



## Request for Modification of Section 88B Restrictions

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Restrictions on the use of the land numbered Thirteenthly-2(a) in S.88B for DP 1120559 and Eleventhly-3(a) in S.88B for DP 1120034

Lot 272 in Deposited Plan 1120559  
32 Kellehers Road, Pottsville

Prepared by CPS on behalf of the State Property Authority (SPA)

Project No: A086

Date: April, 2010

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## 1 Introduction

### 1.1 Background

The State Property Authority is currently considering the purchase of the subject site on behalf of Ageing, Disability & Home Care, Department of Human Services for the construction of a 'group home' development.

However, it is noted that the subject site is burdened by a restriction on the use of the land, as identified in the Section 88B Instrument in Deposited Plan 1120559, and in Deposited Plan 1120034, that limits redevelopment of the subject site to single dwelling houses only.

As 'group homes' are separately defined under the prevailing environmental planning instruments, the restrictions serve to prohibit a 'group home' development, even though such developments are not prohibited under the current and proposed land use zones for the site.

### 1.2 Purpose

This Report has been prepared by CPS on behalf of the State Property Authority to request that the Section 88B restrictions on the use of the land in Deposited Plan 1120559 and 1120034 be modified to facilitative the redevelopment of the subject site for the intended group home development.

This Report also provides sufficient evidence to support modification of the restrictions and determines that the subject site is suitable for the intended development of a Group Home for Ageing, Disability and Home Care (ADHC), Department of Human Services.

## 2 Site Analysis

### 2.1 Site Description

Site address: 32 Kellehers Road, Pottsville NSW 2489

Legal description: Lot 272 in Deposited Plan 1120559

Site dimensions: 19.97m frontage to 32 Kellehers Road, average site depth of 47.76m (Deposited Plan 1120559)

Site area: 939.7m<sup>2</sup> (Deposited Plan 1120559)



Figure 1 - Location map  
Source: <http://maps.google.com.au>

- Site improvements:** The subject site is currently a vacant allotment with nil building improvements. A timber paling fence extends along the side and rear boundaries to an approximate height of 1800mm. No front fence is present.
- Vegetation:** The subject site is currently a vacant allotment, with the only form of vegetation present being patchy grass.
- Site gradient:** The Site Survey indicated subject site is relatively flat, with only a slight fall from the northern boundary to the south-western corner of the site of 0.53m.



Photograph 1 – View of site from Kellehers Road  
Source: CPS – February 2010



Photograph 2 – View from middle of lot  
Source: CPS – February 2010



Photograph 3 – Site frontage, looking south  
Source: CPS – February 2010



Photograph 4 – Site frontage, looking north  
Source: CPS – February 2010

## 2.2 Adjoining Development

Address	Site improvements	Ownership
30 Kellehers Road, Pottsville	 <p data-bbox="655 734 1098 786">Photograph 5 – 30 Kellehers Road, Pottsville Source: CPS – February 2010</p>	Private
34 Kellehers Road, Pottsville	 <p data-bbox="655 1142 1098 1193">Photograph 6 – 34 Kellehers Road, Pottsville Source: CPS – February 2010</p>	Private
134 Overall Drive, Pottsville	 <p data-bbox="663 1561 1090 1612">Photograph 7 – 134 Overall Drive, Pottsville Source: <a href="http://maps.google.com.au">http://maps.google.com.au</a></p>	Private
136 Overall Drive, Pottsville	 <p data-bbox="663 1980 1090 2031">Photograph 8 – 136 Overall Drive, Pottsville Source: <a href="http://maps.google.com.au">http://maps.google.com.au</a></p>	Private

Address	Site improvements	Ownership
138 Overall Drive, Pottsville		Private
<p>Photograph 9 – 138 Overall Drive, Pottsville Source: <a href="http://maps.google.com.au">http://maps.google.com.au</a></p>		

### 2.3 Local Context

- The surrounding area is characterised by a low-density detached dwelling houses on large sized lots ranging in size from approximately 700m<sup>2</sup> to 1250m<sup>2</sup>.
- On-street parking is available on either side of Kellehers Road.
- Pottsville Town Centre is located approximately 3.3km drive north of the subject site. The Route 603 bus operated by Surfside Buslines runs along Overall Drive and connects Pottsville with Kingscliff, Tweed City and Tweed Heads. The nearest bus stop for this service is located approximately 240m north of the subject site on Overall Drive.



Photograph 10 – Pottsville Town Centre  
Source: CPS – February 2010



Photograph 11 – Pottsville Town Centre  
Source: CPS – February 2010



### 3 Restrictions to be Modified

The subject site is burdened by a restriction on the use of the land, as identified in the Section 88B Instrument in Deposited Plan 1120559, and in Deposited Plan 1120034, that would currently prohibit the redevelopment of the subject site for the purposes of a 'group home' development. A copy of the Section 88B Instruments for both Deposited Plans is provided in Appendix 7.2.

The Section 88B Restriction numbered Thirteenthly-2(a) in DP 1120559 and numbered Eleventhly-3(a) in DP 1120034 states:

*'On every lot except those lots marked "Duplex" on the Plan of Subdivision no main building shall be used for any purpose other than as a single dwelling house lot'*

The intended development on the subject site is for a 'group home' and not a 'single dwelling house'. As these developments are separately defined under the prevailing environmental planning instruments, this restriction on the use of the land currently prohibits a 'group home' development, even though such developments are not prohibited under the current and proposed land use zones for the site.

As identified in both Section 88B Instruments, the name of the person or authority empowered with the ability to vary or modify the terms of restrictions identified Thirteenthly in Deposited Plan 1120559 and Eleventhly in Deposited Plan 1120034 is Tweed Shire Council. To facilitate redevelopment of the subject site for the intended group home development, it is requested that the subject restrictions for be modified to read as follows:

*'On every lot except those lots marked "Duplex" on the Plan of Subdivision no main building shall be used for any purpose other than as a single dwelling house lot or a group home lot'*

To support the suitability of this modification to allow a group home development on the subject site, the following information in Section 4 and 5 of this Report is provided

## 4 Statutory Planning Considerations

### 4.1 Local Environmental Plan/Zoning

The applicable LEP is the Tweed Local Environmental Plan 2000 (TLEP2000). The land is zoned 2(a) Low Density Residential under the provisions of the TLEP2000. Permanent and transitional group home developments are not identified as prohibited development pursuant to the provisions of Clause 11 of the TLEP2000.

Additionally, the subject site is land which is considered to be classified as a prescribed zone under Clause 42(b) of State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP). Development for the purposes of specified group home developments can be undertaken by, or on behalf of, public authorities pursuant to this SEPP.

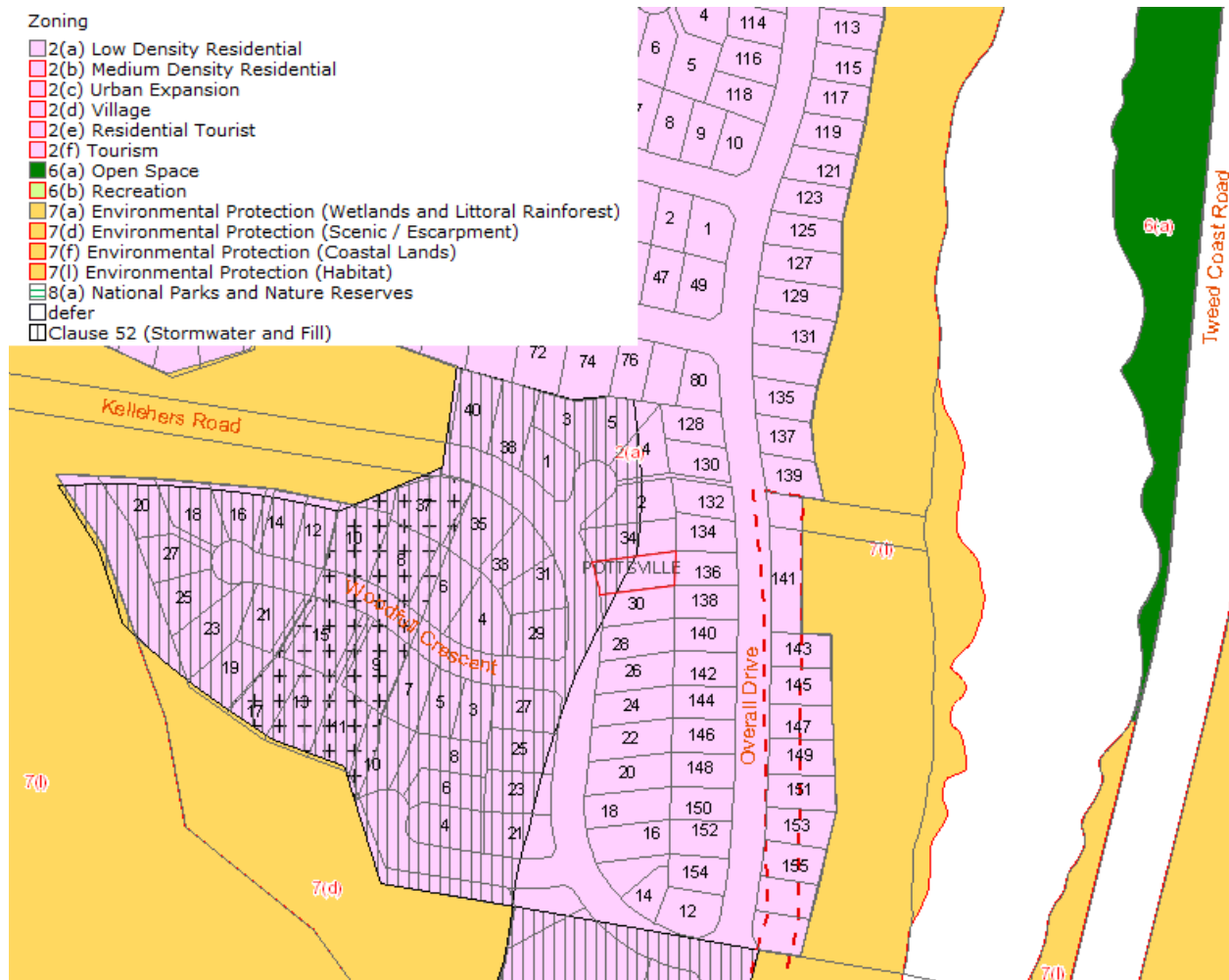


Figure 2 – TLEP2000 Zone map extract  
Source: <http://www.tweed.nsw.gov.au>

Tweed Shire Council is currently exhibiting its Draft Tweed Local Environmental Plan 2010 (DTLEP2010), which also needs to be taken into consideration when planning to develop in the Tweed LGA. The land is zoned R2 Low Density Residential under the DTLEP2010. 'Group homes' are identified as development 'permitted with consent' under the provisions of the Land Use Table within the DTLEP2010.

Further, the subject and is classified as a prescribed zone under Clause 42(b) of the ARH SEPP.



Figure 3 – DTLEP2010 Zone map extract  
Source: <http://www.tweed.nsw.gov.au>

## 4.2 Zone objectives

The objectives of the 2(a) Low Density Residential zone under the TLEP2000 are:

### Primary objectives

- to provide for and maintain a low density residential environment with a predominantly detached housing character and amenity.

### Secondary objectives

- to allow some diversity of housing types provided it achieves good urban design outcomes and the density, scale and height is compatible with the primary objective.

- to allow for non-residential development that is domestically based, or services the local needs of the community, and does not detract from the primary objective of the zone.

The objectives of the R2 Low Density Residential zone under the DTLEP2010 are:

- To provide for the housing needs of the community within a low density residential environment
- To enable other land uses that provide facilities or services to meet the day to day needs of residents

**Comment: The intended group home development on the subject site is considered to be consistent with the objectives of the zone in that it will maintain the existing low density residential character of the area and contribute to a diversity of housing type in the local area. In addition the provision of a group home will help demand in the local community for accommodation of ADHC tenants.**

Please refer to Appendix 7.3 for a list of permissible and prohibited development in the above zones.

#### 4.3 State Environmental Planning Policy (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable rental Housing) 2009 allows for permanent and transitional group homes to be undertaken without consent as per clause 43 'Development within prescribed zones'.

This clause states that:

*Development for the purpose of a group home on land in a prescribed zone may be carried out: without consent if the development does not result in more than 10 bedrooms being within one or more group homes on a site and the development is carried out by or on behalf of a public authority; or with consent in any other case.*

**Comment: Should the final group home design result in less than 10 dwellings on the subject site, the proposal can be undertaken without consent, subject to the provisions of clause 43 of the ARH SEPP.**

## 5 Additional Supporting Information

### 5.1 Group home design

A key component in the design and construction of ADHC group home developments is to ensure compatibility with the surrounding residential character of neighbourhoods is achieved. Group homes are single storey in height and designed to take the form of a typical 'dwelling house' type building ensuring each development presents as a single entity to the street, enables passive supervision of the dwelling entry, provides for good private and communal open space areas and provides opportunities to create a sense of community for the residents.

Should redevelopment of the subject site for the purposes of a group home development take place, ADHC will be required to supply Tweed Shire Council with notification of the intended development, including proposed plans, and give Council the opportunity to make submission on any aspects of the intended development for consideration.

### 5.2 Impact on the Natural Environment

The modification of the specified restriction to permit the intended group home will allow for a development that utilises an existing allotment which is provided with existing infrastructure and utility services. Stormwater will be managed on site and to Council's drainage system. The subject site is a vacant allotment with no vegetation.

Accordingly, the intended group home is unlikely to have any significant impact on the natural environment.

### 5.3 Impact on the Built Environment

The modification of the specified restriction will allow for a group home development that will set a positive precedent to the streetscape character of the local neighbourhood. As indicated, standard group home designs are of single storey in height and do not exhibit any undesirable impacts in terms of overlooking, or visual / acoustic intrusion.

Accordingly the intended group home is unlikely to have any significant impact on the built environment.

### 5.4 Social Impacts

No adverse social impacts are anticipated as a result of the proposed development. The intended group home development will provide an essential service to the Pottsville and Tweed Shire region that is currently experiencing demand for group home type housing.

In this regard, the proposal is considered to contribute to a positive social impact on the surrounding locality by providing accommodation for people that require full time care.

## 5.5 Economic Impacts

No adverse economic impacts are likely to result from the intended group home development. The proposal will contribute to positive economic outcomes by providing short term construction employment, long term operational employment, and long term multiplier effects to local retail and business operators.

Accordingly, it is considered no substantial negative economic impacts will occur to the locality.

## 5.6 Suitability of the site for the development

The proposed development makes use of existing land resources and utility infrastructure. The site is located in a residential locality and maintains a suitable scale. Site characteristics (topography and location) ensure that any adverse impacts can be minimised and controlled.

Accordingly it is considered that the subject site is suitable for the proposed group home development.

## 5.7 Public Interest

The intended group home development provides the local area with new full time care accommodation on a site that has been assessed and is considered inherently suitable for such use. As ADHC is currently experiencing demand for such housing in the region, it is considered that modification of the restriction that currently prohibits the use of the site as a group home is in the public interest.

## 6 Conclusion

The intended group home development has been assessed against the provisions of Tweed Shire Council's current and draft local environmental plans. On balance, it is concluded the intended group home development is appropriate for the subject site given:

- The intended group home is permissible under the prevailing land use zone.
- The intended group home is consistent with the relevant objectives and controls of Tweed Local Environmental Plan 2000;
- No unreasonable external impacts will result from the intended group home. The design and siting of the intended group home will ensure that potential impacts are minimised;
- The proposal will help to provide an essential service to the Pottsville and Tweed Shire region that is currently experiencing demand for group home type housing;
- It is considered there are no matters that warrant refusal of the restriction modification on the grounds of it being contrary to the public interest; and
- The proposal will provide short-term economic benefits to the local community and wider region.

As such, the restriction modification is considered appropriate and will positively contribute to the required supply of housing for people that require full time care in the Tweed Shire region, as well as the help economic and employment viability of the local area. Accordingly, it is recommended that Tweed Shire Council support and approves the modification to the restrictions on the use of the land as detailed in Section 3 of this Report.

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## 7 Appendices

### 7.1 Section 149 Planning Certificate



# Planning Certificate under Section 149



**TWEED**  
SHIRE COUNCIL

*Environmental Planning and Assessment Act, 1979*

Customer Service | 1300 292 872 | (02) 6670 2400

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www.tweed.nsw.gov.au

Fax (02) 6670 2429  
PO Box 816  
Murwillumbah NSW 2484

Land No. 74195

ABN: 90 178 732 496

**Applicant:** Hwl Ebsworth Lawyers  
Lvl 14, Australia Square  
264 George Street  
SYDNEY NSW 2001

**Certificate No:** 149C09/3778  
**Date of Issue:** 08/12/2009  
**Receipt No:** 428952  
**Fee Paid:** \$142.00

**Your Reference:** 0001871184

**Property Description:** Lot 272 DP 1120559, No. 32 Kellehers Road Pottsville

*In accordance with the requirements of section 149 of the Environmental Planning and Assessment Act 1979 (as amended), the following prescribed matters relate to the land at the date of this certificate.*

## ITEM 1

### Names of relevant planning instruments and DCPs

- |     |  |
|-----|--|
| (1) | <i>The name of each environmental planning instrument that applies to the carrying out of development on the land.</i>   |
| (2) | <i>The name of each proposed environmental planning instrument that will apply to the carrying out of development on the land and that is or has been the subject of community consultation or on public exhibition under the Act (unless the Director-General has notified the council that the making of the proposed instrument has been deferred indefinitely or has not been approved).</i> |
| (3) | <i>The name of each development control plan that applies to the carrying out of development on the land.</i>  |
| (4) | <i>In this clause, proposed environmental planning instrument includes a planning proposal for a LEP or a draft environmental planning instrument.</i>   |

#### Item 1(1)

The following local environmental planning instrument applies to the carrying out of development on the land:

Tweed Local Environmental Plan 2000 (TLEP2000)

The following State environmental planning policies (SEPPs) apply to the carrying out of development on the land.

State Environmental Planning Policy (Affordable Rental Housing) 2009

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

State Environmental Planning Policy (Major Development) 2005

State Environmental Planning Policy (North Coast Regional Environmental Plan) 1988

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State Environmental Planning Policy (Rural Lands) 2008

State Environmental Planning Policy No. 1 - Development Standards

State Environmental Planning Policy No. 4 - Development Without Consent and Miscellaneous Exempt and Complying Development (Amendment No. 7)

State Environmental Planning Policy No. 6 - Number of Storeys in a Building

State Environmental Planning Policy No. 15 - Rural Landsharing Communities

State Environmental Planning Policy No. 21 - Caravan Parks

State Environmental Planning Policy No. 22 - Shops and Commercial Premises

State Environmental Planning Policy No. 30 - Intensive Agriculture

State Environmental Planning Policy No. 32 - Urban Consolidation (Redevelopment of Urban Land)

State Environmental Planning Policy No. 33 - Hazardous and Offensive Development

State Environmental Planning Policy No. 36 - Manufactured Homes Estate

State Environmental Planning Policy No. 44 - Koala Habitat Protection

State Environmental Planning Policy No. 50 - Canal Estate Development

State Environmental Planning Policy No. 55 - Remediation of Land

State Environmental Planning Policy No. 62 - Sustainable Aquaculture

State Environmental Planning Policy No. 64 - Advertising and Signage

State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development

State Environmental Planning Policy No. 71 - Coastal Protection

State Environmental Planning Policy (Infrastructure) 2007

State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

State Environmental Planning Policy (Temporary Structures) 2007

**Item 1(2)**

**The following draft local environmental plan(s) and draft planning proposal(s) have been placed on public exhibition and apply to the carrying out of development on the land:**

Draft Local Environmental Plan Amendment No 20 - Kings Forest / Shirewide

Draft Local Environmental Plan Amendment No 21 - Tweed Vegetation Management Plan

Draft Local Environmental Plan Amendment No 70 - DCP 40 Exempt & Complying Development - Date Change

Draft Local Environmental Plan Amendment No 76 - Tweed Shire Community Based Heritage Study

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**Item 1(3)**

The following development control plan(s) that have been prepared apply to the carrying out of development on the land:

Section A1 - Residential and Tourist Development Code

Section A2 - Site Access and Parking Code

Section A3 - Development of Flood Liable Land

Section A4 - Advertising Signs Code

Section A5 - Subdivision Manual

Section A6 - Biting Midge and Mosquito Control

Section A7 - Child Care Centres

Section A8 - Brothels Policy

Section A9 - Energy Smart Homes Policy

Section A10 - Exempt and Complying Development

Section A11 - Public Notification of Development Proposals

Section A13 - Socio Economic Impact Assessment

**ITEM 2**

**Zone and land use under relevant LEPs**

*For each environmental planning instrument or proposed instrument referred to in clause 1 (other than a SEPP or proposed SEPP) that includes the land in any zone (however described):*

- (a) the identity of the zone, whether by reference to a name (such as "Residential Zone" or "Heritage Area") or by reference to a number (such as "Zone No 2 (a)"),*
- (b) the purposes for which the instrument provides that development may be carried out within the zone without the need for development consent,*
- (c) the purposes for which the instrument provides that development may not be carried out within the zone except with development consent,*
- (d) the purposes for which the instrument provides that development is prohibited within the zone,*
- (e) whether any development standards applying to the land fix minimum land dimensions for the erection of a dwelling-house on the land and, if so, the minimum land dimensions so fixed,*
- (f) whether the land includes or comprises critical habitat,*
- (g) whether the land is in a conservation area (however described),*
- (h) whether an item of environmental heritage (however described) is situated on the land.*

**Item 2(a-d)**

The subject land is within the following zone(s) and is affected by the following landuse table:

**Zone 2 (a) Low Density Residential**

**Zone objectives**

**Primary objectives**

In the case of land within Zone 2 (a) between the Tweed Heads Bypass and Cobaki Bridge:

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- \* to minimise the number of dwellings subject to unacceptable aircraft noise and to limit development within the Kennedy Drive traffic catchment so that development is compatible with Kennedy Drive traffic capacity.

In the case of all other land within Zone 2 (a):

- \* to provide for and maintain a low density residential environment with a predominantly detached housing character and amenity.

#### Secondary objectives

- \* to allow some diversity of housing types provided it achieves good urban design outcomes and the density, scale and height is compatible with the primary objective.
- \* to allow for non-residential development that is domestically based, or services the local needs of the community, and does not detract from the primary objective of the zone.

#### Development within the zone

In Zone 2 (a) development for the purpose of the following is:

##### Item 1 allowed without consent:

- \* environmental facilities

##### Item 2 allowed only with consent:

- \* bed and breakfast
- \* dwelling houses if each is on an allotment of at least 450m<sup>2</sup>
- \* (b) one dwelling per 250m<sup>2</sup> of site area where the site is within 300 metres distance of a business centre listed in Schedule 8
- \* utility installations except gas holders or generating works
- \* any other buildings, works, places or land uses not included in Item 1, 3 or 4

##### Item 3 allowed only with consent and must satisfy the provisions of clause 8 (2):

- |                         |  |
|-------------------------|--|
| * boarding-houses       | * boat repair and servicing facilities |
| * Boating facilities    | * clubs                                |
| * cruise craft docks    | * helipads                             |
| * Hotels                | * marinas                              |
| * recreation facilities | * training facilities                  |

##### Item 4 prohibited

- |                                     |   |
|-------------------------------------|---|
| * Abattoirs                         | * agriculture                                       |
| * airline terminals                 | * animal establishments                             |
| * boat showrooms                    | * brothels  |
| * bulk stores                       | * bulky goods retailing                             |
| * camping grounds                   | * car repair stations                               |
| * caravan parks                     | * commercial premises                               |
| * Depots                            | * display homes if adjoining an RTA classified road |
| * extractive industries             | * forestry  |
| * Heliports                         | * industries (other than home industries)           |
| * Institutions                      | * integrated housing not included in Item 2         |
| * Junkyards                         | * light industries                                  |
| * liquid fuel depots                | * markets   |
| * Mines                             | * motels  |
| * motor showrooms                   | * multi-dwelling housing                            |
| * offensive or hazardous industries | * outdoor eating areas                              |

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* recreation establishments	* recreation vehicle areas
* refreshment rooms	* restricted premises
* retail plant nurseries	* road transport terminals
* roadside stalls	* rural industries
* rural tourist facilities	* rural workers' dwellings
* Sawmills	* service stations
* shops (other than general stores)	* stock and sale yards
* storage units	* tourist accommodation
* tourist facilities	* tourist resorts
* transport terminals	* utility installations being gas holders or generating works
* Warehouses	

**[End of Zone 2(a) Table]**

**Item 2(e) - Minimum Standards for the Erection of a Dwelling-House:**

See land use table listed in Items 2(a-d) above. If minimum standard not specified, no development standard applies.

**Item 2(f) - Critical Habitat:**

The subject land is not identified as including or comprising critical habitat as prescribed in the Threatened Species Conservation Act 1995 or (subject to section 5c) Part 7A of the Fisheries Management Act 1994.

**Item 2(g) - Conservation Area:**

The subject land is not within a conservation area identified within the Tweed Local Environmental Plan 2000.

**Item 2(h) - Item of Environmental Heritage:**

The subject land does not contain nor constitute an item of environmental heritage as listed in Schedule 2 of the Tweed Local Environmental Plan 2000.

**Other Clauses under Tweed Local Environmental Plan 2000**

**Clause 52 (Stormwater & Fill)**

The subject land is affected by Clause 52 of Tweed Local Environmental Plan 2000 - Stormwater & Fill

- (1) Objective
  - to apply special provisions relating principally to environmental protection within particular areas shown on the zone map.
- (2) In relation to land shown on the zone map in the manner indicated in Column 1 of the following Table, the provisions specified opposite in Column 2 apply.

**Table**

<b>Column 1 Shown on the zone map by:</b>	<b>Column 2 Applicable provisions</b>
	Consent must not be granted to development unless the consent authority and the applicant have considered detailed plans of the development and for management of its consequences and made an assessment of the following matters:

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	<p>(a) the adequacy of proposed measures in a stormwater management plan for the purpose of maintaining or improving the quality of water leaving the site in both surface and ground waters, including measures to control soil erosion, sediment and stormwater run off, and release of ground water or surface water containing high acidity, nutrients or pollutants, resulting from disturbance and development of the site.</p> <p>(b) where the development proposes the filling of land:</p> <p>(i) whether or not the filling of land would increase the risk or severity of flooding of other land in the vicinity, and</p> <p>(ii) the potential impact of the filling of land on groundwater quality, and</p> <p>(iii) the likely impact of increased flooding on adjacent flora and fauna habitat, and</p> <p>(iv) the quality, volume and source of any fill material and the likely impact associated with the sourcing and transportation of fill material, and</p> <p>(v) the adequacy of the location and the justification of the design of environmental buffers between filled areas and environmentally sensitive land such as riparian areas, wetlands and waterways,</p> <p>(c) the adequacy of proposed drainage systems, particularly in respect of the Council's goal that post-development drainage should mimic natural (predevelopment) flows by utilising such techniques as reuse, detention, retention and infiltration,</p> <p>(d) the extent to which stormwater management and control is consistent with the Tweed Urban Stormwater Management Plan.</p>
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### ITEM 3

#### Complying Development

- (1) *Whether or not the land is land on which complying development may be carried out under each of the codes for complying development in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.*
- (2) *If complying development may not be carried out on that land because of one or more of the requirements under clause 1.19 of that Policy, why it may not be carried out.*

#### General Housing Code

No. Complying Development under the General Housing Code may not be carried out on this land. The land is excluded land being land identified by an environmental planning instrument as being:

a flood control lot

#### Housing Internal Alterations Code

Yes. Complying Development under the Housing Internal Alterations Code may be carried out on this land subject to an assessment of compliance with the requirements of the SEPP.

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### General Commercial and Industrial Code

Yes. Complying Development under the General Commercial and Industrial Code may be carried out on this land subject to an assessment of compliance with the requirements of the SEPP.

#### ITEM 4

##### Coastal Protection:

*Whether or not the land is affected by the operation of section 38 or 39 of the Coastal Protection Act 1979, but only to the extent that the council has been so notified by the Department of Public Works.*

The Council has not been notified by the Department of Public Works that the land is affected by the operation of sections 38 or 39 of the Coastal Protection Act 1979.

#### ITEM 5

##### Mine Subsidence:

*Whether or not the land is proclaimed to be a mine subsidence district within the meaning of section 15 of the Mine Subsidence Compensation Act 1961.*

No.

#### ITEM 6

##### Road Widening/Road Realignment:

*Whether or not the land is affected by any road widening or road realignment under:*

- (a) *Division 2 of Part 3 of the Roads Act 1993, or*
- (b) *any environmental planning instrument, or*
- (c) *any resolution of the council.*

##### Item 6(a-c)

The subject land is not affected by any road widening or realignment proposal under either Division 2 or Part 3 of the Roads Act, 1993, any environmental planning instrument or any resolution of the Council.

#### ITEM 7

*Whether or not the land is affected by a policy:*

- (a) *adopted by the council, or*
- (b) *adopted by any other public authority and notified to the council for the express purpose of its adoption by that authority being referred to in planning certificates issued by the council,*

*that restricts the development of the land because of the likelihood of land slip, bushfire, tidal inundation, subsidence, acid sulphate soils or any other risk (other than flooding).*

##### Item 7(a-b)

##### Land Slip:

The council has not adopted a policy to restrict development of the subject land because of the likelihood of land slip. Geotechnical investigations may be required prior to development of some sites, depending upon the characteristics of the site and the nature of development proposed.

Certificate No: 149C09/3778  
Date: 08/12/2009



#### Bushfire:

The Council has not adopted a policy to restrict development of the subject land because of the likelihood of bushfire hazard.

#### Tidal Inundation:

Council has no records that indicate that the land is affected by tidal inundation. Accordingly, the Council has not adopted a policy to restrict development of the land in respect of tidal inundation.

#### Subsidence:

Council records do not indicate that the land is affected by subsidence. Accordingly, the Council has not adopted a policy to restrict development of the land in respect to subsidence.

#### Acid Sulfate Soils:

The subject land is identified as Class 3 on Councils "Acid Sulfate Soil Planning Map". Refer to Clause 35 of Tweed Local Environmental Plan 2000 regarding implications of this classification on developing the land.

The subject land is identified as Class 5 on Councils "Acid Sulfate Soil Planning Map". Refer to Clause 35 of Tweed Local Environmental Plan 2000 regarding implications of this classification on developing the land.

#### Any Other Risk:

Council has adopted a policy to restrict development of the subject land due to the following other identified risk: -

- **Cattle Tick Dip Sites:**

Council records do not indicate that the land is or has been used as a Cattle Tick Dip Site. Accordingly, no policy has been adopted to restrict development of the land in respect to cattle tick dip sites.

- **Contamination:**

Council has not by resolution, adopted a policy which may restrict development of the subject land in respect of potential contamination of that land.

Due to the historical nature of land uses in the Tweed Shire, there is a possibility that land previously used for such purposes as agriculture, industrial, residential, commercial or similar uses would contain contamination. Enquiries should be made at the Council for any information held in their files and enquiries should also be made with all other relevant authorities. Tweed Shire Council has not yet prepared any detailed information as to whether this land is contaminated land.

## ITEM 7A

### Flood related development controls information

- |                                  |  |
|----------------------------------|--|
| <p>(1)</p> <p>(2)</p> <p>(3)</p> | <p><i>Whether or not development on that land or part of the land for the purposes of dwelling houses, dual occupancies, multi dwelling housing or residential flat buildings (not including development for the purposes of group homes or seniors housing) is subject to flood related development controls.</i></p> <p><i>Whether or not development on that land or part of the land for any other purpose is subject to flood related development controls.</i></p> <p><i>Words and expressions in this clause have the same meanings as in the instrument set out in the Schedule to the Standard Instrument (Local Environmental Plans) Order 2006.</i></p> |
|----------------------------------|--|



Certificate No: 149C09/3778  
Date: 08/12/2009



### Item 7A(1-3)

- (1) Council is aware that the land is in an area, which may be susceptible to flooding. Consequently Council has adopted Development Control Plan A3 – Development of Flood Liable Land, which establishes minimum fill and/or floor levels for development. In this area Council adopted a design flood level of RL 3m AHD and requires new residential dwellings to be constructed with a minimum floor level of RL 3.3m AHD. Council also has an adopted policy for extensions to existing residential dwellings below the adopted design floor level.

#### **Floodplain Risk Management Study**

Council has adopted the Tweed Valley Floodplain Risk Management Study (and Draft Plan) 2005 - Part 2 Planning Controls for High Flow Areas dated August 2006. The subject land is not affected by this Policy.

- (2) Council is aware that the land is in an area which may be susceptible to flooding. Consequently Council has adopted Development Control Plan A3 – Development of Flood Liable Land, which establishes minimum standards for development not referred to in (1)

### **ITEM 8**

#### **Land Reserved for Acquisition:**

*Whether or not any environmental planning instrument or proposed environmental planning instrument, referred to in clause 1 makes provision in relation to the acquisition of the land by a public authority, as referred to in section 27 of the Act.*

The subject land is not identified as being subject to acquisition by a public authority (as referred to in section 27 of the EP&A Act 1979) under the provisions of any environmental planning instrument deemed or draft environmental planning instrument.

### **ITEM 9**

#### **Contributions Plans:**

*The name of each contributions plan applying to the land.*

The following contributions plan(s) apply (or may apply depending upon proposed future development) to the subject land:

Section 94 Plan No 4 - Tweed Road Contribution Plan

Section 94 Plan No 5 - Open Space Contributions

Section 94 Plan No 11 - Tweed Shire Library Facilities

Section 94 Plan No 12 - Bus Shelters

Section 94 Plan No 13 - Eviron Cemetery

Section 94 Plan No 15 - Developer Contributions for Community Facilities

Section 94 Plan No 16 - Emergency Facilities (Surf Lifesaving)

Section 94 Plan No 18 - Council Administration Offices and Technical Support Facilities

Section 94 Plan No 22 - Cycleways

Section 94 Plan No 26 - Shirewide/Regional Open Space

Certificate No: 149C09/3778  
Date: 08/12/2009



## ITEM 10

### REPEALED

## ITEM 11

### Bush Fire Prone Land

*If any of the land is bush fire prone land (as defined in the Act), a statement that all or, as the case may be, some of the land is bush fire prone land.*

*If none of the land is bush fire prone land, a statement to that effect.*

The subject land is not identified as bush fire prone land in accordance with the Bush Fire Prone Land map certified in accordance with Section 146(2) of the Environmental Planning and Assessment Act, 1979, as amended.

## ITEM 12

### Property Vegetation Plans

*If the land is land to which a property vegetation plan under the Native Vegetation Act 2003 applies, a statement to that effect (but only if the council has been notified of the existence of the plan by the person or body that approved the plan under that Act).*

The subject land is not affected by a Property Vegetation Plan under the Native Vegetation Act 2003.

## ITEM 13

### Orders under Trees (Disputes between Neighbours) Act 2006

*Whether an order has been made under the Trees (Disputes Between Neighbours) Act 2006 to carry out work in relation to a tree on the land (but only if the council has been notified of the order).*

Council has not been notified of any Order made under the Trees (Disputes between Neighbours) Act 2006 to carry out work in relation to a tree on the land.

## ITEM 14

### Directions under Part 3A

*If there is a direction by the Minister in force under section 75P (2) (c1) of the Act that a provision of an environmental planning instrument prohibiting or restricting the carrying out of a project or a stage of a project on the land under Part 4 of the Act does not have effect, a statement to that effect identifying the provision that does not have effect.*

There are no Directions under Part 3A affecting this land.

## ITEM 15

### Site compatibility certificate and conditions affecting seniors housing

*If the land is land to which State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 applies:*

- (a) a statement of whether there is a current site compatibility certificate (seniors housing), of which the council is aware, in respect of proposed development on the land and, if there is a certificate, the statement is to include:
  - (i) the period for which the certificate is current, and
  - (ii) that a copy may be obtained from the head office of the Department of Planning, and
- (b) a statement setting out any terms of a kind referred to in clause 18 (2) of that Policy that have been imposed as a condition of consent to a development application granted after 11 October 2007 in respect of the land.

There are no site compatibility certificates and conditions affecting seniors housing on the land.

Certificate No: 149C09/3778  
Date: 08/12/2009



## ITEM 16

### Site compatibility Certificate for Infrastructure

A statement of whether there is a valid site compatibility certificate (infrastructure), of which the council is aware, in respect of proposed development on the land and, if there is a certificate, the statement is to include:

- (a) the period for which the certificate is valid, and
- (b) that a copy may be obtained from the head office of the Department of Planning

There are no site compatibility certificates for infrastructure on the land.

## ITEM 17

### Site compatibility certificates and conditions for affordable rental housing

- (1) A statement of whether there is a current site compatibility certificate (affordable rental housing), of which the council is aware, in respect of proposed development on the land and, if there is a certificate, the statement is to include:
  - (a) the period for which the certificate is current, and
  - (b) that a copy may be obtained from the head office of the Department of Planning.
- (2) A statement setting out any terms of a kind referred to in clause 17 (1) or 38 (1) of *State Environmental Planning Policy (Affordable Rental Housing) 2009* that have been imposed as a condition of consent to a development application in respect of the land.

There are no site compatibility certificates and conditions for affordable rental housing on the land.

### Prescribed matters in accordance with the Contaminated Land Management Act 1997

The following matters are prescribed by section 59(2) of the Contaminated Land Management Act 1997 as additional matters to be specified in a planning certificate:

- (a) that the land to which the certificate relates is significantly contaminated land within the meaning of that Act – if the land (or part of the land) is significantly contaminated land at the date when the certificate is issued,
- (b) that the land to which the certificate relates is subject to a management order within the meaning of that Act – if it is subject to such an order at the date when the certificate is issued,
- (c) that the land to which the certificate relates is the subject of an approved voluntary management proposal within the meaning of that Act – if it is the subject of such an approved proposal at the date when the certificate is issued,
- (d) that the land to which the certificate relates is subject to an ongoing maintenance order within the meaning of that Act – if it is subject to such an order at the date when the certificate is issued,
- (e) that the land to which the certificate relates is the subject of a site audit statement within the meaning of that Act – if a copy of such a statement has been provided at any time to the local authority issuing the certificate.

#### (a) Significantly Contaminated Land

As at the date of this certificate, Council has not been notified by the Environment Protection Authority (EPA) that the land is significantly contaminated land within the meaning of the Contaminated Land Management Act 1997.

#### (b) Management Order

As at the date of this certificate, Council has not been notified by the Environment Protection Authority (EPA) that the land is the subject of a management order within the meaning of the Contaminated Land Management Act 1997.

#### (c) Approved Voluntary Management Proposal

As at the date of this certificate, Council has not been notified by the Environment Protection Authority (EPA) that the land is the subject of an approved voluntary management proposal within the meaning of the Contaminated Land Management Act 1997.

Certificate No: 149C09/3778  
Date: 08/12/2009



**(d) Ongoing Maintenance Order**

As at the date of this certificate, Council has not been notified by the Environment Protection Authority (EPA) that the land is the subject of an approved voluntary management proposal within the meaning of the Contaminated Land Management Act 1997.

**(e) Site Audit Statement**

As at the date of this certificate, Council has not been notified that the land is the subject of a site audit statement within the meaning of Part 4 of the Contaminated Land Management Act 1997. Council has not been notified/provided with a copy of any site audit statement pertaining to the subject land.

**Additional Information under Section 149(2) as per Tweed Shire Council Resolutions**

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**Height under Tweed Local Environmental Plan 2000**

The land is restricted to a 2 Storey height limit under Tweed Local Environmental Plan 2000.

**Aircraft Noise**

The subject land is not affected by aircraft noise.

**Future Road Corridor**

The subject land is not identified as being subject to future road corridor as identified in Tweed Road Contribution Plan No. 4 (as referred to in Section 26 of the EP&A Act 1979).

**Future Road Widening**

The subject land is not identified as being subject to future road widening as identified in Tweed Road Contribution Plan No. 4 (as referred to in Section 26 of the EP&A Act 1979).

**Farmland Protection**

The land is identified as Committed Urban Uses and Rural Residential Zones (Farmland Protection Project) on the map referred to in Section 117(2) Direction No. 14 dated 30 September 2005.

Certificate No: 149C09/3778  
Date: 08/12/2009



**Additional Information Pursuant to Section 149(5) of the Environmental Planning and Assessment Act, 1979**

---

**Development Approvals**

No development consents have been issued within the last five (5) years.

**Draft Environmental Planning Instruments**

Council has resolved to prepare Draft Local Environmental Plan Amendment No. 74 (Restoration of Lost Dwelling Entitlement) relating to the subject land.

Council has resolved to prepare Draft Local Environmental Plan Amendment No. 80 (Clause 58 in Schedule 5) relating to the subject land.

**Tree Preservation Orders**

The subject land is not affected by Council's Tree Preservation Orders.

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**NOTE:** *The information contained in this certificate needs to be read in conjunction with the provisions of the Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulation 2000.*

*Information provided under Section 149(2) is in accordance with the matters prescribed under Schedule 4 of the Environmental Planning and Assessment Regulation 2000.*

*When information pursuant to Section 149(5) is requested, the Council is under no obligation to furnish any particular information pursuant to that Section. The absence of any reference to any matters affecting the land shall not imply that the land is not affected by any matter not referred to in this Certificate.*

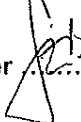
*Council draws your attention to Section 149(6) which states that a Council shall not incur any liability in respect of any advice provided in good faith pursuant to subsection (5).*

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**Please contact the Development Assessment Unit for further information about any instruments or affectations referred to in the Certificate.**

---

**MIKE RAYNER  
GENERAL MANAGER**

Per  .....



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## 7.2 Certificate of Title and Section 88B Instrument – DP 1120559 and DP 1120034



LAND AND PROPERTY INFORMATION NEW SOUTH WALES - TITLE SEARCH

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FOLIO: 272/1120559

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SEARCH DATE	TIME	EDITION NO	DATE
-----	----	-----	----
2/12/2009	10:34 AM	2	11/6/2008

LAND

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LOT 272 IN DEPOSITED PLAN 1120559  
 AT POTTSVILLE  
 LOCAL GOVERNMENT AREA TWEED  
 PARISH OF MOOBALL COUNTY OF ROUS  
 TITLE DIAGRAM DP1120559

FIRST SCHEDULE

-----

CATHERINE GRAY COLLINS (T AE12430)

SECOND SCHEDULE (12 NOTIFICATIONS)

-----

- 1 LAND EXCLUDES MINERALS AND IS SUBJECT TO RESERVATIONS AND CONDITIONS IN FAVOUR OF THE CROWN - SEE CROWN GRANT(S)
- 2 DP1064717 EASEMENT TO DRAIN SEWAGE 3 METRE(S) WIDE AFFECTING THE PART(S) SHOWN SO BURDENED IN THE TITLE DIAGRAM
- 3 DP1120034 EASEMENT TO DRAIN WATER 3 METRE(S) WIDE APPURTENANT TO THE LAND ABOVE DESCRIBED
- 4 DP1120034 EASEMENT TO DRAIN WATER VARIABLE WIDTH APPURTENANT TO THE LAND ABOVE DESCRIBED
- 5 DP1120034 RESTRICTION(S) ON THE USE OF LAND REFERRED TO AND NUMBERED (10) IN THE S.88B INSTRUMENT
- 6 DP1120034 RESTRICTION(S) ON THE USE OF LAND REFERRED TO AND NUMBERED (11) IN THE S.88B INSTRUMENT
- 7 DP1120034 RESTRICTION(S) ON THE USE OF LAND REFERRED TO AND NUMBERED (12) IN THE S.88B INSTRUMENT
- 8 DP1120559 EASEMENT TO DRAIN WATER 3 METRE(S) WIDE APPURTENANT TO THE LAND ABOVE DESCRIBED
- 9 DP1120559 RESTRICTION(S) ON THE USE OF LAND REFERRED TO AND NUMBERED (12) IN THE S.88B INSTRUMENT
- 10 DP1120559 RESTRICTION(S) ON THE USE OF LAND REFERRED TO AND NUMBERED (13) IN THE S.88B INSTRUMENT
- 11 DP1120559 RESTRICTION(S) ON THE USE OF LAND REFERRED TO AND NUMBERED (14) IN THE S.88B INSTRUMENT
- 12 AE12431 MORTGAGE TO NATIONAL AUSTRALIA BANK LIMITED

NOTATIONS

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UNREGISTERED DEALINGS: NIL

\*\*\* END OF SEARCH \*\*\*

spa:syd-topalcikh 0188/19

PRINTED ON 2/12/2009

\* ANY ENTRIES PRECEDED BY AN ASTERISK DO NOT APPEAR ON THE CURRENT EDITION OF THE CERTIFICATE OF TITLE.  
 WARNING: THE INFORMATION APPEARING UNDER NOTATIONS HAS NOT BEEN FORMALLY RECORDED IN THE REGISTER.

# DP1120559

**Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.**

Lengths are in metres

(Sheet 1 of 13 Sheets)

Plan Subdivision of land covered by Tweed Shire Council Clerks Certificate No. *SCOT 10091*  
 Dated: *13 November 2007.*

**Full Name and address of the Owner of the Land:**

Black Rocks Estate Pty Ltd  
 ACN 000 614 399, Level 2,  
 27 Macquarie Place, Sydney  
 NSW 2000

## Part 1 (Creation)

Number of Item shown in intention panel on the plan	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcels(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
1	Right of Access & Easement for Services 4 Wide	281 282	282 281

Number of Item shown in intention panel on the plan	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcels(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
2	Easement to drain water 3.5 wide	265 267 268 285, 286	264 264, 265 264, 265, 267 Tweed Shire Council



# DP1120559

**Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.**

Lengths are in metres

(Sheet 2 of 13 Sheets)

Plan Subdivision of land covered by Tweed Shire Council Clerks Certificate No. 5007/0051

Dated: 13 November 2007.

Number of Item shown in intention panel on the plan	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcels(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
3	Easement to drain sewage 3.0 wide	266, 267, 275, 277 278, 279, 280, 283 284	Tweed Shire Council

Number of Item shown in intention panel on the plan	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcels(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
4	Easement to drain sewage 3.5 wide	264, 265, 267, 285, 286	Tweed Shire Council

Number of Item shown in intention panel on the plan	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcels(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
5	Easement to drain water 3.0 wide	267 268 269 270 271 275 284 285	264, 265, 266 264 to 267 264 to 268 271, 272 272 284, 285 285 Tweed Shire Council

# DP1120559

**Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.**

Lengths are in metres

(Sheet 3 of 13 Sheets)

Plan Subdivision of land covered by Tweed Shire Council Clerks Certificate No. *5007/0051*  
Dated: *13 November* 2007.

Number of Item shown in intention panel on the plan	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcels(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
6	Easement to drain water variable width	286	285, Tweed Shire Council

Number of Item shown in intention panel on the plan	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcels(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
7	Easement to drain Sewerage variable width	268, 269, 273, 274, 275, 276, 286	Tweed Shire Council

Number of Item shown in intention panel on the plan	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcels(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
8	Easement to Drain Water 5 wide	286	Tweed Shire Council



# DP1120559

**Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.**

Lengths are in metres

(Sheet 4 of 13 Sheets)

Plan Subdivision of land covered by Tweed Shire Council Clerks Certificate No. *5607/0051*

Dated: *13 November 2007.*

Number of Item shown in intention panel on the plan	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcels(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
9	Easement to Drain Sewage 5 wide	286	Tweed Shire Council

Number of Item shown in intention panel on the plan	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcels(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
10	Easement to Drain Water 3.25 wide	282, 286	Tweed Shire Council

Number of Item shown in intention panel on the plan	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcels(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
11	Easement to Drain Sewage 3.25 wide	282, 286	Tweed Shire Council



# DP1120559

**Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.**

Lengths are in metres

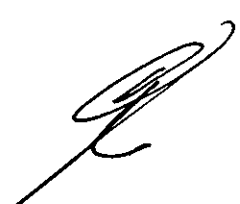
(Sheet 5 of 13 Sheets)

Plan Subdivision of land covered by Tweed Shire Council Clerks Certificate No. 5607/0051  
Dated: 13 November 2007.

Number of Item shown in intention panel on the plan	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcels(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
12	Restrictions on Use of Land	Each Lot	Every other lot

Number of Item shown in intention panel on the plan	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcels(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
13	Restrictions on Use of Land	Each Lot	Every other lot

Number of Item shown in intention panel on the plan	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcels(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
14	Restrictions on Use of Land	Each Lot	Every other lot



# DP1120559

**Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.**

Lengths are in metres

(Sheet 6 of 13 Sheets)

Plan Subdivision of land covered by Tweed Shire Council Clerks Certificate No. *SC07/0051*  
Dated: *13 November 2007.*

Number of Item shown in intention panel on the plan	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcels(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
15	Restrictions on Use of Land	264, 276, 281, 282	Tweed Shire Council

## Part 2 (Terms)

### 1. **Terms of Restrictions on User Twelfthly referred to in the abovementioned plan:**

- (a) Not more than one main building shall be erected or permitted to remain on any lot and the pitch of the roof on the main building shall not be less than 12.5 degrees and that such main building shall not be erected otherwise than with the new materials and shall have an overall minimum aggregate external floor area of not less than:
- (i) 165 square metres in the case of buildings erected on Lots 264 to 276 (inclusive).
  - (ii) 135 square metres per unit erected on Lots 264, 265 and 266 (inclusive).
  - (iii) 213.67 square metres (23 squares) in the case of the buildings erected on Lots 277 to 279 and not less than 260.12 square meters (28 squares) in the case of the buildings erected on Lots 280 to 285.



# DP1120559

**Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.**

Lengths are in metres

(Sheet 7 of 13 Sheets)

Plan Subdivision of land covered by Tweed Shire Council Clerks Certificate No. *SC07/0081*  
Dated: *13 November 2007.*

- (b) No garage, carport, shed or outbuilding shall be erected or permitted to remain on any lot hereby transferred except until after or concurrently with the erection of the main building therefore and shall be constructed of the same materials as those of the main building.
- (c) No external walls of any main building shall be erected of any material other than brick, stone, painted cement render, glass, timber or any combination thereof and no main building shall be constructed wholly or substantially from fibrolite or otherwise from pre-fabricated materials. Asbestos cement shall not be used in such external walls except as in-fill panels in conjunction with all or any of the above materials hereinbefore specified provided that the proportion of asbestos cement so used in relation to the external wall areas of any building shall not exceed 10% thereof for so long as Black Rocks Estate Pty Ltd is the registered proprietor of any land in the subdivision of which this lot forms part a main building may be erected on any lot with external walls of materials other than those mentioned above provided the plans for such building are submitted to Black Rocks Estate Pty Ltd and it endorses its consent in writing thereon.
- (d) No roof of any main building erected on any lot shall be constructed other than of tiles or non-reflective pre-painted steel (colour bond or the like) for so long as Black Rocks Estate Pty Ltd shall be the registered proprietor of any land in the subdivision of which the lot forms part a roof of any main building or structure may be constructed of corrugated tin or galvanised iron provided the consent in writing of Black Rocks Estate Pty Ltd is obtained before construction thereof.



# DP1120559

**Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.**

Lengths are in metres

(Sheet 8 of 13 Sheets)

Plan Subdivision of land covered by Tweed Shire Council Clerks Certificate No. 507/0051  
Dated: 13 November 2007.

- (e) (i) No truck, automobile, plant or machinery having a tare weight of 2 tonnes or more shall be placed or permitted to remain on any lot hereby transferred.
- (ii) No caravan, mobile home, tent or other moveable transportable dwelling shall be permitted to be parked on any lot for the purpose of occupation.
- (iii) No caravan or caravans shall be permitted to be parked or stored on any lot unless the main building on the lot has been completed and the said caravan is parked or stored behind the front building alignment of the main dwelling on the lot.
- (f) No external timber walls of any main building or structure erected on any one lot hereby transferred shall remain unpainted for a period longer than two months after the date of completion thereof provided that this restrictions shall not apply to timber which has been treated by oil.
- (g) No sanitary convenience erected or permitted to remain on the lot shall be detached or separated from any main building erected thereon.
- (h) No advertisement, board, sign, or similar construction shall be erected or permitted to remain on any lot excepting such as may relate solely to the selling of such lot and such permitted sign shall not exceed 1 metre by 1 metre in size. No such restriction shall apply to the display of a doctor's or dentist's nameplate or light.



# DP1120559

**Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.**

Lengths are in metres

(Sheet 9 of 13 Sheets)

Plan Subdivision of land covered by Tweed Shire Council Clerks Certificate No. *507/0051*  
Dated: *13 November* 2007.

- (i) No fence shall be erected on any lot without consent in writing from Black Rocks Estate Pty Ltd its successors or assigns is obtained beforehand and provided that such consent shall not be refused if such fence is erected without expense to Black Rocks Estate Pty Ltd its successors and assigns and provided that any fence shall be constructed of hardwood palings and shall be unpainted and treated in a natural timber colour having a height of 180 cm, or no fence other than hardwood paling fences, may be constructed of material other than solid brick, stone or similar matching materials to those used in the exterior walls of the main building or a combination of the said materials and spaced with wrought iron or timber picket and if any combination style fence is constructed of a pillar of brick or stone or similar material in support of each feature panel of wrought iron or timber picket with each pillar spaced no less than three (3) metres apart.
- (j) Subject to the following no fence shall be erected or permitted to remain on any lot closer to the front boundary than the external front wall on either side of any main building erected thereon without the written consent of Black Rocks Estate Pty Ltd provided that consent shall not be refused to erect on a front fence on a lot;
- (i) if the fence does not have a height more than 180 cm;
- (ii) if the fence is constructed of solid brick or of material other than solid brick, stone or similar matching materials to those used in the exterior walls of the main building or a combination of the said materials and spaced with wrought iron or timber picket;
- (iii) if that any combination style fence is constructed of a pillar of brick or stone or similar material in support of each feature panel of wrought iron or timber picket with each pillar spaced no less than three (3) metres apart;

Further no gate is to be constructed in such fence other than of solid timber, wrought iron or wrought iron look alike or a combination of solid timber, wrought iron or wrought iron look alike.





# DP1120559

**Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.**

Lengths are in metres

(Sheet 10 of 13 Sheets)

Plan Subdivision of land covered by Tweed Shire Council Clerks Certificate No. 5007/0051  
Dated: 13 November 2007.

- (k) No dairy brick, brickyard, tannery, poultry farm, piggery, kennels, quarry or any other noxious noise, some or offensive occupation trade or business shall be carried out on any lot.
- (l) No materials (except as required in the course of building) rubbish, old unused or out of working order plant, motor vehicles or machinery shall be kept or stored on any lot.
- (m) No grass and other vegetation growing upon the subject land shall be permitted to grow in a manner which is unsightly nor shall rubbish, refuse or garbage be allowed to accumulate on a lot except where that refuse or garbage is stored in sanitary container designed for that purpose.
- (n) No clothes line shall be erected or permitted to remain on any lot hereby transferred unless such clothes line shall be a retractable or folding type.
- (o) No fence shall be erected on any lot in association with the requirements of the Tweed Shire Council for the purpose of fencing any swimming pool other than a flat top aluminium powder coated safety pool fence or other fence approved by the Tweed Shire Council.

**2. Terms of Restrictions on Use Thirteenthly referred to in the abovementioned plan:**

- (a) On every lot except those lots marked "Duplex" on the Plan of Subdivision no main building shall be used for any purpose other than as a single dwelling house lot
- (b) No granny flat shall be constructed unless it is within the main building and provided the granny flat does not exceed 1/3 of the floor area of the main dwelling or have a gross floor area not exceeding 50 m<sup>2</sup>, whichever is the lesser.



# DP1120559

**Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.**

Lengths are in metres

(Sheet 11 of 13 Sheets)

Plan Subdivision of land covered by Tweed Shire Council Clerks Certificate No. *SC07/0051*  
Dated: *13 November 2007.*

**3. Terms of Restrictions on Use Fourteenthly referred to in the abovementioned plan:**

- (a) No animals, livestock or poultry of any kind shall be raised, bred or kept upon the said Lots burdened or part thereof, except dogs. Other household pets excluding cats may be kept provided these are not kept, bred or maintained for any commercial purpose and dogs shall be kept enclosed within the boundary of any Lot burdened. When outside the subject Lots, dogs shall be kept under control by way of a leash or other suitable method. Dogs of the breed of Alsatian, German Shepherd, Doberman, Rottweiler, Bull Terrier or Pit Bull Terrier or any part breed or combination of any of the said breed or breeds are not permitted to remain on any Lot burdened.

**4. Terms of Restrictions on Use Fifteenthly referred to in the abovementioned plan:**

- (a) No fence dividing the Lot burdened from the koala habitat shall be maintained unless it complies with the following criteria:-
- (i) The height shall be 150 cm in height;
  - (ii) It must be supported by 32NB galvanised iron posts spaced 4 lineal metres apart;
  - (iii) From the ground level there must be a 70 cm high strip of unpainted flat zinc sheeting;
  - (iv) Immediately adjacent to the metal strip referred to in the preceding subparagraph, there must be uncoated galvanised chain wire to the full height of 150 cm;
  - (v) The fence must be vertical for its entire height without an angled section at the top;



# DP1120559

**Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.**

Lengths are in metres

(Sheet 12 of 13 Sheets)

Plan Subdivision of land covered by Tweed Shire Council Clerks Certificate No. *SC07(0051)*  
Dated: *13 November 2007.*

- (vi) All maintenance and replacement costs must be borne by the owner from time to time of the lot burdened.
- (b) No fence dividing the Lot burdened from the koala habitat shall be replaced unless that replacement is given prior approval by the Tweed Shire Council.

**Name of person or authority to vary or modify terms of easement and restrictions Firstly to Eleventhly (inclusive) and Thirteenthly to Fifteenthly (inclusive) referred to in the abovementioned Plan:**

Tweed Shire Council, Tumbulgum Road, Murwillumbah NSW 2484



# DP1120559

**Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.**

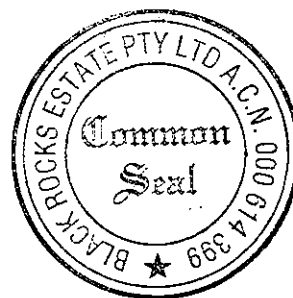
Lengths are in metres

(Sheet 13 of 13 Sheets)

Plan Subdivision of land covered by Tweed Shire Council Clerks Certificate No. 5001/0051  
Dated: 13 November 2007.

**Name of person empowered to release vary or modify Terms of Restrictions Twelfthly referred to in the abovementioned Plan:**

BLACK ROCKS ESTATE PTY LTD ACN 000 614 399  
Level 2, 27 Macquarie Place, Sydney NSW 2000 whilst  
it is the Registered Proprietor of any of the land  
referred to in the Plan and thereafter Tweed Shire  
Council and the proprietors from time to time of each lot  
benefited



BLACK ROCKS ESTATE PTY LTD ACN 000 614 399

Authority: By resolution pursuant to Section 127 of the Corporations Act 2001 (Cth)

.....  
Signature of authorised person:

.....  
RICHARD LINTON COWAN

Name of authorised person:

Office held: Director

.....  
Signature of authorised person:


.....  
JANET MARGERY COWAN

Name of authorised person:

Office held: Director

**SIGNED** at Murwillumbah on the 13<sup>th</sup> )  
day of NOVEMBER 2007 for and )  
on behalf of the Council of the Shire of )  
Tweed )

.....  
[Signature]  
Authorised Person

**REGISTERED**  30/11/2007

**Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.**

Lengths are in metres

(Sheet 1 of 13 Sheets)

Plan Subdivision of land covered by Tweed Shire Council Clerks Certificate No. SCOT/0047  
Dated: 31 October 2007.

**Full Name and address of the  
Owner of the Land:**

Black Rocks Estate Pty Ltd  
ACN 000 614 399, Level 2,  
27 Macquarie Place, Sydney  
NSW 2000

**DP1120034**

Part 1 (Creation)

Number of Item shown in intention panel on the plan	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcels(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
1	Easement to drain sewage 0.5 wide	255, 260	Tweed Shire Council

Number of Item shown in intention panel on the plan	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcels(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
2	Easement to drain sewage 2.5 wide	256	Tweed Shire Council

# DP1120034

**Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.**

Lengths are in metres

(Sheet 2 of 13 Sheets)

Plan Subdivision of land covered by Tweed Shire Council Clerks Certificate No. *SC07/0047*

Dated: *31 October* 2007.

Number of Item shown in intention panel on the plan	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcels(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
3	Easement to drain sewage 3.0 wide	257, 261, 262, 264	Tweed Shire Council

Number of Item shown in intention panel on the plan	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcels(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
4	Easement to drain sewage 0.75 wide	251	Tweed Shire Council

Number of Item shown in intention panel on the plan	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcels(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
5	Easement to drain sewage 2.75 wide	250	Tweed Shire Council

**Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.**

Lengths are in metres

(Sheet 3 of 13 Sheets)

Plan Subdivision of land covered by Tweed Shire Council Clerks Certificate No. SC07/0047  
 Dated: 31 October 2007.

**DP1120034**

Number of Item shown in intention panel on the plan	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcels(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
6	Easement to drain sewage variable width	256, 258, 259, 263, 264	Tweed Shire Council

Number of Item shown in intention panel on the plan	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcels(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
7	Easement to drain water 3.0 wide	261 262 264	262 to 264 incl. 263, 264 263, Tweed Shire Council

# DP1120034

**Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.**

Lengths are in metres

(Sheet 4 of 13 Sheets)

Plan Subdivision of land covered by Tweed Shire Council Clerks Certificate No. SC07/0047  
Dated: 31 October 2007.

Number of Item shown in intention panel on the plan	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcels(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
8	Easement to drain water variable width	260 263 264	261 to 264 incl. 264 Tweed Shire Council

Number of Item shown in intention panel on the plan	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcels(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
9	Easement for Multi-purpose Electrical Installation 5.4 wide	264	Country Energy





# DP1120034

**Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.**

Lengths are in metres

(Sheet 5 of 13 Sheets)

Plan Subdivision of land covered by Tweed Shire Council Clerks Certificate No. SC07/0047  
Dated: 31 October 2007.

Number of Item shown in intention panel on the plan	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcels(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
10	Restriction on the Use of Land	Each Lot	Every other lot

Number of Item shown in intention panel on the plan	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcels(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
11	Restriction on the Use of Land	Each Lot	Every other lot



# DP1120034

**Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.**

Lengths are in metres

(Sheet 6 of 13 Sheets)

Plan Subdivision of land covered by Tweed Shire Council Clerks Certificate No. *SC07/0047*  
Dated: *31 October* 2007.

Number of Item shown in intention panel on the plan	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcels(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
12	Restriction on the Use of Land	Each Lot	Every other lot

Number of Item shown in intention panel on the plan	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcels(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
13	Restriction on the Use of Land	263	Tweed Shire Council

## Part 2 (Terms)

### 1. **Terms of Easement ninthly referred to in the abovementioned plan:**

As defined in Part C of registered Memorandum AA26009.



# DP1120034

**Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.**

Lengths are in metres

(Sheet 7 of 13 Sheets)

Plan Subdivision of land covered by Tweed Shire Council Clerks Certificate No. SC07/0047  
Dated: 31 October 2007.

**2. Terms of Restrictions on Use tently referred to in the abovementioned plan:**

- (a) Not more than one main building shall be erected or permitted to remain on any lot and the pitch of the roof on the main building shall not be less than 12.5 degrees and that such main building shall not be erected otherwise than with the new materials and shall have an overall minimum aggregate external floor area of not less than:
  - (i) 165 square metres in the case of buildings erected on Lot 245 and Lots 247-254 (inclusive), Lots 261-263 inclusive,
  - (ii) 135 square metres per unit erected on Lots 246 and 255-260 (inclusive),
- (b) No garage, carport, shed or outbuilding shall be erected or permitted to remain on any lot hereby transferred except until after or concurrently with the erection of the main building therefore and shall be constructed of the same materials as those of the main building.
- (c) No external walls of any main building shall be erected of any material other than brick, stone, painted cement render, glass, timber or any combination thereof and no main building shall be constructed wholly or substantially from fibrolite or otherwise from pre-fabricated materials. Asbestos cement shall not be used in such external walls except as in-fill panels in conjunction with all or any of the above materials hereinbefore specified provided that the proportion of asbestos cement so used in relation to the external wall areas of any building shall not exceed 10% thereof for so long as Black Rocks Estate Pty Ltd is the registered proprietor of any land in the subdivision of which this lot forms part a main building may be erected on any lot with external walls of materials other than those mentioned above provided the plans for such building are submitted to Black Rocks Estate Pty Ltd and it endorses its consent in writing thereon.



# DP1120034

**Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.**

Lengths are in metres

(Sheet 8 of 13 Sheets)

Plan Subdivision of land covered by Tweed Shire Council Clerks Certificate No. SC07|0047  
Dated: 31 October 2007.

- (d) No roof of any main building erected on any lot shall be constructed other than of tiles or non-reflective pre-painted steel (colour bond or the like) for so long as Black Rocks Estate Pty Ltd shall be the registered proprietor of any land in the subdivision of which the lot forms part a roof of any main building or structure may be constructed of corrugated tin or galvanised iron provided the consent in writing of Black Rocks Estate Pty Ltd is obtained before construction thereof.
- (e) (i) No truck, automobile, plant or machinery having a tare weight of 2 tonnes or more shall be placed or permitted to remain on any lot hereby transferred.
- (ii) No caravan, mobile home, tent or other moveable transportable dwelling shall be permitted to be parked on any lot for the purpose of occupation.
- (iii) No caravan or caravans shall be permitted to be parked or stored on any lot unless the main building on the lot has been completed and the said caravan is parked or stored behind the front building alignment of the main dwelling on the lot.
- (f) No external timber walls of any main building or structure erected on any one lot hereby transferred shall remain unpainted for a period longer than two months after the date of completion thereof provided that this restrictions shall not apply to timber which has been treated by oil.
- (g) No sanitary convenience erected or permitted to remain on the lot shall be detached or separated from any main building erected thereon.
- (h) No advertisement, board, sign, or similar construction shall be erected or permitted to remain on any lot excepting such as may relate solely to the selling of such lot and such permitted sign shall not exceed 1 metre by 1 metre in size. No such restriction shall apply to the display of a doctor's or dentist's nameplate or light.

# DP1120034

**Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.**

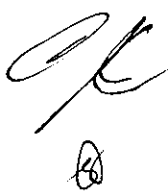
Lengths are in metres

(Sheet 9 of 13 Sheets)

Plan Subdivision of land covered by Tweed Shire Council Clerks Certificate No. SC07/0047  
Dated: 31 October 2007.

- (i) No fence shall be erected on any lot without consent in writing from Black Rocks Estate Pty Ltd its successors or assigns is obtained beforehand and provided that such consent shall not be refused if such fence is erected without expense to Black Rocks Estate Pty Ltd its successors and assigns and provided that any fence shall be constructed of hardwood palings and shall be unpainted and treated in a natural timber colour having a height of 180 cm, or no fence other than hardwood paling fences, may be constructed of material other than solid brick, stone or similar matching materials to those used in the exterior walls of the main building or a combination of the said materials and spaced with wrought iron or timber picket and if any combination style fence is constructed of a pillar of brick or stone or similar material in support of each feature panel of wrought iron or timber picket with each pillar spaced no less than three (3) metres apart.
  
- (j) Subject to the following no fence shall be erected or permitted to remain on any lot closer to the front boundary than the external front wall on either side of any main building erected thereon without the written consent of Black Rocks Estate Pty Ltd provided that consent shall not be refused to erect on a front fence on a lot;
  - (i) if the fence does not have a height more than 180 cm;
  - (ii) if the fence is constructed of solid brick or of material other than solid brick, stone or similar matching materials to those used in the exterior walls of the main building or a combination of the said materials and spaced with wrought iron or timber picket;
  - (iii) if that any combination style fence is constructed of a pillar of brick or stone or similar material in support of each feature panel of wrought iron or timber picket with each pillar spaced no less than three (3) metres apart;

Further no gate is to be constructed in such fence other than of solid timber, wrought iron or wrought iron look alike or a combination of solid timber, wrought iron or wrought iron look alike.



# DP1120034

**Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.**

Lengths are in metres

(Sheet 10 of 13 Sheets)

Plan Subdivision of land covered by Tweed Shire Council Clerks Certificate No. SC07|0047  
Dated: 31 October 2007.

- (k) No dairy brick, brickyard, tannery, poultry farm, piggery, kennels, quarry or any other noxious noise, some or offensive occupation trade or business shall be carried out on any lot.
- (l) No materials (except as required in the course of building) rubbish, old unused or out of working order plant, motor vehicles or machinery shall be kept or stored on any lot.
- (m) No grass and other vegetation growing upon the subject land shall be permitted to grow in a manner which is unsightly nor shall rubbish, refuse or garbage be allowed to accumulate on a lot except where that refuse or garbage is stored in sanitary container designed for that purpose.
- (n) No clothes line shall be erected or permitted to remain on any lot hereby transferred unless such clothes line shall be a retractable or folding type.
- (o) No fence shall be erected on any lot in association with the requirements of the Tweed Shire Council for the purpose of fencing any swimming pool other than a flat top aluminium powder coated safety pool fence or other fence approved by the Tweed Shire Council.

**3. Terms of Restrictions on Use Eleventhly referred to in the abovementioned plan:**

- (a) On every lot except those lots marked "Duplex" on the Plan of Subdivision no main building shall be used for any purpose other than as a single dwelling house lot
- (b) No granny flat shall be constructed unless it is within the main building and provided the granny flat does not exceed 1/3 of the floor area of the main dwelling or have a gross floor area not exceeding 50 m<sup>2</sup>, whichever is the lesser.



# DP1120034

**Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.**

Lengths are in metres

(Sheet 11 of 13 Sheets)

Plan Subdivision of land covered by Tweed Shire Council Clerks Certificate No. SC07/007  
Dated: 31 October 2007.

**4. Terms of Restrictions on Use Twelfthly referred to in the abovementioned plan:**

- (a) No animals, livestock or poultry of any kind shall be raised, bred or kept upon the said Lots burdened or part thereof, except dogs. Other household pets excluding cats may be kept provided these are not kept, bred or maintained for any commercial purpose and dogs shall be kept enclosed within the boundary of any Lot burdened. When outside the subject Lots, dogs shall be kept under control by way of a leash or other suitable method. Dogs of the breed of Alsatian, German Shepherd, Doberman, Rottweiler, Bull Terrier or Pit Bull Terrier or any part breed or combination of any of the said breed or breeds are not permitted to remain on any Lot burdened.

**5. Terms of Restrictions on Use Thirteenthly referred to in the abovementioned plan:**

- (a) No fence dividing the Lot burdened from the koala habitat shall be maintained unless it complies with the following criteria:-
- (i) The height shall be 150 cm in height;
  - (ii) It must be supported by 32NB galvanised iron posts spaced 4 lineal metres apart;
  - (iii) From the ground level there must be a 70 cm high strip of unpainted flat zinc sheeting;
  - (iv) Immediately adjacent to the metal strip referred to in the preceding subparagraph, there must be uncoated galvanised chain wire to the full height of 150 cm;
  - (v) The fence must be vertical for its entire height without an angled section at the top;



# DP1120034

**Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.**

Lengths are in metres

(Sheet 12 of 13 Sheets)

Plan Subdivision of land covered by Tweed Shire Council Clerks Certificate No. SC07/0047  
Dated: 31 October 2007

- (vi) All maintenance and replacement costs must be borne by the owner from time to time of the lot burdened.
- (b) No fence dividing the Lot burdened from the koala habitat shall be replaced unless that replacement is given prior approval by the Tweed Shire Council.

**Name of person or authority to vary or modify terms of easement and restrictions Firstly to Eighthly (inclusive) and Eleventhly to Thirteenthly (inclusive) referred to in the abovementioned Plan:**

Tweed Shire Council, Tumbulgum Road, Murwillumbah NSW 2484

**Name of person or authority to vary or modify terms of easement ninthly referred to in the abovementioned Plan:**

Country Energy, 36 Sunshine Avenue, Tweed Heads South, NSW, 2486





# DP1120034

**Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.**

Lengths are in metres

(Sheet 13 of 13 Sheets)

Plan Subdivision of land covered by Tweed Shire Council Clerks Certificate No. SC07/0047  
Dated: 31 October 2007.

**Name of person empowered to release vary or modify Terms of Restrictions Tenthly referred to in the abovementioned Plan:**

BLACK ROCKS ESTATE PTY LTD ACN 000 614 399  
Level 2, 27 Macquarie Place, Sydney NSW 2000 whilst  
it is the Registered Proprietor of any of the land  
referred to in the Plan and thereafter Tweed Shire  
Council and the proprietors from time to time of each lot  
benefited



BLACK ROCKS ESTATE PTY LTD ACN 000 614 399

Authority: By resolution pursuant to Section 127 of the Corporations Act 2001 (Cth)

.....  
*[Signature]*

Signature of authorised person:

*RICHARD LINTON COWAN*

*[Signature]*

Name of authorised person:

Office held: Director

.....  
*[Signature]*

Signature of authorised person:

*JANET MARGERY COWAN*

*[Signature]*

Name of authorised person:

Office held: Director

**SIGNED** at Murwillumbah on the 31<sup>st</sup> )  
day of OCTOBER 2007 for and )  
on behalf of the Council of the Shire of )  
Tweed )

.....  
*[Signature]*  
Authorised Person



## 7.3 Permitted or Prohibited Development

### Permitted or Prohibited Development – Tweed Local Environmental Plan 2000

#### Item 1 allowed without consent:

- environmental facilities

#### Item 2 allowed only with consent:

- bed and breakfast
- dwelling houses if each is on an allotment of at least 450m<sup>2</sup>
- integrated housing if at a density of not greater than:
  - (a) one dwelling per 450m<sup>2</sup> of site area, or
  - (b) one dwelling per 250m<sup>2</sup> of site area where the site is within 300 metres distance of a business centre as indicated on the Business Centres Map
- multi-dwelling housing
- utility installations except gas holders or generating works
- **any other buildings, works, places or land uses not included in Item 1, 3 or 4**

#### Item 3 allowed only with consent and must satisfy the provisions of clause 8 (2):

- |                         |  |
|-------------------------|--|
| ▪ boarding-houses       | ▪ boat repair and servicing facilities |
| ▪ boating facilities    | ▪ clubs                                |
| ▪ cruise craft docks    | ▪ helipads                             |
| ▪ hotels                | ▪ marinas                              |
| ▪ recreation facilities |  |

#### Item 4 Prohibited

- |                                     |   |
|-------------------------------------|---|
| ▪ abattoirs                         | ▪ agriculture                                       |
| ▪ airline terminals                 | ▪ animal establishments                             |
| ▪ boat showrooms                    | ▪ brothels  |
| ▪ bulk stores                       | ▪ bulky goods retailing                             |
| ▪ camping grounds                   | ▪ car repair stations                               |
| ▪ caravan parks                     | ▪ commercial premises                               |
| ▪ depots                            | ▪ display homes if adjoining an RTA classified road |
| ▪ extractive industries             | ▪ forestry  |
| ▪ heliports                         | ▪ industries (other than home industries)           |
| ▪ institutions                      | ▪ integrated housing not included in Item 2         |
| ▪ junkyards                         | ▪ light industries                                  |
| ▪ liquid fuel depots                | ▪ markets   |
| ▪ mines                             | ▪ motels  |
| ▪ motor showrooms                   | ▪ outdoor eating areas                              |
| ▪ offensive or hazardous industries | ▪ recreation vehicle areas                          |
| ▪ recreation establishments         | ▪ restricted premises                               |
| ▪ refreshment rooms                 | ▪ road transport terminals                          |
| ▪ retail plant nurseries            | ▪ rural industries                                  |
| ▪ roadside stalls                   | ▪ rural workers' dwellings                          |

- rural tourist facilities
- sawmills
- shops (other than general stores)
- storage units
- tourist facilities
- transport terminals
- warehouses
- service stations
- stock and sale yards
- tourist accommodation
- tourist resorts
- utility installations being gas holders or generating works

## Permitted or Prohibited Development – Draft Tweed Local Environmental Plan 2010

### 2 Permitted without consent

Environmental facilities; Environmental protection works; Home occupations; Roads

### 3 Permitted with consent

Bed and Breakfast Accommodation; Boarding houses; Dwelling houses; **Group homes**; Health Consulting Rooms; Home Industries;

Any other development not specified in item 2 or 4

### 4 Prohibited

Agriculture; Air Transport Facilities; Amusement Centres; Boat repair facilities; Brothels; Bulky Goods Premises; Business premises ;Caravan parks; Cemeteries; Charter and tourism boating facilities; Correctional centres; Crematoriums; Depot; Educational establishments; Entertainment facilities; Exhibition homes; Exhibition villages; Farm Buildings; Forestry; Freight transport facilities; Function Centres; Funeral homes; Health services facilities; Highway service centres; Home occupation (sex services); Hostels; Industries; Industry Retail Outlets; Information and education facilities; Landscape and Garden Supplies; Marinas; Moorings; Mortuaries; Office premises; Passenger transport facilities; Port facilities; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered Clubs; Research stations; Residential flat building; Restricted premises; Retail premises ; Rural industries; Rural Supplies; Rural Workers Dwellings; Service stations; Sex services premises; Shop Top Housing; Storage premises; Timber and Building Supplies; Tourist and visitor accommodation ; Transport depots; Vehicle Body Repair Workshops; Vehicle repair stations; Vehicle Sales or Hire Premises; Veterinary Hospitals; Wholesale Supplies.