

CENTRAL COAST COUNCIL

Minutes

of Special Meeting

26 FEBRUARY 2007

Note.

Minutes subject to confirmation at
a meeting of the Council to be held on
19 March 2007



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Minutes of a special meeting of the Central Coast Council held in the Council Chamber at the Administration Centre, 19 King Edward Street, Ulverstone on Monday, 26 February 2007 commencing at 7.30pm

Councillors attendance

Cr Mike Downie (Mayor)	Cr Brian Robertson (Deputy Mayor)
Cr Warren Barker	Cr Jan Bonde
Cr Lionel Bonde	Cr Rodney Cooper
Cr John Deacon	Cr David Dry
Cr Ken Haines	Cr Beryl Marshall
Cr Terry McKenna	Cr Tony van Rooyen

Employees attendance

General Manager (Mrs Katherine Schaefer)
Director Assets & Engineering (Mr Bevin Eberhardt)
Director Corporate & Community Services (Ms Sandra Ayton)
Director Development Services (Mr Jeff McNamara)
Executive Services Manager (Mr Graeme Marshall)
Land Use Planning Group Leader (Mr Shane Warren)

Media attendance

The Advocate Newspaper and the ABC

Public attendance

Thirty-one members of the public attended during the course of the meeting.

Prayer

The meeting opened in prayer.

MAYOR'S COMMUNICATIONS

78/2007 Authority for special meeting

The Mayor reported as follows:

“This special meeting of the Council has been convened at my direction. Only the items on the agenda may be discussed.”

- Cr (L) Bonde moved and Cr Robertson seconded, “That the Mayor's report be received.”

Carried unanimously

79/2007 Pecuniary interest declarations

The Mayor reported as follows:

“Councillors are requested to indicate whether they have, or are likely to have, a pecuniary interest in any item on the agenda.”

The Executive Services Manager reported as follows:

“The *Local Government Act 1993* provides that a councillor must not participate at any meeting of a council in any discussion, nor vote on any matter, in respect of which the councillor has an interest or is aware or ought to be aware that a close associate has an interest.

Councillors are invited at this time to declare any interest they have on matters to be discussed at this meeting. If a declaration is impractical at this time, it is to be noted that a councillor must declare any interest in a matter before any discussion on that matter commences.

All interests declared will be recorded in the minutes at the commencement of the matter to which they relate.”

No interests were declared at this time.

DEPARTMENTAL BUSINESS

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80/2007 Council acting as a planning authority

The Mayor reported as follows:

“The *Local Government (Meeting Procedures) Regulations 2005* provide that if a council intends to act at a meeting as a planning authority under the *Land Use Planning and Approvals Act 1993*, the chairperson is to advise the meeting accordingly.

The Director Development Services has submitted the following report:

‘If any such actions arise out of Agenda Item 2.2, they are to be dealt with by the Council acting as a planning authority under the *Land Use Planning and Approvals Act 1993*.’”

The Executive Services Manager reported as follows:

“Councillors are reminded that the *Local Government (Meeting Procedures) Regulations 2005* provide that the general manager is to ensure that the reasons for a decision by a council acting as a planning authority are recorded in the minutes.”

- Cr McKenna moved and Cr (J) Bonde seconded, “That the Mayor’s report be received.”

Carried unanimously

**81/2007 Five Apartments, two retail tenancies, car parking and demolition of existing house at 52 Main Road, Penguin
Application No. DEV2006.53 (62/2007 - 19.02.2007)**

The Director Development Services reported as follows:

“The Land Use Planning Group Leader has prepared the following report which was considered by the Council at its ordinary meeting on 19 February 2007 (Minute No. 62/2007) but in respect of which voting on the motion moved at that meeting was tied [resulting in the motion being determined in the negative - *Local Government*

(Meeting Procedures) Regulations 2005] and which, for the purposes of the *Land Use Planning and Approvals Act 1993*, resulted in the application not being determined.

DEVELOPMENT APPLICATION NO.: DEV2006.53
LOCATION: 52 Main Road, Penguin
OWNER: Jaws Architects
obo owner
ZONING: Business (BA) - Central
PLANNING INSTRUMENT: Central Coast S.46 Planning Scheme
No.1 of 1993 (the Scheme)
ADVERTISED: 5 December 2006
REPRESENTATIONS EXPIRY DATE: 19 December 2006
REPRESENTATIONS RECEIVED: 159
42-DAY EXPIRY DATE: 26 February 2007
DECISION DUE: 19 February 2007

PURPOSE

The purpose of this report is to consider the merits of an application for a proposed use and development that has discretionary components at a site on the periphery of the commercial business district of Penguin.

The report will consider:

- 1 the compliance of the application and the different land uses against the relevant provisions and development standards of the Scheme;
- 2 the specific objectives of the Scheme and their relevance to this application;
- 3 the specific intent of the Business (BA) - Central zone;
- 4 the merits of the representations received opposing the development;
and
- 5 the merits of the representations received in support of the development.

BACKGROUND

The subject property is located on the southern side of Main Road and contains an existing single-storey house that was constructed in 1927. The lot size is 690m² in area, rectangular in shape with a north-east to south-west axis. A right of way over the adjacent lot at 54 Main Road also benefits the land.

The immediate property in a westerly direction contains the heritage listed Uniting Church (St Stephens) and church hall. A local real estate business operates to the east. A railway line bounds the land to the rear.

The proposed development comprises two retail tenancies at ground level with direct access onto Main Road. The remaining ground floor level behind the two retail tenancies includes car parking and manoeuvring space for vehicles associated with the five apartments.

These spaces are partially covered by the overhead apartments. Also on the ground floor and located behind the retail area and accessed by a discreet pedestrian access from Main Road is the lobby, liftwell and stairwell for the apartments above.

The first and second floors above ground level contain two apartments each with the top floor containing one larger apartment with a similar footprint as the units below.

The applicant indicates that:

“the form of the building takes reference from the broader topography and geology of Penguin. It is conceived as an object in the landscape of the town rather than simply a façade to the street. The twisted/stepped form of the building provides maximum sunshine, privacy and views for all apartments.”

A location plan is attached as Annexure 1.

The supporting written documentation is attached as Annexure 2.

The proposed plans are appended as Annexure 3.

DISCUSSION

It seems reasonable to acknowledge that the scale and mass of this proposal has attracted the attention of local residents who in the main, based solely on the quantity of representations received, are opposed to this development for varying reasons.

This report will consider the merit of all representations received within the prescribed 14-day public scrutiny period as well as assessing the development against the relevant provisions of the planning scheme.

The discussion will generally follow the sequence of the first three points mentioned previously in the introduction. The fourth and fifth points are addressed in that part of the report dealing with consultation.

1 The compliance of the application and the different land uses against the relevant provisions and development standards of the Scheme.

Clause 3.9.2 of the Scheme provides the appropriate matters for Council to consider before granting or refusing a planning application.

As well as considering the objectives and the intent of the zone the other matters relevant to this proposal include:

- (a) whether the proposed development is satisfactory in terms of its siting, size and appearance in relation to the existing site, adjoining land, the streetscape, and any items of historic or architectural interest;
- (b) whether the proposal would adversely affect the existing and future uses on adjoining land and vice versa; and
- (c) any other matters which in the opinion of Council should be considered.

Schedules 1, 2, 5 and 7 of the Scheme form the basis for this discussion. The demolition of the existing house is included in the description because under the Scheme, demolition can only occur if it is for the purpose of a development which has been granted planning approval or is a permitted as of right use. This essentially ensures that a Building Permit for the demolition can't be considered unless the redevelopment is known and has been approved.

Schedule 1 contains the definition(s) of the proposed uses(s). The description of the proposal was formed at the time the application was made.

Conclusion - This portrays the overall intent of the proposed development and doesn't require any further elaboration or discussion.

Schedule 2 defines the status of the defined use in any particular zone as either "P1" - permitted as of right, "P" - permitted, "d" - discretionary, "x" - prohibited or "R" - development in rural zones.

The following can be assigned to this proposal in the Business (BA) - Central zone.

Apartments are a “d” - discretionary land use. Shop (two retail tenancies) are a “P1” - permitted as of right land use.

Schedule 5 of the Scheme defines the car parking requirements for the proposed uses. An existing Council decision (Minute No. 141/94 - 28.02.1994) excludes a requirement for on-site car parking associated with commercial uses in the Business (BA) - Central zone. This application consequently only deals with the car parking requirements of the apartment use.

The Schedule requires 1.3 spaces per dwelling unit (apartment). The plans indicate that ten spaces are provided for the five apartments. The Scheme provides comment that any additional spaces provided, in this instance two, can be designated as visitor spaces if required.

Conclusion - No further elaboration or discussion needs to occur with car parking as the car parking requirements of the Scheme are satisfied for the proposed uses.

Schedule 7 contains the numerical standards as they relate to specific development(s) within the particular zone(s). The following Table 1 is included to best compare the requirements against the proposed uses.

To avoid repetition in the following notes Dedicated Open Space, where mentioned, means unroofed open space adjoining a dwelling unit that could reasonably be used for domestic purposes.

Other Open Space means unroofed area in the vicinity of the dwelling unit and is to be calculated in addition to the Dedicated Open Space.

Table 1: See page 8

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Table 1

APARTMENT ONE		
<i>Specific Standards</i>	<i>Requirement</i>	<i>Comment</i>
Minimum size	30m ²	Conforms.
Front setback	Nil	Conforms.
Side setback	Nil	Conforms.
Rear setback	Not applicable	
Dedicated Open Space	10m ² @ 1.2m wide	Conforms since the plans were revised resulting from “clockstop” correspondence.
Other Open Space	25m ²	Conforms since the plans were revised resulting from “clockstop” correspondence.

APARTMENT TWO		
<i>Specific Standards</i>	<i>Requirement</i>	<i>Comment</i>
Minimum size	30m ²	Conforms.
Front setback	Not applicable	
Side setback	Nil	Conforms.
Rear setback	3.5metres	Conforms.
Dedicated Open Space	10m ² @ 1.2m wide	Conforms since the plans were revised resulting from “clockstop” correspondence.
Other Open Space	25m ²	Conforms since the plans were revised resulting from “clockstop” correspondence.

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APARTMENT THREE		
<i>Specific Standards</i>	<i>Requirement</i>	<i>Comment</i>
Minimum size	30m ²	Conforms.
Front setback	Nil	Conforms.
Side setback	Nil	Conforms.
Rear setback	Not applicable	
Dedicated Open Space	10m ² @ 1.2m wide	Conforms since the plans were revised resulting from “clockstop” correspondence.
Other Open Space	25m ²	Conforms since the plans were revised resulting from “clockstop” correspondence.

APARTMENT FOUR		
<i>Specific Standards</i>	<i>Requirement</i>	<i>Comment</i>
Minimum size	30m ²	Conforms.
Front setback	Not applicable	Conforms.
Side setback	Nil	
Rear setback	3.5metres	Conforms.
Dedicated Open Space	10m ² @ 1.2m wide	Conforms since the plans were revised resulting from “clockstop” correspondence.
Other Open Space	25m ²	Conforms since the plans were revised resulting from “clockstop” correspondence.

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APARTMENT FIVE		
<i>Specific Standards</i>	<i>Requirement</i>	<i>Comment</i>
Minimum size	30m ²	Conforms.
Front setback	Nil	Conforms.
Side setback	Nil	Conforms.
Rear setback	3.5metres	Conforms.
Dedicated Open Space	10m ² @ 1.2m wide	Conforms since the plans were revised resulting from “clockstop” correspondence.
Other Open Space	25m ²	Conforms.

GENERAL STANDARDS		
<i>Parameter</i>	<i>Requirement</i>	<i>Comment</i>
Height	12.5m	Doesn't conform. The height of each use is calculated from the lowest point of natural ground level existing prior to construction. This was not the method used in this application and as a consequence the height is slightly exceeded. The "clockstop" response is commented on later.
Number of storeys	Three	Doesn't conform. Including the lobby and associated car parking area, the proposed development contains four storeys. The "clockstop" response is commented on later.
Site Coverage	25%	Doesn't conform. The footprint of the Apartment use varies between 386m ² (apartment floor area and deck) and 440m ² (car parking and

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		manoeuvring area and lobby). The lot size is 690m ² which indicates the ratio varies between 56% and 64%. The “clockstop” response is commented on later.
RETAIL 1 AND 2		
The proposed retail components are permitted as of right uses unless a particular development standard cannot be complied with. The relevant standards are height, number of storeys and site coverage. The retail component of the development has been assessed and the standards are complied with. Any other issues relating to other legislation encompassing building, plumbing and health are addressed at the building application stage.		

As a consequence of the assessment of the application an opportunity exists under the *Land Use Planning and Approvals Act 1993* to “stop the clock” and request further information. This enables the applicant to submit additional information to support the application and respond accordingly to any outstanding or post application discovered issues. With this application the clock was stopped and the applicant was requested to provide substantial reasons why the exemptions from the development standards should be considered. The consideration of withdrawing the application was also suggested.

This matter of withdrawing is mentioned due to the fact that the additional information received in response to the “clockstop” is not possible (under the planning legislation) to be made available for further scrutiny by the community unless a new application was made.

Explanatory note - Under the land use planning legislation the only chance any representor will have to scrutinise the response is through an appeal process after the application has been determined by the planning authority. In this regard it was thought prudent to allow some procedural fairness to all parties affected by the application by allowing the fresh information to be made available during a further 14-day advertising period, especially considering the number of representations received to this application. This option was discounted by the applicant.

Although the clock on the processing time was stopped primarily for reasons of non-compliance with the development standards the applicant was also given the opportunity to respond to some of the more subjective matters generally raised in the representations.

In regard to the development standards any exemption from these has to consider four very important elements. These are provided in Part 7 of the Scheme.

The Council has to be of the opinion that enforcement of the requirements, in this case - maximum height, minimum open space, maximum number of storeys and maximum site coverage is:

- (a) impracticable;
- (b) unreasonable; or
- (c) inequitable; and

- (d) not of sufficient importance in respect to the objectives of the Scheme to warrant enforcement.

Part 7 goes on to say that the Council shall not consider granting an exemption unless it has received:

- (a) a request from the applicant;
- (b) a submission detailing the required relaxation or modification;
- (c) a submission outlining the reasons for the request and the reasons why the particular requirement cannot be met; and
- (d) a statement as to the likely effects of the variation on adjoining developments or uses.

The applicant has responded to the “clockstop” request for additional information.

The response is attached as Annexure 4.

The following comments are made in reference to the corresponding points in the 5 February 2007 letter.

Point 1 (a) - Open space

The revised plans demonstrate compliance with the Dedicated Open Space and Other Open Space development standards.

Point 1 (b) - Height

There is reasonable merit provided to support a minor height exemption based on site topography.

Point 1 (c) - Number of storeys

The car parking area and lobby are associated with the apartment use. There has been no information provided to demonstrate why the development standards are unreasonable, impracticable and inequitable and not of sufficient importance in respect to the objectives of the Scheme to warrant enforcement.

Clause 3.7.1 of the Scheme interprets a “mixed use” as one which is predominant and other subordinate uses are carried out in support of the predominant use. In this development the two uses stand alone and the “mixed-use” definition submitted by the applicant cannot be used in support of allowing an additional storey.

Point 1 (d) – Site coverage

There has been no information submitted that demonstrates why this standard should be varied based upon the grounds of unreasonableness and not of sufficient importance in respect to the objectives of the Scheme to warrant enforcement. The mixed use interpretation has been previously commented on.

Point 3 (a) – Appearance and character

The Scheme is silent on providing values relative to appearance and character on contiguous sites. It was thought prudent to request the applicant to comment on these issues due to the majority of representations received objecting to this particular issue.

Point 3 (b) – Noise and vibration mitigation

The acoustic consultant report includes comments on building elements that can be specified and incorporated into the design and construction facets of the proposal.

2 *The specific objectives of the Scheme and their relevance to this application.*

The objectives, although generally strategic in nature, do provide some guidance as an over-arching support mechanism to ensure that zones and the intent of the particular zones ensure developments are appropriately located and that subsequent uses and developments can be adequately controlled by the relevant planning scheme provisions and development standards. In short, objectives provide a range of desirable outcomes.

They are not used primarily as an assessment tool but will usually provide guidance in the support of a final determination.

The Scheme has 15 objectives. Each has been examined in regard to this proposal and there are five that have some relevance for this application. They are objectives (b), (c), (l) (m) and (n).

(b) proper use and development of land, buildings and resources.

Comments – This site is located at the western-most extremity of Penguin’s Commercial Business District. Putting aside the demolition component, this application is for the development of five apartments and two retail tenancies. The intent of the zone is primarily for retail

and commercial. It could be contended that, based simply on numbers, the primary use being applied for is residential.

Similarly the mass of the building is also considered in this deliberation because there are four levels of apartment use proposed and only a small portion of the ground floor level is proposed for commercial. An examination of the plan in greater detail indicates that the retail component totals 116m² in area compared to the total apartment and ancillary car parking area of 1511m².

(c) enhancement of the environmental “quality of life” of residents and visitors by attention to aesthetics and landscape impact and general pollution effects.

The applicant submits that:

“Penguin is a charming coastal town located between Ulverstone and Burnie on the North West coast of Tasmania. The main road passes through the town with a mix of shops, cafes, pubs and banks on one side and a wonderful beach and coastal reserve on the other. The centre of the town is relatively flat while a hilly hinterland stretches up to the Dial range and Mt Montgomery allowing magnificent coastal views for its residents”.

A previous report to the Council on a similar application indicated that the beach and coastline is the visual focus of the town and the “quality of life” term in the objective is based upon the seaside experience.

This objective carries through to all development applications and the matter for consideration is whether a four-storey building, regardless of the proposed dominant use for apartments, will in this location detract or enhance the environmental “quality of life” due to the height and mass of the development proposed.

(l) provision for diversity and innovation in residential lifestyle opportunities and recreational and cultural community services.

This development does provide diversity and innovation in lifestyle living opportunities in comparison to the conventional single and two-storey houses and commercial developments that exist in Penguin. Generally any diversity and the discretion attached to extraordinary developments can be addressed by other planning scheme provisions.

(m) encouragement of (appropriately sited and planned) activities which would expand opportunity for development of skills, increase local employment, enhance or establish natural or created attractions and broaden and diversify the economic base.

Although difficult to quantify, the flow-on effect from capital investment and population increase will broaden the economic base and stimulate activity in other community sectors. How this is measured is not provided as part of this report.

(n) development and promotion of a compact, healthy, vibrant and attractive central business district with a balanced regard for the needs of people on foot or in motor vehicles.

This objective was subject to a comprehensive response in a previous report to the Council on another proposed development at Penguin (DEV2005.91). The planning viewpoint for this application is similar and an abridged version follows.

The presence of residential uses in commercial districts is common in larger towns and cities, particularly in the form of “shop-top” flats where they utilise upper storeys not necessarily suitable for retail or commercial facilities.

In the instance of this application the development has been designed primarily as a residential building with “token” commercial components. It is also important in creating these compact, healthy, vibrant and attractive central business districts that the scale of any development is compatible with the existing urban form.

Urban form is the characteristic pattern of urban open spaces and buildings in a place. It is formed primarily by the nature of the walls of buildings which determine building volumes and enclosed external open space. The town centre of Penguin current maintains a pedestrian scale. Buildings do not exceed two storeys, there is clear delineation between each storey which visually breaks up the height, the ground floors generally have active frontages to the street creating interest, and building length is minimal.

It is an urban design principle that where an urban form consists of low-rise small-scale building elements then buildings which are tall and/or bulky in comparison may have a detrimental effect.

3 *The specific intent of the Business (BA) - Central zone.*

The Business (BA) - Central zone is primarily intended to accommodate retail and commercial business, offices and agencies and public and private community services.

In establishing an assessment methodology the intent of each zone is considered but there is still discretion in approving activities which are not within the primary intent but which may receive favour if the prime intent is not significantly affected or jeopardised.

This becomes more self-explanatory when considering the Table of Uses (Schedule 2) and the development standards (Schedule 7) to enable an application to be fully examined for either compliance or discretion to waive any provision if deemed satisfactory.

These discretionary aspects associated with exempting any of the development standards were not clearly addressed in the initial application. Regardless of the timing the difficulty arises in determining how many elements of discretion should be exercised and how objective the reasons to allow them should be viewed. This requires some careful consideration on the perceived level of importance that is to be attributed to the intent of the zone and the scale of any development not entirely compliant with the intent of the zone.

The Scheme does not give any guidance other than setting some numerical standards on how to measure the statement of intent of the Business (BA) - Central zone.

CONSULTATION

The application was subjected to the required 14-day public scrutiny process required by s.57 of the *Land Use Planning and Approvals Act 1993*. This requires advertising of the development by a notice on site and also by a notice placed once in a daily local newspaper. Correspondence to the adjoining owners inviting them to view the application was also undertaken.

The application as a matter of procedure was referred to the Council's Planning and Assessment Team. No comments were received from the Planning and Assessment Team that required inclusion in the final determination of the application.

An observation made at the conclusion of the 14-day public scrutiny period was that it would be difficult to reconcile the number of written representations received to the development to the number of people who actually viewed the application.

This is mentioned not to question the credibility of the representations but to verify that the plans were only available for public viewing at the Planning Services counter in the Council Administration Centre in King Edward Street, Ulverstone.

4 *The merits of the representations received opposing the development.*

Within the 14-day public advertising period 159 representations were received. These representations comprise 124 objections to the application based on varying grounds and 35 letters of support.

Of the 124 representations in opposition to the development 79 were lodged on a pro-forma document. The remaining 46 objections have similar issues of concern.

Similarly, of the 35 representations received in support of the application, a high proportion were submitted on a brief pro-forma document.

The representations of objections have been examined and a response to them follows in the following Tables.

Table 2: Pro-forma representations

See page 22

Table 3: Summary of other objections

See page 24

Table 4: Methodology used in examining representations

See page 27

Table 2 - Pro-forma representations

ISSUES	COMMENTS
<p>According to your planning scheme, scale is an important factor when considering new building proposals. The new development does not correspond with and respect the scale of adjacent buildings (Reg 3.9.2)</p>	<p>The reference to scale is indicated in clause 3.9.2(e) of the Scheme. This requires the Council to take into consideration, if appropriate, whether the proposed development is satisfactory in terms of its siting, size and appearance in relation to existing site features, adjoining land, the streetscape or landscape, the natural environment, any items of historic, architectural or scientific interest and isolation and separation from other lands.</p> <p>The difficulty presented is how to assess the application objectively to determine these matters in regard to how a development might detract or conversely enhance the existing locale. This is the second contemporary development proposed in Penguin to effectively test the boundaries of the Scheme insofar as “scale” is concerned. For the purposes of discussion the adjacent building to the south-east is a single-storey commercial building and the building immediately adjacent in a north-westerly direction is the Uniting Church Hall. This proposal is greater in “scale” than both these buildings but the representation doesn’t demonstrate how the proposal adversely affects or causes detriment to these buildings and their respective uses. The nearest building or part of a building with a comparable height is the spire of the Uniting Church itself.</p>

<p>Not only is the scale out of context with adjacent buildings, it is also unsatisfactory in size and appearance to the streetscape.</p>	<p>The opposition to the size and appearance is the issue that dominates the multiple objections to the proposal. (See ranking details below).</p> <p>Similar to the above comments no demonstration of detriment has been submitted. “Satisfactory” means amongst other things “leaving no room for complaint”. It is submitted that it would be nigh impossible to design a building that is aesthetically pleasing to everyone.</p>
<p>The design of the new complex has no relevance to any of the buildings in the Main Road.</p>	<p>The applicant submits that the form of the building takes reference from the broader topography and geology of Penguin. It is conceived as an object in the landscape of the town rather than simply a façade to the street. The twisted/stepped form of the building provides maximum sunshine, privacy and views for all apartments.</p>
<p>The proposed development is contrary to the proposed new planning scheme which limits buildings in the CBD to 8m. If permitted, this building will destroy the streetscape of the Main Road and destroy the character of the town.</p>	<p>The draft scheme is not a document at this stage that can be used as an assessment tool for any applications. In its response to representations, the Council recommended a height limitation of 10 metres for buildings in the Business Zone in Penguin and Ulverstone.</p>
<p>The proposed development is next to a heritage building. The visual aspect of the church would be lost and overshadowed with a building of such height adjacent to it.</p>	<p>Refer to previous comments. The church building is approximately 16 metres from the boundary of the subject site and the church hall is located between the church itself and the proposed building subject to this application. From research undertaken the church hall is not a place of heritage significance.</p>

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	The submitted plans best illustrate the relativity between existing and proposed.
The Uniting Church is an attraction visited and photographed by many tourists. The proposed development, which is adjacent to the church, will detract from this.	Refer to above comments on proximity.
Although this building is in the CBD, its prime purpose is residential. The planning scheme indicates that buildings in this zone should be predominantly commercial.	Refer to earlier comments elaborating on the Intent of the zone.

Table 3 - Summary of other objections received (in no particular order of priority)

ISSUES	COMMENTS
Contrary to draft planning scheme.	Refer to previous comments.
Scale out of context with adjacent buildings.	Refer to previous comments.
Visual impact of church will be lost.	Refer to previous comments.
Contrary to current planning scheme.	Refer to previous analysis of the Scheme's development standards.

Shop/residential ratio.	Refer to previous comments on “Intent of zone”.
Is the parking compliant?	Refer to previous comments.
Driving hazards due to reflections from extensive glazing.	Non reflective materials could be conditioned on a Permit.
Contrary to Council’s Community Plan.	Refer to previous comments.
No meaningful employment generated by end use.	The planning scheme is silent on employment generating developments.
Inappropriate character/design/colours.	Refer to previous comments.
Inappropriate site for accommodation.	Nothing to substantiate why this site is inappropriate for accommodation has been submitted.
Proximity to Uniting Church.	Refer to previous comments.
Availability of plans to view.	<p>This matter has been raised previously as to why this application and others in Penguin are not made available at the Penguin Service Centre. Previous advice given to enquirers include the facts that:</p> <ol style="list-style-type: none"> 1 the Penguin Service Centre is not open during all normal working hours; 2 professional staff are not available to answer any questions; and

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	3 the planning regulations refer to the display at the planning authority's office. This is recognised as King Edward Street, Ulverstone.
Timing of application.	This is also a matter raised on occasion. Section 57(5) of the <i>Land Use Planning and Approvals Act 1993</i> (Land Use Act) allows a person to make representation relating to the application during a period of 14 days from the date the notice of the application is made or such further time not exceeding 14 days as the planning authority may allow. These 14 days include weekends and public holidays. Departmental practice at Central Coast is to ensure that in effect 10 working days are available for public scrutiny. This application was advertised on Tuesday 5 December 2006 and the end date for representations was Tuesday 19 December 2006.
Loss of views from Crescent Street properties.	The loss of views is often used in opposition to a proposed development. The Scheme does not indicate any prescriptive right to a view.

Table 4 - The methodology used in examining the representations was to collate the various points, tally them and prioritise them in order from the most important issues (greater number) to less important (lesser number).

RANKING	ISSUE	NO. OF POINTS
1	Scale of building, size of building, appearance of building, relevance to existing buildings.	266
2	Proximity to Church.	108
3	Commercial/residential ratio inequity, retail viability.	87
4	Height in relation to new planning scheme, and community wishes.	84
5	State Coastal Policy, immoral, no empathy, devaluation, tourist impacts, loss of views, timing of application, overshadowing.	14
6	Current planning scheme non-compliance with development standards and scheme objectives.	8

(It should be noted that the majority of the representations contain many points of opposition. This is why the tallied numbers following will not reconcile with the actual number of representations received.)

Due to the number received, this summary has only been applied to the representations of objections. It was not considered as important to prioritise the letters of support beyond listing the salient points as follows.

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5 *The merits of the representations received in support of the development.*

EXCERPTS
I write to express my support for the development proposal at 52 Main Road, Penguin. (29 pro-formas).
We are pro development within the Central Coast region. Business closure and one Doctor is not a good sign and the trend needs to be reversed. Penguin is ideally suited to attract more investment and growth to become a showpiece on the Coast.
This type of investment into the town not only meets the current planning scheme but should be encouraged for the future of the town.
The proposed development is of exceptional design and concept.
Additional retail space provides excellent opportunity.
We look forward to much more employment and business opportunities.
Continuation of the design and structure which may encourage the remainder of Main Street to improve their appearance.
This type of investment increases property values for present residents and investors.
The design is tasteful and sympathetic.

IMPACT ON RESOURCES

This report has no significant impact on resources at this stage of the application process.

CORPORATE COMPLIANCE

The Central Coast Strategic Plan 2004-2009 includes the following objectives:

- Meet our statutory and regulatory obligations
- Plan for and develop a sustainable community
- Create a municipal area that is productive and socially and aesthetically attractive.

CONCLUSION

In determining whether to recommend a development for either approval or refusal, the issues to consider can be somewhat subjective in manner unless the Scheme standards are explicit. There have been some very passionate representations made opposing the proposal and similar passion expressed in support of it, albeit the letters of support were less in number than the objections received.

The content and credibility of the representations, the relevance of the Scheme objectives, the intent of the zone and compliance with the development standards will always be challenged no matter what the outcome. In this regard any recommendation has to be substantiated. The Scheme is silent on many of the points raised in the representations. For example there are no Council policies in Penguin, regardless of the scale of the buildings, to differentiate between properties with heritage values being positioned adjacent to proposed buildings of contemporary design.

Whether this juxtaposition works is all a matter of opinion when no legislative controls are in place.

Putting aside the discretion attached with an “apartment” use of a building, it is always interesting to compare the “what ifs”. If the form of this building remained the same but the use proposed was commercial then the application would have been a “P1” permitted as of right use. That is, no discretionary planning approval would have been required because from a cursory assessment the development associated with a commercial use complies with the development standards and the intent of the zone.

However, that aside, the use and development being applied for is a discretionary use and further discretion is also attached to considering the relevant development standards that cannot be met.

Clause 6.1.1 of the Scheme (Intent of the Zones of the Scheme) indicates:

“For the purposes of this part, activities which are not within the prime intent but which may receive approval in accordance with the provisions of this Scheme, are subject to evaluation on the basis that the prime intent is not significantly affected or jeopardised.”

This confers discretion in obviously allowing other uses and development to be considered that may not be included within the intent of the zone. The very fact that Apartments are a discretionary use in the Business (BA) - Central zone verifies this clause. The application then becomes reliant on demonstrating performance against the development standards of the Scheme as they relate to the proposed discretionary use.

Schedule 7 prescribes very specific development standards to measure how these “non commercial” uses might perform. The purpose of the “clockstop” was to give opportunity for the applicant to show due cause why these standards are impracticable, unreasonable, or inequitable and not of sufficient importance in respect to the objectives of the Scheme to warrant enforcement.

The development standards for Apartments in a Business (BA) - Central zone are quite specific. The intention to develop the site primarily for Apartments in excess of the prescribed 25% site coverage and an additional storey requires an extraordinary departure from the development standards. The applicant in both the initial application documentation and the response to the “clockstop” correspondence has not demonstrated why the Council should grant this exemption in accord with clause 7.1.3(b) of the Scheme.

Clause 7.1.3(b) indicates:

“The Council shall not consider granting an exemption in accordance with clause 7.1.3(a) unless it has received:

- (i) a request from the applicant;
- (ii) a submission detailing the required relaxation or modification;
- (iii) a submission outlining the reasons for the request and the reasons why the particular requirement cannot be met;

- (iv) a statement as to the likely effects of the variation on adjoining developments or uses;
and the matter shall be subject to the notification, determination and appeal provisions of the Act.”

Recommendation

It is recommended that the proposed use and development of the site at 52 Main Road, Penguin for “Five Apartments, Two retail tenancies, car parking and demolition of existing house” be refused for the following reasons:

- 1 The proposal is inconsistent with the intent of the Business (BA) - Central zone (Clause 6.2.7) of the S.46 Central Coast Planning Scheme No.1 of 1993; and
- 2 The proposal does not comply in part with Schedule 7 of the S.46 Central Coast Planning Scheme No.1 of 1993.’

The report is supported.”

The Executive Services Manager reported as follows:

“The Annexures referred to in the Land Use Planning Group Leader’s report and a copy of the motion moved and lost on a tied vote of the Council on 19 February 2007 have been circulated to all Councillors, and copies of all representations have been previously circulated.”

■ Cr McKenna moved and Cr Haines seconded, “That the application number DEV2006.53 lodged on 1 December 2006 to develop and use land situated at and known as 52 Main Road, Penguin for the purpose of demolition of an existing house and new building (two retail tenancies, five apartments and car parking) is approved subject to the following conditions:

- 1 The developer providing:
 - (a) an adequately sized water supply connection and meter to the development;
 - (b) a sewerage connection point to the development;
 - (c) an adequately sized underground stormwater connection to the development;
 - (d) a paved vehicular access together with kerb and channelling crossover to the development; and
 - (e) a separate power and telecommunication connection to the development;

DEVELOPMENT SERVICES

2 Existing services disturbed during the development including any damage to road, kerb and channel, nature strip and footpath being reinstated to the satisfaction of the Council's Director Assets & Engineering; and

3 The provision where necessary of water supply and drainage easements;

and further, that the applicant be requested to note that:

A in relation to condition 1(c) this will require a capacity analysis of the downstream system and any upgrade is to be at the developer's expense;

B any works undertaken within the Road Reservation requires a Road Reservation Permit and applicable fee to be submitted and approved prior to construction; and

C an application for a Building Permit is required for the construction of the new development and the demolition of existing buildings."

Voting for the motion

(7)

Cr Downie

Cr (J) Bonde

Cr Deacon

Cr Haines

Cr Marshall

Cr McKenna

Cr van Rooyen

Voting against the motion

(5)

Cr Robertson

Cr Barker

Cr (L) Bonde

Cr Cooper

Cr Dry

Motion

Carried

Closure

There being no further business, the Mayor declared the meeting closed at 8.37pm.

CONFIRMED THIS 19TH DAY OF MARCH, 2007.

Chairperson

(gjm:dil)

QUALIFIED PERSON'S ADVICE

The *Local Government Act 1993* provides (in part) as follows:

- . A general manager must ensure that any advice, information or recommendation given to the council is given by a person who has the qualifications or experience necessary to give such advice, information or recommendation.

- . A council is not to decide on any matter which requires the advice of a qualified person without considering such advice unless the general manager certifies in writing that such advice was obtained and taken into account in providing general advice to the council.

I therefore certify that with respect to all advice, information or recommendation provided to the Council within these minutes:

- (i) the advice, information or recommendation was given by a person who has the qualifications or experience necessary to give such advice, information or recommendation; and

- (ii) where any advice was directly given by a person who did not have the required qualifications or experience that person has obtained and taken into account in that person's general advice the advice from an appropriately qualified or experienced person.

Katherine Schaefer
GENERAL MANAGER