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Portnalong  
Isle of Skye  
IV51 9TW

Our ref: NA-270-005  
Planning Authority ref:21/02619/FUL

7 November 2022

Dear Ms Morrison,

## DECISION NOTICE

### **TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 THE TOWN AND COUNTRY PLANNING (NOTIFICATION OF APPLICATIONS) (SCOTLAND) DIRECTION 2009 SITING OF A CATERING TRAILER, LAND 185M NORTH OF UNIT 1C, MARKET PLACE, PORTREE ('the proposed development')**

1. This letter contains Scottish Ministers' decision on the above planning application submitted by Jacqueline Morrison.
2. The application was called in for Scottish Ministers' determination on 17 March 2022. The application was considered by means of an unaccompanied inspection of the site and its surroundings on 17 May 2022, by Christopher Warren, a reporter appointed for that purpose. A copy of the reporter's report ('the report') is enclosed.

#### **Consideration by the Reporter**

3. The reporter's overall conclusions and recommendations are set out in Chapter 2 of the report. The reporter recommended that planning permission should be granted subject to conditions.

#### **Scottish Minister's Decision**

4. Scottish Ministers have carefully considered all the evidence presented in the reporter's report. They agree with the reporter's overall conclusions and recommendation that planning permission should be granted subject to conditions, and adopt the reporter's reasoning for the purpose of their own decision, which is summarised below.
5. Scottish Ministers agree with the reporter's view that although there is no demarcation or segregation between the hardstanding area and the edge of the A78 trunk road; the boundary is visually obvious and it is unlikely that this would result in an unacceptable road safety risk. Scottish Ministers also agree with the reporter that the proposed development can be compared to the many formal and informal laybys along the length of the A87 (on the Isle of



Skye) where there is no physical segregation from the road and that the generous size of the hardstanding at the application site would further reduce any residual risk from a lack of segregation.

6. Scottish Ministers agree with the reporter that there is inevitably some prospect of increased pedestrian activity because of the catering trailer being located here. However, Ministers agree with the reporter that the number of additional pedestrian movements would likely be very low as the catering trailer is aimed at attracting road users, rather than pedestrian footfall.

7. Scottish Ministers agree with the reporter's view that despite some concerns about disruptions to the free flow of traffic from vehicles slowing down, turning onto the hardstanding area and subsequently re-joining the road; the level of risk to road safety would likely be no greater than that posed by the use of many other junctions and laybys along the trunk road.

8. Scottish Ministers also agree with the reporter that given there is no obvious demand for parking in this location currently and as the hardstanding provides a generous amount of space; the catering trailer would largely not generate customers to the extent that the demand for parking would become problematic or lead to vehicles parking on the carriageway. However, Scottish Ministers also agree with the reporter that the exception to this would be when the land adjacent to the catering trailer is used for a cattle market approximately four times a year - as the proposed location is used for parking on these days. Therefore, Scottish Ministers agree with the reporter that it would be appropriate to impose a condition which would restrict the catering trailer from being onsite when the cattle market is on.

9. Scottish Ministers consider that the reporter has carefully considered the objection and concerns raised by Transport Scotland and agree with the reporter that the siting of a catering trailer in this location would not present a particular road safety risk that would in itself justify the refusal of planning permission.

10. Scottish Ministers agree with the reporter that the proposed development would overall accord with the relevant provisions of the development plan and that there are no material considerations that justify the refusal of planning permission.

11. Accordingly, for the reasons set out in the reporter's report and as summarised above, Scottish Ministers hereby grant planning permission for the siting of a catering trailer at land 185m north of Unit 1C, Market Place, Portree subject to conditions set out in Appendix 1 of this letter.

12. The decision of Scottish Ministers is final, subject to the right conferred by Sections 237 and 239 of the Town and Country Planning (Scotland) Act 1997 of any person aggrieved by the decision to apply to the Court of Session within 6 weeks of the date of this letter. If an appeal is made, the Court may quash the decision if satisfied that it is not within the powers of the Act, or that the appellant's interests have been substantially prejudiced by a failure to comply with any requirements of the Act, or of the Tribunals and Inquiries Act 1992, or any orders, regulations or rules made under these Acts.

13. A copy of this letter and the reporter's report has been sent to Highland Council and Transport Scotland.

Yours sincerely,

*Paul Lawson*

**Paul Lawson**  
Planning Decisions Team  
Scottish Government

## Appendix 1

### Conditions to be attached to Planning Permission: NA-270-005 (Highland Council Reference: 21/02619/FUL)

1. The development to which this permission relates must be begun not later than the expiration of three years beginning with the date of grant of this permission.

**Reason:** Section 58 of the Town and Country Planning (Scotland) Act 1997 requires a condition to be attached to permission limiting its duration. Three years is the default period set by law and there is no material reason indicating that a different period should be set.

2. Details of the precise position, dimensions and method of demarcation of at least four parking spaces shall be submitted to and approved in writing by the planning authority. The use hereby approved shall not commence until the parking spaces have been provided in accordance with the approved details and shall thereafter be retained in perpetuity.

**Reason:** To ensure that customer vehicles park away from the trunk road verge and that pedestrian routes to the catering trailer are clear and unobstructed.

3. The use hereby approved shall not take place on the same day as livestock sales at the adjacent auction mart.

**Reason:** To ensure that parking pressures during livestock sales are not exacerbated, in the interests of road safety.

4. The change of use planning permission hereby granted shall not enure other than for the catering trailer detailed in the application and approved documents, unless otherwise agreed in writing by the planning authority.

**Reason:** To ensure the matters considered in the determination of the application do not materially alter without further consideration by the planning authority.



## Report to the Scottish Ministers

# TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

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Report by Christopher Warren, a reporter appointed by the Scottish Ministers

- Case reference: NA-270-005
- Site Address: land 185m north of Unit 1C, Market Place, Portree, IV51 9HH
- Application by Jacqueline Morrison
- Application for planning permission, ref. 21/02619/FUL dated 28 May 2021, called-in by notice dated 17 March 2022
- The development proposed: siting of catering trailer
- Date of site visit: 17 May 2022

Date of this report and recommendation: 30 May 2022

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Scottish Government  
Planning and Environmental Appeals Division  
Hadrian House  
Callendar Business Park  
Callendar Road  
Falkirk  
FK1 1XR

DPEA case reference: NA-270-005

The Scottish Ministers  
Edinburgh

Ministers

I have prepared a report with recommendations in connection with the proposed siting of a catering trailer on land 185m north of Unit 1C, Market Place, Portree.

On 17 February 2022, The Highland Council notified the application to Scottish Ministers. This was because the council was minded to grant planning permission for this development against the advice of Transport Scotland.

On 17 March 2022, a Direction was given to require the council to refer the application to Scottish Ministers for determination. This direction was given in view of Transport Scotland's objection to the proposed development and the potential for significant adverse impacts upon road safety. It was considered that the issues raised would benefit from further scrutiny by Ministers.

I carried out an unaccompanied inspection of the site and its surroundings on 17 May 2022, which has informed my assessment of the proposal.

Chapter 1 of my report describes the proposal and site context. It outlines the council's position and sets out matters raised in consultation responses including Transport Scotland's objections. It also provides an overview of relevant policy and guidance. In chapter 2, I have set out my conclusions and recommendation.

## CHAPTER 1: BACKGROUND

### The application site

1.1 The application site is situated to the north of Portree and consists of an area of rough hardstanding with an open frontage onto the A87 trunk road of 70 metres approximately. This section of the A87 is subject to a 40 mph speed limit. Immediately to the north, this increases to the national speed limit of 60 mph.

1.2 The site is located on the very edge of Portree. There are no residential properties in the immediate vicinity of the site. There are business/commercial premises to the south on Market Place and Broom Place (both accessed from the A87) beyond the auction mart.

1.3 The area of hardstanding is immediately adjacent to the auction mart, and is used for parking during livestock sales.

### The proposed development

1.4 Planning permission is sought for the siting of a catering trailer. I understand that the trailer would be 3m x 1.9m and red in colour, although as this proposal is for a change of use of land, any design and colour of catering trailer would be permitted if consent is granted (unless restricted by condition).

1.5 The [site layout plan](#) broadly indicates that the trailer would be sited on the east side of the hardstanding, positioned so it would be the furthest possible distance from the edge of the road.

### Consultations received by the council

1.6 The council's Environmental Health service has [no objection](#) to the proposal.

1.7 Transport Scotland [objects](#) to the proposal and advises that planning permission should be refused for the following reasons:

- There is no demarcation or segregation between the hardstanding area and the edge of the A87 trunk road.
- The proposed development would increase the pedestrian movements adjacent and crossing the A87 trunk road.
- The proposed development would result in increased interference with the safety and free flow of traffic on the trunk road.
- The development would result in an increase in the demand for parking, with the potential to lead to indiscriminate parking on the trunk road which would increase interference with the safety and free flow of traffic on the A87 trunk road.

1.8 No third party representations have been received.

### Consideration by The Highland Council

1.9 The application was considered by the council's North Planning Applications Committee on 25 January 2022. The officer's recommendation was to refuse planning permission for reasons which aligned with the objection of Transport Scotland. Contrary to

recommendation, the committee agreed to notify Scottish Ministers of its intention to grant planning permission subject to conditions, including granting planning permission for a temporary period of three years.

1.10 The council supports the proposal for the following reasons:

- the proposed development is to be accessed from a stretch of the A87 trunk road that is subject to a 40 mph speed restriction;
- the application site is the cattle mart car park in Portree which has a history of a catering trailer being sited there and the car park is only well used during cattle sales;
- with some limited marking out of vehicle parking spaces, the site could be managed in such a way as to minimise risk both to those using the trunk road and those visiting the catering trailer;
- the siting of the trailer would have no detrimental negative impact on the surrounding area;
- approval of developments such as this one promotes economic development and are welcomed by the travelling public visiting the island; and
- a temporary permission for three years could assess the effectiveness of conditions (including parking management).

1.11 The council have recommended three [conditions](#) be applied to the consent. The first of these would be to grant permission for only a temporary period to enable the impact of the development to be reassessed. The second condition would be to require the demarcation of at least four parking spaces. The final condition would seek to restrict consent only for the siting of the specific catering trailer as detailed in the application.

### **Development plan policies and guidance**

1.12 The development plan is principally comprised of the Highland-wide Local Development Plan (2012) and the West Highland and Islands Local Development Plan (2019).

1.13 The most relevant provisions in the Highland-wide Local Development Plan are contained in policies 34, 28 and 41.

1.14 Policy 34 'Settlement Development Areas' supports proposals in defined settlement development areas where they meet the requirements of policy 28 and other relevant policies. The site is on the edge of, but within, the settlement development area as defined for Portree. Amongst its provisions, the policy requires proposals to be assessed in terms of their compatibility with adjacent land uses.

1.15 Policy 28 'Sustainable Design' outlines a range of principles which apply to developments. Of greatest relevance to this proposal, development will be assessed on the extent to which they: are compatible with public service provision, which includes roads; are accessible by public transport, cycling and walking as well as by car; and contribute to the economic and social development of the community.

1.16 Policy 41 'Business and Industrial Land' contains wide-ranging provisions principally



aimed at larger-scale sites and proposals than is being proposed by this application. Whilst the policy is therefore largely inapplicable in this case, it is noteworthy that the policy's accompanying text, at paragraph 20.3.1 of the plan, states that "The Council is supportive of new business and industrial developments where they are located in sustainable locations and reduce the need to travel".

1.17 The West Highland and Islands Local Development Plan establishes a range of place-making priorities for Portree, but none of these are of direct relevance to a small-scale proposal of this nature.

1.18 The application site falls within allocation PT20, which applies to the whole auction mart site. It is allocated for business/tourism use, and the developer requirements listed are intended to apply to redevelopment proposals for the whole site. However, it is still noteworthy that amongst those requirements, junction improvements onto the A87 are stipulated. It also requires a high quality of architectural siting and design given its prominent location along the A87.

### **National planning policy**

1.19 Scottish Planning Policy (2014) (SPP) is not part of the development plan, but its provisions are a material consideration in decision-making.

1.20 Paragraph 33 of SPP states that where a plan is more than five years old, it is effectively considered to be out-of-date and the presumption in favour of development that contributes to sustainable development will be a significant material consideration.

1.21 As the Highland-wide LDP was adopted in 2012, it is well in excess of five years old. Its provisions are of greater relevance to the proposed development than those contained in the more recent West Highland and Islands LDP. Consequently the SPP presumption should be treated as a significant material consideration in this case.

1.22 SPP paragraph 93 provides overarching support in principle to business development that increases economic activity, and it expects due weight to be given to the net economic benefit of proposed development.

## CHAPTER 2: REPORTER'S CONCLUSIONS AND RECOMMENDATION

2.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires this application to be determined in accordance with the development plan, unless material considerations indicate otherwise.

2.2 Having regard to the relevant provisions of the development plan, together with other material considerations (principally comprised of the objections raised by Transport Scotland, the council's resolution to grant consent, and the provisions of SPP), the main matters in this case relate to road safety and whether the proposal would contribute to sustainable development.

### Road safety

2.3 In order to fully assess the road safety implications of the proposed siting of a catering trailer in this location, I have considered each of Transport Scotland's concerns in turn.

- "There is no demarcation or segregation between the hardstanding area and the edge of the A87 trunk road".

2.4 The inference of this aspect of Transport Scotland's objection is that a lack of physical or visual separation between the application site and trunk road could present a road safety risk, presumably due to the potential for vehicles or people to inadvertently move into the flow of live traffic.

2.5 During my site inspection I found the boundary between the road and hardstanding to be visually obvious, principally due to the change in surface together with a broken white line along the edge of the road.

2.6 The wider area of hardstanding within which the application site is located provides ample space to park vehicles well away from the immediate edge of the road. Whilst there is no physical segregation from the road, I consider it to be highly unlikely that this would in itself result in an unacceptable road safety risk. In this regard, I consider comparisons can be drawn to the very many laybys (both formal and informal) along the length of the A87 on the Isle of Skye, where there is no physical segregation from the road. There is no evidence before me to suggest that such arrangements present an increased road safety risk. Furthermore, given the fairly generous size of the hardstanding in this case, in my view this would further reduce any residual risks from a lack of segregation.

- "The proposed development would increase the pedestrian movements adjacent and crossing the A87 trunk road".

2.7 The application site's position on the very edge of Portree's settlement boundary is relatively remote from residential areas and visitor accommodation, with the exception of a few outlying properties. The catering trailer would be more readily accessible from the business premises on Market Place and Broom Place, but on foot this would involve walking along the A87 and there is no footway beyond the junction between Broom Place and the A87.

2.8 The likelihood of increased pedestrian movements would ultimately, to some degree at least, depend on the trading times of the proposed catering trailer. If it was confined to evenings for example, there may be less likelihood of individuals walking to it from the business units on Market Place and Broom Place, than if it was operating during the week

at lunchtime.

2.9 There is inevitably some prospect of increased pedestrian activity as a consequence of a catering trailer being sited in this location, although I consider the number of additional pedestrian movements would be likely to be very low. Whilst the absence of a footway is of some concern, there is a flat grass verge which would allow any pedestrians to stay off the carriageway. The road is fairly straight along this section, providing good inter-visibility between pedestrians and drivers, and is subject to a 40 mph speed limit.

2.10 A catering trailer in a location such as this would however be predominantly aimed at attracting passing road users, rather than pedestrian footfall. For reasons already outlined, I do not consider that pedestrian movements on the hardstanding area itself would present any discernible road safety risk.

- “The proposed development would result in increased interference with the safety and free flow of traffic on the trunk road”.

2.11 I consider the main risk to safety and the free flow of traffic would be from vehicles slowing down and turning onto the hardstanding area, and thereafter re-joining the road.

2.12 In the proposal’s favour, at this location the A87 is relatively straight, which provides road users with clear visibility of the approaching hardstanding, and equally good visibility of traffic in both directions from the hardstanding, enabling safe egress. As the hardstanding area is quite large, vehicles would be able to manoeuvre so as to both enter and exit the trunk road in a forward gear. Aside from market days at the auction mart (which I return to below) there are no obvious attractors in this location which would lead to parking pressures, which in turn could cast doubt over whether adequate space to manoeuvre in this way would remain available at all times.

2.13 As the catering trailer would be sited in the furthest position back from the road edge, advance visibility of it would be more limited, particularly for northbound traffic where the auction mart fencing would obscure it. This could lead to an increased risk of some drivers suddenly braking or making an unexpected manoeuvre upon seeing the catering trailer, in order to stop at it. In my opinion it would be unlikely that a driver would respond so abruptly as to risk causing a collision, but that risk cannot be ruled out entirely.

2.14 Residual risks are further mitigated to some extent by the 40 mph limit which applies to this section of the road. I have not been provided with any evidence such as traffic speed monitoring data, and therefore I cannot say whether the limit is generally adhered to in this location. Noting that the national speed limit of 60 mph applies to the trunk road immediately beyond the northernmost tip of the hardstanding, and given the road is wide and straight, in practice I consider there to be an increased likelihood of traffic exceeding the 40 mph limit on a fairly regular basis as it passes the application site.

2.15 Despite this, I do not consider that the characteristics of the application site and its relationship to the trunk road are such that they would present a particularly unusual or heightened risk to road safety or the free flow of traffic. The residual level of risk to road safety would, in my opinion, be no greater than that posed by the use of the very many other junctions and laybys along the trunk road.

- “The development would result in an increase in the demand for parking, with the potential to lead to indiscriminate parking on the trunk road which would increase interference with the safety and free flow of traffic on the A87 trunk road”.

2.16 As already noted, there are currently no particular attractors in this location which would lead to the general public, including visitors to the island, parking on this area of hardstanding. There are no notable walking routes, views or amenities which elsewhere evidently place pressure on many other parking opportunities in the area. When I visited the site, no vehicles were parked on the hardstanding.

2.17 It is therefore a fair assertion by Transport Scotland that the proposed catering trailer would result in an increased demand for parking, given its customers are likely to predominantly, if not exclusively, arrive in a vehicle. However, given there is ordinarily no obvious demand for parking in this location currently, and as the hardstanding provides a generous amount of space, I cannot envisage that a catering trailer would generate so many customers that the demand for parking would become problematic or lead to vehicles parking on the carriageway.

2.18 There is one exception to my foregoing findings. This hardstanding is used for parking by the adjacent auction mart on livestock market days. Photographs of this have been submitted which show parking on the hardstanding to be at capacity, and vehicles (mainly 4x4s, some with trailers) parked along the verges of the A87 on both sides of the road. In my view it would be highly undesirable for these parking pressures, which occur when livestock sales are being held, to be further exacerbated.

2.19 In these circumstances, in the event of planning permission being granted I find it would be appropriate to impose a condition which would not allow the catering trailer to be on the site when the auction mart is holding a livestock sale.

2.20 The council has suggested a condition be imposed to require four parking spaces to be marked out. This could potentially encourage drivers to park in a more orderly way than may otherwise occur. I can also see the benefit in providing these spaces well away from the edge of the road as a further means of lessening the residual risk of the proposed use, so I consider this would be an appropriate requirement.

#### Overall conclusions on road safety

2.21 Based on my foregoing assessment and my own observations from my site inspection, I do not find that the proposed siting of a catering trailer in the location proposed would present a particular road safety risk which would in itself justify the refusal of planning permission. However, given there are obvious pressures for parking when livestock sales are taking place at the auction mart, it would not be appropriate to allow the catering van to add to those difficulties.

2.22 A condition to prevent the catering trailer being sited on the land during livestock sales would address that specific matter effectively, whilst the council's proposed condition for parking spaces to be marked out would further encourage orderly and safe parking when the catering trailer is on the site.

2.23 The council has also suggested that temporary consent, for a period of three years, should be stipulated by condition. The reason given for this is to enable the impact of the development to be reassessed. I am unclear on how any impacts would be meaningfully monitored by the council, but in any event, based on my conclusions in regard to road safety I do not consider such a condition would be necessary or adequately justified in order for the proposed use to be deemed acceptable.

2.24 All told, I find the proposal would accord with policy 28 of the Highland-wide LDP, insofar as this is relevant to roads infrastructure.

## Sustainable development

2.25 The site is within Portree's defined settlement development area and therefore the proposed land use would be broadly consistent with the overall focus of the development plan which seeks to focus commercial and business activity within settlements.

2.26 The proposed siting of a single catering trailer is a small-scale proposal and therefore whilst it may offer some economic benefit (principally for its operator), any wider impact in this regard would be negligible.

2.27 The nature of the proposal, and its location on the very edge of Portree, is such that it would be heavily reliant upon customers arriving in a private vehicle. This could lead to some increase in traffic, which would not align with policy 41 of the Highland-wide LDP which supports proposals which reduce the need to travel. However, in my view a venture such as this is more likely to have greater reliance on passing trade, and I do not consider that the number of additional journeys which this proposal may generate would be likely to be significant.

2.28 I have also considered whether the town centre first approach should apply to this proposal. This is outlined in policy 1 of the West Highland and Islands LDP and states that "development that generates significant footfall will firstly be expected to be located within the town centres as identified by town centre boundaries". The policy gives examples of 'significant footfall developments' which included retail, restaurants and hotels amongst others. Given the small scale and nature of this proposal, in my opinion it is unlikely to attract footfall (which I interpret to refer to the overall number of customers rather than those just 'on foot') which could fairly be described as 'significant'. For this reason, I do not consider policy 1 applies in this instance.

2.29 In terms of the wider amenity of the area, the site is a sufficient distance from homes and businesses to ensure that there would not be any possibility of noise, disturbance or odour from the catering trailer causing any form of nuisance. The visual effect of the siting of the trailer would also be inconsequential in this location within the settlement development area.

2.30 In conclusion, I find the proposal would have a generally neutral effect in regard to wider sustainability considerations. Whilst a proposal of this nature and scale is not explicitly supported by the development plan, nor would it be contrary to its relevant provisions.

## **Overall conclusions and recommendation**

2.31 For the reasons set out above, I find that the proposed development would accord overall with the relevant provisions of the development plan and that there are no material considerations which would justify the refusal of planning permission. I have carefully considered the objection and concerns raised by Transport Scotland, but based on my foregoing assessment I am satisfied that this proposal would not create an unacceptable road safety risk.

2.32 Accordingly, I recommend that planning permission should be granted, subject to the conditions listed in the appendix to this report. As outlined in paragraph 2.23 above, in my opinion there is no need to only grant a temporary planning permission and I have not included the condition suggested by the council to this effect. As explained in paragraphs 2.18 and 2.19, I do however find that the catering trailer should not be allowed on the site during livestock sales and I have included a condition to provide necessary

control. The remaining conditions are as proposed by the council, with some minor changes in the interests of clarity and enforceability.

*Christopher Warren*  
Reporter

## **APPENDIX – SCHEDULE OF CONDITIONS**

1. Details of the precise position, dimensions and method of demarcation of at least four parking spaces shall be submitted to and approved in writing by the planning authority. The use hereby approved shall not commence until the parking spaces have been provided in accordance with the approved details and shall thereafter be retained in perpetuity.

Reason: To ensure that customer vehicles park away from the trunk road verge and that pedestrian routes to the catering trailer are clear and unobstructed.

2. The use hereby approved shall not take place on the same day as livestock sales at the adjacent auction mart.

Reason: To ensure that parking pressures during livestock sales are not exacerbated, in the interests of road safety.

3. The change of use planning permission hereby granted shall not enure other than for the catering trailer detailed in the application and approved documents, unless otherwise agreed in writing by the planning authority.

Reason: To ensure the matters considered in the determination of the application do not materially alter without further consideration by the planning authority.