

CENTRAL COAST COUNCIL

Minutes

of Special Meeting

4 JUNE 2007

Note.

Minutes subject to confirmation at
a meeting of the Council to be held on
18 June 2007



INDEX

- 195/2007 Authority for special meeting
- 196/2007 Pecuniary interest declarations
- 197/2007 Council acting as a planning authority
- 198/2007 Demolition of house, development of nine apartments and exemption from the development standards (front and rear setbacks and number of storeys) at 1-3 Hales Street, Penguin - Application No. DEV2006.93
- 199/2007 Demolition of service station, development (commercial and residential with 11 apartments), exemptions from development standards (rear setback, number of storeys, site coverage and roofing of open space for apartments) at 109 Main Road, Penguin - Development Application No. DEV2006.94
- 200/2007 Tenders for construction of kiosk/change room facilities and replacement of southern grandstand roof at Ulverstone Recreation Ground

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, 4 June 2007 commencing at 7.30pm

Councillors attendance

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

Councillors apologies

Cr Jan Bonde

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

Public attendance

Thirty two members of the public attended during the course of the meeting.
Five members of the public were in attendance outside the chamber.

Prayer

The meeting opened in prayer.

MAYOR'S COMMUNICATIONS

195/2007 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 Robertson moved and Cr McKenna seconded, “That the Mayor's report be received.”

Carried unanimously

196/2007 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

DEVELOPMENT SERVICES

197/2007 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 Minute Nos 198/2007 and 199/2007, 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 Haines moved and Cr (L) Bonde seconded, “That the Mayor’s report be received.”

Carried unanimously

198/2007 Demolition of house, development of nine apartments and exemption from the development standards (front and rear setbacks and number of storeys) at 1-3 Hales Street, Penguin - Application No. DEV2006.93

The Director Development Services reported as follows:

“The Land Use Planning Group Leader has prepared the following report:

‘ <i>DEVELOPMENT APPLICATION NO.:</i>	DEV2006.93
<i>LOCATION:</i>	1-3 Hales Street, Penguin
<i>ZONING:</i>	Residential (RA) - Closed

<i>PLANNING INSTRUMENT:</i>	Central Coast S.46 Planning Scheme No.1 of 1993 (the Scheme)
<i>ADVERTISED:</i>	1 May 2007
<i>REPRESENTATIONS EXPIRY DATE:</i>	15 May 2007
<i>REPRESENTATIONS RECEIVED:</i>	152
<i>42-DAY EXPIRY DATE:</i>	4 June 2007
<i>DECISION DUE:</i>	4 June 2007

PURPOSE

The purpose of this report is to consider the merits of an application for a discretionary land use and associated exemptions from the development standards at a site on the corner of Hales Street and Mortimer Road, Penguin.

The report will consider:

- 1 the specific objectives of the Scheme and their relevance to this application;
- 2 the specific intent of the Residential (RA) - Closed zone;
- 3 the compliance of the application with the relevant development standards of the Scheme;
- 4 the appropriateness of the clause 3.9.2 requirements of the Scheme; and
- 5 the merits of the representations received in opposition to and support of the development.

BACKGROUND

The subject property is within an established residential area located on the north-eastern corner of Hales Street and Mortimer Road. It contains an existing house that was constructed in the early 1980's. The lot size is 1318m² in area, rectangular in shape with an east-west axis falling with a gentle gradient from south to north.

A location plan is attached as Annexure 1.

The proposed development comprises a single building over four storeys that comprises lower level parking for 17 cars accessed from Mortimer Road and nine Apartments on the remaining three levels. Apartment number nine exists in isolation over the western half of the third storey as a penthouse but still is defined as a storey for the purposes of later discussion.

The development varies in height from just under 6.0 metres on the Hales Street elevation to 11.16 metres on the northern elevation adjacent to the house at 9 Mortimer Road. At this point mention is made of the height definition in the Scheme. By definition the height is scaled as 10.6 metres. This will be elaborated on later in the report.

Copies of the plans and elevations are attached as Annexure 2.

DISCUSSION

This discussion will generally follow the sequence of the five points mentioned previously in the introduction. The fifth point is addressed in that part of the report dealing with consultation.

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

The objectives, although generally strategic in nature, do provide some guidance to ensure that zones are appropriately located and that subsequent uses and developments can be adequately controlled by the intent of the zone and 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 the three that are deemed relevant for this application are objectives (b), (c), and (l).

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

Comment - The use is quite clear. Apartments are a residential use and this site is located amidst the urban residential area of Penguin. The discretionary components of the development standards forming part of the application are only of minor significance. Discounting the setback interpretation and number of storeys, to be discussed later in this report, the mass of this proposed building fits within the allowable three dimensional aspects of the development standards of setbacks, heights and site coverage ratio.

This objective is deemed to be satisfied.

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

The town centre of Penguin is relatively flat. Hales Street, which is in effect an eastern extension of South Road, is well elevated in comparison and has substantial views in all directions.

Comment - It is conceded that the mass of the building is the exception rather than the rule amongst the usual residential developments in Penguin. Rather than enhancing the quality of life the issue is how this might be detrimentally affected by the development. Unless severe detriment can be proven it becomes very difficult to prove non-conformance with this objective. There have been no specific urban streetscape values developed by the Council to measure and challenge this level of subjectivity.

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

Comment - This development does provide diversity and innovation in lifestyle opportunities in comparison to the conventional single and two-storey houses and commercial developments that exist in Penguin. The Scheme doesn't however provide any means of assessing this performance.

2 *The specific intent of the Residential (RA) - Closed zone.*

The Residential (RA) - Closed zone:

“is intended to accommodate dwelling units primarily on the basis of one dwelling unit per lot but providing for other forms of housing allowing innovation and higher densities under controlled conditions”.

The Macquarie Concise Dictionary, Third Edition, definition of innovation means:

“something new or different introduced, the act of innovating; introducing of new things or methods”.

The development of nine Apartments under the controlled conditions prescribed in the development standards of the Scheme is considered an innovative form of housing for Penguin. There are no other developments of this scale established within the town.

The Council has no policies, development area plans or similar that restrict higher density housing developments. The only enabling control is contained within the Scheme and the Council's application of discretion in considering the development standards or the subjective areas of siting, size and appearance partially qualified in clause 3.9.2 of the Scheme.

3 *The compliance of the application with the relevant development standards of the Scheme.*

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

APARTMENT ONE		
<i>Specific Standards</i>	<i>Requirement</i>	<i>Comment</i>
Minimum size	30m ²	Conforms (102m ²).
Front setback (Mortimer Road)	6m	Doesn't conform (4m).
Side setback (Hales Street)	3m	Conforms - 6m to balcony.
Side setback - lateral (northern boundary)	3m plus 1m per additional storey	Conforms - 6m+ to balcony.
Rear setback (eastern boundary)	5m	Not applicable.
Dedicated Open Space	10m ² at 1.2m wide	Conforms (16m ² @ 1.2 min).
Other Open Space	25m ² per apartment	Conforms (61m ²).
APARTMENT TWO		
<i>Specific Standards</i>	<i>Requirement</i>	<i>Comment</i>
Minimum size	30m ²	Conforms (110m ²).
Front setback (Mortimer Road)	6m	Not applicable.
Side setback (Hales Street)	3m	Conforms - 6m+ to balcony.
Side setback - lateral (northern boundary)	3m plus 1m per additional storey	Conforms - 5m to balcony.
Rear setback (eastern boundary)	5m	Not applicable.
Dedicated Open Space	10m ² at 1.2m wide	Conforms (15m ²).
Other Open Space	25m ² per apartment	Conforms (61m ²).

APARTMENT THREE		
<i>Specific Standards</i>	<i>Requirement</i>	<i>Comment</i>
Minimum size	30m ²	Conforms (102m ²).
Front setback (Mortimer Road)	6m	Not applicable.
Side setback (Hales Street)	3m	Conforms - 7m+ to balcony.
Side setback - lateral (northern boundary)	3m plus 1m per additional storey	Conforms - 5m+ to balcony.
Rear setback (eastern boundary)	5m	Not applicable.
Dedicated Open Space	10m ² at 1.2m wide	Conforms (16m ²).
Other Open Space	25m ² per apartment	Conforms (61m ²).
APARTMENT FOUR		
<i>Specific Standards</i>	<i>Requirement</i>	<i>Comment</i>
Minimum size	30m ²	Conforms (110m ²).
Front setback (Mortimer Road)	6m	Not applicable.
Side setback (Hales Street)	3m	Conforms - 7m to balcony.
Side setback - lateral (northern boundary)	3m plus 1m per additional storey	Conforms - 5m+ to balcony.
Rear setback (eastern boundary)	5m	Doesn't conform (4m).
Dedicated Open Space	10m ² at 1.2m wide	Conforms (15m ²).
Other Open Space	25m ² per apartment	Conforms (61m ²).

APARTMENT FIVE		
<i>Specific Standards</i>	<i>Requirement</i>	<i>Comment</i>
Minimum size	30m ²	Conforms (102m ²).
Front setback (Mortimer Road)	6m	Doesn't conform (4m).
Side setback (Hales Street)	3m	Conforms - 6m to balcony.
Side setback - lateral (northern boundary)	3m plus 1m per additional storey	Conforms - 6m to boundary.
Rear setback (eastern boundary)	5m	Not applicable.
Dedicated Open Space	10m ² at 1.2m wide	Conforms (16m ²).
Other Open Space	25m ² per apartment	Conforms (61m ²).
APARTMENT SIX		
<i>Specific Standards</i>	<i>Requirement</i>	<i>Comment</i>
Minimum size	30m ²	Conforms (110m ²).
Front setback (Mortimer Road)	6m	Not applicable.
Side setback (Hales Street)	3m	Conforms - 6m+ to balcony.
Side setback - lateral (northern boundary)	3m plus 1m per additional storey	Conforms - 5m+ to balcony.
Rear setback (eastern boundary)	5m	Not applicable.
Dedicated Open Space	10m ² at 1.2m wide	Conforms (15m ²).
Other Open Space	25m ² per apartment	Conforms (61m ²).

APARTMENT SEVEN		
<i>Specific Standards</i>	<i>Requirement</i>	<i>Comment</i>
Minimum size	30m ²	Conforms (102m ²).
Front setback (Mortimer Road)	6m	Not applicable.
Side setback (Hales Street)	3m	Conforms - 7m+ to boundary.
Side setback - lateral (northern boundary)	3m plus 1m per additional storey	Conforms - 5m+ to boundary.
Rear setback (eastern boundary)	5m	Not applicable.
Dedicated Open Space	10m ² at 1.2m wide	Conforms (16m ²).
Other Open Space	25m ² per apartment	Conforms (61m ²).
APARTMENT EIGHT		
<i>Specific Standards</i>	<i>Requirement</i>	<i>Comment</i>
Minimum size	30m ²	Conforms (110m ²).
Front setback (Mortimer Road)	6m	Not applicable.
Side setback (Hales Street)	3m	Conforms - 8m to balcony.
Side setback - lateral (northern boundary)	3m plus 1m per additional storey	Conforms - 5m to balcony.
Rear setback (eastern boundary)	5m	Doesn't conform (4m).
Dedicated Open Space	10m ² at 1.2m wide	Conforms (15m ²).
Other Open Space	25m ² per apartment	Conforms (61m ²).

APARTMENT NINE		
<i>Specific Standards</i>	<i>Requirement</i>	<i>Comment</i>
Minimum size	30m ²	Conforms (129m ²).
Front setback (Mortimer Road)	6m	Doesn't conform (4m to balcony).
Side setback (Hales Street)	3m	Conforms - (9m min.).
Side setback - lateral (northern boundary)	3m plus 1m per additional storey.	Conforms - 6m+ to balcony.
Rear setback (eastern boundary)	5m	Conforms - 20m.
Dedicated Open Space	10m ² at 1.2m wide.	Conforms (24m ²).
Other Open Space	25m ² per apartment.	Conforms (61m ²).

GENERAL STANDARDS		
<i>Parameter</i>	<i>Requirement</i>	<i>Comment</i>
Height	12.5m maximum.	Conforms - 10.6m.
No. of storeys	3	Doesn't conform (4).
Site coverage	50%	Conforms (36%).

After examination of the above tables the non-conforming development standards identified are:

- 1 front setback (Mortimer Road);
- 2 rear setback (eastern boundary adjacent 5 Hales Street); and
- 3 number of storeys.

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 which states that the Council has to be of the opinion that enforcement of the requirements 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 application includes a written submission from Town and Country Planning (Tas) Pty Ltd. Relevant comments in support of the exemptions have been provided.

A copy of this is attached as Annexure 3.

The Council's attention is drawn to a minor technical interpretation on page 4 of this submission in regard to the Schedule 7 definitions of the Scheme. The eastern boundary has been interpreted by the author as the "Lateral distance - side" setback. From the perspective of the Scheme this is actually the "Lateral distance - rear" setback as described in the application. This is due to the simple premiss that the rear setback

boundary is usually the boundary opposite that mostly runs parallel to the front boundary, which is Mortimer Road not Hales Street.

The definition contained in the Scheme reads:

“On a corner lot, Set Back - front, and Set Back - side, means that the setback to a building from the frontage and sideline boundaries respectively where the frontage boundary is the boundary of least dimension in contact with a road and the sideline boundary is the boundary of greater dimension in contact with a road ...”.

In the context of the Scheme the Mortimer Road boundary is the setback - front boundary, Hales Street is the setback - side boundary, the eastern boundary (adjoining 5 Hales Street) becomes the rear boundary and the northern boundary (primarily adjoining 9 Mortimer Road) becomes the lateral distance - side boundary.

As a consequence the respective setback dimensions are 6m, 3m, 5m and 3m plus a third for each additional rise in storeys.

The submitted drawings indicate the comparable dimensions of 4m, 6m, 4m and 5m.

Regardless of the interpretation the required setback from both the eastern and northern boundaries on this particular site, because of the rise in storeys, is 5m and grounds for an exemption have to be demonstrated.

The maximum rise in storeys is also a definition that has been discussed before on other applications determined by the Council. The reference to storeys in the Scheme is directed to the Building Code of Australia. The Code has been subjected to amendment since the inception of the Scheme by referencing storeys only in regard to commercial and public buildings and the like. There is no specific reference to storeys in residential buildings.

Although not a frequent occurrence, the Council on past occasions has assessed applications for exemptions to the rise in storeys more in context with the impacts arising from the actual height of a building. The bulk and form of a building have probably influenced more public opinion than the number of storeys if the overall height is within the vertical building envelope. This situation was discussed during the

preparation of the Draft Central Coast Planning Scheme 2005 and, although the number of storeys was subject to debate, on practical application the overall height was the issue that was ultimately quantified and expressly determined as the important development standard.

Another technical requirement of the Scheme is the requirement for the Dedicated Open Space (DOS) to be unroofed.

The unroofed areas for DOS has been an issue with quite a few applications for multi-residential uses on the same site. The Scheme refers to DOS areas being unroofed and adjoining a dwelling unit that could be reasonably used for domestic purposes. Although the Council has the ability to waive the dimensional requirements of the development standards there is no ability to alter the definition.

The provision of DOS on single-storey ground-level developments has not been an issue but the practical application of the entire DOS as a deck or balcony above ground level as the sole means of providing the required open space has only been identified in recent Penguin proposals.

To support this variation the applicant has provided some reasons which are contained on page 12 of the accompanying written component of the application. A credible dictionary meaning of “roof” is used in support of the proposal. Examination of another accredited dictionary that indicates a “roof” is usually supported by its walls also adds further weight to the contention.

The report has been examined and, as a consequence of the information provided, satisfactory demonstration has been provided in support of the setback variations, rise in storeys and partial covering of the DOS.

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 not be considered unless the redevelopment is known and has been approved.

Schedule 5 of the Scheme defines the car parking requirements for the proposed uses. The schedule requires 1.3 spaces per dwelling unit. A

rounding up of the calculation indicates that a minimum of 12 spaces is required. The development provides 18 spaces, seven of which are in a “piggyback” configuration.

Clause 7.5.3(a) of the Scheme also requires the parking spaces, accesses and turning areas to be designed to ensure that the vehicles associated with the use can enter and exit the site in a forward direction. The plans demonstrate this, although car park space 18 will need to be omitted to allow some additional manoeuvring space.

4 *The appropriateness of the clause 3.9.2 requirements of the Scheme.*

Clause 3.9.2 of the Scheme provides the other appropriate matters for the Council to consider before granting or refusing a planning application. These remaining provisions are those subject to the most angst because there are no measurable standards.

These merit-based provisions also have as equal weight in the assessment and determination process as the development standards, objectives and zoning intent but have proven to be subject to differing views and public opinion. The items of particular importance are:

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

How a development performs or does not perform under these provisions is one for careful consideration. Setting aside the architectural features, initial impressions are that the proposal is satisfactorily sited on the lot, looks satisfactory in appearance but is bulky in size in comparison to other buildings in the vicinity. Closer examination and assessment indicates that the three dimensional aspects of the development standards have been satisfied.

CONSULTATION

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

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. The only relevant comments received from the Planning and Assessment Team were asset-based issues that can be conditioned on a Planning Permit if so determined by the Council.

Within the prescribed 14-day public advertising period 152 representations were received. One hundred and nineteen of these are objections against and 33 are in support of the development. One hundred of the objections were presented on pro-forma documents and the remaining 19 were individually written, albeit sharing the same issues and concerns.

The representations have been attached as Annexure 4.

The various issues contained within the representations of objection have been summarised in Table 2 as follows:

Table 2

ISSUE 1	COMMENTS
<p>The bulk scale and height is incongruent with adjacent single-storey dwellings and will have a detrimental impact on the quality of life of these immediate neighbours as well as a detrimental impact on the aesthetics of the streetscape and coastal landscape.</p>	<p>The reference to Clause 6.2.1 is the intent of the zone. The consideration of the matters of height and scale are indicated in Clause 3.9.2(e) of the Scheme. These matters have been commented on in the preceding paragraphs.</p> <p>This proposal is certainly greater in “scale” than the homes on the adjoining lots and those in the immediate vicinity but whether this additional bulk is detrimental cannot be definitively measured.</p>
ISSUE 2	COMMENTS
<p>The development is not compatible with existing streetscape and will diminish current amenity and streetscape.</p>	<p>This point follows from the community input to the Draft Central Coast Planning Scheme 2005 and the resultant height limit set for Penguin. The Council has no jurisdiction to enforce the Draft Scheme provisions.</p>
ISSUE 3	COMMENTS
<p>The need for multi-storey high-density apartments is questionable in a community which does not have a city lifestyle.</p>	<p>The pro-forma refers to objective 5.1.1(i) which does not follow. The issue of whether multi-storey developments should only occur in city communities is outside the ambit of this Council’s planning control.</p>

ISSUE 4	COMMENTS
The proposal does not comply with Schedule 7 of the Scheme.	Refer to previous comments on Schedule 7 compliance and interpretations.
ISSUE 5	COMMENTS
This proposal relies extensively on discretions and exemptions. No demonstration has been given.	The discretionary elements and supporting grounds have been previously discussed
ISSUE 6	COMMENTS
The height of the building is grossly misrepresented.	<p>The definition of height is:</p> <p>“The maximum vertical distance between a point against an external wall of a building and the horizontal plane which rests on the highest part of the building (excluding minor protrusions) where the point is the lowest ground level existing prior to construction works for that building”</p> <p>The development standard is 12.5 metres. The figured dimension is 11.16 metres but the claim is that the measurement at the same point is 11.6 metres. Notwithstanding the difference, the scaled measurement per the Scheme definition is 10.6 metres. The site topography is not complex to a degree where exactness is required.</p>

ISSUE 7	COMMENTS
Does not comply in regard to siting, size and appearance.	Clause 3.9.2 is the referring clause of the Scheme. Previous comments have been made on these areas of subjectivity.
ISSUE 8	COMMENTS
Privacy is affected by the domination of the apartment building.	Screening measures and their implementation are covered at length in the application documents. Page 10 of this report addresses these privacy issues.
ISSUE 9	COMMENTS
The development will dominate the built environment.	The State Coastal Policy cannot be used in isolation in the assessment of applications. It deals with strategic issues that should be integrated within a planning scheme.
ISSUE 10	COMMENTS
The remaining issues can be summarised to include - Noise from site intensification, shading effects, traffic access, loss of view, housing affordability, loss of value.	It is generally accepted that the traffic generated from nine apartments will be significantly different than the current land use. It is beyond the scope of this report to substantiate the effects of the traffic noise if site access and egress is uncontrolled. The existing house at 5 Hales Street will be the only property affected by the effects of shading. The owner of this property is a signatory of one the many pro-forma letters received. Other issues are not within the jurisdiction of the Council and no evidence has been submitted to substantiate the claims.

The representations of support can be summarised as follows.

The proposed development:

- adds to the design and atmosphere of Penguin;
- creates exciting opportunities in the community;
- provides gains to the wider community;
- will provide contemporary and quality housing;
- is suited to Penguin;
- creates a desirable change;
- encourages progress;
- will generate tourism;
- will create new employment and business generation;
- will increase the population with flow-on effects of medical and other professional services relocating to Penguin; and
- will increase the value of the area.

These representations do not require any further explanation.

IMPACT ON RESOURCES

Any application for a significant development has a noticeable impact on Council resources. This is magnified when there is considerable public interest in the development, as is the case for this proposal. It is noted that if there is an appeal to the Council's decision, there will be additional impacts on the Council's resources.

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

This application is for a development which in terms of construction, evaluation of form and architecture has no precedent in Penguin. In very simple terms it covers 470m² or 36% of a 1318m² lot. This area when converted to length and breadth of the building is proportionate to the orientation and shape of the block and is not unconventional in the site-ratio

aspect of other residential buildings and uses in Penguin. It may appear to be extraordinary in terms of height but is not in excess of the maximum permissible height.

In some respects the sloping site tempers the impact and adds a controlling dimension to the concerns. The number of storeys influences the perception and this has been a concern expressed with interpreting the relative bulk of the building. There is no argument that it would be one of the larger residential buildings proposed in Penguin but it is difficult to prove detriment simply on size.

The relevance of the Scheme objectives, the intent of the zone and compliance with the provisions of the Scheme will always be challenged no matter the number of representations or nature of development.

Any recommendation has to be substantiated and in this regard the Scheme is either silent or too subjective on many of the points raised in the representations.

Comments on the acceptance and issues associated with pro-forma letters of objection have been discussed on many occasions. These are not to be discounted by any means; however, it is interesting to note that if they were treated as one petition then the letters of support would outnumber the objections.

Recommendation

It is recommended that the representations of objection be deemed to have insufficient merit on planning grounds to justify refusal of the Application and that upon deliberation of the merits of the proposal against the provisions of the Central Coast S.46 Planning Scheme No. 1 of 1993, Application No. DEV2006.93 be approved subject to the following conditions and restrictions:

- 1 The development generally conforming with the drawings - reference A2E 1007-03 dated April 2007 and the supporting information of Town and Country Planning (Tas) Pty Ltd dated April 2007 as submitted unless altered by subsequent conditions of this Permit;
- 2 A plan of proposed landscaping and site treatments is to be submitted for consideration no later than the application for the required Building Permit and is to indicate the following:

- (a) a schedule of the species to be planted which is to include varieties of local provenance where possible;
 - (b) a maintenance regime for the final layout including mulching and water reticulation methods to be used to ensure 70% stem retention rate after two years; and
 - (c) any paving and drainage designs that are to be incorporated with the plantings;
- 3 The landscaping and other site treatments are to be implemented, including all paving, drainage, plantings, mulches, and reticulation being installed, prior to residential occupation of any of the apartments;
- 4 Prior to the occupancy of the development, the parking and manoeuvring spaces identified on the submitted plans must be:
- (a) designed in accordance with the Australian Standard *AS2890.1 Off Street Parking Part 1 - Car Parking Facilities*;
 - (b) constructed and drained to the satisfaction of the Council; and
 - (c) paved with an acceptable impervious material;
- 5 The undercover parking spaces provided for each unit cannot be converted to another use without the issue of a separate planning approval by the Council;
- 6 Where practicable all pipework, ducts and vents are to be concealed from public view;
- 7 Where practicable one common television receiving device should be provided in lieu of individual devices per dwelling unit;
- 8 The developer providing a double-width vehicle access in accordance with the Council's Standard Drawing No. SD-1003;
- 9 The developer removing the two redundant vehicle accesses in Hales Street;
- 10 The developer installing trafficable manhole covers in driveways and parking areas;

- 11 The developer relocating the Council stormwater main from the centre of the property to the satisfaction of the Council's Director Assets & Engineering;
- 12 Attainment of a minimum 2.3 metre clearance between the footings and the centrelines of the Council sewer and stormwater pipelines;
- 13 The developer upgrading where required water, sewer or drainage services to service the development to the satisfaction of Council's Director Assets & Engineering;
- 14 The developer rectifying any damage or disturbance to footpaths, roads, kerbs, nature strips or existing services to the satisfaction of Council's Director Assets & Engineering;

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

- A any infrastructure extensions or upgrades required to service the development are at the developer's expense;
- B the preferred relocation of the stormwater main is west into manhole PC7/31 in Mortimer Road;
- C any works undertaken within a Road Reservation requires a Road Permit to be issued by the Council's Assets & Engineering Department prior to construction;
- D an application for a Building Permit is required for the construction of the new development and the demolition of existing buildings; and
- E this permit expires two years from the date advice of this decision is received unless the development has been substantially commenced.'

The report is supported."

The Executive Services Manager reported as follows:

"The annexures referred to in the Land Use Planning Group Leader's report have been circulated to all Councillors."

■ Cr Haines moved and Cr Marshall seconded, "That the representations of objection be deemed to have insufficient merit on planning grounds to justify refusal of the Application

and that upon deliberation of the merits of the proposal against the provisions of the Central Coast S.46 Planning Scheme No. 1 of 1993, Application No. DEV2006.93 be approved subject to the following conditions and restrictions:

- 1 The development generally conforming with the drawings - reference A2E 1007-03 dated April 2007 and the supporting information of Town and Country Planning (Tas) Pty Ltd dated April 2007 as submitted unless altered by subsequent conditions of this Permit;
- 2 A plan of proposed landscaping and site treatments is to be submitted for consideration no later than the application for the required Building Permit and is to indicate the following:
 - (a) a schedule of the species to be planted which is to include varieties of local provenance where possible;
 - (b) a maintenance regime for the final layout including mulching and water reticulation methods to be used to ensure 70% stem retention rate after two years; and
 - (c) any paving and drainage designs that are to be incorporated with the plantings;
- 3 The landscaping and other site treatments are to be implemented, including all paving, drainage, plantings, mulches, and reticulation being installed, prior to residential occupation of any of the apartments;
- 4 Prior to the occupancy of the development, the parking and manoeuvring spaces identified on the submitted plans must be:
 - (a) designed in accordance with the Australian Standard *AS2890.1 Off Street Parking Part 1 - Car Parking Facilities*;
 - (b) constructed and drained to the satisfaction of the Council; and
 - (c) paved with an acceptable impervious material;
- 5 The undercover parking spaces provided for each unit cannot be converted to another use without the issue of a separate planning approval by the Council;
- 6 Where practicable all pipework, ducts and vents are to be concealed from public view;

- 7 Where practicable one common television receiving device should be provided in lieu of individual devices per dwelling unit;
- 8 The developer providing a double-width vehicle access in accordance with the Council's Standard Drawing No. SD-1003;
- 9 The developer removing the two redundant vehicle accesses in Hales Street;
- 10 The developer installing trafficable manhole covers in driveways and parking areas;
- 11 The developer relocating the Council stormwater main from the centre of the property to the satisfaction of the Council's Director Assets & Engineering;
- 12 Attainment of a minimum 2.3 metre clearance between the footings and the centrelines of the Council sewer and stormwater pipelines;
- 13 The developer upgrading where required water, sewer or drainage services to service the development to the satisfaction of Council's Director Assets & Engineering;
- 14 The developer rectifying any damage or disturbance to footpaths, roads, kerbs, nature strips or existing services to the satisfaction of Council's Director Assets & Engineering;

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

- A any infrastructure extensions or upgrades required to service the development are at the developer's expense;
- B the preferred relocation of the stormwater main is west into manhole PC7/31 in Mortimer Road;
- C any works undertaken within a Road Reservation requires a Road Permit to be issued by the Council's Assets & Engineering Department prior to construction;
- D an application for a Building Permit is required for the construction of the new development and the demolition of existing buildings; and
- E this permit expires two years from the date advice of this decision is received unless the development has been substantially commenced."

Voting for the motion
 (8)
 Cr Downie
 Cr (L) Bonde
 Cr Deacon
 Cr Dry
 Cr Haines
 Cr Marshall
 Cr McKenna
 Cr van Rooyen

Voting against the motion
 (2)
 Cr Robertson
 Cr Barker

Motion

Carried

199/2007 Demolition of service station, development (commercial and residential with 11 apartments), exemptions from development standards (rear setback, number of storeys, site coverage and roofing of open space for apartments) at 109 Main Road, Penguin - Development Application No. DEV2006.94

The Director Development Services reported as follows:

“The Town Planner has prepared the following report:

<i>‘DEVELOPMENT APPLICATION No.:</i>	DEV2006.94
<i>LOCATION:</i>	109 Main Road, Penguin
<i>ZONING:</i>	Business (BA) - Central
<i>PLANNING INSTRUMENT:</i>	Central Coast S.46 Planning Scheme No. 1 of 1993 (the Scheme)
<i>ADVERTISED:</i>	30 April 2007
<i>REPRESENTATIONS EXPIRY DATE:</i>	14 May, 2007
<i>REPRESENTATIONS RECEIVED:</i>	154
<i>42-DAY EXPIRY DATE:</i>	1 June, 2007 (extension granted until 4 June, 2007)

PURPOSE

The purpose of this report is to consider the merits of an application received for development of commercial and residential uses at 109 Main Road, Penguin. The discretion applies as follows:

Commercial use:

- Number of storeys

Apartments:

- Development of apartments in this zone;
- Site coverage;
- Number of storeys;
- Roofing of open space; and
- Rear setback.

The report will consider:

- 1 the compliance of the application with 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; and
- 4 the merits of the representations received, both in support of and opposition to, the development.

BACKGROUND

The subject site is located on the ocean side of Main Road, in the centre of the Penguin township. It has previously been used as a service station, and the buildings and infrastructure from this use remain on site. An application from the developers was previously received by the Council for development of apartments and commercial premises on the same site. This original proposal is currently on “stop-clock” awaiting information from the applicant, therefore no decision has been made on the original proposal. The current proposal is being assessed independent of the previous application, as required by the *Land Use Planning and Approvals Act 1993* (the Act).

A location plan for the current proposal is attached as Annexure 1.

The application is for development of the following:

First storey (ground floor): four retail outlets, carparking, storage and gymnasium for use by the apartment residents.

Second storey: two commercial sites and three apartments.

Third and fourth storeys: four apartments each.

Fifth storey: commercial.

Copies of the relevant plans, elevations and similar details are attached as Annexure 2.

The applicant commissioned a planning consultant to provide a report which is included as part of the application documentation in Annexure 2.

Given the previous use of the site as a service station, there are legal requirements for decontamination to occur prior to development of the site for a more sensitive use. As of this date, decontamination for the proposed development has not occurred. Based on legal advice this is a requirement that can be addressed adequately in conditions if a planning permit is issued. It is noted that decontamination must be completed before a building permit can be issued.

The rear of the site abuts the railway reserve, where significant noise is generated as the trains travel through town. The applicant has provided a statistical noise analysis for the site which, combined with the report by the planning consultant employed by the applicant, asserts that the noise concerns can be dealt with in design and construction.

Details of the site contamination and noise survey are provided as Annexure 3.

DISCUSSION

This discussion will generally follow the sequence of the four points mentioned in the introduction. The fourth point is addressed in that part of the report dealing with consultation.

1 The compliance of the application with the relevant provisions and development standards of the Scheme.

A précis of Clause 3.9.2 of the Scheme provides a number of matters for the Council to consider before approving 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:

3.9.2(e) whether the proposed development is satisfactory in terms of its siting, size and appearance in relation to the existing site, adjoining land, the surrounding streetscape and landscape, natural environment and any items of historic or architectural significance.

Comment - The existing site is occupied by an empty commercial building. To the east of the subject land is a single-storey house, to the west are commercial developments. The surrounding streetscape is dominated by commercial development and some street landscaping. The natural environment is limited to the coastline, which relates to the northern aspect of the proposed development. The subject property is not heritage listed, nor of particular architectural value.

3.9.2(f) whether the proposed development will be supplied with an adequate level of infrastructure and services (roads, water, sewerage and electricity), without detriment to existing users.

Comment - Any development on the site would require the developer to upgrade the existing infrastructure to service the development.

3.9.2(g) the impact on the existing and possible future use of adjacent land and vice versa.

Comment - The proposed development is a mix of the two adjoining land uses (residential and commercial).

3.9.2(h) adequate landscaping, amenity facilities, illumination and general site features.

Comment - The developer has provided plans showing proposed landscaping, amenities and general site features. Information on illumination is limited.

3.9.2(i) whether there is a need to impose periods within which activities may be carried out.

Comment - The application does not include details on operating hours of the proposed commercial sections of the development.

Schedule 1 defines the use categories. The development is for two separate uses: apartments and a number of permitted uses such as offices, professional offices, shops, restaurants and other. These are referred to throughout this report as “commercial”.

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.

Commercial uses in the Business (BA) - Central zone are a “P1” use. Apartments are “d”.

It is noted that as per section 3.7 of the Scheme, the proposal does not conform to the description of a “mixed use” and has been treated as different and separate uses in the assessment of the proposal. The Scheme is silent on assessment when the design is such that the two uses will exist in the one building. Then Council staff have taken the only practical approach, resulting in the proposal being assessed as discretionary, as per the most sensitive use of the two as it is impossible to approve the permitted use without the discretionary proposal.

The following Table 1 provides detailed assessment against the relevant development standards. Figures have been taken from the application documentation:

Table 1

DESCRIPTION	STANDARD	DIMENSIONS OF PROPOSAL	COMMENTS
<i>Commercial</i>			
Front setback	0m	0m	Conforms.
Side setback	0m	0m	Conforms.
Rear setback	0m	0m	Conforms.
Height	15.5m	14.8m	Conforms.
Number of storeys	4	5	Seeks exemption.
Site coverage	100%	91.1%	Conforms.
Carparking	N/A	N/A	Minute No. 141/94 - 28.02.1994.
<i>Apartments</i>			
Minimum floor area	30m ²	Minimum 136.2m ²	Conforms.
Front setback	0m	8m (approx.)	Conforms.
Side setback (west)	0m	0m	Conforms.
Side setback (east)	0m	0m	Conforms.
Rear setback	3.5m	0m	Seeks exemption.
Dedicated Open Space per unit	10m ² at min. 1.2m width, unroofed	10m ²	Seeks exemption (roofed).
Other Open Space	25m ² unroofed	From 25m ² (apartments 5&9) to 50m ² (apartment 1)	Seeks exemption (roofed).
Maximum height	12.5m	10.45m	Conforms.

Number of storeys	3	4	Seeks exemption.
Site coverage	25%	40% (as per consultant report)	Seeks exemption.
Carparking	1.3 per dwelling unit (total: 15)	29	Conforms + standard condition re visitor spaces.

Additional comments on exemptions

When granting an exemption, the Council must be of the opinion that enforcement of a requirement would be impracticable, unreasonable, inequitable and not of sufficient importance in respect to the objectives of the Scheme to warrant enforcement. The Council cannot consider granting an exemption unless it has received a request from the applicant, a submission detailing the exemption and the reasons for the request and why they cannot be met and a statement as to the likely effect of the exemption on adjoining developments or uses. It is this demonstration that is assessed when exemptions are being considered (Clause 7.1.3).

The application documentation included a submission by planning consultant firm, Town & Country Planning, in response to Clause 7.1.3. The elements for which exemptions are requested are detailed below, and the associated responses from Town and Country Planning are summarised:

- (a) Number of storeys (commercial and apartments): the Scheme provides limits on both the height of the developments and the number of storeys. The proposal includes requests for an additional storey for each of the two uses. The response from Town & Country Planning was as follows:
 - (i) Both uses comply with the height limit for the zone;
 - (ii) Number of storeys is an unsophisticated method for managing scale and bulk and an inefficient tool of control. For example, a single storey building could be just as high as a double storey, simply as a result of design;
 - (iii) If the development was purely commercial, a building of greater bulk would be permitted, but the impact would be the same; and
 - (iv) Because of the significant setbacks, commercial component on the upper floor will have no adverse impact on neighbouring properties.

Comment - Assessment for this point of discretion rests on whether the rationale that a commercial building covering the

entire site would have more impact regarding scale and bulk is a strong one as defined by Clause 7.1.3.

- (b) Rear setback (apartments): the applicant is seeking an exemption from the rear setback recommended for apartments in the zone from 3.5m to 0m. A response to Clause 7.1.3 was provided by Town & Country Planning, asserting that:
 - (i) there is no adverse impact from the variation being sought at the rear of the block. This includes adverse impact on the proposed development itself, as the noise from the railway can be dealt with in the design;
 - (ii) if the use was commercial, it would be built in the same location, with the same impacts, but would be “as of right” (no planning permit required); and
 - (iii) it is efficient that the northern areas of the site be developed for courtyards and living space, and that courtyards (balconies) may not be a “building”.

Comment - To clarify for assessment, the Scheme uses the Building Code to determine what is classified as a “building”, and the proposed decks fall into this classification. It is noted that if the development was designed differently, the northern side could be developed and remain within the recommended setbacks. In assessing this element of discretion, the validity of the arguments regarding “no adverse impacts” and comparison to “as of right” developments depends on whether these arguments adequately demonstrate that enforcement of a requirement would be impractical, unreasonable and inequitable and not of sufficient importance to warrant enforcement.

- (c) Dedicated open space and other open space (DOS and OOS - apartments): the Scheme advises that all open space is to be unroofed. The response from Town & Country Planning in support of this exemption is as follows:
 - (i) Apartment developments, as is the case for this one, usually include balconies, existing over the top of the lower balconies - it would be ridiculous for decks to be staggered across the building to avoid this arrangement;

- (ii) The decks comply with the definition of open space in that it must be provided so that it can “reasonably be used for domestic purposes by the residents of that dwelling unit as a yard, garden, recreation area or the like”; and
- (iii) The definition of a roof in the Concise Oxford Dictionary precludes an upper deck from being included in the “roof” category.

Comment - This submission proposes that the Scheme can be interpreted to preclude upper decks from being included in the definition of a “roof”, and that to interpret it otherwise would be impracticable, unreasonable, inequitable and is not of sufficient importance in respect to the objectives of the Scheme to warrant enforcement. This interpretation is generally agreed to by the Council planning staff.

- (d) Site coverage (apartments): the applicant is seeking an exemption to allow site coverage for apartments to be approximately 40% (figures from Town & Country Planning’s report). The Scheme recommends 25%. The response from Town & Country Planning provides a response to Clause 7.1.3 addressing the issue as follows:
 - (i) The exemption is for carparking only and some of this coverage is shared between the two uses;
 - (ii) Compliance with the requirement would impact negatively on the streetscape; and
 - (iii) Similar uses are allowed greater site coverage, therefore the requirement for 25% site coverage for apartments appears “onerous, unreasonable and arbitrary”.

Comment - A “residential building” (discretionary use within the BA zone) is defined in the Scheme as land used for human habitation in which some or all of the facilities for living are used in common by the residents, and includes uses such as a guest house or hostel, and is allowed a 60% site coverage under the Scheme. The consultant is endeavouring to demonstrate that it appears “onerous, unreasonable and arbitrary” to require a

lesser site coverage for a use which he states would have a similar impact.

Clause 7.9.3 of the Scheme provides additional standards for Grouped houses, which also apply to apartments. The relevant sections are as follows:

7.9.3(a) design and layout of the land shall be such that the reasonable privacy of the occupants is ensured and each dwelling unit on the land and on adjoining land shall be capable of receiving a reasonable amount of daylight:

Comment - Each unit has its own areas of open space. Whilst “reasonable amount of daylight” is difficult to define, it is noted that the adjoining residence also has uninterrupted access to sunlight from the north.

7.9.3(b) proximity of driveways and pedestrian paths to another dwelling unit:

Comment - Driveways and pedestrian paths are not on the same floor as the dwelling units.

7.9.3(c) reasonable effort shall be made to maintain existing trees and shrubs on site:

Comment - There are none on site to maintain.

7.9.3(d),(f),(g),(i),(j) open space shall be landscaped or otherwise developed for the enjoyment of the residents; suitable for storage of waste and garbage to be provided; clothes drying, mail and newspaper facilities to be provided; pipes, ducts and vents to be concealed from public view; common television antenna to be provided:

Comment - These requirements are typically addressed as a standard condition if a permit is issued.

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 their intent 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.

Clause 1.5.1 of the Scheme provides the following advice for use of the objectives in assessment:

“... where any question arises as to the interpretation or effect of any part of this Scheme, those objectives should be referred to in order to provide the basic intent”

The Scheme has 15 objectives. Each has been examined in regard to this proposal and eleven are deemed relevant to this application.

- (a) *Orderly settlement and management of population, commerce, rural production and industry.*

The application is a proposal for commerce and population settlement within an existing township.

- (b) *Proper use and development of land, buildings and resources.*

The proposal is for development which will utilise all available space on the land and in the building. The application documentation contends that this is the best use of the available site, and is in keeping with the surrounding streetscape.

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

The first part of this objective is highly subjective, as aesthetics and landscape impact are often a matter of personal opinion. As such, this may be one objective which is best assessed by considering the comments received from the community during the public notification period. The second part, relating to pollution effects, applies to the rehabilitation of the site from previous use as a service station. The Council’s legal advice is that if the development is approved, the rehabilitation can be addressed through conditions on a permit.

- (d) *Promotion of safe, sightly and suitable standards of construction and maintenance.*

The issues associated with promoting safe and suitable standards of construction and maintenance are considered to be satisfactorily addressed as part of the building assessment process under the relevant building legislation. The assessment of the proposed development as “sightly” is considered to be best addressed by both the development standards and the public comments received.

- (e) *Provision of adequate space for both active and passive recreation.*

The proposal conforms with the development standards for dedicated and other open space. The issue of open space within the wider township of Penguin is addressed at other stages of development (e.g. a monetary contribution towards open space is taken at the subdivision stage for public works programs).

- (f) *Preservation and promotion of logical, efficient and safe transport and service routes.*

The proposed development would utilise existing transport and service routes. If a permit were to be issued, the developer would be required to upgrade any services (if necessary) in keeping with standard permit conditions.

- (g) *Controlled economic use and/or expansion of municipal services and facilities.*

The proposed development is within an existing township, and would utilise the services already provided for a variety of commercial and residential uses.

- (h) *Reservation and preservation of areas or sites of special significance.*

There has been discussion of the possible heritage value of a number of properties within the Penguin area. The site where the development is proposed is not listed on the heritage register, nor are the adjoining properties. The responses provided from the community provide input into the areas they believe are significant within the town.

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

The developer proposes building 11 apartments, providing increased diversity in a township with predominantly single dwellings per lot.

- (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 or diversify the economic base.*

The proposal includes commercial activities. The applicant purports that these will create outcomes similar to those in this objective. The proposal may have both positive and negative impacts on the local attractions (natural and created). It has the potential to diversify the economic base within the town. The success of this diversification cannot be assessed at this stage, only an estimate of its potential.

- (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.*

The proposed development has been designed by an architect, and includes commercial development within the centre of the Penguin township. The site is accessible by foot. Penguin currently has limited carparking available for motor vehicles. The proposal conforms with the Council's current carparking requirements, as determined in the Council's decision (Minute No. 141/94 - 28.02.1994), which excludes a requirement for on-site carparking associated with commercial uses within the Business (BA) - Central zone. The development is therefore required only to provide carparking for the residential portion of the proposal.

In summary, the application has a mixed response when assessed against the objectives of the Scheme. The assessment of the proposal against the objectives must be taken within the context of the assessment against the specific development standards, zone intent and representations received from the community.

- 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. The allocation of land in and to this zone and its location is intended to ensure that the central business districts of Ulverstone and Penguin are consolidated and contained.

Schedule 7 of the Scheme prescribes the development standards that are applicable. The “stopclock” request resulted in a submission on the relevant discretions being sought in relation to the development standards, as required by Clause 7.1.3. This response requires careful consideration to determine whether the reasons provided by the planning consultant on behalf of the applicant warrant the granting of the requested exemptions. This should include, but not be limited to, careful consideration of the perceived level of importance that is to be attributed to the intent of the zone and the scale of development and proposed uses for development not clearly in keeping with the intent of the zone.

Comment: One line of thought could result in the determination that the proposed development would constitute a “link” or progression between the two adjoining land uses and zonings. It is submitted as part of the consultant’s response that despite the fact that residential development is not included within the definition of the zone intent, the Table of Uses (Table S2) provides for apartments as a discretionary use within the zone, and similarly, development standards are provided in Schedule 7. The consultant’s response to these standards is provided in part 1 of this discussion.

CONSULTATION

The application was subject 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 each frontage on the site (Main Road and the railway frontage) and also by a notice placed once in a daily local newspaper, all of which were done. Correspondence to the adjoining landowners 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. Relevant comments received from the Team were asset based and related to the provision of infrastructure by the developer and the decontamination of the site.

4 *The merits of the representations received, both in support of and opposition to, the development.*

Within the prescribed 14-day period, 154 representations were received. Thirty-eight of these were in support of the development, 116 were objections, and one included comments in support of and objection to various components of the proposed development. The issue of pro-forma letters of objection has been discussed on many occasions. These are not to be discounted by any means; however, it is interesting to note that if they were treated as one petition then the letters of support would outnumber the objections.

The representations are attached as Annexure 4.

Due to the large number of representations, the responses have been broken down into the various issues raised. Table 2 below was developed to précis the representations received. The issues are listed roughly in order to reflect the number of representations received on each issue (most to least).

Table 2

ISSUE #	ISSUE	CONCERN IN REPRESENTATION	COMMENT
REPRESENTATION IN SUPPORT			
1	The development will provide future growth opportunities.	The development will provide investment, tourism, economic growth and employment in the town.	This is difficult to demonstrate at the application stage. However, if the development were to provide these outcomes, it would be in keeping with Objectives (m) and (n) of the Scheme.
2	This type of development is needed in Penguin.	This type of development is needed to prevent Penguin becoming a “ghost town”, losing residents (particularly youth), development and investment moving elsewhere, loss of safety.	If the proposed development were to address these concerns, it would be in keeping with Objectives (d), (m) and (n) of the Scheme.
3	Quality development with good architectural design.	There is a need for development with good architectural design.	The Scheme provides little guidance on what constitutes “good design”, other than the development standards. Compliance with these standards has been addressed earlier in this report.
4	Residential options.	The development provides a variety of residential options.	Noted. This is in keeping with Objective (l) of the Scheme.
5	Streetscape.	There will be a visual improvement in the streetscape as a result of this development.	This is a subjective measure, with the only guidance in the Scheme the development standards, addressed earlier in this report.
6	Natural features.	Will complement existing natural features.	This is a subjective measure, however if it does achieve this outcome, it will be in keeping with Objectives (c) and (h) of the Scheme.

DEVELOPMENT SERVICES

7	Assessment tools.	Discrimination, personal attitudes and beliefs should not be used in assessments; assessment should be limited to the Scheme.	The Scheme provides the assessment tool for development applications, with reference to State Policy and other legislation.
8	Support.	Representations generally in support with no detail.	Noted.
9	Height, and height v number of storeys.	Height is similar to other buildings in the area, and height is not the same thing as number of storeys.	The report by Town & Country Planning provides a discussion of the differences between, and effectiveness of, limiting development by number of storeys <i>or</i> height.
10	Provision of services.	The development will provide medical and dental services.	The applicant has not indicated precisely what commercial uses will be introduced to the building. Both of these uses are Permitted (with Council permit) in the zone.
11	Rate base.	Increase in rate base from development.	This is not a consideration under the Scheme.
12	Request to adhere to process.	Specific requests to adhere to the process and Scheme in assessing the application.	Due process has been followed.
13	Anti-development campaigns.	Inappropriate and untrue objections intended to thwart all development.	Noted. It is the intent of the Scheme that each development be assessed on its own merit, based on the specific direction the Scheme provides.
14	Impact on other residents.	The development will not interfere with the other residents.	The guidance under the Scheme is limited for this impact of development. The development standards (height, parking, site coverage, etc.) provide the most applicable guide to the impact of a development. These are addressed earlier in this report.

15	Impact of attitudes.	Peoples attitudes are, and will, affect development proposals elsewhere in the municipality.	Noted. It is the intent of the Scheme that each development be assessed on its own merit, based on the specific direction the Scheme provides.
16	Infrastructure.	The development will improve the infrastructure in Penguin.	Standard conditions on any permit issued by the Council include the requirement of the developer to provide the necessary infrastructure upgrades required to service that development.
17	Zone intent.	The development is in keeping with the zone intent.	See point 3 under the Discussion section of this report for further assessment in relation to zone intent.
18	Heritage values.	Heritage values in surrounding properties should not stop suitable development on other sites.	This property is not listed in the Heritage Register, nor are the adjoining properties as at the writing of this report (www.heritage.tas.gov.au).
19	Compliance with Scheme.	The proposal generally complies with the Scheme requirements.	See the Discussion section for further detail.
20	Shortfall in Scheme.	The Scheme falls short on encouraging innovation and growth. This is in contrast with other Council policy.	The Objectives of the Scheme provide some guidance in these two matters. The Vision Statement in the Council's Strategic Plan covers a "growing and innovative community" and other objectives (see the Corporate Compliance section towards the end of this report), many of which are covered in the Scheme objectives.
21	Development and history.	Buildings which now have historical value were once modern. New development today will one day be labelled as having historical value.	Noted. The Scheme does not specifically cover or provide for consideration of potential heritage value.
22	Developer effort.	The developer has gone to considerable	This is a subjective view. The applicant has

DEVELOPMENT SERVICES

		effort “in his endeavour to progress these developments”.	followed due process and provided information as part of the application. It is the purpose of this assessment to determine whether the information is satisfactory to demonstrate that the proposal conforms with the Scheme.
23	Leadership from Council.	Provide the “big picture” and leadership, “think outside the square”.	The planning process provides for the planning authority to assess a proposal within the guidance of the Scheme.
REPRESENTATIONS OF OBJECTION			
24	Clause 3.9.2.	Proposal does not comply with Clause 3.9.2.	Part 1 of the Discussion section of this report covers this clause in detail.
25	Intent of the zone.	The proposal is not in keeping with the intent of the zone.	See point 3 under the Discussion section of this report for further assessment in relation to zone intent.
26	Site contamination.	The site should be decontaminated before any permit is issued.	Legal advice to the Council has been that this issue can be dealt with by condition if a permit is issued.
27	Height.	The building is too high.	The proposal meets the height limit of the current Scheme.
28	Clause 7.1.3.	The application does not include an acceptable demonstration in relation to Clause 7.1.3 of the Scheme to warrant the granting of the requested exemptions.	See point 1 under Discussion and Annexure 2.

29	View/streetscape/interrelationship between the town, development and the coast.	The proposed development will have a negative impact on the streetscape and views and will limit interaction between the town and the coastline.	<p>Guidance for assessing impact on streetscape is provided in the development standards. The proposal meets the front (street) setback requirements.</p> <p>Impact on views and relationships between parts of the township are addressed in the Scheme objectives. Of particular relevance are Objectives (c), (d), (m) and (n), covered in detail in part two of the Discussion section of this report.</p>
30	Parking.	<ul style="list-style-type: none"> (a) Not sufficient for what is already a problem in Penguin; (b) piggyback parking; (c) not enough for large functions; and (d) a sign indicating how many carparking spaces are available at any one time. 	<ul style="list-style-type: none"> (a) A Council decision (Minute No. 141/94 - 28.02.1994) excludes a requirement for on-site carparking associated with commercial uses within the Business (BA) - Central zone; (b) the piggyback parking Conforms with the Australian standards; refer to Minute No. 141/94 - 28.02.1994; (c) as public parking is not required, the parking provided as part of this development is to service the development only, and (d) it would therefore be the developer's decision whether to indicate to the users the level of parking available.
31	Coastal Policy.	The proposal does not comply with the	The State Coastal Policy cannot be used in

DEVELOPMENT SERVICES

		Coastal Policy.	isolation in the assessment of applications. It deals with strategic issues that should be integrated within a planning scheme.
32	Provisions in the new Scheme.	Height restrictions, one single level of residential and only above the ground floor.	The current Planning Scheme provides the assessment tool for height and location of residential developments. The proposal meets the height limits, and the residential use is defined as apartments which is a Discretionary use within the zone.
33	Planning Scheme objectives.	The proposal does not comply with the Scheme objectives.	See part 2 of the Discussion for further detail.
34	Overshadowing.	The proposal will overshadow adjoining users/uses.	There is limited guidance in the Scheme on overshadowing. Any guidance to be found is within the scope of Clause 3.9.2, discussed in detail in part 1 of the Discussion section of this report.
35	Enforcing the Scheme.	The Council has a duty to enforce the Planning Scheme.	<p>Clause 1.6.1 states that “It is the duty of the Council within the ambit of its powers to ... enforce the observance of, and the requirements of this Scheme.”</p> <p>Following standard practice, the staff has assessed the proposal and is providing a recommendation to the Councillors, upon which they will base their decision. This process is intended to satisfy the requirements of Clause 1.6.1.</p>

36	Noise.	Impact on (railway), and from (functions, increased use) the development.	Reports by consultants commissioned by the applicant demonstrate that the impact of noise on the development can be addressed by design modifications (materials, soundproofing). Guidance in the Scheme for impact of noise from the development is covered in part 1 of the Discussion.
37	Inconsistent with existing town.	Values, lifestyle and culture of the town.	This is a subjective view. The Scheme provides guidance for this type of assessment in the Objectives, particularly Objective (n), covered in detail in part 2 of the Discussion.
38	Traffic impacts.	Negative impacts on traffic in Penguin.	Advice to the Council on traffic impact is provided by the Assets & Engineering Department. No Traffic Impact Assessment was required by this Department. If a permit is issued, standard conditions on traffic management would be imposed.
39	Overdevelopment of the site.	Site coverage.	The applicant is requesting an exemption to the site coverage recommendations in the Scheme. The submission regarding this request is provided in part 1 of the Discussion section of this report.
40	Heritage values.	Heritage value of surrounding buildings will be diminished.	The Tasmanian Heritage Register lists 34 and 50 Main Road Penguin as heritage properties. Under current legislation, this does not require the Council to refer the proposal to Heritage Tasmania. The Heritage Council did not provide a submission during the public comment stage.

DEVELOPMENT SERVICES

41	Future changes of use.	Concern that the commercial uses in the proposed building will be changed to residential uses	If the developer wishes to convert the commercial sections of the building into apartments (to other residential uses) in the future, the change would be subject to assessment under the Scheme. Currently, this would require an application for a discretionary planning permit, which the community could again comment on.
42	Progress should be suitable.	The proposed development is not suitable.	The Scheme objectives and development standards provide the only guidance as to whether a development is suitable or not. Parts 1 and 2 of the Discussion section of this report cover assessment in relation to the development standards and Scheme objectives respectively.
43	Privacy.	Impact on and from development.	Clause 3.9.2 of the Scheme provides the only guidance for protection of privacy. Refer to part 1 of the Discussion section of this report for detail.
44	Waste disposal.	Skip, access and top floor.	These challenges were identified by staff in the assessment of the proposed development. If a permit is to be issued, then appropriate conditions would be necessary to ensure proper waste disposal was provided.
45	High rise development.	Objects to high rise development in Penguin.	The Scheme does not provide guidance specific to "high rise" development. Part 1 of this report details the development standards applicable to assessment of proposed developments with regard to height and number of storeys.

46	Property values.	Negative impact on property values.	The Scheme provides no guidance on how to assess the impact of a development on property values.
47	Intimidation and favouritism.	Intimidation from, and favouritism to, the developers.	<p>Clause 1.6.1 states that “It is the duty of the Council within the ambit of its powers to ... enforce the observance of, and the requirements of this Scheme.”. It is the intent of the Scheme that each development be assessed on its own merit, based on the specific direction the Scheme provides.</p> <p>Following standard practice, the staff has assessed the proposal and is providing a recommendation to the Councillors, upon which they will base their decision. This process is intended to satisfy the requirements of Clause 1.6.1.</p>
48	Demand.	No demand for this type of development (apartments or commercial).	The Scheme provides no guidance on how to assess the demand for a particular development, other than to advise that there should be “provision for diversity and innovation in residential lifestyle opportunities” [Objective (1)].
49	Conflict between the two uses in the building.	Concern that the two uses (residential and commercial) within the same building will conflict with one another.	This is a subjective view. The Scheme provides guidance for this type of assessment in the Objectives, covered in detail in part 2 of the Discussion.
50	Limit on the uses allowed on the land.	Should be commercial only on the site.	In the planning consultant’s report, he submits that despite the fact that residential development

DEVELOPMENT SERVICES

			is not included in the definition of the zone intent, the Scheme provides for apartments as a discretionary use within the zone, with development standards imposed. The application has been assessed as discretionary, based on the relevant standards.
51	Fire.	Insufficient fire exits and firewalls.	The development will be required to comply with the Building Code of Australia, which will be assessed at the building application stage.
52	Number of storeys.	Too many storeys.	The planning consultant has provided a response to this exemption request, which is detailed in part 1 of the Discussion section of this report.
53	Loss of security and safety for adjacent land.	Overlooking adjacent uses, building to the boundary, impact on security during building phase, objects falling from the building (i.e. balconies).	This is a subjective view. The Scheme provides a limited guide for consideration of security in Clause 3.9.2, covered in detail in part 1 of the Discussion section of this report.
54	Suggestions for changes.	Underground parking, removing the top storey, the same amount of progress would be possible with a lower building.	Noted. The developer is aware of these suggestions from their own community discussions and open days. The application currently before the Council is the one that is being assessed.
55	Concern over the Councillors making decisions that are against staff advice.	Previous decisions in Council meetings have conflicted with advice from Council staff.	The Council has delegated decision making to staff for most planning applications. Applications which receive representations against the proposal have not been delegated, therefore the final decision with these lies with the Councillors.

56	Concern that the development will impact negatively on future growth.	The development will limit future opportunities, investment, tourism, economic growth and employment in the town.	This is difficult to demonstrate at the application stage. However, if the development does not provide these outcomes, it would be in conflict with Objectives (m) and (n) of the Scheme.
57	Access and proximity to the railway line.	Illegal, impractical and dangerous.	The proposal was referred to Pacific National. No response was received regarding the development. It should be noted that the houses next door have similar access, as do the general public.
58	Infrastructure is insufficient to service the development.	Access and stormwater.	Standard conditions on any permit issued by the Council would include the requirement of the developer to provide the necessary infrastructure upgrades required to service that development.
59	Penguin Cultural Plan.	Conflicts with the Penguin Cultural Plan.	The Community Plan provides strategic objectives, many of which are similar to the Scheme objectives. As with the Scheme objectives, they are subjective. The Community Plan is not part of this statutory assessment.
60	Aesthetics.	The proposed development will have a negative impact on the aesthetics of the town.	The Scheme provides guidance on this in the form of development standards and objectives. These are assessed in parts 1 & 2 of the Discussion section of this report.
61	Need for a community, urban design or strategic plan to be incorporated into the Scheme.	Legislation should be amended to provide a legislated strategic guide.	The issue is outside the scope of assessment of this application, but is a matter for future consideration by the Council.
62	Misleading information.	Previous advice to residents that medical facilities would be provided on	The applicant has not indicated precisely what commercial uses will be introduced to the

DEVELOPMENT SERVICES

		site was misleading.	building. Both of these uses are Permitted (with Council permit) in the zone.
63	Ugly.	The design is ugly.	This is a subjective view. The Scheme provides a limited guide for consideration of aesthetics and these have been covered earlier in this report.
64	“Flooding” of applications by the developers.	Impact of submitting three applications at once (on the community and the Council).	The Council is required under the Act to accept and assess applications as they are submitted.
65	Diverse residential developments have already been approved.	Diverse residential developments have already been approved.	The Council is required under the Act to accept and assess applications as they are submitted.
66	Clotheslines.	No clotheslines provided.	Standard conditions on any permit issued by the Council include the requirement of the developer to provide clothes drying facilities as per Clause 7.9.3.
67	Future owners.	The site may be sold with the development approval in place.	Approvals are given for specific development proposals. If the land is sold, the approval remains valid for the normal permit period. If a new owner wishes to significantly alter an approved proposal, a new application would be required, along with the normal public notification periods (if required).
68	Style out of place.	Style out of place.	The Scheme provides little guidance on what constitutes suitable “style”, other than the development standards. Compliance with these standards are addressed earlier in this report.
69	Wind tunnelling.	The effects of wind tunnelling on adjacent users/uses.	There is limited guidance in the Scheme on this issue. Any guidance to be found is within the

			scope of Clause 3.9.2, discussed in detail in part 1 of the Discussion section of this report.
70	Disturbance during construction.	Interruption to adjacent users during construction.	There is limited guidance in the Scheme on this issue. Any guidance to be found is within the scope of Clause 3.9.2, discussed in detail in part 1 of the Discussion section of this report.
71	Lions Park is being claimed as open space as part of this proposal.	Lions Park is being claimed as open space as part of this proposal.	The design includes all the required open space (dedicated and other) within the boundaries of the lot. Lions Park is public land and there is no plan to change that.

IMPACT ON RESOURCES

Any application for a significant development has a noticeable impact on Council resources. This is magnified when there is considerable public interest in the development, as is the case for this proposal. It is noted that if there is an appeal to the Council's decision, there will be additional impacts on the Council's resources.

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 summary, the application is for a five storey development, comprising apartments and commercial outlets. The design exceeds the recommended number of storeys for each of the two uses, but meets the height restrictions.

There was some confusion in the community regarding the height limit, possibly because of the Draft Planning Scheme provisions. A satisfactory submission demonstrating that enforcement of the limit on storeys would be impractical, unreasonable, inequitable and not of sufficient importance to warrant enforcement (Clause 7.1.3) has been provided as part of the application.

The consultant's submission regarding the roofing of the decks is also considered to be satisfactory, and will result in development in keeping with the intent of the recommended design restriction.

In the application documentation, the planning consultant maintains that the Scheme restrictions for site coverage and rear setback are impractical, unreasonable, inequitable and not of sufficient importance to warrant enforcement. This position is substantially based on the apparently arbitrary allocation of development standards for apartments in comparison to commercial uses. The developer has pointed out numerous times that if purely commercial, a building could be constructed to a greater height than

this proposal, with 100% site coverage and a solid façade, resulting in a significantly greater impact on the streetscape. The content and number 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. The Scheme is silent or open to interpretation on many of the points raised in the representations. Any recommendation must be substantiated by the requirements outlined in the Scheme. In this application it has been demonstrated that the requested exemptions will not have a significant impact and meet the requirements of Clause 7.1.3.

Recommendation

It is recommended that the representations of objection be deemed to have insufficient merit on planning grounds to justify refusal of the application and that upon deliberation of the merits of the proposal against the provisions of the Central Coast S.46 Planning Scheme No. 1 of 1993, Application No. DEV2006.94 be approved subject to the following conditions and restrictions:

- 1 The development generally conforming with the drawings and other documentation as submitted and referred to as follows unless altered by subsequent conditions of this Permit:
 - (a) A2E REF 1006-38 dated 5 April 2007;
 - (b) Report by Town and Country Planning (Tas) Pty Ltd, “Development application for demolition of existing service station, construction of 11 apartments, 4 retail shops, office space and reception area”, dated April 2007;
 - (c) Noise survey by P. Tearts, Consulting Engineer, dated 26/4/2007; and
 - (d) SEMF letter Ref: 1739.004 L001 GGC/gc, dated 24 April 2007;

- 2 The developer is to enter into a Part 5 Agreement under s.71 of the *Land Use Planning and Approvals Act 1993* with the Council on the understanding that:
 - (a) a site contamination assessment and report is to be obtained and provided to the Council prior to issue of a Building Permit

- which complies with the requirements, practices and procedures identified in Schedule 1 to this permit; and
- (b) no development approved by this permit is to commence on the land unless it has been demonstrated that any contamination of the land has been remediated to comply with the pollutant levels and characteristics identified in Schedule 2 to this permit;
- 3 Demonstration of compliance with the obligations expressed in Condition 2 of this permit is to be as follows:
- (a) Provision of a written report to the Council's Director Development Services prepared by a suitably qualified and experienced environmental consultant which certifies that the contamination requirements of Schedule 2 of this permit have been achieved in all respects; and
- (b) Confirmation being provided to the Council's Director Development Services from the Director of Environmental Management of the Department of Primary Industries and Water appointed pursuant to the provisions of the *Environmental Management and Pollution Control Act 1994*, to the effect that the contamination levels specified in Schedule 2 to this permit have been achieved in respect of the land and that as a consequence the land is suitable for the uses approved of by this permit;
- 4 Building construction and choice of materials must take into account and mitigate the impact of the noise from the railway line on the residents of the apartments;
- 5 The proposed landscaping and site treatments indicated are to:
- (a) enable planting of species of local provenance where possible;
- (b) ensure the final layout, species to be planted, and land maintenance regimes, including mulching and water reticulation methods to be used, ensure 70% stem retention rate after two years; and

- (c) allow for satisfactory paving and drainage designs to be incorporated with the plantings;
- 6 That landscaping and other site treatments are to be implemented, including all paving, drainage, plantings, mulches, and reticulation being installed, prior to the certification of the Strata Title by the Council;
- 7 The developer providing:
 - (a) double-width vehicle access in accordance with the Council's Standard Drawing No. SD-1003 and removal of the redundant crossing;
 - (b) undergrounding of the Aurora power lines along the frontage of the site in conjunction with Aurora Energy;
 - (c) the provision (where required) of water supply and drainage easements;
 - (d) a downstream capacity analysis of the current stormwater drainage system;
 - (e) upgrading and extension (where required) of water, sewer or drainage services to service the development to the satisfaction of the Council's Director Assets & Engineering;
 - (f) continuing use of the existing bus zone; and
 - (g) rectification of any damage or disturbance to footpaths, roads, kerbs, nature strips or existing services, to the satisfaction of the Council's Director Assets & Engineering;
- 8 The undercover parking spaces provided for each unit cannot be converted to another use without the issue of a separate planning approval by the Council;
- 9 All carparking spaces in excess of one per dwelling unit are to be designated as "Visitor" spaces as per Table S5;
- 10 Where practicable, all pipework, ducts and vents are to be concealed from public view;

- 11 Where practicable, a common television receiving device should be provided in lieu of individual devices per dwelling unit;
- 12 The developer providing garbage and recycling collection which must be maintained by the Body Corporate and will require the separate approval of the Council; and
- 13 The developer providing adequate clothes drying facilities and mail receptacles;

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

- A the development within the commercial sections of the building may require separate planning approval. Any potential operator should contact Council's Development Services Department prior to commencement of the use;
- B any infrastructure extensions or upgrades required to service the development are at the developer's expense;
- C the current stormwater would need to be extended and/or upgraded to service the block. The developer will need to provide details on how it is proposed to service the lot including provision for draining the basement;
- D any works undertaken within the Road Reservation require a Road Permit to be issued by the Council's Assets & Engineering Department prior to construction;
- E an application for a Building Permit is required for the construction of the new development and the demolition of existing buildings. A copy of this Permit is to be provided to the private Building Surveyor prior to the completion of their assessment; and
- F this Permit expires two years from the date advice of this decision is received unless the development has been substantially commenced. An extension of time to this period can be granted once only but only if, the request is received prior to the expiry of the specified time.'

The report is supported.”

The Executive Services Manager reported as follows:

“The annexures and schedules referred to in the Town Planner’s report have been circulated to all Councillors.”

■ Cr van Rooyen moved and Cr Deacon seconded, “That the representations of objection be deemed to have insufficient merit on planning grounds to justify refusal of the application and that upon deliberation of the merits of the proposal against the provisions of the Central Coast S.46 Planning Scheme No. 1 of 1993, Application No. DEV2006.94 be approved subject to the following conditions and restrictions:

- 1 The development generally conforming with the drawings and other documentation as submitted and referred to as follows unless altered by subsequent conditions of this Permit:
 - (a) A2E REF 1006-38 dated 5 April 2007;
 - (b) Report by Town and Country Planning (Tas) Pty Ltd, ‘Development application for demolition of existing service station, construction of 11 apartments, 4 retail shops, office space and reception area’, dated April 2007;
 - (c) Noise survey by P. Tearts, Consulting Engineer, dated 26/4/2007; and
 - (d) SEMF letter Ref: 1739.004 L001 GGC/gc, dated 24 April 2007;
- 2 The developer is to enter into a Part 5 Agreement under s.71 of the *Land Use Planning and Approvals Act 1993* with the Council on the understanding that:
 - (a) a site contamination assessment and report is to be obtained and provided to the Council prior to issue of a Building Permit which complies with the requirements, practices and procedures identified in Schedule 1 to this permit (a copy of the Schedule being appended to and forming part of the minutes); and
 - (b) no development approved by this permit is to commence on the land unless it has been demonstrated that any contamination of the land has been remediated to comply with the pollutant levels and characteristics identified in Schedule 2 to this permit (a copy of the Schedule being appended to and forming part of the minutes);
- 3 Demonstration of compliance with the obligations expressed in Condition 2 of this permit is to be as follows:

- (a) Provision of a written report to the Council's Director Development Services prepared by a suitably qualified and experienced environmental consultant which certifies that the contamination requirements of Schedule 2 of this permit have been achieved in all respects; and
 - (b) Confirmation being provided to the Council's Director Development Services from the Director of Environmental Management of the Department of Primary Industries and Water appointed pursuant to the provisions of the *Environmental Management and Pollution Control Act 1994*, to the effect that the contamination levels specified in Schedule 2 to this permit have been achieved in respect of the land and that as a consequence the land is suitable for the uses approved of by this permit;
- 4 Building construction and choice of materials must take into account and mitigate the impact of the noise from the railway line on the residents of the apartments;
- 5 The proposed landscaping and site treatments indicated are to:
- (a) enable planting of species of local provenance where possible;
 - (b) ensure the final layout, species to be planted, and land maintenance regimes, including mulching and water reticulation methods to be used, ensure 70% stem retention rate after two years; and
 - (c) allow for satisfactory paving and drainage designs to be incorporated with the plantings;
- 6 That landscaping and other site treatments are to be implemented, including all paving, drainage, plantings, mulches, and reticulation being installed, prior to the certification of the Strata Title by the Council;
- 7 The developer providing:
- (a) double-width vehicle access in accordance with the Council's Standard Drawing No. SD-1003 and removal of the redundant crossing;
 - (b) undergrounding of the Aurora power lines along the frontage of the site in conjunction with Aurora Energy;
 - (c) the provision (where required) of water supply and drainage easements;
 - (d) a downstream capacity analysis of the current stormwater drainage system;

- (e) upgrading and extension (where required) of water, sewer or drainage services to service the development to the satisfaction of the Council's Director Assets & Engineering;
 - (f) continuing use of the existing bus zone; and
 - (g) rectification of any damage or disturbance to footpaths, roads, kerbs, nature strips or existing services, to the satisfaction of the Council's Director Assets & Engineering;
- 8 The undercover parking spaces provided for each unit cannot be converted to another use without the issue of a separate planning approval by the Council;
- 9 All carparking spaces in excess of one per dwelling unit are to be designated as 'Visitor' spaces as per Table S5;
- 10 Where practicable, all pipework, ducts and vents are to be concealed from public view;
- 11 Where practicable, a common television receiving device should be provided in lieu of individual devices per dwelling unit;
- 12 The developer providing garbage and recycling collection which must be maintained by the Body Corporate and will require the separate approval of the Council; and
- 13 The developer providing adequate clothes drying facilities and mail receptacles;

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

- A the development within the commercial sections of the building may require separate planning approval. Any potential operator should contact Council's Development Services Department prior to commencement of the use;
- B any infrastructure extensions or upgrades required to service the development are at the developer's expense;
- C the current stormwater would need to be extended and/or upgraded to service the block. The developer will need to provide details on how it is proposed to service the lot including provision for draining the basement;
- D any works undertaken within the Road Reservation require a Road Permit to be issued by the Council's Assets & Engineering Department prior to construction;

DEVELOPMENT SERVICES

- E an application for a Building Permit is required for the construction of the new development and the demolition of existing buildings. A copy of this Permit is to be provided to the private Building Surveyor prior to the completion of their assessment; and
- F this Permit expires two years from the date advice of this decision is received unless the development has been substantially commenced. An extension of time to this period can be granted once only but only if the request is received prior to the expiry of the specified time.”

Voting for the motion

(7)

Cr Downie

Cr (L) Bonde

Cr Deacon

Cr Haines

Cr Marshall

Cr McKenna

Cr van Rooyen

Voting against the motion

(3)

Cr Robertson

Cr Barker

Cr Dry

Motion

Carried

ASSETS & ENGINEERING

200/2007 Tenders for construction of kiosk/change room facilities and replacement of southern grandstand roof at Ulverstone Recreation Ground

The Director Assets & Engineering reported as follows:

“Due to discrepancies in the tender evaluation report provided to the Council on this matter by Pitt & Sherry, consulting engineers, the agenda report prepared by Council officers has had to be withdrawn.

Following further evaluation and investigation, the report will be provided for Council’s ordinary meeting scheduled for 18 June 2007.”

Closure

There being no further business, the Mayor declared the meeting closed at 8.49pm.

CONFIRMED THIS 16TH DAY OF JULY, 2007.

Chairperson

(gjm:dil)

Appendices

Minute No. 199/2007 - Schedules 1 and 2

QUALIFIED PERSON'S ADVICE

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

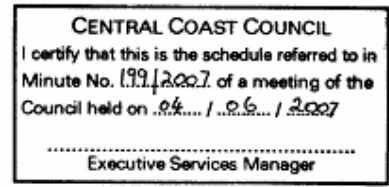
- . A general manager must ensure that any advice, information or recommendation given to the council is given by a person who has the qualifications or experience necessary to give such advice, information or recommendation.
- . A council is not to decide on any matter which requires the advice of a 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

Appendices



SCHEDULE 1

NOTE: REQUIREMENTS ARE IN 'ITALIC BOLD' TEXT

CONTAMINATED SITE ASSESSMENT/REPORT:

Contaminated site assessments are usually multi-staged procedures, and may be inherently complex. Depending on the complexity and scale of contamination, stages of a site assessment may include:

- A site history,
- Preliminary investigation including sampling and analysis (or screening survey),
- A secondary sampling, analysis and assessment program,
- An environmental and health risk assessment, and
- A site management plan, remediation and a post remediation validation program.

The *National Environment Protection (Assessment of Site Contamination) Measure 1999*, National Environmental Protection Council (*'the NEPM'*) provides a policy framework and guidelines for assessment of site contamination in Tasmania. It requires an assessment report to demonstrate that potentially contaminated land has no contamination or how contamination will be managed.

The site contamination assessment and report for the subject site must comply with the requirements, practices and procedures identified in the NEPM, together with other relevant requirement of the Director of Environmental Management of the Department of Tourism, Arts and the Environment (*'the Director'*), and must include a statement regarding the site's suitability for its proposed use. All sample testing must be conducted by a NATA registered laboratory (accredited for all testing procedures).

Any contamination identified by the site assessment must be managed in accordance with the NEPM and any other relevant requirement of the Director. This involves either demonstrating that any contamination of the land has been remediated, or otherwise managed to the extent that any pollutant on, discharging from or historically emitted from the land is not and will not cause any unacceptable risk to:

- ***human health under the proposed residential use, and***
- ***any land use allowable under the zoning of surrounding lands, and***
- ***the environment.***

A SUITABLY QUALIFIED AND EXPERIENCED PERSON:

A suitably qualified and experienced person must undertake the site contamination assessment and prepare the report.

To be suitably qualified and experienced a person must satisfy the competencies prescribed in the *National Environment Protection (Assessment of Site Contamination) Measure 1999, Schedule B(10) Guidelines on Competencies and Acceptance of Environmental Auditors and Related Professionals.*

SCHEDULE 2

NOTE: REQUIREMENTS ARE IN 'ITALIC BOLD' TEXT

The *National Environment Protection (Assessment of Site Contamination) Measure 1999*, National Environmental Protection Council ('the NEPM') prescribes *Health Investigation Level Guidelines* for the assessment of soil and groundwater contamination. A Health Investigation Level ('HIL') is the concentration of a contaminant above which further appropriate investigation and evaluation is required.

ASSESSMENT OF SOIL CONTAMINATION:

The contaminated site assessment must include consideration of the HIL's relevant to the subject site. HIL's are not cleanup or response levels, nor are they desirable quality criteria. They are to be used for assessment of existing contamination only and are intended to prompt an appropriate site-specific assessment when they are exceeded. ***A site-specific environmental and health risk assessment plan must be prepared if exceedance of investigation levels indicates there is the likelihood of adverse effects on human health or ecological values for that site. This plan must be developed in consultation with the Department of Tourism, Arts and Environment's Contaminated Sites unit.***

The NEPM prescribes HIL's on the basis of five (5) human exposure settings, ranging from (A) being 'standard' residential to (F) being commercial/industrial. On this scale, Human Exposure Setting D is appropriate for the proposed 'more sensitive' use of the subject site. Human Exposure Setting D includes:

"...Residential with minimal opportunities for soil access; includes dwellings with fully and permanently paved yard space such as high-rise apartments and flats..."

The HILs for human exposure setting D are included as Table 1:

Table 1: Soil Investigation Levels (mg/kg)	
Substance	Health Investigation Levels (Human Exposure Setting D)
METALS/METALLOIDS	
Arsenic (total)	400
Beryllium	80
Cadmium	80
Chromium (III)	48%
Chromium (VI)	400
Cobalt	400
Copper	4000
Lead	1200
Manganese	6000
Methyl mercury	40
Mercury (inorganic)	60
Nickel	2400
Zinc	28000
ORGANICS	

Aldrin + Dieldrin	40
Chlordane	200
DDT +DDD + DDE	800
Heptachlor	40
Polycyclic aromatic hydrocarbons (PAHs)	80
Benzo(a)pyrene	4
Phenol	34000
PCBs (Total)	40
Petroleum Hydrocarbons Components (constituents):	
• >C16 – C35 Aeromatics	360
• >C16-C35 Aliphatics	22400
• >C35 Aliphatics	224000
OTHER	
Boron	12000
Cyanides (Complexed)	2000
Cyanides (free)	1000

ASSESSMENT OF GROUNDWATER CONTAMINATION:

When assessing groundwater contamination, the values in Table 2 must be applied as investigation levels at the point of extraction and as response levels at the point of use, or where there is the likelihood of an adverse environmental effect at the point of discharge. *If groundwater monitoring establishes levels of contamination above the appropriate investigation level, then further investigation must be carried out to determine sources of contamination and to determine the lateral and vertical extent of contaminated groundwater. This investigation must be undertaken in consultation with the Department of Tourism, Arts and Environment's Contaminated Sites unit.*

Setting	Fresh Water µg/L
METALS/METALLOIDS	
Aluminium	<5 (if pH <6.5) <100 (if pH >6.5)
Antimony	30
Arsenic (total)	50
Beryllium	4
Cadmium	0.2-2.0
Chromium (Total)	10
Copper	2.0 – 5.0
Iron	1000
Lead	1.0-5.0
Mercury (total)	0.1
Nickel	15.0 – 150.0
Selenium	5.0
Silver	0.1
Thallium	4.0
Tin (tributyltin)	0.008
Zinc	5.0 – 50.0
ORGANICS	

Hexachlorobutadiene	0.1
Monocyclic aromatic compounds	
Benzene	300.0
Chlorinated benzenes	0.007 – 15.0 ¹²
Chlorinated phenols	0.05 – 18.0 ¹³
Phenol	50.0
Toluene	300.0
Phthalate esters	
di-n-butylphthalate	4.0
di(2-ethylhexyl)phthalate	0.6
other phthalate esters	0.2
Polyaromatic hydrocarbons	
Polychlorinated bipheyls	0.001
Polysyclic aromatic hydrocarbons	3.0
OTHER	
Cyanide	0.005

GENERAL:

Inappropriate use of investigation levels as ‘default’ remediation criteria may result in unnecessary remediation adding to development costs, causing unnecessary disturbance to the site and local environment, and potential waste of valuable landfill space. Similarly, it is an abuse of investigation levels if they are interpreted as condoning contamination to these levels. Accordingly, *the Department of Tourism, Arts and Environment’s Contaminated Sites unit must be consulted in the development of a remediation and/or environmental and health risk assessment plan for the subject site.*”