

WATERCOURSES

PART 3 ; PROTECTING ACCESS TO WATERCOURSES AND CULVERTS

1.0 Introduction

- 1:1 Byelaws : The Board's byelaw number 10 states 'No person without the previous consent of the Board shall erect any building or structure, whether temporary or permanent, or plant any tree, shrub, willow or other similar growth within nine metres of the landward toe of the bank where there is an embankment or wall or within nine metres of the top of the batter where there is no embankment or wall, or where the watercourse is enclosed within nine metres of the enclosing structure.'
- 1:2 The purpose of these byelaws is to protect the Board's right of access to its maintained watercourses and culverts at all times in order to be able to undertake repair and maintenance, and to protect the need for future improvements to cope with changed circumstances.

2.0 Implementation

- 2:1 The Board requires all owners and occupiers of land or property who propose to undertake any works that would breach the above byelaws to seek prior approval from the Board before they commence such work.
- 2:2 The Board will liaise with the local planning authority to ensure that all planning applications that fall within the Board's area are referred to the Board for comment before they are approved by the District Council.

3.0 Policy

- 3:1 The Board will at all times require a continuous strip of undeveloped land at least nine metres wide on both sides of any maintained watercourse or culvert to allow free access to meet all foreseeable maintenance needs.
- 3:2 The Board may be prepared in exceptional circumstances to allow development within the nine metre protected strip on one side of any Board maintained open watercourse provided that there is an adequate continuous and guaranteed access strip on the opposite side. Such development will not normally be allowed any closer than six metres from the bank top of the watercourse. See Figure 1 below :-

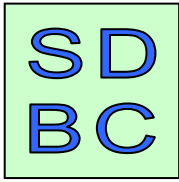
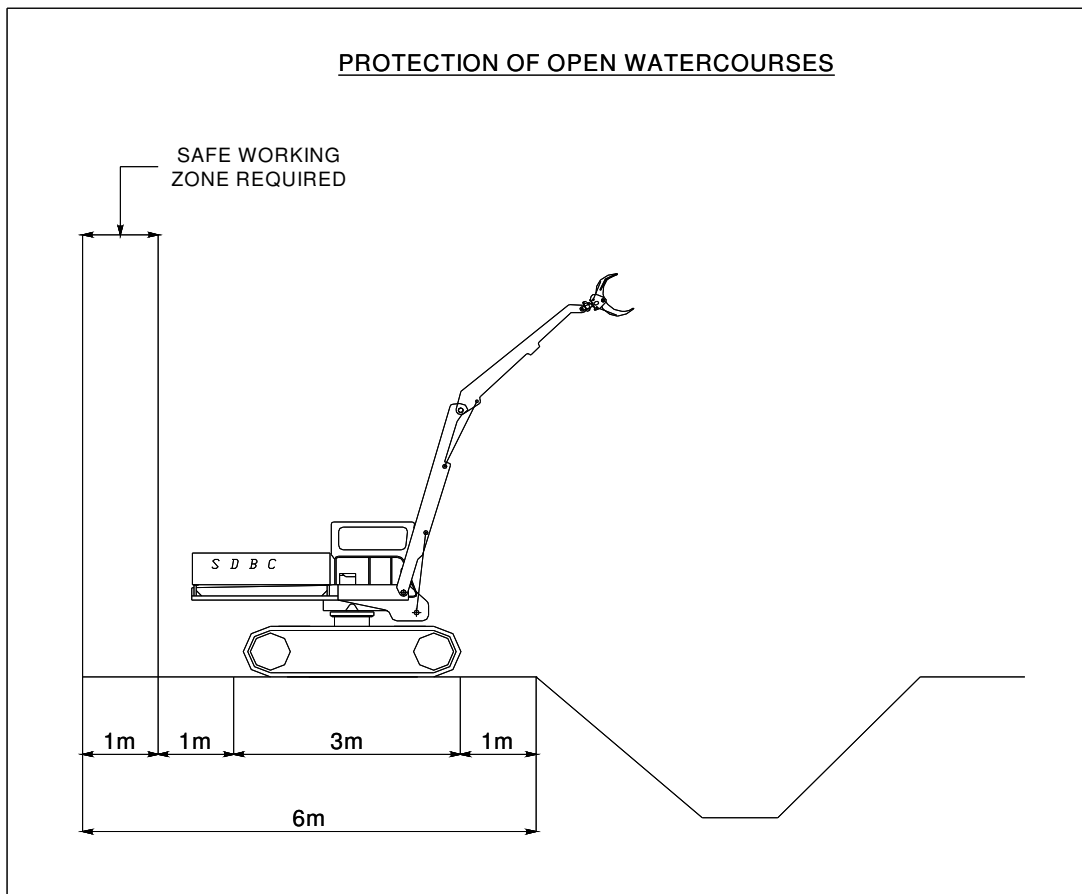
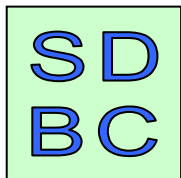


Figure 1



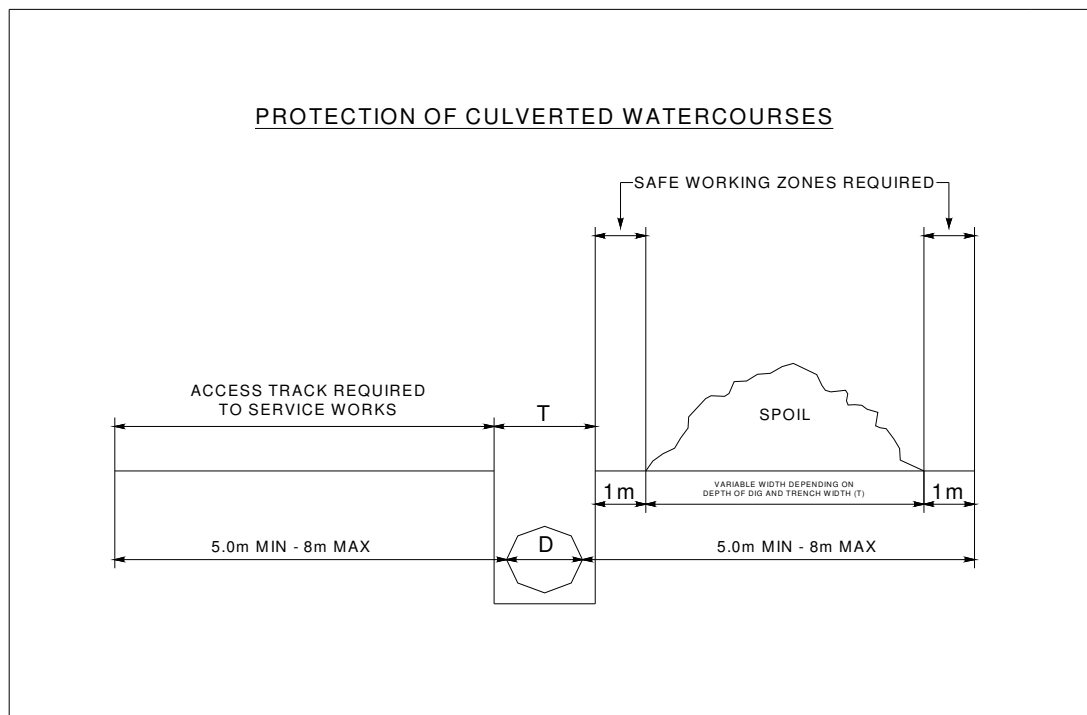
- 3:3 The Board will not allow any development over the top of a Board maintained culvert.
- 3:4 The Board may be prepared in exceptional circumstances to allow development within the nine metre protected strip adjacent to a culvert provided that there is an adequate and continuous access either side of the culvert available after the development is completed and provided that the development does not impose any restriction to the culvert. (See Figure 2 below)



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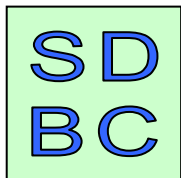
Figure 2



3:5 The extent of any relaxation will be dependent on the size and depth of the culvert and will be determined by the Board's operational needs as set down in the following table and as shown on Table 1 below.

Table 1

Pipe Diameter (metres)	Depth to Invert of Pipe (metres)							
	1.5	2.0	2.5	3.0	3.5	4.0	4.5	5.0
0.3 m	5.0	5.0	6.0	6.0	6.0	7.0	7.0	7.0
0.45 m	5.0	6.0	6.0	6.0	7.0	7.0	7.0	8.0
0.60 m		6.0	6.0	7.0	7.0	7.0	8.0	8.0
0.75 m		6.0	7.0	7.0	7.0	8.0	8.0	8.0
0.9 m		6.0	7.0	7.0	8.0	8.0	8.0	9.0
1.2 m			7.0	8.0	8.0	9.0	9.0	9.0
Above 1.2 m			8.0	8.0	9.0	9.0	10.	10.



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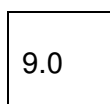
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Minimum cover not achieved



Easement relaxation
permissible



Maximum easement required



Easement requirement exceeds maximum of 9.0m allowable

- 3:6 Where an applicant or developer controls access to both sides of a culvert or in circumstances where access to one side is guaranteed in perpetuity (i.e. a road verge) or on publicly owned land, exceptional relaxation rules may apply. If these circumstances apply, applicants or developer should contact the Board's officers for without prejudice pre-application guidance.
- 3:7 The Board will permit redevelopment or rebuilding of an existing structure that is within the protected zone provided it occupies the same position and has the same dimensions as the original structure. Byelaw consent will be required as if a new structure was planned.

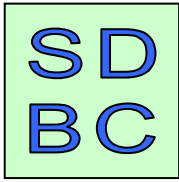
4.0 Protection of culverts

- 4:1 Where watercourses are culverted by the Board or others, markers will be placed at all established points where the culvert crosses boundaries of properties in order to allow for easy identification of the line of the culvert. Similar markers will be placed to mark the boundary of any byelaw exclusion zones lateral to the culvert.
- 4:2 Where existing culverts are subject to work or investigations the Board will place markers at appropriate points for future reference.
- 4:3 Culvert markers will normally be plates (cast iron or concrete) inserted at ground level or concrete marker posts. The agreement of land or property owners for the Board to erect and permanently maintain markers will be sought.

5.0 Planting of trees, shrubs and hedges

The following restrictions will be applied to any trees, hedges or shrubs planted near a Board maintained watercourse or culvert:-

- (a) no trees will be allowed within nine metres of a watercourse or culvert.
- (b) selected species of bushes and hedges only will be allowed within nine metres but no closer than six metres of a watercourse or culvert (see Appendix 1), and



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- (c) in exceptional circumstances landscaping of maintenance strips above Board maintained culverts may be permitted under agreement where amenity is an issue in highly visible public areas.

6.0 Enforcements of agreements

- 6:1 Where the Board approves any development within the nine metre protected strip it will require a signed acknowledgement of the agreement from the owner/developer and a written undertaking that the agreement has been added to the title deeds and will be maintained at all times with such deeds.

7.0 Dealing with breaches

- 7:1 Where any breach of the byelaw is discovered or suspected the Board's officers will conduct an investigation. If there is prima facie evidence of a breach the Board will serve notice under the Land Drainage Act 1991, Section 66 (6) which states:-

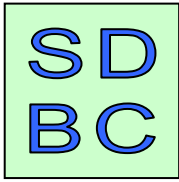
'If any person acts in contravention of, or fails to comply with, any byelaw made under this section he shall be guilty of an offence and liable, on summary conviction –

- (a) to a fine not exceeding level 5 on the standard scale; and
- (b) if the contravention or failure is continued after conviction, to a further fine not exceeding £40 for every day on which the contravention or failure is so continued.'

- 7:2 The notice will require that the breach is remedied within a period of not less than 14 days and not exceeding 28 days, failure to do this will result in summary proceedings being issued.
- 7:3 If the breach is not remedied within the specified time scale then the Board will use Land Drainage Act 1991, Section 66 (7) powers to undertake the necessary works and recharge the costs of such works to the offenders.

8.0 Ownership and use of land compromising of or adjacent to a Board maintained watercourse or culvert

- 8:1 The Board is not normally the owner of any watercourse, or land adjacent to any watercourse.
- 8:2 In consequence, when a watercourse is culverted the Board will not normally own the ground above the culvert.
- 8:3 It must be recognised that circumstances can arise where adjoining owners do not have title to a watercourse e.g. where land on either side of a watercourse is developed and the title to that land area consisting of the watercourse is not conveyed to either party. In such circumstances the title is likely to remain with the original owner or owners of the land.
- 8:4 The Board has powers to purchase land alongside a watercourse to secure freedom from encroachment in perpetuity. Where land is so purchased the Board may enter into agreement to allow licensed use of such land on terms to be agreed.



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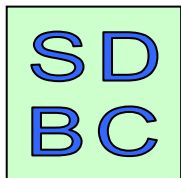
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8:5 Where a watercourse is culverted and adjoining landowners have title to the land above the culvert, the Board may permit use of the land for normal domestic or commercial purposes, provided that no permanent or temporary structure is erected without the Board's prior approval and subject to the absolute right of the Board to enter upon the land at any time to gain access to the culvert, without liability to pay compensation for any accidental or unavoidable damage caused to the permanent or temporary structure. Signed agreements for the use of such land will be completed between the Board and the land owner/developer as detailed in paragraph 6.

8:6 In any instance where public access is permitted on any land purchased by the Board or created through culverting of a watercourse, the Board will take all necessary steps to ensure that such access is permissive and that public rights of access are not obtained by uninterrupted use.

9.0 Board decision

9:1 The Board retains the absolute right and authority to enforce its byelaws and the Policy shall not convey any rights to any person to develop any land without the necessary statutory consents from the Board and other authorities. The Board retains the right to vary any conditions or course of action set out in the Policy. Each application to the Board will be considered on its merits.



APPENDIX 1

PLANTING OF TREES, HEDGES AND SHRUBS

The following restrictions will be applied to any hedges or shrubs planted near a Board maintained watercourse or culvert:-

1. No trees will be allowed within nine metres of an open or culverted watercourse.
2. Selected species of bushes and hedges only will be allowed within nine metres but no closer than six metres as above.
3. In exceptional circumstances landscaping of maintenance strips with approved shallow rooted ground cover plants above Board maintained culverts may be permitted under agreement where amenity is an issue in high visibility areas.

Approved List of Hedges and Shrubs for Planting in accordance with 2 above.

Dogwood	-	<i>Cornus Sanguinea</i>
Hawthorne	-	<i>Crateagus Monogyna</i>
Holly	-	<i>Ilex Aquifolium</i>
Laurel	-	<i>Prunus Laurocerasus</i>
Privet	-	<i>Ligustrum Vulgare</i>
Guelder Rose	-	<i>Viburnum Opulus</i>
Dog Rose	-	<i>Rosa Canina</i>
Rhamnus Rose	-	<i>Rosa Rugosa</i>
Scotch Rose	-	<i>Rosa Pimpinellifolia</i>
Snowberry	-	<i>Symphoricarpos Albus</i>
Spindle	-	<i>Euonymous Europaeus</i>
Sweet Briar	-	<i>Rosa Rubiginosa</i>
Wayfaring Tree	-	<i>Viburnum Lantana</i>
Rhododendron	-	<i>Rhododendron Ponticum</i>

NOTE: This is not a definitive list but these are mostly indigenous species.