

**Item: 5**

**Planning Committee: 25 June 2025.**

**Proposed Erection of 66 Houses and Flats, Creation of Access,  
Construction of Road and Associated Infrastructure and Landscaping  
on Land near New Scapa Road, Kirkwall.**

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

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## **1. Overview**

- 1.1. This report considers a major housing application to erect 66 houses and flats with air source heat pumps, create an access, construct a road, surface water drainage basin, and associated services, infrastructure and landscaping on land near New Scapa Road, Kirkwall. The site lies within the Kirkwall settlement boundary and is allocated for housing development (allocation K9). Two valid representations (objections) have been received. Engineering Services has also objected.
- 1.2. This report is not a policy assessment, as would normally be the case for a planning application reported to the Planning Committee. In this case, the application has been subject to a formal request for further information. Under the provisions of Regulation 24 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, planning authorities can require applicants to provide any additional information required to assess the application. Such a request has been made, principally in relation to hydrogeological and hydrological assessment. Failure to provide any such information is regarded a technical deficiency, and an application can be refused on this basis.
- 1.3. The applicant was provided until 30 June 2025 to provide the information requested. It has been indicated that the information will not be prepared by that time, and so the application would be refused.
- 1.4. As a 'major' planning application, it must be determined by the Planning Committee, even on grounds of technical deficiency. The applicant confirmed a preference that the decision should not be delayed until the next scheduled meeting of the Planning Committee in August 2025, and has confirmed in writing that the recommendation for refusal on technical deficiency grounds be reported to this meeting.

- 1.5. Refusal of the application would be without prejudice to resubmission of the application, allowing for the hydrogeological and hydrological information to be provided and fully assessed under any such future application.

|                        |  |
|------------------------|--|
| Application Reference: | 24/160/PPMAJ.  |
| Application Type:      | Planning Permission – Major Development.             |
| Proposal:              | New Scapa Road (Land Near) (K9), Kirkwall, Orkney.   |
| Applicant:             | Orkney Builders (Contractors) Ltd.                   |
| Agent:                 | Bracewell Stirling, 5 Ness Bank, Inverness, IV2 4SF. |

- 1.6. All application documents (including plans, consultation responses and valid 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. Recommendation

- 2.1. It is recommended that members of the Committee:
- i. Refuse the application in respect of the proposed erection of 66 houses and flats and associated works on land near New Scapa Road, Kirkwall, on grounds of technical deficiency, due to failure to submit principally hydrogeological and hydrological information required in order to assess the application, as required under Regulation 24 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013.

## 3. Consultations

### Roads Services

- 3.1. No consultation response received.

### Scottish Water

- 3.2. “Scottish Water has no objection to this planning application.”

### Scottish Environment Protection Agency

- 3.3. “Following the provision of further information, we are now in a position to withdraw our objection to this application which was on flood risk grounds. Please note the advice provided below.

## Flood risk

The Flood Risk Assessment (FRA) has been updated (Cameron & Ross, 221037-000-July 2024 Version 1.0 dated 03/09/2024) to include information to address our previous concerns.

The modelling has been extended upstream to capture the flood risk from the small watercourses east of New Scapa Road, which drain to the Easdale Burn. Modelling indicates that these are likely to exceed the capacity of the culverts they drain to before reaching the Easdale Burn. However, flow pathways indicated within the FRA show that these are not likely to impact on the proposed development with flood water ponding upstream of the site or being confined to the northern most part of the site and not impacting at the location of the proposed dwellings.

Additional information has also been provided on the new crossing proposed for the water treatment works. We accept that the coastal flood level used to determine design levels on site is higher than the proposed crossing and as such a blockage of this structure will not result in a higher overall design level.

We are satisfied that the design levels used within the site, based on the 1 in 200 year including climate change coastal levels, are the more precautionary. The site layout has been designed to avoid any development, or associated landraising, being located within the flood risk area, as determined by the coastal flood level. Finished floor levels have been set to provide more than the required 0.6m freeboard. We are therefore able to remove our objection to this development.”

## **Engineering Services**

### 3.4. Summary of OIC Engineering comment regarding flood risk:

- With further information needed on the flow of groundwater at the proposed development, including how levels and flow vary throughout the year, it is not possible [to] assess effect of groundwater on flood risk.
- We have asked the Roads Authority for comment regarding the suitability of the daily traffic rate from the Traffic Assessment provided. Should it be considered, as suggested by Aegaea it may be, that the appropriate traffic rate exceeds 300 vehicles per day, then it is likely that an amendment to the drainage design and arrangement would be required to provide the enhanced treatment required.
- If an oil interceptor (or interceptors) was to be included in stormwater drainage, as recommended by Stephen Buss Environmental Consulting, then the drainage design and arrangement would need to be amended.

- Overland flow routes in the event of exceedance or failure of elements of the proposed surface water drainage system should be provided.
- In view of the above we do not currently have all the information needed to assess the effect of the proposed development on flood risk inside or outside the development site.”

### **Education, Leisure and Housing**

- 3.5. “All development in any community will have an impact on school roll, which means we consider the development plan and assess likely need (or ‘pupil yield’) arising from each proposal.

We remain mindful that overall the data indicates a small fall in total roll, which in itself creates new capacity, and in some areas this will be sufficient to cater for ‘new’ pupil demand created by any proposed development.

In Kirkwall we are tracking proposals as development comes on line. The town is served by two primary schools, with catchment areas being broadly Kirkwall East and Kirkwall West. It is unlikely (although not impossible) that proposals to change the catchment areas will be brought forward as neither school is projected to have excess capacity in the future.

However, Glaitness School in particular is at or very close to capacity and this is currently the subject of work and (in due course) a report/proposals to Council.

It maybe that consideration should be given to the contribution developers can make to the infrastructure in this context.”

### **Islands Archaeologist**

- 3.6. I am satisfied that the archaeological works conducted, and the reports on these archaeological works commissioned by the applicant and uploaded to the OIC Planning Portal on 23 August 2024, fulfil the recommendations for an archaeological geophysical survey across the proposed development site, followed by archaeological evaluation trenching to groundtruth any geophysical anomalies, and to assess the potential for any significant remains not identified by the geophysics that may require further archaeological investigation.

I therefore have no further recommendations to make.”

## 4. Representations

4.1. Two valid representations (objections) have been received from:

- Sara Campbell, 2 Royal Oak Road, Kirkwall, KW15 1RF.
- Highland Distillers Ltd., c/o Brodie's House, 31-33 Union Grove, Aberdeen, AB10 6SD.

4.2. Representations objecting to the application raised the following matters:

- Loss of rural and natural character of the area and impact on landscape.
- Loss of green space and biodiversity.
- Scale and density are out of character.
- The site is flood-prone and damp.
- Impact on the safety of road users due to traffic and road width.
- Noise pollution.
- Hydrological and hydrogeological assessments deemed inadequate.
- Assessments do not demonstrate that there will be no unacceptable impacts on the Highland Park Distillery water sources.
- Responsibility for addressing environmental impacts would be shifted to the distillery operation, in direct conflict with the agent of change principle.
- Groundworks are proposed upstream, in the catchment feeding distillery water sources, and potential impact has not been properly assessed.
- Threat to the quality and quantity of water vital for distillery operations.
- The impact assessments are inadequate in terms of water quality, water quantity, or surrounding environmental receptors.
- Failure to accord with the Orkney Local Development Plan Policy 9D.
- Failure to accord with the Kirkwall South Development Brief.
- Failure to accord with the National Planning Framework 4 Policy 15.
- No cumulative impact assessment to consider the combined effects with other nearby developments (including sites K8–K11, the Forelands Road, and Balfour Hospital) on water catchment.
- Construction and post-construction change, which may allow for the contamination or the reduction of water recharge.

## 5. Relevant Planning History

### 5.1. Planning applications

| Reference  | Proposal   | Location   | Decision             |  |
|------------|--|--|----------------------|--|
| 24/211/PP. | Construction of a wastewater pumping station and access track including bridge crossing, and create an access. | Land West Of Easdale Burn, New Scapa Road, Kirkwall, Orkney. | Under consideration. |  |

## 6. Relevant Planning Policy and Guidance

- 6.1. The full text of the Orkney Local Development Plan 2017 and supplementary guidance can be read on the Council website [here](#).
- 6.2. National Planning Framework 4 can be read on the Scottish Government website [here](#).
- 6.3. The key policies, supplementary guidance and planning policy advice listed below are relevant to this application:
  - National Planning Framework 4 (NPF4):
    - Policy 3- Biodiversity
    - Policy 7. Historic assets and places.
    - Policy 13. Sustainable transport.
    - Policy 14. Design, quality and place.
    - Policy 15. Local living and 20-minute neighbourhoods
    - Policy 16. Quality Home
    - Policy 22. Flood risk and water management.
  - Orkney Local Development Plan 2017 (OLDP):
    - Policy 1 - Criteria for All Development.
    - Policy 2 - Design.

- Policy 5 - Housing.
- Policy 8 - Historic Environment and Cultural Heritage.
- Policy 9 - Natural Heritage and Landscape.
- Policy 10 - Green Infrastructure.
- Policy 11 - Outdoor Sports, Recreation and Community Facilities.
- Policy 13 - Flood Risk, SuDS and Waste Water Drainage.
- Policy 14 - Transport, Travel and Road Network Infrastructure.
- Policy 15 - Digital Connectivity.
- Supplementary Guidance and Planning Policy Advice:
  - Planning Policy Advice ‘Planning Policy Advice: Amenity and Minimising Obtrusive Lighting (2021).
  - Kirkwall South Development Brief.

## 7. Legislative Position

- 7.1. 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...”
- 7.2. Annex A of Planning Circular 3/2013: ‘development management procedures’ provides advice on defining a material consideration, and following a House of Lords’ 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.”
- 7.3. Annex A continues as follows:
- The House of Lords’ 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 local development plan or proposed supplementary guidance.
  - 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.
- 7.4. 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.
- 7.5. An award of expenses may be substantial where an appeal is conducted either by way of written submissions or a local inquiry.

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

- 7.6. 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.

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

- 7.7. 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 NPF4 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.

- 7.8. 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.

## **8. Assessment**

- 8.1. As noted in section 1 above, permission is sought for the proposed erection of 66 houses and flats with air source heat pumps, creation of an access, construction of a road and surface water drainage basin, and associated services, infrastructure and landscaping in the allocated site K9, on the south edge of Kirkwall, as indicated in the Location Plan attached as Appendix 1 to this report. K9 is between New Scapa Road to the east and the Crantit Burn, Crantit Lagoons and Crantit footpath to the west, with Foreland Road and the Balfour to the north. Highland Park Distillery and its warehouse is uphill to the east. The land slopes down from east to west.
- 8.2. The Kirkwall South Development Brief (2016) covers this area and is a material consideration in the determination of any planning application within this area. The location of the Crantit Burn and Crantit Lagoons are highlighted in the development brief, including the critical nature of these as a main water supply for Highland Park Distillery. It is a requirement that any development must set out measures to control potential contamination of or disturbance to the water supplies, and specifically states, “No Planning Permission will be granted unless it can be demonstrated to the Planning Authority, in consultation with SEPA, that there will be no unacceptable effects to the quantity and quality of the water supply to Highland Park Distillery”.
- 8.3. A detailed objection has been submitted on behalf of the operator of Highland Park Distillery, including the points listed at section 4.2 above. In accordance with the development brief requirements, and in part to address these objections, further information has been requested from the applicant principally in relation to hydrogeological and hydrological assessment.
- 8.4. That information has been formally requested under the provisions of Regulation 24 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013. Failure to provide any such information is regarded a technical deficiency, and an application can be refused on that basis.
- 8.5. On 6 June 2025, the applicant provided written confirmation of their agreement to the application being determined at this stage as a refusal, with a view to future resubmission after survey and assessments are completed: “Given the further

ground investigation, modelling and design work required to address the comments in your letter, we would agree, as discussed in our call this morning, that it would be sensible for the application to be refused on technical grounds. This would then provide us with an opportunity to consult with your specialists and other relevant parties in the meantime to close out all the comments before resubmitting”.

- 8.6. The application is classed as a ‘major development’ as defined by The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009. In accordance with the Scheme of Delegation, the Appointed Officer cannot determine a major development. This application is therefore reported to the Planning Committee for determination.

## 9. Conclusion

- 9.1. The application is reported to the Planning Committee with a recommendation to refuse on grounds of technical deficiency, following a Regulation 24 formal request further information, and in written agreement with the applicant that the application be refused.

### **For Further Information please contact:**

Margaret Gillon, Senior Planner (Development Management), Email  
[margaret.gillon@orkney.gov.uk](mailto:margaret.gillon@orkney.gov.uk)

### **Implications of Report**

1. **Financial:** None.
2. **Legal:** Detailed in section 7 above.
3. **Corporate Governance:** In accordance with the Scheme of Administration, determination of this application is delegated to the Planning Committee.
4. **Human Resources:** None.
5. **Equalities:** Not relevant.
6. **Island Communities Impact:** Not relevant.
7. **Links to Council Plan:** Not relevant.
8. **Links to Local Outcomes Improvement Plan:** Not relevant.
9. **Environmental and Climate Risk:** None.
10. **Risk:** None.
11. **Procurement:** None.
12. **Health and Safety:** None.
13. **Property and Assets:** None.
14. **Information Technology:** None.
15. **Cost of Living:** None.

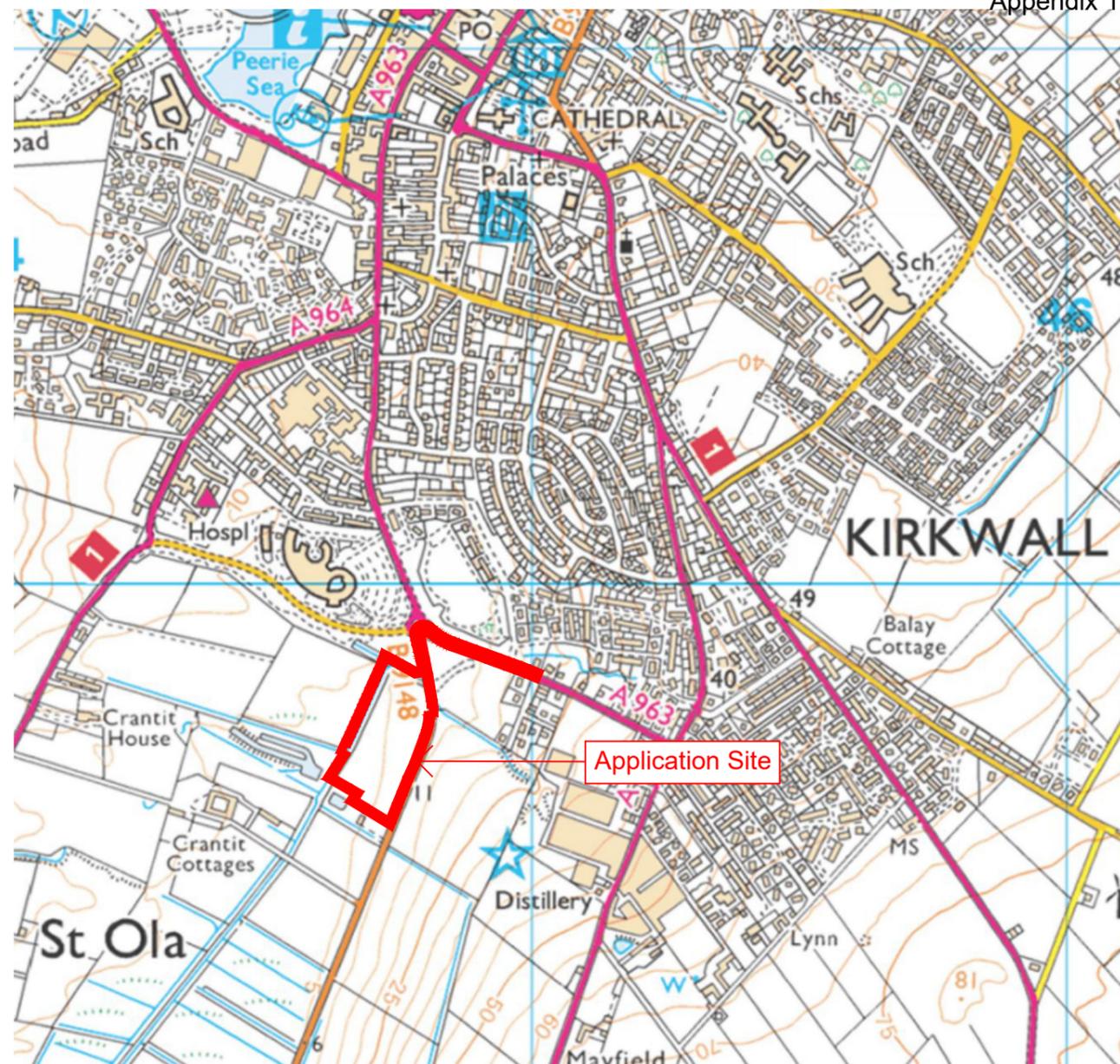
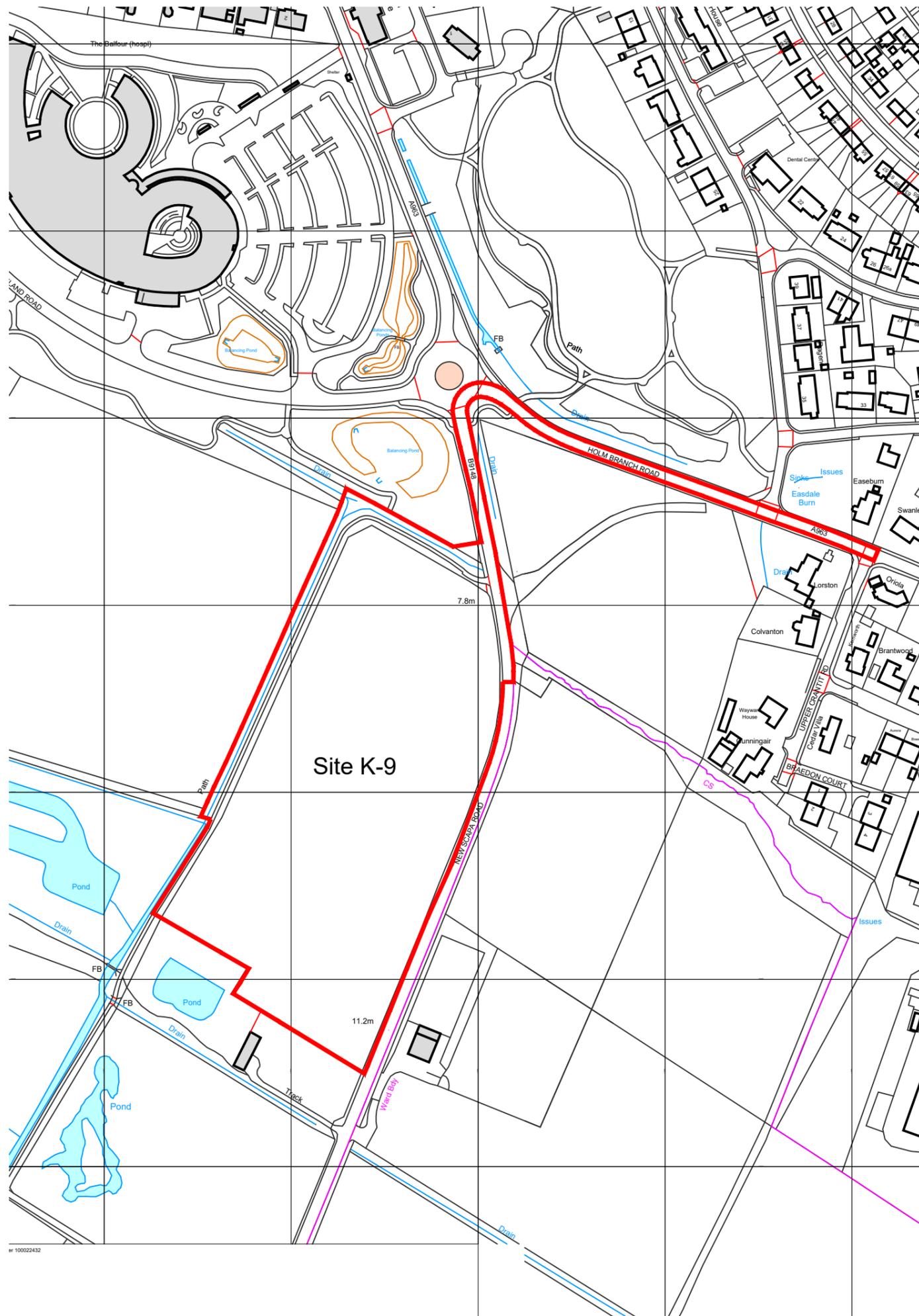
### **List of Background Papers**

Orkney Local Development Plan 2017, available [here](#).

National Planning Framework 4, available [here](#).

### **Appendix**

Appendix 1 – Location Plan.



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

## Bracewell Stirling CONSULTING

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

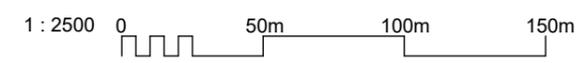
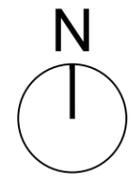
K9 KIRKWALL SOUTH  
 NEW SCAPA ROAD, KIRKWALL  
 ORKNEY BUILDERS LTD

### LOCATION PLAN

STATUS: **PLANNING**

SCALE: 1 : 2500 DRAWN: LMid  
 PAPER SIZE: A3 DATE: Dec 2023

DWG No. **4844-01-001** REV. -



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