

IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
AS AMENDED BY THE PLANNING ETC. (SCOTLAND) ACT 2006**

BREACH OF CONDITIONS NOTICE

REFERENCE NUMBER: 20/00004/ENBOC2

To: Bruichladdich Co. Ltd
Bruichladdich
Isle of Islay
Argyll
PA49 7UN

SERVED BY: ARGYLL AND BUTE COUNCIL, KILMORY, LOCHGILPHEAD

1. **THIS IS A FORMAL NOTICE** which is served by Argyll and Bute Council, as Planning Authority, under Section 145 of the Town and Country Planning (Scotland) Act 1997, as amended ('the Act') because it is considered a condition imposed on the grant of planning permission, relating to the land described below, has not been complied with. It is considered that you are (the person who is carrying out or has carried out the development)(the person having control of the Land Affected) and as such are the person responsible for securing compliance with the conditions specified in this notice

2. THE LAND AFFECTED BY THE NOTICE

That plot or area of ground shown delineated in red on the attached plan which plot or area of ground forms **Land North of Coultorsay Bruichladdich, Isle of Islay** (hereinafter referred to as 'the Land Affected')

3. THE RELEVANT PLANNING PERMISSION

The planning permission to which this notice relates is the permission granted by Argyll and Bute Council Reference Number **15/00158/PP** on **30.06.15** for **Construction of 6 No new bonded warehouses, together with disgorging unit/filling store and welfare facilities, formation of access road, hard standings, installation of septic tank and drainage infrastructure** on the Land Affected (hereinafter referred to as 'the Planning Permission')

4. BREACH OF CONDITION

The following condition(s) of the Planning Permission have not been complied with:

8. No development shall take place within the development site as outlined in red on the approved plan until the developer has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation which has been submitted by the applicant, agreed by the West of Scotland Archaeology Service, and approved by the Planning Authority. Thereafter the developer shall ensure that the programme of archaeological works is fully implemented and that all recording and recovery of archaeological resources within the development site is undertaken to the satisfaction of the Planning Authority in agreement with the West of Scotland Archaeology Service.

Reason: In the interests of archaeology.

10. No development shall be commenced until samples and/or full details of the colour and profile of the sheet roofing to the buildings and the external paint finish of the walls (which shall be off- white) have been submitted to and have been approved in writing by the Planning Authority. The development shall be implemented in accordance with the duly approved details, unless any subsequent variation thereof is agreed in advance in writing.

Reason: In order to ensure an appropriate appearance in the interests of visual amenity and to help integrate the development into its surroundings.

5. WHAT YOU ARE REQUIRED TO DO

As the person responsible for the breach of condition specified in paragraph 4 of this notice, you are required to comply/secure compliance with the stated condition(s) by taking the following steps:

- 1.) Paint the remaining building walls in the off-white previously agreed;
- 2.) Fully comply with the archaeology condition as above; West of Scotland Archaeology Service have advised "A *post excavation research design or PERD* was subsequently required for the excavated material and was submitted and agreed 06-07-2016. At this time a copy of the letter was requested from the applicants commissioning GUARD to undertake the post excavation works set out in the PERD. This has never been received.

6. TIME FOR COMPLIANCE

You are required to comply with the requirements of this notice within **2 months** from the date on which you receive this notice by postal delivery.

7. DATE THIS NOTICE TAKES EFFECT

This notice takes effect immediately it is served on you or you receive it by postal delivery.

Dated: 18th February 2020

A handwritten signature in purple ink, appearing to be 'David Murray', written over a horizontal line.

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

WARNING - THERE IS NO RIGHT OF APPEAL AGAINST THIS NOTICE
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Copies of sections 145 and 145A of the Town and Country Planning (Scotland) Act 1997 (as amended) are attached. You will wish to note in particular the points referred below

It is an offence to contravene the requirements stated in paragraph 5 of this notice after the end of the compliance period. The maximum penalty for such an offence is £5000.00.

If you are in any doubt about what this notice requires you to do, you should get in touch immediately by telephone, followed by written enquiry to:

Planning Services, 1A Manse Brae, Lochgilphead, Argyll PA31 8RD.

Section 145A of The Planning etc. (Scotland) Act 2006 provides the Planning Authority with power to issue a fixed penalty notice for breaching the terms of a breach of condition notice. The issue of a fixed penalty notice is at the discretion of the Planning Authority. There is no right of appeal against a fixed penalty notice. The Town & Country Planning (Amount of Fixed Penalty) (Scotland) Regulations 2008 sets out that the penalty for breach of a breach of condition notice is £300. Payment of the penalty does not discharge the requirement to comply with the terms of the breach of condition notice, while prosecution proceedings can be taken where a fixed penalty notice is unpaid.

If you need independent advice about this notice, you are advised to contact urgently a lawyer, planning consultant or other professional advisor specialising in planning matters. If you wish to contest the validity of the notice, you may only do so by an application to the Court of Session for judicial review. A lawyer will advise you on what procedure this process involves.

DO NOT LEAVE YOUR RESPONSE TO THE LAST MINUTE
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TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED)

SECTIONS 145 AND 145A

145

(1) This section applies where planning permission for carrying out any development has been granted subject to conditions.

(2) The planning authority may, if any of the conditions is not complied with, serve a notice (in this Act referred to as a “breach of condition notice”) on—

(a) any person who is carrying out or has carried out the development, or

(b) any person having control of the land,

requiring him to secure compliance with such of the conditions as are specified in the notice.

(3) References in this section to the person responsible are to the person on whom the breach of condition notice has been served.

(4) The conditions which may be specified in a notice served by virtue of subsection (2)(b) are any of the conditions regulating the use of the land.

(5) A breach of condition notice shall specify the steps which the authority consider ought to be taken, or the activities which the authority consider ought to cease, to secure compliance with the conditions specified in the notice.

(6) The authority may by notice served on the person responsible withdraw the breach of condition notice, but its withdrawal shall not affect the power to serve on him a further breach of condition notice in respect of the conditions specified in the earlier notice or any other conditions.

(7) The period allowed for compliance with the notice is—

(a) such period of not less than 28 days beginning with the date of service of the notice as may be specified in the notice, or

(b) that period as extended by a further notice served by the planning authority on the person responsible.

(8) If, at any time after the end of the period allowed for compliance with the notice—

(a) any of the conditions specified in the notice is not complied with, and

(b) the steps specified in the notice have not been taken or, as the case may be, the activities specified in the notice have not ceased,

the person responsible is in breach of the notice.

(9) If the person responsible is in breach of the notice he shall be guilty of an offence.

(10) An offence under subsection (9) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under that subsection by reference to any period of time following the preceding conviction for such an offence.

(11) It shall be a defence for a person charged with an offence under subsection (9) to prove—

(a) that he took all reasonable measures to secure compliance with the conditions specified in the notice, or

(b) where the notice was served on him by virtue of subsection (2)(b), that he no longer had control of the land.

(12) A person who is guilty of an offence under subsection (9) shall –

(a) be liable on summary conviction to a fine not exceeding level 5 on the standard scale, or

(b) the court when setting the fine shall have regard to any financial benefit or likely financial benefit that the convicted person may accrue in consequence of the activity which constitutes the offence

(13) In this section—

(a) “conditions” includes limitations; and

(b) references to carrying out any development include causing or permitting another to do so.

145A

(1) Where a planning authority have reason to believe that, by virtue of subsection (8) of section 145, a person is in breach of a breach of condition notice they may, provided that the conditions mentioned in subsection (7) are satisfied, serve on him a fixed penalty notice as respects that breach.

(2) The fixed penalty notice is to specify—

(a) the step specified, under subsection (5) of section 145, in the breach of condition notice which has not been taken, or

(b) the activity so specified which has not ceased.

(3) It is not competent to serve more than one fixed penalty notice in relation to a particular step or activity.

(4) For the purposes of this section, a “fixed penalty notice” is a notice offering the person the opportunity of discharging, by paying to the planning authority, within the period of 30 days

which immediately follows the day on which that notice is served, a penalty of an amount (being a prescribed amount) specified in that notice, any liability to conviction for an offence under section 145(9) as respects the breach of the breach of condition notice.

(5) But if payment is made within the first 15 days of the period mentioned in subsection (4) the amount payable is reduced by 25%.

(6) The fixed penalty notice is to identify the period mentioned in subsection (4) and is also to state that if payment is made within the first 15 days of that period the amount payable is reduced by 25%.

(7) The conditions are that the fixed penalty notice—

(a) is served within the period of 6 months which immediately follows the period allowed by section 145(7) for compliance with the breach of condition notice, and

(b) is not served after the person has been charged with an offence under section 145(9) as respects the breach of the breach of condition notice.

(8) During the period mentioned in subsection (4) it is not competent to commence proceedings against the person for an offence under section 145(9) as respects that breach.

(9) If the amount (or as the case may be the reduced amount) is timeously paid it is not competent to commence proceedings against the person for an offence under section 145(9) as respects that breach.

(10) A penalty received by a planning authority by virtue of subsection (4) is to accrue to that authority.

(11) In prescribing an amount for the purposes of subsection (4), the Scottish Ministers may make different provision for different cases or for different classes of case.

