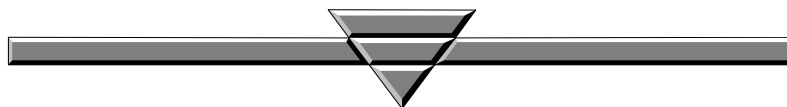


Record of Proceedings 23 June 2009



Port Stephens

C.O.U.N.C.I.L

... a community partnership

Due to a lack of a quorum for the Ordinary Council Meeting of the 23 June 2009, the meeting did not proceed. In accordance with the Code of Meeting Practice the Chair advised those present that a quorum was required to conduct the meeting and that the Code required a 30 minute period to lapse before adjourning the meeting.

At the end of the 30 minutes a quorum was not present and the Chair adjourned the meeting until Tuesday 30 June 2009 at 6.00pm to be held in the Council Chambers, 116 Adelaide St, Raymond Terrace.

PRESENT: Councillors; R. Westbury (Deputy Mayor); G. Dingle; P. Kafer; J. Nell; S. Tucker, F. Ward; Acting General Manager; Corporate Excellence Group Manager, Sustainable Planning Group Manager; Commercial Services Group Manager & Executive Officer.

		Apologies were received from Cr Glenys Francis (leave of absence on holidays), Cr Sally Dover & Cr Bruce MacKenzie (on Council business in Canberra), Cr Shirley O'Brien (absence due to an illness), Crs Ken Jordan & Daniel Maher (due to a bereavement in the family) the General Manager and the Group Manager Facilities and Services.
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INDEX

SUBJECT

PAGE NO

OPERATIONS COMMITTEE RECOMMENDATIONS..... 3

1. PROPOSED AMENDMENT TO PORT STEPHENS S94A DEVELOPMENT CONTRIBUTIONS PLAN.....	4
2. LOCAL TRAFFIC COMMITTEE MEETING – 5 TH MAY 2009	5
3. EXHIBITION OF DRAFT HUNTER ESTUARY MANAGEMENT PLAN AND STUDY.....	6
4. MAKING OF RATES AND CHARGES FOR 2009/2010	7
5. PROPOSED ROAD CLOSURE & PURCHASE ZIRCON LANE FULLERTON COVE.....	8
6. ACQUISITION & DEDICATION OF EASTERN END OF KILLALOE LANE AS PUBLIC ROAD - EAGLETON.....	9
7. ROAD WIDENING ITALIA ROAD EAST SEAHAM	10
8. DRAFT COUNCIL PLAN 2009-2013 AND FEES & CHARGES 2009-2010.....	11
9. NSW COASTLINE CYCLEWAY GRANTS- SANDY POINT RD	12
10. MAYOR AND COUNCILLOR FEES 2009/10.....	13
11. DESIGNATED PERSONS – PECUNIARY INTERESTS	14
12. INFORMATION PAPERS.....	17

GENERAL MANAGER'S REPORT..... 18

1. REQUEST FOR FINANCIAL ASSISTANCE	19
2. HUNTER COUNCILS BOARD ADVISORY GROUPS.....	23
3. INFORMATION PAPERS.....	29

GENERAL MANAGERS INFORMATION PAPERS..... 30

1. AUSTRALIAN SHARK AND RAY CENTRE – ROADWORKS UPDATE.....	31
--	----

NOTICES OF MOTION 36

1. MEETING OF WILDLIFE RESCUE GROUPS.....	37
2. CONFIDENTIAL REPORTS	39
3. REMOVE ACCESS GATE BLOCKING THE ACCESS TO MALLABULA WHARF	41

RESCISSION MOTIONS..... 44

1. REZONING REQUEST FOR 60 PORT STEPHENS DRIVE.....	45
---	----

OPERATIONS COMMITTEE RECOMMENDATIONS

ITEM NO. 1

FILE NO: PSC2006-0859

**PROPOSED AMENDMENT TO PORT STEPHENS S94A DEVELOPMENT
CONTRIBUTIONS PLAN**

REPORT OF: TREVOR ALLEN – MANAGER, INTEGRATED PLANNING

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the draft amendments to the Port Stephens S94A Development Contributions Plan to include non-residential subdivisions.
 - 2) Endorse the draft amendments for public exhibition.
-

OPERATIONS COMMITTEE – 09th June 2009

RECOMMENDATION:

	Councillor John Nell Councillor Bob Westbury	That the recommendation be adopted.
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In accordance with the Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Sally Dover, Ken Jordan, Bruce MacKenzie, Bob Westbury, Shirley O'Brien, Steve Tucker, Frank Ward, Glenys Francis, Glenys Francis, John Nell, and Daniel Maher.

Those against the Motion: Nil

Cr Peter Kafer was not present at the meeting at the time of this item.

ITEM NO. 2**FILE NO: A2004-0511****LOCAL TRAFFIC COMMITTEE MEETING – 5TH MAY 2009****REPORT OF: TREVOR ALLEN – MANAGER, INTEGRATED PLANNING**
-----**RECOMMENDATION IS THAT COUNCIL:**

Adopt the recommendations contained in the minutes of the Local Traffic Committee meeting held on 5th May 2009.

-----**OPERATIONS COMMITTEE – 09th June 2009****RECOMMENDATION:**

	Councillor Ken Jordan Councillor Steve Tucker	That the recommendation be adopted.
--	--	-------------------------------------

MATTER ARISING

	Councillor Glenys Francis	That further information be provided to Council on other streets such as Kangaroo and Glenelg Streets that open onto Adelaide Street to allow access similar to Bourke Street proposal.
--	----------------------------------	---

ITEM NO. 3

FILE NO: PSC2005-4386

EXHIBITION OF DRAFT HUNTER ESTUARY MANAGEMENT PLAN AND STUDY

REPORT OF: BRUCE PETERSEN – MANAGER, ENVIRONMENTAL SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Resolve to place the Draft Hunter Estuary Management Study and Draft Hunter Estuary Management Plan on public exhibition for a period of 28 days.

OPERATIONS COMMITTEE – 09th June 2009

RECOMMENDATION:

	Councillor Bruce MacKenzie Councillor Ken Jordan	That the recommendation be adopted.
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ITEM NO. 4

FILE NO: PSC2009-00707

MAKING OF RATES AND CHARGES FOR 2009/2010

REPORT OF: DAMIEN JENKINS - MANAGER, FINANCIAL SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Make rates and charges for 2009/2010 in accordance with **ATTACHMENT 1**.
-

OPERATIONS COMMITTEE – 09th June 2009

RECOMMENDATION:

	Councillor Ken Jordan Councillor John Nell	That the recommendation be adopted.
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ITEM NO. 5**FILE NO: PSC2008-1422****PROPOSED ROAD CLOSURE & PURCHASE ZIRCON LANE FULLERTON COVE****REPORT OF: CARMEL FOSTER – MANAGER, COMMERCIAL PROPERTY****RECOMMENDATION IS THAT COUNCIL:**

- 1) Consents to the closure and sale of part of Zircon Lane being that part separating Lot 1 DP1006307 from Lot 1910 DP557701 commencing of the existing gate to the north easterly to the boundary near Nelson Bay Road.
- 2) Makes application under Section 34 Roads Act 1993 to the Department of Lands for the closure to be processed.
- 3) Obtains a valuation from a registered valuer of the proposed closure area and that the valuation set be used to establish the purchase price.
- 4) Prepares a land Transfer on finalisation of the closure and payment of all costs including the purchase price by the applicant.
- 5) Requires the applicant to lodge a subdivision application with Council for the road closed lot as required by Land and Property Information NSW.
- 6) Requires the applicant to prepare a plan for the subject area to be consolidated with the adjoining lot, if the application is successful. This consolidation plan to be presented to Council prior to execution of the Transfer.
- 7) Allocate proceeds from the sale to road improvements in the vicinity.
- 8) Grants authority to affix the Council Seal and signatures to the road closure subdivision plan prior to lodging it at the office of Land and Property Information.
- 9) Grants authority to affix the Council Seal and Signatures to the future Transfer, if the matter is successfully concluded.

OPERATIONS COMMITTEE – 09th June 2009**RECOMMENDATION:**

	Councillor Bruce MacKenzie Councillor Shirley O'Brien	That the recommendation be adopted.
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Cr Frank Ward recorded his vote against the recommendation.

ITEM NO. 6**FILE NO: A2004-1000 & PSC2009-01763****ACQUISITION & DEDICATION OF EASTERN END OF KILLALOE LANE AS PUBLIC ROAD - EAGLETON****REPORT OF: CARMEL FOSTER – MANAGER, COMMERCIAL PROPERTY****RECOMMENDATION IS THAT COUNCIL:**

- 1) Seeks the Minister for Local Government's consent and the Governors approval to publish in the N.S.W. Government Gazette a 'Notice of Acquisition' by agreement under the provisions of the Land Acquisition (Just Terms Compensation) Act 1991, for road purposes over the following areas of land:-
 - a. Lot 1 D.P. 860597 and
 - b. Strip shown as "Killaloe Lane (20 wide and var.)" shown on D.P.1008109 separating lots 1 and 2 in D.P.1008109.
- 2) Dedicates the areas of land in a. above as Public Road under Section 10 Roads Act 1993 as soon as practicable after publication of the above Notice of Acquisition.
- 3) Officially names the constructed length of road from Newline Road generally easterly, known locally and signposted as Killaloe Lane as 'Killaloe Lane' under Section 162 Roads Act 1993.
- 4) Under Geographical Names Board regulations relocates the locality boundary between Eagleton and Balickera to the northern and eastern boundaries of lot 1 D.P.860597 to place the full length of Killaloe Lane in Eagleton.
- 5) Investigates the possibility of renaming the section of Killaloe Lane running westward from the Pacific Highway along the southern boundary of the locality of Balickera. Discussions to be held with landowners affected and a further report to be presented to Council.

OPERATIONS COMMITTEE – 09th June 2009**RECOMMENDATION:**

	Councillor Bruce MacKenzie Councillor John Nell	That the recommendation be adopted.
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ITEM NO. 7

FILE NO: A2004-1014

ROAD WIDENING ITALIA ROAD EAST SEAHAM

REPORT OF: CARMEL FOSTER – MANAGER, COMMERCIAL PROPERTY

RECOMMENDATION IS THAT COUNCIL:

- 1) Acquires a strip of land 10 metres wide from Lot 303 DP713773 to finalise previous road work for the widening of Italia Road at corner of East Seaham Road.
 - 2) Accept the owner's offer of the land with no compensation payable as new fencing was provided by Council when previously constructing the road widening.
 - 3) Carries out the survey required and lodges the plan at Land and Property Information after endorsement by the owners.
-

OPERATIONS COMMITTEE – 09th June 2009

RECOMMENDATION:

	Councillor Bruce MacKenzie Councillor John Nell	That the recommendation be adopted.
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ITEM NO. 8

FILE NO: PSC2008-9838

DRAFT COUNCIL PLAN 2009-2013 AND FEES & CHARGES 2009-2010

REPORT OF: WAYNE WALLIS - GROUP MANAGER CORPORATE SERVICES

THIS ITEM WAS DEALT WITH AT THE ORDINARY MEETING OF COUNCIL ON 9TH JUNE 2009

ITEM NO. 9

FILE NO: PSC2008-0599

NSW COASTLINE CYCLEWAY GRANTS- SANDY POINT RD

REPORT OF: MICK LOOMES - ENGINEERING SERVICES MANAGER

THIS ITEM WAS DEALT WITH AT THE ORDINARY MEETING OF COUNCIL ON 9TH JUNE 2009

ITEM NO. 10

FILE NO: A2004-0266

MAYOR AND COUNCILLOR FEES 2009/10

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

RECOMMENDATION IS THAT COUNCIL:

- 1) Determine the fees for the Mayor and Councillors for the period 1 July 2009 to 30 June 2010.

OPERATIONS COMMITTEE – 09th June 2009

RECOMMENDATION:

	Councillor Ken Jordan Councillor John Nell	That the maximum allowance be applied for both the Mayoral and Councillors.
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ITEM NO. 11

FILE NO: A2004-0030

DESIGNATED PERSONS – PECUNIARY INTERESTS

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

RECOMMENDATION IS THAT COUNCIL:

- 1) Identifies the following positions which require the occupants, for the purposes of Chapter 14 of the Local Government Act (S441), to be deemed "designated persons" because they are involved in the exercise of functions that could give rise to a conflict between the person's duty and that person's private interest.
-

Councillors (past and present)

Cr Bruce MacKenzie
Cr Shirley O'Brien
Cr Daniel Maher
Cr Peter Kafer
Cr Frank Ward
Cr Steve Tucker
Cr Geoff Dingle
Cr Bob Westbury
Cr John Nell
Cr Sally Dover
Cr Ken Jordan
Cr Glenys Francis
Cr Helen Brown
Cr Ron Swan
Cr Geoff Robinson
Cr Josh Hodges

General Manager's office

General Manager
Executive Manager Corporate Management
Executive Officer

Corporate Services

Group Manager Corporate Services
Legal Services Manager
Corporate Planning & Community Engagement Coordinator
Customer Relations and Communications Manager
Information Management Manager
Publications Coordinator
Organisation Development Manager
Human Resources Manager

IT Coordinator

Sustainable Planning

Group Manager Sustainable Planning
Development and Building Manager
Building Coordinator
Integrated Planning Manager
Strategic Planning Coordinator
Senior Land Use Planner
Strategic Planner (2)
Customer Support Coordinator
Engineering Coordinator
Development Coordinator
Senior Development Planner (3)
Senior Policy Planner
Development Planners (2)
Senior Building Surveyors (2)
Health and Building Surveyors (5)
Subdivision Engineer
Section 94 Engineer
Social Planning Coordinator
Development Engineer
Infrastructure Planning Coordinator
Traffic Engineer
Environmental Services Manager
Coordinator Environmental Compliance & Community Health
Coordinator Natural Resources
Compliance Officer
Executive Planner
Environmental Health Team Leader

Commercial Services

Group Manager Commercial Services
Resources Manager
Principal Property Advisor
Property Unit Coordinator
Business Development Manager
Commercial Property Services Manager
Business Operations Manager
Tourism Manager
Financial Services Manager
Fleet Management Coordinator
Finance & Assets Coordinator
Financial Accountant
Economic Development Manager
Procurement & Contracts Coordinator
Mechanical Services Coordinator

Facilities & Services

Group Manager Facilities & Services
Community and Library Services Manager
Engineering Services Manager
Project Services Manager
Operations Manager
Recreation Services Manager
Sports Facilities Coordinator
Parks Facilities Coordinator
Contracts & Halls Coordinator

OPERATIONS COMMITTEE – 09th June 2009**RECOMMENDATION:**

	Councillor Glenys Francis Councillor Steve Tucker	That the recommendation be adopted.
--	--	-------------------------------------

ITEM NO. 12

INFORMATION PAPERS

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

RECOMMENDATION IS THAT COUNCIL:

Receives and notes the Information Papers listed below being presented to Council on 9th June, 2009.

No:	Report Title	Page:
1	DETERMINED AND UNDETERMINED DEVELOPMENT APPLICATIONS	
2	CASH AND INVESTMENTS HELD AT 30 APRIL 2009	
3	PUBLIC EXHIBITION OF DRAFT PLANS OF MANAGEMENT FOR CROWN LAND RESERVES COVERING FINGAL BAY, HALIFAX AND SHOAL BAY HOLIDAY PARKS	
4	DEPARTMENT OF INFRASTRUCTURE – COMMUNITY INFRASTRUCTURE - PROGRAM – STRATEGIC PROJECTS GRANT APPLICATION: MEDOWIE CYCLEWAYS	

OPERATIONS COMMITTEE – 09th June 2009

RECOMMENDATION:

	Councillor Glenys Francis Councillor Shirley O'Brien	That the recommendation be adopted.
--	---	-------------------------------------

GENERAL MANAGER'S REPORT

**PETER GESLING
GENERAL MANAGER**

ITEM NO. 1

FILE NO: 1190-001

REQUEST FOR FINANCIAL ASSISTANCE

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

RECOMMENDATION IS THAT COUNCIL:

- 1) Approves provision of financial assistance under Section 356 of the Local Government Act from the respective Mayor and Ward Funds to the following:-
 - a) Robyn Yvette Dance Centre Fundraising – Sister Cities Visit - \$2,000 (between West / Central / East Ward)
 - b) Mount Kanwarly Public School Association – Transport Costs for Sydney Trip for the School Choir - \$1,400 – West Ward
 - c) Tomaree Peninsula Public Schools – Challenge Program - \$500 – East Ward
 - d) Country Womens Association – Fees for Holding Charity Sausage Sizzle - \$125 – East Ward
 - e) Gateway Family Presbyterian Church – Donation for Market costs - \$125 – Mayoral Funds
 - f) Port Stephens Sister Cities – Donation for books for school - \$450.50 – Mayoral Funds
 - g) Hands on Youth Events Tilligerry – Donations towards operations costs - \$500 – Mayoral Funds
 - h) Tilligerry Habitat Association – Contribution towards cost resulting in break in - \$500 – Central Ward Funds
 - 2) Publicly exhibit the proposal to provide financial assistance to Tynan Wood as a donation towards trip to Canada for Ballet Competition to the value of \$250 from Mayoral Funds, for a period of 28 days.
-

BACKGROUND

The purpose of this report is to determine and, where required, authorise payment of financial assistance to recipients judged by Councillors as deserving of public funding. The Council's policy gives Councillors a wide discretion to either grant or to refuse any requests.

The Council regularly receives requests for financial assistance from community groups and individuals. However, Council is unable to grant approval of financial assistance to individuals unless it is performed in accordance with the Local Government Act. This would mean that the financial assistance would need to be included in the Management Plan or Council would need to advertise for 28 days of its intent to grant approval. Council can make donations to community groups.

MINUTES FOR ORDINARY COUNCIL – 23 JUNE 2009

Council's policy for financial assistance has been developed on the basis it is "seed" funding and that there is benefit to the broader community. Funding under Council's policy is not intended for ongoing activities.

The requests listed below were considered by the former Ward Councillors and approved however these were not reported to Council prior to the Local Government election. Due to the timing Items (a) and (b) have been approved by the General Manager and are before Council for ratification by Council.

The requests for financial assistance are shown below:-

MAYORAL DONATIONS

Gateway Family Presbyterian Church	Donation for Market costs	\$125.00
Port Stephens Sister Cities	Donation for books for school	\$450.50
Hands on Youth Events Tilligerry	Donations towards operations costs	\$500.00

EAST WARD – Councillors Nell, Westbury, Dover & Ward

Robyn Yvette Dance & Talent Centre	Sister Cities Visit	\$666.67
Tomaree Peninsula Public Schools	Challenge Program	\$500.00
Country Womens Association	Fees for holiday charity sausage sizzle	\$125.00

CENTRAL WARD – Councillors Dingle, MacKenzie, O'Brien, Tucker

Robyn Yvette Dance & Talent Centre	Sister Cities Visit	\$666.67
Tilligerry Habitat Association	Contribution towards cost resulting in break in	\$500.00

WEST WARD – Councillors Kafer, Jordan, Francis, Maher

Robyn Yvette Dance & Talent Centre	Sister Cities Visit	\$666.67
Mount Kanwaray Public School Association	Transport Costs for Sydney Trip for the School Choir	\$1400.00

LINKS TO CORPORATE PLANS

The Council's Management Plan does not have any program or stated goal or objective for the granting of financial assistance.

FINANCIAL/RESOURCE IMPLICATIONS

Council Ward Funds are the funding source for all financial assistance.

LEGAL AND POLICY IMPLICATIONS

To qualify for assistance under Section 356(1) of the Local Government Act, 1993, the purpose must assist the Council in the exercise of its functions. Functions under the Act include the provision of community, culture, health, sport and recreation services and facilities.

The policy interpretation required is whether the Council believes that:

- a) applicants are carrying out a function which it, the Council, would otherwise undertake;
- b) the funding will directly benefit the community of Port Stephens;
- c) applicants do not act for private gain.

The policy has other criteria, but these have no weight as they are not essential. These criteria are:

- a) a guarantee of public acknowledgment of the Council's assistance
- b) the assistance encouraging future financial independence of the recipient
- c) the assistance acting as 'seed' funding with a multiplier effect on the local economy.

Australian Business Excellence Framework

This aligns with the following ABEF Principles.

- 3) Understanding what customers value, now and in the future, influences organisational direction, strategy and action
- 10) Organisations provide value to their community through their actions to ensure a clean, safe, fair and prosperous society
- 11) Sustainability is determined by an organisation's ability to create and deliver value for all stakeholders

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

Nil

ECONOMIC IMPLICATIONS

Nil

ENVIRONMENTAL IMPLICATIONS

Nil

CONSULTATION

Mayor
Councillors

OPTIONS

- 1) Adopt the recommendation.
- 2) Vary the dollar amount before granting each or any request.
- 3) Decline to fund all the requests.

ATTACHMENTS

Nil

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil

ITEM NO. 2

FILE NO: A2004-0026

HUNTER COUNCILS BOARD ADVISORY GROUPS

REPORT OF: PETER GESLING – GENERAL MANAGER

RECOMMENDATION IS THAT COUNCIL:

- 1) Appoint a Councillor representative for each of the three Strategic Advisory Groups of the Hunter Board.

BACKGROUND

The purpose of this paper is to seek member Council nominations for councillor representation on the three strategic advisory groups to be formed by the Board of Hunter Councils.

In March of this year the Board of Hunter Councils resolved to amend its constitution in order to facilitate a more powerful and proactive approach by the Board to issues of regional advocacy. The changes to the constitution included restricting membership of the Board to the Mayors of the member councils, increased meeting frequency and the introduction of strategic advisory groups to assist the Board in identifying and actioning responses to key issues affecting our region.

The areas of focus for the strategic advisory groups are derived from the Hunter Councils Constitution and comprise Economic Development and Infrastructure, Community and Cultural Development and Environment. Their roles and responsibilities will comprise the following:

- 1.1 *To have input to the development and implementation of strategic, regional positions that will enhance (economic development and infrastructure / cultural and community development / the environment) within the Hunter Region*
- 1.2 *To identify areas of opportunity and priority in relation to (economic development and infrastructure / cultural and community development / the environment) and to recommend to the Board appropriate responses to those areas of opportunity and priority*
- 1.3 *To provide a forum for discussion of regionally significant (economic development and infrastructure / cultural and community development / environmental) issues*
- 1.4 *To receive input from outside agencies in relation to areas of the Advisory Group's responsibility and to determine the potential for that input to inform wider Board deliberations on those matters.*

The strategic advisory groups will not, in themselves, determine Board policy or position on a matter. They will, however, have a critical role in assisting the Board in

its deliberations and in its wider development, review of and advocacy for adopted strategic priorities and goals for our Region.

Membership of the strategic advisory groups is limited to councillors chosen by member councils at a ratio of one (1) councillor per council per group. The groups will meet five (5) times in a full calendar year and will be chaired by a councillor elected annually by the members of each group. The operations of each group will be resourced by Hunter Councils Inc through staff time and other assistance allocated by the CEO Hunter Councils.

Meetings will be chaired by a councillor elected from within the group's members.

A councillor may not be a member of more than one (1) advisory group at any given time.

Choosing councillor representatives:

The strategic advisory groups are a recognition of the significant contribution that all councillors can make at a regional level to the communities of the Hunter Region. The groups will be a major and respected resource for our region.

Given that the groups will meet five times a year at agreed venues throughout the region they will, however, generate a significant burden in terms of travel, meeting and preparation time on top of the already significant responsibilities and time demands inherent in being a councillor. Prospective members of the advisory groups will need to bear this additional workload and time impost in mind when considering nomination. Prospective members will also need to be conscious of the fact that – while their local perspective adds value and dimension to their potential contribution to the regional group – their advisory group role must be approached with a whole of region mindset. Such a focus might not always be easy to achieve especially given the complex nature of many of the issues that will be discussed and the diversity that exists within our many communities and local environments.

It is hoped that nominations for the regional advisory groups will be finalised by the end of June. This will allow a first meeting of the Advisory Groups to be held on a day to be determined in the first and second weeks of July. The groups will then begin a bimonthly meeting schedule as follows:

- August 2009
- October 2009
- December 2009 (to be confirmed)
- March 2010
- May 2010
- July 2010
- September 2010
- November 2010

Terms of reference for the strategic advisory groups are shown at **ATTACHMENT 1**.

LINKS TO CORPORATE PLANS

The links to the 2008-2012 Council Plan are:-

SOCIAL SUSTAINABILITY – Council will preserve and strengthen the fabric of the community, building on community strengths.

CULTURAL SUSTAINABILITY – Council will assist to inspire a sense of pride and place as well as enhancing quality of life and defining local identity.

ECONOMIC SUSTAINABILITY – Council will support the economic sustainability of its communities while not compromising its environmental and social well being.

ENVIRONMENTAL SUSTAINABILITY – Council will protect and enhance the environment while considering the social and economic ramifications of decisions.

BUSINESS EXCELLENCE – Council will use the Business Excellence Framework to innovate and demonstrate continuous improvement leading to long-term sustainability across operational and governance areas in a Business Excellence Journey

FINANCIAL/RESOURCE IMPLICATIONS

Nil

LEGAL AND POLICY IMPLICATIONS

Nil

BUSINESS EXCELLENCE FRAMEWORK

Port Stephens Council is a quality driven organisation. We use the Business Excellence Framework as a basis for driving organisational excellence. The Framework is an integrated leadership and management system that describes elements essential to organisational excellence. It is based on eight (8) principles.

These outcomes align with the following Business Excellence principles:-

- 1) **LEADERSHIP** – Lead by example, provide clear direction, build organisational alignment and focus on sustainable achievement of goals.
- 2) **CUSTOMERS** – Understand what markets and customers value, now and into the future, and use this to drive organisational design, strategy, products and services.
- 3) **SYSTEMS THINKING** – Continuously improve the system.
- 5) **CONTINUOUS IMPROVEMENT** – Develop agility, adaptability and responsiveness based on a culture of continual improvement, innovation and learning.

- 7) **CORPORATE AND SOCIAL RESPONSIBILITY** – Behave in an ethically, socially and environmentally responsible manner.

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

Nil

ECONOMIC IMPLICATIONS

Nil

ENVIRONMENTAL IMPLICATIONS

Nil

CONSULTATION

Hunter Councils Board

OPTIONS

- 1) Adopt the recommendation
- 2) Amend the recommendation
- 3) Reject the recommendation

ATTACHMENTS

- 1) Terms of Reference

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil

ATTACHMENT 1

HUNTER COUNCILS

**ECONOMIC DEVELOPMENT AND INFRASTRUCTURE / CULTURAL AND
COMMUNITY DEVELOPMENT / THE ENVIRONMENT**

STRATEGIC ADVISORY GROUP

TERMS OF REFERENCE

Aim:

To assist the Board of Hunter Councils in developing and implementing strategic, regionally based responses to (economic development and infrastructure / cultural and community development / environmental) issues critically impacting on the communities of the Hunter Region.

Role and Responsibilities:

- 1.5 To have input to the development and implementation of strategic, regional positions that will enhance (economic development and infrastructure / cultural and community development / the environment) within the Hunter Region
- 1.6 To assist in the identification of areas of opportunity and priority in relation to (economic development and infrastructure / cultural and community development / the environment) and to recommend to the Board appropriate responses to those areas of opportunity and priority
- 1.7 To provide a forum for discussion of regionally significant (economic development and infrastructure / cultural and community development / environmental) issues
- 1.8 To receive input from outside agencies in relation to areas of the Advisory Group's responsibility and to advise on the potential for that input to inform wider Board deliberations on those matters.

Level of Autonomy and Accountability:

- 2.1 The Advisory Group will operate within and have input to broader strategic frameworks adopted by the Hunter Councils Board. The Advisory Group can recommend a position or policy to the Board. It is not, however, a decision-making entity and cannot determine Board policy or position on a matter
- 2.2 It is expected that Council representatives will act as an information conduit between their Council and the Advisory Group. Councillor representatives will be assisted in that regard by the provision of Minutes and Agendas to member Councils
- 2.3 Neither the Chair nor members of the Advisory Group have delegated authority to speak with and / or provide information to the media on behalf of the Advisory Group and its deliberations or on behalf of the Hunter Councils Board as a whole and its deliberations.

Membership:

- 3.1 Membership of the Advisory Group will be limited to one (1) Councillor representative from each member Council of Hunter Councils
- 3.2 The Advisory Group will elect a Chair and Deputy Chair who will hold that position generally for a twelve (12) month period. The term of office of Chair and Deputy Chair will end at the first Advisory Group Meeting held after the Hunter Councils Inc Board Annual General Meeting. At that Advisory Group meeting elections for the positions of Chair and Deputy Chair for the following twelve months will be held
- 3.3 A councillor may not be a member of more than one Advisory Group at any given time
- 3.4 As is the case with attendance at Hunter Councils Board Meetings, alternate members are not permitted
- 3.5 Incumbent Mayors may not be members of a Advisory Group.

Administration:

- 4.1 Meetings will be held five (5) times per year and will take place in months during which a Hunter Councils Board Meeting is not held
- 4.2 Administrative support for the Advisory Group will be provided by staff of Hunter Councils Inc selected for that purpose by the CEO of Hunter Councils. A management representative of Hunter Councils Inc will act as the Group's Executive Officer and will be responsible for agendas, minutes, research and meeting organisation. Hunter Councils Inc will also provide financial resources to assist the Advisory Group's deliberations. Such resourcing will relate to meeting venue costs, catering, guest speaker and related expenditures
- 4.3 Each Advisory Group will develop and adhere to a meeting schedule including dates and venues developed and adopted by the Group's members and consistent with Point 4.1 above
- 4.4 Meeting agendas and Minutes of previous meetings will be distributed to members prior to Advisory Group Meetings. Minutes of the meetings will also be included in the agendas of Hunter Councils Board Meetings. This will include any recommended actions proposed by the Group for Board consideration. A summary report of Advisory Group and Board deliberations will also be made available for reporting to individual Councils
- 4.5 At its discretion the Board of Hunter Councils may direct the Advisory Group to consider a matter and to report its findings
- 4.6 Deliberations of Advisory Group Meetings will be recorded for purposes of accurate minute taking and general accountability. Recommendations of the NSW Privacy Council will be adhered to in relation to meeting tapes.

ITEM NO. 3

INFORMATION PAPERS

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

RECOMMENDATION IS THAT COUNCIL:

Receives and notes the Information Papers listed below being presented to Council on 23rd June, 2009.

No:	Report Title	Page:
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1	Australian Shark & Ray Centre – Road Works Update	
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GENERAL MANAGERS INFORMATION PAPERS



INFORMATION ITEM NO. 1

AUSTRALIAN SHARK AND RAY CENTRE – ROADWORKS UPDATE

REPORT OF: ANTHONY RANDALL – ACTING MANAGER, DEVELOPMENT AND BUILDING

FILE: 7-1995-394-3 & 16-2007-445-1

BACKGROUND

The purpose of this report is to provide Council with a quarterly update of the progress of the roadworks required to be completed by the Australian Shark and Ray Centre.

The Shark and Ray Centre intersection works have been an ongoing matter since December 2007, when the business operator requested that Council provide an extension for required intersection works, to allow the business to commence operation. The intersection works were required by condition 10 of development consent 7-1995-394-3, which states:

10. This modified development consent No. 7-394-1995-3 approves the use of the site and buildings associated with this consent as a Tourist Facility – Shark and Ray Centre and extends to envelope the approved structures and uses contained with Development Consent No. 16-2007- 445-1 and A1614/97, and all associated conditions contained therein, to ensure this consent and associated consents above mentioned adhere to the requirements of Section 79C of the Environmental Planning and Assessment Act 1979 (as amended).

By the 31 May 2008, provide pavement widening for an intersection turnout to the development onto Marsh Road being a Type A intersection in accordance with the Council's Subdivision Code. An Interim Occupation Certificate may be issued by the Council for the development without this condition being completed, however a Final Occupation Certificate is required to be sought by the proponent upon completion of the works.

As this work is located in a public road, an approval under section 138 of the Roads Act 1993 is required. Engineering details in accordance with Council's Subdivision and Development Code, of such works shall be submitted with a Roads Act application form and then approved by Council prior to approval to commence these works and prior to issue of the Construction Certificates. The following items are also required to be approved by Council prior to approval being granted to commence works:

- i) Traffic control plans in accordance with the Roads and Traffic Authority – Traffic Control at Worksites Manual;*
- ii) Payment of fees and bonds (same Principle Certifying Authority fees, inspection fees and maintenance bonds as relevant to subdivisions);*

iii) Contractors public liability insurances to a minimum value of \$10 million dollars.

The following fees and/or bonds are to be paid as part of this consent:

- i) Construction certificate/plan approval fee, prior to approval of construction certificate or plans.
- ii) PCA/inspection fee, prior to approval of construction certificate or plans.
- iii) Long Service Levy, prior to issue of construction certificate (verification of payment is required if paid directly to Long Service Board) The rates are as listed in Council's fees and charges. Contact Council's Subdivision Engineer prior to payment.

Works associated with the approved plans and specifications located within the existing Road Reserve shall not commence until:

- i) a Roads Act Approval has been issued, and
- ii) all conditions of the Roads Act Approval have been complied with to Council's satisfaction.

All civil engineering works associated with the Roads Act Approval shall be carried out to the satisfaction of Council (with a letter of practical completion issued) prior to issue of the Occupation Certificate. All works associated with the Roads Act Approval shall be at no cost to Council.

Works associated with the Roads Act Approval are subject to: i. inspection by Council, ii. testing by a registered NATA Laboratory and iii. approval by Council at each construction stage as determined by Council.

Note: Council advises that in order for this condition to be completed, a Roads Act application will need to be lodged with Council prior to 31 January 2008.

Council resolved at its Ordinary Meeting of 18 December 2007 to provide the operator a six month extension, requiring the Centre to upgrade road access, inclusive of design and construction by 31 March 2008. On the basis of this Council resolution, an Interim Occupation Certificate was issued on 21 December 2007 with several outstanding matters to be completed, particularly the intersection works.

The matter was again considered by Council in May 2008 after the business operator requested a further extension stating that he has 'done everything humanly possible to expediate this situation', and he suggested that the timeframe provided was not reasonable. On the basis of this request, at the Ordinary Meeting on 27 May 2008, Council resolved the following:

- 1) Council reaffirmed the current condition of consent that requires the provision of pavement widening in Marsh Rd for an intersection turnout to the development and provide an extension of time (12 months) for the proprietor to complete required road works in accordance with condition 10 of the development consent.

- 2) *Issue a letter of intention that the business has 12 months to comply with the conditions of consent. There will be quarterly reports to the Council during this time.*

As required by the 27 May 2008, quarterly reports have been provided to the Council updating the progress of this matter. As a result of these quarterly reports, Councillors requested a site inspection on the 23 March 2009. Subsequent to this site meeting, Council made a further resolution on 24 March 2009, that Council defer the matter to the Ordinary Council meeting on 28 April 2009.

During the debate, a Motion was put to Council to provide a further extension for the intersection works, however this Motion was not carried. This Motion is detailed below:

That Council grant the Shark & Ray Centre:

- 1. An extension to May 2009 to complete run off entry coming from Nelson Bay direction and slash all reeds on the approach for 300 meters.*
- 2. An extension to May 2010 to complete passing lane from Newcastle direction and trim trees and slash reeds again 300 metres on approach to centre entry.*

Given that this Motion was not adopted, the extension provided to the Shark and Ray Centre has now lapsed. In this regard, it is advised that further conversations with the owner have not occurred in terms of progress of this matter due to difficulties in contacting the operator. Opportunities to discuss the issues with the business operator before the Ordinary Meeting are being strongly pursued. Once additional information is received by Council officers, a further update will be provided to Council. Council officers will continue to pursue a meeting to facilitate progression of this matter.

Breakdown of Works

As per the resolution dated 27 May 2008, below is a quarterly report as to the applicant's progress.

A breakdown of anticipated works required to be undertaken to fulfil Condition 10 (as modified) consists of, but not limited to, the following activities. Based on the response received, the progress made by the Proprietor is highlighted in bold below.

It is advised that since March 2009, slashing of reeds has been completed by Council as part of general maintenance program to a width of 1 metre from the constructed road.

Works to be completed by May 2009:

1. **Clearing of sight lines**
2. **Topographical survey**
3. **Concept plan view of existing driveway / intersection (provided to Council April 10, 2008).**
4. Remove part of the gate to provide sufficient width for required access
5. Prepare Geotechnical investigation of pavement widening (shoulder)
6. **Prepare geometric road design and provide a concept plan for Council comment (Design approved by Council on 22 December 2008)**
7. Consult contractors for advice, quote, construction methodology etc.
8. Lodge application to obtain a Roads Act approval
9. Contractor or sub-contractor to develop a Traffic Control Plan for required construction works
10. Approval to remove existing power pole from the driveway swept paths
11. Negotiate with NSW Department of Fisheries to construct shoulder widening
12. Obtain a Roads Act approval
13. Engage a contractor
14. Construct intersection including Council inspection and sign off of hold points specified by Roads Act approval

Risks Assessment

The safety risks should Council allow the business to continue operating without the completion of the intersection works were originally outlined within the Traffic Engineer's Report contained in the Council report of 18 December 2007 (see attached). A summary of the matters outlined in this report is detailed below:

- a) The current access does not meet Council's design requirements for minimum access improvements in that:-- there is no shoulder width to provide a typical basic left or right turn treatment for westbound vehicles turning left into the Property;
 - there is inadequate sight distance for egress vehicles from the Property to the left or right,
 - a power pole and entrance structures;
 - there is inadequate access width to the Property, currently 4.5m and gravel (Council requirement is 6m);
 - there is inadequate return radii for the access, currently 5m left and right (Council requirement is 15m left and right).
- b) Given the 80km/hr speed limit which applies to this section of Marsh Road, the above design deficiencies pose serious safety risks in regard to left and right turning movements and egress/ingress movements from the existing access. Controlled access arrangements are critical in helping to reduce the number of crashes on the road network.

Council's Traffic Section advised that these safety risks should be addressed prior to the business commencing operation. Council resolved to provide an extension to timeframe for works to be undertaken, notwithstanding the safety risks identified.

Given that the works are not completed to date, it is noted that the safety risks continue to be on-going.

It should be noted that Council applies the Austroads Guide to Traffic Engineering Practice as its reference in respect of design, construction and user aspects of roads and bridges and is considered "Best Practice" for assessing intersection improvements. The type of intersection required in the development consent is based on the Austroads Standards.

Council needs to consider the potential for legal implications if in the event that a traffic incident were to occur at the site, and Council has continued to allow these operations to occur without the necessary access/road works being constructed.

OPTIONS

- 1) Reaffirm Condition 10 of the consent that requires a Type A intersection and note that, given that works were not completed by 31 May 2009, an Order will be issued requiring cessation of business operations pursuant to the provisions of the Environmental Planning & Assessment Act 1979.
- 2) Provide a further extension of time for the Proprietor to complete required intersection works as required by condition 10.

ATTACHMENTS

Nil

NOTICES OF MOTION

NOTICE OF MOTION

ITEM NO. 1

FILE NO: A2004-0217 + PSC2005-4165

MEETING OF WILDLIFE RESCUE GROUPS

COUNCILLORS: JOHN NELL, GEOFF DINGLE, PETER KAER, GLENYS FRANCIS,
BOB WESTBURY

THAT COUNCIL:

- 1) Council call a meeting of the two "Wildlife Rescue Groups" in Port Stephens and representatives of DECC and NPWS to :-
 - (a) Resolve differences between groups.
 - (b) Ensure to have wide coverage for wildlife rescue
 - (c) Report back to council.

BACKGROUND REPORT OF: BRUCE PETERSEN – MANAGER, ENVIRONMENTAL SERVICES

BACKGROUND

The Port Stephens Council Local Government Area currently has two animal carer groups, Native Animal Trust Fund (NATF) and the Hunter Koala Preservation Society (HKPS) – Tilligerry which only handles the rescue of Koalas on the Tilligerry Peninsula.

Council staff understand that Wildlife in Need of Care is a splinter group of NATF that are trying to obtain their own license from DECC to undertake wildlife rescues.

There a number if matters relating to this issue that Councillors should be made aware of, including:

- The management and licensing of wildlife care groups in NSW is the jurisdiction of the Department of Environment and Climate Change (DECC) and not local government.
- DECC have provided a license to NATF and not WINC in accordance with the departments policy to minimise the number of animal carer groups in a locality to avoid conflict.
- DECC has already attempted to resolve the differences between the groups and engaged NATF and WINC in a negotiation process with an external facilitator. The conflict between the groups remains and the encouragement of a merger failed.

- NATF has informed council staff that they have advised members of WINC that the door remains open to become members of NATF and assist with wildlife rescue within Port Stephens.
- Council supports NATF with equipment, signage, access to community land and regeneration of native animal habitat and in general by working together on issues relating to native fauna and habitat in Port Stephens.
- Having another Wildlife Care Group within Port Stephens would result in additional financial costs for Council. This would include the costs associated with modifying current signage, information cards and other information distributed by council.
- Another Wildlife Care Group within Port Stephens may also require additional representation on committees and could cause confusion for the general public on who to call for wildlife rescues.
- As per the resolution from the NOM on the 28th of April 2009 a letter has been sent to DECC requesting that the Department support the 'Wildlife in Need of Care' (WINC) group by providing them with a license and asks that DECC respond to council with the reason for the lack of licensing to the group.
- NATF are disappointed that Council is supporting another wildlife group in this area.

NOTICE OF MOTION

ITEM NO. 2

FILE NO: A2004-0217, PSC2009-00431

CONFIDENTIAL REPORTS

COUNCILLOR: FRANK WARD

THAT COUNCIL:

- 1) Request the General Manager prepare a report for discussion by Council on his reasons for the decision to restrict Councillor access to confidential information that has effectively declared to the public that Councillors are untrustworthy. The General Managers report must advise Council as to what authority he has acted under in the Local Government Act and Council's Code of Practice and if the Code of Practice needs to be reviewed. The report and debate on the report should be in open Council.
-

BACKGROUND REPORT OF: PETER GESLING – GENERAL MANAGER

BACKGROUND

This background information is provided to Council on the recent decision taken in relation to the provision of confidential information to Councillors.

As Council is aware over the past 12 to 18 months there have been a number of breaches of the Code of Conduct and the Local Government Act with respect to the release of confidential information.

The matters which have been released to the media and the community include:-

- Information surrounding Council's confidential legal matters
- Confidential report concerning a security tender report
- Councillor Dover Code of Conduct report
- Former Councillor Hodges Code of Conduct report
- Confidential memorandum about the sale of land at Salamander Bay
- Confidential discussions surrounding development compliance matters before Council
- Release of items from the Confidential PS Newsletter to Councillors from the General Manager

As has been explained to Councillors previously there is a high level of security placed on confidential information that is before Council. The decision to put reports into a confidential session of Council is not one that is done so lightly. Council staff must ensure that the reason for a confidential report is in accordance with the *Local Government Act 1993*.

Whilst some of the items listed above occurred during the term of the previous Council it is of concern that confidential information is still being released in an inappropriate manner. A number of the items listed have only been issued to Councillors and very limited Council staff.

In accordance with the *Local Government Act 1993, Section 335*, as General Manager I am responsible for the day to day management of Council in an effective and efficient manner. The release of the information listed above is in breach of *Section 664 of the Local Government Act 1993 "Disclosure and Misuse of Information"*. The practice is also a breach of the Code of Conduct. It is my responsibility to ensure that Council does not place itself in a position whereby a breach of any legislation or other legal requirement placed upon it by law may occur or that the unauthorised release of material might prejudice Council.

Council needs to be aware of the reputation and business relationship damage that this type of action is causing in the community.

I would also remind Councillors that I have not restricted access to confidential report but introduced a new management procedure to improve the compliance of Council as an organisation. All reports are available from staff at my office on the Friday before the meeting. This also addresses the concern of some Councillors regarding the delivery of their weekly packages. I have also introduced a confidential briefing session for Councillors prior to the meeting to allow Councillors to be brief on the reports and for questions to be asked of staff.

NOTICE OF MOTION

ITEM NO. 3

FILE NO: A2004-0217; PSC2005-3544

REMOVE ACCESS GATE BLOCKING THE ACCESS TO MALLABULA WHARF

COUNCILLOR: STEVE TUCKER

THAT COUNCIL:

- 1) Undertake to remove the access gate blocking the access to Mallabula Wharf.

This Notice of Motion was deferred at the Ordinary Meeting of Council on the 19th May 2009 to the June meeting of Council to allow for a Works Inspection and consultation with the community.

ORDINARY COUNCIL – 19TH MAY 2009

	Councillor Steve Tucker Councillor Daniel Maher	That the Notice of Motion be adopted.
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AMENDMENT:

163	Councillor Glenys Francis Councillor Peter Kafer	It was resolved that the Notice of Motion be deferred to the Ordinary Meeting of Council in June 2009 to allow for a Works Inspection onsite and consultation with the community.
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The motion on being put was carried.

COUNCILLORS COMMENTS

A Recreational Fishing Grant was received under the Commonwealth Community Grants Programme in 2006 to restore the Mallabula Wharf.

The stated basis for this project was:

“Completion of the project will provide the Mallabula and Tanilba Bay communities with a safe and accessible jetty from which fishing can continue to take place. In addition to the prime public benefit of enhancing sustainable recreational fishing in our communities, the project will also have the following public benefits:-

- Provide the only jetty on the Tanilba Bay and Mallabula foreshore at which small craft can transfer passengers.
- Provide a vital emergency services asset for the transfer of casualties from boat to land ambulance.
- Provide the only seaward evacuation point for Mallabula residents cut off by bushfire.
- As part of the planned system of coastal walks, enhance the tourist experience.
- Continue to provide a suitable location for automatic tide measuring equipment.
- Often used by local residents as a place of peace and contentment and to enjoy the views and sunsets.
- Has been used in the past by Department of Environment and Conservation for rescue of endangered sea life (turtles and other environmental and sustainable fishing research projects such as dolphin census).
- Land Department maps surveyed in February 1886 show a jetty of some sort at this location. While it is not claimed that the existing jetty circa 1886, the location has significant heritage value making it all the more important to restore the jetty”

The access road has now been blocked limiting access to the general public. Access by even moderately disabled people is all but impossible due to the steep grade and unsealed nature of the access road.

BACKGROUND REPORT OF: MIKE TRIGAR – GROUP MANAGER, FACILITIES AND SERVICES

BACKGROUND

The original wharf and existing boat ramp at this Mallabula location were both unauthorised and illegal. The wharf was also in dangerous disrepair. The boat ramp was not built to the appropriate standard making it a hazard and further it was dangerous to use in certain prevailing weather conditions. Access and parking to the wharf and boat ramp were also problematic. Both structures were not under the care and responsibility of Port Stephens Council but of NSW Crown Lands. When NSW Crown Lands originally approached Council to takeover the wharf, it was initially rejected because of these inherent problems.

However, some of the local community wished to retain the wharf so despite the serious ongoing concerns about the community's application for the recreational fishing grant as outlined above was finally sponsored. Some considerable funds from Council of around \$69,000 were added to the \$44,000 in Federal and State grants to construct the new wharf.

For the concerns above, it was never envisaged that the boat ramp would continue to be used, hence the access barrier at the top of the unsealed road leading to the new wharf and ramp. In fact, the closure of access to this area by road was part of the Development Approval (DA) for the wharf. It should be noted that Council received no comments on this at the time of the DA process.

Apart from the safety concerns, it is unlikely that approval for the ramp would be given by the Marine Parks Authority (MPA) due to the adjacent MPA sanctuary zone, sea grass beds and the very shallow water in the area. The two Licensed Boat Ramps in the area nearby are or the 1km to Tanilba Bay, 1 km away and Lemon Tree Passage, 4 km away.

The Mallabula Parks Committee is fully aware of the Council closing access and has encouraged this closure for a variety of reasons including inappropriate behaviour by visitors at night.

The new access gate is yet to be modified for facilitating disabled access to the wharf to unload and load only. There will be a disabled "Milak" lock and key provided to current local disabled users and additional keys will be made available for use and return from the local parks committee.

It is therefore recommended that Council retain the closure of access to the new Mallabula wharf except for disabled unloading and loading.

RESCISSION MOTIONS

RECISSION MOTION

ITEM NO. 1

FILE NO: A2004-0217 + PSC2005-4165

REZONING REQUEST FOR 60 PORT STEPHENS DRIVE

COUNCILLORS: PETER KAHER, GEOFF DINGLE AND FRANK WARD

That Council rescind its decision of 19 May 2009 on Item 1 of the Strategic Committee Report, namely to prepare a draft amendment to the Port Stephens Local Environmental Plan 2000 to rezone Lot 100, DP 1121428, 60 Port Stephens Drive, Taylors Beach to 7 (a) Environment Protection and 4 (a) Industrial.

ITEM NO. 1

FILE NO: PSC2007-1441

REZONING REQUEST FOR 60 PORT STEPHENS DRIVE

REPORT OF: TREVOR ALLEN – MANAGER INTEGRATED PLANNING

RECOMMENDATION IS THAT COUNCIL:

- 1) Resolve to prepare a draft amendment to the Port Stephens Local Environmental Plan 2000 to rezone Lot 100, DP 1121428, 60 Port Stephens Drive, Taylors Beach to (a) Environment Protection and 4(a) Industrial (**Attachment 1**)

COMBINED STRATEGIC & OPERATIONS COMMITTEE – 12TH May 2009

RECOMMENDATION:

	Councillor John Nell Councillor Geoff Dingle	That the draft amendment to the Port Stephens Local Environmental Plan 2000 to rezone Lot 100, DP 1121428, 60 Port Stephens Dr, Taylors Beach be refused.
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The motion on being put was lost.

	Councillor Bruce MacKenzie Councillor Shirley O'Brien	That the recommendation be adopted.
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In accordance with the Local Government Act 1993, a division is required for this item.

Those for the Motion: Councillors Sally Dover, Bruce MacKenzie, Ken Jordan, Steve Tucker, Shirley O'Brien and Bob Westbury.

Those against the Motion: Councillors John Nell, Glenys Francis, Frank Ward, Geoff Dingle and Peter Kafer.

BACKGROUND

The purpose of this report is to advise Council of a request to rezone land at 60 Port Stephens Drive, Taylors Beach.

Owner: Eureka 1 Project 17 Pty Ltd

Proponent: As above

Date of Submission: December 2008

Subject Land: Lot 100 in DP 1121428

Current Zones: 4(a) Industrial and 1(a) Rural Agriculture (**Attachment 2**)

Proposed Zones: 4(a) Industrial and 7(a) Environment Protection (**Attachment 1**)

Council has received a request to rezone land at Taylors Beach industrial area. The majority of the site is already zoned for industrial development. The request is to rezone additional areas of land on the site to 4(a) Industrial, and rezone the remainder of the site to 7(a) Environment Protection. The proponent submits that the rezoning will facilitate an improved industrial subdivision.

It should be noted that a previous rezoning request for the site was lodged in April 2007 seeking to expand the area zoned 4(a) Industrial and retain some areas zoned 1(a) Rural Agriculture. Consideration of that request was delayed then stopped following the alleged illegal clearing of the land between August 2006 and April 2007. Council entered into negotiation with the landowner to rehabilitate the site and a Deed of Agreement has been made to ensure this occurs.

DEED OF AGREEMENT

The Deed of Agreement was exchanged on the 15th April 2009 and ensures that an important wildlife corridor on the southern boundary of the site is restored. Just as importantly the Deed also dictates that this corridor is dedicated to Council ensuring its long term survival. The ecological value of the corridor is recognised in the request to rezone this area to environmental protection. The size of this wildlife corridor is approximately 2.1ha, the same size of the original 1a land that was cleared without approval.

The Deed also contains detailed specifications as to how the wildlife corridor is to be restored and maintained and ensures that the restoration of the corridor is to occur before its transfer to Council. If this does not occur to an appropriate standard Council can call upon a bond already lodged with council.

In addition to the above public benefits the Deed ensures that the developer enter into a voluntary planning agreement to provide for a \$20,000 contribution to council to be applied to native vegetation regeneration works in the Port Stephens LGA. This contribution is additional to all section 94 contributions.

DEVELOPMENT APPLICATION 16-2007-1065-1

It is important to note that the majority of the site, approximately 7.9 hectares, is already zoned for industrial development and a development application is under assessment for 38 industrial lots on the site. The assessment and potential approval of the development application does not rely on the rezoning of the land.

FINANCIAL/RESOURCE IMPLICATIONS

Stage 1 rezoning fees have been paid. Stage 2 fees will be sought from the proponent if the rezoning request proceeds to public exhibition. Council staff time will be spent processing the proposed draft LEP.

LEGAL AND POLICY IMPLICATIONS

The request is consistent with the Deed of Agreement, exchanged between Council and the landowner on 15th April 2009, to rehabilitate that part of the site proposed to be zoned 7(a) Environment Protection.

The request is consistent with the intent of the Lower Hunter Regional Strategy 2006 and the Port Stephens Community Settlement and Infrastructure Strategy 2007. It is a comparatively minor adjustment to zone boundaries in an existing industrial area.

SUSTAINABILITY IMPLICATIONS

SOCIAL AND ECONOMIC IMPLICATIONS

The purpose of the rezoning request, as stated in the rezoning report submitted by the developer, is to "...facilitate improved land use outcomes and for the site and to facilitate efficient use of the land for industrial purposes". The draft LEP will facilitate industrial development immediately adjacent to Port Stephens Drive increasing its exposure to passing motorists and increasing economic benefits in the form of employment and the provision of products and services for the Tomaree Peninsula.

ENVIRONMENTAL IMPLICATIONS

The site was cleared without consent on between approximately August 2006 and April 2007. Part of the site adjacent to Port Stephens Drive is proposed for rezoning to 4(a) Industrial. Prior to being cleared approximately 2.1ha of the site comprised Swamp Sclerophyll Forest on Coastal Floodplains of the NSW North Coast, an Endangered Ecological Community (EEC) listed under the Threatened Species Act 1995. It was also an area of preferred koala habitat identified under the Port Stephens Comprehensive Koala Plan of Management and a known wildlife corridor.

To account for the loss of the EEC 2.1 hectares of the site is proposed to be rezoned to 7(a) Environment Protection (**Attachment 2**) and be revegetated. The land owner has initiated the rehabilitation works of the 2.1ha in accordance with the Deed of Agreement. Although more than the 2.1ha was cleared the majority of the site already zoned 4a industrial and had relatively few less environmental constraints. The restoration and projection of the 2.1ha wildlife corridor ensures the corridors viability while still allowing for an effective sub division layout.

CONSULTATION

Council's Environment Services section supports the rezoning request on the basis that it is consistent with the Deed of Agreement.

Council officers met with representatives of the developer and DECC on 16th March

2009 to discuss the Deed of Agreement over the site. DECC advised at the meeting and via letter dated 25th March 2009 (**Attachment 4**) that it does not support the rezoning of lands along Port Stephens Drive due to likely adverse impacts on threatened species. DECC's opposition to the rezoning mainly relates to the agreed wildlife corridor not being identical in location to the original area occupied by the EEC and their concern that the new corridor layout will not completely counteract the vegetation that was lost. Although the size of the wildlife corridor is commensurate the layout has been amended to allow for a more effective sub division layout.

If Council resolves to prepare a draft LEP over the site and it receives the approval of the NSW Department of Planning's LEP Review Panel to progress, additional consultation will occur with government authorities including the DECC. The draft LEP will also be placed on public exhibition.

OPTIONS

- 1) Not adopt the recommendations
- 2) Amend the recommendations.
- 3) Reject the recommendations.

ATTACHMENTS

- 2) Proposed Zoning Map
- 3) Existing Zoning Map
- 4) Aerial photograph
- 5) Advice from DECC dated 25th March 2009

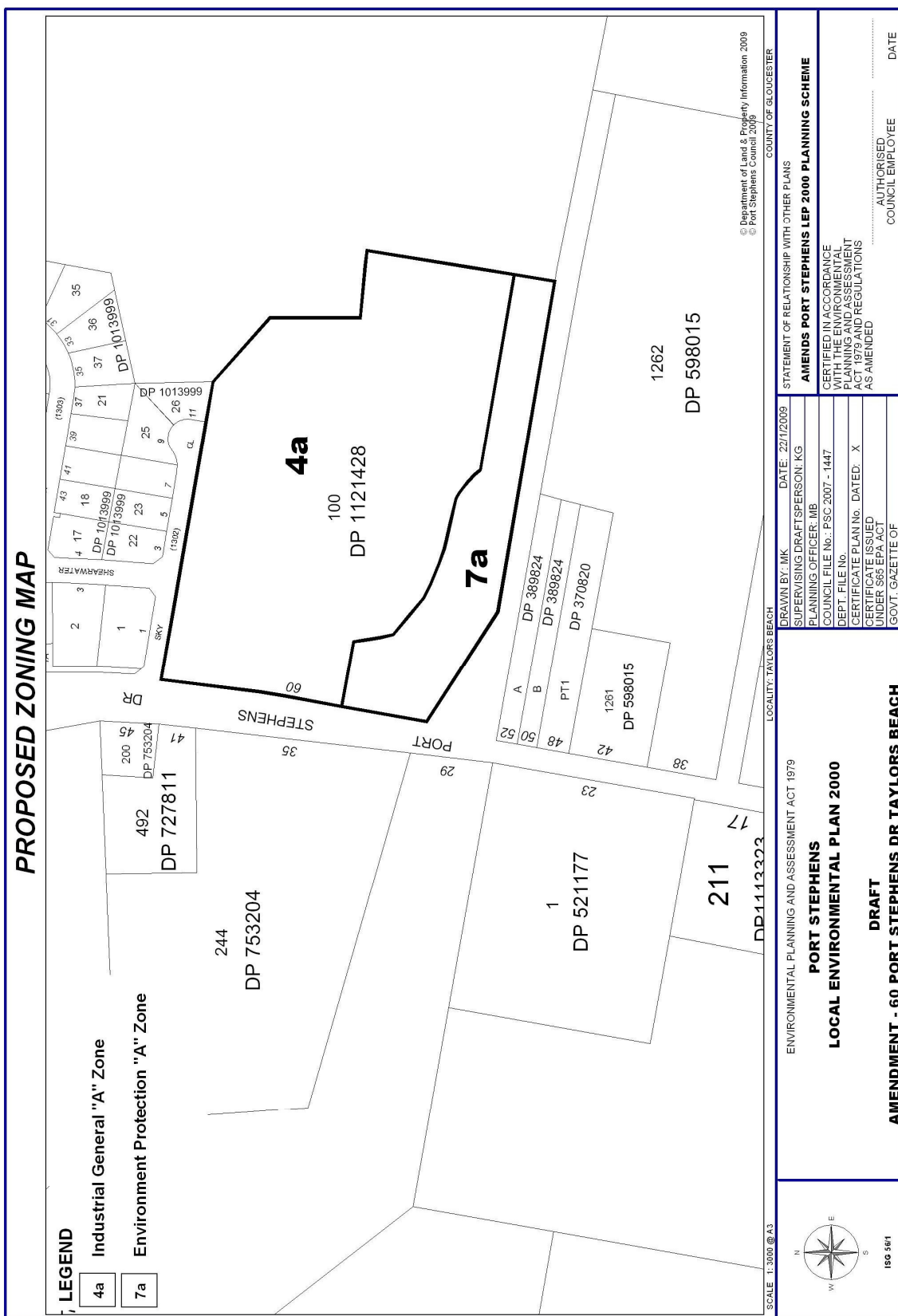
COUNCILLORS ROOM

- 1) Rezoning Report (Orogen Pty Ltd December 2008)

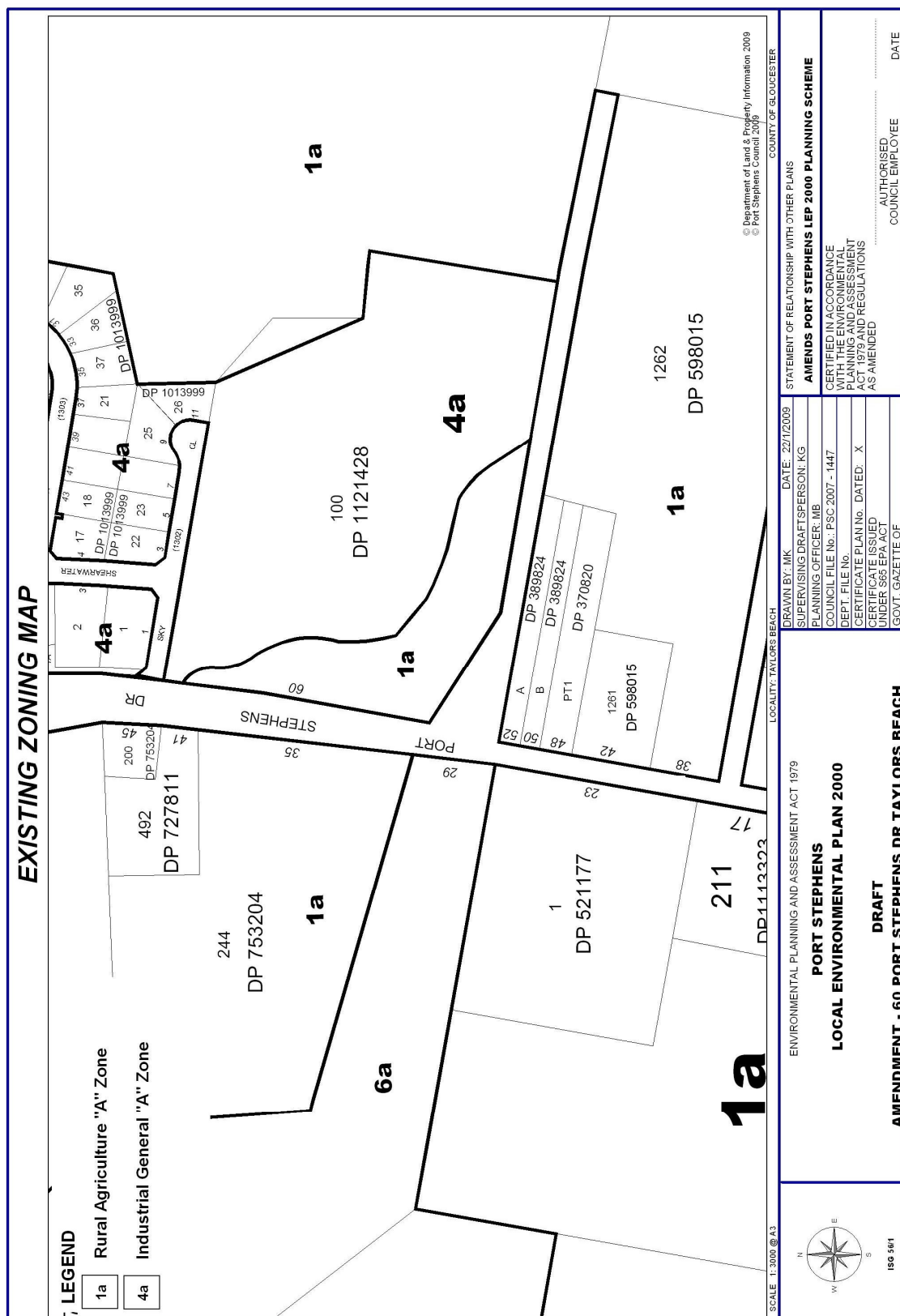
TABLED DOCUMENTS

Nil.

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ATTACHMENT 2 EXISTING ZONING MAP



52

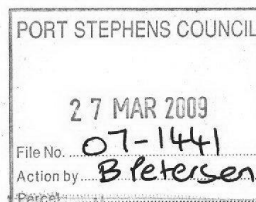


ATTACHMENT 4
ADVICE FROM DECC

Our reference: DOC09/13489; File No.: FIL06/925-05
Contact: Emma Coombs, (02) 4908 6831

Port Stephens Council
PO Box 42
Raymond Terrace NSW 2324

Attention: Bruce Petersen



Dear Mr Petersen,

RE: TAYLORS BEACH REZONING APPLICATION – DEED OF AGREEMENT AND REVEGETATION PROPOSAL

Reference is made to the meeting held between the Department of Environment and Climate Change (DECC), Port Stephens Council and Eureka on 16 March 2009 concerning Lot 473 DP 728126 Port Stephens Drive, Taylors Beach ("the site"). DECC understands that this meeting was held as a requirement of the Deed of Agreement (DoA) reached between Eureka and Port Stephens Council outlining the requirements for remediation following unauthorised clearing of vegetation including Swamp Mahogany Paperbark Forest.

DECC understands that the site is currently the subject of a development application over all the existing lands zoned 4(a) General Industrial under the Port Stephens LEP and that Council is currently considering this application. DECC also understands that a rezoning application is currently before Council to rezone lands along Port Stephens Drive and in the north-east of the site from 1(a) Rural Agriculture to 4(a) General Industrial. The rezoning application also proposes rezoning the land on the southern boundary from "Industrial" and "Rural" to 7(a) "Environmental Protection". We were advised at the meeting that part of this land is proposed to be revegetated in an effort to create a connective habitat link.

As discussed at the meeting DECC does not support the rezoning of the lands along Port Stephens Drive to "Industrial" due to likely adverse impacts on threatened species. In particular:

1. The area of land along Port Stephens Drive proposed for rezoning to 4(a) Industrial is mapped in the Port Stephens Council Comprehensive Koala Plan of Management (CKPoM) as "Preferred" Koala Habitat.
2. The area of land along Port Stephens Drive proposed for rezoning to 4(a) Industrial is noted as a location where koalas have been recorded crossing the road between adjacent stands of vegetation.

PO Box 488G Newcastle NSW 2300
117 Bull Street, Newcastle West NSW 2302
Tel: (02) 4908 6800 Fax: (02) 4908 6810
ABN 30 841 387 271
www.environment.nsw.gov.au

Department of **Environment and Climate Change** NSW



3. The vegetation on the western boundary of the site adjacent to Port Stephens Drive is *Swamp Sclerophyll Forest on Coastal Floodplains of the NSW North Coast, Sydney Basin and South East Corner bioregions* Endangered Ecological Community (EEC). EEC's should be protected wherever possible.
4. We note that this land on the western boundary has been cleared in recent times, however we have observed that the EEC vegetation is in the process of regrowing. Council should note that an individual and a company have been charged with offences in relation to this clearing, in particular for causing damage to the habitat of a threatened species (koala), knowing that the land concerned is habitat of that kind.
5. Taylors Beach falls within the Tomaree Peninsula Koala Management Unit identified within the CKPoM. The document states that land between Anna Bay/Boat Harbour and Salamander Bay/Taylors Beach are identified as being of particular importance for habitat conservation. These lands contain Preferred Koala Habitat in particular, but also contain Supplementary Koala Habitat, Habitat Buffers and/or Habitat Linking Areas.

This Koala Management Unit has been targeted for the application of incentives-based conservation measures such as rezoning for environmental protection or being set aside under a Voluntary Conservation Agreement.

Given that the land adjacent to Port Stephens Drive is vegetated with an EEC that contains species known to be preferred by koalas, and given that the land is mapped as preferred koala habitat and koalas have been recorded in this area, DECC is of the opinion that this land should be rezoned to 7(a) Environmental Protection and not 4(a) Industrial. Further, to ensure conservation in perpetuity a Voluntary Conservation Agreement under the *National Parks and Wildlife Act 1974* should be established over the Preferred Koala Habitat areas.
6. The area proposed to be revegetated along the eastern half of the southern boundary is unlikely to have attributes as valuable for endangered fauna movement and foraging as the land along Port Stephens Drive, which is EEC vegetation.
7. We are of the opinion that the proposed revegetation area will not completely restore connectivity to remaining vegetated bushland to the north, east or west. The vegetation adjacent to the revegetation area (outside the southern boundary) is within privately owned land and is fragmented, with reduced ecological value. The width of the proposed revegetation area will lead to any restored bushland being subject to edge effects and further fragmentation.
8. DECC has not reviewed the DoA, but it appears that the only long term protection proposed for the 7(a) zoned lands (should the rezoning be approved by Council) is the protection provided by that zoning. DECC is of the opinion that any lands to be set aside for conservation should be formalised by a Voluntary Conservation Agreement under the *National Parks and Wildlife Act 1974*, or a covenant under section 88E of the *Conveyancing Act 1919*.

In light of the above, and as advised in our meeting of 16 March 2009, DECC is not in a position to support the rezoning proposal as it is currently presented. If you wish to discuss this matter further or require additional information please contact Emma Coombs on (02) 4908 6831.

Yours sincerely

 25-3-09

PETER JAMIESON

Head Regional Operations Unit Coastal

North East Branch

Environment Protection and Regulation

I certify that pages 1 to 54 of the Minute of the Record of Proceedings 23 June 2009 were confirmed by Council at its meeting held on 30 June 2009.

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Cr Bruce MacKenzie
MAYOR