

## Item: 4.4

Planning Committee: 26 April 2023.

### Erect Workshop (Class 5) and Extend Slipway (Resubmission of 22/249/PP) at Burray Boatyard, Burray.

Report by Corporate Director for Neighbourhood Services and Infrastructure.

## 1. Summary

### 1.1.

Burray boatyard is located within the village of Burray, accessed from Pier Road to the east of the Sands Hotel. There is a long-established history of boatbuilding and marine engineering at the site, with the current business following the previous Duncan's Boatyard including vessel movements across the public road. It is proposed to erect a new workshop adjoining the east of the existing boatshed, in addition to extending landward elements of the current slipway, including works to surface a section of the public road with reinforced concrete to facilitate access from the sea to the boatshed. The footprint and external appearance of the proposed new boatshed is generally comparable to the existing boatshed, with elevated eaves and ridge height. A Travel Management Plan has been submitted in support of the proposed development. Representations both in support and in objection to the application have been received, with objections not considered to have sufficient weight to merit refusal. There are no matters raised by consultation bodies that cannot be addressed by planning conditions. The application is considered to accord with relevant policies of the Orkney Local Development Plan 2017 and the provisions of the National Planning Framework 4. Accordingly, the application is recommended for approval.

Application Number:	22/451/PP.
Application Type:	Planning Permission.
Proposal:	Erect a workshop (Class 5) and extend slipway including resurfacing section of public road (resubmission of 22/249/PP).
Applicant:	Burray Boatyard.
Agent:	Mr Allan Reid, AR Structural Design Ltd, Chaos, Petertown Road, Orphir, KW17 2RE.

### 1.2.

All application documents (including plans, consultation responses and representations) are available for members to view [here](#) (click on "Accept and

Search” to confirm the Disclaimer and Copyright document has been read and understood, and then enter the application number given above).

## **2. Consultations**

### **2.1. Roads Services**

Roads Services comments are principally in relation to the section of public road proposed to be resurfaced with reinforced concrete, between the proposed boatshed and existing slipway, the location and repositioning of a street lighting column, appropriate surface water drainage and traffic management. The use of reinforced concrete to form the surface of the carriageway is exceptional and would ordinarily be resisted by Roads Services; however, the functionality of the surface is required given the movement of plant and boats between the boatshed and sea. These matters have all been addressed and Roads Services confirmed no objection, subject to appropriate conditions attached to an approval.

### **2.2. Environmental Health**

No adverse comments. Further clarification was sought with regards amenity matters raised through representations. Environmental Health confirmed through further response that matters including hours of work/goods vehicle movements, fixed plant and machinery and external lighting can be appropriately controlled by planning condition.

### **2.3. Scottish Water**

No objection.

## **3. Representations**

### **3.1.**

Eight representations have been received: five in support and three in objection to the proposed development.

### **3.2.**

The three objections have been received from:

- Mr John Corsie, South Manse, Burray, KW17 2SS.
- Rosalind Johansson, Watersound Flat, Burray, KW17 2SS.
- Mr Adam Moore, Mayfield, Burray, KW17 2SX.

### **3.3.**

The objections are on the following grounds:

- The scale and dominance of the proposed building within its context.
- The appearance and residential character of the area.
- Overshadowing and loss of natural light to neighbouring residential properties.

- Noise impact from boatbuilding/engineering activities.
- Road closures owing to the movement of boats across the public carriageway.
- Traffic levels resulting from the expansion of the business.
- Outdated map layers submitted with the application, potentially misleading in relation to residential development in the area.

### 3.4.

Representations in support of the development have been received from:

- Mr Robin Duncan, Ashley Cottage, Burray.
- Mrs Julie Hepworth, Rigini, Burray.
- Mr Roger Jackson, Sandy Hook, Burray.
- Mr Leo Kerr, The Workshop, Burray.
- Ms Kathleen McGlinchey, Burray.

### 3.5.

The representations in support of the application note that:

- The boatyard is well established, being at the location more than 50 years.
- The extent and nature of buildings on the site has changed over time, and the proposed building together with the existing building would occupy a lesser footprint than previous buildings on site.
- The business provides a local service and employment.
- Noise and inconvenience through works and movements of vessels across the public road have been of limited duration and have not caused significant concern.
- The settlement is not wholly residential and has various commercial uses.

## 4. Relevant Planning History

Reference	Proposal	Location	Decision	Date
14/498/PP	Change of use from bus depot and builders yard to industrial workshop and boatyard.	Briarlea (Land Near), Village Road, Burray, KW17 2SS.	Granted subject to conditions	04.02.2015
08/300/PPF	Construct a coastal protection scheme.	Burray Boatyard, Burray.	Granted subject to conditions	09.02.2009

## 5. Relevant Planning Policy and Guidance

### 5.1.

The full text of the Orkney Local Development Plan 2017 and supplementary guidance can be read on the Council website [here](#).

## **5.2.**

The key policies, supplementary guidance and planning policy advice listed below are relevant to this application:

- Orkney Local Development Plan 2017:
  - The Spatial Strategy.
  - Policy 1 – Criteria for All Development.
  - Policy 2 – Design.
  - Policy 3 – Settlements, Town Centres and Primary Retail Frontages.
  - Policy 4 – Business, Industry and Employment.
  - Policy 9 – Natural Heritage and Landscape.
  - Policy 12 – Coastal Development.
  - Policy 13 - Flood Risk, SuDS and Waste Water Drainage.
  - Policy 14 – Transport, Travel and Road Network Infrastructure.
- Supplementary Guidance:
  - Settlement Statements (2017)
- Planning Policy Advice:
  - Amenity and Minimising Obtrusive Lighting (2021).
- National Planning Framework 4.

## **6. Legal Aspects**

### **6.1.**

Section 25 of the Town and Country Planning (Scotland) Act 1997 as amended (the Act) states, “Where, in making any determination under the Planning Acts, regard is to be had to the development plan, the determination is, unless material considerations indicate otherwise...to be made in accordance with that plan...”

### **6.2.**

Annex A of Planning Circular 3/2013: ‘development management procedures’ provides advice on defining a material consideration, and following a House of Lord’s judgement with regards the legislative requirement for decisions on planning applications to be made in accordance with the development plan, confirms the following interpretation: “If a proposal accords with the development plan and there are no material considerations indicating that it should be refused, permission should be granted. If the proposal does not accord with the development plan, it should be refused unless there are material considerations indicating that it should be granted.”

### **6.3.**

Annex A continues as follows:

- The House of Lord's judgement also set out the following approach to deciding an application:
  - Identify any provisions of the development plan which are relevant to the decision.
  - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies.
  - Consider whether or not the proposal accords with the development plan.
  - Identify and consider relevant material considerations for and against the proposal.
  - Assess whether these considerations warrant a departure from the development plan.
  
- There are two main tests in deciding whether a consideration is material and relevant:
  - It should serve or be related to the purpose of planning. It should therefore relate to the development and use of land.
  - It should relate to the particular application.
  
- The decision maker will have to decide what considerations it considers are material to the determination of the application. However, the question of whether or not a consideration is a material consideration is a question of law and so something which is ultimately for the courts to determine. It is for the decision maker to assess both the weight to be attached to each material consideration and whether individually or together they are sufficient to outweigh the development plan. Where development plan policies are not directly relevant to the development proposal, material considerations will be of particular importance.
  
- The range of considerations which might be considered material in planning terms is very wide and can only be determined in the context of each case. Examples of possible material considerations include:
  - Scottish Government policy and UK Government policy on reserved matters.
  - The National Planning Framework.
  - Designing Streets.
  - Scottish Government planning advice and circulars.
  - EU policy.
  - A proposed strategic development plan, a proposed local development plan, or proposed supplementary guidance.
  - Guidance adopted by a Strategic Development Plan Authority or a planning authority that is not supplementary guidance adopted under section 22(1) of the 1997 Act.
  - Community plans.
  - The environmental impact of the proposal.

- The design of the proposed development and its relationship to its surroundings.
- Access, provision of infrastructure and planning history of the site.
- Views of statutory and other consultees.
- Legitimate public concern or support expressed on relevant planning matters.
- The planning system operates in the long term public interest. It does not exist to protect the interests of one person or business against the activities of another. In distinguishing between public and private interests, the basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings which ought to be protected in the public interest, not whether owners or occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development.

#### **6.4.**

Where a decision to refuse an application is made, the applicant may appeal under section 47 of the Act. Scottish Ministers are empowered to make an award of expenses on appeal where one party's conduct is deemed to be unreasonable. Examples of such unreasonable conduct are given in Circular 6/1990 and include:

- Failing to give complete, precise and relevant reasons for refusal of an application.
- Reaching a decision without reasonable planning grounds for doing so.
- Not taking into account material considerations.
- Refusing an application because of local opposition, where that opposition is not founded upon valid planning grounds.

#### **6.5.**

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

### **6.6. Status of the Local Development Plan**

Although the Orkney Local Development Plan 2017 is “out-of-date” and has been since April 2022, it is still a significant material consideration when considering planning applications. The primacy of the plan should be maintained until a new plan is adopted. However, the weight to be attached to the Plan will be diminished where policies within the plan are subsequently superseded.

### **6.7. Status of National Planning Framework 4**

#### **6.7.1.**

National Planning Framework 4 (NPF4) was adopted by Scottish Ministers on 13 February 2023, following approval by the Scottish Parliament in January 2023. The statutory development plan for Orkney consists of the National Planning Framework and the Orkney Local Development Plan 2017 and its supplementary guidance. In the event of any incompatibility between a provision of NPF4 and a

provision of the Orkney Local Development Plan 2017, NPF4 is to prevail as it was adopted later. It is important to note that NPF4 must be read and applied as a whole, and that the intent of each of the 33 policies is set out in NPF4 and can be used to guide decision-making.

### **6.7.2.**

In the current case, there is not considered to be any incompatibility between the provisions of NPF4 and the provisions of the Orkney Local Development Plan 2017, to merit any detailed assessment in relation to individual NPF4 policies.

## **7. Assessment**

### **7.1. Background and Proposal**

#### **7.1.1.**

The site is accessed from Pier Road and is located to the east of the Sands Hotel, addressing the coast to the south, as indicated in the location plan attached as Appendix 1 to this report. A carpentry business is based adjacent to the north of the site. The character of the area is therefore mixed use. Burray has a longstanding history and tradition of boatbuilding and marine engineering, with Duncan's Boatyard previously occupying the site. The proposed boatshed would be adjoined to the west of the existing boatshed on an area of hardstanding. The extension and resurfacing of a section of Pier Road is proposed with reinforced concrete, to facilitate manoeuvring vessels between the proposed boatshed and the sea.

#### **7.1.2.**

The proposed boatshed is portal frame construction of gable ended form with dwarf concrete walls, profiled metal sheets to the roof and most of the walls, with near full height central sliding doors to seaward, south gable, and a pedestrian door on the same elevation. A centrally positioned roller shutter door is to landward, north gable, again with pedestrian door to one side. Centrally located single windows would be included in each bay between the frame sections on the west elevation with two windows on both planes of the roof. A row of roof-mounted solar panels is proposed beneath the line of the rooflights on the west plane of the roof. The height to eaves is 6.760 metres, slightly higher than the existing adjoined boatshed, 9.975 metres to ridge with a footprint of 371.01 square metres. The shed would be located 13.224 metres from the west boundary of the site.

#### **7.1.3.**

External works include formation of a concrete apron and resurfacing of a section of Pier Road with reinforced concrete. The proposed extent of concrete finish would adjoin at an angle into both the existing concrete surfacing fronting the existing boatshed and slipway. A street lighting column would be repositioned.

## **7.2. Design and Appearance**

### **7.2.1.**

The design and appearance of the proposed boatshed would be consistent with the existing boatshed albeit taller than the existing building. This is anticipated to create an imposing frontage, comprising two significantly scaled gables facing the sea with distinctive large sliding doors. However, this is the scale, form and utilitarian detailing expected for boatsheds.

### **7.2.2.**

Key to the consideration of design and appearance is the context in which a proposed development is set. In this case the proposed development is directly related to the use and function of a commercial boatyard. Whilst it is accepted that the scale of the proposed building is significant in relation to nearby residential properties, many of which are single or one and a half storeys in height, the overall character of the area is mixed, noting the boatyard, the existing boatshed and the commercial character of the pier and slipway. The proposed development is considered adequately in-keeping with the design and appearance of its immediate context. It is therefore considered that the proposed development complies with Policy 1: Criteria for All Development and Policy 2: Design.

## **7.3. Residential Amenity**

### **7.3.1.**

The site of the proposed development is historically linked to boatbuilding, with surrounding uses including the Sands Hotel, historically a herring station, and linked to the use of the boatyard site for repair of vessels, as well as a joinery workshop and residential properties. The area is neither allocated nor safeguarded within the Settlement Statement for Burray for any given use.

### **7.3.2.**

Representations have noted amenity concerns and are a mix of acceptance of current activities but state concern regarding potential future operations, and others which raise concern regarding the existing operation and state that this could be exacerbated. Environmental Health has advised no record of any noise complaints relating to Burray Boatyard. Additional comment was sought from Environmental Health following receipt of objections on amenity grounds. Environmental Health advised that planning conditions be applied to the proposed development to align operations with the existing boatyard in terms of noise and disturbance, and on that basis Environmental Health has no objection or further comment.

### **7.3.3.**

Matters raised within objections also note the potential for overshadowing and loss of natural light. The nearest neighbouring residential property is Beachview, approximately 27 metres to the west of the site on the opposite side of Pier Road and which has shrubs and semi-mature trees within its grounds. The property Myrtledene is located to the rear, north, of Beachview, and has an otherwise open



aspect to the south and is approximately 30 metres from the proposed shed. Briarlea is 37 metres to the north-east. Whilst the proposed boatshed would be a significant new structure in relation to these properties, potentially having significant visual impact in seaward views, it is not considered that the structure would result in any substantive loss of natural light given the physical separation from the proposed development.

#### **7.3.4.**

The site is considered capable of accommodating the development whilst protecting neighbouring properties from unacceptable amenity impacts. It is therefore considered that subject to appropriate working practices and planning conditions as advised by Environmental Health, the development would be acceptable in relation to amenity impacts and as such is compliant with Policy 1: Criteria for All Development.

### **7.4. Access and Road Safety**

#### **7.4.1.**

Due to the long commercial history at the site, access between the boatyard and the slipway across the public road is long established.

#### **7.4.2.**

Bituminous surfacing on Pier Road has been found less resistant to the wear and tear of the movement of plant, equipment and boats relating to the function of the boatyard. This has led to an exceptional accepted use of reinforced concrete as a surfacing material on a section of the public road fronting the boatshed. This would be expanded, in turn impacting a street lighting column and roadside drainage. A Traffic Management Plan has been provided by the applicant as supporting information, in addition to consideration of the detailed specification and extent of the reinforced concrete.

#### **7.4.3.**

Representations have raised concerns regarding traffic volumes and the inconvenience of temporary road closures attributed to the proposed development. The Traffic Management Plan provides detail indicating that limited disruption occurs in the movement of vessels up to five tonnes, given that these can be moved with an appropriate vehicle and trailer, typical of movements expected in the vicinity of a slipway. The developer has stated that a banksman – an operative trained to direct vehicle/traffic movement on or around a site – would be used in such cases and that no significant disruption or closure of the road would be required.

#### **7.4.4.**

For vessels over five tonnes the movement of vessels is more involved, including use of a winch, and whilst not specified in the Traffic Management Plan, is anticipated to require approximately 10 to 20 minutes. This would require a temporary closure of Pier Road for the duration of such works, for which the use of appropriate barriers and signage would be necessary to protect road and public

safety, as specified in the Traffic Management Plan which also. Given the scale of the existing boatyard and the increase in capacity which would result from the proposed development, it is not considered that the increase in traffic or inconvenience of temporary road closures of up to 20 minutes is so significant that the application should be refused, noting that Roads Services has no objection.

#### **7.4.5.**

Following consideration by Roads Services, the proposed use and proposed increase in extent of reinforced concrete in the public road are considered acceptable subject to appropriate planning conditions including requirement to remove the reinforced concrete and resurfacing of the section of public road following cessation of use. Full detail of any alteration of street lighting can be secured by planning condition. On balance, the proposed development is considered acceptable in relation to Policy 14: Transport, Travel and Road Network Infrastructure.

### **7.5. Business, Industry and Employment**

#### **7.5.1.**

As noted through this report, the application site forms part of an established boatyard. The proposed development relates to the ongoing use of the site and would allow a greater variety and scale of vessels to be handled than currently. Policy 4: Business, Industry and Employment supports the principle of expanding existing businesses in appropriate locations and within settlements. In addition, the proposed development also benefits from a specific locational requirement given its proximity to the sea.

#### **7.5.2.**

Objections include that the boatyard is within a settlement that is typically residential and would detract from the residential amenity of the area. Whilst the wider character of Burray is residential, this does not exclude expansion of an existing business within an established site, and which can be accommodated without significant or unacceptable impacts on neighbouring uses. Other non-residential uses operate in the immediate vicinity of the boatyard, noting the hotel and a joinery business immediately adjacent.

### **7.6. Flood Risk, Foul and Surface Water Drainage**

#### **7.6.1.**

The site is identified as at risk of coastal flooding, based on flood mapping. The nature and use of the proposed structure is such that proximity to the sea is an obvious operational requirement for the practical use and function as a boatyard. The design of the boatshed is such that no accommodation or office space would be created, rather a large and open space. In consideration of SEPA: Flood Risk and Land Vulnerability Guidance, the development would be considered as a water compatible use.

### 7.6.2.

No additional foul drainage provision is identified within the proposed development. Surface water drainage is proposed to utilise existing infrastructure, with no additional drainage infrastructure proposed, noting the proximity of the development to the sea. The application is therefore considered acceptable in consideration of Policy 13: Flood Risk, SuDS and Waste Water Drainage.

## 7.7. Other Matters

The base mapping used by the agent for the application submission was raised in objection, specifically the location plan which did not include some relatively recent properties in the vicinity of the proposed development. This was raised with the agent and a revised location plan was provided. The location plan under consideration meets validation standards to allow the application to be processed, including that it clearly defines the extent of the application site in relation to its surroundings whilst providing sufficient detail to allow any interested party to be able to locate the development.

## 8. Conclusion and Recommendation

The principle of expanding existing businesses and creating new businesses in appropriate locations is supported. The site is an established business, situated adjacent to other commercial uses. The nature of the business has an obvious locational requirement given accessibility to the sea. It is acknowledged that some works may result in amenity concerns including noise, or some inconvenience in terms of the flow of traffic on the public road. Including advice contained in consultation responses, it is considered that all relevant matters can be adequately addressed by planning condition. The application is considered to comply with provisions of National Planning Framework 4 and Policies 1, 2, 3, 4, 9, 12, 13 and 14 of the Orkney Local Development Plan 2017. Objections are of insufficient weight to warrant refusal. Accordingly, the application is **recommended for approval**, subject to the conditions attached as Appendix 2 to this report.

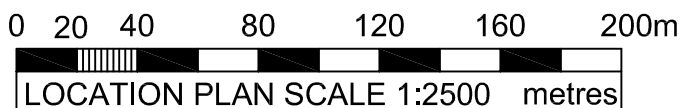
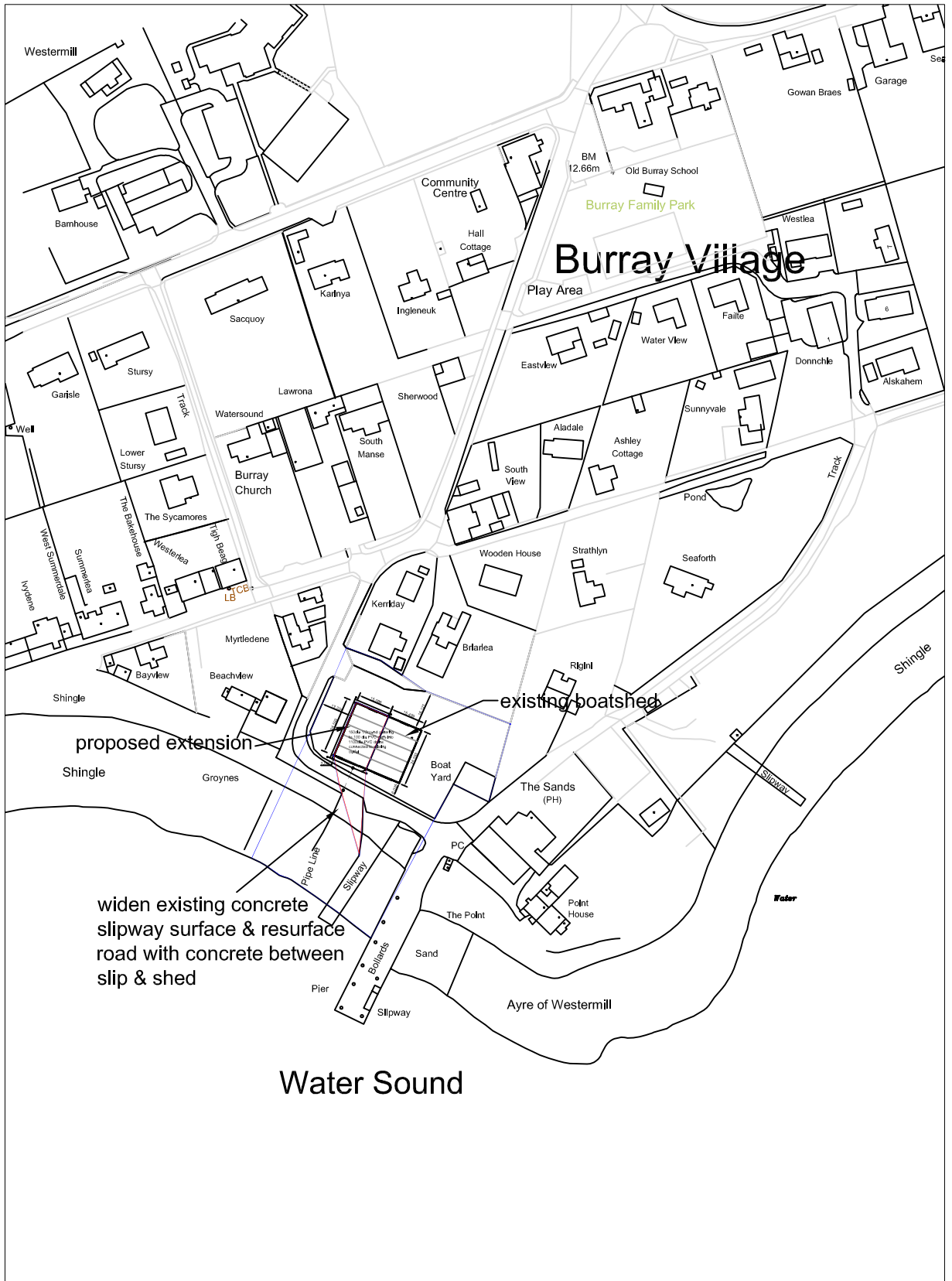
## 9. Contact Officer

David Barclay, Senior Planner (Development Management), Email [david.barclay@orkney.gov.uk](mailto:david.barclay@orkney.gov.uk)

## 10. Appendices

Appendix 1: Location Plan.

Appendix 2: Planning Conditions.



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## Appendix 2

01. The development hereby approved to which this planning permission relates must be begun not later than the expiration of three years, beginning with the date on which the permission is granted, which is the date of this decision notice. If development has not commenced within this period, this planning permission shall lapse.

Reason: In accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997, as amended, which limits the duration of planning permission.

02. No other development shall commence until a fully detailed street lighting design in accordance with BS 5489 and EN13201 has been submitted to, and approved in writing by, the Planning Authority, in consultation with Roads Services. Thereafter the approved streetlighting design shall be installed in accordance with the approved detail prior to any other development work commencing on site.

Reason: In the interest of safety and for the avoidance of doubt.

03. Prior to the first use of the development hereby approved the sections of reinforced concrete indicated as (b) and (c) on the hereby approved Site Plan, drawing reference 'Proposed extension to boat repair shed at Burray Boatyard KW17 2SS Site Plan date 22/11/22 revA' 17/1/23', shall be constructed fully in accordance with the reinforced concrete details and Note 3 on the plan to ensure that all existing services and surface water drainage are adequately accommodated and operational. The reinforced concrete slab shall be constructed in accordance with Note 4 on the site plan, to ensure that access is always maintained to the pier and properties during the construction and curing of reinforced concrete area.

The hereby approved reinforced concrete slab shall thereafter be maintained in a safe and serviceable manner acceptable to the Planning Authority, in consultation with Roads Services, throughout the lifetime of the development.

Reason: In the interest of road safety and for the avoidance of doubt.

04. Within six months of the date of cessation of use as a boatyard, the reinforced concrete area hereby approved and the existing reinforced concrete within the public road shall be removed, with both areas reinstated to the Council's Roads Services standard detail for road construction, as attached, to the satisfaction of the Planning Authority, in consultation with Roads Services.

Reason: To ensure that the road surface is returned to a typical adoptable road standard upon cessation of the approved development. This is in recognition of the exceptional circumstance and requirement for deviation from the typical Roads Services standard.

05. Throughout the lifetime of the development hereby approved, all surface water within the application site area shall be treated in accordance with the principles of Sustainable Drainage Systems (SuDS) and be compliant with the guidance set out in CIRIA's SuDS Manual C753. Requisite surface water drainage shall be operational prior to first occupation of the development 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 runoff to the public road or adjacent land.

Reason: To ensure the provision of an adequate surface water drainage system and to accord with Policy 13B: Sustainable Drainage Systems (SuDS) of Orkney Local Development Plan 2017.

06. Any exterior lighting employed on the development hereby approved shall be so positioned, angled and controlled to prevent any direct illumination, glare or light spillage outwith the site boundary. The use of automatic cut-out or sensor operated external lighting of limited timed illumination is advocated.

Reason: To ensure that any lighting installed within the application site does not spill beyond the intended target area, does not impact adversely upon the amenity of adjacent properties and does not result in 'sky glow'.

07. There shall be no vehicle deliveries to, or the unloading or loading of delivery vehicles, or vessel movements, within the application site outwith the hours of 08:00 to 18:00 Mondays to Fridays, and 08:30 to 13:00 on Saturdays, with no noisy activities or goods vehicle movements, including vessel movements, outside these hours or on Sundays/Bank Holidays, unless otherwise approved, in writing, by the Planning Authority as an exceptional instance for operating outwith these hours.

Reason: In order to safeguard the amenity of neighbouring properties and occupants.

08. No fixed plant or machinery (e.g., extract ventilation plant, etc.) shall be installed as part of the fabric of the building or in the grounds of the site without further application to the Planning Authority.

Reason: In order to safeguard the amenity of neighbouring properties and occupants and for the avoidance of doubt.

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 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.

There shall be no bonfires or other open fires allowed on site at any time.

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.