

Variation of Condition to Application at West Marketgait

KEY INFORMATION

Ward Maryfield

Address

Land to East of West
Marketgait
Overgate Lane
Dundee

Applicant

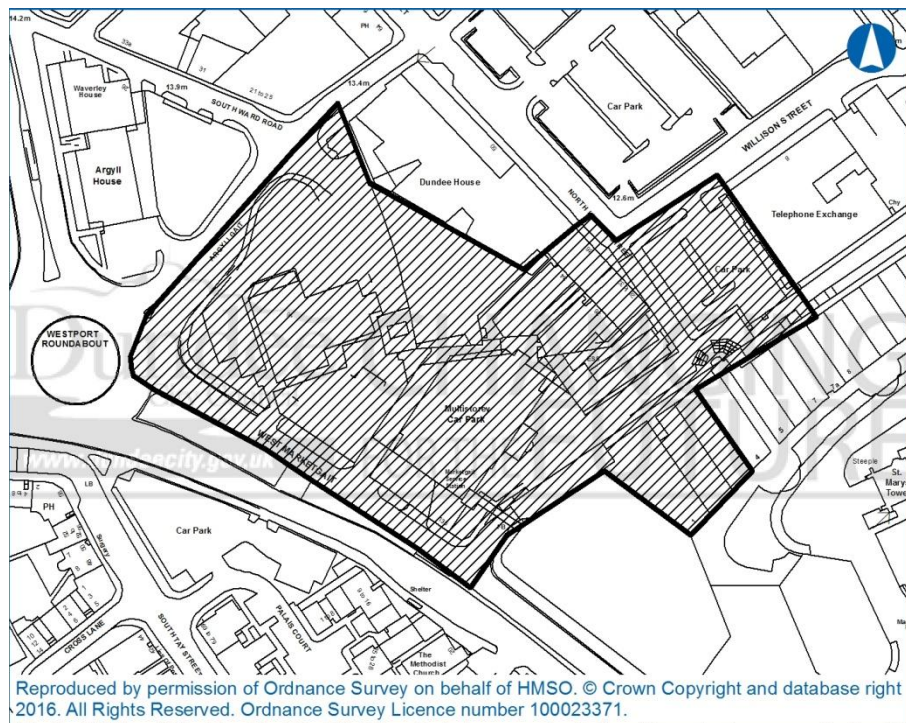
Overgate Nominees Ltd
c/o CBRE Ltd
7 Castle Street
Edinburgh EH2 3AH

Agent

Samantha Jackson
7 Castle Street
Edinburgh
Midlothian EH2 3AH

Registered 16 June 2016

Case Officer S Dorward



SUMMARY OF REPORT

- Planning permission is sought under Section 42 of the Town and Country Planning (Scotland) Act 1997 for the variation of Condition 1 of Planning Permission 11/00124/FULM to allow additional time for development to commence.
- The statutory neighbour notification process was undertaken, one letter of objection has been received.
- In accordance with Dundee City Council's scheme of delegation, this application is to be determined by the Development Management Committee as it constitutes a major Development.
- More details can be found at <http://idoxwam.dundee.gov.uk/idoxpa-web/applicationDetails.do?activeTab=documents&keyVal=O8SVKFGCMQV00>.

RECOMMENDATION

The application complies with Policies 1 and 7 of the Adopted Strategic Development TAYplan, Policies 7, 20, 29, 42, 45, 47, 48, 49, 50, 55 and 57 of the Adopted Dundee Local Development Plan and also with Scottish Planning Policy. The application is therefore recommended for APPROVAL subject to conditions.

1 DESCRIPTION OF PROPOSAL

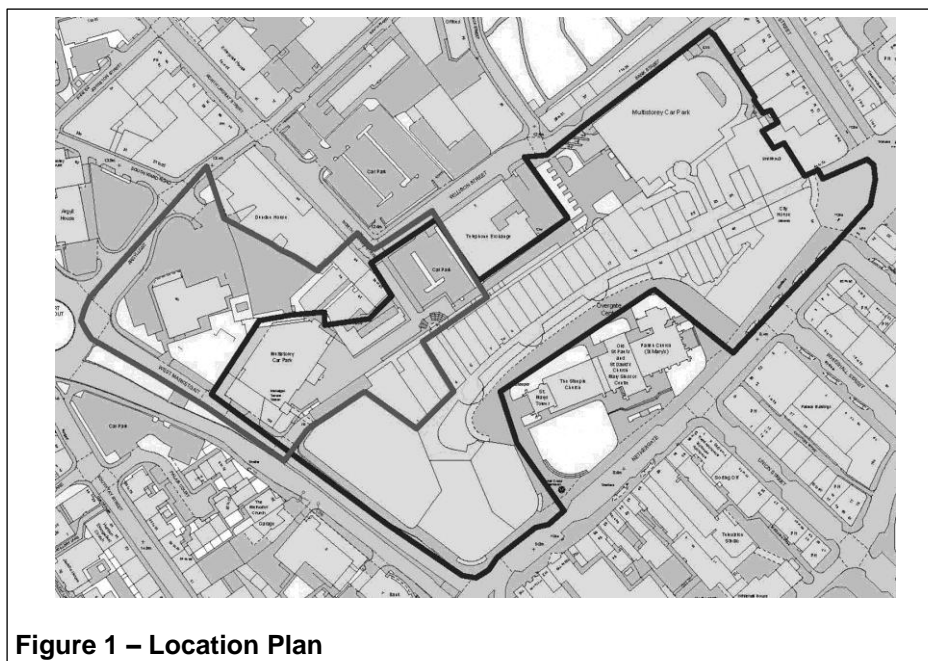


Figure 1 – Location Plan

- 1.1 Planning permission is sought under Section 42 of the Town and Country Planning (Scotland) Act 1997 for the variation of Condition 1 of planning permission 11/00124/FULM to allow additional time for the development to commence. A further 5 years is sought.
- 1.2 The original proposals were made under planning application 05/00815/FUL to seek a two storey extension to the Overgate Shopping Centre including a new multi-storey car park at land to the north of the existing Overgate Shopping Centre. Planning permission 11/00124/FULM was previously approved under section 42 to vary Condition 1 of planning permission reference 05/00815/FUL to extend the time allowed before development must commence. This application was approved by Committee in June, 2011 and allowed the permission to run to 30th June, 2016.
- 1.3 Planning permission 05/00815/FUL allowed a new extension which would accommodate in excess of 40 new retail units with approximately 20,000m² of floor area on two levels (18,700m² gross retail). The existing malls would extend through to provide full access to the new extension at both levels and the new retail and associated facilities would be finished to the same high standard as that of the existing Centre. A new major shopping unit is proposed to the north of the site. A new entrance on the north edge of the site adjacent to the former Halley works and flanked by retail units would provide pedestrian access into the new extension. In addition, a new entrance located on the northwest corner of the site at the junction between South Ward Road and West Marketgait would act as a marker to signify the new north edge of Overgate and provide direct access into new major shopping units at upper mall level.
- 1.4 The new multi-storey car park would provide 330 additional spaces (total 700 cars) on 4 decks with vehicular access being directly off West Marketgait. Exit from the car park would be via a ramp into Willison Street. Control barriers would be located at service deck level which is on the roof of the upper mall level. At this level there would be accessible parking for parent/child and disabled, and the Shop Mobility facility. Access from this and the upper car park decks to the retail area would be via the lifts and stairs that would arrive directly into the new atrium space and welcome hall. Direct access would be provided to the

new major unit and a pedestrian “bridge” would connect the new car park with the existing Debenhams store.

- 1.5 The existing service access ramp located off West Marketgait would be retained and would remain the main point of service access and egress for the complete Centre. A new service bay with sufficient space for an additional 5 service vehicles and a compactor unit is proposed, to be located between the new car park and the existing service access deck. The new major shopping unit would have its own dedicated service dock capable of taking up to 3 service vehicles; this would be accessed from South Ward Road.
- 1.6 Finishing materials are proposed to match those existing, with a contemporary design to complement adjacent existing buildings and category B listed properties on North Lindsay Street, including the former Halley Works, now Dundee House. No changes are proposed to the original development proposals. It would be necessary to demolish all existing buildings within the site boundary, with the exception of the facade to the northernmost Category B listed tenement in North Lindsay Street.
- 1.7 Condition 1 of planning permission 11/00124/FULM states:

"The development hereby approved shall be commenced before 30 June 2016."
- 1.8 By varying Condition 1 of planning permission 11/00124/FULM, the applicant proposed to allow additional time for the development to commence.
- 1.9 The current operator, Overgate Nominees Ltd for Overgate (Jersey) Unit Trust, acquired the shopping centre in 2014 from Land Securities. The Supporting Statement submitted with this application illustrates that the current owner is actively reviewing their wider long term strategy for the centre and considers that since 2014, the economic climate and level of retailer demand which required the previous renewal has not improved sufficiently to have allowed the implementation of the current proposals. A further 5 years is now sought to allow sufficient time for improvement and to maintain the ability to implement the planning permission and listed building consent.

2 SITE DESCRIPTION

- 2.1 The application site extends to approximately 1.46 hectares. The site is bounded by the West Marketgait section of the Inner Ring Road to the west; South Ward Road to the north; the new Dundee House complex on South Ward Road and fronting North Lindsay Street to the east; the BT Exchange building to the south east; and the existing Overgate and Overgate Lane to the south.
- 2.2 Within the application site there are buildings of various styles, scale and types. They are undistinguished both in terms of their individual appearance, massing and grouping, largely as a consequence of the piecemeal development dating from the 1960's. The site levels fall gently from north to south.
- 2.3 A small part of the application site is located within the Central Conservation Area as identified within the Adopted Local Development Plan, this area also contains the Category B listed buildings at 26-36 North Lindsay Street.

3 POLICY BACKGROUND

3.1 The following plans and policies are considered to be of direct relevance:

TAYPLAN STRATEGIC DEVELOPMENT PLAN 2012-2032

Policy 1: Location Priorities

Policy 7: Town Centres

DUNDEE LOCAL DEVELOPMENT PLAN

Policy 7: High Quality Design

Policy 20: City Centre Retail Frontages

Policy 29: Low and Zero Carbon Technology in New Development

Policy 42: Sustainable Drainage Systems

Policy 45: Land Contamination

Policy 47: Environmental Protection

Policy 48: Listed Buildings

Policy 49: Demolition of Listed Buildings and Buildings in Conservation Areas

Policy 50: Development in Conservation Areas

Policy 55: Accessibility of New Developments

Policy 57: Car Parking

SCOTTISH PLANNING POLICY, PLANNING ADVICE NOTES AND CIRCULARS

Scottish Planning Policy (2014)

Historic Environment Scotland Policy Statement (2016)

NON STATUTORY STATEMENTS OF COUNCIL POLICY

Dundee Retail Study (2015)

3.2 There are no other plans, policies and non-statutory statements that are considered to be of direct relevance.

4 SITE HISTORY

4.1 Planning application 05/00815/FUL was approved in February 2006 for the erection of an extension to the existing Overgate shopping centre; planning permission 11/00124/FULM then extended the life of the permission to 30 June 2016, approved in June, 2011.

5 PUBLIC PARTICIPATION

5.1 One letter of objection has been received from an agent acting on behalf of Lidl UK GmbH. Lidl UK GmbH own land and operate a discount foodstore on a site to the west within the application site and are directly affected by the proposals. Grounds for objection are cited as the loss of an important retail facility in the City Centre, failure to begin development, change in material circumstances and the creation of uncertainty in the area.

6 CONSULTATIONS

6.1 **The Head of Community Safety and Protection** – has requested that the previous conditions attached to the original 05/00815/FUL planning permission remain in place with regard to contaminated land and noise.

7 DETERMINING ISSUES

- 7.1 **Section 25 of the Act provides that an application for planning permission (other than for a national development) shall be determined in accordance with the development plan unless material considerations indicate otherwise.**

THE DEVELOPMENT PLAN

The provisions of the Development Plan relevant to the determination of this application are specified in the Policy Background section above.

ADOPTED TAYPLAN STRATEGIC DEVELOPMENT PLAN 2012

- 7.2 **Policy 1: Location Priorities** - states that the principal settlements within the region have the potential to accommodate the majority of development in the region, and that the re-use of previously developed land and buildings should be priorities; Dundee's core area is identified as a Tier 1 principal settlement.
- 7.3 **The proposal satisfies Policy 1 of the Adopted Strategic TAYplan.**
- 7.4 **Policy 7: Town Centres** - calls for a focus of comparison retail development within town centres, with the largest scale of activity in the largest town centres, to protect and enhance their vitality and viability. Dundee City Centre is the Regional Centre.
- 7.5 **The proposal therefore satisfies Policy 7.**

ADOPTED DUNDEE LOCAL DEVELOPMENT PLAN 2014

- 7.6 **Policy 7: High Quality Design** - of the Dundee Local Development Plan requires that all development contributes positively to the quality of the surrounding built and natural environment. Design should complement its surroundings in terms of appearance, height, scale, massing, materials, finishes and colour. All proposals should consider and respect site topography, contribute to a sense of identity, complement surroundings and respect the existing street scene. Policy 7 requires that all development in Dundee with construction costs of £1million or more will be required to allocate at least 1% of construction costs towards public art.
- 7.7 The extension has been designed and would use materials to complement the design of the existing Overgate shopping centre, thereby complementing its surroundings. The proposal is of an acceptable quality of design and would not have a detrimental impact on the surrounding environment. A planning condition to the original planning permission to require further details would be retained.
- 7.8 **The proposal satisfies Policy 7 with the addition of a planning condition.**
- 7.9 **Policy 20: City Centre Retail Frontages** - supports locations as identified within Appendix 6 of the Adopted Local Development Plan "City Centre Extending and Upgrading Shopping Provision" for extending and upgrading shopping provision, as areas capable of accommodating a major element of new shopping floorspace within the city centre. Any other proposals for new shopping floorspace must demonstrate that they will be well located, connected to and will not undermine the existing shopping provision in the city centre.

- 7.10 The application site is partly located within the area identified in Appendix 6 for city centre Extension and Upgrade of Shopping Provision and the remainder of the proposed extension would be immediately connected.
- 7.11 **The proposal satisfies Policy 20.**
- 7.12 **Policy 29: Low and Zero Carbon Technology in New Development** - requires that, for specified developments, carbon emissions will be reduced by defined percentages through the installation and operation of zero-carbon generating technologies.
- 7.13 An appropriate condition is proposed that would ensure that a Statement is submitted in accordance with the terms of Policy 29.
- 7.14 **With the addition of a planning condition, the proposal would satisfy Policy 29.**
- 7.15 Policy 42 (Sustainable Drainage Systems) states that surface water from new development must be treated by a Sustainable Urban Drainage System (SUDS), which should be designed so that in a 1 in 200 year rainstorm event, flooding will not be higher than 300mm below floor level. Proposals are encouraged to adopt an ecological approach.
- 7.16 No SUDS details have been supplied for the application; a condition was appended to planning permission 05/00815/FUL to require that a drainage and flood assessment be submitted for prior approval. It would be advisable to require these details along with check certification and maintenance details; appropriate conditions are proposed.
- 7.17 **With the addition of planning conditions, the proposal satisfies Policy 42.**
- 7.18 **Policy 45: Land Contamination** - requires that development of potentially contaminated land will be considered where a site investigation has been submitted and establishes the nature and extent of the contamination, and where remediation is proposed that it would adequately address contamination risks and be suitable for the planned use.
- 7.19 A contaminated land condition was recommended for the original application and subsequently applied. The Head of Community Safety and Public Protection has advised that updated contaminated land conditions should be appended to any planning permission granted.
- 7.20 **With the addition of planning conditions, the proposal satisfies Policy 45.**
- 7.21 **Policy 47: Environmental Protection** - asks that all new development that would generate noise, vibration or light pollution is required to demonstrate that it can be accommodated without an unsatisfactory level of disturbance to the surrounding area. New development in close proximity to existing sources of noise, vibration or light pollution will need to demonstrate that it can achieve a satisfactory level of amenity without impacting on the viability of existing businesses or uses.
- 7.22 In this case, it is recommended by the Head of Community Safety and Public Protection that the noise condition originally appended to the planning permission is carried over.
- 7.23 **The proposal satisfies Policy 47 with the addition of a planning condition.**
- 7.24 **Policy 48: Listed Buildings** - states that alterations to listed buildings must have regard to the preservation or enhancement of its architectural or historic character. It is intended to retain the facade of the northernmost listed building on North Lindsay Street, a planning

condition was included with the original permission to seek a scheme of works for prior approval. It is proposed to retain this planning condition.

- 7.25 **The proposal satisfies Policy 48 with the addition of a planning condition.**
- 7.26 **Policy 49: Demolition of Listed Buildings and Buildings in Conservation Areas** - states that applications for the demolition of a listed building or unlisted building within a conservation area must be fully supported by a feasibility study and that applications should be in accordance with Historic Environment Scotland policy. Where demolition is acceptable, applications must be supported by acceptable proposals for redevelopment.
- 7.27 In this case, the original proposals were acceptable to Historic Scotland, the retention of the facade is welcomed and proposals are put forward for redevelopment. It is proposed to retain a planning condition to secure a programme of archaeological works prior to demolition.
- 7.28 **The proposal satisfies Policy 49.**
- 7.29 **Policy 50: Development in Conservation Areas** - expects that all development proposals will preserve or enhance the character of the surrounding area, retaining all features that contribute to the character and appearance of the conservation area.
- 7.30 A small part of the application site is located within the Central Conservation Area, the remainder is immediately adjacent. With the retention of planning conditions to seek further details in relation to elevational design and finishing materials the proposals would comply with Policy 50.
- 7.31 **With the addition of planning conditions, the proposal satisfies Policy 50.**
- 7.32 **Policy 55: Accessibility of New Developments** - seeks that all development proposals which generate travel should be designed and well served by all modes of transport and development proposals are required to incorporate facilities for walking, cycling and public transport networks. Proposals should also comply with Dundee City Council's road standards. The application is supported with the conditions as attached to the original planning permission 05/00815/FUL retained. This would include the implementation of a traffic management plan as identified within the Transport Assessment.
- 7.33 **With the addition of planning conditions, the proposal satisfies Policy 55.**
- 7.34 **Policy 57: Car Parking** - requires all new developments, or alterations to existing developments within the City Centre to comply with the Central Dundee Parking Strategy. The application is supported with the retention of the original planning conditions.
- 7.35 **The proposal satisfies Policy 55.**
- 7.36 **It is concluded from the foregoing that the proposal complies with the provisions of the Development Plan.**

OTHER MATERIAL CONSIDERATIONS

A - STATUTORY DUTY

- 7.37 Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 requires that special regard is given to the desirability of preserving listed buildings or their setting or any features of special architectural interest which they possess when determining

applications for planning permission. Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 requires that with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

B - NATIONAL PLANNING POLICY

- 7.38 Scottish Planning Policy (2014) adopts a town centre first principle, to attract significant retail and other town centre uses. New development should be of a scale which is appropriate to that centre. The aim is to prioritise the importance of town centres and encourage a mix of developments which support their vibrancy, vitality and viability. This aim should also be taken into account in decisions concerning proposals to expand or change the use of existing development. The extension to the Overgate Centre would remain compliant with Scottish Planning Policy.
- 7.39 Scottish Planning Policy (2014) and Historic Environment Scotland Policy Statement (2016) should be taken into account when determining applications for planning permission for development which may affect the historic environment. Scottish Planning Policy (Historic Environment) advises that change to a listed building should be managed to protect its special interest while enabling it to remain in active use; development which will affect a listed building or its setting should be appropriate to the character and appearance of the building and its setting. The Historic Environment Scotland Policy Statement seeks to identify the key characteristics of the historic environment and establish the boundaries within which change can continue so that it enhances rather than diminishes historic character; the historic environment should be valued as an asset, rather than thought of as a barrier to development. It is therefore concluded that the proposed works comply with national planning guidance with regard to development affecting a listed building.

C - APPLICANT'S JUSTIFICATION

- 7.40 The applicant has provided justification for the variation of Condition 1 of planning permission 05/00815/FUL to state that the economic climate and level of retailer demand which required the previous renewal has not improved sufficiently to have allowed the implementation of the current proposals. A further 5 years is now sought to allow sufficient time for improvement and to maintain the ability to implement the planning permission and listed building consent; the applicant's commitment to the Overgate centre is demonstrated by recent change of use applications for Frankie & Benny's and Five Guys restaurants.

D - THE DUNDEE RETAIL STUDY (2015)

- 7.41 Advises that the forecast for expenditure on comparison goods over the next 10 years would support the proposed Overgate expansion, but not fully within the first 5 years, and the proposed expansion is likely to have a long lead-in time as market demand lags behind the expenditure potential.
- 7.42 It would be appropriate in this case to allow permission for a further 5 years. The removal of Condition 1 and variation of the time directive under Section 58 would be appropriate. Section 58 of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006 states that unless varied, a planning permission lapses on the expiration of a period of 3 years.

E - VIEWS OF OBJECTORS

- 7.43 The objection letter received from Lidl UK GmbH cites the loss of a retail facility, lack of intention to develop and creation of uncertainty as reasons for objection. These issues have been discussed earlier within the report and are not considered to be reasons to refuse planning permission and allow an extension of time.
- 7.44 **The concerns of the objectors are not supported.**
- 7.45 **It is concluded from the foregoing that the material considerations support the approval of planning permission.**

8 CONCLUSION

- 8.1 The proposal satisfies the requirements of the Development Plan. There are no material considerations that would justify refusal of planning permission. Therefore, it is therefore recommended that planning permission be granted subject to conditions.

9 RECOMMENDATION

- 9.1 It is recommended that consent be GRANTED subject to the following conditions:
- 1 Samples of all finishing materials shall be submitted to the Council for approval prior to the commencement of development and if approved the proposed development shall be carried out using only the approved finishing materials.
 - 2 Development shall not begin until a Preliminary Risk Assessment is completed and, if required, an Intrusive Investigation and a scheme to deal with contamination at the site has been submitted to and approved in writing by the planning authority. The scheme shall contain details of proposals to deal with contamination to include:
 - i assessment of the risks associated with contaminant sources, pathways and receptors specific to the proposed use of the site, and if necessary;
 - ii a remediation Implementation Plan detailing measures to treat/remove contamination and mitigate risks to ensure the site is fit for the proposed use;
 - iii measures to deal with contamination during construction works; and
 - iv verification of the condition of the site on completion of decontamination measures.
 - 3 Before the unit is occupied the remediation strategy shall be fully implemented and a verification report with relevant documentation demonstrating that the objectives of the remediation strategy have been achieved shall be submitted to and approved by the planning authority.
 - 4 During the period 2300-0700hrs total noise from all mechanical and electrical services shall not exceed NR35 as measured 1m external to the facade of the nearest residential accommodation.
 - 5 Details of the proposals for the 1% for public art contribution and the timescale for its implementation shall be submitted to the Council for approval before any development

is commenced and if approved the development shall be carried out only in full accordance with such approved details.

- 6 That a landscaping plan including future maintenance shall be submitted to the Council for approval prior to the commencement of development and if approved the proposed development shall be carried out only in full accordance with such approved details.
- 7 No part of the development shall be occupied until a Travel Plan has been submitted and approved in writing by the Planning Authority. The Travel Plan will identify the measures to be provided, the system of management, monitoring, review, reporting and duration of the plan.
- 8 Details of the improved pedestrian crossing facilities on Willison Street/Bank Street shall be submitted to the Council for approval prior to the commencement of development and if approved the proposed development shall be carried out only in full accordance with such approved details.
- 9 Details of the scheme of works for retaining the listed tenement facade and the associated new build shall be submitted to the Council for approval prior to the commencement of development and if approved the proposed development shall be carried out only in full accordance with such approved details.
- 10 No development or demolition shall take place on the site until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the Council.
- 11 The detailed design of all elevations shall be submitted to the Council for approval prior to the commencement of development and if approved the proposed development shall be carried out only in full accordance with such approved details.
- 12 No part of the development shall commence trading until all of the improvements to the surrounding road network have been completed to the satisfaction of the Council.
- 13 No part of the development shall commence trading until all of the traffic management and infrastructure works set out in the Schedule to the Transport Assessment have been implemented and completed to the satisfaction of the Council.
- 14 Details of the tree planting scheme to continue the avenue of trees on West Marketgait shall be submitted to the Council for approval prior to the commencement of development and if approved the proposed development shall be carried out only in full accordance with such approved details.
- 15 The multi storey car park shall be for variable stay parking only and the pricing policy as operated by Dundee City Council for variable stay parking will be implemented and maintained.
- 16 Details of provision for waste recycling facilities within the proposed development shall be submitted to the Council for approval before any development is commenced and if approved the development shall be carried out only in full accordance with such approved details. The approved scheme to deal with waste recycling shall be operational prior to the first occupation of any of the retail units.
- 17 Details of the scheme for the safe management of the dedicated service yard at South Ward Road shall be submitted to the Council for approval prior to the commencement of

development and if approved the proposed development shall be carried out only in full accordance with such approved details.

- 18 Details of the design of the new build to the tenement facade retention in North Lindsay Street shall be submitted to the Council for approval prior to the commencement of development and if approved the proposed development shall be carried out only in full accordance with such approved details.
- 19 The costs of implementing all of the traffic management and infrastructure works set out in the Schedule to the TA shall be met by the applicant.
- 20 Prior to the commencement of any works on site, a detailed surface water drainage/SUDS design including drawings, calculations, full modelling, simulation results, design risk assessment, signed Dundee City Council Design and Independent Check Certification, and where appropriate SEPA comments shall be submitted to the Council for written approval. Thereafter, all works approved by virtue of this condition shall be carried out prior to the first occupation of any housing unit hereby approved.
- 21 Prior to the commencement of any works on site, maintenance responsibilities along with a maintenance schedule for the surface water drainage system/ SUDS features shall be submitted to the Council for written approval. Thereafter, all works approved by virtue of this condition shall be carried out in perpetuity.
- 22 Prior to the commencement of any works on site, evidence of Scottish Water approval for the proposed drainage system for the development hereby approved shall be submitted to the Council for written approval.
- 23 Prior to the commencement of any works on site, a Flood Risk Assessment shall be prepared and submitted to the Council and SEPA for written approval. Any recommendations contained within the Flood Risk Assessment must be implemented thereafter prior to occupation of the development.
- 24 Before any works start on site, a Sustainability Statement demonstrating the extent to which the development will meet the requirements of Policy 29 of the Adopted Dundee Local Development Plan (2014) shall be submitted for the approval of the Council and the works shall be completed in accordance with the approved Statement.

REASONS

- 1 To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area.
- 2 In the interests of providing a site suitable for retail development.
- 3 In the interests of providing a site suitable for retail development.
- 4 In the interests of residential amenity and to comply with the Council's standards for the control of night-time noise.
- 5 To ensure that an appropriate scheme of public art is contained within the development proposals and that the scheme is fully implemented prior to the development being completed.
- 6 To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area.

- 7 In the interests of traffic and pedestrian safety.
- 8 In the interests of traffic and pedestrian safety.
- 9 To ensure that the works maintain the character and visual appearance of the listed tenement facade in North Lindsay Street.
- 10 The site is in an area of archaeological interest and it is considered important to ensure that items of archaeological interest are protected and recorded and salvaged if appropriate.
- 11 To ensure that the visual appearance of the proposed development is to an acceptable quality.
- 12 In the interests of vehicular and pedestrian safety.
- 13 In the interests of vehicular and pedestrian safety.
- 14 To continue the existing the avenue of trees northwards on the west side of Marketgait ensuring the visual appearance of the proposed development is to an acceptable quality.
- 15 In order to ensure that the car park is operated for variable stay parking only.
- 16 To ensure the site has adequate waste recycling provision in the interests of the amenity of the area.
- 17 In the interests of vehicular and pedestrian safety.
- 18 To ensure that the visual appearance of the proposed development is to an acceptable quality.
- 19 To make it clear that all of the costs necessary to implement the identified works shall be borne by the applicant only.
- 20 In the interest of flood protection.
- 21 In the interests of flood protection and visual amenity.
- 22 In the interest of flood protection.
- 23 In the interest of flood protection.
- 24 In order to demonstrate that the new development will meet the required carbon emissions reduction standards in the interests of the environment.