



RIVERS & FISHERIES TRUSTS OF SCOTLAND
Safeguarding Scotland's Rivers & Lochs

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22 September 2011

Dear Sir / Madam

**Water Use Licence CAR L 1014578 (River Tyne, Sandy's Mill)
Appeal by Scott Officer**

I am writing in reference to SEPA's letter of 01 September where notice was given of the appeal lodged by Mr Scott Officer in relation to the above water use license and invitation made for the Rivers and Fisheries Trusts of Scotland (RAFTS) to make representation to the appeal process.

RAFTS is an independent charity registered with the Office of the Scottish Charity Regulator and a Company Limited by Guarantee and the member and representative body for Scotland's 25 individual charitable fisheries and rivers trusts and foundations. RAFTS and our members work across over 90% of Scotland's freshwaters to protect and develop our native fish stocks and populations by undertaking a range of activities including freshwater, river habitat restoration, fish and fisheries monitoring, research and education programmes.

We have considered both the terms of the variation notice served by SEPA to Mr Officer and his representation setting out his appeal of this notice. Having done so RAFTS wishes to confirm our support for the licence review and the revised conditions of that licence proposed; namely the requirement for the installation of a fish pass to the weir structure.

When The Water Environment (Controlled Activity) (Scotland) Regulations 2005 were put in place large numbers of new activities were required to be authorised by SEPA. At that





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time these activities were brought into the new system as they were operating in order to maintain their legality and basic compliance with the new legislation; namely that the activity was authorised. From that point SEPA has been taking forward the review of these CAR licenses on a prioritised basis; a process RAFTS fully supports and endorses. Therefore, the structure at Sandy's Mill, which the owner makes an active and economic use of, is correctly within the licensing regime. However, the issue of the original license in no way confirms that revisions to the terms of the original license are not required.

The provision of fish passage is a key requirement of the Water Framework Directive (WFD) and its implementing legislation in Scotland; namely the Water Environment and Water Services Act (Scotland) 2003 and the CAR regulations above. The ongoing and expanded provision of fish passage via the installation of fish passes or barrier removal is entirely appropriate and in line with this legislation and its objectives.

The River Tyne contains important salmon and sea trout populations and we consider that the improved passage of migratory fish over the structure at Sandy's Mill will represent an important and necessary improvement to the current situation where fish passage is not always possible. By ensuring free passage of fish significant environmental and socio economic benefits will be derived. More detailed representations on this matter can be provided by either the Forth District Salmon Fishery Board (DSFB) or the Forth Fisheries Trust.

Having reviewed the submission made by Mr Officer we do not see where the grounds for appeal of the licence variation are made. There is acknowledgement of the need for a fish pass and there is no proposal that to install such a pass would be disproportionately expensive (a key WFD test of reasonableness). It is also our understanding that the detail of the design and exact location of the required pass is not specified by SEPA. It is for the owner of the structure to bring forward designs and specifications for the fish pass for review and approval by SEPA and to ensure that these are technically robust. In addition there is a clearly set out and reasonable period for proposals for fish pass installation to be brought forward to SEPA for inspection and approval and for installation thereafter. We are content with and support the advice provided to the owner and that this is consistent with the legislation applying.

As the structure has a current economic use it is our understanding that public funding to meet the terms of the license is not available to the owner. This is also consistent with the principles of a large number of regulatory systems where the owner or operator of the activity bears the cost of meeting regulatory requirements. There is a fund to support the removal and easement of abandoned or redundant barriers to fish passage, the SEPA WFD Restoration Fund, but the structure at Sandy's Mill would not be eligible for such support.

The representation from Mr Officer makes mention of work completed by RAFTS and associated with Sandy's Mill and suggests that this has influenced SEPA's decision to take forward a license review. This is quite simply not the case. RAFTS, with the Forth Fisheries Trust and the East Lothian Angling Association, did engage an engineer to assess 7 weirs in the catchment in 2009. However, this was to achieve a better understanding of where and how fish passage and migration could be approved across a range of barriers in the catchment. Where such weirs are abandoned or redundant the Forth Fisheries Trust, the Forth DSFB, RAFTS and others can consider seeking funding from the SEPA WFD Restoration Fund for their removal or easement and where any





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structure is subject to licensing by CAR we support license review and variation to ensure fish passage is secured.

In summary we support the terms of the license variation proposed as:

- It is consistent with the requirements and objectives of the WFD and its implementing legislation, specifically in this case the CAR Regulations;
- There are clear economic, environmental and social benefits in ensuring the free passage of migratory fish in the River Tyne;
- The license variation proposed is reasonable and is part of a national and ongoing process of license review of CAR authorisations undertaken by SEPA which are necessary after the initial licensing of a large number of activities newly regulated by CAR; and
- We do not feel that Mr Officer has set out a case to either deny the need for the fish pass itself or state that its installation is unreasonable.

For the reasons set out above we, therefore, support the variation of the license proposed by SEPA and recommend that the appeal made by Mr Officer is rejected by Scottish Ministers.

I trust this submission is clear but should you require further information then, please, do not hesitate to contact me.

Yours faithfully

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