

City Chambers  
DUNDEE  
DD1 3BY

5th April, 2024

Dear Colleague

You are requested to attend a MEETING of the **PLANNING COMMITTEE** to be held remotely on Monday, 15th April, 2024 at 5.00 pm.

Members of the Press or Public wishing to join the meeting should contact Committee Services on telephone (01382) 434205 by Friday, 12th April, 2024.

Yours faithfully

GREGORY COLGAN

Chief Executive

## **AGENDA OF BUSINESS**

### **1 DECLARATION OF INTEREST**

Members are reminded that, in terms of The Councillors Code, it is their responsibility to make decisions about whether to declare an interest in any item on this agenda and whether to take part in any discussions or voting.

This will include all interests, whether or not entered on your Register of Interests, which would reasonably be regarded as so significant that they are likely to prejudice your discussion or decision-making.

### **2 DEPUTATIONS**

- (c) 24-00101-S42 – SECTION 42 APPLICATION TO EXTEND THE TIME PERIOD FOR IMPLEMENTATION OF PLANNING PERMISSION 22-00493-FULM FOR THE ERECTION OF PURPOSE BUILT STUDENT ACCOMMODATION BY 18 MONTHS – SITE OF JUMPIN JAKS, SOUTH WARD ROAD, DUNDEE

A request has been made for a deputation to address the Committee in support of the abovementioned application which is recommended for approval.

### **3 PLANNING APPLICATIONS**

(Copy attached).

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# Planning Applications

Reports by Head of Planning & Economic Development to the Planning Committee

<b>Item No</b>	<b>Case No/Ward</b>	<b>Location</b>	<b>Page</b>
1	24/00101/S42 W05-Maryfield	Site of Jumpin Jaks, South Ward Road, Dundee	1

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## Section 42 Application to Extend the Time Period for Implementation of Planning Permission 22/00493/FULM for the Erection of Purpose Built Student Accommodation by 18 Months

### KEY INFORMATION

**Ward** Maryfield

**Address**

Site of Jumpin Jaks, South Ward Road, Dundee

**Applicant**

KR Developments Group Limited

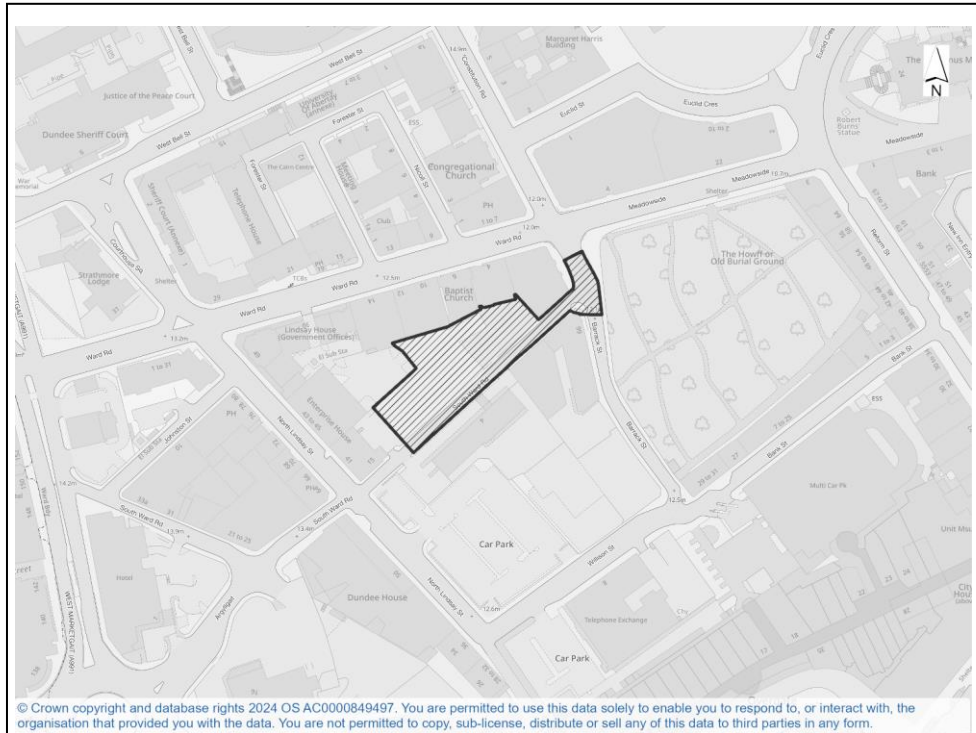
**Agent**

Alex Mitchell  
Zander Planning Limited

**Validated** 13 Feb 2024

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

**Contact:** Craig Swankie



### SUMMARY OF REPORT

- This is an application under Section 42 of The Town and Country Planning (Scotland) Act 1997 to vary Condition 1 of planning permission 22/00493/FULM to allow a further 18 months for the erection of purpose built student accommodation to commence.
- There is already an extant planning permission for the development, and the planning authority can only consider the matter of the conditions subject to which planning permission was granted.
- The extant planning permission will expire on 15 May 2024 and development has not yet commenced. However, the developer cannot lawfully commence development until the relevant conditions have been discharged. Whilst the developer has progressed discharging conditions, this has been delayed due to a potential ground contamination issue within the site. The applicant has fully engaged with officers about this issue since the planning permission was granted and is still in the process of addressing the matter with the Council and SEPA. As a result, the developer requires more time to discharge the conditions and commence development.
- The statutory neighbour notification process was undertaken, and the application was advertised in the press. One neutral representation was received regarding the impacts of construction works and the proposed development on neighbouring buildings.
- As this application relates to a condition attached to a Major planning application it is to be determined by the Planning Committee.
- More details can be found at <https://idoxwam.dundee.gov.uk/idoxpa-web/applicationDetails.do?activeTab=documents&keyVal=S8SPJDGCIE500>

### RECOMMENDATION

The application under Section 42 of The Town and Country Planning (Scotland) Act 1997 to vary Condition 1 of planning permission 22/00493/FULM is in accordance with the Development Plan. 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 22/00493/FULM was granted for the erection of a development of purpose built student accommodation comprising 242 student bedrooms with associated amenity spaces, landscaping and associated infrastructure.
- 1.2 Condition 1 of that planning permission states: "*The development hereby permitted shall be commenced within 18 months of the date of this permission.*" The reason for the condition is "*To ensure the timeous commencement of development and in compliance with Section 58 of the Town and Country Planning (Scotland) Act 1997.*"
- 1.3 The planning permission was granted on 15 November 2022 meaning that development was required to commence prior to 15 May 2024. The development has not yet commenced. The applicant is addressing the planning conditions of 22/00493/FULM. However, ground investigations have identified potential hydrocarbon contamination within the site. Until this is addressed, planning condition 2 of 22/00493/FULM cannot be discharged, works are unable to progress, and the planning permission cannot be implemented. The applicant has been engaging with Dundee City Council and SEPA to agree a solution. However, the applicant advises that this will not be concluded before expiry of the planning permission on 15 May 2024.
- 1.4 This application seeks to vary the condition to allow a further 18 months for development to commence on site. It is proposed to amend the condition to read:  
  
*"The development hereby permitted shall be commenced no later than 15 November 2025."*
- 1.5 This is the only change proposed to the planning permission. The development would be progressed in other respects as approved under 22/00493/FULM.

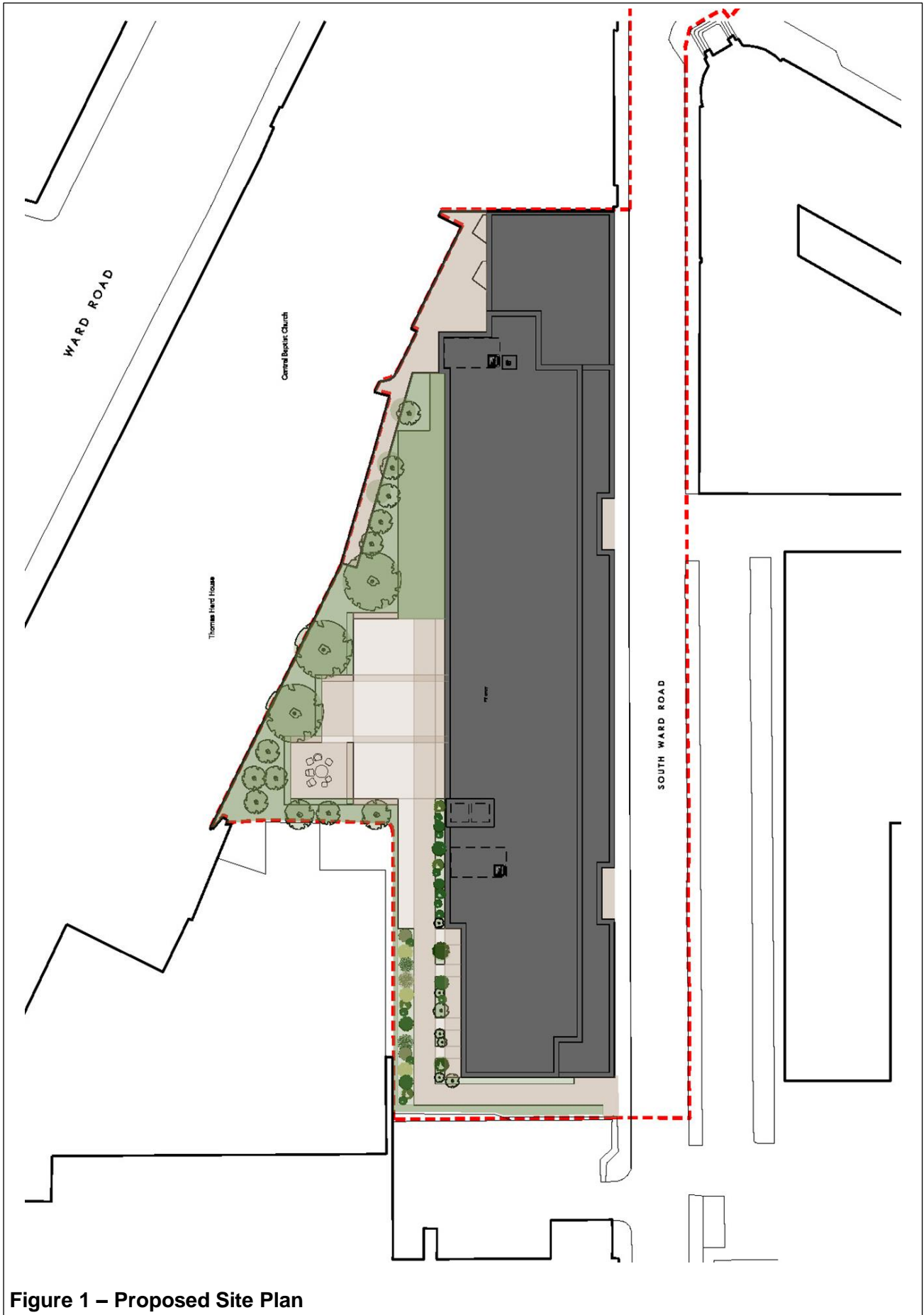


Figure 1 – Proposed Site Plan

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## 2 SITE DESCRIPTION

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- 2.1 The application site is located on the north side of South Ward Road. The site is 0.22 hectares and level in nature, with buildings to the north, east and west boundaries.
- 2.2 The site previously contained a substantial stone built mill building which operated as warehouses and a nightclub for several years before the building was demolished in 2014. The “saw tooth” roof form of that building comprised high roof gables along the north and south of the building. The main walls of the building were equivalent in height to 2-3 modern storeys.
- 2.3 The site was cleared following the demolition in 2014 and it is presently surfaced in gravel and hardstanding and is bounded by a temporary fence and a short section of the warehouse walls. The site can be accessed via the one way South Ward Road, which provides connections to surrounding roads and footways.
- 2.4 The surrounding buildings contain various uses including office, healthcare services and leisure. The site is also close to the city centre shops and services including Overgate Shopping Centre, Dundee House, and High Street/Murraygate. The site is contained within the Central Conservation Area, with a range of heritage buildings within the vicinity including Category B and Category C listed buildings immediately adjacent to the site. The surrounding area contains a range of building types within the city centre, including modern offices and traditional stone-built buildings.





Figure 2: View of Site from South Ward Road



Figure 3: View of Site from South Ward Road

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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 to this application under Section 42 of the Act:

**NATIONAL PLANNING FRAMEWORK 4**

Policy 16c: Quality Homes

**DUNDEE LOCAL DEVELOPMENT PLAN 2019**

Policy 15: Student Accommodation

- 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 Proposal of application notice 22/00303/PAN for the erection of student accommodation together with access, parking, landscaping and engineering/infrastructure works was submitted in May 2022.
- 4.2 Planning application 22/00493/FULM for the erection of purpose built student accommodation together with access, landscaping and engineers/infrastructure works was approved subject to conditions in November 2022.

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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 One neutral representation was received. The representation does not object to the proposed development, but raises concerns with groundworks which have previously caused shaking and potential for construction works to damage surrounding buildings.
- 5.3 The valid grounds of representation are taken into account in the material considerations section of this report.

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## 6 CONSULTATIONS

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- 6.1 No consultee comments were received.

## 7 DETERMINING ISSUES

- 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 National Planning Framework 4 relevant to the determination of this application are specified in the Policy Background section above.

#### Principle of Development

- 7.2 **Policy 16c: Quality Homes** of NPF4 states development proposals for new homes that improve affordability and choice by being adaptable to changing and diverse needs, and which address identified gaps in provision, will be supported. This could include homes for people undertaking further and higher education.
- 7.3 **Policy 15: Student Accommodation** of the Dundee Local Development Plan 2019 states student accommodation will only be supported where:
- 1 it can be suitably demonstrated that a demand exists within the particular area for the level and type of student accommodation proposed;
  - 2 it is within convenient walking distance of the higher education institution to which a need exists and is well connected to local services and facilities; and
  - 3 the design and layout of the proposed development is of a high quality and provides an appropriate level of amenity space, car parking provision, refuse/recycling storage space and secure bike storage facilities.

Following development of new and replacement purpose-built student accommodation over the past ten years, it is considered unlikely that there will be the need over the short to medium term for significant additions to the existing supply. To ensure that there is not an oversupply of this type of accommodation, proposals will need to demonstrate that there is a need in the area for the accommodation proposed.

- 7.4 The applicant submitted a Student Demand Assessment in support of application 22/00493/FULM. The report provided analysis of the existing student population and student accommodation within the city.
- 7.5 The study considered that the full-time student population within the city has grown in recent years. With regard to unmet demand, the submitted report identified there to be 3,463 full time students who require purpose-built accommodation but were unable to access it in the city. Through analyses of supply in relation to the growing student population, the report demonstrated there to be sufficient demand for the proposed 242 bedroom development to provide new build, accessible purpose-built student accommodation within the city.
- 7.6 It is recognised that there is likely to be demand for the development of a limited number of student bedrooms and that new development will increase the choice of student accommodation within the city. In this case, it is considered that allowing this scale of development will not result in oversupply of the type of accommodation proposed.

- 7.7 At the time of determination of 22/00493/FULM, three other planning application for purpose built student accommodation were under consideration. Proposal of Application Notices had also been submitted for purpose-built student accommodation developments within the city. To ensure there is not an oversupply of student accommodation, and to encourage the early implementation of planning permission the normal time limit for implementation of a planning permission was reduced from 3 years to 18 months.
- 7.8 Eleven planning applications for purpose-built student accommodation have been approved since April 2020 creating a live pipeline of 2,121 beds. Of the approved new build developments, two are nearing completion at Greenmarket (22/00205/FULL) and on Brown Street (21/00478/FULL). Development is progressing on two further developments on Brown Street (20/00729/FULM) and Douglas Street (23/00519/FULL). These developments will provide 661 bedrooms. There are no other live planning applications for student accommodation developments at this time.
- 7.9 As there has been no significant increase in the supply of purpose-built student accommodation within the city since the approval of 22/00493/FULM, the amendment of condition 1 would not result in oversupply of accommodation. With regard to encouraging the early implementation of the permission, the justification provided by the applicant is understood and acknowledged. The applicant has demonstrated through ongoing engagement with the Council and the submission of details to discharge conditions that works are progressing and that further time could support the progression of the development on site. The requirements of criteria 1 of Policy 15 are met.
- 7.10 The location and design of the proposed development is to remain as previously approved, accordingly the requirements of criteria 2 and criteria 3 of Policy 15 are met.
- 7.11 In this case, it is considered that allowing the extension of time for implementation of the planning permission will not result in an oversupply of the type of accommodation proposed. The proposal is in accordance with Policy 16c of NPF4 and Policy 15 of the Local Development Plan, subject to a condition.
- 7.12 **It is concluded that the proposal is in accordance with the Development Plan.**

## **MATERIAL CONSIDERATIONS**

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

### **A – Scottish Government Circular 4/1998**

- 7.14 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 will satisfy the following 6 tests:

- necessary;
- relevant to planning;
- relevant to the development to be permitted;
- enforceable;
- precise; and

- reasonable in all other respects.
- 7.15 Condition 1 of planning permission 22/00493/FULM states: "The development hereby permitted shall be commenced within 18 months of the date of this permission."
- 7.16 After consideration of the tests in the Circular, and to ensure it is precise and enforceable, the proposed wording has been amended to read:
- 7.17 *"The development hereby permitted shall be commenced no later than 15 November 2025."*
- 7.18 The proposal to vary condition 1 of planning permission 22/00493/FULM does not undermine the necessity, purpose, relevance or precision of the original conditions. The condition sought to ensure the timeous implementation of the planning permission. Since approval, there have been factors including the identification of ground contamination within the site which have impacted on the progress of this development. Investigations into the source of the contamination are ongoing, however until these are concluded any mitigation and remediation measures to address the contamination cannot be confirmed. The developer is engaging with Dundee City Council and SEPA whilst undertaking further on site investigation works. However, it will not be concluded within the required timescales for development to progress before expiry of 22/00493/FULM.
- 7.19 The applicant has continually engaged with the Council on the development, and a number of the pre-commencement planning conditions attached to 22/00493/FULM have been addressed. There has been no significant increase in the availability of purpose-built student accommodation within the city since planning permission was granted. However, it is still considered necessary to only allow a short period for implementation of the permission in order to encourage the development to progress timeously.
- 7.20 Based on the supporting information provided by the applicant and consideration of existing and pipeline student accommodation within the city, the provision of a further 18 months to commencement development would be acceptable. In this instance, the proposals adhere to the requirements of Circular 4/1998.
- 7.21 The effect of granting permission for a Section 42 variation is such that a new and separate permission exists for the development. In this case, the full set of conditions attached to the original permission are proposed to be carried forward and attached to this planning permission, with the variation to condition 1.
- 7.22 **It is concluded that there are material considerations which would justify approval of planning permission.**

## **B – REPRESENTATIONS**

- 7.23 In total one letter was received; the letter was a neutral representation raised the following matter:

Our buildings back directly on to the development site, previous groundworks within the site last summer caused shaking. There are concerns for the structure of buildings in the area which have structural cracks. Confirmation is requested that future works/construction works will not cause structural damage.

- 7.24 Response – It is understood the works previously carried out on site were undertaken by a contractor as part of site investigation works to investigate contaminated land issues. This involves drilling to sample soil conditions below ground level. Any damage caused during these works is a civil matter which the Council has no control over. Any issues arising will need to be pursued independently through the Scottish legal system.
- 7.25 With regard to construction works, this is not a matter which can be addressed through a planning permission. However, details will be considered at Building Warrant stage. At this time no application for a Building Warrant has been lodged with the Council. When one is submitted, it will require to demonstrate compliance with the following:

Mandatory Standard: 1.1 Structure - Every building must be designed and constructed in such a way that the loadings that are liable to act on it, taking into account the nature of the ground, will not lead to: (3) impairment of the stability of any part of another building.

- 7.26 Through the building warrant process, the impacts of construction will be considered and the development will need to ensure there is no impact on the stability of neighbouring buildings.
- 7.27 There are no matters raised in the letter of representation which would justify the refusal of planning permission.

## **C – CITY CENTRE STRATEGIC INVESTMENT PLAN**

- 7.28 The City Centre Strategic Investment Plan seeks to prepare and guide the future vision for the city, setting out a long-term strategic investment plan for the next three decades, structured around five themes including city centre living. The plan seeks to double the residential population living in and around the City Centre, ensuring a diverse range of people choose to live in the city.
- 7.29 Strategic Outcome 1 of the plan seeks to deliver high-quality residential development by promoting vacant and underused sites and buildings. The proposed development would meet this requirement, through the redevelopment of a long standing vacant site in the city centre.
- 7.30 The redevelopment of the vacant site and provision of high-quality purpose-built student accommodation for 242 students would support the target of doubling the residential population in the city centre and the returning to use of an unused site.
- 7.31 Strategic Outcome 2 seeks to provide a variety of residential types and tenures to meet the needs of different households and to create a diverse community. As considered under Policy 6 of NPF4 and Policy 15 of the Local Development Plan, there is demand for purpose-built student accommodation within the city.
- 7.32 The proposed development would contribute positively to the variety and form of development within the city centre and support the creation of diverse communities.
- 7.33 Strategic Outcome 3 seeks to attract a range of centrally located services and facilities to support city centre living. The proposed development of student accommodation would introduce a number of residents to the area, which would support the provision, vitality and viability of shops and services within the city centre. The development is located within walking distance of a range of facilities and supports the provision of 20-minute neighbourhoods.
- 7.34 Overall, the proposed development aligns with the themes and requirements of the City Centre Strategic Investment Plan through the provision of city centre residential accommodation, re-

development of a brownfield site and by being within proximity of a range of shops and services.

- 7.35 **It is concluded that there are no material considerations which would justify refusal of planning permission.**

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## 8 CONCLUSION

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- 8.1 The application under Section 42 of The Town and Country Planning (Scotland) Act 1997 to vary Condition 1 of planning permission 22/00493/FULM is in accordance with the Development Plan. There are no material considerations of sufficient weight that would justify refusal of planning permission.

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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** - the development hereby permitted shall be commenced no later than 15 November 2025.

**Reason** - to ensure the timeous commencement of development and in compliance with Section 58 of the Town and Country Planning (Scotland) Act 1997.

- 2 **Condition** - development shall not begin until the investigation and risk assessment proposed in the submitted Stage I Desk Study are completed and a remediation strategy to deal with contamination risks 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 and does not contain any significant pollution linkages;
- iii measures to deal with contamination during construction works; and
- iv verification of the condition of the site on completion of decontamination measures.

**Reason** – in order to ensure that any potential contamination of the site is dealt with appropriately in the interests of public and environmental safety.

- 3 **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 order to ensure that any potential contamination of the site is dealt with appropriately in the interests of public and environmental safety.

- 4 **Condition** - prior to the commencement of any construction works, details of a scheme of public art to be provided within the development hereby approved shall be submitted

to the Council for written approval. Thereafter, the approved scheme of public art shall be installed prior to the completion of the development hereby approved.

**Reason** - in the interests of enhancing the visual amenity and environmental quality of the development.

- 5 **Condition** - prior to the commencement of development, a detailed landscaping plan shall be submitted to the Council for written approval. Thereafter, landscaping shall be provided on site as the agreed details prior to first occupation of the **development** hereby approved. 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 the implementation and management of a satisfactory scheme of landscaping which will help to integrate the proposed development into the local streetscape in the interests of the visual amenity of the area.

- 6 **Condition** - prior to the commencement of any construction works, a detailed surface water drainage/SUDS design including drawings, calculations, full modelling, simulation results, design risk assessment, signed Dundee City Council Design Compliance and Independent Check Certification, evidence of compliance with the Simple Index Approach as described in section 26.7.1 of the CIRIA SUDS Manual (C753), 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 the development hereby approved.

**Reason** - in the interests of sustainable drainage provision and flood protection.

- 7 **Condition** – prior to the commencement of any construction works, 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.

**Reason** - in the interests of flood protection and visual amenity.

- 8 **Condition** – prior to the commencement of any construction works, evidence of Scottish Water approval for the proposed drainage system for the development hereby approved shall be submitted to the Council for written approval.

**Reason** - in the interests of flood protection.

- 9 **Condition** – prior to commencement of any works on site, a review of the Noise Impact Assessment shall be submitted to the Council for written approval. The Noise Impact Assessment shall assess all noise sources associated with the proposed development, including plant and heating equipment, renewable technologies, vehicles and to determine the cumulative noise impact on the existing noise sensitive receptors and proposed residents. Thereafter, full details of any noise mitigation measures recommended in the assessment shall be submitted to the Council for written approval. The approved mitigation measures will be implemented in full prior to first occupation of the development hereby approved.

**Reason** - in the interests of protecting residential amenity.

- 10 **Condition** – the total noise from the mechanical and electrical plant/services shall not exceed NR45, during daytime, and shall not exceed NR35 during night-time, as measured



1 metre external to the facade of adjacent residential property. Furthermore, it shall not exceed NR25 within any adjoining residential property. NR45 is applicable for the period 0700 to 2300 hours and NR35 and NR25 are applicable for 2300 to 0700 hours.

**Reason** - in the interests of protecting residential amenity.

- 11 **Condition** - the received noise from the electrical substation(s) shall not exceed NR30 as measured 1 metre external to the facade of adjacent residential property.

**Reason** - in the interests of protecting residential amenity.

- 12 **Condition** - prior to any construction works onsite, full details of the proposed means of providing heating (and/or additional standby/ emergency power) to the building, including details of any flues or extracts or similar related works shall be submitted to and approved in writing by the planning authority. Thereafter, the development shall be finished in strict accordance with the details approved by this condition. An air quality assessment may also be needed depending on the size, location and fuel type of any combustion appliances.

**Reason** - in the interest of air quality and protecting residential amenity.

- 13 **Condition** - the mitigation measures detailed within Pages 16, 17, 18 of the submitted Air Quality Assessment by ITP Energised, Project/Proposal No: 5111, Version: 1.1, dated 2022-07-07 shall be incorporated into a Construction and Environmental Management Plan and thereafter implemented during construction of the development hereby approved.

**Reason** – in the interest of air quality and protecting residential amenity.

- 14 **Condition** – full details of the proposed cycle parking and storage shall be submitted to the Planning Authority for approval. For the avoidance of doubt the cycle parking requires to be covered and secure. Thereafter, the cycle parking shall be installed as the agreed details prior to opening of the development.

**Reason** – in the interest of ensuring that provision is made for sustainable transport measures.

- 15 **Condition** - a Travel Plan must be in place and agreed with the Local Authority within one year of the development opening.

**Reason** - in the interest of ensuring that provision is made for sustainable transport measures.

- 16 **Condition** - prior to the first opening of the development the footway alongside the site on South Ward Road shall be reconstructed to Dundee City Council Standards.

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

- 17 **Condition** - any existing accesses that are no longer required as part of the proposed development must be made good as footway to Dundee City Council specifications. Details of these alterations must be agreed prior to any works on site.

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

- 18 **Condition** - the development hereby approved shall be used solely for the purposes of providing student accommodation and ancillary facilities associated with their needs, other than from 1 June to 31 August annually when it may be used as short term holiday accommodation, unless otherwise agreed in writing by the planning authority.

**Reason** - to retain control of use of the building.

- 19 **Condition** - prior to the commencement of development, a site waste management plan shall be submitted to and approved by the Council. The waste management plan shall contain details of how site waste will be controlled during construction and operation of the development.

**Reason** – in the interest of sustainable waste management.

- 20 **Condition** - prior to the commencement of work on site, full details and samples of all of the proposed finishing materials of the development hereby approved shall be submitted to the Council for written approval. For the avoidance of doubt, these shall include bricks, cladding, render, windows and doors. Thereafter, the development shall be finished in strict accordance with the details approved by this condition.

**Reason** - in the interests of visual amenity and to ensure the character and setting of surrounding listed buildings is maintained.

- 21 **Condition** - prior to the commencement of any works on site, the developer shall secure the implementation of a programme of archaeological work in accordance with a detailed written scheme of investigation which has been submitted by the developer and approved in writing by this Planning Authority.

**Reason** - in order to safeguard the archaeological heritage of the site and to ensure that the developer provides for the investigation, recording and rescue excavation of any remains on the site in advance of their loss to development.

- 22 **Condition** - a Sustainability Statement demonstrating the extent to which the new build elements of the development will meet the requirements of Policy 48 of the Dundee Local Development Plan shall be submitted for the approval of the planning authority and the works shall be completed in accordance with the approved Statement.

**Reason** - in the interests of reducing carbon emissions associated with the proposed development.