

## Item: 5.6

**Planning Committee: 3 March 2021.**

### **Remove Trees, Install Sewer Pipe and Associated Landscaping (Retrospective) at Stromness Millennium Woodland/Cairston Road, Stromness.**

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

## **1. Summary**

### **1.1.**

Planning permission is sought for the installation of a new sewer pipe, between a housing development currently under construction and the existing Scottish Water public sewer infrastructure. Planning permission for the housing development was granted by the Planning Committee, for 13 houses on 4 March 2020, and 3 houses on 2 September 2020. Due to previous decisions being made by the Planning Committee, the Executive Director of Development and Infrastructure has opted not to exercise delegated powers and, accordingly, the application is submitted to the Planning Committee for determination. The current planning application site comprises a relatively narrow strip of land, allowing for the pipe and a wayleave strip on both sides of the pipe, extending west from the housing site, through the Stromness Millennium Woodland. The application is retrospective; the pipe has already been installed. These works resulted in the loss of 23 trees within the Millennium Woodland. The applicant has agreed to a set of mitigation measures including replacement trees and management of salmonberry, an invasive shrub present within the woodland. Nonetheless, the application remains finely balanced. Based on the mitigation and elimination of viable alternatives for the sewer route, and without diminishing the impact of the regrettable loss of established trees and woodland, the application is considered acceptable in relation to Policies 1, 9F, 10B and 13C of the Orkney Local Development Plan 2017. Accordingly, the application is recommended for approval.

Application Number:	20/458/PP.
Application Type:	Planning Permission.
Proposal:	Remove trees, install sewer pipe and associated landscaping (retrospective).
Applicant:	Orkney Builders Limited, 10 Crowness Road, Hatston, Kirkwall, KW15 1RG.
Agent:	Bracewell Stirling Consulting, c/o Sam Sweeney, 5 Ness Bank, Inverness, IV2 4SF.

## **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. Scottish Water**

No objection and the response does not raise any technical matters which could not be addressed by planning condition.

### **2.2. Roads Services and Stromness Community Council**

No consultation response was received from either party.

### **2.3. Development and Marine Planning**

#### **2.3.1. Sewer Route**

Development and Marine Planning initially objected to the application, principally due to lack of information on why the proposed sewer route had been selected, or analysis of whether other routes were available that would not involve the removal of established trees. An analysis of alternative routes was subsequently provided and the objection was amended to a comment only.

#### **2.3.1. Loss of Trees**

Comment was provided regarding the recent history of the Millennium Woodland, the impact of the loss of established trees, loss of biodiversity and habitat and the green network fragmentation, and associated policy implications, as follows:

“This location is known locally as the Millennium Woods and was planted with grant funding to celebrate the Millennium. The planting is established and mature in nature. Within the Orkney Local Development Plan 2017, the site is Strategic Open Space and any development within these spaces should improve, expand or enhance these locations.

20/458/PP is considered to be a retrospective application but it should be noted that at the time of the neighbouring housing applications (Summer 2020) a number of these mature trees had been removed / uprooted on the site and a large trench dug for a new foul drainage connection.

Twenty-three trees including Downy birch, Ash, Common alder and Hawthorn were uprooted and re-planted nearby. However, this was done crudely using a mechanical implement at a time of year when soil conditions were very dry. It is therefore unlikely that many, if any, of the trees will have survived and re-established successfully. These trees, along with the undergrowth, which was also removed, would have contributed significantly to the overall biodiversity value of the woodland. The loss of

a healthy Ash is particularly regrettable, as throughout the UK this species has been impacted by the fungus *Hymenoscyphus fraxineus*. It would be unwise to consider sourcing a replacement due to the risk of introducing the fungus into Orkney...

...We are concerned that locating the sewer through the Millennium Woods conflicts with Policy 1 – Criteria for all Development, Policy 9 – Natural Heritage and Landscape; parts C Wider Biodiversity and Geodiversity; and F Trees and Woodland; and Policy10 – Green Infrastructure of the Orkney Local Development Plan 2017. This proposal removes established tree planting, resulting in the loss of local biodiversity; it will result in potentially unnecessary fragmentation of a green network and will have an unacceptable impact on amenity within this urban area. It is questionable whether the development will improve, expand or enhance this open space.”

### 2.3.3. Maintenance Burden

“We also have concerns over the maintenance responsibility of any...proposed tree and shrub planting. The planning application does not detail where this responsibility will lie; and the potential responsibility of having a public foul drainage asset under the proposed path (meaning an asset of the Scottish Water system). Additional information and clarification is needed on this matter before this application can be determined.”

## 3. Representations

No representations have been received.

## 4. Relevant Planning and Site History

### 4.1.

Reference.	Proposal.	Location.	Decision.	Date issued.
20/288/PP.	Create a public footpath.	Cairston Road/ Millennium Woodland, Stromness.	Pending Decision.	
20/222/PP.	Erect 3 houses with air source heat pumps.	Cairston Road, Stromness	Approved with conditions.	06.10.20.
19/376/PP	Erect 13 houses, upgrade an access and construct a road and drainage works.	Cairston Road, Stromness.	Approved with conditions.	09.03.20.

### 4.2. Indicative Sewer Route

Applications 19/376/PP and 20/222/PP were both approved by the Planning Committee for consecutive phases of a development of 16 houses accessed from

Cairston Road. A 'Sewers and SuDS Layout Plan' was submitted and approved in relation to application 19/376/PP; this indicated the location and routes of all surface and waste water pipework within the application site, and the application site boundary was amended at an early stage to include the surface water outfall. That plan included an indicative sewer pipe and servitude route from the application site extending west to an existing public combined sewer. However, and critically in relation to planning procedure, that indicative route did not form part of the proposal description or application site for that application, and, correctly, was therefore not considered or assessed as part of the determination of that application.

### **4.3. Proposed Path**

Planning application 20/288/PP to create a public footpath is currently under consideration. This is proposed to follow the route of the sewer, the subject of this planning application, and extend further westwards to connect with the existing footpath network. These are submitted as separate applications and must therefore be determined separately. However, it is reasonable to conclude that the likelihood of the path being approved would be increased by approval of the current application for the buried pipe.

### **4.4. Millennium Woodland**

#### **4.4.1.**

It was noted on a site inspection on 29 June 2020 that works had been carried out within the Millennium Woodland, adjacent to the 19/376/PP application site, which is a Council-owned community woodland. These were the works to install a sewer pipe from the application site to the public sewer, the subject of the current application. These unauthorised engineering works and the loss of the 23 semi-mature trees within the Millennium Woodland was pursued with the applicant and the current retrospective application submitted.

#### **4.4.2.**

The report to the Planning Committee for application 20/222/PP noted that the unauthorised works within the Millennium Woodland potentially conflicted with landscaping details submitted for the neighbouring housing development, and the aims of biodiversity and water habitat enhancement measures along the length of the burn, noting that "the proper sequence of having details approved has been lost – approval subject to conditions, discharge of pre-commencement conditions and commencement in accordance with the agreed details. Pursuance of the original condition may now be delayed to allow the retrospective application to be determined."

## **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 9F – Trees and Woodland.
  - Policy 10B – Open Space and Settlements.
  - Policy 13C – Waste Water Drainage.

## **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. Background and Proposal**

#### **7.1.1.**

The application is to install a sewer pipe in the Millennium Woodland, Stromness, extending from an approved housing site to the east, to the existing public combined sewer to the west, as shown on the location plan attached as Appendix 1 to this report. The site is bounded by the Mill Burn and related semi-natural habitat to the south, and by tree and shrub planting and shrub and ground cover comprising the Millennium Woodland on all sides. Housing development to the east is under construction. In line with the location of the application site within the Millennium Woodland, the site is designated as Strategic Open Space.

### **7.1.2. Retrospective application**

The application is retrospective, and the pipe has already been installed through the woodland. This was carried out in early summer 2020, in conjunction with works in the adjacent housing site. The site is owned by the Council, maintained as a community asset for recreational purposes and for amenity and biodiversity value. Although not intensively managed, the trees, which were planted over 20 years ago, were well established. As noted in the consultation response from Development and Marine Planning, these trees included some irreplaceable specimens including an Ash, which was in good health and good form, and cannot be replaced due to restrictions on movement of Ash trees.

### **7.1.3. Impact on trees**

In advance of the pipe installation, plant was used to move multiple trees. This was carried out using a bucket so small that most tree roots were severed. Most of the trees suffered extensive bark damage and several trees were ringbarked. The trees were moved into holes, at the wrong time of year to relocate trees and during a dry spell. In any case, the trees were such a size that relocation was not appropriate. And when assessing impact on woodland, this should include not only impact on individual trees, but also the habitat as a whole. The result is a wide strip of excavated soil forming a track through the woodland, with damaged trees on both sides and the loss of 23 semi-mature trees.

### **7.1.4.**

Such intrusion may generate multiple options for the Council as landowner to pursue the damage, but it is important to note that this report and the planning decision must focus on the planning implications only. Irrespective of other powers, for the purpose of the planning application, the development must be assessed on its merits, in relation to relevant policies and any other material considerations. Pursuing the matter with the developer who carried out the works, the current planning application was submitted, seeking to regularise the situation. The environmental, amenity and other considerations to be taken into account in determining the application must be the same as if the development had not commenced, ie there is no 'punishment' in the planning system by assessing a retrospective application more negatively than would otherwise be the case, but similarly there is no less scrutiny of the impacts of the development, or mitigation or conditions required, simply because the development has already been carried out without permission.

### **7.1.5. Maintenance burden**

A future implication of approval of the pipe is not maintenance of the pipe itself, but maintenance of a wayleave strip above it. The Scottish Water document 'Sewers for Scotland, version 4.0' (October 2018) confirms the width of the strip required on both sides of the centre line of the pipe, which must be kept clear of tree growth or overhanging branches. The width is greater for some tree species. The wayleave must be clear felled in perpetuity, ie all tree or shrub growth removed, at intervals not exceeding seven years. This would result in a burden on the Council in perpetuity, to maintain a strip of land free of tree or shrub growth, through a community woodland. In addition to the works of installation of the pipe, this burden in perpetuity must also be considered in relation to the relevant planning policies.

### **7.1.6. Root barrier and wayleave strip**

Although the pipe is already installed, it is proposed to install root barriers as part of the development, and a specification has been submitted. This has not already been installed, so would require re-excavation of the pipe trench, installation of the root barrier and backfilling of the trench. The purpose of a root barrier is to prevent the spread of tree roots towards buried infrastructure. This can have the effect of allowing a reduction in the width of wayleave on both sides of the pipe, ie by having the root barrier, trees can potentially be allowed closer to the pipe on the basis that the root barrier would prevent those tree roots from affecting the pipe. When initially submitted, the wayleave strip was six metres total, three metres each side of the pipe. Following discussion between the applicant and Scottish Water and based on the nature of existing and proposed tree planting in the vicinity, combined with the use of the root barrier, this wayleave strip can be reduced to four metres total. This is critical in consideration of the application because the maintenance burden and the width of strip required to be kept clear of trees or overhanging branches through the woodland is therefore kept to an absolute minimum.

### **7.1.7. Mitigation**

Since submission of the application, and to create grounds for the development to be supported, the applicant has willingly discussed potential mitigation measures. These cannot directly replace the established trees and habitat lost and impacted, so any works are a judgement of what would be appropriate. In terms of numbers and size of replacement trees, logically it could be requested that a direct replacement of 23 large trees be provided. It is possible to purchase 'standard' trees, which are trees grown to approximately two metres and commonly used in landscaping schemes. However, such trees are not without challenges in establishment, and particularly as any such trees would be supplied from the Scottish mainland, they can suffer from at least partial dieback after planting in the Orkney climate. Bearing in mind these works would be on Council land, therefore providing limited control over the applicant regarding planning conditions for ongoing maintenance, a blended approach of some 'standard' trees and other bare rooted stock may be more appropriate. Using that approach, it would be considered reasonable to require a greater number of trees be planted than the 23 lost. An indicative Mitigation Plan has been submitted, providing indicative numbers and locations of new/replacement trees. In addition, the applicant has proposed mitigation by means of treating with a view to eliminating salmonberry, an invasive shrub which has become dominant in parts of the woodland. This is included alongside tree planting in the indicative Mitigation Plan. The full detail of mitigation works, and the subsequent implementation of these works in conjunction with the construction works to complete the pipe installation, would be controlled by planning condition.

### **7.1.8.**

As noted above, the application must be considered as proposed works, not influenced by it being retrospective. The key negative impacts are the loss of 23 established trees in a community woodland, damage to ground habitat and the requirement for a relatively sterile strip to be maintained through a woodland, with the associated maintenance burden for the Council. Positives and mitigation include provision of a sewer pipe for an approved housing development, having eliminated

feasible alternative routes, the planting of a greater number of replacement trees, including a blend of bare root stock and larger 'standard' trees and treatment of salmonberry, and creation of a route over which a footpath could be constructed and benches installed, if approved. The key consideration is whether one outweighs the other. The application cannot be considered more negatively because of the damage that has been caused, but similarly cannot be considered positively because the harm has now passed or because approval would improve the site as it exists currently. Consideration must be neutral, on whether the benefits outweigh negative impacts.

## **7.2. Assessment**

### **7.2.1.**

Policy 13C – Waste Water Drainage requires all new development within settlements to connect to a public sewer; this applies to the approved housing development to the east. It is required that such infrastructure alterations should not have a detrimental effect to the natural or built environment. In the absence of other information, routing a sewer pipe through a community woodland is not the preferred approach. As such, an assessment of alternatives was requested from the developer. The developer's engineering consultant submitted a review of options. These were:

- Option 1 – take the sewer southwards, across the adjacent land and burn.
  - It was concluded that this option was potentially conflicting with surface water drainage and potentially introducing a risk of blockage of the water course from debris building up behind the pipe. It is noted that there are other pipe crossings of the burn in the vicinity, and no evidence of such problems; however, the conclusion of the engineer is accepted.
- Option 2 – create a pumping station at the south of the housing development to pump to the existing Cairston Road combined sewer.
  - This option was dismissed due to the adoption and maintenance implications, the area of ground required to install such infrastructure and risk of pollution should such a system fail. It is not considered appropriate where a gravity sewer option is available.

### **7.2.2.**

The review of options leads to the conclusion of taking a sewer pipe in the general direction of the current application. The question is therefore detail of that route, and whether impact on trees could be avoided or minimised below the extent carried out. Policy 9F states that development which would result in the loss of, or damage to, trees or woodlands of significant ecological, landscape, shelter or recreational value should not be permitted unless (a) significant and clearly defined benefits would be achieved which would outweigh the loss, (b) an evaluation to the appropriate British Standard has first been carried out with the conclusion that the loss would be acceptable, and (c) in such an event, that an additional equivalent number of new trees be planted on or near the site. In addition, tree works must not result in any unnecessary fragmentation of a green network.



### 7.2.3.

On the basis the developer entered the Council's woodland and removed the trees without any prior notice or survey, the opportunity was lost to carry out a survey of the trees or woodland. The figure of 23 trees lost is based on a count of dead and dying trees carried out after the Council was alerted to the works, which is therefore the figure used for the assessment. The benefits of the development are accepted, in part for the delivery of housing development in Stromness and with potential to provide informal access from the housing development to nearby existing footpaths. In terms of minimising fragmentation of habitat, the reduction in the width of the wayleave strip is critical and, even in a condition in perpetuity of retaining a strip free of any tree growth, it should have a character of a footpath through a single woodland, rather than a sense of two separate areas of woodland. The extent of tree planting required, and also the treatment of invasive salmonberry, are also critical in reaching a conclusion that, acknowledging irreplaceable loss of individual trees, there could be some enhancement of biodiversity and amenity value. This is not an endorsement of the way in which this development has been carried out but seeks to be a balanced judgement of the merits and harms of the development.

### 7.2.4.

Related to the above is Policy 10B – Open Space in Settlements, which supports development of open space that would improve, expand or enhance the current open space provision. The same balanced judgement has to be made, whether the proposed mitigation outweighs the negative impacts on the open space, and therefore whether it can be regarded as improvement or enhancement.

## 7.3. Residential Amenity

Hours of work would be controlled by planning condition, thereby protecting the amenity of nearby residential properties, and in accordance with Policy 1 – Criteria for all development.

## 8. Conclusion and Recommendation

The application for installation of a sewer pipe and resultant loss of trees and habitat is retrospective. The decision is a balance; on one hand the loss of 23 established trees in a community woodland, damage to ground habitat and the requirement for a relatively sterile strip to be maintained through a woodland, with an associated maintenance burden for the Council in perpetuity, and on the other hand the provision of a sewer pipe for an approved housing development, having eliminated feasible alternative routes, planting of a greater number of replacement trees, including a blend of bare root stock and larger 'standard' trees and treatment of salmonberry, with potential to create a pedestrian route through the open space. The entry onto Council land and unauthorised carrying out of works is regrettable. However, the balanced judgement is that the works are acceptable, strictly based on mitigation measures proposed, in accordance with Policies 1, 9F, 10B and 13C of the Orkney Local Development Plan 2017. Accordingly, the application is **recommended for approval**, subject to the conditions attached as Appendix 2 to this report.

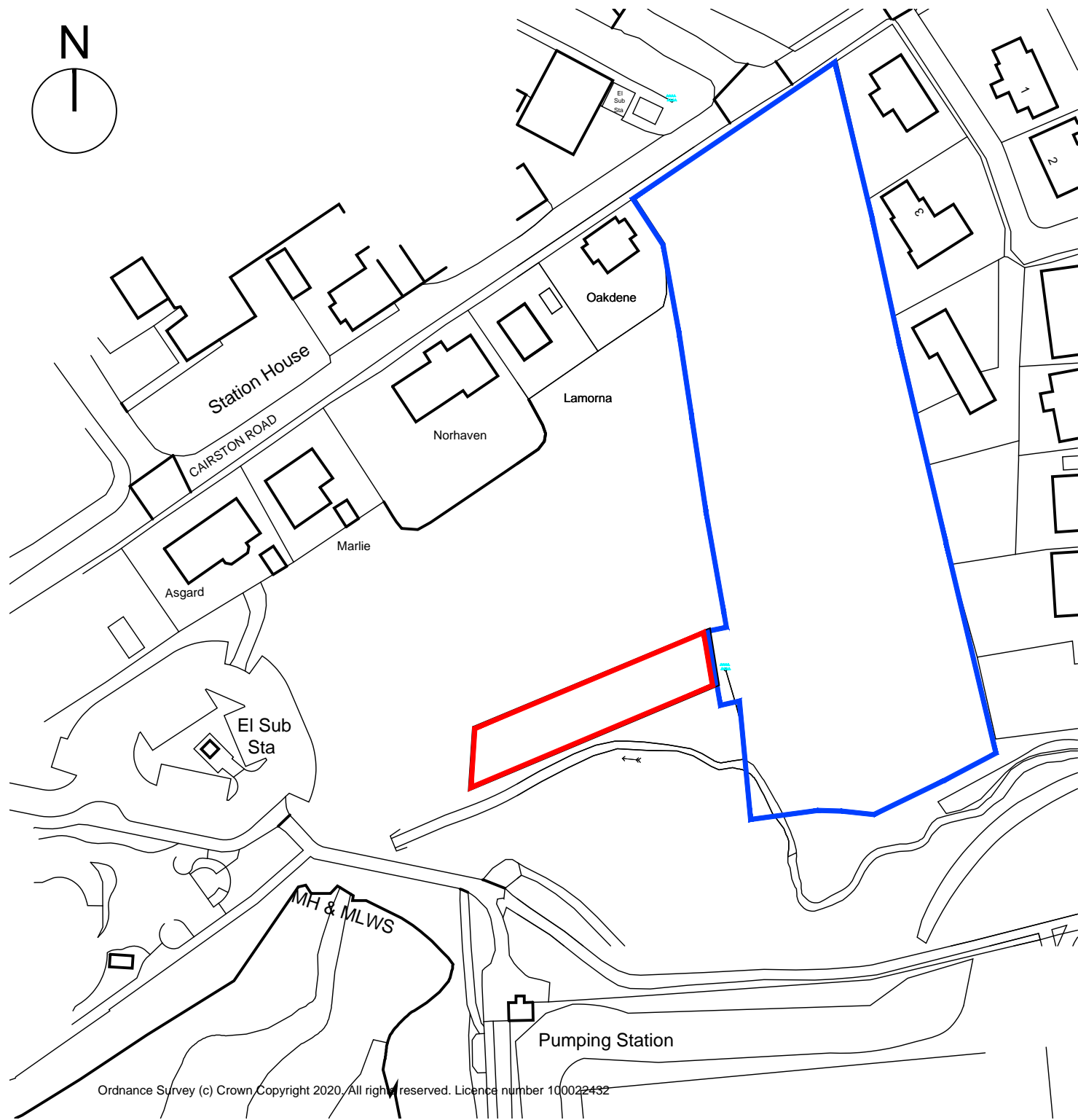
## **9. Contact Officer**

Jamie Macvie, Planning Manager, Development Management, Email  
[jamie.macvie@orkney.gov.uk](mailto:jamie.macvie@orkney.gov.uk)

## **10. Appendices**

Appendix 1: Location Plan.

Appendix 2: Planning Conditions.



REV	DATE	DESCRIPTION	DRN
-----	------	-------------	-----

## Bracewell Stirling CONSULTING

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

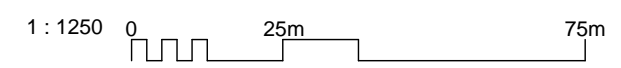
HOUSING AT CAIRSTON ROAD  
 STROMNESS  
 ORKNEY BUILDERS LTD

LOCATION PLAN ( SEWER)

STATUS: **PLANNING**

SCALE: 1 : 1250 DRAWN: --  
 PAPER SIZE: A3 DATE: Dec 2020

DWG No. **4458-01-005** REV. ----



## Appendix 2.

01. Hours of construction work on site 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 only take place between the hours of 07:30 and 19:00 Mondays to Fridays, 09:00 to 17:00 Saturdays, and not at all on Sundays or the Christmas or New Year Public Holidays, unless otherwise agreed, in writing, with the Planning Authority.

Reason: To safeguard the amenity of nearby residents.

02. No development shall commence until a Mitigation Plan is submitted to, and approved in writing by, the Planning Authority. This Mitigation Plan shall include a site plan and written strategy for all site mitigation, including but not limited to:

- Excavation and backfilling of the pipe trench, temporary storage of materials, and measures to limit the area of all plant movement associated with the excavation.
- Full details of the specification and location of the root barrier, including a wayleave strip of maximum width 4 metres.
- Pruning works to make good all damage to trees which have been retained and are still alive.
- The planting location, species, height and stem circumference of not less than 10 'standard' trees.
- The planting location, species, height and location of not less than 40 trees.
- Timing/schedule of all tree planting, not later than the first winter following commencement of works.
- Full details of methods of planting, aftercare/protection and remedial measures should any trees die or be damaged.
- Measures to monitor, treat and eradicate salmonberry from the woodland, including completion point.
- Measures to make good all ground habitat.
- Confirmation of all parties who will enter Council land to carry out the works.

Thereafter, all mitigation shall be carried out in accordance with the terms and details of the approved Mitigation Plan, unless otherwise agreed in writing by the Planning Authority.

Reason: To ensure adequate mitigation measures are submitted and subsequently carried out as approved, to make the overall impact of the development acceptable.

NOTE: No plant shall enter the application site, or any works carried out until all the above details are submitted and approved.