

Agenda Item	5.2
Report No	PLS-26-23

HIGHLAND COUNCIL

Committee: South Planning Applications Committee

Date: 03 May 2023

Report Title: 22/04363/FUL: Edge Hospitality
Land to West of Onich Hotel, Onich

Report By: Area Planning Manager – South

Purpose/Executive Summary

Description: Formation of path

Ward: 21 – Fort William and Ardnamurchan

Development category: Local

Reason referred to Committee: Objection from Community Council

All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

Recommendation

Members are asked to agree the recommendation to **GRANT** the application as set out in section 11 of the report

1. PROPOSED DEVELOPMENT

- 1.1 This part-retrospective planning application proposes a new gravel path to connect the recently finished pod development site to the shore area west of the Onich Hotel. The new gravel path will join an existing path which leads from the south side of the A82 down to the shoreline.
- 1.2 Planning permission was granted in March 2022 for the siting of 5 holiday accommodation pods (21/03755/FUL) which have recently been completed. This application proposes a pedestrian access directly from the pod site to the beach. Development of the path has started, however once the applicant was advised that planning permission for the proposal was required, works to complete the path stopped and it remains unfinished.
- 1.3 Pre Application Consultation: None
- 1.4 Supporting Information: The applicant's agent has provided the following comments:
1. A number of the representations make reference that the application site is out with the applicant ownership. I have attached an excerpt from the title deed for the hotel which demonstrates that the land in question is wholly within the ownership of the applicant. For ease of reference I have clouded the location of the path.
 2. The applicant has no intention or desire to restrict access to the beach for locals, it is recognised that this is a well use route for locals and visitors alike, the application merely links the current path with developments within the hotel grounds.
 3. The perimeter fence around the pod site does not reflect the applicants full legal title.
 4. We recognise that works on the path were started but upon realisation that planning approval would be required works were immediately stopped, there is no obstruction in place preventing access to the path that has been placed there by the applicant.
- 1.5 Variations: None

2. SITE DESCRIPTION

- 2.1 The application site sits to the west of the recently completed pod development in the grounds of the Onich Hotel and is bound by the A82 Trunk Road to the north and by the shoreline of Loch Linnhe stone beach to the south. The site slopes gently southwards towards the beach, on level ground below the trunk road and bounded by 1-metre-high stone wall.
- 2.2 The site sits to the south-west, of the Nether Lochaber Parish Church on the north side of the A82.
- 2.3 The site is located within the Ben Nevis and Glen Coe National Scenic Area and adjacent to the boundary of the Site of Special Scientific Interest (SSSI) which is contained to the shoreline.

3. PLANNING HISTORY

3.1	04.04.2022	21/03755/FUL Siting of 5Nr Accommodation Pods in grounds on Onich Hotel	Planning Permission Granted
3.2	13.04.2021	19/04099/PREAPP - Siting of four self-contained accommodation pods	
3.3	04.03.2019	18/03165/FUL - Siting of four self-contained accommodation pods	Planning Permission Granted
3.4	31.01.2011	10/04066/FUL - Extension of hotel	Planning Permission Granted
3.5	13.08.2009	09/00278/FULLO - Landscaping garden area	Planning Permission Granted
3.6	11.08.2009	09/00129/FULLO - Erection of semi-permanent marquee in hotel gardens	Planning Permission Granted
3.7	16.06.2009	09/00120/FULLO – COU of staff accommodation to holiday letting	Planning Permission Granted

4. PUBLIC PARTICIPATION

4.1 Advertised: Oban Times

Date Advertised: 24.11.2022

Representation deadline: 08.12.2022

Timeous representations: 3 (2 households)

Late representations: 1 (1 household)

4.2 Material considerations raised are summarised as follows:

- a) The path would create a drastic impact on the shore line with the amount of footfall to both the ground and to nesting birds and wildlife.
- b) The existing path is used by crofters resulting in an increase in contact with users of the path and agricultural machinery.
- c) The path raises safety concerns given its close proximity to the A82.
- d) The formation of a new path would restrict public and vehicular access to the beach.
- e) The proposed track will detract from the amenity of this very important and highly valued community asset.

- 4.3 All letters of representation are available for inspection via the Council's eplanning portal which can be accessed through the internet www.wam.highland.gov.uk/wam.

5. CONSULTATIONS

5.1 **Nether Lochaber Community Council:** Objection

"The NLCC has been contacted by The Township crofters and several residents to say the ground that the Onich Hotel wishes to develop with a path, outlined in red on the latest planning application, does not belong to them. This small area of land, which has been added on to plans of the hotels pod development, has existed as open public access to the beach and foreshore for more than sixty plus years. It contains the only safe vehicle access to the foreshore which in the recent past has been used by Scottish Water to access culvert repairs and by BEAR Scotland to make repairs to steps that are part of the supporting wall of A82. It is regularly used by locals and tourists for launching boats. It is also one of the safest areas for pedestrians to cross the busy A82 to access the shore.

Representation from the Township crofters and several local residents have voiced their concerns to the community council that they believe this ground is owned by the Township with a right of access across it to the foreshore.

There is concern from the Community Council that if ownership of the land is not challenged the ground could be, now, or in the future fenced off with a loss of access to the foreshore. The community councillors considered the building of a path from the pod development to be a secondary consideration to the ownership and future development of this land. It should be noted that the hotel has already constructed a path here without planning permission which does partly encroach on the access ramp.

It is essential that any development in this area, now, or in the future, maintains the vehicle and pedestrian access rights to the shore."

5.2 **Access Officer:** Comments as follows:

"The claim in the application form that there will be no change to any public paths, public rights of way or affecting any public rights of access is incorrect.

The existing gravel path between the A82 and the foreshore may be a public right of way. The crash barrier accommodates it, there is a gravel route down to the foreshore and I understand that some members of the community have been in the habit of using this and nearby routes to reach that foreshore for some time. Certainly public access rights under the Land Reform (Scotland) Act 2003 apply.

The proposed "new gravel path" joins the existing path. It appears that the remainder of the path down to the beach is to be upgraded to the specifications in the proposal.

If consent is considered and you think it worthwhile a condition may be useful here. It might read:

The development proposes upgrading a section of existing path between the A82 and the foreshore. This path will remain open and free from obstruction before and on completion of the development. During construction public access will be accommodated alongside the line of the existing path.

Reason: To uphold public access rights.”

5.3 **Transport Scotland:** The Director does not propose to advise against the granting of permission

6. DEVELOPMENT PLAN POLICY

6.1 National Planning Framework 4 (NPF4) was adopted by the Scottish Ministers and published on 13 February 2023. It is now part of the statutory development plan, while also replacing NPF3 and Scottish Planning Policy.

6.2 The following policies are relevant to the assessment of the application

6.3 National Planning Framework 4

Policy 1 - Tackling the Climate and Nature Crises

Policy 2 - Climate Mitigation and Adaptation

Policy 3 - Biodiversity

Policy 4 - Natural Places

Policy 7 - Historic Assets and Places

Policy 10 - Coastal Development

Policy 13 - Sustainable Transport

Policy 14 - Design Quality and Place

Policy 23 - Health and Safety

Policy 30 - Tourism

6.4 Highland Wide Local Development Plan 2012

28 - Sustainable Design

29 - Design Quality and Place-making

36 - Development in the Wider Countryside

44 - Tourist Accommodation

47 - Safeguarding Inbye/AppORTioned Croftland

49 - Coastal Development

56 - Travel

57 - Natural, Built and Cultural Heritage

58 - Protected Species

66 - Surface Water Drainage

77 - Public Access

6.5 West Highland and Islands Local Development Plan (2019)

No specific policies apply.

6.6 Highland Council Supplementary Planning Policy Guidance

Flood Risk and Drainage Impact Assessment (Jan 2013)

Highland Historic Environment Strategy (Jan 2013)

Highland's Statutorily Protected Species (March 2013)

Sustainable Design Guide (Jan 2013)

7. OTHER MATERIAL POLICY CONSIDERATIONS

7.1 Scottish Government Planning Policy and Guidance

Not applicable

8. PLANNING APPRAISAL

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

Determining Issues

8.2 This means that the application requires to be assessed against all policies of the Development Plan relevant to the application, all national and local policy guidance and all other material considerations relevant to the application.

Planning Considerations

8.3 The key considerations in this case are:

- a) compliance with the development plan and other planning policy
- b) siting and design
- c) impact on public access
- d) any other material considerations

Development plan/other planning policy

8.4 In terms of NPF4, the site is located in an area identified as 'Accessible Rural'. Policy 30 (Rural Development) requires proposals to be suitably scaled, sited and designed to be in keeping with the character of the area.

8.5 Subject to the development being sensitively sited and designed so as not to have a significantly detrimental impact on existing servicing, landscape character and capacity, natural, built and cultural heritage or on community and individual residential amenity, the proposal would accord with the Development Plan.

Siting and Design

8.6 The proposed path, which is part completed, extends from the site of the existing Onich Hotel pod development site granted under planning application 21/03755/FUL. Approximately 20 metres of new path has been formed which links to an existing path which leads from the south side of the A82 trunk road down to the Onich beach front. The new path is relatively narrow at 1.3 metres and is made up of 300mm type 1 gravel with compacted quarry dust as a finish to the path.

8.7 The new path will link with the existing path where the remaining 6 metres of path leading to the shore is to be upgraded to the same specification. There are no improvements proposed to the remaining short section of path leading to the A82.

- 8.8 The siting of the path is fairly discreet sitting below the level of the A82 trunk road. Transport Scotland has raised no concerns over the path's siting and does not raise any road safety concerns. At 26 metres in total length, the path is a modest infrastructure which will not detract from the character of the area and has a practical use of allowing easy pedestrian access to the shoreline from a holiday accommodation site. The materials proposed are acceptable and do not significantly alter the landscape or appearance of the area and will have no adverse impact on the NSA or SSSI designations.
- 8.9 One public objection has raised concerns on the path's impact on nesting birds and other wildlife. The very short section of new path is in close proximity to existing development, including the A82 and recently completed hotel pod site and therefore, it is considered that there will be no significant impact on nesting birds and wildlife. Separate controls are also in place in relation to their protection and an informative will be attached to the planning decision.
- 8.10 Public comments have raised concerns over the users of the path coming into conflict with agricultural machinery and launching boats. The new path joins to an existing path which is used frequently by members of the public to access the foreshore. The presence of an additional spur from the existing path is not considered to limit the use of the existing path for the identified activities.

Impact on public access

- 8.11 An existing path leading to the shore from the A82 is situated within the application site. The existing access to the site is not proposed to be altered and only the last 6 metres of the short path is to be upgraded from where the new section of short path is joined.
- 8.12 The right of public access over this existing path to the foreshore at Onich is recognised by the Council's Access Officer. A condition is proposed to ensure public access is accommodated during construction/upgrading works and public access legislation will continue to apply thereafter. The applicant's agent has also confirmed that there are no intentions of restricting public access to the shore.

Other material considerations

- 8.13 There are no other material considerations.

Non-material considerations

- 8.14 The issue of land ownership is not a material planning consideration. Public representations have disputed the applicant's ownership of the site and an objection received from Nether Lochaber Community Council states that the ownership of the site sits with the Township Crofters. While this issue is not for the Planning Authority to consider, the applicant has been reminded of their responsibility to ensure that the correct land ownership certificate has been submitted to ensure the validity of the application.

9. CONCLUSION

- 9.1 The short section of path proposed is considered to accord with the relevant policies as identified within the NPF4 Development Plan and the Highland-wide Local Development Plan and would not have no significant impact upon neighbouring amenity. A short path in this location in close proximity to existing development would have no adverse impact on the NSA or SSSI designations.
- 9.2 A condition is proposed to ensure that the existing path accommodates a public right of access during construction.
- 9.3 All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

10. IMPLICATIONS

- 10.1 Resource: Not applicable
- 10.2 Legal: Not applicable
- 10.3 Community (Equality, Poverty and Rural): Not applicable
- 10.4 Climate Change/Carbon Clever: Not applicable
- 10.5 Risk: Not applicable
- 10.6 Gaelic: Not applicable

11. RECOMMENDATION

Action required before decision issued	N
Notification to Scottish Ministers	N
Conclusion of Section 75 Obligation	N
Revocation of previous permission	N

Subject to the above actions, it is recommended to **GRANT** the application subject to the following conditions and reasons

1. In accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended), the development to which this planning permission relates must commence within THREE YEARS of the date of this decision notice. If development has not commenced within this period, then this planning permission shall lapse.

Reason: Statutory requirement

2. During construction/upgrading works hereby approved public access over the existing path within the application site, running between the A82 and the foreshore, will be accommodated alongside the line of the existing path.

Reason: In order to safeguard public access during the construction phase of the development.

3. No development shall commence on the construction of the new and upgraded sections of footpath hereby approved until full details of the tie-in with the existing path have been submitted to, and approved in writing by, the Planning Authority. Such details shall show a level join of the two paths to prevent impediment to existing public access. Thereafter the works shall be undertaken in accordance with the approved details.

Reason: In order to provide an acceptable transition between the existing path and the new and upgraded path.

REASON FOR DECISION

All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

INFORMATIVES

Initiation and Completion Notices

The Town and Country Planning (Scotland) Act 1997 (as amended) requires all developers to submit notices to the Planning Authority prior to, and upon completion of, development. These are in addition to any other similar requirements (such as Building Warrant completion notices) and failure to comply represents a breach of planning control and may result in formal enforcement action.

1. The developer must submit a Notice of Initiation of Development in accordance with Section 27A of the Act to the Planning Authority prior to work commencing on site.
2. On completion of the development, the developer must submit a Notice of Completion in accordance with Section 27B of the Act to the Planning Authority.

Copies of the notices referred to are attached to this decision notice for your convenience.

Flood Risk

It is important to note that the granting of planning permission does not imply there is an unconditional absence of flood risk relating to (or emanating from) the application site. The granting of planning permission does not remove the liability position of developers or owners in relation to flood risk.

Mud and Debris on Road

Please note that it is an offence under Section 95 of the Roads (Scotland) Act 1984 to allow mud or any other material to be deposited, and thereafter remain, on a public road from any vehicle or development site. You must, therefore, put in place a strategy for dealing with any material deposited on the public road network and maintain this until development is complete.

Construction Hours and Noise-Generating Activities

You are advised that construction work associated with the approved development (incl. the loading/unloading of delivery vehicles, plant or other machinery), for which noise is audible at the boundary of the application site, should not normally take place outwith the hours of 08:00 and 19:00 Monday to Friday, 08:00 and 13:00 on Saturdays or at any time on a Sunday or Bank Holiday in Scotland, as prescribed in Schedule 1 of the Banking and Financial Dealings Act 1971 (as amended).

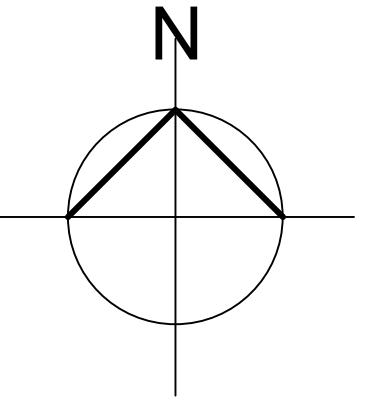
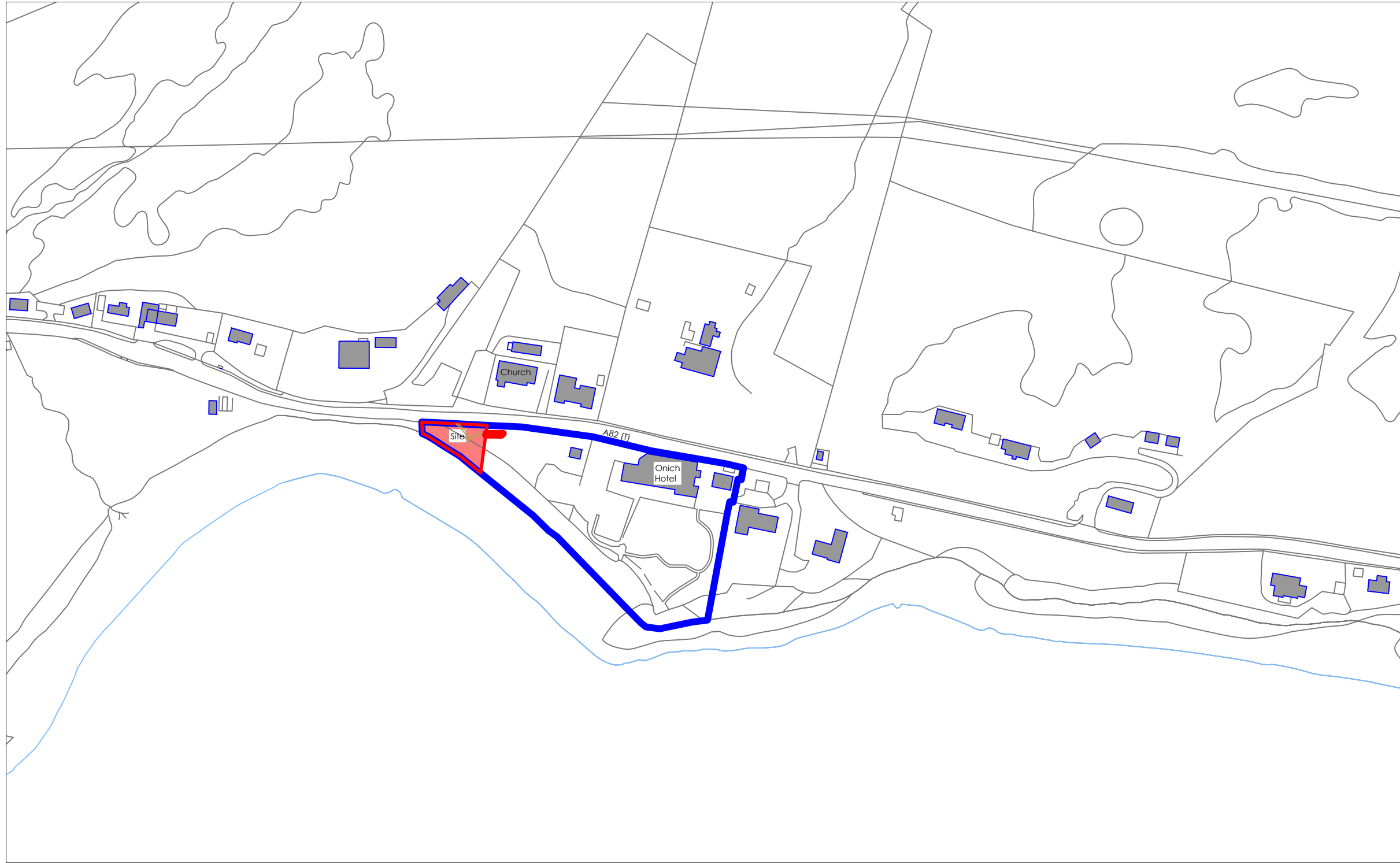
Work falling outwith these hours which gives rise to amenity concerns, or noise at any time which exceeds acceptable levels, may result in the service of a notice under Section 60 of the Control of Pollution Act 1974 (as amended). Breaching a Section 60 notice constitutes an offence and is likely to result in court action.

If you wish formal consent to work at specific times or on specific days, you may apply to the Council's Environmental Health Officer under Section 61 of the 1974 Act. Any such application should be submitted after you have obtained your Building Warrant, if required, and will be considered on its merits. Any decision taken will reflect the nature of the development, the site's location and the proximity of noise sensitive premises. Please contact env.health@highland.gov.uk for more information.

Protected Species – Halting of Work

You are advised that work on site must stop immediately, and NatureScot must be contacted, if evidence of any protected species or nesting/breeding sites, not previously detected during the course of the application and provided for in this permission, are found on site. For the avoidance of doubt, it is an offence to deliberately or recklessly kill, injure or disturb protected species or to damage or destroy the breeding site of a protected species. These sites are protected even if the animal is not there at the time of discovery. Further information regarding protected species and developer responsibilities is available from NatureScot: <https://www.nature.scot/professional-advice/protected-areas-and-species/protected-species>

Signature: David Mudie
Designation: Area Planning Manager – South
Author: William Langdon
Background Papers: Documents referred to in report and in case file.
Relevant Plans: Plan 1 - 14020-WHAS-ZZ-XX-PL-A-00-0101 REV 01 LOCATION PLAN
Plan 2 - 14020-WHAS-ZZ-XX-PL-A-00-0103 REV 01 SITE LAYOUT PLAN



Application Site outlined in **RED**
 Other land owned by the Applicant
 outlined in **BLUE**

Project

Proposed access path in grounds of
 Onich Hotel, Onich, Nr Fort William

Client

Onich Hotel

Detail

Planning Application
LOCATION PLAN

Scale

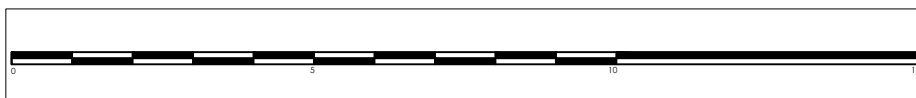
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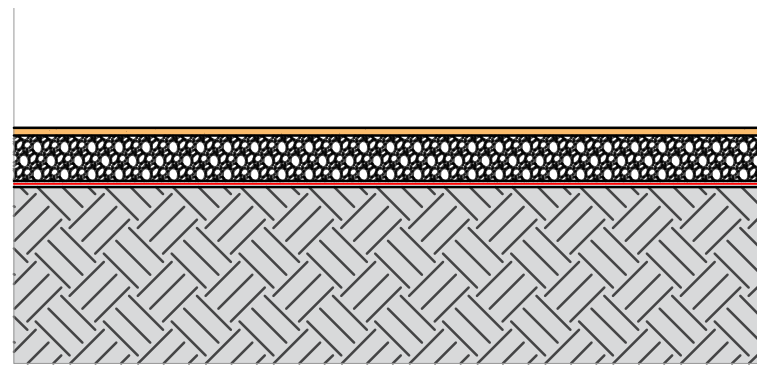
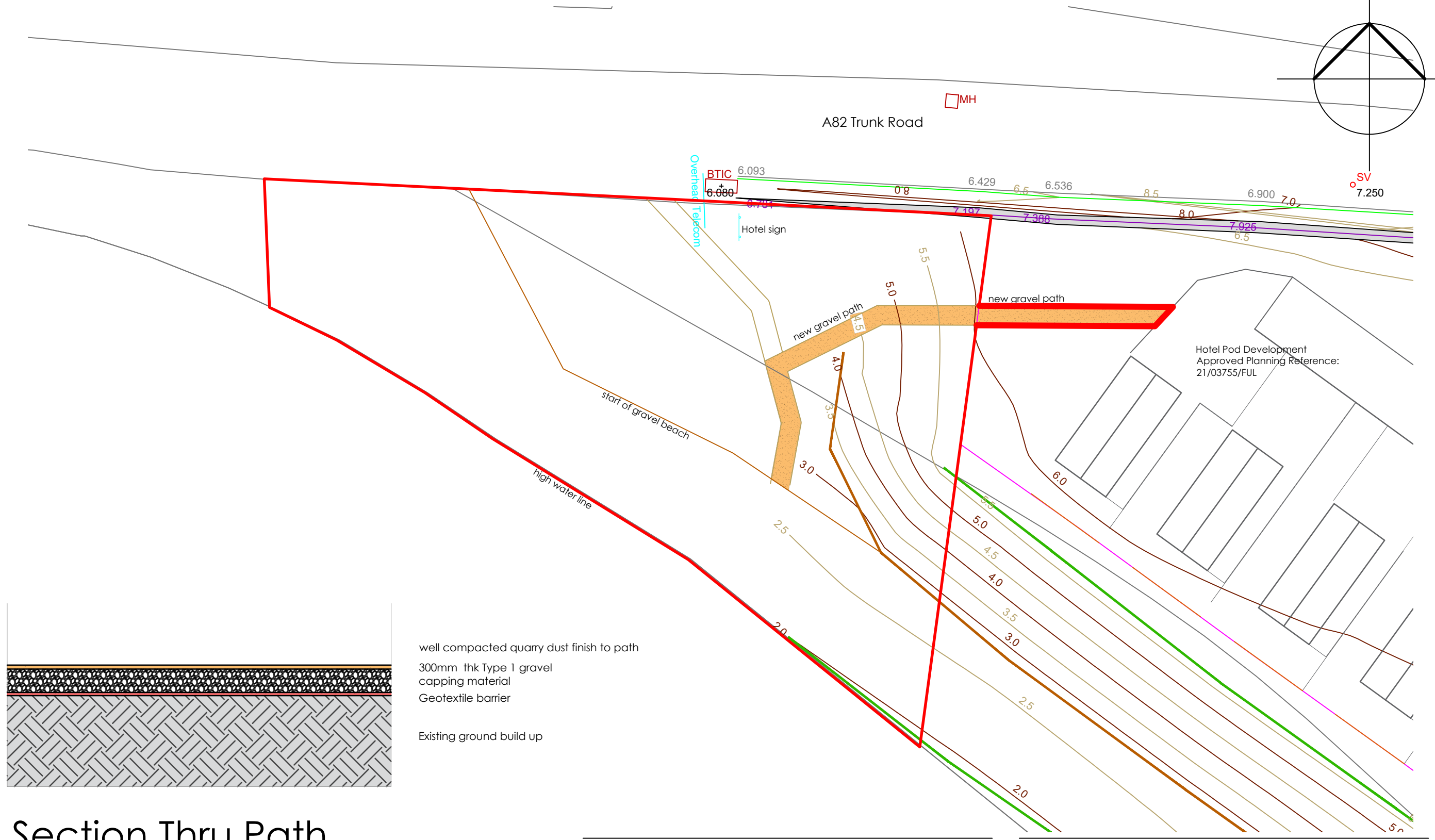
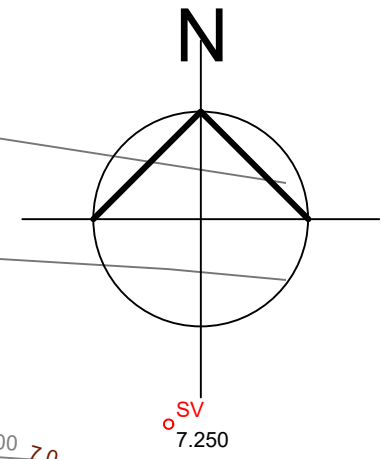
Date

Sept 2022

Job No

14020-WHAS-ZZ-XX-PL-A-00-0101-01





well compacted quarry dust finish to path
 300mm thk Type 1 gravel capping material
 Geotextile barrier
 Existing ground build up

Section Thru Path

Project
 Proposed Access Path in Grounds of
 Onich Hotel, Onich, Nr Fort William

Client
Onich Hotel

Detail
 Planning Application
SITE PLAN - AS PROPOSED

Scale 1:200	Date Sept 2022
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Job No
 14020-WHAS-ZZ-XX-PL-A-00-0103-01

