

Agenda Item	6.6
Report No	PLN/056/23

## HIGHLAND COUNCIL

### HANDLING REPORT FOR CASES RECOMMENDED FOR REFUSAL

**Report Title:** 23/01144/FUL: Campbell Dickson  
Portree Hotel, Somerled Square, Portree IV51 9EH

#### **Purpose/Executive Summary**

**Description:** Retention of outdoor seating area (previous permission 20/02709/FUL)

**Ward:** 10 - Eilean A' Cheò

**Development category:** Business and Industry - Local

**Reason referred to Committee:** Call in by local members

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 **REFUSE** the application as set out in section 11 of the report

## **1. PROPOSED DEVELOPMENT**

- 1.1 This application seeks retrospective permission to retain an existing timber platform with metal railings which serves as an outdoor seating area for the Portree Hotel. The structure is parallel with and extends almost the entire length of the frontage of the hotel for a distance of 29 metres along the eastern side of Somerled Square. It is sited on the location of the former taxi bays and is separated from the hotel itself by the public footpath.
- 1.2 It was originally erected during the Covid crisis to provide safe outdoor customer space for the Hotel and featured a number of greenhouse-like shelters which have now been removed
- 1.3 Pre Application Consultation: No formal pre-application submission but there has been much discussion and correspondence about the structure which has been the subject of two previous temporary permissions.
- 1.4 Supporting Information: None
- 1.5 Variations: The elevations plan has been amended to show the removal of the greenhouse shelters

## **2. SITE DESCRIPTION**

- 2.1 The platform sits on a section of the public road outside the hotel's Somerled Square frontage previously occupied by a taxi rank. The Portree bus and coach bays are accessed from the opposite side of the same section of road. A pavement runs down between the platform and the hotel elevation.
- 2.2 The site lies in a prominent position on the eastern side of Somerled Square within the Portree Conservation Area

## **3. PLANNING HISTORY**

- |     |            |  |                       |
|-----|------------|--|-----------------------|
| 3.1 | 26.10.2020 | 20/02709/FUL - Erection of temporary decking seating bays and dining pods  | Application Permitted |
| 3.2 | 05.01.2021 | 20/04201/FUL - Erection of retractable awning over pavement adjacent to Portree hotel  | Application Permitted |
| 3.3 | 09.06.2022 | 21/05643/S42 - Application under section 42 to remove condition 1 of planning permission 20/02709/FUL (Erection of temporary decking seating bays) | Application Permitted |

## **4. PUBLIC PARTICIPATION**

- 4.1 Advertised: Affects a Conservation Area

Date Advertised: 20 March 2023

Representation deadline: 14 April 2023

Timeous representations: 2

Late representations: 1

The applicant has also submitted the results of a supportive petition but not the petition itself

- 4.2 Material considerations raised are summarised as follows:

- a) The platform is an inherently temporary assemblage which does not preserve or enhance the character of the square and the wider conservation area
- b) Does not utilise the high quality of materials and design expected for public realm architecture in an important location
- c) This was a cheap, temporary solution to Covid restrictions which no longer apply
- d) The seating area is inappropriate both in its conservation area location and in the nature of its construction
- e) Traffic congestion around the bus stance has reached unacceptable levels due to the road space occupied by the structure

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](http://www.wam.highland.gov.uk/wam).

## 5. CONSULTATIONS

5.1 **Historic Environment Team** – no longer object given the removal of the greenhouse elements. Would like to see conditions controlling any future addition of awnings, canopies, tents, greenhouses and for the face of the decking will be painted dark grey or black.

5.2 **Transport Planning Team** – the concerns raised by the team during the previous applications as justifying only a temporary consent remain. The permanent retention of the structure will result in an unacceptable loss of parking and negative impacts on road and pedestrian safety. The structure has created ongoing operational and maintenance issues for the public road. The Head of Roads and Infrastructure has made it clear that no further license to occupy the road will be issued for this structure.

5.3 Access Panel – no response at time of writing

## 6. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application

### 6.1 National Planning Framework 4 (NPF4)

Policy 7 - Historic assets and places

Policy 14 - Design, quality and place

Policy 27 – City, town, local and commercial centres

Policy 30 - Tourism

### 6.2 Highland Wide Local Development Plan 2012 (HwLDP)

28 - Sustainable Design

29 - Design Quality & Place-making

34 - Settlement Development Areas

43 - Tourism

57 - Natural, Built & Cultural Heritage

### 6.3 West Highland and Islands Local Development Plan – 2019 (WestPlan)

Portree Placemaking priorities include;

- Encourage town centre expansion that respects the architectural, cultural and

natural heritage of the conservation area

- Improve public car parking and coach/bus drop-off provision within the village centre

## 7. OTHER MATERIAL CONSIDERATIONS

### 7.1 Highland Council Supplementary Planning Policy Guidance

Highland Historic Environment Strategy (Jan 2013)

### 7.2 Planning (listed Buildings and Conservation Areas) (Scotland) Act 1997

- s.64 – General duty as respects conservation areas in exercise of planning functions

## 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) Planning history and legislation changes
- c) Impact on the conservation area
- d) Public amenity, road safety and parking impacts

#### a) Development plan/other planning policy

8.4 National Planning Framework 4 became part of the development plan from 13th February 2023, following parliamentary approval. All planning applications must now be determined in accordance with the provisions of NPF4 and the existing Local Development Plan, unless material considerations provide justification otherwise. If there is an inconsistency between NPF4 policies and an LDP which was adopted before 13 February 2023, the NPF prevails under Section 24(3) of the 1997 Town and Country Planning (Scotland) Act 1997 (as amended).

8.5 In respect to this proposal there is a high degree of compatibility between the new policies of NPF4 and the existing policies of the HwLDP. So, the adoption of NPF4 has not significantly changed the policy framework under which the previous two temporary permissions for this development were decided.

8.6 NPF4 Policy 7 - Historic assets and places states that development proposals in or affecting conservation areas will only be supported where the character and appearance of the conservation area and its setting is preserved or enhanced. Relevant considerations include the:

- i. architectural and historic character of the area;
- ii. existing density, built form and layout; and
- iii. context and siting, quality of design and suitable materials.

This closely aligns with the requirements of HwLDP Policy 57(1) which states that developments in conservation areas will be allowed if it can be satisfactorily demonstrated that they will not have an unacceptable impact on the conservation area.

Both policies should be read in the context of the statutory duty imposed on the planning authority by s.64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. S.64 states;

“...In the exercise, with respect to any buildings or other land in a conservation area, of any powers under [the planning Acts] special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area...”.

- 8.7 NPF4 Policy 14 and HwLDP Policy 29 both stress a requirement for developments to be consistent with the six qualities of successful places with Policy 14 going on to say that development proposals that are poorly designed, detrimental to the amenity of the surrounding area or inconsistent with the six qualities of successful places, will not be supported.

Similarly, Policy 28 of the HwLDP requires proposals to be compatible with public service provision including roads as well as demonstrating sensitive siting and high quality design in keeping with local character and historic and natural environment and in making use of appropriate materials

- 8.8 NFP4 Policy 30 – Tourism states that development proposals for tourism related development will take into account:
- i. The contribution made to the local economy;
  - ii. Compatibility with the surrounding area in terms of the nature and scale of the activity and impacts of increased visitors;
  - iii. Impacts on communities, for example by hindering services for local people;
  - iv. Opportunities for sustainable travel and appropriate management of parking and traffic generation and scope for sustaining public transport services.

Likewise, HwLDP Policy 43: Tourism states;

“...Proposals for tourist facilities will be assessed as to whether: the scale of the proposal is proportionate to its location/settlement; the site is within a settlement boundary and whether it will complement existing/allocated tourist facilities within that settlement; the proposal will increase the length of peoples stay, increase visitor spending or promote a wider spread of visitors; the proposal will safeguard, promote responsible access, interpretation and effective management or enhancement of natural, built and cultural heritage features...”

b) Planning history, proposal redesign and legislation changes

- 8.9 The planning history at section 3 above identifies that this outdoor seating platform has been granted two previous temporary planning permissions. Both were justified and accepted in respect to government guidance at the time aimed at supporting the hospitality industry through the Covid crisis by allowing them to provide safe outdoor eating and drinking spaces. Initially this had been aimed at increasing seating capacity to allow for enhanced social distancing. Latterly it was intended to support those business. This Covid justification time period was extended several times but

finally came to an end in September 2022 – which coincided (deliberately) with the expiry of the second permission - 21/05643/S42.

- 8.10 It should also be noted that both permissions were granted for temporary periods only because the structure was not considered acceptable for permanent retention in respect of;
- its negative visual impact on the conservation area and
  - the unacceptable road safety, maintenance and parking implications of the occupation of an area of the public road previously used as a taxi rank.

8.11 There has been a significant change to the proposal since the most recent consent. The ‘greenhouse’ shelters have been removed so that the proposal is now simply a raised seating area with tables and foldable canopy/shades surrounded by railings with some artificial small trees providing ornamental interest.

8.12 Another recent significant change has also occurred in respect of relevant legislation. On the 31 March 2023 Scottish Statutory Instrument 2023 no.35 came into force and inserted a new Part 2H into the General Permitted Development Order 1992 and a new Class 9L which created new permitted development rights for;

“...9L. (1) Development consisting of—

(a) a change of use of part of a public road adjacent to relevant premises for the purposes of selling or serving food or drink supplied from those premises or consuming good or drink supplied from those premises, and

(b) placing furniture for use in connection with such purposes.

This new permitted development was, however, subject to an important condition;

(2) Development is permitted by this class subject to the condition that no furniture may be placed in a public road so as to cause an obstruction unless consent has first been obtained from the relevant roads authority under section 59 of the Roads (Scotland) Act 1984...”

The interpretation provided for this new class by the regulations includes decking chairs and tables. It is considered by officers that the Portree Hotel structure conforms to this definition and would be permitted development other than for the fact that it does not meet the condition because it no longer has permission to occupy the public road under s.59 of the Roads (Scotland) Act 1984 (see below).

c) Impact on the conservation area

8.13 In their consultation response in respect of the previous two applications the Historic Environment Team made strong objections to the seating platform and greenhouse shelters arguing that the visual impact of the design and materials failed to respond to the historic context of this important, prominent and sensitive part of the conservation area. It failed the statutory test of the legislation and the requirements of policy. The same conclusion would have been drawn in respect of new NPF4 Policy 7.

8.14 However, officers consider that the removal of the glazed shelters, with their utilitarian and somewhat incongruous garden greenhouse appearance, has made a significant material reduction in the structure’s negative impact on its conservation area setting. The platform is far less prominent now and able to find its place visually

against the backdrop of the Portree Hotel façade rather than visually jarring with it.

- 8.15 In the light of this the historic environment team have withdrawn their previous objection. However they have requested that any consent carry a condition requiring that no shelters or similar be added to the structure in future. They have also requested that the elevations of the decking be painted dark grey or black to match the colour scheme of the hotel signage and the platform railings and so further blend in with this setting.

(d) Public amenity, road safety and parking impacts

- 8.16 In contrast to the above, the transport planning team maintain their objection to the seating platform in the strongest terms for all the reasons they have previously identified during the earlier applications. These can be grouped into the categories of negative impact on the amenity and safety of other road users and operational management concerns related to the occupation of a part of the public road. Without the justification provided by Covid considerations these are now considered to be reasons for refusal.
- 8.17 The committee report for the previous application identified that the displacement of the former taxi rank by the seating platform had resulted in the net loss of some five or six public parking spaces. Whilst this was not particularly significant during the reduced traffic activity of the Covid period, 2023 has seen a return of significant levels of tourist activity and village centre parking is once more at a premium resulting in congestion at the busiest times. Any loss of public parking to provide commercial space for a private business is difficult to justify in these circumstances. The take up of this street space has displaced the existing taxi rank which had to be relocated and which subsequently impacted on disabled parking bays. The relocation of these resulted in the loss of public parking spaces.
- 8.18 Equally, the return of tourists has seen a very noticeable increase in tour bus and coach traffic. A third party comment from the main bus company operating in Skye and Portree has suggested that this is causing considerable congestion around the bus and coach stances on the opposite side of the public road. The perception of drivers is that the platform has made the turn into the stances more difficult and that an opportunity for tour minibus operators to use the taxi spaces at peak times has been lost.
- 8.19 There is also a concern that the installation of the structure can cause problems for pedestrians. This is in part due to the perception of the narrowing of the pavement along this stretch of footway with the hotel on one side and the decking/barrier on the other. Due to its narrowness, it may deter pedestrians including those pushing prams/wheelchairs from using it, if it is busy with patrons or staff going to and from the decking to the hotel. This will result in pedestrians being displaced and having to either walk along the public road or having to cross the square itself increasing the possible risk of pedestrian/vehicular conflict. In addition there is also the related concerns with staff carrying food and drink between the decking and the hotel and having to cross the public pathway impacting on pedestrians.
- 8.20 However, the main concern of the transport planning team is that the occupation of a part of the public road by this structure is causing and will continue to cause operational management problems. It is already the case that this area of the road was not resurfaced along with the rest of the Somerled Square last year and made that operation more difficult. Equally, access to the services running beneath the

road has not been possible.

- 8.21 Perhaps more significantly, the transport planning team also have an ‘in principle’ objection to the proposal. Although it is not uncommon for the Council to lease areas of land in its ownership to community or social enterprises or, on occasion, for private businesses for their commercial purposes, it is unprecedented for a portion of the public road to be permanently used in such a way in the case of the latter. It is difficult to conceive of a practical justification for ‘stopping up’ a portion of the public road and then leasing it for the benefit of a private business and the roads and Infrastructure service is not willing to consider doing so at the expense of public road space. Furthermore, without the Covid justification, they are not willing to issue any further license to occupy the road.
- 8.22 They point out that, in these circumstances, the new permitted development rights for such structures do not apply and that an offence under the Roads (Scotland) Act is already being committed which could result in enforcement action.
- 8.23 The Community Council has also expressed its concerns and consider the continued seating as inappropriate both in terms of its location and in the nature of its construction.

#### Other material considerations

- 8.24 There are no other material considerations.

#### Non-material considerations

- 8.25 The planning authority has been made aware that the seating area may not have the necessary civic and liquor licensing for the use of the seating area at present, but this is not a material planning consideration.

#### Developer Contributions

- 8.26 n/a

## **9. CONCLUSION**

- 9.1 The revised design of the seating platform is considered to be acceptable in terms of its impact on the conservation area
- 9.2 The temporary siting of the decking at this location was supported on a temporary basis in response to the adaptations necessitated by Covid. The occupation of an area of the public road by the seating platform however is considered to be causing an unacceptable loss of public amenity and road safety due to a reduction of public parking in Somerled Square and constrained manoeuvring road space for buses and coaches using the stances on the opposite side of the road. This also has the ability to adversely impact on pedestrian footfall. Without a Covid justification these impacts cannot be allowed to continue on a permanent basis.
- 9.3 The permanent occupation of a portion of the public road for the commercial activities of a private business raises significant ‘in principle’ issues, is unprecedented and cannot be justified outside of the special circumstances created by the Covid crisis.

## **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

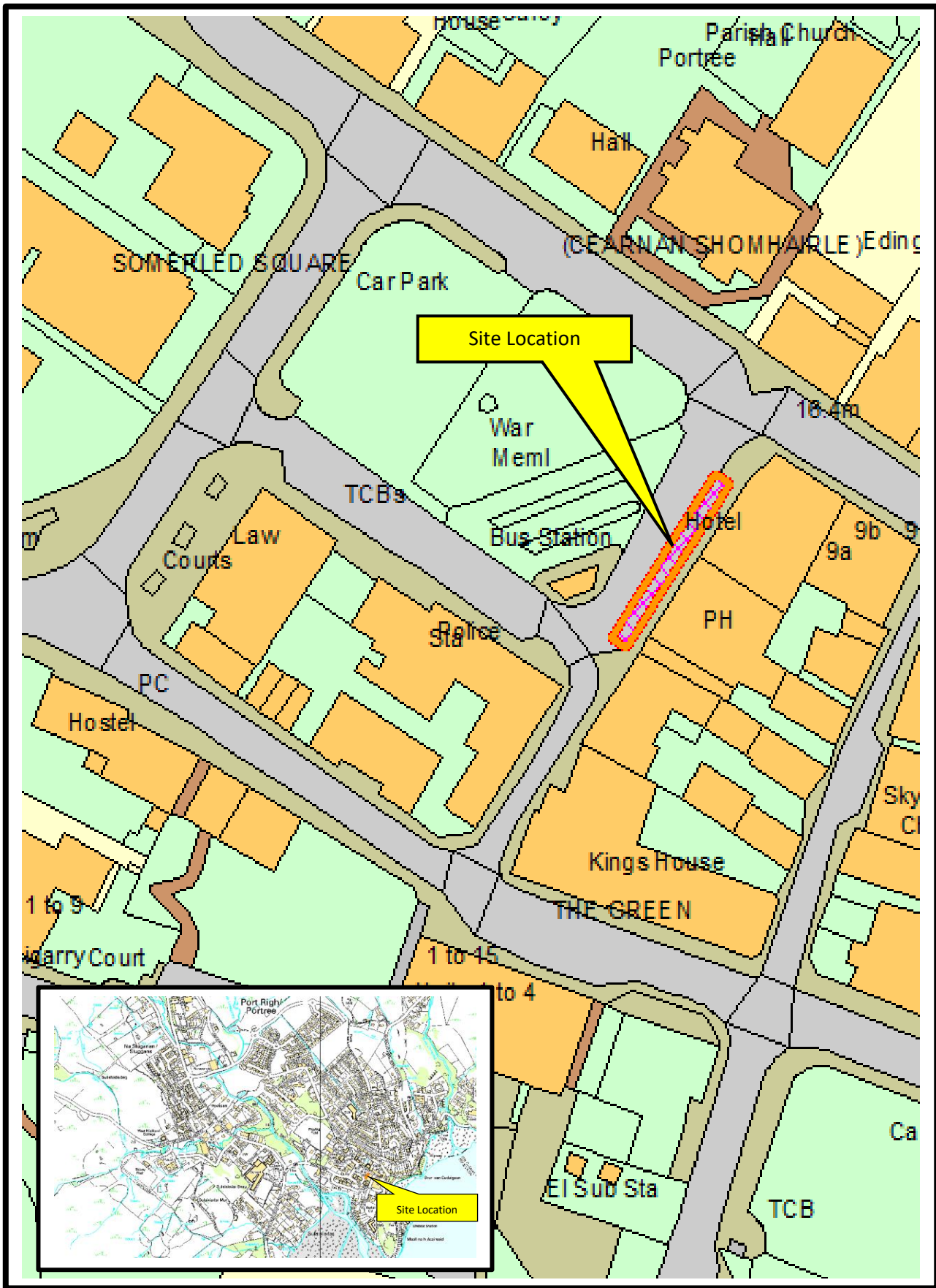
**11. RECOMMENDATION**

The application is recommended for refusal for the reasons set out below.

**Reason for Refusal**

- 1 The raised seating platform and railings by virtue of its location on a portion of the public road previously occupied by a taxi rank and immediately opposite the main Portree bus and coach stances, is considered to be incompatible with public service provision including the safe operation and maintenance of the public road. Furthermore, it is considered to be detrimental to the amenity of the village centre, inconsistent with the six qualities of successful places and through the loss of village centre parking, to be hindering services for local people and disrupting the appropriate management of parking, traffic generation and sustainable public transport services. As such it is considered to be incompatible with the requirements of Policies 14 and 30 of National Planning Framework 4 and Policies 28, 29 and 43 of the Highland-wide Local Development Plan and the Placemaking Priorities for Portree identified in the West Highland and Islands Local Development Plan.

Signature: Dafydd Jones  
 Designation: Area Planning Manager – North  
 Author: Mark Harvey  
 Background Papers: Documents referred to in report and in case file.  
 Relevant Plans: Plan 1 - DH PH 2 Location Plan  
 Plan 2 - PH3A Site Layout Plan and Elevations



Infrastructure and Environment Service

**23/01144/FUL**

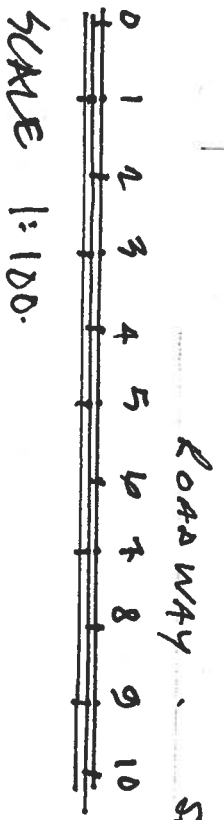
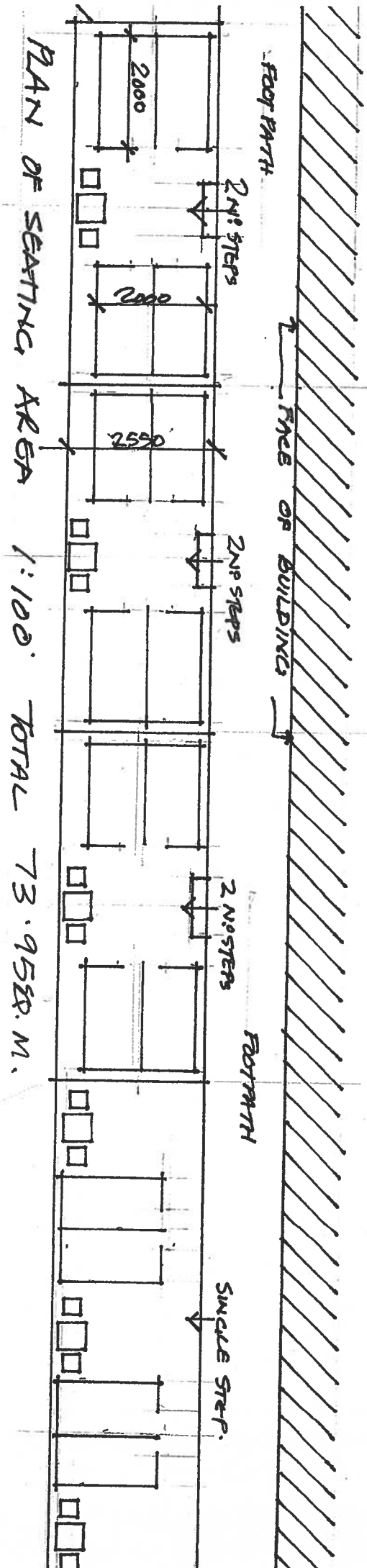
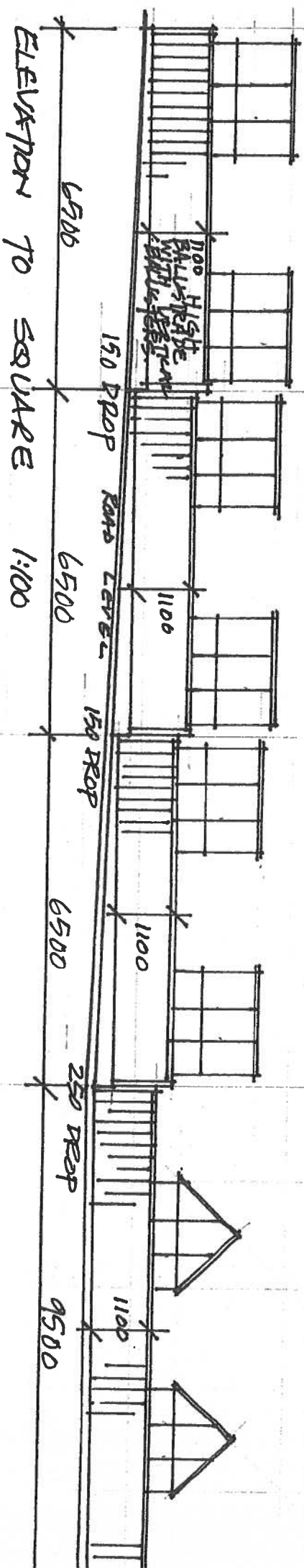
Retention of outdoor seating area (previous permission 20/02709/FUL) at Portree Hotel, Somerled Square, Portree.

August 2023



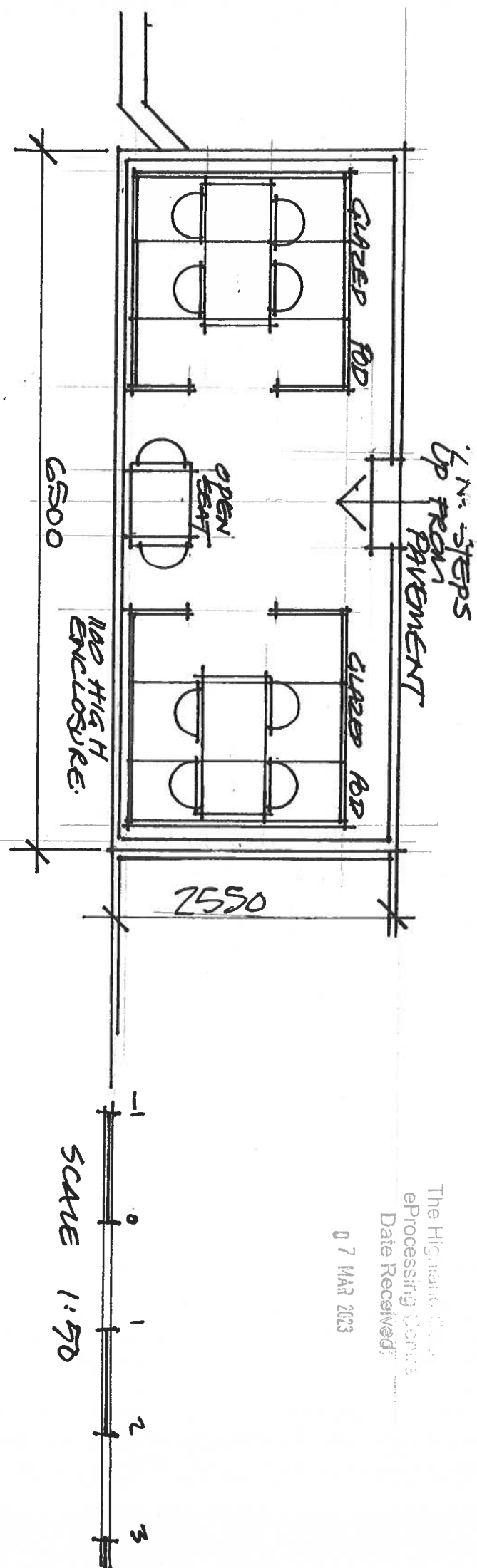
PROPOSED EXTERNAL SEATING TO RETREE HOTEL  
 SOMERLED SQUARE, PORTREE. FEBRUARY 2023  
 PLANS & ELEVATIONS. SCALE 1:100. D.G. PHIZ.

07 MAR 2023



ROADWAY . SOMERLED SQUARE.

PROPOSED EXTERNAL SEATING TO FORETREE HOTEL, SOMERKED SQUARE  
 FORTREE. FEB 2023 SCALE 1:50 TYPICAL LAYOUT OF BAY DG. PH4.



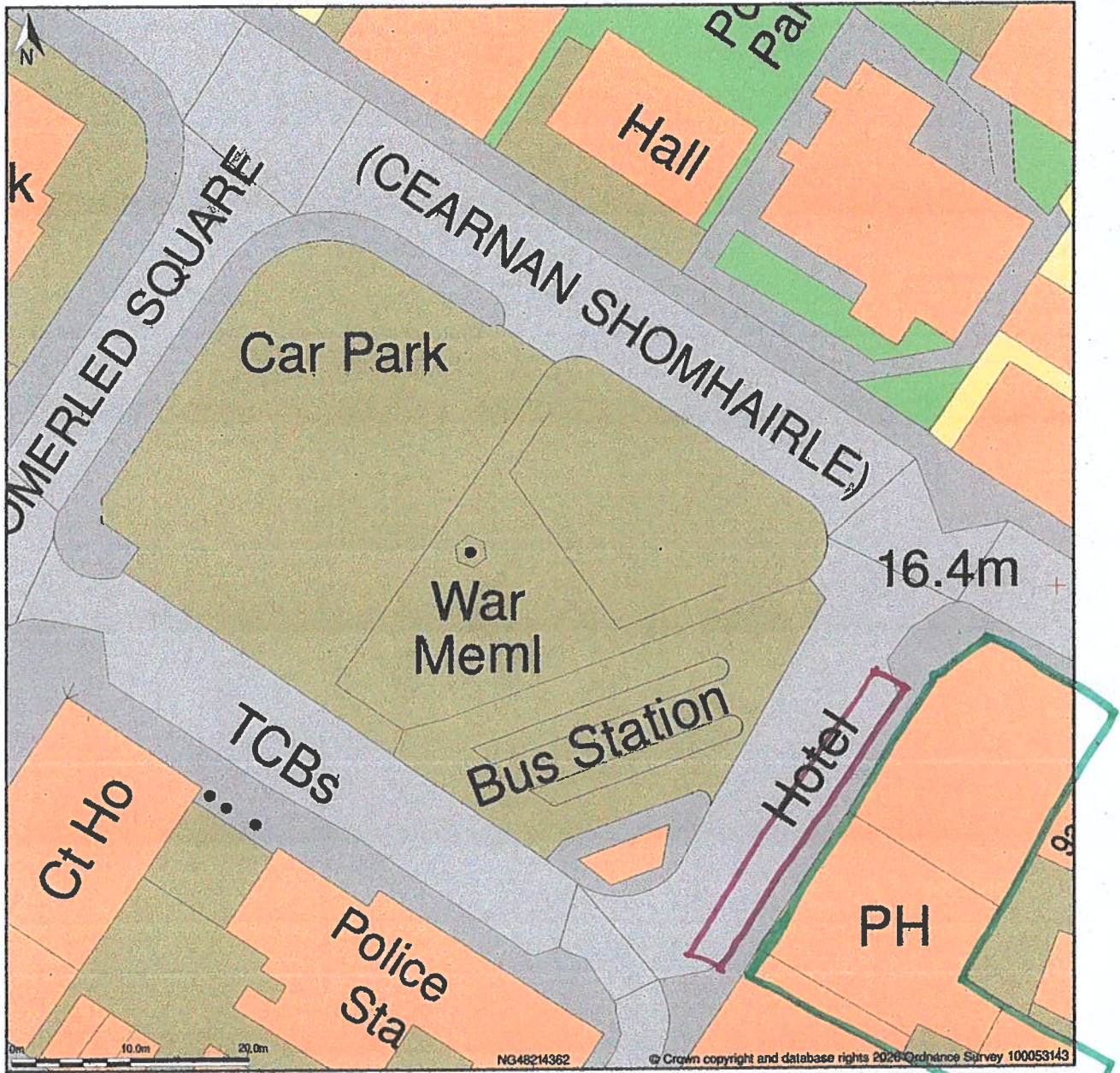
EACH BAY CONSTRUCTED OF LARCH DECKING  
 ON 150 mm DEEP TIMBER SUPPORTING STRUCTURE  
 ENCLOSED BY 1100 mm HIGH BALUSTRADE WITH  
 VERTICAL BALUSTERS AT MAX 100 mm CRS.  
 GLAZED PODS TO BE ALLOY FRAMES WITH  
 SLIDING ACCESS DOOR & SAFETY GLAZING  
 THROUGHOUT.



07 MAR 2023

PORTREE HOTEL,

~~XXXXXXXXXX~~ Somerled Square, Portree, Highland, IV51 9EH



Block Plan shows area bounded by: 148174.45, 843583.71 148264.45, 843673.71 (at a scale of 1:500), OSGridRef: NG48214362. The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.

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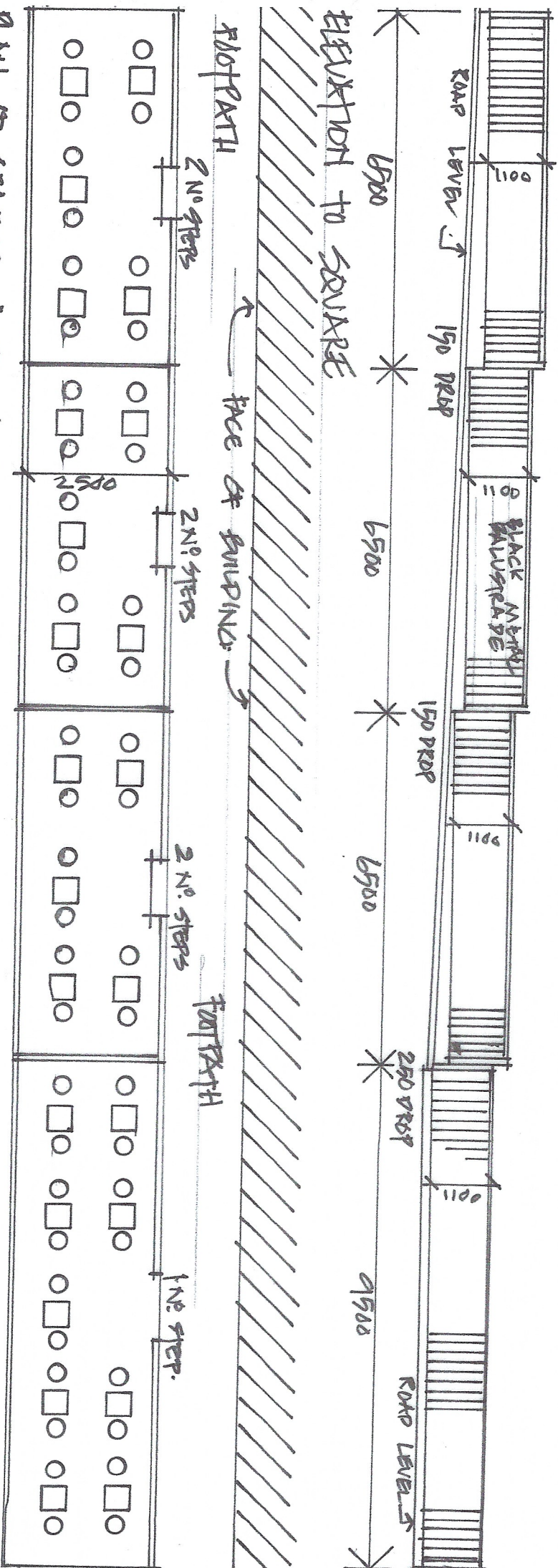
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DC. PH 2.



PROPOSED EXTERNAL SEATING / DECKING AT PORTREE HOTEL, SOWERLED SQ.,  
 PORTREE, ISLE OF SKYE. MAY 2023. SCALE 1:100. DG. NO. P13A.  
 PLAN & ELEVATION. PLANNING. REF: [REDACTED]

23/01144/FUL



PLAN OF SEATING AREA. 1:100 TOTAL AREA

K O A B W A Y . S O M E R L E D S R U K A E



SCALE 1:100