



NSW GOVERNMENT

Department of Planning

Office of Sustainable Development Assessment and Approvals, Urban Assessments

Planning Assessment Report

Development Application DA 243-10-2004

1 SUMMARY

This report is an assessment of the proposed development the subject of Development Application number DA 243-10-2004.

The application seeks consent for a 68 Lot Subdivision being final stages 13 & 14 of Black Rocks Estate.

The Minister for Infrastructure and Planning is consent authority under Clause 9 and 10 of State Environmental Planning Policy 71 – Coastal Protection.

In June 2004 the Department, under delegation, waived the requirement to prepare a master plan for the land.

It is recommended that the development application be **granted consent**.

(tagged 'A').

2 BACKGROUND

2.1 Site Context

The site is located at Overall Drive, Pottsville in the Tweed Shire local government area.

The development application was lodged with the Department on 1 October 2004 in accordance with the *Environmental Planning and Assessment Act, 1979* (the Act).

The subject land is described as Lot 232 DP 1072665 and Lot 183 DP 1034824 Overall Drive Pottsville. The subject site comprises two main parts; an area zoned 2(a) to the east abutting Mooball Creek where residential development is proposed and an area zoned 7(l) to the west. The total area of the site is 42.15 hectares.

The site is bounded to the east by Mooball creek, to the north by completed stages of Black Rocks Estate, to the south by rural grazing land (Dunloe Park) and to the west by vacant rural land currently owned by the developer.

There are four distinct landscape features that characterise the subject site, tidal drains, the western paperbark wetland, the lowland grasslands and the north/south central dunal ridge.

The subject site is predominantly cleared and has been previously used for grazing. It is currently unstocked, and is subject to dumping of cars and rubbish. The land is currently utilised by local residents for access to Mooball Creek and for recreational 4 wheel driving and trail biking.

A site location and zone plan (Tagged 'B') is attached.

2.2 Planning History

The planning History for the Black Rocks Estate is set out as follows:

- Stages 1 and 2, comprising approximately 82 lots, were approved and constructed in the mid 1990's.
- On 12 July 1996 development consent was granted for a 128 lot residential subdivision comprising Black Rocks Stages 3 to 7. Construction has been completed and the final Subdivision Certificate (Stage 7) approved on 10 January 2002.
- On 8 April 2002 development consent was granted for a 57 lot residential subdivision comprising Stages 8, 9 and 10. The consent was subsequently modified on 27 January 2004 relating to staging. Construction has been commenced and Subdivision Certificate (Stage 8) approved 9 February 2004.
- On 2 January 2003 development consent was granted for an 8 lot residential subdivision comprising Stages 11 and 12. The consent was modified on 16 April 2002. Construction of these stages has been completed however the subdivision certificate has not been released for Stage 12.

2.3 Deed of Agreement

- On 5 June 2003, in accordance with a resolution of Tweed Shire Council, a Deed of Agreement was executed between Tweed Shire Council and Black Rocks Estate, amended by a Deed of Amendment dated 9 December 2003. The Deed requires the proponent, upon approval of a Plan of Subdivision (DA) for the development of the land, to undertake the following:
- Transfer land identified as koala habitat, scenic protection and Mooball Creek buffer to Council for a 'Public Reserve' (See Plan of Proposed Subdivision - Lots 301, 302, 303, 304 & 306)
- The owner to submit a Management Plan with the DA, which shall include:
 - Comprehensive fencing plan to protect koala habitat around areas marked as koala habitat and scenic protection;
 - Compensatory koala planting within areas marked as koala habitat.
- Land dedicated to Council and marked as 'koala habitat' and 'scenic protection' to be fenced in accordance with the Management Plan.
- Land identified as koala habitat to be planted with koala food trees in accordance with the Management Plan.
- Dedicate to Council a minimum of four (4) hectares of land for the purpose of a sportsfield. (See Plan of Proposed Subdivision – Lot 305).
- To embellish and dedicate to Council a minimum of 2,000sq.m of land for the purpose of casual open space.

A copy of the Deed of Agreement is attached (Tagged 'E')

3 THE PROPOSED DEVELOPMENT

The proposed development seeks consent for the creation of 68 residential lots. Key elements of the proposal include:

- Approval to remove vegetation under Tweed Shire Council Tree Preservation Order 2004;
- An extension to Overall Drive to the South;
- Creation of 68 residential lots with areas ranging from 714 sq.m to 1109 sq.m.
- Creation of 5 public reserve lots (301, 303, 304, 305 and 329);
- Creation of 2 drainage reserve lots (306 and 308)
- Creation of 1 sewer pump station lot (314)
- Creation of 1 residue lot (302)
- Establishment of bush fire asset protection zones;
- Provision of normal urban infrastructure including reticulated water supply, sewer, power , telephone and access roads;
- Filling of the land to the design flood level;
- Dedication of the Mooball Creek foreshore buffer area as a public reserve;
- Dedication of the residue of the Black Rocks Estate land.
- Construction of playing fields and an access road within the designated 4 ha area (Lot 305)
- Haulage of approximately 250,000 cb.m of fill material to the site from Tagget's Quarry

To comply with the terms of the Deed of Agreement referred to in section 2.2 above the proposal is to phase the subdivision to facilitate the transfer of Lots 301, 303, 304 and 305:

- Phase 1 – Create Lots 299 to 305;
- Phase 2 – Subdivide Lot 300 to create Lots 306 to 308;
- Phase 3 – Subdivide Lot 307 to create Stages 13 and 14 residential lots.

A copy of the subdivision layout is attached (Tagged 'E')

4 STATUTORY FRAMEWORK

4.1 *Statement of permissibility*

The land to which this application relates is zoned:

- part 2(a) 'Low Density Residential',
- part 7(d) 'Environmental Protection (Scenic/Escarpment)',
- part 7(l) 'Environmental Protection (Habitat)' and
- part 7(a) 'Environmental Protection (Wetlands and Littoral Rainforests)'

under the provisions of the Tweed Local Environmental Plan 2000.

The proposed residential lots are located entirely within the land zoned 2(a) and the area of each lot complies with the minimum of 450 sq.m required for the erection of a dwelling house.

Portion of proposed Lot 302 at the eastern side of the site is zoned Residential 2(a) and Environmental Protection 7(l).

No development is proposed within the part of the site zoned 7(a) other than the creation of a residue lot having an area of approximately 99 hectares.

Construction of the playing fields within the land zoned 7(l) is permissible, with consent, pursuant to Clause 53 and Schedule 3 of the Plan.

Creation of proposed Lots 301 and 303 within land zoned 7(a) and 7(d) is permissible, pursuant to Clause 20(3) of the LEP.

Proposed Lot 302 does not comply with the 40 hectare development standard in Clause 20(2)(a) of the LEP and accordingly a State Environmental Planning Policy No. 1 Objection comprises part of the application and is considered in section 6.2.2 of this report.

4.2 *Instrument of consent and other relevant planning instruments*

The proposal is state significant development under Schedule 2 of SEPP 71. Pursuant to Clause 10(2) of the SEPP the Minister is the consent authority. The proposal has been assessed against the aims and objectives of the SEPP. The proposal is consistent with SEPP 71.

4.3 *Legislative context*

Coastal Protection Act 1979

The proposal is consistent with the Coastal Protection Act 1979.

NSW Coastal Policy 1997

The proposal is consistent with the Coastal Policy; the proposal does not impinge on public access to the foreshore.

North Coast Regional Environment Plan (REP) 1988

The proposal is consistent with the REP. Refer to the accompanying compliance table for a full assessment.

4.4 *Other statutory provisions*

Tweed Development Control Plan 5 - Flooding

Tweed Development Control Plan 16 – Subdivision

Tweed Development Control Plan 39 – Energy Smart Homes

Tweed Development Control Plan 44 – Dual Occupancy

Tweed Development Control Plan 45; Socio-Economic Impacts.

The proposal is generally consistent with the provisions of Councils DCPs. Refer to the attached compliance table (Tagged ‘C’) for a full assessment.

5 CONSULTATION

5.1 *Public consultation*

The application was notified, in accordance with the Regulations and Council's Community Consultation Policy including:

Notifications – landowners/occupiers	53 local residents and landowners were notified of the application in a letter dated 16 November 2004.
Newspaper advertisements	Advertised in Tweed Daily News Date of Publication 22 Nov 2004.
Site notices	Placed on site by applicant.
Exhibition dates	Start: 23 November 2004. End: 21 December 2004.
Exhibition venues	▪ Planning Information Centre, 20 Lee Street Sydney ▪ Tweed Shire Council, Civic & Cultural Centre, Tumbulgum Road, Murwillumbah

1 public submission was received. Issues raised are considered in Section 6.2 of this report.

5.2 *Referrals*

5.2.1 *Integrated Approval Bodies*

The proposal is classed as integrated development under the Environmental Planning and Assessment Act 1979 as approval is required from Tweed Shire Council under section 138 of the *Roads Act 1993*, from NSW Fisheries under sections 201 and 205 of the *Fisheries Management Act 1977* and from NSW Rural Fire Service under section 100B of the *Rural Fires Act 1997*.

5.2.2 *Tweed Shire Council*

The application was referred to Tweed Shire Council on 16 November 2004. Additional information was requested in letters dated 21 January and 22 February and a formal referral response endorsing the recommendation and requesting draft conditions of consent was received dated 19 August 2005. Issues raised by Council are discussed in Section 6.2 of this report. A copy of Council submissions are attached. (Tagged 'F')

5.2.3 *NSW Rural Fires Service (RFS)*

The application was referred to the RFS on 16 November 2004. The RFS responded in a letter of 7 February 2005 and raised concern regarding the increased bushfire threat to the proposed development should the recommendations for the Koala Habitat corridor proceed. Asset Protection Zones were also considered inadequate. Comments were relayed to the applicant who responded to the issues raised in a letter dated 15 September 2005. Further to the applicant's response and a letter from Council dated 10 November agreeing to maintain the APZs the RFS issued a bushfire safety authority subject to conditions in a letter dated 21 November 2005. A copy of RFS submissions and relevant correspondence is attached (Tagged 'G')

5.2.4 *NSW Fisheries*

The application was referred to NSW Fisheries on 16 November 2004. NSW Fisheries responded in a letter dated 6 December 2004. Issues raised relate to the riparian buffer, impact on marine vegetation and the proposed filling of the drain. The issues are

discussed in section 6.2 of the report and a copy of the submission attached (Tagged 'H')

5.2.5 Department of Environment and Conservation (DEC)

The application was referred to DEC on 16 November 2004. DEC responded in a letter dated 19 January 2004. No objections were raised but several conditions of consent recommended. A copy of the submission is attached. (Tagged 'I')

6 CONSIDERATION

6.1 The Environmental Planning & Assessment Act

6.1.1 Section 79C

The application and the likely impacts of the proposed development have been considered in accordance with Section 79C of the Act. Significant issues are discussed below in Section 6.2, and, where relevant, a detailed assessment is provided as noted in the table below.

The subject site is considered suitable for the proposed development. Submissions have been considered and issues raised in submissions are discussed in Section 6.2. On balance, the proposed development is considered to be in the public interest.

6.2 Issues

6.2.1 Riparian Buffer

<i>Issue:</i>	The riparian buffer proposed does not achieve the minimum 50m required by Development Control Plan (DCP) No. 16 – Subdivision, and the Tweed Coast Estuaries Management Plan 2004-2008.
<i>Raised by:</i>	Council, Department, NSW Fisheries & Public submission
<i>Consideration:</i>	DCP No. 16 – Subdivision and the Tweed Coast Estuaries Management Plan require a 50m buffer zone of riparian vegetation to remain intact on any new development site. The proposal includes a public reserve along Mooball Creek with a minimum width (generally) of 50m. However, approximately 12m width of this riparian buffer is used as a 1:4 slope full batter for supporting adjacent elevated (above flood level) residential allotments. The riparian buffer also contains a 2.5m wide cycleway with a 1.2m berm. These non-riparian uses consume about 16m of the reserve, leaving 34m available for riparian functions. The applicant has provided the following justification for non-compliance with policies relating to the 50m riparian buffer: • <i>'Earlier stages of Black Rocks Estate (which commenced in 1996) have been approved by Council with a 50m foreshore reserve which includes the batters and cycleway/walkway (these stages have been constructed);</i> • <i>Geolink Pty Ltd were commissioned by Tweed Shire Council in 2000 to prepare a Local Environmental Study to inform Draft Local Environmental Amendment No. 8 which applies to the Stages 13 and 14 site.</i> • <i>During the Local Environmental Study/Draft local Environmental Plan</i>

exhibition period (in late 2002), several State Agencies sought clarification of the proposed interface between the residential lots and the foreshore reserve;

- Subsequently, it is understood that discussions were held with these agencies and Council officers during which the proposed batter arrangements and cycleway location were discussed and agreed;*
- Following these discussions and at the request of Council's Co-ordinator of Strategic Planning, on 5 August 2003 Ardill Payne & Partners on behalf of Black Rocks Estate Pty Ltd submitted a letter and typical cross section to Tweed Shire Council clearly showing the batter and cycleway within the proposed 50m foreshore reserve;*
- The location of the easterly 2(a)/7(l) boundary (i.e.foreshore) was agreed and approved on the basis that the batter and cycleway would be within the foreshore reserve as reflected in the cross section referred to at Paragraph 5. It was on that basis that Black Rocks Estate Pty Ltd agreed to the location of the western 2(a)/7(l) zone boundary together with agreement to the transfer to Council, at no cost, of 113 hectares of high conservation value land west of the residential area.*

Had Black Rocks Estate Pty Ltd been advised that the 50m foreshore reserve must exclude any batter/cycleway it would not have agreed to the current zone boundary locations and land transfers. It would have insisted, as part of a negotiated agreement, that the western zone boundary be located at least 15m further to the west to avoid a significant reduction in lot yield.'

Upon review of Council's historical files it was discovered that all plans associated with the LEP Amendment detailed the proposed batter and footpath to be within the 50m buffer. Furthermore, discussion with Council's Coordinator of Strategic Planning confirmed that it was always intended for infrastructure such as batters and community footpaths to be located within the 50m buffer.

Portion of the residual Lot 302 encroaches upon the 50m buffer and is zoned Environmental Protection 7(l). The width of the buffer is reduced to approximately 40m at this point. This portion is the subject of negotiations between the applicant and Council in regard to the Deed of Agreement and the preparation of an LEP to vary the zone boundary.

Council at its meeting of 17 August 2005 adopted a report that proposed agreement to the variation on the buffer. (*Tagged 'F'*). Council officers have confirmed verbally that it accepts the encroachment of Lot 302 and that it is the subject of negotiation with Council. Notwithstanding the allotment configuration, the 7(l) zone maintains a minimum 50m buffer.

Resolution:

Given the long history of the subject site, which has involved a LEP Amendment, subsequent re-zonings, and previous negotiations, the proposed variation is considered reasonable. Furthermore, allowing a batter and a public footpath within the 50m buffer to Mooball Creek would achieve consistency with the previous stages of the Black Rocks Estate development.

One of the recommended conditions (B9 (g)) of consent is to ensure that the footpath is located immediately adjoining the residential blocks to create a distinct delineation between public and private land. This will ensure the batter will be seen by residents as public land rather than being consumed by individual land owners. Furthermore, condition (B9) requires the applicant to provide a plan of management to ensure the buffer is dedicated to Council and placed under active management. The plan will

ensure the buffer zone shall be revegetated and fences or other appropriate barriers be provided to prevent transverse crossing of the buffer.

It is not considered that this recommendation to vary from DCP will set an undesirable precedent, as this subdivision is the final stage of the overall development scheme. The development has been through a LEP Amendment and subsequent negotiation for land dedications. If Council had previously indicated that no footpath or batter could be placed in the 50m riparian zone the entire re-zoning would have been changed to reflect the additional space required westward of the current zone boundary. Subsequently, the proposed variation in this instance is considered justified.

6.2.2 SEPP 1 – Non Compliance with LEP

Issue: The proposed Lot 302 does not comply with the 40ha development standard contained in Clause 20(2)(a) of the Tweed Local Environmental Plan (LEP) 2000.

Raised by: Department

Consideration: Clause 20(2)(a) of the Tweed LEP 2000 states that:
'The objectives of the development standard (in so far as it relates to land zoned 7(l)) include:

- To assist in achieving the objective of the zone;*
- To minimise fragmentation of environmental protection land;*
- To avoid creating uneconomic land management units;*
- To protect the scenic and landscape value of rural and environmental protection land;*
- To preserve the habitat and ecological values of 7(l) land;*
- To preserve habitat diversity for flora and fauna'*

Proposed Lot 302 does not comply with the 40 hectare development standard contained in Clause 20(2)(a). The applicant argues that the development standard is unreasonable and unnecessary in the circumstances for the following reasons;

- Proposed Lot 302 has a total area of 4983 sq.m and comprises the whole of the residue land to be retained by Black Rocks Estate Pty Ltd;*
- The Deed of Agreement with Council excludes that part of Lot 302 adjacent to Mooball Creek foreshore from dedication to enable the owner to pursue a rezoning of the area to 2(a);*
- Because of existing lot configurations, ownership and staging arrangements, it is not possible to create one conforming lot incorporating all 7(l) zoned land adjacent to Mooball Creek;*
- In total, approximately 110 hectare of land will be transferred to Council as a public reserve under the terms of the Deed of Agreement between Tweed Shire Council and the developers. This is consistent with its high conservation values;*
- The objectives of the development standard are achieved in view of the fact that all 7(l) land identified in the Deed will be held in public ownership in perpetuity and managed by Tweed Shire Council for conservation purposes.*

Resolution: It is considered that the proposal would assist in achieving the objectives of the Environmental Protection zone and is consistent with the objectives of the standard in that strict compliance with the development standard would preclude the logical and sequential transfer of high conservation lands to public ownership.

6.2.3 Earthworks

Issue: All filling, topsoiling and grassing of proposed Stages 13 and 14 should be completed prior to the release of any residential allotments in Stages 9 and 10.

Raised by: Council (completion timing)
Department (height)

Consideration: The application states that all filling of the proposed residential allotments will be contained within the 2(a) Residential zone, with the exception of the allotments adjoining the proposed reserve fronting Mooball Creek. The application shows fill batters from the residential allotments extending into the riparian buffer area with a max slope of 1 vertical: 4 horizontal.

Design flood levels have been identified as RL 3.0m AHD. The proposal is to fill the residential levels to a minimum of RL 3.14m AHD. However the plans for finished levels indicate filled heights up to RL 4.59m AHD. The resultant height may lead to obstruction of views to a sand ridge to the west which has a height which ranges from RL 6.0m AHD.

Sustainability issue of extra fill

A small catchment drains to Mooball Creek through a man made drain along the southern boundary of the proposed development. The applicant proposes that the drainage path be retained throughout the bulk earthworks and urban development

Resolution: The completion of all filling, topsoiling and grassing of proposed Stages 13 and 14 prior to the release of any residential land in Stages 9 and 10 will ensure the amenity of the residents within these stages will not be adversely affected by the filling works or nuisance caused by heavy haulage trucks. Appropriate conditions are recommended (E22).

The applicant has submitted a letter stating that the RL 4.59m AHD level at the southern end of the site is determined by the need to drain to the approved drainage basin. Council officers have verbally confirmed this.

The proposed earthworks detailed above are considered to be in accordance with DCP 16 – Subdivision in terms of earthworks.

It is considered that the height of the fill is acceptable.

6.2.4 Fire Trails

Issue: The proposal should only be accepted if the cycleways are constructed to carry the weight of full laden tenders. It should also be ensured that the fire access tracks are sufficiently wide, are of appropriate vertical and horizontal alignment and are constructed of materials that will not be unreasonably expensive to maintain.

Raised by: Public submission

Consideration: The applicant has confirmed that the parts of the cycleway/footway network which will also serve as a fire trail will be designed and constructed to public road standard in terms of their structural (load bearing capacity).

The geometric design of the fire trails will comply with the standards contained in Section 4.3.3 of Planning for Bushfire Protection, 2001. Furthermore, the site is

relatively flat and compliance with the vertical and horizontal design standards can be readily achieved.

The common fire trail/cycleway/footpaths will be constructed of low maintenance materials comprising either reinforced concrete or asphaltic concrete on a flexible pavement, in accordance with Tweed Shire Council's standards in Development Control Plan No. 16 – Subdivision Manual.

Resolution: Conditions of consent (D37-39) will ensure the above recommendations are adhered to.

6.2.5 Deed of Agreement

Issue: The requirements of the Deed of Agreement between Tweed Shire Council and Black Rocks Estate Pty Ltd, stated in Section 2.2 above, need to be fulfilled.

Raised by: Department

Consideration: A brief of the requirements include the following:

- Clause 4.3 – developer to prepare plan of subdivision to dedicate two areas as public reserve areas;
- Clause 4.3iii(b) – dedicate Koala food trees prior to release of the subdivision certificate for the first residential stage.
- Clause 4.3iii(c) - dedicate and embellish 4 hectare playing fields prior to first stage residential release

Resolution: To ensure the above requirements are adhered to the following conditions of consent have been included:

- Clause 4.3 - Condition (E20) of the consent has been included for dedication and fencing of the land.
- Clause 4.3iii(b) – The amelioration measures recommended in the Koala assessment by James Warren & Associates have been included as a condition of consent (E19).
- Clause 4.3iii(c) – A condition of consent has been included (E21), stating that the playing fields are to be constructed and embellished prior to the release of the subdivision certificate for the first residential stage.

6.2.6 NSW Fisheries

Issue: Recommend the removal of headworks and the existing culvert associated with the drains outlet to Mooball Creek, and the floodway between the infiltration basin and Mooball Creek be designed so as to operate effectively with a invert of the floodway no lower than 1.3 AHD.

Raised by: NSW Fisheries

Consideration: The applicant was invited to respond to the issues raised by NSW Fisheries. The applicant concurs with NSW Fisheries recommendation to remove the existing culvert and headworks from the existing drain in the centre of the development, which will be noted on engineering design plans for bulk earthworks for the development. The requirement to design the floodway from the infiltration basin to Mooball Creek to have an outlet no lower than 1.3 AHD is not consistent with the infiltration basin of stage 1 of the development which was completed in March 2005 with the invert level of the base of the infiltration basin as RL1.25m AHD, and the invert level of the outlet of the floodway at Mooball Creek is RL1.05 AHD.

The level of the floodway is below the level recommended by NSW Fisheries; However, the issue was discussed with NSW Fisheries who recognised that the invert level has already been established. The Fisheries officer expressed concern that fish deaths my result. However it was accepted by the Fisheries officer that a condition be applied requiring a Plan of Management to address dissolved oxygen levels in the basin and that this satisfactorily addressed the issue.

Resolution: A condition (D1) of consent is recommended to ensure the removal of the existing culvert and headworks from the existing drain in the centre of the development.
A condition (B11) of consent is recommended to require a Plan of Management is prepared to address dissolved oxygen levels in the basin.

6.2.7 Environmental Health Concerns

Issue: Additional information required

Raised by: Council & public submission

Consideration: Original concern was expressed with relation to contamination, acid sulphate soils, and sediment, mosquitos and erosion control.

Resolution: Through discussion with the applicant, Council received revised documentation (Supplementary Information to Engineering Infrastructure Report, April 2005; Acid Sulfate Soil Assessment, April 2005 & Amended Erosion and Sediment Control Plan, March 2005) that detailed additional testing and information as required. All outstanding issues have now been satisfied and subsequently Council's Environmental Health Officer has recommended conditional consent.

6.2.8 Sports Field

Issue: No provision of amenities block and formal carparking space with sports fields and insufficient engineering detail.

Raised by: Public submission

Consideration: As indicated in Section 6.2.5 of this report, Tweed Shire Council and Black Rocks Estate Pty Ltd have entered into Deeds of Agreement relating to the dedication and embellishment of the sports fields. Clause 4.3(c) of the Deed provides that the sports fields shall be 'filled, drained, top soiled, grassed and provided with an automated sprinkler system.' There is no requirement for an amenities block or car park.

Objector considers that little or no information is provided regarding the existing ground levels at the proposed site of the sports fields.

Resolution: Funding for amenity facilities is available from the Section 94 Contributions (Condition E2).

As requested, the applicant submitted supplementary information to the Engineering Infrastructure Report, dated 7 April 2005. The report states that the entire 4 hectare site will be filled to a minium level of RL 2.0m AHD. The minimum proposed crossfall on the playing surface is 1 in 100. Detailed levels and crossfalls will be provided with a Construction Certificate application. The report was submitted to Council for comment, no objections were raised. The Department is satisfied with the detail of the levels provided in the report.

6.2.9 Koala Plan of Management

Issue: Proposed koala fencing would not be of benefit and the proposal for mitigation plantings of Koala food trees lacks details.
Monitoring of the Koala Plan of Management

Raised by: Public submission, DEC.

Consideration: Concern has been raised relating to the recommendations of the Koala Plan of Management, specifically the proposed fencing and the planting of food trees.

The proposed fencing is considered to be the most effective measure to restrict koalas entering the proposed residential development, safeguarding them from domestic hazards such as swimming pools. In the unlikely event that a koala does enter the residential area, it should be able to climb the rear side of the koala fencing as there will be no tin sheeting along the base of this side of the fence. The proposed fence is in accordance with the Koala Plan of Management approved by the Department of environment and Conservation. The proposed fencing will be a continuation of the koala fencing proposed for Stages 8-12 for Blackrocks Estate to create a continuous exclusion zone around both residential developments.

DEC requested that annual reports on the Koala Plan of Management be undertaken and a review be every five years. The Koala Plan of Management proposes a monitoring program involving observations every 12 months for 3 years with reports to be made to Council. It is considered that the implementation of the Koala Plan of Management would provide an accountable and reasonable program of monitoring.

Resolution: Condition E19 will ensure the measures and recommendations outlined in the Koala Management Plan prepared by James Warren & Associates dated September 2004 are to be implemented to the satisfaction of the Principle Certifying Authority, prior to the release of the subdivision certificate for any residential allotments.

6.2.10 Stormwater Detention Pond

Issue: It is not clear from the documentation provided whether is proposed to manage the main permanent stormwater detention pond as an entirely freshwater facility or one that has tidal influence.

Raised by: Public submission

Consideration: The proposal is for a freshwater facility. The project Engineers (Ardill Payne & Partners) have advised that the level of stormwater pond spillway is RL 1.75m AHD. The king tide level of RL 1.75m AHD is at the same level and therefore the probability of salt water entering the pond is negligible.

Resolution: The above recommendation addresses the issue raised.

6.2.11 Bushfire Assessment

Issue: The bushfire threat will be increased if the additional tree planting required in the Koala management Plan is undertaken.
Portion of the Asset Protection Zone is located within the Environmental Protection land.

Raised by: The Department, DEC.

Consideration: The NSW Rural Fire Service has required a 25m Inner Protection Area and an additional 10m Outer Protection Area for an Asset Protection Zone on the western boundary and a 20 APZ on the southern boundary. The applicant has proposed a 30m APZ to the south. To the north a 20m APZ is proposed within the residential redevelopment portion of the site and a further 20m is to be provided within the public reserve Environmental Protection land. The Environmental Protection land is to be transferred to Council and Council has agreed to manage the APZ. (*tagged J*). The NSW Rural Fire Service has verbally agreed that portion of the APZ be located within the Environmental Protection land. This is the result of long term discussions with the parties that go back to the original identification of zone boundaries and the Deed of Agreement between the applicant and Council.

In the circumstances it is considered that the location of the APZ is appropriate.

The Koala Plan of Management applies to an extensive area of the Environmental Protection land and will be implemented in the area of the APZ in a manner that is consistent with the principles of 'Planning for Bushfire Protection 2001'. This issue has been considered by the NSW Rural Fire Service who has subsequently issued their response under the Rural Fires Act 1997.

Resolution: Condition of consent H2 applies the requirements of the NSW Rural Fire Service to address the APZs.

7 CONCLUSION

The Minister for Planning is the consent authority.

In June 2004 the Department, under delegation, waived the requirement to prepare a master plan for the land.

The application has been considered with regard to the matters raised in section 79C of the Act and the Department of Environment Conservation, Department of Infrastructure, Planning and Natural Resources, Roads and Traffic Authority, Rural Fire Service and NSW Fisheries Waterways Authority who were consulted and provided general terms of approval under the Integrated Development Provisions within the Act.

The application has been notified in accordance with the Regulations. All submissions received in the period prescribed by the Regulations have been considered.

On balance, it is considered that the proposed development is acceptable and should be approved.

8 CONSULTATION WITH APPLICANT – DRAFT CONDITIONS

The applicant was asked to comment on the draft conditions of consent on 22 November 2005. The applicant responded on 29 November and generally agreed to the draft conditions subject to some minor alterations to the wording.

9 RECOMMENDATION

It is recommended that the Acting Deputy Director General, Office of Sustainable Development Assessment and Approvals, as delegate for the Minister of Planning as described by the Instrument of Delegation dated 12 September 2005 and pursuant to section 80 (1) and 80A of the *Environmental Planning and Assessment Act, 1979* (as

amended) and clause 10 of State Environmental Planning Policy No. 71 – Coastal Protection:

- (A) grant **consent** to the application subject to conditions (Tagged “**A**”), and
- (B) authorise the Department to carry out post-determination notification.

For Ministerial Approval

Prepared by:

Endorsed by

John Arnold
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