

# Appendix G: Developer Gateway Process

## Introduction

This note is a guide to the Environment Agency's (EA) development gateway acceptance process<sup>1</sup> for proposed hydropower schemes on EA assets (land or structures). Each gateway is an acceptance stage enabling progress to a subsequent project stage. Scheme development stages may overlap as not all schemes will be progressed in a standardised form; each gateway stage must however be formally approved by the EA and any deviation agreed with the EA Project Manager.

This document should be read in conjunction with the EA Hydropower Good Practice Guidelines for developers an annex to the EA Hydropower Handbook and the Expression of Interest.

To ensure clear lines of communication, throughout (the development process) developers must allocate a technical lead as the developer's representative who will liaise with the EA Project Manager.

The EA Project Manager will be the primary point of contact for all development matters; including leasing arrangements, commercial negotiations, scheme operational agreements and design / construction reviews. It should be noted that the hydropower permitting process will be managed independently through the EA national permitting team.

The remainder of this document explains the development gateway process. A flowchart of the development gateway process has been included at Appendix 1; gateway stages as follows:

Gateway 1: Expression of Interest (Developer evaluation stage)  
Gateway 2: Operating Agreement, Schedule of Responsibility & Pre-application EA licensing  
Gateway 3: Leasing arrangements  
Gateway 4: Statutory Permitting & Consents  
Gateway 5: Planning Process  
Gateway 6: Detailed Design Phase  
Gateway 7: Pre-construction Phase  
Gateway 8: Construction, Commissioning & Handover  
Post Construction Stage: Resolution of Defects

## Gateway 1: Expression of Interest (Developer evaluation stage)

Expression of Interest published for hydropower development opportunities. Interested developers are to respond with scheme proposals for review. EA to evaluate developer returns and to select final developers following an interview process.

Developer evaluation will be a two stage process. Stage 1 is the developer submission stage and selection of 'preferred' developers to interview; stage 2 is the interview process and final developer selection for each site. Developer responses are to be provided in two parts; scheme 'proposal submission' and 'company information'.

The 'proposal submission' will account for 60% of the evaluation criteria and requires the following outline information:

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<sup>1</sup> This gateway process is separate from the OGC gateways used for internal EA scheme management

- Development Proposals
- Development Programme
- Development Costs
- Commercial Arrangements
- Lease Arrangements
- Project Risk
- Scheme Benefits

The 'company information' will account for 40% of the evaluation criteria and requires responses to questions set under the following headings:

- Company details
- Relevant Experience & Project Team
- Sustainability & Ethical Policy
- Health & Safety

Developers submissions will be reviewed (stage 1) on receipt and preferred developers selected for the interview stage (stage 2). The following criteria will be assessed by the EA when considering the suitability of development partners for short-listing. It should be noted that these criteria are not in a priority order:

- Technical Merit & Quality
- Relevant Experience
- Business & Financial Standing
- Approach to Health & Safety
- Commitment to Sustainability, Environmental and Ethical Policies.
- Commercial arrangements

This evaluation stage is described fully within the Expression of Interest document. Successful developers will be selected following stage 2 interviews.

*Acceptance: "EA recommendation for acceptance of developer"*

On selection of a developer for a site an agreement will be entered into between the developer (tenant) and the EA (landlord) for hydropower development exclusivity for a period of up to 24 months.

This agreement outlines principle terms between the parties. This agreement will include, but not be limited to, the following:

- parties to the agreement
- site location
- details of outline proposal (inc. form of technology, scheme size, anticipated value of electricity to be generated)
- indicative timescale linked to progress through developer gateway stages
- mechanism for calculating rental value to the EA

The agreement will specify the period of exclusivity.

*Acceptance: "Signed exclusivity agreement between both parties"*

## **Gateway 2: Operating Agreement, Schedule of Responsibility, Pre-application EA licensing & Outline Condition Survey**

The developer and the EA will work to define an operational agreement for the scheme which will ultimately be included within leasing arrangements and the abstraction license (if applicable). The operating agreement will include (but not be limited to) the following:

- Operation & Maintenance of the scheme
- Monitoring of the scheme (inc. flow monitoring)
- Operation & Maintenance of Existing Asset (weir)
- Environmental Monitoring (inc. ecology & fish)

The operational agreement containing the operational detail of the scheme will be included within both the leasing documentation and abstraction license (as may be required). Requirements for management of the abstracted flow will be included within this documentation. At this stage the developer should submit a pre-application to the EA for either an abstraction licence (if applicable) or (if an abstraction licence is not applicable) an impoundment licence. The EA will register the pre-application and running this in parallel with aid the full licence application process.

The operating agreement is to be captured in a series of schedules and should include all development and operational aspects of the scheme of interest to the EA and developer. The content of these schedules will be agreed through consultation with a representative EA internal stakeholder team. Agreement and negotiations will be facilitated by the EA Project Manager.

In order to prepare these schedules the following studies / surveys will be required; developer to check with EA Project Manager prior to proceeding re format and approach:

- Flood Risk Assessment
- Environmental Report & Impact Assessment
- Weir condition survey (initially preliminary survey – full structural survey if required)

This list is not exhaustive; developers should check with the EA Project Manager and refer to the EA Good Practice Guidelines for clarification.

The basis on which the development shall proceed is captured within a set of Heads of Terms. This document includes the key principles for the development including an agreed mechanism for calculating the rent or other commercial remuneration to the EA.

*Acceptance: "Heads of Terms agreed between both parties based on an in-principle operating agreement & schedules of responsibility"*

## **Gateway 3: Leasing arrangements**

It should be noted that Gateway stages 3 and 4 are to be undertaken in parallel, a set of Heads of Terms will however precede an Agreement for Lease.

Both parties must enter into formal leasing arrangements in the form of an Agreement for Lease (AfL) for the development phase and a Lease from completion of the scheme. This AfL will include conditionality on both parties. Conditionality on both parties will include details from the finalised operating agreement and schedule of responsibilities. Conditions of the AfL will include the required statutory licenses (from the EA & other 3<sup>rd</sup> parties) and a satisfactory planning consent (as may be appropriate) from the Local Planning Authority. The EA legal department will provide standard templates for Agreement for Lease and Lease.

A Lease will only be entered into (executed) once the scheme has been completed to the satisfaction of the EA and is operational (end of Gateway 8).

*Acceptance: "The legal exchange of the Agreement for Lease"*

#### **Gateway 4: Statutory Permitting & Consents**

Developer to obtain necessary EA licences were applicable; as follows:

- an abstraction licence or Transfer licence (dependent on site)
- an impoundment licence – required to licence the impoundment of water at the site (required for all hydropower schemes)

These licences should be obtained prior to submitting a planning application to the Local Planning Authority. For details of these licenses refer to the EA website: <http://www.environment-agency.gov.uk/business/topics/water/32022.aspx>

Developer is also to obtain the following:

- flood drainage consent – required to undertake works within 8m of any watercourse

This will require a design to have been worked up and approved by the EA prior to submission. The developer contractor will also be required to input into proposed construction methodology prior to submission. This part of Gateway 4 will therefore commence in earnest on completion of the design phase at the end of Gateway 6.

As noted under Gateway 2, it is recommended that **pre-applications** are submitted to the EA national permitting team at an early stage. The EA Project Manager is to be notified of a pre-application in advance of submission such that existing internal EA stakeholder team may be consulted by national permitting at the pre-application stage.

For land drainage consent, a detailed scheme design must be submitted along with the Flood Risk Assessment and Environmental reports, proposals for flood risk management, any increase in flow capacity and proposed environmental management measures must also be submitted.

*Acceptance: "Satisfactory consent of the requisite EA licences."*

#### **Gateway 5: Planning Process**

It should be noted that Gateway stages 5 and 6 are to be undertaken in parallel, the design phase should commence prior to the submission of a planning application and ideally have been submitted to the EA and formally approved around the time planning is attained.

The developer is responsible for obtaining a satisfactory planning consent for the scheme. We request that the developer submit the planning application to the EA Project Manager for review and acceptance prior to making an application to the Local Planning Authority. An Environment Statement and an Environmental Impact Assessment (EIA) will likely be required to satisfy the planning process. This is to be discussed with the EA Project Manager and Local Planning Authority at an early stage.

EA licence consents (Gateway 4) should be obtained 'prior' to submitting a planning application; as the EA is a statutory consultee to the planning process. The timing of the

consents and the planning application process are to be discussed with the EA Project Manager and EA Planning Liaison officer for each scheme.

*Acceptance: "Demonstration of a satisfactory planning consent."*

### **Gateway 6: Detailed Design Phase**

The developer shall prepare and submit a detailed specification and package of proposed works, for review and acceptance, to the EA Project Manager. This package of information should include (but not be limited to):

- Design philosophy and specification
- Detailed design drawings
- Detailed design calculations, structural calculations and any associated survey results
- Environmental mitigation measures (based on an approved EIA)
- Construction Design and Management Regulations 2007 documentation
- Construction methodology
- Programme of works
- Proposed project team structure and proposed building and consultancy contracts
- Planning permission documents confirming all reserved matters have been satisfied
- All necessary Statutory Consents

Once received by the EA Project Manager the documents will be reviewed by an Independent Design Check Engineer (IDCE) employed to review developer's proposals in-conjunction with internal EA stakeholders. Submission of a detailed package of proposed works must be submitted for review a minimum of **16 weeks** prior to a proposed start on site date.

Within **6 weeks** of receipt of the completed detailed design the EA (IDCE) will at their sole discretion either:

- a. approve the detailed design specification and package in writing
- b. request further information from the developer
- c. provide the developer with detailed comments on the detailed design specification

If further information is requested by the EA then a reasonable time (minimum of 2 weeks) for consideration of this information will be agreed between the parties. Once approved by the IDCE no further changes shall be permissible without the consent of both parties.

The developer shall ensure that all intellectual property rights in the detailed design are jointly invested in both parties.

*Acceptance: "Detailed design package approved by EA."*

### **Gateway 7: Pre-construction Phase**

The developer shall submit for review a package of Pre-Construction Phase information to the EA Project Manager; information to include (but not be limited to):

- Site Access Plans
- Method Statements (Construction & Temporary Works)
- Notification of construction project – HSE F10
- Construction Phase Health & Safety Plan

- Flood Contingency Plan
- Environmental Action Plan
- Programme of Works

This information is to be provided a minimum of **6 weeks** prior to a proposed start on site date.

Within **6 weeks** of receipt of the completed Pre-Construction Phase Package the EA (IDCE) will at their sole discretion either:

- approve the Pre-Construction Phase package in writing
- request further information from the developer
- provide the developer with detailed comments on the Pre-Construction Phase package

If further information is requested by the EA then a reasonable time (minimum of 2 weeks) for consideration of this information will be agreed between the parties. Once approved by the IDCE no further changes shall be permissible without the consent of both parties.

The developer will also be required to provide a performance guarantee during the construction works and lease period. Value of the performance guarantee will be scheme specific.

The developer should also have obtained consent for the flood defence consent application submitted at the end of Gateway 5.

*Acceptance: "Pre-construction package & flood defence consent approved by EA."*

### **Gateway 8: Construction, Commissioning & Handover**

The developer is wholly responsible for constructing the scheme; however the EA will require a part-time site presence during the construction phase. The IDCE and an EA environmental co-ordinator will be allocated to the project. The IDCE will check that the scheme is being constructed in accordance with the approved plans; the environmental co-ordinator will check that the requirements of the Environmental Action Plan are being adhered too (reasonable prior notice of visits shall be provided to the developer).

On formal completion of the works, the developer is required to provide a copy of a contractual completion certificate. A copy schedule of any outstanding snagging items, together with a programme for completion of these items, must also be provided.

*Acceptance: "EA accept the completion certificate and a satisfactory Health & Safety File provided."\**

*\*Agreement for Lease unconditional and Lease executed at this stage*

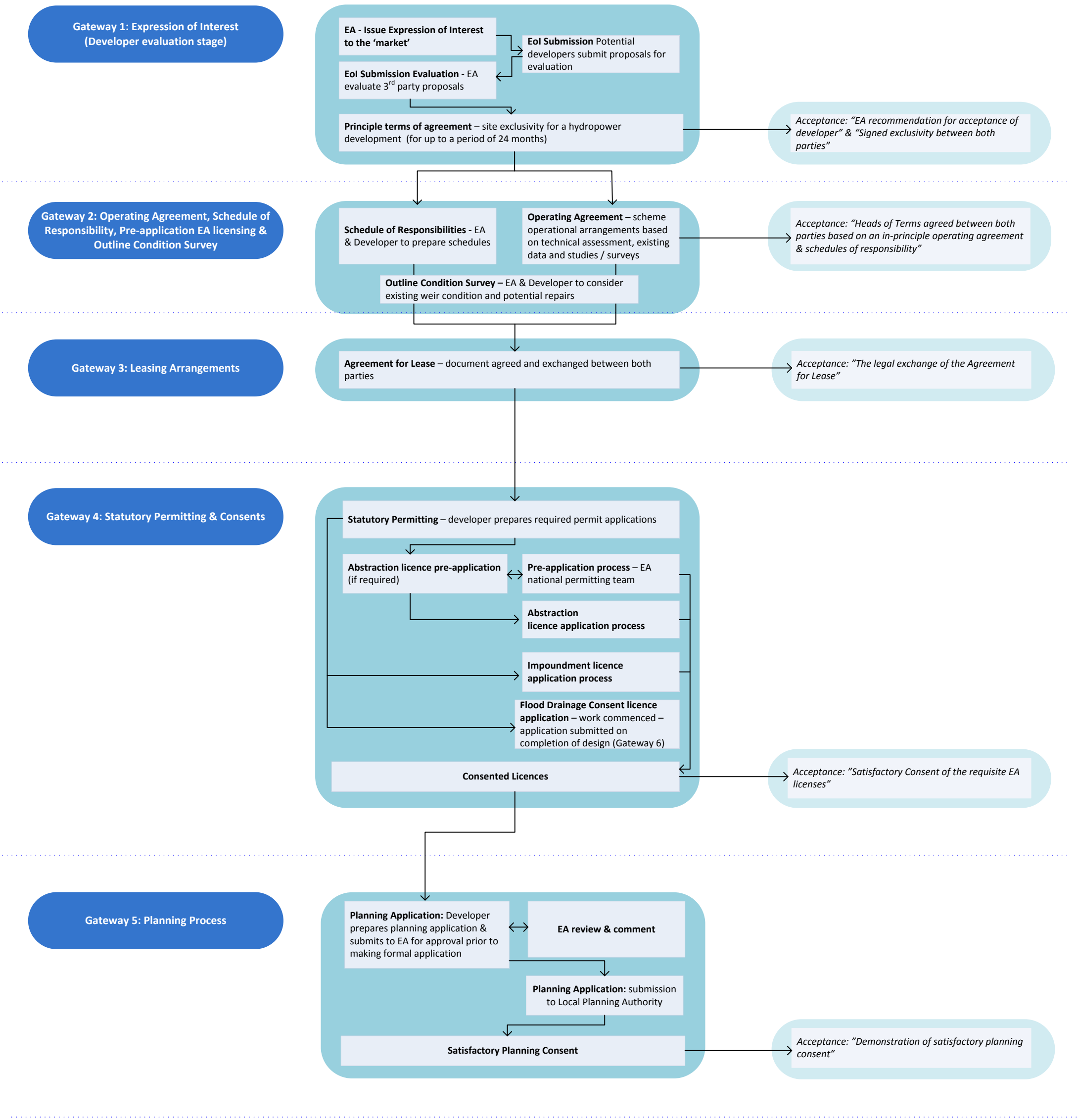
### **Post Construction Stage: Resolution of Defects**

The Developer is required to provide a copy of defects completion certificate at the end of the contract defect liability period.

*Acceptance: "Receipt of end of defects certificate with evidence of all snagging items having been attended too."*

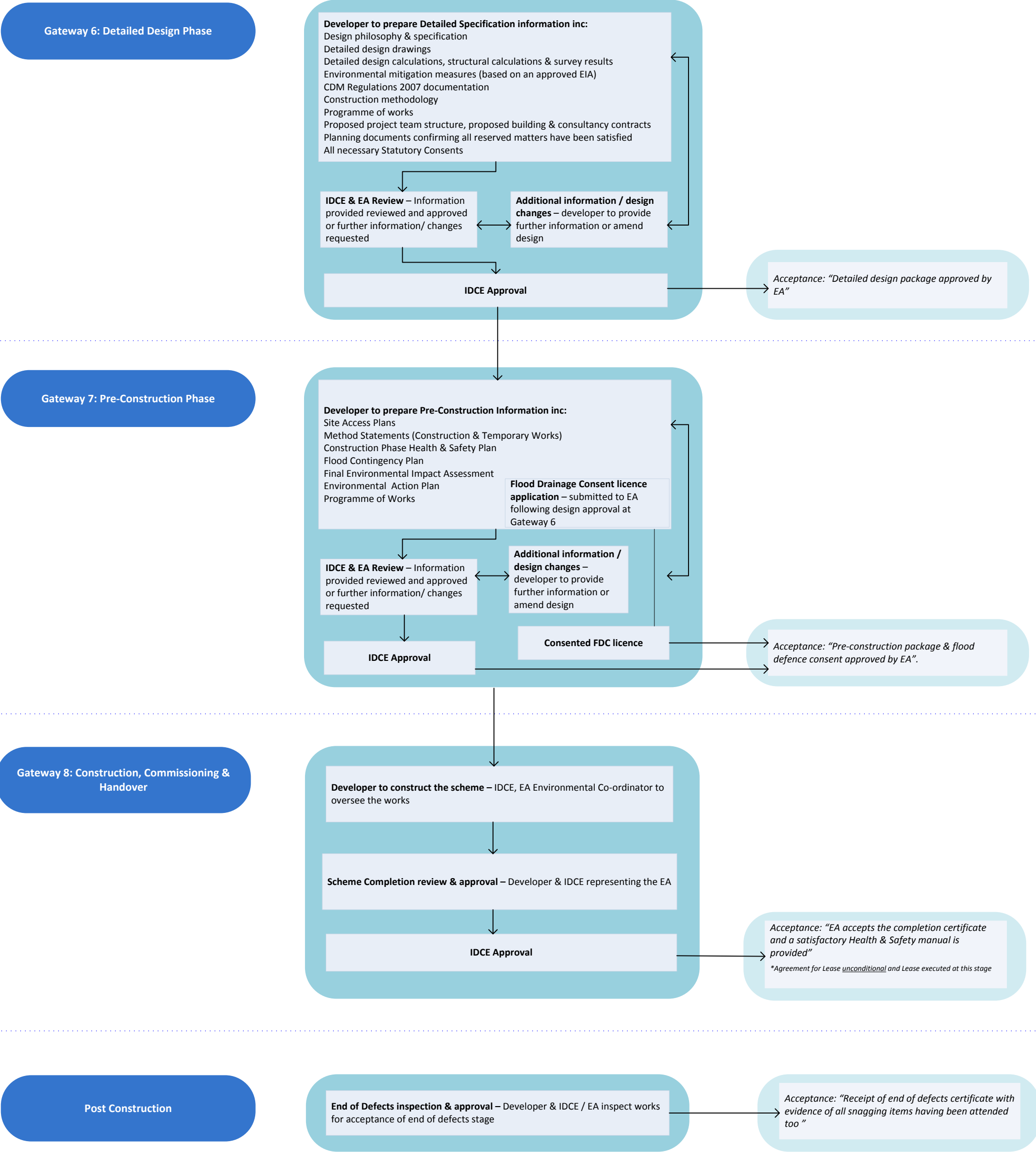
Appendix 1:

Hydropower Development Gateway Process – Flow Chart





Appendix 1: Hydropower Development Gateway Process – Flow Chart (cont’d)



## INDICATIVE HYDROPOWER DEVELOPMENT PROGRAMME

