

Determining water resources licence applications

Who this applies to

- Permitting
- Integrated Environmental Planning staff (IEP)
- Operations Catchment Services (OCS)
- Hydrogeologists
- Hydrologists

Contact

- [Water Resources Helpdesk](#)
-

Introduction

This document provides guidance on what you need to take into account when making decisions on full, [temporary](#), [transfer](#) and [impounding](#) licence applications.

This guidance relates to Step 11 of [LIT 11659 Water Resources Permitting – an overview](#) for formal applications.

Some of the information you need to make decisions will be collected at the pre-application and consultation stages. You should use this Operational Instruction once you have accepted an application as technically valid.

See [LIT 12313 Validation Checks for water resources licence applications](#) for the steps and information needed to accept an application as technically valid.

Permitting plays a central role in our environmental work. It is the mechanism by which the environmental outcomes we want to achieve through our planning activities (Abstraction Licensing Strategies) are put into practice.

The purpose of this guidance is to ensure that water resources licence applications are considered in a professional, efficient and consistent manner and that our decisions are in line with our statutory duties and balance the needs of applicants, the environment and other water users. It is also to ensure we make the correct additional charges for applications which require them.

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Part A - Introduction to determination

General principles

Abstractions and impoundments may have an impact on the natural and built environment, the rights and practices of individuals and have social and economic consequences. We have wide ranging duties to take these matters into account in making our licensing decisions.

This is referred to as the 'balancing act'. Better regulation means we must determine this balancing act by using risk-based decision making.

Balancing act

When assessing the potential impact of an application (whether from surface or ground water), you must resolve the question of protecting the aquatic environment (and its lawful users) while ensuring the proper use of water resources and meeting an applicant's legitimate needs whilst:

- Ensuring the proper use of water resources, and
- Taking account of the likely costs and benefits (Section 39 Environment Act 1995)

The effect of abstractions are twofold within a catchment:

- Resources used by individual licences, which may have an immediate and local impact on resources and the environment.
- The cumulative effect of abstractions

Individual abstractions may be acceptable on their own, but proper water resources management also requires them to be managed bearing in mind their cumulative impact.

Environment Agency's environmental duties

The Environment Agency has various duties to 'further' and 'promote' environmental issues (see [LIT 11102 Overview of Water Resources Law](#)).

These duties may appear incompatible with the duty to grant abstraction licences, since every abstraction and impoundment to some extent will affect the environment.

When determining water resources applications, you need to seek the right balance between protecting the 'natural' situation and authorising acceptable development. You will also need to consider our other statutory duties which are included throughout the rest of this guidance where applicable.

Working with risks

The amount of effort that you put into determining water resources applications needs to be equal with the risk the proposal poses to the environment. This will generally be proportional to the application charge we receive to cover our work. The Validation Specialist will have given an indication of the risk associated with an application in the allocation log and handover document, if the application has been validated. Follow the criteria below which list various indicators that may help to define an application as low, medium or high risk. The risk level can change from what it was given at validation as new factors arise or initial concerns prove not to be relevant during determination.

! Important An application could have particular details across different risk levels depending on the combination of indicators that are relevant. The table doesn't include definitive lists to cover every possible scenario so the permitting officer, SPO and line manager should use their judgment when deciding on the level of risk.

Level of risk	Application particulars
Low risk / less complex	• Variation to change purpose to lower loss / reduced quantities • Standard conditions from WR21 and WR22 only • Sustainable same terms renewals • Abstraction Licensing Strategy (ALS) shows water available for licensing or water availability not relevant to application (e.g. non-consumptive abstraction with no depleted reach) • No protected rights or lawful users affected • No protected species or sites affected

Level of risk	Application particulars
	• Variations to extend a self-destruct clause (including hydropower) • Small daily or annual quantity of water requested compared to watercourse size
Medium risk	• ALS shows restricted water available for licensing and applicant is applying for higher quantities or new licence • Bespoke conditions (not from WR22) • Unsustainable same terms renewals • Different terms renewals • Conservation sites / species identified (assessment not likely to damage / no significant effect) • Water company application where internal consultees are not concerned • Impoundments without other concerns • Hydropower licensed with no deviation from Table A or Table B of the 'Run of River Guidance', with no other concerns (e.g. representations, protected sites/species assessed, competing scheme, or novel technology)
High risk / more complex or contentious	• ALS shows no water available for licensing and applicant is applying for higher quantities or new licence • Unusually complex or bespoke conditions required due to situations listed below • Conservation sites / species identified (assessment likely to damage / likely significant effect) • Risk of derogation • Competing schemes, including if consultation confirms an application is competing with a Strategic Resource Option (SRO) • High Public Interest (HPI) sites • Nationally Significant Infrastructure Project (NSIP) sites • Environment Agency-own application • Water company application where internal consultees are concerned • Any particular regions / projects that are high-profile or involve special consideration (Ant Broads Thurne, Restoring Sustainable Abstraction) • Drought permits • Hydropower (where not fitting low/med) • Impoundments with concerns

Level of risk	Application particulars
	• Minded to refuse application, or issue on different terms without agreement from applicant • Risk of appeal or judicial review

Information resources

Gathering information

The information required for you to arrive at your decision during the technical assessment can be found in various places. This could include:

Information resource	Information provided
Validation Handover Document	• Actions taken so far on the application • Key issues to consider during determination
Water Resources Screening Tool (WRST), WRGIS, Easimap 2	• Water bodies • Resource availability colours • WFD information • Features that could be impacted • Enable a better understanding of the area
Catchment Planning System (CPS)	• WFD Status information – ecological status, hydrology and morphology (for SW), quantitative status (for GW) • Information on Artificial or Heavily Modified Water Bodies
Abstraction Licensing Strategy (ALS)	• Information on waterbodies • Hydrological or hydrogeological characteristics of the catchment • Resource availability colours • Hands off flow/level requirements • Assessment points in the catchment
Document Management Service (DMS)	• Any previous correspondence (including pre-application advice or existing licences) • Previous determination reports / decision documents • Monitoring reports completed
IPS	• Weekly lists (for information on any competing schemes)
Local IEP team	• Initial comments on feasibility (during enhanced pre-app) • Site visit co-ordination and feedback • Local strategies • Local issues and proposed mitigation • Area specific licence conditions

Information resource	Information provided
	- Required hands off flow/level conditions - Habitats Directive and Restoring Sustainable Abstraction (RSA) implications - Information on protected rights - Strategic Resource Option schemes (through liaison with National Appraisal Unit)
Local L&W team	- Local issues and policies - Information about any compliance concerns or historic non-compliances (for licence variations) - Other relevant local information and advice - Organise/attend site visits (along with IEP)
Local hydrology team	- Gauging flow data and long-term statistics - Use of CUBE to estimate flows - Local hydrology expertise - Setting local hands off flows/levels
Local GWCL team	- Information about local hydrogeology - Pump test audit and reporting (including radius of influence, impacts on other groundwater users and impacts on surface waters) - Aquifer characteristics - Groundwater modelling
Local FBG team	- Local issues and policies - Input to impacts on features and any proposed mitigation - Conservations sites and species
Local PSO team	- Local issues and policies - Risks of flooding
OCS (if application is for a water company)	- Background information - Water Resources Management Plans - Regulators Alliance for Progressing Infrastructure Development (RAPID) schemes
National Appraisal Unit	Strategic Resource Option schemes
Coordination Specialist (if application is part of Priority Tracked Service or Nature Permitting & Coordination)	- Background information - Details of linked applications - Up to date information from applicant - Support with resolving problems and decision-making
Natural England / Natural Resources Wales (Conservation team)	- Habitats Directive Sites and site specific information - SSSI sites and site specific information
Natural Resources Wales / River Tweed Commission	Water management and environmental considerations in relation to waterbodies that cross border catchments.

Information resource	Information provided
Wildlife Trusts	• Water dependent sites • Water management plans for their sites
Other	Based on the above lists and information, you may also need to discuss the proposal with: • Broads Authority • National Park Authority • Navigation/Harbour/Conservancy Authority • Historic England

Part B – determination process

Process overview

This guidance sets out the topics you need to go through to make a decision on a licence application. The process might not necessarily follow the topics in the order presented below.

You must complete or have regard to all of them to successfully reach a decision on an application.

Use the Navigation functionality to jump to the different stages easily.

Before you begin determining the application, review the handover document completed by the Validation Specialist. This will tell you what actions have been taken on the application so far and highlight key issues to address during determination. If you have any questions, call the Validation Specialist and they can help you understand the application.

If the application is part of the Priority Tracked Service you will need to talk to the Coordination Specialist when you first pick up the application. See '[Priority Tracked Service applications](#)'.

Stage 1 – Water availability

General principles

Water availability is the resource available for licensing, taking into account the needs of the environment and other abstractors and lawful users.

In most catchments, some water will be available for licensing, but you need to identify if the right amount of water is available at the right time.

Abstraction Licensing Strategies (ALS) will help you answer these questions at a catchment/water body level.

! Important Water availability also impacts the application charge for most application types. The water availability used in calculating the charge is a separate layer in WRGIS that is not updated as frequently as the layers used in the Resource Assessment Management (RAM) ledgers and the ALS, meaning there may be a difference between the water availability that someone is charged for and the actual water availability.

There are three topics to determining water availability: Areas assessed by licensing strategies; areas not assessed by licensing strategies and reliability of supplies. These are covered in more detail below.

Areas assessed by licensing strategies

The ALS will provide a good starting point for establishing water availability if the proposal is located close to an assessment point (AP).

You can use the results from the WRST and the ALS to determine the quantity of water applied for is available. If water is available, continue with the determination process. If water is not available (not even with appropriate hands off flow/level conditions), you should discuss the application with the applicant informing them that if there are no alternative options the application will be refused.

The further away a proposal is from an AP, the more likely it is that you will need to do a more local assessment of water availability (see principles in the next topic).

Areas not assessed by licensing strategies

In the ALS, the focus is on assessment at defined points, generally at a gauging station on a downstream reach of a principle tributary or the main river. If the abstraction licence application is not specifically within an assessed area, further work may be required to determine resource availability.

Local IEP teams will be able to advise on water resource availability using the local licensing strategy. The local hydrologist may be able to provide modelled flow data using CUBE. The local hydrologist will need to use their judgment to select the best method for generating this data.

! Important You will need to check whether other applications are in progress in the same catchment that could be 'competing' for the same water, as this may impact your assessment.

If water is available, continue with the determination process. If water is not available (not even with appropriate hands off flow/level conditions), you should discuss the application with the applicant informing them that if there are no alternative options the application will be refused.

If the applicant is not happy with our assessment of available resources (or lack thereof) they could choose to monitor flows at the proposed abstraction point to show that the requested volumes are available. This will not change our decision on the existing application (although the applicant could choose to withdraw their application) but could be used to support applying again in the future once the monitoring has been completed. Any proposed flow monitoring setup and monitoring period should be discussed with the local hydrologist beforehand to ensure any monitoring is suitable for the location.

Reliability of supplies

Reliability is largely a matter for the applicant to consider – they may consider an unreliable supply better than no supply at all, or they may decide that the application fee, annual subsistence charge and their own project development costs outweigh the benefits they could gain from an unreliable supply.

Your role is to advise the applicant about the reliability of the supply, and to ensure that the applicant understands that abstraction ceases when required. You may also suggest the development of alternative supplies such as using mains water or winter abstraction during high flows and storing for subsequent summer use.

The information on reliability quoted in the ALS may be sufficient to advise the applicant, however it is likely that a more detailed assessment will be needed. In these cases, you should contact the local hydrologist and ask them to provide an estimate of licence reliability accounting for any hands off flow/level condition that may be required. It is advisable to base this on multiple years of data, looking at wet, average and dry years. You can then estimate the percentage of time that abstraction can take place and provide this information to the applicant.

For groundwater proposals, the pump test will confirm whether the required volumes are available.

If the analysis indicates that abstraction may be unreliable then you should inform the applicant. Advise them that they may employ a consultant to calculate the actual volumes available. Advise them of any subsistence charge that will apply

so that they can weigh up the ongoing cost against the likelihood of having access to the water they are paying for.

! Important You should not advise the applicant to withdraw their application based on reliability alone. You can advise them that this is an option (in which case they may be able to recover some of the application fee costs and avoid subsistence charges) but they should make this decision independently. You should continue to determine the application unless informed of withdrawal by the applicant.

You should only refuse to grant the licence or limit abstraction quantities in extreme cases where it is unlikely that the applicant would ever be able to secure the applied for quantities. The justification for this approach would be to ensure good water resources management.

You should record what you have determined in terms of water availability of supplies in the relevant sections of the decision document.

Stage 2 – Justification of need and water efficiency

Determining reasonable requirements

You must have regard to the ‘reasonable requirements’ of the applicant (Section 38(3)(b) Water Resources Act 1991).

- The Validation Specialist will decide whether information to assess justification of need has been submitted alongside an application as supporting information.
- The Determining Officer will complete the assessment of this information, including running the Optimum Use Tool, as outlined below.

There is a presumption that you will meet these requirements if possible. You need to look critically at what the applicant has requested in every case, but you should not make a value judgement as to whether the proposal is a worthwhile use of water. See the [examples](#) at the end of this section.

To support your determination, you can use the Water Resources Optimum Use Manual tool, the Optimum use of water for agriculture and industry sectors (science report and best practice manual) – these can be found on [the WR Sharepoint Online site](#), as well as [part C: Justification of need](#) of this guidance.

The Determining Officer should complete the following steps when assessing the justification of need:

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1. Critically assess the applicant's requirements. Work from first principles, not backwards from the existing level of use. You may need to ask the applicant to further explain how they will use the water or how they have calculated their volumes.
2. Consider the instantaneous, hourly and daily rates the applicant has applied for, not just the annual rate. The rates need to be achievable when multiplied up by the periods abstraction will take place. For example, an annual volume of 365 times the daily volume will only be acceptable if the abstraction is expected to take place all year round with no seasonal fluctuation in requirements. The daily volume you put on the licence will affect how we assess the impact of the abstraction and how it is represented in the Abstraction Licensing Strategy. The instantaneous rate needs to be achievable by the means of abstraction being proposed.
3. Where the applicant is proposing to replace a mains supply with one for direct abstraction, or where the applicant is looking to vary an existing licence, look at the records of historic mains use to inform your assessment.
4. Make sure you understand what the proposed purpose is and whether any of the water is returned to the environment. Critical to the impact of abstraction is the extent to which water is returned after use or is consumed (lost to the activity). For charging purposes, broad bands of consumptive losses are included as loss categories, as set out in the [Water Resources Charging scheme](#). We need to make sure we use the right purpose on the licence, since the loss category and therefore annual charge will be decided based on the purpose on the licence. See also the section on '[Deciding to use a point of return condition](#)' below.
5. Consider any efficiency measures that the applicant is looking to apply to ensure that the water is not being wasted unnecessarily. See [Chapter 7c Abstraction Licensing Manual](#) for more information.
6. Consider any other abstractions on site. You must consider all the sources of water that the applicant has available during the determination. An applicant may already have existing licences or exempt abstractions that can contribute to their water requirements. For example, a farmer applying for a winter storage abstraction for spray irrigation may already have a licence authorising summer abstraction for direct spray irrigation. See '[Considering aggregated licences](#)' section.
7. For a variation, consider their past usage and what changes are proposed that affect their expected usage. Where the application is to change the purpose, past usage may not be relevant to the justification decision,

though it will still be relevant in our assessment of impact on the environment, particularly [WFD](#).

8. Consider whether any headroom, expansion predictions, safety margins or rounding in calculations that applicants have proposed are reasonable. Request a business plan to justify if appropriate.
9. Discuss your decision with the applicant and identify any changes that need to be made to the application (for example, reducing the quantities) – see [‘Volume changes during determination’](#) if looking to amend the volumes. Alternatively discuss what additional information could be provided to support the application at the requested volumes. Discuss what their annual subsistence charge will be (if relevant) – see [‘Calculating Annual Subsistence charges’](#) for more information.
10. Justification for an application is not always just about quantities of water asked for, there are wider factors that can influence the reasonable requirement for an application. For example, for applications to add extra abstraction points, a detailed consideration of licence volumes is not the key issue. The main reason behind the proposal might be to improve the licence holder’s ability to abstract water close to where it is needed, in this case the application is to allow them to make better use of their existing quantities.
11. Record your decision and any relevant issues in the decision document and where you have amended the quantities being applied on the licence, in the ‘licence conditions’ section. Save any correspondence with the applicant on DMS.

Considering aggregates within and across licences

Aggregating the volume limits within a licence or across more than one licence gives licence holders flexibility in how they use the water they are licensed for. Applicants could be asking to use water for two different purposes but have an aggregated limit across them both. Or they could have two licences in different locations but one overall need for water for their operation, so they want the two licences aggregated at a lower amount than the sum of the individual licences.

There are numerous scenarios where we receive an application that relates to a licence which has or is proposed to have its volumes aggregated with other licences in some way. Aggregates could be between any of the volumes on the licences, controlling the total that can be taken under the licences or under specific volume or purpose combinations.

In most cases, the Validation Specialist will have requested and received any additional application forms and charges so we can vary the existing licence(s) to update the relevant conditions. If they haven’t, you will need to do this during

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determination. Refer to '[LIT 11674 Water resources permitting: admin variations, minor variations and reductions](#)' for an explanation of why we need all aggregated licences to be up to date and what the requirements are under different scenarios.

Aggregates both within and across licences affect the annual charge that will be payable by the holder of full abstraction licences. Not all aggregates result in a lower annual charge. You need to consider this carefully during determination and discuss the implications of how you set up volume conditions with the applicant. It may be that the applicant doesn't want as much flexibility as they initially asked for when they understand it may increase their annual charges.

You will need to calculate the annual charge for each licence within the aggregate group individually and then work out the aggregate factor to calculate how much the applicant will be charged for each licence and in total. Speak to your charging lead if you need support in calculating the aggregate factor.

The effective date of all the new issues and variations of the aggregated licences will need to be the same, otherwise the annual charge calculations become extremely difficult, and it can be unclear what conditions were in force at what time. This makes it important for you to request any required additional forms and charges as early as possible in determination, if it hasn't already been requested at the validation checks stage.

Where the proposal is a transfer re-abstraction scheme, there is additional guidance available to support you in working out the required aggregate conditions. Refer to '[spray irrigation – crops](#)' and '[storage reservoirs and winter fill](#)' sections for more information and the guidance in [LIT 110554 Transfer re-abstraction schemes](#).

Justification for renewing time limited licences

When renewing time limited licences, you need to consider their record of actual abstracted quantities against the amount they are licensed for.

As a guide, if they abstracted less than 80% of their annual quantities in a dry year, then you should consider reducing the quantities or requesting additional information from the applicant to support retaining the existing quantities.

Low usage combined with proof of crop rotations, crop disease or any other mitigating circumstances could be relevant justification for historic low use.

You can find more information for dealing with renewal applications in [LIT 11619 Renewing time-limited abstraction licences](#).

Justification for impounding structures

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You must still consider the reasonable requirements for the applicant for any impounding licence applications (in accordance with section 38(3)(b) Water Resources Act 1991).

Whilst impounding licences do not have quantities that you can assess to consider reasonable use of water, you must consider why the impounding licence is required in the first place and whether this is justified. In cases where there is a linked abstraction, consideration of justification of both the impounding and abstraction licence applications could happen at once. For example, if an impounding licence is to create an online reservoir and the applicant is looking to abstract water from the reservoir, are the quantities that they are looking to abstract reasonable and would the creation of the reservoir reasonably allow this to occur.

Where impounding licences are not associated with an abstraction, you should consider whether there is a requirement for a new impounding structure at the location applied for, or whether any alterations that the applicant wishes to make are necessary in the context of the waterbody and water resources environment.

Examples

You may find the following examples useful when determining the justification of need for an application.

An applicant applies for a quantity of water for spray irrigation that is more than likely use, considering the crops proposed and area of land to be covered. This would be considered unreasonable, and the quantity sought should be revised.

An applicant applies for a winter storage licence where a reservoir has not been constructed yet (volumes are justified). We would apply a self-destruct condition – normally 3 years – to avoid tying up the resource in the event that the reservoir is not built.

When working on an application for a golf course, you feel that in an agricultural area where resources are stretched already, it is better for the economy that water is used for irrigating crops rather than used on a golf course. This would not be a proper application of the 'reasonable requirements' for the golf course application (though it could be a factor in the cost-benefit analysis, especially if there are competing schemes) and would be value judging the purpose which we should not do. If the application for the volumes applied for are reasonable, we should look to grant any abstraction licence in the same way for all applications on a first-come-first-served basis.

The applicant is requesting water they need for the future. In cases like this, you should bear in mind that additional quantities may have been built into the proposal to account for future development and growth. It would be reasonable to

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request a business plan showing how the activity is expected to grow in the future and need the requested water if the volumes requested are not reasonable based on existing use.

Water efficiency

As part of the assessment of reasonable use, you should consider whether the applicant is using water efficiently. Using water efficiently will mean that any water abstracted is not being wasted unnecessarily. This will help to meet our duties under section 38(3)(b) Water Resources Act 1991 to consider the reasonable requirements of the applicant and also section 6(2)(b) Environment Act 1995 to secure the proper use of water in England, including the efficient use of water resources.

The scale of water efficiency measures is likely to be driven by the environmental sensitivity of a given location. For example, in a water stressed area, we may require an applicant to show greater emphasis of water efficiency measures to better show that the volumes of water being abstracted are minimised as much as possible. Broadly speaking, the water efficiency measures can be categorised into the following areas:

- Good housekeeping – assessment of need for all water uses on site
- Management – monitoring and measuring actions/devices to manage demand and identify leakage. This can be incorporated into an annual water audit.
- Re-use – re-use of water without it being treated
- Recycle – recycling of water to be used after treatment
- Re-design – consider changing the system used completely

In general, good housekeeping and management should be the minimum areas considered as part of assessing the water efficiency of an application for an abstraction licence. In areas where there is greater water stress, you may find it useful to consider the latter 3 options as part of the application.

The '[Optimum Use of Water for Industry and Agriculture: Phase 3 Best Practice Manual](#)' and '[Assessing optimum irrigation water use: additional agricultural and non-agricultural sectors Science Report](#)' include optimisation techniques that could be applied to a number of different sectors. These may help you in identifying any efficiency measures that could be undertaken by the applicant.

In addition to the optimum use manual and science report, you may find the following documents useful in considering water efficiency:

- [LIT 15725 Water resources abstraction licensing manual – chapter 7c – water efficiency](#) – this includes water efficiency guidance when assessing it

as part of a licence application, including practical considerations and includes some guidance for different sectors

- [LIT 15726 Water resources abstraction licensing manual – chapter 7c appendix 1](#) – this includes practical steps that abstractors for private water undertaking, spray irrigation and general agriculture can take to assess and improve water efficiency
 - [LIT 15727 Water resources abstraction licensing manual – chapter 7c appendix 2](#) – this includes water efficiency measures that could be implemented for different industrial processes
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Stage 3 – Impact assessment

You will need to work through four topics to determine the impact assessment for the application.

Initial conceptualisation

Start to conceptualise the proposal for new water resources applications.

The output of the WRST will provide a starting point for the assessment. Further guidance on using the WRST and assessing the results can be found in [LIT 55369 Water Resources Screening Tool – Running the tool and understanding results](#).

You should add to the results of the WRST (as applicable) using information from:

- Water resources GIS layers in easimap
- The relevant ALS and section 1 of the Catchment Conceptualisation Report
- Results of any internal consultation

These will help you to conceptualise the catchment and the constraints that may be applicable to any water resources licence. These sources of information can relate to both surface water and groundwater and their interaction.

Once you have conceptualised the licence within the catchment, you should establish the environmental characteristics which may be affected by the proposed activity and what factors of river flow/level may be critical to them – for example the impacts that abstraction could have on fish migration.

Habitats Regulations and Countryside and Rights of Way (CROW) Act

For proposals that have a pathway to impact a designated site under the Habitats Regulations or the CRow Act, you need to go through an additional screening and assessment process involving Natural England (and potentially Natural Resources Wales).

You should contact the local IEP or FBG teams for advice on any review of consents work and follow the process set out in [LIT 12467 Screening and assessing new water resources permissions for impacts](#).

! Important A decision on the application must not be made until the Habitats Regulations/CRow Act assessments have been completed.

Water Framework Directive (WFD) Regulations

To meet our obligations under the WFD Regulations, when determining water resources licence applications, we must not:

- Deteriorate water body status, including deterioration of individual quality elements.
- Compromise the implementation of future improvement measures (including from other functions). These are set out in the River Basin Management Plans (RBMPs) to ensure our aim to achieve good status/potential in water bodies.
- Compromise the achievement of any protected area objectives (SAC, SPA and Ramsar sites).

You must ensure that you meet these objectives as part of your determination. Refer to [LIT 13436 Incorporating WFD objectives into abstraction and impoundment licensing](#) for instructions on where to find the relevant information, and the steps you need to follow, to ensure you meet these requirements.

Peat soils

As part of the government's drive to net zero, it is recognised that worldwide, peat soils contain up to 44% of all soil carbon, and exceeds the carbon stored in all other vegetation types including the world's forests.

Damaged peatlands are a major source of greenhouse gas emission, responsible for almost 5% of CO₂ emissions globally. Defra have developed several funding schemes through which peat soils can be restored to not only prevent carbon being released, but also by increasing the carbon absorbed. However it is important that we try and protect all peat soils from further degradation.

If the application itself is for peatland restoration you need to keep the Peatlands application tracker (linked from Validation handover document) up to date with your progress during determination.

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If peat soils were identified during manual screening as being within the impacted radius/distance downstream of an abstraction, this will be highlighted in the validation handover document. You must ask the relevant questions during internal consultation with IEP, Hydrology, Groundwater and Biodiversity, as shown in the WR49 consultation bank of questions.

Consultees may suggest restrictions or conditions to include on the licence to protect the peat and prevent it from desiccation and therefore releasing carbon. These restriction or conditions should be explained in the decision document as usual in the 'Other Considerations' section where it talks about desiccation.

Legislation which supports the protection of peat includes

- Section 38 (2) of the Water Resources Act
- Section 6(1a) Environment Act 1995

Refer to [Guidance for considering peat soils during determination](#).

Surface water abstraction

General principles

You must work on the basis of no environmental detriment. You must protect the critical aspects of the river environment and adjacent habitats where these are dependent on river flows/levels.

Your impact assessment will need to look at the local impact and the impact on a catchment/water body scale. Abstraction Licensing Strategies will help take care of the catchment and assessment point impacts, but you will still need to use and refer to the WRST results and your other information sources to determine the local impact.

You can find further guidance on assessing impacts for surface water in [Part C Impact Assessment](#).

Surface water assessment

To determine the impact, consider whether the proposal will:

- Reduce naturally occurring low flows or extend low flow periods
- Affect flow variability
- Have an impact on environmental features (for example springs, wetlands, fens and other sites designated or otherwise)

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- Reduce the volume of water available for effluent dilution
- Compromise any [WFD objectives](#) for that water body
- Have an impact on any local features (for example fish migratory routes)

If the answers to any of the above points is yes, then depending on the severity of impacts it may be necessary to either modify the proposal or impose conditions to mitigate those impacts. In extreme cases you may need to consider refusing the licence (or discussing withdrawal with the applicant).

! Important Section 21 Water Resources Act 1991 gives the Secretary of State power to determine a 'Minimum Acceptable Flow' for a watercourse. Historically, we have not used these powers instead relying on mitigation and conditions including hands off flows to suitably protect the water environment.

See the sections on [mitigation](#) and [refusing licences](#) to consider the options available.

If the answers to all the above points is no, or there are considered negligible impacts, it is possible to grant a licence without much further work.

Complete the 'Key issues' section of the decision document to explain your findings.

Groundwater abstractions

General principles

All the previous considerations are also essential for groundwater applications, where there is any connectivity or impact on surface waters.

In addition for groundwater, you must also consider:

- Whether the source will sustainably yield the required quantities
- Derogation and impacts on other groundwater interests
- Impacts upon designated sites that are reliant on groundwater levels
- Whether the abstraction poses a risk to the WFD quantitative status of the groundwater body, or to any other [WFD objectives](#)
- Impacts on essential baseflows from aquifers, which support surface water flow regimes in associated catchments
- The cumulative impacts of existing groundwater abstractions on surface water features

Many of these will be considered as part of a pump test (if applicable) and analysis of pump test results.

Groundwater assessment

Most new groundwater abstraction proposals will require some form of pump test or hydrogeological impact assessment. When setting out the conditions and requirements of the pump test (including monitoring to be undertaken), many of the considerations will have been taken into account and we can analyse the results of the pump test to confirm any impacts.

The overall availability of resources in an aquifer can be assessed through the relevant Abstraction Licensing Strategy, and the local IEP and GWCL teams. You should follow the steps below when assessing any groundwater application.

1. Obtain the pump test report or hydrogeological impact assessment (as applicable) that has either been written or audited by the local hydrogeologist.
2. Review the report and consider the following points:
 - Are the required volumes achievable sustainably?
 - Are there any concerns over derogation or impacts on other groundwater users?
 - Are there any anticipated impacts on any designated sites or species?
 - Are there any anticipated impacts on surface waters?
 - Is subsidence or desiccation a risk?
3. If the answers to the above points are favourable, you can consider the abstraction to be sustainable and a licence can be granted.
4. If the answers to the above points lead you to believe there could be issues with the abstraction, then the proposal may need to be amended (for example by reducing volumes), a pump test may need to be re-completed, or we may be able to grant a licence with mitigation (for example by granting a short time limit with monitoring)

Document your decisions in the 'Key issues' section of the decision document.

You can find further information when considering groundwater applications in [Part C Groundwater availability](#) and information on the pump test procedure in [LIT 12573 Groundwater Investigation Consents \(GICs\)](#).

Protected rights and derogation

General principles

You must have regard to existing abstractions and must not grant licences which derogate any protected rights.

These terms have special meanings which are explained in [Part C: Protected rights](#). Cases of derogation are uncommon, and mostly occur in relation to groundwater abstractions.

You should investigate any potential derogation risks with the local hydrogeologist (for groundwater applications) and hydrology (for surface water applications). Further monitoring may be required to prove or disprove any risk of derogation.

! Important For large surface water abstractions such as HEP, you should refer to [Part C Safeguarding protected rights of large abstractions](#).

If there are no derogation issues, you can progress the licence application.

If there are derogation issues, these will need to be resolved before progressing with the licence application. See the section on [mitigation](#) below for guidance on this.

Record your decision and findings (including any agreed consents to derogate) in the 'Protected rights and lawful users' section in the decision document.

Lawful uses

Effects on lawful uses

There may not be derogation in the legal sense of that term which would prohibit you from granting a licence without the affected parties' consent, however you must still 'have regard to the requirements of existing lawful uses whether for agriculture, industry, water supply or other purposes' (Water Resources Act 1991).

You can find further guidance on considering lawful uses in [Part C: Lawful uses](#).

You should follow the steps below when considering the potential impacts on any lawful uses.

1. Investigate the potential for impact in consultation with the local hydrogeologist (for groundwater applications) and / or a hydrologist (for surface water applications or groundwater applications that can impact on surface waters).

Note: The applicant may need to undertake further monitoring work to prove or disprove whether their proposed activity is likely to impact on another lawful use.

2. If your investigation shows that a lawful use is likely to be affected, try and mitigate the impacts through conditions in the licence or asking the applicant to modify the proposal. Whilst every reasonable effort should be made to avoid adverse impacts on lawful uses, it may be appropriate in some cases to issue a licence where the abstraction would have only a minor or temporary impact on the lawful use. Speak to the WR Regulation team in E&B if you need further advice on this.
3. Record your findings in the 'Protected rights and lawful uses' section of the decision document.

If you encounter any issues regarding claims of subsidence and / or desiccation, then you will need to have regard to these factors as part of your determination. Look at the guidance in [Part C: Desiccation and subsidence](#).

Competing proposals

If screening has identified the application may be competing with another proposal, including a Strategic Resource Option (SRO), follow the guidance in the following documents:

- Policy: [Competing water resources proposals \(non HEP\)](#)
- Process: [Competing water resources proposals process.docx](#)

Stage 4 – Charging considerations during determination

There are various circumstances where you will need to request additional payment from an applicant during the determination process. This section explains when this will be relevant and how to do it.

Annual subsistence charges for full licences are discussed in the section [‘Calculating annual subsistence charges’](#).

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Additional charges related to our requirement to consult and advertise externally

At the technical validation stage set out in [LIT 12313 Validation checks of water resources licence applications](#), the Validation Specialist will have decided which additional charges may be relevant to the application and either charged the applicant or notified them of this possibility within the acknowledgement letter. These additional charges are for applications where we need to complete any of the following tasks:

Advertise in the local newspaper and online

This additional charge applies in all cases where we need to advertise the application. See [LIT 11107 Advertising water resources licence applications](#).

! Important This step will have been completed during validation, by the Validation Specialist.

If the application has been advertised, you should ask whether the applicant has paid their advertising cost when you speak to them about the application. If they say they have paid, ask for the date and payment reference. Send this to IPS using the payment check request email so they can update Log & Track. Asking about the payment helps us to keep our records up to date and reminds the applicant that they need to pay if they haven't.

Consult with the Broads Authority, National Parks Authority or Internal Drainage Board

The external consultation additional charge applies in any cases where:

1. We need to consult the National Parks or Broads Authority as set out in Regulation 9 of the Abstraction and Impounding Regulations 2006. This is the case for all proposals within their boundaries. The WRST will have identified whether this applies for any application being determined.
2. We need to consult the IDB to get their input on how they manage water in this location, whether the proposal can be granted as applied for or what mitigation might be needed (such as a hands off level). This is separate from our decision whether to advertise the proposal which triggers a statutory notification to the IDB.

The Validation Specialist will have

- Sent the WR120 to consult with the National Parks Authority or Broads Authority.
- Charged the applicant if they have consulted.
- screened the application to identify whether consultation with an IDB is needed.
- Charged the applicant if they could decide consultation with an IDB was needed.

In some cases, the Validation Specialist may not have been able to conclude whether consultation with an IDB is needed. They will highlight this in the handover document and the WR184. The Determining Officer will need to make this decision with the help of area teams, and raise the additional charge if consultation is required.

Bespoke consultation with IDBs will be completed by the Determination Officer during determination.

! Important If the application is exempt from advertising and we need to consult the IDB we cannot apply the external consultation additional charge. However, if we have applied advertising discretion (WR29) and need to consult the IDB we can and should apply the external consultation charge.

Complete a Habitats Regulations Assessment or CRoW assessment

The habitats assessment additional charge applies in all cases where we need to complete an assessment under the Habitats Regulations or Countryside and Rights of Way Act, regardless of whether we are completing that assessment for audit, information or consultation purposes. Only one charge applies per application, regardless of how many different assessments are required.

For renewals, there is a statement of approach with Natural England that sets out when we need to complete conservation assessments. See ['Conservation assessments and additional charge for renewals'](#) for details of how the additional charge applies in different scenarios.

The results of the WRST alone are not always sufficient to decide if these are needed. During validation, the Validation Specialist will complete a high-level check of whether these are needed, and take payment if they can decide an assessment will be required. Please check the WR184 and handover document to confirm if these payments have been requested. If the Validation Specialist has not made the decision, the Determining Officer should complete consultation and parts of the impact assessment until they can decide. If an assessment is required, they must request the additional charge promptly to give the applicant time to pay before you finish the determination.

! Important The additional charge must be raised regardless of whether the assessments will be sent to Natural England for information only or consultation.

! Important There may be multiple additional charges if more than one of the activities above are needed for a specific application.

Use template letter [WR392 Additional charge required during determination](#) to notify the applicant of which additional charges are required and request payment. Follow the instructions in '[Requesting additional payments process](#)' below.

Where you are dealing with linked applications and are doing a single advert, external consultation or conservation assessment, you only need to make the relevant additional charge(s) once.

! Important Other than the advertising invoice (which must be raised separately), you should try and include all additional payment charges in a single payment request explaining to the applicant what that covers. This will make it easier to check payment has been received and will take less time than requesting multiple payments per application.

Time and materials charging for High Public Interest or competing schemes applications

When we consider an application to be High Public Interest (HPI) or to be a competing scheme, we may need to do additional work that means it considerably exceeds the amount paid up front under the application charge and relevant additional charges. We will charge on a time & materials basis for this work. See [LIT 17116 Time and materials charges – overarching guidance](#) for the process on how to time record and charge for this, including the letters for notifying the applicant. See also the Permitting EPR regimes document [Charging for HPI applications guidance](#) for a more detailed breakdown of what time is chargeable.

Changes to an application during determination

If an applicant requests changes to their application whilst you are determining it, you may need to do additional work to re-assess parts of the proposal. The 'application amendment' charge in the charging scheme is there primarily for Installations EPR applications which have a public consultation process. We don't expect to use this charge in Water Resources.

If the changes proposed are significant enough to require us to re-do advertising, external consultation or conservation assessments and needs significant internal re-assessment of the proposal, we require the applicant to withdraw their application and submit a new one, paying the appropriate application charge. If the applicant wants to pursue the changes and won't withdraw their application, you can determine it as originally applied for and the applicant will need to apply to vary it, or you can refuse the application. The applicant will then have the option to appeal our decision.

Consider what work we have already done; how much the changes affect this and what work is now needed. Seek advice from your Team Leader and SPO and escalate to the Charges Panel if needed.

Volume changes during determination

If the annual volume changes during determination and this would have put them into a different volume band for the application charge, consider whether a partial refund or request for additional money is appropriate based on the impact on our determination effort so far and what's now required. If the volume has increased to a higher band, our determination effort needs to reflect the correct volume band, so we need to request extra money to match the cost of the higher band. If the volume has decreased to a lower volume band, we will only consider refunding to the lower application charge if we haven't yet done the assessment work associated with the original volume applied for.

Requesting additional payments process

Permitting

1. Use the appropriate section and guidance above to determine any additional payments and use the appropriate template letter to request payment from the applicant. You can send it as a letter, an attachment or by pasting the text into an email.
2. Save all correspondence to DMS.
3. Send template email '[Log & Track Update - Additional Charge](#)' to IPS to ask them to update Log & Track.
4. You can continue your determination without waiting for confirmation from the applicant. If applicant notifies you they have paid, send email template 'Payment check request' to IPS to ask them to check on SOP or Gov.uk Pay whether we have received the payment. It can take a few days for the payment to appear in SOP.

IPS

5. Permitting Update Log & Track to record what payment is required and when it was requested. See Log & Track Finance Module guidance for how to do this.
 6. Respond to '[Payment check request](#)' email to notify PO whether the payment has actually been received.
 7. Update Log & Track to record what payment was received.
-

Applicant requests to withdraw the application before you determine it

The charging scheme is about charging an amount proportional to the effort we have put into our work on an application. If an application is withdrawn part way through, we will retain a proportion of the charge to cover the work we've done already in validating and determining it.

If you believe the charge the applicant paid is disproportionate to the time that had been spent determining it, use your time recording to help estimate what proportion to refund. Collect time estimates from other people in Permitting and Area who have spent time on the application too.

If we have already carried out the activities which attracted the additional charges, do not refund any of these. Debt recovery teams will chase additional charge payment if outstanding. If we haven't done the work associated with any additional charges we have requested then we will refund them (if paid) or cancel them (if not yet paid).

Talk to your Team Leader or SPO and escalate to the Charging Panel if you aren't sure what refund is appropriate (if any). Refunds are agreed through the FSOD hierarchy of team leaders and their managers, with support from IPS. Once agreed, contact IPS to arrange a partial refund using template email '[Log Track Update - Application Withdrawn Rejected \(and refund if required\)](#)'. You will need to explain what charges need refunding and why.

See [LIT 11084 Activities on receipt](#) and [LIT 12313 Validation checks for water resources licences](#) for details of refunds when applications are withdrawn or returned at the administrative and technical checking stages.

IPS will notify the local IEP team that the application has been returned / withdrawn so that they are aware of the activity possibly taking place without a licence and can liaise with L&W if it would be beneficial for them to visit the site.

Abatement of application charges when considerably less work required

Where an application has required a disproportionately small amount of work compared to the application charge and additional charges we've requested, at the applicant's request you can consider whether an abatement of some of that money is appropriate. See [LIT 16981 Abatement of regulatory charges](#) for the process.

We have the option of either agreeing an abatement upfront before starting the licence determination (where we are confident that the application time is going to be less than expected) or, in most cases, require the full application fee upfront and then agree an abatement at the end of the application determination where the application time is less than expected. In most cases, we would use the latter option because unknown issues may come up during the determination of an application, even where it looks simple at the start.

! Important This will be a rare occurrence and needs sign off internally before you can tell the customer we will make an abatement. An example could be a variation to extend a self-destruct condition where screening showed nothing had changed since the original determination so we didn't need to carry out lots of the usual process steps to reach our decision.

If considering an application fee abatement, see the guidance saved [here](#) and discuss it with your centre charging lead.

Dealing with challenge from the applicant about our charges

Sometimes applicants will be unhappy with the amount of money we are charging them for an application. You may need to explain to them about the change to our charging scheme and the principles of cost recovery. Refer them to the charging scheme and external charging guidance in the first instance.

You can get support from your Senior Permitting Officer, Team Leader, the Water Resources Process and Commissioning Team, Permitting Centralised Services team or the E&B Charging team.

Forward any complaints you receive to NPSfeedback@environment-agency.gov.uk.

See also [LIT 11241 How to handle complaints](#).

Outstanding charges when we are ready to issue or refuse an application

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Where we have done all the work and decide to refuse an application, we keep the full application charge, and any additional charges are still due. The additional charges will have been requested via an invoice so will automatically be chased by the debt recovery process outside of Permitting if not paid. This doesn't affect your ability to issue or refuse the application as planned, because these charges requested after the relevant date has been set are not part of the requirement for a 'valid application'.

Stage 5 – Dealing with consultation responses

General principles

The consultation responses you receive will help you understand the proposal, the catchment, potential impacts and possible mitigation of those impacts.

Where licensing policies and practices are routinely used, consultation with our internal specialists should not bring surprises. It is likely that points might have been dealt with during initial pre-application discussions about the proposal.

The mechanics of consultation, including the advantages of pre-application consultation, are discussed in the [LIT 12321 Pre-application activities for water resources permissions](#) and [LIT 12043 How and when to consult for Water Resources licence applications](#).

Process steps

You should follow the steps outlined below when considering consultation responses.

1. Collate internal and external consultation responses received at the pre-application and / or formal application stages.
2. Investigate and respond to any issues raised by internal or external consultees. It may be necessary to carry out a more detailed hydrological or hydrogeological analysis to deal with these comments properly. It will be possible in most cases to have objections or comments modified or even withdrawn, perhaps by working out conditions that could be applied to mitigate the impacts of any licence granted.
3. Summarise your findings in the relevant technical sections of the decision document. **Note** for internal teams, we should use the 'One Agency' voice and not refer to individuals or specific teams in the document.

Types of consultation response and how to deal with them

If you receive a response where there is no objection to the proposal, then no further action is needed.

If you receive a response to the proposal that cannot be resolved, then you should be honest with the applicant about this, rather than risk granting a licence which may cause problems for the environment and us in the future. You should contact the applicant as soon as possible and explain the concerns in relation to our duties when granting water resources licences. If we refuse the application, it may be appealed and we must be able to show that we have acted in good faith in the light of the evidence available at the time of the decision.

If you receive a response with objection to the proposal being granted at all, then you should resolve this locally. If necessary, seek support from your Senior Permitting Officer and line manager. Where these objections cannot be overcome, the final decision on granting the application lies with Permitting, but granting a licence against the wishes of another internal function must be a rare exception. In cases where you are considering granting a licence against national policy, you must refer the matter to the Water Resources Regulation team via the [helpdesk](#). If you decide to refuse the application based on the consultee's concerns, you must tell the consultee that they would have to defend our decision in the event of any appeal or external challenge.

If additional information comes to light during determination, you must critically review the proposal and proposed conditions considering this new information to ensure that our decision takes this information into account. You may need to discuss the new information further with the consultees. You may also need to request information from the applicant to support their application. You can use the [WR183 letter](#) as a template.

If the consultation responses will require the applicant to carry out additional work (for example ecological surveys or monitoring) then you must wait for this additional work to be completed, submitted and audited by the relevant consultees. You will then need to re-assess the potential impacts based on this new information and check with the consultees to make sure that their concerns have been addressed.

! Important Where you need to request additional work is completed, you will need to either ask the applicant to agree to extend the determination period for the application to provide enough time to complete the work, or consider determining the application with the information available (which could result in refusing the application due to the lack of information) and tell the applicant that they will need to submit a new application (with the necessary information) once

the additional work has been completed. You should discuss these options with your Senior Permitting Officer and line manager.

Summary of good consultation process

The following points are considered best practice when consulting and receiving responses from different teams and specialists:

- Properly consider the views of all consultees
 - Where consultees raise concerns, talk to them – make sure you understand their concerns and they understand the application
 - Be prepared to back up our consultees concerns if they are valid. You are not there to take the side of the applicant against consultees. It is better to disappoint an applicant now rather than grant a licence that causes issues in the future for the environment or other third-party users.
 - If changes must be made to a proposal to mitigate a consultee's concerns, make sure the applicant and other interested parties know what these are
 - Use standardised conditions if possible, though adapt them if necessary to fit the particular concerns of the application
 - Fully document all discussions by saving email responses or file notes to the case file on DMS.
-

Stage 6 – dealing with representations

General principles

You have a duty to have regard to any representations made on an application for a licence (see Section 38(3) Water Resources Act 1991).

Advertising will have been completed by the Validation Specialist and saved to DMS by IPS. Check this resource to see if any representations have been made during the advertising period.

All representations are 'valid' if they are made in writing and received before the end of the public notice period. Letters of representation come in all shapes and sizes, but can usually be sorted into three categories:

- those that raise pertinent issues about an application.
- those making general comments about water resources management.
- those not making any relevant points in relation to the application or our duties and responsibilities.

Most representations relate to other rights that may be affected or the environmental impact of the proposal. Usually, we will already be aware of these. You need to check whether the representation is bringing something to your attention you did not know about before, or more information about it.

Meeting legal requirements

! Important You must consider issues raised in valid representations. However, it is up to you how much weight you give the representation. You should note that:

- If you do not consider it at all, then the decision could be overturned (for failure to have regard to a material consideration).
 - If you do consider it but give it no weight on the basis that no legal action can arise, then the decision could be overturned on the basis that you had misdirected yourself on how to deal with the representation.
-

Procedure

You should follow the steps below in considering any representations

1. Collate all representations received and sort out any that aren't relevant. If the application is part of the Priority Tracked Service, notify the Coordination Specialist of the representations as they will be able to support you.
 2. Investigate any issues raised by the representations. It may be necessary to carry out more detailed hydrological or hydrogeological analysis, in order to deal with any relevant representations appropriately.
 3. Consider whether any representations received (if proven) could be mitigated by amending the proposal or applying conditions so that the representations can be addressed suitably ahead of issuing the licence.
 4. Record your considerations and decisions in the 'Consultation responses' or 'Key issues' section(s) of the decision document.
 5. Produce a response to any representations. See below for the steps to follow in producing a response.
-

Examples of how to deal with representations and suggested responses

If the representation relates to protected rights and derogation, then you will need to check what rights (licensed or otherwise) exist and ask the local hydrologist or

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hydrogeologist to assess the risk of derogation (if a pump test has been completed, this will include seeing whether the source at risk was monitored during the pump test and whether it was affected). It may also be necessary to ask the IEP team to organise a site visit to the potentially impacted source.

! Important For large surface water abstractions (such as HEP schemes), follow the guidance in [Part C: Safeguarding the protected rights of large abstractions](#).

If derogation is proven, follow the guidance in '[Protected rights and derogation](#)'.

If the representation raises specific environmental issues, then you should consider if you are already taking the identified impacts into account in your determination. Where you are not aware of the matter raised, you need to research the potential impacts and assess its implications for the determination of the application. It may be appropriate for the local IEP team to organise a visit to the site and / or to consult with internal or external specialists about the issue.

! Important When the assessment is complete, you must update records to ensure that the feature can be identified in future applications.

If the representation raises general environmental concerns, then there will be minimal need for you to conduct further research. The representor may be concerned about the characteristics of a particular watercourse which will be considered as part of your determination. The representation may also include other points that need to be addressed through correspondence, but outside of the determination process. In some cases, the representation is linked to very general points about the environment and / or our management of it. These representations only require a general response outlining our duties and responsibilities and seeking to reassure the representor of the considerations we take in determining applications. If not already included in the general duties and requirements set out in the decision statement, you should record how we have considered the impacts raised.

Producing a response

It is our policy to respond to all representations. Follow the steps below to help you in producing a response.

1. Draft any non-standard text to go in letters that will inform the representor of our decision. You should liaise with IPS over the content within the letters if needed. Use the standard letters detailed below dependent on our decision to either grant the application or refuse it:

- [WR269: Letter to representors \(licence granted\)](#).

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- [WR270: Letter to representors \(licence refused\)](#).
2. IPS will send the response letter to representors when the applicant is notified of our decision.
 3. If the application received significant interest (10 or more representations received), make sure that you state that a summary [decision statement](#) will be published online. A hyperlink to the location of where the decision statement is saved should be included so the representor can access this. You can find more information on writing and publishing decision statements in [LIT 15722 How to publish water resources licence decision statements on the internet](#).

If you have regarded a representation as 'valid' but it did not really address the issue (posed by the application) but, for example, raised comment on general water resources management, then IPS will send a standard response letter to representors when the applicant is notified of our decision.

If the representation was specific to the application (especially where the representor has direct and legitimate concerns about the proposal) then you must explain, in the appropriate level of detail, why the decision has been made and the rationale behind any conditions (if the application is granted) including any time limit that has been applied to allow for the re-assessment of sustainability at the end of the time limit.

If a representation relates to possible derogation, you must confirm that you would not grant a licence that would derogate existing protected rights and that you are satisfied this will not occur (for example, from conditions included on the licence or from the results of monitoring).

If the representation is about monitoring abstracted volumes and whether the licence will be enforced, provide details of any measurement conditions that are included on the licence (if granted) and our policy for inspecting licences for compliance.

If a representor raises valid concerns but you decide that those concerns are unfounded, then you need to write and tell the representor that you consider their concerns unfounded and ask that they withdraw the representation.

Stage 7 – mitigation measures

General principles

Most matters can be dealt with by imposing licence conditions. Potential derogation must be dealt with by agreement between the applicant and derogated protected right unless a derogation agreement is already in place for the impacted protected right. The general principles relating to setting and drafting conditions are discussed in [granting a licence](#) below.

Licensing conditions imposed to mitigate for impacts may be the result of recommendations from local teams (for example, IEP, hydrology or FBG) through consultation. You must make these teams aware that should we grant the licence with conditions based on their recommendations and that decision is then appealed or challenged, they would have to defend their recommendations.

Procedure

You should follow the steps below in assessing and mitigating any impacts required.

1. For each impact you have identified, decide whether it can be mitigated with:
 - additional analysis (potentially further monitoring carried out by the applicant)
 - a condition on the licence, or
 - by the proposal being modified.
2. Agree any proposed mitigation with internal and external consultees.
3. Consider the impacts of the mitigation on the proposal and discuss any agreed mitigation with the applicant – for example, does applying a high hands off flow condition render the activity unviable or unreliable?
4. Document your findings in the relevant parts and in the 'Key issues' section of the decision document. The decision document must fully explain and justify the reasons for applying the mitigation conditions on the licence, particularly where we expect the applicant may appeal our decision.

! Important When discussing any agreed mitigation with the applicant, it is important to remember that they do not have to agree with our mitigation. If they do not agree, and do not feel that we have acted correctly in applying it, they can choose to appeal our decision.

Examples of mitigation

If you have a proposal to abstract surface water that has a noticeable impact on flows and levels, you could mitigate this by imposing a hands off flow or hands off level condition.

When specifying a hands off condition, you should use the hands off condition specified in the Abstraction Licensing Strategy, unless there is a good reason not to. IEP and hydrology will be able to advise you on the most appropriate hands off condition to use for each application. For more information on hands off conditions, see [LIT 12174 Hands off flow condition management](#).

Hands off conditions should be set at the appropriate gauging station linked to the Assessment Point, unless there is good reason not to. Where an abstraction is distant from an Assessment Point, such that gauged flows are unrepresentative of local flows, you may need to consider some form of local control, known as a locally prescribed flow. Seek advice from the IEP and hydrology teams in these cases as these should be avoided if possible as it is more difficult to assess compliance with them.

If there is uncertainty over the impact of a proposal, then you could consider 2 approaches to resolve this. You can either:

- Ensure any conditions included are set at precautionary levels which account for the uncertainty of the impact and our current level of knowledge about impacts; or,
- Set conditions which are appropriate but more generous than applying a precautionary approach, subject to also including a requirement for specific environmental monitoring when abstraction is taking place to confirm our understanding. Such an approach would also need to include a shorter expiry date on the licence (or time limited variation) to ensure we have control over sustainability in a shorter period than may be specified using the common end date for the Abstraction Licensing Strategy.

You could set monitoring requirements out in a Section 158 agreement which will be especially appropriate where monitoring requirements may need to change over time and / or where monitoring is required even when abstraction is not taking place.

If there are resource constraints that prevent a licence being issued, then it may be possible to link the licence to an existing licence through a multi-licence aggregate condition, giving the licence holder flexibility of using the licences whilst simultaneously ensuring there is not increased levels of overall licensed abstraction volumes. It may be more practicable to do this for groundwater source licences than surface water.

This can be a useful way of managing resources both to our benefit and that of the abstractor.

! Important We would not normally link multiple licences that are held by different licence holders. If you have a situation like this and do decide to include an aggregate condition that links multiple licence holders to it, you should ensure that all the licence holders are aware of their duties to comply with the condition and that you have confidence that all the licences can be suitably managed and complied with.

If you have a large non-consumptive proposal that you think will close the catchment upstream from any further abstraction, follow the guidance in [Part C: Conserving water](#) to manage the risk of catchment closure.

If there is potential for derogation, then we cannot grant a licence until the derogation issues have been resolved. You may need to:

- include a hands off flow or level condition to prevent your application from causing derogation
- grant a lesser licence to the extent to which derogation does not occur
- get the applicant to discuss derogation with the affected parties, and get them to agree to being derogated (using form [WR13 consent to derogate](#)). This may involve paying the impacted party compensation or agreeing changes to their operation but is not something that we will be involved in. It is purely a matter between the parties
- refuse the application or ask the applicant to withdraw it

In certain cases, it may be appropriate to use a 'Lee Valley' type clause (they are known as 'Lee Valley' clauses after an appeal by the Lee Valley Water Company resulted in a Ministerial decision on the issue in 1968) in the licence. You will need to get consult with the E+B WR Regulation team (use the [water resources helpdesk](#)) if you want to do this. Historically these agreements could form an agreement under Section 158 Water Resources Act 1991, but this practice is no longer used in this context and any existing Section 158 agreements should be moved across to the licence at the first opportunity. An example Lee Valley Section 158 can be found in [WR300](#).

! Important When an owner of a protected right consents to be derogated at the point of grant of a new licence they are purely consenting to be derogated to the extent of the derogation caused by the new licence. The 'no derogation' provisions of Section 39 Water Resources Act 1991 also apply to variations. Therefore, we cannot assume that consent given for one set of abstraction terms would apply to different terms that change the degree of the derogation. In the event the upstream licence is subsequently varied, and the extent of the

derogation increased then the applicant needs to provide you with a new completed consent to derogate from the owner of the affected protected right before you can grant the variation.

If there is a risk of fish or eel entrainment or impingement, then you will need to specify screening conditions in the licence to prevent this. The local fisheries team will give you guidance on the type and size of screen required.

For hydropower applications, fish screening guidance is included in the [‘Guidelines for run-of-river hydropower development’](#).

If there are operational matters that cannot be covered in a licence, then you will need to cover these in a Section 158 Agreement or a Water Resources Management Arrangement (WRMA).

Examples of these are: maintenance of works; environmental monitoring or other actions required outside the abstraction period (maintaining a compensation release for example); the conjunctive operation of multiple sources – possibly in connection with a river regulation scheme.

You can find further guidance on Section 158 Agreements and WRMAs in [LIT 11475 Impounding licences](#) and [LIT 15716 Entering into and reviewing water resources management arrangements](#)

Decide on land conditions

Impounding licences should not specify the land on which water can be used.

For new abstraction licences, you will need to decide whether to include land on the licence, but this will only be included in exceptional circumstances.

For variations, if there is a land condition, you should remove it unless there is either, a good reason to keep it, or the applicant has asked us to leave it on the licence.

The [WR184 formal licence application acknowledgement letter](#) asks the applicant to contact us if they do **not** want us to consider removing the land condition as part of a licence variation. Before removing the condition, check that they have not asked to keep it.

There is a question in the consultation questions bank that can be added to the internal consultation form, asking IEP whether there are any reasons why the lands condition should not be removed. You should consider any responses in your decision.

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To decide if it is appropriate to include or change a land condition, consider whether the condition will prevent an increase in the actual abstracted volume, resulting in damage to the environment, and/or whether it is required to prevent water from being transferred out of the catchment or not returned to the source from where the water is abstracted. If this is the only concern, you may consider using a condition requiring the return of water as an alternative to using a land condition – this should be discussed with internal consultees and the applicant before making this change.

Before specifying a land condition, consider the follow issues:

- Are there any catchment issues relating to where the water is to be used? Review the ALS to identify any areas of concern within a catchment
- Is there an environmental risk posed and will putting water onto the land cause environmental damage? Use the WRST and easimap to make sure the licence will not impact a designated site. You may need to consult with internal teams to consider this issue.
- Is there an alternative approach to what you are trying to achieve? Would specifying a point of return be more appropriate than specifying the land on which water can be used?

Deciding to use a point of return condition

A point of return must only be specified on a licence where there is a need to protect the environment or to manage water resources.

Transfer licences and transfer activities will be used when moving water from one point to another. It is normal to include a point of return condition on these activities to ensure that the activity remains non-consumptive. Activities could include fish farms, dewatering and non-consumptive industrial activities such as non-evaporative cooling.

In all other cases, to decide if it is appropriate to specify a point of return condition, consider:

- Relocation of water
 - Will the relocation of water have a major effect on the environment?
 - Will the effects of the water not being returned be a positive or a negative?
 - Does the water need to remain within the catchment?
 - Is the proportion of water being returned a large proportion of the river flow during dry conditions? Would the water not being returned have a significant effect on these dry condition flows?

- Are there any catchment issues that can be benefitted by specifying a point of return?
 - Does the ALS identify your abstraction in an area of concern?
 - Does the ALS resource availability colours show that water would detrimentally impact on resource if not returned?
 - Is the waterbody a sensitive watercourse that would benefit from the return of water to it
 - Would there be any water quality concerns from discharging the water? **Note** including a point of return condition does not preclude the operator to have a discharge permit if one is needed. Carefully consider if the issues are water quality (and need to be covered under a suitable discharge permit) or if they are water resources concerns, for example scouring of the watercourse or facilitating movement of Invasive Non-Native Species.
 - What will the impacts be during low flows if the water is not returned?
- Environmental risk
 - If the point at which water is returned is not specified, could this pose an environmental risk to a protected area for example a SSSI, SAC, SPA or Ramsar site?
 - Are there any invasive non-native species (INNS) that could be moved from one location to another? See [LIT 14324 Managing risk of spread of Invasive Non-Native Species raw water](#) for more information.
 - You may need to consider local expert advice in assessing the risks of water not being returned

You should refer to the Abstraction Licensing Strategy to check the water availability of the catchment. It is more likely to require a point of return condition for a partially consumptive abstraction in a water scarce environment. Be aware of purposes and the rate of consumptiveness for different activities and the differences that may be applied between different catchments.

If you specify a point of return condition, this should be included in NALD when inputting your licence. This enables reporting of this type of condition and allows compliance to be checked during licence inspections. See [‘Measuring discharge volumes’](#) section for how to request metering of a discharge on the licence.

! Important Where a discharge quality permit is used to control the return of water, it may still be necessary to include a point of return condition on the abstraction licence. The reason for this is that whilst a discharge permit controls the quality of water being returned, it does not guarantee that the discharge will be made. Therefore, if the return of water is needed for water resources

management reasons, it may be appropriate to include a condition with a requirement to ensure all or a proportion of water abstracted is returned.

Water resources management arrangements may also be used to specify the point of return of an abstraction. Please refer to [LIT 15716 Entering into and reviewing water resources management arrangements \(WRMAs\)](#) on how to use these powers.

Secondary uses

In certain cases, an abstractor may want to use water already abstracted under a licence for a secondary use. For example, they may want to sell water that would normally be discharged to another water user.

Once water has been abstracted for any given purpose on the licence (and in compliance with the terms of the licence) we have no regulatory control over if that water is re-used or sold onto someone else to use. However, if we include a point of return condition then the water will have to be returned in accordance with that condition.

Point of return conditions can therefore be used to prevent the secondary use of water. In determining a partially consumptive licence, you should consider if it is appropriate to include a point of return condition so that the appropriate amount of water is returned to the catchment and cannot be completely lost to the environment through a secondary use.

Stage 8 – Determining an application

You will need to consider six topics to determine the application. These are covered in more detail below. Throughout determining the application, you need to ensure you are saving the appropriate documents to DMS to create an audit trail. See [‘Accountability – audit and information in the public domain’](#) section.

Environment Agency’s wider duties

As well as the direct environmental impact of a proposal, you also need to consider the proposal in relation to:

- The goal of sustainable development
- The impact of proposals on rural communities
- Our cost-benefit duties

Follow the steps below to make sure your decision is in line with our wider duties.

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1. Refer to the guidance in [Part C: sustainable development](#) and confirm that your decision on the application meets these requirements. Amend or add wording into the decision document if required.
 2. Refer to the guidance in [Part C: Rural communities](#) to confirm that your decision on the application meets these requirements. Amend or add wording into the decision document if you have a particularly complex or controversial application and this duty is particularly relevant.
 3. Refer to the guidance in [Part C: cost benefit duties](#) of the proposed approach. If required, add or amend wording in the decision document to cover this duty. Alternatively, use [WR62](#) to support your analysis in more complex cases.
-

Complete decision document

! Important Permitting officers should use the decision document to record the decisions made for any water resources application. Use the table in the [‘Working with risks’](#) section above to decide on the level of detail to include within the decision document in each case.

The decision document is a document that sets out how we have made our decision and includes guidance notes within it where required.

The purpose of the decision document is to record our decision on the application, and it also demonstrates that in determining the licence application, we have acted in a way that is balanced, technically defensible, logical, and robust.

You must collate all the information gathered during the determination process and save the information to the licence file on DMS and complete the decision document accordingly.

If your determination concludes that there are no issues, then the licence will reflect what the applicant has applied for.

If your determination concludes that the licence can be granted but on different terms to those applied for, then these different terms should be discussed within the decision document.

If there have been representations made about an application, you need to include an explanation of how we have considered these within the decision document.

If you cannot grant a licence application, or where we are granting an licence but expect an appeal (or judicial review), then must clearly document the reasons for

our decision in the decision document – see the section below on [‘Procedure when appeal or judicial review expected’](#).

! Important Remember that the decision document is in the public domain and people can ask to see it. It can legitimately contain statements of professional opinion about the application, but it must not include personal opinions on the application, applicant or any other parties involved with the application.

You must be able to substantiate everything included in the document using information gathered during the determination (of course some of that may be a matter of professional judgement, but if so, it must be clearly stated).

Assign a criticality based on the factors set out in [LIT 15730 Water Resources compliance, enforcement and incident investigation](#). State briefly in the decision document which criticality you have applied, based on which of the factors in the guidance. If you have deviated from the guidance, state why.

Consulting with E&B WR Regulation

Consider the list of different factors below and use the [WR Helpdesk](#) if needing to consult with the E&B Water Resources Regulation team. Incorporate this further consultation into your decision and document any decisions in the ‘Key issues’ section of the decision document.

Activities with the following factors will require further consultation with E&B WR Regulation:

- a novel process or activity
- a possible judicial review of our conduct, an Ombudsman inquiry or MP involvement or a decision likely to lead to an appeal (see [Procedure when appeal or judicial review expected](#))
- a claim for confidentiality, for example, on release of environmental information
- a refusal of a licence application (see [Refusing to grant a licence](#))
- the potential to weaken a national precedent, or set a precedent
- interest from the public, the media, or political, campaigning organisations
- issues of national consistency not currently covered by established policy or guidance, or inconsistency with established policies or guidance
- issues which are likely to affect our standing or which may influence or prejudice the formation of policies
- issues likely to affect our own or the government's obligations
- water resources management arrangements under Section 20 Water Resources Act 1991 and memoranda of understanding with external bodies

- water resources developments not in accordance with the relevant Water Company Water Resources Strategy or Abstraction Licensing Strategy
 - Involves a licence requiring over-riding public interest (for effects on Habitats Regulations sites) or derogation (for impacts on WFD status)
-

Calculating annual subsistence charges

If your application is for a full abstraction licence, it is important that you calculate the annual subsistence charge that will apply as part of your determination and ensure the applicant understands the charge, so they are not surprised when they receive their first bill. **Note:** there are no annual charges associated with temporary, transfer and impounding licences or abstraction for power generation rated less than 5 Megawatts.

Set out what the charges will be in the '[annual charges calculations to accompany decision document](#)' using the guidance in that document. You will need to use the information in the [Water Resources Scheme of Charges](#) and guidance in [Water resources licences: when and how you are charged - GOV.UK \(www.gov.uk\)](#). Get support from a Charging Lead if needed.

Secondary abstraction purposes

We cannot charge for secondary abstraction purposes since they are not legally licensable abstractions. See the '[Secondary uses](#)' section for more explanation.

Supported sources

If the licence abstracts water from a supported source (as identified by the [Water Resources Mapping Tool](#)), you may need to include the supported source charge in the annual subsistence charge. See [Supported Sources in Part C](#) for more information on what supported sources are and how to decide whether the charge applies.

Two-part tariff agreements for irrigation licences

Licences that have the purpose of spray irrigation or trickle irrigation (including storage for the subsequent use of spray or trickle irrigation) can benefit from a two-part tariff agreement. This agreement incentivises the efficient use of water for these purposes by charging a reduced annual charge based on the volume of water actually abstracted. For more information on two-part tariff agreements including when they can and cannot be applied to licences, see [LIT 12148 How and when to apply and process a 2-part tariff agreement](#).

Section 126 agreements to abate annual charges

If an application for a full licence is for an environmentally beneficial scheme, it may be eligible for a section 126 agreement to have all or part of the annual charge abated. If they were considered against the criteria for the environmentally beneficial application charge, even if they weren't successful, they may want to apply for the annual charge abatement. For more details of the criteria and the process to follow see [LIT 12126 Abatement of annual abstraction charges - s126 agreements](#).

You should discuss this possibility with the applicant if you think it is relevant, even if they haven't directly asked you for it.

Granting the licence

Use either the [WR19 template](#) (for abstraction licences) or the [WR23 template](#) (for impounding licences).

We have wide ranging powers under our duty to 'secure the proper use of water resources' and to apply appropriate conditions to licences.

As part of the determination process, you will have decided if you are adding conditions to protect the environment and the rights of other water users.

! Important Where you decide to grant a licence without the rights of access in place at the point of grant, you must follow the information set out in [Policy Implementation Note PIN/WR/2021/1](#) and include appropriate conditions and wording on the licence document to ensure that the licence can only become effective upon confirmation that the licence holder has the necessary rights of access.

Follow the steps below in adding conditions to the licence:

1. Add appropriate conditions from those set out in [WR21](#) (original licence conditions) and [WR22](#) (further conditions).
2. Select the most appropriate form of measurement (where applicable). See [Part C: Measuring and monitoring conditions](#) for further guidance on this.
3. Identify any departures from the application that haven't yet been discussed with the applicant and notify them of what these will be in writing. Ensure the applicant understands the reasoning for any departures.
4. If adding any non-standard or complex conditions, check that these meet the UNCLE test and gain confirmation from your Senior Permitting Officer and / or legal advisers. These conditions must be: Unambiguous, Necessary, Clear, Legal and Enforceable. Conditions must also be

consistent with our policies to take into account the cost-benefits and practicality of complying with them.

You can find further guidance on writing licence documents in [LIT 12246 Preparing water resources licence documents](#).

See the '[Procedure when appeal or judicial review expected](#)' section for more information on the process of granting an application when you suspect an appeal or judicial review will be made.

When issuing the licence, use [LIT 12168 Notifying the applicant and representors of a decision](#) for the steps involved in distributing our decision to the applicant and relevant parties.

Refusing to grant a licence

Complete refusal to grant a licence is rare given the 'yes if' approach that the Environment Agency uses, and refusal will usually arise where either an applicant has applied without any pre-application discussions, applied against our pre-application advice or where an insurmountable issue has arisen during determination.

Grounds for refusal may include:

- lack of resources
- potential for derogation
- environmental impact (wetlands, SSSI's, Habitats Regulations sites)
- risk of deterioration in status, or failure to meet other [WFD objectives](#)
- damage to buildings of historic interest or archaeology
- impact on water quality
- potential damage to fisheries or migratory routes
- unsatisfactory water audit information provided at renewal (it is unlikely that failure to comply with water efficiency requirements alone would be sufficient grounds to refuse to grant a licence)
- other reasons, including those raised by representations

See the '[Procedure when appeal or judicial review expected](#)' section for more information on the process of refusing an application.

Insufficient information to make a decision

Ideally, the need for supporting information needs to be scoped out at the pre-application stage. But there may be cases where an application is submitted without any pre-application or the need for additional information arises part-way through determination.

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Follow the steps below to request further information. See also 'Setting deadlines' and subsequent sections in [LIT 12313 Validation checks of water resources abstraction licence applications](#) for guidance on good practice with information requests, setting and extending deadlines and [LIT 11077 Reports to accompany water resource applications](#) for further guidance on requesting information and reports.

1. If the additional information needed has been identified as part of the validation checks, set the application as invalid and request the information using a [WR188 letter](#). Once the information is received, you can accept the application as valid and progress determination in the standard way.
2. If you identify the information needed after the application has been accepted as technically valid, write to the applicant using the [WR183 letter](#) and formally request the information you need. Set an appropriate deadline for the information to be provided, based on the scale and complexity of the information that you need.
3. If required, agree an extension of time to provide the information. You should consider the progress made by the applicant in getting the information and any mitigating factors in delays to this. Use a [WR266 letter](#) to set out any extension of time. **Note** You should not extend the application period beyond 12 months.
4. If you don't receive the information requested by the agreed date (or agreed extended date), you must write a reminder letter to the applicant that you are still waiting for the information and if you don't receive it, you will have to determine the application based on the information that you have (which may mean you have to refuse the application). If an agent is handling the application, this final correspondence must be sent to both the agent and the applicant.
5. If, following this correspondence, the applicant still wants to proceed with the application, then you can consider a further extension for the applicant to provide the information. You should only do this where there is a reasonable prospect that the applicant will provide the information.
6. If there is no response and no prospect that the information will be provided, then you have 2 options. You can determine the application based on the information that you have, which may lead to you either refusing the application or granting it on a precautionary basis.

Peer review of decision

Before you issue or refuse a licence, you may need to get your decision peer reviewed. Refer to [Water Resources Peer Review guide](#) for details on what applications need peer review.

The peer review checklist includes a section to ensure the decision document has been completed correctly.

Procedure when appeal or judicial review expected

Follow the steps below when we expect the applicant may appeal our decision or where there is likely to be a judicial review. This could be for us granting or refusing the licence.

1. Make sure the decision is fully defensible. You must make sound, justifiable decisions for the purpose of standing up to scrutiny in case of appeal or judicial review.
2. You must consult with the Water Resources Regulation team using the [WR Helpdesk](#) on any decisions that are likely to lead to an appeal or judicial review.
3. Document the reasons for our decision:
 - If we are refusing the application, document our reasons for refusal in the appropriate sections of the [refusal decision document template](#).
 - If we are granting the application, ensure any mitigation conditions we expect will be appealed are fully explained and justified in the appropriate sections of the [decision document template](#). Ensure you have copied across the relevant sections of the legal duties document, as explained in the decision document guidance notes.

Where the refusal or mitigation conditions are based on the input from other internal teams, they must provide enough information so we can sufficiently explain the reasons behind the decision.

4. Ask Permitting Legal to review the draft decision document before making the decision.

Refusal procedure

Follow the two additional steps below for applications which are refused:

5. Complete a decision statement to complement the decision document. This will be published externally for members of the public to view. Follow the

guidance in [LIT 15722 How to publish water resources licence decision statements to the internet.](#)

6. Use [LIT 12168 Notifying the applicant and representors of a decision](#) for the steps involved in distributing our decision to the applicant and relevant parties.
-

Accountability

Non-financial scheme of delegation

The non-financial scheme of delegation (NFSoD) defines how matters across our various functions must be signed off. The aim is to ensure that:

- appropriate staff are involved for the matter in hand
- quality is maintained
- there is national consistency
- More detailed information is contained in:
 - [LIT 15604 Non-Financial Scheme of Delegation \(NFSoD\)](#)
 - [LIT 15605 Using your powers delegated under the non-financial scheme of delegation \(NFSoD\).](#)

During the determination process you will have taken into account the whole range of issues which may arise. For example: technical, legal and have consulted the appropriate experts within area and national teams (see [Consultation with E&B WR Regulation](#)).

Audit and information in the public domain

Your work may, occasionally, be subject to scrutiny. There may be internal auditing or other reasons for investigation; occasionally the scrutiny may result from an appeal, judicial review or an Ombudsman inquiry.

There will also be times during the life of the licence when other internal teams need to understand why a decision has been made. For example, this could include the Billing & Data team checking returns and annual charges, area teams doing compliance inspections and enforcement, or IEP teams considering licence changes as part of the renewals cycle. It could also include IPS and Permitting colleagues when we receive an application to vary or renew a licence.

There must be an audit trail to provide at least basic details of who decided what and when. That way you will protect not only yourself, but also our professional

standing and reputation. The decision document provides part of that audit trail, but we will rely more heavily on the records available on DMS.

Follow the [guidance for using DMS](#), including the [naming convention](#) which sets out how to name documents and what sub-folder to put them in. This is to ensure the records you save can easily be found when we need them.

The things you need to save to DMS include:

- Application forms and any correspondence where applicants confirm changes to their original proposals
- Correspondence with applicants, agents and any external consultees or representors via letter or email
- WR49 Internal consultation form and responses, including any follow up correspondence where a decision is made
- Substantive points of telephone conversations with internal or external parties. File notes or scanned versions of hand-written notes are fine, but in the case of important decisions, these should be confirmed in writing so it's clear all parties understood.
- Decision document and any appendices required for annual charges or NALD inputting

! Important do not express personal opinions about an application or the applicant or any other party in the decision document or on file.

Part C – supporting guidance

The guidance contained in this section will help you make the decisions required in the determination process. As you navigate through the determination process (Part B) you will see that there are links to the relevant sections below.

Surface water availability

For water bodies assessed within Licensing Strategies, these will be considered by RAM4 (the RAM ledger) and will underpin the local Abstraction Licensing Strategy and ensure compliance with environmental standards required by the [Water Framework Directive](#).

For water bodies not assessed within Licensing Strategies, you will need to work with the local hydrologist to determine water availability. In these cases, working out how much resource is potentially available for licensing involves specialist calculations taking into account details of rainfall, evapotranspiration, percolation, run-off, river flows and information about anthropogenic influences on the catchment.

You should follow the steps below when considering surface water availability as part of your determination:

1. Compare licensed and exempt abstractions against the available resource. Information about licensed abstractions should be readily available but you will be reliant on area information on any exempt abstractions that are having a larger impact on water resources. In most cases, exempt abstractions will be small and will not have a major impact on the water balance.
 2. Consider surface water abstractions and groundwater abstractions where there is a baseflow from the groundwater source. You should discuss any concerns over groundwater impacts on surface water availability with the local hydrogeologist.
 3. Determine whether there is resource available for your proposal. Water availability may be seasonal, dependent on other licensed abstractions and hydrological conditions. You will also need to consider the impacts of other licensed abstractions in terms of derogation and whether any additional protective conditions need to be included on the licence to prevent derogation or whether the applicant needs to gain a consent to derogate from impacted parties.
 4. Consider discharges and effluent returns within the catchment and whether this effects the abstraction and water resources availability. You should consider the impacts to the catchment if any discharges were to stop or move elsewhere in the future, and the likelihood of this happening. If the discharge regime could be changed, you may need to consider adding protective conditions to the abstraction licence such as a hands off flow condition.
 5. You must take into account other factors that have a significant bearing on the water balance. In general, these will be things, which must be estimated, or may in fact be the "missing link" required to balance water resources. This could include things such as mains leakage, groundwater flow into and out of the catchment, or water flowing from upstream catchments.
-

Groundwater availability

You will need to do a groundwater resource assessment with your colleagues in hydrogeology. Aquifer storage balances year-to-year variations in recharge. The total abstraction, which may be authorised from an aquifer unit, varies with circumstances, particularly with the volume of useable storage in the aquifer. There are no set rules for this.

The availability of groundwater is, broadly speaking, assessed as recharge, minus baseflow, environmental requirements and existing licences and exempt activities.

Licensing policies for groundwater management units will be set to take account of wider catchment requirements determined by Abstraction Licensing Strategies and the [Water Framework Directive](#).

For individual proposals, the results of the test pumping will be your main starting point for the groundwater assessment. These should be analysed by a hydrogeologist.

Justification of need for different sectors

This guidance provides information for the most common sectors that require abstraction licences and will help you in assessing the justification of need provided.

Public water supply

Water undertakers provide for demand forecasts up to 25 years ahead using Water Resources Management Plans (WRMPs). Each water undertaker has a statutory requirement to produce, consult on and publish WRMPs. This duty does not mean that the content of the plan and any associated proposals for a water resources licence have a statutory basis and the water company must still gain and comply with any water resources licences required.

We will expect new licences for public water supply to be in line with the company's WRMP and our views of the plan. Operational Catchment Services (OCS) are responsible for assessing water companies plans on behalf of the Environment Agency.

! Important You should consult OCS for advice when determining an application for a public water supply licence to ensure that it is in line with the water companies WRMP.

Each licence application needs to be assessed on its own merits, and whilst inclusion within a WRMP will satisfy the justification of need, it must not over-ride the need for environmental assessment and consideration of the impact on other abstractors.

Water companies also have a duty to further water conservation when exercising their powers, under Section 82 of the Water Act 2003. The requirements for this are taken into account when water companies create annual reports on progress for their WRMP and are supported by OCS when assessing this. You may need to consider this as part of a water company application however this should be something that OCS will inform you is needed as part of the consultation with them.

The Water Act 2003 brought in new legislation to allow the expansion of competition in the water industry. One way new water supply companies can compete is to secure a source of water and put it into the supply network. This would normally require an abstraction licence from us. We need to ensure that applicants are treated consistently.

Abstraction for competitive water supply is only another purpose of abstraction. You should follow the same procedure for competition related abstraction, as other abstraction purposes. An archived document (OI_55_06 Dealing with Enquiries and Applications for Abstraction Licences Relating to Competition in the Water Industry) can be requested from the document management team. This document details the types of competition and the additional steps you will need to consider when dealing with enquiries and applications for competition.

Spray irrigation - crops

Spray irrigation is defined as "irrigation of land or plants (including seeds) by means of water or other liquid emerging (in whatever form) from apparatus designed or adapted to eject liquid into the air in the form of jets or spray" (Section 72(1) Water Resources Act 1991). This definition is capable of being altered to include or exclude certain types of irrigation activities. See Section 72(5) Water Resources Act 1991 and the Spray Irrigation (Definition) Order 1992.

The applicant should have provided details of the area and type of crops to be irrigated as part of their application, the period in the year over which irrigation is required and the expected application rate over the season. The total seasonal/annual requirement proposed by the applicant should not exceed the sum of each volume per crop per season for the crops specified.

Most irrigated field crops require a long rotation period before you can plant the same crop back on the same area of land. Potatoes, for example need 7 years whilst other crop such as onions and carrots need 6. This means that they are

usually only grown on a limited proportion of the total cropped area on a farm in any one year. There may be valid reasons why an applicant proposes to grow a single irrigated crop type on more than 20% of their irrigated land area but you should query this, asking them how this fits in with their long-term rotations.

Check the agroclimatic zone and soil type Available Water Content if the applicant has provided these on the extra form 'WR: Spray and trickle irrigation of crops - extra information'. Getting these details right is important because it affects the calculation of how much water we think is needed for spray irrigation. We can look up these details via Easimap3 and the Optimum Use Manual. We can go back to the applicant for soil type if our calculations come out significantly different from theirs.

! Important If the applicant has provided insufficient information, you need to query this with the applicant and ask for these details. Without this information, you will not be able to properly determine whether the quantities applied for are reasonable.

The aim is to issue a licence which covers only the reasonable needs of the applicant in a dry year, and you must try to reach agreement with the applicant of the quantities that you feel are justified. This will reduce the likelihood of a subsequent appeal and underline the robustness of your decision.

You should critically assess the information provided as part of the application. You should check that the stated depths of irrigation to be applied and the proposed daily volumes are consistent with the types of crops and are over the maximum area they are being grown. You should use the [Water Resources Optimum Usage Manual](#) to assist with this. If the applicant has included any information about business growth or expansion (or for certain levels of irrigation outside of the growing season, e.g. frost protection) as part of their justification, this is acceptable but should be suitably evidenced in the form of a business plan or similar.

! Important If you decide that the quantities applied for are not reasonable given the information on crops and areas to be irrigated that has been provided, you should discuss this with the applicant at the earliest opportunity and either ask for more information or agree to a reduction in the applied for quantities. If the applicant does not provide more information or does not agree to a reduction, you can continue the determination based on what you feel are justified quantities. The applicant will have the option to appeal our decision if they disagree with us.

Where there is not enough water available locally to where the applicant wants to irrigate their crops, they may propose moving water from elsewhere to support their abstraction needs. This is often referred to as a transfer re-abstraction scheme, a discharge re-abstraction scheme or a 'put and take' scheme. They will abstract

water from a groundwater or surface water source where there is sufficient water available and discharge it into a nearby surface water which carries the water downstream to where they want to re-abtract it for irrigation. Both activities removing water are legally abstraction activities which need to be covered on licences. The discharge is not an abstraction but needs controlling on the licence to ensure there is enough water available to support the re-abstraction. See [‘Measuring discharge volumes’](#) section for how to request metering of a discharge on the licence. These schemes can be complicated and there is addition guidance available to support you in working out the conditions and annual charges needed. See [LIT 110554 Transfer re-abtract schemes](#).

Spray irrigation – golf courses

Spray irrigation of golf courses can use significant volumes of water. These can vary considerably in their requirements depending on the type of construction and variety of grass used. Some golf courses now use under-drainage systems that allow recycling of water, resulting in a reduction in the demand.

If possible, it can be useful to get involved at the development stage to help ensure that storage and recycling are incorporated into the irrigation design to minimise water requirements.

When assessing requirements for golf courses, consider the areas of the course that need to be irrigated (normally greens and tees, but could also include approaches and fairways) to maintain a suitable quality for the course to be viable. Consider whether the information on the areas to be irrigated is sufficient to explain why those areas need to be irrigated. Use the Science Report available as part of the [Water Resources Optimum Usage Manual](#) for helping to decide about justification of volumes.

Trickle and other forms of irrigation

Trickle or drip irrigation is broadly separated into two types:

- Container or substrate grown crops
- Field scale crops

Container grown crops usually include soft fruit and vegetables (e.g. strawberries, tomatoes, and salads) and ornamental plants and trees. These are often planted in substrate (coir) filled pots or ‘grow bags’ and are grown undercover in polytunnels or glasshouses. Water is pre-treated with nutrients and can be applied in precisely measured doses several times each day. These methods also include use of water for hydroponics (for example, soil-less crop production nutrient enhanced water).

Container grown crops are vulnerable to stoppages in water supply. They will show signs of stress and reduced productivity after only a few hours and may die after one or two days without water resulting in the complete loss of the crop. It is important to bear this in mind if you are considering applying a constraint, like a hands off flow (HoF) condition, to a licence for container grown crops. You should explain that the proposed condition could result in licence outages and ensure that they are aware of the benefits of having access to alternative sources of supply such as reservoir storage or mains water.

Trickle irrigation is applied to field scale crops using trickle tape which is usually laid out as the crop is planted. Although more expensive than overhead irrigation, trickle irrigation can apply water more accurately and with greater uniformity. It can therefore improve crop yield and quality and bring efficiency savings of up to 30%. Field grown crops using trickle irrigation are not as vulnerable to supply outages as container grown crops.

Irrigation – non-agricultural purposes

Besides agriculture, irrigation may be carried out for commercial, industrial or recreational purposes not involved with the production of a food crop. Examples could include:

- watering ornamental parks and gardens
- racecourses
- sports pitches

Ask the applicant to specify the quantities required, based on equipment used and grass requirements.

Agricultural purposes (other than irrigation)

In general, the quantities sought for agricultural use are small. Given this, details of justification may be suitably provided in less detail, unless the amount applied for is clearly outside what would normally be expected.

To assess agricultural purposes, you can check livestock consumption, and any processes associated with agricultural activities such as milk cooling (at dairy farms), washing down of equipment and the use of water in applying chemicals. For some of these activities, assessing justification of need may be more difficult, so you should consider the information provided by the applicant and decide whether this is reasonable or not. For livestock consumption, the [Water Resources Optimum Usage Manual](#) includes standardised requirements for different livestock, which can be useful to consider if the quantities applied for are

reasonable. **Note** If livestock have access to other sources of water e.g., a river next to the field, the required water volumes may be reduced.

The applicant should be able to show that the proposal matches best practice standards for the use of the processes in question – for example for chemical spraying, is the proposed use of fertiliser excessive and will it be in breach of requirements to prevent excessive leaching of nitrates etc.? Refer to DEFRA documentation on good practice for uses such as this.

Storage reservoirs

Most irrigation requirements are during the summer when there is generally lower flows and water levels. Licences for this period may be less reliable for use, especially where licences include hands off flow conditions.

Where you can, you should encourage the use of irrigation from off-stream storage reservoirs rather than direct summer abstraction. This can be a benefit by taking higher flows (subject to a hands-off condition as appropriate) during wetter periods and storing it for subsequent use in the summer. This can give a more reliable source of water and can also result in discounted subsistence fees if the licence only authorises abstraction during the winter period.

! Important Whilst we can encourage the use of high flow storage, this is ultimately a business decision for the applicant. The costs of constructing a reservoir can be significant, and the decision on whether the increased value of a more reliable supply outweighs these costs will be for the applicant to decide. You should consider the application that has been applied for and ensure that the appropriate conditions are included to protect the environment.

Where an applicant proposes to put the water into an off-stream (discrete) reservoir and then use it directly from that reservoir, we just license the initial filling activity. The subsequent use from the reservoir is not an abstraction activity because the reservoir is not a source of supply, so the applicant can take what they want from it with no restrictions. Where the applicant wants to discharge some of that water back into a source of supply, from where they will subsequently re-abtract it to do their irrigation, this becomes a transfer re-abtract scheme (also known as a discharge re-abtract or 'put and take' scheme).

Both the filling of the reservoir and the re-abstraction for irrigation are legally abstraction activities which need to be covered on one or more licences. The discharge from the reservoir is not an abstraction but needs controlling on the licence to ensure there is enough water available to support the re-abstraction. See ['Measuring discharge volumes'](#) section for how to request metering of a discharge on the licence. These schemes are always complicated and there is

additional guidance available to support you in working out the conditions and annual charges needed in [LIT 110554 Transfer re-abstract schemes](#).

Where on-stream reservoirs are proposed, proper management of the resource will usually require proper bypass and flow controls. See [LIT 11475 Impounding licences](#) for more information (an impounding licence is likely to be required for on-stream reservoirs).

If granting a licence that utilises a reservoir, it is usually necessary to include a self-destruct condition in the licence in case the reservoir is not constructed in a particular timeframe, to prevent the water resource being tied up in future. You must normally also use conditions requiring the reservoir is of a certain capacity or built to certain specifications (e.g. that it is impermeable).

Industrial uses

For new industrial plants, you may be involved at the planning stage and if so, you have an opportunity to encourage for processes to be as efficient with water as possible. You can use the information in [LIT 15725 Water Resources abstraction licensing manual chapter 7c](#) to help with this.

To assess justification and efficiency, you should make sure that the water usage is comparable to similar manufacturing processes. Further information on this is included in the [Water Resources Optimum Usage Manual](#). It may also involve using recycling water dependent on the process being used.

! Important Assessing justification for purposes with low net losses, such as non-evaporative cooling is still required, even though actual losses may be low. Applicants for low consumption purposes may not have considered this in much detail, so ensure you have a suitable amount of information to show that we have considered the justification for water. However, lower loss purposes generally will need less information if a proportion of the water is being returned if the water is discharged back to the catchment resulting in the low net losses to the environment.

Purposes that are not fully consumptive will often need to discharge the water. Consideration of where this discharge takes place should form part of your overall determination. For example, if the discharge is proposed to be to a sewer, could the water instead be treated and discharged to a watercourse or soakaway (with the appropriate discharge permit) to keep that water within the catchment.

If the applicant has included any information about business growth or expansion as part of their justification, this is acceptable but should be suitably evidenced in the form of a business plan or similar to support these future requirements.

For new industrial plants, it may also be appropriate to include a self-destruct condition in case the plant is not constructed.

For existing industrial sites, you should consider the historic use and planned change in licence that is requested. Increased production is not necessarily a reason for increased water use. You should ensure that the information provided as part of any variation application suitably covers the reason for the licence change, including any increase in volumes.

For guidance on this, see [Water Resources Optimum Usage Manual](#). In certain cases (like larger applications), it may be appropriate to request the applicant to have consultants provide a water efficiency audit.

Hydropower

Hydropower schemes are a specialist area and for a full picture of determination issues and approaches, refer to [LIT 12666 Hydropower applications](#) and [LIT 13108 Guidance for run-of-river development](#).

Justification will include considering what deviation from the flow tables in the [LIT 13108 Guidance for run-of-river development](#) have been applied for and how the hydrology of the river has been used to size the turbine and derive the daily / hourly / instantaneous abstraction figures.

Domestic supplies

Domestic (private supply) abstractions are often small so you should take a risk-based approach to the justification of need. Domestic consumption should be in line with the existing per capita demand for public water supply. If required, OCS will have details of per capita consumption.

Where the properties have previously used mains water, it may be reasonable to request information on historic usage (e.g. any meter readings taken from the mains supply) to justify moving from mains to an abstraction licence supply.

Assessment of future needs may be appropriate if the number of people or properties is likely to change. If there are significant levels of projected growth, it would be reasonable to understand any changes in numbers of properties and the status of planning permission for those changes.

Efficient use of water should also be considered. This will factor in your comparison with per capita consumption expected.

Fish farming and fisheries

You will find that the infrastructure of each fish farm and fishery is unique. Therefore conditions, particularly to enable proper monitoring and enforcement, must often be tailored specifically to the site.

A fish farm produces fish for consumption or to supply other businesses with stock. The key question you need to answer is whether the quantities sought for abstraction are reasonable per tonne of fish produced and whether the impact on the watercourse between points of abstraction and discharge (the 'depleted reach') is acceptable.

A fishery provides sport fishing, either privately or on a day ticket basis. Here you need to check the number of fish being stocked and species and ensure the volumes are sufficient. You should also ensure the operator is aware that the volume of water in the proposed site could support a certain number of fish of a particular species and no more.

Small sites, abstracting in a sensitive catchment, can be a continuous source of concern and very time consuming, especially for licence inspections. Large-scale operations can also cause difficulties by virtue of the large volumes involved.

If a scheme is acceptable in principle, it will almost certainly have to be conditioned such that the catchment is not closed by the licence granted to it and may also be subject to a "self-destruct" clause in case it does not go ahead.

Owing to the complications which these operations can bring, early consultation with the applicant and your colleagues in other functions is recommended. If an ultrasonic measuring device is likely to be required to measure volumes abstracted / discharged, this should be brought to the applicant's attention at an early stage too given the likely higher costs associated with this type of measuring device. See '[Measuring discharge volumes](#)' section for how to request metering of a discharge on the licence.

If you need further advice on justification for these activities, contact the local fisheries officer who can advise on stocking rates and appropriate volumetric requirements.

Cress beds

Cress beds are sited in areas of extremely high-quality water, frequently where chalk springs rise. Sometimes supplies from those springs are inadequate, due to fluctuations in groundwater levels. Boreholes may be drilled to supplement the flows. Monitoring is very difficult, since springs frequently rise inside the beds as well as those, which are diverted to create the farm. These "involuntary" springs are not licensable since the grower does not have any control over them, and they may or may not flow – these are considered 'online cress beds'.

The water leaving the site, as in fish farms, can be greater than that entering it. It is often impossible to measure the abstraction accurately but there are methods if a full licence is required with volumetric restrictions included, for example using a V-notch weir and channel measurement. However, since most of what goes in also comes out, volumetric quantities are not generally a concern, unless we must grant a full type licence which requires volumes in accordance with Section 46(2) Water Resources Act 1991.

Ponds, pools and reservoirs

Ponds, pools, lakes and reservoirs may either be on stream or off-stream and have a variety of uses. Regardless of use there are key issues you need to consider depending on whether the body of water created is either on-stream or off-stream. On-stream reservoirs will need an impounding licence whilst off-stream reservoirs are likely to need an abstraction licence.

For on-stream proposals, check that the applicant has provided the necessary calculations of in-flow, seepage (if unlined), rainfall and evaporation. You'll need to check whether there is sufficient water to sustain the pool. If the evaporation from an on-stream pool is likely to compromise flows downstream in dry weather, then you should include a by-pass flow provision on the impounding licence.

For off-stream proposals, check the capacity of the reservoir equates to the volumes applied for. If it is gravity fed, how will the inflow quantities be constrained? Check the applicant's water balance calculations to ensure the pool is sustainable.

There will usually be a need to drain down reservoirs for maintenance and de-silting, so it not just a case of allowing for evaporative losses to enable the maintenance of reservoir levels.

If the reservoir proves to be unsustainable, then there may be a risk of us needing to carry out a fish rescue if the inflow is insufficient. In these cases, seek advice from fisheries. The applicant may wish to modify the proposal or seek out additional sources of water.

See also [‘Storage reservoirs and winter fill’](#).

Surface water impact assessment

This section outlines how to deal with different impacts of abstraction, for example on:

- river flows
- wetlands and similar water features
- protected rights ("derogation")
- other lawful users
- structures through desiccation or subsidence

For each point, you need to consider the position prior to the proposal, to forecast what is likely to happen if a licence were granted, and what the significance of such changes are likely to be on conservation objectives and flow targets.

The [water resources screening tool](#) result will provide some help with the impact assessment.

Granting licences in accordance with the abstraction licensing strategy will safeguard environmental standards required by [WFD](#) but some element of 'local' impact assessment will still need to be conducted. Follow the steps below to assess the impact of a surface water proposal:

1. You need to characterise the catchment, which you are dealing with, and the constraints within which you must operate. This relates to surface water catchments, aquifer units and (where appropriate) their interaction.
2. Downstream in the catchment, establish a flow regime which takes into account the cumulative impacts on river flows, and accommodates local impacts upon individual reaches (as applicable). Once you have worked

out the impacts on downstream flows, the balance of water remaining is available for abstraction – this gives you the volume of sustainable resources that can be used by abstraction licences which can then be used to assess the application against. You must remember that the available resources will vary between watercourses and at different locations within the same watercourse. Local restrictions may over-ride the water resources availability that has been calculated.

3. Assess the impact on surface water rights by having regard to the ability of the existing abstractor to take water at their fully licensed abstraction rates, compared with their ability if the proposal was in place. To avoid potential derogation, you should impose restrictions on the licence to prevent impacts – normally this will take the form of a suitable hands-off flow (HoF) condition, taking account of the relative location of any proposed abstraction to existing abstractions and consider the impact on downstream rights including in-river needs.

The effect of the condition must be that when there is just too little water in the river to meet the needs of downstream users, the new abstraction must cease. In practice, environmental protection requirements may involve the need for the new abstraction to stop even sooner so derogation may not in itself be a reason for the condition.

You must also consider where any water abstracted is to be discharged after use; in effect, you consider the net abstraction and the impacts of the 'depleted reach' (the length of watercourse between the abstraction and discharge points). Where the discharge is some distance downstream, there may be a length of river which experiences a high net abstraction; and then (after the discharge point) a length with a lower, or nil, net abstraction. Where water is abstracted and exported to a different catchment, all the river downstream of the abstraction will be depleted and so you would consider loss to the original catchment as if it were fully consumptive. You will also need to consider the effect of the exported water on the catchment where the water is transferred to and the impact of increasing flows in that donor catchment.

4. Think very carefully before granting new large licences, especially in locations that are lower down in the catchment. The presence of large, licensed abstractions at the downstream end of a river may effectively close the entire river with respect to granting further abstractions. In practice, an agreement for some derogation may be reached, or some allowance made for potential development of small-scale abstractions upstream over the life of the downstream scheme.

! Important derogation agreements may be necessary for full licences associated with hydropower schemes further down in the catchment but are not applicable to transfer or impounding licences.

5. You must see that the abstraction does not have unacceptable effects on environmental features such as springheads, wetlands, meres and fens. This is not usually an issue with surface abstractions (provided that adequate cessation conditions are applied).
6. Assess the impact on the in-river ecology. Local ecological data may be available from area conservation staff. Where we do not have any data 'in-house', it may be necessary for the applicant to carry out ecological monitoring and submit the results with their application in an Environmental Report.

! Important these exercises can be expensive and will probably only be considered for a public water supply proposal or other substantial project. Before requesting such a survey, discuss this with your Team Leader and area colleagues.

7. Check whether some of the natural flow above any HOF requirements is reserved for in-river needs, the cumulative impact of abstractions could eventually result in the catchment flow characteristics being modified such that its essential character changes.

The likelihood of the flow regime being changed increases as you licence away a larger proportion of the available flow. Approaches such as stepped HOF values, or "percentage take" conditions, may need to be considered to deal with such impacts, particularly for large abstractions. RAM makes sure these principles are taken into account when calculating HoFs.

8. Check whether there is a need to protect a depleted reach between any abstractions and discharge points as other water interests, such as riparian owners, as well as the environment, may be adversely affected. This may be avoided or mitigated by having the licence specify a passive gravity intake from the watercourse channel, always allowing a pre-calculated base flow downstream.

! Important This does not tell you what is actually being abstracted, however, and should be in addition to, rather than instead of, means to measure or estimate the abstraction (if required).

9. Consider whether any abstraction in a supported waterbody needs conditions either to prevent abstraction when the support is taking place (either through a hands off flow condition or specific cessation condition) or any conditions that state when abstraction can take place. See the ['Supported sources'](#) section below for implications of abstraction in a

supported waterbody and charging, including when the supported source charge would apply.

Groundwater impact assessment

For groundwater applications, all the above considerations are also essential for groundwater applications that interact with surface waters, as well as:

- derogation of other groundwater interests
- impact upon habitats dependent upon groundwater levels
- scale of effects on surface flows both alone and in-combination with other existing groundwater abstractions
- preservation of essential baseflows from aquifer units, which support low flow regimes in associated surface catchments
- structures through desiccation and subsidence. In particular, this is important in relation to “protecting and conserving buildings, sites and objects of archaeological, architectural, engineering or historic interest” (section 7(1)(c)(i) Environment Act 1995) under our environmental conservation duties.

Remember that the groundwater in almost all the aquifers in England flows somewhere – either to surface water or direct to the sea.

All groundwater abstraction will have some impact: it is a question of when, where, and how much that impact is. So, in the context of the application, does the abstraction result in a significant reduction in groundwater flow? In practice, these issues will be considered by the hydrogeologist in the test pumping report or hydrogeological impact assessment (HIA).

For groundwater applications, you need to consider the overall availability of resources in the aquifer and whether the proposed source (borehole, well or other) can yield the quantities of water applied for. These considerations will enable you to assess the sustainability of the proposal.

In cases where a pump test is required, these considerations should have been taken into account as part of that pump test. If no pump test has been completed, check with the local hydrogeologist whether the abstraction needs a pump test or HIA.

The local hydrogeologist needs to assess whether a pump test is needed and also analyse the results of any pump test or interpret the conclusions of any HIA. This should include:

- Confirming that the applied for quantities match the quantities assessed in the pump test or HIA
- The source can yield the required quantities sustainably

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- The abstraction can take place without adversely affecting other groundwater users and the environment.

! Important Where the local hydrogeologist confirms that a pump test is required but the applicant has not done one, you should not accept the application as valid. If the application has already been accepted, you should refuse the application (or encourage the withdrawal of the application) on the basis that you do not have sufficient information to assess the application.

In cases where the analysis of the pump test / HIA shows there will be sustainability or adverse effects, the application should be modified to remove these concerns or refused (if not possible to mitigate against the concerns). Our decision may need to be defended in case of appeal.

The following scenarios give certain aspects that may be relevant for a groundwater application:

If a new groundwater abstraction in or near the catchment of a wetland could directly or indirectly affect the flow or level within a wetland, then the Environmental Report procedure, required to support such an application (see [LIT 11077 Reports to accompany water resources applications](#)), should provide you with the information you need to make the right decision. Your conservation colleagues, and probably Natural England, are there to advise and make recommendations. Although the final decision is a matter for your judgment, if you depart from such recommendations you will have to state reasons and be prepared to defend the position on possible appeal or challenge.

If the proposal is in an area where river flows depend wholly or partially on groundwater, then it is important to assess the impact of the proposal on river flow (when flows are at their lowest, as measured or predicted). This can be part of the pumping test procedures. There are various theoretical methods for estimating the impact of a groundwater abstraction on river flow and you should consult a hydrogeologist. As with surface water proposals, you may consider imposing conditions on any new licence to protect the river flows. This may involve a cessation clause but would need to take account of the lag effect of groundwater abstraction on surface flows. Remember to consider not just individual impact, but cumulative impact of groundwater abstraction as well.

If an existing right is close to a proposed abstraction, then it may be appropriate to carry out (or ask a hydrogeologist to carry out) a distance – draw down calculation. This will calculate whether the new abstraction will derogate the existing right. This may already have been done in connection with a pump test. Apart from the immediately observable effect on the level of the water table, a new abstraction may add a significant burden to the local water resources and impact over a longer duration.

If the nature of the aquifer makes estimating impacts of abstraction over time difficult, then you need to seek advice from a hydrogeologist as, in some aquifers, effects are established quickly; in others they may take years to develop fully. The hydrogeologist may need to use ground water resource models to quantify likely impacts of larger proposals.

Protected rights

Legal duties

You must not grant licences which "derogate" from "protected rights". These terms have special meanings and are explained below. Section 39 Water Resources Act 1991 prohibits you from granting an abstraction or impounding licence which would derogate protected rights, without the consent of the person entitled to those rights. See [LIT 110338 Protected rights in water resources](#) for more information.

If you do grant a licence which derogates a protected right without the consent of the affected person being obtained, we could be liable to pay damages to that person. The licence granted, however, is valid.

Section 60 and Schedule 7(4) deals with our liability to pay compensation. These provisions are to some extent helpful in deciding what amounts to a derogation and what does not.

Definitions

Derogating from a particular protected right means abstracting or impounding water so as to prevent the person entitled to the right from abstracting to the extent allowed by the de minimis exemption or a full licence. There are other protected rights for abstractions that do not need a licence, which are explained further in [LIT 110338 Protected rights in water resources](#).

Transfer licences and temporary licences do not have protected right status, although they must still be considered as lawful uses.

The protected rights you need to consider are those that exist at the time you determine the application for the licence (Section 39(1) Water Resources Act 1991).

! Important If someone has a protected right but is not in a position to carry out the abstraction (for example a borehole has been abandoned and does not have a pump), then you still need to consider derogation in the same way however the

fact that they are not in a position will become a factor in deciding any compensation due if it were to be derogated. You must still avoid derogation in these cases to avoid the liability of any compensation.

Appeals

If you refuse the application because the risk of derogation cannot be mitigated against and the matter goes to appeal, the Secretary of State can grant such a licence. In such circumstances we are liable to pay damages for derogation. However, the Secretary of State may indemnify us against this, and an indemnity should always be sought in these cases. See Section 60(2) and Section 63(1) Water Resources Act 1991.

Scenarios

Affecting a person's rights may occur in different ways. Below are some scenarios that you could come across as part of an application. These do not all amount to derogation. For the purposes of considering derogation, you only need be concerned about whether the person with the protected right can continue to abstract the quantity they were able to abstract before. It is not concerned about effects on quality. There may of course be other reasons why we could be concerned with quality of water abstracted. For example, for maintaining quality on discharge or preventing deterioration in groundwater quality within a resource unit because of a new abstraction pulling in deep groundwater. Such are not derogation issues but still need to be considered as part of your determination.

In assessing derogation, you should consider the impact of the new abstraction on the predicted or historical worst-case water level conditions at the site.

1. If the person can still get the same quantity of water, but its quality is reduced (for example, a change in saline levels or temperature of water), then this is not derogation. An abstraction licence does not guarantee the quality or suitability of the water for its intended purpose. You still may be unable to licence it, based on interference with lawful uses, or for example breach of the Groundwater Directive. In other words, this sort of situation may be taken just as seriously as derogation in a technical sense.
2. If the abstraction lowers the water table making it more expensive to pump water but not impossible to, then this is not derogation. Our position is that lowering the water levels where a pump can continue to abstract, albeit at more expense, does not constitute derogation.

However, if the water level is reduced so that the water is only available if the affected borehole is deepened, the pump must be lowered or an

artesian source now requires pumping, then this is derogation. Making it necessary to deepen a borehole or lower a pump, without which the water is physically inaccessible, is derogation. If you are in any doubt in these situations, take advice: getting it wrong could expose us to paying compensation.

3. If a new abstraction might drawdown the water level in a neighbouring source, but not to the extent that the existing abstraction is compromised, then it may be prudent to ask for the pump to be lowered, although this will depend on the margin available.

A 'Lee Valley clause' is an undertaking whereby the liability for putting right any derogation is placed on the licence holder in return for the grant of a licence. Historically, Lee Valley clauses have been included in section 158 Agreements and licence conditions in the past, mainly with water companies. An example of a Lee Valley condition in a section 158 agreement can be found in [WR300](#). In rare occasions when new Lee Valley clauses are considered necessary, they must be included in the licence itself and must not be entered into without the approval of the E&B Water Resources Regulation team.

Safeguarding protected rights of large abstractions

We have a duty not to derogate protected rights and as such we'll need to consider the derogation risk posed by any new consumptive abstraction upstream of a large non-consumptive abstraction. As such schemes utilise most of the flow in the river, any reduction in flow could be regarded as derogation. Where there is a risk of derogation, the licence holder must consent to be derogated before we can grant the licence.

Please refer to section 2 of [LIT 16670 Safeguarding Protected Rights](#) for further guidance on determining whether there is a risk of derogation and, in the event there is, deciding what action to take.

Conserving water availability when determining large non-consumptive abstractions

By their nature, large non-consumptive abstractions such as those for HEP schemes can involve the abstraction of large quantities of water compared with the flow regime, although there is generally no overall loss to catchment resources. Such a scheme that involves a full abstraction licence will attract protected rights that may severely constrain the Environment Agency's ability to grant further licences upstream. The Environment Agency is prohibited from granting licences which derogate from protected rights unless the holder of those rights gives consent (Section 39 Water Resources Act 1991).

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You need to avoid creating protected rights for large non-consumptive abstractions that may prevent other people gaining access to water in the future. You can do this by, where applicable, encouraging applicants to apply for a transfer licence. For hydropower schemes, the Hydropower Scenarios Workbook sets out what licences will be required for these schemes. We have powers under Section 36A Water Resources Act 1991 to change the licence type applied for. A full licence may be unavoidable, or the applicant may not want a transfer licence. In these cases, we will normally require the applicant to enter into a 'derogation agreement' before the licence is granted unless the proposed scheme does not constrain upstream water availability.

If you have decided that a full licence is the only option, the next step is to decide whether a derogation agreement is required. Refer to Section 1 of [LIT 16670 Safeguarding Protected Rights](#) for further guidance.

We rely on powers under Section 37(1) Environment Act 1995 to enter into derogation agreements. A template derogation agreement can be viewed in [WR300](#). The agreement requires the applicant to give prior consent to be derogated, thereby allowing us to grant consumptive abstraction upstream of the protected right up to a defined volume.

Should a derogation agreement be required, then this must be agreed before a licence is granted. The licence must include the following condition:

'No abstraction of water shall take place under this licence unless an agreement between the Licence Holder and the Agency relating to the derogation of 'protected rights' in the form of the attached is in force at all times, and the agreement must remain in force throughout the subsistence of the licence'.

Where you include this condition in a licence you must record it on NALD using the following condition code: Code = 'DEROG', Sub-code = 'CLAUSE'. The first and second parameter fields must be left blank and the words 'derogation agreement' must be added to the text field.

Derogation agreements are not transferrable to another person or another licence on renewal or apportionment. As a result, a transfer, apportionment or renewal will trigger the need for a new agreement. You can take this opportunity to review the derogation agreement and amend the quantities. You may need to do this if the Abstraction Licensing Strategy has changed. The licence condition (see above) allows us to take enforcement action in the event abstraction takes place without an agreement being in force.

Where an applicant will not enter into a derogation agreement you can:

- use our powers under section 36A Water Resources Act 1991 to change an application for a full licence to an application for a transfer licence (this needs to be done before the 'relevant date' is set)

- where a transfer licence is not an option, refuse the application.

You must consult the Water Resources Regulation team using the [WR Helpdesk](#) before refusing an application under these circumstances. In the event of an appeal, we will defend the case on the grounds of us discharging our duty to secure the proper use of water resources.

Lawful uses

There may be no derogation in the technical sense, which actually prohibits you from granting a licence without the affected party's consent.

The Water Resources Act 1991 still requires you to "have regard to the requirements of existing lawful uses whether for agriculture, industry, water supply or other purposes".

Section 39(2) Water Resources Act 1991 is clear enough in its reference to applications to abstract from underground strata. However, the requirement in relation to inland waters is set out in a convoluted way. For these, Section 40(2) requires you to have regard to the same considerations as it would when setting a minimum acceptable flow. Those factors are set out in Section 21(5) and include the same "existing lawful uses" provision (as well as certain other factors).

Desiccation and subsidence

It is settled law that you cannot claim for loss of support by water. There is a long line of cases on nuisance, culminating with *Longbrook Properties v. Surrey CC* [1970] 1 WLR 161. An attempt to say that there was nevertheless a duty of care owed so as to find an action in negligence was struck down in *Stephens v. Anglian Water Authority* [1987] 3 All ER 379.

The situation is not completely straightforward, and you should not dismiss claims of fears of subsidence or desiccation on the basis that this is of no concern to us.

In any event, the use of water for support, and for growing crops, is a legitimate use of water resources and therefore quite properly within our remit of water resources management.

Third parties who suffer loss or damage as a result of abstraction now have a right of redress against the abstractor concerned (Section 48A Water Resources Act 1991). Further information about third party claims can be found in [LIT 11310 Responding to enquiries relating to Third Party Claims](#).

If desiccation and subsidence is raised as an issue, consider whether pumping the water will physically remove material or whether there are any lawful uses which may be affected. See the sections below for considerations of these points. You should also consider whether the concerned parties have submitted representations to our advertising.

Also note your obligation to have regard to the desirability of protecting and conserving buildings, sites and objects of archaeological, architectural, engineering or historic interest (Section 7(1)(c) Environment Act 1995).

Removal of material

If the action of pumping out water removes the rock itself, and causes subsidence, then the person affected may be able to sue the abstractor (if they can prove it) (See *Jordesen v Sutton etc. Gas Co.* [1899] 2 Ch217. Also see the Brine Pumping (Compensation for Subsidence) Act 1891).

Lawful uses and crop desiccation

The extent to which you should have regard to existing lawful uses of water abstracted from underground strata, "whether for agriculture, industry, water supply or other purposes" (Section 39(2) Water Resources Act 1991) is a rather different issue.

Where you (aside from representations — as to which, see above) have reason to believe that a proposed abstraction will affect growing crops or other vegetation, you can have regard to such effects in considering the application.

Doing so may be justified, if not on the "lawful uses" ground, based on our rural communities, cost benefit, or sustainable development duties. Note that although plants use water in the soil, this does not necessarily mean that a groundwater proposal will affect the soil moisture and / or the growth of the plants in question.

Measuring and monitoring conditions

All full licences must contain a condition specifying how quantities abstracted are to be measured or assessed (Section 46(2) Water Resources Act 1991). On temporary and transfer licences these provisions are optional, dependent on whether we include quantities on those types of licence and should be used if we specify quantities in these licence types.

The effect of the condition should be for you and the licence holder to be able to know how much water has been abstracted (and therefore that this is within the quantity authorised by the licence).

The requirement and frequency of measuring volumes should be based on the level of risk the abstraction poses on the environment. [LIT 11631 Operator returns for water resources](#) includes a flowchart that sets out the default measurement requirements based on the level of risk (mainly based on volumes the abstraction licence authorises as well as some specific environmental factors included in the flowchart). If you do not think that the default measurement requirements are reflective of the level of risk the abstraction poses, you can choose an alternative frequency, but this must be sufficiently explained within the decision document.

Metering

The default measurement position is that abstractions should be metered unless there is good reason to choose another method. The metering condition itself is standard but it is essential that the type of meter, maintenance requirements etc. are agreed and understood between you and the licence holder before the full licence is issued. We should send the applicant the appropriate metering summary factsheet with the formal acknowledgement letter. We do this to ensure they're aware of the need to meter in accordance with the [Abstraction metering good practice manual](#) (AMGPM) at an early stage.

Further guidance on metering is given in [LIT 11695 Metering abstractions](#).

Separate purposes and points will normally need to be metered separately, unless you agree an exception is appropriate. If you decide an exception is appropriate, you must document this within the decision document to explain the decision. See [LIT 11631 Operator Returns for Water Resources](#) for more information.

Alternative forms of measurement

If an abstraction can't be metered, some other form of measurement may be acceptable.

! Important. If setting measurement based on structures, insist on fixed intake (and / or discharge) points. If the intake structures can be moved and altered regularly, accurate monitoring becomes almost impossible.

The type of appropriate method of measurement will vary dependent on the abstraction intake. Examples include:

Open channel methods

For open channels the appropriate ISO748 standard should apply and should be specified on the licence. ISO748 should also be applied to structures required to measure prescribed flows or compensation releases where the discharge is measured. It may be proper to include reference to ISO748 within the licence condition wording. However, you should balance this in cases where the standard can be relaxed or varied if application of that standard is impractical or otherwise not possible. The wording 'or as may be authorised in writing by the Agency' included in the condition may provide sufficient control to enable this flexibility.

Usually, flow measurement for fish farms will fall into either open channel methods such as thin plate weirs and flumes or pipes, orifices or other similar fixed flow calibrated controls. With fish farms it is particularly important to be sure the licence is conditioned such that structures or other arrangements are kept in good repair, free of weeds and sediment build-up.

Pipes, orifices, and other fixed controls

Such types of arrangement enable greater control for gravity abstractions, because they can be designed to limit flow to that authorised by the licence as well as providing the basis for measurement. They are therefore preferable to a simple open channel approach. Where pipes or fixed orifices are specified, look-up tables or empirically derived equations can be used to calculate rates of flow. Note, that these will be influenced by the hydraulic conditions at the site.

If abstraction is via a closed pipe and the pipe is always full (below watercourse level), the quantities abstracted through the pipe can be calculated from pipe tables. Ask a hydrologist or the development control engineer for support on this.

Where abstraction is from a pipe that is not always full (level with or above watercourse level), monitoring abstraction accurately may need multiple methods. Electromagnetic or ultrasonic meters may be appropriate however these are expensive to install. You should consider whether these are necessary and reasonable requirements to impose on the licence holder, in the context of the scale and potential impact of the abstraction.

You should always be prepared to explain the reason for flow measurement requirements. They can often be complex and depend on local hydraulics such as gradient, bed roughness, channel geometry, velocity and the flow range, which has to be measured.

Measuring the discharge

Where it can be demonstrated that a single volumetric measurement is appropriate to both the abstraction and discharge requirements it may be more

practicable to monitor the discharge as a measure of the volumes abstracted. You should consider whether there are any inputs of water between the point of abstraction and point of discharge as more water could be leaving the site than entering and adjustments will need to be made (if it is still considered appropriate to measure the discharge). If a discharge permit is needed, then the abstraction licence should not disagree with any requirements on the discharge permit including volumetric limits or location of the discharge.

! Important Measurement of discharge volumes cannot be collected as part of our returns systems and would not be considered as measuring the abstraction directly. The requirement to measure discharge volumes as a licence condition should be included in the 'Further conditions' part of the licence and not the 'Means of measurement' section if they are used.

Telemetry

You may consider it appropriate to require the abstractor to provide and use data loggers and telemetry in certain circumstances. Usually in cases of large but not constant abstractions or abstractions where the point of abstraction is remote from the use, such as certain water company licences and river regulation schemes. Telemetry should be backed-up with meters at the point of abstraction.

Flow measurement

A full licence may also contain requirements for flow measurement in the source. This should be consistent with the quantities authorised and the purposes for which water may be used. For example, you may require installation of a flow measurement device to regulate the abstraction by reference to a Hands off Flow restriction.

For control of a winter storage abstraction from a small stream, this might be a simple V-notch weir to a sump where water can then be pumped from; but a major ultrasonic gauge could be required to regulate a public water supply abstraction. Loggers as well as weirs may be required on gravity inlets.

In each case you should have regard to the complexity and impact of the abstraction in specifying the method/degree of accuracy and resolution required in measurement.

Before specifying a local prescribed flow (LPF) structure you need to consider:

- Whether local measuring structures need to be constructed and maintained to the appropriate (or equivalent) British Standard (ISO748).
- Is the location suitable for a local measuring structure?
- Does the applicant have the capability to install and operate a LPF structure?

- How will the condition be enforced by the local L&W team?
- The cost of installation versus the environmental benefit.
- Are there any flood risk management and fisheries/conservation issues?

You must consult internally before proceeding – also seek advice from the local Hydrometry and Telemetry team.

Discussing measurement requirements with the applicant

Advise the applicant of the acceptable means of measurement and form of return expected before the licence is issued. Especially if this means of measurement is different to how they have indicated they would measure the abstraction in their application form.

When you issue a new or varied licence that includes measurement conditions, you must confirm in writing when you complete the issue letter what we require the measurement arrangements to be. The measurement must comply with the appropriate British Standard or the [AMGPM](#). This letter also acts as the ‘written direction’ which is contained in the standard metering condition.

Measuring discharge volumes

If you have included a discharge on the licence, consider whether you also need to include a requirement to measure and record how much has been discharged.

! Important Measurement of discharge volumes cannot be collected as part of our returns systems because it is not measuring an abstraction activity. The requirement to measure, record and report on discharge volumes as a licence condition should be included in the ‘Further conditions’ part of the licence and not the ‘Means of measurement’ section.

Supported sources

Licences that take water from supported sources may need to pay the supported source charge as part of their annual subsistence charge. As well as in this section, further information on supported sources is in:

- [LIT 12321 Validation checks of water resources licence applications](#) – Application charges section
- [WR49 bank of standard questions for internal consultation](#) – IEP, Hydrology and GW tabs
- [Annual charges calculations to accompany decision document](#)
- [Charging scheme](#) on Gov.uk (Use ‘Ctrl+F’ search for “supported source”)

- [External charging guidance](#) on Gov.uk – Section 6.5.2 Supported sources

Deciding whether a supported source charge applies

1. Permitting Officer consults with Area Hydrologist or Hydrogeologist via the WR49 when the mapping tool has identified that the proposal is within or on the boundary of a supported source
2. Area will calculate if the supported source charge applies to the application using the Area specific methodology for the supported source.
3. Area record their decision on the relevant spreadsheet on the [Hydrology SharePoint](#) regardless of whether the charge applies or not.
4. Area confirm to Permitting via the WR49 if the charge is applicable and a brief explanation to support the decision that will be used in the decision document and [Annual charges calculations to accompany decision document](#) by Permitting. Permitting must save the WR49 consultation response, decision document and Annual charges calculation sheet to DMS.
5. Area save any additional information to support the decision to DMS where relevant.

Background to charging for supported sources

Under the previous charging scheme (before April 2022):

- any licences abstracting from within the boundaries of the supported sources would pay the supported source charge unless they had a HOF preventing abstraction when support was in operation
- no groundwater licences were charged for supported source, even though some were reliant on it where the support water quickly filtered into the ground
- whatever received water from a supported source became a supported source, so abstracting from an IDB area after the IDB took the water from a supported source would be deemed abstracting from a supported source and charged accordingly.

We set up and operate these supported source schemes to protect and facilitate abstractions of major abstractors, primarily water companies and power stations, who generally have fixed intake pipes that need to be fully submerged to allow them to abstract. The schemes are massive and expensive assets. We wouldn't operate them to support small abstractors, except for several surface water

supported sources in East Anglia where the cumulative effect of numerous agricultural abstractors requires the support schemes to operate.

Strategic Review of Charges

When SROC was being worked up, each Area Hydrology/IEP/GW team was required to calculate which licences within each supported source required the support of the scheme and therefore should be paying for the scheme to operate. In the charge scheme modelling, we spread the cost of operating these schemes between the licences they were designed to support, to ensure we will recover all our costs from the right licence holders.

Under the new charging scheme (from April 2022):

- Only licences which require our support will be charged the supported source additional charge. This will mean lots of smaller farming abstractions are no longer paying the additional charge. Usually only in the 'Great East Anglian SW supported source', 'Thet and Little Ouse SW supported source' and potentially 'Witham and Ancholme SW supported source' will have smaller abstractions be paying the charge. Permitting will ask Area to confirm in all cases. Hydrology will refer to their guidance and list of licences on the [Hydrology SharePoint](#). **Note:** Only hydrologists will have access to this site.
- Licences which have a HOF preventing abstraction when support is in operation will not pay the supported source charge.
- The external guidance says you won't pay the charge if "your abstraction is 1% or less of the water available for abstraction". For surface water abstractions, the way to define this varies depending on the hydrology of the catchment so the wording has been left deliberately open and left for Area hydrologists to apply their expertise. In some catchments, it is 1% of Qn95 (the amount available before abstractions are taken out and the support is added). In others, the calculation is different because abstraction and support has been taking place for so long that we have no meaningful data from before it. In others, it relates to levels rather than flows. It is left to the expert judgement of the Area Hydrologists where it is most appropriate to measure the flows or levels to use to determine whether an abstraction requires support.
- When water is transferred from a supported source into another source, the first abstraction is from a supported source, but any subsequent abstraction is no longer considered to be from a supported source. Where the transfer is done under a full licence with a transfer purpose, it pays at the low loss rate. If the transfer is authorised under a transfer type licence, there will be no annual charge. If the abstraction is part of a transfer / 're-abstraction' operation and is within or on the boundary of a supported source, refer to [LIT 110554 Transfer re-abtract schemes](#).

- In the Glenn GW supported source, only the 10 licences specifically named in the section 20 agreement will be charged the supported source additional charge.
- In the 'Witham and Ancholme SW supported source' (near Lincoln and Hull), there are some existing licences with a condition saying they can only abstract when the support scheme is operating because it is needed to back up the water levels in the tributaries they take from. If varying or renewing a licence with such a condition, check with Area whether the charge applies.
- The additional charge will only apply to licence that incur an annual charge

Table of supported sources and which abstractions likely to require charge

Supported Source	Do groundwater abstractions require charge?	Do surface water (including Tidal Water) abstractions require charge?	Comment
Candover	No	Yes	
Dee	No	Yes	
Earl Soham - Deben	Yes	Yes	
Glen Groundwater	Yes	No	Specified water company licences only
Great East Anglian Groundwater	Yes	No	
Great East Anglian Surface Water	No	Yes	Small scale abstractors likely to require charge
Kielder	No	Yes	
Lodes Granta Groundwater	Yes	No	
Lower Yorkshire Derwent	No	Yes	
Medway - Allington	No	Yes	
Nene – Northampton	No	Yes	

Nene – Water Newton	No	Yes	
Ouse – Eaton Socon	No	Yes	
Ouse – Hermitage	No	Yes	
Ouse - Offord	No	Yes	
Rhee Groundwater	Yes	No	
Severn	No	Yes	
Thames	No	Yes	
Thet and Little Ouse Surface Water	No	Yes	Small scale abstractors likely to require charge
Waveney Groundwater	Yes	No	
Waveney Surface Water	No	Yes	
Welland – Tinwell Sluices	No	Yes	
Witham and Ancholme	No	Yes	Small scale abstractors may require charge
Wye	No	Yes	

Priority Tracked Service and Nature Permitting & Coordination applications

A Priority Tracked Service launched in April 2025 for customers who need to apply for multiple permits or licences for major infrastructure and housing projects. Customers of this may occasionally include those needing one or more water resources licences as part of their project. See the [Priority Tracked Service Sharepoint site](#) more about the service's purpose, what the service does and doesn't provide, how it benefits the customer and us, the role of Coordination Specialists (CS) and how it is paid for. SROs and RAPID work are also being processed under the Priority Tracked Service.

Nature Permitting & Coordination (NPC) is a new offer to customers from 2026 who need to apply for multiple permits or licences for nature projects. This coordination service will provide applicants with ongoing support, and at the

same time help us better manage our resource to meet their needs. See the [EA Nature Permitting and Coordination](#) for more about the service.

Applications will be allocated to a permitting officer more quickly than others.

The Validation team leader can see in '[TL view](#)' of the [Smart Allocation List](#) that the application is part of the Priority Tracked Service or Nature Permitting & Coordination so they can allocate appropriately.

We are expected to make a decision on each application within the relevant KPI3 time. We recognise that sometimes this is out of our control, and the CS will have given appropriate caveats to the applicant to this effect. Should we predict that the original expected time to decision will be exceeded, the CS can help to resolve problems where possible.

The determination process itself remains the same and permitting officers will still communicate directly with the applicant.

The CS is a good source of background knowledge to the project, which may support your assessment and decision-making. The CS will be regularly updating the applicant. Permitting officers will need to keep them up to date when determining the application. They will minimise contact with you where possible, and you can discuss how to communicate in a way that works for you both.

The CS will track your determination via the appropriate dashboards on SharePoint and may get in touch if they need to clarify facts or offer support if there appears to be a problem. The CS will monitor issues or risks affecting our overall delivery of permitting to the project, however this shouldn't overlap with your usual process of managing technical issues with the application you are determining. Discuss with the CS when you are getting close to determining the application to check if there is anything that needs to be done at the same time as other application.

The CS can facilitate conversations internally and externally to help resolve problems and support decision-making. They will tell you if there is another application ongoing that relates to what you are working on.

The permitting officer will record their time against the application reference in TETRA as normal.

Environment Agency's wider duties

Closely associated with direct physical impact is the need to consider:

- the goal of [sustainable development](#);
- the impact of proposals on [rural communities](#);

- your [cost benefit duties](#).

! Important Whilst we have a duty to consider these wider duties, these do not over-ride other statutory duties such as our duties to prevent deterioration of waterbody status under the WFD Regulations or preventing adverse effect on a site designated under the Habitats Regulations. In these cases, our decision would need to take into account these other duties.

Sustainable development

Explanation of the meaning of this concept, and your legal duty to have this as your principal aim, is set out in [LIT 11102 Overview of water resources law](#). See the Government's direction to us.

For water resources to be developed in a sustainable way, you must consider environmental, social and economic factors. The sustainable development concept means you must pay attention to ensuring that water is being, or will be, used efficiently. Consider the following factors to assess whether the proposal contributes to sustainable development:

- Have the options been explored and is the proposal the best of them?
 - Is best use being made of water storage options (for example, winter storage compared with summer spray irrigation)?
 - How does the proposal match the applicant's leakage control programme? Is sufficient effort being put into that?
 - What water conservation measures does the applicant promote? Could these be improved?
 - Does an existing user use water efficiently already? Does it really require more? If so, does the applicant require as much water as they claim?
-

Rural communities

You must have regard (see [LIT 11102 Overview of water resources law](#) for an explanation of the meaning of this expression) to the effect that any proposal would have on the economic and social wellbeing of local communities in rural areas (Section 7(1)(c) Environment Act 1995).

In many cases the answer will be "none", but nevertheless this is something that you should always address as part of the determination process. Abstraction or impoundment licensing (or groundwater investigation consent) proposals may have the sorts of effects this requirement is aimed at. When these come from a business or person in a rural community, or could impact on those communities, the point should be looked at particularly closely; for example, in relation to staff employed, opportunities for other employment, etc.

The duty also applies in broader situations, for example:

- proposals for spray irrigation restrictions
- policy formulation or implementation, for example promotion of winter storage, hydrometric strategies and so on
- our capital and maintenance works in areas dominated by agriculture or fisheries.

You should initially consider how your decision (either to grant or refuse) a licence application may affect:

- local employment, especially if few other employment opportunities exist
- resources (like fisheries)
- amenities (such as a beauty spot)
- quality of life
- local traditional or cultural practices.

Once you have considered any potential affects, you should think about how and to what cost, such impacts could be mitigated. Benefits may come from things like us constructing a gauging station which leads to improved flood warnings.

In making your decision, you should consider the potential that your decision could have on limiting other opportunities for abstraction and the knock-on impacts that rural communities could suffer as a result.

If necessary, dependent on the size and complexity of a proposal, it may be appropriate to consult externally with parish councils, public meetings or similar opportunities to canvas local opinion. This may be on top of our statutory advertising requirements.

Cost benefit duties

The duty under Section 39 Environment Act 1995 to take into account the likely costs and benefits of the exercise of a power, or the way it is exercised, stems from government's desire to ensure that our role in protecting and enhancing the environment is balanced by the need to consider the costs and benefits of doing so. It is anticipated that the cost benefit analysis will be completed at the formal application determination stage although it may be useful to focus thoughts during any pre-application discussions with the applicant.

National Environment Agency policies and Abstraction Licensing Strategies will have been assessed for their costs and benefits during development. There is no need to get involved in any more than the most cursory cost-benefit analysis of the individual matter when making a decision on a licence application unless

there is something to alert you that doing so is likely to produce an abnormal result from a cost-benefit point of view.

The costs referred to include costs to the applicant, society, and the environment (Section 56 Environment Act 1995). The statute does not define benefits as such, but these should be considered in the same way. Both financial and un-quantifiable costs and benefits are covered.

Note that the cost benefit requirement applies to the exercise of powers where you have a discretion whether to act or not, or how to act. It does not affect duties, which you must comply with (Section 39(2) Environment Act 1995).

It is desirable to formalise the way we consider costs and benefits, so that the way a decision has been reached can always be properly explained.

Consider the options available to you in your decision. You must recognise that for each option available, there will be a different environmental outcome and different outcomes to those you are regulating.

You should complete either a simple cost-benefit analysis as part of the standard decision document, or in more complex cases where a more involved approach is needed, complete the [WR62](#) proforma and append this to your decision document. If completing a WR62 proforma, seek input from specialists. Further information on this is provided below.

More sophisticated cost-benefit analysis

There are formalised methods of analysing costs and benefits itself, for example:

- multi-attribute analysis
- contingent valuation (This means considering a hypothetical market for an environmental good (like flow in a particular river). Surveys are used to establish how much individuals are willing to pay for seeing that good stay the same, and / or how much compensation they would accept to allow it to fall, and / or how much they would pay to see it improve. This approach can be applied to different degrees of change. Obvious examples in a water context are quality and quantity, but the concept can embrace other environmental goods).
- hedonic pricing (This is a method of valuing unquantifiable values, such as river flow, by reference to something which does have a quantifiable value). For example, if a fall in river flows and house prices next to the river have also fallen, it may be possible to establish a direct causal relationship between the two and hence put a value on the river flow).

These techniques are used in full cost-benefit analysis, but it is unlikely that these would be used in day-to-day water resources work.

We are not bound to use these techniques, and in many cases they would clearly be inappropriate. The cost of applying the duty itself should be taken into account: sophisticated techniques are likely only to be worth the expense of using them for particularly large, controversial projects or similar.

Such analysis should however be considered in all applications, variations or reviews involving Alleviation of Low Flows, or those likely to affect European sites. The cost-benefit analysis will not be relevant to the assessment of implications of the project for the site (Regulation 63 Habitats Regulations 2017) but could be relevant to the issue of overriding reasons for allowing a project to proceed (Regulation 64 Habitats Regulations 2017), and other significant abstractions such as large public water supply and industrial abstractions.

Don't be afraid of suggesting the need for a more (or less) sophisticated approach. It is also something for which the applicant may be expected to pay. Getting the balance right will require debate and discussion. There are no hard and fast rules.

Examples

The table below gives an example of how costs and benefits would be assessed when making a decision on a licence application.

If in dealing with an abstraction licence application you decide to:	Then:
Refuse it	there will be no impact to environment but this may have a large impact on the applicant.
Grant it with 'simple' conditions such as metering	this will involve a small cost to applicant, but will be of benefit to us, as it will allow the proper management of water resources.
Grant it with 'complex but standard' conditions	this gives an impact (cost) for the applicant. Differing costs and benefits will result from how the flow is set.
Grant with 'very complex' conditions, such as long term monitoring, assessment or major restrictions on the ability to abstract	These may have a real cost to the applicant; but prevent, or be precautionary about, a major cost to the environment.

Related documents

1. [Water Resources Optimum Usage Manual](#)

2. [Guidance for run-of-river hydropower development](#)
3. [LIT 11077 Reports to accompany water resource applications](#)
4. [LIT 12467 Screening and assessing new water resources permissions for impacts on conservation, heritage and landscape](#)
5. [LIT 15604 Non- Financial Scheme of Delegation \(NFSoD\)](#)
6. [LIT 15605 Using your powers delegated under the Non-financial scheme of delegation \(NFSoD\)](#)
7. [LIT 11102 Overview of water resources law](#)
8. [LIT 11616 Time limiting abstraction licences](#)
9. [LIT 15715 Entering into and reviewing water resources management arrangements](#)
10. [LIT 13436 Incorporating WFD objectives into water resources licensing](#)
11. [LIT 11349 Taking account of the duty on water companies to further water conservation](#)
12. [LIT 11617 Applying a time limit to new and varied abstraction licences](#)
13. [LIT 11619 Renewing time-limited abstraction licences](#)
14. [LIT 11631 Operator Returns for Water Resources](#)
15. [LIT 11659 Water Resources Permitting – an overview](#)
16. [LIT 11079 Transfer licences](#)
17. [LIT 11024 Temporary Abstraction Licence Applications](#)
18. [Water Resources Charging Scheme](#)
19. [LIT 15716 Entering into and reviewing water resources management arrangements \(WRMAs\)](#)
20. [LIT 12126 Abatement of annual abstraction charges - s126 agreements](#)
21. [LIT 11695 Metering abstractions](#)
22. [LIT 11310 Responding to enquiries relating to third party claims](#)
23. [LIT 110338 Protected rights in water resources](#)
24. [LIT 16670 Safeguarding Protected Rights](#)

25. [LIT 11475 Impounding licences](#)
26. [LIT 55366 Water Resources Screening Tool: Understanding screening rules and data](#)
27. [LIT 12043 How and when to consult for Water Resources licence applications](#)
28. [LIT 15722 How to publish water resources licence decision statements to the internet](#)
29. [LIT 12174 Hands off flow condition management](#)
30. [LIT 12321 Pre-application activities for water resources permissions](#)
31. [WR13 Consent to derogate from protected rights](#)
32. [WR328](#), [WR334](#): Application for an impoundment licence along with guidance [WR329](#) and [WR335](#).
33. [WR328](#), [WR330](#) and [WR332](#): Application for a full, transfer or temporary abstraction Licence along with guidance [WR329](#), [WR331](#) and [WR333](#)
34. [WR21](#): Original licence conditions
35. [WR22](#): Further provisions
36. [WR183: Request further information for the application letter](#).
37. [WR184 Formal licence application acknowledgement letter](#).
38. [WR392 Additional charge required during determination](#)
39. [WR393: Confirm/Rejected/Partial refund](#)
40. [WR120: Letter to statutory consultee](#)
41. [WR266: Extending the determination period letter](#)
42. [WR269: Letter to representors \(licence granted\)](#)
43. [WR270: Letter to representors \(licence refused\)](#)
44. [WR186 Decision on application for a licence](#)
45. [WR49: Consultation form](#)
46. [WR62: Assessment of likely costs and benefits](#)
47. [LIT 15725 Chapter 7c National abstraction licensing manual](#)

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- 48. [LIT 12246 Preparing water resources licence documents](#)
 - 49. [LIT 12573 Groundwater Investigation Consents \(GICs\)](#)
 - 50. [WR300: Water Resources legal agreement templates](#)
 - 51. [LIT 15730 Water Resources compliance, enforcement and incident investigation](#)
 - 52. 55_06 Dealing with enquiries and applications for abstraction licences relating to competition in the water industry (This document has been archived, please email the document management team to get a copy)
-