

Briefing Note

Hydro Electric Schemes

Scotland has a favourable topography and climate for hydro power and, bolstered by the availability of Feed-in Tariffs for hydro schemes with a capacity of 5 Megawatts or below, there has been an increase in recent years in the construction of small scale hydro electric schemes by landowners. This briefing note discusses several of the issues which may arise for a landowner developing a hydro electric scheme.

Neighbouring Proprietors

Opposite bank proprietors

Where the landowner does not own the whole of the watercourse at the point at which the water is to be abstracted from or returned to the water course the landowner must obtain the consent of the owner of the opposite bank to such abstraction or outflow.

Downstream proprietors – below the outflow

If water for a hydro electric scheme is abstracted and returned to the water course above a downstream proprietor's boundary, so that the downstream proprietor receives the water undiminished in quality and quantity, there is no need to obtain the consent of that downstream proprietor to the proposed hydro electric scheme.

Downstream proprietors – above the outflow

If water is abstracted for a hydro electric scheme above a downstream proprietor's upstream boundary and returned to the water course below the downstream proprietor's downstream boundary the downstream proprietor is entitled to object to the abstraction taking place. However, Scots law is not clear as to whether the downstream proprietor has an absolute right to object in these circumstances or whether the downstream proprietor requires to suffer loss as a result of the water being permanently abstracted in order to successfully prevent the hydro electric scheme proceeding.

Catchment area

Consideration should be given to protecting the flow of water to the point where water is to be abstracted for a hydro electric scheme (i.e. the catchment area). Changes in land use, such as the introduction of large scale forestry, could have a material effect on the volume of water which would otherwise have been available to the hydro electric scheme.

Electricity lines

If any of the electricity generated by a hydro electric scheme is to be exported to the grid consideration should be given to what rights for cabling will be required over a neighbour's land.

Other third party rights

The interests of any third parties such as agricultural or other tenants, crofters or the owner of salmon fishing rights in the land and water course being used for the proposed hydro electric scheme, should be identified and addressed as early as possible.

Regulatory issues

Planning consent

Since 1st June 2011 planning applications for hydro electric schemes with a proposed capacity of 50 Megawatts or more must be submitted to the Scottish Government. All other applications are decided by the local planning authority.

CAR licence

The Water Environment (Controlled Activities) (Scotland) Regulations 2011 require the developer of a hydro electric scheme to obtain a licence from Scottish Environment Protection Agency to abstract and impound water and for the associated engineering works (for example, reinforcement of river banks).

Controlled Reservoirs

Impounding water may bring the proposed hydro electric scheme within the scope of the Reservoirs (Scotland) Act 2011. Reference should be made to our separate briefing note in that regard.

Funding

Many landowners fund the development of a hydro electric scheme through borrowings from a commercial lender and the borrowings will most likely be secured against the landowners' land rather than by the income stream of the hydro electric scheme. Consideration should be given to the extent of land subject to such security and the implications for future borrowing.

This note is intended as a brief summary of a selection of the issues surrounding the development of hydro electric schemes. No responsibility can be taken for any action taken in reliance on this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice.

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