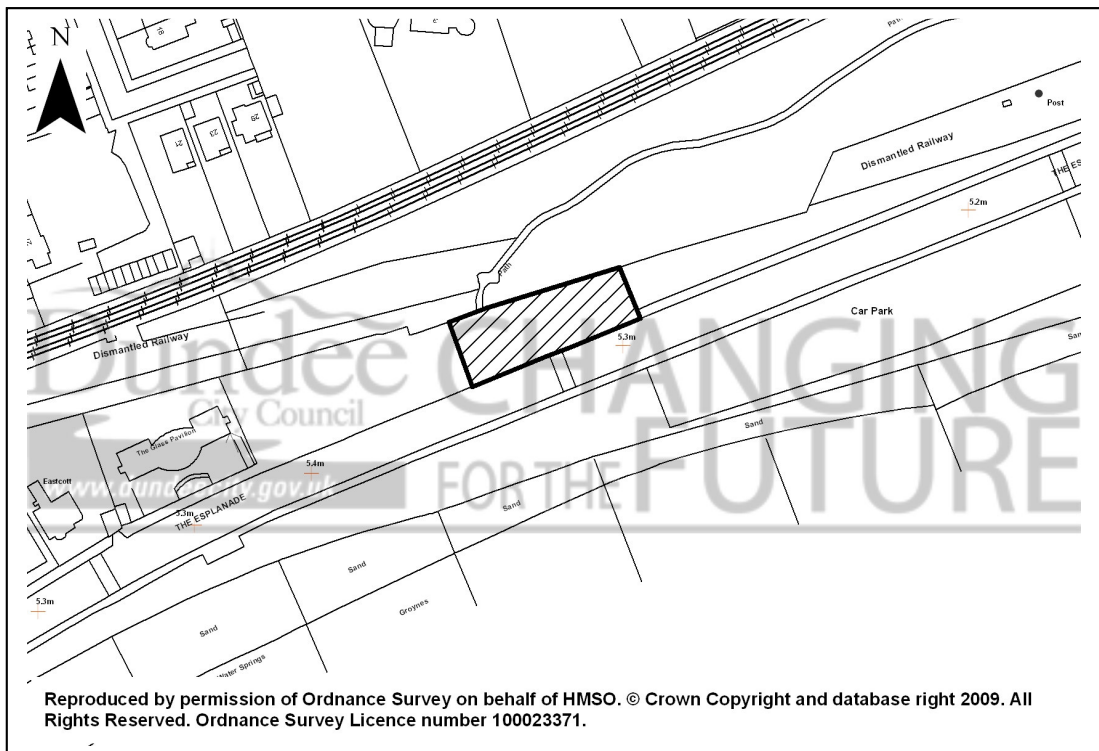


**KEY INFORMATION****Ward** The Ferry**Proposal**Erection of Eight Flats -  
Variation of Planning  
Application 07/00529/FUL**Address**Former Jacques Night Club  
The Esplanade  
Broughty Ferry**Applicant**G L Residential  
163 Princes Street  
Dundee**Agent**KDM Architects  
15 Camperdown Street  
Broughty Ferry  
Dundee  
DD5 3AA**Registered** 10 Nov 2009**Case Officer** P Macari

# Proposed Amendments to Consent for Housing Development in the Esplanade

The erection of eight flats is **RECOMMENDED FOR APPROVAL** subject to conditions. Report by Director of City Development.

**RECOMMENDATION**

Although the proposed development is contrary to Policy 4 (presumption against flats) there are material considerations that support approval of the proposals contrary to the provisions of the Development Plan. The concerns of the objector and the Community Council are not supported. Accordingly, it is recommended that planning permission is granted subject to the completion/ amendment of the existing Section 75 Legal Agreement and conditions.

**SUMMARY OF REPORT**

- This application seeks planning permission to erect eight flats as a variation to Block B of planning application 07/0529/FULL which sought planning permission for the erection of 20 flats on the site of the former Jacques Night Club, The Esplanade Broughty Ferry.
- Policy 1 (Vibrant and Sustainable Communities), Policy 4 (Design of New Housing), Policy 55 (Urban Design) and Policy 70 (Semi-Natural Greenspaces of Local Nature Conservation Importance) of the Dundee Local Plan Review 2005 are relevant to the outcome of this planning application.
- The proposals were advertised in the Dundee Evening Telegraph as development contravening Policy 4 of the adopted Local Plan.
- One letter of objection has been received from a local resident concerned about the impact of the revised design of Block B on the nature reserve, impact upon access to the nature reserve, the impact upon public amenity, absence of statement of justification and a request for a Section 75 legal agreement.
- Broughty Ferry Community Council objects to the development on grounds of poor design and impact on the Nature Reserve. To overcome the impact on the Nature Reserve the Community Council recommend that planning permission if granted is subject to a Section 75 Legal Agreement in addition to the existing Section 75 to secure a financial contribution from the applicant for the on going maintenance of the Nature Reserve.
- The concerns of the Objector and Community Council are not supported.

## DESCRIPTION OF PROPOSAL

Planning permission is sought to erect a block of eight flats varying the design of Block B of planning permission 07/00529/FUL.

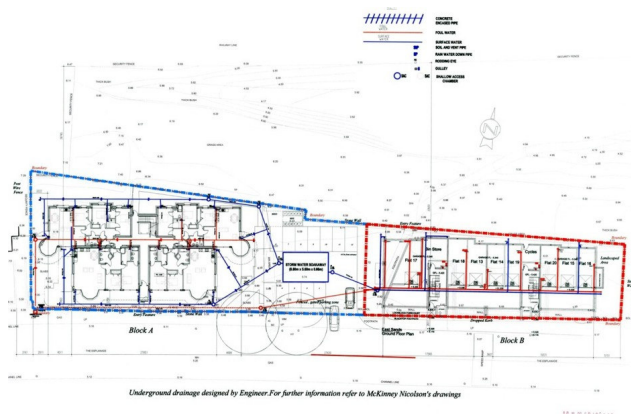
The proposal comprises elevational alterations to the eastmost building, which sits on the former car park of Jacques Night Club. Block B provides eight garages at ground floor level and four apartments on each of the two upper floors. The elevational alterations will impact upon the internal layout of the proposed apartments.

The proposed variations to the design of the building involve changes to the window pattern and frequency, the shape and size of balconies on the southern elevation of Block B as well as the removal of the "pods" forming part of the lounge/dining and kitchen areas of flats 13, 16, 17 and 20. These four flats will have three bedrooms with the remaining four flats in Block B having only two bedrooms. Although the internal floor area of the units will be slightly reduced through the omission of the "pods" from apartments 13, 16, 17 and 20, none of the units in Block B will have a floor area less than 90m<sup>2</sup>.

Externally the omission of the pods from the building will alter the size and shape of the proposed balconies serving apartments 13, 16, 17 and 20. The south facing balconies serving these apartments approved by planning permission 07/00529/FUL have an area ranging between 16m<sup>2</sup> and 26m<sup>2</sup>. The proposed south facing balconies serving apartments 13, 16, 17 and 20 will have an area of 18.5m<sup>2</sup>. The balconies serving apartments 14, 15, 18 and 19 will have south facing balconies with an area of no less than 10m<sup>2</sup> and no greater than 12m<sup>2</sup>. The balconies serving these apartments are no different from those approved by planning permission 07/00529/FUL.

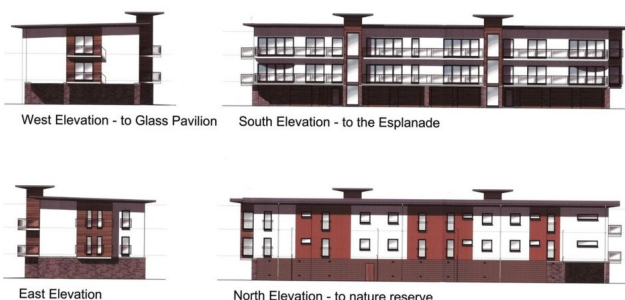
The internal layout of the apartments has changed slightly with bedrooms, bathrooms and dining areas varying in position from those

approved by planning permission 07/00529/FUL. This has led to the introduction of additional window openings in the upper floors of the northern elevation of Block B.



PROPOSED SITE LAYOUT 1:200

The southern elevation of Block B will be changed by the inclusion of floor to ceiling glazed sliding doors. Although the south facing elevation of Block B was mostly glazed on the upper floors, the glazing was in the form of fixed pane floor to ceiling panels. The



eastern elevation of Block B will have projecting bay windows at first and floor level.



Given the significance of the changes proposed and the wording of conditions attached to planning

permission 07/00529/FUL the assessment of the principle of developing Block B on the application site requires to be re-established. It is therefore the purpose of this report to assess the impact that the revised design of Block B will have on the surrounding environment.

This application is being reported to the Development Quality Committee as Broughty Ferry Community Council has objected to the proposals.

## SITE DESCRIPTION

The site comprises some 0.2 hectares of ground on the north side of the Esplanade. The western portion of the site was formerly occupied by Jacques Night Club. The eastern part of the site formed a disused car park. The building has been recently demolished and the site of the former car park scraped with a mound of earth located in the eastern sector of the site. The whole site is enclosed by steel post and mesh security fencing.

Between the disused car park and the site of the former Jacques Night Club there was a public footpath leading to the Broughty Ferry Nature Reserve which bounds the site to the north. The public footpath has been redirected and access to the Nature Reserve has been temporarily located to the east of the site. Planning permission was previously granted subject to a Section 75 Legal Agreement for the retention of the public footpath through the site. Once the development of the site is complete the footpath will be reinstated through the application site.

To the west of the site is the Glass Pavilion, a recently developed cafe and restaurant redeveloped from a Category C listed former beach shelter. To the south, on the opposite side of the Esplanade, is open grassland adjoining the beach.

## POLICY BACKGROUND

### Dundee and Angus Structure

## Plan 2001-2016

There are no policies relevant to the determination of this application.

## Dundee Local Plan Review 2005

The application site is indicated as part of an existing residential area where Policy 1: Vibrant and Sustainable Communities seeks to safeguard the amenity of residential areas in terms of design as well as layout, parking and traffic movement, and noise and smell issues.

Policy 4 sets out standards for the design of new housing. The proposed development meets these standards other than the presumption against flats. However, flats can be permitted in certain circumstances.

Policy 55 Urban Design puts an emphasis on good design and on protecting the setting of listed buildings.

The application site is not allocated as open space in the adopted Local Plan and therefore does not enjoy the protection normally afforded to areas of open space under Policy 66B.

The adjoining Nature Reserve is protected by Policy 70 of the Plan which states that development proposals must not adversely affect the nature conservation qualities of Local Nature Reserves. It adds that any development proposals affecting these sites must be accompanied by an ecological assessment that details the likely impacts along with proposed mitigation measures.

## Scottish Planning Policies, Planning Advice Notes and Circulars

There are no statements of Government policy relevant to the determination of this application.

## Non Statutory Statements of Council Policy

There are no non statutory Council policies relevant to the determination of this application.

## SUSTAINABILITY ISSUES

The proposed development is considered to be sustainable and in general accordance with the Council's

sustainability policies as it involves the reuse of a previously developed site.

## SITE HISTORY

Planning permission (06/00405/FUL) was granted for the erection of 20 flats on the site of the former Jacques Night Club in 2006. Planning permission 06/00405/FUL was granted subject to the completion of a Section 75 Legal Agreement securing pedestrian access through the application site to the Nature Reserve and to prevent the approved flats from being used as Houses of Multiple Occupation.

In 2007, planning permission (07/00529/FUL) was granted again for the erection of 20 flats on the site of the former Jacques Night Club. This was because the conditions attached to the original consent would only allow development to proceed in strict accordance with the approved plans. Therefore, any variations to the approved plans require to be the subject of a formal application for planning permission. Planning application 07/00529/FUL sought planning permission for elevational alterations to Blocks A and B of the development approved by planning permission 06/00405/FUL. The conditions and terms of the Section 75 forming part of planning permission 06/00405/FUL were incorporated into planning permission 07/00529/FUL.

The current application that is the subject of this report seeks planning permission for elevational alterations to the proposals approved by planning permissions 06/00405/FUL and 07/00529/FUL.

## PUBLIC PARTICIPATION

Statutory neighbour notification was carried out and the proposal was advertised as potentially contravening Policy 4 of the adopted Local Plan.

One letter of objection had been received from a neighbouring resident. The valid concerns of the objector are as follows:

- 1 Impact on Nature Reserve
- 2 Impact upon access to the Nature Reserve.
- 3 Request for a Section 75 Legal Agreement securing financial contributions for the ongoing maintenance of the Nature Reserve should the Council be

minded to grant planning permission.

- 4 The objector indicates that the improved design of Block B may contribute to the marketability of the flatted development to the benefit of the developer and the private enjoyment of the residents at the expense of a further reduction in public amenity in the immediate vicinity of the of the local Nature Reserve.

- 5 No justification for proposals

Members will already have had access to these letters and the points raised are considered in the Observations Section of this Report.

## CONSULTATIONS

Broughty Ferry Community Council object to the development on grounds of poor design and impact on the Nature Reserve. To overcome the impact on the Nature Reserve the Community Council recommend that planning permission, if granted, is subject to a Section 75 Legal Agreement in addition to the existing Section 75 to secure a financial contribution from the applicant for the on going maintenance of the Nature Reserve.

## OBSERVATIONS

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

## The Development Plan

The provisions of the development plan relevant to the determination of this application are specified in the Policy background section above.

Policy 4 sets out standards for the design of new housing. The proposed development conflicts with the presumption against flats. For this reason it was advertised as a departure from the Plan.

In light of the outcome of planning applications 06/00504/FUL and 07/00529/FUL it is considered that the development of the site for housing is acceptable in principle. It is further considered that there is a justification for the construction of apartments

rather than houses on the application site. Appendix 1 to Policy 4 states that flats will be permitted where exceptional circumstances demand a flatted solution. In this case the site is very exposed to public view and a well designed apartment block would be the most appropriate form of development. Houses, with the inevitable requirements for extensive and fenced off garden areas and the tendency towards more standardised designs, would be difficult to incorporate onto the site.

The proposed development incorporates large flats with extensive balconies. It provides a type of accommodation on a unique site which is not readily available elsewhere within the city and the Local Plan makes a stated exception for providing a type of accommodation not available in the surrounding area.

The proposed development involves extensive site coverage, but mirrors the footprint and layout approved by planning permission 07/00529/FUL whereby adequate parking and landscaped areas are provided to the sides of Block B and adequate provision has been made for cycle parking and bin stores. Although the site is surrounded by open space, all housing developments should have private ground and this is a requirement of Policy 4 of the Plan. In this case substantial balconies are proposed for all the proposed apartments, and it is considered that these balconies coupled with the space around the building, provide an adequate useable outdoor area.

It is considered that a modern design approach is wholly appropriate for this site. The beach front context with extensive views mean that a building with extensive glazing and balconies on the south facing elevation is appropriate as opposed to a more traditional design. Thus the extension of the adjoining listed building with what is effectively a large glass box on its front elevation has been a very successful development despite being in no way "traditional" to Broughty Ferry. In this case it is considered that the proposed building is well designed, with attention having been given to the side and rear elevations as well as the prominent front elevations.

The proposals are contrary to the requirements of Appendix 1 of Policy 4. However, there are material

considerations that justify support of the proposals contrary to the requirements of the adopted local plan.

Policy 55 Urban Design puts an emphasis on good design and it is considered, for the reasons stated above, that the design of the development meets the high design standards required at this location. Policy 55 also refers to protecting the setting of listed buildings.

In this case the development of the former Jacques Night Club site with contemporary three storey flatted blocks has already been considered through the assessment of planning applications 06/00409/FUL and 07/00529/FUL, to have a neutral impact upon the character and setting of the listed building bounding the site to the west. Principally this is because the C(c) listed former bathing shelter to the west of the site has been significantly extended with a contemporary glazed frontage on to the Esplanade. It is considered that the revised high quality design of Block B will have a lesser effect on the listed building than previous designs for Block B approved by planning permissions 06/00409/FUL and 07/00529/FUL.

The adjoining Nature Reserve is protected by Policy 70 of the Plan. Through consultation with SNH planning permissions 06/00409/FUL and 07/00529/FUL were granted subject to several conditions and the completion of a Section 75 Legal Agreement to safeguard the original pedestrian access through the site to the nature reserve. Therefore, should the Committee be minded to grant planning permission, the Council should apply the relevant conditions pertaining to the nature reserve as applied to planning permissions 06/00409/FUL and 07/00529/FUL as this would protect the nature reserve. In this respect it is also recommended that the Council enter into a new/ amend the existing Section 75 Legal Agreement to safeguard and reinstate the original pedestrian access through the application site to the nature reserve.

By meeting the criteria of Policy 4 (apart from the presumption against flats), Policy 55 and Policy 70 of the adopted local plan, the proposals are considered to maintain the level of environmental quality afforded to the surrounding area by virtue of design,

layout, parking and vehicle movements. In this respect the proposals are considered to satisfy the requirements of Policy 1.

The proposals comply with all relevant aspects of the Development Plan apart from the presumption against flats in suburban areas.

## Other Material Considerations

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

- 1 Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 requires planning authorities, in considering applications that affect the setting of listed buildings, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

This matter has already been considered in the assessment of the proposed development under Policy 55 of the adopted Local Plan and it was considered that the proposal would have a positive impact on the setting of the adjoining listed building.

### 2 The Grounds of Objection

- a The proposed development will adversely impact on the Nature Reserve. This matter has already been considered in the assessment of the development against Policy 70 of the Plan and it has been concluded that there will not be a significant adverse impact. It is considered that maintaining the access path in its original location is an appropriate solution and that any fears about a loss in security by having to pass under the building are more than compensated for by the fact that the building will overlook the nature reserve.
- b Impact on access to the nature reserve - while the Objector claims that the temporary pedestrian access path to the north of the application site is not

sympathetic to the needs of disabled persons, the access path was formed with the approval of the Council's Countryside Rangers and at the time Economic Development Department. This is because there was no requirement by previous planning permissions to provide a temporary access to the nature reserve but rather to maintain the original access through the application site once development was complete. This has been secured both through a Section 75 Legal Agreement and conditions. Should the Committee be mindful to grant planning permission it is recommended that it does so subject to the completion of a new or amendment of the existing Section 75 Legal Agreement to safeguard the position of the pedestrian access through the application site.

- c Request for a Section 75 Legal Agreement securing financial contributions for the ongoing maintenance of the Nature Reserve should the Council be minded to grant planning permission. Planning permission for the erection of 20 flats on the site of the former Jacques Night Club which this application forms part of, was granted subject to the completion of a Section 75 Legal Agreement to retain the pedestrian access through the site to the nature reserve as well as to prevent the flats from being used as houses of multiple occupation.

The applicant has confirmed that they have no intention of entering into another Section 75 Legal Agreement for the revised design of Block B to provide funding for the maintenance of the nature reserve. However, the applicant accepts that the terms of the existing Section 75 Legal Agreement will have to be amended to incorporate the current

proposals should planning permission be granted.

It should be noted that the Council, as owner of the nature reserve, are responsible for its maintenance and upkeep. As owner of the land, there are a variety of legal mechanisms available to the Council to pursue costs for any damages caused to the nature reserve through the development of adjacent land. None of these mechanisms fall within the bounds of current planning legislation. To pursue such costs through a Section 75 Legal Agreement would not be appropriate as there is only a very tenuous link between the current proposals and the purpose of the proposed Section 75 legal agreement. Therefore, it is debatable whether the proposed Section 75 is relevant to this planning application or whether securing a financial contribution from the applicant for the upkeep of the nature reserve is purely an afterthought following planning permission being granted twice for the erection of 20 flats on the site of the former Jacques Night Club.

Planning permission already exists for the erection of 20 flats on the site of the former Jacques Night Club and there is no vehicle available to prevent the flats approved by planning permissions 06/00405/FUL and 07/00529/FUL from being built should the Committee be minded to refuse this application following the applicant's reluctance to enter into a Section 75 Legal Agreement to secure funding for the maintenance and upkeep of the nature reserve.

- d The improved design of the building will benefit the developer and residents at the expense of public amenity in the vicinity of the local nature reserve.

These matters have already been considered in the assessment of the development against Policies 4 and 55 of the Local Plan and it has been concluded that the scale, design and layout of the development are satisfactory. Whether the improved design of the building increases the marketability of the flats to the benefit of the developer or future residents is not a material planning consideration. Of interest in terms of planning however, are concerns relating to the impact upon public amenity. Visually, the revised design of Block B will enhance the appearance of the Esplanade streetscape. The building will overlook the nature reserve as well as give views across the Broughty Ferry bay area. The level of surveillance gained from Block B will enhance the level of safety afforded to pedestrians using the nature reserve and bay area for recreational purposes. Both facilities are used regularly by joggers and walkers.

Given the location of the application site high quality contemporary design was considered more appropriate than traditional standardised design that is associated with suburban locations throughout the city. Taking the above assessment of the proposals into account the revised design of Block B will at the very least have a neutral affect on public amenity.

- e Concern was also raised by the Objector that no statement of justification was submitted by the applicant to accompany the current proposals. here is no statutory requirement for planning applications to be submitted with formal statements unless the application falls within the definition of a "Major" or



"National" application as stipulated by the Town and Country Planning (Scotland) Act 1997 as amended. While the Objector may feel that the proposed changes to the approved design of Block B are not clear, the previously approved plans for the redevelopment of the former Jacques Night Club site are available to view on the Council's website as are the current proposals. Further, the Objector like many other members of the public could have contacted the case officer to discuss the proposed development.

The concerns of the Objector are not supported.

### 3 View of Consultees

Broughty Ferry Community Council - the concerns raised have been addressed in the consideration of objections and the assessment of the proposals against the criteria of the Development Plan.

- 4 Justification for Providing Apartments as opposed to Houses on the Site - in this case the site is very exposed to public view and a well designed apartment block would be the most appropriate form of development. Houses, with the inevitable requirements for extensive and fenced off garden areas and the tendency towards more standardised designs, would be difficult to incorporate onto the site. Indeed had the opportunity arisen to prepare a site planning brief, then a form of development similar to that currently proposed would have been encouraged. This is reflected in the approval of planning applications 06/00405/FUL and 07/00529/FUL for the erection of 20 flats on the site of the former Jacques Night Club.

The proposed development incorporates large flats with extensive balconies. It provides a type of accommodation on a unique site which is not readily available elsewhere within the city and the Local Plan makes a stated exception for providing a type of accommodation not

available in the surrounding area.

The development complies with all other aspects of Policy 4 and the Appendix 1 guidelines.

- 5 Requirement for a Section 75 Legal Agreement - the use of a Section 75 Legal Agreement for the prohibition of the use of the flats approved by planning applications 06/00405/FUL and 07/00529/FUL as houses of multiple occupation and the safeguarding and reinstatement of the original pedestrian access through the application site to the nature reserve was recommended by the Development Quality Committee following the assessment of planning application ref: 06/00405/FUL.

Should the Committee be minded to grant planning permission for the current proposals, it is recommended that the existing Section 75 Legal Agreement relating to planning permissions 06/00409/FUL and 07/00529/FUL is amended or revised to incorporate the current proposals. This would ensure that the original pedestrian access through the application site to the nature reserve would be retained between Block B and the car parking area as well as prevent the proposed flats from being used as a house of multiple occupation.

It is concluded from the foregoing that there are sufficient material considerations to justify the approval of the application despite the fact that the Local Plan supports houses on this site. The views of objectors do not hold sufficient weight such as to justify the refusal of planning permission.

### **Design**

It is considered that a modern design approach is wholly appropriate for this site. The beach front context with extensive views mean that a building with extensive glazing and balconies on the south facing elevation is appropriate as opposed to a more traditional design. Thus the extension of the adjoining listed building with what is effectively a large glass box on its front elevation has been a very successful development despite being in no way "traditional" to Broughty Ferry. In this case it is considered that the building is well designed, with attention having been given to the side

and rear elevations as well as the prominent front elevations. The choice of finishing materials is appropriate for the location and the proposed landscaping and boundary enclosures will help incorporate the development into its unique setting.

## **CONCLUSION**

The proposals comply with all aspects of the Development Plan apart from the presumption against flats on the application site as details by Policy 4 of the adopted Local Plan. However, there are material considerations that justify support of the proposals contrary to the requirements of the adopted local plan and the concerns of the objector. Accordingly, it is recommended that planning permission is granted subject to the revision/completion of a Section 75 legal agreement and conditions.

## **RECOMMENDATIONS**

### **Recommendation 1**

This planning permission shall not be issued unless and until the existing Section 75 Legal Agreement relating to the erection of 20 flats on the site of the former Jacques night Club, The Esplanade, Broughty Ferry is revised or a new Section 75 Legal Agreement between the Council and parties with appropriate interests in the land has been recorded. This agreement will relate to the prohibition of any of the proposed flats approved by planning permissions 06/00409/FUL, 07/00529/FUL and 09/00719/FULL becoming a house in multiple occupation as well as safeguarding the location or reinstatement of the original pedestrian access through the application site to the nature reserve.

### **Recommendation 2**

It is recommended that consent be GRANTED subject to the following conditions:-

- 1 The development hereby permitted shall be commenced within three years from the date of this permission.
- 2 This consent is for the modification of planning permission 06/00405/FUL and 07/00529/FUL. Planning conditions 2-6, 9 and 10 of consent ref: 06/00405/FUL and Condition 2 of consent ref:

07/00529/FUL apply to the modified proposals hereby approved.

**Reasons**

- 1 To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997.
- 2 To accord with the nature of the consent applied for and to ensure an appropriate standard of development.