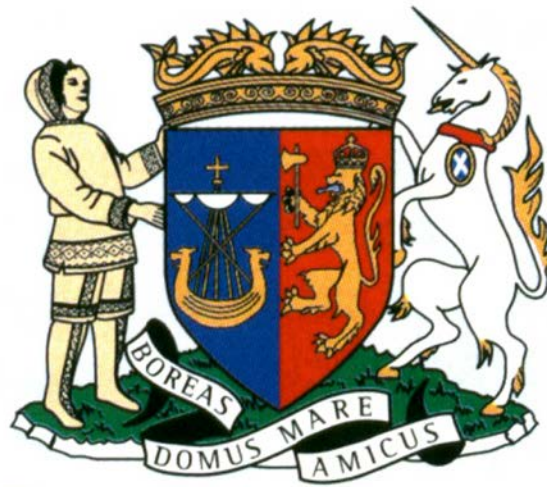


# Kirkwall Urban Design Framework 2018

## Habitats Regulations Appraisal

August 2018



**ORKNEY**  
**ISLANDS COUNCIL**

## **Foreword**

This Habitats Regulations Appraisal (HRA) has been prepared under the requirements of the EU Habitats Directive and has applied the requirements set out by the Scottish Government in the Conservation (Natural Habitats, &c.) Regulations as amended.

It is the Orkney Islands Council's responsibility to consider whether the policies and proposals within the Kirkwall Urban Design Framework (KUDF) are likely to have any significant effect on Special Protection Areas (SPAs), including potential SPAs, or Special Areas for Conservation (SACs), having regard to the qualifying interests and conservation objectives of those sites. These sites are referred to in this document as 'Natura sites'.

During the preparation of the KUDF and this HRA, the Council has had engagement, discussions and input from Scottish Natural heritage (SNH). This has helped identify and address any potential effect and identify any requirement to develop mitigation measures and make changes to the KUDF.

The KUDF draft is currently being finalised, prior to consideration by the Council's Elected Members. Once adopted, it will become Supplementary Guidance in support of the Orkney Local Development Plan 2017.

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## **Introduction and Context**

An October 2005 ruling by the European Court of Justice and subsequent decision by Scottish Ministers mean that the preparation of Supplementary Guidance must include an appropriate assessment of the potential to have significant effects on Natura sites. This HRA considers whether the Supplementary Guidance is likely to have significant effects.

Scottish Planning Policy (2014) sets out that any development plan or proposal likely to have a significant effect on Natura sites must be subject to 'appropriate assessment' and may only be approved if it is confirmed that there will be no adverse effect on the integrity of the site. The only exception is if:

- There are no alternative solutions;
- There are imperative reasons of overriding public interest, including those of a social or economic nature; and
- Compensatory measures are provided to ensure that the overall coherence of the Natura network is protected.

## **The Kirkwall Urban Design Framework**

The Kirkwall Urban Design Framework (KUDF) is a strategic planning document which will guide development and change in the town over the next 20-year period. The KUDF is Supplementary Guidance and forms part of the Orkney Local Development Plan 2017 (OLDP). Its contents will also inform a review of the Kirkwall section of the Supplementary Guidance: Settlement Statements, which sets out the key information for each of Orkney's settlements, complementing the policies of the OLDP.

Beyond planning, the document will also guide other Council and Community Planning Partner policies and activities such as Transportation, Roads, Housing, Education, Tourism and Economic Development.

## **European Sites in Orkney**

There are twenty-two Natura sites in Orkney – six SACs and thirteen SPAs, as well as three proposed SPAs. Each of these sites has been screened to determine the likelihood of being directly or indirectly affected by the KUDF.

## **Assessment methodology**

The following methodology was established, in line with SNH [Guidance for Plan-making Bodies in Scotland 2015](#)

Orkney Islands Council worked with SNH to carry out this appraisal and to seek advice on the wording of guidance to mitigate potential adverse effects and ensure the KUDF is tailored to meet the conservation objectives and qualifying interests.

The HRA focuses on the spatial elements of the KUDF and has identified the Natura sites that are potentially affected by the KUDF.

Although an objective of the KUDF is to improve biodiversity, none of its actions or proposals are directly connected to, or necessary for, nature conservation management of Natura sites. They therefore need to be assessed for likely significant effects.

## **Screening for likely significant effect**

All of Orkney's Natura sites have been screened in Table 1 below to assess whether there is any connectivity with proposals in the KUDF and, therefore, potential for likely significant effect on their qualifying interests, either alone or in combination with other plans, projects or strategies.

Only two Natura sites have been screened in as having potential for likely significant effects on their qualifying interests due to unsympathetic implementation of path proposals in the KUDF. These are the North Orkney pSPA and the Orkney Mainland Moors SPA. Likely significant effects on some of the qualifying interests for these sites would be caused by:

- Disturbance, causing displacement of birds from traditional foraging areas (for both North Orkney pSPA and Orkney Mainland Moors SPA); and
- Loss of foraging habitat (Orkney Mainland Moors SPA only).

The qualifying interests of the North Orkney pSPA are breeding red-throated diver, and wintering common eider, European shag, great northern diver, long-tailed duck, red-breasted merganser, Slavonian grebe and velvet scoter. Of these, only eider, red-breasted merganser and long-tailed duck are known to be present in the vicinity of the proposed Kirkwall coastal path and so there will be a likely significant effect on these species. (There will not be a likely significant effect on the other qualifying interests, so they are not considered further in this assessment.)

The qualifying interests of the Orkney Mainland Moors SPA are breeding and non-breeding hen harrier, breeding short-eared owl and red throated diver. The area proposed for the Wideford Hill path is within the foraging range and offers suitable foraging habitat for hen harrier and short-eared owl, and so there will be a likely significant effect on these species. (There will not be a likely significant effect on red-throated diver and so it is not considered further in this assessment.)

## **Appropriate Assessment**

The conservation objectives for the **North Orkney pSPA** are:

“To avoid deterioration of the habitats of the qualifying species or significant disturbance to the qualifying species, subject to natural change, thus ensuring that the integrity of the site is maintained in the long-term and it continues to make an appropriate contribution to achieving the aims of the Birds Directive for each of the qualifying species. This contribution will be achieved through delivering the following objectives for each of the site's qualifying interests:

- Avoid significant mortality, injury and disturbance of the qualifying features, so that the distribution of the species and ability to use the site are maintained in the long-term;
- To maintain the habitats and food resources of the qualifying features in favourable condition.”

The conservation objectives for the **Orkney Mainland Moors SPA** are:

“To avoid deterioration of the habitats of the qualifying species or significant disturbance to the qualifying species, thus ensuring that the integrity of the site is maintained, and the site makes an appropriate contribution to achieving favourable conservation status for each of the qualifying features and to ensure for the qualifying species that the following are maintained in the long term:

- Population of the species as a viable component of the site;
- Distribution of the species within the site;
- Distribution and extent of habitats supporting the species;
- Structure, function and supporting processes of habitats supporting the species;
- No significant disturbance of the species.”

Appropriate assessment of the potential impacts of path proposals in the KUDF against the sites’ conservation objectives is set out below.

### **KUDF action: Kirkwall Coastal Path**

#### **North Orkney pSPA**

This action proposes the development of a new coastal path, which would extend round Kirkwall Bay from the western boundary of Hatston Industrial Estate to Carness in the east. This would include the construction of new sections to link existing paths. This coastline borders a section of the North Orkney pSPA where the qualifying interests of eider, long-tailed duck and red-breasted merganser are known to forage. If sufficient space proves unavailable on land, it may be necessary to install short sections of boardwalk on the shore, above Mean High Water Springs.

The potential risk posed by this project to eider, long-tailed duck and red-breasted merganser would be disturbance, causing displacement from traditional foraging areas, as these species are known to frequent the shallower, inshore waters in this location. This disturbance could occur during construction of the path and during use of the path.

The path construction phase would be of relatively short duration and would be undertaken above MHWS, with no development-related activity in the sea where the birds feed. However, birds would be disturbed if they were present in the sea in proximity to construction works. It is considered that the construction phase would present a low risk of significant disturbance, which could be avoided by timing works outwith the sensitive wintering period, therefore ensuring that the conservation objectives are met in relation to construction of the path.

Once completed, the path would experience most usage during summer, e.g. by leisure walkers, passengers of visiting cruise ships which berth at Hatston Pier and perhaps by some passengers arriving and departing by Northlink Ferries. Usage would be much reduced during winter, as days are shorter, weather conditions are poorer, and people are more likely to travel to and from the ferry by car, bus or taxi. There is already considerable human activity on the existing stretches of path which border this coast and small flocks of common eider are frequently seen close to the water's edge. Likewise, at the nearby Peedie Sea long-tailed duck are frequently seen, where they also tolerate human activity on waterside paths. It is unlikely therefore, that the operational phase of this project would impact on the conservation objectives of the North Orkney pSPA.

### **KUDF action: Wideford Hill Path**

#### **Orkney Mainland Moors SPA**

This action proposes the development of a path extending from the A965 along the northern side of Wideford Hill to its summit, linking up with an existing path on its southern side and creating a circular route. Much of Wideford Hill consists of moorland habitat and is designated as a Local Nature Conservation Site (LNCS), extending to 183 hectares. The proposed path route is approximately 2km to the north of the nearby Keelylang and Swartabeck Burn SSSI, which forms part of the Orkney Mainland Moors SPA. The qualifying features of the SPA include breeding and non-breeding hen harrier, as well as breeding short-eared owl. Wideford Hill is well within the foraging range for both species.

The potential risks posed by this project to the qualifying interests of the SPA would be loss of foraging habitat due to path development as well as disturbance during use of the path, causing displacement from traditional foraging areas.

The loss of habitat due to path development would represent only a very small percentage of the suitable habitat for foraging hen harriers and short-eared owls in the wider area, which is available in other extensive LNCSs such as Caldale (113 hectares), Bridgend (75 ha), Berryhill (19 ha) and Keelylang (518 ha).

Similarly, disturbance due to people walking or cycling along this route would be unlikely to cause disturbance at a level that would prevent the conservation objectives from being met, in view of the extensive foraging area that is otherwise available to both raptor species from this part of the Orkney Mainland Moors SPA.

### **Mitigation**

#### **North Orkney pSPA**

To mitigate the risk of construction disturbance the following text has been inserted into the relevant section of the KUDF. This will ensure that the conservation objectives of the North Orkney pSPA will be met and so an adverse effect on site integrity is avoided:

*The Kirkwall Bay coastal path will border the North Orkney pSPA, where qualifying interests include a range of bird species which over-winter in this area. Some of*

*these are known to frequent shallower, inshore areas and there is potential for disturbance and displacement from traditional foraging areas. For this reason, any path construction should be timed outwith the wintering bird period for to avoid disturbance.*

*When plans to construct the path are submitted, further information on the design and location of the path will be required, to inform a detailed site-specific Habitats Regulations Appraisal which must include cumulative assessment of the proposal with other plans, projects or strategies connected to the North Orkney pSPA.*

It is not considered that mitigation is required to be included in the KUDF to avoid an adverse effect on the integrity of the Orkney Mainland Moors SPA caused by use of the paths.

### **Orkney Mainland Moors SPA**

It is not considered that mitigation is required to be included in the KUDF to avoid an adverse effect on the integrity of the Orkney Mainland Moors SPA.

### **Policy protection**

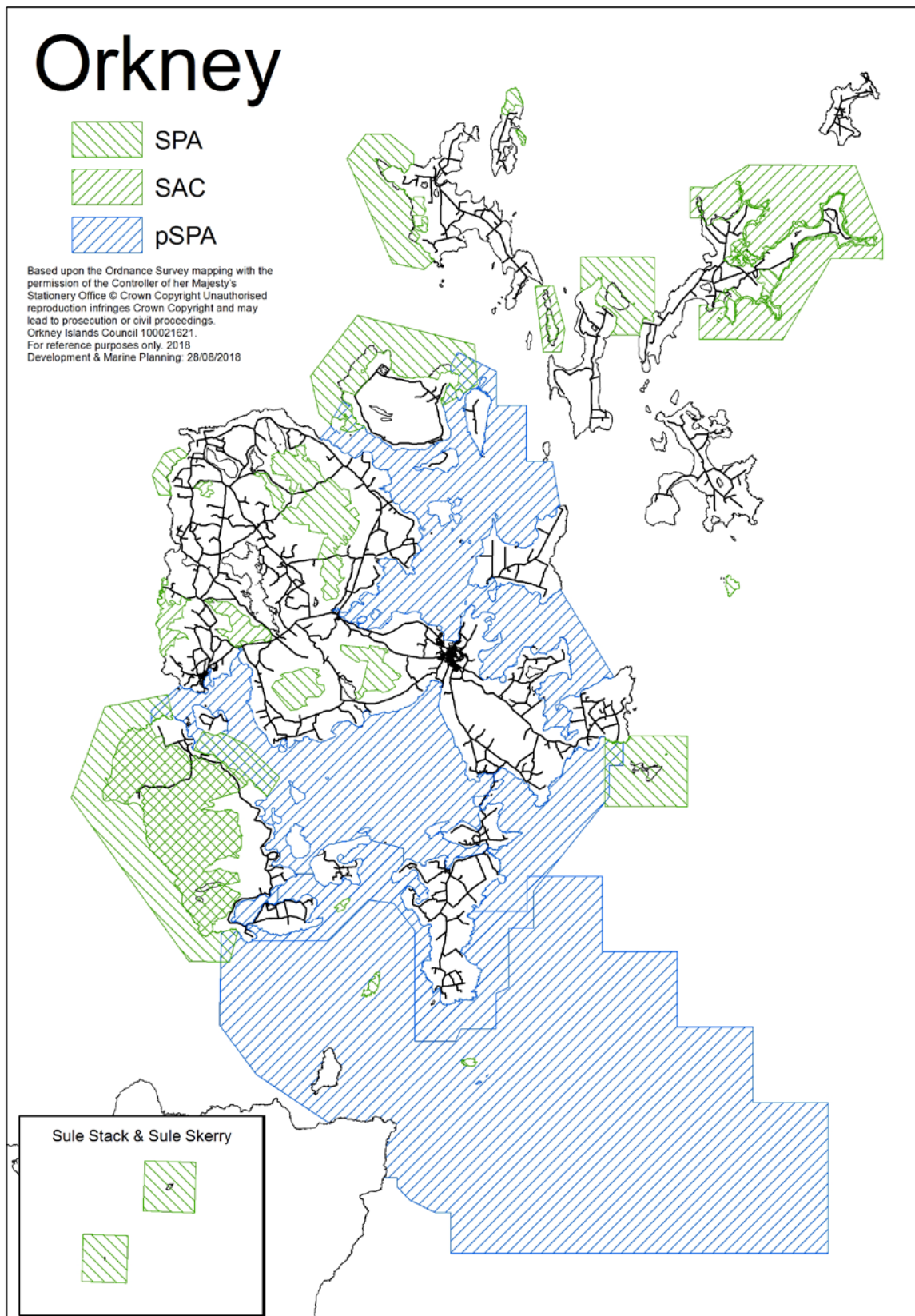
In addition to the mitigation identified above, Policy 9A of the Orkney Local Development Plan 2017 - 2022, supported by Supplementary Guidance: Natural Environment, safeguards Natura sites by requiring individual proposals to be assessed in detail at the time of submission, and if connected to a Natura site, requires submission of information to inform a detailed site-specific Habitats Regulations Appraisal. This must include cumulative assessment of the proposal with other plans, projects or strategies connected to the relevant Natura site. This safeguarding policy will ensure that there will not be an adverse effect on the integrity of Natura sites caused by detailed path proposals that are expected to come forward as a result of the KUDF.

### **Conclusions**

Orkney Islands Council has concluded that, following the incorporation of the above mitigation, the KUDF and its implementation would not result in an adverse effect on the qualifying features or the integrity of the North Orkney pSPA or the Orkney Mainland Moors SPA, either alone or in combination with other plans, projects or strategies.



Figure 1: Map of Orkney Natura sites



**Table 1: Summary of Natura sites in Orkney**

<b>Natura site name</b>	<b>Designation status</b>	<b>Qualifying interests</b>	<b>Conclusions</b>
<b>Faray &amp; Holm of Faray</b>	SAC	Grey seal.	No link or pathway between the policies and proposals of the KUDF and the qualifying interests of this SAC.
<b>Hoy</b>	SAC	Alkaline fen; Alpine & Boreal heath; Blanket Bog; Calcareous rocky slopes with chasmophytic vegetation; European dry heaths; Natural dystrophic lakes & ponds; Northern Atlantic wet heaths with <i>Erica tetralix</i> ; Petrifying springs with tufa formation; Vegetated sea cliffs of the Atlantic and Baltic coasts.	No link or pathway between the policies and proposals of the KUDF and the qualifying interests of this SAC.
<b>Loch of Isbister</b>	SAC	Otter; Natural eutrophic lake with <i>Magnopotamion</i> or <i>Hydrocharition</i> -type vegetation; Transition mires and quaking bogs	No link or pathway between the policies and proposals of the KUDF and the qualifying interests of this SAC.
<b>Loch of Stenness</b>	SAC	Coastal lagoons.	No link or pathway between the policies and proposals of the KUDF and the qualifying interests of this SAC.
<b>Sanday</b>	SAC	MKUDFlats & sandflats not covered by seawater at low tide; Common seal; Reefs.	No link or pathway between the policies and proposals of the KUDF and the qualifying interests of this SAC.
<b>Stromness Heaths and Coast</b>	SAC	Alkaline fens; European dry heaths; Vegetated sea cliffs of the Atlantic and Baltic coasts.	No link or pathway between the policies and proposals of the KUDF and the qualifying interests of this SAC.
<b>Auskerry</b>	SPA	Aggregations of breeding Arctic tern and Storm petrel	No link or pathway between the policies and proposals of the KUDF and the qualifying interests of this SPA.
<b>Calf of Eday</b>	SPA	Aggregations of breeding great cormorant, great black-backed gull, guillemot, northern fulmar and	No link or pathway between the policies and proposals of the KUDF and the qualifying interests of this SPA.

<b>Natura site name</b>	<b>Designation status</b>	<b>Qualifying interests</b>	<b>Conclusions</b>
		kittiwake; Aggregations of breeding seabird assemblage.	
<b>Copinsay</b>	SPA	Aggregations of breeding great black-backed gull, guillemot, northern fulmar and kittiwake; Aggregations of breeding seabird assemblage.	No link or pathway between the policies and proposals of the KUDF and the qualifying interests of this SPA.
<b>East Sanday Coast</b>	SPA and Ramsar site	Aggregations of non-breeding purple sandpiper, turnstone and bar-tailed godwit	No link or pathway between the policies and proposals of the KUDF and the qualifying interests of this SPA.
<b>Hoy</b>	SPA	Aggregations of breeding Arctic skua; northern fulmar; great black-backed gull, great skua; guillemot, kittiwake; peregrine; puffin and red-throated diver. Aggregations of breeding seabird assemblage.	No link or pathway between the policies and proposals of the KUDF and the qualifying interests of this SPA.
<b>Marwick Head</b>	SPA	Aggregations of breeding guillemot and kittiwake; Aggregations of breeding seabird assemblage.	No link or pathway between the policies and proposals of the KUDF and the qualifying interests of this SPA.
<b>Orkney Mainland Moors</b>	SPA	Aggregations of breeding and non-breeding hen harrier Aggregations of breeding short-eared owl and red-throated diver	The KUDF proposes construction of a path on Wideford Hill that may be used by foraging SPA hen harrier and short-eared owl as it is within foraging range of birds from the SPA.
<b>Papa Westray</b>	SPA	Aggregations of breeding Arctic tern and Arctic skua	No link or pathway between the policies and proposals of the KUDF and the qualifying interests of this SPA.
<b>Pentland Firth</b>	SPA	Aggregations of breeding Arctic tern	No link or pathway between the policies and proposals of

<b>Natura site name</b>	<b>Designation status</b>	<b>Qualifying interests</b>	<b>Conclusions</b>
<b>Islands</b>			the KUDF and the qualifying interests of this SPA.
<b>Rousay</b>	SPA	Aggregations of breeding Arctic skua, Arctic tern, fulmar, guillemot and kittiwake.  Aggregations of breeding seabird assemblage.	No link or pathway between the policies and proposals of the KUDF and the qualifying interests of this SPA.
<b>Sule Skerry &amp; Sule Stack</b>	SPA	Aggregations of breeding gannet, guillemot, Leach's petrel, puffin, shag, storm petrel.  Aggregations of breeding seabird assemblage.	No link or pathway between the policies and proposals of the KUDF and the qualifying interests of this SPA.
<b>Switha</b>	SPA	Aggregations of non-breeding Greenland barnacle goose	No link or pathway between the policies and proposals of the KUDF and the qualifying interests of this SPA.
<b>West Westray</b>	SPA	Aggregations of breeding Arctic skua, Arctic tern, fulmar, guillemot, kittiwake and razorbill.  Aggregations of breeding seabird assemblage.	No link or pathway between the policies and proposals of the KUDF and the qualifying interests of this SPA.
<b>North Orkney</b>	pSPA	Breeding Red-throated diver.  Wintering Common eider, European shag, Great northern diver, Long-tailed duck, Red-breasted merganser, Slavonian grebe and Velvet scoter.	The KUDF proposes construction of a coastal pathway in an area which borders the North Orkney pSPA, and is known to be used by SPA wintering eider, red-breasted merganser and long-tailed duck.
<b>Pentland Firth</b>	pSPA	Breeding Arctic skua, Arctic tern, Common guillemot.  Breeding bird assemblage.	No link or pathway between the policies and proposals of the KUDF and the qualifying interests of this SPA.
<b>Scapa Flow</b>	pSPA	Breeding Red-throated diver.  Non-breeding Black-throated diver, Common eider,	No link or pathway between the policies and proposals of the KUDF and the qualifying interests of this SPA.

Natura site name	Designation status	Qualifying interests	Conclusions
		Common goldeneye, European shag, Great northern diver, Long-tailed duck, Red-breasted merganser and Slavonian grebe.	