

Variation of planning condition to allow unrestricted deliveries to the Lidl foodstore at New Craigie Retail Park, Kingsway East

KEY INFORMATION

Ward East End

Address

19 New Craigie Road
New Craigie Retail Park
Dundee

Applicant

Lidl Great Britain
1 Coddington Crescent,
Eurocentral, Motherwell

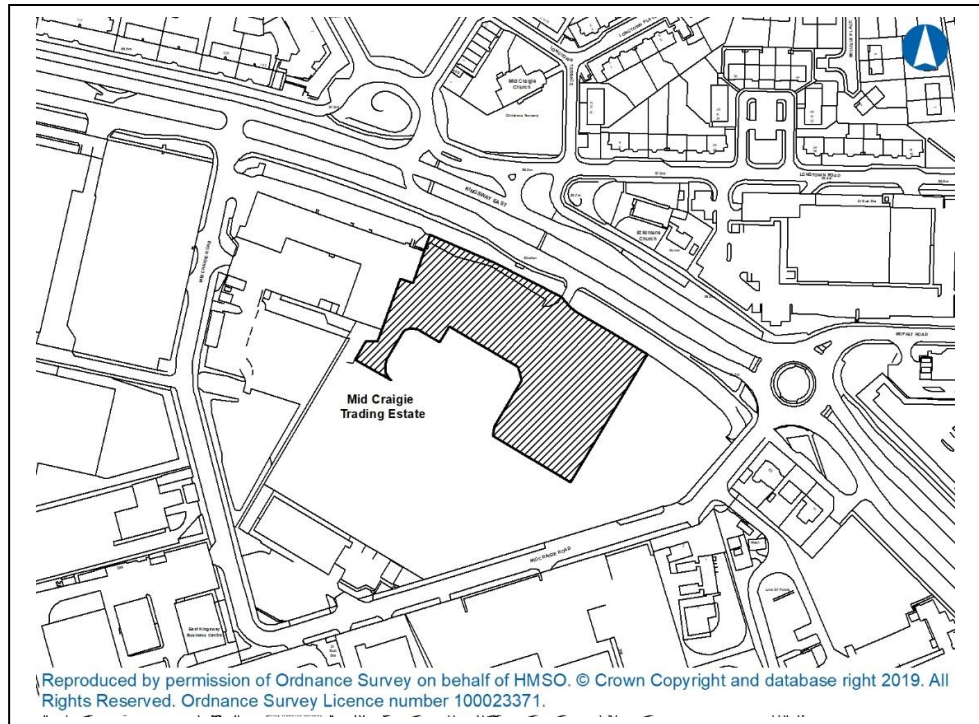
Agent

Rapleys LLP

Registered 7 May 2020

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

Contact: Sharon Dorward



SUMMARY OF REPORT

- This is an application under Section 42 of The Town and Country Planning (Scotland) Act 1997 to vary Condition 18 of planning permission 17/00144/PPPM to allow deliveries and servicing to the Lidl foodstore at New Craigie Retail Park, Kingsway East to take place at any time.
- The application is in accordance with the Development Plan.
- The statutory neighbour notification process was undertaken and the application advertised in the local press. No letters of representation have been received.
- In accordance with Dundee City Council's scheme of delegation, this application is to be determined by the Planning Committee as it is a variation of a condition attached to an approval for a Major development as identified in terms of the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009.
- More details can be found at <http://idoxwam.dundee.gov.uk/idoxpa-web/applicationDetails.do?keyVal=Q9YY3ZGCGV00&activeTab=summary>.

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.

1 DESCRIPTION OF PROPOSAL

- 1.1 Planning permission in principle reference 17/00144/PPPM approved a mixed-use development across the former factory site. Approval was granted subject to several planning conditions including one that restricted the timing of deliveries and servicing of the properties within the development.
- 1.2 Condition 18 states: *"Deliveries and servicing of the properties within this development, including loading, unloading or lay-up, shall not take place between 2200 and 0700 hours."*
- 1.3 The reason for the condition is *"In the interests of safeguarding residential amenity."*
- 1.4 Due to Lidl's operational requirements, the company requires that delivery restrictions are not placed upon new stores. This application seeks to vary the condition to remove this restriction solely for deliveries and servicing of the Lidl foodstore. It is proposed to amend the condition to read:
- 1.5 *"With the exception of the food retail Class 1 development as detailed in approval reference 18/00460/APCONL, deliveries and servicing of the properties within this development, including loading, unloading or lay-up, shall not take place between 2200 and 0700 hours."*
- 1.6 This is the only change proposed to the existing planning permission and means that in essence, deliveries and servicing could take place at any time to the Lidl foodstore but would remain as limited to between 2200 and 0700 hours for the other properties within the wider site.
- 1.7 The applicant has submitted the following in support of the application:
 - Noise Impact Assessment.

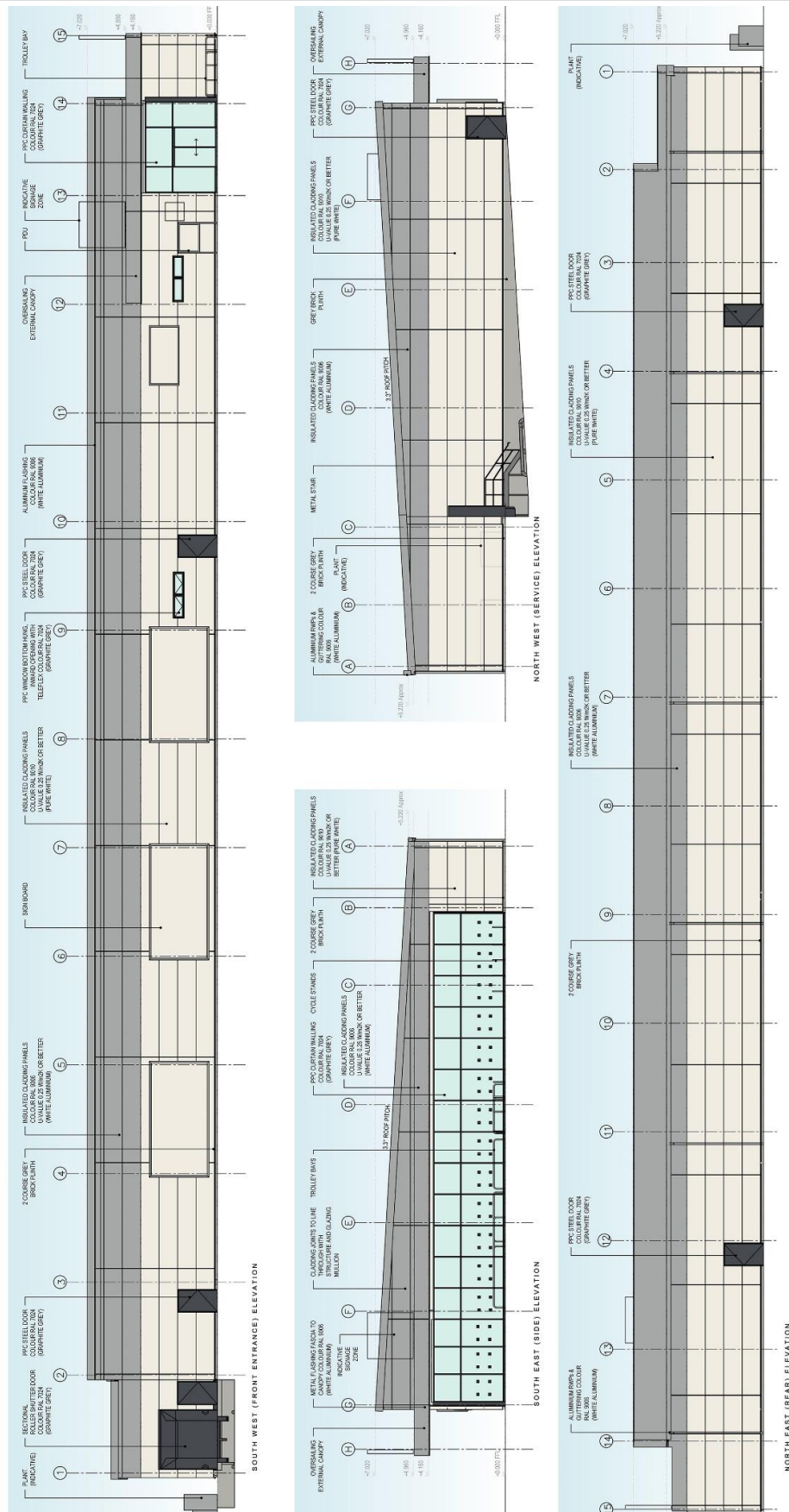


Figure 2 – Elevations of Lidl Foodstore showing location of loading bay

2 SITE DESCRIPTION

- 2.1 The application site is located to the east of Dundee immediately south of the A972 Kingsway East, adjacent to the Kingsway East Retail Park. The site is bound by Mid Craigie Road to the south, west and east. The wider site has planning permission in principle for a mixed-use development under planning permission reference 17/00144/PPPM. Surrounding land uses are largely industrial, with some residential and retail uses and a cemetery beyond.



Figure 3 – Site Entrance from Mid Craigie Road



Figure 4 – Main Entrance to Lidl Foodstore

3 POLICY BACKGROUND

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 39: Environmental Protection

SCOTTISH PLANNING POLICY, PLANNING ADVICE NOTICES AND CIRCULARS

Planning Circular 4/1998: the use of conditions in planning permissions.

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 permission in principle 17/00144/PPPM for a mixed-use development comprising industrial units, car showroom, family restaurant, coffee shop and food retail, with car parking, access and associated works was approved in June 2017.

4.2 Approval of matters specified by condition application 18/00460/APCONL for the erection of the retail food store, car park and associated landscaping and infrastructure was approved in September 2018.

4.3 Approval of matters specified by condition application 18/00077/APCONM for the erection of 16 industrial units was approved in July 2018.

4.4 Planning application 17/00974/FULL for the formation of an access road associated with planning permission 17/00144/PPPM was approved in December 2018.

5 PUBLIC PARTICIPATION

5.1 The statutory neighbour notification procedure has been undertaken. No letters of representation have been received.

6 CONSULTATIONS

6.1 **Transport Scotland** – are satisfied that the proposed variation to allow for unrestricted deliveries is unlikely to result in negative trunk road network impacts and offer no objection to the application.

6.2 **The Head of Community Safety and Protection** – has advised that based on the Noise Impact Assessment (NIA) submitted there is not likely to be a noise issue at this site.

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

- 7.2 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

- 7.3 **Policy 39: Environmental Protection** states 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.
- 7.4 Planning permission in principle 17/00144/PPPM was granted for a mixed-use development comprising Class 4 and 5 industrial units, a car showroom, Class 3 family restaurant with ancillary public house, coffee shop, and a Class 1 food retail store in June, 2017. The details of the food store were approved under the Matters Specified by Condition approval reference 18/00460/APCONL.
- 7.5 The application approved the erection of the Lidl retail food store, car park and associated landscaping and infrastructure. In consideration of the planning permission in principle application it was determined that there would be potential noise impact from servicing and deliveries on the residents of adjacent housing during the evening and night time hours. It was recommended that a general restriction on noise from mechanical and electrical plant during night time hours should be applied, along with a restriction on trade and delivery times.
- 7.6 Condition 18 was applied to the planning permission in principle 17/00144/PPPM and states "Deliveries and servicing of the properties within this development, including loading, unloading or lay-up, shall not take place between 2200 and 0700 hours." The reason for the condition is "In the interests of safeguarding residential amenity." This condition was also attached to the Approval of Matters Specified in Condition 18/00460/APCONL (Condition 11).
- 7.7 During assessment of this Section 42 application, a Noise Impact Assessment (NIA) was submitted in support of the application which concludes that noise levels within habitable rooms of the closest houses are predicted to meet relevant internal noise criteria. The closest noise sensitive receptors were identified as residential properties on Mid Craigie Road and Longtown Road, at a distance of approximately 90 metres from the Lidl store. These are closer to the store than the proposed new housing at the former Stewarts Cream of the Barley development site. Noise effects associated with delivery activities associated with the Lidl food store have been determined to result in very low impacts and are therefore considered not to be significant. The findings of the NIA are accepted and it is not considered that there is likely to be a significant noise issue at the East Kingsway Lidl food store site.
- 7.8 In this instance, the proposal to vary condition 18 of planning permission in principle 17/00144/PPPM would be acceptable. It should be noted that this relaxation of the condition to restrict delivery hours applies to the Lidl food store only. It has not been demonstrated to

be acceptable for any other development within the site boundary for planning permission in principle 17/00144/PPPM. For the avoidance of doubt, it is recommended that condition 18 of 17/00144/PPPM be varied in relation to the Lidl food store only and that the original delivery and servicing hours restriction shall remain applicable to any future development.

7.9 The proposal meets the requirements of Policy 39 and the adopted Dundee Local Development Plan 2019.

7.10 **The proposal is in accordance with Policy 39.**

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

MATERIAL CONSIDERATIONS

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

A – SCOTTISH GOVERNMENT CIRCULAR 4/1998

7.13 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.

7.14 Condition 18 of planning permission in principle 17/00144/PPPM states:

“Deliveries and servicing of the properties within this development, including loading, unloading or lay-up, shall not take place between 2200 and 0700 hours.”

7.15 After consideration of the tests in the Circular, and to ensure it is precise and enforceable, the proposed wording has been amended to read:

7.16 “With the exception of the food retail Class 1 development as detailed in planning approval reference 18/00460/APCONL, deliveries and servicing of the properties within this development, including loading, unloading or lay-up, shall not take place between 2200 and 0700 hours.”

7.17 Based on the NIA submitted during determination of the application, it is considered that noise levels from deliveries to the food store would be acceptable.

7.18 The proposal to vary condition 18 of planning permission in principle 17/00144/PPPM 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.

- 7.19 The effect of granting permission for a Section 42 variation is such that a new and separate permission exists for the development with different (or no) conditions attached. In this case, the full set of conditions are proposed (with the variation to condition 18) as not all of the developments approved under the planning permission in principle have been implemented.
- 7.20 **It is concluded that there are no material considerations of sufficient weight in this case to justify refusal of planning permission.**

8 CONCLUSION

- 8.1 The application under Section 42 of The Town and Country Planning (Scotland) Act 1997 to vary Condition 18 of planning permission in principle 17/00144/PPPM is in accordance with the Development Plan. There are no material considerations of sufficient weight that would justify refusal of planning permission.

9 RECOMMENDATION

- 9.1 It is recommended that planning permission be GRANTED subject to the following condition(s):

- 1 **Condition** - prior to the commencement of any works on site, a further application for the Approval of Matters Specified by Condition shall be submitted for the written permission of this Planning Authority, together with the requisite detailed plans and drawings which shall include a location plan and detailed plans, sections and elevations of all buildings proposed to be erected on the site together with details of any proposed boundary enclosure, access, drainage and external finishing materials.
- 2 For the avoidance of doubt, the indicative proposed masterplan submitted with the application is not approved.

Reason - to ensure that the matters referred to are given full consideration and to accord with section 59 of The Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc (Scotland) Act 2006.

- 3 **Condition** - details of the proposed access road including proposed road signage and markings must be agreed prior to the commencement of any works on site and the road must be formed and constructed to Dundee City Council standards and specifications.

Reason - in the interests of vehicle and pedestrian safety.

- 4 **Condition** - a footway must be provided to Dundee City Council specifications ex adverso the site on Mid Craigie Road. Details of the footway must be agreed prior to the commencement of any works on site.

Reason - in the interests of vehicle and pedestrian safety.

- 5 **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 the commencement of any works on site.

Reason - in the interests of vehicle and pedestrian safety.

- 6 **Condition** - details of car parking for each element of the proposed development must be agreed with Dundee City Council and the level of car parking must comply with maximum car parking standards for each part of the development and as a whole.

Reason - in the interests of sustainable travel measures.

- 7 **Condition** - the hard surfaces within the car parking areas should be made of porous materials or provision should be made to direct run off water from the hard surface to a permeable or porous area or surface within the curtilage of the site.

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

- 8 **Condition** - electric car charging points shall be provided at locations and number to be approved within each car park prior to opening of the development.

Reason - in the interests of sustainable travel measures.

- 9 **Condition** - a Street Lighting system must be provided by the applicant to Dundee City Council standards and specifications.

Reason - in the interests of vehicle and pedestrian safety.

- 10 **Condition** - 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 Compliance 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 the development hereby approved.

Reason - in the interests of flood protection.

- 11 **Condition** - prior to the commencement of any works on site, details of measures proposed to manage surface water run-off from the site during construction shall be submitted to the Council for written approval. Thereafter, all works approved by virtue of this condition shall be carried out prior to construction works commencing on any part of the development hereby approved.

Reason - in the interests of flood protection.

- 12 **Condition** - 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.

Reason - in the interests of flood protection.

- 13 **Condition** - 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.

Reason - in the interests of flood protection.

- 14 **Condition** - development shall not begin until an appropriate remediation strategy 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 the interests of providing a site suitable for future development.

- 15 **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 site suitable for future development.

- 16 **Condition** - prior to the commencement of any works on site, a construction dust management plan shall be prepared in accordance with IAQM Guidance, and submitted for the prior approval of Dundee City Council as Planning Authority. Thereafter any mitigation measures identified shall be implemented in full.

Reason - in the interests of safeguarding residential amenity.

- 17 **Condition** - prior to the commencement of the development hereby approved, full details of the proposed means of heat and emergency power to the buildings, including details of any boilers, flues or extracts or other similar related works shall be submitted to and approved in writing by the planning authority. Thereafter, the development shall be implemented in accordance with the approved details and be maintained as such.

Reason - to ensure that emissions from the development are not prejudicial to health or a nuisance, and the change in annual mean nitrogen dioxide and particulate matter concentrations will be negligible.

- 18 **Condition** - the total noise from all mechanical and electrical plant/services shall not exceed NR 35 during the night as measured 1 metre external to the facade of adjacent residential accommodation. For the avoidance of doubt night time shall be 2300 to 0700 hours.

Reason - in the interests of safeguarding residential amenity.

- 19 **Condition** - with the exception of the food retail Class 1 development as detailed in planning approval reference 18/00460/APCONL, deliveries and servicing of the properties within this development, including loading, unloading or lay-up, shall not take place between 2200 and 0700 hours.

Reason - in the interests of safeguarding residential amenity.

- 20 **Condition** - prior to the commencement of any works on site 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 amenity and environmental quality of the development.

- 21 **Condition** - prior to the commencement of any works on site, a scheme of landscaping indicating the siting, numbers, species and heights (at time of planting) of all trees, shrubs and hedges to be planted, and the extent and profile of any areas of earth mounding, shall be developed and submitted for approval in writing by this Planning Authority. The scheme as approved shall be implemented within the first planting season following the completion or occupation of the development, whichever is the sooner. Any trees or shrubs removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced by trees or shrubs of similar size and species.

Reason - in the interests of visual amenity and to ensure a satisfactory standard of local environmental quality.

- 22 **Condition** - prior to the commencement of any works 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.

Reason - in order to demonstrate that the new development will meet the required carbon emissions reduction standards in the interests of the environment.

- 23 **Condition** - prior to the commencement of any development on site, a scheme for upgrading pedestrian access facilities within the vicinity of the proposed development site shall be submitted for the prior approval of Dundee City Council as Planning Authority in consultation with Transport Scotland.

Reason - in the interests of road and pedestrian safety.

- 24 **Condition** - prior to the commencement of the development hereby approved, a detailed phasing plan for the entire development shall be submitted to and approved in writing by the planning authority. For the avoidance of doubt, the approved Class 4 and Class 5 industrial units shall be completed prior to any part of the Class 1 retail or Class 3 restaurant commencing trading.

Reason - to ensure appropriate provision of these units and opportunity at an early stage in the development.