

# Application under Section 42 of The Town and Country Planning (Scotland) Act 1997 to amend condition 5 of planning application 16/00394/FULL

## KEY INFORMATION

**Ward** North East

**Address**  
Land to the West of Pitkerro Mill  
Kellas Road  
Dundee

**Applicant**  
Mrs Gillian Bayford-Deans

**Agent**  
Aim Design  
Unit 5 City Quay  
Camperdown Street  
Dundee DD1 3JA

**Registered** 21 August 2019

**Report by Head of Planning & Economic Development**

**Contact:** Craig Swankie



## SUMMARY OF REPORT

- Planning Committee deferred this application at its previous meeting on Monday 11 November 2019. The Committee requested further information be provided on the proposed works, future maintenance arrangements and the works which have been undertaken on site to date. These matters are addressed within this report. Planning permission is sought for the amendment of Condition 5 of planning application 16/00394/FULL. Planning application 16/00394/FULL approved the erection of 6 dwellings at Kellas Road.
- Condition 5 identified a 1:200 year flood extent area where built development is prohibited. Following the completion of an updated flood risk assessment the 1:200 year flood extent has been altered. The amendment to Condition 5 is sought to reflect the updated 1:200 year flood extent as detailed within the revised Flood Risk Assessment.
- The application is in accordance with the Development Plan.
- The statutory neighbour notification process was undertaken and the application advertised in the local press. Six letters of objection have been received.
- In accordance with Dundee City Council's scheme of delegation, this application is to be determined by the Planning Committee as 6 letters of objection have been received and the recommendation is to approve.
- More details can be found at <http://idoxwam.dundee.gov.uk/idoxpa-web/simpleSearchResults.do?action=firstPage>.

## RECOMMENDATION

The proposal is in accordance with the Development Plan. There are no material considerations of sufficient weight to justify refusal of planning permission. It is therefore recommended that planning permission be **APPROVED** subject to conditions.

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## 1 DESCRIPTION OF PROPOSAL

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- 1.1 Planning permission is sought for the amendment of condition 5 of planning application 16/00394/FULL. Condition 5 states:

*“No built development or land-raising shall take place within the 1:200 year flood extent as detailed within the Flood Risk Assessment (FRA) by Millard Consulting dated April 2015.”*

- 1.2 Planning application 16/00394/FULL approved the erection of 6 dwellings at Pitkerro Mill, Kellas Road. Following the discharge of all suspensive planning conditions, planning permission 16/00394/FULL is now extant and the developer can commence works on site.

- 1.3 A Flood Risk Assessment submitted with 16/00394/FULL identified a 1:200 year flood extent area within the west of the site. The FRA proposed to retain the weir and inlet pipe as existing, and to remove a section of bund within the west of the site allowing flood waters to enter the defined 1:200 year flood extent area during a flood event. As any development within this area would be at risk of flooding the development was designed to site dwellings and roads out with the defined flood extent this area. To ensure the applicant or future residents did not undertake any development within the flood risk area, planning condition 5 was attached to application 16/00394/FULL.

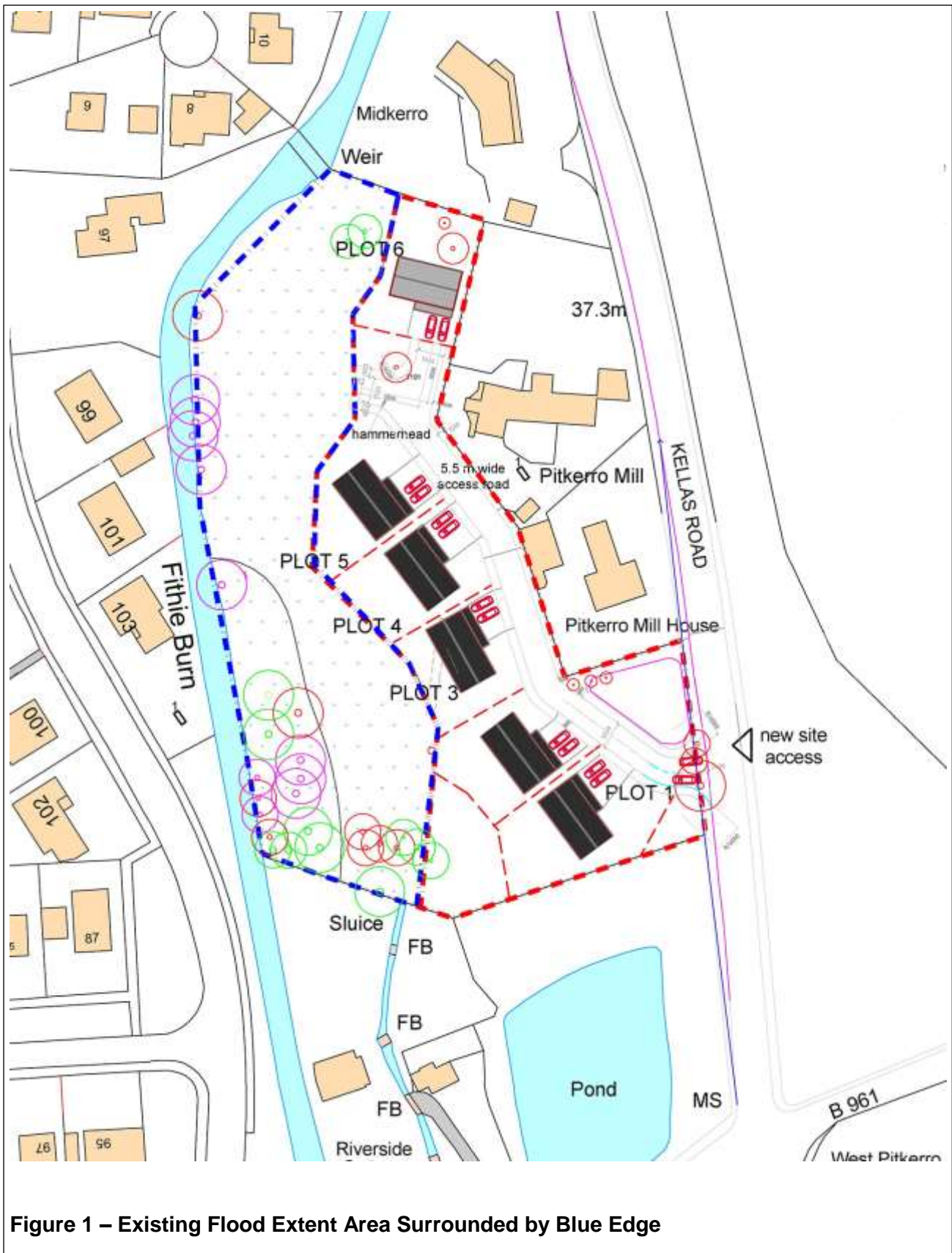
- 1.4 Following the approval of planning application 16/00394/FULL, the applicant commissioned a new Flood Risk Assessment (FRA) ‘Flood Risk Assessment’ Revision F by McGregor McMahon Consulting Engineers dated 19 July 2019’ along with detailed drainage and roads proposals to address the planning conditions attached to 16/00394/FULL. The new FRA proposes to reinstate a wall within the north of the site and to retain bunds along the banks of Fithie Burn to contain water within the river channel during a flood event. This would reduce the area within the application site which is subject to flooding and would allow the volume of water within the lade which crosses the site to be controlled. The updated FRA is supported by Dundee City Council Engineers and has been agreed in discharging the planning conditions attached to 16/00394/FULL. As the proposed works to the weir and bunds reduce the amount of flood water which would enter the application site, the 1:200 year flood extent area is different from that previously approved. The applicant therefore proposes to amend condition 5 of 16/00394/FULL to read:

*“No built development or land-raising shall take place within the 1:200 year flood extent as detailed within Drawing No 20587-FS15 of the Flood Risk Assessment (FRA) Revision F by McGregor McMahon Consulting Engineers dated 19 July 2019.”*

- 1.5 The applicant seeks to provide a turning head to Dundee City Council specifications and this would require an area of the road to be sited within the 1:200 year flood extent area as defined by the original FRA that condition 5 of 16/00394/FULL refers to. A turning head can be formed within the approved site, however it would require a retaining wall to be erected along the edge of the flood extent area. The amendment of Condition 5 and associated alteration to the defined 1:200 year flood event area would allow for the turning head to be formed with a gentle slope rather than a retaining wall. This would increase accessibility to the Flood Risk Area for maintenance vehicles and reduce the long term maintenance requirements of the road which is to be adopted by the Council.

- 1.6 The applicant has submitted the following in support of the application:

- Flood Risk Assessment



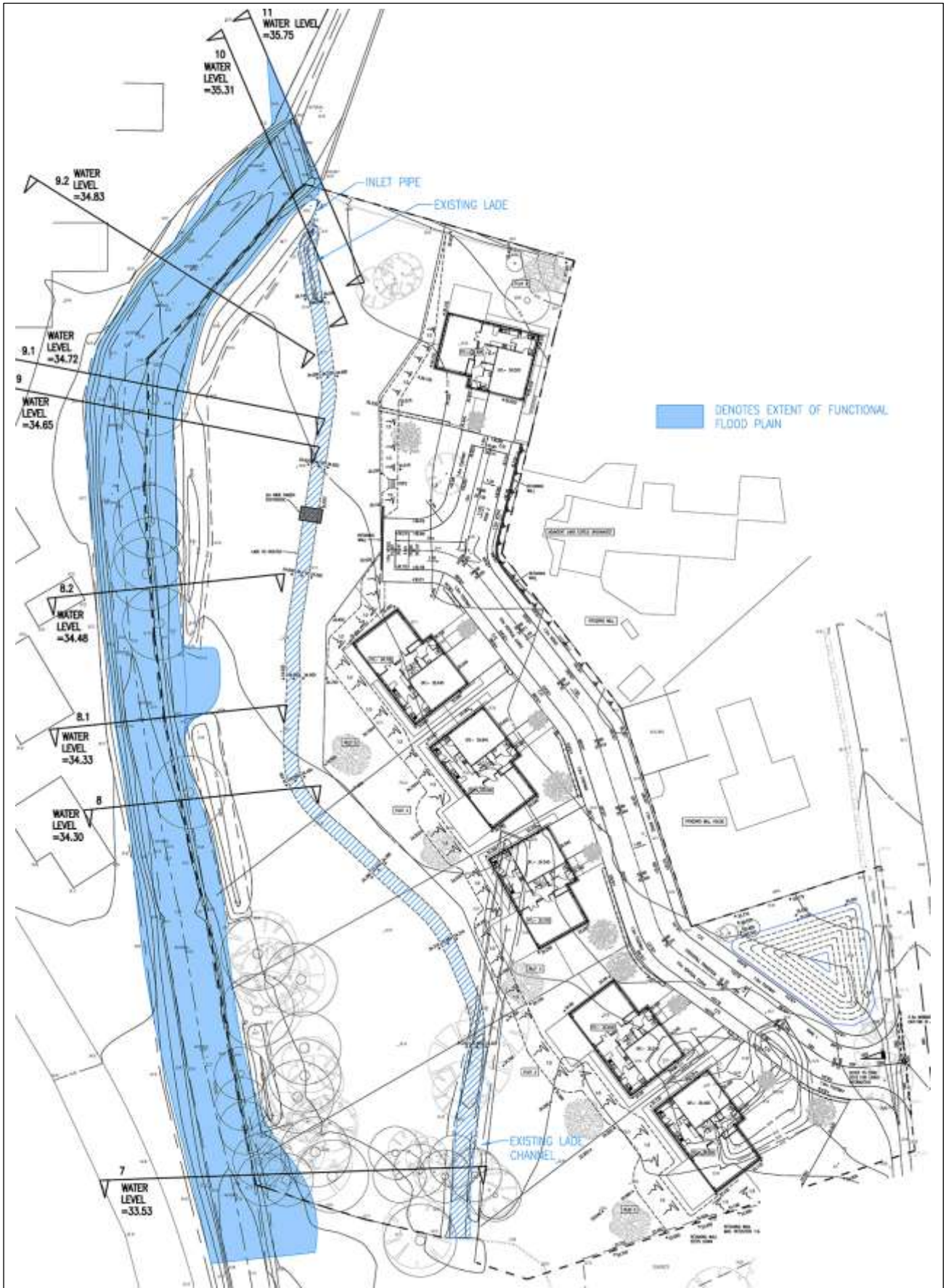


Figure 2 – Proposed 1:200 Year Flood Extent Area in Blue

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## 2 SITE DESCRIPTION

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- 2.1 The site comprises a 0.98 hectare area of ground between Kellas Road and the Fithie Burn, to the north of Baldovie Toll. The site presently contains unmaintained open land which is relatively level, with low lying with areas containing bunds and raised material. A lade runs through the centre of the site which feeds a pond to the south. There are trees within the site, mainly within the south and west towards the banks of the Fithie Burn.
- 2.2 To the west of the site, across the Fithie is a housing development at Peebles Drive. To the south are Riverside Cottage and a pond, with Baldovie Toll beyond. To the east is the Kellas Road and to the north east are dwellings including the Category C listed Pitkerro Mill building. Whilst the site is close to residential areas, it has a rural character.



Figure 3 – Site Photo showing Weir and Inlet Pipe (March 2018)



Figure 4 – Site Photo (October 2019)

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**3 POLICY BACKGROUND**

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

**TAYPlan 2016-2036**

The application raises no issues of relevance.

**DUNDEE LOCAL DEVELOPMENT PLAN 2019**

Policy 01: High Quality Design and Placemaking

Policy 10: Design of New Housing

Policy 33: Local Nature Conservation Designations

Policy 35: Trees and Urban Woodland

Policy 36: Flood Risk Management

Policy 37: Sustainable Urban Drainage Systems

Policy 41: Land Contamination

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

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**4 SITE HISTORY**

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4.1 Planning application 06/00892/FULL for the erection on 6 dwellings was refused in June 2007. This decision was overturned on appeal by the DPEA (07/00026/REF) and planning permission granted on 23<sup>rd</sup> January 2008.

4.2 Planning application 13/00026/FULL sought to extend previous planning application 06/00892/FULL for the erection of 6 dwellings by 3 years. This application was refused in March 2013.

4.3 Planning permission reference 16/00394/FULL for six houses was approved in July 2016.

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**5 PUBLIC PARTICIPATION**

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5.1 The statutory neighbour notification procedure has been undertaken and the application advertised in the local press.

5.2 Six objections have been received raising the following valid material grounds:

- The proposed amendment of condition 5 would result in flood prevention measures which were previously considered under 16/00394/FULL, including the removal of bunds, not being undertaken.
- The proposed amendment to the flood risk area would increase flood risk at the surrounding properties.
- The applicant has previously undertaken works to the detriment of local amenity, wildlife and increased the risk of flooding.
- The site including weir and lade have not been well maintained by the land owner in recent years, the proposal would raise concerns with regard to the control of water into the lade and through the site into Riverside Cottage.

- 5.3 The representations also included a number of photographs of flood events. These matters are taken into account in the material considerations section of this report.

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## 6 CONSULTATIONS

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- 6.1 SEPA – has been consulted and has no objection to the application.

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## 7 DETERMINING ISSUES

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- 7.1 **Section 25 of the Town and Country Planning Act 1997 as amended 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.

### DUNDEE LOCAL DEVELOPMENT PLAN 2019

- 7.2 **Policy 1: High Quality Design and Placemaking** - all development proposals should follow a design-led approach to sustainable, high quality placemaking. Development should contribute positively to the quality of the surrounding built and natural environment and should be planned and designed with reference to climate change mitigation and adaptation. The design and siting of development should respect the character and amenity of the place, create a sense of community and identity, enhance connectivity and incorporate creative approaches to urban design, landscaping and green infrastructure, appropriate to the local context and the scale and nature of the development. New development will be required to meet the six qualities of successful place in accordance with the guidance provided in Appendix 1.
- 7.3 The application relates to changes to the 1:200 year flood extent as defined by condition 5 of 16/00394/FULL. No alterations are proposed to layout, form or location of the six approved houses. Work has commenced on site and the suspensive planning conditions attached to planning permission 16/00394/FULL have been satisfied and/or discharged.
- 7.4 The alteration of the 1:200 year flood extent line would allow for a turning head within the access road to be formed to Dundee City Council specifications. In terms of design, the modest alterations including raising of land and routing of the lade through the site would not have any detrimental impact on the character or appearance of the development in relation to the surrounding environment.
- 7.5 **The proposal is in accordance with Policy 1.**
- 7.6 **Policy 10: Design of New Housing** - states the design and layout of new housing developments in Dundee should be of a high quality and contribute to creating places that respect and enhance the distinct character and identity of the different parts of the city. All new housing developments should meet the six qualities of successful place, as set out in Policy 1 and should provide a balanced choice and type of housing. All new housing developments will be required to conform to the guidance on the Design of New Housing set out in Appendix 4. All new housing developments will need to ensure that the design and



layout respects and enhances the character of adjoining properties and the surrounding area and does not have a detrimental impact on residential amenity and parking.

- 7.7 The application relates to changes to the 1:200 year flood extent as defined by condition 5 of 16/00394/FULL. No alterations are proposed to layout, form or location of the six approved houses which meets the requirements of Policy 10 and Appendix 4.
- 7.8 **The proposal is in accordance with Policy 10.**
- 7.9 **Policy 33: Local Nature Conservation Designations** - states development which could have a significant effect on the conservation interests associated with Local Nature Reserves, Locally Important Nature Conservation Sites or Wildlife Corridors will only be permitted where:
- 1 an ecological or similar assessment has been carried out which details the likely impacts of the proposal on the conservation interests of the designation;
  - 2 any negative impacts identified are contained within the site and can be mitigated without affecting the integrity of the designated area; and
  - 3 it has been demonstrated that there are no other suitable sites that could accommodate the development.
- 7.10 Whilst the site itself is not a Locally Important Nature Conservation Site it is situated alongside two such designations, Fithie Burn and Drumsturdy Pond. The lade which runs through the site in a southerly direction feeds Drumsturdy Pond to the south of the site. Application 16/00394/FULL provided an Ecological Survey Report which assessed the site and identified all present vegetation and wildlife. The report concluded whilst one otter spraint was found to the north west of the site at Fithie Burn, there are no places of shelter/nesting and no evidence of badgers, water voles or habitats suitable for roosting bats. To ensure the development will not impact upon Fithie Burn or Drumstrudy Pond, the Ecological Survey Report recommends steps are taken to control invasive species such as Giant Hogweed and that no ground clearance works are undertaken within the breeding bird season. The implementation of the recommendations set out in the ecological survey report are controlled by condition.
- 7.11 Subject to these recommendations and suitable drainage arrangements to ensure no run off from the proposed dwellings or access road enter the Fithie Burn, the development will not have a detrimental impact upon the application site, adjacent designated conservation sites or any European protected species or species protected under the Wildlife and Countryside Act 1981.
- 7.12 Further to the deferral of the application at November's planning committee, it can be confirmed the proposed works to re-instate the weir wall within the north of the site would have no detrimental impact on wildlife or planting within the site or surrounding area. By not developing land within the west of the application site along the banks of the Fithie Burn a wildlife corridor will be maintained. A condition, as attached to planning permission 16/00394/FULL is recommended to ensure existing trees within this area are suitably protected in the interest of biodiversity and site character should members be minded to grant planning permission.
- 7.13 **The proposal is in accordance with Policy 33 subject to conditions.**
- 7.14 **Policy 35: Trees and Urban Woodland** - states the Council will support the establishment and enhancement of woodland, tree belts and corridors. New development must ensure the survival of woodland, hedgerows and individual trees, especially healthy mature trees, of nature conservation or landscape value through sensitive site layout both during and after construction, unless removal has been approved in advance by the council. Where

appropriate, development proposals must be accompanied by maintenance arrangements and justification for the removal of any trees or hedgerows.

- 7.15 A Tree Report was submitted with 16/00394/FULL which detailed the tree protection measures and considered that it may be necessary to remove or coppice a number of trees. Detailed landscaping drawings have been submitted and measures are to be undertaken to protect retained trees during construction. The proposed amendment to condition 5 would have no impact on the retained trees, it is recommended that planning conditions requiring tree protection measures to be implemented during construction are attached to any permission granted.
- 7.16 **With the addition of relevant planning conditions, the proposal would be in accordance with Policy 35.**
- 7.17 **Policy 36: Flood Risk Management** - states that, within Medium to High Risk Areas, there is a general presumption against a) development on previously undeveloped land and b) development of essential civil infrastructure, in high risk areas based on a 0.5% or greater annual probability of flooding (equivalent to a 1 in 200 year flood or greater) plus an additional allowance of 600mm. Other development may be acceptable where:
- 1 sufficient flood defences already exist, or a Flood Protection Scheme or flood defence, designed and constructed to a standard of 0.5% annual probability plus climate change allowance, will be in place prior to occupation of the proposed development;
  - 2 those flood defences will be maintained for the lifetime of the development and will not increase the probability of flooding elsewhere;
  - 3 the extent of development potentially affected by flooding is protected through the use of appropriate water resistant materials and construction; and
  - 4 the finalised scheme does not result in a land use which is more vulnerable to flooding. A flood risk assessment will be required for any development within the medium to high risk category.
- 7.18 The western section of the site is located within the Fithie Burn 1:200 year flood event area as defined by the Flood Risk Assessment dated April 2015 which was submitted with application 16/00394/FULL. Within the north of the site, the inlet structure to the lade wall and the original culvert have failed and are in poor condition. As a result, water from Fithie Burn is able to enter the site during a flood event. The previous FRA proposed to retain the present situation and did not include mitigation measures or repair works to the existing infrastructure. This resulted in an unrestricted flow into the north of the site during a 1:200 year flood event which resulted in the western portion of the site flooding.
- 7.19 The new FRA 'Flood Risk Assessment' Revision F by McGregor McMahon Consulting Engineers dated 19 July 2019' proposes measures to repair the inlet pipe and weir walls within the north of the site which would allow the flow of water that enters the lade across the site to be controlled. The repair of walls and retention of bunds would also support the containment of water from Fithie Burn within the existing river channel. As a result of the proposed works a smaller area of the site would be flooded during a 1:200 year flood event when compared to the proposals within the FRA which was submitted with 16/00394/FULL.
- 7.20 The flood risk assessment submitted in support of the present application considers the impacts of the proposed mitigation works. The proposals include the retention of a lade inlet pipe which limits the amount of water entering the lade from Fithie Burn. The repair of the inlet wall would result in all the peak flow being retained within the original Fithie Burn channel, with

no unrestricted flow entering the site from the location of the repaired lade wall and inlet. During a 1:200 year flood event some unrestricted flow can extend into the site through the bunds as illustrated on Drawing No 20587-FS15, however this does not have any impact on the proposed residential development and does not result in any increased flood risk at neighbouring dwellings. On this basis, the risk of flooding to Riverside Cottage, immediately downstream of the application site, from the Fithie Burn will remain unchanged. The FRA demonstrates that the post development Fithie Burn and lade water levels would not increase. The development of this site has not increased flood risk to the development site, adjoining land and adjoining properties.

- 7.21 SEPA has been consulted and has no objection to the application.
- 7.22 The submitted FRA and proposed measures to repair the weir, wall and inlet pipe would reduce the extent of flooding within the application site during a 1:200 year flood event, and allow the flow of water into lade to be controlled, reducing the risk of flooding downstream. The FRA demonstrates that the containment of water within Fithie Burn would not increase flood risk to the surrounding area and that the proposed amendment of condition 5 would not result in any additional flood risk.
- 7.23 Further to the deferral of the application at November's planning committee, the applicant has confirmed the proposed lade wall, inlet structure and all sections of lade within the application site are to be their responsibility as land owner. Planning conditions are recommended to ensure the applicant completes the proposed works to the weir, inlet pipe and lade and thereafter maintains the lade structures. Subject to completion of the proposed works the flow of water into the lade and downstream of the site will be at a level which does not result in any increased flood risk to the proposed development or the surrounding area.
- 7.24 **The proposal is in accordance with Policy 36, subject to conditions.**
- 7.25 **Policy 37: Sustainable Urban Drainage Systems** - states surface water discharging to the water environment from new development must be treated by a Sustainable Drainage System (SuDS) except for single houses or where discharge is to coastal waters. SuDS should be designed so that the water level during a 1:200 year rainstorm event plus allowances for climate change and future urban expansion is at least 600mm below finished floor levels. This incorporates an allowance for the effect of climate change. In addition, proposals will be encouraged to adopt an ecological approach to surface water management, ensure an appropriate level of treatment and exploit opportunities for the system to form an integral part of the Dundee Green Network through habitat creation or enhancement through measures such as the formulation of wetlands or ponds. Proposals should have no detrimental impact on the ecological quality of the water environment.
- 7.26 A drainage assessment and detailed layout have been submitted that demonstrates the site can be drained. The detailed design of the proposed drainage infrastructure has therefore been agreed, and it is recommended that planning conditions are attached to any permission granted, as 16/00394/FULL, to control the implementation and maintenance of the approved drainage infrastructure. The proposed amendment of condition 5 would have no impact on the proposed drainage and SUDS provision or its implementation.
- 7.27 **The proposal is in accordance with Policy 37 subject to conditions.**
- 7.28 **Policy 41: Land Contamination** - states development of potentially contaminated or statutorily identified contaminated land will be considered where:
- 1 a site investigation is submitted establishing the nature and extent of contamination; and

- 2 the Council is satisfied that remediation measures proposed for the development, adequately address contamination risks to all receptors, such that the land demonstrably does not meet the statutory definition of contaminated land and is suitable for the planned use.

7.29 A Site Investigation was submitted with application 16/00394/FULL, and subsequently a remediation strategy has been submitted to the Council and agreed with the Head of Community Safety and Protection. The proposed amendment of condition 5 would have no impact on the agreed remediation measures. To ensure the remediation measures are implemented during construction, it is recommended that a planning condition, as attached to 16/00394/FULL, is re-attached to any planning permission.

7.30 **Subject to conditions, the proposal is in accordance with Policy 41.**

7.31 **It is concluded that the proposal is in accordance with the Development Plan.**

### **MATERIAL CONSIDERATIONS**

7.32 The material considerations to be taken into account are as follows:

#### **A – CIRCULAR 4/19918**

7.33 Circular 4/1998 provides guidance on the use of conditions in granting planning permission and stipulates that while the power to impose planning conditions is very wide, it needs to be exercised in a manner which is fair, reasonable and practicable. The Circular demonstrates that conditions that are fair, reasonable and practicable satisfy 6 tests:

- necessary;
- relevant to planning;
- relevant to the development to be permitted;
- enforceable;
- precise; and
- reasonable in all other respects.

7.34 Condition 5 sought to ensure no built development was undertaken within the defined 1:200 year flood extent area to protect the proposed development, and ensure surrounding residential properties were not at an increased risk of flooding from Fithie Water. Since planning permission was granted the applicant has completed a new Flood Risk Assessment which proposes measures to control the flow of water into the flood risk area and lade. The FRA proposes the retention of existing bunds and re-instatement of walls within the north of the site to allow the flow of water within the lade to be controlled. This reduces the amount of water which would enter the site during a flood event and therefore reduces the area at risk from flood waters during a 1:200 year flood risk event. The applicant therefore proposes to amend condition 5 of 16/00394/FULL to reflect this.

7.35 The proposed variation of condition 5 on planning permission 16/00394/FULL does not undermine the necessity, purpose, relevance or precision of the original conditions. In this instance the proposals adhere to the requirements of Circular 4/1998.

7.36 All other relevant conditions attached to the original planning permission 16/00394/FULL are attached again.

### **B - REPRESENTATIONS**

7.37 Six objections have been received raising the following valid material grounds.

- the proposed amendment of condition 5 would result in flood prevention measures which were previously considered under 16/00394/FULL, including the removal of bunds, not being undertaken;
- the proposed amendment to the flood risk area would increase flood risk at the surrounding properties;
- the applicant has previously undertaken works to the detriment of local amenity, wildlife and increased the risk of flooding; and
- the site including weir and lade have not been well maintained by the land owner in recent years, the proposal would raise concerns with regard to the control of water into the lade and through the site into Riverside Cottage.

7.38 The grounds of objection are considered and assessed as follows:

7.39 **Objection** - the proposed amendment of condition 5 would result in flood prevention measures which were previously considered under 16/00394/FULL, including the removal of bunds, not being undertaken.

7.40 **Response** - the previous FRA which was submitted with 16/00394/FULL considered the extent of flooding where no alterations to the existing weir were to be made, sections of the existing bunds were to be removed and the land within the west of the application site were open. This would allow flood water to cover the defined flood event area during a 1:200 year event. The new FRA proposes to repair the weir within the north of the site and to retain bunds along the west of the site. This would result in water being within Fithie Burn during a flood event, with only a small area of the site being flooded as illustrated on Drawing No 20587-FS15 of the Flood Risk Assessment (FRA) Revision F by McGregor McMahon Consulting Engineers dated 19 July 2019. The proposal would reduce the area within the application site which is subject of flooding and would allow the volume of water within the lade which crosses the site to be controlled. The updated FRA is supported by Dundee City Council Engineers and has been agreed in discharging the planning conditions attached to 16/00394/FULL. Through the control of water within the site during a flood event the risk of flooding from the lade at properties downstream, including Riverside Cottage, would be reduced.

7.41 **Objection** - the proposed amendment to the flood risk area would increase flood risk at the surrounding properties.

7.42 **Response** – the proposal would contain the Fithie Burn within the existing river channel during spells of increased water levels. During a 1:200 year flood event a reduced area of the application site would be affected by flood waters. The containment of water within the channel of Fithie Burn has been considered within the Flood Risk Assessment submitted with the application and it is concluded that the flood risk at surrounding properties would not be increased by the proposals when compared to the existing situation. There is sufficient capacity within the Fithie Burn and surrounding infrastructure including clearance under road bridges to the south of the site that ensures the amendment to the 1:200 year flood event area would have no detrimental impact on surrounding properties and would not increase the

risk of flooding at those properties. Objections also raised concerns with flooding from surface water on Kellas Road. The approved development includes access roads and a sustainable drainage system which are considered acceptable by Dundee City Council Engineers and Scottish Water. The proposed drainage system would ensure water from the site would be appropriately drained and that the development would not be at risk from surface water flooding.

- 7.43 **Objection** - the applicant has undertaken works to the detriment of local amenity, wildlife and increased the risk of flooding.
- 7.44 **Response** – Planning application 16/00394/FULL was approved in July 2016, subject to conditions. Prior to addressing the planning conditions, on 20 February 2018 enforcement officers received complaints from residents that works were being undertaken within the application site. These works included the felling of trees, the alteration of the lade to create an open channel and re-align the water course, addition of drainage pipes, formation of a site access and erection of cabins. Following investigation by Planning Enforcement Officers, including a site visit on 23rd February 2018, the works ceased in early March 2018.
- 7.45 The works to the lade undertaken by the applicant resulted in material from the lade including silt being washed into Riverside Cottage and resulted in flood damage. The applicant has undertaken works to address these matters however the site remains secured by fencing and in a mid-construction state with cabins and materials on site.
- 7.46 Since these works were undertaken, the applicant has discharged the suspensive planning conditions of 16/00394/FULL and is now in a position to progress works at any time. Works have however not re-commenced until further consideration is given to the 1:200 year flood extent area and the amendment as proposed by this application has been determined. The works previously undertaken have not impacted on the applicant's ability to implement the development as approved under 16/00394/FULL, including landscaping and flood mitigation measures. As with planning application 16/00394/FULL is it recommended planning conditions are attached to ensure the mitigation measures proposed within the approved Ecology Report are implemented.
- 7.47 **Objection** - the site including weir and lade have not been well maintained by the land owner in recent years, the proposal would raise concerns with regard to the control of water into the lade and through the site into Riverside Cottage.
- 7.48 **Response** – over time the existing inlet pipe and weir walls have deteriorated and became ineffective at controlling the flow of water through the lade. Within areas where the embankment and walls have failed water can bypass the inlet pipe and enter the site creating a flood risk. The application states the site has only recently fell under their ownership, the long term damage to the weir wall by the river current has been the product of historic neglect by previous owners.
- 7.49 The applicant has stated that the eastern section of the existing weir within Fithie Burn is their responsibility. The western section is the responsibility of the land owner on the west side of Fithie Burn. No alterations are proposed to the weir within the watercourse, with repairs relating to the lade inlet pipe and reinstatement of the wall only in order to address the historic deterioration of the wall.
- 7.50 The proposed lade wall, inlet structure and all sections of lade within the application site are the responsibility of the applicant as land owner. Planning conditions are recommended to ensure the applicant completes the proposed works to the weir, inlet pipe and lade and thereafter maintains the watercourse. Subject to completion of the proposed works the flow

of water into the lade and downstream of the site will be at a level which does not result in any increased flood risk to the proposed development or the surrounding area.

- 7.51 The letters of objection also raised concerns with the proposal's impact on and the setting of a neighbouring listed building. The proposed amendment of condition 5 would have no detrimental impact on the setting of Pitkerro Mill, a category C listed building to the east of the site.
- 7.52 The issues raised in the representations have been considered and addressed in the report and the grounds raised are not of sufficient weight to justify refusal of planning permission.
- 7.53 **It is concluded that there are no material considerations of sufficient weight in this case to justify refusal of planning permission.**

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## 8 CONCLUSION

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- 8.1 The Section 42 application for amended of condition 5 of 16/00394/FULL is in accordance with the Development Plan. There are no material considerations of sufficient weight that would justify refusal of planning permission. Therefore it is recommended that planning permission be granted subject to conditions.

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## 9 RECOMMENDATION

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- 9.1 It is recommended that planning permission be GRANTED subject to the following conditions:
- 1 **Condition** - prior to the commencement of work on site, details of the proposed boundary treatments shall be submitted to the Council for written approval. Thereafter the boundary treatments approved by this condition shall be in place prior to the first occupation of any of the houses hereby approved.  
  
**Reason** - in the interest of visual amenity and the provision of private garden ground.
  - 2 **Condition** - the recommendations laid out in section 5 of 'Pitkerro Mill, Kellas Road, Dundee: Ecological Survey Report May 2015' shall be fully implemented as part of the development. Any further investigations to be carried out as part of this shall be submitted to the Council for approval in writing prior to the commencement of development.  
  
**Reason** - in order to ensure the site is developed with due regard to any species on site.
  - 3 **Condition** - prior to the commencement of development, a scheme of landscaping shall be submitted to and approved by the Council, and it shall include indications of all existing trees and hedgerows on this land, and details of any to be retained, together with measures for their protection in the course of development in accordance with BS5837:2012. Full details of new planting and landscaping shall also be submitted to and approved by the planning authority prior to the commencement of development. Any trees or shrubs removed, dying, being severely damaged or becoming seriously diseased within 5 years of planting shall be replaced by trees or shrubs of similar size and species to those originally required to be planted in terms of this condition.  
  
**Reason** – to ensure that the proposed development has a satisfactory external appearance in the interests of the visual amenities of the area.

- 4 **Condition** – prior to the commencement of any development, any site scraping or entry of construction traffic, tree protection fencing in accordance with BS5837:2005 shall be erected on site in the positions agreed within the landscape details to be agreed as Condition 3 to the satisfaction of the Council. Such fencing shall be retained in place throughout the construction period and relocation of any fencing shall be agreed with the Forestry and Enforcement officers prior to any movement of the fencing.

**Reason** - in the interests of visual amenity; to ensure that all trees worthy of retention are satisfactorily protected before and during construction works and to ensure replacement planting.

- 5 **Condition** - no built development or land-raising shall take place within the 1:200 year flood extent as detailed within Drawing No 20587-FS15 of the Flood Risk Assessment (FRA) Revision F by McGregor McMahon Consulting Engineers dated 19 July 2019.

**Reason** - to ensure that the proposed development is not located within a flood plain and will not have an adverse effect, nor influence the existing watercourse, Reservoir, SUDS or Coastal Water to the detriment of existing properties and infrastructure adjacent to and downstream of the proposed development.

**Condition** - no built development shall be constructed over an existing drain (including the mill lade) that is to remain active.

**Reason** - to ensure that the proposed development does not have an adverse effect, nor influence the existing watercourse, Reservoir, SUDS or Coastal Water to the detriment of existing properties and infrastructure adjacent to and downstream of the proposed development.

- 6 **Condition** - details of the proposed vehicular access and road must be agreed prior to any works on site and the access and road must be formed and constructed to Dundee City Council standards and specifications.

**Reason** - in the interests of vehicle and pedestrian safety.

- 7 **Condition** - a Stage 2 Road Safety Audit to Dundee City Council guidelines shall be submitted and agreed for the proposed access and road associated with the development.

**Reason** - in the interests of vehicle and pedestrian safety.

- 8 **Condition** - a Stage 3 Road Safety Audit to Dundee City Council specifications shall be submitted and agreed for the new access and road associated with the development within one month of the road completion.

**Reason** - in the interests of vehicle and pedestrian safety.

- 9 **Condition** - the hard surfaces within the curtilages should be made of porous materials or provision should be made to direct run off water from the hard surfaces to permeable or porous areas or surface within the curtilages of the site.

**Reason** - to ensure that surface water from within the curtilages of the site does not drain to the adjacent road.

- 10 **Condition** - Street Lighting system shall be provided by the applicant to Dundee City Council standards and specifications.



**Reason** - in the interests of vehicle and pedestrian safety.

- 11 **Condition** - the applicant shall provide a disposal route for road surface water to the satisfaction of the Council which discharges to a system publicly maintained/maintainable by the relevant authority. Evidence of Scottish Water's approval for the proposed surface water drainage system must be provided to the Council.

**Reason** - to ensure an appropriate and publicly maintainable system is provided.

- 12 **Condition** – within three months of the date of this decision, a method statement for the proposed Lade Inlet Repairs as detailed within Appendix B of 'Flood Risk Assessment' Revision F by McGregor McMahon Consulting Engineers dated 19 July 2019' shall be submitted to the Council for approval. All repairs approved in the aforementioned method statement shall be completed prior to the commencement of any work on the turning head within the development hereby approved. The works must thereafter be maintained in accordance with the agreed details within the method statement and Appendix B of the Flood Risk Assessment.

**Reason** - to ensure that the proposed development is not located within a flood plain and will not have an adverse effect, nor influence the existing watercourse, Reservoir, SUDS or Coastal Water to the detriment of existing properties and infrastructure adjacent to and downstream of the proposed development.

- 13 **Condition** - prior to the commencement of any works on the Lade Inlet Repairs, full details of maintenance responsibilities along with a Maintenance Schedule for the wall, inlet and areas of the site out with the curtilage of the houses hereby approved, shall be submitted to the Council for written approval. Thereafter, the wall and inlet shall be maintained in accordance with the approved details.

**Reason** - to ensure that future maintenance of the Lade Inlet Repairs and associated land is undertaken.

- 14 **Condition** - prior to commencement of any works on site, a detailed surface water drainage/SUDS design including drawings, calculations, modelling and simulation as necessary shall be submitted to the Council for approval. The design should be accompanied by completed design and check certification from suitably qualified engineers.

**Reason** - to ensure there is no increase to the discharge of surface water and potential pollutants to the public sewer or where applicable a nearby watercourse, to the detriment of existing and proposed properties, infrastructure, and the water quality of any watercourse.

- 15 **Condition** - prior to commencement of any works on site, evidence of Scottish Water approval for the proposed drainage system for the development shall be submitted, where required.

**Reason** - to ensure there is no increase to the discharge of surface water and potential pollutants to the public sewer or where applicable a nearby watercourse, to the detriment of existing and proposed properties, infrastructure, and the water quality of any watercourse.

- 16 **Condition** - prior to the commencement of any works on site, maintenance responsibilities along with a Maintenance Schedule for the surface water drainage system/SUDS feature shall be submitted to the Council for written approval.

**Reason** - to ensure that future maintenance of the surface water drainage system/SUDS features is considered.

- 17 **Condition** - development shall not begin until the investigation and risk assessment proposed in the submitted Stage I Desk Study are completed and, if necessary; a remediation strategy to deal with any contamination at the site has been submitted to and approved in writing by the planning authority. The strategy shall contain proposals to deal with contamination to include:

- i the nature, extent and type(s) of contamination on the site;
- ii measures to treat/remove contamination to ensure the site is fit for the use proposed;
- iii does not contain any significant pollution linkages;
- iv measures to deal with contamination during construction works; and
- v verification of the condition of the site on completion of decontamination measures.

**Reason** - in the interests of providing a development site free from contamination and fit for purpose.

- 18 **Condition** - before any 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.

**Reason** - in the interests of providing a development site free from contamination and fit for purpose.

- 19 **Condition** - prior to the commencement of any work on site, maintenance responsibilities along with a maintenance schedule for all communal/shared areas shall be submitted to the Council for written approval. Thereafter, all works approved by virtue of this condition shall be carried out in perpetuity.

**Reason** - to ensure that the proposed development, including open spaces, lade and bunds, are maintained and in the interests of the environmental quality and visual amenities of the area.