- Lack of bankside shelter and shading, and overshadowing.
- In-channel structures.

The solutions will be delivered in phases based on short-, medium- and long term actions:

- Short term actions such as changing management practices and enhancing habitats by 2015.
- Medium term actions such as modifications to in-channel structures by 2021.
- Long term actions such as modifications to the embankments by 2050.

Specifically we will investigate the potential to remove, modify or alter the operation of structures: For the structures on the river which no longer have a water level control function further studies will be undertaken to identify whether the weirs could be removed, modified or the operation of sluice structures and fish passes modified. Kirkham and Stamford Bridge weirs will be considered initially. This raises considerable doubts over the future of the weir at Kirkham and that facilitating a hydropower scheme at Kirkham does not coincide with our projected outcomes of the River Derwent Restoration Project; that is both now and into the medium term future. Our stated goal for the project at this sites is ideally removal of the structure, or at the very least significant modification of the form and/or operation. Additionally we are also the owner of the structure and in view of our project we would not agree to grant access to enable the operation of the scheme.

We strongly support hydropower schemes when it can be demonstrated that they are the right scheme at the right location. In the case of this proposed scheme at this point in time we would not be able to a) allow access to our land or structure; and b) grant a licence for a scheme that would rely on the presence of a structure that we would like to remove.

#### The River Derwent Special Area Conservation (SAC) & Site of Special Scientific Interest (SSSI)

The River Derwent is designated as a SAC & SSSI and therefore Natural England were consulted regarding the development on this stretch of the designation.

The River Derwent is designated as a SAC for several kilometres both up and downstream of Kirkham weir. The SAC is designated primarily for river lamprey, but with further qualifying features; sea lamprey, bullhead, otter and riverine habitats & running waters (floating vegetation of ranunculus of plain and submountainous rivers). Many of these features are sensitive to changes in water level, flows and habitat and potential significant impact could not be ruled out following initial consultation with Natural England and an appropriate assessment was required.

Similarly the River Derwent is also designated as a SSSI cited for its aquatic flora, invertebrates, fish and breeding birds. These features may be sensitive to changes in flow and water level and following consultation with Natural England, it was agreed that significant impact on the site could not be ruled out with the currently available information and that the appropriate assessment would provide further information to assess potential impacts.

The appropriate assessment produced could not conclude that no adverse impact on site integrity would occur and the Applicant was requested to supply further

supporting information. The Applicant has not provided any further supporting information and thus we are unable to complete the assessment process.

**5. Other Statutory Duties**

We are refusing this application because the Applicant has been unable to demonstrate that he has the necessary right of access to the abstraction point as discussed above at section 4. In the same way that we have not pursued other matters over which we have concerns, see section 4, we have not given full consideration to our wider statutory duties and would wish to do so if at some time in the future we were considering granting a licence.

**6. Recommendation**

We are unable to grant a licence in this instance as the Applicant has not satisfied the rights of access criteria; and even if they had fulfilled this requirement we would still not be able to consider granting a licence at this time as there are other significant issues to resolve.