

Item: 3

Planning Committee: 25 June 2025.

Proposed Erection of Three Storey Block of 15 Flats and Associated Works (Resubmission of 21/266/PP) at Great Western Road, Kirkwall.
Report by Director of Infrastructure and Organisational Development.

1. Overview

- 1.1. This report considers an application to erect a three storey block of 15 flats and alter an access, with associated car parking, landscaping and infrastructure on a brownfield site adjoining Great Western Road, Kirkwall. The application is a resubmission of a previous application, reference 21/266/PP, which was refused due to noise impact from an adjacent premises. The noise impact issue has been resolved; however, in response to updated policies and modelling in relation to the development of land at risk of flooding, the development is subject to an objection from the Scottish Environment Protection Agency (SEPA) on grounds of flood risk. No public representations have been received. Given previous Elected Member decision-making affecting this site, and the strategic interests of flood risk affecting this town centre site, the application is reported to the Planning Committee for determination. The development is contrary to relevant policies in relation to flood risk.

Application Reference:	23/209/PP.
Application Type:	Planning Permission.
Proposal:	Erect a three storey block of 15 flats and alter an access, with associated car parking, landscaping and infrastructure (resubmission of 21/266/PP).
Applicant:	Orkney Builders Ltd.
Agent:	Bracewell Stirling, 5 Ness Bank, Inverness, IV2 4SF.

- 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. Recommendation

2.1. It is recommended that members of the Committee:

- i. Refuse the application in respect of the proposal to erect a three storey block of 15 flats and alter an access, with associated car parking, landscaping and infrastructure (resubmission of 21/266/PP) at Great Western Road, Kirkwall, for the reasons detailed in section 11 of this report.

3. Consultations

Scottish Water

3.1. “Scottish Water has no objection to this planning application.”

Development and Marine Planning (Environmental Planner)

3.2. No objection, noting “The Design statement (Rev A dated June 2023) and the Proposed site layout plan (drawing no. 4742-02-002 rev G dated Jun 2023) both contain measures that could potentially contribute to biodiversity conservation and enhancement, however limited information is provided.”

Environmental Health

3.3. “We note from the application form that the applicant has stated this is a re-submission for a previous application, but ‘including fixed window approach to north and east elevations to address comments receive from Environmental Health.’ However, neither the submitted plans or supporting documents indicate the adoption of fixed windows on the North and East elevations.

Therefore, on the assumption that the ‘Noise Impact Assessment DC3679-R1v4’ dated 9 September 2022 and authored by Dragonfly Consulting on behalf of Orkney Builders (Contractors) Ltd is still valid, and the Planning Authority are comfortable that ventilation to the flats can be provided by other means than an open window, we would suggest that the submitted plans be amended to clearly show that the windows to North and East elevations are to be fixed. Furthermore, for the sake of clarity, a condition should be attached reinforcing the windows which are to be fixed and the required specification as per ‘Noise Impact Assessment DC3679-R1v4’.

It should also be conditioned that prior to occupation noise testing should be undertaken to show compliance in order to protect the occupants of the new development.”

Islands Archaeologist

- 3.4. “The proposed development site sits on land reclaimed from Peerie Sea in the early 20 Century. Previously, the location was a sheltered part of Peerie Sea on the south side of the Ayre embankment.

Therefore there is potential, depending on the depth of foundations and utilities, for the works to intrude into remains such as medieval jetties, sunken vessels / abandoned hulks and other waterlogged organic materials, if any remain or exist.

If it can be shown that foundations and utility trenches remain within the depth of material dumped in the 20th century to reclaim the land, e.g. by any geotechnical groundworks that may have been conducted, then there is no need for archaeological intervention.”

Roads Services

- 3.5. “Roads Services do not object to this development proposal but there are concerns which are noted below and should be dealt with by either requesting further information, amendment of drawings, addition to design statement or by appropriate conditions being applied.

The information provided indicates that development is to be partially built upon the existing Great Western Road, while Roads Services do not object to this the developer should provide evidence of either land ownership, or agreement with the landowner for the area of public road to be used prior to planning permission being granted. Alternatively, the matter of landownership or agreement with the landowner could be conditioned such that the information is supplied prior to commencement of any works on site.

Given that the proposed new road width will be seven metres, it will no longer be possible for there to be on-street parking on both sides of Great Western Road in the vicinity of the development. Therefore, a condition should be applied that prevents the new properties being occupied until a new traffic order is in place, with all costs incurred being paid for by the developer.

Should the development be granted planning approval a condition should be applied that requires the developer to carry out public realm works to offset the loss of the area of public road required for this development.”

Engineering Services

- 3.6. “The following response is regarding the Flood Risk Assessment Report (document 240620-000) submitted in support of this development in December 2024 and its effectiveness in addressing concerns raised regarding coastal flood risk since the adoption of NPF4 in Spring 2023. Since the national adoption of this planning policy, flooding authorities are mandated to include an uplift to account for climate change in flood risk assessments. For coastal flood risk in Orkney, this currently entails predicted sea level rise of 0.93m to 2100 and an increase in the frequency and severity of storm events. It was anticipated that the report commissioned by the applicant would lead to a more complete understanding of flood risk due to overtopping of the Kirkwall Harbour Flood Prevention Scheme (KHFPS). Unfortunately, no new analysis of the effect of overtopping of the various sections of the KHFPS and resulting flooding is included in the report. Therefore, our position is that understanding of flood risk resulting from future overtopping of the KHFPS is unchanged.”

SEPA (26 July 2023)

- 3.7. “We have reviewed the information provided with this planning application and it is insufficient to allow us to determine the potential flood risk impacts. We therefore submit a holding objection and request that determination be deferred until the information outlined below has been provided for our assessment. If the planning authority is not minded to request this information, or the applicant does not provide it, then this representation should be considered as an objection from SEPA.

We were previously consulted on a similar application at this location and removed our objection following provision of information from OIC flood team on the flood risk at the site as determined from their updated fluvial and surface water modelling. Since the time of that response, NPF4 has been adopted and makes avoidance of flood risk areas in the 1 in 200 year plus climate change scenario a requirement. (Previously, under Scottish Planning Policy, consideration of climate change was a recommendation only).

The application site lies in an area protected by the Kirkwall Flood Protection Scheme (FPS) which we understand was designed for a 1 in 200 year including climate change standard of protection. We do not hold any of the studies undertaken at the time of the FPS design or hold information following its completion. We require additional information from OIC on the standard of protection of the scheme and what, if any, climate change allowance is considered

to be provided. Additionally, we previously received outputs from the Scottish Water s16 model for Kirkwall from OIC to assess the previous application. We now require further clarification as to whether these model outputs included an allowance for climate change or were representative of the present day 1 in 200 year event.

The only exceptions to the avoidance principle in NPF4 are outlined in development types i-iv in Policy 22a as below and, for these types of development, they must satisfy the bullet point requirements outlined in Policy 22a. If the Kirkwall Flood Protection Scheme (FPS) and flood risk at the site does not meet the required standards, it is for the LPA to confirm that this development falls within Policy 22a iii or iv.

Therefore, in order to remove our objection to this application, we require:

- additional information on the flood risk at the site from the sources mentioned above (OIC) to demonstrate that the proposals accord with NPF4 in avoiding any areas at flood risk when considering the 1 in 200 year plus climate change event;
- if this cannot be demonstrated, we require confirmation from the Planning Authority that the proposal meets one of the exceptions set out in Policy 22a i-iv and then further information from the applicant to demonstrate it meets the requirements of the bullet points at Policy 22a as highlighted below.”

SEPA (6 December 2023)

- 3.8. “We have reviewed the information provided and we unfortunately object to the application on flood risk grounds. We consider that the proposed development is expected to put people and property at risk of flooding, which is contrary to the duties set out under the Flood Risk Management (Scotland) Act 2009, and the policy principles of National Planning Framework 4. We consider that the proposal is contrary to NPF4 Policy 22.

Since the adoption of National Planning Framework 4 (NPF4) by Scottish Government on 13th February 2023, avoidance of flood risk areas in the 200 year plus climate change scenario is now a requirement and planning applications must be assessed in line with the most up to date guidance.

The site is within an area shown to be at risk of flooding based on the SEPA Future Flood Maps. This indicates that there is a risk of flooding from the sea.

The Kirkwall Flood Prevention Scheme (FPS) offers some protection to the area with a standard of protection of 1 in 200 years. However, with the inclusion of the

required climate change allowance for the area (as required by NPF4), we consider that the proposed site is at flood risk.

The FPS has been constructed with a crest height of 3.855mAOD, which at the time of construction offered protection against a 1 in 200 year design flood event (3.23mAOD) with an allowance for climate change (0.355m) and wave action (0.27m), although no additional freeboard allowance above this level.

The required sea level rise due to climate change for this area to 2100 is now 0.93m. This results in a 1 in 200 year including climate change flood level of 4.16mAOD, which is approximately 0.3m higher than the crest height of the FPS without any addition for wave action.

Based on the above understanding of the FPS and data held, we believe the FPS will be overtopped during a 1 in 200 year plus climate change flood event and the level of overtopping could be significant when accounting for the added impact of wave action.

We note that the period of overtopping will be limited to the period of high tide which will restrict the overall overtopping volumes and we also note that some of the flood water overtopping the wall will drain away through the surface water drainage. However, in the absence of a detailed flood study of the FPS and the risk of overtopping, it is not possible to fully understand the extent of the flood risk in the area. Nevertheless, we are still of the opinion that there could be a significant volume of water overtopping the FPS and it is unlikely all this water will be dealt with by the drainage network, particularly if combined with any rainfall during the event.

We understand that the proposed development for erection of a block of flats is a change of use to a 'Highly Vulnerable' use under SEPA's Land Use Vulnerability Guidance. In accordance with NPF4, such developments are only suitable in locations which avoid the flood risk area as defined by the 1 in 200 year including climate change extent, or where they are considered to be an exception under Policy 22a(iv) and can meet the requirements of the policy. Given the location of the site itself within the flood extent and its proximity to the sea frontage, we do not believe that the policy requirement for flood free access and egress can be achieved. The proposal is therefore contrary to NPF4 Policy 22.

We recognise that OIC Engineers advice is that: - "With water from wave overtopping able to drain from the streets via the roads drainage system to the Peedie Sea, it therefore seems that the extents of coastal flooding due to wave overtopping would be significantly over-represented as currently modelled" -

“From our analysis of recorded flooding we consider that the S16 model does represent surface water flooding in the Great Western Road area well. With pedestrian access available to Burnmouth Road to the north and vehicular access available from the car parking”. - “A review today might demonstrate that the KHFPS would not meet the 1:200 yr plus CCU standard and with the KHFPS in place, its effectiveness as-built could be modelled. With no such review yet undertaken and water overtopping the Kirkwall Harbour Flood Protection Scheme able to drain from Ayre Road and Harbour Street to the surface water system, thereby limiting the spread of water, the extent of flooding due to wave overtopping should be limited” - “In the absence of detailed modelling of the as-built structure demonstrating otherwise, we continue to regard the KHFPS as providing protection equivalent to the ‘functional flood plain’ standard.”

Unfortunately, as OIC does not currently have an up to date a detailed study of the FPS as implemented in 2015, which assesses the likely overtopping rates of the FPS and demonstrating this can be accommodated within the surface water drainage network, to provide a definitive position on flood risk, we have to base our position on the above levels ie a 1 in 200 year including climate change flood level of 4.16mAOD, which is approximately 0.3m higher than the crest height of the FPS without any addition for wave action. SEPA therefore regards the FPS as providing less protection than is required by NPF4 for the proposed development to be considered not at risk of flooding.

A further study is not something that SEPA would undertake and we do not consider it something which we could request an individual applicant to provide. We consider that, if OIC is minded to allow such development in the area identified as at risk behind the flood defence then they should provide the evidence to demonstrate that the FPS with surface water drainage provides the required standard of protection.

Flood protection schemes in Scotland are primarily built to reduce flooding to existing communities in the short to medium term with their design based on what is most feasible to achieve the greatest benefit for the community. Their protection in the long term is less certain because of the changing climate, changes to coastlines and river channels, the effects of the design life of the scheme and its condition over time and the possibility of a failure of some kind. This means most schemes provide less protection than the standard required for new development by NPF4, which must be safe for the longer term.

As set out in NPF4, it is possible to take account of the protection offered by an existing formal flood protection scheme to reassess the area identified as being at

risk of flooding. That means considering in detail a wider range of scenarios. That detailed consideration may be able to identify land where the scheme, the characteristics of the location, the residual risk and understanding of a range of scenarios means that the overall risk is low enough to be suitable for new development. Evidence that the risk is low is required before any development can be planned or approved in those areas, other than for the types of development permitted in flood risk areas under NPF4.

Previously, under Scottish Planning Policy, consideration of climate change was a recommendation only which is why we were able to support a lesser climate change uplift in our response to the previous application (21/266/PP). Prior to NPF4 being implemented, this was sufficient for us not to object to development protected by the FPS. Our understanding of climate change has been amended in accordance with the best available information from UKCP18. The change in policy context now means that, unfortunately, our previous advice is no longer applicable.”

SEPA (7 January 2025)

- 3.9. “The information supplied with this planning application is insufficient to allow us to determine the potential flood risk impacts. Unfortunately, we therefore maintain our holding objection to this application on flood risk grounds and request that determination be deferred until the information outlined below has been provided for our assessment.

1. Flood risk

1.1 In our previous response of 6 December 2023 (our reference 9622/1) we objected to this application due to a lack of information on coastal flood risk associated with overtopping of the Kirkwall Flood Prevention Scheme (FPS) during the 1 in 200 year plus climate change flood event. The best information we hold on flood levels for this area indicate that the FPS will be overtopped due to still water levels alone during this event, and the impact of waves will increase this risk further. Our updated coastal flood maps for Orkney indicate that overtopping of the FPS is expected for the 1 in 200 year plus climate change event. The maps indicate the proposed development site, and surrounding area, is likely to be at flood risk. The information contained within our previous response remains relevant.

1.2 Whilst our updated maps contain detailed modelling for the area, we note that the flood levels used may not represent the best estimate of still water level for the design event (the values used are lower than those believed to best represent as

previously outlined), but also that they do not take account of any loss of overtopping volumes into the drainage network. We advised that in order to fully understand the flood risk from exceedance of the FPS, we require further evidence to be provided by Orkney Islands Council to determine the impact of the overtopping. This information has not been provided but the applicant commissioned Cameron & Ross to undertake a Flood Risk Assessment (FRA) for the proposed development (240620-000- December 2024).

1.3 The FRA does not include any coastal flood modelling or determination of likely overtopping volumes and drainage rates and associated areas of flood risk. Instead, the FRA primarily looks to challenge the climate change allowances required by SEPA and position taken on development behind the FPS. The following information outlines how our climate change allowances were derived and why we believe these to be the most appropriate for land use planning in Scotland.

1.4 The SEPA Future Flood maps and guidance are based upon Met Office 2018 UK Climate Projections, using Representative Concentration Pathway 8.5 (RCP 8.5), which assumes limited efforts to mitigate climate change, so that greenhouse gas levels in the atmosphere will continue to increase. RCP 8.5 is used by the Intergovernmental Panel on Climate Change (The IPCC). In this scenario the best estimate global average temperature rise is 4.3°C above pre-industrial levels by 2100.

1.5 Further information on the emissions scenarios used in the UK Climate Projections are available through the UKCP18 website. In basing the guidance upon this scenario, we acknowledge that the 2015 Paris Agreement commits 137 countries to limiting their carbon emissions with the aim of holding global temperature rise to well below 2°C above pre-industrial levels, and pursuing efforts to limit the rise to below 1.5°C. The Scottish Government is committed to meeting the Paris Agreement through the amended Climate Change (Scotland) Act 2009, which sets a net zero greenhouse gas emissions target for 2045. However, we opted to base the guidance on this scenario given that the intended nationally determined contributions of those countries signed up to the Paris Agreement suggest that we are currently on a higher emissions pathway than 2°C – current estimates show we are on course to reach 2.7°C by the end of this century. Global emissions also continue to rise. SEPA selected this scenario in consultation with Adaptation Scotland. The high emissions scenario was considered most appropriate as our maps and guidance are used to inform significant and long-lasting land use planning decisions (i.e. development likely to be in situ at least to the end of this century, which is only ~75 years from now), where a precautionary

approach is warranted. NPF4 Policy 22 states that a precautionary approach should be taken. Our guidance was jointly launched by SEPA and Scottish Government in 2019. The high emissions scenario RCP 8.5 is used in similar guidance in other parts of the UK.

1.6 SEPA has engaged with research commissioned by the Scottish Government 'Future climate in today's decisions' which is due to be published shortly. SEPA's current guidance on climate change is in alignment with the recommendations of the research where the 4°C warming scenario is appropriate for decisions which present a higher physical risk. More information will be available once the report is published but there will be no imminent changes to SEPA guidance as a result of the research.

1.7 The submitted FRA also provides a summary of alternative sea level rise estimates and whether these result in overtopping of the FPS (Table 1). These predictions on whether the FPS will overtop or not are based on still water levels alone and no mention is made within the report as to overtopping from waves, other than to note our updated flood maps in this area include the impact of wave action. The original FPS design included an allowance for wave action and the detailed flood modelling for the updated maps shows wave overtopping is a risk at this location. Figure 2 in the FRA outlines the range of sea level rises for the different emissions scenarios (for Edinburgh). From Table 1, the 2080 estimated sea level rise of 0.65m is similar to the upper estimate for the medium emissions scenario (RCP4.5) and mid-point estimate for the high emissions scenario (RCP8.5). This results in a still water level of 3.88mAOD, which the FRA notes as being protected by the FPS. However, this is approximately equal to the crest level of the FPS and includes no allowance for wave impacts. Based on the wave overtopping allowance provided for the FPS, we believe that as a minimum, for the 0.4m and 0.65m sea level rise the FPS would overtop. Figure 3 in the FRA is therefore likely to be underestimating flood risk. The FRA does not appear to include any coastal modelling and therefore it appears Figure 4 in the FRA is based on projection of flood extent to all areas lower than 4.16mAOD. We acknowledge that the FPS does provide some protection to Kirkwall and this flood extent would only be expected if the FPS was to fail completely. Therefore, we believe the flood risk area is likely to be less extensive than that shown and currently the best information we hold is that flood risk is likely to impact the areas shown within our flood maps.

1.8 The FRA outlines that the FPS was designed using a 1 in 200 year flood level obtained using statistical analysis of the Kirkwall tide gauge. This was the best information available at the time given no detailed coastal modelling was carried out. We have been reviewing the tide gauge data to help inform our understanding

of flood risk for the area and there is no information to suggest that this previous level is not still appropriate. Our analysis of the data is not for the confirmation of the standard of protection of the scheme and a detailed study would be required to understand the flood risk in Kirkwall, taking account of the protection offered as outlined in Policy 22.”

SEPA (4 April 2025)

- 3.10. “Thank you for your consultation which was received by SEPA on 17 March 2025 in relation to the above application. We note the submission of additional information in follow up to our latest response of 7 January 2025 (our reference PCS-20004016): Flood Risk Assessment Report (FRA) by Cameron & Ross, 240620-000, version 1.0, dated 23/01.2025 and additional comments from Cameron & Ross and Bracewell Stirling Consulting.
- 3.11. The information supplied with this planning application is insufficient to allow us to determine the potential flood risk impacts. Unfortunately, we therefore maintain our holding objection to this application on flood risk grounds and request that determination be deferred until the information outlined below has been provided for our assessment.

1. Flood risk

1.1 We previously outlined that in the absence of a detailed coastal modelling study to determine the impacts of coastal flooding in Kirkwall when taking account of the Flood Prevention Scheme (FPS), it cannot be determined that this site is not at risk of flooding during a 1 in 200 year including climate change event, as is required by Policy 22 in NPF4. The updated information provided does not include any further modelling or analysis of the impacts of overtopping of the FPS and therefore our understanding remains the same i.e. the FPS is expected to be overtopped when taking account of future still water levels, and this will be further increased with the effects of wave action. The best information we hold is from our future flood maps for the area which indicates that in such a scenario the site is expected to be at risk of flooding.

1.2 In response to the points raised by Cameron & Ross in their updated Flood Risk Assessment (FRA) and accompanying letter we can provide the following points of clarity:

SEPA’s updated flood maps for Orkney do include an allowance for impacts of wave overtopping in this area. However, the flood levels we previously outlined in our responses were still water levels and were not taken from the maps directly.

Additionally, as noted previously, the flood maps whilst a recent update, use lower climate change allowances from UKCP09 due to the timescales involved in the updates. They also are based on Coastal Flood Boundary data, which we believe in this area may be underestimating the still water level when compared to gauged data and also observed flooding in other parts of Orkney. As such, we believe the overtopping risk in this location may be underestimated in the maps based on this information. Although we also acknowledge that the overtopping maps do not take any account of drainage behind the FPS and some overtopping volume may be lost through drainage. The risk of flooding is therefore uncertain. We would not expect inundation within Kirkwall as would be seen without the presence of the FPS (as per Figure 4 in the FRA), however, we would expect inundation of some areas and based on the information currently held, it is expected this could include the proposed development site.

Cameron & Ross outline that they have undertaken wave overtopping modelling, however, this does not include an assessment of extent of flooding but rather just that would likely be significant volumes given the length of the FPS and predicted flood levels. We would also highlight that whilst we previously noted that a level of 0.27m had been applied in the design of the FPS to account for wave action, that we were not recommending this as an allowance to be used in this assessment. A detailed study of the impacts of overtopping of the FPS should include an up-to-date assessment of wave action.

We note, as outlined, that the FRA accepts the climate change allowances set out in the guidance but rather is seeking for an approach to be taken against this requirement given the recent construction of the FPS. Unfortunately, we cannot take an alternative view of what timescales should be planned for in new development when considering climate change allowances. We have witnessed in Scotland in recent years the exceedance of FPS which had been designed at the time for a high standard of protection, although recent events have changed what would now be designed for. We do not believe that the FPS in Kirkwall has been made redundant through changes in policy and believe it still offers protection to significant areas of the town.”

4. Representations

4.1. None.

5. Relevant Planning History

5.1. Planning applications

Reference	Proposal	Location	Decision	Date
21/266/PP.	Erect a three storey block of 15 flats and alter an access, with associated car parking, landscaping and infrastructure.	Great Western Road, Kirkwall.	Refused.	10.03.23.

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 1. Tackling the climate and nature crises.
 - Policy 2. Climate mitigation and adaptation.
 - Policy 3. Biodiversity.
 - Policy 7. Historic assets and places.
 - Policy 9. Brownfield, vacant and derelict land and empty building.
 - Policy 10. Coastal development.
 - Policy 13. Sustainable transport.
 - Policy 14. Design, quality and place.
 - Policy 15. Local Living and 20 minute neighbourhoods.
 - Policy 16. Quality homes.
 - Policy 18. Infrastructure first.
 - Policy 21. Play, recreation and sport.
 - Policy 22. Flood risk and water management.
 - Policy 27. City, town, local and commercial centres.

- Orkney Local Development Plan 2017:
 - Policy 1: Criteria for All Development.
 - Policy 2: Design.
 - Policy 3: Settlements, Town Centres and Primary Retail Frontages.
 - Policy 5: Housing.
 - Policy 8: Historic Environment and Cultural Heritage.
 - Policy 9: Natural Heritage and Landscape.
 - Policy 11: Outdoor Sports, Recreation and Communities Facilities.
 - Policy 12: Coastal Development.
 - Policy 13: Flood Risk, SuDS and Waste Water Drainage.
 - Policy 14: Transport, Travel and Road Network Infrastructure.
- Supplementary Guidance:
 - Settlement Statements (2017).
- Planning Policy Advice
 - Development Briefs and Design Statements (2014).
 - Planning for Open Space (2014).
 - Amenity and Minimising Obtrusive Lighting (2021).
 - Developer Contributions (2013).
 - National Roads Development Guide (2015).
- Development Management Guidance:
 - 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, to merit any detailed assessment in relation to individual NPF4 policies.

8. Notification Requirements

- 8.1. The development is subject to consultation response objection by a government agency, in this case objection by SEPA in relation to flooding.
- 8.2. Under the provisions of the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009, should a planning authority propose to approve planning permission for a development falling within any of the descriptions of development listed in the Schedule to the above Direction (including where the application has been subject to objection from SEPA on grounds of flooding), the planning authority shall notify Scottish Ministers.
- 8.3. A planning authority must not approve planning permission for development before the expiry of a period of 28 days, beginning with the date of receipt by the Scottish Ministers of information which the planning authority is required to provide.

9. Assessment

- 9.1. Permission is sought to erect a block of 15 flats on land adjoining Great Western Road, Kirkwall, on the junction with Burnmouth Road, as indicated in the Location Plan attached as Appendix 1 to this report. Formerly the Scarth Centre, the site is currently vacant following the demolition of the building, with only sections of the

boundary wall retained. The application site includes the former footprint of the building and a section of Great Western Road.

- 9.2. The flats would be immediately on the building line at the back edge of the footway of Great Western Road and Burnmouth Road, including the chamfered corner similar to the corner detail of the former Scarth Centre building. The building would be finished with a light render, dark grey aluminium-clad windows and a slate roof with skews at the gables, taking a similar design approach to the detached annex for the Ayre Hotel, located immediately to the west on Burnmouth Road. The building would ensure a positive façade to both streets as required by the development brief.
- 9.3. The building line is approximately three metres further east than the former Scarth Centre building, into Great Western Road. A new footway would be formed, in addition to various street works including a build-out, crossing point and street tree planting to the north of the building, and amended on-street parking to the east of the building on Great Western Road.
- 9.4. Other works are proposed within the application site boundary, including an area for surface water drainage, bin storage and collection points, vehicle parking including a disabled parking bay and an electric vehicle charge point, and shared hard and soft landscaping.

Principle

- 9.5. Policy 9 'Brownfield, vacant and derelict land and empty buildings' of NPF4 supports development proposals that will result in the sustainable reuse of brownfield land. Policy 5A 'Housing in Settlements' of the Local Development Plan notes that applications for housing development in redevelopment sites are supported where they accord with the relevant settlement statement and any adopted Development Brief. Specifically, there is a presumption in favour of appropriate residential development outwith allocations where it consists of infill development, or the redevelopment of derelict land. Therefore, as development of derelict land within the settlement boundary of Kirkwall, the principle of the development is acceptable.
- 9.6. The site is included within the extent of the Supplementary Planning Guidance (SPG): Central West, Kirkwall Development Brief (2011), in the 'Scarth Centre site' triangular parcel of ground between Great Western Road to the east, Burnmouth Road to the north and Burgh Road to the south. The development brief requires development to establish positive facades to Great Western Road and Burnmouth Road and connect with the proposed new pedestrian route through the 'Jewsons

Yard' site. The scale, massing and form of new development must be carefully designed to ensure that it responds effectively to the existing townscape. In terms of design and layout, the development is considered compatible with the development brief.

Design

- 9.7. It is considered that the design adequately meets the terms of the Central West, Kirkwall Development Brief (2011), and the finalised plot layout and building design is in line with advice provided by the planning authority. With reference to historic buildings and other relatively recent development in the vicinity, the development is sympathetic to the character of the local area, would have a positive effect on the appearance of the area, and by virtue of the street works, would be appropriately connected to pedestrian routes and would encourage pedestrian access, all as required by Policy 2 'Design' of the Local Development Plan. The proposed building is large but is seen in the context of the Kiln Corner flats, Fusion nightclub, the Ayre Hotel annexe and the Ayre Hotel main building, and can be accommodated within the streetscape in that location. The form matches that of nearby buildings, of a relatively long narrow plan, and the proportions includes a steeply pitched roof typical in the vicinity. The proposed materials and way in which the plan addresses both street frontages are critical in the application being considered acceptable.
- 9.8. The Ayre Hotel and Fusion nightclub (a former fish processing plant) are both category B listed buildings. In terms of scale, form, materials and relationship to other existing development, it is considered that the development is designed and sited to preserve the character and setting of listed buildings, in accordance with Policy 7 'Historic assets and places' of NPF4 and Policy 8 'Historic Environment and Cultural Heritage' of the Local Development Plan.

Access and Parking

- 9.9. Roads Services has no objection to the application, in terms of works within and surrounding the site. The parking and footway design is to the appropriate standard. Roads Services is satisfied with the proposed parking provision, noting that the development be subject to an electric vehicle car club, designed to allow membership of the car club by each of the flats. In accordance with Policy 14C 'Road Network Infrastructure' of the Local Development Plan, the development would be connected to the existing network of roads and paths, it could be safely and conveniently accessed by service and delivery vehicles, and the proposed new access has been designed to an adoptable standard.

Surface Water and Foul Drainage

- 9.10. Development of the scale proposed is required to incorporate sustainable drainage systems (SuDS). The submission includes a drainage design which demonstrates compliance with best practice, including surface water drainage calculations as required by Engineering Services and submitted in support of the application. Engineering Services and Roads Services have no objections to the application, and in terms of surface water and foul drainage the application is considered to be in accordance with Policy 13 'Flood Risk, SuDS and Waste Water Drainage' of the Local Development Plan.
- 9.11. The development would connect to the public foul drainage system and would not place an unacceptable burden on existing infrastructure services, in accordance with Policy 1 'Criteria for All Development' of the Local Development Plan.

Contaminated Land

- 9.12. Environmental Health provided comment, following submission of a Combined Phase 1/Phase 2 Site Investigation Report in relation to the previous planning application 21/266/PP. Having reviewed that Site Investigation Report, Environmental Health recommended minor amendments but agreed with the conclusions and recommendations. The land has remained generally undisturbed, and there are therefore no concerns with regards to contaminated land, subject to submission of a detailed contaminated land remediation method statement, and for the site to be developed in accordance with the method statement thereafter.

Privacy and Daylight

- 9.13. Windows facing towards the existing hotel annexe to the west would be at an adequate distance to protect residential amenity, and properties on the other three sides are non-residential, comprising the nightclub to the north, a yard to the east across Great Western Road and a car park to the south.
- 9.14. As non-residential development is located to the north and east, there would be no unacceptable loss of daylight or sunlight to an existing property caused by the proposed development. The proposed development would have no unacceptable adverse impacts on the amenity of adjacent or nearby properties or users, in accordance with Policy 1 'Criteria for All Development' of the Local Development Plan.

Noise

- 9.15. Planning application 21/266/PP was refused in March 2023 due to noise impact from the adjacent nightclub (notwithstanding that it is currently not operating), and the agent of change principle which protects the existing nightclub operation from new development. At the time of consideration of the application, the proposed solution was to install fixed windows in particular openings; that option was not pursued, and the application was determined as submitted, with opening windows, and was refused.
- 9.16. The current application is submitted as an amendment to the design, “including fixed window approach to north and east elevations to address comments receive from Environmental Health”. This adequately addresses the noise issue, subject to the ‘Noise Impact Assessment DC3679-R1v4’ dated 9 September 2022 and authored by Dragonfly Consulting on behalf of Orkney Builders (Contractors) Ltd remaining valid. Environmental Health has noted that the submitted elevations do not include annotation to confirm fixed windows in the relevant elevations; however, planning conditions could be used to ensure windows are fixed and of an appropriate specification as included in the noise impact assessment.
- 9.17. Environmental Health has also confirmed that a planning condition would be required to secure pre-occupation noise testing, to protect the occupants of the new development.
- 9.18. Based on the amended design, critically including fixed windows where required and in accordance with the noise impact assessment, the development would meet the agent of change principle and would not result in any unacceptable amenity impact for occupants of the flats, in accordance with Policy 1 ‘Criteria for All Development’ of the Local Development Plan.

Affordable Housing

- 9.19. Policy 5B requires that “All housing proposals within Orkney’s settlements must demonstrate that they have considered and incorporated housing types and tenures which meet local housing requirements as outlined in relevant settlement statements, developments brief and masterplans”. Policy 16 ‘Quality homes’ of NPF4 confirms that, “Proposals for market homes will only be supported where the contribution to the provision of affordable homes on a site will be at least 25% of the total number of homes” unless the circumstances are set out in the Local Development Plan.

- 9.20. The applicant has confirmed that 25% of the development would be provided as affordable homes, in accordance with the relevant policies. The method of delivery would be agreed in consultation with the Housing Service, in relation to local housing requirements and the tenure of affordable units. This matter could be controlled by planning condition, and the development meet the requirements of Policy 5B of the Local Development Plan, and Policy 16 of NPF4.

Flood Risk

- 9.21. The most significant change in policy context since determination of the previous application at the site is in relation to flood risk, and in this case the consideration of applications for development on land modelled as being at risk of flooding, behind the Kirkwall Flood Prevention Scheme ("Kirkwall FPS"). Since the adoption of NPF4 in February 2023, avoidance of flood risk areas in the 200 year plus climate change scenario is now a requirement and planning applications must be assessed in line with this most up to date guidance.
- 9.22. The site is within an area shown to be at risk of flooding based on the SEPA Future Flood Maps. This indicates that there is a risk of flooding from the sea. The Kirkwall FPS offers some protection to the area with a standard of protection of 1 in 200 years. However, with the inclusion of the required climate change allowance for the area (as required by NPF4), SEPA has concluded that the site is at flood risk.
- 9.23. The Kirkwall FPS has been constructed with a crest height of 3.855mAOD, which at the time of construction offered protection against a 1 in 200 year design flood event (3.23mAOD) with an allowance for climate change (0.355m) and wave action (0.27m), although no additional freeboard allowance above this level. On that basis, SEPA did not object to the previous application at the site.
- 9.24. The required sea level rise due to climate change for the area to 2100 is now 0.93m. That results in a 1 in 200 year including climate change flood level of 4.16mAOD, which is approximately 0.3 metres higher than the crest height of the Kirkwall FPS without any addition for wave action.
- 9.25. Based on the above understanding of the Kirkwall FPS and data held, SEPA concludes that the Kirkwall FPS would be overtopped during a 1 in 200 year plus climate change flood event and the level of overtopping could be significant when accounting for the added impact of wave action.
- 9.26. SEPA notes that the period of overtopping would be limited to the period of high tide which would restrict the overall overtopping volumes and that some of the flood water overtopping the wall would drain through surface water drainage.

However, in the absence of a detailed flood study of the Kirkwall FPS and the risk of overtopping, it is not possible to fully understand the extent of the flood risk in the area. SEPA concludes that there could be a significant volume of water overtopping and it is unlikely all that water could be managed by the drainage network, particularly if combined with any rainfall during the event.

- 9.27. As a residential development, it is classed as ‘Highly Vulnerable’ under the SEPA Land Use Vulnerability Guidance. In accordance with Policy 22 ‘Flood risk and water management’ of NPF4, such developments are not supported where they would be at risk of flooding or in a flood risk area, and therefore in locations which avoid the flood risk area as defined by the 1 in 200 year including climate change extent. Policy 22 (a) includes exceptions which are: essential infrastructure; water compatible use E; the development of an equal or less vulnerable use; or where the Local Development Plan identifies a need to bring a site into positive use and where long-term safety and resilience can be secured in accordance with SEPA advice. The proposed development does not meet the exceptions. On the basis the site is within the flood extent and based on its proximity to the sea frontage, SEPA concludes that the policy requirement for flood free access and egress cannot be achieved, and that the proposal is therefore contrary to NPF4 Policy 22.
- 9.28. In discussions between Engineering Services and SEPA in relation to the issue generally, Engineering Services stated that:
- “With water from wave overtopping able to drain from the streets via the roads drainage system to the Peedie Sea, it therefore seems that the extents of coastal flooding due to wave overtopping would be significantly over-represented as currently modelled.”
 - “A review today might demonstrate that the KHFPS would not meet the 1:200 yr plus CCU standard and with the KHFPS in place, its effectiveness as-built could be modelled. With no such review yet undertaken and water overtopping the Kirkwall Harbour Flood Protection Scheme able to drain from Ayre Road and Harbour Street to the surface water system, thereby limiting the spread of water, the extent of flooding due to wave overtopping should be limited.”
 - “In the absence of detailed modelling of the as-built structure demonstrating otherwise, we continue to regard the KHFPS as providing protection equivalent to the ‘functional flood plain’ standard.”
- 9.29. SEPA acknowledged that Engineering Services advice in its consultation response, stating that, “OIC does not currently have an up to date detailed study of the FPS as implemented in 2015, which assesses the likely overtopping rates of the FPS and

demonstrating this can be accommodated within the surface water drainage network, to provide a definitive position on flood risk, we have to base our position on the above levels ie a 1 in 200 year including climate change flood level of 4.16mAOD, which is approximately 0.3m higher than the crest height of the FPS without any addition for wave action. SEPA therefore regards the FPS as providing less protection than is required by NPF4 for the proposed development to be considered not at risk of flooding.”

- 9.30. The SEPA consultation response introduces a key approach to flood prevention works, stating that, “Flood detection schemes in Scotland are primarily built to reduce flooding to existing communities in the short to medium term... Their protection in the long term is less certain because of the changing climate, changes to coastlines and river channels, the effects of the design life of the scheme and its condition over time and the possibility of failure of some kind. This means that most schemes provide less protection than the standard required for new development by NPF4, which must be safe for the longer term.”
- 9.31. The applicant provided a Flood Risk Assessment Report in December 2024. This references the above SEPA statement and agrees that the Kirkwall FPS has been designed and built (in consultation with SEPA) to provide short to medium term flood protection, with a design that was most feasible to achieve the greatest benefit to Kirkwall at the date of implementation.
- 9.32. The Flood Risk Assessment Report evaluates the protection provided by the Kirkwall FPS, and concludes that it offers adequate protection against a 1 in 200 year coastal flood event, including sea level rise projections, up to 2080. This position accepts that the Kirkwall FPS would not be adequate until 2100 based on current modelling, which is the requirement of NPF4, but makes a case for allowing development now, on the basis that several decades would elapse before sea levels would reach the point that the Kirkwall FPS would fail, and on the basis that potential future modifications could include raising the existing flood walls or other adaptive measures.
- 9.33. SEPA was consulted again, and repeated previous advice that “... In order to fully understand the flood risk from exceedances of the FPS, require further evidence to be provided by Orkney Island Council to determine the impact of the overtopping...” The Flood Risk Assessment was acknowledged. SEPA concludes that rather than including any coastal flood modelling or determination of likely overtopping volumes and drainage rates and associated areas of flood risk, the Flood Risk Assessment primarily seeks to challenge the climate change allowances required by SEPA and its position on development behind the Kirkwall FPS.

- 9.34. SEPA also concludes that the Flood Risk Assessment predictions on whether the Kirkwall FPS would be overtopped are based on still water levels alone without reference to overtopping from waves. It was acknowledged that the Kirkwall FPS does offer some protection to Kirkwall, but the objection was maintained based on the policy requirements of Policy 22 of NPF4.
- 9.35. In line with the SEPA consultation response, Engineering Services provided a consultation response, which referenced the Flood Risk Assessment. Engineering Services anticipated that the commissioned assessment would lead to a more complete understanding of flood risk due to overtopping, but concludes that no new analysis of the effect of overtopping of the various sections of the Kirkwall FPS as included in the Flood Risk Assessment. The Engineering Services position is therefore that understanding of flood risk resulting from future overtopping remains unchanged.
- 9.36. An updated Flood Risk Assessment was provided by the applicant in February 2025, based on the SEPA comments and to include wave action added to the design level. That review sought to specify the effectiveness of the Kirkwall FPS and safeguarding against coastal flooding events up to the 1 in 200 year event. A key conclusion when wave action of 0.27 metres was included in assessment, is that the existing scheme would provide flood protection to approximately 2060.
- 9.37. Correspondence attached to the Flood Risk Assessment repeats the conclusion that the existing flood prevention scheme would provide protection to at least the year 2060, and that to meet current NPF4 requirements would require approximately 600 millimetres of increased height to the existing Kirkwall FPS. The developer position is therefore that the additional protection required will not be able to be ascertained until decades into the future and would be “an endeavour for future generations who will be informed by information current at that time”, and based on the existing Kirkwall FPS being adequate to protect the site “for many years into the future”, with a case made for therefore allowing the development.
- 9.38. A final SEPA consultation response was provided in April 2025, which concludes that, “We previously outlined that in the absence of a detailed coastal modelling study to determine the impacts of coastal flooding in Kirkwall when taking account of the Flood Prevention Scheme (FPS), it cannot be determined that this site is not at risk of flooding during a 1 in 200 year including climate change event, as is required by Policy 22 in NPF4. The updated information provided does not include any further modelling or analysis of the impacts of overtopping of the FPS and therefore our understanding remains the same i.e. the FPS is expected to be

overtopped when taking account of future still water levels, and this will be further increased with the effects of wave action.”

- 9.39. In response to the developer’s position that development should be allowed given the recent construction of the Kirkwall FPS, SEPA confirms that it “cannot take an alternative view of what timescales should be planned for in new development when considering climate change allowances. We have witnessed in Scotland in recent years the exceedance of FPS which had been designed at the time for a high standard of protection, although recent events have changed what would now be designed for...”.
- 9.40. Whilst the Kirkwall FPS has not been made redundant through changes in policy, it fails to protect the site from flooding during a 1 in 200 year climate change event by the year 2100. The developer has made a case that the site should be developed based on the protection provided in the immediate future decades by the Kirkwall FPS, on an assumption that other measures could be taken in future decades to address flood risk at that time.
- 9.41. Policy 22 of NPF4 seeks to strengthen resilience to flood risk by promoting avoidance as a first principle and reducing vulnerability of existing and future development to flooding, by avoiding development in areas at flood risk. Taking account of sea levels which are projected to continue to rise beyond 2100, and on the basis the development is none of the policy exemptions set out in Policy 22 (a), the development is contrary to Policy 22 of NPF4.

10. Conclusion

- 10.1. The principle of a flatted development in a Town Centre location within the settlement boundary is accepted, subject to other policy tests. Design is appropriate, including in relation to adjacent listed buildings and in terms of the streetscape. The development would include some affordable housing provision, and would represent visual improvement of an existing derelict site. Matters including access, parking, contaminated land, privacy and daylight, and noise impact meet technical requirements.
- 10.2. However, it cannot be concluded that the site is not at risk of flooding during a 1 in 200 year including climate change event, as is required by Policy 22 in NPF4. In the absence of a detailed coastal modelling study to determine the impacts of coastal flooding in Kirkwall, the Kirkwall FPS is expected to be overtopped when taking account of future still water levels, further increased with the effects of wave action. SEPA has objected on grounds of flood risk in the context that sea levels are

projected to continue to rise. This outweighs the stated benefits of the development, and the development is contrary to Policy 22.

- 10.3. A Chief Planner's letter in relation to Policy 22 of NPF4 was issued on 11 June 2025. This is a formal communication from the Chief Planner, providing guidance, update, and clarification on various aspects of the planning system, including policy implementation, planning applications, and development plans, and in this case application of Policy 22. The letter is a material consideration in the determination of planning applications. The letter confirms when SEPA must be consulted, which has been done in accordance with the Regulations in this case. The letter requires planning authorities to confirm to SEPA when seeking a consultation response, whether the proposed development meets any of the Policy 22 exemptions. That was done, and as noted above, this development does not meet any of the exemptions. The letter also confirms that SEPA will respond with one of a scheme of responses; in this case SEPA has confirmed a response of 'Objection – In Principle'. The content of the Chief Planner's letter is followed in this report.

11. Reason for Refusal

- 11.1. The proposed development would increase the vulnerability of future development to flooding and would represent development in an area at flood risk, which should be avoided as a first principle. In the absence of a detailed coastal modelling study to determine the impacts of coastal flooding in Kirkwall, including consideration of the Kirkwall Flood Protection Scheme, it cannot be concluded that the site is not at risk of flooding during a 1 in 200 year including climate change event, as is required by Policy 22 'Flood risk and water management' of National Planning Framework 4. The development is therefore contrary to Policy 22, and is subject to an objection from the Scottish Environment Protection Agency on grounds of coastal flood risk.

For Further Information please contact:

Jamie Macvie, Service Manager (Development Management), Email
jamie.macvie@orkney.gov.uk

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 the approval of planning permission on the basis of the proposal being in accordance with the development plan policy and 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.

Note to Designers and Contractors

Under the CDM2015 regulations BSC has sought to eliminate or reduce risks where possible as part of the design process.

Significant residual risks, or areas of work that require special attention during construction, which have been identified by BSC, are indicated on project drawings by the following symbol .










It is anticipated that other designers and contractors will co-operate to identify any potential construction hazards and to eliminate them where possible.

Measures to minimise residual hazards will be reviewed on a regular basis.

Please Note: Tree pit locations are indicative, exact position to be confirmed by consulting engineer.



Key:

-  Application Boundary
-  Parking Court
-  Communal Grass Areas
-  Shrub Planting
-  Bulb Planting
-  Gravel Areas
-  Proposed Hedge
-  Proposed Trees
-  Refuse Collection Point (RCP)
Hardstanding area to allow for the placement of 15 no 240 litre waste bins on bin collection day

H	28.08.23	LANDSCAPING AND FOOTPATH POSITION REVISED.	LMid
G	06.06.23	UPDATED TO 'PLANNING' STATUS	LMid
F	25.03.22	TREE POSITIONS TO ROAD NARROWING REVISED	LB
E	16.03.22	FFL REVISED	LB
D	04.02.22	PARKING ARRANGEMENT REVISED / PLANNING COMMENTS ADDRESSED	LB
C	05.11.20	PARKING REVISED / RCP ADDED	LB
B	15.06.21	TREE PIT LOCATIONS REVISED	LB
A	28.05.21	LAYOUT REVISED TO REVERT BACK TO PREVIOUS PROPOSAL	LB
REV	DATE	DESCRIPTION	DRN

Bracewell Stirling CONSULTING

38 WALKER TERRACE, TILlicouLTRY, FK13 6EF 01259 750301
5 NESS BANK, INVERNESS, IV2 4SF 01463 233760
15 LOCHSIDE STREET, OBAN, PA34 4HP 01631 359054

15 NO APARTMENTS
BURNMOUTH ROAD, KIRKWALL
ORKNEY BUILDERS LTD

PROPOSED SITE LAYOUT

STATUS: **PLANNING**

SCALE: 1 : 250	DRAWN: LMid
PAPER SIZE: A3	DATE: Jun 2023
DWG No. 4742-02-002	REV. H