

Item: 5.4

Planning Committee: 3 March 2021.

Install Water and Drainage Pipes (Part Retrospective) on land near West Links, Burray.

Report by Executive Director of Development and Infrastructure.

1. Summary

1.1.

The proposal is to install a water pipe and telephone cable to Site 5, West Links, Burray, and pipework to connect the two housing development sites at Site 5 and Burnbank to the Scottish Water sewer outfall, in the West Links area. Works have commenced on the development, therefore the application is part-retrospective. Some of the development would be within the Sutherland Links Local Nature Conservation Site (LNCS). Four objections have been received on material planning grounds, including impacts on natural heritage including the Burn of Sutherland. Consultation bodies have not objected to the development. It is considered that conditions would adequately mitigate impacts and therefore the proposal would comply with Orkney Local Development Plan 2017 Policies 1, 9, 10A, 13 and relevant guidance, and the application is recommended for approval.

Application Number:	20/423/PP.
Application Type:	Planning Permission.
Proposal:	Install Water and Drainage Pipes (part retrospective).
Location:	West Links (land near), Burray.
Applicant:	Leo Kerr, Kerriday, Burray, KW17 2SS.
Agent:	Di Grieve, Breck Designs, Kveldsro, 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
(then enter the application number given above).

2. Consultations

2.1.

Roads Services and Scottish Water have no objections.

2.2.

Development and Marine Planning (Policy - Environment) confirms no objection, subject to the following works which would be controlled by planning condition: “excavated turf, which is currently stored alongside the track, should be carefully replaced as soon as possible, to enable the flower-rich vegetation to re-establish”, and advice is provided “against trying to replace any lost flower-rich vegetation with a wildflower seed mix as these often contain species that are not native to Orkney”. Protection of otters during construction is also required.

2.3.

Subsequent information was submitted during the course of the assessment of the application and the Policy Officer (Environment) stated “The existing Scottish Water sewer outfall, into which the applicant proposes to connect the foul water drain from Plot 5, appears to be located slightly to the west of the burn outflow; therefore connection of this drain into the outfall is unlikely to require excavation to the burn...The latest information provided confirms that the burn would need to be stopped to allow the excavation to take place; therefore, I recommend that you request a further otter survey to be carried out at a time when the vegetation growth is low. The findings of the survey would provide greater certainty about the level of otter activity along the burn and would also determine if there is any licensing requirement.”.

3. Representations

3.1.

Four objections have been received from:

- Mark Lawrence, Links View, Burray, KW17 2SS.
- John Orr, Skalivoe, Burray, KW17 2SS.
- Alistair Holmes, Lynburn, Burray, KW17 2SS.
- Mrs Alison Wallhead, Lynburn, Burray, KW17 2SS.

3.2.

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

- Impact on natural heritage (including wildlife/protected species).
- Impact on the Burn of Sutherland.

4. Relevant Planning History

4.1.

There is no planning history in relation to the specific pipe route currently proposed; however, the planning history of neighbouring land to which the currently proposed development would be connected is relevant.

Reference.	Proposal.	Location.	Decision.	Date.
20/301/PIP.	Siting of four houses.	Burnbank (Land Near), Burray.	Grant subject to conditions.	20.01.2021.
20/095/PP.	Erect a house with an integral garage and an air source heat pump.	Plot 5, West Links, Burray.	Grant subject to conditions.	25.06.2020.
13/372/AMC.	Erect a house with integral garage and an air source heat pump (following permission in principle - 12/480/PIP).	West Links (Site 5), Burray.	Grant subject to conditions.	01.04.2014.
12/480/PIP	West Links (Site 5), Burray.	Siting a house (renewal of existing).	Grant subject to conditions.	19.09.2012.
07/031/PPO	West Links, Burray.	Siting of 4 houses.	Grant subject to conditions.	06.03.2008.

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 9 – Natural Heritage and Landscape.
 - Policy 10A – Core Paths and Access.
 - Policy 13A – Flood Risk.
 - Policy 13C – Waste Water Drainage.
- Supplementary Guidance and Planning Policy Advice:
 - Supplementary Guidance: Natural Environment (2017).
 - 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.

Two housing sites would connect to the Scottish Water outfall – a single house on Site 5, West Links, and four proposed dwellings in allocated housing site (BV-6) near Burnbank, approved by the Planning Committee on 20 January 2021, reference 20/301/PIP, both within the settlement boundary of Burray. Both house sites and the current proposed infrastructure are indicated on the Site Plan attached as Appendix 1 to this report.

7.1.2.

Most of the route of the foul drainage pipe would be within the Sutherland Links Local Nature Conservation Site (LNCS) and the pipe from the Burnbank site (allocated housing development site BV6) would cross the Sutherland Burn (to the west of the site) to enable it to connect. The route of the water and telephone infrastructure to Site 5 would be located to the west of Sutherland Burn and within the LNCS.

7.2. Clarification

7.2.1.

Both of the housing development sites are located within a Waste Water Consultation Zone which includes limitations on private waste water systems. SEPA and Scottish Water were consulted by the applicant in relation to Site 5 and Burnbank. It was agreed by the parties that private septic tanks could connect to the Scottish Water sewer outfall pipework.

7.2.2.

In the report for application 20/301/PIP, it confirmed that, "The pipe required to connect the site to the Scottish Water sewer outfall pipework is outwith the current application boundary, however, it is understood that a separate application has been submitted for the pipework and that the full planning application will include the route of the pipework from the houses to the Scottish Water sewer outfall pipework ... Scottish Water have no objection to the proposal and state that 'This site will require an off-site extension to connect to the sewer network', which is now in hand."

7.2.3.

This current application is the "separate application" referred to, submitted for waste water drainage for the Burnbank housing site and Site 5, and to connect Site 5 to the public water supply and telephone facilities.

7.3. Foul Water Drainage and Water Supply

7.3.1.

No objection has been raised by Scottish Water and it is considered that the development would comply with Policy 13C: Waste Water Drainage. Scottish Water confirms that Site 5 would be "fed from the Kirbister Water Treatment Works" for the public water supply and the proposed pipe would provide the supply.

7.3.2.

The Scottish Water outfall, to which the proposed waste water from the two development sites would connect, is existing and is connected to the Burray Leaburn Waste Water Treatment Works. This Waste Water Treatment Works and the outfall are Scottish Water infrastructure serving multiple development within Burray.

7.3.3.

It is the responsibility of the applicant/developer to ensure that the relevant permissions have been obtained from Scottish Water prior to the commencement and completion of the works. This is covered by separate legislation.

7.4. Flood Risk

Part of the application site is within a coastal flood risk area. SEPA's Flood Risk and Land Use Vulnerability Guidance indicates that sewage transmission infrastructure and water transmission infrastructure falls within Category 5 – Water Compatible Uses. As the proposed development would be underground, it is unlikely that the

development would be affected by flood risk or would have an impact on flood risk in this location or elsewhere. It is considered that the development could comply with Orkney Local Development Plan Policy 13A – Flood Risk.

7.5. Natural Heritage Interests (including the Burn of Sutherland)

7.5.1.

Much of the proposed infrastructure would cross the Sutherland Links Local Nature Conservation Site (LNCS) and the Sutherland Burn runs through the edge of the Burnbank site.

7.5.2.

Objectors have raised concerns regarding effects on natural heritage interests and wildlife, and it is accepted that there would be some impact. The Council's Policy Officer (Environment) was consulted to advise on whether impacts could be mitigated, and if so, the mitigation required. Further information was submitted by the applicant/agent regarding the proposed works, including mitigation for impacts on biodiversity, otters specifically, the LNCS and the burn.

7.5.3.

Otters are a European Protected Species, under the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended). An otter survey was undertaken in September 2020 in relation to the proposed housing development on the Burnbank site. The Policy Officer (Environment) would require a repeat otter survey along the length of the burn as an up-to-date record, owing to indicators of otter activity along the burn. It is recommended that the survey be carried out when vegetation growth is low. The findings of the survey would provide greater certainty regarding the level of otter activity along the burn and would also determine whether there is any licensing requirement.

7.5.4.

Due to the works having commenced, some damage to the grassland/wildflower habitat within the LNCS has already occurred. The Policy Officer (Environment) has provided guidance regarding how this can be repaired and a condition would be attached requiring that turf and sand excavated during the works (and which has already been removed and stored) be retained, kept separate from the underlying habitat, and replaced as soon as possible. Any bare patches should be re-seeded with appropriate grass seed mix to prevent colonisation of the land by non-native species.

7.5.5.

The waste water drainage from both development sites to the outfall would be via the proposed pipework, and would not flow directly into the Burn of Sutherland or therefore affect flow in the burn. Any increased flow from the developments would be within the Scottish Water infrastructure. The development is therefore unlikely to affect pollution or flows within the Burn of Sutherland.

7.5.6.

In addition to the requirements for a repeat otter survey and mitigation to the habitat, other measures would be controlled by planning condition to adequately protect natural heritage interests. These include:

- Measures to protect otters during the construction phase of the proposed development.
- No dumping of spoil or building tools or materials, temporarily or permanently outside the planning application site boundary or onto the margins of the Sutherland Links LNCS or Burn of Sutherland.
- Burn crossing works limited to when the burn flow is less, and temporary stopping of the burn implemented while the works are undertaken. The pipework would be installed at the bottom of the burn and the burn returned to its previous condition.

7.5.7.

Subject to the mitigation and control provided by planning conditions, the development would accord with Policies 1 (ix) – Criteria for All Development, 9A – Natural Heritage Designations (Locally Important Sites), 9B – Protected Species, 9C – Wider Biodiversity and Geodiversity, 9D – The Water Environment and Supplementary Guidance: Natural Environment (2017).

7.6. Landscape/Visual Amenity/Character of the Area

As proposed, the completed works would be covered at ground level and there would be no residual impacts on the landscape, visual amenity or character of the area. The proposal would comply with Policy 9G – Landscape.

7.7. Residential Amenity

The location of the waste water drainage pipework would be over 50 metres from the closest dwelling. Other than minor disruption during construction/excavation, the development would have no impact on the residential amenity. The proposed development would comply with criteria Policy 1(iv) – Criteria for All Development.

7.8. Historic Environment

There is no known underlying archaeology within the site or listed buildings or other designations within the area that would be affected by the proposed development.

7.9. Core Path

The development crosses Burray Village Core Path (B6) in two places. It is a requirement that public access is maintained along core paths and that there is no prevention of the use of the core path network by construction-related activities or by development. During the works, procedures can be put in place, such as the temporary covering of a trench, to enable the public to pass and for the right of passage along the core path to be maintained. As has been the case in the Burnbank housing proposal, which is adjacent to part of the core path, a condition would be attached to ensure accordance with Policy 10A – Core Paths and Access.

8. Conclusion and Recommendation

8.1.

The proposed development of water and telephone cables to the approved development at Site 5 and waste water drainage pipes from Site 5 and the site at Burnbank to the Scottish Water outfall would allow for the dwelling at Site 5 to progress and would serve housing at Burnbank, noting that it was recently granted planning permission in principle, but would be subject to a further application. Approval would regularise some works that commenced without consent, noting that the applicant has followed the advice of Development Management since the works were brought to the attention of the Planning Authority, with regards halting works, submitting the current application and submission of additional information to provide the mitigation should the application be approved.

8.2.

Objections received on material planning grounds are not of sufficient weight to warrant refusal. Conditions would adequately mitigate impacts of the development and it is considered that the development would be acceptable and would be unlikely to have a significant impact on flood risk, natural heritage interests, residential amenity, landscape/visual amenity/character of the area or core path. Therefore, the proposed development would comply with Orkney Local Development Plan 2017 Policies 1, 9, 10A, 13A, 13C, Supplementary Guidance: Natural Environment (2017) and Amended Orkney Core Paths Plan (2018), and accordingly, the application is **recommended for approval**, subject to the conditions attached as Appendix 2 to this report.

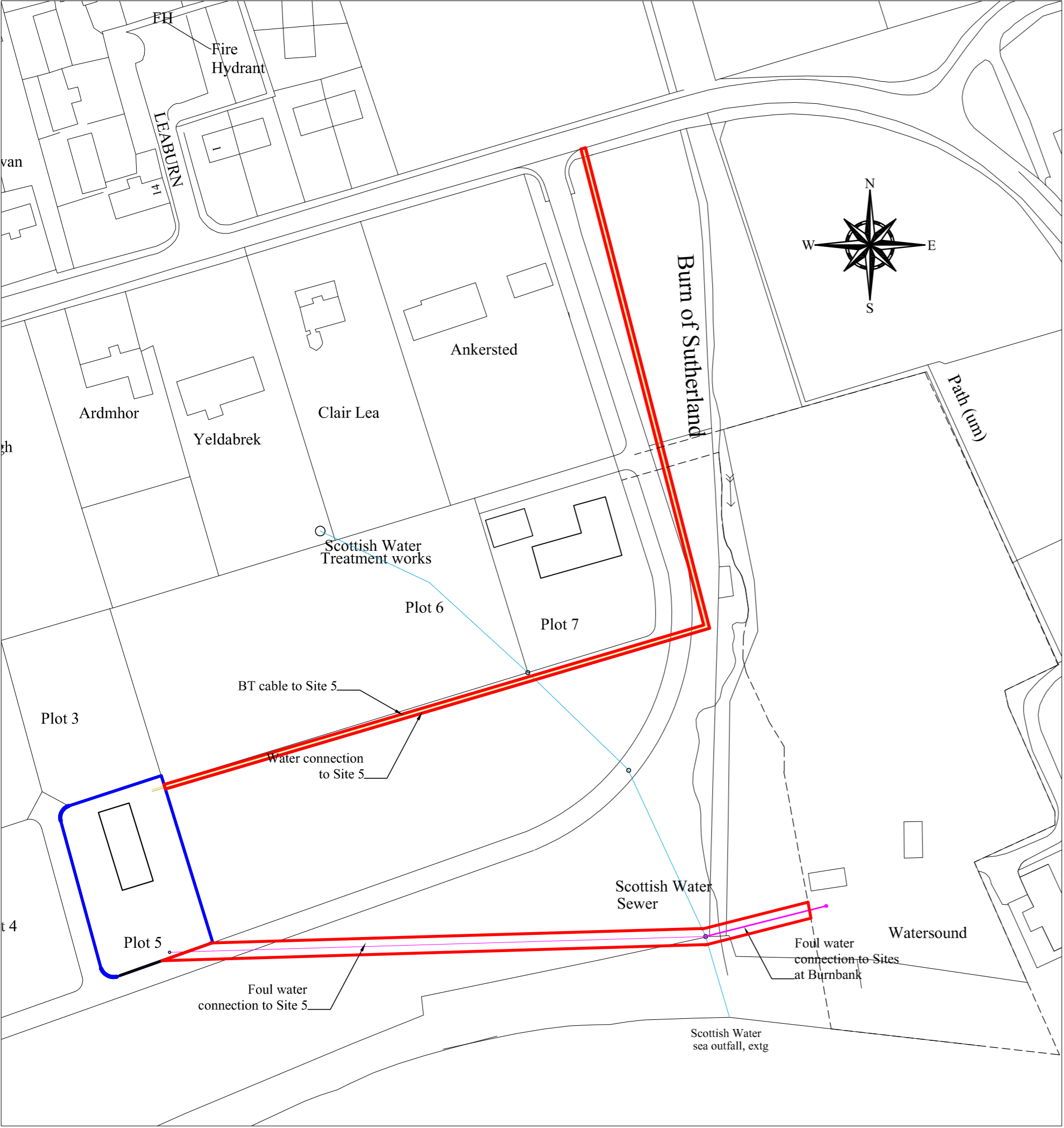
9. Contact Officer

Sue Doyle, Planning Officer, Email sue.doyle@orkney.gov.uk

10. Appendices

Appendix 1: Site Plan.

Appendix 2: Proposed Planning Conditions.



SITE PLAN: SERVICES (E)
SCALE 1/1000

Specification Statement
 The proposed development site forms part of the Sutherland Links Local Nature Conservation Site (LNCS). The preferred option for the outfall drain would have been to dig along the edge of the track and avoid crossing the LNCS but this was just not possible due to the pipe gradient and the main sewer depth.

All personnel involved in the development should be made aware that otters are a protected species and may be present in the area and of the requirement to follow the measures listed. Measures to be taken to avoid disturbance to the species in addition to other measures to be followed to protect the LNCS

All works should be confined to the planning application site boundaries, indicated in red, specified in the planning application and should not be allowed to spill out onto other areas of the Sutherland Links LNCS.

No dumping of spoil or building tools or materials, temporarily or permanently will occur outside the planning application site boundary

When excavating the track, turf/ sand to be stripped and set aside for reinstatement of the trench. Excavated sand/soil to be kept separate from the underlying habitat to avoid disturbing surrounding landscape when reinstating the trench

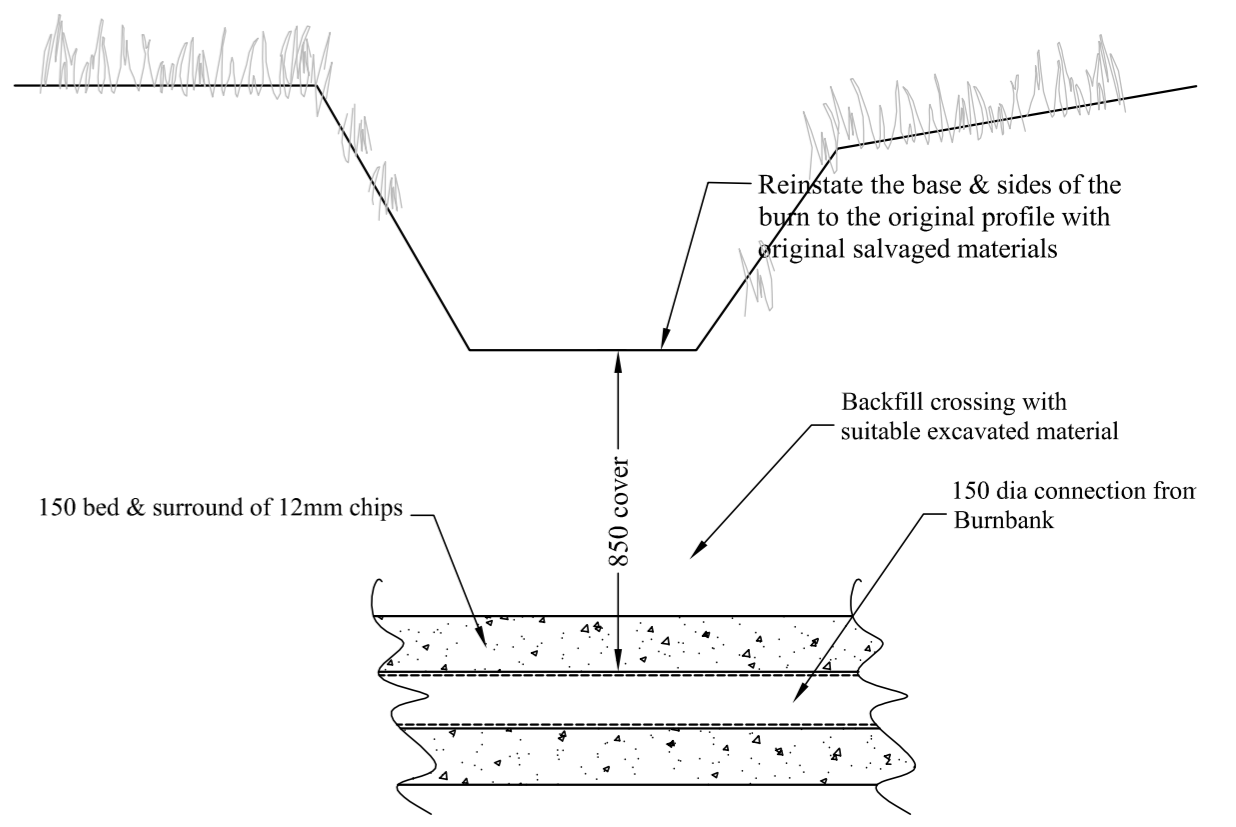
Access to open-water habitats will be safeguarded at all times and impacts to traditional routes between such areas (such as drainage ditches) during the construction phase should be minimised

Any temporarily exposed open pipe system will be capped in such a way as to prevent otters gaining access, as may happen when contractors are off-site.

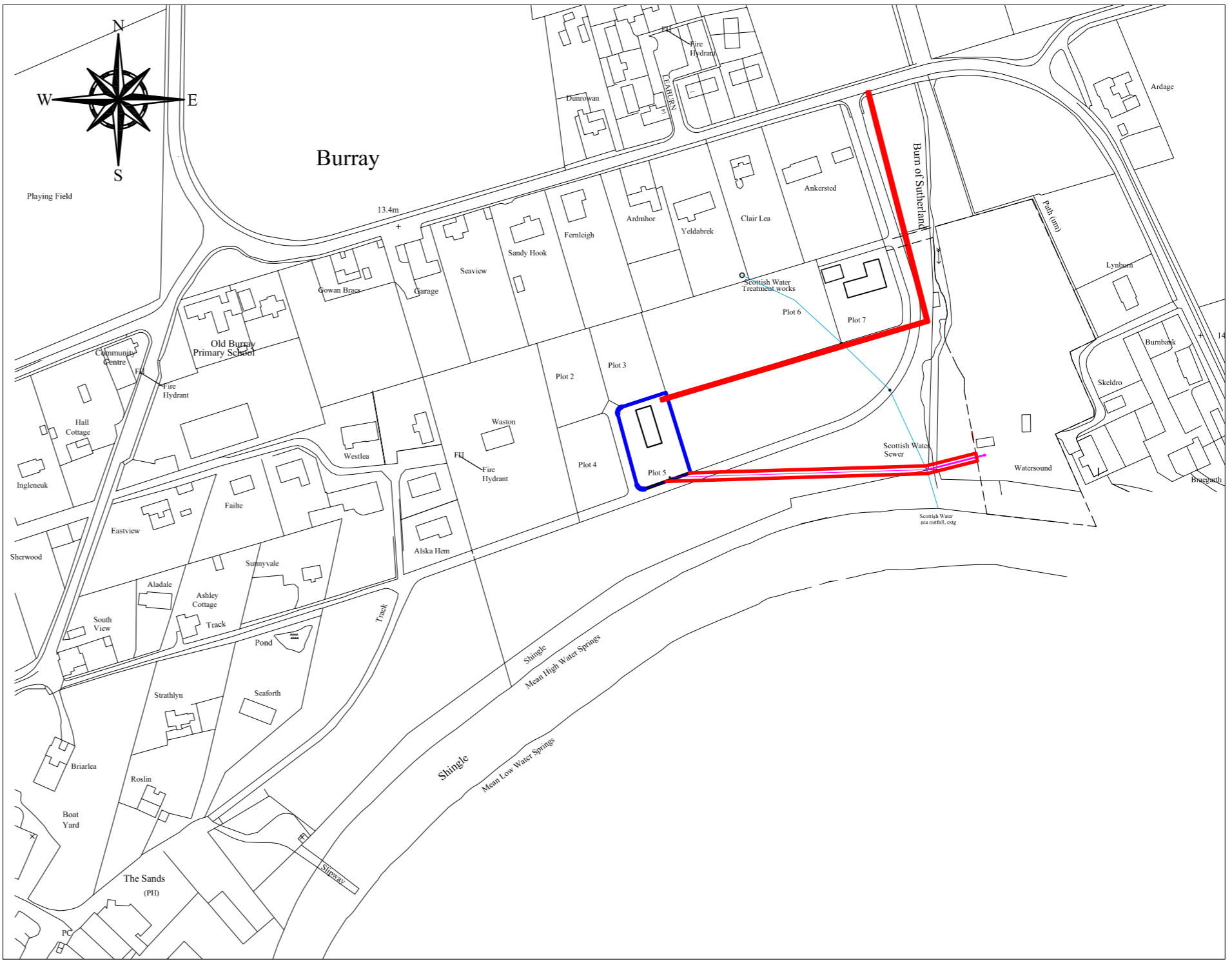
Open pits to be covered at night, and exit ramps provided in steep-sided trenches. All excavations should be checked daily to ensure that no wildlife has become trapped

Works to the burn crossing to be kept to a minimum and executed in expedient manner, all installed in accordance with LDP 9D. Excavations should be carried out during the period between June and September when the burn will be flowing at its least. A temporary stopping of the flow of the burn would take place while a 450mm wide track is excavated through. Pipework would be installed and the burn bottom and sides will be reinstated, the burn to be fully restored to its previous condition with banks and stream base materials reinstated as found.

All works to be undertaken to the satisfaction of Scottish Water (permit required) and SEPA



BURN CROSSING
(Indicative only)
SCALE 1/20



LOCATION PLAN
SCALE 1/2500

Appendix 2.

01. Throughout the construction phase of the development, all works shall be confined to the planning application site, and no dumping of spoil or tools or materials, temporarily or permanently, in the Sutherland Links Local Nature Conservation Site (LNCS) or the margins of the Burn of Sutherland.

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.

02. Excavated turf, which is currently stored alongside the track, should be carefully replaced with vegetation facing upwards as quickly as possible, to enable the flower-rich vegetation to re-establish. During early spring, any significant bare patches of soil remaining should be lightly sown with an appropriate grass seed mix, to be agreed in advance, in writing, with the Planning Authority, to minimise the risk of colonisation by invasive species such as docks, hogweed, nettles.

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 Policy 9C – Wider Biodiversity and Geodiversity.

Note: A standard wildflower seed mix should not be used, as these often contain species that are not native to Orkney. In Scotland it is an offence to plant, or otherwise cause to grow, a plant in the wild (in natural or semi-natural habitat) at a location outside its native range. The law on non-native species is covered by the Wildlife and Countryside Act 1981 (as amended by the Wildlife and Natural Environment (Scotland) Act 2012).

03. Prior to the commencement of development (ie recommencement following the date of the decision notice), an otter survey shall be carried out along the length of the burn. This otter survey shall be carried out at a time when the vegetation growth is low. The otter survey report shall be submitted to the Planning Authority for assessment and approved in writing prior to (re)commencement of works on the site.

Reason: In the interests of the protection of otters, and to accord with Policy 9B – Protected Species of the Orkney Local Development Plan 2017.

04. Throughout the construction phase of the development:

- Access to open-water habitats should be safeguarded at all times and impacts to traditional routes between such areas (such as drainage ditches) should be minimised.
- Any temporarily exposed open pipe system should be capped in such a way as to prevent otters gaining access, as may happen when contractors are off-site.

- Open pits should 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 otters 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, a Protected Species, 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.

05. The pipework which will cross the Burn of Sutherland shall be designed and constructed to maintain access for otters to the marine and freshwater environments of the Burn of Sutherland and the coast.

Reason: In the interests of the protection of otters and to maintain their access to the marine and freshwater environments of the Burn of Sutherland and the coast, and to accord with Orkney Local Development Plan 2017 Policy 9B – Protected Species.

06. The works to connect the pipework to the Scottish Water sewer and outfall shall be as indicated in the letter from Breck Designs dated 8 February 2021 and on the Site Plan OIC-01(3) stamped approved and attached to the decision notice.

The temporary stopping of the flow of the Burn of Sutherland will be undertaken during the period when there is least flow (June to September).

On completion of the works to install the pipework, the banks, sides and base of the burn and the Burn of Sutherland shall be fully restored to the previous condition.

Reason: In the interests of the protection of the Burn of Sutherland, to prevent any impact that would affect its stability, function and ability to drain, and to accord with Orkney Local Development Plan 2017 Policy 9D – The Water Environment.

07. No development shall commence until a baseline condition survey of the core path is submitted to, and agreed in writing by, the Planning Authority, to determine any works necessary during, and at the end of, the construction phase of the development. At the reasonable request of the Planning Authority, interim works shall be carried out to the path.

Throughout the lifetime of the development, the developer shall maintain unobstructed and without unreasonable damage, the stretch of the adjacent B6 – Burray Village Core Path network. Public access along the Core Path adjacent to the application site shall at no time be obstructed or deterred by construction-related activities or by the development, unless otherwise approved, in writing, by the Council's Access Officer.

During the excavation of the trench for the pipework and cable to Site 5 West Links that crosses the Burray Village Core Path (BV6), the developer shall ensure that the unhindered passage by vehicles and pedestrians is maintained at all times along the

core path, by providing the temporary means of passage over works whenever required.

Prior to the first use of the development, the core path shall be returned to a standard at least equal to that prior to the commencement of any works on the development site.

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

08. Any damage caused to the existing road infrastructure during construction of the development shall be repaired prior to the development being brought into use, to the satisfaction of the Planning Authority, in conjunction with Roads Services.

Reason: In the interests of road safety.

09. Hours of work during the construction of 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 Monday to Friday, 08:00 to 13:00 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.