

KEY INFORMATION

Ward East End

Proposal

Demolition of former garage,
erection of restaurant and
formation of car park

Address

137A Broughty Ferry Road
Dundee
DD4 7NL

Applicant

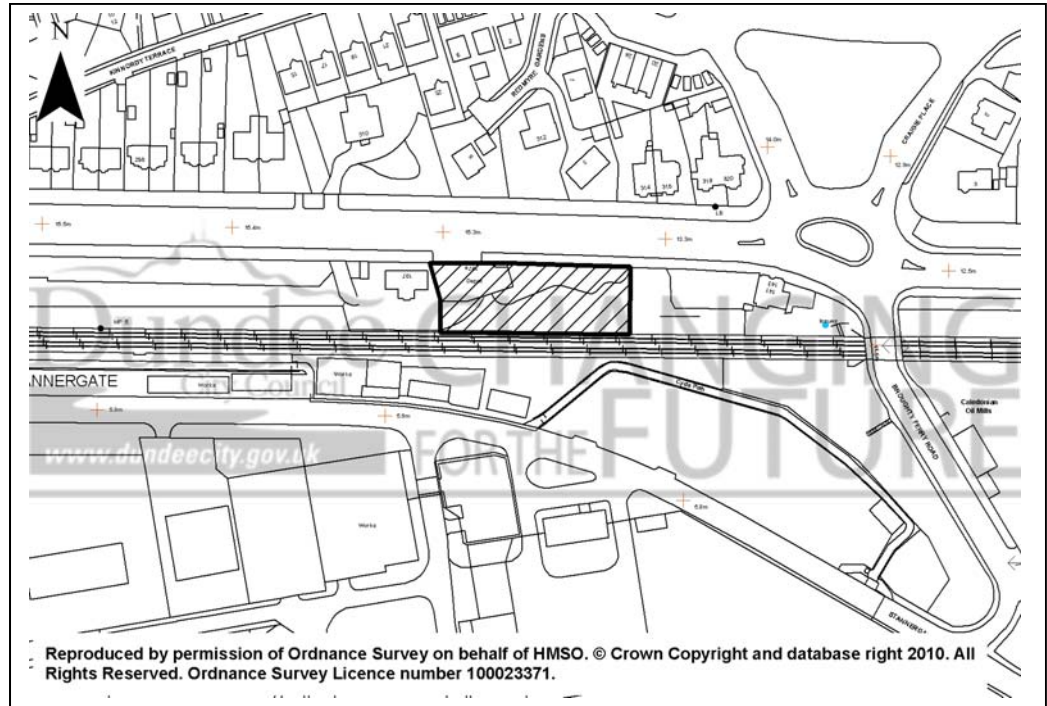
M Chan
Rama Thai Restaurant
32-34 Dock Street
Dundee
DD1 3DR

Agent

P Gunning
Archid Architects Ltd
6A Roseangle
Dundee
DD1 4LR

Registered 16 Aug 2010

Case Officer Paul Macari



Proposed Restaurant at Broughty Ferry Road

The demolition of the former garage, erection of a restaurant and formation of a car park is **RECOMMENDED FOR APPROVAL** subject to conditions. Report by Director of City Development.

RECOMMENDATION

The proposed development contravenes Policy 1 and Policy 53 of the Dundee Local Plan Review 2005 due to its proximity to nearby houses. However, there are material considerations that justify support of the proposals contrary to the requirements of the Development Plan. The concerns of the objectors are not supported. Accordingly the application is recommended for **APPROVAL** subject to conditions.

SUMMARY OF REPORT

- This application seeks planning permission for the erection of a restaurant, terraced herb garden and associated car park at 137A Broughty Ferry Road, Dundee.
- Policy 1 (Vibrant and Sustainable Communities) and Policy 53 (Licensed and Hot Food Premises Outwith the City Centre) of the Dundee Local Plan Review 2005 are relevant to the outcome of this planning application.
- 5 letters of objection have been received. The concerns raised include road safety/ insufficient parking, noise disturbance, smell disturbance, proximity of building to residential properties, design visually intrusive and contravention of Policy 53 of the adopted Local Plan.
- The concerns of the Objectors are not supported.
- The proposals contravene Policy 1 (Vibrant and Sustainable Communities) and Policy 53 (Licensed and Hot Food Premises Outwith the City Centre) of the Dundee Local Plan Review 2005. However, there are material considerations that would justify laying aside the provisions of the Development Plan to grant planning permission.

DESCRIPTION OF PROPOSAL

Planning permission is sought to erect a new restaurant building on the site. The proposed building will have a gross area of 247 with a restaurant area of 115m². The remainder of the building some 132m² will accommodate staff and customer welfare facilities as well as preparation and storage areas. The restaurant building will benefit from a southern balcony with an area of 40m². The balcony will be elevated above the adjacent railway line and docks to take advantage of views over the Tay Estuary.

There is a significant change in levels between the northern and southern boundaries of the application site. It is proposed to terrace the area of ground immediately to the south of the proposed building to form landscaped herb gardens. A refuse storage facility will be located in the north eastern corner of the application site.

The building will be positioned at the eastern end of the site to provide a parking area of 23 spaces including 3 accessible spaces.

The proposed building is a single storey structure of attractive modern design with walls of smooth white render and an armadillo styled roof of natural slate with glazed partitions. The building will have contemporary window openings with floor to ceiling glazed panels forming the southern and western elevations of the restaurant.

A left in - left out arrangement is proposed for the parking area with the layout designed to deter right turning in and out of the car park through the provision of a 75m x 1.2m traffic island formed by raised kerbing. There will be two pedestrian crossing points within the traffic island. The proposed traffic island will stretch from the Stannergate roundabout in the east and will cover the car park exit to the west of the application site. It is proposed to landscape the steeply

sloping ground to the south of the car park adjacent to the railway.

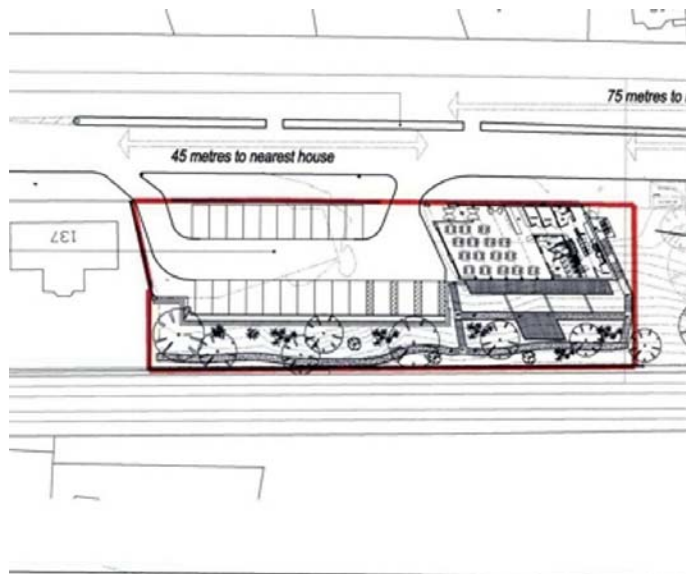
The applicants have submitted statements in support of their application including a contaminated land report, noise impact assessment,

site is level but it then slopes steeply down to the railway line to the south. The sloping embankment is heavily wooded with self seeded deciduous trees.

The vacant garage building has stone walls to the front, brick to the rear and a metal sheeted roof. It sits directly on the edge of the road.

The site is surrounded by houses to the west, north and east. Immediately to the west is a 2 storey villa subdivided into 2 flats. This building sits well below the level of the road so that only its roof and upper level are visible from the north. To the east, adjacent to Stannergate roundabout, is a 2 storey subdivided villa. To the north, on the opposite side of Broughty Ferry Road, are a number of dwellings (both of traditional construction and modern) behind a high stone wall.

To the south of the site is the Dundee to Aberdeen railway and then the operational port area.



transport statement and design and access statement.

In accordance with the Council's mandatory scheme of delegation this application requires to be reported to the Development Management

POLICY BACKGROUND

Dundee and Angus Structure Plan 2001-2016

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

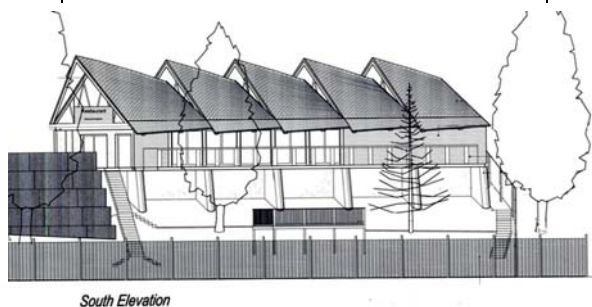
Dundee Local Plan Review 2005

The following policies are of relevance:

Policy 1: Vibrant and Sustainable Communities - the City Council will promote vibrant communities, encouraging the development of an appropriate range of services and facilities close to and within housing areas.

New development should be in accordance with other policies in the Plan and seek to minimise any affect on the environmental quality enjoyed by local residents by virtue of design, layout, parking and traffic movement issues, noise or smell.

Policy 53: Licensed and Hot Food Premises Outwith the City Centre - in general, outwith the District Centres no



South Elevation



North (Road) Elevation

Committee as the Council own part of the application site.

SITE DESCRIPTION

The site comprises a vacant tyre fitting and repair garage and a landscaped roadside verge on the south side of Broughty Ferry Road some 50 metres west of the Stannergate Roundabout. Adjacent to Broughty Ferry Road the

licensed premises other than off licences or hotels with a restricted license and no premises selling hot food is acceptable:

- a within 30 metres of existing and proposed housing if the outlet does not exceed 150m² gross floor space (excluding cellar space) and;
- b within 45 metres if the 150m² figure is exceeded.

In the District Centres some relaxation of the above controls on distance from residential property may be appropriate. However, proposals for hot food takeaways other than those outlined below, will not be permitted in premises directly adjoining (i.e. directly above or to either side) residential property which is not within the control of the takeaway proprietor/operator.

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

There are no specific sustainability policy implications arising from this application.

SITE HISTORY

Planning application ref: 07/00155/FULL sought planning permission for the erection of a new 2 storey restaurant building. The proposed building had a floor area of some 400m² and was positioned at the eastern end of the site to provide a parking area of 26 spaces at the western end of the site. Internally the building provided 2 function areas and 22 covers. Planning permission was refused by the Council's Development Management Committee on grounds that the proposals were contrary to Policy 1 and Policy 53 of the adopted local plan due to the adverse impact upon road safety and residential

amenity by virtue of noise disturbance caused by the proximity of the proposed restaurant to nearby houses.

The Council's decision was appealed to the DPEA. Following a hearing, the Reporter decided to uphold the Council's decision to refuse planning permission.

Planning application ref: 09/00457/FULL sought planning permission for the demolition of the existing garage on site and the erection of a single storey restaurant and formation of a car park. Although the design of the proposed restaurant and the car parking layout and access arrangements had changed significantly from the proposals detailed in planning application ref: 7/00155/FUL, the Council's concerns that were shared by the DPEA relating to noise disturbance and road safety remained. Prior to planning application ref: 09/00457/FULL being reported to the Council's Development Management Committee with a negative recommendation, the application was withdrawn.

Following the withdrawal of planning application ref: 9/00457/FULL the applicant's agent has met with representatives of the Council's City Development Department to discuss access arrangements to the application site.

PUBLIC PARTICIPATION

The Council has followed the statutory neighbour notification procedure. This application was advertised in the Dundee Evening Telegraph as a Bad Neighbour Development and Development Contrary to the Development Plan. 5 letters of objection have been received from neighbouring residents.

The concerns raised include:

- contrary to Policy 53 of the adopted Local Plan;
- proximity of proposed restaurant to neighbouring residential premises;
- insufficient parking/road safety;
- noise disturbance;
- smell disturbance; and
- visually intrusive design.

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

CONSULTATIONS

Scottish Water has no objection to the proposed restaurant development.

The Head of Environmental Health and Trading Standards has requested that a condition minimising noise from electronic and plant machinery is incorporated into the grant of planning permission should the Committee be minded to approve this application. In respect of the impact of the proposed development on neighbouring houses, the Head of Environmental Health and Trading Standards has no comment to make. In addition it is recommended that a condition is incorporated into the grant of planning permission that addresses the need for an intrusive contaminated land investigation along with the submission of an adequate remediation works plan and validation of remediation report.

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 other material considerations indicate otherwise.

The Development Plan

Although Policy 1 contains a general protection of residential amenity, the more relevant policy in this case is Policy 53 which specifically deals with uses such as restaurants. However whilst Policy 53 focuses on noise disturbance and smell issues, Policy 1 has a wider scope also dealing with design, layout, parking and traffic movement issues. In addition, Policy 1 also requires development proposals to accord with other policies in the plan.

In terms of design, it is considered that the proposed building would be an attractive landmark building at this location. The existing garage building on the site is unsightly and its removal and replacement with the building currently proposed would significantly enhance the visual amenity of the area. Even with the loss of some of the open space at the roadside verge it is considered that the net outcome would be an enhancement of the visual amenity of the area.

In terms of layout it is considered that the siting of the building would not result in any unacceptable overlooking or overshadowing of adjoining

properties. The proposed building is sufficiently distanced from all residential neighbours to avoid unacceptable overlooking and overshadowing and the principal public elevation of the building looks south over the port and the Firth of Tay.

With regard to parking and traffic movement issues it is considered that sufficient parking is provided at the premises. In this case the 23 parking spaces required by the Council's Streets Ahead document are provided, with the site located directly adjacent to a bus route. In these circumstances it is considered that appropriate provision for parking is made.

In terms of traffic movement, access arrangements for the site have been altered in conjunction with the DPEA decision for planning application ref: 07/00155/FUL and recent pre-application discussions with the Council. The current proposals involve the provision of a 75m x 1.2m traffic island between the east bound and west bound carriageways from the Stannergate roundabout past the western exit of the proposed car park serving the restaurant. The reasoning behind this is to prevent east bound traffic from turning right into the site and traffic leaving the site on the west bound carriageway from making a right turn on to the east bound carriageway. Although the development has been designed to deter right turning into and out of the site this would be difficult to enforce as the proposed pedestrian refuge points are 2.5m wide and are at the same level as the road carriageway. In this respect it would still be possible for small saloon cars to make a right turn into and out of the application site. However, it is considered that this issue could be overcome through a planning condition should the Committee be mindful to grant planning permission.

In terms of Policy 53, there is a presumption against the proposed development because the application site is within 45 metres of the houses on the north side of Broughty Ferry Road and the car park is within 45m of the property at 137 Broughty Ferry Road. Although the restaurant building is 45m from the property to the west of the application site, the restaurant will benefit from an extensive car park, landscaped garden area and an outdoor balcony that are

within 45m of 137 Broughty Ferry Road whereby the potential for instances of significant noise disturbance from the use of these facilities exists. Therefore, the proposals fail to satisfy the requirements of Policy 53.

It is concluded from the foregoing that the proposals do not comply with Policy 53 and as a consequence the proposals also fail to comply with the requirements of Policy 1 of the adopted Local Plan.

Other Material Considerations

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

The Applicants Supporting Statement

In their supporting statements (traffic statement and design and access statement) the applicants have attempted to address traffic movement issues and contravention of Policy 1 and Policy 53 of the Local Plan.

Whilst it is accepted that the applicants have designed their proposal to minimise right turning movements by east bound traffic, it is considered that taking into account the extent of the proposed traffic island, position and form of the pedestrian refuge points, the potential still exists for traffic exiting the application site to turn right onto Broughty Ferry Road. Therefore, in its current form the proposed development may lead to unacceptable traffic movement issues with vehicles attempting to leave the site in an easterly direction. However, it is considered that this issue can be addressed by reducing the proposed pedestrian refuge openings in the traffic island to a width of 2m. In addition the proposed traffic island should be extended further west to prevent any instances of vehicles exiting the application site from making a right turn onto the east bound carriageway of Broughty Ferry Road. Should the Committee be mindful to grant planning permission these changes to the proposed traffic island can be addressed by condition.

In terms of residential amenity and Policy 53 of the Plan, the applicant has confirmed that the restaurant will operate from 12 noon to 11.00pm seven days a week with last orders at 10.30pm. In addition the restaurant will operate without a takeaway

facility. They suggest that the building is 45 metres from properties to the east and west and just less than 30 metres from houses on the north side of Broughty Ferry Road. The properties on the north side of Broughty Ferry Road are elevated above the application site and separated from the application site by Broughty Ferry Road with noise from traffic being far more significant in terms of impact upon amenity than any potential instances of noise disturbance generated by the proposed restaurant. The restaurant building has been designed with a southern orientation to protect privacy and minimise noise disturbance. With regard to smell nuisance it is proposed to vent the internal extraction system out of the high level louver feature on the eastern elevation of the building. The applicant's therefore conclude that the location and design of the proposed restaurant building makes every effort possible to minimise the impact upon neighbouring properties.

In support of the proposals a revised noise impact assessment was also submitted by the applicant. The noise impact assessment addresses concerns of noise disturbance from persons leaving the proposed restaurant late at night as well as concerns relating to late night vehicle movements.

It is considered that the applicant has demonstrated that the proposed restaurant will not have a significant impact upon the level of amenity afforded to neighbouring properties by virtue of noise disturbance. This is because the houses on the northern side of Broughty Ferry Road are elevated above the application site and located behind a 1.8m high wall. Therefore it is unlikely that instances of noise disturbance caused by vehicle movements within the proposed car park or from people leaving the restaurant premises would impact upon the level of amenity afforded to these properties even during evening and night time hours the level of traffic on Broughty Ferry Road significantly decreases. In terms of the impact upon the properties at 137 Broughty Ferry Road to the west of the application site, the restaurant and car park will be screened from this property by existing trees that will be retained as well as a 2.2m high wall. The building at 137 Broughty Ferry Road is situated at a lower level than the application site and therefore in combination with the

existing trees and wall will not be significantly affected by noise from vehicle movements and persons leaving the premises during the evening and night time hours.

In terms of smell nuisance, the design of the building will ensure that the extraction system from within the premises will vent from the eastern elevation of the building at a high level so as not to impact upon neighbouring houses.

The applicants have demonstrated that there are material considerations that justify support of the proposals contrary to the requirements of Policy 1 and Policy 53 of the Dundee Local Plan Review 2005. However, should the Committee be minded to approve this application, a variety of conditions will be attached to the grant of planning permission to restrict the proposed development to the detail specified by the applicant on both the proposed plans and supporting information in order to minimise the impact of the proposals on the level of amenity afforded to neighbouring properties.

DPEA Appeal Decision for Planning Application Ref: 07/00155/FUL

The Reporter drew several conclusions from planning application ref: 07/00155/FUL.

The first was that the proposed building, would improve the appearance of the application site and Broughty Ferry Road/Stannergate corridor through the introduction of modern landmark architecture. The proposed building that is the subject of this application is significantly different to that proposed by planning application ref: 07/00155/FUL and therefore the Reporter's comments in this instance are not relevant. However, the proposed building is of a modern design that will greatly enhance the appearance of the Broughty Ferry Road and Stannergate Corridor without impacting upon neighbouring residential properties. The design of the proposed building is the same as was proposed by planning application ref: 09/00457/FULL.

The second conclusion drawn by the Reporter was that the Council's concerns of road safety from the proposed unorthodox access and egress arrangements could be made safe

through the provision of a traffic island between the east and west bound carriageways of Broughty Ferry Road in front of the proposed car park access. It was believed that this would prevent east bound traffic from turning right into the application site. It was stated that the provision of a traffic island/ pedestrian refuge could be controlled by condition.

The applicant has incorporated the provision of a traffic island/ pedestrian refuge into the site layout plan as stated by the Reporter in the assessment of planning application ref: 07/00155/FUL and as discussed with the Council's City Development department prior to the submission of the current application. Although the proposed traffic island will prevent east bound traffic from turning right into the application site, the potential still exists for traffic to turn on to the east bound carriageway of Broughty Ferry Road. However, as discussed in the Observations section above this can be overcome by a condition should the Committee be minded to grant planning permission.

The third and final conclusion drawn by the Reporter in the assessment of planning application ref: 07/00155/FUL was that customers leaving the proposed restaurant during the evening would cause significant levels of noise disturbance to the detriment of residential amenity. In particular such instances of noise disturbance would impact directly on properties located on the northern side of Broughty Ferry Road adjacent to the application site but in particular 137 Broughty Ferry Road which bounds the car parking area to the west of the site. The Reporter highlighted that the Noise Impact Assessment submitted by the applicant to aid the appeal but not to the Council as part of planning application ref: 07/00155/FUL, did not take into account the impact on neighbouring properties from noisy groups of potentially inebriated individuals leaving the premises late at night.

The applicant has attempted to overcome the issues raised by the Reporter by omitting the function rooms from the proposed restaurant, increasing the distance between 137 Broughty Ferry Road and the nearest car parking spaces to 7m and retaining a 2.2m high section of the existing boundary wall along the western boundary. A revised noise impact

assessment has been submitted as part of the current planning application and details the impact of late night vehicle movements and noise from people leaving the premises on the level of amenity afforded to neighbouring properties. The revised noise impact assessment accounts for these changes in the layout and concludes that behavioural noise from customers leaving the premises and noise from vehicle movements late at night shall not have a significant impact upon the level of amenity afforded to neighbouring houses.

Letters of Objection

The concerns of objectors are addressed as follows:

1 Insufficient Parking and Road Safety

This matter has been considered in the assessment of the development against Policy 1 of the Dundee Local Plan Review 2005 and the findings of the DPEA in the assessment of planning application ref: 07/00155/FUL. It was concluded that although the provision of car parking was adequate and the inclusion of a traffic island in front of the proposed car park entrance would prevent east bound traffic from turning right into the application site, there was no evidence to suggest that the revised proposals for a restaurant on the application site would prevent west bound traffic leaving the application site from attempting to turn on to the east bound carriageway of Broughty Ferry Road. However, as detailed in the Observations section of this report, this issue can be controlled by a condition should the Committee be minded to grant planning permission for the proposed development.

2 Noise Disturbance

This matter has been considered in the assessment of the development against Policy 53 of the Plan and it was concluded that the development would not have an unacceptable impact on the houses to the north and west of the site due to noise and disturbance from customers arriving and leaving by car.

3 Local Plan Policy

It has been concluded that the proposal contravenes Policy 1 and Policy 53 the adopted Local Plan. However, as detailed above there are material considerations that justify support of the proposals contrary to the requirements of the Development Plan.

4 Smell Disturbance

No details of the proposed ventilation system have been submitted for consideration. However, issues of smell disturbance can be addressed through the installation of modern extraction and ventilation facilities that will vent the building on the southern elevation. This matter can be controlled by condition.

5 Visually Intrusive Design

This matter has been considered in the assessment of the development against Policy 1 of the Plan and it was concluded that the design of the building was satisfactory.

6 Proximity of Proposed Restaurant to Neighbouring Residential Premises

This matter has been considered in the assessment of the development against Policy 53 of the Plan and Other Material Considerations.

It is concluded from the foregoing that sufficient weight can be afforded to the material considerations outlined above such as to justify the grant of planning permission contrary to the provisions of the development plan. It is therefore recommended that planning permission is granted subject to conditions.

Design

It is considered that the proposed building would be an attractive landmark building at this location. The existing garage building on the site is unsightly and its removal and replacement with the building currently proposed would significantly enhance the visual amenity of the area. Even with the loss of some of the open space at the roadside verge it is considered that the net outcome would

be an enhancement of the visual amenity of the area.

CONCLUSION

The proposed development contravenes Policy 1 and Policy 53 of the Dundee Local Plan Review 2005 due to its proximity to nearby houses. However, there are material considerations that justify support of the proposals contrary to the requirements of the Development Plan. The concerns of the Objectors are not supported. Accordingly it is recommended that planning permission is granted subject to conditions.

RECOMMENDATION

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

- 1 The total noise from all Mechanical & Electrical plant shall not exceed NR 35 as measured 1 metre external to the facade of adjacent residential accommodation.
- 2 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 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:
 - a the nature, extent and type(s) of contamination on the site;
 - b measures to treat/remove contamination to ensure the site is fit for the use proposed and does not contain any significant pollution linkages;
 - c measures to deal with contamination during construction works; and
 - d verification of the condition of the site on completion of decontamination measures.
- 3 Before the proposed restaurant is brought into use the remediation strategy shall be fully implemented and a verification report with relevant

documentation demonstrating that the objectives of the remediation strategy have been achieved shall be submitted to and approved by the planning authority.

- 4 Prior to the commencement of work on site, details of the proposed extraction and ventilation system to be installed in the proposed restaurant shall be submitted to the Council for written approval. Thereafter, only the extraction and ventilation system approved by this condition will be installed.
- 5 No work shall start on site until full details of the proposed road works (including the narrowing of the lanes on the east and west bound carriageways on Broughty Ferry Road and the formation of a central reservation) to facilitate safe access to and egress from the application site have been submitted to and approved in writing by the Council and these works have been completed in full.
- 6 The proposed restaurant hereby approved shall be operational between the hours of 11.00am and 11.00pm 7 days a week only.
- 7 At no time shall the proposed restaurant hereby approved operate a takeaway facility.

Reasons

- 1 In the interests of safeguarding residential amenity.
- 2 In the interests of ridding the application site of potentially harmful contaminants.
- 3 In the interests of ensuring the application site is free from contamination.
- 4 In the interests of safeguarding residential amenity.
- 5 In the interests of road safety.
- 6 In the interests of safeguarding the level of residential amenity afforded to neighbouring properties.
- 7 In the interests of safeguarding residential amenity and preventing excessive vehicle movements during evening and night time hours.