

JOINT ANALYSIS FOR APPLICATIONS 09/0019/MFUL & 09/0557/MFUL

PLANNING CONSIDERATIONS AND ASSESSMENT

The principal considerations with these applications are as follows:-

- Principle of development and Development Plan policies
- Retail impact on town centre and the sequential test
- Flood defence issues and method of filling the site
- Contaminated land and other environmental health issues
- Visual impact and design issues
- Highway issues
- Archaeology
- Impact on local residents
- Nature conservation issues
- Section 106 issues and contributions

PRINCIPLE OF DEVELOPMENT AND DEVELOPMENT PLAN POLICIES

A range of policies as contained in the East Devon Local Plan, Devon Structure Plan and government guidance help to inform opinion on the application. Each element of the application proposals the subject of this report will need to take into account the policies set out above. Certain policies can be highlighted at this stage. The three key policies set out below are appended to this report.

The Southern Store

The site is shown as part of the Seaton Regeneration Area in the Development Plan and included in the adopted Seaton Development Brief as part of the commercial area and car parking area.

In particular the following key policies apply to the application site:-

- EDDC LSE1, which seeks mixed use development including retail on the wider Regeneration Area but which supports individual applications including for retail provided that mechanisms are in place that will achieve the delivery of a comprehensive regeneration scheme for this area. Necessary and reasonable developer contributions will be sought.
- EDDC SH1, supports retail development within Town Centre areas as defined in the Local Plan. The site is included within the town centre area designated in the Development Plan.
- EDDC SH3, which supports large new food stores within town centre areas as defined in the Development Plan. A sequential test needs to be carried out. Only where sites are not available within town centre areas should sites outside be considered.

A more detailed examination of shopping policies has been included below.

In terms of LSE1 the application does falls in line with the aspirations of policy. Whilst the development site is only part of the overall Regeneration Area, it does conform to the principles laid out in the Seaton Development Brief and falls within the designated Town Centre in the adopted Development Plan. The development of this site for a new supermarket has potential to provide a catalyst for, and result in, the unlocking of other potential

developments on the remainder of the Regeneration Area (see separate outline application elsewhere on this agenda). The applicants intend to enter into planning obligations in parallel with planning obligations related to the development - for which the outline proposals have been submitted aimed at delivering a regeneration scheme over the bulk of the Regeneration Area, including the necessary infrastructure for the Regeneration Area.

The fact that this application is a stand-alone full application does not therefore inhibit the remainder of the site coming forward and indeed given the commitment of the applicants to accepting a requirement to fill the whole of the Regeneration Area in the applicant's ownership would result in it being more likely that a large proportion of the Regeneration Area would come forward for development.

The Northern Store

The same overarching Development Plan policy LSE1 applies to this application site. However, it should be noted that the site does not lie within the Town Centre as defined in the Local Plan. The site of the proposed food store is shown as being recreation land in the Development Plan.

EDDC Policy RE1, amongst other things, seeks to restrict the loss of playing fields unless alternative provision of equivalent community benefit is provided by the applicant. In this case the applicants propose to enter into a legal agreement once they take possession of the land to provide a financial contribution for a replacement facility. At present they suggest imposing a negatively worded condition on any grant of planning permission requiring the developers thereafter to enter into a legal agreement. The applicants point out the Tram Company could enter into an agreement now, but even if that were possible they would only be able to commit to the land in their control (as a lessee). Comments on this proposal are provided in the section entitled "Section 106 Agreements" below..

In terms of a potential site for a new mini pitch playing field, no site has been identified. The Development Plan does allocate a site at Harepath Road under EDDC Policy LSE2. However, that site was not envisaged as providing alternative facilities lost elsewhere in Seaton but for *additional* playing fields to cater for the future needs of the town. In this respect there are concerns about the policy implications of losing centrally placed playing facilities and relying on an uncertain mechanism to provide alternative facilities elsewhere. The loss of the playing field in this location is not acceptable therefore. The proposed contribution of funds to allow for the provision of alternative facilities is not seen as acceptable in overcoming the loss of the recreational land because there is no certainty that an alternative central location can be found to suitably replace the existing facility. Such a provision in this location would be even more important should the remainder of the Regeneration Area come forward with large areas of housing likely to be located close to the Northern Site. It would be unfortunate if residents who live in a central location are forced to travel to the edge of town to enjoy recreational activities.

Members should further note the existing large picnic area to the east of the current car park would also be lost and not replaced in a meaningful way. This area is approximately 90 metres by 25 metres (2250 square metres) in extent and is a well used facility for visitors to the town. The Seaton Development Brief shows this area being subsumed into a new area of car parking on the understanding that the open space area to the north would be retained. If that open space is lost then the picnic site area becomes more valuable as an amenity space and should be preserved.

The proposals also include a new visitor centre to be sited on a first floor above the main shopping floor of the store. The visitor centre will have its own entrance and be able to be separated off from the operation of the store when required. The visitor centre would have a floor area of 3131 square metres (approximately 27, 0000 square feet). Policy LSE1 points to visitor attractions being a priority for the delivery of regeneration. However the policy also states that mechanisms must be in place to ensure these elements are delivered. The EDDC Estates Department have raised issues with the size of the visitor centre and a mechanism to

ensure that it is delivered and how ongoing maintenance and service charges will be dealt with over the long term.

A cycle hub is proposed also but at the present time there is no funding available for this project, no details are available as to the future running of this building and the allocation of maintenance liabilities would need to be clarified.

A new tramway terminus building is proposed of 413 square metres with a shop, cafe, snack bar, kitchen, and control and ticket offices. There is no agreement at present between the applicants and the Council as landowner to allow this to go ahead and there are no details of how this aspect of the scheme is to be funded

Policy LSE1 looks for a comprehensive development approach for the Regeneration Area. It does allow for individual schemes but stresses that these should be in accordance with other guidance, particularly in relation to interim supplementary planning guidance. In this respect the Development Brief for the Northern Site shows the land to be retained as open space and an activity hub. These are defined as perhaps a visitor centre, TIC, tram station, craft and retail complex including pubs and restaurants, Sustrans centre and other forms of leisure activity. It was not however envisaged that major retail units would be built in this location because this use was catered for elsewhere on the Regeneration Area. The loss of this important open space and the loss of the picnic and amenity area to the south are considered to be unacceptable when analysing the application by reference to the overall aims of Policy LSE1 and the Development Brief.

There are therefore some fundamental issues in relation to the proposal being at odds with the policies of the Council. Comments below under the S106 heading discuss matters of the deliverability of the scheme as put forward.

RETAIL IMPACT ON TOWN CENTRE AND SEQUENTIAL TEST

A number of policies are relevant here as set out above. Each proposal must be weighed against those policies and relevant government advice such as PPS6.

To that end the Council has employed planning consultants GVA Grimley to undertake a detailed analysis of the retail case put forward by each developer. This company carried out a recent 'health check' of all the major towns in the district as part of the LDF process. They are therefore well placed to offer guidance to the Council in weighing up the two proposals.

GVA Grimley's draft report was referred to both southern applicant companies who have had the benefit of understanding their content and commenting and arguing against any negative points put forward. GVA Grimley has taken into account comments made by both companies in arriving at its final report.

Summary and conclusions of the GVA Grimley report:-

Southern/Northern

6.2 In accordance with our instructions from EDDC, we have carried out a review of the Signet Planning ('SP') Retail Statement which has been submitted in support of the outline and full planning southern applications and the WYG Retail Impact Assessment which has been submitted in support of the northern scheme. As part of our assessment of the southern proposals, we have also been supplied with supplementary information which has been submitted by SP and DPP during May 2009. Similarly, supplementary information has been supplied by WYG on behalf of northern in July 2009.

6.3 The proposals are considered in the context of the development plan for the area and other material planning policy considerations such as Planning Policy Statement 6:

Planning for Town Centres (2005) and the adopted Development Brief for this area of Seaton. It should be noted that draft PPS4 has been published by DCLG for consultation, although at this stage it has been afforded limited weight (however should the final version of PPS4 be published prior to the determination of this application, then we reserve the right to update this advice report).

- 6.4 The analysis within this report has considered the quantitative and qualitative need for the proposed retail floor space. Having regard to the proposed southern store, we have found that there is available surplus expenditure to accommodate the majority but not all of the turnover associated with 2,215sq m of convenience and 1,209sq m of comparison goods floor space. Whilst there is a shortfall, it is relatively limited when compared against the benchmark turnover of the store and assuming all other policy tests are met we consider it unreasonable to withhold permission based on the need test alone based on a theoretical shortfall in available expenditure. For the northern scheme, our analysis indicates that there is a demonstrable quantitative need to accommodate the convenience and comparison goods floor space proposed.
- 6.5 In relation to qualitative need, we consider that there is a qualitative need for improved retail provision within Seaton. Having regard to the current aspects of qualitative deficiency, we can confirm that the southern or northern supermarkets will meet a qualitative need and improve the range and choice of convenience and comparison goods provision in the town. Having regard to the size of the southern proposal, it is does not necessarily follow however that the size and scale of that store is necessary to meet the identified need and a smaller store may also provide the same qualitative improvements and claw back expenditure which is currently being lost from the town.
- 6.6 Having regard to the sequential approach to site selection, we consider that the southern proposal is to be preferred in terms of policies SH1 and SH3 of the Local Plan, plus the locational aspects of the adopted Development Brief and PPS6. This conclusion is based on the assumption that the proposed pedestrian link from the south-western part of the southern site to The Underfleet is provided. Having regard to PPS6 guidance, the distances between the proposed southern and northern stores and the primary shopping area is very similar and both have the potential to form edge of centre locations. However, we consider that the route between the primary shopping area and the proposed south store is preferable in terms of its character and appearance. However, we consider that more can be done in order to make the design of southern scheme more conducive to links with (and its relationship to) the centre. Overall, we acknowledge that northern and southern stores have similar characteristics and the detailed individual characteristics of each location should be taken into account when identifying a preferred scheme. Such consideration leads us to the conclusion that the southern scheme is to be preferred in principle having regard to the contents of the Local Plan and other material considerations, although we have some concerns over the relationship of the store with the town centre and its ability to encourage linked trips.
- 6.7 Having regard to the impact of the proposed supermarkets, we have found that the southern proposal could, depending on which trade diversion estimates are adopted, have an impact of between 30% and 36% on the 2014 turnover of the town centre. These levels of impact are based on the Co-op store forming part of the town centre, although there is some disagreement over whether this store forms part of the centre (in terms of the PPS6 definition). If the Co-op is excluded from the centre, then the impact of the proposed southern store on the centre is between 17%-19%. We consider that these impact levels are significant and are between one fifth to one sixth higher than if the southern applicant company were to occupy the size of store proposed within the previous Liatrix scheme.
- 6.8 Overall, we consider that the proposed northern store, like the proposed southern one, has the potential to divert a significant amount of trade from Seaton town centre. Depending on whether the Co-op is considered to be part of the centre, the impact is

between 12% and 27%. In financial terms, the northern store will divert £4.5m from the Co-op and £1.6m from other town centre stores.

- 6.9 It is acknowledged that both of the proposed stores could, assuming appropriate linkages are provided, lead to positive spin off benefits for the town centre which to some extent mitigate their negative impact. In theory, it is possible that the northern store could provide a £0.9m, whilst using some of Signet Planning's assumptions, the southern one could generate between £1m-£2m. However, a number of assumptions are used to arrive at these figures and we also consider that the size of the supermarket (and the range of products offered) will also influence the propensity for linked trips to be made. In addition, in order to ensure that linked trips occur, attractive pedestrian routes will need to be provide and, as already mentioned, we consider that the southern store has the slightly better potential to encourage link trips (although the size and design of the southern store/site and the route will be key these links being achieved). We do not consider, however, that the spin off financial benefits from either proposal will fully compensate for the loss of trade from town centre stores.
- 6.10 However, there are further positive and negative factors to be considered alongside the financial impact. We consider that the financial impact of the northern store is between one quarter and one third lower than the equivalent impact of the southern store proposal. In addition, we consider that it is of a size which is better able to meet the 'complementarity' test as outlined in the adopted Development Brief and criterion No.4 of Policy LSE1. However, with reference to our analysis of the sequential approach, the ability of the northern store to deliver financially beneficial spin off benefits may be compromised to some extent by the lack of attractiveness of the link with the town centre.
- 6.11 In addition, there is a need to consider criterion No.4 of Policy LSE1 which requires retail uses within Seaton Regeneration Area to complement town centre facilities. This is supported by the contents of the Development Brief which requires the new supermarket to have a beneficial impact and not of a size that would undermine the existing shopping centre. We consider that the size and scale of the southern store, including its potential impact upon the financial performance and vitality & viability of Seaton town centre, does not sit comfortably with the tests outlined in Local Plan Policies LSE1 and SH1 plus the adopted Development Brief. From a retail policy perspective, a smaller size of store (such as the size proposed by Liatrix and the northern store) would have a better relationship with these policies. There will be, however, other non-retail policy material considerations which will need to be taken into account by EDDC when making a decision on both the southern and northern store applications including their relationship to Policy LSE1 and the Development Brief in totality.
- 6.12 Overall, balancing the above factors, we make the following conclusions regarding the two applications

Consultants' Conclusions

The Southern Store (full and outline planning applications)

On the basis that an appropriate pedestrian link between the proposed supermarket and The Underfleet can be provided prior to occupation (and retained in perpetuity), we consider that the in principle location of the southern supermarket (in the full and outline planning applications) meets the provisions of the sequential approach in PPS6, RPG10 and the Structure Plan and is the sequentially preferable site within Seaton. We also consider that, on balance, there is a need for the proposed southern store, although it should be noted that a quantitative need does not exist for all of the proposed convenience and comparison good retail floor space in the proposed southern store. However, due to the size of the proposed store (in terms of convenience and comparison goods floor space) we do not consider that the full and outline planning applications fully meet the provisions of Policies SH1 & LSE1 of the Local Plan. In particular, we consider that the size and orientation of the store do not respond

positively to guidance within PPS6 and its accompanying design guidance, plus Local Plan Policy LSE1. In terms of the impact of the southern store, taking into account compliance with Local Plan Policies LSE1 and SH1 plus the adopted Development Brief for the application site, we do not consider that the proposed store complements the town centre and its size (and financial impact) has the ability to undermine the vitality and viability of the town centre. Overall, whilst the location of a supermarket within the proposal is to be preferred, the size and design of the current proposal does not, in our opinion, fully address the requirements of Policies SH1, LSE1 and the adopted Development Brief.

The Northern Store

Whilst we consider that there is a demonstrable need for the amount of convenience and comparison goods floor space proposed within the planning application (thus meeting guidance within the Development Plan and PPS6), we conclude that it fails the sequential test as set out in PPS6, RPG10, the Structure Plan and Policy SH3 of the Local Plan, given that the southern planning application site is the in principle East Devon District Council July 2009 preferred location for retail development on the edge of Seaton town centre. As a result, whilst the northern scheme is of a scale which performs better against the 'complementarity' test in Policy LSE1 and may have a lower direct financial impact on the town centre economy than the southern proposal, the current northern application cannot be preferred in overall retail policy terms above the location of the supermarket within the southern proposal.

Assessment of Consultants' Conclusions

Location

On the assumption that the Footpath Link from the Southern Store is provided there is a preferred location in this case i.e. the southern store site. In both Development Plan and sequential approach terms the Southern Store is to be preferred. Set against this, the Council's consultant has expressed concern about the size of the retail provision (which has been reduced slightly by the removal of the kiosks previously proposed as part of the full application). The southern store has been now modified in design and layout terms to better address its relationship with The Underfleet and to give a more active frontage to the new focal point to be created at the front of the store with the new Footpath Link direct from The Underfleet. It is considered that the negative comments of the retail consultant in terms of how the southern store addresses the town centre and new access link and public space in front of the store has been improved and the proposal is now acceptable on those issues.

Impact on Town Centre

The proposed southern store is larger than what is required in quantitative terms and may therefore have an adverse impact on the town centre, whilst the northern store will not.

However there is the question of economic viability of the whole proposal. The southern store applicants have pointed out that the store needs to be of such a size so that this economic viability of carrying out the rest of the work to bring forward the Regeneration Area is not put at risk. Hence whilst they have reduced the retail impact by removing the kiosks, they feel constrained in being able to reduce the size of the store still further. Members will have to consider whether the impacts of the larger store are acceptable because of the wider regeneration benefits the Southern scheme may bring, for instance from the new footpath link into the Regeneration Area and the proposed raising of ground levels across the land in the applicant's ownership to facilitate further development as envisaged by policy LSE 1 and the Planning Brief.

Cumulative impact

GVA Grimley reported on the possibility of both of the Northern and Southern Schemes being granted planning permission. They considered the impacts in planning terms of both schemes being consented. They reported:

- 5.47 We have also been asked by EDDC to consider the cumulative impact of both the proposed southern and northern stores on the basis that both were to be provided. Such an assessment can become complex as it is not realistic to assume that both stores will trade at the same level as if only one were to be provided. In contrast, it is reasonable to assume that there will be a significant level of competition between the two stores which would affect turnover levels and change the solus trade diversion levels which have been outlined for each application. As a result, it would be incorrect to simply add the town centre trade diversion levels for the northern and southern stores (as outlined above) together to derive a cumulative impact figure. We consider it reasonable to assume that the cumulative trade diversion from the town centre to both stores will be at least as high as the solus southern store diversion level and may be higher. In order to provide a more detailed estimate, we would require further information on cumulative turnover levels to be submitted by both applicants.
- 5.48 Given that we have already stated that the impact of the southern scheme on the town centre will be significant, we have reservations about a scenario which seeks to approve both stores. For example, we do not consider that there are any overriding qualitative benefits associated with the provision of both stores. In addition, and more importantly, we consider that the provision of two new supermarkets on adjacent sites within the Seaton Regeneration Area is not supported by the provisions of Policy LSE1 and the adopted Development Brief.

Thus in qualitative terms there would be no benefit to the town in approving both applications and it does not support the wider policy aspirations set out above.

Conclusions on the Retail Impact Analysis

It is clear from the above that there are separate benefits relating to each of the supermarket proposals. On balance however, it is recommended that the southern store is in the better location closest to the town centre (provided the pedestrian link across to the Underfleet and on to the town centre can be provided) and which would have less of a damaging impact on the town centre irrespective of the size proposed because it is less likely the store would become a separate retail destination in its own right. It is important that the new store functions as an integral part of the town centre.

On the question of the size of the southern store being larger than the town centre could theoretically accommodate without an impact on its viability, the overall economic regeneration of the town has to be considered. The ability of the store to draw in visitors and not just serve local needs is an integral part of the regeneration strategy. The town centre shops could benefit from this additional draw, which a straight forward Retail Impact Assessment is not able to take into account. The catalyst affect has the potential to revitalise the town and the size of the store which allows some element of comparison goods to be offered in addition to the convenience products will enhance the offer. Whilst the northern store has some ability to do this, it could not be on the scale the southern store can achieve.

Whilst it is acknowledged that the provision of a store occupant which doesn't have any presence in the District currently may be advantageous against the provision of a store that already has a number of supermarkets in nearby towns, as explained above in the guiding information on determining competing applications, the brand of the store cannot be taken into account and should not form part of the judgement leading to a recommendation. Purely on the sequential test and on the ability to aid the regeneration of the town by its attractor value the southern store site and store proposal is preferred over the northern one.

FLOOD DEFENCE ISSUES AND FILLING THE SITE

Members are referred to the advice of the Environment Agency set out above and the allied report for the northern site. The views of the Environment Agency are different in each case.

The Southern Store

This application is for the supermarket only and the fill requirements are on a significantly lesser scale than will be required to deliver the larger scale scheme proposed in the outline planning application for the store and residential development etc. However, it is appropriate to consider the question of ground level raising for both the full application and the retail element of the Outline Application and also the fill importation in this application because it is proposed in the recommendation that there be a condition requiring the importation of fill for whole of the part of the Regeneration Area within the applicant company's control; and its distribution on the site to bring levels up to that required for development by the Environment Agency; as a pre-requisite to the store opening for trading.

The planning applications contain information relating to the filling mechanism for the site. The EIA and CEMP provide possible mitigation measures which will ameliorate the worst case scenario of 40% of fill for the overall Regeneration Area in the applicant's ownership to be brought by road to an acceptable level.

In addition it needs to be understood that the proposal for a pipeline and the sequence importation of fill is subsequent development which requires planning permission in its own right as an engineering operation. The LPA will consider at that stage whether a detailed Environmental Impact Assessment (EIA) and if necessary Appropriate Assessment under the Habitats Regulations (see below) will be required to deal with this specific element. For the current applications the impacts of the fill operations within the Regeneration Area and the cumulative effects of the fill operations elements outside of the Regeneration Area have been assessed for EIA purposes.

There has been a shift as to how best to bring the site up to a level whereby the development will be protected from flood risk. The initial proposals to bring in aggregate by road met with very strong local opposition for a number of obvious reasons relating to noise, and impact on local residents as well as potentially the fabric of those homes. It is clear that the disruption to the town over a very long period would be significant. Hence the applicants have given further thought to this and have now changed their proposals to bring in the majority of the necessary aggregate on to the site by a sea route and a pipeline ashore.

The scheme submitted initially, and assessed in the applicant's Environmental Statement, anticipated just under 60% of the fill required for the whole of the Regeneration Area being transported by sea. The applicants have subsequently revised their proposals for land raising within the Regeneration Area and now envisage approximately 75% of the total fill material arriving by sea. They have provided a short paper and project brief on how this could be achieved which has been appended to this report. For EIA purposes the assessment on a worst case basis of 40% of fill material arriving by road has been retained, and the impacts of the development assessed on that basis.

It therefore seems there is a practical alternative fill mechanism to the haulage of all fill materials by road. The applicants have already begun to investigate with the owners of the dredging boat the way in which this can be done at Seaton. It appears that the license to recover dredged material (mostly good quality sand) from the Solent area is already in place. Similarly agreement has already been reached with the owners of the Axe Riverside site to bring any pipeline across private land to the site, although it is understood no agreement is yet in place with the Council as owner of the Riverside Workshops site, should the pipeline route run over Council owned land. The advice from the Environment Agency and Natural England at the time of writing this report is that the processes can be controlled adequately for planning purposes by an appropriately worded negative condition, with the offshore elements being controlled by licences issued by the Secretary of State.

The applicants understand that they will be bound by stringent conditions attached to any approval to seek consents for and undertake the necessary fill exercise and that they run the risk that they may not obtain the final approval for the fill works. A Grampian style condition on the grant of permission for both the outline and full application can be imposed and the Council

have received sufficient information on the process to allow the cumulative impacts of the process to be assessed at this stage.

Objectors have pointed to the danger that the developers will ignore planning conditions and carry on with the development regardless. Enforcement processes under various pieces of legislation protecting the environment as well as the planning legislation would however be available to the Council as it would be for any other application, and this would not therefore be a valid planning reason to refuse permission.

The Northern Store

The initial concerns of the Environment Agency now appear to have been overcome. On the question of fill, the proposal is described by the applicant company as fill neutral apart from the potential for bringing in a smaller amount of fill by road for top dressing. There is some clarity needed as to the fill material extracted from the basement car park area of the site and whether or not this is of sufficient quality to use on the construction site. If it is not then further material may need to be imported. The applicants are confident this will not be an issue.

CONTAMINATED LAND AND OTHER ENVIRONMENTAL HEALTH ISSUES

The application sites are all subject to varying degrees of potential contamination. The views of the Environment Agency and the Council's Environmental Health Officers are important considerations in both cases. Other Environmental Health issues such as noise, particularly from construction traffic and lorry movements to the site, light pollution and air quality also need to be considered. In addition the issues in relation to the day to day servicing of the store are relevant

Contaminated Land

The Southern Store

The Environmental Health Officers and the Environment Agency (EA) raise concerns about potential contaminated land on the site. The EA has now considered the issue in more detail and is content for an approval to be granted subject to appropriate conditions.

Likewise EDDC EHO team have reservations about the application but consider that the Council's standard contaminated land condition could be applied and that in the case of the outline this could be dealt with as a reserved matter. As the full application site is encompassed by the outline site it follows that the same logic would apply whereby a negatively worded condition could be imposed to resolve the issue.

The council's standard condition CT3 on contaminated land reads as follows:-

Unless otherwise agreed by the Local Planning Authority, development other than that required to be carried out as part of an approved scheme of remediation must not commence until conditions (*add as appropriate i.e. 1, 2, 3 and/or 4*) have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until condition 4 has been complied with in relation to that contamination.

1. Site Characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written

report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- (i) A survey of the extent, scale and nature of contamination;
- (ii) An assessment of the potential risks to:-
 - human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - adjoining land,
 - ground waters and surface waters,
 - ecological systems,
 - archaeological sites and ancient monuments;
- (iii) An appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's '*Model Procedures for the Management of Land Contamination, CLR 11*'.

2. Submission of Remediation Scheme

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

3. Implementation of Approved Remediation Scheme

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

4. Reporting of Unexpected Contamination

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 1, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 2, which is subject to the approval in writing of the Local Planning Authority.

Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 3.

5. Long Term Monitoring and Maintenance

A monitoring and maintenance scheme to include monitoring the long-term effectiveness of the proposed remediation over a period of [x] years, and the provision of reports on the same must be prepared, both of which are subject to the approval in writing of the Local Planning Authority.

Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced, and submitted to the Local Planning Authority.

This must be conducted in accordance with DEFRA and the Environment Agency's *'Model Procedures for the Management of Land Contamination, CLR 11'*.

Reason (common to all): To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

This must be conducted in accordance with DEFRA and the Environment Agency's *'Model Procedures for the Management of Land Contamination, CLR 11'*.

Reason (common to all): To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

The earlier letter from the EA concedes that soil samples from the site do not show elevated levels of contamination. It does suggest further sampling takes place and also suggest that a condition be applied to any permission. The site is also covered by the allied outline application where the same condition would be applied. Linking and phasing conditions on the full application would ensure that no work commences on the application site until further details had been submitted and agreed by the LPA (in consultation with both EA and EDDC EHO). An appropriate planning condition can be used where further detailed evaluation is necessary before work commences.

The Applicant's ES states that contaminant concentrations within the site are not considered to pose a threat to either future occupiers or controlled water receptors. Conditions can be applied proposing either further work or specified mitigation measures as is being recommended here. The Local Planning Authority has not received any suggestion from either the Environment Agency or Natural England that the Environmental Impact Assessments submitted is of such poor quality that it is not fit for purpose.

The Northern Store

The EA confirms in its letter dated 14 April that it has objections on flood risk and groundwater impact issues but if these can be overcome then in respect of contaminated land they are content with Condition CT3 as set out above.

In its later letter in response to amended plans The EA reiterates this advice and adds that a scheme for the method of piling foundations to prevent any contamination of the underlying aquifer should be applied. The views of EDDC EHO support the views of the EA in respect of contaminated land.

There are no fundamental objections therefore on this issue in respect of the northern store but any grant of permission should therefore include such conditions.

Noise issues

EDDC EHO have commented on both applications that more detailed work is required to mitigate against both construction noise traffic and operational noise once any store is open.

The Southern Store

EDDC EHOs are concerned about noise impact primarily during the construction phase. The EHO team consider that more information needs to be submitted prior to any works commencing on site. In their final comments they suggest that an updated Noise Management Plan should be formulated and submitted to the LPA for approval. So, whilst they have concerns about the potential impact of the development the Council's noise experts take the view that this can be dealt with by appropriate planning conditions.

Some local residents who live along Harbour Road have objected to potential noise impact from the operation of the new store and daily traffic movements to and from the car park, petrol station and servicing area of the store, but these are not so significant as to warrant a refusal and have not been supported by the Council's EHO team.

Noise from construction traffic can also affect those areas remote from the site such as Axmouth village. At the present time the applicant's construction management plan refers to a percentage of lorry movements through the village by construction traffic initially and then by delivery vehicles once the store is operational. If as is now anticipated the bulk of the fill material will come from the sea then the impact on surrounding areas will be lessened.

Officers have now written to the applicants to seek clarification on the exact amount of fill to be brought by road. It is further likely that the s106 agreement will seek an obligation that up to 75% of fill will be brought to the Regeneration Area by sea rather than by road and conditions will require that a maximum of 40% of the fill for the regeneration Area will be imported by road. As part of any approval lorry movement routes and mitigation measures will need to be finally approved based on the proposals put forward in the Construction Management and Environment Plan.

Noise from construction vehicles and other construction work on the site itself such as piling can be adequately covered by appropriate planning conditions.

The Northern Store

Members are referred to the detailed comments of the EHO team. In particular concerns have been raised in respect of the northern proposal with regard to both the construction phase and later operational phase. The noise from construction traffic and the noise from the service area and how this will impact on local residents who live nearby are highlighted. The issue of the skate park has been raised by local residents but the EHO team consider that this impact is at an acceptable level. Similar to the southern scheme the view of the EHO team is that all these issues can be resolved with further submissions and appropriately worded conditions.

Light pollution

Both schemes have the potential to impact on the local area in respect of light pollution. Each scheme presents different issues but in both cases it appears that the issues can be overcome by further submissions via appropriate conditions. Light pollution can also impact on protected species, particularly bats. At present Natural England does not object to any of the applications subject to a scheme of lighting is agreed later.

Air Quality

Similarly in respect of the impact on air quality the EDDC EHO team have concerns about the impact of both developments and how this will affect air quality particularly during construction phases. More survey work needs to be undertaken and mitigation measures proposed for both proposals. As mentioned above the amount of fill material being brought by road is a common

issue for both applications. This will need to be firmed up with revised construction management plans for both applications. Nevertheless your officers consider that both applications can be put forward with appropriate conditions as acceptable in air quality terms in principle, once suitable conditions are applied in the event of a recommendation of approval.

VISUAL IMPACT AND DESIGN ISSUES

Following negotiations both schemes have been amended and the subject of a re-consultation exercise.

The Southern Store

Note: comments on layout, design and visual appearance apply to the full application only as these issues are reserved in the outline application.

(i) Site Layout and Accessibility

This has now been significantly amended in line with the latest drawings – see appendices. The store has now been moved southwards from its original location and provided with a more appropriate sense of arrival both from the car park direction and from a newly created link and pedestrianised areas linking the store to The Underfleet and thence to the town centre. The car parking area has also been reduced particularly on the Harbour Road frontage which is now provided with an area of landscaping to soften the impact of the car park and new highway junction works. In addition the Petrol Filling Station has been somewhat softened by the introduction of further planting as has the main car park. The main access into the site has been reduced in line with the comments of the Highway Authority. The site is accessible by all members of the community with those with disabilities catered for by limiting changes in level and providing easy car parking close to the store entrance. In addition a number of new pedestrian crossing points are shown on Harbour Road and The Underfleet to encourage walking to the site. A new pedestrian entrance way is shown onto Harbour Road to encourage users of the store to access the site by walking rather than by car. Improvements to public transport infrastructure are also planned to encourage other modes of transport.

(ii) Design and Visual Impact

The design of the store has been amended by using different softer materials such as timber cladding, and by extending glazed canopy areas, bringing down the scale of the entrance canopies to a more human level. The Council's landscape architect has also been involved in these discussions and is now content with the scheme subject to conditions and further details being agreed at a later date. Various viewpoints have been considered in terms of short range visual impact as well as those from a distance particularly from high ground outside the town to the west and east. The use of a darker non reflective finish for the roof area of the store will help to reduce any long range impact. Photographic evidence submitted does show that long range impact will be limited. In the short term the visual impact of such a large new building from short range views will be considerable but in the longer term any new building will need to be read in context with other building works on the rest of the Regeneration Site.

(iii) Sustainability

The applicant company aspires to reduce the carbon footprint of the store by a variety of means.. Any new store will need to comply with the latest Building Regulations. The applicants are looking to exceed those requirements. They propose a minimum BREEAM rating of very good.

The Northern Store

(i) Site layout and accessibility

Again the applicants have amended their plans substantially following negotiations with officers. In terms of the site layout this has not changed. The footprint of the building is however very close to the northern boundary of the site. This has raised concerns especially to the Axe Wetlands Project Officer, but it has not been possible to move the store to the south to reduce pressure on the northern boundary. Neither does the applicant own or control land to the north to improve planting in this area to soften the impact of the store. In addition concerns were raised about the position of the new skate park and the poor sense of arrival from the Sustrans route. The Council's landscape architect suggests further design work and conditions. Unfortunately given the constraints of the site the applicants have not been able to adequately address the interface between the built form and rural edge of the town in this location.

The site is accessible by all from the car park at surface level and by lifts from the basement car park. The applicants also point out that the store can be accessed from the town centre by a number of routes, albeit one of those routes is along a poorly surfaced private road known as Marsh Road. The plans indicate a similar crossing point of the Underfleet as shown in the southern proposals. However from the point of the individual store entrances to The Underfleet crossing point the southern store performs much better, if the proposed Footpath Link (included in the S106 offer made by the Southern Store developer) is provided. The route from the store to the Town Centre using Marsh Road is about the same distance as the southern store route to the Town Centre via The Underfleet. Marsh Road is sparsely lit and privately maintained, giving access to the Town Centre via a back road area exiting near the public toilets next to the Town Hall.

The plans indicate further buildings on land to the south of the store comprising a new tram centre terminus and associated visitor centre, a new cycle hub and a new children's play area. It is considered that the design and layout of this area is acceptable and if permitted could enhance the existing appearance of this part of the site. The children's play area is not of the same size as the existing and does not occupy an area set within a pleasant green area of open space away from the road as does the existing. Some objectors have raised issue with the location of the new playing area for children and disagree with the applicant's contention that it will be as safe as the existing playing facility.

(ii) Design and Visual Impact

The applicants have taken on board the concerns raised and have radically amended the design of the store to improve the roof line and entrance as well as to improve its appearance when seen close to from the public footpath which runs to the north. The amended plans show a building which is much more acceptable in design terms. It does still however represent a very large building block on the edge of the town in an area which will not soften with the arrival of other new buildings. That said, the proposals on balance are judged to be acceptable although there are real concerns about the long term survival of the trees on the northern boundary. Other issues also have to be addressed in regard to potential light pollution from the upper visitor centre area. A scheme will need to be devised in the event of an approval to provide suitable blinds to this part of the building to prevent excessive illumination escaping from the building at night.

The cycle hub and new tram terminus buildings display a locally distinctive Victorian character which is considered appropriate in this instance. No objections are raised to these design elements.

(iii) Sustainability

Similar to the southern store proposals the applicants have aspirations to provide an efficient building with a low carbon footprint. Their proposals are set out in more detail in the accompanying documents to the application and can be summarised as follows

- Choice of materials to have long term maintenance
- Rainwater harvesting
- Natural lighting by using of glazing
- Energy efficiency using Biomass boiler, building insulation
- Natural ventilation
- Reduction of heat loss in building
- Appropriate landscaping to reduce water requirements
- BREEAM very good target

No objections are raised on this element of the scheme.

HIGHWAY ISSUES

Both proposals have been subject to discussion prior to and during the processing of the applications. Whilst the Highway Authority still await further information their view is that both applications are acceptable subject to conditions requiring further details to be submitted and agreed. Similarly the Highway Authority is content to deal with the question of filling the site and the management of construction traffic to later approval via conditions.

The Highway Authority has been made aware of the local objections on both schemes but considers an approval can be granted on both applications subject to conditions and further clarification on matters such as public transport contributions, travel plans, and management of construction traffic.

ARCHAEOLOGY

Both sites have the potential to release further archaeological details of the history of Seaton. However, both sites have also been the subject of previous development so archaeological remains are likely to be limited. Nevertheless it would be prudent to impose an appropriate condition on any approval requiring further survey work and the results of any findings to be documented.

NATURE CONSERVATION ISSUES

Southern and Northern Stores

The Northern and Southern schemes have been accompanied by Environmental Statements. The applications have been considered by Natural England and the EA as well as other interested parties.

Given the proximity to the application site of a number of European protected ecological sites, it is also felt necessary to have regard to European Union Directive 92/43/EEC on the conservation of natural habitats and wild flora and fauna – the “Habitats Directive” - which provides legal protection for habitats and species of European importance. The protection is implemented through a network of protected areas as well as designating special species of interest.

The Habitats Directive requires appropriate assessment of plans and projects that are likely to have a significant effect on sites of European importance (known as European Sites). The sites need to be assessed to ensure the integrity of these sites is maintained before plans or projects are consented.

Given the number of European Sites and other nature conservation designations, as well as a number of habitats for protected species in the vicinity of the application site, the Council, as a

Competent Authority for the purposes of the Habitats Directive and the UK Regulations applying the Habitats Directive needs to consider whether an appropriate assessment is required for these applications. In considering the need for appropriate assessment, a precautionary approach is required, that is the Council should err on the side of caution and undertake appropriate assessment where there is doubt as to whether or not a significant effect on the European Site and its conservation objectives.

In this process the Council must identify firstly the European Sites that may be affected. These would be:

- the Beer Quarry Caves Special Area of Conservation (SAC) which supports protected bat colonies (approximately 3 km from the Regeneration Area). It has been designated principally for being regularly used as a hibernation site by small numbers of Bechstein's bat as well as an important assemblage of other bat species. ;
- the River Axe SAC (which lies 2.5km north of the Regeneration Area). It has been designated for the plant and fish life it supports; and
- the Sidmouth-West Bay SAC, which lies to the South of the Regeneration Area, (both running east from Axmouth Harbour towards Lyme Regis (approximately 500m from the Regeneration Area) then also to the South West, running from Beer to Sidmouth (approximately 1.2km away from the Regeneration Area). The area closest to the Regeneration Area has been designated because of the unusual plant and animal life it supports, resulting from the geological features arising from the unstable nature of the cliff.

The Council as competent authority should review the elements of the proposals that could have the potential to significantly affect European Sites to consider if appropriate assessment is required. For the current applications these would be the impacts of the development such as construction noise, emissions (including light) and vibration. The principal issue for the schemes once built would be light emissions affecting the land to the north and to the River Axe, both of which are potentially bat foraging areas and the latter a route for fish to reach the River Axe SAC.

Potential impacts are reported in the applicants' relevant chapters in their submitted ES, albeit as part of their assessment of environmental impacts and not as part of any formal Appropriate Assessment process. The Southern store applications do however make reference to AA and the Habitat Regulations.

Screening for Appropriate Assessment has been carried out by officers by way of consultation with Natural England and based on the information provided by the applicants. The screening process and the Council's findings can be found in the appendices.

For the Beer Quarry Cases SPA, all three applications have been considered in reaching a recommendation on screening for appropriate assessment, given the potential for light emissions affecting bat foraging areas.

The Southern applications might conceivably have an impact on the migratory fish heading to the River Axe SAC by sedimentary disturbance, run-off pollution or acoustic interference.

It is not considered likely that the Sidmouth-West Bay SAC would be affected, given that the nature and location of the Southern and Northern Applications and, for the Southern Application, there are no plans to lay any of the temporary pipes for filling operations related to the Southern Site within the SAC.

Advice from Natural England as relevant nature conservation body for each of the European sites is that the nature of the developments; coupled with the characteristics of the European sites; means the potential for a significant effect on the relevant European Sites is limited for each of the applications. This is also the conclusion of the southern store applicant's

Environmental Statement, when mitigation measures are applied to the potentially adverse effects.

Members must consider whether an appropriate assessment of the planning applications as submitted is necessary, prior to resolving on the applications. A recommendation for both applications and the other applications on this report can be found under the Recommendations section.

Natural England, as a relevant nature conservation body for the purposes of the Habitats Regulations, has the view that the impacts on the Sidmouth-West Bay SAC from the proposed sea borne fill operations can be assessed by the Secretary of State as a competent authority. The onshore impacts of the works required for the pipe connection can be assessed by the Council when consent is sought by the applicant for the laying of the permanent physical features of the pipe (for instance a pipe will be laid on a permanent basis under Harbour Road and infilled once the fill operation is concluded). That said, the cumulative impacts of the overall proposals should be considered in screening for appropriate assessment before either the full or outline applications for the southern site are resolved upon. As the pipe is unlikely to be located within the Sidmouth-West Bay SAC, given that it is on the other side of the River Axe, it is considered for the current assessment of cumulative effects, that no significant effects on the Sidmouth – West Bay SAC are likely.

On this basis it is not proposed that a full Appropriate Assessment is required for any of the applications because it is not likely any of the 3 relevant European Sites will be significantly affected by any of the developments on this agenda. The additional mitigation measures being proposed by the applicants further make it unlikely that any potential effect would be significant and the Council will secure this by appropriate planning conditions and S106 Agreement provisions, which amongst other matters will control the exact nature of all the development works, their phasing, methodology of filling the site and protecting natural species and the European sites in question.

The Council has also had regard to the Environmental Statements submitted as part of the applications and the potential for mitigation of any adverse impact coupled with appropriate planning conditions etc as laid out above.

Full appropriate assessment has not been undertaken therefore, on the basis officers believe that screening of the applications does not suggest that there will be significant effects on any of the European Sites identified.

A number of other issues have been raised in respect of both schemes as indicated by the response of Natural England set out above. In addition the comments of the EA need to be considered in terms of the impact of both developments on protected species, as do the comments of the Axe Wetlands project officer

In addition to the Council's role as competent authority, consideration should also be given to policies EN4 – EN6 of the Development Plan, given the proximity of the schemes to the Axe Estuary and Seaton Marshlands County wildlife sites

Southern Store

In addition to the Council's role as competent authority, consideration should also be given to policies EN4 – EN6 of the Development Plan, given the proximity of the schemes to the Axe Estuary and Seaton Marshlands County wildlife sites. The views of the Axe Wetland project officer, Environment Agency and Natural England point to a lack of firm evidence that harm will be caused to interests of wildlife importance. The proposals can through appropriate conditions safeguard wildlife interests and can lead to enhancement of wildlife areas. The applicants propose to transfer land in their ownership to the Council as part of a S106 obligation so that the Council can take forward their plans to enhance and complete the Axe Wetlands project. There is a direct link between the development of the application site and a need to ensure that wildlife interests are protected in the immediate surrounding area of the site, hence the

need for it be included in the S106 obligations. The comments of Natural England set out above refer to the need to ensure the northern boundary treatment is sensitive to wildlife species, particularly bats, and they require similar consideration to be given to lighting within and on the boundaries of the site. This can be controlled by an appropriate condition. Their comments in relation to the impact on the Axe riverside area can be controlled by conditions as attached to any planning permission that may be granted on the separate application elsewhere on this agenda.

Northern Store

Members are referred to the comments of the Environment Agency, who confirm they have no outstanding objections.

IMPACT ON LOCAL RESIDENTS

The impact on local residents falls into two distinct areas for both proposals:-

- Construction phase
- Operational phase

Local residents in this context means not just those living around the site but those within earshot of the works as well as those more distant from the site both Axmouth residents and Seaton residents who could be affected by a reduction in air quality, lorry movements, vibration and general disturbance. There is no doubt that the construction phase will be the most damaging element and will have the greatest impact on local residents.

The Southern Store

(ii) Construction phase

The construction works on site will potentially be very noisy and intrusive if not adequately controlled in terms of noise output, limitations on working hours and days, and a detailed construction management plan limiting lorry movements and specifying lorry routes. The comments on the southern store application apply equally as well to the remainder of their development site shown in the outline application. It is likely and a necessary part of any approval for the retail store that it will need to be properly linked to the further work required under the outline permission, specifically in terms of an updated and fully detailed management plan for construction, and other limitations on noise as well as ensuring air quality is maintained at an acceptable level.

The original intention to fill the site from land materials would have taken a number of years to complete with approximately 40 lorry movements in each direction per day. The sea dredging option will reduce this time from years to months with a significant reduction in the impact on local residents. There may still be a need to bring some material in by road but this will be very small in quantum terms compared to the bulk fill needed. There will also be the construction traffic however and the applicant deals with the likely impacts in its Environmental Statement.

The other potentially damaging impact from the construction phase will be from piling noise, vibration and dust and air quality reduction. The EDDC EHOs consider these issues can be resolved satisfactorily with negative worded conditions preventing any development from occurring until further submissions have been made and details of construction agreed. This principle is common to most large infrastructure and development projects.

(ii) Operational Phase

The store position benefits from being far enough away from local residents along Harbour Road not to have a long term significant impact on quality of life. The store will be part of a much wider change in the nature of the area from a former holiday use site to a retail store and petrol filling station. The servicing element of the store likewise is in an area where there are no close local residents, albeit the noise of servicing vehicles is likely to carry across the Underfleet to the flats to the west. In this respect it would be prudent to impose conditions relating to servicing hours and/or a scheme for noise measurement at the nearest noise sensitive boundary. The petrol filling station is to be located away from existing residents. The outline master plan shows dwellings on the opposite side of the main servicing access road from the store but it is likely this relationship will be acceptable. Whilst some local objections have been raised regarding the impact of the operation of the store they are not of such significance as to warrant a refusal of planning permission.

The Northern Store

(i) Construction phase

EDDC EHOs raise concerns regarding the lack of information covering this impact. However it is considered that the impact of the construction phase can be limited by condition. There is likely to be a high number of lorry movements associated with the building of the new store even though the applicants put forward a fill neutral scenario. Until further excavation work is carried out on site it is not fully known what amount of clean fill material will be required. Notwithstanding this the EHOs do not object to the scheme subject to conditions being imposed.

Similarly the potential for piling for foundations and other construction noise will need to be carefully controlled. Unlike the southern store this store is located closer to a number of residential properties who could be adversely affected without proper controls being in place.

(ii) Operational phase

Concerns have been raised in connection with the position of the skate park but the EHO having carefully considered the design of this facility have concluded that it is acceptable. Conversely EDDC EHO have expressed serious concerns regarding the position of the service bay and how this could affect local residents in the immediate vicinity. They stop short of recommending refusal but regret that this element of the scheme should be located in a less noise sensitive part of the site. It is suggested that limitations are placed on any servicing hours and that the noise mitigation measures should be put in place.

SECTION 106 CONTRIBUTIONS

Both applicants have put forward a package of measures and contributions to be offered to offset the impact of the development.

Southern Store

The Southern store applicants have offered a number of planning obligations. In particular two are key to consideration of the application in comparison to the Northern Scheme. These are:

- a commitment not to open its store until it has built a link (Footpath Link) across the Council's land south of the tram station to link to Underfleet/Harbour Road roundabout and

- a commitment not to open its store until it has carried out a scheme for filling the whole of the Regeneration Area to raise ground levels to allow the Regeneration Area to be brought forward for development.

The Footpath Link will provide access from the Southern Store to the Town Centre and also would provide a link into the Regeneration Area through an enhanced public realm area.

An important adjunct to the new southern store is the proposal on the adjoining land, owned by the Council, and shown within the red application line for the outline scheme, of a visitor centre. The visitor centre is a key component to the Council's plans for the regeneration of Seaton and in order to enhance the prospect of its' being delivered as expeditiously as possible, it is proposed that the applicant confirms that £1.7million will be provided as East Devon District Council's contribution to the visitor centre. . The mechanism for actual payment may be through an agreement between the applicant company and those charged with facilitating the visitor centre's being constructed rather than the payment being made under the Section 106 Agreement under the Planning Legislation. The S106 agreement will however contain an obligation that the development of the retail store cannot commence until the contribution has been made. It is important to note however that, whilst the applicants have indicated their willingness to make funds available for the visitor centre, the scheme does not include the construction of the visitor centre as an integral part of the development, and it will be for others to actually construct the facility.

Other planning obligations proposed by the Applicant are

1. Prior to the opening of the retail store, the whole of the Regeneration Area in the Applicant's ownership and the visitor centre site) shall be filled to the ground levels required by the Environment Agency to permit redevelopment (to be specified in detail) principally via a pipe system from sea to land to secure a minimum of 75% of the fill required, the process for which shall previously have secured the benefit of planning permission and all other necessary consents. The area of filled land not immediately required for development shall be maintained in a clean and tidy condition to the satisfaction of the Local Planning Authority.
2. The payment of £45,000 contribution for the employment of a Town Centre Manager for a period of 3 years, monies to be paid prior to the commencement of the development.
3. The payment of [£] as the public transport contribution.
4. To put in place the necessary consent, and the payment, for the required off-site highway works as shown on Plan X.
5. The submission to, and agreement of, EDDC of an open space (including any hard surface public realm areas) management plan to include phasing and the putting in place of the necessary mechanisms to secure maintenance to an acceptable standard in perpetuity.
6. To enter into an agreement to permit public access to all areas of maintained open space (specify) at all reasonable times.
7. The provision of a sustainability strategy and its implementation shall be secured for the commercial and residential development. The retail store to achieve BREEAM Very Good
8. There will be a public art contribution [£] to be paid at the appropriate trigger point.

9. The provision of a footway and cycle plan to provide all the necessary links from the development to the Sustrans route and the implementation of the necessary infrastructure works.

Further work is required and negotiations on the exact sums for contribution. A verbal update on this will be given at Committee.

Northern Store

The Northern Store applicant proposes new facilities such as a visitor centre and play facilities and a relocated skate park. A contribution would be made to provide funding for sports pitches play area to replace the mini pitch facility that forms part of the application site.

The visitor centre would be an integral part of the main supermarket building. It would be a large facility on top of the retail floor and would look out over the Seaton Marshes. Provision would also be made for public toilets and a Cycle Hub facility.

In terms of the proposed visitor centre Members will note the comments both from the Estates team and EDDC Visitor Centres Project Development Manager. Both express comments about the northern store's proposal and whether this is a realistic option, not just in cost terms but in terms of whether or not it will be an attractive facility particularly because of its position sitting above the store, albeit it will enjoy views of the wetlands and Undercliff which the southern store proposal could not achieve.

Offers are also made to provide the following -

- Axe Wetlands project (unspecified contribution)
- Signage for pedestrian links to the Town Centre
- Highway infrastructure works including enhancement of public rights of way (but cannot control as not in their ownership or wholly in Council's ownership)
- Public transport contribution of £150k
- Youth Centre facilities (unspecified contribution)
- Town Centre manager (£30k contribution)
- Links to the remainder of the Regeneration Area dependant on being able to cross the tramway (will require the status of the line to change from a light railway to a tramway)
- Community facility hub for a TIC, a Sustrans cycle hub and public toilets either by a financial contribution or to build at part costs
- Public art contribution of 1% of capital cost of scheme (unspecified amount)
- 70/30 split between convenience and comparison goods

There is nothing in the applicant's Heads of Terms which relates to a car park management plan particularly for the basement car park and a lack of clarity as to whether or not the District Council will be given ownership (and future maintenance provision should they wish to take ownership) or a lease (and future rights to gather income). Neither is there any detailed provision for a temporary car park to replace that lost during the construction works in the near vicinity to cater for visitors and other local residents. The applicants Construction Method Statement states that it will look at providing a temporary car park but does not say how much of the existing car park will be kept available or where any alternative temporary car park would be sited. Neither is there any indication of the position of any plant or machinery compound or the works portacabins that will be required. This is critical given the location of nearby dwellings and the lack of space available to provide all these off the actual site of the store building itself without disrupting the existing car parking area. The works themselves will require a large contractor's compound. Neither is there any provision for a replacement picnic site to a commensurate level with that lost in the vicinity.

The northern store applicant company is suggesting a different mechanism to deliver its offer, as it is not currently the owner of the development site and is therefore unable to enter into a S106 agreement that will bind the development land. It suggests imposing a planning condition

to require a legal agreement be entered into at a later date after planning permission has been issued, and on conclusion of an agreement on the part of EDDC to sell the land, with the person who has acquired the necessary interest to allow it to enter into an agreement under S106. It too has provided draft heads of terms which can in its opinion form the basis of an approval in principle.

The applicant's legal team has commented as follows in relation to all contributions:-

1. *A S106 Agreement obligation can only be made by a person with an interest in the land and will only bind the extent of that interest. The Tram Company can validly create a planning obligation but only to the extent of its interest in part of the application site. The freehold interest in the remainder of the site is owned by EDDC. As EDDC cannot contract with itself (even in its separate capacities as landowner and planning authority) it cannot enter into planning obligations and, consequently, the majority of the freehold interest in the site cannot be bound under S106 at this stage.*
2. *A way around the problem identified in paragraph 1 is to impose a condition that restricts development until such time as the land is bound by the planning obligations (this envisages transfer of the land to a new owner and that person entering into a S106 deed before it commences development).*
3. *A condition along the lines referred to in paragraph 2 will be valid, as long as it satisfies the legal requirements for conditions, as established in the Newbury case. These are that conditions imposed must be for a planning purpose and not for any ulterior one; they must fairly and reasonably relate to the development permitted and not be so unreasonable that no reasonable planning authority could have imposed them.*
4. *It is likely that EDDC will also require the condition to be in accordance with Government advice contained in Circular 11/1995. However, it is important to note that it is not a legal requirement to meet this advice. The advice is a material consideration to be balanced with all other material considerations in the determination of the planning application. Notwithstanding this, the main paragraph of the guidance to be aware of when drafting the condition is paragraph 13. Paragraph 13 states that "Permission cannot be granted subject to a condition that the applicant enters into a planning obligation under section 106 of the Act or an agreement under other powers." This can be complied with by drafting the condition as a restriction on development until a Section 106 Agreement has been entered into rather than as a positive obligation to enter into a S106 agreement.*
5. *An important consideration is that EDDC can ascertain and take into account the content of the S106 planning obligations prior to granting the planning permission. This is sometimes achieved by agreeing and appending a draft deed to the planning permission. However, in this situation, as [Tram Co] has an interest in the land, the best course of action would be for [Tram Co] to enter into a S106 agreement to bind its interest in the land then refer to this S106 agreement in the condition.*
6. *Suggested wording for the condition is as follows:*

"The development permitted by this planning permission shall not be initiated by the undertaking of a material operation as defined in section 56(4)(a) to (d) of the Town and Country Planning Act 1990 in relation to the development, until a planning obligation pursuant to S106 of the said Act in relation to the land has been made and lodged with the local planning authority and the local planning authority has notified the persons submitting the same that it is to the local planning authority's approval. The said obligation will be in the same terms as or substantially the same terms as the agreement dated [] 2009 entered into by the local planning authority and [Tram Co] in respect of this application site."

7. *The issue could not be overcome by the submission of a unilateral undertaking by [Tram Co], as EDDC suggests. A unilateral undertaking made under S106, in the same way as a bilateral agreement, would only bind the interest in the land held by the party providing the undertaking. As [Tram Co] has an interest in only part of application site, it is only that interest that would be bound by a unilateral undertaking."*

Officer comments

There are concerns over this approach. Recent Appeal decisions indicate that a planning authority should not seek a S106 by condition. Advice issued to Inspectors by Communities and Local Government suggests the use of negatively worded conditions requiring a legal agreement at a later date should not be used. It is normal practice to require the signing of a S106 agreement prior to issuing a planning permission. Alternatively a Unilateral Undertaking under S106 is signed by the applicants and submitted with their application. Neither is possible in this case.

Whilst there is not a definitive legal judgment on the issue, and indeed legal opinion is divided, it is not entirely clear that a condition can be used as is being proposed by the applicant. If it is accepted that a condition can in principle be used to secure planning obligations as suggested, then officers would insist that a S106 agreement is fully worked up and appended to the planning permission. Any resolution to issue permission should also be subject to a condition precedent that the financial standing of the developer be ascertained prior to the commencement of development, with the Head of Planning and Community Services being satisfied that there will be sufficient financial security available to enable the local planning authority to re-coup its costs of having to step in and complete and/or maintain the undercroft public car park if it is not adequately maintained by the landowner or development is not completed to allow for the occupation of the new visitor car park. A condition should also be imposed on the planning permission to ensure no development takes place until a full scheme for the management and maintenance of car parking for tourists is available throughout the development period and then available following opening of the retail store.

At the present time it remains your officers' advice that it would not be acceptable to issue a planning permission with a condition as suggested by the applicants.

CONCLUSIONS

The Southern Store

The Southern Store better fits the Council's Local Plan and Regeneration Area Brief than the Northern Store. With the provision of a Footpath Link from the application site to the Underfleet/Harbour Road junction, the site is preferable in terms of central government retail policy for linking with the existing town centre.

The store proposed would be larger than what is required according to the Council's retail consultant). It would deliver a new retail opportunity which will help to address leakage of trade away from the town to other nearby centres and assist in providing a catalyst for the remaining regeneration site within the applicant company's ownership by bringing forward the filling process required for the remainder of the land in the applicant's ownership to be developed for housing and other proposed uses.

The design of the store and public realm works, subject to further conditions, are now considered acceptable.

The potential site for and feasibility studies already undertaken in respect of a new visitor centre in close proximity to the store which have now been realistically costed are a significant benefit that will come forward (subject to grant aid and Members approval). This differs from the northern store proposals for a more expensive project and a lack of certainty about deliverability, usability and long term maintenance. The illustrative outline planning drawing for

the southern store proposal has now moved on following discussions with the EDDC project officer. The outline permission will require full details to be agreed for the visitor centre to ensure a project of high quality which will attract the necessary visitors to make it viable and act further as a catalyst for regeneration for the town.

The application and proposals will be linked by S106 agreement and phasing conditions on the outline application to ensure that all relevant elements of the package on offer are delivered when development proceeds. The impact on local residents, subject to detailed conditions, is also considered to be acceptable. This viewpoint is taken on the basis of the application as now amended.

On the question of the fill being brought on to the site, the applicant has offered to deliver the fill on to the whole site within their ownership and control prior to the opening of the store and this is a significant commitment to the future of the Regeneration Area. It is proposed therefore within the recommendation to suggest a Grampian condition requiring the fill to be brought to the site and distributed to the appropriate levels before the store commences trading. Further detail will be provided in the s106 agreement between the parties.

The applicant has offered contributions to the Council's as detailed above which can be realised either through the S106 or a separate agreement with the Council as landowner.

The southern store application is therefore recommended for APPROVAL subject to the details set out in the Recommendation section of this agenda.

The Northern Store

Similarly this scheme has much to commend it. The proposals include a new store which is well suited to the quantitative and qualitative needs of the town. It proposes other new facilities such as a new tram way terminus, visitor centre and play facilities and other valuable contributions as set out above.

Set against this are the issues highlighted by the Council's retail consultant in terms of the sequential approach to site selection.

Much has been made by local people of the benefits the company could bring to the town. However, Members are reminded that there is no guarantee that the named applicants will be in a position to take advantage of any permission granted. In this respect Members are reminded again to look at the schemes without reference to names of the operators and not to be unduly influenced either way.

The loss of the main play area from an essential location in the town where it attracts significant levels of use by young people is felt to be an unacceptable part of this scheme. This loss is exacerbated by the parallel loss of an important picnic area. It is acknowledged that the play equipment and skate board park will be relocated although not in as safe and desirable environment as present. There are real concerns about the exporting of the mini pitch element of the site, most likely to the outskirts of the town in an area where [local surveys] suggest that the young people have no wish to congregate. The presence to the north of the Axe Wetlands is of course a balancing feature but does not make up the loss of this important facility in this location. This ground is considered sufficiently important to warrant a ground of refusal based upon it.

The northern store application is therefore recommended for REFUSAL for the reasons set out below in Recommendation B:-

Conclusions on Dealing with the Competing Applications

The question has also been asked about approving both applications and letting the market decide on which one goes forward. Whilst this scenario does not arise in that the objections set out above are sufficient to reject the Northern Store application as it stands, the views of the Council's retail consultant is that a Local Planning Authority (ignoring as it should any land owning interest it may have in either site) should deal with the cumulative impact question. In this respect to approve two stores and see both potentially built will, it is suggested be unacceptably damaging to Seaton Town Centre.