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General Manager  
Central Coast Council  
PO Box 220  
Ulverstone TAS 7315

Dear General Manager,

The following representation for LPS2022003 & DA2022107 will address inconsistencies with information provided for the function centre and non-compliance with the planning scheme zoning and codes, including responses to the report's consideration of the proposal against strategic documents and policies, where relevant.

## **FUNCTION CENTRE**

The drawings provided for the function centre appear to depict two different versions which differ in size. The proposal description states that the Function Centre is 280m<sup>2</sup>, plus kitchen and back of house, over two storeys, with this floor area being used as the basis for calculations in the Traffic Impact Assessment.

On page 269, the function centre is stated as having a floor area of 392.98m<sup>2</sup>. This appears to align with the supplied floor plans (DA-0-211 & DA-0-121) and the definition of floor area, as defined in the Planning Scheme. This implies that calculations in the TIA are incorrect.

The floor plans also do not appear to align with Drawings SK01-01 Rear View Impression (DA-0-001) and SK01 Artists Impressions of the Function Centre (Rear, Front, Left and Right Side Elevations). These drawings appear to represent a larger building and whilst these drawings are not dimensioned, if the elevation drawings are scaled using the stated height (10.395m as per DA-0-401), the resultant building is approximately twice the size as the one depicted in the floor plans, which would require TIA calculations to be amended further.

### **Consideration against strategic documents & policies**

The report states, in reference to 4.5 Land use Policies for facilitating access to business and community services of the *CCRLUS*, that the proposal would “*enhance business services for the community*”.

In the *CCRLUS*, Penguin is identified as being a local service centre, which is closely aligned and dependent on regional and district centres Burnie, Devonport and Ulverstone. It recommends that commercial and community services be limited in local service centres in order to reinforce the role of established centres in meeting district and regional needs.

The *CCRLUS* also requires proposals for commercial development outside of designated town centres be supported by need. Penguin has a number of community facilities that support business needs in regard to the provision of community meeting and function spaces, including: Penguin Railway Station, Penguin Surf club, and the Dial Park Sports Complex, completed in 2018, which includes a 302m<sup>2</sup> function centre. Further venues are also available throughout the central coast region.

*The Penguin Town Master Plan and Strategies* identified, as part of its review of the previous master plans for the Penguin Recreation Ground, that due to a significant oversupply of community buildings, that this existing plan should be updated to better reflect the needs of the town.

## ZONING

### 29.0 Open Space Zone

#### 29.4.1 Building height, setback and siting

The objectives of the Development Standards for Buildings and Works within the Open Space Zone, states that building *bulk, height, form* and *siting* must be compatible with:

- (a) the *streetscape*,
- (b) not cause unreasonable loss of *amenity* to adjacent properties
- (c) respects the *natural and landscape values* of the site.

The proposal is not compatible with the streetscape, in particular, the apartment buildings scale and bulk would significantly alter the streetscape of Preservation Drive, and along with the Function Centre, Johnsons Beach Road, which abuts the proposal. It will also causes unreasonable loss of amenity to adjacent properties, which includes the adjoining public reserve.

As set out in the planing scheme, the purpose of the Open Space Zone is to provide land for open space purposes including for passive recreation and natural or landscape *amenity*. The definition of amenity is described in the planning scheme as being “*in relation to a locality, place or building, any quality, condition or factor that makes or contributes to making the locality, place or building harmonious, pleasant or enjoyable*”.

*The Central Coast Open Space and Recreation Plan 2012-2022* describes visual amenity as “*usually small areas of open space designed to provide visual relief from urban surroundings, and enhance amenity of streetscapes*”. The Proposed development would reduce any existing landscape or visual amenity, through the significant increase in density, bulk, height and form of buildings on the site.

#### **A1** Non-compliant.

The proposed development is non-compliant with the development standards of the zone, with building heights exceeding 10m.

The performance criteria (P1) states building height must not cause unreasonable loss of amenity to adjacent properties. The report focuses almost solely on the surrounding residential dwellings and limits the definition of amenity, as follows:

#### **P1 (a)** Non-compliant.

The report states, in regard to topography, that it is unlikely to impact on amenity (sunlight and privacy) of surrounding residences. As noted above, the term amenity has a much broader meaning. The report does not address the impact on views/ visual amenity from surrounding residences, the streetscape, or public reserve/ foreshore.

The report incorrectly states that the subject site sits at the lowest point on the contour map, when Johnsons Beach Reserve and the foreshore actually sit lower. The attached demolition plan (DA-0-151) shows the majority of the proposal sits between the 5.5m and 7.5m contours, with an area to the north sitting above the 5m line. This demonstrates that the proposed height, not only exceeds the allowable limit, but also, as a result of the topography, will be exacerbated and further impact on the amenity of the foreshore reserve.

Accompanying drawings (Fig. 17-19 Topography drawings & DA-0-001 Cover Sheet, front and rear views) are of a location, scale, angle, and/or are cropped in a way that does not provide any clear evidence that the height, bulk and form of the proposed buildings will *not* cause an unreasonable loss of amenity to adjacent properties.

#### **(b)** Non-compliant.

Existing buildings on the site are all of a single storey, as are existing buildings in the Johnsons Beach

Reserve. Existing buildings on adjacent residential properties are a mix of one and two storeys. The four storey apartment building is approximately 16.55m high and 83m long. The apartment building exceeds allowable height limits and its bulk and form is not in keeping with adjacent properties and significantly differs from the existing buildings on the site.

**(c) Non-compliant.**

The development will not be ‘shielded’ by Hill A and B as stated. Shielded implies that the hills will conceal the development, thus reducing the impact of its bulk and form. Given their actual location is to the north/west of the proposal, any screening would be most notable when travelling east along Preservation Drive. The report actually notes that this screening is “*particularly from the northern end of the site*”, in both its strategic analysis and in response to **C3.6.1 P1 (c)**.

The location of the hills in relation to the development and its height and bulk, would allow it to be clearly visible to most of the adjacent properties to the east or south/east and, the development would in effect be shielding the hill, reducing natural and landscape values and diminishing the visual amenity they provide, as demonstrated by sections D-D and E-E.

**(d) Non-compliant.**

The requirements of the proposed uses do not necessitate the development of a four storey, 16.55m high building.

**Consideration against strategic documents & policies**

In reference to the Schedule 1 Objectives of the LUPAA, Part 1 Provision (b), the report states: “*The proposed amendment will facilitate additional use without the need to rezone. This will ensure that the purpose and character of the open space zone is maintained*”. Whilst also stating, in regard to the amendment format, that “*Retaining the existing zone ensures that a buffer remains between the General Residential zone and the foreshore*”.

Given the nature of the site specific qualification that is sought, along with the proposed development, maintaining the existing zoning is not of itself an assurance, that the purpose and character of the zone will be maintained. The development would inherently alter the character of the open space zone, as defined above and by increasing development on the site, this area of open space would no longer have the capacity to act as a ‘buffer’ between residential development and the foreshore.

In its review of the *Central Coast Strategic Plan 2014-2024*, the report recognises that under the four platforms identified for future economic and social development in the central coast, ‘liveability’ can be achieved through the *Penguin Urban Design Guidelines* (PUDG). The report highlights the importance that places maintain their own distinctiveness and acknowledges that the definition of liveability includes ‘the character of our place’, but it fails to acknowledge that Penguin’s character, as defined by the PUDG, is at odds with the proposed development.

The PUDG notes that Penguin has an established building rhythm, that is both vertically and horizontally articulated, with height varying between one and two storeys and widths varying between single and double frontages, and states that this existing building rhythm is an integral part of Penguin’s coastal village character, also recommending that:

*“The height and mass of buildings facing the foreshore must be in keeping with the coastal village character and must not adversely affect the visual amenity of the foreshore environs.”*

A recent review of the PUDG, as part of the *Penguin Town Centre Master Plan & Strategies*, determined that:

*“In principle, the guidelines are still relevant and provide helpful assistance for integrating new development and growth in Penguin. Key elements have already been*

*incorporated into the Penguin Specific Area Plan.”*

It also noted, that of the dominant concerns of the community, was the desire that new development be sympathetic to the existing scale of the town.

The *Penguin Specific Area Plan* specifies that in order to be in keeping with the towns ‘coastal village character’ and to protect and maintain a human scale, buildings must reflect the existing building rhythm and not exceed a height of 8m, and that a continuous wall of a frontage or side boundary must not exceed 16m or 20m respectively. The apartment building and the function centre exceed these limits.

Whilst the proposed development falls just outside the bounds of the *Penguin Specific Area Plan*, given the extensive public consultation undertaken for both the *PUDG* and the more recent *Penguin Town Centre Master Plan and Strategies*, they should be considered important local strategic documents that have significant relevance when considering a development of this scale, in this location.

The *CCRLUS*, under section 3.3 Land Use Policies for Economic Activity and Jobs, states that sustainable tourism should “*avoid alienation and displacement of local communities and significant change in local character, function and identity*”

Displacement or alienation of locals, can occur, not only through the physical displacement of people from local places, in favour of tourists, but also when development of tourist infrastructure alters the character of a place.

Also under section 3.3 Land Use Policies for Economic Activity and Jobs, it states that visitor accommodation should “*designate sites for camping, caravan and mobile home use*”. The report states that whilst the site will no longer provide these facilities, there are a number of sites that currently provide these facilities within 2.5km, however this is incorrect.

There are currently no alternative locations in Penguin that provide camping or caravan facilities. Nearby free camping areas at Preservation Bay/Penguin Surf Life Saving Club and Sulphur Creek/Hall Point, have been closed for some time. More recently, due to misuse and environmental damage, the Midway Point Reserve was closed (as at May 31, 2023) for remediation works. Even when operational, these camp sites only permitted stays of 48 hours for fully self-contained campers, as they do not provide any facilities.

## **CODES**

### **C2.0 Parking and Sustainable Transport Code**

#### **C2.5.1 Car Parking Numbers**

##### **A1**

**(d)** Non-compliant, refer below.

#### **Parking Space Requirements: Notes to Table C.2.1**

Total parking requirements for the accommodation have been calculated as 61 spaces, with the TIA allocating 21 spaces to the cabins and 40 to the apartments. Notes to **Table C.2.1 (2)** states “*Parking Spaces must be individually accessible, excluding tandem parking spaces which may be used to serve a dwelling*”.

42 out of a total of 101 parking spaces have been allocated as tandem spaces adjoining the cabins, and as such, they cannot fulfil the requirements of other uses. This leaves only 59 individually accessible spaces to service the remaining requirement of 73.

If the Function Centre floor area has been underestimated, it will require a total of 27 parking spaces, not 19 as specified in the report & TIA, resulting in a shortfall of 22. Further, **Table C.2.1** specifies that a Function Centre must have 1 space per 15m<sup>2</sup> or 1 per 3 seats, whichever is greater. Floor plans indicate seating for 85, which would require a total of 29 spaces. This renders the proposal non-compliant even if the tandem spaces aren't taken into consideration.

And whilst the TIA makes the assertion that, in relation to **C3.5.1 P1 (a)**, that visitors to the function centre would not impose on trip generation (and as a result, parking), indicating: "*Given the location of the development, it is anticipated that the visitors of the function centre will also be staying in the visitor accommodation*". In contrast, the report describes the proposal, in relation to both the Zone Purpose statement of the **Open Space Zone** and the previous planning scheme provisions, as being 'family-orientated' and, along with its location and the provision of parking, that it is "*more directly associated with outdoor activities than other forms of accommodation*", and in reference to **C2.6.5 A1.1/ P1 (b)**, that the site "*predominately caters for families and young children*".

Given that the developments stated uses include *Community Meeting & Entertainment*, and in light of the above descriptions, it would be more likely to assume that visitors to the function centre would be in addition to those staying in the accommodation, and therefore, parking requirements would be independent of each other.

### **Consideration against strategic documents & policies**

In reference to the principles of *The State Coastal Policy 1996*, the report maintains that the proposed development "...*would ensure the adjoining Johnsons Beach foreshore reserve remains available and accessible to the public*". This is reiterated by the TIA, which claims:

*"Given all parking can be provide on site there will be no impact of the demand for parking off site, either in the Council owned car parks associated with the public area of open space and skate park or on Main Road, Penguin"*

Johnsons Beach Reserve is categorised as an area District Open Space (*Central Coast Open Space and Recreation Plan 2012-2022*), which is intended to provide a range of facilities to people within a 10-20 minute drive of most Central Coast residents. However, if the parking requirements of the proposal cannot be met on site, as demonstrated above, then visitor parking would likely overflow into the reserve, alienating and displacing locals.

## **C2.6.5 Pedestrian Access**

### **A1.1**

**P1 (d)** Non-compliant.

The stated vehicle movements in the report are not evidenced by the TIA. It identifies that the development will generate a total of one-hundred and twenty-four (124) additional trips per day, and a total of nine (9) additional trips during the peak hour. These may be further increased based on inconsistencies with the floor area of the Function Centre.

**(e)** Non-compliant.

Does not address A1.2. Accessible parking provided at the function centre does not have a footpath from those parking spaces to the main entry of the building. Main entry and side entries to the building also appear to be stairs, which would not meet accessibility requirements.

**(g)** Non-compliant.

Grassed areas do not meet the requirements of A1.2

## **C3.0 Road and Railway Assets Code**

### **C3.5.1 Traffic generation at a vehicle crossing, level crossing or new junction**

#### **A1.4**

##### **P1 (a) Non-compliant.**

The accompanying TIA identifies that the site currently generates total of 352 trips per day, not 351 as stated in the report. It also identifies that the proposed development will generate an additional *124 trips per day*, not 29 as stated in the report. This results in an increase of 35% and therefore does not meet the specified acceptable increase as per Table C3.1.

##### **Consideration against strategic documents & policies**

The TIA assumes, in relation to **C3.5.1 P1 (a)**, that visitors to the site, who aren't also staying in the accommodation, wouldn't contribute to additional trip generation, stating:

*“Given strict drink driving laws, the visitors to the function centre will be likely accessing the site through sustainable transport options or ride sharing transport”.*

However, the *CCRLUS* identifies that cars provide the dominate form of passenger transport in the Cradle Coast Region, and that *“There is a high level of car dependency encouraged by necessity as an attractive, fast and convenient transport mode [and] There is an absence of viable alternatives”.*

Further, in reference to section 4.9 Land Use Policies for Active Communities in the *CCRLUS*, the report argues that the proposed amendment to the LPS is consistent with policies regarding recreation and open space, reiterating once more, the proposals *“family-orientated nature”* and its association with *“outdoor sporting activities”*, whilst also giving emphasis to the transportation of sporting equipment such as surfboards, bicycles and kayaks, that it supposedly enables.

Given the reliance on car based transport in the region, and participation in outdoor activities that require the transportation of large sporting accessories, it is likely that guests of the accomodation would generate further trips in pursuit of these activities, such as accessing the numerous mountain biking trails on offer in the region, and given that neither Johnsons Beach, nor other beaches in walking distance, are surfing locations.

The report further supports the implication that visitors to the function centre wouldn't necessarily be staying in the accommodation, by highlighting, this time, in reference to sections 3.3.5 Sustainable Tourism and 4.5 Land use Policies for facilitating access to business and community services, that both the function centre and restaurant/cafe are *“accessible and beneficial to the broader community”*, that it would *“enhance business services for the community”*, and in summary, concluding that *“The business will provide... the benefit of local community facilities.”*

The 'broader community' as defined in the *CCRLUS*, includes the major centres of Burnie, Devonport, Latrobe, Sheffield, Ulverstone, Wynyard, Queenstown, Smithton and Currie. Excluding Queenstown, Smithton and Currie, visitors from the other major centres and from Penguin itself would, rather than stay in the visitor accommodation, be more likely to use private transport to travel to and from the venues, thus imposing on both trip generation and car parking.

#### **C3.6.1 Habitable buildings for sensitive uses within a road or railway attenuation area**

##### **A1**

##### **P1 (f) Non-compliant.**

The TIA does not demonstrate that the number of additional trips generated by the development is anticipated to be less than 10%. Further, if the floor area of the Function Centre has been underestimated (392.98m<sup>2</sup> instead of 280m<sup>2</sup>), then the total additional trips generated could amount to 192 trips per day, which is an increase of 54%.

##### **Use of qualifying statements**

Both the report and the TIA use qualifying statements to seemingly downplay the increase in traffic generated by the proposal as a whole, whilst also singling out the function centre:

TIA Performance Criteria P1 (b)

*“notably many people attending the restaurant and / or function centre on the site will also be staying at the visitor accommodation. As all trips were calculated independently it is anticipated that there has been some double or triple counting.”*

TIA Conclusion

*“The proposed development will lead to an increase in trip generation of approximately one-hundred and twenty-four (124) trips per day (based upon worst case scenarios of 100% occupancy rates of the visitor accommodation, restaurant, and function centre) and an extra nine (9) trips during the peak hour.”*

Report C2.6.5 P1 (d)

*“...based on 100% occupancy of units and facilities. This represents worst case scenario conditions, given that there will not be functions held on a daily basis...”*

Both existing and proposed trip generation rates have been determined using the same method, therefore all trips have been calculated independently, which means the possibility of double or triple counting applies to both the existing & proposed development. In particular, as the existing trip rates include 120 trips per day for a cafe/restaurant that hasn't been in operation since at least 2012, when it was converted to an accommodation building (refer p.256), it would be more appropriate to apply a qualification to these figures.

If the existing trips are adjusted based on this incorrect allocation, along with the potential underestimation of the Function Centre floor area, then the total additional trips generated by the proposal could increase to 307, which is a 129% increase.

Further, given the stated land uses, then both the existing and proposed trip generation rates are based upon *‘the worst case scenario of 100% occupancy’*, therefore if this *‘worst case scenario’* has been assumed across all figures, any qualifications regarding the results of the proposed trip generation calculations, are unnecessary.

## **C10.0 Coastal Erosion Code**

### **C10.5.1 Use within a high coastal erosion hazard band**

#### **A1**

##### **P1.1 Non-compliant.**

As per C10.2.3, for the purpose of C10.5.1, the proposal is a vulnerable use not reliant upon a coastal location to fulfil its purpose. As stated in the objectives of the use standards, uses within a high coastal erosion hazard band must be reliant on a coastal location *and* achieve and maintain a tolerable risk from coastal erosion.

### **C10.5.3 Critical, hazardous or vulnerable use**

#### **A1**

##### **P1.1 Non-compliant.**

Proposal is a vulnerable use located in a non-urban zone and high coastal erosion hazard band and is not reliant upon a coastal location to fulfil its purpose. C10.5.3 has not been addressed in the report.

##### **P1.2**

##### **(b) Non-compliant.**

As per the Executive Summary of the *Coastal Vulnerability Assessment*, the proposal has been assessed to have a tolerable level of risk based on a coastal erosion evening in 2071, not 2100 as required by the planning scheme.

In addition, a coastal erosion hazard report, as per **C10.3** Definition of Terms (d), must include a report of a geotechnical site investigation undertaken consistent with AS 1726-2017. C10.3 (e) (v)

also requires that the report must relate to any matter specifically required by Performance Criteria in this code. Assessment of the proposal has been based on Development Standard E6.5.2 of the E6.0 Hazard Management Code, Central Coast Council Interim Planning Scheme 2013 and not C10.0 Coastal Erosion Code of the Tasmanian Planning Scheme.

#### **A4**

##### **P4 Non-compliant.**

Under the definitions of E6.0 Hazard Management Code, the proposed use was not categorised as vulnerable and therefore was not assessed under the performance criteria related to vulnerable uses. Further, Appendix 5 Quantitative Risk Assessment of the Coastal Vulnerability Assessment, shows the risk assessment was also conducted based on the proposal *not* being considered a vulnerable use. Therefore, whilst it is argued that the proposal has a tolerable level of risk, the parameters under which that was determined have changed and do not meet the requirements of the current planning scheme.

### **C10.6.2 Coastal protection works within a coastal erosion hazard area**

#### **A1**

##### **P1 (a) Non-compliant.**

The proposed use does not rely on its coastal location to fulfil its purpose. Coastal protection measures were completed without the appropriate approvals and would not have been permitted under the current planning scheme.