

**TITLE: [DS] Draft Tweed Local Environmental Plan 2000, Amendment No 8
- Black Rocks Estate**

ORIGIN:

Strategic Town Planning

FILE NO: GT1/LEP/2000/8 Pt5

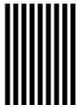
SUMMARY OF REPORT:

Council previously resolved to adopt draft Tweed Local Environmental Plan 2000 (Amendment No 8) and the associated pre-rezoning Legal Agreement between Council and Black Rocks Estate Pty Ltd. In response to a number of issues raised by various State Agencies, and after consultation with State Agencies and the landowner, it is recommended that the adopted draft Plan and Legal Agreement be amended. It is recommended that additional provisions in Clause 52 of Tweed LEP 2000 be inserted into the draft Plan to address soil and water management issues raised by the Department of Infrastructure, Planning and Natural Resources. It is also recommended that the Legal Agreement be amended to reflect these changes.

RECOMMENDATION:

That: -

1. Council amends the adopted draft Tweed Local Environmental Plan 2000 (Amendment No 8) zone map, as shown in Figure 2, and amends the adopted Written Instrument, as follows:
 - Inserting the following additional aim:
 - “(d) to apply special provisions on soil and water management”.
 - By adopting a new zone map as shown in Figure 2.
 - By amending the Table in Clause 52 by inserting the following in Columns 1 and 2:

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

	<p>surface and ground waters, such 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 development proposes the filling of land:</p> <ul style="list-style-type: none"> i. whether or not the filling of land would increase the risk or severity of flooding of other land in the vicinity, and ii. the potential impacts of the filling of land on groundwater quality, and iii. the likely impacts of increased flooding on adjacent flora and fauna habitat, and iv. the quality, volume and source of any fill material and the likely impacts associated with the sourcing and transportation of fill material; and v. the adequacy of the location and justification of the design of environmental buffers between filled areas and environmentally sensitive land eg, riparian areas, wetlands and waterways. <p>(c) the adequacy of proposed drainage systems, particularly in respect of Council's goal that post development drainage should mimic natural (pre-development) 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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2. Council amends the Legal Agreement between Council and Black Rocks Estate Pty Ltd dated 5 June 2003 prior to forwarding the new adopted Plan to the Department of Infrastructure, Planning and Natural Resources. The Agreement is amended by inserting an amended Annexure A1 (draft Written Instrument) and Annexure A2 (draft zone map) consistent with the amended draft Plan in 1. above.
3. All necessary documentation associated with the amended Legal Agreement in 2. above be completed under the Common Seal of Council.

REPORT:

Background

Council, at its meeting of 19 March 2003, resolved to adopt draft Tweed Local Environmental Plan 2000, Amendment No 8, for the residual area of Black Rocks Estate subject to finalisation of a Legal Agreement between Council and Black Rocks Estate Pty Ltd for dedication and embellishment of koala habitat and sportsfields. The Deed of Agreement was completed and signed by the proponent, and Council resolved on 4 June 2003 that:

“all necessary documentation be completed under the Common Seal of Council”.

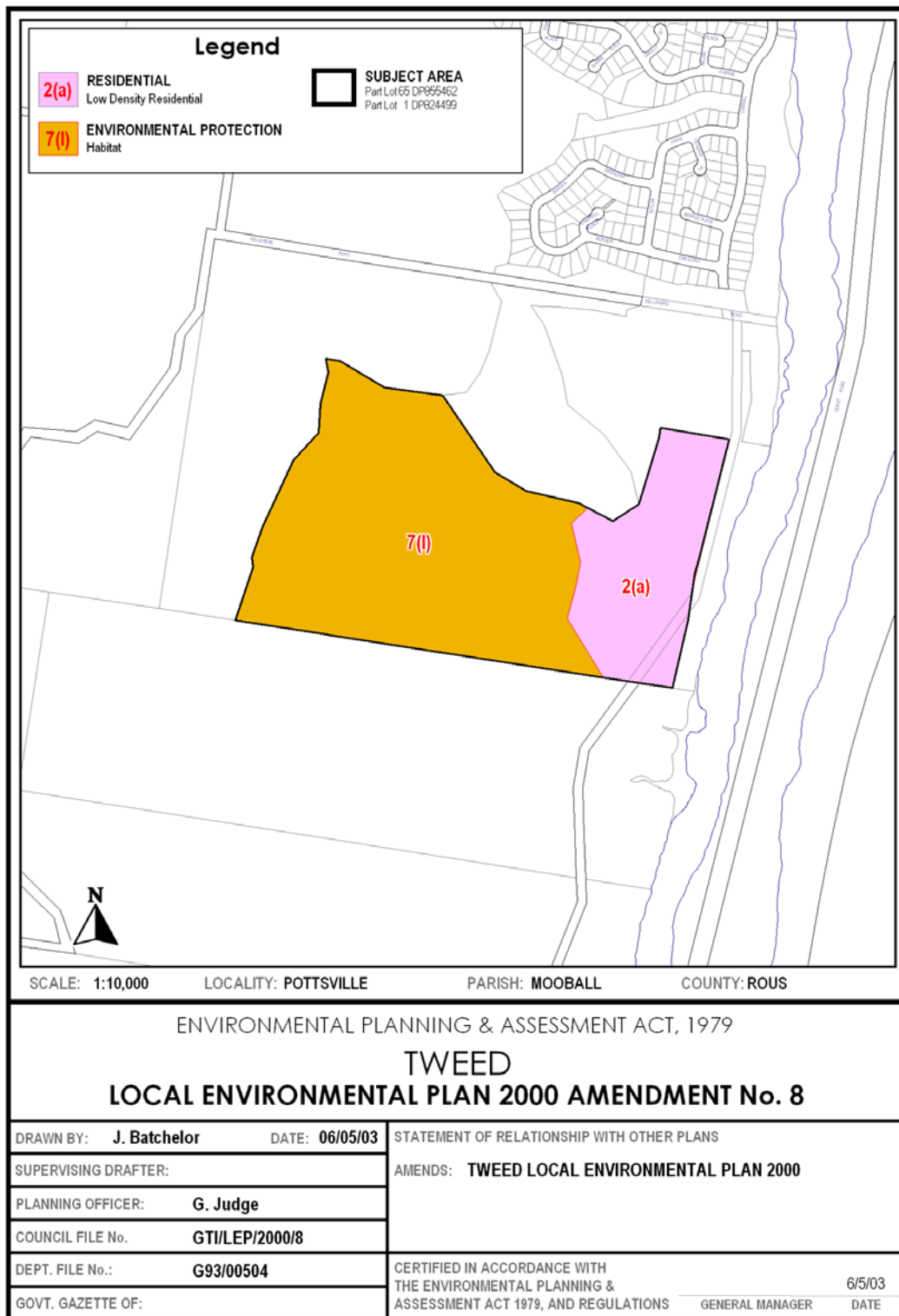
The adopted draft zone map is shown in Figure 1. The adopted Written Instrument is attached as Appendix 1 to this report.

Draft Tweed LEP 2000 (Amendment No 8) proposes to rezone the residual area of Black Rocks 1(a) Rural zone to 11ha of 2(a) zone and 31 hectares of 7(l) Habitat zone. When the LEP is gazetted the owner (Richard Cowan) will be required to do the following in accordance with the Legal Agreement:

- Dedicate to Council in the first subdivision 104 hectares of koala habitat including land for the sportsfield, 2 hectares of scenic protection zone over Mooball Hill and 2.8 hectares of the Mooball Creek buffer;
- Embellish the 4 hectare sportsfield (filling, topsoiling and grassing) as part of the first stage of residential subdivision for the area to be rezoned 2(a);
- Provide an automated sprinkler system for the sportsfields as part of the final stage of residential subdivision of Black Rocks Estate. This is done latter because water and electricity will not be available to the sportsfield until the latter stages of residential subdivision;
- Dedicate and embellish a minimum of 2,000m² of casual open space as part of the residential subdivision.

The proponent has agreed to all of the requirements of the Deed of Agreement. All relevant documentation was sent to the Department of Infrastructure, Planning and Natural Resources advising the Department of Council's resolution and a request that the Minister make the Plan.

Figure 1 – Adopted Draft Plan



Department of Infrastructure, Planning and Natural Resources (DIPNR)

In a letter dated 23 July 2003 the DIPNR advised Council that there were a number of issues raised by the Environment Protection Authority (EPA), DIPNR and NSW Coastal Council that they consider have not been adequately addressed in the Environmental Study prepared by Council's Consultant, GeoLINK.

- Fill and flow impacts of stormwater in Mooball Creek (EPA).
- Impacts of fill and the potential of development to create ribbon development along Mooball Creek (Coastal Council/DLWC).
- Impacts of fill on increased flood levels and effects of delayed drainage times (DLWC).
- Acid sulphate soils management (DLWC).

The letter from DIPNR is attached as Appendix 2.

Council officers contacted the relevant State Agencies and responded as follows:

"In the report to Council on the public exhibition of the draft Plan GeoLINK (Council's consultant) and Council officers stated that all of these issues were addressed in the Environmental Study to satisfy the conclusion that eleven (11) hectares of land could be developed for residential development and the remaining thirty (30) hectares could be used for a 4 hectare sports field and for wildlife conservation. The recommendations by GeoLINK and council officers included accepting a development trade-off whereby the proponent will dedicate approximately 100 hectares to Council for wildlife conservation after the draft plan is gazetted.

The need for detailed design details on stormwater management, drainage and acid sulfate soil management were not considered necessary at the rezoning stage. This approach is consistent with past practice with spot rezonings by Council and accepted by PlanningNSW. Council and GeoLINK concluded that the detailed information for residential subdivision of the site and the sportsfields can be addressed at the applicant's expense when the Development Application is lodged with Council or PlanningNSW (SEPP 71). In addition adequate provisions in Council's current Tweed LEP 2000, council's adopted Tweed Stormwater Management Plan and the recently reviewed DCP 16 (Subdivision Manual) require proponents to address these detailed issues when they wish to develop the site. Most of these issues were discussed at a Stakeholder Workshop in September 2002 prior to finalisation of the Environmental Study and draft LEP".

The response from the Environment Protection Authority dated 30 July 2003, and the Coastal Council of NSW dated 8 August 2003, is attached as Appendix 3.

The EPA and Coastal Council did not accept this response.

The EPA advised as follows:

"We understand that the Department of Planning Infrastructure and Natural Resources (DIPNR) has identified a series of outstanding issues, which have

been raised by the various State Agencies and highlighted the need to address them before the plan can be made.

These issues include the impacts associated with the filling of the site, which is required to provide flood immunity for residential development, concerns regarding the 'ribbon' like development along Mooball Creek and impacts associated with stormwater and Acid Sulphate Soils.

We concur with the conclusions drawn by the DIPNR and do not consider that the LES has adequately addressed the impacts associated with filling of this site. We refer Council to our previous correspondence dated 10 October 2003, which highlighted a range of issues associated with filling the site, which needed to be addressed. From our review of the LES it appears that a number of these issues have not been addressed.

The EP remains of the view that the filling, which is essential to facilitate residential development of the site, is a fundamental component of the proposal and as such will have a major bearing on the sustainability of the proposed change in landuse. It is therefore imperative that the impacts associated with filling the site are thoroughly addressed in LES so that the sustainability of the proposed change in landuse can be assessed. We do not consider it appropriate to defer such considerations until the development approval stage. We also have some outstanding issues regarding the management of stormwater from the site”.

The Coastal Council of NSW advised as follows:

“Development on low-lying coastal lands

The rezoning of lands to facilitate residential development on areas that are low-lying and flood prone, prior to studies being completed that demonstrate the areas are appropriate for residential development, is unacceptable to the Coastal Council.

The Coastal Council is concerned by the apparent increasing trend for filling of low-lying lands, particularly wetlands and floodplains, to place urban development in areas that would otherwise be unsuitable for development due to flooding. The NSW Environmental Protection Authority and the Department of Infrastructure, Planning and Natural Resources have provided their concerns to you regarding this proposed rezoning and development at 'Black Rocks Estate'.

Compact urban areas (Coastal Policy Strategic action 6.2.1)

This development is of concern t Coastal Council as it is contributing to ribbon development along Mooball Creek. Both the Premier and his Deputy have continually advocated compact coastal settlements rather than continuous developments along the coast”.

The landowner was provided with copies of the correspondence from State Agencies and the responses from Council.

Meeting Between Council Officers, State Agencies and GeoLINK

A meeting was convened between Council officers, GeoLINK and State Agencies (EPA & DIPNR) on 13 August 2003. The meeting was organised by Council officers to discuss and resolve issues raised by the State Agencies on the draft Plan and Environmental Study.

The outcomes from that meeting were as follows:


- DIPNR did not consider 'ribbon development' was an issue because the Black Rocks site is included in an agreed urban release strategy between PlanningNSW and Tweed Shire Council.
- GeoLINK and Council officers will prepare draft additional provisions that can be included in the draft Plan to address the issues raised by DIPNR and EPA (filling impacts, fill information, stormwater discharge impacts and cumulative flood impacts).

These outcomes avoided the need for Council to undertake more detailed investigations and modelling on the proposed development of the site as part of the rezoning process. The proposed additional provisions will place the onus on the landowner to address these issues as part of a Development Application.

Recommended Amendment to Adopted Draft Tweed LEP 2000 (Amendment No 8)

As a result of discussions with State Agencies GeoLINK, in consultation with Council officers, recommend Council amend Clause 52 (Map Overlay) in Tweed LEP 2000 to ensure that the various agency concerns are considered at the Development Application for Black Rocks. Clause 52 enables Council to apply site specific provisions relating to particular areas shown on the LEP Zone Map (proposed 2(a) zone). The proposed Amendment focuses on addressing impacts of development on surface and ground water and impacts from filling given that flooding and acid sulfate soils are considered to be adequately addressed by existing clauses in the Tweed LEP 2000. The proposed amendment to Clause 52 and the Aims of the draft Plan are shown below. The amendment to the draft Zone Map is shown in Figure 2.

It is recommended that Clause 52 be amended by inserting the following:

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

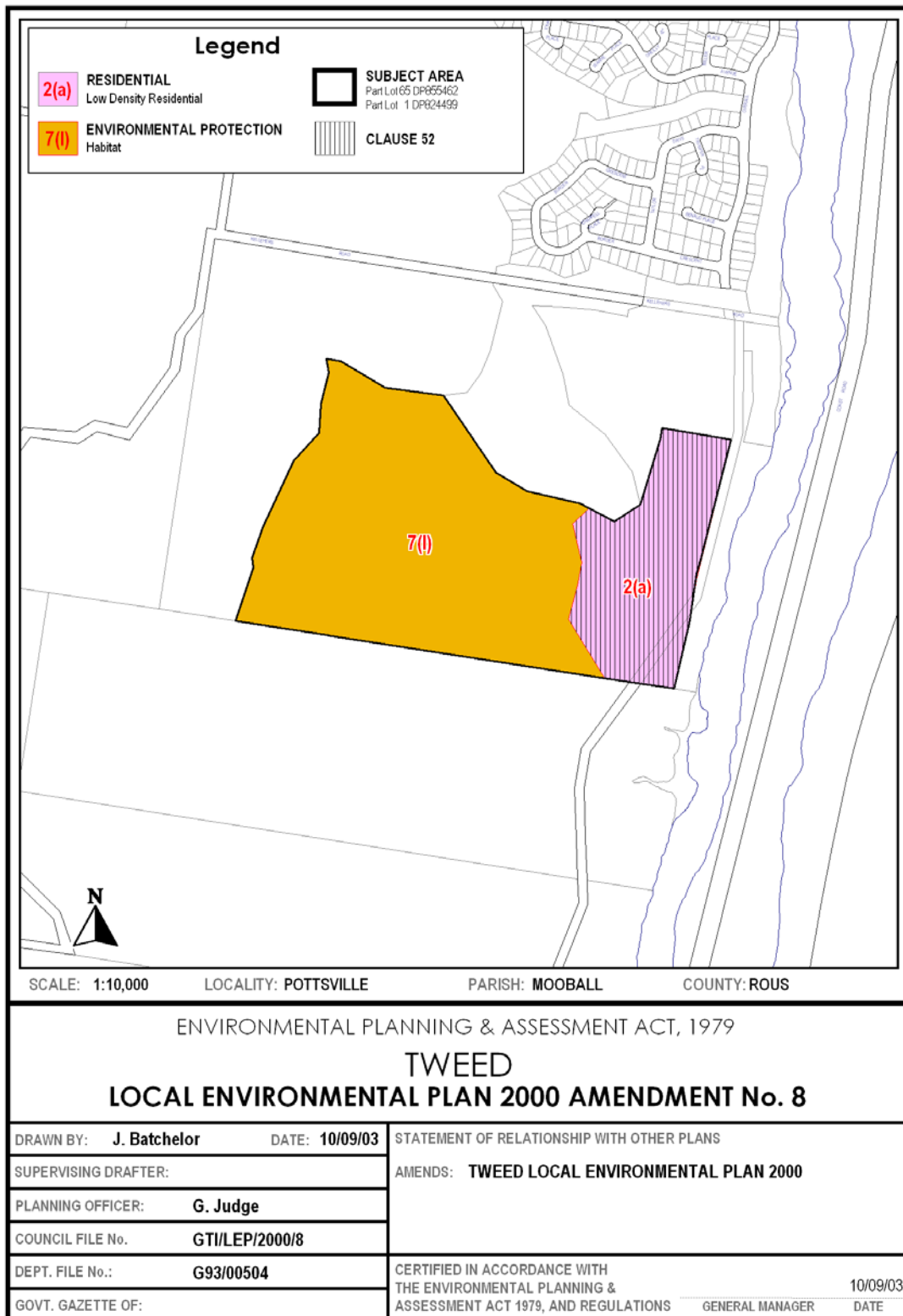
Column 1 Shown on the zone map by:	Column 2 Applicable provisions
	<p>waters, such measures to control soil erosion, sediment and stormwater run off, and release of ground water or surface water containing high acidity, nutrients or pollutants, resulting from disturbance and development of the site.</p> <p>(b) where development proposes the filling of land:</p> <ul style="list-style-type: none"> i. whether or not the filling of land would increase the risk or severity of flooding of other land in the vicinity, and ii. the potential impacts of the filling of land on groundwater quality, and iii. the likely impacts of increased flooding on adjacent flora and fauna habitat, and iv. the quality, volume and source of any fill material and the likely impacts associated with the sourcing and transportation of fill material; and v. the adequacy of the location and justification of the design of environmental buffers between filled areas and environmentally sensitive land eg, riparian areas, wetlands and waterways. <p>(c) the adequacy of proposed drainage systems, particularly in respect of Council's goal that post development drainage should mimic natural (pre-development) 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>

It is recommended that the draft Plan be amended by inserting the following additional aim:

“(d) to apply special provisions on soil and water management”.

The draft zone map as amended as shown in Figure 2.

Figure 2 - Amendment to the draft Zone Map



The landowner, Richard Cowan, has been advised of the outcomes of the meeting with State Agencies and the recommended changes to the draft Plan. Richard Cowan, on behalf of Black Rocks Estate Pty Ltd, advised Council in a letter dated 15 September 2003 that he had no objection to the proposed changes. A copy of his correspondence is attached as Appendix 4.

The DIPNR have advised Council in a letter dated 2 October 2003 that the proposed changes satisfactorily address the issues raised by the State Agencies (see Appendix 5).

It is therefore recommended that Council amends the adopted draft LEP (Figure 2 Zone Map, Clause 52 and Aims of the Plan) as outlined above.

Legal Agreement

As a result of the amendments to the draft Plan, Annexure A1 and A2 of the Legal Agreement between Council and Black Rocks Estate Pty Ltd must also be amended. Annexure A1 and A2 is draft Tweed LEP 2000 (Amendment No 8). It is therefore recommended that Council finalises a new signed Legal Agreement to replace Annexure A1 and A2, and that all necessary documentation be completed under Common Seal prior to forwarding the amended draft LEP to the DIPNR.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

1. Tweed Local Environmental Plan 2000 (Amendment No 8),
 2. Letter from Department of Infrastructure, Planning and Natural Resources dated 23/7/03 (DW 953609),
 3. Letter from Coastal Council of NSW (DW 938911),
 4. Letter from Environment Protection Authority (DW 933949),
 5. Letter from Black Rocks Estate Pty Ltd (DW 949708),
 6. Letter from Department of Infrastructure, Planning and Natural Resources dated 2/10/03 (DW 956003).
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