

Draft LEP Amendment No. **88**
July 2011

PLANNING PROPOSAL

FINAL

v.3

POTTSVILLE
(Black Rocks Estate)

File:PP11/0001

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Purpose

Tweed Shire Council (TSC) received a request for a Planning Proposal from Darryl Anderson Consulting Pty Ltd for the purposes of affecting a zoning amendment that had been agreed to by TSC as part of extensive negotiations surrounding the development and dedication of lands known as Black Rocks Estate, Pottsville.

Tweed Shire Council resolved on the 19 April 2011 to amend Tweed Local Environmental Plan 2000:

RESOLVED that:

1. Council endorses the preparation of a planning proposal for a change of land-use zone classification to enable Lot 378 DP 1148511 Overall Drive, Pottsville, to be developed for a low density residential purpose, and
2. The planning for Lot 378 DP 1148511 Overall Drive, Pottsville, be referred to the Department of Planning and Infrastructure for a 'Gateway' determination under Section 56 of the *Environmental Planning and Assessment Act 1979*, and
3. Any fees arising in association with the preparation of the planning proposal is to be applied in accordance with the Council's adopted Fees and Charges Schedule in force on the date of payment.

[Refer Attachment 1 - Copy of Council Resolution 19 April 2011]

Part 1 – A Statement of the Objectives or Intended Outcomes of the Proposed Local Environmental Plan

Objective

To facilitate a land-use zoning that is both reflective of the lands opportunities and constraints and that permits the subdivision of Lot 378 DP 1148511 for the purpose of low-density residential housing.

Relevantly, the subject land is within the existing urban footprint under the Far North Coast Regional Strategy 2006 – 2031.

Intended Outcome

To reclassify by way of amendment the zoning of Lot 378 DP 1148511 from its present part 2(a) Low Density Residential and part 7(l) Environmental Protection (Habitat), to 2(a) Low Density Residential across the whole of the property.

[Refer Attachment 2 - Copy of Council Planning Report 19 April 2011]

Minister's Gateway Determination



**Planning &
Infrastructure**

Gateway Determination

Planning Proposal (Department Ref: PP_2011_TWEED_001_00): to rezone land being Lot 378 DP 1148511, Overall Drive, Pottsville from part 2(a) Low Density Residential and part 7(1) Environmental Protection (Habitat) to 2(a) Low density Residential across the whole of the site

I, the Deputy Director General, Plan Making & Urban Renewal as delegate of the Minister for Planning and Infrastructure, have determined under section 56(2) of the EP&A Act that an amendment to the Tweed Local Environmental Plan 2000 to rezone land being Lot 378 DP 1148511, Overall Drive, Pottsville from part 2(a) Low Density Residential and part 7(1) Environmental Protection (Habitat) to 2(a) Low density Residential across the whole of the site should proceed subject to the following conditions:

1. No community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act").
2. No consultation is required with State and Commonwealth public authorities under Section 56(2)(d) of the EP&A Act.
3. No public hearing is to be held into the matter under section 56(2)(e) of the EP&A Act.
4. The timeframe for completing the LEP is to be **3 months** from the week following the date of the Gateway determination.

Dated 9th day of June 2011.

A handwritten signature in blue ink, appearing to read "Tom Gellibrand".

**Tom Gellibrand
Deputy Director General
Plan Making & Urban Renewal
Delegate of the Minister for Planning and
Infrastructure**

Site Context and Setting

The site is known as Lot 378 DP 1148511, Overall Drive, Pottsville and is located within the 'Black Rocks Estate' residential housing development.

The subject land presently comprises managed grasslands with finished surface levels ranging from about RL 4.0m AHD at the eastern boundary (top of retaining wall) to approximately RL 3.50m AHD at the Overall Drive alignment.

Underground water, sewer, power and telephone services are available to the subject land within and adjacent to Overall Drive.

Lot 378 has a total area of about 2880m² and is in two (2) parts with each part separated by a drainage reserve, and has a frontage to Overall Drive of approximately 100m.

Figure 1 illustrates the site modification looking south at the point of bisection.



Figure 1 Southward view of site at point of bisection.

Figure 2 illustrates the northern part of the site from a south-easterly perspective, adjacent to the public environmental protection reserve at the interface of the constructed public pedestrian walkway / cycleway.



Figure 2 Site view from south-easterly vantage point looking north.

On 9 January 2006 the delegate of the Minister for Planning issued Development Consent No.243-10-2004 for a 68 lot residential subdivision of the rezoned land and adjacent public reserves and sports fields, comprising the final stages of Black Rocks Estate. The subject land is described as part of Lot 302 in the Subdivision Layout Plan referred to in the Development Consent.

In accordance with Development Consent No.243-10-2004 and Construction Certificate No.06/0093 (Bulk Earthworks) and Construction Certificate No. 07/1166 (Civil Works), the subject land was filled and a perimeter retaining wall, cycleway/walkway, Overall Drive and associated urban infrastructure services were constructed.

Figure 3 depicts the modified site conditions of the lot within its existing built (residential housing) environment.



Figure 3 - Localised Site Plan

[Refer Attachment 3 for Department of Planning's standard 'site identification map']

Planning Controls (Zoning)

Present

The site presently has a dual zoning under the provisions of Tweed Local Environmental Plan 2000 comprising 2(a) Low Density Residential and 7(l) Environmental Protection (Habitat), as depicted in Figure 4 below.

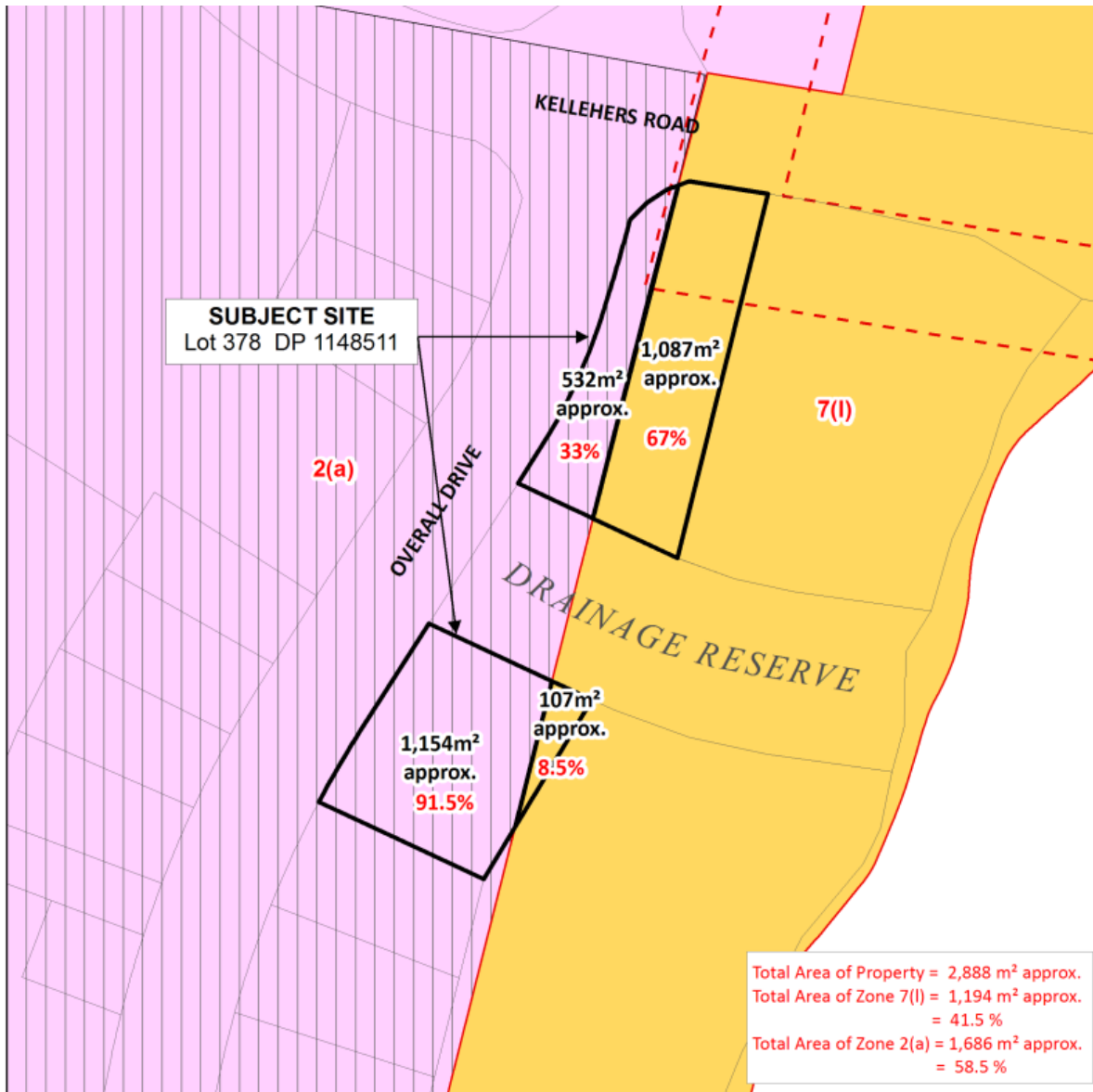


Figure 4 Tweed Local Environmental Plan 2000 - Zoning

Proposed

The planning proposal seeks to achieve a rationalized zoning outcome based on opportunities and constraints presented by way of the lawful construction of the land for urban purposes, and the public and environmental benefit derived through the negotiated dedication of reserves.

Under the Draft Tweed LEP 2010, as publicly exhibited, Tweed Council sought to correct the zoning alignment.

Figure 5 illustrates the draft zoning for the site as exhibited.

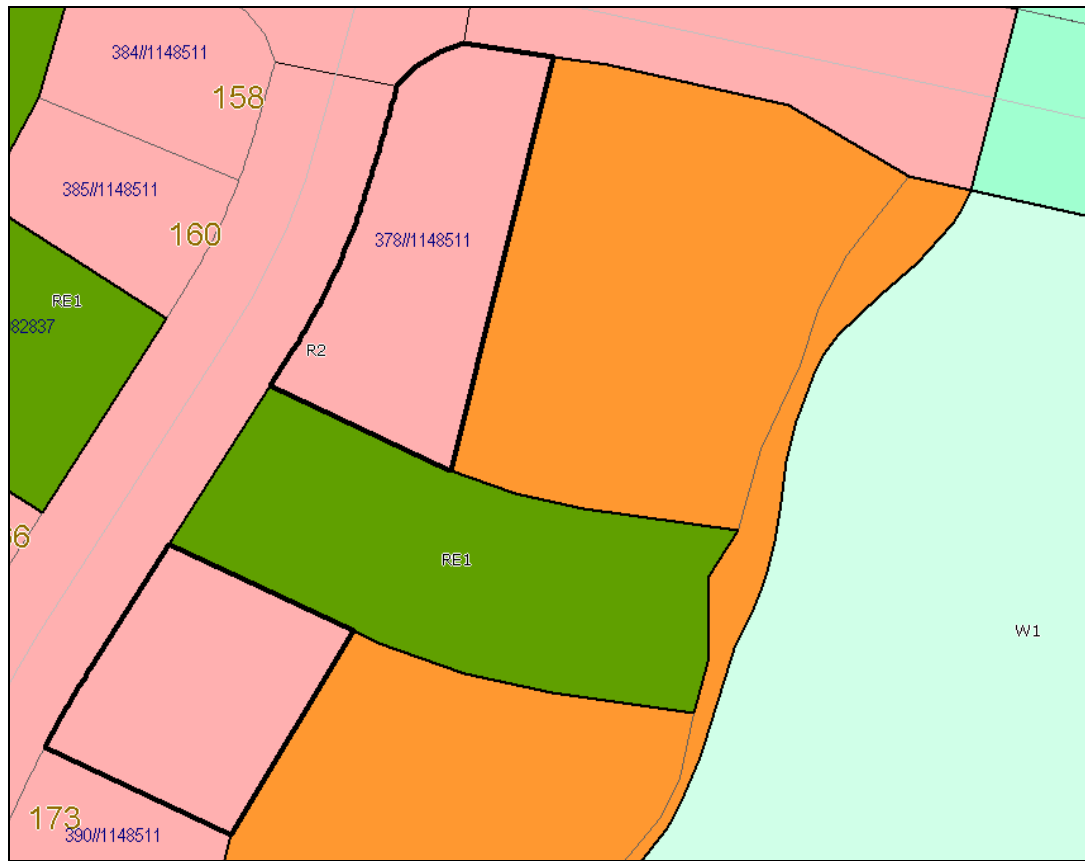


Figure 5 Draft Tweed LEP 2010 - Exhibited

This planning proposal seeks an amendment consistent with that exhibited in the Draft Tweed LEP, but in the current terms of Tweed LEP 2000.

Background

As discussed in the council report at Attachment 2, a Deed of Agreement (DOA) was entered into on 5 June 2003 between Tweed Shire Council and Black Rocks Estate Pty Ltd in relation to certain lands that were identified to be transferred to Council in conjunction with the making of Draft Tweed LEP Amendment No. 8 (Black Rocks Estate).

Clause 4.3 of the Deed of Agreement required [see Attachment 7] the owner of the Black Rocks Estate to dedicate certain land as public reserves, which amounted to about 100 hectares, comprising significant Koala habitat. Under the terms of the DOA the land has been dedicated to Council. The remaining developable areas have been fully constructed into residential housing lots and associated infrastructure, including the land subject to this planning proposal.

As part of the DOA investigations the subject site was found to be of limited environmental significance and a specific notation was made to reflect this, specifically the notation ensured its exclusion from the areas to be dedicated. The future use and rezoning for residential purposes was seemingly contemplated as part of the land dedication trade-off that formed the basis of the DOA, and it is recognised by way of the lawful construction of the allotment to a residential standard, the clear constructed delineation and buffering of

protected environmental reserves, as well as the zoning amendment proposed in the Draft Tweed LEP 2010, discussed above.

Note: There is a discrepancy in the Applicant's request to the Council for a rezoning. It proceeds on the basis that the DOA was the instrument binding Tweed Council by its terms to rezone the subject land. This position is not concurred with and is reconciled in this Planning Proposal, which proceeds on the footing that it was Council's intention, as foreshadowed in the negotiations leading up to the DOA, that the site was suitable for residential development and should be rezoned to correspond with the surrounding lands. Development application approvals following the DOA both align and support this view rendering the current zoning, in light of the full construction of the site, anomalous.

Part 2 – Explanation of the Provisions

The provisions required to achieve the intended outcomes detailed in Part 1 include a an Amendment of the Tweed LEP 2000 zoning map, in accordance with the proposed zoning map shown in Attachment 4, which illustrates a Residential 2(a) zoning for the entire site.

Part 3 – Justification for the Proposal

Section A – Need for Planning Proposal

The proposal is justified because it meets the aims and objectives of the strategic planning for the locality. In particular, the area was identified in 1991 as a future urban land release area, it was subsequently rezoned, and development negotiations between Council and the landowner were reached resulting in the dedication of about 100 hectares of public environmental and recreation reserves. The release area, including the subject site, is fully constructed however the zoning of the subject lot remains anomalous and has not been amended to reflect the outcomes of the negotiations, trade-offs and development approvals from both Council and the Minister for Planning.

Is the planning proposal a result of any strategic study or report?

Yes, the 1991 Tweed Urban Land Release Strategy [Attachment 5 Release Area Map - Pottsville] identified the subject lands (Black Rocks) for future urban development. Following extensive negotiations and development and construction development approvals the area has been fully constructed as a residential housing estate.

This Planning Proposal represents a housekeeping amendment aimed at concluding matters that have, to-date, remained unresolved for two main reasons. Firstly, during the early stages of the proposal attention was directed to ensuring broader strategic policy considerations and amendments were undertaken within a timely manner, with this amendment comprising a residual matter. Secondly, Council has been pursuing the amendment through the Draft Tweed LEP 2010 however, the landowner has requested that Council expedite the rezoning to enable the re-subdivision and subsequent release of housing lots as foreshadowed in the development approvals and broader strategic policy with the view to concluding the development of the release area.

Is the planning proposal the best means of achieving the objectives or intended outcomes or is there a better way?

Yes, the rezoning of the land represents the best way of achieving the intended and planned outcome.

Is there a net community benefit?

The Department of Planning Guidelines (July 2009) include the following advice in relation to the net community benefit assessment:

The Assessment should only evaluate the external costs and benefits of the proposal (ie. the externalities).

Consideration must be given to changes that reflect a higher community benefit.

The proposal should be assessed against the matters specified in the justification. The Assessment should evaluate the proposal against a base case or base cases including retaining the existing zoning on the land.

The Draft Centres Policy includes guidance on conducting a Net Community Benefit Test that should be followed when assessing the net community benefit of a Planning Proposal. This guidance has been reproduced in the Department of Planning's Guidelines but adapted to suit all types of Planning Proposals.

Because of the difficulty in assigning values to certain costs and benefits associated with Planning Proposals, the Net Community Benefit Test will not be a purely quantitative test.

The subject site in isolation of the broader release area would arguably provide minimal benefit with respect to the "externalities" however, in the broader sense of the Black Rocks development as a whole the net community benefit has been significant, comprising in excess of 100 hectares of environmental and recreations reserves, lifestyle infrastructure including cycle and walking paths, improved transport efficiency and access to public transport, more competitive housing cost and housing choice (diversity).

The subject site forms part of the broader development and is fully constructed. The net community benefit to new residents and those in existing neighbouring areas in being taken advantage off; all that remains is for the subject lot to be rezoned to correspond with the remainder of the residential neighbourhood.

Section B – Relationship to Strategic Planning Framework

Is the Proposal Consistent with the Objectives and Actions Contained Within the Applicable Regional or Subregional Strategy (including the Sydney Metropolitan Strategy and Exhibited Draft Strategies)

Yes.

The relevant strategy, the Far North Coast Regional Strategy, 2006 – 2031 was adopted by the Minister for Planning on 17 January 2007.

Among other things the Strategy aims to manage the region's projected population growth sustainably and protect the unique environmental assets, cultural values and natural resources of the region. This is planned to occur through responsive future development that retains the regional identity and local character of the area and fosters opportunities for greater economic activity and diversification.

The Black Rocks development has incorporated and is consistent with those principles notwithstanding that the Strategy largely post dates the development and strategic processes of this release area.

Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

Yes.

The Tweed Community Strategic Plan (TCSP) 2011-21 was adopted on 14 December 2010 and post dates the planning policy and approvals process that facilitated the existing development. It is nonetheless consistent with the TCSP, which aims to ensure the protection of the natural environment, incorporation of best practice urban design principles within new development, and the retention of the regions identity whilst providing housing and employment for the Tweed's growing population.

Relevantly, the Black Rocks development is consistent with the former strategic vision, the Tweed Futures 4/24, which likewise sought to promote sustainable development outcomes, which are consistent with the regional Strategy, as discussed above.

Is the Planning Proposal Consistent with Applicable State Environmental Planning Policies

The following table addresses compliance with *relevant* State Environmental Planning Policies.

TABLE 3 – STATE ENVIRONMENTAL PLANNING POLICIES	
STATE ENVIRONMENTAL PLANNING POLICY	COMMENTS
<p>State Environmental Planning Policy (North Coast Regional Environmental Plan) 1988</p> <p>This Policy applies to the subject land and the following clauses are particularly relevant to this Planning Proposal:</p>	
Clause 7 – Prime Crop or Pasture Land	The subject land comprises filled and serviced land and is not mapped as State or Regionally significant farmland. It does not comprise prime crop or pasture land.
Clause 14 – Wetlands or Fisheries Habitat	An appropriate buffer has been dedicated and revegetated between the subject land and Mooball Creek. Water quality control mechanisms have been incorporated into the adjacent subdivision design including an artificial wetland to pre-treat flows prior to discharge to the Mooball Creek.
Clause 29 – Natural Areas	There are no natural areas on the site.
Clause 38 – Urban Release Strategy	The subject land is included in the Tweed Shire Council Residential Development Strategy, 1991 and is consistent with the Far North Coast Regional Strategy.
Clause 40 - Principles for Urban Zones	The Planning Proposal will adopt the existing residential zones within the Tweed Local Environmental Plan 2000 - zone 2(a) Low Density Residential
Clause 42 – Principles for Housing	As above.
Clause 45 – Hazards	The site is fully constructed to a residential standard in accordance with the relevant Council and Ministerial approvals.
Clause 50 – Height Controls	The height controls contained in Tweed Local Environmental Plan will apply to a 3 storey height limit.
Clause 58 – Servicing Urban Area	All necessary urban infrastructure has been provided within the existing residential subdivision to service the subject land.
Clause 61 – Health and Education Facilities	The village of Pottsville has a primary school and a small shopping centre located approximately 1.5 km north of the site. Kingscliff contains a number of medical centres and health care professionals, one public high school, a public primary school and a private primary school. Adequate facilities are therefore available for the likely additional population of approximately 10 - 15 people arising from this proposal.
Clause 65 – Provision of Community Welfare and Childcare Services	Pottsville contains community buildings and a pre-school. Kingscliff contains normal community welfare and childcare services (including a childcare centre in Kingscliff Street) which are considered to be adequate for this proposal.

TABLE 3 – STATE ENVIRONMENTAL PLANNING POLICIES	
STATE ENVIRONMENTAL PLANNING POLICY	COMMENTS
Clause 78 – Public Recreation Areas	Appropriate areas of casual and structured open space (playing fields) have been dedicated and embellished within the Black Rocks development.
State Environmental Planning Policy No. 55 – Remediation of Land	The land has been filled to the design flood level using appropriate fill and the filling has been certified by Tweed Shire Council and the Plan of Subdivision has been registered. The land is therefore suitable for residential development.
State Environmental Planning Policy (Major Development) 2005	The site is within the coastal zone however any future Development Application would not exceed 25 lots and would be determined by the Tweed Shire Council.

Is the Planning Proposal Consistent With Applicable Ministerial Directions (Section 117 Directions)

The following table (**Table 4**) addresses consistency with *relevant* Section 117 Local Planning Directions.

TABLE 4 – SECTION 117 LOCAL PLANNING DIRECTIONS		
DIRECTION NO.	REQUIREMENTS	COMMENTS
2.1 – Environmental Protection Zones	A Draft LEP shall include provisions that facilitate the protection and conservation of environmentally sensitive areas and shall not reduce the environmental protection standards that apply to the land.	Part of the land to which this planning proposal applies is zoned 7(l), however it has been filled and serviced, the dedicated Mooball Creek foreshore reserve will remain in the 7(l) zone.
3.1 – Residential Zones	In summary, this Direction provides that Draft LEPs shall contain requirements that broaden the choice of building types and locations, make more efficient use of existing infrastructure and services, reduce the consumption of land for housing and associated urban development, are of good design, not permit residential development until the land is adequately serviced and not contain provisions which will reduce the permissible residential density of the land.	The proposed zone will integrate into the Standard Planning Instrument which is currently being implemented by way of exhibited Draft Tweed Local Environmental Plan 2010. The proposal is consistent with the Direction.
3.3 – Home Occupations	In summary, this Direction provides that a Draft LEP shall permit home occupations to be carried out in dwelling houses without the need for development consent.	The proposal will comply with the Direction.
3.4 – Integrated Land Use and Transport	In summary, this Direction provides that a Draft LEP shall locate zones for urban purposes and include provisions that give effect to or are consistent with the aims, objectives and principles of Improving Transport Choice – Guidelines for Planning and Development (DUAP 2001) and The Right Place for Business and Services – Planning Policy (DUAP 2001). The Direction also provides that a Draft LEP may be consistent with the Direction if the land has been identified in the Strategy prepared by Council and approved by the Director General or, the rezoning is justified by an Environmental Study or the rezoning is in accordance with the relevant regional strategy.	The Planning Proposal is consistent with this Direction because the rezoning is consistent with the Far North Coast Regional Strategy and Overall Drive is a Surfside Buslines bus route (Route 6.3).

TABLE 4 – SECTION 117 LOCAL PLANNING DIRECTIONS		
DIRECTION NO.	REQUIREMENTS	COMMENTS
4.1 – Acid Sulphate Soils	Direction requires Councils to consider the Acid Sulphate Soils Planning Guidelines and include provisions which are consistent with the Acid Sulphate Soils Model Local Environmental Plan.	The subject land has been filled to the design flood level and any future excavations for the purpose of erecting a dwelling house is unlikely to expose acid sulphate soils.
4.3 – Flood Prone Land	In summary, this Direction provides that a Draft LEP shall include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005.	The proposal is not inconsistent with the Flood Prone Land Policy and the principles contained in the Flood Plain Development Manual 2005 for the reasons discussed in Section 2.3.
4.4 – Planning for Bushfire Protection	In summary, this Direction provides that in the preparation of a Draft LEP a Council shall consult with the Commissioner of the Rural Fire Service and take into account any comments made. In addition, the Draft LEP is required to have regard to Planning for Bushfire Protection, 2001 among other things.	The site is not mapped as bushfire prone, however, adjoining land to the east is mapped. Any future subdivision layout will need to take into account any relevant provisions, if any, of the Planning for Bushfire Protection 2006.
5.1 – Implementation of Regional Strategies	This Direction provides that when a Council prepares a Draft LEP the Plan shall be consistent with a Regional Strategy released by the Minister for Planning.	Consistency with the Far North Coast Regional Strategy is addressed in this report under the relevant heading.
6.1 – Approval and Referral Requirements	In summary, this Direction provides that a Draft LEP shall minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or Public Authority, not contain these provisions unless Council has obtained approval from the relevant Authority and not identify development as designated development unless certain prerequisites can be met.	The proposed amendment is consistent with the Direction and will not cause any new or additional referral practise.
6.2 – Reserving Land for Public Purposes	This Direction provides that a Draft LEP shall not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant Authority among other things.	The proposal is consistent with the prior approvals for the site.
6.3 – Site Specific Provisions	This Direction provides that a Draft LEP that amends another Environmental Planning Instrument in order to allow a particular development proposal shall either allow that land use to be carried out in the zone that the land is situated on or rezone the site to an existing zone already applying in the Environmental Planning Instrument that allows that land use without imposing any development standards or requirements in addition to those already existing or allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal Planning Instrument being amended.	The proposal is consistent with the existing zones under the Tweed LEP 2000 and the Direction.

NSW Coastal Policy, 1997

The site is within the coastal zone and therefore relevant provisions of the Policy apply.

[refer Attachment 6 - Coastal Policy Checklist]

Section C – Environmental, Social and Economic Impacts

Is There any Likelihood That Critical Habitat, Threatened Species, Populations or Ecological Communities, or Their Habitats, Will be Adversely Affected As a Result of the Proposal?

The subject land has been filled to the design flood level or above and contains managed grasslands planted following completion of site works.

Based on the above, there is no likelihood that critical habitat, threatened species, populations or ecological communities or their habitats will be adversely affected as a result of the proposal.

Council's Natural Resource Management Staff have reviewed the request for a planning proposal and raise no objection to the proposed rezoning on environmental grounds.

Are There Any Other Likely Environmental Affects As a Result of the Planning Proposal and How Are They Proposed to be Managed

No.

In summary, there are no significant constraints on rezoning of the site as proposed. Appropriate management and mitigation measures relating to water quality in the adjacent open drain and bushfire asset protection zones can be dealt with at the Development Application stage for the subdivision and future dwelling houses.

The site has been fully constructed and is a part of a much larger urban residential housing estate. All risk management events and practices have been evaluated and managed through the prior Ministerial and Council approvals, and construction works. Any additional or residual potential for impact are seen to be minor and completely manageable at a minor re-subdivision and or residential housing application stage.

How Has the Planning Proposal Adequately Addressed Any Social and Economic Effects?

Social and economic effects were addressed as part of the broader strategic and statutory planning processes for this residential housing estate. Residual or additional effects arising from the proposed zoning correction will be alleviated through s 64 and s 94 Developer Contributions should further subdivision for low density housing occur. The potential lot yield of the subject site through any re-subdivision will not have any significant or notable impact on the demand for additional social infrastructure above that provided in the locality, and as provided in-part through the dedication of land (roads, reserves, parks) as part of the development approvals to-date.

No European or Aboriginal cultural heritage was identified on the site prior to its construction (filling & contouring).

Section D – State and Commonwealth Interests

Is There Adequate Public Infrastructure For the Planning Proposal

Yes. Public infrastructure assessment, requirement, and dedication was addressed in the broader strategic and statutory planning for the Black Rocks urban release area, as now constructed.

Tweed Council had foreshadowed the rezoning of the subject site, as was highlighted during extensive negotiations with the landowner primarily in respect of the dedication of sensitive environmental protection lands (including Koala habitat), and the subsequent further re-subdivision within the broader infrastructure demand analysis for the Black Rocks Estate.

Council's Planning and Infrastructure Engineering Division has raised no objection to the proposal on infrastructure grounds, noting that; water, sewer, roads, electricity, telephone are available to the site, and can accommodate the expected additional 3 or 4 lots.

The site has access to emergency services and schools, and is within close proximity to the local business centres of; Pottsville, Murwillumbah and Kingscliff.

What are the Views of State and Commonwealth Public Authorities Consulted In Accordance With the Gateway Determination

This section of the planning proposal is to be completed following consultation with the State and Commonwealth Public Authorities identified in the gateway determination, which will summarise any issues raised by public authorities, not already dealt with in the planning proposal.

Part 4 – Community Consultation

The Gateway Determination will specify the community consultation that must be undertaken on this Planning Proposal. The consultation will be tailored to specific proposals generally on the basis of a 14 day exhibition period for low impact Planning Proposals and a 28 day exhibition period for all other Planning Proposals.

'Low Impact Planning Proposal' means a planning proposal that, in the opinion of the person making the Gateway Determination: is consistent with the pattern of surrounding land use zones and/or land uses; is consistent with the strategic planning framework; presents no issues with regard to infrastructure servicing; is not a principal Local Environmental Plan; and does not reclassify public land.

Having regard to the definition of Low Impact Planning Proposals and the scale, nature and issues relating to this Planning Proposal, it is considered that it would be defined as a Low Impact Planning Proposal.

Summary and conclusions

As discussed in this Report, the planning proposal involves a small scale residential rezoning comprising 1194m² (41%) of a total land area of 2880m² (1686m² or 59%), which is anticipated to yield about 4 or 5 lots total.

All necessary infrastructure to service the land is available and the site has been filled to the required residential design flood level. The proposed rezoning was foreshadowed as part of Tweed Council's strategic and statutory planning for the Black Rocks release area and is consistent with the Far North Coast Regional Strategy 2006 – 2031.

ATTACHMENT 1 - Copy of Council Resolution 19 April 2011

1 of 1

[Agenda Report](#)**TWEED SHIRE COUNCIL
MEETING TASK SHEET****User Instructions**

If necessary to view the original Report, double-click on the 'Agenda Report' blue hyperlink above.

Action Item - COUNCIL MEETING Tuesday, 19 April 2011

Action is required for Item **9** as per the Council Resolution outlined below.

TITLE: [PR-CM] Planning Proposal PP11/0001 - Part Lot 378 DP 1148511 Overall Drive, Pottsville (Black Rocks Estate)

**Cr W Polglase
Cr P Youngblutt**

RESOLVED that:

1. Council endorses the preparation of a planning proposal for a change of land-use zone classification to enable Lot 378 DP 1148511 Overall Drive, Pottsville, to be developed for a low density residential purpose, and
2. The planning for Lot 378 DP 1148511 Overall Drive, Pottsville, be referred to the Department of Planning and Infrastructure for a 'Gateway' determination under Section 56 of the *Environmental Planning and Assessment Act 1979*, and
3. Any fees arising in association with the preparation of the planning proposal is to be applied in accordance with the Council's adopted Fees and Charges Schedule in force on the date of payment.

The Motion was **Carried**

FOR VOTE - Cr P Youngblutt, Cr W Polglase, Cr D Holdom, Cr B Longland, Cr J van Lieshout, Cr K Skinner
AGAINST VOTE - Cr K Milne

ATTACHMENT 2 - Copy of Council Planning Report 19 April 2011

TITLE: [PR-CM] Planning Proposal PP11/0001 - Part Lot 378 DP 1148511 Overall Drive, Pottsville (Black Rocks Estate)

ORIGIN:

Planning Reforms

FILE NO: PP11/0001 Pt1

SUMMARY OF REPORT:

This report seeks Council's endorsement to prepare a planning proposal over Part Lot 378 DP 1148511 Overall Drive, Pottsville, which is a newly created allotment within Black Rocks Estate.

A Deed of Agreement (DOA) between Council and the landowner was entered into in 2003, which established, through intensive investigation and negotiation, the extent of land to be dedicated for open space reserve and environmental protection of Koala habitat.

The subject lot is part zoned residential and environmental protection and although there was no specific provision in the DOA for the proposed zoning amendment there was an apparent bilateral intention between the parties to that effect. This is supported, in part, by a specific reference to this Lot so that it was not to form part of the land otherwise identified for dedication, and flowing from the subdivision and construction development approvals that were subsequently approved and acted on.

The subject site is fully constructed, having been filled and retained to achieve Council's flood design requirements for urban residential properties, serviced and, but for the remaining zoning anomaly, ready for residential purposes in-line with that already occurring within this new housing estate.

This report concludes that, in recognition of the processes carried on to-date, this planning request is considered more of a 'housekeeping' amendment; a final tidy-up of unresolved or outstanding actions that would otherwise enable the orderly development of the Estate to be concluded.

Council's endorsement for preparing a planning proposal is sought.

RECOMMENDATION:

That:

- 1. Council endorses the preparation of a planning proposal for a change of land-use zone classification to enable Lot 378 DP 1148511 Overall Drive, Pottsville, to be developed for a low density residential purpose, and**
- 2. The planning for Lot 378 DP 1148511 Overall Drive, Pottsville, be referred to the Department of Planning and Infrastructure for a 'Gateway'**

determination under Section 56 of the *Environmental Planning and Assessment Act 1979*, and

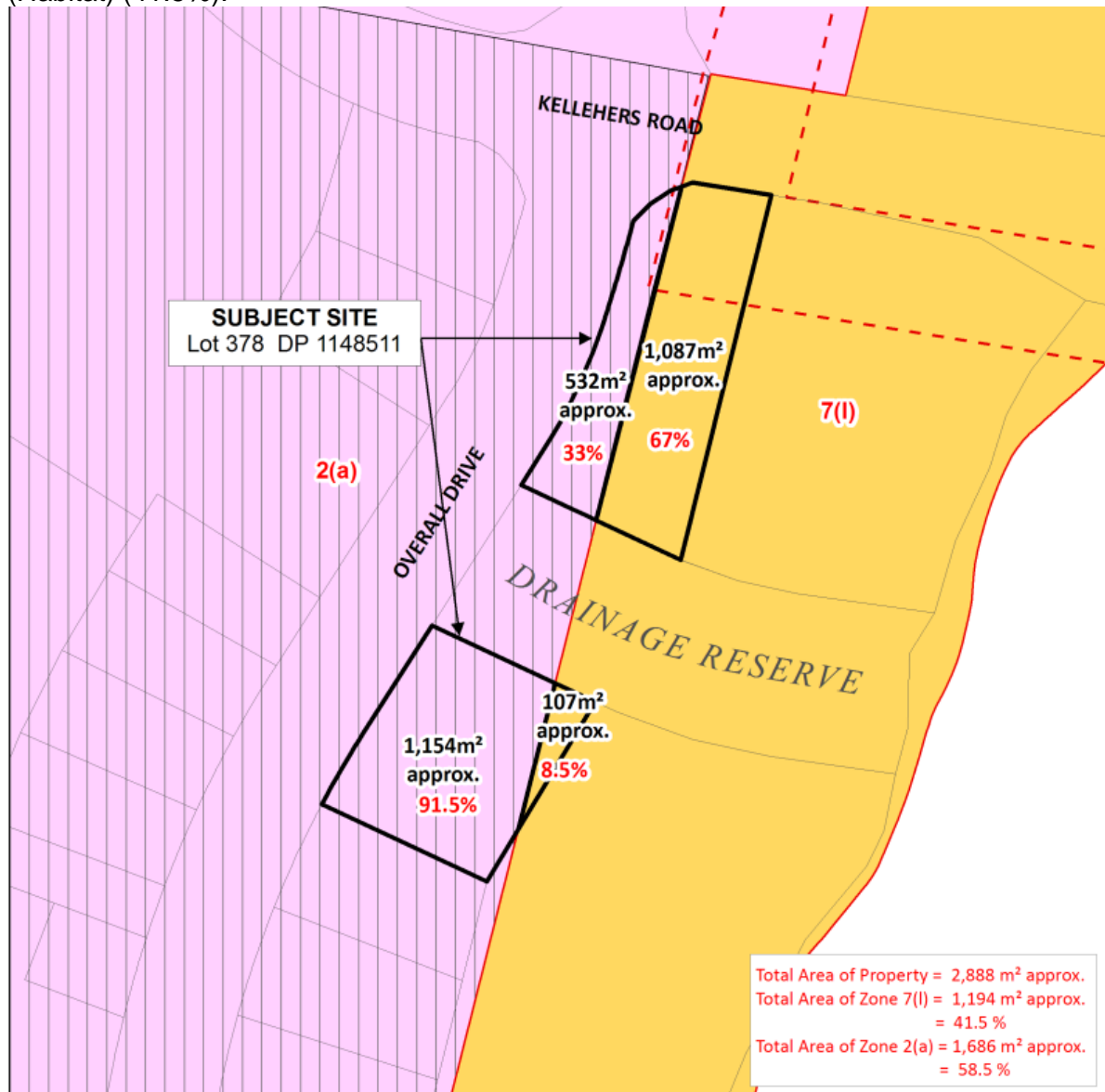
- Any fees arising in association with the preparation of the planning proposal is to be applied in accordance with the Council's adopted Fees and Charges Schedule in force on the date of payment.

REPORT:

Background

A request for a planning proposal seeking a zoning amendment has been received from Darryl Anderson Consulting Pty Ltd on behalf of the owners of Lot 378 DP 1148511 Overall Drive, Pottsville.

The allotment is bisected by a drainage reserve and has a total site area of 2878m². It is zoned part 2(a) Low Density Residential (58.5%), and Part 7(l) Environmental Protection (Habitat) (41.5%).



On 5 June 2003 a Deed of Agreement (DOA) was entered into between Tweed Shire Council and Black Rocks Estate Pty Ltd in relation to certain lands that were identified to be transferred to Council in conjunction with the making of Draft Tweed LEP Amendment No. 8 (Black Rocks Estate).

Clause 4.3 of the Deed of Agreement required the owner of the Black Rocks Estate to dedicate certain land as public reserves, which amounted to about 100 hectares, comprising significant Koala habitat. Under the terms of the DOA the land has been dedicated to Council. The remaining developable areas have been fully constructed into residential housing lots and associated infrastructure.

As part of the DOA investigations the subject site was found to be of limited environmental significance and a specific notation was made to reflect this, specifically the notation ensured its exclusion from the areas to be dedicated. The future use and rezoning for residential purposes was seemingly contemplated as part of the land dedication trade-off that formed the basis of the DOA, and it is recognised by both the lawful construction of the allotment to a residential standard, as well as, the zoning amendment proposed in the Draft Tweed LEP 2010, which is the same as that now sought under a planning proposal.



The request for a planning proposal stems from the negotiated outcomes that resulted in the dedication of 100 hectares of private land for regional open space and environmental protection (Koala habitat). While it was agreed with the landowner to facilitate the zoning amendment through the Draft standard instrument Tweed LEP 2006 (as it then was) the time that has since lapsed arising in part from the many complications arising from the implementation of the State Government's (then) new planning reforms was beyond the contemplation of the parties.

Since 2006 the Black Rocks Estate subdivision has been all but completed, with many new homes under construction. However, as arises with many large scale development proposals, there are actions that arose out of the initial processes that require attention and which would otherwise enable the orderly development of the Estate to be concluded. This planning proposal request is one such action.

CONCLUSION:

While the history and events covering the inception-to-development processes of the Black Rocks Estate project are many and varied it is quite apparent from the negotiated outcomes, arising from the preparation of a Deed of Agreement and the subsequent development approvals, that Council and the landowner alike, if not bilaterally, had either contemplated or had intended that a rezoning should occur. To think otherwise would be to lead questions about the alternative purpose for which the subdivision and construction applications were approved, and the land developed.

The events and occurrences to-date have, save for the remaining partial environmental protection zoning, set in place an allotment that is suitable for and should be pursued for low density residential housing.

For the reasons above, the planning proposal request is considered to have merit and suitable for a recommendation seeking Council's endorsement for the preparation of a planning proposal.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The planning proposal canvassed in this report it required to finalise matters outstanding on an otherwise concluded matter, so that this remaining lot can be developed orderly and economically in-line with the development of the Estate already occurring. Because of the built or constructed nature of the lot the planning proposal is considered more of housekeeping matter and is not likely to require substantial resourcing.

Inter-divisional referrals of the proposal have been made and no objections to the proposal on any ground, including environmental/estuarine/coastal/infrastructure, have been raised.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

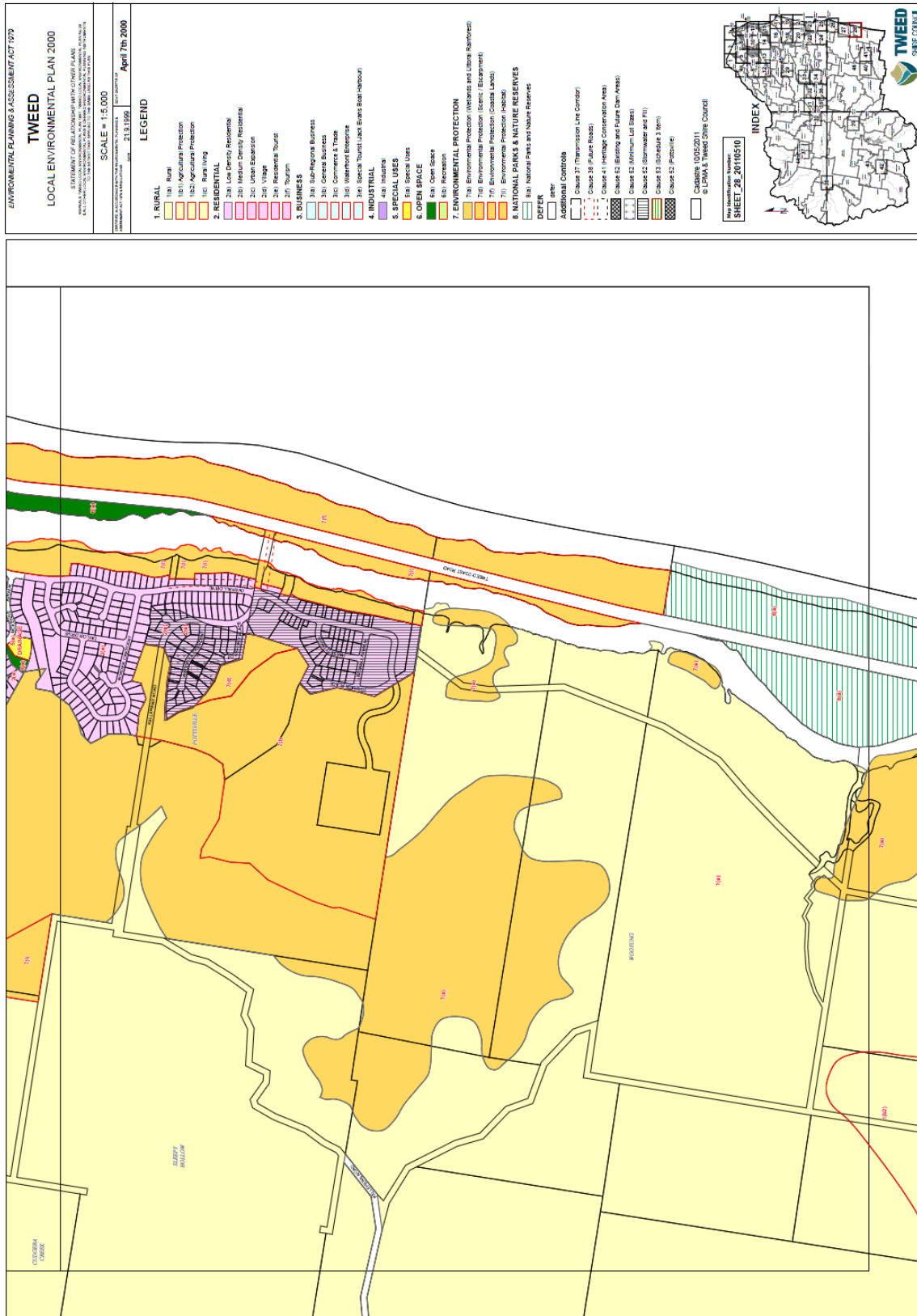
*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

Nil.

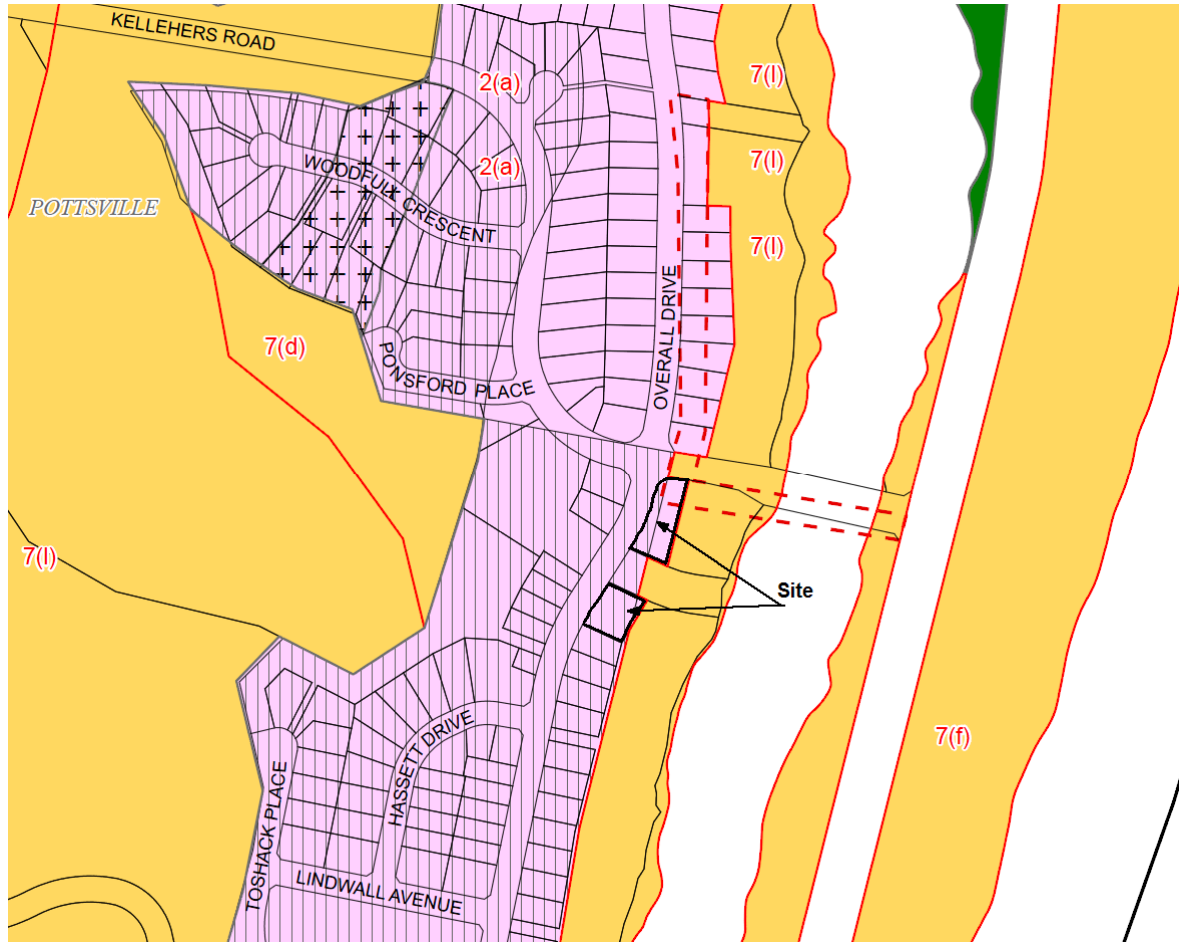
ATTACHMENT 3 - Site Identification Map



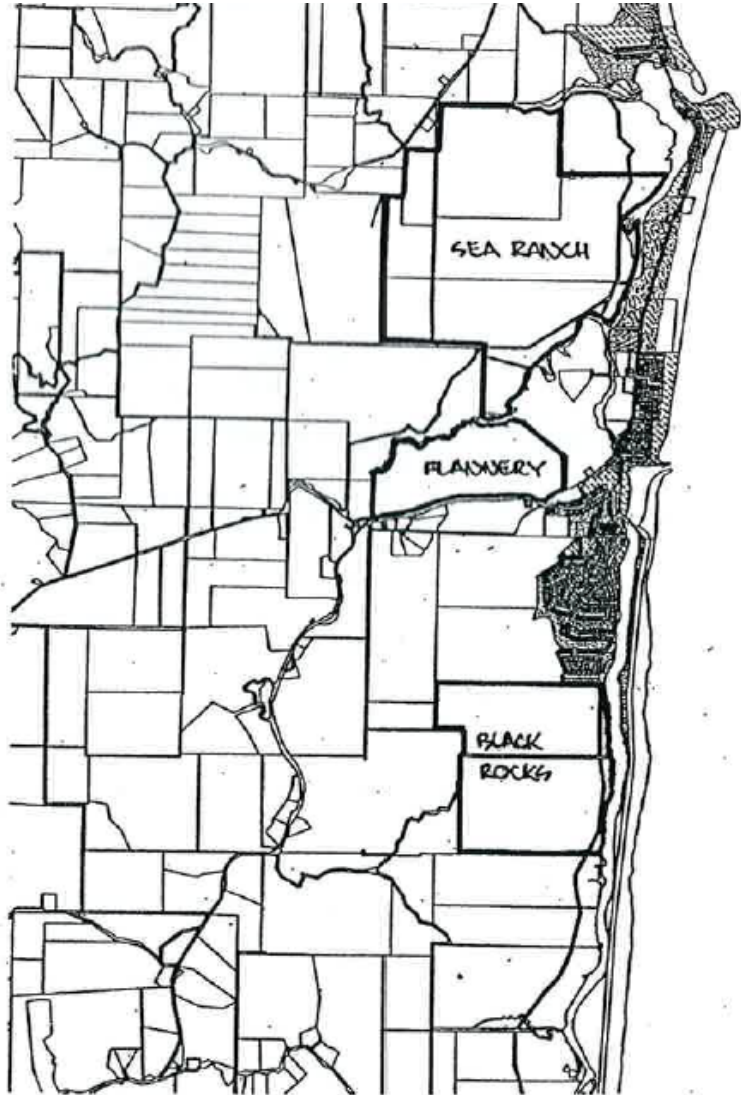
ATTACHMENT 4 - LEP Zoning Map Sheet No.28



Attachment 4 Continued.



ATTACHMENT 5 - Tweed Residential Development Strategy (as amended 1992)






-  : EXISTING URBAN AREA
-  : PUBLIC OPEN SPACE
-  : PROPOSED OPEN SPACE

FIGURE 13A
RELEASE AREA POTTSVILLE

ATTACHMENT 6 - NSW Coastal Policy Checklist

NSW COASTAL POLICY, 1997 – COMPLIANCE CHECKLIST

REQUEST FOR PLANNING PROPOSAL – LOT 378 DP 1148511, OVERALL DRIVE, POTTSVILLE (BLACK ROCKS ESTATE)

STRATEGIC ACTION	PROVISION	CONSISTENT (YES/NO/N/A)	INDICATE HOW THE LEP IS CONSISTENT/INCONSISTENT WITH THE POLICY
	PROTECT, REHABILITATE AND IMPROVE THE NATURAL ENVIRONMENT.		
1.1.2	Does the site have areas with land and/or marine and estuarine conservation value? If so, are these to be dedicated?	YES	Site does not have conservation values.
	If the land is Crown land (submerged or otherwise), has it been assessed for dedication/reservation under appropriate Acts (e.g. MPA, NPWS, NSWFW)?	N/A	
	If foreshore Crown land, will public access be maintained and/or appropriately zoned?	N/A	
1.1.5	If open space land, is it to be classified "community land" under the Local Government Act?	N/A	
1.1.9	Does the land have recognised conservation values? If so, what zones and/or other provisions are proposed?	YES	Site does not have recognised conservation values.
1.1.10	Is the land adjacent to a marine park? If so, what provisions are included which will give effect to the marine park zoning and operational plans?	N/A	
1.1.11	Does the plan enable the natural habitats of the site to form part of a regional open space corridor (including water areas)? If so, how?	YES	Site does not have natural habitat values.
1.3.7	Is the site included in a catchment management plan?	YES	Tweed Urban Stormwater Quality Management Plan.
	Have water quality objectives been established? If so, in what form (i.e. instrument/strategy)?	YES	Strategy.
	Does the plan incorporate water quality objectives and controls?	YES	
	Is ongoing water monitoring proposed?	YES	With future Development Application if required.
	Does the plan incorporate water monitoring provisions?	YES	
1.3.8	Has a stormwater management plan been developed?	YES	The subject land has been filled and serviced in accordance with relevant development consents and construction certificates (see Section 1.0 of PPR Report)
	Does the plan include stormwater controls?	YES	As Above.
1.3.14	Does the plan create the potential for impacts on ground water? If so, does the plan incorporate management controls for ground water?	YES	As Above.

STRATEGIC ACTION	PROVISION	CONSISTENT (YES/NO/N/A)	INDICATE HOW THE LEP IS CONSISTENT/INCONSISTENT WITH THE POLICY
	RECOGNISE AND ACCOMMODATE NATURAL PROCESSES AND CLIMATE CHANGE		
2.1.1	Does a coastline, estuary or floodplain PoM apply to the land? If so, does the L E P incorporate provisions to give effect to these plans?	YES	Tweed Development Control Plan 2008, Section A3 applies and Clause 34 of Tweed Local Environmental Plan 2000. The proposal is consistent.
2.1.4	If the site is effected by Acid Sulphate Soils, does the plan incorporate objectives for their management in accordance with the ASS manual and section 117 Direction ASS C1?	YES	Clause 35 of Tweed Local Environmental Plan 2000 applies.
2.2.2	Does the plan include provisions for sea level change as provided by the inter-governmental Panel On Climate Change?	YES	The land has been filled above the climate change level (see Section 2.3 of the PPR Report).
	PROTECT AND ENHANCE THE AESTHETIC QUALITIES OF THE COASTAL ZONE		
3.1.2	Does the plan include provisions to protect areas or items of high aesthetic value? If so, in what way?	N/A	
3.2.4	How does the plan address design and locational principles listed below (as detailed in appendix C table 3 page 83 Coastal Policy) ;	N/A	
	• Only essential public developments (e.g. surf lifesaving clubs on beach frontal dunes;	N/A	
	• Overshadowing of beaches and waterfront open space;	N/A	
	• Preservation of undeveloped headlands;	N/A	
	• New development on developed headlands (require environmental assessment including visual impact from adjoining beaches);	N/A	
	• No buildings greater than 14 m (unless justified following environmental planning considerations);	YES	
	• Do building height controls apply to the land? In what form (e.g. LEP, endorsed DCP)?	YES	Tweed Local Environmental Plan 2000 provides for a 2 storey height limit.
	• Is D U A P concurrence required or does Council have assumed concurrence? If so, up to what height?	YES	Concurrence required for buildings over 14m high under Clause 51 of the SEPP (North Coast Regional Environmental Plan) 1988.
	• Does the plan establish a setback line from coastal lakes, estuaries, beaches, foreshores and cliffs? Provide details.	N/A	
	• Is public access to foreshore to be maintained or provided? If so, how does the plan achieve this?	YES	Public access is provided by the existing cycleway/walkway and the dedicated public reserve comprising the foreshore of Mooball Creek (See Annexure 7 and Figure 1).

STRATEGIC ACTION	PROVISION	CONSISTENT (YES/NO/N/A)	INDICATE HOW THE LEP IS CONSISTENT/INCONSISTENT WITH THE POLICY
	<ul style="list-style-type: none"> Have provisions been made for dedication or an agreement entered into, to ensure use and maintenance of the public access area? 	N/A	
	<ul style="list-style-type: none"> Tourist or recreation developments adjacent to or within a National Park, Nature Reserve or State Recreation Area. 	N/A	
3.3.1	Has a regional and/or local housing strategy been developed to encourage compact towns? If so, does the plan comply?	N/A	
	PROTECT AND CONSERVE CULTURAL HERITAGE.		
4.1.2	How does the plan conserve or protect known regional/local items or areas of coastal heritage?	N/A	
	Does the plan protect any significant views or vistas within or from towns?	N/A	
	PROMOTE ECOLOGICALLY SUSTAINABLE DEVELOPMENT AND USE OF RESOURCES.		
5.1.2	Does a regional industry, economic development and/or tourism strategy apply to the area? If so, does the plan comply?	N/A	
5.1.3	Is the land identified as class 1, 2 or 3 (prime crop and pasture land) in NSW Agriculture's Land Classification Scheme?	N/A	Class 9 (Urban).
	If so, how does the plan protect this resource?	N/A	
5.1.7	Does the plan affect or facilitate the identification or development of areas for aquaculture?	N/A	
5.1.8	Does the plan identify or facilitate mineral exploration, mining or extraction?	N/A	
	How does the plan ensure ecologically sustainable development of the resource and protect environmentally significant site?	N/A	
5.2.3	Are there plans of management that apply to the site?	N/A	
	How does the plan integrate these to ensure responsible and ecologically sustainable development and use of resources?	N/A	
5.2.11	Does a regional and/or local tourism plan apply to the area?	N/A	
	If so, how does the L E P compliment this plan?	N/A	
	PROVIDE ECOLOGICALLY SUSTAINABLE HUMAN SETTLEMENT		
6.1.1	Is the plan consistent with a regional settlement strategy prepared by D U A P and consistent with the Coastal Policy?	YES	Consistent with NCUPS, 1995 and Far North Coast Regional Strategy, 2006 - 2031
6.1.2	Is the plan consistent with an urban land release/strategy endorsed by D U A P and consistent with the Coastal Policy?	YES	Consistent with Tweed Residential Development Strategy, 1991.
6.1.4	Does the plan create canal estate developments as these types of developments are prohibited?	N/A	

STRATEGIC ACTION	PROVISION	CONSISTENT (YES/NO/N/A)	INDICATE HOW THE LEP IS CONSISTENT/INCONSISTENT WITH THE POLICY
6.2.1	If the plan creates urban areas are they “compact” and “contained” rather than “ribbon”, “unrelated cluster” or “continuous”?	YES	The site immediately adjoins an established urban area.
	Does the plan define urban boundaries and indicate the amount and form of development?	N/A	
	Can servicing and infrastructure be economically and environmentally provided?	YES	All necessary infrastructure exists adjacent to the subject land.
6.3.1	Is the plan consistent with a rural residential release strategy, endorsed by D U A P and consistent with the coastal policy, which preserves scenic conservation, agricultural, significant or extractive resources?	N/A	
6.4.1	Does the plan provide greater choice in housing?	YES	
6.4.2	Is the area close to an existing town centre?	YES	Kingscliff is approximately 15km north of the site. Pottsville town centre is approximately 1.5 km north of the subject land
	Does the plan provide for higher density residential development?	YES	
	Does the plan require additional infrastructure? What type?	N/A	All existing infrastructure is adequate.
	PROVIDE FOR APPROPRIATE PUBLIC ACCESS AND USE.		
7.2.4	If the plan provides for tourism development, what provisions have been included in the plan to ensure public access to the foreshore?	N/A	

ATTACHMENT 7 - Deed of Agreement

DATED:

5/6/03

BETWEEN:

THE TWEED SHIRE COUNCIL

AND:

BLACK ROCKS ESTATE PTY LTD

DEED

OF

AGREEMENT

Stacks The Law Firm
Solicitors
12 Queen Street
MURWILLUMBAH NSW 2484

REF: GT1/LEP/2000/8

PH: 6672 1855

FAX: 6672 4677

30 May 2003

THIS DEED made 5th day of June

Two Thousand and Three **BETWEEN THE TWEED SHIRE COUNCIL** a Council duly incorporated in pursuance of the provisions of the Local Government Act 1993 of Council Chambers, Tumbulgum Road, Murwillumbah in the State of New South Wales (hereinafter called "the Council") **AND BLACK ROCKS ESTATE PTY LTD** a company duly incorporated in New South Wales and having its registered office at , 27 Macquarie Place , Sydney (ACN 000 614 399) (hereinafter called "the Owner").

WHEREAS

- A. The Owner is the registered proprietor of Lot 65 Deposited Plan 855462, Lot 183 Deposited Plan 1034824 and Lot 1 Deposited Plan 824499 (Parish Mooball) and being the land contained in Certificates of Title Folio Identifiers 65/855462, 183/1034824 and 1/824499 (hereinafter called "the land").
- B. The land is zoned Part 2(a), Part 7(l), Part 7(d), Part 7(a) and Part Rural 1(a) under the Tweed Local Environmental Plan 2000 (hereinafter called "the plan").
- C. The Owner has requested the Council to make an application to the Minister administering the Environmental Planning and Assessment Act 1979 (hereinafter known as "the Act") to make an amendment to the Tweed Local Environmental Plan 2000 to permit approval of residential allotments upon the land and inter alia, a Koala and creek side habitat and wetland area and sportsfield.
- D. The Council has considered the request for rezoning under the provisions of the Act resolving pursuant to S54 that the rezoning of the land shall be in accordance with and in furtherance of the provisions of the Act and has prepared a draft Local Environmental Plan (see Annexure "A1" herewith) (hereinafter called the "draft LEP") to rezone the land so that the zoning shall be part 2(a) and part 7(l) under the Tweed Local Environmental Plan 2000 as amended and such proposed rezoning to be generally in accordance with the areas so depicted in plan annexed hereto marked "A2".



THIS DEED WITNESSES THAT the owner agrees with the Council to the following terms and conditions in consideration for the Council making a draft LEP and application to the Minister as follows:

1. The Council will pursuant to Section 54 of the Act submit the draft LEP to the Minister upon the execution of this Deed.
2. The Council shall also take all necessary steps in accordance with the Act to provide to the Minister all such things as are in its power to provide so as to allow the Minister to make a determination with regard to the rezoning of the land.
3. Upon the Minister making the Local Environmental Plan in respect of the land and in pursuance of the Act so that the Council is empowered to approve a subdivision of the land into residential allotments and to create a koala habitat and creek side reserves, it shall consider any such proposal for development made by the owner as may then be permitted in accordance with the Act and the Local environmental Plan.
4. That the Owner shall upon the Local Environmental Plan being made:
 - 4.1 Execute a transfer in escrow of the land identified as koala habitat, scenic protection and the Mooball Creek buffer zone and more particularly identified as "public reserve" hereinafter in Clause 4.3, such transfer to be executed and capable of registration by the Council in respect of the said land in the name of the Council upon the approval of a plan of subdivision to be submitted to Council with the first Development Application for the development of the land. Such transfer is to be prepared by the solicitors for the Council and forwarded to the Owner for such execution.

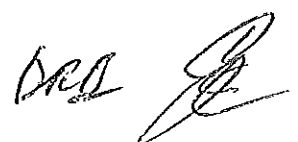
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4.2 The Owner shall submit a management plan with the development application referred to in clause 4.1 which shall include;

- (i) a comprehensive fencing plan to protect koala habitat such plan to include appropriate fencing around the boundaries of the area marked koala habitat and scenic protection and shaded green and yellow shown in the plan annexed hereto and marked "B1". The plan to be approved by the Director, Development Services on behalf of Council; and
- (ii) a compensatory koala food tree planting plan within areas marked koala habitat and shaded green in the plan annexed hereto and marked "B1" for planting of five (5) koala food trees for every one (1) koala food tree removed in the construction of the future sportsfield referred to in clause 4.3 (iii) (c). The plan to be approved by the Director, Development Services on behalf of Council.

4.3 The Owner will proceed at the Owner's cost to prepare a plan of subdivision for the approval of Council so as to provide in such a subdivision without cost to the Council as public reserve that part of the land shown in the plans annexed hereto and marked "B1" and "B2" as "Public Reserve" for the purposes and on the further terms and conditions set out hereunder.

- (i) The owner will at its own expense make a subdivision application with all necessary documentation and information for the processing by the Council of said application and if the Council should grant approval for such subdivision with conditions of consent for that subdivision the owner will at its own expense observe and comply with every such reasonable lawful condition imposed by the Council and will in every respect comply with the requirements for registration of plans by the Act and the Regulations thereunder in relation to the subdivision of the land.
- (ii) The Owner will in such subdivision provide without cost to the Council as a public reserve that part of the land shown on the plan



annexed hereto marked "B1" and "B2" as "Public Reserve" and being all the land contained within the areas coloured red, green and yellow shading and will in the plan of such subdivision show such part of the land as "Public Reserve" to the intent and so that such parts of the said land shall vest in the Council in accordance with the provisions of Section 49 of the Local Government Act 1993 and shall pay all rates and taxes and outgoings including land tax of whatever nature outstanding at the date of registration of the said plan of subdivision in the Land and Property Information Office and shall at its cost procure execution of all transfers re-conveyances releases surrenders and discharges necessary to vest the same in the Council.

- (iii) The land to be provided as public reserve shall be primarily for the following purposes:
- (a) to dedicate to the Council the area of land identified as koala habitat and scenic protection as generally indicated by green shading and yellow shading on Annexure "B1" to this Agreement and Mooball Creek buffer generally indicated by red shading on Annexure "B2". The land so dedicated shall subsequently be fenced in accordance with the Management Plan detailed in clause 4.2 (i) to the satisfaction of Council prior to the release of the linen plan pursuant to the powers of Council under the Local Government Act 1993 and the Environmental Planning & Assessment Act 1979 for the subdivision of the land. Such fencing shall be at the cost of the party seeking the release of the linen plan; and
 - (b) to plant the land identified as koala habitat with koala food trees in accordance with the management plan detailed in clause 4.2 (ii) to the satisfaction of Council prior to the release of the linen plan for the first stage of residential subdivision of land identified as 2(a) and shaded pink on Annexure "A2" pursuant to the powers of Council under the Local Government Act 1993 and the Environmental Planning & Assessment Act 1979 for the



subdivision of the land. Such planting shall be at the cost of the party seeking the release of the linen plan; and

- (c) to dedicate to Council a minimum of four (4) hectares of land for the purpose of a sportsfield in the general area indicated by blue edging and blue hatching on Annexure "B1". The land so dedicated shall be filled, drained, topsoiled, grassed and provided with an automated water sprinkler system in accordance with detailed plans to be submitted by the Owner and approved by Council prior to work commencing. The work for filling, draining, topsoiling and grassing is to be completed prior to the release of the linen plan for the first stage of the residential development of the land zoned 2(a) shown in Annexure "A2" pursuant to the powers of Council under the Local Government Act 1993 and the Environmental Planning & Assessment Act 1979. The provision of an automated water sprinkler system is to be completed prior to the release of the linen plan for the final stage of residential subdivision of the land zoned 2(a) shown in Annexure "A2" pursuant to the powers of Council under the Local Government Act 1993 and Environmental Planning & Assessment Act 1979 such stage shall not be less than 20 lots. Such embellishments shall be at the cost of the party seeking the release of the linen plans;
- (d) in the alternative the parties may agree to an alternative location for the sportsfield subject to the conditions detailed in Clause 4.3(iii)(c) and in accordance with the draft Local Environmental Plan (Annexure "A1").
- (e) to embellish and dedicate to council a minimum of two thousand (2000) square metres of land for the purpose of casual open space. The parties acknowledge that part of the casual open space may include the Mooball Creek Buffer indicated by red shading on Annexure "B2". The parties acknowledge that part of the casual open space must include part of the land marked 2(a)



and coloured pink on Annexure "A2" and must be embellished with children's play equipment. The land so dedicated and embellished shall be in accordance with detailed plans to be submitted and approved by Council for the first stage of residential subdivision of land marked 2(a) and coloured pink on Annexure "A2".

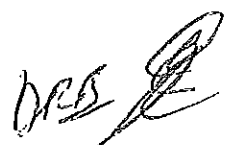
- 4.4 Until the vesting of that part of the said land in the Council as public reserve as aforesaid the Owner shall not assign or part with possession of the land until a Deed of Covenant containing the same obligations and liabilities to those herein contained shall have firstly at the cost of the Owner been procured from such persons as may acquire an interest in the said land or any part by reason of any assignment transfer or surrender of possession thereof it being acknowledged by the Owner that the Council has a proprietary and equitable interest in and to so much of the said land that is shown in the annexed plan as "Proposed Public Reserve" and is at liberty if it so desires to cause registration in the Land and Property Information Office of any Caveat or document that it shall consider necessary to ensure that notice of this Deed is available to any person intending to acquire an interest in any part of the said land and in the event of the Owners having failed to obtain such Deed of Covenant then notwithstanding any omission by the Council to cause such Caveat to be entered the Owner shall indemnify and keep indemnified the Council against all payments of compensation costs and expenses whatsoever incurred by it in causing the vesting in it as public reserve of that part of the said land that is shown in the annexed plans as "Public Reserve".
5. The Owner hereby releases and discharges the Council from all or any claims actions suits and proceedings of whatsoever nature and kind which the Owner now has against the Council in respect of the said land or in respect of the severance of the said land or any part thereof from any land used or enjoyed in conjunction therewith arising out of or by virtue of the coming into operation of the aforesaid amendment to the zoning of the land or by reason of any prohibition or restriction imposed by or under any rezoning or otherwise howsoever arising out of or in respect of the land.



6. IT IS HEREBY AGREED AND DECLARED that the provisions in this Deed are conditional upon the rezoning and the said document shall not operate or have effect until a Plan is approved providing for the rezoning.
7. Each party shall pay their own legal fees. The Owner shall pay all stamp duties in connection with the preparation and execution of this document and any document executed ancillary or pursuant thereto.
8. The parties hereby acknowledge that it is a fundamental condition of the Council entering into this Agreement that the area of land identified as Koala Habitat, scenic protection and the Mooball Creek buffer zone identified in Clause 4.1 (excluding land identified in clause 4.3 (iii) (c) and (e)) herein are areas of high conservation value and to be preserved as such pursuant to this Agreement and does not constitute in any way a contribution by the Owner under S94 of the Environmental Planning & Assessment Act 1979.
9. The parties acknowledge that the proposed dedications and embellishments set out in Clause 4.3(iii)(c) and (e) herein represents a material public benefit pursuant to Section 94 of the Environmental Planning & Assessment Act 1979 and any payment as such under this agreement for embellishment shall be capable of being accounted for in any demand under Section 94 on the approval of a proposed development in respect of the subject land.
10. The Owner agrees to bind itself and its successors in title to the whole of the land described in Recital A of this Deed and to have any successor in title to execute a Deed in the same form and to the same effect as the current Deed. The Owner agrees that it shall not execute any transfer of the land until such a Deed has been executed.
11. Each party shall promptly execute all documents and do all things that the other party may from time to time reasonably require to effect perfect or complete the provisions of this document and any transaction contemplated by it.
12. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of New South Wales and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings brought in those courts.



13. In this Deed the word "Act" means the Environmental Planning and Assessment Act 1979 or any Act amending repealing or replacing the same.
14. Where herein used words importing the singular number of plural number shall include the plural number and singular number respectively and words importing the masculine gender shall include the feminine or neuter gender.

A handwritten signature in black ink, appearing to be "D.R.S." followed by a stylized flourish.

IN WITNESS whereof the parties hereto have hereunto signed their names and affixed their seals the day and year first hereinbefore written.

THE COMMON SEAL OF THE TWEED

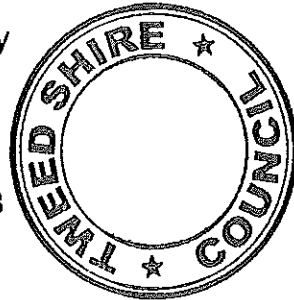
SHIRE COUNCIL was hereto affixed

Pursuant to delegated authority

Provided by a resolution of

Council passed on the

24TH day of JUNE 2003



)
)
) *[Signature]*
)
)
)

) *David Boyd*
)
) GENERAL MANAGER

THE COMMON SEAL OF BLACK

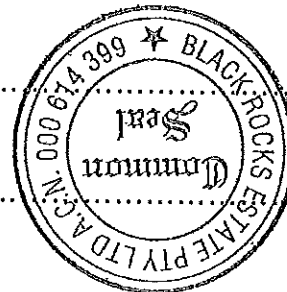
ROCKS ESTATE PTY LTD

ACN 000 614 399 was hereto affixed

in the presence of *the two*

Director and Secretary whose signatures

are set opposite thereto



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[Signature]
[Signature]
DIRECTOR

Annexure "A1"



Tweed Local Environmental Plan 2000 (Amendment No 8)

under the

Environmental Planning and Assessment Act 1979

I, the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration), make the following local environmental plan under the *Environmental Planning and Assessment Act 1979*. (G93/00504/S69)

Minister Assisting the Minister for Infrastructure
and Planning (Planning Administration)

Tweed Local Environmental Plan 2000 (Amendment No 8)

under the

Environmental Planning and Assessment Act 1979

1 Name of plan

This plan is *Tweed Local Environmental Plan 2000 (Amendment No.8)*.

2 Aims of plan

This plan aims:

- (a) to require the consideration of bushfire hazards and buffer zones when determining applications for development of land within the local government area of Tweed, and
- (b) to permit additional development of certain land at Pottsville for the purposes of sports fields, and
- (c) to rezone certain land at Pottsville to permit urban development and environmental protection on that land.

3 Land to which plan applies

- (1) To the extent that this plan deals with bushfire protection, it applies to all land within the local government area of Tweed to which the *Tweed Local Environmental Plan 2000* applies.
- (2) To the extent that this plan permits additional development of land, it applies to land at Pottsville being Part Lot 65 DP 855462.
- (3) To the extent that this plan rezones land, it applies to land at Pottsville being Part Lot 65 DP 855462 and Part Lot 1 DP 824499.

4 Amendment of Tweed Local Environmental Plan 2000

Tweed Local Environmental Plan 2000 is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 4)

[1] Clause 39A

Insert after clause 39:

39A Bushfire protection

(1) Objective

- to minimise bushfire risk to built assets and people and to reduce bushfire threat to ecological assets and environmental assets.

(2) In determining whether to grant consent to development in areas that, in the opinion of the consent authority, are likely to be affected by bushfire, the consent authority must take into account:

- (a) whether the development is likely to have a significant adverse effect on the implementation of any strategies for bushfire control and fuel management adopted by the Bushfire Control Office established by the Council for the area, and
- (b) whether a significant threat to the lives of residents, visitors or emergency services personnel may be created or increased as a result of the development (including any threat created or increased by the access arrangements to and from the development), and
- (c) whether the increased demand for emergency services during bushfire events that is created by the development would lead to a significant decrease in the ability of the emergency services to effectively control major bushfires, and
- (d) the adequacy of measures proposed to avoid or mitigate the threat from bushfires including:
 - (i) the siting of the development, and
 - (ii) the design of structures and the materials used, and
 - (iii) the importance of fuel-free and fuel-reduced areas, and

Tweed Local Environmental Plan 2000 (Amendment No 8)

Schedule 1 Amendments

- (iv) landscaping and fire control aids such as roads, reserves, access arrangements and on-site water supplies, and
 - (e) the environmental and visual impacts of the clearing of vegetation for bushfire hazard reduction.
- (3) In taking into account the matters required by subclause (2), the consent authority must have regard to the provisions of the document entitled *Planning for Bushfire Protection*, prepared by Planning & Environment Services, NSW Rural Fire Service in co-operation with the Department of Urban and Transport Planning, and dated December 2001, and must be satisfied that those provisions are, as much as is possible, complied with.

[2] **Schedule 3 Development of specific sites**

Insert at the end of the Table to the Schedule:

That part of Lot 65, DP 855462, Pottsville that is within Zone No 7 (I) Environmental Protection (Habitat)	Development for the purposes of sports fields.	Maximum area of 4 hectares. (excluding water quality control ponds or drains.) The sports fields must be located as close to possible to the residential land on the eastern portion of the site, the western side of the dunal ridge and the southern boundary of the land.
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[3] **Schedule 6 Maps and Zones**


Insert in appropriate order in Part 2:

Tweed Local Environmental Plan 2000 (Amendment No 8)

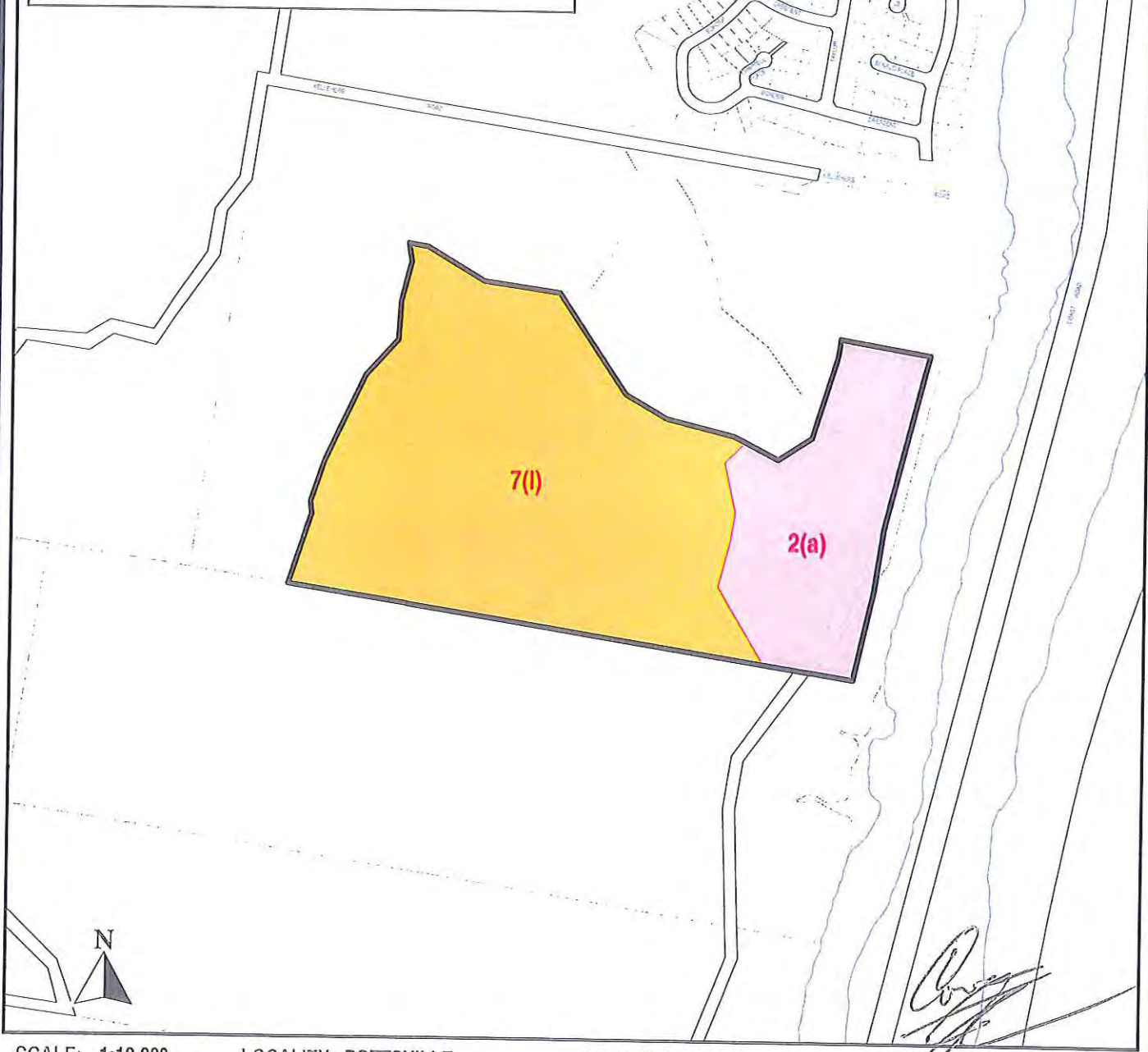
Legend

2(a) RESIDENTIAL
Low Density Residential

7(l) ENVIRONMENTAL PROTECTION
Habitat

 SUBJECT AREA
Part Lot 65 DP855462
Part Lot 1 DP824499

Annexure "A2"



SCALE: 1:10,000

LOCALITY: POTTSVILLE

PARISH: MOOBALL

COUNTY: ROUS

ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979

TWEED

LOCAL ENVIRONMENTAL PLAN 2000 AMENDMENT No. 8

DRAWN BY: **J. Batchelor** DATE: **06/05/03**

SUPERVISING DRAFTER:

PLANNING OFFICER: **G. Judge**

COUNCIL FILE No.: **GTI/LEP/2000/8**

DEPT. FILE No.: **G93/00504**

GOVT. GAZETTE OF:

STATEMENT OF RELATIONSHIP WITH OTHER PLANS

AMENDS: **TWEED LOCAL ENVIRONMENTAL PLAN 2000**

CERTIFIED IN ACCORDANCE WITH
THE ENVIRONMENTAL PLANNING &
ASSESSMENT ACT 1979, AND REGULATIONS

GENERAL MANAGER

6/5/03
DATE

Annexure "B2"

Part Lot 1 in DP 824499
zoned 7(l) Environmental Protection
(Habitat)

Part Lot 1 in DP 824499
zoned 7(l) Environmental Protection
(Habitat)

Part Lot 65 in DP 855462
zoned 7(l) Environmental Protection
(Habitat)


7(l) / 2(a) boundary

165 metres from 7(l)/2(a)

Approximately 2.8 hectares

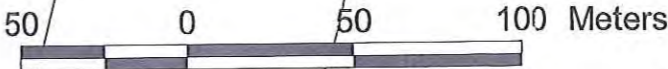
Mooball Creek

Coast Road

 excluded area
approximately 3,300m²

 cadastre

 Mooball Creek Buffer -
Public Reserve



May 2003

Annexure "B1"

part Lot 183 on DP 1034824
approximately 47.5 hectares

dedication excludes 10 metres from Kellehers Road zoned Rural 1(a)

dedication excludes 10 metres from Kellehers Road zoned Rural 1(a)

part Lot 65 on DP 855462
approximately 56.5 hectares

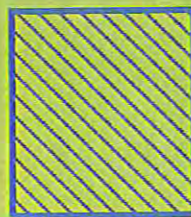
Black Rocks Estate

Coast Road

Kellehers Road

part Lot 65 DP 855462
approximately 2.0 hectares

-  Scenic Protection - Public Reserve
-  Cadastre
-  4 hectare sportsfield - Public Reserve
-  Koala Habitat - Public Reserve



100 0 100 200 Meters

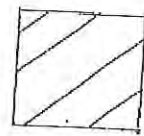
May 2003

ATTN G. JUDGE.

RESE

KELLEHERS (20115 WIDE) ROAD

Suggested
 7(A) Habitat Zone
 to be dedicated
 to TSC as part
 of legal agreement
 for Tweed LEP 2000
 (Amendment No 8)



BUFFER LINE

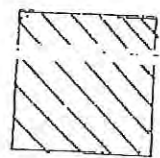
1856000

Existing
 Zone Boundary

1855800

POR. 180

Suggested
 7(A) Habitat Zone
 not to be
 dedicated to
 TSC as part
 of legal
 agreement for
 Tweed LEP 2000
 (Amendment No 8)



Approx 16-18 metres

Mooball

1855600

PLAN SHOWING BUFFER
 50 m. FROM M.H.W.M.
 PORTIONS 179 & 180.
 Parish of MOOBALL
 'BLACK ROCKS ESTATE'

SCALE - 1:2500

G.S. Robertson & Associates
 GENERAL SURVEYORS
 P.O. BOX 110
 TWEED HEADS 2430

Ref. No - N.1926

2/2/03

[Signature]

For the purposes of drawing up the legal
 agreement I agree with the above

26/3/03

[Signature]

Ref. No - N.1926



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

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