

# **TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997, AS AMENDED**

## **TEMPORARY STOP NOTICE UNDER Section 144A**

To: Mr Graham MacEachen  
Point Five Building Design  
Dungallan Studio  
Gallanach Road  
Oban  
PA34 4LS

### **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, as amended ('the Act'). This Notice is hereby served because it appears to the Planning Authority that there has been a breach of planning control in relation to the Land Affected as hereinafter defined, the breach consists in engagement in an activity, and it is expedient that the activity is stopped immediately.

### **2. THE LAND AFFECTED**

Land to the South and South West of Soroba House Hotel, partially contained within the Land Register of Scotland Title Deed ARG2040, shown delineated in red on the plan annexed hereto (hereinafter referred to as 'the Land Affected').

### **3. THE UNAUTHORISED ACTIVITY**

The carrying out of engineering and/or other operations constituting 'development' as defined by Section 26 of Part III of the Town and Country Planning (Scotland) Act 1997, as amended, in on and over the Land Affected without Planning Permission ('the Unauthorised Activity')

### **4. PROHIBITION OF ENGAGEMENT IN UNAUTHORISED ACTIVITY**

The Unauthorised Activity is prohibited from the time and date that this notice has effect.

### **5. REASONS FOR ISSUING THE NOTICE**

The Unauthorised Activity does not benefit from planning permission and it is expedient that the activity is stopped immediately. The unlawful development of the Land Affected has the potential to cause material harm to residential amenity, has the potential to materially affect the setting of the adjacent listed building (Soroba House Hotel) and raises potential highway safety issues. In the absence of any opportunity to properly consider a formal planning application for the Unauthorised Activity and in the absence of any response to repeated requests for information from the developer, including the failure of the developer to respond to a Planning Contravention Notice, it is considered that the service of this notice is proportionate in that it temporarily prohibits the Unauthorised Activity to allow time for the proposed development to be appropriately assessed and a relevant planning application to be submitted and subsequently determined. It should, however, be noted that the Planning Authority may decide to take further formal planning enforcement action should it be considered expedient to do so.

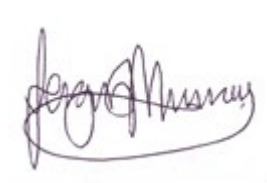
#### **6. WHEN THIS NOTICE TAKES EFFECT**

**This notice has immediate effect from the 5<sup>th</sup> of February 2021 being the time and date at which a copy of it was first displayed on the Land Affected. This notice will cease to have effect at the end of the period of 28 days from the 5<sup>th</sup> of February 2021.**

#### **7. YOUR RIGHT OF APPEAL**

There is no statutory right of appeal against this notice.

Dated: 5<sup>th</sup> of February 2021

A handwritten signature in dark ink, appearing to read 'Fergus Murray', enclosed within a thin rectangular border.

Fergus Murray  
Head of Development and Economic Growth  
On behalf of Argyll and Bute Council, Kilmory, Lochgilphead, PA31 8RT

<b>STATEMENT AS TO THE EFFECT OF SECTION 144C of the Town and Country Planning (Scotland) Act 1997, as Amended</b>
--

**RELEVANT LEGISLATION**

**WARNING**

THIS NOTICE TAKES EFFECT ON THE DAY IT IS FIRST DISPLAYED ON THE LAND TO WHICH IT RELATES.

THERE IS NO RIGHT OF APPEAL AGAINST THIS NOTICE.

Section 144C of the Town and Country Planning (Scotland) Act 1997 is set out below. You will wish to note in particular the points referred to below.

It is an offence for a person to contravene a temporary stop notice which has been served on them, or a copy of which has been displayed in pursuance of section 144A(4) of the Town and Country Planning (Scotland) Act 1997, as amended. It is also an offence to cause or permit contravention of the notice. An offence may be charged by reference to a day or to a period of more than a day. A person may be convicted of more than one offence if they repeatedly breach the temporary stop notice.

A person convicted of contravening a temporary stop notice is liable on summary conviction to a fine not exceeding £50,000 and on conviction on indictment to a fine.

**Section 144C Temporary stop notices: offences**

(1) A person is guilty of an offence if he contravenes a temporary stop notice—

(a) which has been served on him, or

(b) a copy of which has been displayed in pursuance of section 144A(4).

(2) Contravention of a temporary stop notice includes causing or permitting the contravention of it.

(3) An offence under this section may be charged by reference to a day or to a period longer than a day.

(4) A person may, in relation to the same temporary stop notice, be convicted of more than one offence under this section by reference to different days or different periods.

(5) It is a defence in any proceedings under this section that—

(a) the temporary stop notice was not served on the accused, and

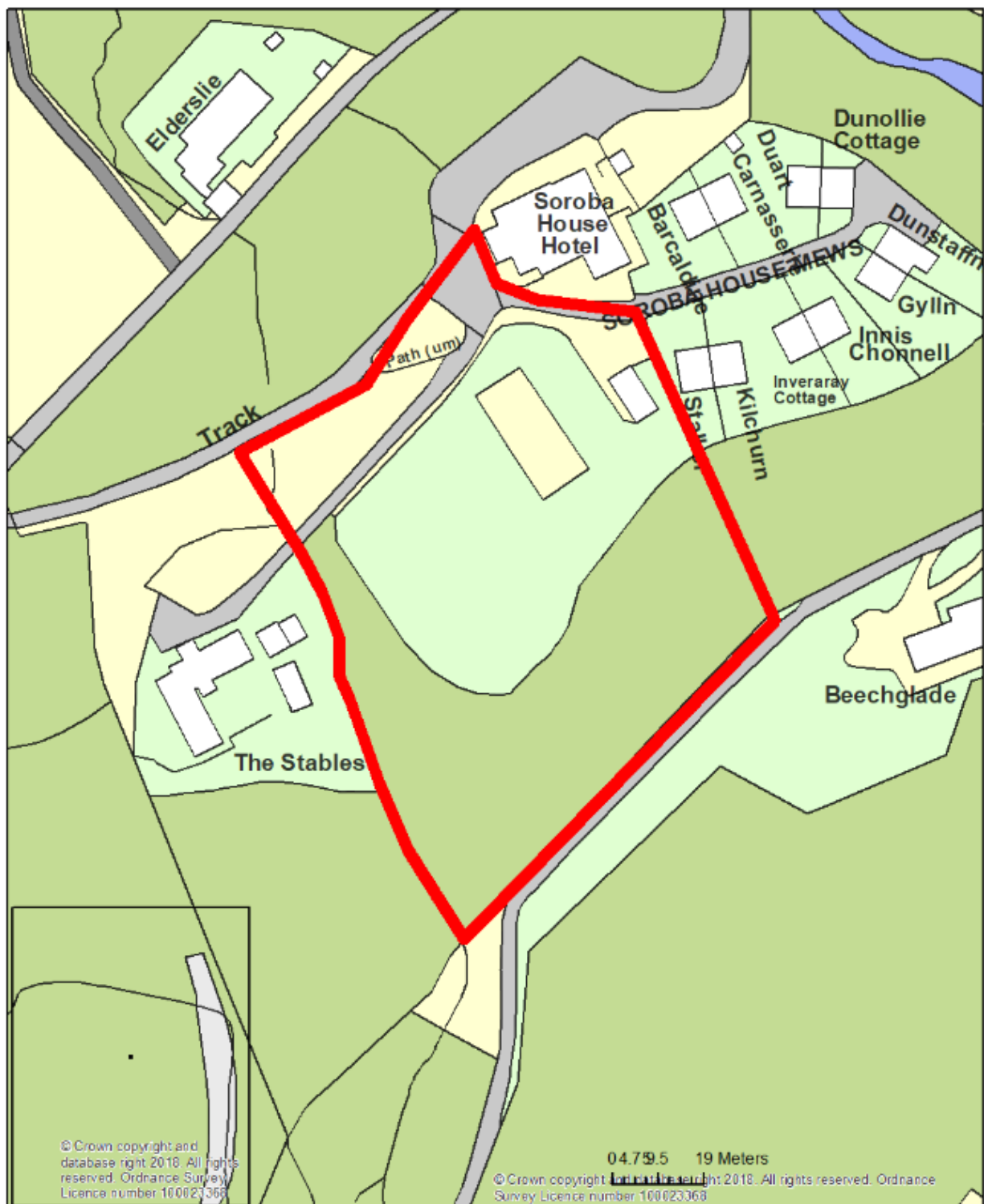
(b) he did not know, and could not reasonably have been expected to know, of its existence.

(6) A person convicted of an offence under this section is liable—

(a) on summary conviction, to a fine not exceeding £50,000,

(b) on conviction on indictment, to a fine.

(7) In determining the amount of the fine, the court is in particular to have regard to any financial benefit which has accrued or appears likely to accrue to the convicted person in consequence of the activity which constituted the offence



## Temporary Stop Site Notice Plan: 21/00018/ENOTH2



1:1,000

Reproduced from the Ordnance Survey map with the permission of the Controller of Her Majesty's Stationery Office (C) Crown Copyright 2005  
 Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or Civil Proceedings.  
 OS License No. XYZ123ABC

**IMPORTANT – THIS NOTICE AFFECTS YOUR PROPERTY AND HAS IMMEDIATE EFFECT.**

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

**NOTICE REQUIRING SUBMISSION OF A PLANNING APPLICATION FOR DEVELOPMENT  
ALREADY CARRIED OUT**

**REFERENCE NUMBER: 21/00018/ENOTH2**

To: Mr Graham MacEachen  
Point Five Building Design  
Dungallan Studio  
Gallanach Road  
Oban  
PA34 4LS

1. **THIS IS A FORMAL NOTICE** which is issued by Argyll and Bute Council, as Planning Authority, under s33A of the Town and Country Planning (Scotland) Act 1997, as amended, ('the Act'), because there has been a breach of planning control under Section 123(1) (b) of the Act as development has been carried out in, on, over or under the Land Affected described below without the required planning permission.

**2. THE LAND AFFECTED**

That plot or area of ground shown delineated in red on the attached plan which plot or area of ground forms Land to the South and South West of Soroba House Hotel, partially contained within the Land Register of Scotland Title Deed ARG2040 ('hereinafter referred to as the Land Affected').

**3. THE BREACH OF PLANNING CONTROL**

The carrying out of engineering and/or other operations constituting 'development' as defined by Section 26 of Part III of the Town and Country Planning (Scotland) Act 1997, as amended, in on and over the Land Affected without Planning Permission ('the Unauthorised Activity')

**4. REASONS FOR ISSUING THIS NOTICE**

The Breach of Planning Control at the Land Affected has the potential to cause material harm to residential amenity, has the potential to materially affect the setting of the adjacent listed building (Soroba House Hotel) and raises potential highway safety issues. In the absence of any opportunity to properly consider a formal planning application for the Unauthorised Activity

and in the absence of any response to repeated requests for information from yourself, including your failure to respond to a Planning Contravention Notice, it is considered that the service of this notice is proportionate. It should, however, be noted that the Planning Authority may subsequently decide to refuse planning permission and/or decide to take further formal planning enforcement action should it be considered expedient to do so.

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

As the owner of the Land Affected you are required to make a formal detailed application for planning permission to Argyll and Bute Council, as Planning Authority, for the development of the Land Affected that represents the breach of planning control.

Time period for compliance: **5<sup>th</sup> of March 2021**

## **6. FAILURE TO COMPLY**

Please note that section 123(2) of the Act provides that, for the purposes of the Act, the issue of this notice constitutes taking enforcement action.

Failure to comply with this notice may result in further enforcement action.

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

This notice takes effect on the date on which it is received by you.

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

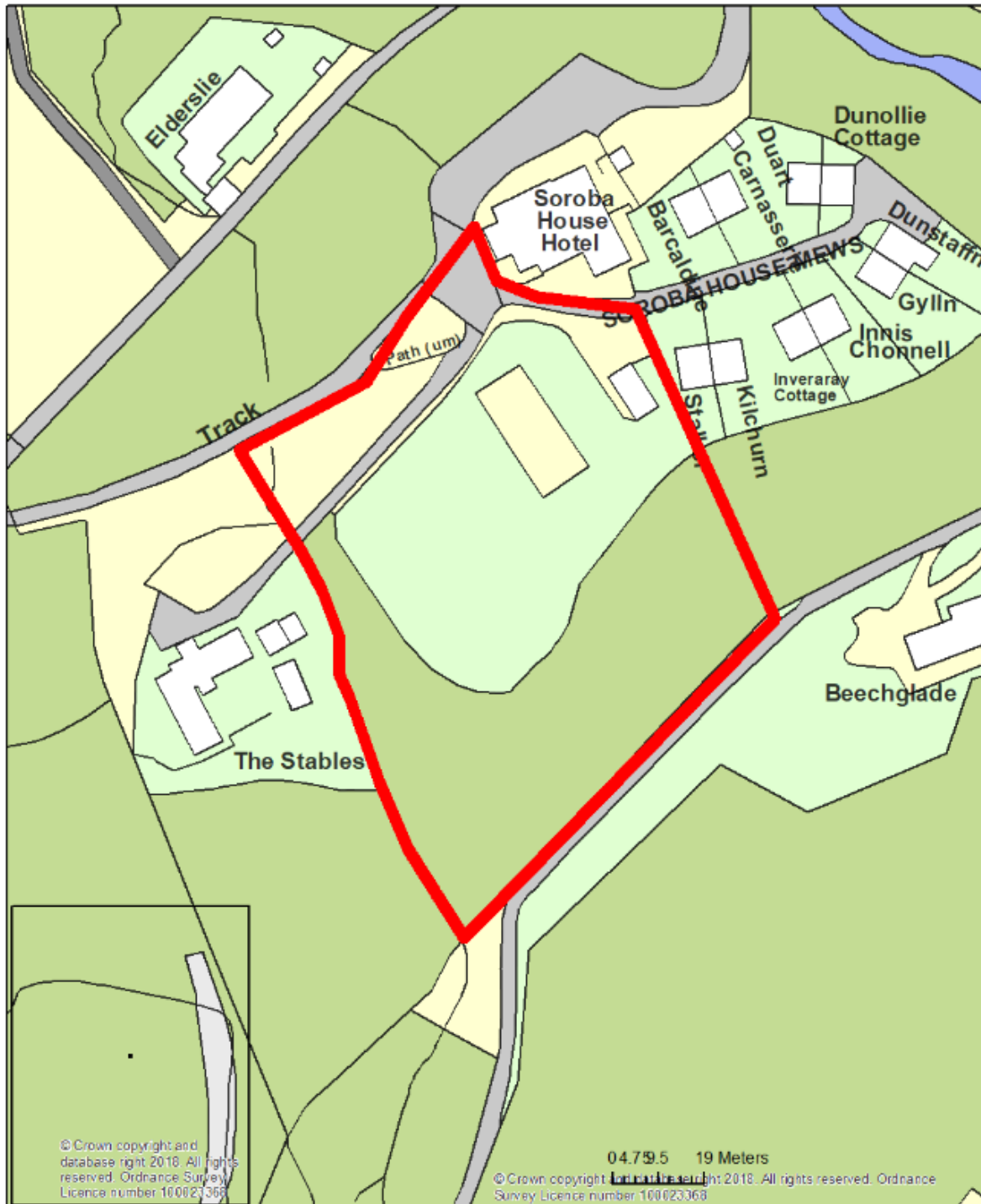
You do not have a right of appeal against this notice.

Dated: **5<sup>th</sup> of February 2021**

A handwritten signature in purple ink, appearing to read 'Fergus Murray', with a large, stylized flourish at the end.

Fergus Murray  
Head of Development and Economic Growth  
Kilmory  
Lochgilphead

On behalf of Argyll and Bute Council, Kilmory, Lochgilphead, PA31 8RT



**The Land Affected**

## **EXPLANATORY NOTE FOR THOSE IN RECEIPT OF A NOTICE REQUIRING SUBMISSION OF A PLANNING APPLICATION FOR DEVELOPMENT ALREADY CARRIED OUT.**

### **Relevant Legislation**

Copies of s33A and s123 of the Town and Country Planning Scotland Act 1997, as amended, are attached.

### **What does this notice mean?**

You have received this notice because the planning authority believe that you have either built something or are doing something on your property for which you should have obtained planning permission, or built something having failed to comply with any condition or limitation subject to which planning permission has been granted. The planning authority has therefore issued you this notice requiring you to submit a planning application for the work that has been carried out (a retrospective planning application).

### **What happens next?**

You need to submit a planning application by the date stated in the Notice. When submitting a planning application you will require to pay the requisite fee.

### **What happens if I don't submit an application?**

If you don't submit an application the planning authority may take further enforcement action. This can ultimately mean that you may be required to remove the development and/or, should you fail to comply with further enforcement action, that you could face prosecution. You should note that a notice issued under s33A of the Act constitutes the taking of enforcement action and this notice may accordingly affect the timescales in which the Council may take further enforcement action against you.

### **What happens if I think I should not have received the notice?**

If you believe that you should not have received this notice; for example, because you have no interest in the land to which it relates, then you should contact the local planning department as soon as possible.

### **If I submit a retrospective planning application, how will it be dealt with by the planning authority?**

Your application will be handled in exactly the same way as any other application. You should be aware that the fact that you have been served this notice does not mean that permission will be granted. If the planning application is unacceptable then the planning authority may refuse it (in which case you may appeal) or may grant it subject to whatever conditions or restrictions are considered necessary to make the application acceptable.



## **RELEVANT LEGISLATION**

### **Town and Country Planning Scotland Act 1997**

#### Section 33A

Where there is a breach of planning control the planning authority may issue a notice—

- (a) requiring the owner of the land in, on, over or under which the development has been carried out to make an application to them for planning permission for the development,
- (b) describing the development in a way that is sufficient to identify it,
- (c) specifying a date by which the application is to be made, and
- (d) setting out the terms of section 123(1).

#### Section 123

(1) For the purposes of this Act—

- (a) carrying out development without the required planning permission, or
- (b) failing to comply with any condition or limitation subject to which planning permission has been granted, or
- (c) initiating development without giving notice in accordance with section 27A(1) of this Act, or
- (d) carrying out development without displaying a notice in accordance with section 27C(1) of this Act, constitutes a breach of planning control.

(2) For the purposes of this Act—

- (a) the issue of an enforcement notice, or
- (b) the service of a breach of condition notice,

under this Part constitutes taking enforcement action as does the issuing of a notice under section 33A

(3) In this Part “planning permission” includes planning permission under Part III of the 1947 Act and Part III of the 1972 Act.