

## Item: 5.2

**Planning Committee: 20 January 2021.**

**Siting of Four Houses on land near Burnbank, Burray.**

**Report by Executive Director of Development and Infrastructure.**

### 1. Summary

#### 1.1.

Planning permission in principle is sought to erect four detached houses on land near Burnbank, Burray. The site has a short-term housing allocation (BV-6). Three objections have been received, on grounds including impact on natural heritage, environmental sustainability, flood risk, access and road safety, which have been considered in the assessment of the proposal. Following comments from consultation bodies, it is considered that issues raised in the objections can be addressed by conditions and, as an application in principle, if approved, full details (including any mitigation and any relevant surveys) would be fully assessed in a subsequent application for the development of the site. It is considered that the proposal would comply with Orkney Local Development Plan 2017 policies 1, 5A, 9, 10A, 13 and 14 and relevant guidance. Accordingly, the application is recommended for approval.

Application Number:	20/301/PIP.
Application Type:	Planning in Principle.
Proposal:	Siting of four houses.
Location:	Burnbank (land near), Burray.
Applicant:	Mr Leo Kerr, Kerriday, Burray, KW17 2SS.
Agent:	Ms Di Grieve, Breck Designs, Kvelsro, Weyland Terrace, Kirkwall, KW15 1LS.

#### 1.2.

All application documents (including plans, consultation responses and representations) are available for members to view at the following website address:

[https://www.orkney.gov.uk/Service-Directory/D/application\\_search\\_submission.htm](https://www.orkney.gov.uk/Service-Directory/D/application_search_submission.htm)  
(then enter the application number given above).

### 2. Consultations

#### 2.1. Roads Services

No objection, on the basis, "...access to this development site has been in use without any concerns for a number of years. The forward visibility from the junction

as it currently stands is sufficient, albeit that when looking eastwards whilst exiting the junction part of the visibility splay required is over land that is not included in this development proposal.” Roads Services also specifies a condition to require submission of details of how access roads would be maintained in perpetuity, as the development would be accessed via an unadopted road outside the boundary of the development site.

## **2.2. Scottish Water**

No objection. “This site will require an off-site extension to connect to the sewer network.”

## **2.3. Scottish Environment Protection Agency (SEPA)**

No objection with regard to flood risk: “...the site is elevated above 4.25mAOD, which is higher than the 200 year coastal flood level, including an allowance for climate change and freeboard. As such, the site is not at risk of coastal flooding.”

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

No objection, due to the proximity of the Sutherland Links Local Nature Conservation Site (LNCS) and burn, a suggestion is made to require further information by conditions, including a Species Protection Plan.

## **2.5. Development and Marine Planning (Access – Core Paths)**

No objection. “A condition to address protection of the core path(s) in the vicinity of the site proposed should be attached to any approval. General rights of public access should also be maintained...under the provisions of the Land Reform (Scotland) Act 2003.”

## **2.6. Engineering Services**

No objection, following submission of information during the assessment of the application regarding proposed surface water drainage (SuDS) and to address flood risk concerns.

# **3. Representations**

## **3.1.**

Three objections have been received from:

- A Holmes, Lynburn, Burray KW17 2SS.
- John Orr, Skalivoe, Burray KW17 2SS.
- Miss Linda Greig, Skeldro, Burray KW17 2SS.

## **3.2.**

The objections are based on the following matters, which have been considered in the assessment of the proposal:

- Flood Risk and Erosion.
- Drainage.
- Impact on natural heritage.
- Environment/Environmental Sustainability.
- Access and road safety, including road maintenance.
- Amenity and proximity to neighbouring properties.

### 3.3.

Other issues are raised which are not material planning considerations, including speculation regarding potential future development.

## 4. Relevant Planning History

Development surrounds the application site, but no relevant planning history within the site itself.

## 5. Relevant Planning Policy and Guidance

The full text of the Orkney Local Development Plan 2017 (OLDP 2017) and supplementary guidance can be read on the Council website at:

<https://www.orkney.gov.uk/Service-Directory/D/Planning-Policies-and-Guidance.htm>

The policies listed below are relevant to this application.

- Orkney Local Development Plan 2017:
  - Policy 1 – Criteria for All Development.
  - Policy 5A – Housing in Settlements.
  - Policy 9 – Natural Heritage and Landscape.
  - Policy 10A – Core Paths and Access.
  - Policy 13 – Flood Risk, SuDS and Waste Water Drainage.
  - Policy 14 – Transport, Travel and Road Network Infrastructure.
- Supplementary Guidance:
  - Settlement Statements: Burray Village (2017).
  - Natural Environment (2017).
- Other guidance.
  - Amended Orkney Core Paths Plan (2018).

## 6. Legal Aspects

### 6.1.

Section 25 of the Town and Country Planning (Scotland) Act 1997 (“the Act”) states that in making determinations under the Planning Acts the determination should be

in accordance with the development plan unless material considerations determine otherwise.

## **6.2.**

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.

## **6.3.**

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

# **7. Assessment**

## **7.1. Proposal and Location**

### **7.1.1.**

Four houses are proposed in principle on land near Burnbank in the settlement of Burray. The site is a short term allocated housing site (BV-6) as defined in the Orkney Local Development Plan 2017 and Supplementary Guidance: Settlement Statements (2017) Burray Village. The site would be accessed from an access track from the A961 and would be close to other development within the West Links and is to the rear of houses adjacent to the A961. The site is indicated on the location plan attached as Appendix 1 to this report. The development would not exceed this capacity and, in this respect, the development would accord with criteria (ii) and (iii) of Policy 1 – Criteria for All Development.

### **7.1.2.**

As the application is for planning permission in principle only, any decision would not authorise operational development on the site; if approved, a subsequent planning application would be required.

## **7.2. Housing in Settlements**

### **7.2.1.**

There is a general presumption in favour of new housing developments within settlement boundaries under the provisions of Policy 5A – Housing in Settlements. In this case, the application site is allocated for housing, and therefore the site is

considered appropriate for housing development, subject to compliance with relevant policies and guidance and other material planning considerations.

#### **7.2.2.**

Policy 5A requires “The development of housing sites must be planned as a whole to ensure that the long-term development of the wider allocation and/or adjacent sites is not compromised by any piecemeal development” and that, “Allocated redevelopment sites are predominantly in residential locations and are therefore suitable for residential uses.” It is proposed to establish the principle of four dwellings on the site, which is the indicative capacity specified in Supplementary Guidance.

#### **7.2.3.**

On the basis the site is located within the settlement boundary and an allocated housing site, the proposed development is for houses, and the proposal does not exceed the indicative capacity of the site, the development is considered acceptable in principle in accordance with Policy 5A – Housing in Settlements.

### **7.3. Flood Risk**

#### **7.3.1.**

The lower (southern) part of the site is located within an area of flood risk and the Burn of Sutherland is to the western boundary of the site. Submitted representations have cited flood risk.

#### **7.3.2.**

As the current proposal is to establish the principle of development only, no details of final site layout are provided. The flood risk potential of the site has been identified by both SEPA and Engineering Services and during assessment of the application, further details of site levels were submitted. Following additional assessment, SEPA and Engineering Services confirmed no objection to the proposal on flood risk grounds, on the basis flood risk advice could be considered in any subsequent detailed design.

#### **7.3.3.**

The indicative layout shows houses on the higher parts of the site, outwith the flood risk area and above the minimum level of 4.25 metres Above Ordnance Datum (mAOD), as well as a buffer zone of over 6 metres from the Burn of Sutherland, in accordance with Supplementary Guidance: Settlement Statements 2017 Burray Village. This accords with the requirements of SEPA and Engineering Services and flood risk could be mitigated. The finished floor levels of future houses would be required to be a minimum of 5.36mAOD. This and other details to mitigate flood risk would be addressed by planning condition.

#### **7.3.4.**

On the basis that details of site development and mitigation measures could be adequately addressed in any future application, the development is considered to comply with Policy 13A – Flood Risk.

## **7.4. Natural Heritage**

### **7.4.1.**

The site is located adjacent to and overlaps the eastern end of Sutherland Links Local Nature Conservation Site (LNCS) and the Sutherland Burn runs through the western edge of the site. Representations submitted include concern regarding the impact of the development on natural heritage interests, both habitat and birds and animals in the area. The Council's Policy Officer (Environment) has been consulted and has no objection, subject to mitigation measures.

### **7.4.2.**

Otters are a European Protected Species (EPS) under the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended); an otter survey was undertaken by an appropriate body, which indicates evidence of otter activity within the area. As a result, a condition would be attached to any approval, requiring a Species Protection Plan, to be prepared by an appropriate professional, to be submitted with any subsequent application. Any such Species Protection Plan would also include Orkney voles and other biodiversity present, and its provision at a later stage would ensure information provided is up to date at that time.

### **7.4.3.**

All development would be conditioned to be contained within the site area, as defined by the red outline on the Location Plan, and outwith a buffer zone from the Burn of Sutherland. This is to ensure that there would be no encroachment onto the Sutherland Links Local Nature Conservation Site or Burn of Sutherland and would prevent the development directly impacting the features.

### **7.4.4.**

With regards to site layout and landscaping, the Site Plan is indicative only and details would be finalised in any future planning application. An Informative would be attached to any approval, requiring further details to be sought regarding proximity of houses to the adjacent Local Nature Conservation Site, landscaping and any parts of the site to be avoided due to natural heritage interests.

### **7.4.5.**

On the basis the above requirements would be satisfactorily addressed in any subsequent planning application, it is considered that the development would accord with Policies 1 – Criteria for All Development (part ix), 9A – Natural Heritage Designations, 9B – Protected Species, 9C – Wider Biodiversity and Geodiversity, and 9D – The Water Environment, and Supplementary Guidance: Natural Environment.

## **7.5. Residential Amenity**

### **7.5.1.**

Issues that could impact on residential amenity, such as the scale and orientation of proposed houses, overlooking, proximity to nearby properties and location of

windows, would be considered fully under any subsequent application and subject to assessment. At this permission in principle stage, it is considered that four domestic dwellings would be unlikely to have a significant impact on residential amenity.

#### **7.5.2.**

Due to the size of the allocated site, it is considered individual plots of adequate size could be provided to protect the amenity of the occupants and maintain a minimum distance of 21 metres between directly facing windows. To protect residential amenity, external lighting could be controlled by conditions to minimise light pollution, in accordance with Policy 2(vi) – Design. In terms of separation from the development, part of the B6: Burray Village Core Path runs between the boundaries of the proposed site and neighbouring properties. It is considered that the proposed development would comply with criteria (iv) of Policy 1.

### **7.6. Landscape/Visual Amenity/Character of the Area**

The site is an allocated housing site within the settlement boundary, and other existing and approved (including under construction) houses are present to the east and west. The development would be viewed from the A961, on slightly lower ground than the houses adjacent to the road. If not exceeding 1½ storeys in height, and subject to appropriate design, development of houses on the site is considered acceptable in relation to protecting the character of the area, visual amenity and the wider landscape. Views towards the sea from existing houses is not a material planning consideration. It is considered that the proposed development would comply with criteria (i) and (ix) of Policies 1 – Criteria for all Development and 9G – Landscape.

### **7.7. Access and Road Safety**

#### **7.7.1.**

With regard to road safety, Roads Services has no objections, on the basis, “...access to this development site has been in use without any concerns for a number of years. The forward visibility from the junction as it currently stands is sufficient, albeit that when looking eastwards whilst exiting the junction part of the visibility splay required is over land that is not included in this development proposal.”

#### **7.7.2.**

The access to the site from the A961 is an unadopted road which is outside the main development area; in addition, all access within the development site would also be unadopted. Accordingly, further details would be required with any subsequent application of how access roads would be maintained in perpetuity. The applicant has indicated that “The access track to the houses will be the joint responsibility of the owners of the properties. A condition stating this will be added to the title deed/land registration at the point of sale.” Nonetheless, evidence of agreement with the relevant landowner for the access would be subject to planning condition.

### **7.7.3.**

On the basis the Roads Authority is satisfied in relation to road safety, and provided access provision and maintenance details are provided with any subsequent application, the development site could be safely and conveniently accessed and would therefore comply with Policy 14C – Road Network Infrastructure.

## **7.8. Active Travel and Recreation**

### **7.8.1.**

The vision of the Orkney Local Development Plan 2017 (paragraph VS.2) is that, “Orkney’s settlements will act as a focus for growth in order to support existing facilities and services such as shops, schools and public transport links. Facilitating active travel will be an integral part of development planning across the county with a commitment to include well-integrated footpaths and cycleways within new developments and to connect any fragmented sections of the existing network to encourage active and healthy living.”

### **7.8.2.**

In terms of amenities, Burray has a bus service to St Margaret’s Hope and Kirkwall, taking the route of the proposed access the houses would be within 300 metres of the shop and would be 670 metres from the primary school. It is therefore considered that the development would be within walkable/cyclable distance of these amenities, as well as other roads and the core path which would provide walking and cycling opportunities for active travel and recreation. It is considered that the proposal would therefore comply with Policy 14 – Transport, Travel and Road Network Infrastructure.

## **7.9. Sewerage and Drainage**

The development would connect to the public sewer. The site is located within a Waste Water Consultation Zone, which includes limitations to private sewerage systems; therefore, prior to submission, the applicant developed a scheme in consultation with SEPA and Scottish Water. It was agreed that the development could utilise private septic tanks, with outfalls connected to an existing Scottish Water outfall pipe. The pipe infrastructure from the application site boundary to the existing Scottish Water outfall pipe is subject to a separate, current planning application. Scottish Water has no objection. Subject to this connection to the Scottish Water outfall pipe, in principle it is considered that the proposed development would comply with Policy 13C – Waste Water Drainage.

## **7.10. Surface Water Drainage**

It is a requirement that developments incorporate Sustainable Drainage Systems (SuDS) and a standard condition would be attached to secure this, in compliance with Policy 13B – Sustainable Drainage Systems (SuDS).

## **7.11. Core Path**

The site is located adjacent to the B6: Burray Village Core Path, which runs to the northern, eastern and southern boundaries of the site. It would be required that



public access be maintained, free from any obstruction to use of the core path network by construction-related activities or the development. Subject to a condition attached to any approval, the development accords with Policy 10A – Core Paths and Access.

## **7.12. Historic Environment**

There is no known underlying archaeology at the site or any designations within the immediate area that would be affected by the proposed development.

## **7.13. Environment/Environmental Sustainability**

Submitted representations include reference to volumes of quarried materials required to raise ground levels, the geology of the land and ground stabilisation required. The Site Levels Plan submitted confirms indicatively that houses would be located on the higher parts of the site, avoiding the lowest ground immediately adjacent to the coast and the Burn of Sutherland.

## **8. Conclusion and Recommendation**

Erection of four houses on the site would be consistent with the development site and density set out in housing allocation BV-6 as detailed in Supplementary Guidance: Settlement Statements, Burray Village (2017). Planning conditions would ensure appropriate mitigation, and any development would be subject to a further planning application. On this basis, the development is acceptable in relation to housing in settlements, flood risk, natural heritage interests, residential amenity, landscape/visual amenity, access and road safety, sewerage, drainage, core path and environmental sustainability. Material planning considerations included in the objections are not of sufficient weight to merit refusal. On balance, the proposed development would comply with Policies 1, 5A, 9, 10A, 13 and 14 of The Orkney Local Development Plan 2017 and Supplementary Guidance: Settlement Statements, Burray Village and Natural Environment, and Amended Orkney Core Paths Plan (2018). Accordingly, the application is **recommended for approval**, subject to the conditions attached as Appendix 2 to this report.

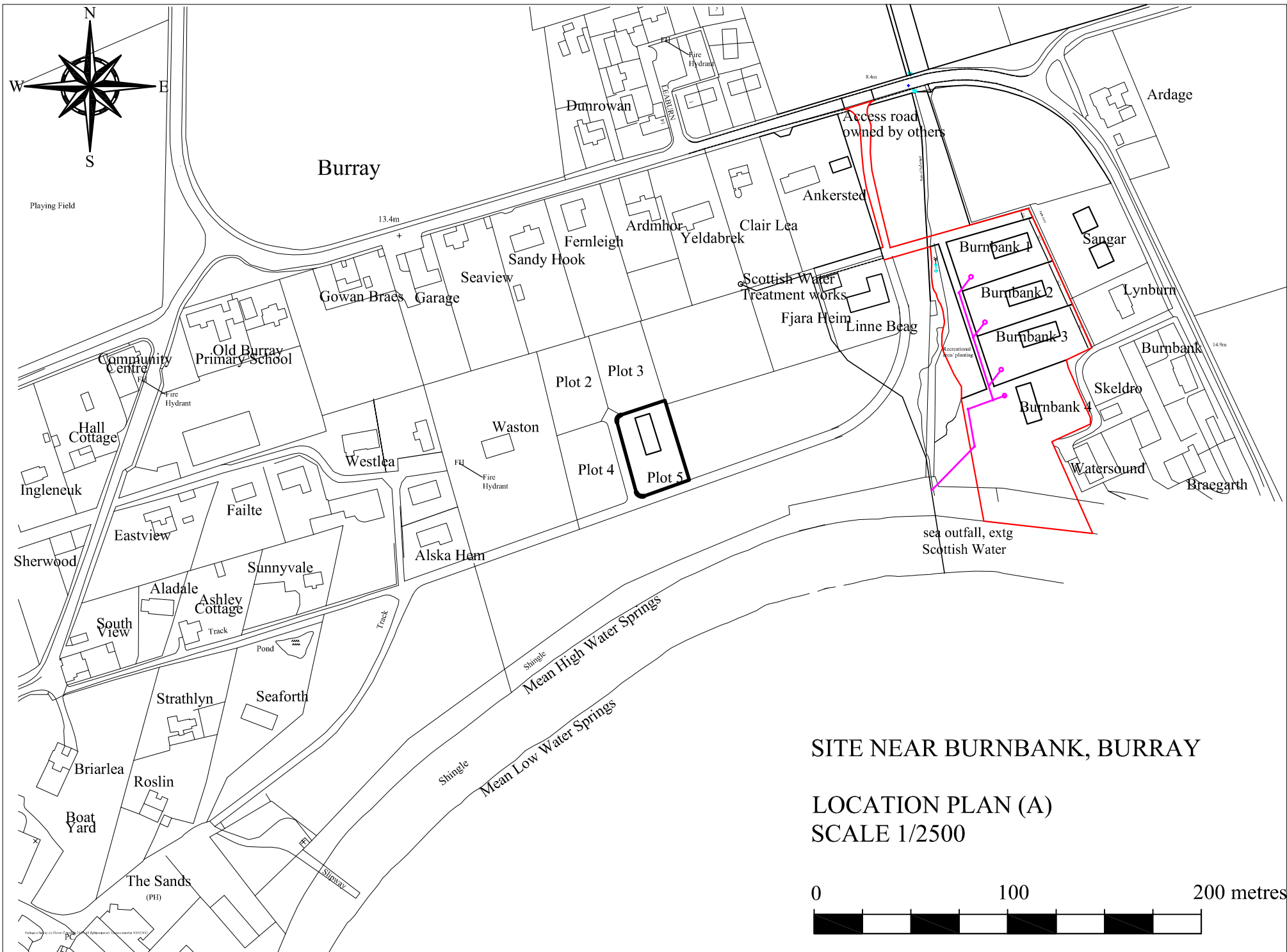
## **9. Contact Officer**

Sue Doyle, Planning Officer, Email [sue.doyle@orkney.gov.uk](mailto:sue.doyle@orkney.gov.uk)

## **10. Appendices**

Appendix 1: Site Plan.

Appendix 2: Proposed Planning Conditions.



Burray

SITE NEAR BURNBANK, BURRAY

LOCATION PLAN (A)  
SCALE 1/2500



## Appendix 2.

01. Within three years of the date of this permission, a written application and plans, in respect of the following matters, shall be submitted to, and approved in writing by, the Planning Authority:

(a) The siting, design and external appearance (including details of materials) of all buildings and other structures, including boundary walls or fences. Houses and other buildings shall not exceed one and a half storeys in height.

(b) Site sections, including existing ground levels and proposed ground levels, finished floor level and ridge height. Sections should be from site boundaries through the east and west facing, and north and south facing, walls of the houses and any other buildings. All foundations must be excavated and not built on top of any slope, and no underbuilding to compensate for any gradient is permitted. Minimum finished floor levels shall be as indicated on the Site Levels Plan, hereby approved.

(c) Access to the site, including details showing surface water drainage and how surface water from the access will be prevented from flowing onto the public road.

(d) Site layout, including roads, footways, turning areas and parking areas, (houses and any other buildings shall not exceed one third of any individual plot area).

(e) Landscaping (including details of species, sizes, number and type of planting). All landscaping shall be carried out in accordance with approved details. All approved planting, seeding or turfing shall be carried out within two years of commencement of development and shall be completed prior to the first occupation of the respective house, unless otherwise stated in the approved scheme. Any trees or plants which within a period of five years from completion of the development die, or are removed or damaged, shall be replaced in the next planting season with others of the same size and species.

(f) The provision of surface water drainage works. The development shall incorporate a surface water drainage system which is consistent with the principles of Sustainable Urban Drainage Systems (SuDS) compliant with the guidance set out in CIRIA's SuDS Manual C753. The requisite surface water drainage shall be operational prior to the development being brought into use and shall be maintained as such thereafter. All surface water shall be contained within the development site and there shall be no surface water drainage run-off onto the road or adjacent land.

(g) The disposal of sewage.

(h) Details of refuse and recycling bin storage.

(i) Full details of an agreement with the relevant landowner(s) confirming that access can be provided over the section of private road between the access to the A961 and the boundary of the application site, and details of maintenance of the access track in perpetuity thereafter.

(j) A Species Protection Plan completed by a suitably qualified professional. An otter survey has confirmed that otters use the Burn of Sutherland, noting that Orkney voles are also present. Orkney vole is identified in the Scottish Biodiversity List as a priority species for conservation; the Species Protection Plan shall include measures to provide Orkney vole habitat, specifically tussocky grass for cover and foraging habitat. Other than areas identified for construction and access road, existing rough grassland should be protected from development-related activity forever possible.

(k) Full details of the culvert of the Burn of Sutherland, including measures to maintain access for otters.

(l) A Site Development Statement, confirming a consistent design approach and to provide cohesion between all structures and landscaping, and to avoid piecemeal development of the site.

(m) A 0.5 metre topographical survey relative to Ordnance Survey Datum including the development site, and from the site boundary to the shore, and including the course of the Burn of Sutherland adjacent to the site.

Reason: The approval is in principle only and these specified matters must be approved prior to development commencing.

02. Any damage caused to the existing road infrastructure during construction of the development shall be repaired prior to first occupation of the development, to the satisfaction of the Planning Authority, in conjunction with Roads Services.

Reason: In the interests of road safety.

03. In conjunction with condition 01(g) above, prior to first occupation of the development hereby approved in principle, the development shall be connected to an authorised and fully operational sewage system.

Reason: In the interests of environmental protection and to accord with Policy 13C – Waste Water Drainage of Orkney Local Development Plan 2017.

04. No development shall commence until the baseline condition of core path B6, Burray Village Core Path has been agreed in writing between the developer and the Planning Authority. Throughout the lifetime of the development hereby approved in principle, the developer shall maintain unobstructed and without unreasonable damage, the stretch of the B6, Burray Village Core Path network adjacent to the site. Public access along the core path adjacent to the site shall not be obstructed by construction-related activities, unless otherwise approved in advance in writing by the Council's Access Officer. Prior to occupation of the first house within the development, this stretch of core path network shall be inspected and made to a standard at least equal to that prior to the commencement of works. At the reasonable request of the Planning Authority, interim works shall be carried out to the core path.

Reason: To maintain the core path network and in order to safeguard public access during the construction phase and occupation of the development.

05. Throughout the construction phase of the development, all works shall be confined to the planning application site boundary. Spoil or building tools or materials shall not be dumped, temporarily or permanently, outside the planning application site boundary or onto the margins of the Sutherland Links Local Nature Conservation Site which is adjacent to the site.

Reason: In the interests of the protection of the biodiversity and flower rich grassland of the Sutherland Links (West Links) LNCS and to accord with Orkney Local Development Plan 2017 Policies 9A – Natural Heritage Designations, 9B – Protected Species and 9C – Wider Biodiversity and Geodiversity.

06. Otters are present in the vicinity, which may alternate between the marine and freshwater environments of the Burn of Sutherland and the coast. Otter is a European Protected Species (EPS) and is therefore afforded a strict level of protection under UK legislation. Throughout the construction phase of the development:

- Access to open-water habitats shall be safeguarded and impacts to traditional routes between such areas (such as drainage ditches) during the construction phase shall be minimised.
- Any temporarily exposed open pipe system shall be capped in such a way as to prevent otters gaining access, as may happen when contractors are off-site.
- Open pits shall be covered at night, and exit ramps provided in steep-sided trenches. All excavations should be checked daily to ensure that no wildlife has become trapped.
- All personnel involved in the development should be made aware that otter may be present in the area, and of the requirement to follow the measures listed above in order to avoid disturbance to the species.

Reason: In the interests of the protection of otters, as the development site is located adjacent to the Sutherland Links LNCS, an area of known otter activity, and to accord with Policy 9B – Protected Species of the Orkney Local Development Plan 2017.

07. Throughout the lifetime of the development, no alterations shall be made to Sutherland Burn that would affect its stability, function or ability to drain, and the development shall not increase overland flows into the burn.

Reason: In the interests of the protection of the Burn of Sutherland, that runs adjacent to the western edge of the site, to prevent any impact that would affect its stability, function and ability to drain, to prevent an increase in flood risk to the properties and others in the area and to accord with Orkney Local Development Plan 2017 Policy 9D – The Water Environment.

08. Throughout the lifetime of the development, any external lighting used on the dwellings and any outbuildings shall be downward facing only and shall comply with the requirements of Orkney Local Development Plan 2017 Policy 2 – Design (part vi) that all external lighting shall minimise light pollution and shall meet the requirements specified by the Institution of Lighting Professionals for Zone E1/E2 areas (Rural/Low

District Brightness). The lighting shall be turned off when not required either by automatic sensor or manually.

Note: Further information regarding the control of light pollution and obtrusive light can be viewed online at [www.theilp.org.uk/documents/obtrusive-light/](http://www.theilp.org.uk/documents/obtrusive-light/) (Institution of Lighting Professionals (Guidance Notes for the Reduction of Obtrusive Light GN01:2011) and [www.scotland.gov.uk/Publications/2007/03/14164512/0](http://www.scotland.gov.uk/Publications/2007/03/14164512/0) Scottish Executive (Transport Scotland) Guidance Note (Controlling Light Pollution and Reducing Lighting Energy Consumption).

Reason: To minimise obtrusive light, glare or distraction in the interests of safeguarding the amenity of the area and to accord with Orkney Local Development Plan 2017 Policy 2 – Design.

09. Hours of work of demolition, construction or any other operations relating to the development hereby approved, involving the use of machinery and powered tools, or any other operation, for example hammering, that would generate noise audible beyond the boundary of the site, shall be restricted to 07:30 to 18:00 Mondays to Fridays, 08:00 to 13:00 on Saturdays and not at all on Sundays, Christmas or New Year Public Holidays, unless otherwise agreed, in writing, with the Planning Authority.

Throughout the construction phase of the development there shall be no burning of waste material on site.

Reason: In the interest of residential amenity of the area and in order to reduce any possible nuisance arising to nearby residents during the construction of this development.