

Derry City and Strabane District Council Planning Committee Report

COMMITTEE DATE: 14th February 2019

APPLICATION No: A/2014/0629/F

APPLICATION TYPE: Full

PROPOSAL: Medical Building (totalling 6,901 gross sqm) with car parking in a semi-basement, Superstore (totalling 5,574 gross sqm) associated car parking, Restaurant, Self Service Filling Station, servicing and landscaping with access/egress via Pennyburn Pass and Pennyburn Industrial Estate Road.

LOCATION: Arntz Belting Company Ltd site, Pennyburn Pass and former Eurocentre West site, Pennyburn Industrial Estate Road, Pennyburn Industrial Estate Londonderry.

APPLICANT: Arntz Belting Company Ltd

AGENT: McGurran Associates

ADVERTISEMENT: STATUTORY EXPIRY

14.1.2015	28.1.2015	(Initial Advertisement)
26.1.2016	9.2.2016	(Amended Scheme)
23.11.2016	7.12.2016	(Additional information received)
19.4.2017	3.5.2017	(Addendum to Environmental Statement)
15.8.2017	29.8.2017	(Amended transport information)
30.8.2017	13.9.2017	(Amended Retail Impact Assessment)
1.11.2017	15.11.2017	(Addendum to Transport Assessment)
1.8.2018	15.8.2018	(Scheme Readvertised including Flood Risk Assessment)

RECOMMENDATION: Approve

REASON FOR PRESENTATION TO COMMITTEE: Major Application – Retailing, Community, Recreation and Culture – Development that comprises 1,000 square metres or more gross floor space outside town centres or the area of the site exceeds 1 hectare.

All planning application forms, drawings, consultation responses, letters etc. relating to this planning application are available to view on www.planningni.gov.uk

1.0 Description of Proposed Development

1.1 It is proposed to construct a Mixed Use Retail scheme consisting of a retail park with a medical building with a semi basement car park, superstore, restaurant and self-service filling station. The application site covers an area of c.5.83ha. The detailed plans are included in Appendix 1A. The gross floor area proposed is as follows:

- Foodstore Unit 5,574 sqm
- Restaurant 390sqm
- Medical Building 6,901sqm

2.0 EIA Determination

2.1 The application was accompanied by an Environmental Statement (ES). This ES includes information considered necessary to assess the environmental effects of the development and identifies appropriate mitigation measures where relevant to ensure the proposal can be implemented without adversely impacting on the environment.

The following is a list of environmental subjects given individual chapters within the ES

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| Chapter 1 | Introduction |
| Chapter 2 | Background and Project Description |
| Chapter 3 | Planning Policy Context |
| Chapter 4 | Human Environment and Socio-economic Effects |
| Chapter 5 | Noise Impact Assessment |

Chapter 6	Transport Assessment
Chapter 7	Soils, Water, & Land Contamination Assessment
Chapter 8	Drainage Assessment
Chapter 9	Archaeology
Chapter 10	Landscape and Visual Impact Assessment
Chapter 11	Ecological Assessment
Chapter 11A	Bat Survey
Chapter 12	Air Quality Impact Assessment

2.2 Following proposed amendments the proposal was subject to further assessment and further information was submitted in respect of the Retail Impact assessment (RIA), transport assessment (TA) and Site analysis and concept. A Flood Risk Assessment (FRA) was also submitted as further environmental information. These amendments were advertised as per the EIA legislative requirements.

3.0 Site and Surrounding Area

3.1 The application site is currently a 5.83 ha site comprising the former Arntz Belting Company and the former Eurocentre West site. The site is located on the Pennyburn Pass, bounded by the Bunrana Road to the North and Pennyburn Industrial Estate to the West/North West. The south eastern edge of the site contain a mix of residential development, including McCartney Park and Pennyburn Court. To the north east of the site, along the Bunrana Road, the lands are given over to a variety of land uses ranging from commercial, office, residential and car park use. The lands to the north west include a bus depot, while to the west and south west the majority of the land use is given over to wholesale and industrial activity. An entertainment complex including a restaurant and cinema are located along the south west directly adjoining the site boundary. Pennyburn Community Centre and St Patricks RC Church are also located to the North East of the site.

- 3.2 The site contains a number of derelict buildings and concrete hard standing with small areas of grass and some trees throughout.
- 3.3 The site is within the settlement limits of the City of Derry and immediately adjacent to, but outside of the Central Area as defined on the map in Appendix 1B. The site is would be considered as a brownfield site with a previous economic development use.

4.0 Site Constraints

- 4.1 The site lies immediately outside the Central Area of the DAP 2011 and is considered edge of centre.
- 4.2 The site is identified in the Derry Area Plan 2011 as “Archaeological Sites and Monuments”.
- 4.3 The site is in close proximity to the River Foyle ASSI and Tributaries
- 4.4 The site is also in close proximity to St Patricks Church and Manse, both of which are Grade B1 and B2 listed buildings respectively.
- 4.5 Natural Environment Division, Historic Environment Division, Rivers Agency and Shared Environmental Services have all been consulted regarding the above constraints. A summary of all consultation replies are set out in Section 7.

5.0 Neighbour Notification

Appendix 1C lists the neighbours notified.

6.0 Relevant Site History

Under planning approval A/2008/0677/O these development lands currently have planning approval for a Non Food Retail and Retail Warehousing (Total GFA – 36000sqft). Access to this approved site was directly off Pennyburn Industrial Estate Road and this is to be retained as the same access to the northern portion of the lands.

6.1 A/2007/1166/O – Arntz Site

Site for mixed use development to include the provision of residential development and accommodation for hi-tech companies.

Permission refused 29.08.2008

The applicant was Arntz Belting Co. The application was refused for the following reasons:

1. The proposal is contrary to the Regional Development Strategy for Northern Ireland 2025, Policy SPG-ECON “in that the proposal if approved would lead to a loss of an industrial site which is centrally located to an existing labour market and lies adjacent to a key transport corridor.
2. The proposed development is contrary to the Regional Development Strategy for Northern Ireland 2015, Policy SPG-HOU5 and Planning Control Principle 1 of PPS12 Housing in Settlements in that the proposal would represent town cramming.
3. The proposal is contrary to Planning Policy Statement 1 – General principles paragraph 11 in that the loss of an existing industrial site and the loss to the local economy would not deliver the Departments aim of achieving sustainable development.
4. The proposal is contrary to the Department’s paragraph 35 of Planning Policy Statement 4 Industrial development in that it would result in the loss of an existing industrial or storage/distribution use within the development limits of Derry and there are no overriding benefits that would justify this proposal being considered an exception to this Policy.
5. The proposal is contrary to the Departments Policy IBD3 of Draft Planning Policy Statement 4 Industry, Business and Distribution in that it would result in the loss of an existing industrial or storage distribution use within the development limits of Derry and there are no overriding benefits that would justify this proposal being an exception to this policy.
6. The proposal is contrary to Policy QD1 of PPS 7 Quality Residential Developments and DCAN 8 Housing in Existing Urban Areas in that the Design

Concept Statement submitted with the application has not demonstrated that it meets criteria a, c, e g and I of QD1 and therefore will not create a quality residential development.

7. The proposal is contrary to Policy IND 3 of the Derry Area Plan 2011 in that the proposal will be at variance with the Departments declared aim of retaining industrial uses and making full use of the existing infrastructure in industrial estates and its aim of reducing the need to travel.

6.2 A/2000/1095/F – Arntz Site

Erection of industrial extension for Arntz Belting Co Ltd

Permission approved 12.01.2001

6.3 A/2008/0677/O – Former Eurocentre Site

Construction of retail warehousing, associated car parking and general site works

Permission approved 16.05.2012

6.4 A/2000/0643/F – Former Eurocentre Site

Removal of 28no. Existing industrial units & offices and development of 4no. Two-storey units comprising 4752 sq. metres of floor space for research and development processes (Class 4)

Permission approved 13.11.2000

7.0 Consultation Responses

- 7.1 A summary of consultation responses is as below and conditions recommended are provided in full in section 12 of this report. The consultee responses will be referred to throughout the planning assessment in section 9 of this report.

- 7.2 **DFI Roads:** Transport impacts mitigated sufficiently that strategic nil net detriment has been adequately demonstrated subject to detailed highway design and technical approvals as per conditions recommended.
- 7.3 **NIEA Natural Heritage Division:** Impacts on designated sites and protected species considered and approval recommended subject to conditions.
- 7.4 **NIEA Historic Environment Division:** Agree with the mitigation proposed in the ES and recommend approval subject to standard conditions
- 7.5 **Environmental Health Department (EHD):** Noise Impact assessment and Air Quality assessment are acceptable subject to standard conditions controlling mitigation and operations where necessary.
- 7.6 **Shared Environmental Services (SES):** No adverse effect on site integrity of any European site and recommend approval subject to submission of construction management statement at least 8 weeks prior to commencement of development.
- 7.7 **DFI Rivers Agency:** Drainage assessment and Flood Risk assessment accepted and DFI Rivers could not sustain a reason to object from a drainage or flood risk perspective.
- 7.8 **NI Water:** No issues of concern, standard condition recommended.
- 7.9 **Loughs Agency:** Advised the site had a previous historical use of Toluene and they seek assurance that this has been specifically considered and no leaching can occur into the Pennyburn Stream. In consideration of this, the ES advises of a land contamination investigation previously carried out in 2010 which did not identify any significant contamination risks, therefore Loughs Agency response requires no further action.

8.0 Representations

A total of 79 objections have been received during the processing of this application and are considered in the planning assessment under the relevant sections. The objections are summarized as follows:

Appendix 1

- Traffic Impacts / congestion – these matters have been fully considered by DFI Roads, who have had sight of all objections including references to the A2 Widening Scheme and commented accordingly. DFI Roads are content that the proposal with appropriately designed junction improvements, which are conditioned, will not result in a net detriment to the safety and convenience of road users. AECOM have also lodged technical objections to the scheme on behalf of MBA planning consultancy, these have also been fully considered by DFI Roads.
- Residential amenity affected by the original retail ware housing proposed – the retail warehousing proposed has been omitted from the current amendment to the scheme.
- Noise / operating hours of superstore and restaurant – the noise impact of the proposal has been assessed by Environmental Health Department and an acoustic report has demonstrated that there is unlikely to be any significant impact upon amenity by way of noise nuisance. This point is considered further in the policy consideration below.
- Sufficient exiting retail provision in the city – The retail impact of the proposal has been based on the submitted retail impact assessment, this has been considered independently by retail consultants acting on behalf of this Council. A considered view on the retail impact of this proposal is outlined below.
- Detrimental impact on city centre traders – A considered view on the retail impact of this proposal is outlined below.
- Methodology used in Retail Impact Assessment - A considered view on the retail impact of this proposal is outlined below.
- Challenge to land ownership – This issue has been considered and control over the lands required for the proposal has been demonstrated by the applicant, whilst this remains contested by other parties, this is a civil legal issue between the contesting parties.
- Flood Risk and Methodology Used in FRA –Several objections raise the issue of the flooding risk of the site and the impact of any flood inundation from the potential failure of the Creggan Reservoir. Interpretation of FLD 5 is also challenged by objectors. The agent has submitted a Flood Risk Assessment in respect of FLD 5,

this has been sent to DFI Rivers Agency for consultation and they have agreed that the assessment is robust. This point is considered further in the policy assessment below in section 10.

The 5 letters of support all supported the investment and job creation to be created.

9.0 Planning Policy Framework

9.1 The application falls to be assessment under the relevant policy framework listed below:

- Regional Development Strategy
- Strategic Planning Policy Statement
- Derry Area Plan 2011
- PPS 2 Natural Heritage
- PPS 3 Access Movement and Parking
- PPS 4 Planning and Economic Development
- PPS 6 Planning Archaeology and the Built Environment
- PPS 13 Transportation and Land Use
- PPS 15 Planning and Flood Risk

10.0 Planning Assessment & Other Material Considerations

Section 6(4) of The Planning Act (Northern Ireland) 2011 requires the Council to make planning decisions in accordance with the local development plan, so far as material to the application, and to any other material considerations. The Derry Area Plan 2011 (DAP 2011) is the local development plan for the area. In addition to the DAP 2011, the SPPS is material to all decisions on individual planning applications (*para 1.5 SPPS, 2015*). The main considerations are:

- Retail Policy Context
- Retail Impact

- Traffic and Transport Impact
- Health and Community Impact
- Impact on surrounding land uses
- Other Environmental Considerations
- Economic Considerations

10.1 Retail Policy Context

Regional Development Strategy 2035 (RDS)

- 10.2 The RDS aims to strengthen Londonderry as the principal city within the North West, and notes the city has the capacity and potential for strong economic growth. SPG 7 looks to strengthen the City's role and prioritises the city for regeneration noting this should be the focus for shopping and commerce in the North West.

Strategic Planning Policy Statement for Northern Ireland 2015 (SPPS)

- 10.3 The SPPS is material to all decisions on individual planning applications. The SPPS sets out the core principles for the planning system are set out in section 4 and they are as follows:

- "Improving Health and Well-being;
- Creating and Enhancing Shared Space;
- Supporting Sustainable Economic Growth;
- Supporting Good Design and Positive Place making; and
- Preserving and Improving the Built and Natural Environment."

The section on Town Centres and Retailing identify the following regional strategic objectives:

- "secure a town centres first approach for the location of future retailing and other main town centre uses";
- Adopt a sequential approach to the identification of retail and main town centres uses in Local Development Plans (LDPs) and when decision taking;

- Ensure decisions and LDPs and decisions are informed by robust and up to date evidence in relation to need and capacity;
- Protect and enhance diversity in the range of town centre uses appropriate to their role and function, such as leisure, cultural and community facilities, housing and business;
- Promote high quality design to ensure that town centres provide sustainable, attractive, accessible and safe environments; and
- Maintain and improve accessibility to and within the town centre.”

10.4 Paragraph 6.282 of the SPPS states that where there is no up to date LDP Councils should require applicants to prepare an assessment of need that may incorporate a quantitative and qualitative assessment of need taking account of the sustainable and objectively assessed needs of the local town and take account of committed development proposals and allocated sites. In addition proposals over 1000 sqm and not proposed in a town centre must prepare a full assessment of impact.

10.5 Paragraph 6.290 sets out the factors that should be considered within a retail impact and assessment of need. These include:

- “the impact of the proposal on trade and turnover for both convenience and comparison goods traders, and the impact on town centre turnover overall for all centres within the catchment of the proposal;
- The impact of the proposal on existing committed and planned public and private sector investment and investor confidence in the town centre/s;
- The impact of the proposals on the delivery of the planned/allocated sites and the LDP strategy
- The impact on the vitality and viability of existing centre including consideration of the local context. This should take into account existing retail mix and the diversity of other facilities and activities.
- Cumulative impact taking account of committed and planned development, including plan commitments within the town centre and wider area; and,

- A review of local economic impacts.”

10.6 Paragraph 6.291 also states that where an impact on one or more of the criteria above is considered significantly adverse or where in balancing the overall impacts of each of the criteria the proposed development is judged to be harmful, then the application should be refused. Finally the SPPS advises that all retail type developments will be assessed in accordance with normal planning criteria including transportation and access arrangements, design, environmental and amenity impacts.

Derry Area Plan 2011 (DAP)

10.7 The DAP adopted in 2000 sets out the land use policies for the development of the city. Section 8 outlines the retail hierarchy, “ Commercial Core, District centres, Local Centres and corner shops in descending order of scale” (DPA 2011). Policy COM 1 seeks to protect the Commercial Core and the general thrust of Policy COM 2 is to retain and enhance where possible the District Centres. There is no sequential tests for Superstores within the DAP, therefore the sequential test referred to in the SPPS is now a material consideration and will be applied to this proposal. Section 15 sets out the policies for the Central Area, and in particular policies CA1 and CA2 are key. CA2 states that any proposals which prejudice the vitality and viability of the Commercial Core either directly or indirectly will be resisted.

The site lies immediately outside the central area and is therefore considered “edge of centre”. The site is on white land in the DAP and is unzoned. Given its previous economic development use it is considered as a brownfield regeneration opportunity. Appendix 4b illustrates the site in relation to the Central are and Commercial Core.

In relation to the provision of Community Facilities, paragraph 9.10 of the DAP states that it is unlikely that there will be a requirement for major allocations of land to accommodate new health facilities over the Plan period. If new sites are needed, land will be identified by individual site assessment. With regard to care services in the

community, favourable consideration will be given to the location of small special care facilities in appropriate locations.

10.8 **Retail Impact**

10.9 The current proposal being assessed is a retail food store measuring 5,574sqm gross, 3902sqm net. It is proposed that 70% of the sales space (2,731sqm net) will be allocated for the sale of convenience goods, with the remaining 30% (1,171sqm net) for the sale of comparison goods. Retail Impact Assessments (RIAs) were submitted to support the amended proposal in May 2016, March 2017 and August 2017. Council employed retail consultants to help review the methodology used and the findings. In addition to this Council has also considered previous decisions by the Planning Appeal Commissions (PAC) and these are referred to as appropriate. Since the submission of the last RIA in August 2017, the superstore approved at Crescent Link under A/2010/0493/F expired on 29th January 2018 and the Change of Use at Springtown, A/2010/0820/F expired on the 2nd October 2018. These permissions have been factored into different scenarios as set out within the applicants submitted Retail Impact assessments. These are set out within table 4.9 of the applicants RIA of March 2017, which is copied below.

Extant planning permissions for convenience goods floorspace			
App. No.	Proposal	Net sq.m.	Expiry date
A/2007/0145/F	Lisnagelvin Tesco redevelopment	33	17-04-17
A/2010/0493/F	ASDA Store Crescent Link	2,416	29-01-18
A/2010/0802/F	Springtown Change of use	2,048	02-10-18
LA11/2015/0124/F	Home Bargains	1,579	Opened 18/3/2017

Source: Planning Portal & Departmental evidence submitted at the Inquiry into the Tesco proposals at Faustina Retail Park

Retail Capacity and Needs Assessment

- 10.10 Council had concerns about the methodology used by the applicants in the initial RIAs submitted and that it was not comprehensive enough. Subsequently the final RIA submitted in August 2017 does provide sufficient analysis to consider and assess the impacts. A number of the objections focused on the methodology and data used in the RIA's and these concerns also support Council in the need for the amendments to be submitted. There are have been no further objections in respect of the retailing element of the scheme since the revised information was submitted in August 2017.
- 10.11 The base year for the proposal is 2016 and the design year is 2019. It is accepted by the authority that due to the previous decision being quashed on 29th June 2018, the actual design year may exceed 2019. The discrepancy between 2019 and any possible design year of 2020 or 2021 is not considered detrimental to the consideration of the retail information or the robustness of the Retail Impact Assessment. The last submission of retail information was in August 2017, whilst almost 18 months has now passed since this submission, the information upon which the retail impact assessment and associated addendums were based is industry standard and has applied to the scheme since its submission in 2014. Officers have assessed The Pitney Bowes Retail Expenditure Guide (PBREG-2017/18), which predicts spend per head growing by £3 for convenience goods and £156 for comparison goods. The spend per head is then considered against overall population in the catchment area which is projected to increase by 127 between 2018 and 2020. This then outlines that whilst there is an increase in the available expenditure for both comparison and convenience goods between 2019 and 2020, it is negligible in the overall context of the submitted information. The low population growth (0.2 % per annum) within the catchments means that the figures are relatively stable and as such appropriate to consider.
- 10.12 The catchment area is a 15 minute drive time from the proposals location. The population is estimated to grow to 106,605 by the design year in 2019. It is estimated that the available expenditure for convenience goods amounts to £295 million in 2019 and the available expenditure for comparison goods amounts to £420 million in 2019. Cross Border inflows from ROI are included in these estimations, however cross border outflows to ROI have not been included in the RIA. In relation to ROI inflows and Brexit,

it is considered the RIA may have benefitted from a further analysis to consider the different scenarios. However this is unlikely to change the overall position on the quantitative need.

- 10.13 The total turnover at the design year is estimated at £38.97 million. This comprises of £32.77 million for convenience goods and £6.2 million for comparison goods. These figures appear reasonable based on the latest Verdict data. The turnover of existing retail provision has been estimated at £315.9 million for convenience goods and £306.7 million for comparison goods. Prior to the development of any of the proposal or any current planning commitments, the difference between the available convenience expenditure (including ROI inflows) and existing turnover within the catchment is -£20.95 million.
- 10.14 With regard to comparison goods, the difference between the available expenditure (including ROI Inflows) and existing turnover within the catchment is £113.5 million. The difference between the available convenience expenditure and existing and proposed turnover is estimated at £107 million. This is significant and indicates a considerable level of quantitative deficiency in the catchment for convenience goods.
- 10.15 It is noted from the RIA, there is a significant deficit when comparing expenditure potential against turnover within the catchment area. As this calculation is based on company average turnover levels, the deficit would indicate that such levels are not being sustained by all retailers in the catchment.

Qualitative Need

- 10.16 The SPPS highlights in para 6.282 the quantitative and qualitative assessment should take account of the sustainably and objectively assessed needs of the local town together with committed development proposals and allocated sites.

Needs of the Town

- 10.17 The RIA indicates there is a qualitative need for the proposal:
- There is evidence of an outflow of convenience expenditure to Strabane within the 2012 DOE Retail Study

- The number of planning applications for new convenience retail developments in the catchment in recent years.
- An assessment of the quality and range of convenience provision in the town
- High levels of overtrading at certain stores within the catchment.
- The DSD Derry/Londonderry Demand Analysis (Dec 2014) found that existing facilities were trading strongly and above expected levels (by 44% or £88 million). The report also noted there is scope to grow the level of convenience retailing in the city (see Evidence Base 8 Retailing May 2017 prepared to support the LDP)
- Back in 2014 the PAC commissioner on the Tesco Faustina appeal (2013/A0055) did conclude that the proposal "... would provide greater choice and competition within the northern suburbs of the Cityside" (pg7). It was therefore considered to meet the policy tests in respect to the deficiency in the overall shopping provision at that time.

In light of the above evidence, Council has concluded there is a qualitative need for additional food store provision within the catchment area that the proposal would assist to address. This is supported from the advice from the retail consultants employed on behalf of Council.

Committed/Allocated Sites

10.18 The SPPS also requires that consideration be given to existing commitments and allocated sites. This is in case there are proposals already available to address these short comings. The catchment area has witnessed a high level of retail planning activity over the last 10 years. This has included a number of development proposals at Faustina Retail park (refused at appeal), Springtown, Northside, Genova NW, GML, Lisnagelvin and Niche Drinks. A planning application was submitted by Lidl NI on 7th March 2018. This application is yet undetermined and therefore is not considered in the Retail Impact Assessment for the current proposal on the Arntz site. Existing, approved and expired sites are included in the schedule at Appendix 1A.

10.19 The SPPS also requires an assessment of allocated sites in the development plan. Sections 5.3 and 5.5 of the RIA submitted in March 2017 demonstrates a sequential test has been carried out. It is considered this adequately addresses this and concludes that none of the 12 Opportunity sites identified in the DAP are considered suitable due to the site area not being sufficient to accommodate this scheme and there are no other alternatives within the Central Area or Commercial Core. This point is reasonable and evidence based and Council accepts this position regarding this edge of centre proposal now being sequentially assessed.

Cumulative Retail Impact Assessment

10.20 The SPPS requires that retail impact assessments consider cumulative impact matters taking account of committed and planned development, both within town centres and the wider area. The turnover over the proposal is £38.97 million as previously noted in para 9.11 of this report.

Estimation of Trade Draw

10.21 It is estimated that 35% of the proposed superstore's turnover from the sale of convenience goods will come from within the 0-5 min drive band, 40% from the 5-10 min drive band, 5% from the 10-15 min band with the remaining 20% from beyond the 20% the 15 min catchment. For comparison goods shopping, 60% of trade is estimated to originate from within the 10 min drive band. Council considers that trade draw from beyond the catchment may be higher than 20% and that this would likely decrease the impact on retailers within the catchment area.

Assessment of Commitments and their Trade Draw, Trade Diversion and Impacts

10.22 **Convenience Goods** - The extant permissions for convenience goods floor space within the catchment area have been set out in the RIA. The approval at Unit 4 Crescent Link has not been included, however it is considered by Council not to significantly impact on the trade draw/diversion estimations and the details and

further considered in this section. The trade diversions in the RIA are generally based on the principle of “like competes with like” in that the majority of diversions will be derived from locations that are most similar to the offer. This principle is supported and considered robust. In terms of trade draw the final RIA in August 2017 presented three scenarios:

- 1) The trade draw and impact assessment of the proposals in isolation (solus)
- 2) The trade draw and impact assessment of the proposals at Crescent Link
- 3) The trade draw and impact assessment of the proposals with the commitments at Crescent Link and Springtown Shopping Centre.

Since the submission of the RIA the Crescent link superstore approval and the Springtown 2010 approval have both expired; it is reasonable to assert that scenario 1 is the impact which should be afforded the most weight.

10.23 In the first scenario, the solus trade draw and impact assessment of the proposals in isolation are considered. The majority of trade impact is anticipated to fall on the Tesco store at Lisnagelvin (15.7%), Dunnes at Springtown (13.3%), Supervalu store at Northside District Centre (13.9%), Tesco Quayside (11.2%) and Sainsburys Strand Road (11.1%).

10.24 In terms of impacts on overall centre turnover, the RIA indicated that Lisnagelvin District Centre will experience the highest level of impact (14%), followed by Springtown District Centre (12.9%), Northside District Centre (12%) and Derry City Centre (9.8%).

10.25 Whilst some of these impacts are adverse, it is considered these are not significantly adverse as per the test in the SPPS. Given the high level of overtrading at the Tesco, Lisnagelvin store it is considered this could withstand the levels of impact proposed.

Whilst the current vitality and viability of both Springtown and Northside District Centres are less than satisfactory, confirmed by updated information in the RIA, it is considered that both of the anchor stores within each centre would remain viable based on the diversions proposed and would continue to fulfil a top-up function following the completion of the development proposals.

- 10.26 The need for improved choice and provision in the catchment is clear and needs to be given clear consideration.
- 10.27 The second and third scenarios presented in the RIA included the committed development at Crescent Link and Springtown. Given the expiry of these approvals, Council has considered these impacts but not placed determining weight on their outcomes.
- 10.28 From further analysis of the figures presented in the RIA in Appendix 5 and the supporting information noted in the RIA it is notable that the introduction of new retail floor space at Springtown is likely to heighten its appeal and correspondingly lead to a lowering of retail impact, with a 5.6% impact on the Springtown District Centre. Although the 2010 approval for the variation of condition to allow for additional convenience floorspace for Springtown has expired, the physical extension and floorspace exists at present, it was just that this did not become operational within the timeframe of the permission. This results in an over impact of 10.6% in 0-5min drive band. This is a reduction of approximately 6.7%. The impact on Northside is also significantly reduced to 2.9% and Sainsburys to 3.9%. On that basis it is considered this is not a significantly adverse cumulative impact.
- 10.29 In the 5-10 min drive band the impact on Tesco Lisnagelvin will be reduced from 30.2% to 2.9% with the expiry of the Crescent Link superstore. This is not significantly adverse and in particular given the estimated over trading currently taking place at that Tesco store. In relation to the convenience element of the approval in September 2017 at Crescent Link Retail Park, it is important to note the small scale of the convenience stores at this location. The approval will add approximately 550sqm convenience floor space which when added to the total impact on Crescent Link results in a 1.8% impact. This is not significantly adverse. The total cumulative impact of the proposal and the Springtown approval on the Central Area is reduced to 12.7%. An objection was received from the City Centre Initiative back in June 2015. The scheme has been amended since then with the retail floor space reduced and significantly the expiry of the Crescent Link superstore, Tesco Lisnagelvin and Niche Drinks sites has meant a further significant reduction in the impact on the central area to from 19.5% to 12.7%.

The current estimated cumulative impact on all centres catchment is 11.4%. This is not significantly adverse.

10.30 **Comparison Goods** – The details in the RIA do not provide a comprehensive trade diversion and impact assessment as required by the SPPS. The commentary in respect to the growth in comparison expenditure between the base and test years is noted, however, this should have been completed in order to provide a robust assessment for this element of the proposal.

10.31 In terms of considering the cumulative impact, the RIA considered the impact of the proposal and Crescent Link and Springtown on existing centres. This was a worse case scenario and presented an impact on 0.72% on the Springtown centre with an overall impact of 0.3% on all the centres within the whole catchment area. With the expiry of Crescent Link this creates a positive figure resulting in 1.7% shortfall in the provision, therefore there is capacity for the comparison goods element. This is not adverse and is the proposal will provide an opportunity to provide this capacity. Both permissions have now expired.

10.32 **Planned Public and Private Sector Investment**

10.33 There are no planned public sector investments indicated within the current Derry Area Plan. This Council does have a Capital Projects and Investment agenda and the recent launch of the Strategic Growth Plan sets the foundation for this long term growth. The preparation of the new Council-wide Local Development Plan will provide a strong and evidence based framework to for growth and investment. It is important to note the recent approval for approximately 3, 500 homes in two phases on the H2 lands. These dwelling will further support the need for local shopping provision at both Springtown and Northside, and Council estimates this will further reduce the impact of the proposal on this centres, improving their vitality and viability. As a result it is not considered the proposals would negatively impact on any current committed and planned public and private sector investment.

10.34 **Traffic and Transport Impact**

10.35 The SPPS advises the successful integration of transport and land use is fundamental to the objective of furthering sustainable development. Planning has a vital contributing role for improving connectivity and promoting more sustainable patterns of transport and travel. The aim of the SPPS with regard to transportation is to secure improved integration with land-use planning, to facilitate safe and efficient access, movement and parking.

The regional strategic objectives for transportation and land use planning are to:

- Promote sustainable patterns of development which reduce the need for motorised transport, encourages active travel, and facilitate travel by public transport in preference to the private car
- Ensure accessibility for all
- Promote the provision of adequate facilities for cyclists in new development
- Promote parking policies that will assist in reducing the reliance on the private car and help tackle growing congestion
- Protect routes required for new transport schemes.

10.36 In assessing development proposals, the SPPS advises planning authorities must apply the Department's published guidance and this would be PPS 3 and PPS 13 respectively. The proposed mixed use scheme will result in a considerable increase in vehicle movements within the area and will impact on number of major junctions and most notably on the already congested Buncrana Road. The site layout and proposed access points are illustrated on the plans in Appendix 1B.

10.37 The SPPS advises that when determining a development proposal likely to generate a significant volume of traffic, planning authorities should require the developer to submit a Transport Assessment. A Transport Assessment was submitted along with the application as part of the Environmental Statement. Following consultation with DFI Roads and their consultants Amey and the submission of amended Transport details, DFI Roads on 21st December 2017 stated:

“ DFI Roads considers that, based on the Transport Assessments (TA, addendums and information submitted, this application mitigates its transport impacts sufficiently that strategic nil net detriment has been adequately demonstrated subject to detailed highway design and technical approvals”.

DFI Roads have recommended detailed conditions and informatives included section 12 of this report to ensure the development is carried out in accordance with the mitigated impacts considered necessary.

10.38 From the objections received, the majority of concerns related to the impact on the traffic network from local residents but also from traders and other business operators in the city. Translink also provided an objection with their comments being received in November 2016. No further objection has been received from Translink on the revised Transport Assessment details. Another notable objection was from Heron Bros objecting to landownership on part of the site. This is responded to by the agents who have advised their client has rights to the land. In this instance it is appropriate for any challenge to the ownership to be dealt with as a civil matter and would not be for Council to adjudicate on. DFI Roads have been consulted on all the objections received that raised traffic and transport concerns. DFI Roads are now content with the strategic nil net detriment and on that basis DFI are recommending approval.

10.39 **Health and Community Impact**

10.40 Part of this mixed use proposal includes a medical building of 6901sqm gross floor space and the location as seen in Appendix 1B. The medical building is based on the National Health Service integrated health care model on three floors. Although the scheme is at an early stage it is initially being proposed the facility will provide:

- GPs and Practice Nurses
- Community Nurses
- Occupational Therapists
- Physiotherapists
- Home Help/Support Staff

10.41 Improving Health and Well-Being is a core principle of the SPPS. Although this objective is mainly focused on the impacts new development can have on health and well-being, paragraph 4.6 advises that where appropriate councils may bring forward local policies that contribute to improving health and well-being, including the provision of health and community facilities. In the absence of an up to date LDP, the current Derry Area Plan advises in paragraph 9.10 that it is unlikely that there will be a requirement for major allocations of land to accommodate new health facilities over the plan period. It goes on to state that if new sites are required it will be identified by individual site assessment and that care services in the community will be considered favourably in small special care facility locations.

10.42 The provision of this element of the mixed use scheme would secure a location for a much needed and desired concentration of community health and social care services that do not necessarily require a hospital setting. A flexible approach is recommended in the provision of the proposed medical facilities and as such it is considered that the use is acceptable on this site and would not be incompatible with adjacent and surrounding land uses.

10.43 **Impact on Surrounding Land uses.**

10.44 The site is currently a brownfield site and presents a major regeneration opportunity, in particular considering the fact it has been vacant for a substantial time. The proposal introduces a mixed use scheme on a previous industrial economic development use. The surrounding land uses are predominantly residential to the south and east and industrial/mixed business to the north and west. Objections were received on the initial proposal, about the location of the proposed retail warehousing as it was proposed close to the boundary with Olde Mill Court. The retail warehousing element of the scheme was removed back in March 2017 and in the current proposal this area is grassed with a landscaped boundary. It is considered the buildings proposed will not adversely impact on the surrounding residential area. However the activity associated with the proposal will impact on the area but this is not considered

significantly adverse, as outlined in the Transport section of this report, paragraph 10.34. Noise and odour impacts are considered separately in section 10.48 below.

10.45 **Other Environmental Considerations**

10.46 **Design**

10.47 “Supporting Good Design and Positive Place making” is the fourth core principle of the planning system as defined in the SPPS. Design is an important material consideration in the assessment of all proposals and good design should be the aim of all those involved in the planning process and must be encouraged across the region. The design and layout of the proposal does provide a contemporary option in the regeneration of this site. The layout illustrates three vehicular access/egress points (see Appendix 4a) and satisfactory pedestrian permeability for travelling through the site and beyond. The exterior finishes on all the buildings is proposed to be red/brown brick with timber cladding on the feature walls of the Superstore and restaurant, and limestone seam cladding on the Medical Building. This provides a contemporary design solution whilst retaining the red/brown brick character of the industrial buildings currently on site.

10.48 **Noise and Odour Impacts**

10.49 A noise impact assessment and an air quality impact assessment were both submitted as part of the Environmental Statement and amended with advice from the Environmental Health Department (EHD). With regard to noise, the residential areas most likely to be exposed to noise generated by the proposed development are the rear of properties located at Collon Terrace, Pennyburn Court and the Olde Mill Court. EHD are advising that although the retail warehousing units have been removed, the acoustic barrier being proposed for the operational phase should be retained permanently. This has been included in the proposed conditions of this

report. In relation to air quality EHD have advised the revised proposal will result in less vehicle/heavy good vehicle movements and consequently have less impact on air quality. Conditions regarding restaurant odour abatement, construction activities, noise levels, delivery times and standard EHD conditions have been proposed in the conditions section 12 of this report.

10.50 **Contaminated land**

10.51 A contaminated land report was submitted and considered. A contaminated land investigation was previously carried out in November 2010 for this entire site. The intrusive site investigation did not identify any significant contamination or risks. It is also understood there has been no on-site activity since which is likely to have resulted in further contamination. Loughs Agency advised the site had a historical use, but this was not identified as a contamination risk in the previous investigation. EHD has recommended a condition to deal with any unexpected contamination and this is considered reasonable and necessary.

10.52 **Flooding/Reservoirs**

10.53 The site lies outside the floodplain however it is partially located within the flood inundation zone for the Creggan Reservoir. The flood inundation zone map is split into three parts, red areas where there is a presumption against development, yellow areas where a detailed flood risk assessment is required and green areas where just a flood risk assessment is required. This is amplified in FLD5 of PPS 15 Planning and Flood Risk, whereby it advises the detail required in the flood risk assessment will be proportionate to the flood risk.

The SPPS considers development in the proximity to reservoirs in paragraphs 6.119-6.122 and advises development in such areas should be accompanied by a flood risk assessment. A flood risk assessment and accompanying addendum has been submitted by the agent in relation to the reservoir inundation issue and the detail of which has been considered by Rivers Agency.

- 10.54 It is important to note the site is comprised of a number of vacant buildings and areas of hard standing, so this proposal would not constitute “New Development” as referred to in FLD 5 of PPS 15 Planning and Flood Risk. Therefore it is not considered necessary to provide details on the appropriateness of the condition, management and maintenance regime or to provide assurance regarding reservoir safety. FLD 5 does refer to replacement buildings, advising it would be acceptable to grant planning permission provided it is demonstrated that there is no material increase in the flood risk to the development and elsewhere. The SPPS does not refer to replacement buildings, therefore as per para 1.12 of the SPPS weight can be given to FLD 5 of PPS 15 for the consideration of replacement buildings whereby the SPPS is silent on the matter. Therefore in weighing up and balancing the facts to consider the risk it is considered the existing brownfield site with its vacant units could currently be re-occupied and the site could be operational again with very minor works and this would therefore not materially increase the flood risk of the site, as it currently stands. This point has been queried several times by objectors to the scheme, arguing that the site is a derelict industrial site and as such the full tests within FLD 5 should apply. This point is not without merit, however the policy is silent (in the context of FLD 5) on whether or not the ‘replacement buildings’ need to be occupied or currently operational or indeed that they share the same use class than the scheme proposed, the bare fact remains that there are structures and an existing use on this site which are to be replaced by the proposal. For the purposes of FLD 5 officers are satisfied that this proposal represents replacement buildings.
- 10.55 The proposal also falls to be considered as ‘All Development’ within FLD 5, this policy advises that there is a presumption against development within the flood inundation area for proposals that include; essential infrastructure, storage of hazardous substances, or bespoke accommodation for vulnerable groups. Objections to the scheme have cited that the medical building should be considered as bespoke accommodation for vulnerable groups and similarly that the petrol filling station should be considered as a facility for the storage of hazardous substances.
- 10.56 Bespoke accommodation for vulnerable groups is broadly defined within FLD 1, whilst this is helpful for outlining the context, it is not definitive as this relates specifically to

development in fluvial or coastal flood plains. This does state that vulnerable groups will generally include the young, old and infirm and that this includes facilities such as children's nurseries, schools, residential care / nursing homes, sheltered housing and hospitals. The proposed medical centre contains consulting rooms, waiting rooms, x-ray facilities, phlebotomy, speech and language therapy, physiotherapy, occupational therapy and other associated services. No wards or accommodation is proposed within the medical building, this is a day patient facility. The facility is also not 'accommodation' in the ordinary dictionary definition of the word, it does not offer a building within which someone may live or stay. On balance therefore, it can be reasonably asserted that this facility does not offer bespoke accommodation for vulnerable groups and as such a presumption against the development as cited within FLD 5 does not apply.

- 10.58 A number of objections were lodged relation to the methodology used in the applicant's Flood Risk Assessment (FRA) to assess flood risk to people. Officers referred this matter specifically to DFI Rivers and they have advised in their latest response of 3rd February 2019 the "Hazard Rating" methodology used in the FRA can be used independently as a metric estimating flood risk to people and consequently DFI Rivers would have no reason to object to this. Furthermore DFI Rivers advise the objection is not supported by documentary evidence proving the "Hazard Rating" methodology used in the FRA is an inappropriate means of assessing the flood risk to people.
- 10.59 The petrol filling station, is obviously for the retail sale of petrol and diesel. Petroleum products are a material which is listed under The Planning (Hazardous Substances) (No 2) Regulations (Northern Ireland) 2015. Under schedule 2 part 2 of these regulations any quantity over 2500 tonnes of petroleum requires Hazardous Substances Consent. Given that the amount of petroleum products which will be held at this site for retail sale will be significantly less than the threshold required for Hazardous Substances Consent it would not be considered that this proposal relates specifically to the storage of said materials. In planning terms, the retail sale of material is demonstrably different from its storage, therefore it would not be considered that the petrol filling station relates specifically to the storage of hazardous substances. Similarly, the actual

risk to human or environmental receptors from the level of inundation at this site is negligible given that the potential level of inundation is modelled at less than 50cm.

10.60 **Archaeology and Built Heritage**

10.61 The application site is located at an archaeologically sensitive location with a number of known archaeological sites nearby, as identified in the DAP 2011. The site is also located in close proximity to Pennyburn Chapel which is a Listed Building. Consultation has been carried out with Historic Environment Division (HED). The site of a windmill recorded within the Industrial Heritage Record is located within the development site, however traces of this will have been removed by a phase of quarrying in the southern part of the site which is recorded on maps of the area from the 1930s. There is therefore increased potential for uncovering archaeological remains in the areas of the site undisturbed by the 20th century quarry. HED Historic Monuments Branch has reviewed the Archaeology section of the ES and agree with the recommendations and mitigations outlined within it. HED Historic Monuments Branch are also content with the details outlined in the ES and have no concerns in respect of the built heritage issues considered. Therefore the proposal complies with the Archaeological and Built heritage objectives outlined in the SPPS and PPS 6, Planning Archaeology and the Built Environment.

10.62 **Natural Heritage**

10.63 The SPPS and PPS 2 Natural Heritage advises presence or potential presence of a legally protected species is an important consideration in decision-making. If there is evidence to suggest that a protected species is present on site or may be affected by a proposed development, steps must be taken to establish whether it is present, the requirements of the species must be factored into the planning and design of the development, and any likely impact on the species must be fully considered prior to any determination. Planning permission will only be granted for a development proposal that is not likely to harm a European protected species.

10.64 An ecological assessment and bat survey were submitted as part of the ES. The site is hydrologically linked to the Lough Foyle Special protection Area (SPA) and Area of Special Scientific Interest (ASSI) and Tributaries and the site itself contains a “pipstrelle roost” for bats. In consultation with NIEA Natural Environment Division and Shared Environmental Services (SES), the impacts of the proposal on designated sites and bats has been considered and there are no concerns subject to condition stipulating no demolition prior to the granting of a wildlife licence to minimise the impact of the proposal on bats.

10.65 On behalf of Council, SES have carried out a Habitats Regulations Assessment and considered that provided appropriate mitigation is carried out the proposal will not have an adverse effect on site integrity of any European site. The submission of a construction method statement must also be submitted to Council at least 8 weeks prior to works commencing on site, in order to mitigate against any risk of construction related pollutants migrating off site via the existing site drainage. NIEA Water Management Unit are content with the impact of the proposal on the surface water environment. The ecological assessment identified Japanese Knotweed on the site and NIEA are satisfied this will be appropriately dealt with.

10.66 It can be concluded the proposal will not adversely impact on an issues of Natural Heritage importance.

10.67 **Landscape and Visual Impact**

10.68 The ES considers the landscape and visual impact of the proposal through the survey of existing viewpoints to the city from and within the surrounding local area. The site lies east approximately 10m above the Strand Road which runs parallel to the River Foyle. The site is visually connected with the fabric of the city and is virtually indistinguishable from distant views save for the tall chimney stack which sits to the northern portion of the site next its junction of Pennyburn Pass and Bunrana Rd. This chimney flue is quite a strong visual reference in the surrounding landscape and along with the steeple of St. Patrick’s Church represents a good visual key when viewed from

the wider landscape. The viewpoints have selected in the ES fall into two broad categories:

- close proximity to the site to include views along Buncrana Road and Pennyburn Pass
- wider views where the interplay of topography, landscape and built form provide distant views. These are generally from the Foyle Bridge, Peace Bridge and positions on the east of the River Foyle.

10.69 From the distant views the development represents a 'slither of predicted development' in the scheme, as advised by the ES. From close views there are more expansive views of the predicted development, most notably from the Buncrana Rd/Racecourse Rd junction where the three storey medical building will feature prominently in the streetscape. The contemporary design and brick finishes aid the integration of the building into the locality. The boundary treatments are more permeable to encourage visual and physical interaction and with the boundary treatments and significant landscaping, the proposals will significantly improve the streetscape and present a more human scale within the urban context.

10.70 **Economic Considerations**

10.71 The proposed mixed use scheme will have a major impact on the local economy and job creation. The third core principle of the planning system as defined in section 4 of the SPPS is "Supporting Sustainable Economic Growth". Paragraph 4.19 of the SPPS advises large scale investment proposals with job creation should be given particular priority.

10.72 Policy PED 7 of PPS 4 requires the retention of zoned land and economic development uses. The site lies on unzoned white land in the Derry Area Plan 2011. The last use of the site was an economic development use. However, the proposed mixed use scheme is not considered an "Economic Development Use" as defined in the SPPS and PPS 4 Planning and Economic Development. The footnote 28 in paragraph 6.82 of the SPPS advises its objectives relate to economic development uses comprising industrial, business and storage and distribution uses, as currently defined in Part B

'Industrial and Business Uses' of the Planning (Use Classes) Order (Northern Ireland) 2015.

10.73 PED 7 goes on to advise that development proposals on unzoned land or land last used for economic development purposes (B2, B3, B4 uses) will only be permitted whereby one of seven criteria have been met. Two of the seven criteria are relevant to this proposal:

a) Redevelopment for a Class B1 business use or other suitable employment use would make a significant contribution to the local economy.

It is considered the proposal accords with criteria (a) of PED 7 in PPS 4. Whilst the scheme is not a B1 business use, it is a suitable employment use given the job creation, and therefore will make a significant contribution to the local economy.

10.74 The second criterion (b) advises:

If the proposal is a specific mixed use regeneration initiative which contains a significant element of economic development use and may also include residential or community use, and which will bring substantial community benefits that outweigh the loss of land for economic development use.

The policy amplification in para 5.32 goes further to advise *"the redevelopment of an existing industrial or storage and distribution site with a mixed use scheme, as a specific regeneration initiative to meet the needs of a particular locality and providing a significant element of employment or community uses are integrated into the overall development scheme."*

It is acknowledged that whilst the policy amplification text in para 5.32 does not specifically refer to economic development use, the significant employment and investment this mixed use regeneration proposal will create, is appropriate and supports sustainable economic growth, the third core principle of the planning system, as outlined in Section 4 of the SPPS.

10.75 The total the net job creation of the proposal taking account of projected displacement is 336 jobs, 195 for the Superstore, 127 for the medical building and 14 for the restaurant. This would represent a significant investment in the economy of the North West and contribute to growth of the City and surrounding area. In addition it is estimated in the ES an additional 200-300 much needed construction jobs would be created over several years. Whilst it is accepted the proposal will result in a loss of 'economic development' land as defined in the SPPS and PPS 4, the proposal is employment generating, with significant job creation as a result. This is the discernible difference between the current proposal and previous planning decisions on the site. All elements of the scheme will create direct employment which will improve and sustain the economy. Objections on behalf of the retail sector have stated concerns on the speculative nature of the scheme and that the proposal is not an economic development use, and therefore weight should not be afforded to the job creation. The professional officer consideration is that the mixed use regeneration proposal with the significant community benefit element, and significant employment, does accord with part of PED 7 and therefore should be afforded determining weight in this instance, for reasons outlined in paras 10.68-10.73 of this report.

10.76 Sustainable development is at the heart of the SPPS, as noted in paragraph 3.1. The SPPS advises that furthering sustainable development in the long term public interest requires the integration and balancing of complex social, economic and environmental factors when making decisions. The SPPS advises in determining planning application, the Council should deliver on all three pillars of sustainable development which are:

1. On the needs and aspirations of our society
2. On the economy
3. On the environment.

10.77 With regard to the needs of society, supporting urban regeneration proposals to address dereliction and promoting investment in the physical regeneration are considered important. This mixed used scheme will regenerate a current redundant

derelict site back into use with proposals that will improve the health and well-being of the community.

10.78 In relation to the economy pillar the proposal will remove economic development land but create long term employment beyond the construction jobs also created. This will help promote the economy and provide balanced growth and therefore the job creation should be afforded significant weight.

10.79 The third pillar relates to the environment. The proposal will not create any significantly adverse impacts on the environment and therefore supports this element of the policy.

10.80 DCSDC's "Strategic Growth Plan" should be noted in association with this case, and clearly whilst officers are unable to afford it determining weight, one of the main aims in the enterprise and economy section is to maximise job creation and investment opportunities in our City and Town Centres, regionally significant regeneration sites and rural areas.

11.0 Conclusion and Recommendation

11.1 After fully assessing the development proposals and the environmental information submitted, supporting documentation including the comments of consultees, letters of objection and support and having regard to the relevant planning policy context, the statutory development plan and all other relevant material considerations the following conclusions have been reached;

- Retail Policy Context – The SPPS recommends a Town centre first approach and the introduction of a sequential test for retail developments. The site is "edge of centre" and in the absence of a suitably sized site within the central area, it has been satisfactorily demonstrated the current site is the most appropriate site in the City at the moment in terms of land use planning, in particular due to the expiry of the major

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superstore proposals at Niche Drinks and Crescent Link. Therefore it is concluded the proposal accords with the principles of the SPPS and therefore approval is recommended.

- Retail Impact – The development proposals on their own and cumulatively will not result in a significantly adverse impact on the existing centres within the catchment. It is accepted there will be some adverse impacts on the Springtown district centre, however this is not considered significantly adverse. A qualitative need for the proposal has been demonstrated and accepted, therefore in accordance with the SPPS and balancing the overall impacts of each criteria, the proposal is not judged to be harmful and approval is recommended.
- Traffic and Transport Impact – the majority of objections focused on this and DFI Roads through the negotiation and further discussions with the agent have enabled strategic nil net detriment to be demonstrated. The proposal accords with the SPPS and PPS 3 and therefore approval is recommended subject to conditions.
- Health and community Impact - A flexible approach is recommended in the provision of the proposed medical facilities and as such it is considered that the use is acceptable on this site and would not be incompatible with adjacent and surrounding land uses, therefore approval is recommended.
- Impact on surrounding land uses – With the removal of the retail ware house units it is considered the It is considered the proposal will not adversely impact on the surrounding residential area, and therefore approval can be recommended.
- Other Environmental Considerations – The details in the ES mitigates successfully against noise, odour, land contamination, archaeology, natural and built heritage and the landscape and visual impact. Conditions in section 12 ensure the mitigation will be carried out.
- Economic Considerations – The proposal is mixed use scheme which will provide a major regeneration opportunity on a vacant site. The loss of economic development land is set against the need for sustainable and long term employment and investment in the economy the proposal would create. Therefore the economic considerations do have significant weight in this individual case and on balance this would support recommending approval.

11.2 On balance it is concluded this proposal is acceptable in policy terms and in considering significant economic benefits in terms of job creation and investment approval is recommended. The proposal is not considered a significant departure from the DAP and therefore there is no requirement to notify DFI on the application.

12.0 Conditions

Officials are proposing the following conditions. In addition to below if there are any changes or additional factors to be included officials would seek delegated approval from the Planning Committee to carry this out.

1. As required by Section 61 of the Planning Act (Northern Ireland) 2011, the development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.

Reason: Time Limit.

2. The planning permission hereby granted relates to the proposals as submitted which comprise of the following elements:

- a) a food superstore, the gross floorspace of which shall not exceed 5,574 square metres.
- b) the medical building, the gross floorspace of which shall not exceed 6,901 square metres.
- c) the restaurant, the gross floorspace of 390 square metres.

Reason: To control the use of the site so as not to prejudice the continued vitality and viability of existing retail centres or the adequacy of the roads infrastructure.

3. Of the net retail floorspace of the foodstore hereby approved, no more than 2731 square metres shall be used for the sale and display of Convenience goods and no more than 1171 square metres shall be used for the sale and display of Comparison goods. Convenience goods for this purpose are hereby defined as the sale of:

- (a) Food and drink including alcoholic drink.
- (b) Tobacco, newspapers, magazines and confectionery.
- (c) Stationery and paper goods.

(d) Toilet requisites and cosmetics.

(e) Household cleaning materials.

(f) Other retail goods as may be determined in writing by the Department as generally falling within the category of convenience goods.

Reason: To control the nature, range and scale of retailing activity so as not to prejudice the continued vitality and viability of existing retail centres or the adequacy of the roads infrastructure.

4. There shall be no internal operations made to the foodstore, including subdivision or any other alteration that would result in an increase in the gross and net retail floorspace without the prior written consent of the Council.

Reason: To enable the Council to retain control over the nature, range and scale of retailing activity so as not to prejudice the vitality and viability of existing retail centres.

5. The detailed designs of the proposed junctions as generally indicated on Drawings Nos. 36 Rev 03, 55 bearing the date stamp 23rd October 2017 and stamped approved drawings 37 Rev 05, 53 Rev 01 and 54 Rev 01 bearing the date stamp 27th September 2018, 43 Rev 03 and 51 Rev 02 Bearing the date stamp 17th July 2018, shall be submitted to and agreed with the Planning Authority prior to commencement of development.

Reason: To ensure that the road works considered necessary to provide a proper, safe and convenient means of access to the site are carried out at the appropriate time.

6. The detailed design of the junction improvement proposed at Buncrana Road/Springtown Road shall be submitted to and agreed with the Planning Authority prior to commencement of development.

Reason: To ensure that the road works considered necessary to provide a proper, safe and convenient means of access to the site are carried out at the appropriate time.

7. No works shall commence on the development hereby approved until detailed designs for the road improvements at Pennyburn Industrial Estate/Buncrana Road/Racecourse Road junction, Pennyburn Pass/Buncrana Road junction and Pennyburn Roundabout generally as indicated on Drawings 43 Rev 03, 53 Rev 01, 54 Rev 01 and 55 date stamped 23rd October 2017, 17th July 2018 and 27th September respectively and for the Buncrana Road/Springtown Road junction have been submitted and agreed in writing with the Planning Authority.

Reason: To ensure that the road works considered necessary to provide a proper, safe and convenient means of access to the site are carried out at the appropriate time.

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8. Before any works commence on the development hereby approved, a Stage 2 Safety Audit shall be agreed and approved by the Planning Authority and thereafter implemented in the detailed design of the road works at Buncrana Road/Springtown Road junction, the Pennyburn Industrial Estate/Buncrana Road/Racecourse Road junction, Pennyburn Pass/Buncrana Road junction and Pennyburn Roundabout junction prior to the commencement of any element of these works.

Reason: To provide an assurance that all safety requirements have been implemented.

9. On completion of the works at Buncrana Road/Springtown Road junction, the Pennyburn Industrial Estate/Buncrana Road/Racecourse Road junction, Pennyburn Pass/Buncrana Road junction and Pennyburn Roundabout, a Stage 3 and a Stage 4 Safety Audit shall be undertaken and approved by Planning Authority and thereafter implemented as agreed..

Reason: To provide an assurance that all safety requirements have been implemented.

10. A detailed programme of works and any required/associated traffic management proposals shall be submitted to and agreed by the Planning Authority prior to the commencement of any element of road works on the adopted network.

Reason: To facilitate the convenient movement of all road users and the orderly progress of work in the interests of road safety.

11. No retailing or other operation in or from the development hereby approved shall be commenced until the works at Buncrana Road/Springtown Road junction, the Pennyburn Industrial Estate/Buncrana Road/Racecourse Road junction, Pennyburn Pass/Buncrana Road junction and Pennyburn Roundabout have been completed to the satisfaction of the Planning Authority in accordance with the approved design.

Reason: To ensure that the roadworks necessary to provide a proper, safe and convenient means of access to the site are carried out prior to the commencement of retailing and other operations

12. No retailing or other operation in or from the development hereby permitted shall commence until hard surfaced areas have been constructed and marked out in accordance with Drawing 51 Rev 02 approved drawings to provide car parking spaces, servicing and circulation within the site. No part of these hard surfaced areas shall be used for any time for any purpose other than the parking and movement of vehicles.

Reason: To ensure that adequate provision has been made for parking, servicing and traffic circulation within the site

13. The development hereby approved shall not become operational until the Applicant has submitted and agreed a service management plan with the Planning Authority.

Reason: To ensure that adequate provision has been made for servicing to the site that minimises conflict with customer/visitor traffic from the network and to ensure that the

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servicing and traffic management necessary to provide a proper, safe and convenient means of access to the site are designed safely and appropriately.

14. The vehicular accesses to both Pennyburn Pass and Pennyburn Industrial Estate, including visibility splays and any forward sight distance, shall be provided in accordance with Drawings No. 36 Rev 03 bearing the date stamp 23rd October 2017, 37 Rev 05 bearing the date stamp 27th September 2018 and 48 Rev 01 bearing the date stamp 27th September 2018 prior to the commencement of any part of development hereby permitted. The area within the visibility splays and any forward sight line shall be cleared to provide a level surface no higher than 250mm above the level of the adjoining carriageway and such splays shall be retained and kept clear thereafter.

Reason: To ensure there is a satisfactory means of access in the interests of road safety and the convenience of road users

15. The proposals to raise ground levels and construct two retaining walls shall be constructed as detailed and specified in the 'Addendum 1 to Reservoir Flood Risk Assessment' dated May 2018 and stamped by the planning authority 17 July 2018 and in drawing Nos. C101 & C102.

Reason: In order to mitigate the flood risk to the development from the Creggan Upper & Lower Reservoirs.

16. Prior to commencement of any construction works: all acoustic barriers and fences the extent of which are described on the approved 'masterplan drawing' 14-112-CO5C and 'External Details Drawing' 14-112-C32B, must be constructed in either masonry or timber panelling (close lapped with no gaps) with a self-weight of least 25 Kg/Nm².

Reason: To protect residential amenity

17. Construction activities shall be restricted to 07.30 – 18.00 (Monday to Friday), 7.30 - 13.00 on Saturday, and at no time on a Sunday.

Reason: To protect residential amenity

18. Mechanical plant used on site shall be fitted with effective exhaust silencers.

Reason: To protect residential amenity

19. The developer shall take all measures necessary to ensure that noise levels from demolition and construction activities comply with the threshold levels described in the table below:-

Threshold Level Period	Threshold level (LAeq) at Residential Locations
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	Collon Terrace	Pennyburn Court	Old Mill Court
Weekday Daytime (07.30-18.00) & Saturday (07.30-13.00)	70	75	65

Reason: To protect residential amenity

20. Prior to the commencement of any development hereby permitted, a 'Construction Environmental Management Plan' shall be submitted to the Planning Authority of Derry City and Strabane District Council (DCSDC) for approval which includes all noise control mitigation measures, a good public relations procedure, noise complaint procedures, an emergency deviation from agreed works procedure; and liaison proposals as outlined in section 5.47 of Chapter 5 'Noise Impact Assessment' of the Environmental Impact Assessment.

Reason: To protect residential amenity

21. The requirements of the 'Construction Environmental Management Plan' received in compliance with the Condition above shall be adhered to at all times (unless otherwise agreed in writing by the Planning Authority of DCSDC).

Reason: To protect residential amenity

22. All vehicles exiting the site shall make use of a wheel wash facility prior to entering onto public roads, to ensure mud and other wastes are not tracked onto public roads.

Reason: To minimise the off-site migration of dust and soil and protect residential amenity

23. Site roads with the potential to give rise to dust shall be regularly watered, as appropriate, during dry and/or windy conditions to minimise the off-site deposition of dust.

Reason: To protect residential amenity and human health

24. Prior to the commencement of any onsite commercial operations, acoustic barriers (Details D, E, & I), the extent of which is described on 'External Details Drawing' 14-112-C32B and the approved 'masterplan drawing' 14-112-CO5C, must be constructed in either masonry or timber panelling (close lapped with no gaps) with a self-weight of least 25 Kg/Nm².

Reason: To protect residential amenity

25. Deliveries to the superstore shall only take place via the Pennyburn Pass entrance to the site.

Reason: To protect residential amenity

26. Noise from plant and equipment shall not exceed the day-time and night-time BS4142:2014 noise limits in Table 5.9 of the Envest Environmental Ltd 'Noise Impact Assessment' in Chapter 5 of the Environmental Impact Assessment.

Reason: To protect residential amenity

27. No fixed plant associated with the development shall be brought into permanent use until the results of a post-construction noise testing scheme for same has been submitted and approved in writing by the Planning Authority (in conjunction with the EHS). Details of all external fixed plant serving the development and any mitigation measures to achieve this condition shall be included.

The post-construction noise testing scheme shall be carried out at appropriate times and under typical operating conditions to demonstrate that cumulative noise emissions from items of plant and equipment associated with the development are achieving the daytime and night-time noise limits detailed in Table 5.9 of the Envest Environmental Ltd 'Noise Impact Assessment' in Chapter 5 of the Environmental Impact Assessment.

The measurements and assessment shall be made in accordance with BS 4142:2014. The report detailing the findings of the noise testing scheme shall be submitted to the Planning Authority (in conjunction with the EHS) within one month of the assessment taking place.

Reason: To protect residential amenity

28. Loading areas associated with the superstore shall have level docking bays for the reception of delivery vehicles. Rubber seals must be incorporated to effectively seal the gap between the loading bay structural opening and the tail-gate of the delivery vehicle.

Reason: To protect residential amenity

29. Any activities, other than the arrival and departure of delivery vehicles, shall not occur in the service yard of the Superstore between the hours of 23.00 and 07.00 Monday to Saturday, after 22.00 on Saturdays and at any time on Sundays.

Reason: To protect residential amenity

30. Forklift trucks shall be fitted with broadband reversing alarms when in operation.

Reason: To protect residential amenity

31. Compactor units to be located in the service yard areas of the proposed development shall not be brought into operation between the hours of 22.00 and 08.00 weekdays and Saturday and at any time on Sundays.

Reason: To protect residential amenity

32. Any loud speaker units to be located in the service yard areas of the proposed development shall not be brought into operation between the hours of 21.00 and 08.00 weekdays and Saturday and at any time on Sundays.

Reason: To protect residential amenity

33. Refrigerated delivery vehicles shall connect to an external electrical supply when in the delivery yard, if not immediately proceeding to the unloading area. This restriction will apply during night-time hours, 23.00 to 07.00 Monday to Saturday, after 22.00 on Saturdays and at any time on Sundays.

Reason: To protect residential amenity

34. A proprietary odour control system shall be installed to treat the restaurant kitchen exhaust gases and that the said system should be effectively maintained. Details of the system chosen, with plan and sectional drawings, showing all ducting, type of abatement proposed and terminal extract point should be forwarded to the Planning Authority for agreement prior to installation.

Reason: To protect residential amenity

35. It is important to recognise that these control systems will not necessarily eliminate all the odour and that there may be some loss of amenity at adjacent residential or commercial properties.

The main elements of the grease and odour control system fitted must include:-

- A kitchen canopy incorporating primary grease filters;
- Duct work to final termination incorporating high level odour control.
- A discharge at a suitable height and velocity to ultimately disperse and dilute residual odours.

It is not recommended that cowl fittings that impede dispersion be fitted.

It is advisable that the applicant should obtain the services of a reputable Ventilation/Heating Engineer with experience and knowledge of odour/grease control systems.

Reason: To protect residential amenity

36. If during the development works, contamination is encountered which had not previously been identified, works should cease and the Planning Authority shall be notified immediately. This new contamination shall be fully investigated in accordance with CLR 11 'Model Procedures for the Management of Land Contamination'. A suitable risk assessment shall be completed and submitted in writing to Planning Authority. In this situation, a remediation strategy shall be agreed in writing with the Planning Authority, and implemented and verified to its satisfaction.

Reason: To protect human health and to bring the site into a state that represents an acceptable risk to end-users.

37. A Construction Method Statement must be submitted for approval to the Planning Authority at least 8 weeks prior to works commencing onsite.

The CMS must specifically mitigate against any risk of construction related pollutants migrating offsite via the existing site drainage infrastructure. The CMS should be drafted in tandem with the detailed planning phase of the proposal so that effective mitigation (eg. physical barriers or work methods) can be identified. The appointed contractor must be fully conversant with the CMS.)

Reason: To prevent adverse effects on European designated sites.

38. No site works of any nature or development shall take place until a programme of archaeological work has been implemented, in accordance with a written scheme and programme prepared by a qualified archaeologist, submitted by the applicant and approved by the Department. The programme should provide for the identification and evaluation of archaeological remains within the site, for mitigation of the impacts of development, through excavation recording or by preservation of remains, and for preparation of an archaeological report.

Reason: To ensure that archaeological remains within the application site are properly identified, and protected or appropriately recorded.

39. Access shall be afforded to the site at all reasonable times to any archaeologist nominated by the Department to observe the operations and to monitor the implementation of archaeological requirements.

Reason: To monitor programmed works in order to ensure that identification, evaluation and appropriate recording of any archaeological remains, or any other specific work required by condition, or agreement is satisfactorily completed.

Appendix 1

40. The development hereby permitted shall not be occupied until the remediation measures as described in the remediation strategy provided in the WYG Updated GQRA, Arntz Belting Co. / Eurocentre West dated November 2014 have been implemented to the satisfaction of the Department. The Department must be given 2 weeks written notification prior to the commencement of remediation work.

Reason: Protection of environmental receptors to ensure the site is suitable for use.

41. All hydrocarbon storage tanks (and associated infra-structure) must be fully decommissioned and removed in line with current Pollution Prevention Guidance (PPG2, PPG27) and the quality of surrounding soils and groundwater has been verified. Should contamination be identified during this process, Conditions 3 and 4 will apply.

Reason: Protection of environmental receptors to ensure the site is suitable for use.

42. If during the development works, new contamination or risks are encountered which have not previously been identified, works should cease and the Department shall be notified immediately. This new contamination shall be fully investigated in accordance with the Model Procedures for the Management of Land Contamination (CLR11). In the event of unacceptable risks being identified, a remediation strategy shall be agreed with the Department in writing, and subsequently implemented and verified to its satisfaction.

Reason: Protection of environmental receptors to ensure the site is suitable for use.

43. After completing all remediation works under Conditions 36-38 above; and prior to occupation of the development, a verification report needs to be submitted in writing and agreed with Department. This report should be completed by competent persons in accordance with the Model Procedures for the Management of Land Contamination (CLR 11). The verification report should present all the remediation and monitoring works undertaken and demonstrate the effectiveness of the works in managing all the risks and achieving the remedial objectives.

Reason: Protection of environmental receptors to ensure the site is suitable for use.