



# Section 42 Statement

## South Esplanade West

THE200030

Port of Aberdeen

February 09, 2024



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## 1.0 INTRODUCTION AND PROPOSED VARIATION OF CONDITION

- 1.1 This application has been submitted under Section 42 of the of the Town and County Planning (Scotland) Act 1997 that determines applications to develop land without compliance with conditions previously attached.
- 1.2 Granting a permission under section 42 of the Act represents a new permission that is separate to the original permission so consideration to the changes in the development plan as it would affect the planning permission in principle are considered.
- 1.3 Condition 2 sets out features that are to be incorporated into any proposal for development. Criterion g) of this condition states that a minimum of 618 square metres of commercial floor space at ground floor level at the Victoria Bridge frontage and as a part of the buildings enclosing the central square and public realm is incorporated. This application seeks to reduce the minimum threshold of 618sqm to 575sqm to provide for flexibility. The proposal would be to vary Condition 2 g) to read:

**A minimum of 575 square metres of commercial floor space at ground level at the Victoria Bridge frontage and as part of the buildings enclosing the central square and public realm.**

- 1.4 This statement will explain in further detail the reasons for the requested change and as there has been a change to the Development Plan since the previous decision a review of the proposal and existing conditions has been considered.

## 2.0 BACKGROUND

- 2.1 Planning Permission reference 181702/PPP was granted consent on Appeal on 11 May 2021. This granted permission for a residential led development comprising 258 flats and 618 square metres of Class 1 (retail) space, enhanced riverside park and associated infrastructure. A copy of the decision notice is attached to Appendix 1.
- 2.2 The permission was granted on the basis of an indicative layout to consider the ability of the site to accommodate the scale of development proposed. The design of this and the final arrangement was subject primarily to Conditions 2 and 3, which effectively set out a design brief for compliance with. This covers matters such as provision of a central square for pedestrian use. In addition to this there are other conditions that deal with matters including flood risk, ecology, environmental management, trees, surface water drainage, noise, Electric vehicle charging and sustainable transport measures, building energy and efficiency and safe routes to school.

## 3.0 REASON FOR VARIATION

- 3.1 Condition 2 refers to commercial floor space, but approval has only been granted for flats and Class1 (retail). Commercial floor space within this condition is interpreted as being restricted to Class 1A.
- 3.2 The size of demand has changed since designs submitted previously. The expectation was for 618sqm total Class 1 floor area and there were three units identified. A convenience retailer or more secure tenant will be important to make the development the retail element viable. At the upper end of the potential demand then the 618sqm

could be achieved. However, the expectation, given the market and surrounding retailers, is that demand would be at the lower end of the 230-550sqm range. See Appendix 2 for marketing advice.

- 3.3 The Applicant has considered splitting the central area to 2 smaller units (2 x 60sqm), utilising the larger unit for a convenience store of 230sqm and splitting the units at the corner of S.Esplanade and Victoria Road to 2 x 75sqm. This provides 500sqm in total. There would be limitations on the available frontage to get any more than an additional single unit, which could provide an additional 93sqm. It is necessary to have some flexibility in the size of this additional unit and also allow for additional service access requirements within this.
- 3.4 In order to allow for the changed market expectations the applicant seeks to reduce the minimum threshold of 618sqm to 575sqm to provide for flexibility. The variation in Condition is important to the applicant in the marketing of the site and review of conditions that any developer would undertake.

#### 4.0 CONSIDERATION OF NEW DEVELOPMENT PLAN

- 4.1 Section 25 of the Town & Country Planning (Scotland) Act 1997 requires that applications are determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the Development Plan comprises the Aberdeen Local Development Plan (ALDP) 2023 and National Planning Framework 4 (February 2023). The application was determined against the Strategic Development Plan and Aberdeenshire Local Development Plan 2017, and a review of any changes is set out below. The following sections are structured considering firstly the principle of development of this site, then the aspects dealt with by conditions and then any other new matters not explicitly covered by conditions.

##### Principle of Development

- 4.2 Since the time of the application the only physical change to the site and surrounding area is that some of the buildings on the application site have now been demolished. The land at South Esplanade West is identified in the Local Development Plan as being part of OP106 and covered by a mixed use zoning as. Mixed use zones are covered by Policy H2 and there has been no change to the policy within the 2023 Local Development Plan. Appendix 2 of the LDP lists the site as Torry Waterfront City Centre Masterplan Intervention Area. Within the notes it states that

**“New residential development. New ground floor uses including Use Class 1 (Retail) and Use Class 3 (Food and Drink), Hotel Academy (Use Class 7). Pedestrian bridge linking into OP100 North Dee . Consider improvements to the riverside park and promenade. This development proposal will be subject to a Habitats Regulations Appraisal (HRA) in order to consider potential effects on the qualifying interests of the River Dee SAC. As part of this process an adequate Construction Environmental Management Plan (CEMP) may be required although it is possible that this may be addressed subject to planning conditions. A flood risk assessment may be required.”**

- 4.3 Brownfield development and housing development is explicitly supported within the city. This site forms part of the City Centre Masterplan and the spatial strategy supports a

strong and thriving city centre to deliver these transformational projects. Residential led mixed use development would be supported on this site in principle by the Local Development Plan.

- 4.4 National Planning Framework 4 replaces SPP and NPF3 and now forms part of the Development Plan. The introduction of NPF3 has brought a greater focus on mitigating challenges of climate change and in doing so places a significant emphasis on the reuse and redevelopment of brownfield sites, particularly where these can contribute to objectives of local living and 20 minute neighborhoods, which is very much what would be achieved by this development project.
- 4.5 In the Regional Spatial Priorities for the North East NPF4 advises that "A new focus on local living could help to address the high levels of car ownership and respond to the area's dispersed settlement pattern" and that there is "significant opportunity to improve urban liveability by unlocking waterfront sites for mixed use development close to the city centre"
- 4.6 The introduction of NPF4 and the updated Local Development Plan have in combination strengthened the positive support for this proposed development and there is no reason to reach an alternative conclusion on the principle of development.

### **Current Planning Conditions**

#### 1, 2 and 3. Design and Layout

- 4.7 Condition 1, 2 and Condition 3 deal with the delivery, design and layout of the development. These matters would require an application for Approval of Matters Specified in Conditions and that application would be considered in accordance with the Development Plan and any design guidance in place at that time. With the exception of Condition 2 Criterion g) where variation is sought, there would be no need for any amendment to the design considerations to ensure compliance with the LDP Policies D1, D2, D3, D6, D9, WB1, WB5, H3 and H4.

#### 4. Landscaping and Open Space

- 4.8 Condition 4 requires the submission of a landscaping scheme with the proposed development. NPF4 Policy 3 expects that in addition to the mitigation for biodiversity that measures result in biodiversity being left in a better state than before development. This is a brownfield development opportunity and development located on areas previously developed and new landscaping was envisaged as a part of the indicative proposals. This remains to be considered in detail as a part of the approval of matters specified in condition and Condition 4 will feed into this assessment where the details of woodland, tree, shrub planting will be provided. This will ensure compliance with LDP Policies D4 and D5.

#### 5. External Lighting

- 4.9 External lighting details are requested which to ensure that the impact on the River Dee SAC are not adversely affected. This provides specific control on an aspect where mitigation measures were identified for biodiversity. An assessment of the impact of the lighting will be made on submission of these details. This will require assessment under Policy NE3 to ensure no adverse impact.

#### 6. Site Investigation

- 4.10 This condition requires details of ground conditions through intrusive investigation and to identify any remediation measures. There have been no changes to the Development Plan related to this condition. This will ensure compliance with LDP Policy R2.

#### 7. Riverside Buffer

- 4.11 A buffer was identified as a part of the original application following a flood risk assessment. The condition requires that in consultation with SEPA the extent of the boundaries of a buffer strip is set out and that no development will be permitted in this area to protect the River Dee and also to ensure there is no risk of removal of flood capacity. This will require to be assessed in accordance with NPF4 Policy 22, which currently provides the most up-to-date policy position. This will ensure compliance with LDP Policy NE4.

#### 8. Otter Protection Plan

- 4.12 Otters are a qualifying feature of the River Dee SAC and there has not been any change to this since the approval. The condition in place requires the approval of further details for their protection. This will ensure compliance with LDP Policy NE3.

#### 9. Construction and Environmental Management Plan (CEMP)

- 4.13 This is a standard condition and in this case, it is specifically required to ensure construction does not have a negative impact on the River Dee SAC. This ensures the requirements of the Development Plan can be achieved as they relate to protected species. This will ensure compliance with LDP Policy NE3.

#### 10. Dust Management

- 4.14 This is a standard condition of development and there has been no change to the requirements in this regard and a plan will require to be approved that could take into account any future changes. This will ensure compliance with LDP Policy WB2.

#### 11. Tree Protection

- 4.15 The tree protection fencing relates to those trees to be retained. Should there be any change to this then an alternative protection plan would require to be provided and agreed. This will link to condition 4 on landscaping which would deal with any compensatory planting that might be agreed. This will ensure compliance with LDP Policy NE5.

#### 12. Recording of Former Mission Hall

- 4.16 There has been no change to the status of the Mission Hall and the condition remains appropriate to record the building. This will ensure compliance with LDP Policy D6.

#### 13 and 14. Surface and Waste Water Drainage

- 4.17 Drainage schemes are required to be prepared and approved. This will ensure compliance with NPF4 Policy 22 c) and LDP Policy NE4 on SUDS and water quality.

#### 15. And 16 Noise Mitigation and Ventilation

- 4.18 These conditions related to a noise assessment of the site, which identified that acoustic glazing would be required for part of the development. Once the detail design is prepared the scheme will need to be prepared to take account of this assessment. The condition requires that internal noise ratings are achieved and there has been no change to policy that would suggest alternative criteria. This will ensure compliance with LDP Policy WB3.

#### 17. Bus Stop Improvements

- 4.19 These measures assist in the promotion of public transport and would support the objectives of LDP Policy T2.

#### 18. Car Club Parking Spaces

- 4.20 Two car club spaces were to be provided as a part of the development and this would support a reduced car ownership within the development. Policy T2 remains in support of this as an initiative.

#### 19. Electric Vehicle Charging Points

- 4.21 Since the time of approval requirements for electric charging infrastructure have been introduced through the building regulations. These will require to be provided and identified as a part of the site design. The delivery of EV charging will be greater than envisaged at the time of approval.

#### 20. Water Efficiency Statement

- 4.22 Policy R6 refers to Aberdeen Planning Guidance and the condition requires details to be submitted and assessed against this guidance to ensure compliance.

#### 21. Low and Zero Carbon Buildings

- 4.23 Much similar to EV charging, the building regulations have been and continue to be enhanced in respect of efficiency and requirement for low and zero carbon buildings. LDP Policy R6 refers to planning guidance and Condition requires compliance with this guidance. This will also consider Policy R8, Heat Networks.

#### 22, 23, 24 and 25. South Esplanade West Pavement, Safe Routes to School, Residential Travel Pack and Traffic Management Interventions

- 4.24 The pavement along the north side of South Esplanade West is not in good condition and it is required to upgrade this to an adoptable standard to encourage walking from the development in accordance with Policy T2.

#### **Other Policies Not Addressed by Conditions**

- 4.25 Policy H5 Affordable Housing and Policy I1 Infrastructure Delivery and Planning Obligations are addressed through an existing Section 75. This has created a burden on

the title and includes a clause that links the agreed terms to any Section 42 application. This would ensure that there remains compliance with these policies.

## 5.0 CONCLUSION

- 5.1 The Applicant seeks consent under Section 42 of the Town and Country Planning Act (Scotland) 1997 to vary Condition 2 of 181702/PPP. The variation seeks to introduce some flexibility in the total retail (Class 1A) floor space required as a part of development. The applicant remains committed to incorporation of retail space as a part of any plans, but needs to respond to market expectations to ensure a marketable development proposal.

## APPENDIX 1 DECISION NOTICE



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Decision by Elspeth Cook, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-100-2112
- Site address: Land to north west of South Esplanade West, Aberdeen AB11 9AA
- Appeal by Aberdeen Harbour Board against the decision by Aberdeen City Council
- Application for planning permission in principle 181702/PPP dated 28 September 2018 refused by notice dated 2 March 2020
- The development proposed: a residential led development comprising 258 flats and 618 square metres of Class 1 (retail) space, enhanced riverside park and associated infrastructure.
- Application drawings: Site Layout Ref A10-00-02
- Date of site visit by Reporter: 3 August 2020

Date of appeal decision: 11 May 2021

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## Decision

I allow the appeal and grant planning permission in principle subject to the conditions listed at the end of the decision notice. Attention is drawn to the three advisory notes at the end of the notice.

## Reasoning

1. By notice of intention dated 30 October 2020 (attached as Annex A to this notice) I indicated that I was minded to grant planning permission in principle subject to the signing and registering or recording of a planning obligation under section 75 of the Town and Country Planning (Scotland) Act 1997 or some other suitable alternative.
2. The matters to be covered by the planning obligation were specified in paragraphs 73, 74 and 89 of the notice of intention and relate the provision of financial contributions to healthcare, community, sport and open space facilities in the area; the provision and delivery method(s) associated with the required percentage of affordable housing at the appeal site and; the delivery method and funding arrangements for two car club spaces within the appeal site.
3. On the 31 March 2021 the council submitted a copy of the signed section 75 agreement which addresses all the matters referred to in the notice of intention. On 27 April 2021 the appellant provided a copy of the keeper's acknowledgement received from the Registers of Scotland which confirm that the section 75 agreement has been presented for registration against the relevant title.



4. I have also received written confirmation that the council are content for the decision to be issued on the basis of this acknowledgement of receipt and the completion of the other steps set out in Clause 3.2 of the section 75 agreement rather than await the full completion of the registration process.

5. On this basis I am satisfied that planning permission in principle can now be granted subject to the conditions listed below.

*Elsbeth Cook*

Reporter

## Conditions

### PHASING

1. No development shall take place unless the plans and particulars of the matters listed below have been submitted to and approved by the planning authority:-
  - a) a phasing plan for the delivery of the development which sets out the stage at which the following parts of the development are to be delivered:-
    - each flatted block including the access points and, the number/location of vehicle, motorcycle and cycle parking spaces associated with each block;
    - the two car club spaces;
    - the electric vehicle charging points;
    - the retail space;
    - the affordable housing;
    - the riverside area walkway improvements and landscaping;
    - the other landscaping and open space and;
    - the surface water drainage system and any outfall to the River Dee.
    - the traffic management interventions required by condition 25.

Thereafter no development shall take place other than in full accordance with the approved phasing plan(s).

*Reason* – to ensure that the development is delivered in a comprehensive and coherent manner and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

### LAYOUT AND DESIGN PRINCIPLES

2. The design and layout of the development to be submitted for further approval under the terms of this planning permission in principle shall incorporate the following features:-

- a) a high-quality landmark design fit for the riverside context including big buildings situated at right angles to the river and avoiding a wall of development along the river and South Esplanade West;
- b) buildings set back from the footpath along South Esplanade West with mature tree planting provided in landscape strips along the street to provide a buffer and defensible space;
- c) buildings orientated to offer the residential units views towards the river, with no single aspect flats facing onto South Esplanade West (any single aspect flats only included elsewhere in the development where they can be fully justified)
- d) a line of sight maintained between Cabel's Lane and the river
- e) the vehicle parking areas set back from the ends of each building facing the river;
- f) a central square for pedestrian use only with public realm facilities capable of accommodating the landing point for a footbridge from the opposite side of the river;
- g) a minimum of 618 square metres of commercial floor space at ground level at the Victoria Bridge frontage and as part of the buildings enclosing the central square and public realm;
- h) the retention of the green space within the riverside area with an improved public walkway and connections to the proposed residential area;
- i) the retention of the existing play area (Billies Play Park);
- j) a mix of dwelling sizes including, but not exclusively, 1 and 2 bedroom flatted properties and the requisite proportion of affordable housing units;
- k) a low car development whereby the on-site parking rates are lower than that set out in Aberdeen City Council's publication Supplementary Guidance Transport and Accessibility (other than with regard to the provision of disabled spaces) and;
- l) the location of the built development above 3.92 metres AOD with finished floor levels no lower than 4.45 metres AOD.

*Reason* - to ensure a satisfactory layout and design of the development that reflects the aspirations of the Aberdeen City Centre Masterplan and the other requirements of the Aberdeen City Local Development Plan 2017.

## DESIGN AND LAYOUT OF ROADS, PATHS AND BUILDINGS

3. No development shall take place within each phase of development unless the plans and particulars of the matters for that phase as listed below have been submitted to and approved by the planning authority:-
  - a) the detailed layout, design and external appearance of all buildings and ancillary structures including an updated Design and Access Statement;
  - b) the details of the existing and proposed site, access and building levels (including cross sections);
  - c) the details of the mix of commercial and residential unit type, size and tenure;
  - d) the detailed layout, design and external appearance of roads, footpaths, cycle paths and the vehicular, pedestrian and cycle access points;
  - e) the detailed layout, design and external appearance of the vehicle and motorcycle parking areas, electric vehicle changing points and any car club spaces within that phase including the associated signs and road markings;
  - f) the detailed layout, design and external appearance of the short and long-term secure cycle parking;
  - g) the detailed layout, design and external appearance of storage and collection facilities for waste and recyclables;

- h) the detailed layout, design and external appearance of boundary enclosures around the site or that phase of the development and;
- i) the details of how that phase of development will integrate with future or existing completed phases of development.

Thereafter the development shall take place in accordance with the details as approved.

*Reason* – to ensure a satisfactory layout and design of the development including the provision of a suitable level of vehicle and cycle parking for each phase and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

#### LANDSCAPING AND OPEN SPACE

4. No development shall take place within each phase of development unless the plans and particulars of the matters for that phase as listed below have been submitted to and approved by the planning authority:-

- a) a scheme of hard and soft landscaping covering all areas of public and private open or green space which includes;
  - i) the details of the areas reserved as private space and those areas that will be freely accessible by the general public with the latter to include all riverside areas and the central square;
  - ii) the details of the improvements to the riverside walkway, including any changes to its alignment and any connections to it from the proposed residential area;
  - iii) the existing and proposed finished ground levels within the open space;
  - iv) the details of the existing landscape features, trees, woodland and vegetation to be retained or removed;
  - v) the details of the proposed woodland, tree and shrub numbers, densities, locations, species, sizes and stage of maturity at planting and;
  - vi) the location, design and external appearance of hard surface finishing materials, walls, fences, gates and street furniture.
- b) details of the existing and proposed services and utilities including cables, pipelines and substations within the open space and ;
- c) the arrangements for the management and maintenance of existing and proposed open space, woodland and landscaped areas including watercourse buffer strips within the site.

All soft and hard landscaping proposals shall:-

- be specifically designed to enhance both the recreational and the wildlife value of the riverside;
- include mature tree planting along and close to the footway of South Esplanade West,
- be carried out in accordance with the approved scheme and shall be completed during the planting season immediately following the commencement of each respective phase of the development or such other date as may be agreed in writing with the Planning Authority.

Any planting which, within a period of 5 years from the completion of each phase of the development, in the opinion of the Planning Authority is dying, being severely damaged or becoming seriously diseased, shall be replaced by plants of similar size and species to those originally required to be planted.

*Reason* – in order to integrate the development into the surrounding landscape, increasing the biodiversity and recreational value of the site and creating a suitable living environment for future residents and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

## EXTERNAL LIGHTING

5. No development shall take place within each phase of development unless the plans and particulars of the matters for that phase as listed below have been submitted to and approved by the planning authority:-

- a) the detailed design and layout of the external lighting for that particular phase or block (during construction and as part of the permanent scheme) and;
- b) a Lighting Impact Assessment carried out by a suitably qualified practitioner for that phase of external lighting which demonstrates no light spillage over the river or riverbank.

Thereafter the external lighting shall be implemented and maintained in accordance with the details as approved.

*Reason* – to ensure that the integrity of the River Dee Special Area of Conservation is not adversely affected and to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

## SITE INVESTIGATION

6. No development shall take place within each phase of development unless the plans and particulars of the matters for that phase as listed below have been submitted to and approved by the planning authority:-

- a) a scheme to deal with any contamination on or within the land forming that particular phase or block

The scheme shall follow the procedures outlined in Planning Advice Note 33 (Development of Contaminated Land) and shall be conducted by a suitably qualified person in accordance with best practice as detailed in BS10175 (Investigation of Potentially Contaminated Sites - Code of Practice) and other best practice guidance and include

- (i) an investigation to determine the nature and extent of contamination;
- (ii) a site-specific risk assessment; and
- (iii) a remediation plan to address any significant risks and ensure the site is fit for the use proposed.

Thereafter no building within that particular phase shall be occupied unless for that phase

- (i) any long-term monitoring and reporting that may be required by the approved scheme of contamination or remediation plan or that otherwise has been required in writing by the planning authority is being undertaken and
- (ii) a report specifically relating to that phase has been submitted and approved in writing by the planning authority that verifies that remedial works to fully address contamination issues related to the site and building(s) have been carried out,

unless the planning authority has given written consent for a variation.

The final building within that particular phase shall not be occupied unless a report has been submitted and approved in writing by the planning authority that verifies the completion of the remedial works for the entire phase, unless the planning authority has given written consent for a variation.

*Reason* – in order to ensure that the site is fit for the intended end uses and to ensure that the integrity of the River Dee Special Area of Conservation is not adversely affected and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

## RIVERSIDE BUFFER

7. No development shall take place within any part of the development unless the plans and particulars of the matters as listed below have been submitted to and approved by the planning authority in consultation with SEPA:-

- a) the extent and boundaries of a buffer strip within the site up to the tidal limit of the River Dee;
- b) the extent and boundaries of the part of the riverside area of the site currently lying below 3.92 metres AOD;

Thereafter no development shall take place within the approved buffer strip other than that required to complete the surface water drainage scheme approved under condition 13; and no development, land raising or other works shall take place within the part of the site below 3.92 metres AOD other than surface water drainage infrastructure, improvements to the riverside walkway, or footpath connections to the riverside walkway, tree felling, tree planting or other landscape works as approved under condition 4.

*Reason* – to ensure the existing character and wildlife habitat of the riverside area, the integrity of the River Dee Special Area of Conservation and the flood plain capacity is not adversely affected and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

## OTTER PROTECTION PLAN

8. No development (including site stripping, service provision or establishment of site compounds) shall take place within each phase of development unless the plans and particulars of the matters for that phase as listed below have been submitted to and approved by the planning authority:-

- a) an otter protection plan produced by an appropriately qualified person and containing avoidance, mitigation and compensation measures in accordance with Scottish Natural Heritage's (now NatureScot's) advice designed to minimise the impact of the development on otters.

Thereafter no development shall take place unless the agreed mitigation measures have been implemented.

*Reason* – to ensure the protection of a European protected species and to ensure that the

integrity of the River Dee Special Area of Conservation is not adversely affected and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

### CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN (CEMP)

9. No development (including site stripping, service provision or establishment of site compounds) shall take place within each phase of development unless the plans and particulars of the matters for that phase as listed below have been submitted to and approved by the planning authority in consultation with SEPA:-

- a) a site specific construction environmental management plan (CEMP) for that particular phase of development detailing the site specific management of surface water run-off.

Thereafter development shall be undertaken in accordance with the approved CEMP.

*Reason* – to minimise the impacts of necessary demolition or construction works on the Environment; to ensure that the integrity of the River Dee Special Area of Conservation is not adversely affected and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

### DUST MANAGEMENT PLAN

10. No development (including site stripping, service provision or establishment of site compounds) shall take place within each phase of development unless the plans and particulars of the matters for that phase as listed below have been submitted to and approved by the planning authority:-

- a) a Dust Management Plan for that particular phase specifying dust mitigation measures and controls, responsibilities and any proposed monitoring regime.

Thereafter development (including any demolition) shall be undertaken in accordance with the approved plan.

*Reason* – to control air pollution from dust associated with the construction of the development and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

### TREE PROTECTION

11. No development shall take place within each phase of development unless the tree protection fencing relating to that particular phase as shown on Astell Associates drawing SEW-1906-TP (Rev.1) and Appendix H of Tree Survey Report SEW-1906-TR (Rev.1) has been installed or such other tree protection measures that have been submitted to and approved in writing by the planning authority, have been installed.

Thereafter the tree-protection fencing shall remain in place for the duration of the construction period.

*Reason* - in order to safeguard trees which are to remain on the site.

## RECORDING OF FORMER MISSION HALL

12. No development shall take place within the phase of development that incorporates all or part of the site of the former mission hall at 4 Esplanade West unless the plans and particulars of the matters as listed below have been submitted to and approved by the planning authority:-

- a) the scope of a Level 2 archaeological standing building survey of the former mission hall and;
- b) the subsequent results of the Level 2 archaeological standing building survey presented in a digital format clearly marked with the planning application reference number.

*Reason* – To ensure that a historic record of the building is made for inclusion in the National Record of the Historic Environment and in the local Sites and Monuments Record and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

## SURFACE WATER DRAINAGE

13. No development shall take place within each phase of development unless the plans and particulars of the matters for that phase as listed below have been submitted to and approved by the planning authority in consultation with SEPA:-

- a) a detailed scheme for surface water drainage including the detailed design of the surface water out-fall proposed on the banks of the River Dee.

Thereafter the development shall be implemented in accordance with the approved scheme.

*Reason* – in order to ensure adequate protection of the water environment from surface water run-off; to ensure that the integrity of the River Dee Special Area of Conservation is not adversely affected and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

## WASTE-WATER CONNECTIONS

14. No development shall take place within each phase of development unless the plans and particulars of the matters for that phase as listed below have been submitted to and approved by the planning authority:-

- a) a scheme for the connection of the buildings in that phase to the public waste water system;
- b) confirmation from Scottish Water that those connections can be made and any necessary upgrades to the public waste-water system are in place.

Thereafter no building shall be occupied unless connection has been made to the public waste-water network in accordance with the approved details.

*Reason* – in order to ensure that sewage is satisfactorily treated and disposed of; to ensure that the integrity of the River Dee Special Area of Conservation is not adversely affected and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

## NOISE MITIGATION SCHEME FOR NEW RESIDENTIAL PROPERTIES

15. No development shall take place within each phase of development unless the plans and particulars of the matters for that phase, as listed below, have been submitted to and approved by the planning authority:-

- a) a scheme of mitigation measures for the protection of the proposed residential properties from external noise for that particular phase.

The scheme shall ensure that internal noise levels do not exceed the criterion identified in Table 16 of the Noise Impact Assessment prepared by CSP Acoustics (ref: 1329002 IK V2 –13th September 2019).

Thereafter no residential property in that phase shall be occupied unless the mitigation measures relevant to that particular property have been implemented in accordance with the approved scheme.

*Reason* – to ensure that residents of the development are adequately protected from excessive noise levels and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

## ALTERNATIVE MEANS OF VENTILATION

16. No development shall take place within each phase of development unless the plans and particulars of the matters for that phase, as listed below, have been submitted to and approved by the planning authority:-

- a) a scheme demonstrating that suitable ventilation complying with the relevant building standards is to be provided in each of the units within that phase.

Thereafter no unit within that phase shall be occupied unless the buildings have been constructed in accordance with the approved scheme.

*Reason* - In order that satisfactory ventilation can be provided to flats without windows being opened, which could result in exposure to excessive noise levels and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

## BUS STOP IMPROVEMENTS / PEDESTRIAN CROSSING

17. No development shall take place within any part of the development unless the plans and particulars of the matters as listed below have been submitted to and approved by the planning authority:-

- a) a scheme for the improvement of the existing bus stops at the following locations:-
  - i) the west side of Victoria Road, 40m north of the junction with South Esplanade West
  - ii) the east side of Victoria Road, 25m north of the junction with South Esplanade West
  - iii) the north side of Menzies Road, opposite the junction with Walker Lane;
  - iv) the south side of Menzies Road, 28m south of the junction with Walker Lane;
  - v) the north side of Menzies Road, 28m north of the junction with Walker Place and;

vi) the south side of Menzies Road, 17m north of the junction with Walker Place.

The scheme shall address the provision of bus shelters, real-time information displays, timetables, lighting, boarding kerbs and road markings at each location taking into account the extent of upgrading that the locational characteristics of each stop allows.

Thereafter no units within any phase shall be occupied until all the bus stop locations have been upgraded in accordance with the approved scheme.

*Reason* – in order to encourage the use of public transport within the vicinity of the site and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

### CAR CLUB PARKING SPACES

18. Two car club only parking spaces shall be provided and made available for use within the site in accordance with the phasing plan approved under condition 1 above and the details approved under condition 3 above. No dwelling shall be occupied until a traffic regulation order (TRO) is in place to restrict the use of these two parking spaces for car club vehicles only.

*Reason* – To ensure the car club parking spaces are provided at an appropriate stage in the development and to encourage modal shift away from the private car.

### ELECTRIC VEHICLE CHARGING POINTS

19. No dwelling in any phase shall be occupied until the electric vehicle charging points and bays for that phase have been made available for such a use in accordance with the phasing approved under condition 1 and in accordance with the details approved under condition 3.

*Reason* – To ensure the electric vehicle charging points are provided at an appropriate stage within the development and to encourage the use of electric vehicles.

### WATER EFFICIENCY STATEMENT

20. No development shall take place within any part of the development unless the plans and particulars of the matters as listed below have been submitted to and approved by the planning authority:-

- a) a water efficiency statement that takes into account the advice provided in CIRIA publication C723 (Water sensitive urban design in the UK) and;
- b) the measures proposed to incorporate water saving technology into the development so as to achieve gold standard for water use efficiency in domestic buildings or BREEAM level 5 for non-domestic buildings.

Thereafter the approved measures shall be implemented in the construction of the development.

*Reason* – in order to help avoid reductions in river water levels, which at times of low flow

can have impacts on freshwater pearl mussel, one of the qualifying features of the River Dee Special Area of Conservation (SAC) and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

## LOW AND ZERO CARBON BUILDINGS

21. No development shall take place within any phase of the development unless the plans and particulars of the matters as listed below have been submitted to and approved by the planning authority:-

- a) a scheme detailing compliance with the Council's 'Low and Zero Carbon Buildings' supplementary guidance for the buildings within that phase.

Thereafter, each building shall not be occupied unless the approved measures have been implemented in full and are available for use.

*Reason* – in order to ensure that the development complies with the 'Low and Zero Carbon Buildings' Supplementary Guidance and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

## SOUTH ESPLANADE WEST PAVEMENT

22. No development shall take place within any part of the development unless the plans and particulars of the matters as listed below have been submitted to and approved by the planning authority

- a) a scheme to bring the pavement on the north west (development site) side of South Esplanade West between in its junction with Victoria Road and Wellington Road up to adoptable standard.

The scheme shall be designed to provide pedestrian priority along the length of the development frontage with any vehicular accesses into the site formed as footway crossings rather than a road junction.

Thereafter no dwelling shall be occupied unless the scheme has been implemented in its entirety.

*Reason* – in order to provide satisfactory and safe pedestrian access to the development. And; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

## SAFE ROUTES TO SCHOOL

23. No development shall take place within any part of the development unless the plans and particulars of the matters as listed below have been submitted to and approved by the planning authority:-

- a) an assessment of, and scheme for securing, safe pedestrian routes to Lochside Academy and Walker Road Primary School (or such as other school as pupils from the site may be zoned to should circumstances change).

Thereafter no residential unit shall be occupied until any associated work identified within the approved scheme to create the safe routes has been completed.

*Reason* - in order to promote sustainable and safe travel and ensure compliance with policy D3 (Sustainable and Active Travel) of the Aberdeen Local Development Plan and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

#### RESIDENTIAL TRAVEL PACK

24. No development shall take place within any part of the development unless the plans and particulars of the matters as listed below have been submitted to and approved by the planning authority:-

- a) a residential travel pack identifying the details of different travel options available in the area in order to discourage the use of the private car as well as the duration of the plan, system of management, monitoring, review and reporting.

Thereafter the approved travel pack shall be implemented as approved and supplied to the first occupants of every residential unit within the development.

*Reason* – in order to reduce dependency on the private car for travel and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

#### TRAFFIC MANAGEMENT INTERVENTIONS

25. No development shall take place within any part of the development unless the plans and particulars of the matters as listed below have been submitted to and approved by the planning authority:-

- a) a scheme for the delivery of traffic management interventions to improve the road and footway environment on South Esplanade West to mitigate pedestrian and road safety concerns and enhance residential use based on the findings (and including the results of) of an up-to-date study in terms of traffic movements, car parking and loading/unloading operations.

Thereafter the traffic management interventions as approved shall be carried out in accordance with the phasing plan approved under condition 1 above.

*Reason* – in the interests of traffic and pedestrian safety and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

## Advisory notes

**1. Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action. (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).)

**2. Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position. (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended).)

**3. Display of notice:** A notice must be displayed on or near the site while work is being carried out. The planning authority can provide more information about the form of that notice and where to display it. (See section 27C of the Town and Country Planning (Scotland) Act 1997 Act (as amended) and Schedule 7 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013.)



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## Notice of Intention by Elspeth Cook, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-100-2112
- Site address: Land to north west of South Esplanade West, Aberdeen AB11 9AA
- Appeal by Aberdeen Harbour Board against the decision by Aberdeen City Council
- Application for planning permission in principle 181702/PPP dated 28 September 2019 refused by notice dated 2 March 2020
- The development proposed: a residential led development comprising 258 flats and 618 square metres of Class 1 (retail) space, enhanced riverside park and associated infrastructure.
- Application drawings: Site Layout Ref A10-00-02
- Date of site visit by Reporter: 3 August 2020

Date of notice: 30 October 2020

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## Notice of Intention

For the reasons given below I am minded to allow the appeal and grant planning permission in principle subject to the conditions listed at the end of this decision, following the signing and registering or recording of a planning obligation under section 75 of the Town and Country Planning (Scotland) Act 1997, [or some suitable alternative arrangement] covering the matters listed in paragraphs 73, 74 and 89.

## Preliminary

The scale and nature of this development is such that it would come within the description of development set out in Class 10 b) of Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017. The proposed development was the subject of a screening opinion issued by Aberdeen City Council on 8 May 2018 under the aforementioned Regulations. The council decided that an Environmental Impact Assessment would not be required and I agree with this conclusion.

## Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan consists of the recently approved Aberdeen City and Shire Strategic Development Plan 2020 and the Aberdeen Local Development Plan 2017 including its supplementary guidance.
2. As the Category B listed building, Victoria Bridge lies immediately to the north east of the site I must also have special regard to the desirability of preserving the setting of nearby



listed buildings in accordance with section 59(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

3. Due to the proximity of the site to the River Dee Special Area of Conservation (SAC) I am also required to consider whether the development proposed is likely to have a significant effect on the qualifying interest of the SAC in accordance with the Conservation (Natural Habitats &c) Regulations 1994 (Habitats Regulations 1994).

4. I must also consider the statutory duty imposed by Section 159 of the Town and Country Planning (Scotland) Act 1997 (as amended). In granting planning permission, whenever it is appropriate, adequate provision should be made, by the imposition of conditions, for the preservation or planting of trees.

5. No specific policies of the Strategic Development Plan are referred to by the appellant or the council however my attention is drawn to the plan's expectations for the city centre which include increasing the amount of housing, creating more liveable environments and revealing waterfronts that improve connections to the river. The plan seeks to ensure new development is conveniently located and designed to encourage walking, cycling and the use of public transport that in turn reduces the number of journeys made by private car. The plan also offers guidance on housing densities which I deal with in more detail below.

6. A further 24 local development plan policies and 9 Supplementary Guidance documents associated with that plan are referred to by the appellant and the council. I find these to be relevant considerations and address them in more detail in my findings below.

7. Having regard to the provisions of the development plan and the general support it offers for residential development at this location I consider the main issues in this appeal are whether the proposed development would:-

- be an acceptable form of development within an area designated for mixed use development and urban green space;
- achieve an appropriate mix and density of housing;
- have an acceptable traffic impact, be accessible by a range of transport modes and include adequate on-site car parking, and;
- have an acceptable impact on the River Dee in particular the qualities of the SAC.

### Appeal site and proposal

8. The appeal site covers the industrial land lying between South Esplanade West, Victoria Road and the River Dee including a meeting hall, a hot food takeaway, an established play area (Billie's Park) and the sloping riverbank. The various Boat School buildings at the western end of South Esplanade West lie outwith the site although the site boundary overlaps the access route to Aberdeen School Boat House. The south side of South Esplanade West is occupied by predominantly business premises with the flatted tenements on Menzies Road sitting on slightly higher ground beyond.

9. Although the application is for planning permission in principle a number of supporting plans and reports were submitted with the application. The appellant prefers Layout Plan Option 3. This demonstrates a development of eight separate flatted blocks

aligned perpendicular to the road and river with car parking areas located in between them; the retention of Billie's Park and the riverside open space and; the introduction of ground floor retail floorspace.

10. Based on a number of legal cases cited in their submission, the council believes that detailed elements of the development described in the supporting information associated with the application would be approved if planning permission in principle is granted. The appellant however highlights to me that the supporting plans are annotated as 'indicative' and these were provided to allow the scale of the development to be tested against the relevant policies.

11. I am inclined to treat the supporting plans and reports as 'indicative' only and I do not find, on that basis, that they are capable of forming part of a detailed permission. In this regard the appellant has confirmed that they would prefer any favourable decision to list the design parameters (such as those described in the council's committee report) rather than rely on a particular plan. They believe this approach would secure sufficient "flexibility to adjust or refine the detailed design response" in the future. This seems to me a prudent approach especially as the appellant may not be the housing developer.

12. Consequently I find the description of the proposed development to determine the scope of the proposals before me. The number of flatted dwellings and the amount of Class 1 retail floor space is described in the application and appeal forms. Although the indicative Layout Plan Option 3 refers to a café (and the proposed conditions also reference a possible office use) there is nothing before me to indicate that these uses were applied for. I have not been advised that the description of the development has been amended.

#### Development within the Mixed Use Area

13. The appeal site lies mainly within the yellow zone defined as a 'Mixed Use Area' on the local development plan map. Policy H2 Mixed Use Areas applies. This policy does not prescribe the range, proportion or locations of uses expected in a mixed use area. It simply confirms that a mix is expected. There is nothing to indicate that individual proposals affecting only part of the mixed use area would be resisted.

14. In determining such proposals the key policy tests are whether the development takes "into account the existing uses and character of the surrounding area and avoid(s) undue conflict with the adjacent land uses and amenity" and "Where new housing is proposed, a satisfactory residential environment should be created which should not impinge upon the viability or operation of existing businesses in the vicinity."

15. The existing business uses (including fish processing) are expected to continue operating on the south side of South Esplanade West. At my site inspection it was clear that these businesses (with the exception of the vehicle repair facility) are accessed from South Esplanade West. This busy road also provides links to further employment land to the east, the Torry local centre on Victoria Road and the city centre via Victoria Bridge.

16. During my visit I found the traffic movements accounted for much of the background noise in this area. Although the riverside walkway area was quieter the general bustle associated with the city and local centres nearby was noticeable.

17. The appellant has provided a Noise Assessment that demonstrates the development would be capable of meeting the relevant noise levels set out in PAN 1/2011 Planning and Noise, subject to introducing a particular standard of noise insulation within the buildings along with (in some locations) the use of ventilation systems in place of openable windows.

18. The council's Environmental Health team are content that these measures are sufficient to address any noise issue and recommend applying conditions that secure their implementation. On that basis I therefore consider this approach would be sufficient to meet the terms of Policy T5 Noise.

19. The Environmental Health Team do not raise any concerns regarding the potential smell nuisance associated with the fish processing even though complaints have been made on that basis in the past. At my site visit the odour of fish was evident outside the processing businesses but this diminished nearer to the riverside. I did not find it to be an overwhelming feature of the area sufficient to impact detrimentally on residential amenity.

20. In terms of protecting amenity generally I find the wide carriageway of South Esplanade West offers both physical and visual separation of the proposed housing from the remaining businesses. This separation, coupled with the proposed orientation of the residential buildings away from the road and the road side tree planting, would help to limit any disturbance from traffic or businesses on South Esplanade West.

21. Overall I am satisfied that the evidence currently before me indicates that a residential development could be accommodated here that would offer an adequate standard of amenity for the future residents without compromising the ability of the remaining industrial activities to continue operating. In this context I find the proposed residential development in the mixed use area would meet the requirements of Policy H2.

#### Development within a Green Space Area

22. In the main the proposed built development is likely to be confined to the areas currently or previously occupied by existing built development but the appeal site boundary also overlaps Urban Green Space that is part of the Green Space Network. Policies NE1 Green Space Network and NE3 Urban Green Space, subject to a number of caveats, would not support the loss or redevelopment of these areas.

23. The appellant's preferred Layout Plan Option 3 indicates that there is no intention to redevelop Billies Play Area. Whilst some development is expected within the riverside area it is likely to be in the form of formalising access routes and enhancing the landscape or habitat. It is intended that the land would continue to function as an enhanced riverside walkway outwith the area occupied by the residential development.

24. I consider the likely impacts on the green space would be generally consistent with policies NE1 and NE3 and also NE9 Access and Informal Recreation. The terms of the conditions applied to any permission granted can ensure the final layout and design protects the two green space areas and retains access along the riverside area.

#### Housing Mix

25. Policy H4 Housing Mix applies to allocated housing sites or windfall developments and expects the housing mix on sites of over 50 units to be determined by a masterplan reflecting the “needs of families, older people and people with particular needs”. It also encourages the provision of 1 and 2 bedroom properties in both the affordable and market housing elements of a development. I agree with the appellant that the wording of this policy does not require every development to include dwellinghouses only that there should be a cross section of dwelling sizes with, if necessary, the appropriate design features incorporated to meet any particular needs.

26. The appellant’s supporting information is not set out in the form of masterplan but it does indicate an intention to provide a mix of 1, 2, 3 and 4 bedroom flats, and a commitment to 25% affordable housing in accordance with policy H5: Affordable Housing and the Supplementary Guidance, Affordable Housing. The delivery of the affordable housing element is expected to be addressed by condition and/or a legal agreement.

27. The Aberdeen City Centre Masterplan is not part of the development plan but I consider it has some relevance in interpreting policy H4. It applies to the whole Torry Waterfront area which broadly aligns with the Mixed Use Area in the development plan. It states “New housing, comprising riverside apartments and a mix of tenement apartment blocks and town houses” is expected here.

28. It is reasonable in my opinion to expect the ‘riverside apartments’ to have a riverside location but equally this would not preclude other types of housing from being located near the river. The schematic drawing for Torry Waterfront within the Masterplan does not differentiate between dwelling types though the particular layout depicted for the appeal site appears to favour communal open space which is normally associated with flatted dwellings rather than individual dwellinghouses. In my opinion the Masterplan encourages the development of flatted dwellings in the riverside area.

29. The council have not provided any evidence, such as a Housing Need and Demand Assessment, that shows there is a specific demand at this location for any particular housing types. Greater emphasis is placed in their submission on the likelihood that no further redevelopment may take place in the mixed use area at Torry Waterfront. As such the council believes there may be no other opportunity to provide the broader range of housing types described in the Masterplan.

30. I can only consider the proposals that are placed before me. As there is a Masterplan which sets out an aspiration for riverside apartments and a policy that does not expressly require every development to include dwellinghouses in the mix I am satisfied that the 258 flats of varying sizes (including affordable units) would be sufficient to meet the housing mix required by Policy H4.

#### Housing density and Design Approach

31. Policy H3 Density sets a minimum net density of 30 dwellings per hectare for sites over 1 hectare. Higher densities are expected in the “city centre, around local centres and at public transport nodes”. The site, though outwith the city centre, abuts the boundary of the local centre at Torry and a regular bus route into the city centre lies to the east. Furthermore as the site is within the Strategic Growth Area for Aberdeen City, the SDP target of no less than 50 dwellings per hectare would apply.

32. There is no agreement on the actual density of development at the appeal site. The appellant calculates the net density of the proposed development of 258 flats on a 2.2 hectare site as 117 units per hectare but this increases to 135 units per hectare if the existing infrastructure is subtracted from the site area. The council assumes a developable area of 1.12 hectares and calculates the density at 230 units per hectare. Nevertheless neither the SDP nor policy H3 set a maximum density. It therefore falls to the terms of policy H3 regarding the impact on the characteristics of the site and surrounding area to determine if the proposed density would be acceptable.

33. The appellant cites a number of other developments approved in Aberdeen with densities varying between 107 and 164 units per hectare. While these decisions will have taken into account the particular characteristics of their locations, I agree they demonstrate that, in principle, higher density development is a suitable urban form in the city.

34. The local development plan and the Masterplan expects this area to be redeveloped and I do not find these documents expect the new development to reflect the scale and design of the existing riverside industrial environment. I find the key aspiration from these documents is the creation of a new residential quarter that maximises the benefits of the riverside location close to the city centre without interfering with the landscape character of the riverbank. I find the indicative plans and the Design and Access statement show there is potential to deliver a strong and distinctive sense of place as required by Policy D1 Quality Placemaking by Design whilst at the same time respecting the important landscape features at this location in accordance with Policy D2 landscape.

35. It is also clear that achieving the number of flats proposed would necessitate the development of a number of large buildings ranging between four and seven storeys in height. These would be higher than the prevailing buildings in this area and policy D3 Big Buildings and Supplementary Guidance (SG) on Big Buildings apply. The policy states that the most appropriate location for these buildings is within the city centre and its immediate periphery and the SG extends the acceptable locations to City Centre Masterplan areas. I therefore find the site is a suitable location for the required 'big buildings'.

36. With the exception of the parking space shortfall which I deal with in more detail below, I have not been presented with any evidence that the density of the proposed development would conflict with the general urban environment at this location or result in adverse living conditions for future residents. On that basis I consider higher density development exceeding 50 units per hectare would comply with policy H3 and the terms of the 2020 Strategic Development Plan.

#### Accessibility and Car Parking

37. I have considered the Transport Assessment (TA) and the additional information addressing the correct safe route to school. These describe the likely impacts on the road network and the accessibility of the development to pedestrian, cycle and public transport facilities. Although some improvements would be required to bus and pedestrian facilities in the area the council does not raise any significant concerns regarding the impacts on the surrounding road and pedestrian network.

38. South Esplanade West is a one way street helping to distribute traffic movements around the southern side of the River Dee. As a result the carriageway is wide but the footway at the appeal site is in a poor condition affected by the numerous private accesses into the appeal site. I would expect the rationalisation of these accesses and the reconstruction of the footway, as proposed, to offer significant safety improvements over the existing situation.

39. The council indicates that the access points onto South Esplanade West as set out in preferred Layout Plan Option 3 may need to be adjusted to meet the required junction spacing but there is no indication that the standards could not be met. To address any road safety concerns regarding the development at this location the appellant suggests applying an additional condition securing a scheme of traffic management interventions to improve the road and footway environment in the vicinity of the site. This would be in addition to the proposed condition securing a safe pedestrian route to the local school(s).

40. The council assumes the additional condition would include a controlled parking zone (CPZ) in the immediate vicinity of the site. Whilst such measures are a 'traffic management intervention' they are not expressly referred to in the proposed condition. I accept the council's concerns that CPZs may need to operate across a wider area to be successful however it would fall to the council to determine the acceptability of the proposed scheme and any associated CPZ. I do not find this is sufficient reason to resist adding this condition.

41. I find the condition offers the council an opportunity to address, in light of the final access point locations, whether other detailed measures in the vicinity of the site are necessary to achieve the required vehicular and pedestrian safety standards. Based on the proposed wording I am also satisfied the proposed scheme would be expected to take into account the existing access and servicing arrangements for the remaining businesses on the south side of the road. On this basis I consider the condition should be applied.

42. Consequently I am satisfied there is no conflict with policies Policy T2 Managing the Transport Impact of Development or Policy T3 Sustainable and Active Travel in terms of the wider accessibility or road safety at the development site. Furthermore the council are satisfied that the additional traffic movements would not adversely affect the air quality at this location and therefore there is no conflict with Policy T4 Air Quality.

43. The development plan policies do not specify car parking rates. This is dealt with in statutory Supplementary Guidance Transport and Accessibility (SG). It sets out three different zones where increasing rates of car parking provision are expected: city centre, inner city and outer city. These parking rates vary in relation to the type of residential development proposed and a proportion should be suitable for use by the disabled. Maximum parking rates for various non-residential uses and rates for cycle and motorcycle spaces are also provided.

44. The appellant believes the residential rates are maximum figures however I am satisfied the table should not be read in this way. It is however clear from paragraph 5.2 on page 10 that residential parking rates are guidelines rather than fixed rates. Especially as the text at the bottom of page 14 encourages the use of car club spaces and the acceptability of "low or no car developments in well-connected locations".

45. Layout Plan Option 3 shows around 110 spaces can be provided and it is not disputed by the appellant this would be less than the number of parking spaces required if the rates set out in the table on page 14 of the SG are applied. The appeal site is in the outer city and the council (using the housing mix from option 3) estimates the on-site parking requirement to be 368 spaces: 299 spaces and 226 spaces if the inner city and city centre rates are applied respectively. The shortfall would range between 258, 189 and 116 spaces. No separate parking allocation is being provided for the non-residential elements of the development and the council has not raised any concerns in this regard.

46. The appellant is however seeking to establish that this site even though it is located in the outer city zone is a suitable candidate for a low car development. The SG sets out the criteria that may justify such an approach and confirm not all must be met. These are:-

- the site benefits from good walking, cycling and public transport accessibility
- complementary measures have been put in place to remove the need for residents to own a car such as Car Club access;
- it can be demonstrated through a Travel Plan that significant measures will be undertaken to minimise the number of cars expected to travel to/from the site;
- there will be no adverse impact on the amenity of neighbouring sites through increasing on-street parking pressures;
- the anticipated occupants are within close proximity to their main trip destination (e.g. nursing staff accommodation close to the hospital; student accommodation close to the university).

47. I consider the first of these is essential if a low car development is to be considered in the outer zone. Regular bus services are available on Victoria Road to the east and Menzies Road to the south. Pedestrian routes from the site to these services exist and would be improved as part of the development. At my site inspection I walked to the city centre from the middle of the appeal site following the riverside walkway and then returning via South Esplanade West. The edge of the designated city centre can be reached in around 15 minutes and a journey of around 20 minutes takes you to the main railway and bus stations. Although there are no dedicated cycle lanes in this area South Esplanade West forms part of a National Cycle Route with linkages across the city.

48. I therefore find a residential development here would benefit from good walking, cycling and public transport accessibility. The appellant is also willing to address two other criteria. Firstly, to provide two car club spaces and secondly to provide a Travel Pack for residents as recommended by the council's Roads Team. According to the SG these three factors may be sufficient to allow a low car development. Nevertheless it is reasonable to consider the effects of any resultant overspill parking: such as the availability of parking for local businesses (as set out in the representations) or any road safety problems as set out in the council's reason for refusal.

49. In this regard I have considered the average car ownership rates in the city (and in Torry), the appellant's parking survey and the existing parking arrangements in South Esplanade West and Menzies Road.

50. The average car ownership per household in the city is approximately 68%. I note the council's committee report expects car ownership rates in the new development to reflect current car ownership rates in Torry which is lower at 55%. I consider the appeal

site, for the reasons described above, is likely to be attractive to residents who choose not to own a car. On the basis of 55% car ownership around 140 car parking spaces may be required. The two car two car club spaces are expected to address the demand for 34 cars. These usually displace second car ownership but they would still assist in reducing any potential demand for parking.

51. Consequently while there may be additional demand by residents or visitors to park outwith the site I do not expect it to be of the scale predicted by the council. I would also expect any such demand to occur mainly in the evening when the parking survey confirms there can be around 65 to 75 free spaces in the area.

52. The appellant's parking survey also identifies 28-30 free spaces in the vicinity of the site during the day when most of the parking restrictions South Esplanade West apply. In the course of the hour that I spent in the area (on a week day) I noticed a steady turnover in the use of the available spaces on South Esplanade West. At the same time there was evidence, predominantly on the south side of the road next to businesses, of double parking, parking on the footways and parking across access gates.

53. The council assumes the development would give rise to 'indiscriminate' parking in the vicinity of the site yet from my site inspection it is clear this can occur already. Bearing in mind any demand for parking in the area associated with the remaining businesses at the appeal site will be removed and the likelihood that any demand for parking would increase in the evening I find it is unreasonable to assume the new development would exacerbate any 'indiscriminate' parking problems in this area. In any event parking that causes a road safety problem may be in breach of traffic regulations or other road safety legislation and subject to appropriate enforcement.

54. It is my opinion that any overspill parking arising from this development would be unlikely to cause any significant harm to the character of the surrounding streets nor would it significantly impact on the general accessibility of on-street parking for existing residents and businesses. I therefore find it offers a suitable location for a low car development in accordance with the provisions of the SG Transport and Accessibility.

55. The mix of housing types and sizes within the development (including the number and tenure of the affordable housing element) is not yet fixed. It would therefore be essential that conditions on any permission granted seek to resolve the final number of parking spaces based on the detailed design and housing mix and to secure the delivery of the Travel Pack. Furthermore a legal agreement would be required to address the provision and funding of the car club spaces.

### Impact on the River Dee

56. The appeal site is predominantly brownfield land but parts of the development are likely to impact on the green space next to the River Dee. The appellant's environmental and bat surveys identify the natural heritage interests at this location. There is no evidence of any protected species or other important habitat within the brownfield part of the site. Any natural heritage interests lie within the riverside area and the river itself. In accordance with policy NE8 Natural Heritage, I therefore consider whether the various elements of the development adequately protect the character of the riverside area and the qualifying interests of the River Dee and the Moray Firth Special Areas of Conservation (SAC).

57. The appeal proposals indicate that trees in the riverside embankment area would be removed and additional landscaping and tree planting carried out. The council has not raised any concerns regarding the loss of these trees. I note that conditions are proposed that would address the final felling proposals, the re-planting scheme and the tree protection measures. On this basis I find the development would comply with policy NE5 Trees and Woodland. These works would however represent some level of change in the existing habitat aligning the river.

58. The potential contamination within the brownfield part of the site has been considered in the appellant's Geo-environmental report. Subject to ensuring the further survey work is carried out and any de-contamination works completed in accordance with an agreed scheme I am satisfied the development would comply with policy R2 Degraded and Contaminated Land. However in addressing the presence of contamination arising from the current and previous uses at this location there is a risk of contaminated material entering the river.

59. No issues have been raised by the council concerning the sustainable urban drainage solution here although conditions are recommended by SEPA to ensure further detailed proposals address the design of the system and the management of surface water run-off during the construction process. I consider these measures should ensure the development meets the relevant part of policy NE6 Flooding Drainage and Water Quality and the associated Supplementary Guidance Flooding, Drainage and water quality. However any new surface water outfall is expected to pass through the riverside area and there may be both construction and operational risk associated with the quality of the water entering the river.

60. The appellants Flood Risk Assessment (2017) and Flood Risk Assessment Addendum (2019) along with the various consultation responses from SEPA and the council's Flood Team confirm there is general agreement over the extent of potential fluvial and coastal flood risk at this location. A 1 in 200 year flood event is expected to reach a level of 3.45 metres AOD (above ordnance datum). SEPA suggests that the council's local knowledge should be used to determine the extent of the free board element to be added to this. The council recommends a 1000mm freeboard is added thus the finished floor levels of any building should be above 4.45 metres AOD.

61. The appellant's indicative plans show the built development confined to the land above 3.92 metres AOD and the finished floor level set at 5 metres AOD or above. I consider this approach should ensure the development meets the relevant part of policy NE6 Flooding, Drainage and Water Quality and associated guidance.

62. SEPA recommend applying a condition that prevents built development or land raising below 3.92 metres AOD and in addition seeks to secure a riverside buffer area to ensure no development takes place in the tidal limit. However the proposals before me necessitate some works within this area, in particular, the improvements to the riverside walkway, new footpath connections to this route and surface water drainage infrastructure.

63. Taking into account these potential risk factors and the terms of policy NE8 Natural Heritage I consider the River Dee and the Moray Firth Special Areas of Conservation (SAC) may be affected by this development. The qualifying interests of these are respectively the

presence of freshwater pearl mussel, Atlantic salmon and otter; and the presence of Bottlenose dolphin and subtidal sandbanks.

64. In making my own assessment of the likely effects I have considered the appropriate assessment carried out by the council as set out in the Habitat's Regulation Appraisal form, the advice from Scottish Natural Heritage (NatureScot) in this regard and the Environmental Survey carried out by Astell Associates dated August 2018. The risks I have identified above overlap with the likely effects on the qualifying interests identified by the council.

65. Construction and demolition works may disturb contaminated ground which presents a risk of contaminants transferring to the River Dee. Similarly surface water run-off into the river during the construction period could contain silt, fuel or other chemical spillages with potential impacts on Atlantic salmon. Although the appellant's Environmental Survey did not identify any otter activity at the site, the disturbance from construction could deter otters which are known to commute along the river. No direct impacts on pearl mussels are identified but they may be indirectly affected by any change to the salmon population. The completed operational development could have similar effects arising from polluted surface water run-off or disturbance in the riverbank area.

66. Any effects on the dolphins that frequent the mouth of the River Dee arising from the pollution risks described above, may indirectly affect the dolphin population associated with the Moray Firth SAC. However no effects are anticipated on the subtidal sandbanks of the Moray Firth. The council concludes there are no in-combination effects arising with other developments at this point in time and there is no evidence before me to suggest otherwise.

67. The council's appropriate assessment of these effects concludes that there would be no adverse effects on the integrity of the two SAC sites. In doing so the assessment takes into account a range of mitigation measures that should be secured by conditions on any permission granted. These overlap to some extent with the measures already required to address the relevant development plan policy matters described above and include the following:

- Additional intrusive contaminated land investigations and the identification of the most appropriate treatment for any contaminants discovered.
- A construction environmental management plan (CEMP) to manage surface water run-off and the interaction with otters with appropriate monitoring measures.
- An otter protection plan including no loss of otter habitat.
- Retention of the existing riverbank in its current state (i.e. land below 3.92 AOD).
- Minimise, by design, the light pollution within the riverbank area.
- Provide sustainable urban drainage systems to control any discharge into the river.

68. I find that these mitigation measures should be taken into account in the assessment of the likely effects. On that basis and on the assumption they are incorporated into the conditions attached to any permission granted I agree with the council's conclusions that the development proposals do not adversely affect the integrity of the River Dee SAC or indirectly the integrity of the Moray Firth SAC.

69. I find the council's proposed conditions adequately deal with the mitigation measures except with regard to the protection of the riverside area. SEPA recommends a condition that seeks to ensure no built development or land raising takes place below 3.92 m AOD

and in addition seeks to secure a riverside buffer area to ensure no development takes place in the tidal limit. The council's draft condition on this matter is slightly different. It states "no development shall take place below the tidal limit or in any case below 3.92 AOD" (my emphasis). I asked for further information on the reasons for this more restrictive approach. The council has advised me that it is standard wording and they would have no objection to any adjustment necessary to reflect the SEPA advice.

70. The mitigation measure however seeks to retain the riverbank (land below 3.92 metres AOD) in its current state and a condition that seeks to prevent any development in this area would align, in part, with that aspiration. However tree felling and re-planting works do not fall within the description of development. At the same time this approach prevents the installation of any surface water infrastructure or any new footpath links to the riverside walkway and significantly limits the extent of any improvements to the existing footpath.

71. Scottish Natural Heritage (now NatureScot), taking into account the existing industrial activity and the established footpath route, do not resist some element of change or development in the riverside area even if it may increase activity or disturbance. On that basis I consider an adjustment to the proposed condition is required to accommodate the intention of the suggested mitigation measure and the flood protection requirements but without preventing improvements to the walkway, some element of change or enhancement to the trees and other landscape features and, importantly, the surface water drainage infrastructure (a mitigation measure in its own right). I have altered condition 7 accordingly.

### Other Development Plan Matters

#### Setting of listed building

72. Victoria Bridge is a Cat B Listed building aligned north to south across the River Dee immediately to the north east of the appeal site offering open views along the river. It is a simple 5 span granite bridge with evenly spaced ornate street lights along its parapet walls. The proposed built development would be set back from the river's edge and would not interfere with existing views of the bridge from the riverside. Although a larger building, than existing, is intended for the Victoria Road frontage I do not consider it would impact on the approach to the bridge. Although the final architectural solution is not yet available I do not envisage the development would adversely affect the historic setting of the bridge and do not anticipate any conflict with policy D4, Historic Environment.

#### Developer Contributions

73. Policy I1 Infrastructure delivery and Planning Obligations applies at this site and expects developers to address any additional demands placed on community facilities and infrastructure as set out in Appendix 3 to the plan. The council has provided a Developer Obligations Assessment Report highlighting the nature and monetary value (where relevant) of contributions required towards affordable housing, community facilities, sport and recreation facilities, open space and healthcare. This assessment is derived from the calculation methods set out in Supplementary Guidance Planning Obligations. As this development introduces a significant number of new residential units within an existing industrial area I consider it is reasonable to assume the new resident population would place demands on such facilities and that the contributions are required.

74. With particular regard to the open space contribution I note that this is based on a shortfall in on site provision. Policy NE4 Open Space Provision in New Development requires useful open space in new residential development of around 2.8 ha per 1000 people to be provided within the development site. The Supplementary Guidance Green Space Network and Open Space sets out how this should be calculated. The proposed development is likely to provide some new communal open space between the buildings and a new central square but relies predominantly on the retention of the two existing areas of green space which currently serve the wider area. On that basis I am satisfied that there is a shortfall in provision in accordance with the policy requirements and a financial contribution is appropriate to address this. Such arrangements are provided for within Policy NE4 and on that basis I find there is no conflict with this policy.

#### Other design requirements

75. I find no conflict with policy CI1 Digital Infrastructure, R6 Water Management Regulations for New Development and R7 Low and Zero Carbon Build and Water Efficiency and the associated Supplementary Guidance, Resources for New development. The council's proposed conditions make provision for the relevant information associated with these matters to be submitted for approval as part of the finalised design.

#### Overall compliance with the development plan

76. As set out above I find the development is capable of complying with all the relevant local development plan policies. Although it cannot secure the specified parking rates set out in the statutory Supplementary Guidance Transport and Accessibility, I find the appeal site is a suitable candidate for a low car development and as such the specified parking rates can be lowered. On that basis I find the proposed residential development would comply with the terms of the Strategic Development Plan, the policies of the Local Development Plan and the relevant supporting Supplementary Guidance. All subject to the conditions set out at the end of my decision and the conclusion of a legal agreement on developer obligations and car club spaces.

#### Other material Considerations

##### Government policy and guidance

77. I find this brownfield site redevelopment with good links to active travel routes, public transport and the facilities in the nearby local and city centres demonstrates several important sustainable development principles as set out in paragraph 29 of Scottish Planning Policy. I therefore consider it to be development that contributes to sustainable development. I do not find there to be any conflict with the wider vision and objectives of National Planning Framework 3. I also find the development is capable of responding favourably to the design guidance offered by the government publications Designing Streets and Creating Places.

##### Aberdeen City Centre Masterplan

78. The site forms part of the Torry Waterfront zone within the Aberdeen City Centre Masterplan. I do not find this document sets out any expectation that the whole area would be developed as one project. The development proposals broadly meet the design expectations of the masterplan (as I have set out in relation to policy H4). However there are three notable exceptions.

79. Firstly, no provision is made to accommodate hotel development within the riverside area. Having reviewed the appellant's submissions on this I am satisfied that the economic evidence no longer supports the need for such a facility in Aberdeen. It is reasonable that the whole riverside frontage now be occupied by residential development.

80. Secondly, the proposed layout does not indicate discrete undercroft or basement parking. The council's design parameters however seek to ensure the parking is not located between the buildings and the river. I am satisfied that this and other landscaping measures should minimise the visual impact of the parking areas.

81. Thirdly, the appellant would prefer to introduce a smaller amount of commercial floorspace split between the Victoria Road frontage and the riverside frontage omitting any floorspace on the South Esplanade West frontage. The council does not raise this as an issue. Taking into account the proximity to the established local centre at Torry, I consider these changes are reasonable adjustments.

#### Proposed Aberdeen Local Development Plan 2020

82. The proposed plan retains the 'mixed use' and 'green space' designations at the appeal site and the area is now identified in the plan as OP106, Torry Waterfront City Centre Masterplan Intervention Area. Residential development and ground floor retail/food uses and a hotel academy are expected. The proposed policies applying in this area are similar to the adopted plan however the policy on housing density raises the minimum density for developments of over 1 hectare to 50 units per hectare in line with the Strategic Development Plan.

83. The other relevant policies are very similar to the adopted plan however a new policy has been introduced on parking (T3). This increases the support for low or no car development in the inner and outer city zones where access to active travel and public transport exists. A revised map of these zones is still to be finalised but as the appeal site currently lies in the 'outer' zone I find this policy change is likely to apply.

84. This proposed plan has yet to be presented for examination and as a result I do not consider it to be a significant material consideration. However, other than the hotel academy element, I do not find it sets out any additional design expectations for a development at this location that are not capable of being met by the proposals before me.

#### Representations

85. The matters raised relating to road safety, the scale of the proposed development and its relationship to the remaining businesses have been addressed in detail in my findings above. The proposed designs are indicative therefore the concerns regarding the architectural concept and whether it creates a wind tunnel effect cannot be reasonably addressed at this stage. I do not find there is any justification at this location to apply a

higher affordable housing rate. The retention of the vehicular access to the boat club facilities is not a planning matter that can be addressed by this decision though I note that preferred Layout Plan Option 3 does not interfere with this.

### Planning Conditions

86. I am satisfied that the council's proposed conditions have addressed all the key issues arising from the development plan policy requirements and consultation responses. I have made some minor changes to the format of the conditions to clarify the nature of the specified matter and to separate these from any appropriate design or implementation requirements.

87. To reflect my findings on a number of matters set out above I have also made the following adjustments:-

- The deletion of the duplicate reference to affordable housing in condition 1 and the addition of other key infrastructure items that I find (from the terms of the other proposed conditions) may require to be delivered in a phased manner;
- The deletion of condition 2 as I consider it is not necessary to control the location of commercial uses that have not been applied for;
- The insertion of a new condition 2 that incorporates the design parameters set out in the council's committee report with some additional items to reflect my assessment of the proposals including the addition of the flood level restriction, the low car (reduced parking) design and a specific reference to 'big buildings';
- The insertion of an additional requirement in condition 3 to submit an updated Design and Access Statement as part of the detailed proposals for the buildings;
- The addition of the car club spaces and electric vehicle charging points to the matters listed in condition 3 with conditions 18 and 19 amended to only address the provision of those facilities at an appropriate time. The reference to the delivery method of the car club spaces in condition 18 is also removed as I find it to be a relevant matter for the legal agreement;
- The addition of the riverside walkway improvements as one of the key features of the landscaping scheme required under condition 4;
- The insertion of an alternative Condition 7 that allows some development to take place in the riverside area while still accommodating the requirements of SEPA and the mitigation measures associated with the protection of the SAC;
- The addition of condition 25 on traffic management interventions for the reasons set out in paragraphs 39 to 41 above.

### Overall Conclusion

88. I therefore conclude, for the reasons set out above, that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would still justify refusing to grant planning permission in principle.

89. This decision however relies on the successful conclusion of a planning obligation restricting or regulating the development or use of the land in order to secure the necessary financial contribution to healthcare, community, sport and open space facilities in the area;

the provision and delivery method(s) associated with the required percentage of affordable housing at the appeal site and; the delivery method and funding arrangements for two car club spaces within the appeal site.

90. I will accordingly defer determination of this appeal for a period of up to 12 weeks to enable the relevant planning obligation (either an agreement with the planning authority or a unilateral obligation by the appellant under section 75 of the Town and Country Planning (Scotland) Act 1997 or some suitable alternative arrangement as may be agreed by the parties) to be completed and registered or recorded, as the case may be. If, by the end of the 12 week period, a copy of the relevant obligation with evidence of registration or recording, or at least receipt of such an obligation by the Registers of Scotland, has not been submitted to this office, I will consider whether planning permission should be refused or granted without a planning obligation."

*Elsbeth Cook*

Reporter

## Conditions

### PHASING

1. No development shall take place unless the plans and particulars of the matters listed below have been submitted to and approved by the planning authority:-
  - a) a phasing plan for the delivery of the development which sets out the stage at which the following parts of the development are to be delivered:-
    - each flatted block including the access points and, the number/location of vehicle, motorcycle and cycle parking spaces associated with each block;
    - the two car club spaces;
    - the electric vehicle charging points;
    - the retail space;
    - the affordable housing;
    - the riverside area walkway improvements and landscaping;
    - the other landscaping and open space and;
    - the surface water drainage system and any outfall to the River Dee.
    - the traffic management interventions required by condition 25.

Thereafter no development shall take place other than in full accordance with the approved phasing plan(s).

*Reason* – to ensure that the development is delivered in a comprehensive and coherent manner and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

### LAYOUT AND DESIGN PRINCIPLES

2. The design and layout of the development to be submitted for further approval under the terms of this planning permission in principle shall incorporate the following features:-
- a) a high-quality landmark design fit for the riverside context including big buildings situated at right angles to the river and avoiding a wall of development along the river and South Esplanade West;
  - b) buildings set back from the footpath along South Esplanade West with mature tree planting provided in landscape strips along the street to provide a buffer and defensible space;
  - c) buildings orientated to offer the residential units views towards the river, with no single aspect flats facing onto South Esplanade West (any single aspect flats only included elsewhere in the development where they can be fully justified)
  - d) a line of sight maintained between Cabel's Lane and the river
  - e) the vehicle parking areas set back from the ends of each building facing the river;
  - f) a central square for pedestrian use only with public realm facilities capable of accommodating the landing point for a footbridge from the opposite side of the river;
  - g) a minimum of 618 square metres of commercial floor space at ground level at the Victoria Bridge frontage and as part of the buildings enclosing the central square and public realm;
  - h) the retention of the green space within the riverside area with an improved public walkway and connections to the proposed residential area;
  - i) the retention of the existing play area (Billies Play Park);
  - j) a mix of dwelling sizes including, but not exclusively, 1 and 2 bedroom flatted properties and the requisite proportion of affordable housing units;
  - k) a low car development whereby the on-site parking rates are lower than that set out in Aberdeen City Council's publication Supplementary Guidance Transport and Accessibility (other than with regard to the provision of disabled spaces) and;
  - l) the location of the built development above 3.92 metres AOD with finished floor levels no lower than 4.45 metres AOD.

*Reason* - to ensure a satisfactory layout and design of the development that reflects the aspirations of the Aberdeen City Centre Masterplan and the other requirements of the Aberdeen City Local Development Plan 2017.

## DESIGN AND LAYOUT OF ROADS, PATHS AND BUILDINGS

3. No development shall take place within each phase of development unless the plans and particulars of the matters for that phase as listed below have been submitted to and approved by the planning authority:-
- a) the detailed layout, design and external appearance of all buildings and ancillary structures including an updated Design and Access Statement;
  - b) the details of the existing and proposed site, access and building levels (including cross sections);
  - c) the details of the mix of commercial and residential unit type, size and tenure;
  - d) the detailed layout, design and external appearance of roads, footpaths, cycle paths and the vehicular, pedestrian and cycle access points;
  - e) the detailed layout, design and external appearance of the vehicle and motorcycle parking areas, electric vehicle changing points and any car club spaces within that phase including the associated signs and road markings;
  - f) the detailed layout, design and external appearance of the short and long-term secure cycle parking;

- g) the detailed layout, design and external appearance of storage and collection facilities for waste and recyclables;
- h) the detailed layout, design and external appearance of boundary enclosures around the site or that phase of the development and;
- i) the details of how that phase of development will integrate with future or existing completed phases of development.

Thereafter the development shall take place in accordance with the details as approved.

*Reason* – to ensure a satisfactory layout and design of the development including the provision of a suitable level of vehicle and cycle parking for each phase and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

#### LANDSCAPING AND OPEN SPACE

4. No development shall take place within each phase of development unless the plans and particulars of the matters for that phase as listed below have been submitted to and approved by the planning authority:-

- a) a scheme of hard and soft landscaping covering all areas of public and private open or green space which includes;
  - i) the details of the areas reserved as private space and those areas that will be freely accessible by the general public with the latter to include all riverside areas and the central square;
  - ii) the details of the improvements to the riverside walkway, including any changes to its alignment and any connections to it from the proposed residential area;
  - iii) the existing and proposed finished ground levels within the open space;
  - iv) the details of the existing landscape features, trees, woodland and vegetation to be retained or removed;
  - v) the details of the proposed woodland, tree and shrub numbers, densities, locations, species, sizes and stage of maturity at planting and;
  - vi) the location, design and external appearance of hard surface finishing materials, walls, fences, gates and street furniture.
- b) details of the existing and proposed services and utilities including cables, pipelines and substations within the open space and ;
- c) the arrangements for the management and maintenance of existing and proposed open space, woodland and landscaped areas including watercourse buffer strips within the site.

All soft and hard landscaping proposals shall:-

- be specifically designed to enhance both the recreational and the wildlife value of the riverside;
- include mature tree planting along and close to the footway of South Esplanade West,
- be carried out in accordance with the approved scheme and shall be completed during the planting season immediately following the commencement of each respective phase of the development or such other date as may be agreed in writing with the Planning Authority.

Any planting which, within a period of 5 years from the completion of each phase of

the development, in the opinion of the Planning Authority is dying, being severely damaged or becoming seriously diseased, shall be replaced by plants of similar size and species to those originally required to be planted.

*Reason* – in order to integrate the development into the surrounding landscape, increasing the biodiversity and recreational value of the site and creating a suitable living environment for future residents and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

## EXTERNAL LIGHTING

5. No development shall take place within each phase of development unless the plans and particulars of the matters for that phase as listed below have been submitted to and approved by the planning authority:-
- a) the detailed design and layout of the external lighting for that particular phase or block (during construction and as part of the permanent scheme) and;
  - b) a Lighting Impact Assessment carried out by a suitably qualified practitioner for that phase of external lighting which demonstrates no light spillage over the river or riverbank.

Thereafter the external lighting shall be implemented and maintained in accordance with the details as approved.

*Reason* – to ensure that the integrity of the River Dee Special Area of Conservation is not adversely affected and to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

## SITE INVESTIGATION

6. No development shall take place within each phase of development unless the plans and particulars of the matters for that phase as listed below have been submitted to and approved by the planning authority:-
- a) a scheme to deal with any contamination on or within the land forming that particular phase or block

The scheme shall follow the procedures outlined in Planning Advice Note 33 (Development of Contaminated Land) and shall be conducted by a suitably qualified person in accordance with best practice as detailed in BS10175 (Investigation of Potentially Contaminated Sites - Code of Practice) and other best practice guidance and include

- (i) an investigation to determine the nature and extent of contamination;
- (ii) a site-specific risk assessment; and
- (iii) a remediation plan to address any significant risks and ensure the site is fit for the use proposed.

Thereafter no building within that particular phase shall be occupied unless for that phase

- (i) any long-term monitoring and reporting that may be required by the approved scheme of contamination or remediation plan or that otherwise has been required in writing by the planning authority is being undertaken and
- (ii) a report specifically relating to that phase has been submitted and approved in

writing by the planning authority that verifies that remedial works to fully address contamination issues related to the site and building(s) have been carried out,  
unless the planning authority has given written consent for a variation.

The final building within that particular phase shall not be occupied unless a report has been submitted and approved in writing by the planning authority that verifies the completion of the remedial works for the entire phase, unless the planning authority has given written consent for a variation.

*Reason* – in order to ensure that the site is fit for the intended end uses and to ensure that the integrity of the River Dee Special Area of Conservation is not adversely affected and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

## RIVERSIDE BUFFER

7. No development shall take place within any part of the development unless the plans and particulars of the matters as listed below have been submitted to and approved by the planning authority in consultation with SEPA:-
- a) the extent and boundaries of a buffer strip within the site up to the tidal limit of the River Dee;
  - b) the extent and boundaries of the part of the riverside area of the site currently lying below 3.92 metres AOD;

Thereafter no development shall take place within the approved buffer strip other than that required to complete the surface water drainage scheme approved under condition 13; and no development, land raising or other works shall take place within the part of the site below 3.92 metres AOD other than surface water drainage infrastructure, improvements to the riverside walkway, or footpath connections to the riverside walkway, tree felling, tree planting or other landscape works as approved under condition 4.

*Reason* – to ensure the existing character and wildlife habitat of the riverside area, the integrity of the River Dee Special Area of Conservation and the flood plain capacity is not adversely affected and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

## OTTER PROTECTION PLAN

8. No development (including site stripping, service provision or establishment of site compounds) shall take place within each phase of development unless the plans and particulars of the matters for that phase as listed below have been submitted to and approved by the planning authority:-
- a) an otter protection plan produced by an appropriately qualified person and containing avoidance, mitigation and compensation measures in accordance with Scottish Natural Heritage's (now NatureScot's) advice designed to minimise the impact of the development on otters.

Thereafter no development shall take place unless the agreed mitigation measures have been implemented.

*Reason* – to ensure the protection of a European protected species and to ensure that the integrity of the River Dee Special Area of Conservation is not adversely affected and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

#### CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN (CEMP)

9. No development (including site stripping, service provision or establishment of site compounds) shall take place within each phase of development unless the plans and particulars of the matters for that phase as listed below have been submitted to and approved by the planning authority in consultation with SEPA:-

- a) a site specific construction environmental management plan (CEMP) for that particular phase of development detailing the site specific management of surface water run-off.

Thereafter development shall be undertaken in accordance with the approved CEMP.

*Reason* – to minimise the impacts of necessary demolition or construction works on the Environment; to ensure that the integrity of the River Dee Special Area of Conservation is not adversely affected and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

#### DUST MANAGEMENT PLAN

10. No development (including site stripping, service provision or establishment of site compounds) shall take place within each phase of development unless the plans and particulars of the matters for that phase as listed below have been submitted to and approved by the planning authority:-

- a) a Dust Management Plan for that particular phase specifying dust mitigation measures and controls, responsibilities and any proposed monitoring regime.

Thereafter development (including any demolition) shall be undertaken in accordance with the approved plan.

*Reason* – to control air pollution from dust associated with the construction of the development and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

#### TREE PROTECTION

11. No development shall take place within each phase of development unless the tree protection fencing relating to that particular phase as shown on Astell Associates drawing SEW-1906-TP (Rev.1) and Appendix H of Tree Survey Report SEW-1906-TR (Rev.1) has been installed or such other tree protection measures that have been submitted to and approved in writing by the planning authority, have been installed.

Thereafter the tree-protection fencing shall remain in place for the duration of the construction period.

*Reason* - in order to safeguard trees which are to remain on the site.

## RECORDING OF FORMER MISSION HALL

12. No development shall take place within the phase of development that incorporates all or part of the site of the former mission hall at 4 Esplanade West unless the plans and particulars of the matters as listed below have been submitted to and approved by the planning authority:-

- a) the scope of a Level 2 archaeological standing building survey of the former mission hall and;
- b) the subsequent results of the Level 2 archaeological standing building survey presented in a digital format clearly marked with the planning application reference number.

*Reason* – To ensure that a historic record of the building is made for inclusion in the National Record of the Historic Environment and in the local Sites and Monuments Record and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

## SURFACE WATER DRAINAGE

13. No development shall take place within each phase of development unless the plans and particulars of the matters for that phase as listed below have been submitted to and approved by the planning authority in consultation with SEPA:-

- a) a detailed scheme for surface water drainage including the detailed design of the surface water out-fall proposed on the banks of the River Dee.

Thereafter the development shall be implemented in accordance with the approved scheme.

*Reason* – in order to ensure adequate protection of the water environment from surface water run-off; to ensure that the integrity of the River Dee Special Area of Conservation is not adversely affected and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

## WASTE-WATER CONNECTIONS

14. No development shall take place within each phase of development unless the plans and particulars of the matters for that phase as listed below have been submitted to and approved by the planning authority:-

- a) a scheme for the connection of the buildings in that phase to the public waste water system;
- b) confirmation from Scottish Water that those connections can be made and any necessary upgrades to the public waste-water system are in place.

Thereafter no building shall be occupied unless connection has been made to the public waste-water network in accordance with the approved details.

*Reason* – in order to ensure that sewage is satisfactorily treated and disposed of; to

ensure that the integrity of the River Dee Special Area of Conservation is not adversely affected and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

#### NOISE MITIGATION SCHEME FOR NEW RESIDENTIAL PROPERTIES

15. No development shall take place within each phase of development unless the plans and particulars of the matters for that phase, as listed below, have been submitted to and approved by the planning authority:-

- a) a scheme of mitigation measures for the protection of the proposed residential properties from external noise for that particular phase.

The scheme shall ensure that internal noise levels do not exceed the criterion identified in Table 16 of the Noise Impact Assessment prepared by CSP Acoustics (ref: 1329002 IK V2 –13th September 2019).

Thereafter no residential property in that phase shall be occupied unless the mitigation measures relevant to that particular property have been implemented in accordance with the approved scheme.

*Reason* – to ensure that residents of the development are adequately protected from excessive noise levels and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

#### ALTERNATIVE MEANS OF VENTILATION

16. No development shall take place within each phase of development unless the plans and particulars of the matters for that phase, as listed below, have been submitted to and approved by the planning authority:-

- a) a scheme demonstrating that suitable ventilation complying with the relevant building standards is to be provided in each of the units within that phase.

Thereafter no unit within that phase shall be occupied unless the buildings have been constructed in accordance with the approved scheme.

*Reason* - In order that satisfactory ventilation can be provided to flats without windows being opened, which could result in exposure to excessive noise levels and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

#### BUS STOP IMPROVEMENTS / PEDESTRIAN CROSSING

17. No development shall take place within any part of the development unless the plans and particulars of the matters as listed below have been submitted to and approved by the planning authority:-

- a) a scheme for the improvement of the existing bus stops at the following locations:-
  - i) the west side of Victoria Road, 40m north of the junction with South Esplanade West

- ii) the east side of Victoria Road, 25m north of the junction with South Esplanade West
- iii) the north side of Menzies Road, opposite the junction with Walker Lane;
- iv) the south side of Menzies Road, 28m south of the junction with Walker Lane;
- v) the north side of Menzies Road, 28m north of the junction with Walker Place and;
- vi) the south side of Menzies Road, 17m north of the junction with Walker Place.

The scheme shall address the provision of bus shelters, real-time information displays, timetables, lighting, boarding kerbs and road markings at each location taking into account the extent of upgrading that the locational characteristics of each stop allows.

Thereafter no units within any phase shall be occupied until all the bus stop locations have been upgraded in accordance with the approved scheme.

*Reason* – in order to encourage the use of public transport within the vicinity of the site and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

#### CAR CLUB PARKING SPACES

18. Two car club only parking spaces shall be provided and made available for use within the site in accordance with the phasing plan approved under condition 1 above and the details approved under condition 3 above. No dwelling shall be occupied until a traffic regulation order (TRO) is in place to restrict the use of these two parking spaces for car club vehicles only.

*Reason* – To ensure the car club parking spaces are provided at an appropriate stage in the development and to encourage modal shift away from the private car.

#### ELECTRIC VEHICLE CHARGING POINTS

19. No dwelling in any phase shall be occupied until the electric vehicle charging points and bays for that phase have been made available for such a use in accordance with the phasing approved under condition 1 and in accordance with the details approved under condition 3.

*Reason* – To ensure the electric vehicle charging points are provided at an appropriate stage within the development and to encourage the use of electric vehicles.

#### WATER EFFICIENCY STATEMENT

20. No development shall take place within any part of the development unless the plans and particulars of the matters as listed below have been submitted to and approved by the planning authority:-

- a) a water efficiency statement that takes into account the advice provided in CIRIA publication C723 (Water sensitive urban design in the UK) and;
- b) the measures proposed to incorporate water saving technology into the development so as to achieve gold standard for water use efficiency in domestic buildings or BREEAM level 5 for non-domestic buildings.

Thereafter the approved measures shall be implemented in the construction of the development.

*Reason* – in order to help avoid reductions in river water levels, which at times of low flow can have impacts on freshwater pearl mussel, one of the qualifying features of the River Dee Special Area of Conservation (SAC) and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

#### LOW AND ZERO CARBON BUILDINGS

21. No development shall take place within any phase of the development unless the plans and particulars of the matters as listed below have been submitted to and approved by the planning authority:-
- a) a scheme detailing compliance with the Council's 'Low and Zero Carbon Buildings' supplementary guidance for the buildings within that phase.

Thereafter, each building shall not be occupied unless the approved measures have been implemented in full and are available for use.

*Reason* – in order to ensure that the development complies with the 'Low and Zero Carbon Buildings' Supplementary Guidance and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

#### SOUTH ESPLANADE WEST PAVEMENT

22. No development shall take place within any part of the development unless the plans and particulars of the matters as listed below have been submitted to and approved by the planning authority
- a) a scheme to bring the pavement on the north west (development site) side of South Esplanade West between in its junction with Victoria Road and Wellington Road up to adoptable standard.

The scheme shall be designed to provide pedestrian priority along the length of the development frontage with any vehicular accesses into the site formed as footway crossings rather than a road junction.

Thereafter no dwelling shall be occupied unless the scheme has been implemented in its entirety.

*Reason* – in order to provide satisfactory and safe pedestrian access to the development. And; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

#### SAFE ROUTES TO SCHOOL

23. No development shall take place within any part of the development unless the plans and particulars of the matters as listed below have been submitted to and approved by the planning authority:-

- a) an assessment of, and scheme for securing, safe pedestrian routes to Lochside Academy and Walker Road Primary School (or such as other school as pupils from the site may be zoned to should circumstances change).

Thereafter no residential unit shall be occupied until any associated work identified within the approved scheme to create the safe routes has been completed.

*Reason* - in order to promote sustainable and safe travel and ensure compliance with policy D3 (Sustainable and Active Travel) of the Aberdeen Local Development Plan and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

#### RESIDENTIAL TRAVEL PACK

24. No development shall take place within any part of the development unless the plans and particulars of the matters as listed below have been submitted to and approved by the planning authority:-

- a) a residential travel pack identifying the details of different travel options available in the area in order to discourage the use of the private car as well as the duration of the plan, system of management, monitoring, review and reporting.

Thereafter the approved travel pack shall be implemented as approved and supplied to the first occupants of every residential unit within the development.

*Reason* – in order to reduce dependency on the private car for travel and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

#### TRAFFIC MANAGEMENT INTERVENTIONS

25. No development shall take place within any part of the development unless the plans and particulars of the matters as listed below have been submitted to and approved by the planning authority:-

- a) a scheme for the delivery of traffic management interventions to improve the road and footway environment on South Esplanade West to mitigate pedestrian and road safety concerns and enhance residential use based on the findings (and including the results of) of an up-to-date study in terms of traffic movements, car parking and loading/unloading operations.

Thereafter the traffic management interventions as approved shall be carried out in accordance with the phasing plan approved under condition 1 above.

*Reason* – in the interests of traffic and pedestrian safety and; to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

## APPENDIX 2 MARKET ADVICE

**From:** [Chris Grinyer](#)  
**To:** [Daniel Harrington](#)  
**Cc:** [Glen Smith](#)  
**Subject:** RE: South Esplanade  
**Date:** 18 October 2023 17:21:43

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Daniel

I refer to our conversation regarding the likely retail requirements for South Esplanade East.

There are currently no named retail occupier requirements for the area. It is likely the development will require to be progressing before occupiers might be attracted.

The exception to this is the convenience sector where we anticipate securing some form of forward commitment might be possible.

Torry has typically been a low value area in the context of retail occupiers, and lettings and sales are difficult. For that reason alone flexibility on unit sizes would be required. I think general retail demand would be less than 1,000sqft (93sqm), so such sizes would require to be accommodated.

Convenience stores vary in size and the required floorplate will be dictated by a number of factors, such as catchment, demographic of the area, competition etc. I would anticipate a convenience store in this area would probably be at the lower end of the size scale given the relative close proximity of the Tesco and Lidl supermarkets. Convenience units would normally range in size from 2,500-6,000 sqft (230-550sqm). It is difficult to know at this stage what the actual requirement might be as convenience operators would need to undertake appropriate studies to determine the required footplate. As a result flexibility in terms of size is essential.

I trust this clarifies but should you need anything further then please let me know.

Regards

Chris

COMMERCIAL

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