



Report to the Scottish Ministers

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Report by Robert Seaton, a reporter appointed by the Scottish Ministers

- Case reference: NA-SBD-056
- Site Address: Land west of store and R Elliot Ltd, Commercial Road, Hawick, TD9 7AD
- Application by Image Estates Queen Street Ltd
- Application for planning permission, ref. 19/00509/FUL dated 4 April 2019, called-in by notice dated 4 March 2020
- The development proposed: erection of class 1 retail unit and class 3 restaurant
- Date of site visit: 5 July 2020

Date of this report and recommendation: 29 September 2020



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The erection of a class 1 retail unit and class 3 restaurant on land west of store and R Elliot Ltd., Commercial Road, Hawick, TD9 7AD

• Case reference	NA-SBD-056
• Case type	Planning application called in for determination by Ministers
• Reporter	Robert Seaton
• Applicant	Image Estates Queen Street Ltd.
• Planning authority	Scottish Borders Council
• Other parties	SEPA Aldi Stores Ltd. Miss Elizabeth Bowie Ms Fiona Mackie
• Date of application	4 April 2019
• Date case received by DPEA	4 March 2020
• Method of consideration and date	Written submissions and unaccompanied site inspection on 5 July 2020
• Date of report	29 September 2020
• Reporter's recommendation	Approve

The site and proposed development

The application site lies to the west of Commercial Road, Hawick, in a low-lying area by the River Teviot. It was formerly occupied by a car showroom and builders' yard. Part is currently vacant and part is in use for a temporary access road associated with the construction of the Hawick Flood-Protection Scheme. It is within a development-plan allocation for regeneration and is on the edge of the designated town centre, partly inside and partly outside. There are commercial premises to the north (Aldi) and south (Sainsbury's). To the west, a large domestic garden slopes up to Princes Street, the trees in which are subject to a tree-preservation order.

The proposed development comprises a class-1 retail unit and "drive-thru" restaurant and takeaway with associated infrastructure. The proposal includes the raising of the site level by one to almost two metres. The application drawings are provided in schedule 1 to this report.

The call-in

The council was minded to grant the application, but it was required to notify it to Ministers because there was an unresolved objection by the Scottish Environment Protection Agency (SEPA) in respect of flood risk. The application was subsequently called in because of

potential conflict with national policy in that regard and inadequate justification for departing from the policy.

Case for the applicant

Land-raising has already been carried out at the application site in order to construct a temporary relief road. The land-raising associated with the proposed development is required to create a developable platform and secure vehicle access from the neighbouring Sainsbury's site, which is currently higher than the application site. There is no increased vulnerability of the other neighbouring land uses to flooding as a consequence of the proposed development. The minimal impact of land-raising must be balanced against the benefits of the proposed development practically, economically and aesthetically. The site is currently an unsightly gap and will be left so if development, including land-raising, cannot go ahead.

The applicant has submitted a retail-impact report, transport report and arboricultural reports which demonstrate the proposed development is acceptable.

The applicant is confident that the proposed development can be built as presently proposed without unacceptable impact on protected trees beyond the western boundary of the site. It considers that a suitable mitigation can be agreed by the council under a condition of the permission.

Case for SEPA

SEPA objects in principle to the proposed land-raising within the river's floodplain. Although a flood-protection scheme is proposed in Hawick, it is designed to a 1-in-75-year standard of protection. It does not remove flood risk.

There are also unexplained differences in predictions between the flood-risk assessment for the applicant and the flooding study carried out by Jacobs for the Hawick Flood-Protection Scheme. The assessments provided also take no account of a situation in which the flood-protection scheme is not built.

Case for the Scottish Borders Council

The flood-risk assessments have been validated by the council's flood-protection officer and by the project team for the Hawick Flood-Protection Project. They indicate that although there would be some flooding of the proposed development during a 1-in-200-year flood, the flooding would be slight and the risk acceptable.

The proposed development is in an area allocated for redevelopment, where commercial premises have historically been located. Although not wholly in the designated town centre, it would be flanked on either side by retail premises. Both the proposed retail and drive-thru are acceptable uses in an edge-of-centre site. The proposed development would fill an unsightly gap site. Although the design is not ideal, particularly in the landscaping and difference in level with the Aldi car park, it is acceptable given the site's constraints. Matters raised by Transport Scotland and the council's roads-planning service can be dealt with by condition.

The proposed development should not be permitted to harm neighbouring protected trees by cutting into their roots. The proposed development should therefore be altered slightly to

move the retail unit away from the root-protection area of the trees. This can be required by condition. The proposed development would be unlikely to be a nuisance to neighbours or have a greater impact on their amenity than the previous use of the site.

Objections

Occupiers of Haig House (23 Princes Street), the proposed development's neighbours to the west, objected in respect of the proposed development's impact upon the protected trees on their garden boundary, its effect on their amenity as a consequence of noise, smell, loss of privacy, sunlight and daylight, its poor design, failure to design out crime and anti-social behaviour, and its adverse effect on the town centre and road safety. Aldi objected in respect of an assumption in the transport assessment involving the proposed development's customers using its neighbouring car park.

Reporter's assessment

Flood-risk assessment

There are some significant differences between the predictions from modelling in the applicant's flood-risk assessment and in the Jacobs assessment. These have not been fully explained. I have no means of determining which is the better prediction. In the circumstances, I prefer the predictions that show a worse case – for the most part those in the Jacobs study.

Although the flood-protection scheme has not been completed, it is evidently under construction. I find it is in accordance with Scottish Planning Policy (SPP) for it to be taken into account in the flood-risk assessment provided.

The assessments are consistent in predicting that the flood-protection wall would not be overtopped by a 1-in-200-year flood in the reach of the river beside the application site, but would be at risk from overland flow arising from overtopping further upstream. They are also consistent in predicting the proposed development would be inundated in a 1-in-200-year flood with 33% allowance for additional flow arising from climate change.

Flood risk to the proposed development

The application site is within the 1-in-200-year floodplain. SPP indicates commercial development can be acceptable within a built-up area if flood-protection measures to an appropriate standard are under construction. "The appropriate standard" is not defined in SPP.

Hawick is a built-up area. The application site previously had a commercial use, identified as a "least vulnerable use" in SEPA guidance. The vulnerability of the proposed use to flooding is similar to that of the previous use of the site. The application site is allocated in the local-development plan for regeneration. SEPA's Flood-Risk and Land-Use Vulnerability Guidance indicates that in such circumstances such a proposed use is acceptable. A flood-protection scheme is being built that will provide protection to a standard designed to meet a 1-in-75 year flood. This is a greater degree of protection than the site has currently or had when it was previously in use. SEPA's Planning Background Paper on Flood Risk indicates that such flood defences provide an acceptable degree of protection in such circumstances. It is my view that the flood-protection scheme is to the

appropriate standard. On this basis, I find that the proposed use of the application site would conform to SPP's flood-risk framework.

If Ministers take the view that the flood-risk framework is to be interpreted as requiring that flood defences "of the appropriate standard" must provide a specific, higher degree of protection, I consider the proposed development's degree of vulnerability, the site's development-plan allocation, its previous use, and the construction of the flood-protection scheme are material considerations weighing in favour of setting aside the policy restriction on development in a medium- to high-risk area.

The proposed land-raising would lift the proposed development, thereby protecting the proposed development further from flooding. Limited flooding is predicted in a 1-in-200-year flood, at a level the council considers acceptable.

Local development plan (LDP) policy IS8 provides that new development should generally be located in areas free from significant flood risk and that it is not to be permitted if it would be at significant risk of flooding or would materially increase the probability of flooding elsewhere. The policy does contemplate some development, including commercial development, in an area of significant risk, though the risk must be assessed and mitigation measures considered. The policy indicates SEPA's Land-Use and Flood-Risk Vulnerability Guidance should be taken into account in assessing the acceptability of the development.

Since (leaving aside the proposed land-raising) the proposed use complies with the relevant SEPA guidance, I find it complies with policy IS8 in respect of flood risk within the application site.

Land-raising

The applicant proposes land-raising, acknowledges there would be an increase in flood levels as a consequence, but offers no compensatory storage.

SPP requires that land-raising should only be considered in exceptional circumstances where it would have a neutral or better effect on flood risk outside the raised area.

The increase in flood level in a 1-in-200-year flood is predicted to be, at its greatest, 0.34 metres at a point to the south-west of the proposed development, behind the new flood-protection wall. The Jacobs report indicated this could lead to increased loading on the wall. No other adverse effect from the increase in flood level was identified. The flood-protection-scheme project team has confirmed that it will design the wall to take account of the increased load.

The degree of increase in predicted flood level was less in the scenario with the highest level of flow of the three modelled: a 1-in-200-year flood with a 33% allowance for climate change. This was because in a greater flood, the impact of the proposed land-raising was proportionately less.

I find that the proposed land-raising would have a neutral impact on flood risk.

I consider that there are reasons specific to the site for the land-raising:- temporary land-raising has already been carried out for the temporary flood relief road to the Aldi; to form a developable platform, the site must now be either levelled up or down; to take access as proposed from Sainsbury's requires it to be levelled up; without such work, it is likely to be left as a multi-level gap site; and flood-protection-scheme infrastructure at the front of the

site (not part of the present application) must be installed at a specific height. In the context that the site is an urban brownfield and designated for regeneration, and without land-raising is likely to be left as a gap site, these are - in my view - exceptional circumstances. I therefore consider that the proposed land-raising would accord with SPP.

There would be an increase in the level of flooding outside the site. This requires to be taken into account in the design of the flood-protection wall. However, since the flood-protection-scheme project team has indicated this will be done, I do not consider the proposed development would materially increase the probability of flooding elsewhere. I therefore find that the proposed land-raising would not be contrary to LDP policy IS8.

Other matters

The application was called in for reasons relating to flood risk. Although Ministers must consider other relevant matters, it is a material consideration that the council found the proposed development was acceptable in respect of those other matters.

The retail unit as designed would be within the root-protection area of trees beyond the western boundary of the application site, which are protected by the tree-preservation order. Its construction as proposed could therefore harm the trees, which are of importance for the amenity of houses on Princes Street in whose garden they stand, and as a backdrop to the proposed development as seen from the Hawick conservation area. Minor alteration of the retail unit's location or design to avoid harm to the trees can be required by condition if another satisfactory mitigation cannot be achieved.

I do not consider that the proposed development would have an unacceptable effect on the sunlighting or daylighting of the neighbouring garden of 23 Princes Street, given the existing tree cover in the garden and its relative height and orientation in relation to the proposed development. I find it would accord in these respects with LDP policies HD3, PMD2 and ED5.

The proposed development is a town-centre use. The application site is at the edge of the designated town centre. The applicant has provided a retail study that demonstrates there was no suitable site for the proposed development in the town centre and that it would not harm the centre's vitality or viability, its mixed-use nature or its character. I find the proposed development would accord with LDP policy ED3.

The buildings proposed would be contemporary retail buildings and would be in scale and keeping with the retail units to north and south. Their materials and finish can be approved under condition to ensure their design is consistent with their surroundings. The constraints of the site mean the depths of landscaping provided north and south of the proposed development would not be maintained. Nonetheless, the proposals are acceptable in view of the constraints. Boundary treatments, including treatment to deter unauthorised entry to the gardens of the residential properties to the west, can be finalised under condition. Weight should be given to the council's assessment that the proposed development was acceptable in terms of its design. I find that the proposed development complies with relevant development-plan policy on design and its related effects including policies PMD1, PMD2, ED5 and EP9.

The applicant's transport assessment demonstrated that the proposed development would be well-connected to active-travel routes, would not increase the local accident rate and

that there would be adequate parking. I find that the proposed development complied with LDP policies relevant to transport, IS4, IS6 and IS7.

The proposed development is within a site that is allocated for regeneration under LDP policy ED5. It meets the criteria for development under that policy.

Assessment

Overall I find the proposed development accords with the development plan.

The proposed development, although in a medium- to high-risk area in respect of flooding, accords with SPP's flood-risk framework, as I interpret it. Ministers might take a different view on the framework's interpretation, but if that is so, I have set out material considerations that still weigh in favour of setting aside the policy restriction on development. There are, in my view, exceptional circumstances for the proposed land-raising.

I find that the proposed development accords with the development plan and, in my view, there are no material considerations that would indicate it should be refused.

Recommendation

I recommend that planning permission be granted, subject to conditions listed in Schedule 2 to this report.

Scottish Government
Planning and Environmental Appeals Division
4 The Courtyard
Callendar Business Park
Callendar Road
Falkirk
FK1 1XR

DPEA case reference: NA-SBD-056

The Scottish Ministers
Edinburgh

Ministers

I conducted a review of the documents that were before the planning authority in relation to the application for planning permission for erection of a retail unit and drive-thru restaurant on land next to the Sainsbury's store at Commercial Road, Hawick, TD9 7AD. The application had been called in because Ministers considered there was a potential conflict with national policy on flooding and inadequate justification provided for departing from the policy. Having considered the documents, I gave the interested parties an opportunity to make written submissions to explain their respective positions. My report takes account of the written submissions I received. I subsequently made an unaccompanied inspection of the application site and its context in Hawick.

CHAPTER 1: BACKGROUND

Site location and description

1.1 The application site lies to the west of Commercial Road, Hawick (see the [location plan](#)). It is within a larger area allocated for redevelopment in the adopted Scottish Borders Local Development Plan 2016 (LDP). The site has the reference zR08 Commercial Road (see [LDP volume 2](#), p 345 and following).

1.2 Historically, from at least the early 19th century, much of the zR08 allocation, including the site itself, was occupied by mills, powered by a lade (or “lead”) running from the Teviot. The application site was most recently the location of a car showroom, several stone-built cottages, and a builders’ yard, all accessed from Commercial Road, all of which have been demolished.

1.3 Commercial Road runs along the left bank of the Teviot, which meanders through Hawick, flowing roughly from the south to the north in the reach that passes the application site. Commercial developments lie to the south of the application site (a Sainsbury’s supermarket) and north (Aldi, a discount food retailer). To the application site’s west is a relatively steep wooded slope to Princes Street. Much of the slope to the west is included in the garden of 23 Princes Street. The trees are the subject of a recently confirmed [tree preservation order](#) (reference SBC57).

1.4 The northern part of the site is currently vacant. At the time of my site inspection it contained heaps of debris, apparently from site clearance. The southern part accommodates a temporary access road associated with the construction of the Hawick Flood-Protection Scheme. The access traverses the site from the car park of the neighbouring Sainsbury’s supermarket to the neighbouring Aldi store (at the time of my inspection, Commercial Road was closed to allow the flood-protection works to proceed). The south-western part of the application site, which formerly formed part of the Sainsbury’s car park, at the time of my site inspection was in use as a temporary compound, apparently for the construction of the flood-protection scheme. The temporary access road and the former section of the Sainsbury’s car park within the site have evidently been raised above their natural level.

1.5 The application site and the area surrounding it both to north and south are part of an area of low-lying land by the river extending from the Common Haugh (now partly taken up with a car park) in the south to the northern edge of the Aldi site. This area is bounded to the west by the slope to Princes Street. There are steps from beside the Sainsbury’s store up to Princes Street (“the Hundred Steps”). There is a similar, less-extensive area of low-lying land on the other side of the river. This runs from Teviot Road and the Little Haugh to Laidlaw Terrace’s junction with the North Bridge and includes tenements of Laidlaw Terrace and a terrace of houses on Teviot Crescent. To the east of Teviot Crescent, the land rises towards the backs of the buildings fronting on the High Street, the historic centre of Hawick.

1.6 The landform suggests that the area of low-lying land of which the application site is part was formed by the meandering and flooding of the river. The level of the Sainsbury’s site (including its car park) and the Aldi store (though not its car park) is higher than the level of Commercial Road. Apparently both have been raised above the natural ground level. The Aldi car park, though, is at a similar level to Commercial Road.

1.7 The Sainsbury's car park appears to have been artificially raised above the level of Commercial Road by about a metre. The Sainsbury's petrol station (to the application site's south-west) appears to have been raised somewhat higher, by about two and a half metres. The "[proposed levels plan](#)" submitted by the applicant shows both the proposed levels and the levels existing at the time of the application. A stone retaining wall is shown between the Sainsbury's site and the application site. Notwithstanding the more recent works at the application site for the temporary access road, the wall can be seen and the substantial difference in levels between the Sainsbury's petrol station and the northern part of the application site is still evident.

1.8 The level of the Aldi temporary access road across the site has been raised so that it is, over most of its length, an equivalent height to or higher than the Sainsbury's car park, though it slopes down at its northern end to the Aldi car park. The ground on which the Aldi store itself stands has evidently been raised by about a metre at its southern edge – possibly somewhat less at its northern edge, where Commercial Road rises to the western end of the North Bridge. There are steps and a ramp from the car park to the store.

1.9 There is a landscaped strip at the edge of the Aldi site fronting on Commercial Road. At the Sainsbury's site there is a retaining wall fronting on the road, but a landscaped strip beyond it.

1.10 The former premises of the proposed occupier of the retail unit (B&M Discount Store) are on the opposite bank of the river, on Teviot Crescent, almost opposite the site. There is a road bridge at the northern end of Commercial Road about 150 metres to the north of the site and a footbridge about 100 metres to the south of the site connecting it to the east bank of the Teviot and the historic town centre.

1.11 I saw apparent evidence of flood damage in Hawick near the site on my site inspection. For instance, just to the south, there is a collapsed section of riverside wall on Commercial Road. Further to the south, part of the Bridge House guest house at the confluence of the Slitrig Water and the Teviot has collapsed. The works on the flood-protection scheme have evidently begun on the left bank of the river.

1.12 Part of the site near Commercial Road is proposed to accommodate infrastructure associated with the flood-protection scheme, but that does not form part of the present application.

1.13 According to the application form, the land is owned by a number of businesses: Sainsburys, OLIM, Bruce Motors, and Bayhill Farming Ltd.

Proposed development

1.14 The proposed development comprises a class-1 retail unit and a "drive-thru" restaurant and takeaway, with associated infrastructure and other works. The proposal also includes the raising of the level of the site, so that it is roughly the same height as the neighbouring Sainsbury's site. This involves an increase in the site level by between one and just under two metres. I agree with the council that the proposed drive-thru would not fall into any use class (so would not be use class 3, as suggested on the application form).

1.15 The application plans for the proposed development are listed in schedule 1 to this report. The proposed increase in the site level is shown in the [proposed levels plan](#). The application plans in schedule 1 supersede earlier plans submitted with the application.

There have been changes to the proposed internal design of roadways and parking in particular since the application was made.

1.16 I adopt the case officer's [report to the Planning and Building Standards Committee](#)'s description of the proposed buildings, which is as follows:

“The larger retail unit is not dissimilar in its scale or design to the retail units on the neighbouring sites to the north and south. It is described as a rectangular building with a floor area of around 52m by 33m, and would rise to 9.4m in height at its roof ridge. The roof and upper section would be a goosewing grey panelled roofing system; a different but not specified panel finish would be employed on the lower walls.

The proposed drive thru and restaurant is a smaller building, which comprises of four main sections, all flat-roofed which step-up incrementally in height from 3m to a height of just under 6m at its highest section. However, in its siting – specifically in lying between the aforementioned proposed retail unit and the public road it would be altogether more prominent in views from the public realm. It would be clad in a range of panels, including pseudo stone and timber effects of a range and type employed by a franchise.

The remainder of the site would accommodate the associated access roads, car parking and delivery areas required to operate the sites, with associated landscaping areas and some minor ancillary structures such as trolley sheds and bicycle stores.”

Planning history

1.17 The [committee report](#) includes a history of relevant planning decisions in respect of the application site and neighbouring development. This refers to the following applications, the council's proposal to grant permission for which was notified to the Scottish Ministers, in each case as a consequence of an objection in respect of flooding from the Scottish Environment Protection Agency (SEPA):

On the application site:

- Application 14/01008/FUL for the change of use of a former office at 30 Commercial Road to a dwellinghouse (Scottish Government reference NA-SBD-046)

On the site to the south of the application site:

- Application 09/00622/FUL for the erection of a supermarket and three class-1 non-food retail units with associated car-parking and landscaping (notified to the Scottish Government under reference NA-SBD-024).

On the site to the north of the application site:

- Application 15/00100/FUL, which the council's local review body decided it was minded to grant, for erection of a class-1 retail food store with ancillary works, including car-parking, access and landscaping (Scottish Government reference NA-SBD-049).

Although each of these cases was considered for call-in by Ministers, none was called in.

Environmental impact assessment

1.18 The proposal is an urban development project under 10(b) of the table in Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017. It exceeds the size threshold of 0.5 hectares. The council has screened the proposal and is of the view that environmental impact assessment is not required. I agree no environmental impact assessment is required.

Consultation responses

1.19 SEPA responded to consultation on the proposed development by letters of 18 April, 24 June, 5 July, and 25 October 2019 (SEPA's responses are included with other [consultation responses](#) from the 65th to 81st page). SEPA initially objected to the proposed development on the basis that there was insufficient information on flood risk at the application site. Having considered information submitted by the applicant, it maintained its objection on the basis that the proposed development might place buildings and persons at flood risk, contrary to Scottish Planning Policy (SPP). It referred to Scottish Ministers' duty under the Flood Risk Management (Scotland) Act 2009 to reduce overall flood risk and promote sustainable flood management. It noted that overtopping or a breach of flood defences would result in flooding of a more rapid and unexpected nature than currently, without defences, and that the trapping of floodwater behind defences is likely to result in more prolonged flooding and an increase in damage. It recommended that an alternative design without land-raising should be considered.

1.20 Transport Scotland did not object to the proposed development, subject to the imposition of conditions in respect of site lighting, details of landscaping and the barrier fronting the trunk road, and prohibiting drainage connection to the trunk-road drainage system. It also sought confirmation that permission was not granted for the proposed pumping station shown on the plans.

1.21 A number of council services provided internal consultation responses.

1.22 The council's environment and infrastructure section, who are responsible for the council's flood-risk duties, initially objected to the proposed development, referring to various matters where they required further information. Having received a flood-risk assessment from Jacobs, the advisors appointed for the Hawick Flood-Protection Scheme, the section stated it was content that that assessment fully considered the impact of the proposed development on the flood risk of Commercial Road. It indicated that, although Jacobs predicted flooding at the proposed development in a 1-in-200-year flood event or greater, the level of flood risk within the proposed development was acceptable. There would be an increase in the flood level beyond the application site that would place an increased load on the flood protection wall to be built as part of the Hawick Flood-Protection Scheme. It was for the Hawick Flood-Protection Scheme project team to analyse the effect of that additional load.

1.23 The Hawick Flood-Protection Scheme project team stated that it considered increased flood risk as a consequence of the proposed development for the scheme's proposed new flood walls would be the responsibility of the scheme and not the applicant. The design of the scheme could be revised to mitigate the identified additional risk from the proposed development for the scheme.

1.24 The council's archaeology officer asked that the mill lade running through the site should be retained in place and that interpretation boards should be provided to explain the site's former industrial use.

1.25 The contaminated-land officer advised that any grant of permission should be subject to a condition requiring site investigation before commencement of development.

1.26 The council's economic-development section had no objection to the proposed development and welcomed new development if it would support new employment opportunities.

1.27 The council's landscape architect advised that the proposed development would have an unacceptable effect upon trees protected by a tree-preservation order immediately to the west of the application site. She advised that a four-metre root-protection zone was required between the buildings of the proposed development and the protected trees. This would require the retail unit to be moved two metres further away from the north-west boundary.

1.28 The roads-planning service raised a number of matters relating to the number and layout of parking spaces and manoeuvring of service vehicles into and within the development.

Representations

1.29 [Representations](#) objecting to the proposed development were received from three members of the public.

1.30 Aldi, the application site's neighbour to the north, objected through its planning consultants, Avison Young, in respect of the parking provision at the proposed development. It also objected in respect of an initially-proposed road connection into the Aldi car park, removed from the current proposal.

1.31 The other two representations raised a number of matters. These included that the proposed development was contrary to the development plan and that there would be an unacceptable impact upon trees to the north west subject to the tree-preservation order and upon the green corridor of which they form part. The claim is made that the impact on the trees would have consequent adverse effects upon privacy and residential amenity of the garden of 23 Princes Street and upon the public amenity, cultural and historic value, and ecological benefit provided by the green corridor between Commercial Road and Princes Street.

1.32 The objections also refer to adverse effects of the proposed development in respect of:- flood risk; over-development of the site; the retail impact of the proposed development, which should in accordance with policy be restricted to small-scale shopping provision designed to serve the needs of local rural communities; the consequent impact on the variety, vitality and viability of the town centre and the established local small- and medium-sized businesses within it; inadequate boundary treatment and consequent failure to design out risks of crime and anti-social behaviour; road-safety and traffic impact; loss of light, loss of view, noise nuisance, overshadowing, and overlooking in respect of the residential properties to the west; and poor design, including lack of landscaping and lack of attempt to address the site's historical context.

1.33 One of the objectors refers to a failure on the part of the council to give notice of the proposed development as required by regulation 18 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013.

The council's handling of the application and Ministers' call-in

1.34 The case officer produced his [report to the Scottish Borders Council Planning and Building Standards Committee](#) on 13 January 2020, which recommended approval of the proposed development subject to conditions. The committee accepted the recommendation, notwithstanding the objection from SEPA, and determined it was minded to grant permission.

1.35 The planning authority then notified Ministers in accordance with the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009. On 4 March 2020, in view of the proposed development's potential conflict with national policy on flooding and inadequate justification provided for departing from that policy, Ministers decided to call the application in for determination by them.

Procedure

1.36 I invited the applicant to make a written submission to set out its case for grant of permission:

- [The applicant's](#) written submission

I invited other parties to respond:

- [Scottish Borders Council](#) written submission
- [SEPA's](#) written submission

Finally, I invited the applicant to reply to SEPA.

- [The applicant's reply](#)

CHAPTER 2: PLANNING POLICY AND GUIDANCE

Development plan

2.1 The development plan is comprised of the strategic development plan, SESplan (2013) and the Scottish Borders Local Development Plan (2016) (the LDP) (comprised of [volume 1 - policies](#) and [volume 2 – settlements](#)).

2.2 The SESplan strategy identifies the Central, Western and Eastern Borders as strategic development areas (SDAs). SESplan includes Hawick and other principal Borders towns in the Central Borders SDA.

2.3 The LDP's aims include that it should promote the development and regeneration of town centres and integrate climate-change-adaptation requirements, such as flood prevention. It identifies the town of Hawick, along with Galashiels, Kelso, Jedburgh and Selkirk, as part of its Central SDA. The town centres in the Central SDA are said to serve an important role in the commercial and social life of the area and are identified as opportunities for regeneration. The plan refers to important flood-prevention schemes taking place, including that in Hawick, which – it is said – will protect areas from future flood risk and promote future development potential in core areas.

Town centres and shopping development

2.4 As regards retail policy, the development plan provides for a hierarchy of centres. SESPlan identifies strategic town centres, though none in the Borders. The LDP identifies Hawick's town centre as a district town centre. Its policy ED3 provides that growth of the retail sector is supported in the district town centres. Proposals for shopping development and other town-centre developments are generally to be approved provided that the character, vitality, viability and mixed-use nature of the town centre is maintained and enhanced. Town-centre enhancement, including the provision of new retail facilities and complementary non-retail uses, are to be encouraged in centres.

2.5 On the settlement plan for Hawick ([LDP volume 2](#), after page 355), the application site is shown part within and part outside the town centre boundary. The Aldi store to the site's north is wholly outside and the Sainsbury's store to the site's south is wholly within.

Regeneration and design

2.6 [LDP volume 1](#) identifies opportunities for redevelopment focusing primarily on town centres in supporting text to policy ED5 on regeneration (see page 45). These are to be promoted through supplementary guidance. Among the locations identified for redevelopment is Wilton Mill / Commercial Road in Hawick. Policy ED5 sets out criteria for approval of regeneration development on brownfield land. These include that:

- it does not conflict with established land uses,
- it does not detract from the character and amenity of the surrounding area,
- its individual and cumulative effects can be sustained by the social and economic infrastructure, and it does not lead to over-development ("town cramming"),
- it respects the scale, form, design, materials and density of its surroundings,
- adequate access and servicing can be achieved,
- it does not result in significant loss of daylight, sunlight, or privacy in adjoining properties.

2.7 In the settlement plan for Hawick, the Commercial Road area of which the application site forms part is identified as a redevelopment proposal, with reference zR08. The LDP refers to the [planning brief](#) for the application site as being a material consideration in determining planning applications. The planning brief is not itself statutory supplementary guidance forming part of the development plan.

Flooding

2.8 SESplan policy 15 provides that local development plans should avoid new development in areas at medium to high risk of flooding.

2.9 LDP policy IS8 indicates that avoidance is the first principle of managing flood risk. New development should generally be located in areas free from significant flood risk. Development is not to be permitted if it would be at significant risk of flooding from any source or would materially increase the probability of flooding elsewhere. The ability of functional floodplains to convey and store water is to be protected.

2.10 The policy specifies certain vulnerable types of development are not to be located within the 1-in-200-year floodplain. These include development comprising essential civil infrastructure such as hospitals, fire stations, emergency depots and so on, and schools, care homes, ground-based electrical and telecommunications equipment. There should not be additional built development in undeveloped or sparsely developed areas. Other forms of development are subject to an assessment of risk and of mitigation measures.

2.11 I therefore understand that policy does not rule out development at the proposed location, or specifically a commercial development of the type proposed. Indeed, it envisages such development. The policy refers to information to be used to assess the acceptability of development. This includes (in addition to information from SEPA and the council's flood team, SEPA's flood-risk maps indicating the extent of the floodplain, historical records and flood studies) "SEPA's Land Use Vulnerability Guidance". I understand this to refer to SEPA's [Flood-Risk and Land-Use Vulnerability Guidance](#), the latest version of which was published in July 2018, supplemented by SEPA's [Background Paper on Flood Risk](#), the latest version of which was also published in July 2018.

Trees

2.12 LDP Policy EP13 deals with the effect of development on trees. It indicates that permission should be refused if it would cause loss of or serious damage to trees, unless the public benefits of the development clearly outweigh the loss of landscape, ecological, recreational, historic or shelter value. Any development should aim to minimise adverse impacts on biodiversity and ensure replacement planting.

Other policies

2.13 The council's committee report notes as relevant a number of infrastructure policies, including:

- IS4: Transport Development and Infrastructure, which indicates that a transport assessment must be provided in respect of proposed development that generates significant travel demand;
- IS6: Road Adoption Standards, which sets standards for new roads within developments; and

- IS7: Parking Provision and Standards, which sets standards for parking provision;

2.14 The committee report indicates a number of other LDP policies are relevant to the proposal:

- PMD1: Sustainability sets out a number of principles that are to underpin all the LDP's policies and that developers are expected to incorporate into developments. These include long-term sustainable use and management of land; protection of landscapes, habitats and species; encouragement of walking, cycling and public transport in preference to the private car; protection of public health and safety; and provision of new jobs and support to the local economy.
- PMD2: Quality Standards sets out the council's expectation that all new development should be of high quality, designed to fit into the townscape and integrate with landscape surroundings. It sets out a number of further standards for sustainability, placemaking, accessibility and greenspace. The LDP indicates that the supplementary guidance [Designing Out Crime in the Scottish Borders](#) and on [Privacy and Sunlighting](#) are relevant to policy PMD2. The supplementary guidance is referred to in the LDP as being "available to assist in determining planning applications as a complement to Local Plan policies and national policy and guidance".
- PMD3: Land Use Allocations provides that development will be approved in principle for the land uses allocated on the Land Use Proposals tables and accompanying Proposals Map. Development is to be in accordance with a Council-approved planning brief.
- HD3: Protection of Residential Amenity states indicates that development that has an adverse impact on the amenity of existing residential areas will not be permitted. It sets out a number of factors against which a proposed development is to be assessed. These include the scale, form and type of development; the impact of the proposed development on existing properties, particularly in terms of overlooking, loss of privacy and sunlighting; the generation of traffic or noise; and visual impact. The council's Privacy and Sunlighting supplementary guidance is also relevant to policy HD3.
- EP8: Archaeology provides that any proposal that will adversely affect a historic environmental asset or its appropriate setting must include a mitigation strategy acceptable to the council;
- EP9: Conservation Areas supports development proposals within or adjacent to a conservation area that are located and designed to preserve the special architectural or historic character and appearance of the conservation area. The boundary of the Hawick Conservation Area runs to the north of the application site and also includes the land directly across the river.
- EP15: Development Affecting the Water Environment, which provides that development that would result in a significant adverse effect on the water environment will be refused, and that decision-making is to be guided by assessment of flood risk and compliance with best drainage practice, among other matters.

Scottish Planning Policy (SPP)

Town Centres

2.15 Like the development plan, SPP prioritises town centres over other locations for uses that generate significant footfall, including new retail development. SPP paragraph 70

indicates that new development in a town centre should be of a scale that is appropriate to the town centre and should contribute to providing a range of uses. The impact of new development on the character and amenity of town centres is a material consideration in decision-making. A mix of development that supports the vibrancy, vitality and viability of town centres is encouraged.

Flooding

2.16 SPP sets out that a precautionary approach is to be taken to flood risk, including river flooding. The planning system should take account of the predicted effects of climate change. There is to be flood avoidance. Flood storage and conveying capacity is to be safeguarded, and development is to be located away from functional floodplains and medium- to high-risk areas.

2.17 The policy sets out three levels of constraint for development planning. These are:

- Little or no risk: where the annual probability of coastal or watercourse flooding is less than 0.1% (so where flooding would occur less frequently than once in a thousand years);
- low to medium risk: where the annual probability of coastal or watercourse flooding is between 0.1% and 0.5% (so where flooding would take place at a frequency of between once in a thousand years and once in two hundred years);
- medium to high risk: where the annual probability of coastal or watercourse flooding is greater than 0.5% (once in two hundred years).

There are no constraints in respect of the first category, while the middle category is suitable for most development. The policy states that the third category

“may be suitable for ... commercial ... development within built-up areas provided flood protection measures to the appropriate standard already exist and are maintained, are under construction, or are a planned measure in a current flood risk management plan ...”

2.18 The policy goes on to say that “where built development is permitted, measures to protect against or manage flood risk will be required and any loss of flood storage capacity mitigated to achieve a neutral or better outcome. ... Water-resistant materials and construction should be used where appropriate.”

2.19 Paragraph 266 indicates that the development-planning flood-risk framework is to be applied also to development-management decisions.

2.20 At paragraph 264, the policy lists a number of matters to be taken into account in any development-management decision. These include the characteristics of the site, the design and use of the proposed development, the area likely to flood, the depth of the flood, its flow path, rate of rise and duration, committed flood-protection methods and cumulative effects. Paragraph 265 goes on to state that:

“land-raising should only be considered in exceptional circumstances, where it is shown to have a neutral or better impact on flood risk outside the raised area. Compensatory storage may be required.”

Trees

2.21 In respect of trees, SPP indicates the planning system should protect and enhance native or long-established woods, hedgerows and individual trees with high nature-conservation or landscape value.

SEPA Guidance

Flood risk

2.22 SEPA's [Background Paper on Flood Risk](#) (adopted in July 2018) provides (in DM Requirement 1: Flood Risk Context) that proposed developments should not be located in areas of medium to high risk of fluvial flooding. However, where this is not possible, some types of development may be acceptable if they meet the requirements of SPP's flood-risk framework. The risk framework is to be applied within the context of the issues listed in paragraph 264 of SPP (referred to above). SEPA's Land Use Vulnerability Guidance should be used to inform the vulnerability classification of the proposed land use and ensure it is suitable for the location and degree of flood risk.

2.23 SEPA's [Flood-Risk and Land-Use Vulnerability Guidance](#) (also adopted in July 2018), sets out a risk-based framework for the acceptability of development in respect of flooding. The proposed development, comprising a shop and a drive-thru, falls among the "Least Vulnerable Uses". In a medium- to high-risk area (an area with an annual probability of flooding of more than 0.5% - in other words, an area within the 1-in-200-year floodplain), the framework indicates that a development in the least-vulnerable-use category is not acceptable unless one of the following applies:

- Redevelopment of an existing building, including changes of use to an equal or less vulnerable use to the existing use.
- Redevelopment of a previously developed site where it involves the demolition of existing buildings and/or erection of additional buildings within a development site, and the proposed land use is of equal vulnerability to or less vulnerability than the existing land use.
- Where the principle of development on the site has been established in an up-to-date, adopted development plan or the National Planning Framework and flood risk issues were given due consideration as part of the plan preparation process and our assessment of risk has not changed in the interim.
- The site is protected by a flood-protection scheme of the appropriate standard that is already in existence and maintained, is under construction, or is planned for in a current flood risk management plan.

2.24 The first category does not apply in this case.

2.25 As regards the second category, the proposed development is of a brownfield site, previously in a commercial use. This category comes into consideration for the proposed use.

2.26 As regards the third category, the site has been allocated for regeneration in the current LDP, which is up to date. The flood-risk issues in central Hawick were taken into account in the LDP, which makes reference to them and to the proposed flood-protection scheme in Hawick. This category too comes into consideration for the proposed use.

2.27 As regards the fourth category, there is a flood-protection scheme under construction. SEPA's Flood-Risk and Land-Use Vulnerability Criteria do not define what

“the appropriate standard” is that is required for a flood-protection scheme. However, SEPA’s Background Paper on Flood Risk does set this out (again in DM Requirement 1: Flood Context). It indicates that within a built-up area, where the standard of protection provided by the scheme is less than a 200-year standard of protection (greater than an 0.5% annual probability of flooding) a defended area is generally acceptable for development where (among other points):

- the principle of the development has been established in an up-to-date, adopted development plan or the National Planning Framework with due consideration of flood risk or
- it is redevelopment of a previously developed site involving demolition of existing buildings and/or erection of additional buildings and the proposed land use is of equal vulnerability to or less vulnerability than the existing land use.

I find that the fourth category also comes into consideration for the proposed use.

2.28 SEPA’s Background Paper on Flood Risk indicates that where redevelopment is proposed with no new overnight accommodation, provision of adequate access and egress is good practice (though not a requirement) (DM Requirement 3). It also recommends that the finished floor level of buildings should have freeboard above the 1-in-200-year flood level of 600 millimetres (DM Requirement 4) - though, again, this is not a requirement.

Land-raising

2.29 DM Requirement 2 in SEPA’s [Background Paper on Flood Risk](#) provides that proposed development should not increase the risk of flooding elsewhere or adversely interrupt the ability of the floodplain to store or convey flood water. Therefore proposed developments that are acceptable in terms of DM Requirement 1 (described above) must be designed to ensure that flood risk is not increased elsewhere. Where land-raising is proposed, SEPA’s policy is to require compensatory storage. Situations where land-raising is acceptable will be rare. In exceptional circumstances a case for land-raising may be considered where a particular proposal warrants a more flexible approach. Each proposal is to be considered on its own merits. Matters to which consideration is to be given include:

- Locational characteristics, for instance, a site in a built-up area or a previously developed site might be considered more favourably
- The site design and layout – raised areas should be set back from the watercourse and not create islands of development (they should adjoin areas outwith the functional floodplain)
- Compensatory storage should be provided
- The opportunity to reduce overall flood risk (for instance, reducing risk to neighbours) should be considered as part of the development.

Planning brief

2.30 The council’s [planning brief](#) for zR08 was adopted in 2009. It envisages residential or mixed-use residential and commercial development of the allocation. It refers to flooding as a constraint, but not an insuperable constraint. The application site itself is not specifically identified as a development opportunity in the brief because there was existing development on the site at the time. The brief recommends the site that is now Sainsbury’s for development for retail, and recommends boulevard-style planting on the front with Commercial Road.

2.31 The brief is now relatively old and has been superseded in a number of respects by development on the Aldi and Sainsbury's sites, as well as the demolition at the application site. Nonetheless, it gives an understanding of the council's broad and relatively long-term intentions for the development of the area.

Ministers' legal duties

2.32 Ministers have the duty under section 159 of the 1997 Act to ensure, wherever it is appropriate, that in granting planning permission for any development, adequate provision is made, by imposition of conditions, for the preservation or planting of trees.

Case for Scottish Borders Council

2.33 The council's [submissions](#) indicate that it relies upon its [committee report](#).

2.34 Although the committee report listed a number of LDP policies as relevant to the proposed development, it does not expressly state that the proposed development complies with those policies or with the development plan as a whole. It does indicate that the principle of development is supported, and does not expressly find any divergence from any other policy. I also understand the council to consider the proposed development meets the LDP policy on flooding (IS8) and conforms with the development plan overall.

2.35 The council concluded that material considerations indicated overall that the proposed development is acceptable in principle. These included that the proposed development would redevelop a gap site within an area allocated for redevelopment, that it is bounded by retail units to south and north, and that it would be within the town centre in the emerging plan.

Case for the applicant

2.36 The applicant does not address planning policy in its submissions, with one exception. Its [initial findings on flood risk](#) and its subsequent [flood-risk assessment](#) both imply that, where a site that would otherwise be within the 1-in-200-year floodplain is protected by a flood-protection scheme so that there is no flooding from the river immediately opposite the site, then the site is not within the 1-in-200-year functional floodplain for the purposes of SPP.

Case for the Scottish Environment Protection Agency

2.37 The land-raising proposed would result in loss of the functional floodplain. This would be contrary to policy on mitigation of flood risk as set out in SPP. The proposed development could place buildings and persons at flood risk.

2.38 There is no increase in the vulnerability of the land use proposed at the site from what previously existed. However, with defences in place, there is an increase in flood risk resulting from the change in the nature of flooding and the likely increase in damage due to the trapping of floodwater. This would also be contrary to SPP.

Case for objectors

2.39 The proposed development is contrary to LDP policies ED5, EP12 and EP13 on account of its effects on the trees protected by the tree-preservation order. It is a retail development outside the town centre contrary to policy ED3 and is not small-scale shopping provision designed to serve the needs of local rural communities, again contrary to policy ED5. It will result in overshadowing, loss of daylight and loss of privacy to 23 Princes Street contrary to policy ED5. The proposed development's design, making no reference to the site's history, would be soulless and have an adverse effect on its surroundings including retained stone buildings nearby. The proposed development fails to design out crime, contrary to policy PMD2. It is likely to have a detrimental effect on the A7 both in respect of road safety and slowing of traffic, contrary to policy IS4.

Interpretation of flood-risk policy

Scottish Planning Policy

2.40 It is evident from the arrangement of policy in SPP paragraph 263 that the risk category of an application site is to be identified in respect of the natural 1-in-200-year floodplain, unconstrained by any flood-protection scheme. Certain development is permitted at a medium- to high-risk site if (a) it is in a built-up area and (b) flood-protection measures exist or are proposed or under construction that are (or will be) "of the appropriate standard."

2.41 The policy does not state what "the appropriate standard" is. However, the fact is that the policy says "the appropriate standard". It does not specify (which it might easily have done) a specific standard (such as a requirement that the defences should meet a 1-in-200-year flood, with or without an allowance for climate change). This suggests that there are factors according to which the standard might vary.

2.42 I have described how SEPA's [Background Paper on Flood Risk](#) provides a table setting out what SEPA considers the appropriate standard of protection from a flood-protection scheme should be. SEPA's policy is evidently designed to complement the flood-risk framework in SPP. It appears to me that they provide a sound basis upon which to determine for the purpose of SPP whether flood defences are "of the appropriate standard" to protect any particular development.

2.43 Separately, it seems to me it is rational to permit redevelopment of a site where the new use is of no greater vulnerability than the existing use. Furthermore, if flood defences are proposed and land has been allocated in the development plan on that basis, it would frustrate the plan if an allocation could not be realised because the defences do not meet a

higher standard than that for which they were designed. These therefore appear to me to be appropriate factors to take into account in determining whether a site is defended “to the appropriate standard”.

2.44 Nonetheless, Ministers may wish to consider whether SEPA’s Background Paper on Flood Risk does set out the appropriate standard of protection for flood-protection measures to allow development in a built-up area, or whether SPP requires a higher standard of protection. If Ministers take the latter view, it would still be a material consideration weighing in favour of a grant of permission that a proposal was for re-continuation of an existing or previously existing use or was in accordance with an allocation in the development plan.

LDP policy IS8

2.45 The background text to policy IS8 refers to the flood-risk framework in SPP. In my view, an area that, in terms of SPP, has a medium to high risk of flooding is to be treated as an area of significant flood risk under policy IS8. Development in such an area is therefore generally to be avoided.

2.46 For development such as that proposed, the policy requires an assessment of flood risk and mitigation measures. Given the specific reference in the policy to SEPA’s guidance, I consider that development that complies in respect of flood risk with that guidance is likely to be acceptable under policy IS8.

Reporter’s conclusions

2.47 There is no other substantial dispute between parties as to the interpretation of policy, though there does appear to be disagreement about the application of a number of policies.

2.48 Since this application has been called in with regard to one particular issue – that of the proposed development’s compliance with national policy in respect of flooding – my view is that the council’s assessment that the proposed development is acceptable in other respects is a significant material consideration for Ministers in considering those matters. That said, the decision on the application is for Ministers to make, and therefore Ministers must take into account all material considerations in their decision, including on matters not directly related to their reasons for calling the application in.

2.49 I consider I am required to advise Ministers on the following issues in respect of flooding:

- the degree of risk to the proposed development from flooding and its compliance with national policy and the development plan in this respect,
- the effect of the proposed land-raising as part of the proposed development on flood risk outside the raised area, and
- whether there are exceptional circumstances such that land-raising would be in accordance with national policy.

2.50 The application site is within an area designated for regeneration by policy ED5. Whether the proposed development is acceptable must be considered against the criteria in ED5.

2.51 I am also required to advise Ministers on other matters raised by parties, including the proposed development's effects upon trees, compliance with retail policy, effects upon residential amenity and the character and amenity of the surrounding area more broadly, standard of design and placemaking, including the effect upon crime, and effect upon traffic and road safety.

CHAPTER 3: FLOODING

3.1 The application site is within the 1-in-200-year floodplain of the Teviot. The proposed development would involve significantly raising the ground level at the site from levels at the time the application was made (though as the applicant has pointed out, land-raising has already been carried out for the temporary access road across part of the site).

3.2 The Hawick Flood-Protection Scheme is currently under construction. It is designed to protect land behind the defences from a 1-in-75-year flood (this standard of protection includes 600 mm of freeboard above the predicted flood level). The location of the flood-protection scheme in relation to the application site is shown on figure 1 of the [Jacobs flood-risk assessment](#) for the proposed development dated 27 August 2019, carried out on the instructions of the flood-protection scheme's project team.

3.3 The applicant provided the following flood-risk-assessment documents prepared by the applicant's consultants, Terrenus:

- [Initial findings on flood risk \(1 April 2019\)](#)
- [Flood-risk update \(20 May 2019\)](#)
- [Flood-risk update \(4 June 2019\)](#)

The last of these is the fullest, addressing various comments made by SEPA on the previous two documents.

3.4 The document considers the effect of floods that would occur once in 75 years, once in 200 years, and once in 200 years with a further allowance for climate change of 33% additional flow. The assumption is made that the Hawick Flood-Protection Scheme, currently under construction, is complete. Terrenus compared the output of its model with the output from a model used by Jacobs, the engineers who have designed the flood-protection scheme. It summarises its findings as follows (using the abbreviations FPS for flood-protection scheme and OD for "[above] ordnance datum"):

"The Terrenus hydraulic modelling broadly concurs with the Jacobs model and confirms that the site is protected from the still peak water level of the River Teviot during the 1 in 75-year event and for the 1 in 200-year event. For the 1 in 200-year event, however, the site is at risk from fluvial overtopping further upstream. It is further noted that during the 1 in 200-year design flow event, overtopping of the FPS may occur due to wave action or blockage / debris within the channel. For the 1 in 200-year plus 33% scenario, the Hawick FPS is exceeded leading to inundation of the site.

The overland flow and flood routing beyond the FPS, in the event of fluvial overtopping, is off-line storage area and is ineffective for flood conveyance. Static water level changes may occur but are likely to be low and localised with lower flow velocities once ponding occurs. The proposed Hawick FPS is anticipated to be designed to withstand pressures from water build up on either side of the defence wall and will not be significantly impacted by the proposed development."

I understand the second paragraph to be a discussion of fluvial overtopping in the second scenario (a 1-in-200-year flood), rather than the third (a 1-in-200-year flood with 33% allowance for climate change), in which it is acknowledged that the site would be inundated.

3.5 The flood-risk assessment also considers the effect of the proposed land-raising in circumstances of the third scenario (a 1-in-200-year flood with 33% allowance for climate change). It summarises its findings as follows:

“As a result of the proposed site platforming, there is no significant impact on downstream peak water levels¹. The site records an 10 mm increase at the upstream end of the site and an overall decrease in peak water level throughout the remainder of the site. Upstream of the site increases in peak water level range from 10 mm to 20 mm between Sainsbury’s and Albert Road Bridge. ...

3.6 As regards mitigation of the flood risk, the report makes the following recommendations:

“It is recommended that the proposed development is development with the same flood risk mitigation strategy as adopted for the adjacent downstream Aldi site. Such measures are considered suitable for a commercial development of this type.

The recommended Final Floor Levels are similar to those adopted for the adjacent Aldi site (101.63 mOD). Whilst there is a commercial risk from flooding from the design storm event with potential climate change, it is in-line with previously accepted Final Floor Levels for commercial properties in the local neighbourhood and would result in flood depths between 0.27 m and 0.45 m across the site. Safe access / egress is available via the completed Aldi site further downstream.”

It went on to recommend flood-resilient design for the buildings, such as wash-down floors, sealed walls, elevated electrical installations and sockets and elevated stock platforms, and flood-defence installations to protect doorways and access points from flooding.

3.7 The council also obtained a [flood-risk assessment carried out by Jacobs](#) on behalf of the Hawick Flood-Protection Scheme project team for the proposed development. This also treated the completed flood-protection scheme as part of the assessment baseline. It examined the same three scenarios as Terrenus (1-in-75-year and 1-in-200-year flood events and a 1-in-200-year flood event with an additional 33% flow to allow for climate change) for flooding at the application site without the proposed development. Its figure 3 shows the extent of these floods. It shows the application site to be inundated in the latter two scenarios, with water depths in the last of the scenarios of more than 0.6 metres above the finished floor levels of the proposed buildings.

3.8 The Jacobs assessment then goes on to consider the effect of the land-raising proposed as part of the proposed development, to determine the significance of the impacts on flood risk to other parts of the town. Its figure 5 shows the difference in flood levels for a 1-in-200-year flood with the proposed development as compared with the baseline. It shows an increase of up to 0.34 metres in the area to the south of the proposed development, just behind the proposed new flood defences along Commercial Road. Its figure 6 depicts a similar assessment for a 1-in-200-year flood with 33% allowance for climate change. For the most part, this shows a more limited increase in flood levels as a consequence of the proposed development.

¹ I understand from the context that this means that there is no significant impact on downstream peak-water levels as a result of the proposed land-raising (rather than that there is anything about the design of the site-platforming that causes the increase in peak-water levels not to be significant).

3.9 It concludes (using the abbreviation AEP to stand for “annual event probability”, maOD for “metres above ordnance datum” and FFL for “finished floor level”):

“The impact on water levels are higher for the 0.5% AEP event without climate change. The influence of the proposed structures and parking area is negligible for 0.5% +33% Climate Change scenario, where the changes in water levels compared to baseline 0.5% AEP + CC event are much lower. This is due to the fact that a larger volume of water has overtopped the FPS defences than the 0.5% AEP event, and the overall throttling impact of the raised land is, in relative terms, not as significant.

The maximum water depths at the two main proposed buildings are highlighted on the table, where water levels are determined to be higher than the proposed FFL of +101.63 maOD.

It is also worthy of note that the computed maximum change in water levels for the 0.5% AEP overtopping event (with the development in place), places an increased load on the adjacent Flood Protection Scheme defence wall as a result of the 0.34m increase in water level (see Figure 5, Point A). This increased load has not been factored into the design of the flood defence wall and there is a risk that the factors of safety against failure of the structure will be reduced to an unacceptable level – further analysis is required to determine the true impacts.”

3.10 As regards the last point in the conclusion of the Jacobs report, the Hawick Flood-Protection Scheme provided a [consultation response](#) dated 20 September 2019, which states:

“... any increased flood risk from the proposed development to the Scheme’s new flood walls at Commercial Road are considered to be 100% the responsibility of the Scheme and not the developer.

The Scheme is not yet constructed. Indeed, the design of the flood wall at Commercial Road is not yet completed. The Scheme will therefore revise the design to mitigate the identified additional risk from the proposed development into the new structure.”

3.11 Conor Price, the project director of the Hawick Flood-Protection Scheme subsequently [wrote to me](#) stating:

“we do not consider that the development as proposed by Image Estates can have any adverse flood impact on the new flood scheme.”

Case for the applicant

Land-raising in the floodplain

3.12 The application site needs to be raised for three reasons:

- first, so that it is the same level as the neighbouring site of the Sainsbury’s petrol station which resulted in problematic low points at the rear of the application site.
- second, the Hawick Flood-Protection Scheme is to accommodate new sub-surface pumping stations and related plant and equipment at the front of the site at a specified height;

- third, the Hawick Flood-Protection Scheme was required to provide a relief road to ensure the public could have uninterrupted access to the Aldi store, so that the store would not be severed for two or three years as a result of the flood-prevention works.

3.13 Raising the land would create a site that was free of flood risk and capable of development. It would be at grade with the neighbouring development. This allows access to the proposed development through the Sainsbury's site, and so the direct accesses from the A7 can be removed. This is perceived to represent an improvement in road safety.

3.14 If the levelling works are not undertaken as part of the proposed development, the application site, which is in the town centre, would become a landlocked, multi-level gap site comprising a series of internal retaining walls that could itself represent an increased flood risk. There would also be practical problems associated with an abandoned site, including problems of health and safety and economic and aesthetic problems. Remediation costs might then have to be borne by the public purse, rather than by a developer. Scottish Borders Council appears to share these concerns.

3.15 The Aldi store, approved in 2018, was deemed to comply with policy in terms of the building's finished floor level.

3.16 The Hawick Flood-Protection Scheme will remove further risk of flooding.

3.17 The proposed land-raising would be an expensive undertaking and would not ordinarily be carried out for such a development, if it could be avoided. The relief access road for Aldi, completed as part of the Hawick Flood-Protection Scheme, which is built across the application site, has already involved significant land-raising. Land-raising would involve filling in remaining low points, which are at risk of flooding. To create a developable site, the alternative would now be to incur the cost of removing the relief road. Development of the re-engineered land would mitigate the project costs for the Hawick Flood-Protection Scheme.

Flood risk during construction

3.18 It is envisaged that the applicant would carry out some works at the site before the completion of the Hawick Flood-Protection Scheme. The contractors for the flood-protection scheme have taken possession of the application site and have constructed the relief road. They are likely to return to the site several times over the course of the two- to three-year construction period for the scheme. It is unlikely to be possible for the applicant to carry out works on the site at the same time. It is envisaged that the applicant would access the site to carry out works for the proposed development while the flood-protection-scheme contractor is working elsewhere.

3.19 The works proposed by the applicant and those already carried out for the flood-protection scheme significantly reduce flood risk for the application site. Flood risk for works at the rear of the site (away from the A7) should already have effectively been eliminated before any above-ground construction work for the project commences.

Flood risk following construction

3.20 The applicant is confident on the basis of the assessments carried out by its consultants, Terrenus (reports of 20 May 2019 and 4 June 2019) that the proposed development would not flood in a 1-in-200-year flood. This is notwithstanding the

assessment by Jacobs (on behalf of the Hawick Flood-Protection Scheme) that there would be some flooding of the proposed development in a 1-in-200-year flood. The finished floor height of the proposed buildings is greater than the Aldi store (completed in 2018) and the Sainsbury's petrol station.

3.21 Mutual access rights have been secured that allow free movement of pedestrians between the proposed development and the Aldi and Sainsbury's sites. If the new flood-protection scheme were to fail, there are site accesses to the north-east of the Aldi store to Laing Terrace and from the Sainsbury's car park by a route known as "the Hundred Steps" both of which lead to higher ground.

Response to SEPA's objection

3.22 SEPA may not be familiar with the context of the site. The following aspects of the context are relevant:

- the adjoining properties
- the site levels that existed before commencement of the flood-protection scheme
- the works for the relief access road across the site and other flood-protection-scheme works, and
- the removal of the three existing vehicular accesses from the A7 to provide a continuous retaining wall along the road's edge for additional protection.

3.23 SEPA's objection appears to have four aspects: objection in principle to the site-raising, the modelling, the effects of the 2005 flood, and the proposed development's effect on the new flood-protection scheme.

3.24 SEPA's objection to land-raising appears to be in principle. Land-raising can increase flood risk in areas upstream or downstream. That is not relevant in the present case. There would be no adverse effect on any neighbouring land use arising from flood risk associated with the proposed development. The practical, safety, economic and aesthetic benefits of the proposed development, including land-raising, outweigh the policy provisions against it.

3.25 The results of modelling carried out by Jacobs and Terrenus have been validated by the Scottish Borders Council and Hawick Flood-Protection Scheme.

3.26 The flood wall on the Teviot beside the site was not breached in 2005 by water overtopping the wall but rather by water that had overtopped the wall 700 metres upstream returning to the river at the then-existing defences' weakest point. The new measures would prevent such an occurrence in future.

3.27 The Hawick Flood-Protection Scheme has confirmed that the proposed development has been factored into the new flood-defence design. Through collaboration with the flood-protection scheme, the proposed development can only enhance this part of the town's safety.

Case for SEPA

3.28 The flood-protection scheme has not yet been built and the site is located within the 1-in-200-year functional floodplain. Analysis of flood risk to the proposed site should be for existing conditions without the flood-protection scheme.

3.29 The Hawick Flood-Protection Scheme does not remove the risk of flooding in Hawick. It reduces the frequency of flooding impacting homes and businesses. Schemes can fail. The proposed flood-protection scheme has a 1-in-75-year standard of protection from flooding. The over-topping of defences would result in flooding of a more rapid and unexpected nature than currently without defences. Floodwater trapped behind defences is likely to be more prolonged and result in an increase in damage.

3.30 SEPA does not support land-raising within the functional floodplain at this location to enable development. Jacobs modelled the baseline and the proposed development in place and identified an increase in flood levels as a consequence of the land-raising. During a 1-in-200-year flood event, water levels are predicted to increase by up to 340 mm as a result of the proposed land-raising. This has the potential to impact on the stability of the proposed flood-defence wall.

3.31 SEPA previously objected to land-raising for the Sainsbury's supermarket and petrol station and also to land-raising for the Aldi store without provision of compensatory storage. The present objection to land-raising is in line with SEPA's previous objections.

3.32 The design flows shown in table B of the Terrenus flood-risk assessment are not comparable to those agreed between Jacobs and SEPA during the flood studies undertaken to inform the design of the flood-protection scheme. Large differences in flood levels are shown between the Jacobs study used to inform the proposed flood scheme and the Terrenus flood-risk assessment used to support the application. These were not fully addressed. They may be a consequence of the different design flows input into the Jacobs and Terrenus models. The differences in water levels between the Jacobs and Terrenus models could affect the viability of the flood-protection scheme.

Case for the council

3.33 The proposed development has been the subject of detailed study by the council's flood-protection section and the project team for the Hawick Flood-Protection Team. The flood-protection-scheme project team advised that the scheme would be designed to take account of the proposed development. The council's flood-protection section indicated it would support the project on this basis. SEPA's concern about the proposed development would be justified if it were to go ahead without the flood-protection scheme being in place. The development should be carried out to a timetable and programme agreed with the flood-protection-scheme project team. In this way, the proposed development and surrounding area can be safeguarded from unacceptable flood risk.

Reporter's reasoning

Differences in Jacobs and Terrenus models

3.34 There are some significant differences in the outputs from the Jacobs and Terrenus flood models as shown in table C of the Flood-Risk Update (6 June 2019). Upstream of the Albert Bridge, there are differences of up to 1.74 metres in the predicted flood level in a 1-in-200-year flood. The differences in the reach next to the application site are much less: between about 1 and 200 millimetres. The differences are not fully explained. Upstream of the proposed development, the Jacobs model generally shows a higher flood level in a 1-in-200-year flood than the Terrenus model.

3.35 I have no means of determining whether the Jacobs model or Terrenus model is more accurate in its predictions. In reaching my findings, I will rely upon the worse-case predictions from either of the two reports (which are generally from the Jacobs report).

3.36 There is also a degree of consistency in the assessments. Both assessments model three scenarios: a 1-in-75-year flood, a 1-in-200-year flood and a 1-in-200-year flood with a 33% allowance of additional flow for climate change. They both indicate that the application site would be protected in a 1-in-75-year flood. They both predict there would be overtopping of the proposed flood-protection wall upstream of the application site in a 1-in-200-year flood, though in the Jacobs model the overtopping would be more extensive. Neither model shows the still-water level of the flood overtopping the flood-protection wall in the reach next to the application site in such a flood. Both models predict the site (and the proposed development, following land-raising) would be inundated in the third scenario.

3.37 In the second scenario, the Terrenus report indicates that there would be no flooding at the proposed development following land-raising, while the Jacobs report shows that there would be flooding to just above the finished floor level of the buildings. For the purpose of this report, I assume that the Jacobs finding is correct.

3.38 SEPA does not (expressly at least) suggest that the Terrenus report is incorrect in its conclusion that the overland flow and flood-routing beyond the flood-protection scheme in a 1-in-200-year flood would be off-line storage and not effective for flood conveyance. There is nothing in the Jacobs report to suggest that conclusion is incorrect. I accept it.

3.39 SEPA accepts the Jacobs report's estimate that, in a 1-in-200-year flood, there would be a maximum increase of 0.34 metres in flood levels as a consequence of proposed land-raising at a point behind the flood wall. This increase would be by the south-east corner of the application site, on the dry side of the flood wall. SEPA does not question the Jacobs report's conclusion that in the third scenario (making a 33% allowance for climate change), the relative increase in flooding as a consequence of land-raising would be less (and would be negligible).

Flood risk at the application site

3.40 The application site is in the 1-in-200-year floodplain. It is therefore a medium- to high-risk site in terms of SPP's flood-risk framework. Given that the site is low-lying, I believe it would be at the higher-risk end of the risk spectrum.

3.41 As I have set out, commercial development can be acceptable in the 1-in-200-year floodplain if it is in a built-up area and if flood-protection measures to the appropriate standard are under construction. The proposed development is in a built-up area and a flood-protection scheme is under construction. I have said that, in my view, the "appropriate standard" is to be determined in accordance with the table provided in SEPA's [Background Paper on Flood Risk](#) (DM requirement 1).

3.42 The site was previously in commercial use, as a car showroom and builders' yard. Such a use might have lawfully been continued, notwithstanding inundation of the site in previous flood events. The site is allocated for regeneration in the LDP, which would include development of the type proposed. The LDP makes specific reference to the construction of the Hawick Flood-Protection Scheme and the protection it will provide to core areas of Hawick. The Commercial-Road allocation under policy ED5 was made in that context. The proposed commercial use falls into the least-vulnerable category in SEPA's

[Flood-Risk and Land-Use Vulnerability Guidance](#). I find that its vulnerability to flooding is likely to be similar in degree to the site's previous use. SEPA acknowledges this.

3.43 The flood-protection scheme under construction will provide a 1-in-75-year standard of protection. This is a higher standard of protection than the site would have had when its previous commercial uses were present. Given the freeboard included in the flood-protection scheme, the flood defences would be capable of meeting a flood with a greater annual probability, though as the flood-risk assessment predicts, there would be flooding at the application site in a 1-in-200-year flood, notwithstanding the defences.

3.44 I acknowledge that if the flood-protection scheme were to fail, that would lead to flooding of a more rapid and unexpected nature than currently without defences. While this represents a new quality of risk to the application site (low-probability, but potentially high-impact), I do not consider that a risk arising from the construction of flood defences can properly be presented as an increased flood risk to the site overall. The overall flood risk is evidently lower as a consequence of the defences' construction.

3.45 SEPA's position in this case is that the site should be assessed as undefended, since the proposed flood-protection scheme has not been completed. Such a position is clearly contrary both to SPP and SEPA's own guidance (both of which permit a scheme under construction to be taken into account in assessment of flood risk to a proposed development).

3.46 Taking into account the site's previous use, the allocation in the plan, and the higher standard of protection offered by the new defences than was available for the previous use, the proposed development would be defended to a standard that is acceptable in terms of SEPA's guidance in its Background Paper on Flood Risk. My view is that consequently it would have appropriate standard of protection in terms of SPP. It follows that, in my view, the proposed use of the application site would accord with the flood-risk framework in SPP.

Flood risk for the proposed development

3.47 The assessment of flood risk for the proposed development must be adjusted further because of the proposed land-raising. The land-raising would further mitigate the flood risk to the proposed development, particularly if the flood defences were to be overtopped or to fail. It would lift the application site so that the still-water level in a 1-in-200-year flood would be (according to the Jacobs report – see table 2, twelfth page) just above the proposed finished floor levels of the buildings. I acknowledge that this does not include an allowance for climate change or provide any freeboard. The proposed development would remain in the medium- to high-risk category in SPP, but would be close to the lower threshold of that category.

3.48 If the flood defences were to fail, there would be routes to leave the proposed development either across the Aldi site or through the Sainsbury's car park by the Hundred Steps. No party has suggested that the escape routes would not be adequate.

Flood risk at the proposed development and LDP policy IS8

3.49 As regards [LDP policy IS8](#), I find that there would be a significant risk of flooding at the proposed development. Since the proposed development is a commercial development, it is potentially acceptable, subject to a risk assessment and consideration of mitigation. I have set out why the proposed use meets SEPA's guidance on land-use

vulnerability. Land-raising as part of the development would further mitigate flood risk (leaving aside the potential policy restriction on land-raising itself for the moment). Like the council, I consider that the degree of flood risk at the proposed development would be acceptable. I find that the proposed development would conform with policy IS8 in respect of flood risk to the proposed development itself.

Land-raising

3.50 The applicant proposes land-raising in the 1-in-200-year floodplain, acknowledges an increase in flood levels as a consequence of the land-raising, but offers no compensatory storage.

Additional flood risk arising from land-raising

3.51 As regards the effect of the proposed land-raising on flood risk, SEPA refers to the conclusion of the Jacobs report that there could be an impact on the flood-protection wall. Neither the Jacobs report nor SEPA suggest any other risk that the increase in flood level might cause in a 1-in-200-year flood or greater. Figure 5 of the Jacobs report indicates that the main area in which the flood level would be increased would be at the southern edge of the proposed development, in the Sainsbury's car park, and along Commercial Road to the south of the proposed development. This is an area in which there is limited likelihood of increased risk from an increase in flood level of the degree predicted. No other development proposals that might have a cumulative effect with the proposed development in respect of increased flood levels have been drawn to my attention. I find that the effect of potential additional loading on the flood-protection wall in a 1-in-200-year flood is the sole potentially adverse effect of the increased flood level caused by the land-raising that requires to be considered further.

3.52 The Hawick Flood-Protection Scheme project team has stated that the scheme can be designed to take account of the increased loading on the flood wall as a consequence of the increase in flood level predicted to be caused by the proposed development.

3.53 I consider therefore that the increased flood risk as a direct consequence of the proposed development would be negligible. I find, in terms of SPP, that the effect on flood risk outside the site would be neutral.

Whether there are exceptional circumstances to justify land-raising

3.54 The applicant's justification for the proposed land-raising is set out at paragraphs 3.12 to 3.17 of this report. This evidence is unquestioned by other parties. I accept it. I note in particular that:

- equipment for the flood-protection scheme must be installed at a specified height at the site's Commercial Road front;
- for vehicular access to be provided from the neighbouring Sainsbury's site, the site (or at least part of it) has to be raised to the same level as the Sainsbury's site;
- without land-raising, the site would be on multiple levels, which would cause particular difficulties for its redevelopment (without which it would remain a gap site);
- land has already been raised at the site for the purpose of the temporary access road and the alternative to levelling the site up would be to level the site down, which would be costly and would expose the site to flooding.

3.55 As regards the factors set out in SEPA's guidance on permitting land-raising, the site is located in a built-up area, it is a brownfield site and is set back from the river with development on either side. It would not create an island. The effect on flood risk of the increase in the flood level would be neutral. These factors weigh in favour of land-raising. No compensatory storage would be provided. This weighs against.

3.56 In view of the applicant's evidence, I consider that it is unlikely the site would be developed without the proposed land-raising. The reasons are unique to the application site, and would not set an undesirable precedent for land-raising elsewhere. I consider that, given the context of a prominent site, allocated for regeneration, which might otherwise be left as an unsightly gap site, these are exceptional circumstances. I acknowledge that the question of whether these amount to exceptional circumstances is one of judgement, and that Ministers might take a different view.

3.57 SPP indicates that compensatory storage may be required where there is land-raising as part of a development. It is not an absolute requirement. The constraints on providing compensatory storage in an urban setting are self-evident, particularly where part of the site is intended to play a role in the flood-protection scheme (although that is not part of the present application). In my view, given the degree of the predicted effect on flood risk and the constraints involved, requiring compensatory storage would not be justified.

3.58 I consider therefore that the proposed land-raising accords with SPP.

Compliance of land-raising with LDP policy IS8

3.59 As regards [LDP policy IS8](#), the proposed land-raising would increase the level of flooding outside the site. The risk entailed by the increase can be addressed by an adjustment to the design of the flood-protection scheme. Since there is an increase in flood levels outside the site as a consequence of the proposed land-raising, it might be said that there is an increase in the probability of flooding elsewhere. I do not consider that the increase is material though. I find that the proposed land-raising would be consistent with policy IS8.

Flood risk before completion of the Hawick Flood-Protection Scheme

3.60 If construction is carried out for the proposed development before completion of the flood-protection scheme, the construction site (or its northern part at least) would be at relatively high risk of flooding. I accept that the construction of the proposed development would have to be phased with the construction of the flood-protection scheme (and its phasing can be required by condition). I accept that the presence of the raised temporary access road would limit flood risk during land-raising, and that once the development platform had been created, there would be limited flood risk in 1-in-200-year flood (leaving aside the effect of climate change).

Water environment and drainage

3.61 No other issue has been raised in respect of the proposed development's effect on the water environment, nor has any objector commented adversely upon the drainage proposals. I consequently find that the proposed development accords with LDP policy EP15.

CHAPTER 4: OTHER MATTERS

Trees

4.1 The garden of several residential properties lie to the proposed development's west. The trees in these gardens are subject to a [tree-preservation order](#). The order specifies a number of individual trees and trees as components of a group for protection. Twelve of the trees are just to the north of the boundary with the application site. A survey of the condition of the trees is attached to the order.

4.2 The occupiers of 23 Princes Street objected to the proposed development on the basis of its effect upon the protected trees. They argue that the proposed development would cut through the roots of the protected trees lying within the application site, so causing harm to the trees.

4.3 The applicant has provided in respect of the protected trees:

- [A report on trees in the two groups protected by the tree-preservation order](#) (Anna Craigen Environmental Services)
- [A report on managing existing boundary trees on north-west of proposed retail store](#) (Alan Couper Consulting). This is accompanied by a plan and section of a proposed tree-root barrier and a plan of the proposed retail unit showing the root protection zone (AT3184 L(-1)103)

4.4 Neither of the reports provided is a tree survey in accordance with British Standard BS 5837:2012. The Anna Craigen Environmental Services Report includes findings that the Lawson's Cypress Trees along the boundary, though protected by the order, are of poor quality and that there are numerous dead specimens amongst them. It suggests they are not worthy of protection and might easily be replaced by fast-growing species, which would provide screening. The Alan Couper Consulting report acknowledges that the trees identified in the order should be preserved and proposes a root-protection barrier to protect their roots.

4.5 The committee report states that

- the trees on the land to the west of the application site provide the properties with residential amenity and screening from existing retail premises on Commercial Road.
- They also provide a pleasant backdrop in views from the east, including the town centre.
- The building footprint would be between 3.2 metres and 3.9 metres from the boundary, and consequently within the four-metre root-protection zone of the trees. This could cause damage to the trees.
- The proposed installation of a root-protection barrier would protect the building rather than the trees. The installation of such a barrier would be likely to cause more harm rather than prevent harm.
- The risk to the trees is unacceptable.

The council considers that a suspensive condition can be imposed that requires either effective mitigation of any impact to be identified and implemented or a change in the design of the proposed retail unit such that it is not within the trees' root-protection area. The applicant does not object to the imposition of such a condition, though its position is

that there is no scope for changes to the proposed development's layout beyond the changes that have already been made.

4.6 Since no tree survey has been carried out, I do not find there to be any substantial evidence that the cypress trees protected by the tree-preservation order or other trees along the boundary are in a condition that would justify their removal. Although, on my site inspection, it appeared to me that two of the protected cypress trees along the boundary were either dead or mainly dead, I did not see any substantial evidence that any other trees along the boundary were in a poor condition. The condition of the other cypress trees was consistent with their lower branches having been cut back from the application site.

4.7 I agree with the council that the protected trees along the boundary contribute amenity and provide screening to the gardens of the houses on Princes Street bounding the application site. I also agree that they provide a pleasant backdrop to the proposed development in views from the conservation area. In my view, it would not be acceptable for them to be harmed by the proposed development.

4.8 I consider that any adverse effect upon the trees can be addressed by a condition in the form proposed by the council. The proposed condition is included as condition 1 in schedule 2 to this report. Subject to such a condition, I find that the proposed development complies with LDP policy EP13 and with SPP.

Residential amenity

4.9 The occupiers of 23 Princes Street objected to the proposed development in respect of a number of effects upon residential amenity, including overshadowing, inadequate screening, overlooking, loss of view, noise, smell and health issues, which they argued were contrary to LDP policies HD3 and PMD2.

4.10 The case officer's assessment, accepted by the Planning and Building Standards Committee, was as follows:

"Given that the site has reasonably been in use as business premises that have been open to the general public and/or accommodating a builders yard; given that the site has been identified for redevelopment within the statutory development plan; and given its set back from surrounding residential dwellings, the impacts upon the residential amenity of surrounding dwellings are considered, on balance, to be acceptable.

There are potentially impacts in terms of daylighting and sun-lighting upon areas of neighbouring garden ground, but given that these are wooded, and higher than the site, and given that there is also a benefit to the surrounding area with respect to the redevelopment of the site, including the removal of an industrial use, such impacts are on balance, considered to be acceptable."

4.11 The council went on to agree with the objectors that existing trees should be retained and that they provide valuable screening for the property.

4.12 I agree with the council's assessment. I consider that if the screening trees are retained, the impacts on privacy in the garden of 23 Princes Street, and in respect of noise and smell are unlikely to be different in degree from the previous use of the application site. I also agree that any effect on sunlighting and daylighting of the garden would not be

unacceptable, given the existing tree cover and the orientation and relative height of the garden.

4.13 I find that, subject to the council's proposed condition 1, the proposed development would comply in the relevant respects with LDP policy HD3, PMD2 and ED5.

Retail at the proposed location

4.14 The objectors also argued that, since the proposed development would not be within the designated town centre, it does not meet the requirements of policy ED3.

4.15 Policy ED3 indicates that town centre locations are to be preferred to edge-of-centre locations, which are in turn to be preferred to out-of-centre locations.

4.16 The proposed development is part in the designated town centre and part outside it. The applicant submitted a [retail assessment](#). It describes the business model of the proposed operator envisaged for the proposed retail unit (B&M Bargains Store). Its primary activity is sale of bulky and comparison goods, such as furniture, textiles, flooring, lighting, DIY products and decorations, while its remaining floorspace is used for sale of non-perishable convenience (food) goods. The availability of parking is said to be important to its business model.

4.17 The retail assessment examined the availability of alternative sites for the proposed development in the designated town centre, and found none of the required size or with the parking it states is required. The proposed development would represent a move from an existing (closed) store that is wholly within the town centre (at Croft Road, on the opposite bank of the Teviot). The assessment rejected that existing site as being too small to accommodate the proposed development, both in terms of the size of the store and provision of associated parking and servicing and because the existing building was reaching the end of its lifespan.

4.18 The assessment also found that the proposed development was unlikely to undermine the vitality or viability of the town centre and would not have a significant impact on any one destination in the town centre. It anticipated that it could benefit the town centre and supply inward investment.

4.19 No party has advanced substantial evidence to rebut the findings of the retail assessment. I found no reason to doubt them when I visited the town centre. I consider that a site with adjacent parking can appropriately be required for a retailer selling bulky goods. Although there are vacant units within the town centre, none provides the space required for the proposed development. Similarly, the other element of the proposed development, a drive-thru restaurant, cannot conveniently be accommodated within the town centre. I accept that there is no viable alternative site available entirely in the town centre.

4.20 While policy ED3 sets out a number of other considerations to be taken into account in respect of out-of-centre shopping development, I do not understand these to apply to development on the edge of a town centre. I find that the proposed development accords with policy ED3. I also find it complies with town-centre policy set out in SPP paragraphs 70 to 73.

4.21 The council considered that the application site was suitable for the proposed use. The application site already has existing retail uses to the north and south. There is a proposal in the main-issues report for the next local development plan that the town centre should be expanded to include the application site and the Aldi site to the north. It is reasonably well connected to the historic town centre by pedestrian and vehicle routes. It would benefit from the town centre's public-transport connections. I find that these are material considerations weighing in favour of grant of permission for the proposed development.

Design, landscaping, visual impact and effect upon the townscape

4.22 The objectors object on the basis that the design is soulless, and makes no reference to the history of the site as part of the Wilton Mills complex. They argue that the proposed landscaping is inadequate and refer to the requirement in policy ED5 to avoid "town cramming". They also suggested that the proposed car parks might at times the stores were closed, attract crime or anti-social behaviour, including unauthorised attempts to enter their property.

4.23 As regards design, the case officer's assessment was as follows:

"The Proposal Drawings describe contemporary retail buildings which are generally in scale and keeping with the retail units on either side. The materials and finishes are in line with these designs and types of buildings, and generally do not raise any concerns. However, the built environment of the surrounding area is established, and the current proposal is essentially infilling a 'gap' within a new, emerging streetscape on Commercial Road. As such, there is a need to consider the specific materials and finishes of the external surfaces in more detail, to ensure that the proposed buildings contribute appropriately to the character of the site and surrounding area.

While different designs and types of buildings are capable of being accommodated within the emerging and modern retail streetscape of Commercial Road, there is a concern that these should appear to belong together as a group of buildings when viewed in vantages from the town centre or approach roads and footpaths. There is a need to ensure that the precise materials and finishes contribute appropriately to the visual amenities of the site and surrounding area, including in the achievement of a wider and attractive retail environment on Commercial Road, as well as in terms of their contribution to the development of the Town Centre, Conservation Area and surrounding townscape more generally."

4.24 The council was minded to impose conditions on permission requiring details of materials and external finishes of the buildings and design of ancillary structures to be approved before their construction is commenced.

4.25 As regards landscaping along the Commercial-Road front of the proposed development, the case officer's assessment was as follows:

"Effective landscaping, particularly in relation to the site's roadside boundary with Commercial Road and the A7, has a critical part to play in allowing this proposal to be accommodated acceptably relative to its surroundings.

It is regrettable that there is no ability to maintain the depth of landscaping provision along this frontage that has been achieved on the neighbouring sites which would

contribute to a sense of a consistent and continuous landscaping treatment along Commercial Road. However, there has been an additional need to accommodate infrastructure relating to the [Hawick Flood-Protection Scheme] within this same road verge area which would be seen as an interruption in what might otherwise have been achieved.

Beyond the accommodation of infrastructure relating to the [flood-protection scheme], there are other constraints which mean that space is generally at a premium within the site, particularly in relation to vehicle movements and the conservation of trees on neighbouring land. Ultimately these factors do not prevent the ability to bring forward appropriate landscaping proposals for the site. As such, while the proposed layout is accepted as representing a reasonable and balanced response, conditions and informatives are required to ensure that every opportunity to deliver a quality landscaped finish for the site is taken. Appropriate conditions are set out within the proposed schedule of planning conditions.

An aspect that does require further consideration is the boundary treatment. As noted above, the specific form and treatment of the roadside boundary and edge fronting Commercial Road is especially important in being highly visible, but any treatment must simultaneously address certain functional considerations required within the accommodation and operation of the [flood-protection-scheme] infrastructure, along with Transport Scotland's requirement that there should be an appropriate barrier between the site and the Trunk Road. There is then a need for visual amenity concerns to be necessarily balanced by these practical considerations."

4.26 The case officer's report also notes that details have not been provided of the treatment of the site's other boundaries, particularly its northern boundary with the Aldi site and its western boundary with the Princes Street properties. The treatment of the western boundary would have to take account of the arrangements approved for protection of the trees on the opposite side of the boundary. The case officer considered that the treatment of both boundaries could satisfactorily be dealt with under condition.

4.27 The case officer's report acknowledges that, from the point of view of visual amenity, the step down from the proposed development to the Aldi car park would not be ideal. It points out that there is currently such a step down between the Sainsbury's car park and the proposed development.

4.28 The applicant argues that, if the proposed development does not go ahead, including the levelling-up of the site, it could instead become a landlocked, multi-level gap site comprising a series of expensive internal retaining walls which may provide an increased risk of flooding within the site.

4.29 I agree with the council that the proposed buildings would be broadly in keeping with the retail buildings to the south and north. I agree that the materials and finish of the buildings and design of ancillary buildings can be approved under conditions for the reasons the council set out. Subject to the retention of the trees to the west, the proposed development would fit into its context. The site is situated across the river from the conservation area and set in a different context. I agree with the applicant that the proposed development would redevelop what would otherwise be an unsightly gap site. I have proposed an addition to the council's proposed condition 13, so that it expressly

requires details to be approved of treatment of the boundaries to north and west (see proposed conditions in schedule 2 to this report).

4.30 While I have sympathy with the objectors' position that the design incorporates no reference to the previous use, no specific proposal has been made for any such design reference that might be secured by condition. Such a design element may be secured though, if the archaeological investigation of the site, required under proposed condition 7 (see schedule 2 to this report), identifies anything worth preserving in situ.

4.31 The site is evidently constrained, given the restrictions on landscaping along the Commercial-Road front and the issue arising from the proximity of the retail unit as currently proposed to the trees on the western boundary. I agree with the objectors that this could be taken as evidence that there is an attempt to put too much development into the site, if the issue with the trees on the western boundary cannot be resolved. That issue, however, may be addressed by condition.

4.32 As regards crime and anti-social behaviour taking place in the proposed car park, the objector references current behaviour in the existing car parks of the neighbouring shops. I consider that the degree to which the proposed development would add to any existing problem would be limited. The car park would be open to view from Commercial Road and from the opposite bank of the Teviot, and behaviour in the car park could be widely observed. That may to some extent restrict such behaviour.

4.33 The objectors refer to attempts at entry into their property as being an existing problem. I doubt that the erection of the proposed development would make the problem worse. The design of boundary treatment to prevent crime by hindering such attempts can be determined under condition. I have proposed an addition to the council's proposed condition 13, to add a requirement that an explanation should be given of how the landscaping scheme complies with the council's planning guidance on designing out crime.

4.34 There is a degree of judgement in assessing matters such as design and its related effects. Given that the application was not called in on the basis of any concerns about its design, I consider weight should be given to the council's assessment that the proposed development is acceptable in terms of design, landscaping, visual impact and effect upon the character of the town.

4.35 For these reasons, subject to the conditions proposed, I do not find that the proposed development is contrary to LDP policy relevant to design quality or the effects of development on townscape or visual amenity or on the conservation area in particular. It complies with policies PMD1, PMD2, ED5 and EP9.

Traffic and road safety

4.36 The applicant has provided a [transport assessment](#). Its findings include that the proposed development:

- would be well-connected to surrounding residential areas and Hawick town centre by pedestrian routes, would be connected to local and regional cycle routes and would be within 400 metres of bus stops with routes to a range of destinations;
- would incorporate measures to enhance accessibility, including pedestrian links to the neighbouring stores and provision of bicycle parking; and

- was not predicted to affect the operation of any junction or increase the very low accident rate in the vicinity.

4.37 While the council's Roads-Planning Section sought alterations to the proposed development's internal layout, the council considered these matters could be dealt with by condition.

4.38 Aldi's agents objected in respect of an access road into the Aldi proposed in the original application, which is no longer proposed. They also objected in respect of an assumption in the applicant's transport assessment that parking spaces in the neighbouring stores would be used by people visiting the proposed development and vice versa. Like the council, I consider such an objection is of limited materiality.

4.39 Although there has been an objection on the basis that the proposed development would adversely affect road safety, I find no substantial technical evidence that would support such a conclusion or cause me to reject the evidence of the transport assessment.

4.40 I find that the proposed development complies with relevant LDP policies, including IS4, IS6 and IS7.

Regeneration policy

4.41 As regards the six criteria of policy ED5 on development on allocated brownfield sites:

- subject to the proposed conditions in schedule 2 to this report, and in particular condition 1 protecting the trees on the western boundary, the proposed development will not conflict with the established land use of the area. The increase in flooding arising from the proposed land-raising would not have any significant adverse effect on the established land uses.
- I have found that (again subject to proposed conditions) the proposed development would be in keeping with the character of the surrounding area and would not detract from its amenity.
- if the issue in respect of the trees can be resolved, there will not be ill-effects arising from over-development.
- the scale, form, design and density of the proposed buildings respects its context. The compliance of the materials with this policy can be secured by condition.
- subject to conditions, adequate servicing and access can be achieved.
- there is no significant loss of daylight, sunlight or (subject to the protection of existing trees under proposed condition 1) privacy to adjoining properties.

The proposed development would accord with policy ED5.

Neighbour notification of the application

4.42 One of the objectors alleges she did not receive notice of the application for the proposed development, as required by law. She acknowledges that she nonetheless found out about the proposed development and was able to make a submission to the council in respect of it.

4.43 The objector considers she ought to have had 21 days (which she considers the minimum period required by law) to comment on the proposed development. I have

provided an opportunity to parties to comment on the application documents before me. Consequently, I do not understand the objector to have been substantially prejudiced in her ability to put her case. I do not consider that any failure in giving the proper initial notice is fatal for the application.

CHAPTER 5: CONCLUSIONS

5.1 The proposed development is in a location allocated for regeneration. It is consistent with the criteria of LDP policy ED5 which deals with regeneration. Notwithstanding that the proposed development is within the 1-in-200-year floodplain, it is also consistent with policy LDP IS8. I have not found it to be inconsistent with any other development-plan policy. I find that the proposed development accords with the development plan overall.

5.2 In my view, notwithstanding the proposed development being located within the 1-in-200-year floodplain and therefore in a medium- to high-risk area in respect of flooding, it is consistent with SPP's flood-risk framework. It would be in a built-up area and would be protected by flood-protection measures of a standard identified as acceptable in SEPA's guidance. In my view, the standard for acceptable flood-protection measures identified in SEPA guidance can also be applied to determine the standard required by SPP.

5.3 Ministers may take the view that SPP requires a higher standard of flood-protection measures than that set out in SEPA guidance for development of the type proposed. In that case, I consider that the following are material considerations that indicate the policy restriction on development in a medium- to high-risk area can be set aside in this case: the site is allocated for regeneration in the LDP; the site has had a previous use of a similar degree of vulnerability; and flood defences are being built that will make it better defended than before.

5.4 I have found that the effect of the predicted increase in flood level as a consequence of the proposed development would have (subject to account being taken of it in the design of the flood-protection scheme) a neutral effect on flood risk. I have identified a number of circumstances that justify the proposed land-raising. I consider these amount to exceptional circumstances, in terms of SPP. In particular, my view is that the proposed development would not go ahead if land-raising is not permitted, which would leave an unsightly brownfield site near the centre of Hawick. In my view, the circumstances are sufficient to justify the proposed land-raising under SPP.

5.5 I recognise that there is a degree of judgement in both my assessment that the circumstances are exceptional and that they are sufficient to justify the proposed land-raising. Ministers might take a different view. I note, though, that similar development at a similar degree of flood risk (and which has involved land-raising) has been permitted to south and north. This is also a material consideration in favour of a grant of permission.

5.6 The council proposed fourteen conditions and a number of informatives. The conditions secure protection of the trees on the western boundary and elsewhere in the site, co-ordination of development with that of the flood-protection scheme, further consideration of the design and finish of the proposed buildings, an archaeological investigation of the site, investigation and remediation of contamination, and details of lighting, landscaping, boundary treatment, drainage and internal layout. Although the informatives are extensive, they are integrated with the conditions, and provide information on what the planning authority expects by way of performance of the conditions' requirements. I agree the conditions would be necessary, and I recommend (with one minor amendment to condition 13, which I described in chapter 4) that they are attached to the permission, should Ministers grant it, along with the proposed informatives. My recommendation for conditions and informatives is set out in schedule 2 to this report.

5.7 I therefore find that the proposed development accords with the development plan and that there are no material considerations that would indicate permission should not be granted. I recommend that permission is granted subject to the conditions set out in schedule 2.

Robert Seaton
Reporter

SCHEDULE 1: LIST OF APPLICATION DRAWINGS

- [Location plan AT3184 Loc1](#)
- [Site plan AT3184 I\(-1\)101 rev i](#)
- [Site drainage layout plan P18-377-3E-ZZ-XX-DR-C-1000-P2](#)
- [Proposed retail unit floor plan AT3184 L\(-2\)101 rev A](#)
- [Proposed retail unit elevations AT3184 L\(-4\)101 rev A](#)
- [Proposed levels plan P18-377-3E-ZZ-XX-DR-C-2000-P3](#)
- [Proposed drive-thru floor plan 7929-SA-8970-P006](#)
- [Proposed drive-thru elevations and section 7929-SA-8970-P005](#)
- [Proposed build-up works site plan 18-377-3E-ZZ-XX-DR-C-4000-P2](#)

SCHEDULE 2: CONDITIONS AND INFORMATIVES

1. Notwithstanding the details submitted in support of the planning application, no development shall commence until, EITHER:

(a) revised versions of all of the approved site layout plans have first been submitted to and approved in writing by the planning authority, which all consistently describe the footprint and foundations of the retail unit building hereby approved, set back such as to be at least a minimum distance of 4 metres away from the existing property boundary with the garden ground of Haig House, 23 Princes Street; OR

(b) an arboricultural report prepared by a qualified professional arboriculturalist, which identifies and describes the impacts of the proposal upon all trees along the western boundary of the site, has first been submitted to, and approved in writing by, the planning authority and includes appropriate mitigation of these impacts.

Thereafter, the development shall only be implemented and operated in accordance with the approved details including any and all measures specifically identified to conserve the trees in question.

Reason: To retain effective control over the development in the interests of conserving appropriately trees on neighbouring land and within a tree-preservation order, which make a valuable contribution to the visual amenities of the site and surrounding area and to the residential amenity of 23 Princes Street and its neighbours.

2 No development shall commence until an Arboricultural Method Statement (AMS) fully compliant with BS5837:2012, has first been submitted to, and approved in writing by the planning authority, which details in full the approach and measures that are to be taken - during the construction period and within the construction works themselves - to minimise impacts upon all trees within the area of tree-preservation order SBC57, including all such impacts upon and within the root protection areas and canopy spreads of all trees that root into, and/or overhang, the site. This shall include all measures that are to be put in place or operated in order to minimise such impacts during construction works (including excavations) to accommodate any and all services (including water supply) and within the formation of any and all areas that are to be surfaced in hard standing. Further to the approval of this AMS, the development shall then be implemented in accordance with the approved details, including any and all mitigation measures required to protect the root systems within the area concerned.

Reason: To retain effective control over the development in the interests of conserving appropriately trees on neighbouring land and within a tree-preservation order, which make a valuable contribution to the visual amenities of the site and surrounding area.

3 No development shall commence until a written programme and timetable for the implementation of the development, which addresses in full the matters set out in Informative Note 1 attached to this planning permission, has first been submitted to, and approved in writing by, the planning authority after consultation with the council's Roads Planning Section and the Hawick Flood Protection Scheme project team. Thereafter, the development shall only be delivered and implemented in accordance with the details of the approved programme and timetable unless any subsequent change or changes to the

approved details are first agreed in writing by the planning authority prior to the implementation of this change/these changes.

Reason: To retain effective control over the delivery and implementation of the development in the interests of road safety, by ensuring that sufficient measures are in place to manage vehicular and pedestrian movements at and around the site during the development period; and in the interests of mitigating appropriately the risk of any unacceptable flood risk impacts at the site and in the surrounding area during the same period by ensuring the delivery and effectiveness of the Hawick Flood Protection Scheme are not compromised by the development.

4 Notwithstanding the details submitted in support of the planning application, and unless otherwise agreed in writing by the planning authority in advance of the commencement of construction on the retail unit building hereby approved, no development shall commence upon the superstructure of this aforementioned building until a scheme of details describing the proposed external materials and finishes of the external surfaces of this same building, has first been submitted to, and approved in writing by, the planning authority. Thereafter, the development shall be implemented in accordance with the approved details and the external walls of the aforementioned building shall be so finished, by a point in time that is no later than six months after the day of the first occupation of this same building.

Reason: To ensure a finished appearance for the same building that is sympathetic to the visual amenities of the site and surrounding area, including Commercial Road and the Conservation Area.

5 Notwithstanding the details submitted in support of the planning application, and unless otherwise agreed in writing by the planning authority in advance of the commencement of construction on the restaurant building with drive thru and takeaway facilities hereby approved, no development shall commence upon the superstructure of this aforementioned building until a scheme of details describing the proposed external materials and finishes of the external surfaces of this building has first been submitted to, and approved in writing by, the planning authority. Thereafter, the development shall be implemented in accordance with the approved details and the external walls of the aforementioned building shall be so finished, by a point in time that is no later than six months after the day of the first occupation of this same building.

Reason: To ensure a finished appearance for the same building that is sympathetic to the visual amenities of the site and surrounding area, including Commercial Road and the Conservation Area.

6 Notwithstanding the details submitted in support of the planning application, none of the following ancillary structures shall be erected or installed on site, other than in accordance with a scheme of details for each, which shall in each case first have been submitted to, and approved in writing by, the planning authority, and which shall furthermore in each case also include full details of the proposed size (including dimensions) and proposed finished appearance (including design, materials and finishes) of each, and each type of, ancillary structure:

- (a) storage container;
- (b) trolley bay shelter;

- (c) cycle store; and
- (d) play area, including details of all proposed play equipment, the surfacing and any enclosure.

Thereafter, the development shall be implemented in accordance with the approved details.

Reason: To ensure a finished appearance for the site that is sympathetic to the visual amenities of the site and surrounding area, including Commercial Road and the Conservation Area.

7 No development shall commence until the developer has secured approval from the planning authority for a Written Scheme of Investigation (WSI) detailing a programme of archaeological works. The WSI shall be formulated and implemented by a contracted archaeological organisation working to the standards of the Chartered Institute for Archaeologists (CIfA). The WSI shall be submitted by the developer no later than 1 month prior to the start of development works and approved by the planning authority before the commencement of any development. Thereafter the developer shall ensure that the programme of archaeological works is fully implemented and that all recording, recovery of archaeological resources within the development site, post-excavation assessment, reporting and dissemination of results are undertaken per the WSI. (Please see Informative Note 2 for related advice and guidance).

Reason: The site is within an area where development may damage or destroy archaeological remains, and it is therefore desirable to afford a reasonable opportunity to record the history of the site.

8 Unless otherwise agreed in writing and in advance by the planning authority, no development shall commence until a ground-investigation report has first been submitted to and approved in writing by the planning authority. The report shall include identification and assessment of potential contamination on the site (in accordance with PAN 33 (2000) and BS10175:2011 or subsequent revisions/replacements) and shall include (as applicable) a remediation strategy, validation report and monitoring statements, including timescales for the implementation of all such measures. Development shall not commence until the report is approved by the planning authority. Thereafter, the development shall be carried out only in accordance with the approved report, including approved remediation, validation, monitoring measures and timescales for their implementation.

Reason: To ensure that the potential risks to human health, the water environment, property and ecological systems arising from any identified land contamination have been adequately addressed.

9 Notwithstanding the details submitted in support of the planning application, and unless otherwise agreed in writing by the planning authority in advance of the commencement of development, no development shall commence until all of the following have first been submitted to, and approved in writing by, the planning authority after consultation with Transport Scotland:

- (a) a scheme of details of street lighting (including the proposed locations, dimensions, materials and finishes of the columns; the proposed numbers, specifications, luminance and operation of the lamps; and the lighting design); and

(b) a scheme of details describing the treatment of the site boundary with the A7 Trunk Road, including measures to regulate public access between the site and the carriageway of the Trunk Road.

Thereafter, the development shall be implemented and operated in accordance with the approved details and the site shall not be occupied for the first time, or be made accessible to the general public, until all of the approved street lights have all first been installed and are all fully operational; and the roadside boundary treatment has first been fully implemented, and the measures to regulate public access to and from the trunk road are first in situ.

Furthermore, the aforementioned measures shall thereafter be maintained and operated in perpetuity in accordance with the approved details (including any and all repairs and replacement as necessary, to maintain this boundary treatment in situ, and to the required specification).

Reason: To ensure that there is no distraction or dazzle to drivers on the trunk road and that the safety of the traffic on the trunk road is not diminished; and to minimise the risk of pedestrians and animals gaining uncontrolled access to the trunk road with the consequential risk of accidents.

10 Notwithstanding the details submitted in support of the planning application, no development shall commence until revised versions of the approved site layout plans, which address in full the concerns of the Roads Planning Service (set out within Informative Note 3), have first been submitted to, and approved in writing by, the planning authority. Thereafter the development shall be implemented and operated in accordance with the approved details. Furthermore, and unless otherwise agreed in writing and in advance by the planning authority, no part of the development hereby approved shall be opened to, or otherwise made accessible to, the general public until the road access, footways and car parking provision described on the approved drawings have all first been fully constructed and completed, and made fully available to, and for use by, visiting members of the public.

Reason: To retain effective control over the construction and operation of the site in the interests of road and public safety.

11 Surface-water drainage from the site shall not be connected into the existing surface-water-drainage system which serves the carriageway of the A7 trunk road. No development shall commence until a revised version of the Approved Site-Drainage Plan, which addresses in full the matters set out in Informative Note 4, has first been submitted to, and approved in writing by, the planning authority. Thereafter, the development shall be implemented and operated in accordance with the approved details. Furthermore, and unless otherwise agreed in writing and in advance by the planning authority, no part of the development hereby approved shall be opened to, or otherwise made accessible to, the general public until the approved surface water drainage system has first been completed and fully implemented.

Reason: To retain effective control over the construction and operation of the site in the interests of road and public safety.

12 Notwithstanding the details submitted in support of the planning application, this consent shall not purport to grant consent for any of the following structures or installations

that are described or indicated on the Approved Drawings, including the Approved Site Plan:

- (a) "Pumping station";
- (b) "Totem"; and/or
- (c) "Banner".

Please see Informative Note 8 for related advice and guidance.

Reason: To retain effective control over the development. The permission is not specifically an approval of the pumping station (or any other infrastructure) which is to be installed or operated by the Hawick Flood-Prevention Scheme under a different consent. Any advertisements require advertisement consent.

13 Notwithstanding the details shown on the approved drawings, the development hereby approved shall not take place except in strict accordance with a scheme of hard and soft landscaping works, which shall first have been submitted to, and approved in writing by, the planning authority before the commencement of development. Details of the scheme shall take full account of the advice and guidance of Informative Note 6, and shall include:

- (a) location and design, including materials, of any walls, fences and gates;
- (b) all soft and hard landscaping works;
- (c) a planting schedule and programme for subsequent maintenance;
- (d) the design specifically of the boundary treatment for the site's western boundary with properties on Princes Street and northern boundary with the present Aldi store;
- (e) a description of how the proposed landscaping scheme accords with the council's 2007 guidance Designing Out Crime in the Scottish Borders (or any replacement of that guidance).

Unless otherwise agreed in writing and in advance by the planning authority, all planting, seeding and turfing comprised in the approved details of new soft landscaping shall all be carried out during the first full planting and seeding seasons following the first occupation of the first of the two buildings hereby approved (regardless of whether this is the retail-unit building or the restaurant building), and shall be maintained thereafter and replaced as necessary for a period of five years from the date of completion of the planting, seeding or turfing. Further to the completion of all approved new planting during the first full planting and seeding seasons following the first occupation of the first of the two buildings hereby approved, written notice shall be given to the planning authority for its information and inspection.

Reason: To ensure the satisfactory form, layout and assimilation of the development and to ensure that the proposed landscaping is carried out as approved.

14 No trees within the application site shall be felled, lopped, lifted or disturbed in any way without the prior written consent of the planning authority. Further, and unless otherwise agreed in writing and in advance by the planning authority, there shall be no excavation or raising or lowering of levels within the root-protection area(s) of any retained tree(s).

Reason: To ensure that the trees to be retained will not be damaged during demolition or construction, because the existing tree(s) represent an important visual feature which the planning authority considered should be substantially maintained.

Informatives

INFORMATIVE NOTE 1:

The timetable and programme required under Planning Condition 3 attached to this Consent, should identify the precise times, periods (in calendar dates) and arrangements for the operation and management of all vehicular and pedestrian movements at, to, from and around the site, during all of the following phases of the implementation and progress of the development hereby consented, and any interludes in between these:

(a) the commencement, progress and completion of any use of the site for the accommodation of any and all operations relating to the progress of the Hawick Flood Protection Scheme works; and

(b) the commencement, progress and completion of the re-development of the site hereby approved, including the timetables and programmes for the completion of both the retail unit building and of the completion of the restaurant building.

The details shall include the proposed access arrangements to and from the site during all of these periods, and identify any and all measures required within the operation of the surrounding streetscape and wider road network, required to manage safely and expeditiously all vehicular and pedestrian movements at and around the site during these phases.

INFORMATIVE NOTE 2:

The Written Scheme of Investigation required under Planning Condition 7 should include a proposed protocol for identifying whether or not there are any appropriate opportunities to conserve a record of the presence of the mill lade on the site, including any potential to conserve and display any actual physical remnant(s) in situ; and/or to provide any other interpretative resource to advise visiting members of the public about the site's industrial heritage.

INFORMATIVE NOTE 3:

The details of the revised Site Plan Drawing required under Planning Condition 10, should be revised to address the following points highlighted by the Roads Planning Section:

- The radii on the left of the exit from the restaurant drive-thru should be larger and sweeter to ensure vehicles can manoeuvre out without having to use both lanes of the access road;
- The tie-in path with Aldi conflicts with a parking space in the Aldi layout and also has steps present. This should be an at-grade route. A revised detail for this area is required;
- The crossing point located adjacent to the two disabled bays at the corner of the access road should either be relocated so as not to conflict with the adjacent parking bay or omitted. Pedestrians from that corner of the parking area and the link path should be encouraged to travel to the crossing in front of the main access;
- The trolley store and goods display zones still interfere with the free-flow of pedestrians/customers, particularly the one at the south east corner of the store;
- an upstand kerb should be utilised where the link path passes through the parking areas to the right of the restaurant. This will prevent vehicles driving across this area,

protect the pedestrians and protect the footpath. (If flush kerbs are retained, the construction of the path is not to a standard suitable for vehicles and may deteriorate quicker than expected); and

- A flush kerb should be provided between the two disabled bays to assist with access to the restaurant.

INFORMATIVE NOTE 4:

The details of the revised Site Drainage Plan Drawing required under Planning Condition 11, should be revised to address appropriately all of the following points highlighted by the Roads Planning Section:

- As described on the Proposal Drawings, surface water may flow on to the pedestrian area in front of the restaurant due to the road levels and the flush kerb for the pedestrian crossing, to the left of the disabled bays;
- The levels indicate a low point in the corner of the parking area adjacent to Commercial Road [100.300]. This area may be susceptible to ponding as the construction does not appear to be porous;
- There does not appear to be any drainage for the access path around the store building; and
- The gullies indicated for the parking areas along the main access road would be better placed on the carriageway side of the flush kerb, rather than on the parking side.

INFORMATIVE NOTE 5:

Please note that the signage shown on the approved drawings is not approved under this planning consent. An advertisement consent application is required for the proposed signage unless the signage is compliant with exemptions under the Advertisement Regulations.

INFORMATIVE NOTE 6:

Planting plans must provide sufficient information to be enforceable by detailing the following:

- i.) Plan is to an identified true scale (e.g. 1:200).
- ii.) Boundary of the application site is clearly marked.
- iii.) Site orientation is indicated by a north point or Ordnance Survey grid lines.
- iv.) All existing trees, shrubs and hedges to be retained are clearly marked.
- v.) Take account of site factors such as slope, aspect, soil conditions, proximity of buildings and minimum distances from pipe and cable runs, when choosing planting positions. Where necessary, seek professional landscape advice.
- vi.) Planting positions are clearly marked showing individual trees and shrubs and / or planting area boundaries using dimensions as necessary.
- vii.) All species of plants identified using their full botanical name (e.g. oak - *Quercus robur*)
- viii.) All plant numbers to be identified individually or by group or area as appropriate. Species mixes can be identified by percentages and an overall number or a specified area and a planting density (e.g. Silver Birch - *Betula pendula* 30%, oak - *Quercus robur* 70%, 120 square metres @ 1 plant per 4 square metres = 9 *B. pendula* & 21 *Q. robur*)
- ix.) A planting schedule identifies all the proposed planting by species and specification indicating size and nature of plants to be used (e.g.: Extra heavy standard tree 14-16cms girth or shrub 60-75cms high in 2 litre pot.)

- x.) Notes on the plan describe how the planting is to be carried out and maintained to ensure successful establishment.
- xi.) The plan indicates when the work will be completed and ready for inspection taking account of planting seasons (e.g. November to end March each year for bare rooted plants.)

N.B. Planting conditions are only discharged following an inspection of the completed work. Please also note that the programme for completion and subsequent maintenance must include action points describing actions that will definitely be taken by the Applicant, and must also note precisely when these are to be carried out (i.e. definite actions to be carried out at clearly identifiable times). Use of ambiguous, vague or otherwise non-committal words or phrases (including "should", "could" or "may") must be avoided in favour of words and phrases that are clear and definite (such as "will" and "shall") when detailing these actions that the Applicant will carry out. A critical concern is that the detail and timing of the measures are capable of being checked if necessary by a third party, rather than left as discretionary or optional.

INFORMATIVE NOTE 7:

The granting of planning consent does not carry with it the right to carry out works within the trunk-road boundary and that permission must be granted by Transport Scotland Trunk Road and Bus Operations. Where any works are required on the trunk road, contact details are provided on Transport Scotland's response to the planning authority which is available on the council's planning portal.

Trunk-road modification works shall in all respects comply with the Design Manual for Roads and Bridges and the Specification for Highway Works published by the HMSO. The developer shall issue a certificate to that effect, signed by the design organisation.

Trunk-road modifications shall in all respects be designed and constructed to arrangements that comply with the Disability Discrimination Act: Good Practice Guide for Roads published by Transport Scotland. The developer shall provide written confirmation of this, signed by the design organisation.

INFORMATIVE NOTE 8:

The Roads-Planning Section has raised concerns with regard to the need to manage the use of customer-parking provision at the site, including the restaurant's operation of its own dedicated customer-parking provision, as well as the temporary requirement for customer parking areas within the site to be set aside at times for the use and movement of delivery vehicles. Ultimately, the site's operators should be aware of the need for good and effective regulation of the parking and access arrangements on site work to ensure that these work optimally and safely, avoiding any and all unnecessarily exclusive, restrictive or overly elaborate arrangements that would be liable to reduce parking options available to customers, particularly during peak times of the day. Ultimately it is with the operators, and is in the operators' best interests, to ensure that these matters are addressed appropriately.