

**IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY  
OR PROPERTY THAT YOU HAVE AN INTEREST IN**

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

**ENFORCEMENT NOTICE**

**REFERENCE NUMBER: 10/00319/ENAMEN**

To: Patrick Docherty,  
Westerhill Cottage,  
Cardross,  
G82 5EW

**ISSUED BY: ARGYLL AND BUTE COUNCIL, KILMORY, LOCHGILPHEAD**

1. **THIS IS A FORMAL NOTICE** which is issued by Argyll and Bute Council, having their head office at Kilmory, Lochgilphead, Argyll, PA31 8RT a local authority constituted under the Local Government etc (Scotland) Act 1994, and as such the Planning Authority for the area of Argyll and Bute in terms of the Town and Country Planning (Scotland) Act 1997 ("the Act") because it appears to them that there has been a breach of planning control, under Section 127 of the Act at the Land Affected as hereinafter defined. Argyll and Bute Council consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material considerations.

**2. THE LAND AFFECTED**

That plot or area of ground at Westerhill Cottage Cardross, G82 5EW being the subjects located on the northern side of the A814, registered in the Land Register of Scotland under Title Number **DMB13142**, as shown edged red on the plan attached hereto labelled "Land Affected – Land Registry Map DMB13142" (which said plot or area of ground is hereinafter referred to as "the Land Affected")

**3. THE BREACH OF PLANNING CONTROL ALLEGED**

In terms of Section 123(1)(a) of the above Act, the carrying out of development without the required planning permission, relative to:

- **Unauthorised engineering, and other, operations in, over, and/or under the Land Affected.**

**4. REASONS FOR ISSUING THIS NOTICE**

- I. The engineering, and other, operations in, over, and/or under the Land Affected have been carried out without the benefit of planning permission and as such are unauthorised.
- II. The unauthorised engineering, and other, operations carried out raise the level of land and fail to provide appropriate mitigation measures to control surface water flows and soil movement

related to such operations and to ensure that the affect of the said operations on the setting, or structural integrity of the listed wall which is located within the Land Affected are appropriately controlled to ensure that neither visual harm to its setting or structural harm occur. The said operations are therefore contrary to the Argyll and Bute Local Plan Policies LP SERV 3 and LP ENV13(a)

## **5. WHAT YOU ARE REQUIRED TO DO**

With reference to Plan 1 (Required Landscape Buffer Zone) and the Required Schedule of Works:

- I. You are required to dig out the unauthorised infill to original ground level so as to leave clear of such infill a one metre clear strip along the boundary of the listed wall and form a slope on the ground immediately to the left of the said one metre strip with a 1:2 gradient all to release pressure on the wall. The resulting ditch shall thereafter be maintained as specified above to ensure no pressure is exerted upon the listed wall
- II. You are required to create a 5m landscaped Buffer Zone comprising a planting strip at the area marked A on the attached labelled 'Plan 1 – Required Landscape Buffer Zone' (hereinafter referred to as Plan 1), in accordance with the steps set out at the attached Required Schedule of Works.

## **6. THE TIME PERIOD FOR COMPLAINEE**

All works required under this notice must be completed **within 3 months from 3rd December 2012** to coincide with the first planting season

## **7. WHEN THIS NOTICE TAKES EFFECT**

**This notice takes effect on 3<sup>rd</sup> December 2012, subject to section 131(3) of the Act** which provides that where an appeal is made to the Scottish Government before the date this notice takes effect that this notice shall be of no effect pending the final determination or the withdrawal of the appeal.

## **8. YOUR RIGHT OF APPEAL**

You can appeal against this notice, but your appeal must be received or posted in time to be received by the Scottish Government before 3<sup>rd</sup> December 2012. Schedule 1 to this notice gives information on your rights of appeal. **READ IT CAREFULLY.**

#### **9. WHAT HAPPENS IF YOU DO NOT APPEAL**

If you do not appeal against this notice, it will take effect on 3rd December 2012 and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period(s) specified in the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution and/or remedial action by the Council.

Dated: 2.11.12

Howard Young  
Area Team Leader  
Helensburgh and Lomond Area  
On behalf of Argyll and Bute Council

<b>EXPLANATORY NOTE FOR THOSE IN RECEIPT OF AN ENFORCEMENT NOTICE</b>
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### **RELEVANT LEGISLATION**

In respect of Sections 127, 130, 131 and 134 of the Act, copies of which are attached hereto, you will wish to note in particular the points referred below.

### **RIGHT OF APPEAL**

If you wish to appeal against this notice, you should give written notice of the appeal to the Scottish Government at The Directorate for Planning and Environmental Appeals, 4 The Courtyard, Callendar Business Park, Callendar Road, Falkirk, FK1 1XR, which written notice of appeal must be received, or posted in time to be received, by the Scottish Government before, or sent to them using electronic communications at such a time that, in the ordinary course of transmission, it would be delivered to them before that date. The Scottish Government has no power to consider an appeal lodged out of time.

If you lodge an appeal, the enforcement notice is suspended and will not take effect unless the appeal is withdrawn or dismissed.

### **PENALTIES FOR NON-COMPLIANCE WITH AN ENFORCEMENT NOTICE**

Where an enforcement notice requires the discontinuance of a use of land or compliance, in respect of a use of land or the carrying out of operations, with any conditions or limitations, then any person who, without the grant of planning permission uses the land or causes or permits it to be used, or carries out those operations or causes or permits them to be carried out, is guilty of an offence and liable on summary conviction to a fine not **exceeding Twenty Thousand Pounds or on conviction on indication to an unlimited fine**. Further more, if the use is continued after conviction the person may be convicted of a second or subsequent offence.

### **DIRECT ACTION FOR NON-COMPLIANCE WITH AN ENFORCEMENT NOTICE**

If the steps required by an enforcement notice are not taken within the specified period(s) the Council may enter on the land, take those steps and recover the cost from the owner or lessee of the land.

### **FURTHER OFFENCES**

Compliance with the terms of an enforcement notice does not discharge the notice. It will continue in effect and any repetition of the breach of control may incur further penalties or may result in direct action by the Council.

## **REQUIRED SCHEDULE OF WORKS:**

### **General Overview of planting scheme**

A landscaped Buffer Zone defined by Area A outlined on the attached PLAN 1 requires to be formed to stabilise the infill and soil imported onto the Land Affected and address water flows from the recently formed raised land to both the adjoining property and other land. This landscape buffer requires to be a 5m wide strip as set out in Plan 1.

For the avoidance of doubt the ditch referred to in Part 5 (I) of this notice adjacent to the listed wall can be regarded as forming part of this 5m buffer zone and should be grassed and seeded in accordance with the requirements set out at stage 3 below. It should thereafter be retained as a ditch and not filled to ensure that the ground level does not rise and soil does not press against or impact upon the listed wall.

Within the 5m buffer zone and on the outer edge of the land marked A, a 60cm wide trench shall be prepared in accordance with Stage 2 below to allow the planting of Hawthorn Bushes which will assist in stabilising the land and slowing water flows from the raised land in accordance with SEPA Guidance contained in:

BMP:69 – Hedgerow Planting and Stone Dykes

BMP 82 – Buffer Zones, Focussing Run Off into Buffers at Critical Places on the Slope.

Along the boundary with the listed wall, where a ditch is already to be formed under Part 5 (i) of this notice to protect the wall, the planting trench set out at stage 2 below shall be set back 1m from top edge of the ditch to avoid causing damage and causing its collapse through undertaking the works at stage 2. Any collapse of the ditch requires to be cleared and the ditch reinstated in accordance with the requirements of Part 5 (I) and Stage 3 of this notice.

### **Works to be undertaken**

#### **Stage 1 - General Site Preparation**

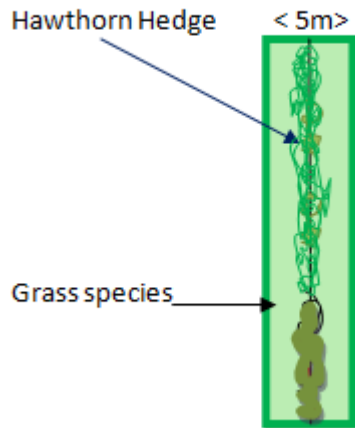
The land delineated as Area A in Plan 1 shall be raked over and any large stones with a diameter in any direction in excess of 150mm should be removed from the defined area prior to any works set out below being undertaken.

#### **Stage 2 Hawthorn Hedge Planting and required ground preparation**

The area where the Hawthorn is to be planted along the outer edge of the area delineated as Area A on Plan 1 shall be prepared by digging compost into the soil in a 60cm wide trench and 30cm in depth to provide adequate nutrients for the replanting scheme. (Note requirement to set trench 1m back from the ditch formed under requirements of Part 5(I) previously outlined above along the boundary with the Listed Wall)

Crataegus Monogyna (Hawthorn) shall be planted at 45cm intervals in a single row protected by coil tubes with canes within the 5m buffer zone throughout the full length of Area A. See example below- not to scale. The hedge to consist of Crataegus Monogyna (Hawthorn) only.

### Example of planting in buffer zone.



### Stage 3 – Grass Seeding/ Planting

Following stages 1 and 2 being undertaken and completed the following species shall be sewn on the remainder of the 5m Buffer zone annotated A on Plan 1

Timothy, Meadow fescue, Tall fescue, Creeping red fescue, Chewing's fescue, Red and White clover- at a rate of between 30 and 40 grms/m<sup>2</sup>

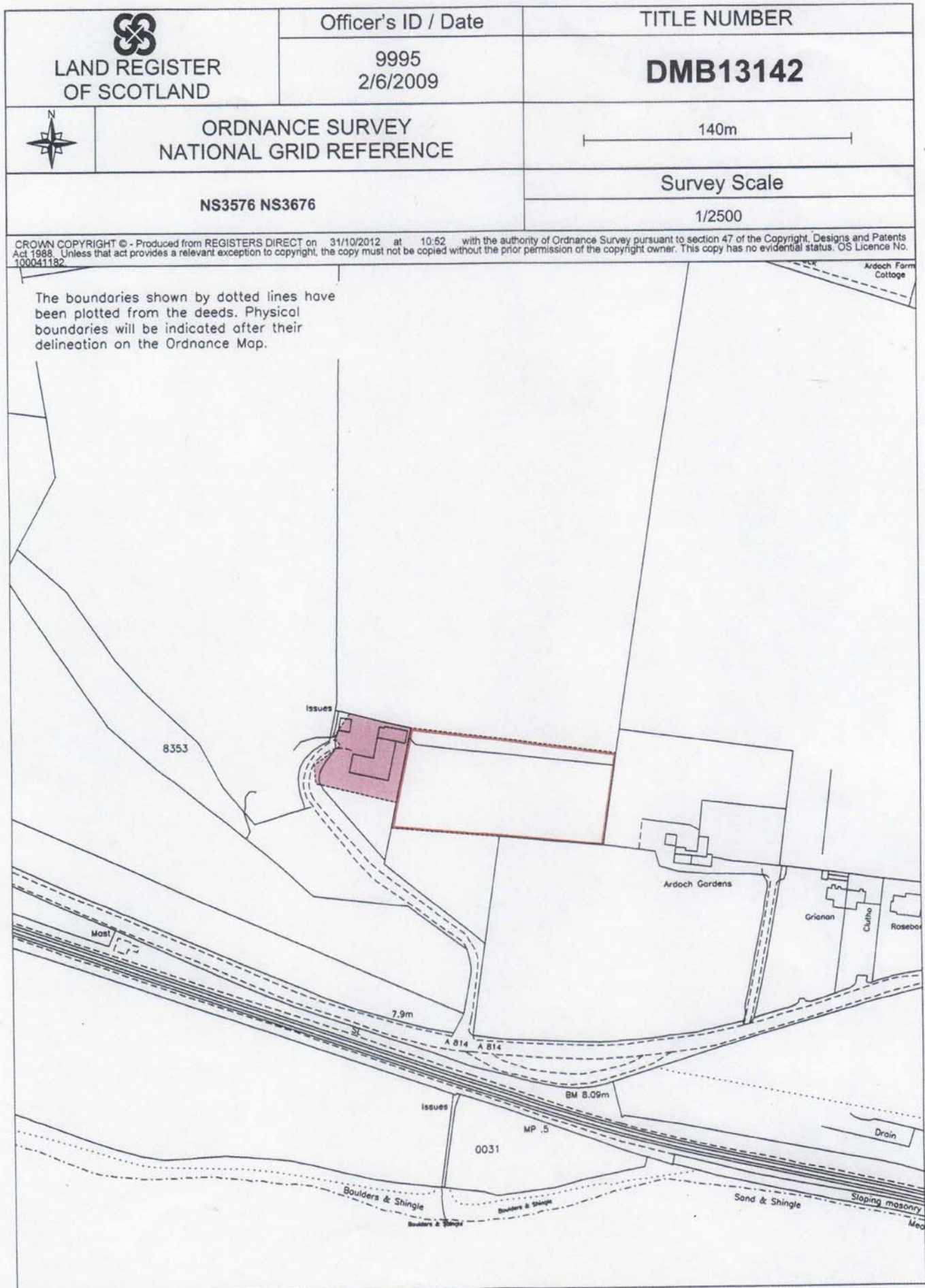
### Conclusion

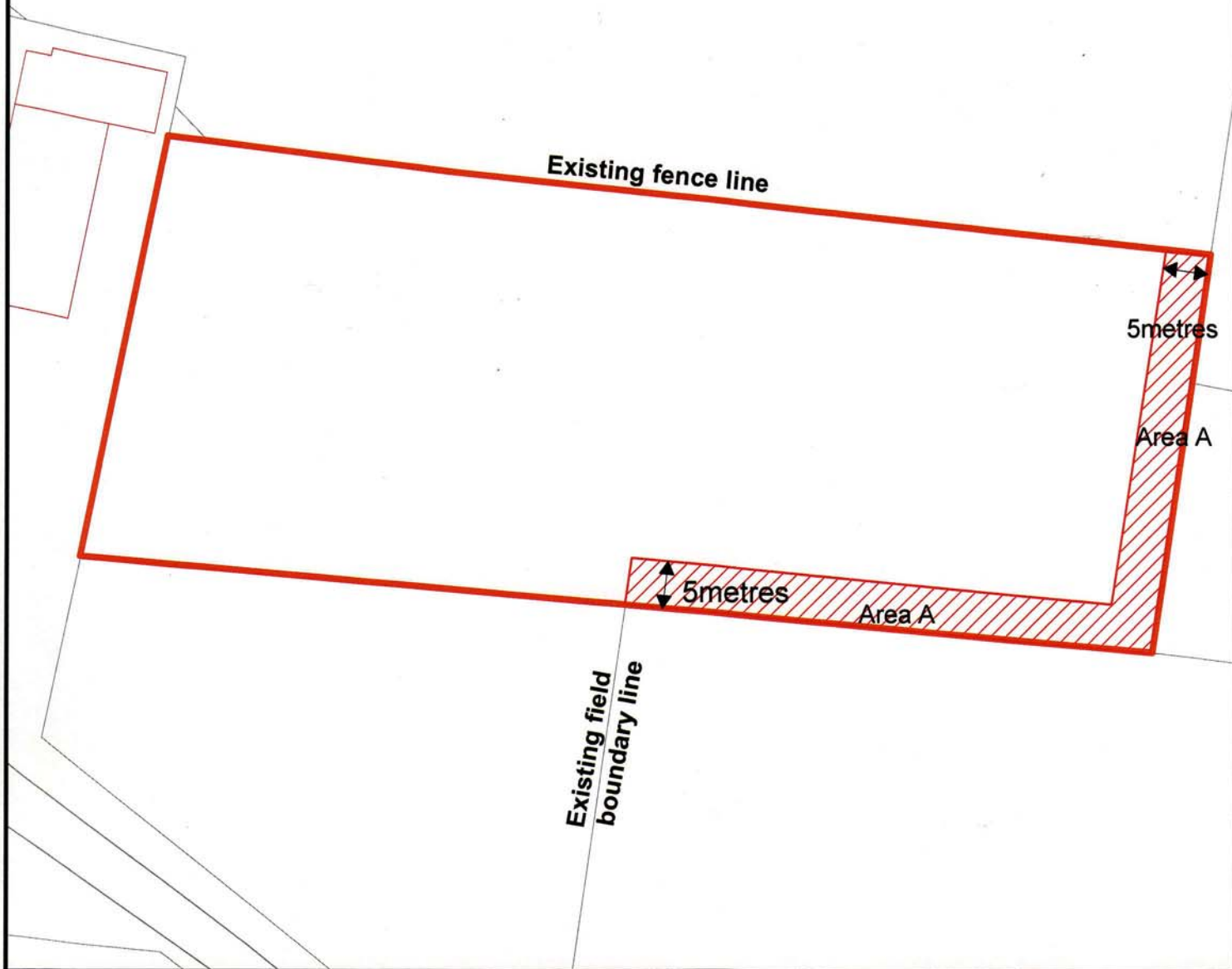
The recommended planting scheme, when completed and established, will reduce surface water run-off, stabilise the topsoil and provide a habitat for birds such as a Song Thrush, Black Bird and Tree Sparrow. As the Hawthorn becomes established, it will flower thus attracting a number of species of Bumble Bee and a variety of insects.

The scheme seeks to address both flooding and soil stability issues as well as providing a more appropriate setting for the Listed Wall, both visually, and in ensuring it is not damaged by soil pressure against it from this adjoining land where levels have been raised without the benefit of planning permission.

All of the planting and other works set out in this notice are required to be maintained and thereafter retained unless with the written approval of the planning authority.

# Land Affected





## Plan 1 - Required Landscape Buffer Zone

1:625



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