

Appeal Decision Notice

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Decision by James McCulloch, a Reporter appointed by the Scottish Ministers

- The Water Environment (Controlled Activities) (Scotland) Regulations 2005 (the Regulations)
- Appeal reference: CAR/L/1033622
- Site address: River Nith, Dumfries
- Appeal by Dumfries and Galloway Council under Regulation 46(a) against the refusal by the Scottish Environment Protection Agency (SEPA) of a complex water use licence for an engineering operation, the management of sediment

Date of appeal decision: 6 September 2010

Decision

1. I dismiss the appeal and refuse to direct SEPA to licence a controlled activity within the River Nith.

Reasoning

2. Regulation 15(1)(c) and Parts 1 and 2 of Schedule 4 apply the Water Framework Directive (Council Directive 2000/60/EC) and the Water Environment and Water Services (Scotland) Act 2003. Taken together these require protection of the water environment, including enhancement and the prevention of any further deterioration of the status of water bodies and aquatic ecosystems. Regulation 15(1)(b) requires an assessment of the steps that may be taken to ensure efficient and sustainable water use. In addition, EC Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Flora and Fauna (the Habitats Directive) and the Conservation (Natural Habitats &c) Regulations 1994 apply. Regulation 48 requires that where an authority concludes that a project unconnected with the nature conservation management of a Natura 2000 site is likely to have a significant effect on that site the competent authority must consider the implications for the conservation interests for which the area has been designated. That need for appropriate assessment extends to a project outwith the Special Area of Conservation (SAC) in order to determine the implications for the interest that is protected within it. The main issue in this appeal thus concerns the appropriate management of the risk to the water and natural environment from the proposed operation.



3. The Council refer to public perception and disquiet having reached the point where the (then) Minister for the Environment formally requested, as constituency MSP, that the Council take action to remove unsightly vegetation and the gravel banks on which that vegetation had established within the centre of Dumfries. The area is a prominent tourist attraction. Weed growth on these banks traps litter and debris including bottles, food wrappers and waste and also discarded syringes and needles, posing a risk to health and safety. The council's preferred means of achieving the environmental improvement that they seek is controversial. Elected representatives and some members of the community favour the proposal with the latter – supported by video and photographic evidence - referring to the absence of these gravel banks as recently as 1967, to the potential to reduce the loading on the structure of the Old Bridge and to alleviate the devastating flooding and consequent disruption that is endured by residents and businesses in the town centre. Other residents are opposed to the proposal.

4. The River Nith is subject to several important environmental designations. Almost half the freshwater and migratory fish species present in Scotland are recorded in the Nith catchment. Of these 4 are listed in Annex II of the Habitats Directive, with British populations thus internationally important – sea lamprey (*Petromyzon marinus*); river lamprey (*Lampetra fluviatilis*); brook lamprey (*Lampetra planeri*); and Atlantic salmon (*Salmo salar*). Salmon is also a priority species in the UK Biodiversity Action Plan; the Nith is the seventh most productive salmon river in Scotland. The site is 5km upstream of the Solway Firth SAC designated for its coastal, estuarine and marine habitats, associated plant communities and river and sea lamprey. It is known also that otter frequent the area of the proposed works and otter are a European Protected Species.

5. The removal of 1000 m³ of gravel along 195 m of the bank and bed of the river with a tracked excavator amounts to a substantial engineering operation, passing under 2 Listed bridges, one of which is also a Scheduled Monument. Besides removing surface vegetation, which includes a dozen mature and semi-mature bankside trees, that operation would remove any habitats contained in the gravel displacing plants, aquatic invertebrates and other animals as well as leading, temporarily, to the release to the water course of finer sediments. In respect of that last consideration, based on the advice of the Nith District Salmon Fishery Board and SNH, there is the possibility that the adverse effects of sediment release on migratory salmon may be accommodated provided the works are undertaken before numbers of fish are in transit upstream. This could be achieved by a restriction on the timing of the works and careful control on, and monitoring of, working methods.

6. The potential effect on habitats may be more significant. Juvenile lamprey are known to live in silty sediment throughout their development of 5 years or more. Given their conservation status and the possible functional relationship with the SAC, SNH advised that a survey was necessary to establish their use of this part of the river. This would inform the need for, and nature of any mitigation that would ensure that the SACs conservation objectives for the species are maintained so as to avoid any adverse effect on its integrity.

7. The council observe that natural processes are inhibited in this location, but that the works proposed would mimic the result of such processes and return the freshwater habitat to its optimum state to support salmon in line with the aims of the Scottish LIFE Salmon

Project. However, that observation is of no assistance in reaching an assessment of the likely effects because that study is stated to be directed at conserving threatened habitats and there is no suggestion that this habitat is otherwise under threat. I accept the council's reasoning that only a very small proportion of the Nith's 112 km overall length would be affected and that there is no proposal for works downstream where an important contribution to habitats and biodiversity is also made. I find no evidence to justify their related suggestion that the present proposal would lead to the enhancement of habitats. As the gravel banks are the result of natural processes the works could not, as the council claim, remove man-made obstacles to migration.

8. When considered against Regulation 48 of the Habitats Regulations I find that the sediment management that is proposed is neither directly concerned with nor necessary for site management for conservation connected with the interests of the SAC. Additionally, as pointed out by SNH, there is no survey information presently available concerning this important consideration that could inform the decision-making process including any necessary appropriate assessment of the likely environmental effects. Thus, the information needed to establish the likelihood, or otherwise, of any adverse effect on the integrity of the SAC is unavailable. The same is true also of otter where information concerning the likely effects is necessary to allow consideration of those effects together with the need for mitigation, if appropriate. In this context the partnership document on which the council found, the River Nith Catchment Management Plan, does not assist.

9. The council's application to SEPA does not refer to their assessment of these important considerations. Whilst not initially objecting, SNH made their position clear on the need for survey and, potentially, appropriate assessment when the application was before SEPA; but these considerations do not feature in specific terms in their decision to refuse the licence. Had this proposal been acceptable on other grounds, a conditional authorization requiring survey followed, if necessary, by appropriate assessment would not have been lawful because these steps must have been taken, and the evidence assessed, before reaching a decision to grant approval.

10. I note that the council's officers had reached a management agreement with representatives of SEPA and SNH on a programme of litter removal and monthly strimming. However Councillors decided, despite the cost, to seek approval for this project which they considered to be a better option. Even so, the council's submissions acknowledge that this would not be a permanent solution, recognising that sediment removal now would lead to deposition in future. Those who support the proposal refer to its potential effect in alleviating flooding. I accept that the flood capacity of this part of the river would be increased, but that effect would be likely to be minimal where the channel is some 70 m wide and the gravel bank only a few metres in width. Of greater significance is the fact that the works are located above the Caul where the river overflows meaning that there could be no flood management benefit. The need to repeat the works suggests that their effect, whether in respect of flooding or amenity, would be short-lived. There is consequently the likelihood that litter and debris could again be trapped.

Conclusion

11. I conclude that the scheme devised by officers and agreed with the regulatory agencies would be consistent with the objectives of the River Nith Catchment Management Plan. That scheme also involves the minimum of intervention to remove vegetation and debris and thus its adverse effect on the amenity of the town centre contributing to the objective of promoting tourism. Both of these considerations are at the root of the council's concern. In contrast, the engineering solution that is proposed, involving complete removal of this part of the riverside bank, would be neither efficient nor sustainable and these considerations lead me to conclude that the operation would be an unsustainable intervention in the natural morphology of the river. In addition, and for the reasons given in paragraphs 8 and 9, the information presently available is inadequate to allow an informed judgment to be reached concerning the likely effects of the proposal on habitats and species. That is an important matter because it is not possible to license this controlled activity within the River Nith without first considering the likely effects on the Solway Firth Special Area of Conservation.

This is a true and certified copy as issued to parties on 6 September 2010

JAMES McCULLOCH

Reporter

Ms Joyce Carr (Water Division)

CASE: 137216/7

Cc: Philip Wright, Head of Climate Change
Louise Miller, SGLD
Elizabeth Rutherford, SGLD

**THE WATER ENVIRONMENT (CONTROLLED ACTIVITIES) (SCOTLAND)
REGULATIONS 2006 – APPEAL UNDER REGULATION 46(a) – RIVER NITH,
DUMFRIES: DUMFRIES AND GALLOWAY COUNCIL**

The purpose of this minute is to advise you that we have received an appeal from Dumfries and Galloway Council against the Refusal of Application for Authorisation (CAR/L/1033622) issued by SEPA on 18 May 2009 for the above-named site.

We should be grateful if you would ensure that nothing is said to either party which would be prejudicial to the Scottish Ministers' consideration of the appeal.

Eleanor Vance
Determinations Team
1-G (North)
Victoria Quay
Ext: 40853

18 August 2009

[REDACTED]

From: Redpath C (Carol-Anne)
Sent: 18 August 2010 16:32
To: 'James McCulloch'
Subject: FW: film

Jim

More correspondence from David Slater. Have advised that we cannot access link.

C-A

From: Redpath C (Carol-Anne)
Sent: 18 August 2010 16:31
To: 'DAVID SLATER'
Subject: RE: film

Dear Mr Slater

Thank you for your further e-mail with attached link. I am afraid that we are unable to access and open the link. If you want this information to be sent to the reporter can you please put on memory stick or DVD and submit it by this Friday.

Yours sincerely

Carol-Anne

Carol-Anne Redpath
Section Manager - Development Plans & Case Work South
The Scottish Government
Directorate for Planning and Environmental Appeals
4 The Courtyard
Callendar Business Park
Falkirk
FK1 1XR

Tel: [REDACTED]

Fax [REDACTED]

E-mail [REDACTED]

www.scotland.gov.uk/Topics/Built-Environment/planning/decisions-appeals/Appeals/dpea

From: DAVID SLATER [mailto:[REDACTED]]
Sent: 18 August 2010 15:59
To: Redpath C (Carol-Anne)
Subject: FW: film

Hi Carol-Anne

I have sent you a link to this Border TV Archive. This is the film I wrote about in my previous e mail. The relevance of it is in the middle of the clip as it shows film of The Devorgilla bridge and the bank of the river. You can clearly see in this part of the film there are many swans on the river, it also shows clearly that there is no so called natural habitat in the river and the river is clear of silt debris. I believe the river was maintained to keep the bridge structure clear of silt and debris. In times of flooding one of the archways is almost full of silt and debris, this silt and debris increases the load factors greatly on its structure, and as seen on national television, a bridge in Cumbria collapsed with the loss of a police officer. I do hope this is all taken in to consideration when the reporter examines all the facts. I hope that the reporter will be able to view this film about Dumfries and the river Nith. Thanks again for your help.

Regards
David R Slater

From: DAVID SLATER [mailto: [REDACTED]]
Sent: 18 August 2010 15:31
To: 'DAVID SLATER'
Subject: film

<http://www.youtube.com/watch?v=YnXMN66B-Sk> click on the link

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[REDACTED]

From: Redpath C (Carol-Anne)
Sent: 21 June 2010 14:52
To: susan.watson@sepa.org.uk
Cc: 'bill.barker@dumgal.gov.uk'
Subject: APPEAL UNDER REGULATION 46(A) RIVER NITH, DUMFRIES (CAR/L/1033622)

Importance: High

Dear Ms Watson

I refer to my letter of 2 June 2010 concerning the above appeal and would now be grateful to know if you are in a position to provide the information requested.

Yours sincerely

Carol-Anne Redpath
Processing & Decisions Manager

The Scottish Government
Directorate for Planning and Environmental Appeals
4 The Courtyard
Callendar Business Park
Falkirk
FK1 1XR

Tel: + [REDACTED]

Fax: + [REDACTED]

E-mail [REDACTED]

www.scotland.gov.uk/Topics/Built-Environment/planning/decisions-appeals/Appeals/dpea

[REDACTED]

From: DAVID SLATER [REDACTED]
Sent: 01 September 2010 19:44
To: Redpath C (Carol-Anne)
Subject: RE: Ministerial Correspondence for 2010/0018162OR about the River Nith Appeal

THANK YOU VERY MUCH FOR YOUR HELP

Kind regards
David Slater

From: [REDACTED]
Sent: 01 September 2010 17:09
To: [REDACTED]
Subject: RE: Ministerial Correspondence for 2010/0018162OR about the River Nith Appeal

Dear Mr Slater

The Reporter is currently working on the case and I can confirm that he was able to access your film footage.

Yours sincerely

Carol-Anne Redpath
Section Manager - Development Plans & Case Work South
The Scottish Government
Directorate for Planning and Environmental Appeals
4 The Courtyard
Callendar Business Park
Falkirk
FK1 1XR

Tel: [REDACTED]
Fax [REDACTED]
E-mail: [REDACTED]

www.scotland.gov.uk/Topics/Built-Environment/planning/decisions-appeals/Appeals/dpea

From: DAVID SLATER [mailto:[REDACTED]]
Sent: 01 September 2010 12:28
To: Redpath C (Carol-Anne)
Subject: RE: Ministerial Correspondence for 2010/0018162OR about the River Nith Appeal

Dear Carol-Anne

Have you any idea when the reporter may take a look at the appeal regarding the river Nith, and when a decision might be made. I hope my film footage was ok this time.

Kind regards
David Slater

From: Carol-Anne.Redpath@scotland.gsi.gov.uk [mailto:Carol-Anne.Redpath@scotland.gsi.gov.uk]
Sent: 18 August 2010 15:27
To: [REDACTED]
Subject: RE: Ministerial Correspondence for 2010/0018162OR about the River Nith Appeal

Dear Mr Slater

Thank you for your e-mail. I note your comments concerning the memory stick and DVD and will let you know when these have been received. I also acknowledge receipt of your further e-mail enclosing two photographs and will ensure that this information is forwarded to the reporter.

Yours sincerely

Carol-Anne

Carol-Anne Redpath

Section Manager - Development Plans & Case Work South

The Scottish Government

Directorate for Planning and Environmental Appeals

4 The Courtyard

Callendar Business Park

Falkirk

FK1 1XR

Tel: [REDACTED]

Fax: [REDACTED]

E-mail: [REDACTED]

www.scotland.gov.uk/Topics/Built-Environment/planning/decisions-appeals/Appeals/dpea

From: DAVID SLATER [mailto:[REDACTED]]
Sent: 18 August 2010 15:03
To: Redpath C (Carol-Anne)
Subject: RE: Ministerial Correspondence for 2010/0018162OR about the River Nith Appeal

Hi Carol-Anne

I have sent you a flash memory stick with films of the river Nith in Dumfries. I have also managed to make a DVD also. The films show the build up silt debris and now trees that have built up over a period of time. Archive film footage from Border television clearly shows that this material was not in the river. The footage was taken in black and white and was shot around 1967 It also shows around twenty swans at the edge of the river Caul. This is completely unknown to happen in a Dumfries today. You might get the odd swan in that area but as I say just the odd one. The area in question is building greatly now with several invasive plants such as giant hogweed. As you will see by the film footage this is the part of Dumfries that gets continually flooded. All this build up of silt grass and trees certainly does nothing to help the situation. I have sent you films of the flooding as the natural habitat as SEPA refers to it and the flooding are connected. When the then environment Minister MSP Mike Russell brought THE Chairman of SEPA David Sigsworth to Dumfries to view the state of the river Nith, one of the first comments he made was Dumfries and Galloway council had never ever applied for a license to clean it. After that meeting Dumfries and Galloway council applied for a licence as the chairman of SEPA said it would be looked sympathetically . SEPA refused the license. I believe the local SEPA unit always maintained that any application from the council would be refused. I believe this put the chairman of SEPA in a difficult position regarding the cleaning of the river. I also believe that the application from the council was very basic regarding what needed to be done hence the application was refused. Can this letter also be submitted to the reporter. If you require more information about the river please do not hesitate to contact me as I have fought for a number of years now to have it cleaned out and a flood prevention system installed. I have brought a flood prevention company to Dumfries on several occasions with a system that won the most innovated product of the year in the year 2000, Alas nothing ever happened resulting in the continual flooding of Dumfries the capital town in south west Scotland.

Regards

David R Slater

From: [REDACTED]
Sent: 17 August 2010 16:02
To: [REDACTED]
Subject: RE: Ministerial Correspondence for 2010/0018162OR about the River Nith Appeal
Importance: High

Dear Mr Slater

Thank you for your e-mail. Can you please now send the material on a memory stick and confirm that you have posted it to me at this office.

The Reporter would be pleased to have the material by Friday 20 August at the latest.

Yours sincerely

Carol-Anne

Carol-Anne Redpath
Section Manager - Development Plans & Case Work South
The Scottish Government
Directorate for Planning and Environmental Appeals
4 The Courtyard
Callendar Business Park
Falkirk
FK1 1XR

Tel: [REDACTED]
Fax [REDACTED]
E-mail: [REDACTED]

www.scotland.gov.uk/Topics/Built-Environment/planning/decisions-appeals/Appeals/dpea

From: DAVID SLATER [mailto:[REDACTED]]
Sent: 16 August 2010 08:44
To: Redpath C (Carol-Anne)
Subject: RE: Ministerial Correspondence for 2010/0018162OR about the River Nith Appeal

Dear Carol

Thank you for coming back to me. I apologise for not getting back to you reference a DVD. A piece of equipment failed in my computer and I have been unable to make a disc. Can I send the film on memory stick, or alternatively download them to your computer.

David

From: [REDACTED]
Sent: 03 August 2010 18:26
To: [REDACTED]
Subject: Ministerial Correspondence for 2010/0018162OR about the River Nith Appeal

Dear Mr Slater

Thank you for your e-mail of 19 July 2010 to the Minister for the Environment about the appeal by Dumfries and Galloway Council against the decision of SEPA to refuse the removal of gravel from the River Nith. I am the official within the Directorate for Planning and Environmental Appeals (DPEA) that is dealing with this appeal.

Your change of address has been noted and I can confirm that you can either send another copy of the DVD that was attached to your letter received on 30 September 2009 or, you may want to consider printing the material that it contains to ensure that it may be taken into account.

As stated in my latest e-mail of 2 August 2010, it would be helpful if you could send the information to me by 16 August.

I hope that you will find this helpful.

Yours sincerely

Carol-Anne Redpath

Section Manager - Development Plans & Case Work South

The Scottish Government

Directorate for Planning and Environmental Appeals

4 The Courtyard

Callendar Business Park

Falkirk

FK1 1XR

Tel: [REDACTED]

Fax: [REDACTED]

E-mail: [REDACTED]

www.scotland.gov.uk/Topics/Built-Environment/planning/decisions-appeals/Appeals/dpea

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Version: 9.0.851 / Virus Database: 271.1.1/3078 - Release Date: 08/17/10 19:35:00

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From: James McCulloch [REDACTED]
Sent: 25 May 2010 13:43
To: Redpath C (Carol-Anne)
Cc: Gordon DN (David); Nicoll L (Lindsey)
Subject: CAR/L/1033622

C-A

Lindsey, Dave or Andy will be producing a form of words that can be used to introduce parties to us as we restart processing the environmental appeals that have transferred to us from the Determinations Team.

For my River Nith case we need to write to SEPA and to a supporter, Mr Slater:

The letter heading is:

***WATER ENVIRONMENT (CONTROLLED ACTIVITIES) (SCOTLAND) REGULATIONS
2005
APPEAL UNDER REGULATION 46
RIVER NITH, DUMFRIES***

SEPA:

SEPA's letters of 26 and 28 August 2009 list the names and addresses of 10 parties who have been notified of the appeal in accordance with Regulation 49 and Schedule 9(8) of the 2005 Regulations. The reporter would be grateful to receive copies of relevant correspondence concerning the interest of these parties in the application and appeal.

David Slater:

Unfortunately the DVD attached to your letter received on 30 September 2009 has proved to be unreadable and the reporter is therefore unable to view its contents. Could you either send another copy or consider printing the material that it contains to ensure that it may be taken into account?

Could you also contact Clare who was in the Determinations Team and ask her if they can:

- Release from Objective the 5 PDFs of material that Dumfries and Galloway Council sent with their appeal to the environment appeals mailbox. These are under cover of an e-mail from the council on 14 August 2009 at 16.04 from a Mr Bill Barker. Failing that you could ask Mr Barker at Bill.Barker@dumgal.gsx.gov.uk
- Also release from Objective the SEPA response to the appeal, sent by Susan Cochrane on 28 September 2009 at 17.10. Failing that you could ask Susan.cochrane@sepa.org.uk

I'll return the file to you, but will retain the bundle of documents that the council put in, none of which is relevant to this need for additional material.

Thanks

Jim

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[REDACTED]

From: [REDACTED]
Sent: 26 August 2009 15:17
To: Vance E (Eleanor)
Cc: Winter GP (Guy)
Subject: FW: MCS - Dumfries, river nith

Eleanor

Can you make a note on the River Nith file that we need to let Mike Russell know the outcome of the appeal in due course

[REDACTED]
[REDACTED]
Water, Air, Flooding and Soils Division
Scottish Government
[REDACTED]

Mail area - 1G (N) -Victoria Quay
Edinburgh

From: [REDACTED]
Sent: 26 August 2009 15:15
To: Hunter GD (Graeme)
Subject: RE: MCS - Dumfries, river nith

Graeme

Thanks. A contribution is given below:-

I note your comments in relation to the River Nith. You will appreciate that as the Council's appeal against the refusal by SEPA to permit removal of the gravel banks is currently under consideration by Scottish Ministers it is not appropriate for me to comment on matters relating to the appeal. However, I have asked Officials to notify you of the outcome of the appeal in due course.

[REDACTED]
Environmental Appeals - Casework Officer
Scottish Government
1G Victoria Quay
Edinburgh, EH6 6QQ
[REDACTED]

From: Hunter GD (Graeme)
Sent: 26 August 2009 14:52
To: [REDACTED]
Subject: RE: MCS - Dumfries, river nith

<< File: S20090026169.pdf >>

Here you go [REDACTED]

G

Graeme Hunter
Policy Officer - Communications
Scottish Government
Water Industry Team
1-H Dock Side
Victoria Quay
Edinburgh
EH6 6QQ

Tel: [REDACTED]
[Visit our website](#)

From: [REDACTED]
Sent: 26 August 2009 14:39
To: Hunter GD (Graeme)
Subject: MCS - Dumfries, river nith

Graeme

Can you send me a copy of the MCS case that we discussed yesterday or let me know the MCS case number so I can have another look at the letter.

[REDACTED]
Environmental Appeals - Casework Officer
Scottish Government
1G Victoria Quay
Edinburgh, EH6 6QQ
[REDACTED]

[REDACTED]

From: Redpath C (Carol-Anne)
Sent: 17 August 2010 16:02
To: 'DAVID SLATER'
Subject: RE: Ministerial Correspondence for 2010/0018162OR about the River Nith Appeal

Importance: High

Dear Mr Slater

Thank you for your e-mail. Can you please now send the material on a memory stick and confirm that you have posted it to me at this office.

The Reporter would be pleased to have the material by Friday 20 August at the latest.

Yours sincerely

Carol-Anne

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www.scotland.gov.uk/Topics/Built-Environment/planning/decisions-appeals/Appeals/dpea

From: DAVID SLATER [mailto:[REDACTED]]
Sent: 16 August 2010 08:44
To: Redpath C (Carol-Anne)
Subject: RE: Ministerial Correspondence for 2010/0018162OR about the River Nith Appeal

Dear Carol

Thank you for coming back to me. I apologise for not getting back to you reference a DVD. A piece of equipment failed in my computer and I have been unable to make a disc. Can I send the film on memory stick, or alternatively download them to your computer.

David

From: [REDACTED]
Sent: 03 August 2010 18:26
To: [REDACTED]
Subject: Ministerial Correspondence for 2010/0018162OR about the River Nith Appeal

Dear Mr Slater

Thank you for your e-mail of 19 July 2010 to the Minister for the Environment about the appeal by Dumfries and Galloway Council against the decision of SEPA to refuse the removal of gravel from the River Nith. I am the official within the Directorate for Planning and Environmental Appeals (DPEA) that is dealing with this appeal.

Your change of address has been noted and I can confirm that you can either send another copy of the DVD that was attached to your letter received on 30 September 2009 or, you may want to consider printing the material that it contains to ensure that it may be taken into account.

As stated in my latest e-mail of 2 August 2010, it would be helpful if you could send the information to me by 16 August.

I hope that you will find this helpful.

Yours sincerely

Carol-Anne Redpath

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[REDACTED]

From: Cochrane, Susan (Solicitor) <Susan.Cochrane@sepa.org.uk>
Sent: 28 September 2009 17:10
To: Environmental Appeals
Cc: [REDACTED]
Subject: Water Environment, Appeal under regulation 46(a) - River Nith, Dumfries, Dumfries and Galloway Council (CAR/L/1033622)
Attachments: Notes on Nith appeal.doc

I refer to this afternoon's telephone call with Eleanor Vance and enclose SEPA's response to the above appeal. As discussed the hard copy and accompanying documents will be sent out tomorrow as there is no mail being sent out today due to a public holiday.

Many thanks

This correspondence is from a member of the Legal Team in SEPA's Environmental Protection and Improvement Directorate. To the extent that it may contain legal advice, it is legally privileged and may therefore be exempt from disclosure under the Freedom of Information (Scotland) Act 2002 or the Environmental Information (Scotland) Regulations 2004.

Susan Cochrane
Regional Solicitor (South West)
[REDACTED]

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SEPA's response to the grounds of appeal by Dumfries and Galloway Council (the appellant) dated 14 August 2009 in respect of SEPA's decision dated 18 May 2009 to refuse its application to a water use licence under the Water Environment (Controlled Activities) (Scotland) Regulations 2005

1. Legal and Policy Background

1.1 Under Regulation 15(1)(a) of the Water Environment (Controlled Activities)(Scotland) Regulations 2005 (CAR), before determining the application for an authorisation to carry on a controlled activity SEPA must assess the risk to the water environment posed by the carrying on of that activity.

1.2 A Regulatory Method published in November 2006 set out SEPA's approach to regulation of engineering activities ("the Regulatory Method") **(Document 1)** The Regulatory Method sets out the process for determining an engineering authorisation under CAR. The regulations are designed to encourage sustainable development by ensuring adequate consideration is given during the design and implementation of engineering works to the protection of ecological quality of surface waters. Activities will be required to adhere to principles of best practice as a key element of the regulatory method.

1.3 The Regulatory Method explains the technical assessment process which involves licence screening and detailed impact assessment. The licence screening tests consider impacts on conservation sites, flood risk, environmental standards and best practice.

1.4 Details of how to apply environmental standards for rivers is given in supporting guidance on environmental standards for river morphology **(Document 2)**

1.5 Further, in terms of Regulation 15 (1) (b) of the Regulations, before determining an application for an authorisation to carry on a controlled activity SEPA must assess what steps may be taken to ensure efficient and sustainable water use.

1.6 A position statement published in August 2006 to support implementation of the new engineering regime under CAR sets out SEPA's regulatory approach to applications for sediment removal. The Position statement explains: the negative impacts that sediment removal can have on the quality of the water environment; the fact that SEPA has a presumption against sediment removal; and the circumstances where that presumption may be overturned ("the position statement")**(Document 3)**.

1.7 In terms of Regulation 15 (1) (c) of the Regulations, before determining an application for an authorisation to carry on a controlled activity SEPA must apply the requirements of legislation referred to in Parts 1 and 2 of Schedule 4

to the Regulations, which includes Council Directive 2000/60/EC (The Water Framework Directive) and the Water Environment and Water Services (Scotland) Act 2003 (The 2003 Act). The Water Framework Directive establishes a framework for the protection of the water environment and requires Member States to implement necessary measures to prevent deterioration of the status of all bodies of surface water. Article 4 of the Water Framework Directive establishes the general objective of good status to be achieved in all surface waters by 2015 and introduces the principle of preventing any further deterioration of status. The 2003 Act implements the provisions of the Water Framework Directive in Scotland making provision for the protection of the water environment which includes preventing further deterioration of, and protecting and enhancing the status of aquatic ecosystems.

2. The Application

2.1 SEPA received an application from the appellant under CAR to carry on controlled activities, namely the removal of vegetation and gravel banks approximately 13 metres north of Buccleuch Street Bridge, Dumfries. The Application was attached as an accompanying document to the Appellant's grounds of appeal (the Application).

2.2 In determining the application for an authorisation for engineering works representing the removal of gravel from the north east bank of the River Nith, SEPA assessed the risk to the River Nith. SEPA considered the morphological conditions of the relevant stretch of the river, both in its existing state and if the proposed activity of gravel removal were authorised.

In particular SEPA considered;

- a. the impact that the sediment extraction would have in relation to the damage and loss of river habitats
- b. the fact that the proposed works would create a section of river that is unstable and would lead to continued habitat loss, and
- c. the fact that disturbance to the river bed would cause instability of finer sediments which would be released into the watercourse in suspension leading to impact on salmonid fish and invertebrates.

2.3 SEPA also considered the requirements contained in the Water Framework Directive and the 2003 Act referred to above in connection with preventing deterioration of status of water bodies and aquatic ecosystems and concluded that the works would be likely to cause a significant adverse morphological impact on the said watercourse and therefore present a risk to the water environment.

2.4 In addition, when assessing whether or not the application represented efficient and sustainable use of the water environment, SEPA considered the appellant's statement that the reason for the proposed activity is that the gravel banks in the area are unsightly as they provide a platform for weed growth which traps litter and debris, and should therefore be removed.

2.5 SEPA considers that, for the purposes of engineering works, efficient water use equates to using best management practice. This is the action which serves a demonstrated need, while minimising ecological harm, at a cost that is not disproportionately expensive. SEPA considers that, in principle, sediment or gravel removal is unlikely to constitute efficient water use, unless it can be justified for navigation, flood risk management, water supply purposes, infrastructure protection or other sustainable development activities.

2.6 SEPA has duly considered whether or not the said proposed activity of gravel removal represents efficient and sustainable water use, and notes that because removal of sediment will encourage sediment to be deposited rapidly in the future, it is likely that the works would require to be repeated, and that this is unsustainable. The applicant has not demonstrated that the proposed activity will solve the issue of sediment build up and litter or that there are any significant human health or safety benefits to be gained from the proposed works. SEPA has concluded that the proposal does not serve a demonstrated need and does not represent efficient and sustainable water use.

2.7 Accordingly, having assessed the risk to the water environment, applied the requirements of the Water Framework Directive and the 2003 Act referred to above and having assessed what steps may be taken to ensure efficient and sustainable water use, SEPA concluded that the application should be refused.

3. Grounds of Appeal

3.1. Damage and Loss of habitat

3.1.1 The appellant indicates that they do not see the significance of the loss of habitat especially as it contains invasive species. They state that the removal of these plants will address the stated concerns of SEPA on page 41 of the River Nith Catchment Management Plan (the Catchment Plan) (**Document 4**) without the use of potentially harmful chemicals.

3.1.2 For the avoidance of doubt, the Catchment Plan is a partnership initiative involving numerous organisations, community groups and individuals including the appellant. The concerns and the objectives are not only those of SEPA but also the other partner organisations.

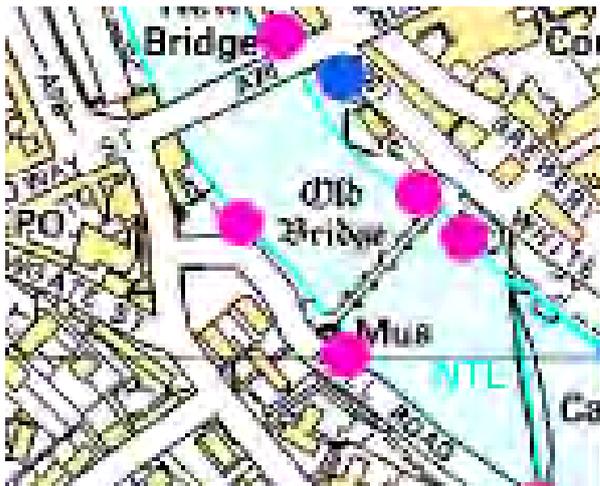
3.1.3 The section of the Catchment Plan referred to by the appellant is in section 4 of the Catchment Plan, Wildlife and Habitat Management. The objectives of the section are listed at the top of page 22 as follows;

- “Conserve and enhance the status and distribution of wildlife habitats and species of conservation interest in the Nith catchment.”
- “Promote and support a strategic approach towards the control of invasive species.”

3.1.4 By removing the gravel banks the appellant is not meeting the objectives of the Catchment Plan or the Water Framework Directive. It should be noted that the Draft River Basin Management Plan for the Solway Tweed River Basin District (**Document 5**) recognises the Nith Catchment Plan as a supporting document/plan. Section 4.2 of the Catchment Plan at page 22 refers to a number of rare aquatic invertebrates associated with the exposed river sediments and shingle. The appellant's proposal to remove the bank will destroy these rather than conserving and enhancing them.

3.1.5 Also within this section of the Catchment Plan it states "One of the easiest places to see and study wildlife of the River Nith is at the Whitesands in Dumfries. Despite the modifications to the river carried out over the centuries, the river here shows many of the natural features typical of a lowland river system. It has shingle and sand banks, a fringe of natural vegetation and a host of associated wildlife." This section also refers to a wildlife survey commissioned by Dumfries and Galloway Council Local Biodiversity Action Plan officer which was carried out in 2001 and identified over 180 species of plants growing on the riverbanks in the Dumfries area. The bank is therefore an important wildlife habitat which contributes positively to the Nith's ecological status; and the bank should be conserved in line with the Catchment Plan objective and not removed.

3.1.6 The appellant mentions that Himalayan Balsam and Japanese Knotweed are present in these banks. As part of a project under the Catchment Plan the mapping of invasive plant species in the catchment was undertaken by The Nith District Salmon Fishery Board. The mapping exercise did not indicate the presence of Japanese Knotweed in this bank (see attached portion of map). It did highlight the presence of Himalayan Balsam and Giant Hogweed.



Legend

Invasive plants species

- Giant Hogweed
- Himalayan Balsam
- Japanese Knotweed

3.1.7 The control of invasive plants by digging out gravel is not generally recognised as a way of controlling the aforementioned species of invasive plants nor can it be categorised as a long-term strategic approach. It is purely concentrating on this particular stretch and may lead to the release of large numbers of seeds locked in the gravels which could colonise elsewhere if dug out. A strategic approach would be to start at the upstream end of the river which contains the invasive species and concentrate on removing the seed source, namely the vegetation and not the banks, and then working downstream.

3.1.8 A document titled “River Nith Catchment Invasives” (**Document 6**) to which the appellant contributed has been produced to help landowners and the community understand the problem of invasive plants and offer advice and practical solutions to encourage sustainable control of these species.

3.1.9 This document indicates that a good way of controlling Giant Hogweed and Himalayan Balsam is by cutting stems before the plant flowers and sets seeds. Eradication can be achieved in 2-3 years. So rather than removing the gravel banks, vegetation control by regular cutting is a more sustainable approach. In addition, this would benefit larger stretches of the river by introducing a longer-term sustainable management strategy as opposed to ongoing short-term fire fighting that is fundamentally unsustainable. Use of a commercial glyphosate-based chemical is also effective if undertaken properly and professionally.

3.1.10 The document does not include gravel removal as a method of control.

3.2. Unstable River Section

3.2.1 The appellant indicates that the man made constraints on this section of the river, with solid walls lining the banks and a weir immediately downstream, do not allow natural hydrological processes to take place. It is their position that the works proposed would mimic the result of the natural processes.

3.2.2 This position appears to contradict the Catchment Plan at section 4.2, which states at page 22;

“Despite the modifications to the river carried out over the centuries, the river here (Whitesands) shows many of the natural features typical of a lowland river system. It has shingle and sand banks, a fringe of natural vegetation and a host of associated wildlife including fish, otters, kingfishers, noctule bats and goosanders.”

“In Dumfries town centre, the river is constrained by the walls but, as the channel is wider than the natural river channel during periods of low flow, there is still space for the river to build up sand bars and create shingle banks.”

3.2.3 It is SEPA’s position that the natural processes should be allowed to take place and it is important to ensure that these banks continue to be valuable for wildlife.

3.2.4 Despite their statement that no natural hydrological processes take place and an application for a single activity (point 16 of sheet E, Form E of the Application) the appellant now acknowledges that there will be a need to undertake similar work in the future because of the natural processes of deposition.

3.2.5 SEPA acknowledges, and indeed raised with the appellant prior to their application, that the appellant would have to carry out similar works at a future date as the natural river processes will continue to deposit gravels leading to ongoing river bank formation and the requirement for further removal. It is SEPA’s position that the appellant’s proposal is unsustainable and would lead to continued habitat loss.

3.3 Impacts on salmonid fish and invertebrates

3.3.1 The Method Statement in Form E of the Application did not indicate how the release of sediment would be minimised. The statement by Jim Henderson on how the work could be undertaken to minimise sediment release does not go in to detail about the appropriate techniques so SEPA cannot comment on it.

4.1 Other issues

4.4.1 The appellant raises the issue of water quality and aesthetics and the assessment of the impact of litter. The appellant refers to the Catchment Plan which highlights the impact of litter on wildlife and the fact that it detracts from the river’s beauty for the town and its visitors as being a particular issue at the site of the proposed works. The appellant claims that the removal of the banks will address this. However regular litter picking on the banks which has been undertaken by the appellant this year, does achieve this aim. This method helps to clean the area up without having to remove an important habitat and would be in keeping with the Catchment Plan objective of conserving and enhancing habitats.

4.4.2 The removal of the banks will not stop the littering problem. Any litter discarded would fall into the river and lie in the shallow water instead of on the banks. This would be aesthetically undesirable and the task of litter removal made more difficult than is currently the case. Indeed, in the past, the Council have intimated at meetings with SEPA staff that for health and safety reasons they are reluctant to remove litter from within the river, only from banks. If this is the case there could be longer term challenges in this regard if the bank was removed. Fundamentally, the problem of people throwing litter away needs to be tackled rather than seeking to destroy habitats as a method of litter control.

4.4.3 With regards to benefits for tourism by removing these banks, as suggested by the appellant, RSPB Scotland has stated the value of retaining these banks for tourism as follows *“ Instead of removing natural gravel banks that are valued by many people, we feel there is an opportunity for the appellant to interpret and promote the wildlife and natural features of the River Nith in Dumfries town centre, thereby encouraging more people to visit and enjoy the wildlife spectacle.”* (para 2, page 2 of RSPB Letter 23 July 2009) **(Document 7)**.

4.4.4 In response to the five objectives from the Catchment Plan listed by the appellant:

- **Conserve and enhance sustainable fisheries in the River Nith by enhancing habitats, removing man-made obstacles to migration, ensuring genetic integrity and minimising threats from non-native species.**
- This is the objective set out in section 3 of the Catchment Plan. The appellant is not enhancing habitat they are in fact removing habitat. Within this section (Page 18) it states the importance of bank side vegetation and riparian habitats in providing insects for fish to feed upon and that this should not be underestimated. The non-native species referred to in the above objective is in relation to fish and not plants.
- **Conserve and enhance the status and distribution of wildlife habitats and species conservation interest in the Nith catchment.**

This is the first objective set out in section 4 of the Catchment Plan. The appellant's proposals are in contradiction to this chapter of the catchment plan as they advocate removing important habitat. As stated above bank side vegetation is extremely important in providing insects for fish to feed on. Also within this chapter mention is made of rare aquatic invertebrates within the Nith mostly associated with exposed river sediments. The proposal runs contrary to species conservation in this area.

In addition, the Dumfries and Galloway Local Biodiversity Action Plan (LBAP) (**Document 8**) published in 2009 by the Dumfries and Galloway biodiversity Partnership which includes the appellant, SEPA and other partners highlights key, relevant issues. In the section, 'Exposed River Shingle' at page 103 the importance of this habitat type is outlined in relation to key important plants and animals that bankside habitat supports. In the section, Lowland rivers and Backwaters at page 93, the LBAP states as 'very high importance' invertebrates, birds and mammals associated with the banks for the Nith. The invertebrates *Bidessus minutissimus* which is a nationally important species has been identified in the sediments of the banks of the Nith just upstream of the bank at the Whitesands. Mammals such as otters are found at the Whitesands, and these animals are associated with areas of watercourse with abundant instream and riparian (bankside) vegetation. Various species of birds, some listed in the LBAP as Local Priority Species are found on the banks and in the vegetation at the Whitesands. In the section Public Open Spaces at page 218 the aim of the LBAP is to work with local communities to increase management and interpretation of biodiversity in public open spaces. The Whitesands falls into this category and has already been the subject of a successful interpretation project by a community group, the Nith Society, whereby the variety and value of the river bank habitats is presented on public interpretation boards at various locations at the Whitesands. In appendix 2 of the LBAP there is a list of Local Priority Habitats one of which is Urban Watercourses and Wetlands; the Nith at the Whitesands is a classic example of an urban watercourse on the seventh longest river in Scotland.

- **Promote and support a strategic approach towards the control of invasive species.**

This is the second objective set out in section 4 of the Catchment Plan. As previously mentioned (see section 1.1 - the Damage and Loss of Habitat section above) the removal of the gravel banks is not a strategic approach. A strategic approach is being put together by The Dumfries and Galloway Catchment Management Initiative as detailed below. The Catchment Management Initiative began as a pilot project in 2000 with the aim of delivering the objectives contained within the wetland section of the LBAP. At that time the concept of catchment management planning was fairly new but is now widespread and has been adopted as a central theme of the Water Framework Directive. Throughout the project the aim has been to involve the stakeholders of river catchments in identifying issues and developing actions that will lead to environmental improvements at a catchment scale. To date the Initiative has published three catchment management plans and is now focused on delivering projects that address the actions identified in the plans. The Initiative is jointly sponsored by SEPA and SNH.

The Dumfries & Galloway Catchment Management Initiative is putting together a project that aims to reduce the extent of non-native invasive species (NNIS) in Dumfries & Galloway (D&G) through targeted

management and control over a 5 year period. Working at a catchment scale with coverage across the whole of D & G the project will target Japanese knotweed, Himalayan knotweed, giant hogweed and Himalayan balsam. The project will also trap American mink and record and monitor water vole populations on the Annan and Nith catchments.

Practical control of NNIS will be undertaken using chemical and mechanical means. A top down approach will be taken on each catchment within D&G and control will be undertaken by the Annan District Salmon Fishery Board, the Nith District Salmon Fishery Board and Galloway Fisheries Trust, with some additional input from the Criminal Justice Community Service programme.

Based on the experience of other NNIS projects on the Tweed and Fleet catchments this project does not set out with the aim of achieving complete eradication. However, at the end of the 5 year period the extent and density of NNIS will be reduced to such an extent that fisheries bodies and riparian landowners will be able to manage and control infested areas and new outbreaks using their current resources.

- **Encourage and Support the development of towns, villages and industries that build on the natural resources and heritage of the catchment to improve economic, social and environmental sustainability**

This is the first objective set out in section 7 of the Catchment Plan. The removal of the gravel banks is not building on the natural resource and as the appellant has indicated that further removal would be required in the future it is not environmentally sustainable. Within this chapter in relation to litter (page 54) it states "Education and vigilance are two possible solutions to this problem, but will require the involvement of many to resolve the issue." SEPA has and is willing to discuss with the appellant other means of tackling the litter problem.

The appellant published its five year Regional Economic strategy in 2008 (**Document 9**). The strategy was the outcome of work by the Local Economic Forum that included research and consultation with stakeholders across the region. The strategy reflects a broad consensus of the issues faced by the regions economy and contains agreed actions to address as well as deliver significant change to the region's economy in the years to come. Theme 3 of the strategy is about 'Quality of Life' and states at page 1 "*The main aim is to promote the region as a desirable place to live, invest, study and visit*". There are five supporting objectives namely affordable housing, strengthening the 'natural place' assets, promoting the 'natural place', quality of life indicators, and opportunities for the whole region. Within the objective strengthening the 'natural place' assets, it states "*The natural environment is one of the region's key strengths. Environmental improvement, 'green-ness', avoidance of pollution, waste management and promotion of sustainable economic growth are critical*". In a second

objective, promoting the 'natural' place, it states *"There are clear links between the quality of life theme and the region's branding strategy. As part of the economic strategy, the 'natural place' brand will find a central role in promoting the area to the three principal audiences: in migrants, tourists and investors"*.

The Dumfries and Galloway Community Plan 2009-12 (**Document 10**) and Dumfries and Galloway Single Outcome Agreement for 2009-11 (**Document 11**) has the sub heading 'together is better'. In the single outcome agreement Section 6.5 at page 42 'An environment that is protected and enhanced', identifies National Outcome 12 namely, 'We value and enjoy our built and natural environment and protect it and enhance it for future generations'. As a partner organisation in this plan, together with SNH and the appellant, SEPA does not believe that cognisance has been taken of the shared vision of the community for the Whitesands and nor has a creative sustainable solution by working together in the spirit of community planning been identified. In contrast, a unilateral decision was taken by the appellant, ignoring SEPA and SNH advice, to seek to remove the banks rather than adhere to the agreement reached in 2008 to control litter and maintain bankside vegetation.

- **Promote the sustainable development of tourism and recreational activities within the Nith catchment to accommodate a variety of interests. (Chapter 7)**

This is the second objective set down in section 7 of the Catchment Plan. As stated previously this area of the Whitesands with its gravel banks attracts numerous visitors to the town and RSPB have suggested that the appellant take this opportunity to promote the wildlife and natural features of the River Nith in Dumfries town centre, thereby encouraging more people to visit and enjoy the wildlife spectacle. (see section 4.4.3 above)

Less than two years ago, the Nith society supported by SEPA, the appellant and SNH, erected interpretation boards around the Whitesands as a community project celebrating the areas rich biodiversity. These boards are enjoyed by locals and tourists and show the range of wildlife colonising the gravel banks and river at the Whitesands.

On the 28 March 2009 the Greater Nith Estuary Nature Based Tourism Cluster Development Plan (the Plan) (**Document 12**) was produced by the Southern Uplands Partnership under a project funded by SNH. The Southern Uplands Partnership operates in Dumfries and Galloway and the Scottish Borders. The Partnership is supported by various organisations including the appellant who is described as a major contributor. The Greater Nith Estuary Nature Based Tourism Cluster Development Plan includes the town of Dumfries. In the introduction at

page 4 the Plan states: *“With encouragement from Scottish Natural Heritage (SNH), Southern Uplands Partnership (SUP) identified the potential to focus on the Nith Estuary as a pilot project to demonstrate how the viability of individual businesses and environmental attractions could be increased through collaborative or cluster development based upon the intrinsic appeal of the local wildlife, landscapes and historical sites. The first phase has involved production of a development plan, funded by SNH, to establish how this could be achieved. The second phase will involve the local community, businesses, attractions and other key partners in further developing and implementing this plan”*. In section 2.7 (2.7.1) at page 9 of the Plan existing marketing is explored based on data from Visit Scotland. Four groups of people are identified from the data relevant to nature based tourism namely, affluent southern explorers, young domestic explorers, mature devotees and affluent active devotees. The potential interests of each of these four groups in terms of visiting the area are listed and under each of the groups, wildlife is included whereas with regards to two of the groups, nature is also included as an interest.

Section 5.8 of page 21 of the Plan includes ideas to explore further with local attractions, residents and businesses. Eleven points are highlighted in the report of which the following five relate directly to the value of wildlife, nature and landscape:

1. Identify ways of reinforcing the scenic and wildlife appeal of the area into every aspect of visitors' experience.
2. Explore potential for landscape/earth science holidays.
3. Explore potential for painting holidays tutored by local artists based at local nature reserves or more generally in the area.
4. Explore potential for wildlife photography courses tutored by expert local wildlife photographers, packaged with local accommodation, locally sourced food and visits to nature reserves.
5. Explore potential for guided bird and wildlife watching visits/tours.

The foregoing key strategies/plans all support good environmental management for economic, environmental and tourism reasons as well as sustainability and the appellants own slogan for Dumfries and Galloway, *‘the natural place to live, work and do business’*. SEPA believes that the proposal to remove the natural river bank is contrary to the appellant's own plans/strategies or to those to which it is a key contributor. Moreover, the removal of the river bank is contrary to CAR and unsustainable as recognised not only by SEPA but also the appellant. Contrastingly, by leaving the river banks intact and undertaking litter picking, vegetation management, educational interpretation the bank would continue to contribute to the objectives of the above mentioned plans and strategies in relation to the Whitesands, a key area of Dumfries which is the major community in the region. A particular strength with regards to economic, social and environmental sustainability is the potential the banks could play in relation to environmental tourism strategies. The management

agreement established in 2008 by SEPA, the appellant and SNH was more sustainable than the proposal to remove gravel banks and destroy natural habitats. This management agreement was reached at a meeting between managers acting on behalf of the appellant, SEPA and SNH as a way forward for managing the river bank without seeking its removal. Moreover, the application of the management plan during the summer of 2009 has demonstrated that litter can be readily removed from the bank thereby vastly improving this problem whilst the cutting of the vegetation has also enhanced the aesthetics of the bank. The only part of the management agreement not completed thus far is to make the bank more accessible to the public in order that it can be used as an amenity area similar to the Greensands on the opposite bank of the river. Accompanying this latter point, any 'dangerous' indentations or holes that exist in the bank would be levelled off by the council to ensure public safety. The RSPB and Nith Society have highlighted the value of the banks from the point of view of birds and other wildlife. SNH have also stressed their importance in this regard with particular reference to otters. The RSPB also state that the Whitesands is possibly the best place in the UK to watch goosanders close up. They go on to say that *"this species is quite rare in Northern Ireland and several groups of visiting bird watchers come to Dumfries just to watch them, as do groups from elsewhere in the UK"*. These comments together with the above proposed nature based tourism strategy emphasise the value of the bank as an integral part of the natural environment and associated wildlife of the River Nith at the Whitesands. The LBAP complements these points in terms of its listings with regards to priority local habitats and species.

For all of the above reasons SEPA believes that it is not in the public interest to remove the banks. This view is reinforced by the survey undertaken in 2009 by the Nith Society whereby they interviewed members of the public at random to establish public opinion of issues of concern with the Nith at the Whitesands. Whereas matters such as litter and vegetation, for example featured high amongst the public, less than 10% thought that the removal of the banks was appropriate. **(Document 13)**

5 List of Documents

1. SEPA Regulatory Method (WAT-RM-02); Engineering Activities
2. SEPA Supporting Guidance (WAT-SG-21); Environmental Standards for River Morphology
3. SEPA Position statement to support the implementation of CAR – sediment management dated 24 August 2006
4. The River Nith Catchment Management Plan
5. Draft River Basin Management Plan for the Solway Tweed River Basin District
6. River Nith Catchment Invasives
7. Letter from RSPB dated 23 July 2009
8. Dumfries and Galloway Local Biodiversity Action Plan 2009

9. Dumfries and Galloway Regional Economic Strategy;
10. Dumfries and Galloway Community Plan 2009-2012
11. Dumfries and Galloway Single Outcome Agreement 2009- 11
12. Greater Nith Estuary Nature Based Tourism Cluster Development Plan, March 2009
13. Results of Nith society Survey

[REDACTED]

From: Redpath C (Carol-Anne)
Sent: 28 June 2010 17:37
To: susan.watson@sepa.org.uk
Cc: [REDACTED]
Subject: CASE 137216/7 - APPEAL UNDER REGULATION 46(a) RIVER NITH, DUMFRIES (DUMFRIES AND GALLOWAY COUNCIL) (CAR/L/1033622)

Dear Ms Watson

**WATER ENVIRONMENT (CONTROLLED ACTIVITIES) (SCOTLAND) REGULATIONS 2005
APPEAL UNDER REGULATION 46(a) RIVER NITH, DUMFRIES (DUMFRIES AND
GALLOWAY COUNCIL) (CAR/L/1033622)**

Thank you for your letter of 23 June together with copies of representations received in response to the advertised application in relation to the above case.

Yours sincerely

Carol-Anne Redpath
Processing & Decisions Manager

The Scottish Government
Directorate for Planning and Environmental Appeals
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www.scotland.gov.uk/Topics/Built-Environment/planning/decisions-appeals/Appeals/dpea

[REDACTED]

From: Redpath C (Carol-Anne)
Sent: 04 August 2010 09:25
To: 'james.mcleod@dumgal.gsx.gov.uk'
Subject: FW: Case 137216/7 - Water Environment (Controlled Activities) (Scotland) Regulations 2005 - Appeal (ref CAR/L/1033622) - River Nith, Dumfries

Dear Mr McLeod

Thank you for your e-mail enquiry regarding the above appeal.

The Reporter is currently on annual leave, I can however confirm that he has made good progress on the appeal and is hopeful that a decision will be issued in the near future.

I am sorry that I cannot be more helpful at this time.

Yours sincerely

Carol-Anne Redpath
Section Manager - Development Plans & Case Work South
The Scottish Government
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4 The Courtyard
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www.scotland.gov.uk/Topics/Built-Environment/planning/decisions-appeals/Appeals/dpea

From: McLeod, James [mailto:james.mcleod@dumgal.gsx.gov.uk]
Sent: 26 July 2010 09:12
To: DPEA
Subject: Case 137216/7 - Water Environment (Controlled Activities) (Scotland) Regulations 2005 - Appeal (ref CAR/L/1033622) - River Nith, Dumfries

Dear Ms Redpath

I refer to your letter of the 2 June 2010 regarding the appeal case 137216/7.

I am responsible for preparing a committee report to Members regarding the removal of gravel from the Nith. I would be grateful if you were able to provide an update on the appeal.

Regards

James McLeod
Team Leader - Flood Risk Management
Planning & Environment Services
Militia House - English Street - DUMFRIES - DG1 2HR

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[REDACTED]

From: Redpath C (Carol-Anne)
Sent: 02 June 2010 11:23
To: Jim McCulloch
Subject: FW: Water Environment, Appeal under regulation 46(a) - River Nith, Dumfries, Dumfries and Galloway Council (CAR/L/1033622)
Attachments: Notes on Nith appeal.doc

Jim

E-mail of 28 Sept @ 17:10 from Susan Cochrane, SEPA. Am trying to locate Bill Barker e-mail and 5 PDF attachments of 14 August @ 16.04.

Cheers

C-A

From: Cochrane, Susan (Solicitor) [mailto: Susan.Cochrane@sepa.org.uk]
Sent: 28 September 2009 17:10
To: Environmental Appeals
Cc: bill.barker@dumgal.gov.uk
Subject: Water Environment, Appeal under regulation 46(a) - River Nith, Dumfries, Dumfries and Galloway Council (CAR/L/1033622)

I refer to this afternoon's telephone call with Eleanor Vance and enclose SEPA's response to the above appeal. As discussed the hard copy and accompanying documents will be sent out tomorrow as there is no mail being sent out today due to a public holiday.

Many thanks

This correspondence is from a member of the Legal Team in SEPA's Environmental Protection and Improvement Directorate. To the extent that it may contain legal advice, it is legally privileged and may therefore be exempt from disclosure under the Freedom of Information (Scotland) Act 2002 or the Environmental Information (Scotland) Regulations 2004.

Susan Cochrane
Regional Solicitor (South West)

[REDACTED]

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SEPA's response to the grounds of appeal by Dumfries and Galloway Council (the appellant) dated 14 August 2009 in respect of SEPA's decision dated 18 May 2009 to refuse its application to a water use licence under the Water Environment (Controlled Activities) (Scotland) Regulations 2005

1. Legal and Policy Background

1.1 Under Regulation 15(1)(a) of the Water Environment (Controlled Activities)(Scotland) Regulations 2005 (CAR), before determining the application for an authorisation to carry on a controlled activity SEPA must assess the risk to the water environment posed by the carrying on of that activity.

1.2 A Regulatory Method published in November 2006 set out SEPA's approach to regulation of engineering activities ("the Regulatory Method") **(Document 1)** The Regulatory Method sets out the process for determining an engineering authorisation under CAR. The regulations are designed to encourage sustainable development by ensuring adequate consideration is given during the design and implementation of engineering works to the protection of ecological quality of surface waters. Activities will be required to adhere to principles of best practice as a key element of the regulatory method.

1.3 The Regulatory Method explains the technical assessment process which involves licence screening and detailed impact assessment. The licence screening tests consider impacts on conservation sites, flood risk, environmental standards and best practice.

1.4 Details of how to apply environmental standards for rivers is given in supporting guidance on environmental standards for river morphology **(Document 2)**

1.5 Further, in terms of Regulation 15 (1) (b) of the Regulations, before determining an application for an authorisation to carry on a controlled activity SEPA must assess what steps may be taken to ensure efficient and sustainable water use.

1.6 A position statement published in August 2006 to support implementation of the new engineering regime under CAR sets out SEPA's regulatory approach to applications for sediment removal. The Position statement explains: the negative impacts that sediment removal can have on the quality of the water environment; the fact that SEPA has a presumption against sediment removal; and the circumstances where that presumption may be overturned ("the position statement")**(Document 3)**.

1.7 In terms of Regulation 15 (1) (c) of the Regulations, before determining an application for an authorisation to carry on a controlled activity SEPA must apply the requirements of legislation referred to in Parts 1 and 2 of Schedule 4

to the Regulations, which includes Council Directive 2000/60/EC (The Water Framework Directive) and the Water Environment and Water Services (Scotland) Act 2003 (The 2003 Act). The Water Framework Directive establishes a framework for the protection of the water environment and requires Member States to implement necessary measures to prevent deterioration of the status of all bodies of surface water. Article 4 of the Water Framework Directive establishes the general objective of good status to be achieved in all surface waters by 2015 and introduces the principle of preventing any further deterioration of status. The 2003 Act implements the provisions of the Water Framework Directive in Scotland making provision for the protection of the water environment which includes preventing further deterioration of, and protecting and enhancing the status of aquatic ecosystems.

2. The Application

2.1 SEPA received an application from the appellant under CAR to carry on controlled activities, namely the removal of vegetation and gravel banks approximately 13 metres north of Buccleuch Street Bridge, Dumfries. The Application was attached as an accompanying document to the Appellant's grounds of appeal (the Application).

2.2 In determining the application for an authorisation for engineering works representing the removal of gravel from the north east bank of the River Nith, SEPA assessed the risk to the River Nith. SEPA considered the morphological conditions of the relevant stretch of the river, both in its existing state and if the proposed activity of gravel removal were authorised.

In particular SEPA considered;

- a. the impact that the sediment extraction would have in relation to the damage and loss of river habitats
- b. the fact that the proposed works would create a section of river that is unstable and would lead to continued habitat loss, and
- c. the fact that disturbance to the river bed would cause instability of finer sediments which would be released into the watercourse in suspension leading to impact on salmonid fish and invertebrates.

2.3 SEPA also considered the requirements contained in the Water Framework Directive and the 2003 Act referred to above in connection with preventing deterioration of status of water bodies and aquatic ecosystems and concluded that the works would be likely to cause a significant adverse morphological impact on the said watercourse and therefore present a risk to the water environment.

2.4 In addition, when assessing whether or not the application represented efficient and sustainable use of the water environment, SEPA considered the appellant's statement that the reason for the proposed activity is that the gravel banks in the area are unsightly as they provide a platform for weed growth which traps litter and debris, and should therefore be removed.

2.5 SEPA considers that, for the purposes of engineering works, efficient water use equates to using best management practice. This is the action which serves a demonstrated need, while minimising ecological harm, at a cost that is not disproportionately expensive. SEPA considers that, in principle, sediment or gravel removal is unlikely to constitute efficient water use, unless it can be justified for navigation, flood risk management, water supply purposes, infrastructure protection or other sustainable development activities.

2.6 SEPA has duly considered whether or not the said proposed activity of gravel removal represents efficient and sustainable water use, and notes that because removal of sediment will encourage sediment to be deposited rapidly in the future, it is likely that the works would require to be repeated, and that this is unsustainable. The applicant has not demonstrated that the proposed activity will solve the issue of sediment build up and litter or that there are any significant human health or safety benefits to be gained from the proposed works. SEPA has concluded that the proposal does not serve a demonstrated need and does not represent efficient and sustainable water use.

2.7 Accordingly, having assessed the risk to the water environment, applied the requirements of the Water Framework Directive and the 2003 Act referred to above and having assessed what steps may be taken to ensure efficient and sustainable water use, SEPA concluded that the application should be refused.

3. Grounds of Appeal

3.1. Damage and Loss of habitat

3.1.1 The appellant indicates that they do not see the significance of the loss of habitat especially as it contains invasive species. They state that the removal of these plants will address the stated concerns of SEPA on page 41 of the River Nith Catchment Management Plan (the Catchment Plan) (**Document 4**) without the use of potentially harmful chemicals.

3.1.2 For the avoidance of doubt, the Catchment Plan is a partnership initiative involving numerous organisations, community groups and individuals including the appellant. The concerns and the objectives are not only those of SEPA but also the other partner organisations.

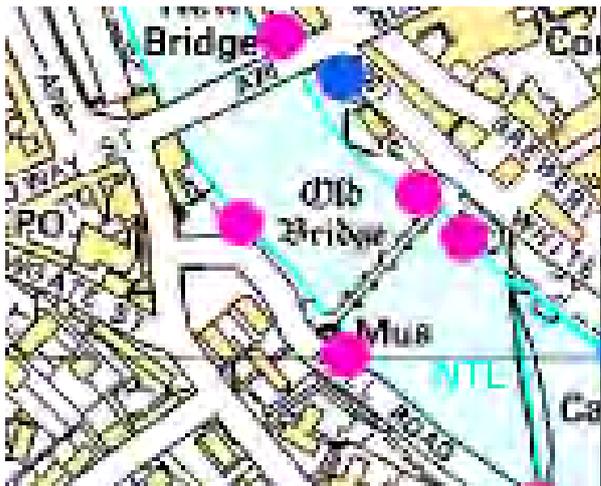
3.1.3 The section of the Catchment Plan referred to by the appellant is in section 4 of the Catchment Plan, Wildlife and Habitat Management. The objectives of the section are listed at the top of page 22 as follows;

- “Conserve and enhance the status and distribution of wildlife habitats and species of conservation interest in the Nith catchment.”
- “Promote and support a strategic approach towards the control of invasive species.”

3.1.4 By removing the gravel banks the appellant is not meeting the objectives of the Catchment Plan or the Water Framework Directive. It should be noted that the Draft River Basin Management Plan for the Solway Tweed River Basin District (**Document 5**) recognises the Nith Catchment Plan as a supporting document/plan. Section 4.2 of the Catchment Plan at page 22 refers to a number of rare aquatic invertebrates associated with the exposed river sediments and shingle. The appellant's proposal to remove the bank will destroy these rather than conserving and enhancing them.

3.1.5 Also within this section of the Catchment Plan it states "One of the easiest places to see and study wildlife of the River Nith is at the Whitesands in Dumfries. Despite the modifications to the river carried out over the centuries, the river here shows many of the natural features typical of a lowland river system. It has shingle and sand banks, a fringe of natural vegetation and a host of associated wildlife." This section also refers to a wildlife survey commissioned by Dumfries and Galloway Council Local Biodiversity Action Plan officer which was carried out in 2001 and identified over 180 species of plants growing on the riverbanks in the Dumfries area. The bank is therefore an important wildlife habitat which contributes positively to the Nith's ecological status; and the bank should be conserved in line with the Catchment Plan objective and not removed.

3.1.6 The appellant mentions that Himalayan Balsam and Japanese Knotweed are present in these banks. As part of a project under the Catchment Plan the mapping of invasive plant species in the catchment was undertaken by The Nith District Salmon Fishery Board. The mapping exercise did not indicate the presence of Japanese Knotweed in this bank (see attached portion of map). It did highlight the presence of Himalayan Balsam and Giant Hogweed.



Legend

Invasive plants species

- Giant Hogweed
- Himalayan Balsam
- Japanese Knotweed

3.1.7 The control of invasive plants by digging out gravel is not generally recognised as a way of controlling the aforementioned species of invasive plants nor can it be categorised as a long-term strategic approach. It is purely concentrating on this particular stretch and may lead to the release of large numbers of seeds locked in the gravels which could colonise elsewhere if dug out. A strategic approach would be to start at the upstream end of the river which contains the invasive species and concentrate on removing the seed source, namely the vegetation and not the banks, and then working downstream.

3.1.8 A document titled “River Nith Catchment Invasives” (**Document 6**) to which the appellant contributed has been produced to help landowners and the community understand the problem of invasive plants and offer advice and practical solutions to encourage sustainable control of these species.

3.1.9 This document indicates that a good way of controlling Giant Hogweed and Himalayan Balsam is by cutting stems before the plant flowers and sets seeds. Eradication can be achieved in 2-3 years. So rather than removing the gravel banks, vegetation control by regular cutting is a more sustainable approach. In addition, this would benefit larger stretches of the river by introducing a longer-term sustainable management strategy as opposed to ongoing short-term fire fighting that is fundamentally unsustainable. Use of a commercial glyphosate-based chemical is also effective if undertaken properly and professionally.

3.1.10 The document does not include gravel removal as a method of control.

3.2. Unstable River Section

3.2.1 The appellant indicates that the man made constraints on this section of the river, with solid walls lining the banks and a weir immediately downstream, do not allow natural hydrological processes to take place. It is their position that the works proposed would mimic the result of the natural processes.

3.2.2 This position appears to contradict the Catchment Plan at section 4.2, which states at page 22;

“Despite the modifications to the river carried out over the centuries, the river here (Whitesands) shows many of the natural features typical of a lowland river system. It has shingle and sand banks, a fringe of natural vegetation and a host of associated wildlife including fish, otters, kingfishers, noctule bats and goosanders.”

“In Dumfries town centre, the river is constrained by the walls but, as the channel is wider than the natural river channel during periods of low flow, there is still space for the river to build up sand bars and create shingle banks.”

3.2.3 It is SEPA’s position that the natural processes should be allowed to take place and it is important to ensure that these banks continue to be valuable for wildlife.

3.2.4 Despite their statement that no natural hydrological processes take place and an application for a single activity (point 16 of sheet E, Form E of the Application) the appellant now acknowledges that there will be a need to undertake similar work in the future because of the natural processes of deposition.

3.2.5 SEPA acknowledges, and indeed raised with the appellant prior to their application, that the appellant would have to carry out similar works at a future date as the natural river processes will continue to deposit gravels leading to ongoing river bank formation and the requirement for further removal. It is SEPA’s position that the appellant’s proposal is unsustainable and would lead to continued habitat loss.

3.3 Impacts on salmonid fish and invertebrates

3.3.1 The Method Statement in Form E of the Application did not indicate how the release of sediment would be minimised. The statement by Jim Henderson on how the work could be undertaken to minimise sediment release does not go in to detail about the appropriate techniques so SEPA cannot comment on it.

4.1 Other issues

4.4.1 The appellant raises the issue of water quality and aesthetics and the assessment of the impact of litter. The appellant refers to the Catchment Plan which highlights the impact of litter on wildlife and the fact that it detracts from the river’s beauty for the town and its visitors as being a particular issue at the site of the proposed works. The appellant claims that the removal of the banks will address this. However regular litter picking on the banks which has been undertaken by the appellant this year, does achieve this aim. This method helps to clean the area up without having to remove an important habitat and would be in keeping with the Catchment Plan objective of conserving and enhancing habitats.

4.4.2 The removal of the banks will not stop the littering problem. Any litter discarded would fall into the river and lie in the shallow water instead of on the banks. This would be aesthetically undesirable and the task of litter removal made more difficult than is currently the case. Indeed, in the past, the Council have intimated at meetings with SEPA staff that for health and safety reasons they are reluctant to remove litter from within the river, only from banks. If this is the case there could be longer term challenges in this regard if the bank was removed. Fundamentally, the problem of people throwing litter away needs to be tackled rather than seeking to destroy habitats as a method of litter control.

4.4.3 With regards to benefits for tourism by removing these banks, as suggested by the appellant, RSPB Scotland has stated the value of retaining these banks for tourism as follows *“ Instead of removing natural gravel banks that are valued by many people, we feel there is an opportunity for the appellant to interpret and promote the wildlife and natural features of the River Nith in Dumfries town centre, thereby encouraging more people to visit and enjoy the wildlife spectacle.”* (para 2, page 2 of RSPB Letter 23 July 2009) **(Document 7)**.

4.4.4 In response to the five objectives from the Catchment Plan listed by the appellant:

- **Conserve and enhance sustainable fisheries in the River Nith by enhancing habitats, removing man-made obstacles to migration, ensuring genetic integrity and minimising threats from non-native species.**
- This is the objective set out in section 3 of the Catchment Plan. The appellant is not enhancing habitat they are in fact removing habitat. Within this section (Page 18) it states the importance of bank side vegetation and riparian habitats in providing insects for fish to feed upon and that this should not be underestimated. The non-native species referred to in the above objective is in relation to fish and not plants.
- **Conserve and enhance the status and distribution of wildlife habitats and species conservation interest in the Nith catchment.**

This is the first objective set out in section 4 of the Catchment Plan. The appellant's proposals are in contradiction to this chapter of the catchment plan as they advocate removing important habitat. As stated above bank side vegetation is extremely important in providing insects for fish to feed on. Also within this chapter mention is made of rare aquatic invertebrates within the Nith mostly associated with exposed river sediments. The proposal runs contrary to species conservation in this area.

In addition, the Dumfries and Galloway Local Biodiversity Action Plan (LBAP) (**Document 8**) published in 2009 by the Dumfries and Galloway biodiversity Partnership which includes the appellant, SEPA and other partners highlights key, relevant issues. In the section, 'Exposed River Shingle' at page 103 the importance of this habitat type is outlined in relation to key important plants and animals that bankside habitat supports. In the section, Lowland rivers and Backwaters at page 93, the LBAP states as 'very high importance' invertebrates, birds and mammals associated with the banks for the Nith. The invertebrates *Bidessus minutissimus* which is a nationally important species has been identified in the sediments of the banks of the Nith just upstream of the bank at the Whitesands. Mammals such as otters are found at the Whitesands, and these animals are associated with areas of watercourse with abundant instream and riparian (bankside) vegetation. Various species of birds, some listed in the LBAP as Local Priority Species are found on the banks and in the vegetation at the Whitesands. In the section Public Open Spaces at page 218 the aim of the LBAP is to work with local communities to increase management and interpretation of biodiversity in public open spaces. The Whitesands falls into this category and has already been the subject of a successful interpretation project by a community group, the Nith Society, whereby the variety and value of the river bank habitats is presented on public interpretation boards at various locations at the Whitesands. In appendix 2 of the LBAP there is a list of Local Priority Habitats one of which is Urban Watercourses and Wetlands; the Nith at the Whitesands is a classic example of an urban watercourse on the seventh longest river in Scotland.

- **Promote and support a strategic approach towards the control of invasive species.**

This is the second objective set out in section 4 of the Catchment Plan. As previously mentioned (see section 1.1 - the Damage and Loss of Habitat section above) the removal of the gravel banks is not a strategic approach. A strategic approach is being put together by The Dumfries and Galloway Catchment Management Initiative as detailed below. The Catchment Management Initiative began as a pilot project in 2000 with the aim of delivering the objectives contained within the wetland section of the LBAP. At that time the concept of catchment management planning was fairly new but is now widespread and has been adopted as a central theme of the Water Framework Directive. Throughout the project the aim has been to involve the stakeholders of river catchments in identifying issues and developing actions that will lead to environmental improvements at a catchment scale. To date the Initiative has published three catchment management plans and is now focused on delivering projects that address the actions identified in the plans. The Initiative is jointly sponsored by SEPA and SNH.

The Dumfries & Galloway Catchment Management Initiative is putting together a project that aims to reduce the extent of non-native invasive species (NNIS) in Dumfries & Galloway (D&G) through targeted

management and control over a 5 year period. Working at a catchment scale with coverage across the whole of D & G the project will target Japanese knotweed, Himalayan knotweed, giant hogweed and Himalayan balsam. The project will also trap American mink and record and monitor water vole populations on the Annan and Nith catchments.

Practical control of NNIS will be undertaken using chemical and mechanical means. A top down approach will be taken on each catchment within D&G and control will be undertaken by the Annan District Salmon Fishery Board, the Nith District Salmon Fishery Board and Galloway Fisheries Trust, with some additional input from the Criminal Justice Community Service programme.

Based on the experience of other NNIS projects on the Tweed and Fleet catchments this project does not set out with the aim of achieving complete eradication. However, at the end of the 5 year period the extent and density of NNIS will be reduced to such an extent that fisheries bodies and riparian landowners will be able to manage and control infested areas and new outbreaks using their current resources.

- **Encourage and Support the development of towns, villages and industries that build on the natural resources and heritage of the catchment to improve economic, social and environmental sustainability**

This is the first objective set out in section 7 of the Catchment Plan. The removal of the gravel banks is not building on the natural resource and as the appellant has indicated that further removal would be required in the future it is not environmentally sustainable. Within this chapter in relation to litter (page 54) it states "Education and vigilance are two possible solutions to this problem, but will require the involvement of many to resolve the issue." SEPA has and is willing to discuss with the appellant other means of tackling the litter problem.

The appellant published its five year Regional Economic strategy in 2008 (**Document 9**). The strategy was the outcome of work by the Local Economic Forum that included research and consultation with stakeholders across the region. The strategy reflects a broad consensus of the issues faced by the regions economy and contains agreed actions to address as well as deliver significant change to the region's economy in the years to come. Theme 3 of the strategy is about 'Quality of Life' and states at page 1 "*The main aim is to promote the region as a desirable place to live, invest, study and visit*". There are five supporting objectives namely affordable housing, strengthening the 'natural place' assets, promoting the 'natural place', quality of life indicators, and opportunities for the whole region. Within the objective strengthening the 'natural place' assets, it states "*The natural environment is one of the region's key strengths. Environmental improvement, 'green-ness', avoidance of pollution, waste management and promotion of sustainable economic growth are critical*". In a second

objective, promoting the 'natural' place, it states *"There are clear links between the quality of life theme and the region's branding strategy. As part of the economic strategy, the 'natural place' brand will find a central role in promoting the area to the three principal audiences: in migrants, tourists and investors"*.

The Dumfries and Galloway Community Plan 2009-12 (**Document 10**) and Dumfries and Galloway Single Outcome Agreement for 2009-11 (**Document 11**) has the sub heading 'together is better'. In the single outcome agreement Section 6.5 at page 42 'An environment that is protected and enhanced', identifies National Outcome 12 namely, 'We value and enjoy our built and natural environment and protect it and enhance it for future generations'. As a partner organisation in this plan, together with SNH and the appellant, SEPA does not believe that cognisance has been taken of the shared vision of the community for the Whitesands and nor has a creative sustainable solution by working together in the spirit of community planning been identified. In contrast, a unilateral decision was taken by the appellant, ignoring SEPA and SNH advice, to seek to remove the banks rather than adhere to the agreement reached in 2008 to control litter and maintain bankside vegetation.

- **Promote the sustainable development of tourism and recreational activities within the Nith catchment to accommodate a variety of interests. (Chapter 7)**

This is the second objective set down in section 7 of the Catchment Plan. As stated previously this area of the Whitesands with its gravel banks attracts numerous visitors to the town and RSPB have suggested that the appellant take this opportunity to promote the wildlife and natural features of the River Nith in Dumfries town centre, thereby encouraging more people to visit and enjoy the wildlife spectacle. (see section 4.4.3 above)

Less than two years ago, the Nith society supported by SEPA, the appellant and SNH, erected interpretation boards around the Whitesands as a community project celebrating the areas rich biodiversity. These boards are enjoyed by locals and tourists and show the range of wildlife colonising the gravel banks and river at the Whitesands.

On the 28 March 2009 the Greater Nith Estuary Nature Based Tourism Cluster Development Plan (the Plan) (**Document 12**) was produced by the Southern Uplands Partnership under a project funded by SNH. The Southern Uplands Partnership operates in Dumfries and Galloway and the Scottish Borders. The Partnership is supported by various organisations including the appellant who is described as a major contributor. The Greater Nith Estuary Nature Based Tourism Cluster Development Plan includes the town of Dumfries. In the introduction at

page 4 the Plan states: *“With encouragement from Scottish Natural Heritage (SNH), Southern Uplands Partnership (SUP) identified the potential to focus on the Nith Estuary as a pilot project to demonstrate how the viability of individual businesses and environmental attractions could be increased through collaborative or cluster development based upon the intrinsic appeal of the local wildlife, landscapes and historical sites. The first phase has involved production of a development plan, funded by SNH, to establish how this could be achieved. The second phase will involve the local community, businesses, attractions and other key partners in further developing and implementing this plan”*. In section 2.7 (2.7.1) at page 9 of the Plan existing marketing is explored based on data from Visit Scotland. Four groups of people are identified from the data relevant to nature based tourism namely, affluent southern explorers, young domestic explorers, mature devotees and affluent active devotees. The potential interests of each of these four groups in terms of visiting the area are listed and under each of the groups, wildlife is included whereas with regards to two of the groups, nature is also included as an interest.

Section 5.8 of page 21 of the Plan includes ideas to explore further with local attractions, residents and businesses. Eleven points are highlighted in the report of which the following five relate directly to the value of wildlife, nature and landscape:

1. Identify ways of reinforcing the scenic and wildlife appeal of the area into every aspect of visitors' experience.
2. Explore potential for landscape/earth science holidays.
3. Explore potential for painting holidays tutored by local artists based at local nature reserves or more generally in the area.
4. Explore potential for wildlife photography courses tutored by expert local wildlife photographers, packaged with local accommodation, locally sourced food and visits to nature reserves.
5. Explore potential for guided bird and wildlife watching visits/tours.

The foregoing key strategies/plans all support good environmental management for economic, environmental and tourism reasons as well as sustainability and the appellants own slogan for Dumfries and Galloway, *‘the natural place to live, work and do business’*. SEPA believes that the proposal to remove the natural river bank is contrary to the appellant's own plans/strategies or to those to which it is a key contributor. Moreover, the removal of the river bank is contrary to CAR and unsustainable as recognised not only by SEPA but also the appellant. Contrastingly, by leaving the river banks intact and undertaking litter picking, vegetation management, educational interpretation the bank would continue to contribute to the objectives of the above mentioned plans and strategies in relation to the Whitesands, a key area of Dumfries which is the major community in the region. A particular strength with regards to economic, social and environmental sustainability is the potential the banks could play in relation to environmental tourism strategies. The management

agreement established in 2008 by SEPA, the appellant and SNH was more sustainable than the proposal to remove gravel banks and destroy natural habitats. This management agreement was reached at a meeting between managers acting on behalf of the appellant, SEPA and SNH as a way forward for managing the river bank without seeking its removal. Moreover, the application of the management plan during the summer of 2009 has demonstrated that litter can be readily removed from the bank thereby vastly improving this problem whilst the cutting of the vegetation has also enhanced the aesthetics of the bank. The only part of the management agreement not completed thus far is to make the bank more accessible to the public in order that it can be used as an amenity area similar to the Greensands on the opposite bank of the river. Accompanying this latter point, any 'dangerous' indentations or holes that exist in the bank would be levelled off by the council to ensure public safety. The RSPB and Nith Society have highlighted the value of the banks from the point of view of birds and other wildlife. SNH have also stressed their importance in this regard with particular reference to otters. The RSPB also state that the Whitesands is possibly the best place in the UK to watch goosanders close up. They go on to say that *"this species is quite rare in Northern Ireland and several groups of visiting bird watchers come to Dumfries just to watch them, as do groups from elsewhere in the UK"*. These comments together with the above proposed nature based tourism strategy emphasise the value of the bank as an integral part of the natural environment and associated wildlife of the River Nith at the Whitesands. The LBAP complements these points in terms of its listings with regards to priority local habitats and species.

For all of the above reasons SEPA believes that it is not in the public interest to remove the banks. This view is reinforced by the survey undertaken in 2009 by the Nith Society whereby they interviewed members of the public at random to establish public opinion of issues of concern with the Nith at the Whitesands. Whereas matters such as litter and vegetation, for example featured high amongst the public, less than 10% thought that the removal of the banks was appropriate. **(Document 13)**

5 List of Documents

1. SEPA Regulatory Method (WAT-RM-02); Engineering Activities
2. SEPA Supporting Guidance (WAT-SG-21); Environmental Standards for River Morphology
3. SEPA Position statement to support the implementation of CAR – sediment management dated 24 August 2006
4. The River Nith Catchment Management Plan
5. Draft River Basin Management Plan for the Solway Tweed River Basin District
6. River Nith Catchment Invasives
7. Letter from RSPB dated 23 July 2009
8. Dumfries and Galloway Local Biodiversity Action Plan 2009

9. Dumfries and Galloway Regional Economic Strategy;
10. Dumfries and Galloway Community Plan 2009-2012
11. Dumfries and Galloway Single Outcome Agreement 2009- 11
12. Greater Nith Estuary Nature Based Tourism Cluster Development Plan, March 2009
13. Results of Nith society Survey

From: Redpath C (Carol-Anne)
Sent: 09 September 2010 17:49
To: 'elaine.murray.msp@scottish.parliament.uk'
Subject: Environmental Appeal - River Nith, Dumfries - copy of decision letters from DPEA

Follow Up Flag: Follow up
Flag Status: Flagged

Good Afternoon

Please find attached a copy of an environmental appeal decision relating to the River Nith which the Directorate for Planning and Environmental Appeals (DPEA) issued on 6 September.

DPEA has now taken over responsibility for environmental appeals and I understand that you wished to be informed of the final outcome of this case.

I trust you will find this helpful.



River Nith,
Dumfries - Reg ...

Regards

Carol-Anne

Carol-Anne Redpath
Section Manager - Development Plans & Case Work South
The Scottish Government
Directorate for Planning and Environmental Appeals
4 The Courtyard
Callendar Business Park
Falkirk
FK1 1XR

Tel: [REDACTED]

Fax [REDACTED]

E-mail: [REDACTED]

www.scotland.gov.uk/Topics/Built-Environment/planning/decisions-appeals/Appeals/dpea

Appeal Decision Notice

T: 01324 696 400
F: 01324 696 444
E: dpea@scotland.gsi.gov.uk



Decision by James McCulloch, a Reporter appointed by the Scottish Ministers

- The Water Environment (Controlled Activities) (Scotland) Regulations 2005 (the Regulations)
- Appeal reference: CAR/L/1033622
- Site address: River Nith, Dumfries
- Appeal by Dumfries and Galloway Council under Regulation 46(a) against the refusal by the Scottish Environment Protection Agency (SEPA) of a complex water use licence for an engineering operation, the management of sediment

Date of appeal decision: 6 September 2010

Decision

1. I dismiss the appeal and refuse to direct SEPA to licence a controlled activity within the River Nith.

Reasoning

2. Regulation 15(1)(c) and Parts 1 and 2 of Schedule 4 apply the Water Framework Directive (Council Directive 2000/60/EC) and the Water Environment and Water Services (Scotland) Act 2003. Taken together these require protection of the water environment, including enhancement and the prevention of any further deterioration of the status of water bodies and aquatic ecosystems. Regulation 15(1)(b) requires an assessment of the steps that may be taken to ensure efficient and sustainable water use. In addition, EC Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Flora and Fauna (the Habitats Directive) and the Conservation (Natural Habitats &c) Regulations 1994 apply. Regulation 48 requires that where an authority concludes that a project unconnected with the nature conservation management of a Natura 2000 site is likely to have a significant effect on that site the competent authority must consider the implications for the conservation interests for which the area has been designated. That need for appropriate assessment extends to a project outwith the Special Area of Conservation (SAC) in order to determine the implications for the interest that is protected within it. The main issue in this appeal thus concerns the appropriate management of the risk to the water and natural environment from the proposed operation.



3. The Council refer to public perception and disquiet having reached the point where the (then) Minister for the Environment formally requested, as constituency MSP, that the Council take action to remove unsightly vegetation and the gravel banks on which that vegetation had established within the centre of Dumfries. The area is a prominent tourist attraction. Weed growth on these banks traps litter and debris including bottles, food wrappers and waste and also discarded syringes and needles, posing a risk to health and safety. The council's preferred means of achieving the environmental improvement that they seek is controversial. Elected representatives and some members of the community favour the proposal with the latter – supported by video and photographic evidence - referring to the absence of these gravel banks as recently as 1967, to the potential to reduce the loading on the structure of the Old Bridge and to alleviate the devastating flooding and consequent disruption that is endured by residents and businesses in the town centre. Other residents are opposed to the proposal.

4. The River Nith is subject to several important environmental designations. Almost half the freshwater and migratory fish species present in Scotland are recorded in the Nith catchment. Of these 4 are listed in Annex II of the Habitats Directive, with British populations thus internationally important – sea lamprey (*Petromyzon marinus*); river lamprey (*Lampetra fluviatilis*); brook lamprey (*Lampetra planeri*); and Atlantic salmon (*Salmo salar*). Salmon is also a priority species in the UK Biodiversity Action Plan; the Nith is the seventh most productive salmon river in Scotland. The site is 5km upstream of the Solway Firth SAC designated for its coastal, estuarine and marine habitats, associated plant communities and river and sea lamprey. It is known also that otter frequent the area of the proposed works and otter are a European Protected Species.

5. The removal of 1000 m³ of gravel along 195 m of the bank and bed of the river with a tracked excavator amounts to a substantial engineering operation, passing under 2 Listed bridges, one of which is also a Scheduled Monument. Besides removing surface vegetation, which includes a dozen mature and semi-mature bankside trees, that operation would remove any habitats contained in the gravel displacing plants, aquatic invertebrates and other animals as well as leading, temporarily, to the release to the water course of finer sediments. In respect of that last consideration, based on the advice of the Nith District Salmon Fishery Board and SNH, there is the possibility that the adverse effects of sediment release on migratory salmon may be accommodated provided the works are undertaken before numbers of fish are in transit upstream. This could be achieved by a restriction on the timing of the works and careful control on, and monitoring of, working methods.

6. The potential effect on habitats may be more significant. Juvenile lamprey are known to live in silty sediment throughout their development of 5 years or more. Given their conservation status and the possible functional relationship with the SAC, SNH advised that a survey was necessary to establish their use of this part of the river. This would inform the need for, and nature of any mitigation that would ensure that the SACs conservation objectives for the species are maintained so as to avoid any adverse effect on its integrity.

7. The council observe that natural processes are inhibited in this location, but that the works proposed would mimic the result of such processes and return the freshwater habitat to its optimum state to support salmon in line with the aims of the Scottish LIFE Salmon

Project. However, that observation is of no assistance in reaching an assessment of the likely effects because that study is stated to be directed at conserving threatened habitats and there is no suggestion that this habitat is otherwise under threat. I accept the council's reasoning that only a very small proportion of the Nith's 112 km overall length would be affected and that there is no proposal for works downstream where an important contribution to habitats and biodiversity is also made. I find no evidence to justify their related suggestion that the present proposal would lead to the enhancement of habitats. As the gravel banks are the result of natural processes the works could not, as the council claim, remove man-made obstacles to migration.

8. When considered against Regulation 48 of the Habitats Regulations I find that the sediment management that is proposed is neither directly concerned with nor necessary for site management for conservation connected with the interests of the SAC. Additionally, as pointed out by SNH, there is no survey information presently available concerning this important consideration that could inform the decision-making process including any necessary appropriate assessment of the likely environmental effects. Thus, the information needed to establish the likelihood, or otherwise, of any adverse effect on the integrity of the SAC is unavailable. The same is true also of otter where information concerning the likely effects is necessary to allow consideration of those effects together with the need for mitigation, if appropriate. In this context the partnership document on which the council found, the River Nith Catchment Management Plan, does not assist.

9. The council's application to SEPA does not refer to their assessment of these important considerations. Whilst not initially objecting, SNH made their position clear on the need for survey and, potentially, appropriate assessment when the application was before SEPA; but these considerations do not feature in specific terms in their decision to refuse the licence. Had this proposal been acceptable on other grounds, a conditional authorization requiring survey followed, if necessary, by appropriate assessment would not have been lawful because these steps must have been taken, and the evidence assessed, before reaching a decision to grant approval.

10. I note that the council's officers had reached a management agreement with representatives of SEPA and SNH on a programme of litter removal and monthly strimming. However Councillors decided, despite the cost, to seek approval for this project which they considered to be a better option. Even so, the council's submissions acknowledge that this would not be a permanent solution, recognising that sediment removal now would lead to deposition in future. Those who support the proposal refer to its potential effect in alleviating flooding. I accept that the flood capacity of this part of the river would be increased, but that effect would be likely to be minimal where the channel is some 70 m wide and the gravel bank only a few metres in width. Of greater significance is the fact that the works are located above the Caul where the river overflows meaning that there could be no flood management benefit. The need to repeat the works suggests that their effect, whether in respect of flooding or amenity, would be short-lived. There is consequently the likelihood that litter and debris could again be trapped.

Conclusion

11. I conclude that the scheme devised by officers and agreed with the regulatory agencies would be consistent with the objectives of the River Nith Catchment Management Plan. That scheme also involves the minimum of intervention to remove vegetation and debris and thus its adverse effect on the amenity of the town centre contributing to the objective of promoting tourism. Both of these considerations are at the root of the council's concern. In contrast, the engineering solution that is proposed, involving complete removal of this part of the riverside bank, would be neither efficient nor sustainable and these considerations lead me to conclude that the operation would be an unsustainable intervention in the natural morphology of the river. In addition, and for the reasons given in paragraphs 8 and 9, the information presently available is inadequate to allow an informed judgment to be reached concerning the likely effects of the proposal on habitats and species. That is an important matter because it is not possible to license this controlled activity within the River Nith without first considering the likely effects on the Solway Firth Special Area of Conservation.

This is a true and certified copy as issued to parties on 6 September 2010

JAMES McCULLOCH

Reporter

From: Davidson J (Jackie)
Sent: 17 August 2009 09:54
To: Winter GP (Guy); Vance E (Eleanor); Dodd C (Claire)
Subject: FW: Appeal - The Water Environment (Controlled Activities) (Scotland) Regulations 2005
Attachments: L090814 (Scottish Govt - Appeal).pdf; Statement of Grounds of Appeal.pdf; 09 12 08 ASJ Letter to SEPA.pdf; Application Form A1.pdf; Application Form E1.pdf; Location plan.pdf; MISC_NITH_01 Location Plan.pdf; L090518 (SEPA Refusal of CAR Licence).pdf; L090518 (Mike Russell).pdf; Whitesands flooding problem could be solved within the next few years.pdf
Importance: High

[Please see attached docs.](#)

[Thanks](#)

[Jackie](#)

From: Barker, Bill [mailto:Bill.Barker@dumgal.gsx.gov.uk]
Sent: 14 August 2009 16:04
To: environment.appeals@scotland.gsi.gov.uk
Cc: Water Admin Mailbox
Subject: Appeal - The Water Environment (Controlled Activities) (Scotland) Regulations 2005
Importance: High

Dumfries and Galloway Council wish to appeal under Regulation 46 of The Water Environment (Controlled Activities) (Scotland) Regulations 2005 against the decision by the Scottish Environment Protection Agency to refuse the application CAR/L/1033622 to remove sediment from the River Nith in Dumfries.

In support of this appeal please find the enclosed documentation:

(a) Covering letter:

<<L090814 (Scottish Govt - Appeal).pdf>>

(b) A statement of the grounds of appeal:

<<Statement of Grounds of Appeal.pdf>>

(c) A copy of the relevant application:

<<09 12 08 ASJ Letter to SEPA.pdf>> <<Application Form A1.pdf>> <<Application Form E1.pdf>>
<<Location plan.pdf>> <<MISC_NITH_01 Location Plan.pdf>>

(d) A copy of the decision which is the subject matter of the appeal:

<<L090518 (SEPA Refusal of CAR Licence).pdf>>

Your Ref :

Our Ref : C/B/7 ASJ/PG

9 December 2008

SEPA
5 Redwood Crescent
Peel Park
EAST KILBRIDE
G74 5PP

Architectural and Engineering Design Services

Marchmount House

Marchmount Avenue

DUMFRIES

DG1 1PY

Any enquiries please contact :

Alan Johnstone

Direct Dial : XXXXXXXXXX

Fax : 01387 731107

www.dumgal.gov.uk/designservices

Dear Sirs

**DESIGN SERVICES : RIVER NITH GRAVEL REMOVAL
APPLICATION FOR A COMPLEX LINCENCE**

Please find enclosed two copies of each Forms A and E for the above together with a location plan, copy of the fee calculation, CD containing electronic copies of Forms A and E and photographs. The payment fee of £1,275 will be made by BACS transfer.

Yours faithfully

Peter McKenzie
Engineering Manager

Enc.



The Water Environment (Controlled Activities) (Scotland) Regulations 2005

Licence Application FORM A

To be completed by all licence applicants

The Data Protection Act 1998

"The Scottish Environment Protection Agency is responsible for maintaining and improving the environment and regulating environmental emissions. It has a duty to discharge its functions to protect and enhance the environment and to promote conservation and recreation.

The information provided will be processed by the Scottish Environment Protection Agency to deal with your application, to monitor compliance with the licence/permit/registration conditions, to process renewals, and for maintaining the relevant public register(s).

We may also process and/or disclose it in connection with the following:

- offering/providing you with our literature/services relating to environmental affairs
- consulting with the public, public bodies and other organisations (e.g. Health and Safety Executive, Local Authorities, Emergency Services, Scottish Executive) on environmental issues
- carrying out statistical analysis, research and development on environmental issues
- providing public register information to enquirers
- investigating possible breaches of environmental law and taking any resulting action
- preventing breaches of environmental law
- assessing customer service satisfaction and improving our service.

We may pass it on to our agents/representatives to do these things on our behalf.

You should ensure that any persons named on this form are informed of the contents of this Data Protection Notice

Are you applying for:

New Application	<input type="checkbox"/> NO	<input checked="" type="checkbox"/> YES	
Administrative Variation	<input type="checkbox"/> NO	<input type="checkbox"/> YES	CAR Licence Ref:
Technical Variation	<input type="checkbox"/> NO	<input type="checkbox"/> YES	CAR Licence Ref:
Transfer of Licence	<input type="checkbox"/> NO	<input type="checkbox"/> YES	CAR Licence Ref:
Surrender of Licence	<input type="checkbox"/> NO	<input type="checkbox"/> YES	CAR Licence Ref:

SEPA application forms: General Guidance

You should read the "Guide for Applicants" before completing this licence application form. Form **A** and the guidance below are for all licence applicants. Additional regime specific guidance is listed in the "Guide for Applicants". The regime specific forms available for use are: Form **B** (General Point Source Discharges, excluding Fish Farm discharges and discharges of Sheep Dip to Land), Form **C** (Fish Farm discharges), Form **D** (Abstraction and Impoundment of water), Form **E** (Engineering Works) and Form **F** (discharges of Sheep Dip to Land).

Making changes to a licence

The application forms relevant to your site can also be used to **vary or transfer** a licence for CAR activities. If you already hold a licence you can use this form to apply for changes to the contents of the licence. Please tick the appropriate variation or transfer for which you are applying on the front cover of this form A, and complete the relevant sections of this application form for the elements which you are applying to vary. Please remember to put N/A in those sections that are not to be included in the variation or transfer application.

An administrative variation is one where the change to the licence is administrative only and does not have any environmental implications. This would include a change of address details for example.

A technical variation is one where the applicant is applying to change the conditions of a licence in a way that will increase the risk to the water environment. This could include an application to increase the volumes of water abstracted, alter the extent of an impoundment, change to content of a discharge or amend engineering methods.

If the variation is to reduce the effect of the activity on the environment this should be discussed with the local SEPA Office to confirm the charge that would be applicable.

A licence transfer is an application to transfer the licence (in whole or in part) from the current responsible person to a different responsible person.

Who signs the application?

If you are making an application on your own behalf and you are the Responsible Person, then you should sign the application form. If the application is being made on behalf of a company, partnership or other organisation which will be the "Responsible Person", then the person who signs the declaration at the end of the form should have the authority to sign the application on behalf of that organisation.

NB. If the application is for Transfer of Licence, then the current Responsible Person and proposed transferee must both sign the form as it is a joint application.

For more guidance on 'Responsible Person' please see the "Guide for Applicants".

Where to send your application

See details on page 8 of this form.

What happens when we get your application?

We will check through the application to make sure that it is complete and that SEPA has all the information it requires.

We may contact you for further information and depending on the type of application this may be via telephone, letter or in some cases a formal notice.

SEPA's full service charter may be viewed from the SEPA web site www.SEPA.org.uk

In cases where further relevant information has to be gathered before a decision can be made on an application, there may be an additional charge, to cover the cost of SEPA acquiring the data but this will always be subject to prior agreement. **Poor quality information may result in your application being delayed.**

Processing your Application

SEPA aims to determine all applications within the statutory period of 4 months. This may be extended in particularly complex cases or where the application is deficient in information but this will only be done in consultation with you.

Disclosure of the information you give us in your application

There may be other interested parties who have to be consulted about your application. SEPA will require significant activities to be advertised in the press for which the applicant must pay. (See further guide on consultation and advertising).

Please read the data protection notice on the front sheet of this form which explains how we will use information given to us.

SECTION 1: ABOUT THE RESPONSIBLE PERSON AND OTHER CONTACTS**1.1 RESPONSIBLE PERSON**

1.1.1 Please provide the following details about the responsible person (i.e. the person responsible for securing compliance with the conditions of a licence. See applicant guidance for more information):

Name:	Dumfries and Galloway Council		Date of Birth:	
	(NB for partnerships please list all partners on a separate sheet and the names of any other persons authorised to sign on behalf of the partnership; for companies, please give registered name and any trading names)		If a company, please give registered company number.	
Status: (Select one of the options from either a) or b) and provide the additional details where relevant)	a) Individual:	<input type="checkbox"/> Land-owner/occupier <input type="checkbox"/> Nominated individual on behalf of a voluntary association <input type="checkbox"/> Sole Trader <input type="checkbox"/> Other, please specify:		
		If applicable insert name of voluntary association:		
	b) Corporate body:	<input type="checkbox"/> Limited Company (Ltd or plc) <input type="checkbox"/> Scottish Partnership <input type="checkbox"/> Other Partnership <input type="checkbox"/> Company limited by guarantee <input checked="" type="checkbox"/> Other Corporate Body (e.g. 'NHS Trust', 'Local Authority') Local Authority <input type="checkbox"/> Nominated corporate body on behalf of a voluntary association <input type="checkbox"/> Other, please specify (e.g. 'the Crown'):		
		If applicable insert name of voluntary association:		
Address: If a company, please give address of registered office.	Design Services Combined Services Dumfries and Galloway Council Marchmount House, Marchmount Avenue, Dumfries			
Postcode:	DG1 1PY	E-mail:	[REDACTED] dumgal.gov.uk	
Tel No:	01387 731060	Fax No:	[REDACTED]	
1.1.2 Is there anything you wish to disclose which might inhibit you from undertaking your duty to ensure compliance with the conditions of any authorisation?	<input checked="" type="checkbox"/> NO (<input type="checkbox"/> YES, please give full information on separate sheet)			
	Document name/Reference			
1.1.3 Is this also the applicant contact, billing address, correspondence address and address for service of notices? If yes to all go to section 2. If no to any, complete relevant parts of question 1.2 and 1.3.	Applicant Contact: <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES Billing address: <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES Correspondence address: <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES Address for service of notices: <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES			
1.2 FURTHER CONTACT ADDRESSES:				
Where the applicant contact, billing address, correspondence address or address for service of notices are different from those given in question 1.1 please complete the relevant sections below.				
1.2.1 APPLICANT CONTACT:				
Please nominate someone who we can contact directly with any questions about your application				
Contact Name:				
Address:				
Postcode:		E-Mail:		
Tel No:		Fax No:		

1.2.2 BILLING ADDRESS:			
If a licence is issued you may be required to pay an annual subsistence charge. Please provide details of the address you wish invoices to be sent to and details of someone we may contact about fees and charges. Please see the SEPA charging scheme for more details.			
Contact Name:			
Address:			
Postcode:		E-Mail:	
Tel No:		Fax No:	
1.2.3 CORRESPONDENCE ADDRESS:			
Enter details here if you wish to provide an alternative correspondence address to that given in 1.1.			
Contact Name:			
Address:			
Postcode:		E-Mail:	
Tel No:		Fax No:	
1.2.4 ADDRESS FOR SERVICE OF NOTICES:			
You may specify an alternative UK address to those given in 1.1 or 1.2 as the address at which you or someone on your behalf will accept notices from SEPA under:			
<ul style="list-style-type: none"> • <input type="checkbox"/> regulation 13(2) (notice requiring advertisement of application) • <input type="checkbox"/> regulation 15(3) (notification of grant of licence, or refusal) • <input type="checkbox"/> regulation 20(2) (notice of variation of authorisation) • <input type="checkbox"/> regulation 25(1) (notice of determination of surrender application) • <input type="checkbox"/> regulation 26(1) (notice of suspension or revocation of authorisation) and/or • <input type="checkbox"/> regulation 28(2) (enforcement notice). 			
Please tick the boxes of all types of notice which you wish to be served at this address.			
Contact Name:			
Address:			
Postcode:		Contact No:	

**SECTION 2: ABOUT THE SITE OR SCHEME OF ASSOCIATED ACTIVITIES
(i.e. where all associated activities take place)**
2.1 SITE DETAILS

Please enter the address of the site where the associated activities to be licensed are located.

Site Name (to be used as a reference to your site)	River Nith in Dumfries
Company House SIC Code (if applicable)	
If a farm IACS Farm Code	
Address	
Post code	
Tel No	
Fax No	
e-mail	

2.2 ACTIVITIES CARRIED OUT AT THE SITE

Please state the number of each activity you are applying for - this will help you identify the correct form to complete.

		Number of each activity in box please
Discharge to waters or land excluding fish farm effluent (inc. new outfall design) and disposal of sheep dip or other agrochemicals to land	FORM B	
Discharge of fish farm effluent (inc. new outfall design)	FORM C	
Abstraction of water (inc. new intake design)	FORM D	
Impoundment of Water	FORM D	
Engineering (excluding new outfalls/intakes)	FORM E	1
Agrochemical/sheep dip disposal to land	FORM F	

2.3 SITE LOCATION NATIONAL GRID REFERENCE

Please enter the Ordnance Survey national grid reference (10 characters e.g. NS 1234 5678). If the location extends beyond a single point please give the grid reference of the front gate or entrance.

N	X	-	9	6	8	8	-	7	6	1	2
----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------

2.4 SITE PLAN

PLEASE INCLUDE A PLAN SHOWING THE LOCATION OF THE SITE AND ALL ACTIVITIES APPLIED FOR.

The plan should preferably be a licensed extract from OS map, or properly drawn scheme, clearly labelled and legible.

2.5 CURRENT SEPA ENVIRONMENTAL LICENCES ASSOCIATED WITH THE SITE

(Include CAR authorisations) If applicable please detail any existing consents, permits or licences issued by SEPA or its predecessor bodies in relation to this site (e.g. COPA consent, PPC permit, Waste Management Licence, Groundwater Authorisation etc). Continue on separate sheet if necessary.

Reference Number:	
Reference Number:	
Reference Number:	
Document name/reference:	

2.6 PLANNING DOCUMENTS RELEVANT TO SITE/SCHEME OF ACTIVITIES

2.6.1 Planning Permission for Site activities or associated scheme of activities	N/A
2.6.2 Building Warrant Reference Number for Site activities or associated scheme of activities	N/A

SECTION 3: NATIONAL SECURITY AND COMMERCIAL CONFIDENTIALITY**3.1 COMMERCIAL CONFIDENTIALITY**

Is there any information that you wish to justify being kept from the public register on the grounds of commercial confidentiality?

NO YES If yes please give full information and identify relevant documents/parts of documents NB. There is an additional application fee for a commercial confidentiality request. Please refer to Clause 12 of the 'Charging Scheme' for the correct fee.

Reference number for the documents:

3.2 NATIONAL SECURITY

If there is any information in the application that you believe should be kept from the public register on the grounds of national security please:

- Provide full information on separate sheets.
- Provide a copy of the application form to the Scottish Ministers for a Direction (as appropriate) on the issue of national security.

DO NOT WRITE ANYTHING ABOUT NATIONAL SECURITY ON THIS FORM, NOR GIVE REFERENCE NUMBERS TO THE RELEVANT INFORMATION/DOCUMENTS SUBMITTED. SEE APPLICANT GUIDANCE FOR FURTHER INFORMATION.

SECTION 4: SIGNATURES AND DECLARATION

4.1 The Responsible Person identified on this form must sign below, please use a separate sheet if you need to.

It is an offence under Regulation 40 of the Water Environment (Controlled Activities) (Scotland) Regulations 2005 to:

- Make a statement which you know to be false or misleading in a material particular,
- Recklessly make a statement which is false or misleading in a material particular, for the purposes of obtaining an authorisation (for yourself or anyone else).

If you make a false statement:

- We may prepare a report to the Procurator Fiscal who may prosecute you, and
- If you are convicted, you are liable to a fine or imprisonment, or both.

Declaration (*delete as appropriate):

* I/We certify that the information in this application is correct.
 * I/We apply for an authorisation in respect of the particulars described in this application (including any supporting documentation that *I/we have supplied)
 * I/We specify the address given at 1.2.4 above as the address at which *I/we will accept service of notices of the types selected there.

Signature(s) of responsible person

Please note that the responsible person must sign the declaration themselves, even if an agent is acting on their behalf as applicant contact. For applications from a company or other corporate body the individual(s) signing should be duly authorised to sign on behalf of the company or corporate body. Applications from a Scottish partnership must be signed by a partner of that partnership or a person authorised by the partnership to sign on its behalf.

	Signature:		Name:	
	Position:		Date:	
For Transfer Application only	Signature of Transferee:		Name:	
	Position:		Date:	

SECTION 5: FEES AND CHARGES

The application is not valid unless the application fee is correct. See "Charging Scheme" guidance for further details (www.sepa.org.uk).

Any licence issued may also have an annual subsistence charge and you will be invoiced for this accordingly.

5.1 Please use the fee calculator (excel spreadsheet) available on our website to calculate the correct fee for all licence activities applied for (available at www.sepa.org.uk/) and PRINT OFF AND ATTACH YOUR FEE CALCULATION TO YOUR APPLICATION.

5.2 If you are unable to use the fee calculator please use the table below to summarise the fees applicable for the regimes listed

Please calculate your application fee for each of the regimes below, and any Registration level activities you may be applying for. Then give the total fee enclosed for the whole licence application.

Activity summary	Fee for activity
All Point Source Discharges	£
All Abstractions	£
All Impoundments	£
All Engineering	£ 1,275
Appended Registration* level activities	£
Total Activity application fee	£ 1,275 (sub total)
Request for Commercial Confidentiality (if applicable)	£
Total application fee of	£ 1,275 is enclosed.

*If you are enclosing Registration forms for certain activities as part of your licence, please state the total fee for all Registrations appended.

5.3 PAYMENT

Payment can be made by the following methods

BACS: Sort Code:83-34-00 Account Number: 00137187

Cheques: Made payable to 'SEPA'

Credit/Debit Card: Payment is accepted by all major credit/debit cards. **(Payment by credit cards will attract a 2% surcharge)**

Card Payment:	Visa <input type="checkbox"/> MasterCard <input type="checkbox"/> Switch <input type="checkbox"/> Other <input type="checkbox"/>
Card details:	Please telephone SEPA to pay by Credit /Debit card
Expiry Date:	<input type="text"/> <input type="text"/> Issue No.: <input type="text"/>
Name on Card:	<input type="text"/>
Signature of Cardholder	<input type="text"/>

SECTION 6: APPLICATION CHECKLIST

Once you **have completed all parts of your application, including the relevant regime specific form(s)**, please use this checklist to indicate the items you have completed and are sending us as part of this application:

- | | |
|-------------------------------------|--|
| <input checked="" type="checkbox"/> | 1 PAPER COPY OF WHOLE APPLICATION |
| <input checked="" type="checkbox"/> | SITE MAP CLEARLY REFERENCED (LICENCE A PPLICANTS) |
| <input checked="" type="checkbox"/> | 1 ELECTRONIC COPY OF APPLICATION IF A COMPLEX LICENCE –(SEPA MAY REQUIRE AN ELECTRONIC COPY FOR CERTAIN SIMPLE LICENCES) |
| <input type="checkbox"/> | OTHER MAPS AND PLANS AS NECESSARY |
| <input type="checkbox"/> | ALL REGIME SPECIFIC FORMS AS NECESSARY |
| <input checked="" type="checkbox"/> | PAYMENT |
| <input checked="" type="checkbox"/> | SIGNATURES AND DECLARATION |
| <input type="checkbox"/> | ASSOCIATED DOCUMENTS FOR ANSWERS TO QUESTIONS |
| <input type="checkbox"/> | CONTINUATION SHEETS FOR ANSWERS TO QUESTIONS |
| <input checked="" type="checkbox"/> | CHARGE CALCULATOR PRINT OUT/ BREAKDOWN OF ACTIVITY CHARGES |

Please now return 2 signed paper copies of this form and a CD electronic copy for all complex licences (and all supporting information and correct payment), to the relevant SEPA Office (see details below).

For electronic submissions, forward an electronic copy to: wfdadmin@sepa.org.uk (N.B you must also submit a signed paper copy of your completed application).

Please send to the Registry Department at the appropriate Area Office

Send your application to "the Registry Department" at the appropriate SEPA office. The addresses are listed below. If you are not sure which is your local office, please phone us on one of the numbers below.

Aberdeen Office
 Greyhope House
 Greyhope Road
 Aberdeen
 AB11 9RD
 Tel: 01224 248338
 Fax: 01224 248591

Dingwall Office
 Fodderty Way
 Dingwall Business Park
 Dingwall
 IV15 9XB
 Tel: 01349 862021
 Fax: 01349 863987

Edinburgh Office
 Clearwater House
 Heriot Watt Research Park
 Avenue North
 Riccarton
 Edinburgh
 EH14 4AP
 Tel: 0131 4497296
 Fax: 0131 4497277

East Kilbride Office
 5 Redwood Crescent
 Peel Park
 East Kilbride
 G74 5PP
 Tel: 01355 574200
 Fax: 01355 57468

Perth Office
 Strathearn House
 Broxden Business Park
 Lamberkine Drive
 Perth
 PH1 1RX
 Tel: 01738 627989
 Fax: 01738 630997

SEPA USE	Date Rcvd.	Fee Received <input type="checkbox"/> NO <input type="checkbox"/> YES	Amount	Name Assigned to Activity	Application Reference



The Water Environment (Controlled Activities) (Scotland) Regulations 2005

Licence Application Form E

To be completed for Engineering Activities

The Data Protection Act 1998

The Scottish Environment Protection Agency is responsible for maintaining and improving the environment and regulating environmental emissions. It has a duty to discharge its functions to protect and enhance the environment and to promote conservation and recreation.

The information provided will be processed by the Scottish Environment Protection Agency to deal with your application, to monitor compliance with the licence/permit/registration conditions, to process renewals, and for maintaining the relevant public register(s).

We may also process and/or disclose it in connection with the following:

- offering/providing you with our literature/services relating to environmental affairs
- consulting with the public, public bodies and other organisations (e.g. Health and Safety Executive, Local Authorities, Emergency Services, Scottish Executive) on environmental issues
- carrying out statistical analysis, research and development on environmental issues
- providing public register information to enquirers
- investigating possible breaches of environmental law and taking any resulting action
- preventing breaches of environmental law
- assessing customer service satisfaction and improving our service.

We may pass it on to our agents/representatives to do these things on our behalf.

You should ensure that any persons named on this form are informed of the contents of this Data Protection Notice

1: ASSOCIATED or DEPENDENT ENGINEERING ACTIVITIES
 (Please complete for all applications)

List all engineering activities which are being applied for under this application. Enter the number of each activity at each level of authorisation. Associated activities applied for under a single authorisation will be subject to reduced charges. Activities upon which another controlled activity depends (e.g. bed reinforcement associated with a bridge) are classed as dependent engineering activities and will not be subject to charges. All dependent and associated activities should be included below.

Activity Category	Activity Type	Registration	Simple Licence	Complex Licence
RIVER and LOCH CROSSINGS See Sheet E1	Bridges			
	Bridging culverts			
	Causeways			
	Fords			
	Pipeline/cable crossings			
	Removal of crossings			
IN-STREAM or LOCH STRUCTURES See Sheet E2	Jetties, platforms, marinas			
	Boat slips			
	Boulder placements			
	Croys, groynes, flow deflectors			
	Bed reinforcement			
	Removal of structures			
CHANNEL MODIFICATIONS See Sheet E3	Straightening and/or re-sectioning			
	Realignment			
	Culverting for land gain			
	Removal of land gain culvert			
	Flood by-pass channel			
SEDIMENT MANAGEMENT See Sheet E4	Sediment removal (<50% channel width affected)			1
	Dredging (>50% channel width affected)			
	Sediment introduction			
	Sediment manipulation			
BANK MODIFICATIONS See Sheet E5	Green bank protection (soft)			
	Grey bank protection (hard)			
	Bank re-profiling			
	Set-back reinforcement			
	Embankments			
	Set-back embankments			
	Floodwalls			
	Removal of bank modifications			
OTHER ENGINEERING ACTIVITIES See Sheet E6	Please see guidance for definition of other activities			

2: ENGINEERING ACTIVITIES – DETAILS

The following information is required for ALL activities listed in Section 1. If there is more than one engineering activity being applied for under this application, and the information in the relevant sections below varies between each activity, then the relevant sections must be copied and completed separately for each activity.

2.1 Best Practice

This table provides evidence that you have considered Best Practice for the proposed activity. Guidance on Best Practice for a range of activities is available from your local SEPA office.

<p>2.1.1 Justification for Activity.</p> <p>Please indicate the reason the proposed activity is being undertaken. Also indicate where relevant the underlying nature or cause of the problem being addressed.</p>	<p>The River Nith, particularly between Buccleuch Street Bridge and St Michael's Street Bridge is a very prominent tourist attraction. The area is adjacent to main bus stops, car parks and is much photographed. There has been a view expressed to the Council that the gravel banks that have built up in and around Devorgilla Bridge provide a platform for weed growth which traps litter and debris and that these areas are very unsightly and should be removed. These views are strongly held by some members of the community and have been the subject of a number of newspaper articles and complaints to the Council over the years.</p> <p>Whilst efforts are made to remove the litter and debris, this is hampered by the unknown nature of the gravel bank, the growth of weeds and the fact that it is known that discarded syringes and hypodermic needles are present within the weed growth and all of these are factors of concern relative to health and safety of operatives especially near the watercourse.</p> <p>Dumfries and Galloway Council, recognising all of the above has agreed to request removal of the vegetation and gravel banks over approximately 195 metres of the north east bank of the River Nith from the Caul to a point approximately 13 metres north of Buccleuch Street Bridge in order to improve the amenity value of the area for the benefit not only of the people of Dumfries but also tourists visiting the town.</p>
<p>Please continue on separate sheet if required.</p>	<p>Document name/reference:</p>

<p>2.1.2 Alternative Approaches.</p> <p>Please detail all the alternative approaches that have been considered to address the need identified in Section 2.1.1 above.</p>	<p>The area has been strimmed once a year in the winter in order to help control the weed and sapling growth and to aid litter removal. As a result of recent discussions between the Council, SEPA and SNH it has been agreed that a strimming of the area could be undertaken on a monthly basis to further control the weed and sapling growth and improve the appearance of the area.</p>	
<p>Please continue on separate sheet if required.</p>	<p>Document name/reference:</p>	
<p>2.1.3 Selected Approach.</p> <p>Please state why your selected approach represents the best practical environmental option.</p> <p>Please state why any alternatives given in section 2.1.2 above were rejected. Where cost is given as a reason, please provide details.</p>	<p>Whilst the option for an improved strimming and cleansing regime was presented to Committee, the Council, nevertheless considered that this would not meet the desired improvement to the amenity value of the area and agreed, albeit at significant cost, to seek approval for removal of the gravel banks.</p>	
<p>Please continue on separate sheet if required.</p>	<p>Document name/reference:</p>	

SHEET E1: RIVER AND LOCH CROSSINGS

Please complete Sheet E1 for river and loch crossings. A separate sheet should be used for each individual activity.

PART 1 – please complete for all river and loch crossing activities									
1. Type of activity (please tick)	Bridge	<input type="checkbox"/>	Ford	<input type="checkbox"/>					
	Bridging culvert	<input type="checkbox"/>	Pipeline/Cable	<input type="checkbox"/>					
	Causeway	<input type="checkbox"/>	Removal (please also indicate which type of crossing)	<input type="checkbox"/>					
2. Type of licence (please tick)	Simple licence	<input type="checkbox"/>	Complex licence	<input type="checkbox"/>					
3. Type of surface water affected (please tick)	River	<input type="checkbox"/>	Loch	<input type="checkbox"/>					
	Wetland	<input type="checkbox"/>	Canal/Lade	<input type="checkbox"/>					
4. Name of surface water									
5. Planned start date of activity (dd/mm/yyyy)	/ /		6. Planned end date of activity	/ /					
7. National grid reference of activity (10 characters e.g. XY 1234 5678)									
8. Width of the surface water (m) (at the point where the activity is to occur)				9. Does the activity require planning consent? (please tick)	YES	<input type="checkbox"/>			
					NO	<input type="checkbox"/>			
10. Planning reference number									
11. Are there any other works associated with the activity?¹									
PART 2 – please complete for BRIDGES									
12. Number of in-channel supports (if none, please enter '0')				13. Total length of abutments (m)					
PART 3 – please complete for BRIDGING CULVERTS									
14. Length of culvert (m)				15. Diameter of culvert (m)					
16. Type of culvert (please tick)	Box	<input type="checkbox"/>	Pipe	<input type="checkbox"/>	Arch	<input type="checkbox"/>			
PART 4 – please complete for FORDS & CAUSEWAYS									
17. Length of bed affected (measured parallel to bank/shore)				18. Predominant material used					
PART 5 – please complete for PIPELINE/CABLE CROSSINGS									
19. Diameter of pipeline/cable (m)				20. Number of in-channel supports (if none, please enter '0')					
21. Position of pipeline/cable (please tick)	Below bed	<input type="checkbox"/>	Submerged	<input type="checkbox"/>	Above channel	<input type="checkbox"/>			

¹Please list any dependent activities associated with the crossing – e.g. bank reinforcement, bank re-profiling, bed reinforcement, sediment removal etc. Please provide separate details in relevant sections of application form. Note: no charges are made for dependent activities.

SHEET E2: IN-STREAM OR LOCH STRUCTURES

Please complete Sheet E2 for in-stream and loch structures. A separate sheet should be used for each individual activity.

PART 1 – please complete for all in-stream and loch structures				
1. Type of activity (please tick)	Jetties, platforms, marinas	<input type="checkbox"/>	Croys, groynes, flow deflectors	<input type="checkbox"/>
	Boat slips	<input type="checkbox"/>	Bed reinforcement	<input type="checkbox"/>
	Boulder placements	<input type="checkbox"/>	Removal (please also indicate which type of structure)	<input type="checkbox"/>
2. Type of licence (please tick)	Simple licence	<input type="checkbox"/>	Complex licence	<input type="checkbox"/>
	3. Type of surface water affected (please tick)	River	<input type="checkbox"/>	Loch
	Wetland	<input type="checkbox"/>	Canal/Lade	<input type="checkbox"/>
4. Name of Surface Water				
5. Planned start date of activity (dd/mm/yyyy)	/	/	6. Planned end date of activity	/ /
7. National grid reference of activity (10 characters e.g. XY 1234 5678)				
8. Width of the surface water (m)? (at the point where the activity is to occur)		9. Does the activity require planning consent? (please tick)	YES	<input type="checkbox"/>
			NO	<input type="checkbox"/>
10. Planning reference number				
11. Are there any other works associated with the activity? ¹				
12. Does the activity qualify as an environmental service? (please tick)	YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
13. If Yes, please provide justification on separate sheet	Document name/reference:			
PART 2 – please complete for JETTIES, PLATFORMS, MARINAS AND BOAT SLIPS				
14. Total length of bank/shore affected (m)		15. Length extending into surface water (m)		
16. If relevant, total area of Loch/Wetland affected (m ²)		17. Type of structure (not required for boat slips) (please tick)	Solid	<input type="checkbox"/>
			Stilted	<input type="checkbox"/>
PART 3 – please complete for BOULDER PLACEMENTS				
18. Total length of reach affected (m)		19. Total number of boulders added		
PART 4 – please complete for CROYS, GROYNES, FLOW DEFLECTORS				
20. Length of bank affected (m)		21. Length extending into surface water (m)		
PART 5 – please complete for BED REINFORCEMENT				
22. Length of reinforcement (measured parallel to banks) (m)		23. Predominant material used		

¹Please list any dependent activities associated with the structure – e.g. bank reinforcement, bank re-profiling, bed reinforcement, sediment removal etc. Please provide separate details in relevant sections of application form. Note: no charges are made for dependent activities.

SHEET E3: CHANNEL MODIFICATIONS
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Please complete Sheet E3 for all channel modification activities. A separate sheet should be used for each individual activity.

PART 1 – please complete for all channel modifications									
1. Type of Activity (please tick)	Straightening, resectioning	<input type="checkbox"/>	Removal of land gain culvert	<input type="checkbox"/>					
	Realignment	<input type="checkbox"/>	Flood by-pass channel	<input type="checkbox"/>					
	Culverting for land gain	<input type="checkbox"/>							
2. Type of licence (please tick)	Simple licence	<input type="checkbox"/>	Complex licence	<input type="checkbox"/>					
3. Type of surface water affected (please tick)	River	<input type="checkbox"/>	Loch	<input type="checkbox"/>					
	Wetland	<input type="checkbox"/>	Canal/Lade	<input type="checkbox"/>					
4. Name of surface water									
5. Planned start date of activity (dd/mm/yyyy)	/	/	6. Planned end date of activity	/	/				
7. National grid reference of activity (10 characters e.g. XY 1234 5678)									
8. Width of the surface water (m)? (at the point where the activity is to occur)			9. Does the activity require planning consent? (please tick)	YES	<input type="checkbox"/>				
				NO	<input type="checkbox"/>				
10. Planning reference number									
11. Are there any other works associated with the activity?¹									
12. Does the activity qualify as an environmental service? (please tick)	YES	<input type="checkbox"/>	NO	<input type="checkbox"/>					
13. If Yes, please provide justification on separate sheet	Document name/reference:								
PART 2 – please complete for STRAIGHTENING, RESECTIONING AND REALIGNMENT									
14. Length of original channel affected (m)			15. If relevant, length of new channel (m)						
PART 3 – please complete for CULVERTING FOR LAND GAIN									
16. Length of culvert (m)			17. Type of culvert (please tick)	Pipe	<input type="checkbox"/>				
				Box	<input type="checkbox"/>				
				Arch	<input type="checkbox"/>				
PART 4 – please complete for FLOOD BY-PASS CHANNELS									
18. Length of by-pass channel (m)			19. Length of original channel affected (m)						
20. Operational return period (e.g. 1 in 5 years)			21. Catchment transfer involved? (please tick)	YES	<input type="checkbox"/>				
				NO	<input type="checkbox"/>				
22. If Yes to Q21, please provide information on separate sheet.	Document name/reference:								

¹Please list any dependent activities associated with the works – e.g. bank reinforcement, bank re-profiling, bed reinforcement etc. Please provide separate details in relevant sections of application form. Note: no charges are made for dependent activities.

SHEET E4: SEDIMENT MANAGEMENT

Please complete Sheet E3 for all channel modification activities. A separate sheet should be used for each individual activity.

PART 1 – please complete for Sediment Management Activities											
1. Type of Activity (please tick)	Sediment removal			<input checked="" type="checkbox"/>			Sediment manipulation			<input type="checkbox"/>	
	Dredging			<input type="checkbox"/>			Sediment addition / Re-introduction			<input type="checkbox"/>	
2. Type of licence	Simple licence			<input type="checkbox"/>			Complex licence			<input checked="" type="checkbox"/>	
	River			<input checked="" type="checkbox"/>			Loch			<input type="checkbox"/>	
3. Type of surface water affected	Wetland			<input type="checkbox"/>			Canal/Lade			<input type="checkbox"/>	
	4. Name of surface water										River Nith
5. Planned start date of activity (dd/mm/yyyy)			/ 04 / 2009			6. Planned end date of activity			/ 04 / 2009		
7. National grid reference of activity (10 characters e.g. XY 1234 5678)	N	X	9	6	8	8	7	6	1	2	
8. Width of the surface water (m)? (at the point where the activity is to occur)	70m approx.			9. Does the activity require planning consent? (please tick)			YES			<input type="checkbox"/>	
							NO			<input checked="" type="checkbox"/>	
10. Planning reference number											
11. Are there any other works associated with the activity? ¹											
12. Does the activity qualify as an environmental service? (please tick)											
YES			<input type="checkbox"/>			NO			<input checked="" type="checkbox"/>		
13. If Yes, please provide justification on separate sheet	Document name/reference:										
PART 2 – please complete for SEDIMENT REMOVAL AND DREDGING											
14. Length of watercourse (m) or area of Loch/Wetland affected (m ²)			195m approx.			15. Volume to be removed (m ³)			1,000 cu.m. approx		
16. Frequency of activity (please tick)	Yearly		<input type="checkbox"/>		Single		<input checked="" type="checkbox"/>		Other		<input type="checkbox"/>
17. If Other, please provide information on separate sheet	Document name/reference:										
PART 3 – please complete for SEDIMENT MANIPULATION											
18. Length of watercourse (m) or area of Loch/Wetland affected (m ²)						19. Volume of sediment affected (m ³)					
PART 4 – please complete for SEDIMENT ADDITION / RE-INTRODCUTION											
20. Length of watercourse (m) or area of Loch/Wetland affected (m ²)						21. Volume to be added or re-introduced (m ³)					

¹Please list any dependent activities associated with the works. Please provide separate details in relevant sections of application form. Note: no charges are made for dependent activities.

SHEET E5: BANK MODIFICATIONS

Please complete Sheet E5 for all bank modification activities. A separate sheet should be used for each individual activity.

PART 1 – please complete for bank modifications					
1. Type of activity (please tick)	Green protection bank	<input type="checkbox"/>	Embankment	<input type="checkbox"/>	
	Grey bank proection	<input type="checkbox"/>	Set-back embankment	<input type="checkbox"/>	
	Bank re-profiling	<input type="checkbox"/>	Floodwall	<input type="checkbox"/>	
	Set-back reinforcement	<input type="checkbox"/>	Removal (pls also indicate which type of modification is being removed)	<input type="checkbox"/>	
2. Type of licence (please tick)	Simple licence	<input type="checkbox"/>	Complex licence	<input type="checkbox"/>	
3. Type of surface water affected (please tick)	River	<input type="checkbox"/>	Loch	<input type="checkbox"/>	
	Wetland	<input type="checkbox"/>	Canal/Lade	<input type="checkbox"/>	
4. Name of surface water					
5. Planned start date of activity (dd/mm/yyyy)	/	/	6. Planned end date of activity	/ /	
7. National grid reference of activity (10 characters e.g. XY 1234 5678)					
8. Width of the surface water (m)? (at the point where the activity is to occur)		9. Does the activity require planning consent? (please tick)	YES	<input type="checkbox"/>	
			NO	<input type="checkbox"/>	
10. Planning reference no.					
11. Are there any other works associated with the activity? ¹					
12. Does the activity qualify as an environmental service? (please tick)	YES	<input type="checkbox"/>	NO	<input type="checkbox"/>	
13. If Yes, please provide justification on separate sheet	Document name/reference:				
PART 2 – please complete for SET-BACK REINFORCEMENT					
14. Distance from bank top (m)		15. Length of set-back reinforcement (m)			
16. Type of set-back reinforcement (please tick)	Green (Soft)	<input type="checkbox"/>	17. Bank affected (viewed looking downstream) (please tick)	Left	<input type="checkbox"/>
	Grey (Hard)	<input type="checkbox"/>		Right	<input type="checkbox"/>
PART 3 – please complete for GREEN AND GREY BANK REINFORCEMENT					
18. Length of reinforcement (m)		19. Bank affected (viewed looking downstream) (please tick)	Left	<input type="checkbox"/>	
			Right	<input type="checkbox"/>	
PART 4 – please complete for EMBANKMENTS, SET-BACK EMBANKMENTS & FLOODWALLS					
20. Length of modification (m)		21. Bank affected (viewed looking downstream) (please tick)	Left	<input type="checkbox"/>	
			Right	<input type="checkbox"/>	
22. Distance from bank top (m)		23. Raised height (m) (above natural bank)			
PART 5 – please complete for REMOVAL OF BANK MODIFICATIONS					
24. Length of modification removed (m)		25. Bank affected (viewed looking downstream) (please tick)	Left	<input type="checkbox"/>	
			Right	<input type="checkbox"/>	

¹Please list any dependent activities associated with the bank modifications. Please provide separate details in relevant sections of application form. Note: no charges are made for dependent activities.

SHEET E6: OTHER ENGINEERING ACTIVITIES

Please complete Sheet E6 for other engineering activities (not defined above). A separate sheet should be used for each individual activity. Before completing this application, please check with your local SEPA office that an application is required. SEPA would normally only require an application for activities not defined elsewhere in the CAR practical guide, if a significant adverse impact was likely.

PART 1 – please complete for all activities									
1. Type of activity (please provide detail of the type of activity being applied for).									
Continue on separate sheet if necessary	Document name/reference:								
2. Type of licence (please tick)	Simple licence		<input type="checkbox"/>	Complex licence		<input type="checkbox"/>			
3. Type of surface water affected (please tick)	River		<input type="checkbox"/>	Loch		<input type="checkbox"/>			
	Wetland		<input type="checkbox"/>	Canal/Lade		<input type="checkbox"/>			
4. Name of surface water									
5. Planned start date of activity (dd/mm/yyyy)	/ /		6. Planned end date of activity			/ /			
7. National grid reference of activity (10 characters e.g. XY 1234 5678)									
8. Width of the surface water (m)? (at the point where the activity is to occur)			9. Does the activity require planning consent? (please tick)		YES		<input type="checkbox"/>		
					NO		<input type="checkbox"/>		
10. Planning reference number									
11. Are there any other works associated with the activity? ¹									
12. Does the activity qualify as an environmental service? (please tick)	YES		<input type="checkbox"/>	NO		<input type="checkbox"/>			
13. If Yes, please provide justification on separate sheet.	Document name/reference:								

¹Please list any dependent activities associated with the works – e.g. bank reinforcement, bank re-profiling, bed reinforcement etc. Please provide separate details in relevant sections of application form. Note: no charges are made for dependent activities.

3: ADDITIONAL INFORMATION

In addition to completing the relevant sections above, the following information **MUST** be clearly referenced and submitted with this application.

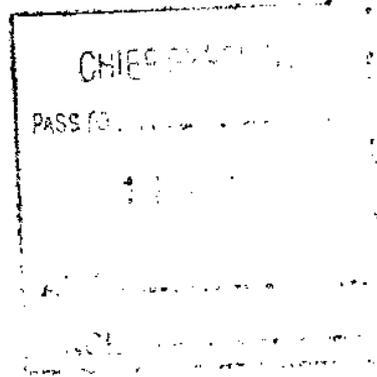
Please provide the following for all activities:		
1. Accurate SCALE DRAWINGS of any design structures or proposed modifications	Document name(s)/reference(s):	
2. PHOTOGRAPHS of area where activity is to be carried out	Document name(s)/reference(s):	River Nith Gravel Removal - Photographs
3. METHOD STATEMENT detailing how each activity is to be carried out, any temporary construction works associated with controlled activities, and details of any machinery to be used	Document name(s)/reference(s):	Removal of the gravel banks would be preceded by removal of scrub trees and other vegetation growing on the banks. This would be followed by litter picking in order to remove litter and discarded syringes and hypodermic needles. Removal of the banks would be carried out by tracked excavator. Access would be taken to the north of Buccleuch Street Bridge. The excavator would commence removal at the Caul and work northwards and would generally be situated on the gravel bank. The excavated material would be loaded into lorries situated at the top of the retaining walls. There would be no requirement for dumpers or dump trucks to be in the watercourse.
4. Details of any other existing or past ENGINEERING WORKS, STRUCTURES OR OTHER MODIFICATIONS located within 250m upstream and downstream of the proposed works	Document name(s)/reference(s):	Buccleuch Street Bridge and Devorgilla Bridge are both located within the works and the Caul is located immediately downstream of the works. Bucleuch Street Bridge and the Caul are both Category B listed structures and Devorgilla Bridge is a Category a listed structure and also a Scheduled Ancient monument.

Please note, in particular circumstances SEPA may also require further information on environmental impacts, mitigation measures and flood risk. To avoid delays in processing your application, please discuss with your local SEPA office if your activity is likely to require these assessments.



The Scottish
Parliament

Phil Jones
Chief Executive
Dumfries & Galloway Council
Council Offices
English Street
Dumfries
DG1 2DD



12 August 2008



As you know from previous discussion I have been pursuing Sepa regarding the possibility of gaining permission to clear the side of the River Nith by Whitesands and remove the very unsightly bankings which have built up and are now covered both in scrubby vegetation and increasingly by rubbish which comes down the River or is thrown over the embankment wall.

This matter was raised with me by several people during the Cabinet meeting in Dumfries and I do not think you should under-estimate these strong feelings that now exist right across the community within the town regarding the matter.

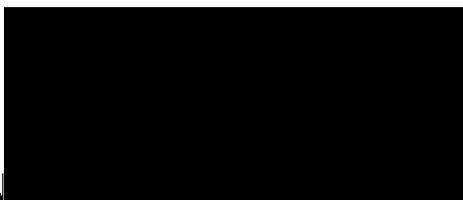
I think it would be greatly beneficial for the Council and its reputation as well as for Sepa and its image locally if action was taken on this matter at an early date.

I am therefore writing to you with a formal request that the council considers and undertakes a variety of works over the next few months to remove these bankings and that it enters into early and positive discussions with Sepa and SNH about these matters.

Michael W Russell MSP
SNP South of Scotland Region
Scottish Parliament, Holyrood, EH99 1SP
Tel: 0131 348 6687
E-Mail: Michael.russell.msp@scottish.parliament.uk

I shall be indicating publicly my support for these actions as the pursuit of a stronger and more positive image for the town centre tied up with the issue of town centre regeneration is very much at the centre of my thoughts at this time.

I'd be happy to have a meeting with you at an early date on these matters and I am copying these letters to the Chief Executive of Sepa, the Chief Executive of SNH and to Cyril Wise in the Civic Forum whom I know is very active on these issues.



M

Michael W. Russell MSP
South of Scotland

Michael W Russell MSP
SNP South of Scotland Region
Scottish Parliament, Holyrood, EH99 1SP
Tel: 0131 348 6687
E-Mail: Michael.russell.msp@scottish.parliament.uk

Architectural and Engineering Design Services
Combined Services

19 MAY 2009

Date Our Ref:
Your Ref:



Scottish Environment
Protection Agency

CAR/L/1033622

Dumfries & Galloway Council
Design Services
Combined Services
Marchmount House
Marchmount Avenue
Dumfries DG1 1PY

FAO Alan Johnstone

18 May 2009

Dear Sir

**WATER ENVIRONMENT (CONTROLLED ACTIVITIES) (SCOTLAND) REGULATIONS 2005
("THE REGULATIONS")**

**APPLICATION REFERENCE NUMBER: CAR/L/1033622
LOCATION: RIVER NITH, DUMFRIES
NOTICE OF REFUSAL OF APPLICATION FOR AUTHORISATION**

Further to your application under the above Regulations for authorisation of a controlled activity or activities at the above location, received on 12 December 2008, the Scottish Environment Protection Agency ("SEPA") hereby notifies you that it has considered the application and has decided to refuse to grant an authorisation to carry on the controlled activity or activities you applied for. I enclose a formal notice of refusal, giving reasons for SEPA's decision.

Under regulation 46(a) of the above Regulations, you may appeal against SEPA's decision to the Scottish Ministers. Notice of any appeal including a statement of the grounds of appeal must be given in writing to the Scottish Ministers within 3 months of the date of the decision. Further details on making appeals are contained within Schedule 9 of the above Regulations.

Appeals should be sent to:

**The Scottish Ministers, Scottish Government, Determinations Team, Climate Change
Division, Area 1-G (North), Victoria Quay, Edinburgh, EH6 6QQ**

**Tel: [REDACTED] Fax: [REDACTED]
Email: environmental.appeals@scotland.gsi.gov.uk**

Cont'd / ...



Chairman
David Sigsworth

Chief Executive
Dr Campbell Gemmell

East Kilbride Office
Redwood Crescent, Peel Park, East Kilbride G74 5PP
tel 01355 574200 fax 01355 574688
www.sepa.org.uk

Architectural and Engineering Design Services
Combined Services

19 MAY 2009

Date Our Ref:
Your Ref:



Scottish Environment
Protection Agency

CAR/L/1033622

Dumfries & Galloway Council
Design Services
Combined Services
Marchmount House
Marchmount Avenue
Dumfries DG1 1PY

FAO Alan Johnstone

18 May 2009

Dear Sir

**WATER ENVIRONMENT (CONTROLLED ACTIVITIES) (SCOTLAND) REGULATIONS 2005
("THE REGULATIONS")**

**APPLICATION REFERENCE NUMBER: CAR/L/1033622
LOCATION: RIVER NITH, DUMFRIES
NOTICE OF REFUSAL OF APPLICATION FOR AUTHORISATION**

Further to your application under the above Regulations for authorisation of a controlled activity or activities at the above location, received on 12 December 2008, the Scottish Environment Protection Agency ("SEPA") hereby notifies you that it has considered the application and has decided to refuse to grant an authorisation to carry on the controlled activity or activities you applied for. I enclose a formal notice of refusal, giving reasons for SEPA's decision.

Under regulation 46(a) of the above Regulations, you may appeal against SEPA's decision to the Scottish Ministers. Notice of any appeal including a statement of the grounds of appeal must be given in writing to the Scottish Ministers within 3 months of the date of the decision. Further details on making appeals are contained within Schedule 9 of the above Regulations.

Appeals should be sent to:

**The Scottish Ministers, Scottish Government, Determinations Team, Climate Change
Division, Area 1-G (North), Victoria Quay, Edinburgh, EH6 6QQ**

**Tel: [REDACTED] Fax: [REDACTED]
Email: environmental.appeals@scotland.gsi.gov.uk**

Cont'd / ...



Chairman
David Sigsworth

Chief Executive
Dr Campbell Gemmell

East Kilbride Office
Redwood Crescent, Peel Park, East Kilbride G74 5PP
tel 01355 574200 fax 01355 574688
www.sepa.org.uk

Dumfries & Galloway Council
Design Services
Combined Services
Marchmount House
Marchmount Avenue
Dumfries DG1 1PY

18 May 2009

If you have any questions regarding this letter please contact David McNay at Rivers House, Irongray Road, Dumfries DG2 0JE or telephone 01387 720502.

Yours faithfully



Lesley Dodds
Registry Manager SW
Enc

SCOTTISH ENVIRONMENT PROTECTION AGENCY

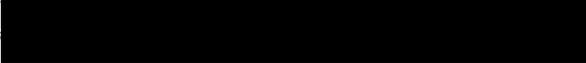
WATER ENVIRONMENT AND WATER SERVICES (SCOTLAND) ACT 2003

**WATER ENVIRONMENT (CONTROLLED ACTIVITIES) (SCOTLAND) REGULATIONS
2005 ("THE 2005 REGULATIONS")**

**NOTICE OF REFUSAL OF APPLICATION TO CARRY ON A CONTROLLED ACTIVITY
OR ACTIVITIES**

To: Dumfries and Galloway Council
Address: Design Services
Combined Services
Marchmount House
Marchmount Avenue
Dumfries
DG1 1PY

Having considered your application under the Regulations for authorisation to carry on a controlled activity or activities at, near or in connection with River Nith, Dumfries (application reference number CAR/L/1033622), the Scottish Environment Protection Agency ("SEPA") hereby notifies you that it has decided to refuse to grant an authorisation for the carrying on of the said activity or activities for the reasons set out in the schedule to this notice.

Signed 

..... Date: 18 May 2009

Authorised to sign on behalf of the
Scottish Environment Protection Agency

NOTES

You are entitled to appeal against SEPA's decision to Scottish Ministers under regulation 46(a) of the Regulations. The details on making appeals are contained within Schedule 9 of the Regulations.

Under regulation 40(1)(a) of the Regulations, it is an offence to carry on a controlled activity except in so far as that activity is authorised and carried on in accordance with that authorisation.

SCOTTISH ENVIRONMENT PROTECTION AGENCY

**WATER ENVIRONMENT AND WATER SERVICES (SCOTLAND) ACT 2003
("THE ACT")**

**THE WATER ENVIRONMENT (CONTROLLED ACTIVITIES) (SCOTLAND)
REGULATIONS 2005 ("THE REGULATIONS")**

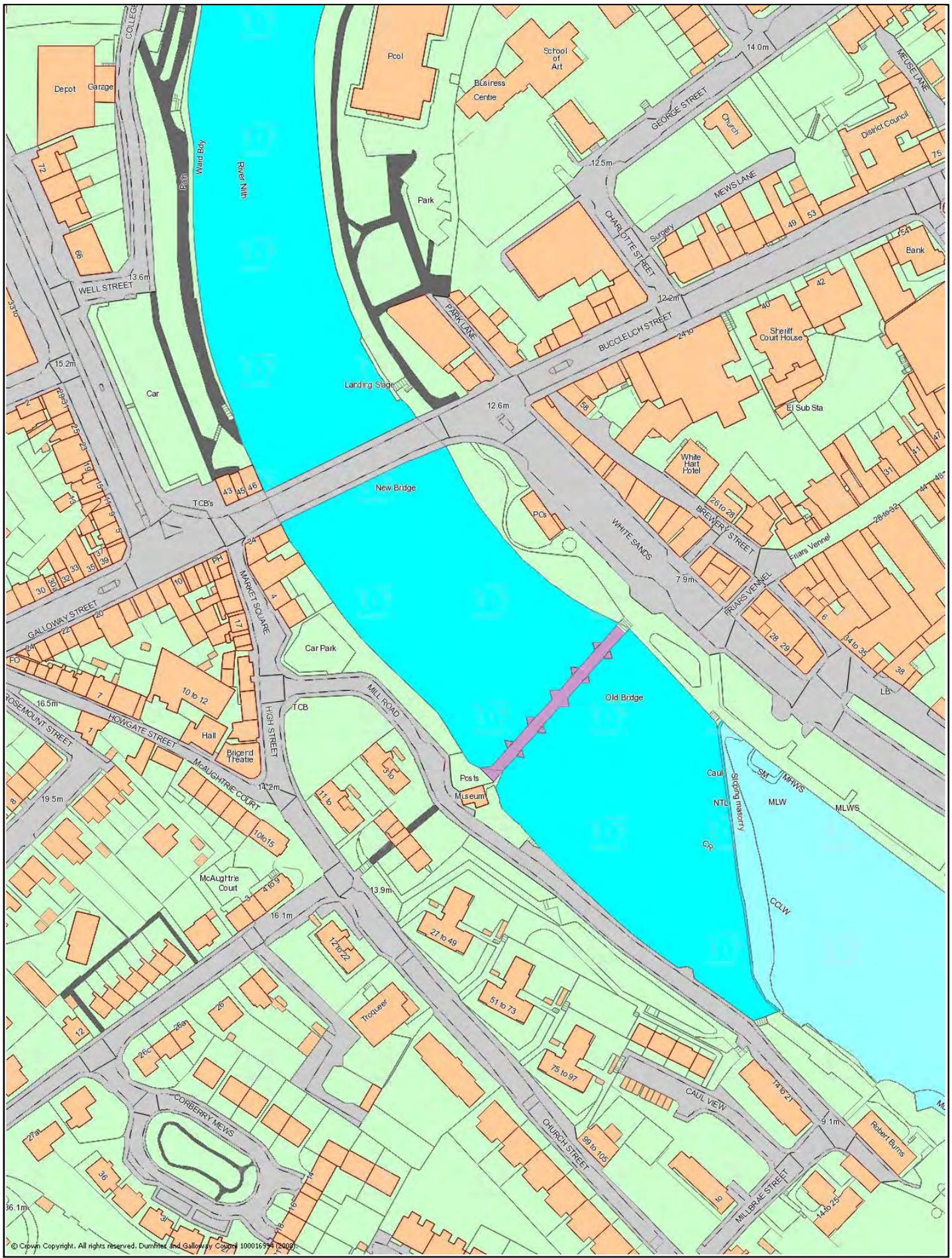
SCHEDULE TO NOTICE OF REFUSAL

REASONS FOR REFUSAL

1. In terms of Regulation 15 (1)(a) of the Regulations, before determining an application for an authorisation to carry on a controlled activity SEPA must assess the risk to the water environment posed by the carrying on of that activity.
2. Further, in terms of Regulation 15(1)(c) of the Regulations, before determining an application for an authorisation to carry on a controlled activity SEPA must apply the requirements of legislation referred to in Parts 1 and 2 of Schedule 4 to the Regulations, which includes Council Directive 2000/60/EC ('The Water Framework Directive') and the Water Environment and Water Services (Scotland) Act 2003 ('The 2003 Act'). The Water Framework Directive establishes a framework for the protection of the water environment and requires Member States to implement necessary measures to prevent deterioration of the status of all bodies of surface water. Article 4 of the Water Framework Directive establishes the general objective of 'good status' to be achieved in all surface waters by 2015 and introduces the principle of preventing any further deterioration of status. The 2003 Act implements the provisions of the Water Framework Directive in Scotland making provision for the protection of the water environment which includes preventing further deterioration of, and protecting and enhancing the status of aquatic ecosystems.
3. Accordingly in determining the application for an authorisation for engineering works representing the removal of gravel from the north east bank of the River Nith, SEPA assessed the risk to the River Nith. SEPA considered the morphological conditions of the relevant stretch of the river, both in its existing state and if the proposed activity of gravel removal were to be authorised.
4. In particular SEPA considered:
 - a. the impact that the sediment extraction would have in relation to the damage and loss of river habitats
 - b. the fact that the proposed works would create a section of river that is unstable and would lead to continued habitat loss, and
 - c. the fact that disturbance to the river bed would cause instability of finer sediments which would be released into the watercourse in suspension leading to impact on salmonid fish and invertebrates.

5. SEPA also considered the requirements contained in the Directive and 2003 Act referred to above in connection with preventing deterioration of status of water bodies and aquatic ecosystems and concluded that the works would be likely to cause a significant adverse morphological impact on the said water course and therefore present a risk to the water environment.
6. In terms of Regulation 15 (1)(b) of the Regulations, before determining an application for an authorisation to carry on a controlled activity SEPA must assess what steps may be taken to ensure efficient and sustainable water use.
7. SEPA considers that, for the purposes of engineering works, efficient water use equates to using best management practice. This is the action which serves a demonstrated need, while minimising ecological harm, at a cost that is not disproportionately expensive. SEPA considers that, in principle, sediment or gravel removal is unlikely to constitute efficient water use, unless it can be justified for navigation, flood risk management, water supply purposes, infrastructure protection or other sustainable development activities. The application states that the reason for the proposed activity is that the gravel banks in the area are unsightly as they provide a platform for weed growth which traps litter and debris, and should therefore be removed.
8. SEPA has duly considered whether or not the said proposed activity of gravel removal represents efficient and sustainable water use, and notes that because removal of sediment will encourage sediment to be deposited rapidly in the future, it is likely that the works would require to be repeated, and that this is unsustainable. The applicant has not demonstrated that the proposed activity will solve the issue of sediment build up and litter or that there are any significant human health or safety benefits to be gained from the proposed works. SEPA has concluded that the proposal does not serve a demonstrated need and does not represent efficient and sustainable water use.

Accordingly, having assessed the risk to the water environment, applied the requirements of the Water Framework Directive and the 2003 Act referred to above, and having assessed what steps may be taken to ensure efficient and sustainable water use, SEPA has concluded that the application should be refused.



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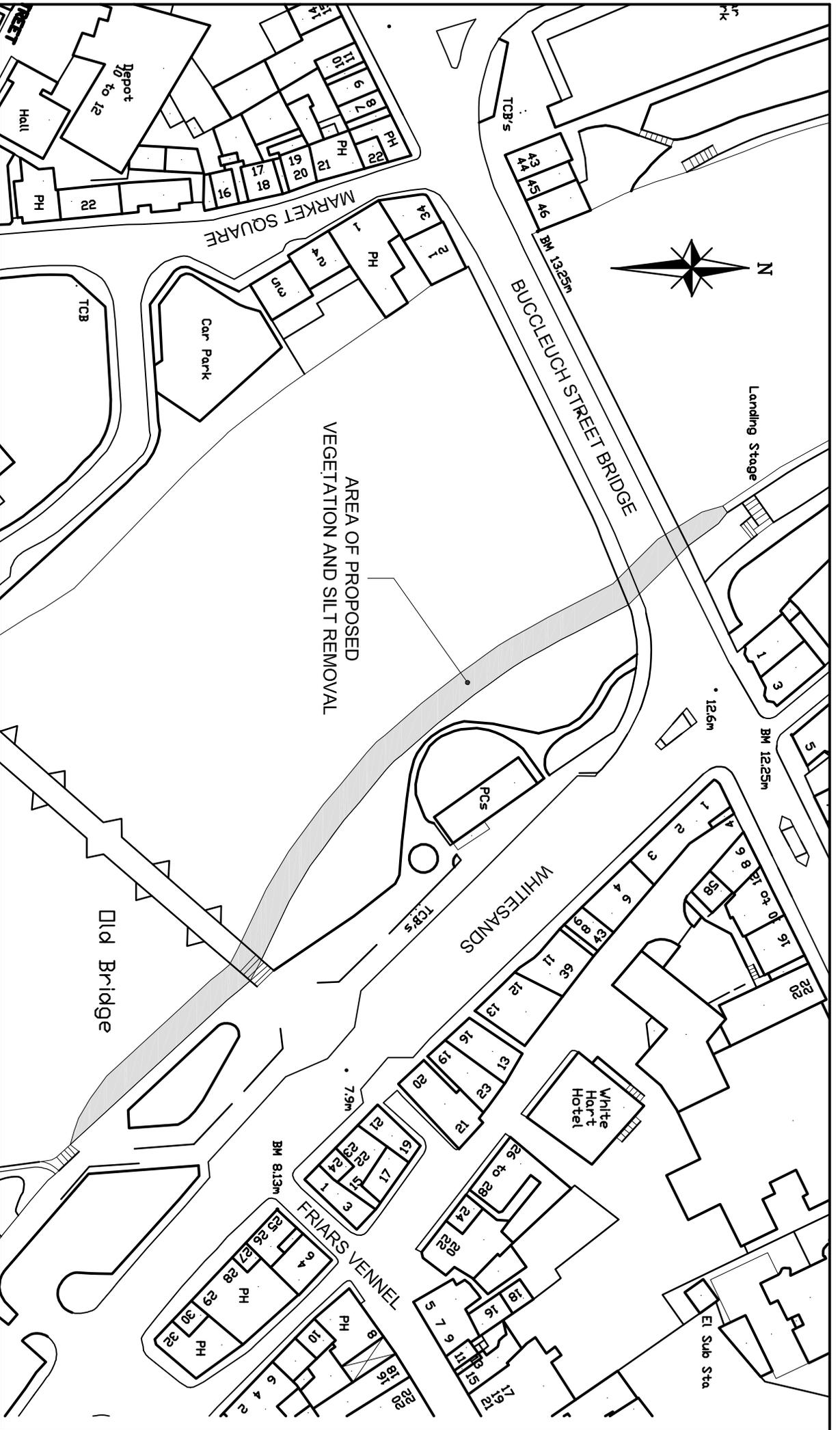
Design Services

Scale 1:2000

River Nith Gravel Removal

Whitesands, Dumfries

Dumfries & Galloway COUNCIL



Engineer for the Works
 Bill Harrow BSc MICE
 Design Services
 Marchmount House
 Dumfries
 Dumfries
 DG1 1PY



Design Services
 RIVER NITH GRAVEL REMOVAL

LOCATION PLAN

PRELIMINARY	TENDER	CONTRACT	RECORD
Drawn By AH	Checked By ASJ	Approved By ASJ	Date NOV 2008
SCALE: 1:1,000			
DRG. No. MISC / NITH / 01			

Whitesands flooding problem could be solved within the next few years

[Aug 22 2008](#) by Craig Robertson, Dumfries Standard Friday



CLEANING UP: Environment Minister Mike Russell with David Sigsworth from SEPA at the site of the River Nith Clean up

Flooded with ideas

WORK to end Dumfries' Whitesands flooding problems could be ready to start in four years.

Scottish Environment Minister and South of Scotland MSP Mike Russell told the Standard he believed a scheme to stop the River Nith spilling over onto the street could be ready by 2011.

Mr Russell was speaking after a meeting on the riverside yesterday with officials from the Scottish Environment Protection Agency.

When asked what the Scottish Government could do about Dumfries' flooding problem, he said: "There is a flooding bill going through Parliament to modernise old flooding legislation.

"What we are trying to do is find the best natural principals because if you just keep on building walls, they just keep on getting higher and we are living in time of climate change.

"So our preference is for natural flood prevention measures and I have to say that Dumfries and Galloway Council, at long last, and all credit to the new administration on that, are bringing forward a scheme that has an element of natural flood defence in it.

"The timescale is up to the council, I haven't seen anything from them on this except the initial ideas but I would suspect in terms of the scheme itself, it would be 2011 to 2013."

Following Mr Russell's meeting with SEPA, a clean-up scheme for the banks of the Nith at the Whitesands now looks a possibility.

A major council clean-up attempt in 2006 to bring in a "mechanical shovel" was blocked by the environment body with the threat of court action.

But SEPA chairman, David Sigsworth, said: "As far as I am aware today, there has been no proposal from the council to clean up this area.

"SEPA obviously want to help the community get what they want in these situations and we are very very happy indeed to consider any proposal the council brings forward.

"The council needs to consider what it thinks would be a good idea and we would be happy to look at that."

Dumfries provost Jack Groom said: "I think it could be that nothing has been done in 30 years.

"We have been pressing the Minister on this and I hope that between us we do get a decent proposal in for a pilot scheme as this river was once a free-flowing river.

"Any other place in Scotland would love to have something like this, but what can you see? weeds."

Dumfries & Galloway Council
Design Services
Combined Services
Marchmount House
Marchmount Avenue
Dumfries DG1 1PY

18 May 2009

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Registry Manager SW
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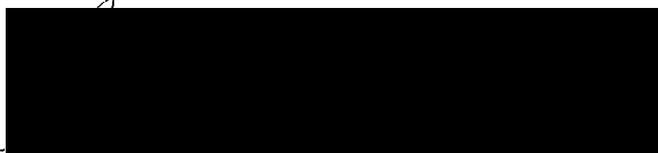
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Accordingly, having assessed the risk to the water environment, applied the requirements of the Water Framework Directive and the 2003 Act referred to above, and having assessed what steps may be taken to ensure efficient and sustainable water use, SEPA has concluded that the application should be refused.

(e) Other supporting documents:

<<L090518 (Mike Russell).pdf>> <<Whitesands flooding problem could be solved within the next few years.pdf>>

I would be grateful if you could confirm receipt of this e-mail. A hard copy has also been sent (to Determinations Team

) in today's post.

W R Barker TD BSc CEng FICE MInstRE

Operations Manager, Infrastructure and Commissioning

Planning and Environment Services

Dumfries and Galloway Council

Militia House, English Street

DUMFRIES

DG1 2HR

Drop Point 207

Tel: [REDACTED]

Fax: [REDACTED]

Mobile: [REDACTED]

e-mail: [REDACTED]

Website: <http://www.dumgal.gov.uk>

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