

EAST AYRSHIRE COUNCIL

SPECIAL NORTHERN LOCAL PLANNING COMMITTEE: 19 AUGUST 2010

**10/0474/PP: ERECTION OF TWO CONCRETE RETAINING WALLS WITH FISH PASSES TO PROVIDE IMPROVED FISH PASSAGE OVER MODIFIED AND INFILLED POOL BELOW WATERFALL AT BLACK ROCKS WATERFALL, KAY PARK, KILMARNOCK, KA3 7RU
BY AYRSHIRE RIVERS TRUST, AUCHINCRUIVE, AYR, KA8 9D2**

EXECUTIVE SUMMARY SHEET

Click for application details

<http://eplanning.east-ayrshire.gov.uk/online/centralDistribution.do?action=dispatch&caseType=Application&caseNo=10/0474/PP>

1. DEVELOPMENT DESCRIPTION

1.1 The proposal is to construct a specialist engineering solution to allow the fish to migrate more effectively than at present. This will be achieved through the construction of a small weir system and rock grading system that would allow the fish to move more easily through the dam.

2. RECOMMENDATION

2.1 **It is recommended that this application for planning permission should be approved.**

3. CONCLUSIONS

3.1 As indicated in Section 5 of the report the application is in accordance with the Development Plan. The proposal will allow for the easier passage of fish along the Kilmarnock Water, and will have both social and economic benefits to the local community.

3.2 There are no material considerations relevant to the application as indicated in Section 6 of the report which would suggest that this should be refused and the consultation responses are supportive of the proposal.

CONTRARY DECISION NOTE

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Economic Development, the application would not require to be referred to the Council as this would not be a significant departure from the development plan.

Alan Neish
Head of Planning and Economic Development

Note: This document combines key sections of the associated report for quick reference and should not in itself be considered as having been the basis for recommendation preparation or decision making by the Planning Authority.

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10/0474/PP ERECTION OF TWO CONCRETE RETAINING WALLS WITH FISH
PASSES TO PROVIDE IMPROVED FISH PASSAGE OVER MODIFIED AND
INFILLED POOL BELOW WATERFALL
AT BLACK ROCKS WATERFALL, KAY PARK, KILMARNOCK

BY THE AYRSHIRE RIVERS TRUST

Report by Head of Planning and Economic Development

1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination, an application for planning consent, which is to be considered by the Local Planning Committee under the scheme of delegation as this Council has a land ownership interest.

2. APPLICATION DETAILS

2.1 **Site Description:** The site is found at the upper dam in the Kay Park, directly west of the Burns Monument by some 100 metres, at the Black Rocks. Historically, in the area there have been two dams for a number of years namely, this one at Black Rock and one below the Viaduct further upstream.

2.2 **Proposed Development:** The proposal is to construct a specialist engineering solution to allow the fish to migrate more effectively than at present. This will be achieved through the construction of a small weir system and rock grading system that would allow the fish to move more easily through the dam.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Council Finance and Corporate Support Asset Management have no objection to the proposal, subject to the applicant entering into a formal Minute of Agreement with the Council to execute the works over Council land.

Estates Management has the facility to regulate the development under their role as landlord, via the appropriate License or Permits issued by that service and Guidance from Scottish Government advises, that, if actions can be covered by other legislation or means, these should not be covered under the Planning Acts. It is

understood from Asset Management that discussions are underway with the applicants.

3.2 East Ayrshire Council Finance and Corporate Support (Risk Management) have noted that they will require to have assurances that the contractors will have adequate insurance in place that takes account of all possible losses that might result from the proposal. .

As per the response at Section 3.1 this is a land ownership / landlord matter that will be addressed by Asset Management through their discussions / agreements as landlord. It is not a material planning consideration.

3.3 East Ayrshire Council (Outdoor Amenities) Outdoor Amenities have no objections to the proposed fish pass at the above location, noting access will need to be agreed with Outdoor Amenities, and will require a 'Licence to Occupy' and any disturbance will need to be reinstated to the satisfaction of the Outdoor Amenities Manager.

Noted

3.4 Scottish Natural Heritage has no objections, and support the application. SNH have advised that it is unlikely that any natural heritage interests in the river will be affected by the proposal.

Noted

3.5 The Scottish Environment Protection Agency has no objection to the proposal noting that the applicant entered into pre-application discussions with SEPA to ensure the correct procedures were followed for working in and around watercourses. A CARS [Water Environment (Controlled Activities) (Scotland) Regulations 2005] License has been granted by SEPA to allow work in and around the river.

Noted

3.6 The Scottish Government (Agriculture and Fisheries) have no objections and advise that consent will be required from SEPA.

Noted. As detailed in Section 3.5 of this report, SEPA are in discussios with the applicant.

4. REPRESENTATIONS

4.1 None

5. ASSESSMENT AGAINST DEVELOPMENT PLAN

Adopted East Ayrshire Local Plan (EALP) (2003)

5.1 Policy ENV19 presumes against development that will detrimentally impact on water quality, aquatic habitats for wildlife or recreational amenity.

The current proposal is intended to improve the quality of the water in relation to such conditions, and therefore the proposed development is in accordance with this policy.

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of this application are the East Ayrshire Local Plan Finalised Version with Modifications, consultation responses and representations, and the planning history of the site.

Alteration to the East Ayrshire Local Plan

6.2 Policy ENV24, is very similar to policy ENV19 in the adopted plan, above at Section 5, and therefore the proposed development complies with this policy.

6.3 Through Policy CS1, the Council will respond positively to the needs for all community facilities, including sporting and leisure facilities.

The proposal would lead to improved facilities in the area which would be of benefit to a wide sector of the local community.

Consultation Responses and Representations

6.4 The consultation responses have been addressed in Section 3 of the report and the replies received support the proposed works, or raise no outstanding issues that would warrant refusal of this application. Furthermore, no objections have been received in respect of the proposals.

Planning History

6.5 There is no planning history for this site that would warrant refusal of this application.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 The Council is the landowner of the application site. If Members choose to grant consent the application does not require to be referred to the Scottish Government under Circular 3: 2009 'Notification of Planning Applications'.

7.2 A formal Minute of Agreement would require to be entered into to between the Council and the applicant and their contractors in relation to access, site restoration and the liability for the works or any losses arising there from. However, this will be undertaken by Asset Management in conjunction with Legal, Regulatory and Procurement Services and would be separate from this planning application.

8. CONCLUSIONS

8.1 As indicated in Section 5 of the report the application is in accordance with the Development Plan. The proposal will allow for the easier passage of fish along the Kilmarnock Water, and will have both social and economic benefits to the local community.

8.2 There are no material considerations relevant to the application as indicated in Section 6 of the report which would suggest that this should be refused and the consultation responses are supportive of the proposal.

9. RECOMMENDATION

9.1 It is recommended that this application for planning permission should be approved.

CONTRARY DECISION NOTE

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Economic Development, the application would not require to be referred to the Council as this would not be a significant departure from the development plan.

Alan Neish
Head of Planning & Economic Development

26 July 2010
MF/RH
FV/DVM

LIST OF BACKGROUND PAPERS

1. Application Forms/Plans.
2. Statutory Letters/Certificates.
3. Consultations Responses
4. Adopted East Ayrshire Local Plan.
5. Alteration to the East Ayrshire Local Plan, Finalised Draft with Modifications

Anyone wishing to inspect the above papers please contact Marion Fergusson, Senior Planning Officer, on 01563 576769.

Implementation Officer: Dave Morris

East Ayrshire Council

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application No: 10/0474/PP

Location	Black Rocks Waterfall Kay Park Kilmarnock KA3 7RU
Nature of Proposal:	Erection of two concrete retaining walls with fish passes to provide improved fish passage over modified and infilled pool below waterfall.
Name and Address of Applicant:	Mr Brian Shaw Donald Hendrie Building Auchincruive Ayr KA8 9D2
Name and Address of Agent	

Officer's Ref: Marion Fergusson
01563 576769

The above Planning Permission application should be approved.

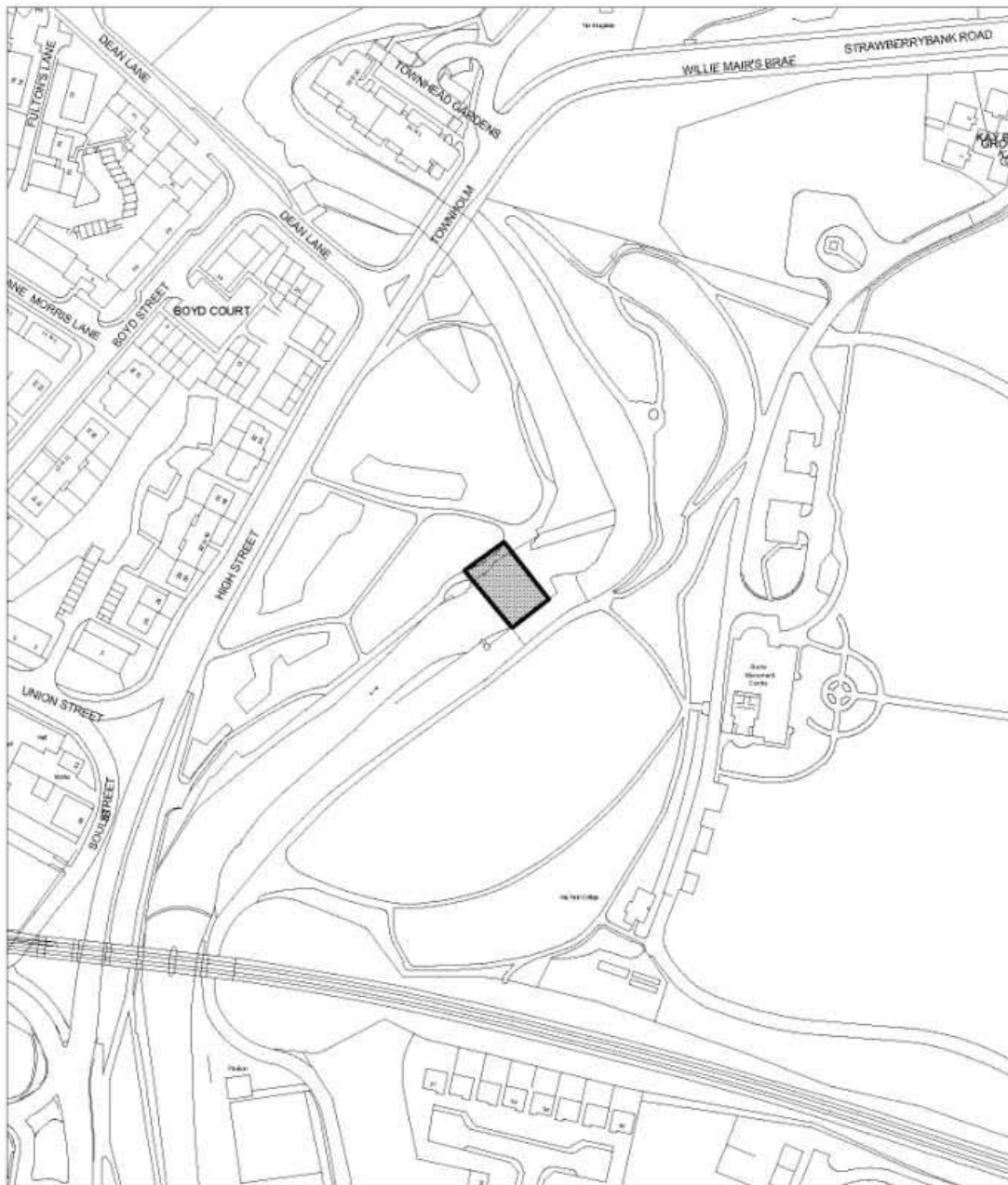
Advisory Notes



- 1 The applicant is advised that early contact should be made to obtain the consent of this Council as owner of the land. Early contact with Asset Management at 17-19 Hill Street, Kilmarnock, KA3 1HA on 01563 503477 is recommended.
- 2 SEPA have advised that all works must be undertaken in accordance with the Water Environment (Controlled Activities) Scotland Regulations 2005 (as amended) and early contact, to ensure compliance and obtain good practice advice, with SEPA is strongly recommended. SEPA can be contacted quoting ref: PCS108401 (from their consultation response) at 5 Redwood Crescent, Peel Park, East Kilbride, G74 5PP or on 01355 574200.
- 3 SNH have advised that the following measures be adopted to further minimise the risk of any potential impacts which might be associated with this proposal. SNH can be contacted at 19 Wellington Square, Ayr, KA7 1EZ quoting ref CNS/DC/EA/DB62428 :-

- Engineering works should be scheduled to avoid the period between October and May when salmon spawning and emergence which takes place.
- Any proposed physical change to / affecting waterfalls will require consultation with the Fisheries Research Services Laboratory (FRSL), the District Salmon Fishery Board and SEPA.
- Guidance on techniques available for dealing with obstacles to fish migration is given in River Crossing and Migratory Fish: Design Guidance (2000-SEERAD).

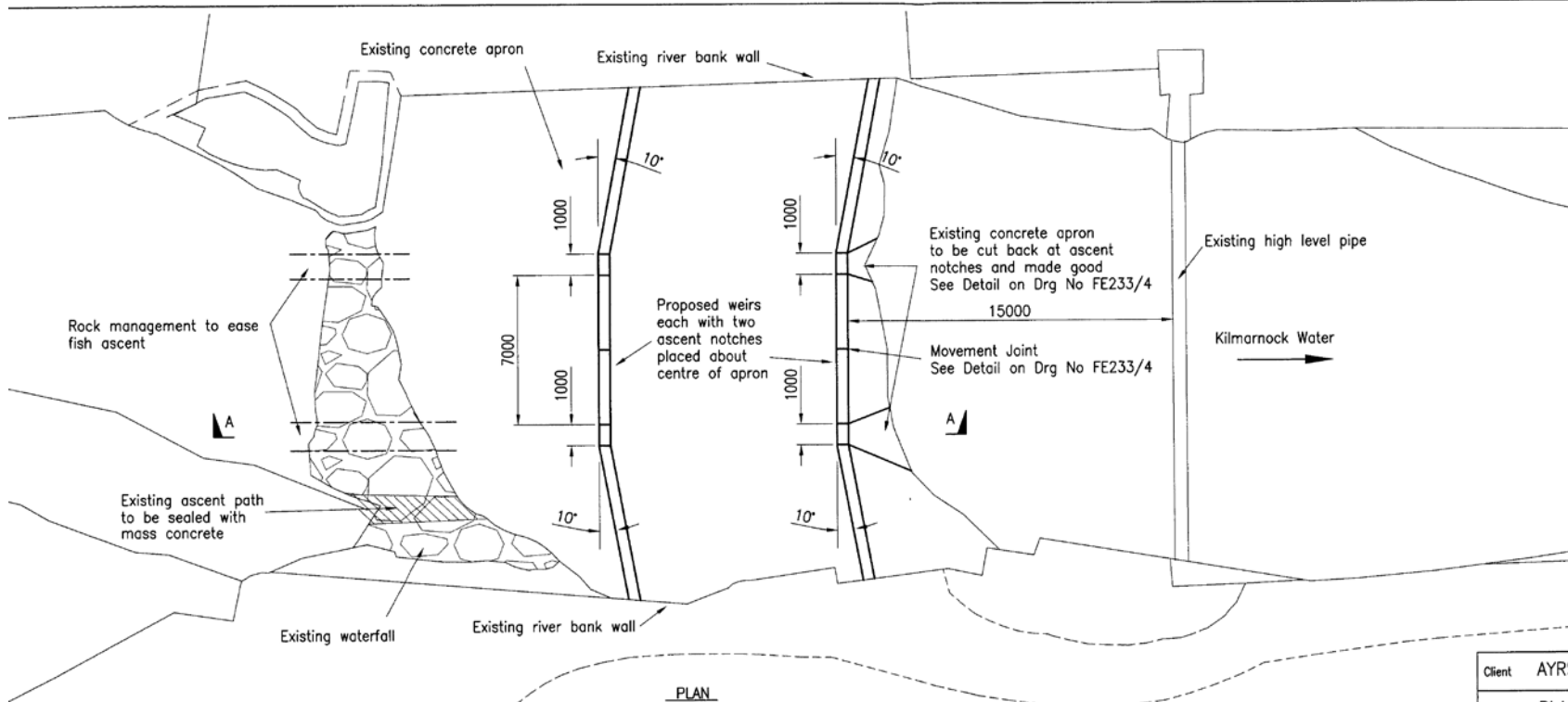
Reason for the Decision

The proposal is compliant with the development plan and there are no material considerations that would indicate refusal of the application.

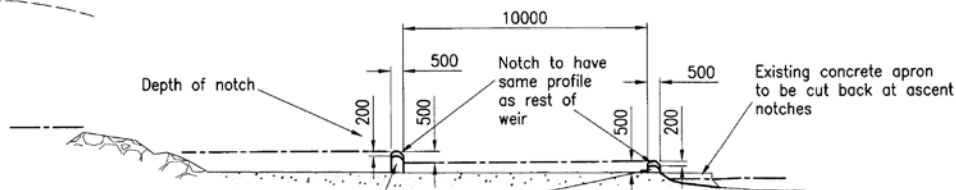


<p>Title/Location Black Rocks Waterfall Kay Park, Kilmarnock Application No. 10/0474/PP</p>	<p>East Ayrshire Council Department of Neighbourhood Services Planning & Economic Development Service 6 Croft Street Kilmarnock KA1 1JB Tel: (01563) 576790 Fax: (01563) 576774 E-Mail : Planning@east-ayrshire.gov.uk Com Date: 19/08/2010</p>
<p>Key</p> <p> Application Site</p>	<p style="text-align: right;"></p>

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PLAN



SECTION A-A

NOTES:

Proposed weirs to be reinforced concrete cast insitu and anchored to existing concrete apron with suitable resin anchors. For construction details see Drawing No. FE233/3

1. All dimensions in millimetres unless stated otherwise.
2. Datum for height of proposed weirs to be taken as mid point of downstream weir 500mm high and constructed level across width of apron. Upstream weir to be 500mm higher than datum weir.

Client AYRSHIRE RIVERS TRUST	
Contract BLACK WEIR FISH PASS	
Title GENERAL ARRANGEMENT	
Designed by ALW	File ref.
Drawn by RJR	Date March 2010
Scale 1:200 (at A3 size)	



Fishway Engineering Ltd.
6 Lockitt Way, Kingston, LEWES,
East Sussex, BN7 3LG, England.

Directors: A L Woolnough MSc CEng MICE MCIMEM MIFM
R J Roberts Eng AMICE MIFM

DRAWING NUMBER FE233/2