
Minutes

of a Special Meeting

29 October 2007

Note.

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

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Minutes of an special meeting of the Central Coast Council held in the Council Chamber at the Administration Centre, 19 King Edward Street, Ulverstone on Monday, 29 October 2007 commencing at 7.31 pm

Councillors attendance

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

Employees attendance

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

Media attendance

The Advocate newspaper

Public attendance

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

Planning consultant

Planning consultant, Korlan Pty Ltd, was represented at the meeting by Mr Geoff Davis.

Prayer

The meeting opened in prayer.

MAYOR'S COMMUNICATIONS

396/2007 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

397/2007 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 General 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

398/2007 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 Acting Director Development Services has submitted the following report:

‘If any such actions arise out of Minute No. 399/2007, they are to be dealt with by the Council acting as a planning authority under the *Land Use Planning and Approvals Act 1993*.’

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

Carried unanimously

399/2007 Demolition, shop (9 retail) – Miscellaneous (32 Serviced Studios & 7 Serviced Apartments) and Apartment (18 Residential) and exemption from the Development Standards at 68–76 Main Road, Penguin – Application No. DEV2007.18

The Acting Director Development Services reported as follows:

“Korlan Pty Ltd has prepared the following report:

‘ <i>DEVELOPMENT APPLICATION NO:</i>	DEV2007.18
<i>OWNERS:</i>	68–T & E Burton, 70–76 S. Hingston, R & V Kerger

APPLICANT: Roche International
LOCATION: 68-76 Main Road Penguin (subject site)
TITLES: Cert of Title Vol. 103885/1,
Vol.16665/1, Vol. 230978/1
TOTAL AREA: 4184sq. m
ZONING: Business (BA) – Central
Planning Instrument: Central Coast S.46
Planning Scheme No.1 of 1993(the
Scheme)
ADVERTISED: 20 August 2007
REPRESENTATIONS EXPIRY DATE: 3 September 2007
REPRESENTATIONS RECEIVED: 276 and a petition
42- Day Expiry Date: 6 November 2007
DECISION DUE: 29 October 2007

PURPOSE

1. Introduction

This planning assessment report prepared by Geoff Davis from Korlan Pty Ltd assesses an application to develop residential apartments, serviced apartments, shops, associated car parking and the demolition of the existing buildings located at 68-76 Main Road Penguin.

1.1 Planning Instrument

Central Coast s.46 Planning Scheme No.1 of 1993

DISCUSSION

2.0 Description of Site and Surrounds

The subject site consists of three adjoining titles with a total area of 4,184 m². The subject site is occupied by a newsagent and private residence, a private residence with a shop front and 3 small shops with above ground flats and a Council car park (Leasehold). (Annexure 1 – Location Plan).

The subject site adjoins a supermarket to the west and the Visitor Information Centre to the east. Opposite is a playground and small library. A railway corridor runs along the south western edge of the subject site.

The site which is relatively flat, faces north-east and has uninterrupted views to the esplanade and sea.

2.2 Adjoining Zoning

The adjoining zoning is Central Business (BA).

2.3 Road Access and Movements

Frontage access to the site is directly off Main Road. Rear access is available to the site via an unnamed road reservation.

2.4 Cultural Heritage

The site contains no listed heritage buildings or sites.

2.5 Fauna and Flora

No threatened fauna or flora species are listed for the site which is understandable considering it has been developed for a number of years.

2.6 Sewer

Sewage from the existing buildings is connected to Councils reticulated system.

2.7 Water

The site is supplied with reticulated water.

2.8 Stormwater

Stormwater drainage is facilitated by discharge into stormwater drains that ultimately flow into the sea.

2.9 Power

Electricity is supplied from the state supply grid.

2.10 Telecommunications

The site is serviced with telecommunications.

3.1 Development Application

3.1.1 Description

The proposal is to demolish the existing buildings and construct a four storey, 15 metres high building comprising of;

Retail shops (9)
Residential apartments (18)
Serviced apartments/studios (39)
Car parking (58 spaces)

The components are;

Ground Level (Main Road frontage);

- Nine retail shop spaces, two of which are shown as café/bars, fronting Main Road, or accessed via the lobby off main Road with a total floor area of 760sq m, associated lobby, multiple lift shafts and storage areas. The administrative area for the serviced apartments is located on this level.
- 58 car parking spaces, (railway frontage) accessed off the service road behind the Penguin Tourist Information Centre.

First floor Level–16 apartments comprising:

- Residential apartments –6x3 bed plus study (143sq.m. per unit) with balcony/ outdoor space (45 sq.m per unit).
- Commercial serviced apartments–2x3 bedrooms (154 sq.m per unit) with balcony/ outdoor space (33 sq.m. per unit).
- Commercial serviced apartments (studios) –8x1 bed (40 sq. m each) with balcony/ outdoor space (18 sq.m each).

Second Floor Level –16 apartments comprising;

- Residential apartments–6x3 bed plus study (143 sq.m each) with balcony/outdoor space (45 sq.m each).
- Commercial serviced apartments–2x 3 beds (154sq.m. each) with balcony/ outdoor space (33 sq.m each).
- Commercial serviced apartments (studios) 8x1 bed(40 sq.m each).

Third Floor Level –16 apartments comprising:

- Residential apartments –6x3 bed (155 sq.m. each) with balcony/ outdoor space (50 sq.m each).
- Commercial serviced apartments –2x3 bed (154 sq.m. each) with balcony/ outdoor space (25 sq.m. each).
- Commercial serviced apartments (studios)–8x1 bed (40sq.m. each).

Fourth Floor Level –9 apartments comprising;

- Commercial serviced apartment–1x3 (2105 sq.m.) with balcony/ outdoor space (120 sq.m).
- Commercial serviced apartments (studios) –8x1 bed (40sq.m –no balcony).

According to the plans the total floor area of the complex, including all roofed areas is 2815m². (Annexure 2 – Application Documentation).

3.2 Design

3.2.1 Materials

Materials consist of zinc and timber cladding, glass stainless, steel and pre-cast concrete. (See Drawings).

3.2.2 Signs

No signage concepts have been developed. A separate application will need to be made for signage.

3.2.4 Height

15.5 m.

3.2.5 Landscaping

No plans were submitted.

3.2.6 Building Design

The building has distinct wings containing the residential component with a central spine containing the lobby with access through onto the rear car park. The ground floor consists of shops with direct access to Main Road.

The residential apartments which range in size from 143m² to 155m² have good views to the esplanade and sea which provides a northeast orientation for the living areas and main outdoor spaces resulting in good solar access. The larger serviced apartments have similar characteristics whilst the smaller serviced apartments are to the rear.

The building has a variety of distinct roof pitches and the construction materials and colours used will highlight the building form.

4 Planning Scheme Provisions

4.1 Definitions

The scheme defines the applied for uses as follows;

- Shop

The proposed 9 retail tenancies which have a floor area of less than 250sq.m fall within the use class definition of “shop.”

- Apartment

The residential apartments are within this use class definition which is defined as;

“any land used for more than one dwelling unit but does not include Grouped House, Holiday, Cabin, Holiday Flat/Unit, House, House and Ancillary Apartment or Residential Building.”

- Miscellaneous

There is no use class definition in the planning scheme for “serviced apartment.”

Legal advice received by Council for a similar application advised that a service apartment should be classified as “Miscellaneous.”

4.2 Use Classification

The Table of Uses (Table S2) establishes the status of a defined use in each of the zones of the Scheme.

Within the Business (BA) Central zone a “shop” is classified as P1 which means that it can be undertaken without the application for and issue of planning approval provided that the development complies with all the relevant development standards. As all relevant standards are not met the shops are discretionary.

The uses “apartment” and “miscellaneous” are classified as discretionary which means the uses have to be advertised and Council has discretion to refuse or permit them.

The submitted plans show two of the retail spaces as being café/ bars. The scheme defines such uses as a “restaurant” (P1) or if it holds a liquor license a “licensed establishment” (P).

4.3 Treatment of Mixed Use

The scheme at clause 3.7 sets out how a development comprising a mixture of uses is to be treated.

The proposed development consists of a mixture of uses where one use is not predominant and the other uses are subordinate or conducted in such a manner which supports the predominant use.

The scheme recognizes such a situation (cl. 3.7.2) and states that the uses shall be treated as different and separate uses. This means that there are three distinct use classes which need to be separately assessed against the Scheme standards.

5 Assessment Criteria

5.1 The Planning Scheme sets out at (cl. 3.9.2) a number of criteria which the Council if it considers appropriate must take into consideration when assessing an application. The criteria includes;

- (a) the objectives of the scheme, the intent of the zoning and any relevant development standards or other relevant requirements of the Scheme,
- (b) the requirements of any relevant State Policy,

- (c) any development plans and relevant development standards the requirements of any public authority,
- (d) whether any part of the site is subject to flooding, landslip, bushfire proximity to a Schedule premise,
- (e) whether the proposed development is satisfactory in terms of its siting, size and appearance in relation to,
 - (i) existing site features,
 - (ii) adjoining land,
 - (iii) streetscape or landscape,
 - (iv) natural environment,
 - (v) items of historic architectural or scientific interest,
 - (vi) isolation separation from other lands,
- (f) adequacy of infrastructure and services(e.g. roads water, sewerage and electricity) without detriment to existing users,
- (g) whether the proposed development would adversely effect the existing and possible future use of adjacent land, and vice versa; effect on existing and possible future use of adjacent land,
- (h) the provision of adequate landscaping, amenity facilities and illumination and treatment of the site generally,
- (i) the desirability or need to impose time periods for the use, a period within which the use or development must commence or cease, and the commencement and completion of the development stages, and
- (j) any other matters in the opinion of the Council that should be considered.

5.2 Scheme Objectives

The Scheme sets out various objectives of which the following apply to this application.

- (b) proper use and development of land, buildings and resources;
The site is serviced with sewer, storm water, power and telecommunications. The sewer and water capacity, which is unknown, is discussed later.
- (c) enhancement of the environmental 'quality of life' of residents and visitors by attention to aesthetics and landscape impact and general pollution effects;

The proposed development will provide an opportunity for residents to experience a 'quality of life' experience living adjacent to the sea and within the local business district. Conversely the size and height of the development will impact on the current streetscape.

- (e) provision of adequate space for both active and passive recreation; Each apartment is provided with a private open space (balcony) and is within a location where there are various areas of public open space (e.g. esplanade, beach).
- (l) provision for diversity and innovation in residential lifestyle opportunities and recreational and cultural community services; The proposed development will provide a new residential opportunity and lifestyle.
- (m) encouragement of (appropriately sited and planned) activities which would expand opportunity for development skills, increase local employment, enhance or establish natural or created attractions and broaden and diversify the economic base;

The proposed development will create new economic opportunities for local suppliers and builders.

- (n) development and promotion of a compact, healthy, vibrant and attractive business district with a balanced regard for the needs of people on foot or in motor vehicles.
As shown later in this report there is a large shortfall in car parking spaces provided. This has an adverse impact on people using motor vehicles to visit the town centre.

5.3 Zone intent

The intent of the Business (BA) Central Zone;

“is primarily to accommodate retail and commercial business, offices and agencies and public and private community services”.

Furthermore, Clause 6.1.1 of the Scheme states that;

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

The retail uses and service apartments, being a commercial business, fall within the zone intent.

The use "Apartment" is discretionary in the scheme. Apartments or flats in the Central Coast business areas are generally located above shops and often have been ancillary to the predominant use. Based on the floor space of the proposed development, 45 percent of it is for residential use.

In support of the zone intent the uses allowed or permitted in the Business zone include a number which potentially cause conflict with residential amenity. It is also noted the uses Grouped Houses/units, Holiday flat/unit, and House, are prohibited uses in the zone.

Given the magnitude of the residential component the zone intent is not met.

5.4 Development Standards

5.4.1 Standards for Apartments

The planning scheme at clause 7.10 establishes a number of provisions which apply to apartments. These include;

- (a) the design of buildings and the layout of the land generally, including the definition and means of separation of private and common entrances, footpaths, parking spaces, driveways and other areas of dedicated and other open space shall be such that the reasonable privacy of the occupants is ensured by the provision of remoteness from potential interference and each dwelling unit on the land and on adjoining land shall be capable of receiving a reasonable amount of daylight.

Access for residents living in the apartments is via the car park at the rear and separate lifts. Each unit has a balcony which has a northerly aspect. Screening of adjoining balcony decks should provide reasonable privacy for the occupants.

- (b) no pedestrian path or vehicle driveway giving access to a dwelling shall be closer than 1 metre from the wall of another dwelling unit, or 2 metres, if such wall contains a window with a sill height less than 2 metres above the level of the path or driveway;
There are no residential developments with pedestrian paths or driveways adjoining the proposed development.

- (c) in the preparation of the land for building construction purposes or when landscaping the land, reasonable effort shall be made to retain existing trees and shrubs which are suitable for the development. There are no significant trees or landscaping features on the site.
- (d) any area of open space that is not dedicated open space shall be suitably landscaped, or developed in other appropriate ways for the enjoyment of all or any residents of the Grouped House development; The proposed development has no open space that is not dedicated to a particular apartment.
- (f) suitably designed and screened areas shall be provided for the storage of waste materials and garbage materials free from foraging animals; Skip bin facilities are to be provided at the rear of the building. As noted elsewhere in this report access by a service vehicle may be an issue. Information is insufficient as to how residential waste is to be managed. There is an assumption that the disposal of residential waste will be by way of the skip bins. Disposal of recycled waste is unknown.
- (g) satisfactory provision shall be made for clothes drying facilities and mail and newspaper receptacles; Clothes drying will rely on mechanical facilities. Provision of newspaper and post receptacles can be a permit condition.
- (i) in buildings of more than one storey, all pipes, ducts and vents servicing the building shall be concealed from public view; and If a development permit is issued it can be conditioned to ensure this criteria is met.
- (j) where practicable, a common TV antenna shall be provided in lieu of additional antennae for each dwelling unit.
If a development permit is issued it can be conditioned to ensure this criteria is met.

5.4.2 Requirements –size, siting, height and open space requirements for apartments– Schedule 7

Standard	Scheme Requirement	Development
Minimum floor area per unit	30m ²	Floor areas range from 143 to 155m ² . The requirement is met.

Front Set back	Nil	
Side and Rear Setback	Side -Nil Rear-3.5	Apartments meet the standard.
Lateral distance across	Nil	
Lateral distance between the walls of separate buildings.	Nil	
Open Space- Min dedicated space per dwelling unit	10m ²	Private open space (balcony) per apartment ranges from 45m ² to 50m ² . The standard is met.
Open Space -Minimum width of dedicated open space	1.2m	The standard is met.
Min other Open Space per unit -	25m ²	The standard is met.
Maximum height	12.5m	Apartments meet requirement
Maximum Height Commercial	15.5m	15.5m
Number of storeys Apartment	3	Apartments meet requirement
Number of storeys Commercial	4	4
Site coverage - Apartment	25 % for use category or group	The planning scheme does not adequately deal with mixed uses. It is noted the ground floor only consists of commercial development which the scheme allows 100 % coverage.
Site Coverage - Commercial	100%	The standard is met.

Note: There are no open space or setback requirements for serviced apartments.

There is an inherent contradiction within the planning scheme in that it allows a residential building up to a height of 12.5 metres and 3 storeys whilst a commercial building can be built up to a height of 15.5 metres and 4 storeys.

5.5 Car Parking Requirements –Schedule 5

The planning scheme sets out the requirements for the design and required numbers of car spaces for various specified uses, but a specific provision for a “Miscellaneous Use” is not included. However the use is covered by clause 7.5.2 (d) *Where the development is for uses not listed in Table S5 in Schedule 5,the minimum number of parking spaces which shall be provided on the subject land shall be that determined by Council.*

The proposal consists of nine retail shops (six shops; two bars/café; and one spa), 18 residential apartments and 39 commercial serviced apartments.

Under the Central Coast S.46 Planning Scheme No. 1 of 1993, Table S5 of Schedule 5 sets out the minimum number of parking spaces to be provided as part of any development. In relation to this development, the following categories and provisions are deemed to apply:

- Residential Apartments – 1.30 parking spaces per dwelling unit
- Holiday Cabin and Holiday Flat/Unit (adopted for serviced apartments) – 0.50 parking spaces per person employed plus 1 parking space per dwelling unit. (If the motel (unlicensed) category is used the rate is 0.80 parking spaces per person employed plus 1 parking space per dwelling unit and 0.30 per 10m² of floor area used by visitors).
- Restaurant – 0.80 parking spaces per person employed plus 0.25 parking spaces per seat
- Shop – 0.5 parking spaces per person employed plus 0.20 parking spaces per 10m²

Residential Apartments – $1.30 \times 18 = 23.4 \sim 24$

Serviced apartments – $1 \times 39 + 2 \times 0.50 = 40$

Shops – $2 \times 0.5 \times 7 + 0.20 \times 705.16 / 10 = 21.00 \sim 21$

Restaurant – $0.8 \times 2 \times 2 + 6 \times 4 \times 0.25 = 9.2 \sim 10$

In accordance with clause 7.5.2(b), the parking requirements are summarised in table 1.

Development Use	No. of parking spaces required
Residential Apartments	24
Serviced apartments	40
Retail/Shops	21
Café/bar	10
Total	95

Table 1 Parking requirements in accordance with clause 7.5.2(b) of the Central Coast S.46 Planning Scheme No. 1 of 1993.

Note: Above numbers assume an average of 2F/T employees per retailer, 2 employees for the serviced apartments, and a total of 6 tables or 24 seats for the café/bars. The plans show a number of tables located in the community forecourt.

The existing car park at the rear of the existing development is currently leased by the Council and provides 24 (including one disabled bay) off-street car parking spaces. This car park was provided in response to local residents and the Council's concern about the lack of parking spaces in Penguin. As a result of the development, these spaces will be lost and no provision has been made in the proposed development to provide public car parking spaces. (It must be noted that this is not a scheme requirement).

Under the Planning Scheme, the proposed development is required to provide 95 parking spaces.

In accordance with clause 7.5.2(c), the parking requirements for a development can be reduced where the development is for more than one use and the separate uses operate at separated times of the day/week. Based on the above figures the minimum is 95 spaces.

In the Planning Report¹ included as part of the submission documentation, it is stated the development requires in the range of 68 spaces in accordance with Schedule 5 of the Planning Scheme. It is worth noting this demand is based on the assumption of 1 full-time employee per retail shop. However, this is considered unrealistic given the general size (100m²) of six of the retail spaces and the proposed function (café/bar and spa) of the other three. It is more likely to be at least the equivalent of two full time employees for each commercial space. Also, with the calculated 68 car parking spaces, no allowance has been made for the administration component associated with the service apartments or for customer parking. However, the developer is

¹ Planning Report prepared by Town and Country Planning (Tas) Pty Ltd - August 2007

only planning to provide a total of 58 spaces (including one disabled parking bay), which equates to a shortfall of 37 spaces compared to the estimated 95 spaces required under the scheme. In addition to this, the loss of the 24 public car parking spaces means the development will generate a net loss of 61 car parking spaces to the Penguin area which is a significant loss to the community and existing businesses.

Furthermore, as part of the development, it is proposed to install kerb outstands and provide some sort of pedestrian crossing. The plan² indicates the pedestrian crossing and kerb outstands will result in a loss of a number of car parking spaces. According to Council's Services Engineer the estimated loss of street parking is estimated to be approximately 12 spaces. Adding this loss to that of the public car park, and the shortfall in parking spaces not provided by the developer, the total loss of parking is 73 spaces which is summarised in Table 2.

	EXISTING	PROPOSED DEVELOPMENT
Total creation/loss of off-street public parking	24	-24*
Estimated creation/loss of on-street parking	N/A	-12*
Estimated creation/loss of on-street parking due to the proposed retail operation of the development	N/A	-37*
TOTAL CREATION/LOSS OF PUBLIC CARPARKING SPACES	24	-73*

Table 2. Break down of parking created or lost as part of the development.

Note: * Represents a loss of parking. Off-street parking provided by the development has not been included as it is assumed it will be reserved for apartments.

If the on-street car parking spaces are retained, then the estimated shortfall in the number of spaces required under the Planning Scheme is 37 car parking spaces.

² Planning Report prepared by Town and Country Planning (Tas) Pty Ltd - August 2007

Finally, the TIA³ supplied by the applicant estimates the retail shops of the development will generate some 900 vehicles movements/day, with an estimated peak of 34 vehicles/hour based on 25% reduction due to multi-purpose trips. However the RTA document indicates the reduction factor is applicable for trip generation and not for parking demand, and therefore the parking demand is 32–37 cars/hour, which approximately equates to the provision of 0.2 m² required under the Planning Scheme.

In terms of parking, the development does not meet the Central Coast Council Planning Scheme requirements for car parking provision and the proposed development will result in a loss of 12 on-street car parking spaces. While the Council could seek a cash in-lieu contribution from the developer to provide the shortfall of the car parking requirements off site in the general vicinity of the development, it is not possible as no vacant land is available.

5.6 State Coastal Policy

Overlying the provisions of the planning scheme are the provisions of the State Coastal Policy 1996. Because the subject land is within 1 kilometre of the high water mark, it lies within the State Coastal zone, and development of the land must also accord with the State Coastal Policy.

However decisions by the Resource Management and Planning Tribunal Planning appears to support the view that the Coastal Policy is not to be used as a test of individual development in the assessment as to whether or not the development application should be approved or refused.

Even if this proposition is incorrect it is noted the proposed development is located within the existing Penguin town centre and set so far back from the coastline that there will be no adverse impact on natural coastal values. The policy supports the infill of existing zoned urban areas.

- 5.7 Is the development satisfactory in terms of;
- (i) existing site features,
 - (ii) adjoining land,
 - (iii) streetscape or landscape,
 - (iv) natural environment,
 - (v) items of historic architectural or scientific interest,
 - (vi) isolation separation from other lands,

The existing development along Main Road is low scale and hugs the foreshore which is unique for a Tasmanian town. Because of its location and

³ Traffic Impact Assessment by Milan Prodanovic – September 2007

scale it has a coastal village feel but the disparate design of the buildings leads to the streetscape lacking harmony and unity. Based on the representations, there is no doubt that for some people Main Road represents a particular sense of place which should be protected. Unfortunately a sense of place is difficult to define and it cannot be quantified and measured. It often relates to feelings and connections an individual may have with a place as well as the form and scale, which in Penguin is one of pedestrian scale. Conversely others felt that the area would benefit from the proposed development.

What is being proposed will dramatically change the existing form and scale found along Main Road. The height, length and bulk of the building which will dominate the pedestrian space along that part of Main Road is untypical of the town and will reduce the spaces found between the existing buildings which creates a perception of wider open spaces. It bears no relation to the existing low scale development along Main Road.

In terms of heritage, the buildings on the subject site are not heritage listed nor within a recognised heritage precinct.

(f) Adequacy of infrastructure,

Impact on the Council Services (Water, Sewer and Stormwater)

The Council Services Engineer reported as follows;

“The proposal is a significant change in the use and intensification of use of the site.

As such, this may impact on the Council’s sewer, stormwater and water networks in Main Road and its ability to meet current and future requirements in the area.

As part of the original planning application by the developer, it was stated no servicing constraints were identified with respect to sewer, water or stormwater, however, no information was provided to support this statement.

As part of the request for additional information, the developer was requested to supply ‘a report by an appropriately qualified and experienced engineer to assess the impacts on the Council’s water reticulation as well as the impacts of the development on the stormwater and sewer networks downstream from the site.’

The response on behalf of the developer was, "This can be a condition of approval as it was for 109 Main Road, Penguin and 52 Main Road, Penguin. Advice provided by Council to date indicates that there are no significant servicing constraints to address."

Whilst the Council can condition this on any approval, the assessment work will need to be done by the developer prior to obtaining building approval and will be subject to the approval and satisfaction of the Director Assets & Engineering."

It must be noted however that the capacity of the existing sewer and storm water mains to service the development is unknown and a feasibility study should have been conducted before the planning application was made in order that the Council could consider the matter in accordance with clause 3.9.2 (f).

5.8 Impact on the traffic and pedestrian use of the street

The Council Services Engineer reports as follows;

"The carpark currently leased by the Council operates under the arrangement of a 'one way' entry between the Visitor Information Centre and the Post Office and a two way entry/exit between the Groovy Penguin and 76 Main Road.

This access configuration was changed from the original two-way access at the post office following a history of complaints relating to pedestrian and vehicle safety. One particular issue is the proximity of this access to the existing pedestrian crossing facility provided outside the Penguin Visitor Information Centre via the kerb outstands.

By reconverting this access to a 'two-way' operation, an increase in conflict points will occur between pedestrians and vehicles and potentially increase the possibility of an accident compared to the provision of a separate entry and exit.

Therefore, a new vehicle access to the Main Road frontage for entry/exit on the western boundary and an entry only access on the eastern boundary (roadway) with the Main Road are preferred to the proposed arrangement.

Furthermore, the proposed access onto Main Road appears to have a width of approximately 9m, which is considered overly wide for the proposed type of development. The geometry of the roadway (mainly its width) should be retained to a minimum to ensure vehicle speeds are kept to a minimum when

ingressing and egressing from the site. Also, for all intent and purposes the roadway and access should be clearly defined so it is clear that frontage traffic (pedestrians and vehicles) will have priority over vehicles using the roadway/access, meaning the existing footpath outside the Penguin Information Centre should continue across the proposed access and roadway junction to delineate and visually reinforce this. The Traffic Impact Assessment provided by the applicant indicated some minor work for existing kerb extension in Main Road is required to prevent vehicles exiting the proposed driveway from crossing the centre of Main Road when undertaking a left turn. However, no plans have been provided detailing either this work or what is envisaged for the driveway of the development.

In relation to the internal road network of the development, an examination of the drawings submitted to the Council shows a medium rigid vehicle (8.8m) with a 10m turn radius, which is deemed as a typical service vehicle to service the development, can adequately negotiate the geometry transition from the parking aisle to the circulating roadway without difficulty. However, the geometry of the parking aisles prohibits the service vehicle to circulate within the site. Also, it appears the only way the service vehicle can attend to the designated waste collection point is if it can use the waste collection area as part of the manoeuvring space. Therefore the developer will need to advise if such use of the space is possible, and if not, the waste collection and parking layout may need to be redesigned accordingly.

(g) Effect on existing and possible future use of adjacent land, and vice versa,

As discussed in the zone intent section, the amenity of the residential apartment component could be affected by neighbouring commercial uses and vice versa.

The applicant's town planner recognised "that the rail corridor is strategically significant, irrespective of current use demands. It is equally accepted that noise sources could include engine noise, the horn and crossing warning bells. A supporting report from an appropriately qualified acoustic (sic) is provided to this effect." *Planning Report 68 - 76 Main Road Penguin by Town & Country Planning for Roche International Aug 2007*. No report was provided.

Council officers requested a noise and vibration report and the applicants provided the following response from P Terts an acoustic consulting engineer.

"I have been engaged by Roach International to provide acoustic design advice for the above development. Previously, we have conducted noise

measurements and analysis for their projects at 52 and 109 Main Road. It is our brief to conduct engineering noise measurements at 68–76 Main Road for the purpose of providing advice at the detailed design stage.

However, in the meantime, based on the previous set of analysis we do not expect the acoustic climate, due to the railway, to be greatly different from what was measured.”

Considering the residential nature of the proposed development and the strategic importance of the rail line, a noise assessment must accompany the application to ensure this criteria is met. The information provided is insufficient to adequately assess this issue.

(h) landscaping, amenity facilities and illumination and treatment of the site,

No detailed landscaping plans were submitted.

(i) time frames,

Not relevant, and

(j) any other matters that Council in its opinion should consider.

5.9 Other Matters

The submitted plans show concept plans for street paving, and a pedestrian crossing. As noted earlier this will result in a loss of on street car parking. Also it is virtually impossible to receive a warrant from Department of Infrastructure Energy and Resources for a pedestrian crossing. These matters were raised in discussions with the applicant and a formal written response was requested but was not supplied.

CONSULTATION

6. REPRESENTATIONS

The planning scheme reiterates that Council shall have regard to any representation received in relation to an application which has required public notification.

The application was advertised and 53 representations opposing the application, 223 supporting it and a petition with 501 signatures were received. Petitions are generally given no weight. Most of the representations in support were based on proforma letters or newspaper coupons which

provided few or no planning reasons to approve the development. A small number of representations were received by email. These were not considered as the Tribunal has ruled that unless the advertisement specifically invites submissions by email they are not valid.

There appears to be a misconception that the quantity of representations will replace the statutory requirements which the application has to be assessed against, i.e. on its planning merits. (Annexure 3 – Representations).

Representations supporting the application gave the following reasons why the application should be approved;

- The proposed development will increase the accommodation and retail opportunities found in Penguin.
- The existing buildings in Main Road are generally not worth preserving.
- The proposed development will bring some vitality to the Main Road and Penguin.
- The proposed development will be a benefit to the Sunday market stall holders.

Representations not supporting the application gave the following reasons why the application should be refused;

- **Size and Appearance**
The building is 5 metres higher than any other building in the street. It will dominate the streetscape and no reason is given why it needs to be so high.
- **Parking**
The existing Council car park is required to alleviate problems in Main Road.
The number of car parking spaces to be provided is insufficient to comply with the Planning Scheme.
The number of shops proposed is more than the present number and will create a need for parking.
- **Access**
Access to the car park has restricted vision near the public toilets.
- **Urban Design**

The proposed development is unsuitable for a small seaside village and is unsatisfactory in terms of scale, siting, size and appearance in relation to the existing site, adjoining land and the streetscape.

The proposed development will detract from the natural beauty of the beach, the town and hinterland. It is not complimentary to the town and will conflict with the panorama of Penguin.

The proposed development will destroy the existing village ambience of the Main Road and replace it with a Gold Coast type of development. The Groovy Penguin and Svonis Barber shop are icons of the village that will never be replaced in a modern setting.

The Council's community consultation program (Cultural Plan) is being ignored.

The proposal effectively usurps Penguin defining space and transforms the town a clone of so many others.

The height is not in keeping with the surrounding buildings, the streetscape or sensitive to the area. The proposed building is 15.5 metres in height compared to the existing buildings which are less than 10 metres.

The proposed development is essentially a residential structure but by making use of commercial height regulations there is circumvention of the planning scheme height standards.

The proposed development does not respect or maintain the culture, values and lifestyle of the coastal community.

It would be better use of resources to halt consideration of these developments until comprehensive, formal community input has been obtained. This is supported by Council's consultation policy.

- **State Coastal Policy**
The proposal is inconsistent with the State Coastal Policy in relation to the cultural and aesthetic values of the coast.
- **Planning Scheme Objectives**
The proposal does not comply with 5.1.1 (h) in that it does not lead to the preservation of areas and sites of special significance.

The proposal does not comply with clause 5.1.1(n) in that it will diminish the current amenity and streetscape.

The proposed development is contrary to the Business (BA) Central zone.

- **Site Coverage**
The proposed development exceeds the 25% maximum site coverage required for apartments in the Business Central zone

The development occupies more than 75% of the area which exceeds the allowable amount.

- **Other Matters**
The proposed development is contrary to the new planning scheme. The demand for units and more shops is questionable. In order to reduce a loss of amenity a condition should be placed on any permit restricting hours of operation to be between 700: am and 9.00pm

The representations raise issues relating to economic development, traffic management, urban design, planning scheme objectives, car parking, height and scale, site coverage and the State Coastal policy. The issues have generally been addressed in various sections of the report.

Non compliance with the draft planning scheme was raised but the scheme is still only in draft form and the application has to be assessed against the existing planning scheme.

7 DEMOLITION

The planning scheme requires the demolition of a building to be treated as a discretionary approval unless demolition or partial demolition:

- (a) is for the purpose of a development which has been granted planning approval;
- (b) is for the purposes of a P1 development;
- (c) is of a minor structure only , the creation of which would not require a permit under the Tasmanian Building regulations;
- (d) does not involve a change of use of the land; or
- (e) is required pursuant to Part XVI of the Act.

The application involves a change of use and thus requires Council approval. The buildings are not heritage listed and if a permit is issued there is no reason why the demolition of the existing buildings should not be approved.

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

There is no doubt that the proposed development would have some positive economic benefits (e.g. construction and accommodation) but it has to be assessed against the planning scheme. Based on this assessment the development meets various standards such as setbacks but it is deficient in areas such as traffic management and parking, zone intent and various assessment criteria such as size in relation to the existing landscape and adjoining land. Furthermore, despite requests to the applicant for more information, the application is so deficient in the information provided that there is a manifest failure to meet the requirements of the Central Coast Planning Scheme No. 1 of 1993 and as a consequence it is not a valid application.

RECOMMENDATION

It is recommended that the proposed use and development located at 68–76 Main Road Penguin for the demolition and the development and use of shops

(9), residential apartments (18), serviced apartments (39) and car parking (58 spaces) be refused for the following reasons:

1. The application is deficient in accordance with Clause 3.8.1(information supplied) of the planning scheme and is therefore not a valid application.
2. The proposed development is unsatisfactory in terms of Clause 3.9.2 (f) as it will create traffic safety problems.
3. The proposed development is unsatisfactory in that there is insufficient provision of on site car parking.
4. The proposed development is inconsistent with Clause 6.2.7 of the planning scheme as it would jeopardize the attainment of the zone intent.
5. The proposed development is unsatisfactory in terms of clause 3.9.2 (e) (siting, size, appearance) of the planning scheme.'

The report is supported.”

The General Manager reported as follows:

“The Annexures referred to in the consultant’s report have been circulated to all Councillors.”

■ Cr van Rooyen moved and Cr Dry seconded, “That the proposed use and development located at 68–76 Main Road Penguin for the demolition and the development and use of shops (9), residential apartments (18), serviced apartments (39) and car parking (58 spaces) be refused for the following reasons:

1. The application is deficient in accordance with Clause 3.8.1(information supplied) of the planning scheme and is therefore not a valid application.
2. The proposed development is unsatisfactory in terms of Clause 3.9.2 (f) as it will create traffic safety problems.
3. The proposed development is unsatisfactory in that there is insufficient provision of on site car parking.
4. The proposed development is inconsistent with Clause 6.2.7 of the planning scheme as it would jeopardize the attainment of the zone intent.

DEVELOPMENT SERVICES

5. The proposed development is unsatisfactory in terms of clause 3.9.2 (e) (siting, size, appearance) of the planning scheme.”

Voting for the motion

(10)

Cr Downie

Cr Robertson

Cr Barker

Cr (J) Bonde

Cr (L) Bonde

Cr Dry

Cr Haines

Cr Marshall

Cr McKenna

Cr van Rooyen

Voting against the motion

(1)

Cr Deacon

Motion

Carried

Closure

There being no further business, the Mayor declared the meeting closed at 8.17pm.

CONFIRMED THIS 19TH DAY OF NOVEMBER, 2007.

Chairperson

(gjm:vjl)

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