

**Item: 3**

**Planning Committee: 12 February 2025.**

**Proposed Extension of Industrial Storage Yard and Erection of Bund (Retrospective) at East Quoys, Birsay.**

**Report by Corporate Director for Neighbourhood Services and Infrastructure.**

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**1. Overview**

1.1. This report considers an application for the extension of a storage yard and formation of a bund at East Quoys, Birsay. The application is retrospective, as the works are complete. A supporting statement has been submitted, which provides an overview of development within the wider site from 2008 to present. The history and current uses of the site are complex, including but not necessarily limited to a works area; shed and storage yard involved in shot-blasting and painting of plant and vehicles; storage of related equipment; an incinerator and ensiling plant; a wind turbine; plant hire; and processing of Orkney-derived recycled glass. The latter use requires storage space to aid the processing of glass on site, with crushing to provide material for shot blasting and as a recycle material in concrete. The current application is stated as seeking to provide an area to set up a weighbridge, and further storage and parking space. This expansion is stated as necessary due to expanded activities on site for waste processing from the aquaculture sector. One neutral comment has been received by an adjoining domestic property. The development is contrary to relevant policies.

Application Reference:	23/071/PP.
Application Type:	Planning application.
Proposal:	Extend an industrial storage yard and erect a bund (retrospective).
Applicant:	Mr Michael Swannie.
Agent:	Ms Di Grieve, Breck Designs.

- 1.2. All application documents (including plans, consultation responses and valid representations) are available for members to view [here](#) (click on “Accept and Search” to confirm the Disclaimer and Copyright document has been read and understood, and then enter the application number given above).

## **2. Recommendations**

- 2.1. It is recommended that members of the Committee:
  - i. Refuse the application in respect of the extension of an industrial storage yard and erect a bund (retrospective) at East Quoys, Birsay, for the reasons detailed in Section 10 of this report.

## **3. Consultations**

### **Roads Services (as Roads Authority)**

- 3.1. No objections, subject to repeat of a specified condition attached to planning permission 20/306/PP, relating to surface water drainage. An informative is also advised regarding works within the public road boundary.

### **Engineering Services (the Local Flood Authority)**

- 3.2. Engineering Services does not object, but notes that due to the low lying nature of the site in relation to the adjacent water course and wetland, and recommends that the construction remains free draining and notes that there is potential for access and egress from the proposed storage areas to be restricted by surface water ponding.

### **Development and Marine Planning (Environment)**

- 3.3. Following submission of additional information, no objections, subject to biodiversity enhancement measures being implemented as part of the development.

### **Environmental Health**

- 3.4. No objections to use for storage purposes, subject to conditions regarding noise and the boundary treatment, as previously conditioned for application 20/306/PP.

### **Development and Marine Planning (Policy)**

- 3.5. Policy advice is provided, confirming that the proposed development is contrary to the critical policies regarding the principle of development:

“We have considered the proposal against our current Local Development Plan and NPF4. The current Local Development Plan supports the principle of expanding existing businesses and creating new businesses in appropriate locations. However, it then goes on to highlight that proposals for heavy industrial/storage and distribution will be directed toward relevant sites within settlements unless there is a specific locational requirement for a countryside location. It is also important to highlight that the recently adopted NPF4 now forms part of the Development Plan and legislation states that in the event of any incompatibility between a provision of NPF and a provision of an LDP, whichever of them is the later in date is to prevail.

The key policy in NPF4 to highlight is Policy 26 parts d and e which states

d) Development proposals for business, general industrial and storage and distribution uses outwith areas identified for those uses in the LDP will only be supported where:

i. It is demonstrated that there are no suitable alternatives allocated in the LDP or identified in the employment land audit; and

ii. The nature and scale of the activity will be compatible with the surrounding area.

e) Development proposals for business and industry will take into account:

i. Impact on surrounding residential amenity; sensitive uses and the natural and historic environment;

ii. The need for appropriate site restoration at the end of a period of commercial use.

There appears limited supporting information accompanying the planning application demonstrating the consideration of suitable alternatives allocated in the LDP or within settlements and the specific locational requirement and justification for the expansion. In addition, we note that there is a number of existing activities with planning permission operating within the currently approved site which by their nature will already be generating a degree of impact on the surrounding residential amenity. This extension to the existing operation moving into a greenfield site would further intensify the scale of the operations in a countryside location, which is located in close proximity to a dwellinghouse. Therefore it is considered that continuing to intensify and expand the use of this site, which isn't currently identified in the LDP for business and industry uses, will

result in development, that due to the cumulative effects of expansion on residential amenity, will not be compatible with the surrounding area and therefore isn't supported by Policy 26 of NPF4".

## 4. Representations

4.1. One valid representation (neutral comment) has been received from:

- Ms Sharon Brown, Eastquoys, Twatt.

4.2. Representations are on the following grounds:

- Commented that there are no concerns currently regarding the nature and operations of the wider development site (noting that the property is adjacent to the application site).

## 5. Relevant Planning History

Reference	Proposal	Location	Decision	Date
15/217/TPP.	Erect a 6kW wind turbine (max height 17.8m).	East Quoys, Birsay.	Grant, subject to conditions.	20.07.2015.
16/208/PP.	Change of use of land from agricultural to industrial, retain existing shed and incinerator and erect an industrial building.	East Quoys, Birsay.	Grant, subject to conditions.	28.07.2016.
18/483/PP.	Create an access.	East Quoys, Birsay.	Grant, subject to conditions.	19.12.2018.
20/009/PP.	Install an ensiler.	East Quoys, Birsay.	Grant, subject to conditions.	30.04.2020.
20/153/PP.	Change of use of land from agricultural to storage (class 6), create hardstanding and construct earth embankments (part retrospective).	East Quoys, Birsay.	Withdrawn.	04.09.2020.
20/306/PP.	Change of use of land from agricultural to storage (class 6), create hardstanding, erect a shed and fencing and construct earth embankments (part	East Quoys, Birsay.	Grant, subject to conditions.	12.10.2020.

Reference	Proposal	Location	Decision	Date
	retrospective) (resubmission of 20/153/PP).			
LRB20/06.	Change of use of land from agricultural to storage (class 6), create hardstanding, erect a shed and fencing and construct earth embankments (part retrospective) – Review of Planning Conditions 3, 7, 8 and 11 (in respect of application 20/306/PP).	East Quoys, Birsay.	Conditions 3, 8 and 11 deleted. Condition 7 amended to a five-year timescale.	17.12.2020.

## 6. Relevant Planning Policy and Guidance

- 6.1. The full text of the Orkney Local Development Plan 2017 and supplementary guidance can be read on the Council website [here](#).
- 6.2. National Planning Framework 4 can be read on the Scottish Government website [here](#).
- 6.3. The key policies, supplementary guidance and planning policy advice listed below are relevant to this application:
  - National Planning Framework 4:
    - Policy 3. Biodiversity.
    - Policy 4. Natural places.
    - Policy 9. Brownfield, vacant and derelict land and empty buildings.
    - Policy 11. Energy.
    - Policy 12. Zero waste.
    - Policy 14. Design, quality and place.
    - Policy 22. Flood risk and water management.
    - Policy 26. Business and industry.
    - Policy 29. Rural development.
  - Orkney Local Development Plan 2017:
    - Policy 1: Criteria for All Development.
    - Policy 2: Design.
    - Policy 4: Business, Industry and Employment.
    - Policy 9: Natural Heritage and Landscape.
    - Policy 13: Flood Risk, SuDS and Waste Water Drainage.
    - Policy 14: Transport, Travel and Road Network Infrastructure.

- Supplementary Guidance:
  - Natural Environment (2017).
- Planning Policy Advice:
  - Amenity and Minimising Obtrusive Lighting (2021).
  - Developer Contributions (2013).
  - National Roads Development Guide (2015).
- Development Management Guidance:
  - Business Development Outwith Town Centres (2023).
  - Considering and Including Biodiversity in Development (2023).

## 7. Legislative Position

- 7.1. Section 25 of the Town and Country Planning (Scotland) Act 1997 as amended (the Act) states, “Where, in making any determination under the Planning Acts, regard is to be had to the development plan, the determination is, unless material considerations indicate otherwise...to be made in accordance with that plan...”
- 7.2. Annex A of Planning Circular 3/2013: ‘development management procedures’ provides advice on defining a material consideration, and following a House of Lords’ judgement with regards the legislative requirement for decisions on planning applications to be made in accordance with the development plan, confirms the following interpretation: “If a proposal accords with the development plan and there are no material considerations indicating that it should be refused, permission should be granted. If the proposal does not accord with the development plan, it should be refused unless there are material considerations indicating that it should be granted.”
- 7.3. Annex A continues as follows:
- The House of Lords’ judgement also set out the following approach to deciding an application:
    - Identify any provisions of the development plan which are relevant to the decision.
    - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies.
    - Consider whether or not the proposal accords with the development plan.
    - Identify and consider relevant material considerations for and against the proposal.

- Assess whether these considerations warrant a departure from the development plan.
- There are two main tests in deciding whether a consideration is material and relevant:
  - It should serve or be related to the purpose of planning. It should therefore relate to the development and use of land.
  - It should relate to the particular application.
- The decision maker will have to decide what considerations it considers are material to the determination of the application. However, the question of whether or not a consideration is a material consideration is a question of law and so something which is ultimately for the courts to determine. It is for the decision maker to assess both the weight to be attached to each material consideration and whether individually or together they are sufficient to outweigh the development plan. Where development plan policies are not directly relevant to the development proposal, material considerations will be of particular importance.
- The range of considerations which might be considered material in planning terms is very wide and can only be determined in the context of each case. Examples of possible material considerations include:
  - Scottish Government policy and UK Government policy on reserved matters.
  - The National Planning Framework.
  - Designing Streets.
  - Scottish Government planning advice and circulars.
  - EU policy.
  - A proposed local development plan or proposed supplementary guidance.
  - Community plans.
  - The environmental impact of the proposal.
  - The design of the proposed development and its relationship to its surroundings.
  - Access, provision of infrastructure and planning history of the site.
  - Views of statutory and other consultees.
  - Legitimate public concern or support expressed on relevant planning matters.
- The planning system operates in the long term public interest. It does not exist to protect the interests of one person or business against the activities of

another. In distinguishing between public and private interests, the basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings which ought to be protected in the public interest, not whether owners or occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development.

7.4. Where a decision to refuse an application is made, the applicant may appeal under section 47 of the Act. Scottish Ministers are empowered to make an award of expenses on appeal where one party's conduct is deemed to be unreasonable. Examples of such unreasonable conduct are given in Circular 6/1990 and include:

- Failing to give complete, precise and relevant reasons for refusal of an application.
- Reaching a decision without reasonable planning grounds for doing so.
- Not taking into account material considerations.
- Refusing an application because of local opposition, where that opposition is not founded upon valid planning grounds.

7.5. An award of expenses may be substantial where an appeal is conducted either by way of written submissions or a local inquiry.

#### **Status of the Local Development Plan**

7.6. Although the Orkney Local Development Plan 2017 is “out-of-date” and has been since April 2022, it is still a significant material consideration when considering planning applications. The primacy of the plan should be maintained until a new plan is adopted. However, the weight to be attached to the Plan will be diminished where policies within the plan are subsequently superseded.

#### **Status of National Planning Framework 4**

7.7. National Planning Framework 4 (NPF4) was adopted by Scottish Ministers on 13 February 2023, following approval by the Scottish Parliament in January 2023. The statutory development plan for Orkney consists of NPF4 and the Orkney Local Development Plan 2017 and its supplementary guidance. In the event of any incompatibility between a provision of NPF4 and a provision of the Orkney Local Development Plan 2017, NPF4 is to prevail as it was adopted later. It is important to note that NPF4 must be read and applied as a whole, and that the intent of each of the 33 policies is set out in NPF4 and can be used to guide decision-making.



- 7.8. In the current case, there is not considered to be any incompatibility between the provisions of NPF4 and the provisions of the Orkney Local Development Plan 2017.

## **8. Assessment**

- 8.1. As noted in section 1 above, permission is sought retrospectively for the extension of an industrial storage yard and formation of a bund at East Quoys, Birsay, as indicated in the Location Plan attached as Appendix 1 to this report. The development would extend the existing storage area by approximately 8,680 square metres eastwards, into agricultural land towards the Burn of Warth. The extended site area adjoins the third-party domestic property of East Quoys to the south. Works have been carried out, and the application is therefore retrospective.
- 8.2. The nature of the wider site is currently a sequence of compounds with a central access road, linking and perpendicular to the public road, the A967. An earthen bund typically encloses the site in association with stock fencing; it is proposed to extend this approach of earth bund at the proposed site, excepting the section bounding East Quoys to the south which is proposed as a blockwork wall, 1.8m in height with a smooth render finish. The proposed storage yard is noted on submitted plans as having a final surface of free draining compacted gravel.
- 8.3. The use of the proposed extended site area is stated as for creating additional storage and parking space and siting of a weighbridge. The site plan includes proposed use for “Orkney Islands Council glass storage & recycling” with the proposed weighbridge located in part of the site outside the current red line application site boundary and in land outlined in blue, indicating other land in the ownership of the applicant. That is in an area annotated as “existing yard – no further works”. Given development in the existing part of the site which is not in accordance with previous approvals, proposed works outside the red application site boundary, and the benefits that could result if the management of the site could be considered as a whole, during consideration of the application, opportunity was provided to the developer to withdraw the current application to allow a fresh application submission, including the proposed works but with the red line application site boundary taking in the site as a whole to understand all of the operations across the wider site, to seek regularisation of such where necessary, and assess the proposed works in that context. That was not pursued.
- 8.4. The developer provided a planning statement after the consultation response was received from Development and Marine Planning, which provided the planning policy position. The planning statement in part explains the site history and seeks to address the ‘locational need’ as required by policy. A position is presented

whereby the business at the existing site has grown, requiring a sequence of extensions, alongside a stated position that the rural area in which the development is located is not otherwise served by any similar facilities. This is cited by the developer as more sustainable than moving the operation to an established industrial estate with a statement that, “There are currently no sites available to fulfil the need for waste disposal/ processing”. Whilst a statement alluding to a deficiency of land available for waste disposal and processing, it must be remembered that the current application is specifically stated as for the purposes of parking, storage and setting up a weighbridge as an extension to the existing site, and that the site is approved for business and storage and distribution (plant hire) purposes, and with a single business exception, is not approved for waste disposal or processing. This is a symptom of the apparent nature of the site operation, outside the terms of previous approvals, i.e. a lack of waste disposal or processing facilities in the area, or in a wider Orkney context, should not be relevant in terms of assessing an application for storage facilities, as a proposed extension to a storage yard. This is part of the reason that opportunity for a fresh application was provided to the developer.

### **Principle**

- 8.5. The piecemeal and gradual development of the wider site over recent years could have (and putting aside the planning history, in terms of actual operations, has had) the effect of creating an industrial estate in the countryside which has no basis for support in relation to relevant policies of the Orkney Local Development Plan 2017, or of National Planning Framework 4, in respect of the policy consideration advised by Development and Marine Planning.
- 8.6. Whilst several policy provisions in both NPF4 and the OLDP 2017 are relevant, key to this consideration are those relating to business, industry and employment, and to rural areas, namely Policy 26 ‘Business and industry’ and Policy 29 ‘Rural development’ of NPF4 and Policy 4 ‘Business, Industry and Employment’ of the OLDP 2017. The area subject to application is in the countryside in West Mainland, and not allocated for business and industry use or other development, and as such is not identified spatially by the OLDP 2017 as anything other than wider countryside. In the context of appropriate uses, it must be remembered that even where provision exists for some rural development, proposals for general industrial uses should be directed to relevant sites within settlements, ‘unless there is a specific locational requirement for a countryside location’.

- 8.7. The expansion of the site over recent years demonstrates at least some demand for the site and services provided. It is however unclear within submitted documentation of the specific locational requirement (not simply that it exists and is used), including for the aquaculture sector. I.e. the apparent success of the business at that site does not necessarily mean that it could not operate and indeed expand and adapt to lawfully include industrial uses, at a more appropriate location. A case is also presented of sustainability and availability within the rural area in which it is situated which has some legitimacy in terms of serving that part of the West Mainland, but again that must be taken in context, and is presented alongside the case that the current expansion is proposed in part due to demand for waste disposal, a significant part of which is processing waste from farmed salmon processing, at an inland site and distant from fish processing facilities in Kirkwall. No evidence of consideration of alternate sites is provided other than a statement that there are no sites available to meet the objectives of the developer.
- 8.8. Of concern in considering the continued expansion of the site, in conjunction with the unclear uses and operations, is the proximity of the third-party dwelling at East Quoys. There would be a greater degree of certainty if the site operated in accordance with Use Class 4 'business' and Use Class 6 'storage or distribution' as defined in The Town and Country Planning (Use Classes) (Scotland) Order 1997. It must be recognised through receipt of neutral comment from the current occupant of East Quoys that the relationship between the current operator of the site and the resident is cordial, and that the current neighbour has confirmed no concerns. However, in decision-making, consideration must be given to long-term compatibility of two adjacent uses, and therefore whether industrial processes are an appropriate use adjacent to a dwelling, particularly in an isolated rural location where a house would normally expect to be free from such potential disturbance. The decision must therefore be made in terms of the context and proposed development, not necessarily the current neighbour specifically.
- 8.9. Information available indicates that beyond the planning site history of the site, various waste exemptions are recorded by the Scottish Environment Protection Agency (SEPA) in relation to baling, sorting and shredding waste, manufacture from waste, manufacture/repair in relation to waste, secure storage of waste, and scrap/end-of-life vehicles storage. Whilst not necessarily affecting the development proposed, as storage, the current application is for an extension to the current operation and not a standalone operation, and so context is important, and the wider knowledge of planning history, other operations evident, and other related consents or documentation.

- 8.10. The developer has stated within the planning statement that the proposal would 'fulfil the need for waste disposal/processing' and it is noted on the submitted site plan that the site is at least in part for the purpose of 'Orkney Islands Council Glass Storage and Recycling', i.e. importation of glass collected by the Council as waste recycling. It is a matter of fact and degree when importation, storage and processing of materials exceeds an approved use, simply as a storage yard, and becomes processing if the 'stored' material is altered and/or used in another manufacturing or other process or is regarded as waste disposal if the imported materials are from another process. As the development is proposed as storage only, and not as a waste site, this matter has not been explored further; as in any case, this matter may require a wider investigation and evaluation of the site as a whole, which is beyond the scope of this application and decision-making process, but does make that decision-making process more difficult in terms of understanding the context and current operation, given that the current application is proposed as an extension.
- 8.11. The developer has cited Policy 29 'Rural development' of NPF4 in support of the application. This policy is intended to 'encourage rural economic activity, innovation and diversification whilst ensuring that the distinctive character of a rural area and the service function of small towns, natural assets and cultural heritage are safeguarded and enhanced'. Specific matters are cited, including that the development avoids use of better-quality agricultural land, that the development is sited in a remote rural area, and aids support of fragile communities.
- 8.12. It is however notable that in the above context, Policy 29 of NPF4 (d) requires development to be 'suitably scaled, sited and designed to be in keeping with the character of the area'. This is considered demonstrably not the case, as a large industrial-character site in the countryside, which this application would further extend.
- 8.13. Previous extension of the development site related to land that was formerly within the outer bounds of former RNAS Twatt / HMS Tern airfield. This provided a degree of comfort in past permissions that use of a greenfield area was avoided. The proposed extension to the site extends into areas with no evidence of any former functional use by the airfield and as such with agricultural / greenfield status. Policies of both NPF4 and the OLDP 2017 direct development to appropriate locations, maximise use of existing land allocations, and minimise additional land take in greenfield locations. As the site for the proposed extension of the yard is neither allocated for Use Class 5 – general industry nor Use Class 6 – storage or distribution, the development is contrary to Policy 4 'Business, Industry and

Employment, part B 'In the Countryside', paragraphs (i and ii) of OLDP 2017, which seeks to protect agricultural / greenfield land, and is also considered contrary to Policy 9 (b) 'Brownfield, vacant and derelict land and empty buildings' of NPF4.

### **Access**

- 8.14 The proposed development would use the existing site access infrastructure with no adverse comment received from Roads Services, subject to use of a previously attached planning condition in relation to sustainable drainage systems.

### **Residential Amenity**

- 8.14. As noted above, a single residential property is located immediately adjacent to the site, and the current resident has made neutral representation.
- 8.15. As initially approved, the previous permission prohibited storage of materials exceeding three metres in height, as measured from ground level. That was to avoid an overbearing appearance in the interests of visual amenity. Following submission of a review to the Local Review Body, the condition which limits the height of storage was removed. Taking the site as a whole, any extension must reflect the operational limitations (or lack thereof) of the existing site.
- 8.16. The previous approval had a planning condition attached, requiring an operational management plan, for operational management across the site, mindful of the variety of storage operations and other activities, which in turn has implications for safeguarding the amenity of East Quoys or the wider area. Similarly, that requirement for an operational management plan was removed by the Local Review Body and the site therefore operates with no such management. Again, given that the current application extends the existing yard and use, it would be both unreasonable and impractical to require an operational management plan for a minority of the site with no consideration of wider operations or impact of such on residential amenity for most of the site. Impact on the neighbouring residential property must be considered in that context.
- 8.17. Irrespective of good neighbour relations and current operation of the wider site, the planning process must assess not only the operation and use of the site at present, but also the future use of the site and compatibility with adjoining land uses, including the safeguarding of residential amenity.

- 8.18. Provisions of both the OLDP 2017 Policy 1 ‘Criteria for All Development’ and NPF4 Policy 14 ‘Design, quality and place’ (c) require the protection of local amenity. Whilst it is again recognised that current relations with the adjacent neighbour are cordial, in the context of previous removal of mechanisms to ensure adequate levels of amenity are preserved, amenity cannot be adequately protected in the long term.

### **Design**

- 8.19. The existing use of vegetated earthen bunds to enclose the wider site would be continued. In an otherwise open landscape this can be an effective means of obscuring a development site and replicates the historic earthen berms surrounding nearby historic remains on the adjacent former RNAS Twatt / HMS Tern airfield. The familiarity of angular earthen berms within the landscape, given the extensive nature of the former airfield remains in the locality is not necessarily discordant. Collectively however the extensive nature, scale and situation adjacent to, and perpendicular with, the A967 provides cause for concern, contrary to Policy 2 ‘Design’ of the OLDP 2017.

### **Landscape**

- 8.20. It is a requirement of all development proposals to be sited and designed to minimise negative impacts on the landscape in accordance with Policy 9 ‘Natural Heritage and Landscape’, part G ‘Landscape’ of the OLDP 2017. The extensive scale of the yard, which would be further extended by the proposed development, is out of character with the surrounding rural countryside and agricultural uses. Stored materials potentially exceeding the height of the surrounding earthen bunds could exacerbate this, leading to a discordant appearance within the otherwise low lying and typically flat agricultural landscape. This matter is further compounded through a lack of control of height of stored materials on site.
- 8.21. Further expansion of the existing site is considered to tip the balance of acceptability owing to the accrual of visually negative impacts on the landscape as the development is both out of character with the nature and use of the wider countryside and is overbearing in appearance in the vicinity or upon approach to the development.
- 8.22. The development is therefore contrary to both Policy 1 ‘Criteria for All Development’ (i) and Policy 9 ‘Natural Heritage and Landscape’, part G ‘Landscape’ of the OLDP 2017.

## 9. Conclusion

- 9.1. It is recognised that the wider development is servicing some need within the rural area in which it is located (as well as materials imported from more distant locations). It is also recognised that the site has been successful in accommodating certain uses/users that may otherwise be difficult to satisfactorily place within existing industrial estates or within any of the settlements given possible amenity issue arising. It is however incumbent on the decision-maker to assess the nature and use of the development subject to application, which in this case is the extension of an industrial storage area into a greenfield site, in a rural area, which is otherwise not allocated for such use.
- 9.2. In consideration of the planning balance, it is acknowledged that the proposed development is an extension of an existing business. This is not in itself a locational justification to address Policy 4 'Business, Industry and Employment', part B 'In the Countryside' of the OLDP 2017. Similarly, it is of concern that the statement presented by the developer that there are no sites available to 'fulfil the need for waste disposal/processing' causes uncertainty regarding the nature of development proposed. Similarly various waste exemptions are recorded by SEPA in relation to baling, sorting and shredding of waste, manufacture from waste, manufacture/ repair in relation to waste, secure storage of waste and scrap storage in the wider site. Ultimately however the application as presented is for the extension of a storage yard and not a waste management site.
- 9.3. Policies within both the OLDP 2017 and NPF4 are clear in intent, to encourage, promote and facilitate business and industrial development, where such development is directed to suitable sites. It is asserted by the developer that there is a local, rural need and that there is a lack of suitable sites elsewhere to base this development. This position is presented as evidenced by the expansion of the current business at the site only, and no evidence is presented regarding lack of alternate sites.
- 9.4. The case presented as to the planning benefit of the site in a rural area is significantly weakened through the proximity of the adjacent, unrelated domestic property at East Quoys and the amenity concerns as may accrue because of further development or a change in circumstance that may alter the apparently cordial relationship between the operator of the site and the current resident. The removal of previous safeguards as secured by condition, including the operational management of the site and the height of stored material, exacerbates concern in safeguarding the amenity of the occupants of East Quoys in the long term.

- 9.5. During consideration of this application, the developer was offered an opportunity to test the planning system through withdrawal of this application and resubmission encompassing the nature and use of the site as a whole including the extended site area. This would have allowed a considered approach to the current nature of all operations and uses, exploring the local rural need for the development and potentially regularise planning matters across the site. This opportunity was not pursued, consequently the consideration of this case rests wholly on the development as applied for, as an industrial storage yard, and as an extension to the existing operation.
- 9.6. In the absence of critical policy support for a development of this nature within a rural site, combined with mechanisms to safeguard amenity being restricted by previous decisions, leads to a conclusion that on balance, the development fails to meet required policy tests. The proposed development fails to comply with Policies 1, 2, 4 and 9 of the Orkney Local Development Plan 2017, and Policies 9, 14, 26 and 29 of National Planning Framework 4, and Development Management Guidance 'Business Development Outwith Town Centres' (2023).

## **10. Reasons for Refusal**

- 10.1. The proposed development is not sited or designed to take into consideration the location and the wider landscape character, and the amenity of the surrounding area would not be preserved, resulting in adverse impacts on the amenity of the adjacent domestic property of East Quoys, Birsay. As such, the development is contrary to Policy 1 'Criteria for All Development', provisions (i) and (iv), Policy 2 'Design' and Policy 9 'Natural Heritage and Landscape', part G 'Landscape' of the Orkney Local Development Plan 2017.
- 10.2. The proposed development is not sympathetic to the character of the rural area in which it is located, having an overall negative effect on the appearance and amenity of the area. As such, the development is contrary to Policy 2 'Design', provisions (i) and (ii) of the Orkney Local Development Plan 2017.
- 10.3. By virtue that it is not demonstrated that there are no suitable alternative sites, or that the nature and scale of the activity is compatible with the surrounding area, the development is contrary to, Policy 26 'Business and industry' paragraph (d), and Policy 29 'Rural development' paragraph (b) of National Planning Framework 4 and, in the absence of a demonstrable locational requirement for the business, the development is contrary to Policy 4 'Business, Industry and Employment' of the Orkney Local Development Plan 2017.



## **For Further Information please contact:**

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## **Implications of Report**

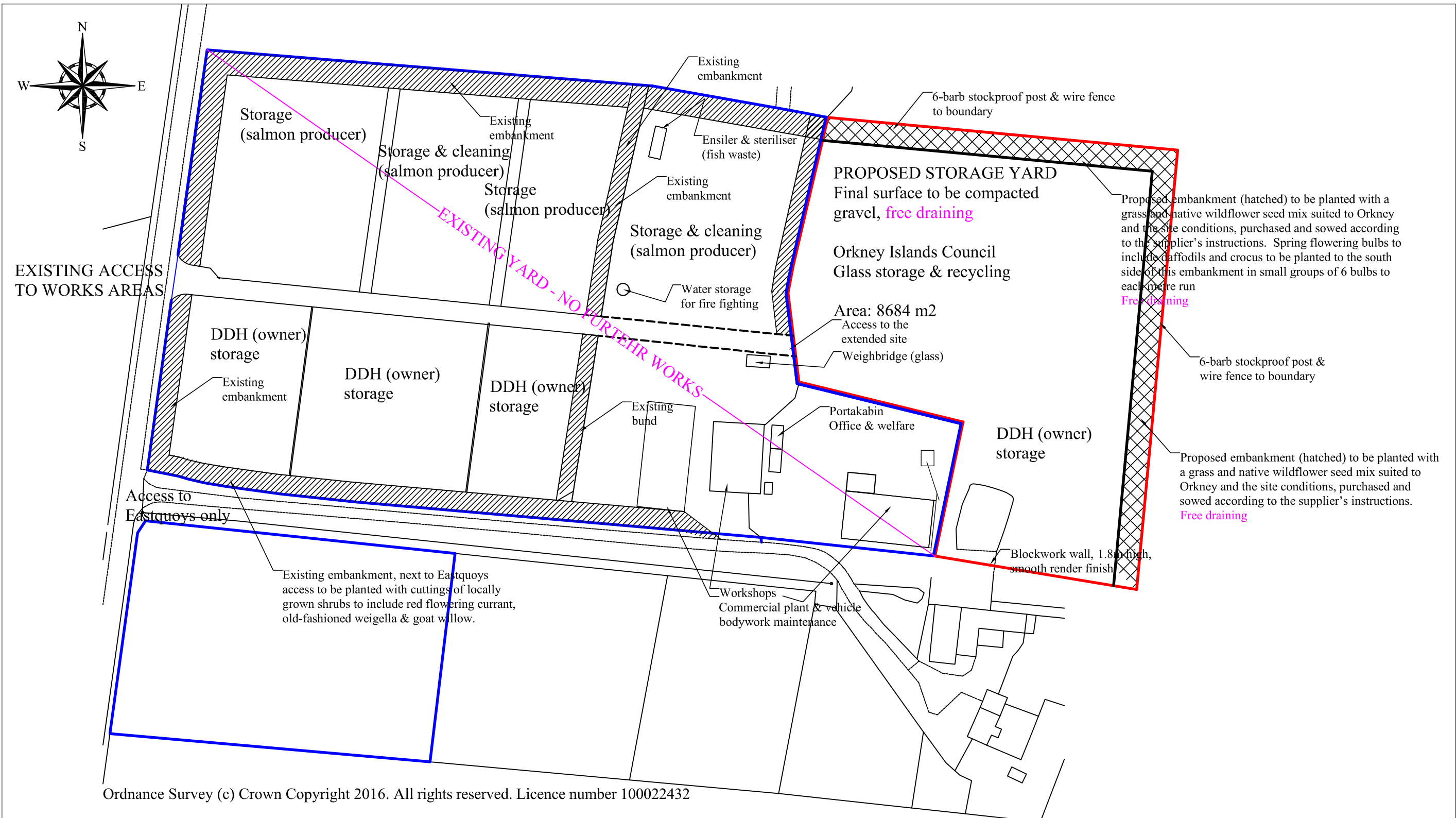
- 1. Financial:** None.
- 2. Legal:** Detailed in section 7 above.
- 3. Corporate Governance:** In accordance with the Scheme of Administration, determination of this application is delegated to the Planning Committee.
- 4. Human Resources:** None.
- 5. Equalities:** Not relevant.
- 6. Island Communities Impact:** Not relevant.
- 7. Links to Council Plan:** Not relevant.
- 8. Links to Local Outcomes Improvement Plan:** Not relevant.
- 9. Environmental and Climate Risk:** None.
- 10. Risk:** If Members are minded to approve the application, it is imperative that clear reasons for proposing approval of planning permission contrary to the officer's recommendation be given and minuted. This is in order to provide clarity in the case of a subsequent planning appeal or judicial review against the Planning Committee's decision. Failure to give clear planning reasons for the decision could lead to the decision being overturned or quashed. In addition, an award of costs could be made against the Council. This could be on the basis that it is not possible to mount a reasonable defence of the Council's decision.
- 11. Procurement:** None.
- 12. Health and Safety:** None.
- 13. Property and Assets:** None.
- 14. Information Technology:** None.
- 15. Cost of Living:** None.

## **List of Background Papers**

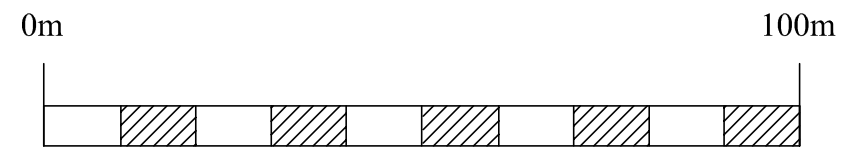
Orkney Local Development Plan 2017, available [here](#).  
National Planning Framework 4, available [here](#).

## **Appendix**

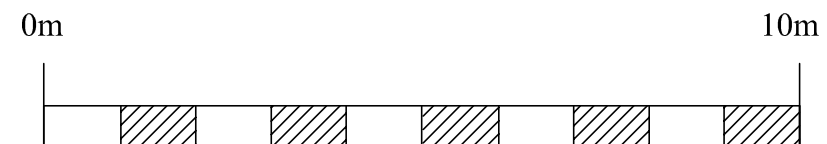
Appendix 1 – Location Plan.



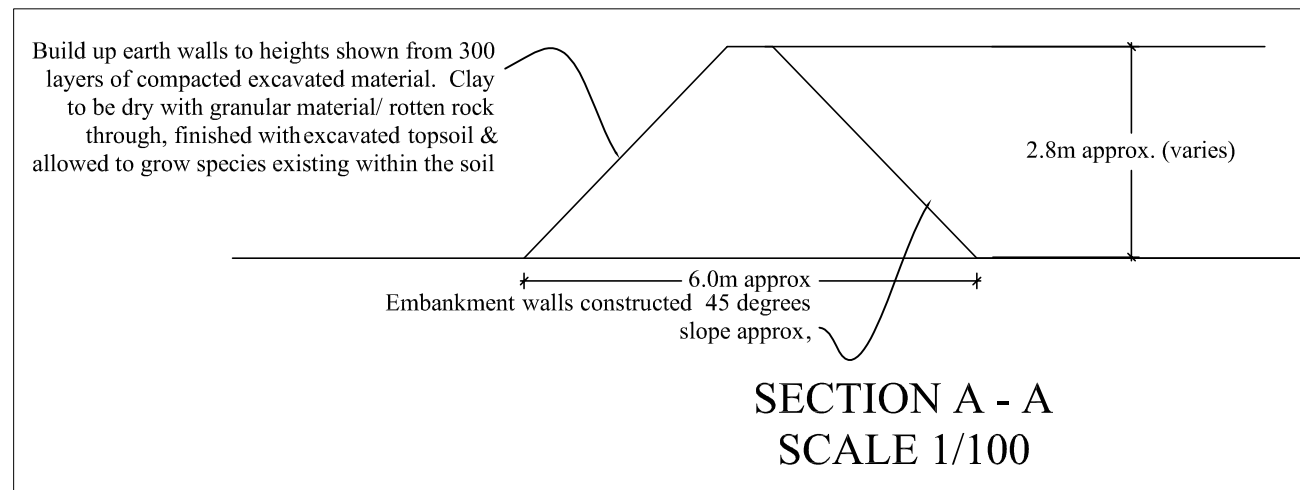
**SITE PLAN D**  
**SCALE 1/1000**



Scale 1:1000



Scale 1:100



Note: Bio-diversity measures added as discussed

**DEEPDALE HIRE**  
**EASTQUOYS, TWATT**  
**PROPOSED EXTENSION TO A STORAGE YARD**