

## 5.6. REQUEST FOR A NEGOTIATED DECISION 2L OASIS DRIVE WONGA BEACH

<b>REPORT AUTHOR(S)</b>	Jenny Elphinstone, Senior Planning Officer
<b>GENERAL MANAGER</b>	Nick Wellwood, General Manager Operations
<b>DEPARTMENT</b>	Development Assessment and Coordination
<b>PROPOSAL</b>	Request for a Negotiated Decision for the Reconfiguring a Lot (1 lot into 7 lots and drainage reserve)
<b>APPLICANT</b>	Port Pacific Estates Pty Limited c/- Flanagan Consulting Group PO Box 5820 CAIRNS QLD 4870
<b>LOCATION OF SITE</b>	2L Oasis Drive Wonga Beach
<b>PROPERTY</b>	Lot 2 on SP259953
<b>LOCALITY PLAN</b>	



Figure 1 - Locality Plan

<b>LOCALITY</b>	Coastal Suburbs
<b>PLANNING AREA</b>	Tourist and Residential
<b>PLANNING SCHEME</b>	Douglas Shire Planning Scheme 2006
<b>REFERRAL AGENCIES</b>	Department of Infrastructure, Local Government and Planning.
<b>NUMBER OF SUBMITTERS</b>	Not Applicable.
<b>STATUTORY ASSESSMENT DEADLINE</b>	Not Applicable
<b>APPLICATION DATE</b>	16 March 2017 (original application) 3 October 2017 (request for a negotiated decision)

## RECOMMENDATION

- A. That Council does not support the request for a negotiated decision notice, further to Council's decision regarding the Reconfiguration of a Lot (1 lot into 7 lots and drainage reserve) over land described as Lot 2 on SP259953, located at 2L Oasis Drive, Wonga Beach, dated 19 September 2017.**

## EXECUTIVE SUMMARY

Application has been made to reconfigure the land, that was part of the former Redback's Resort site, into seven large residential lots and a new drainage reserve. The applicant has request a negotiated decision regarding the timing of the provision of building pads and the finish of the drainage reserve.

The conditions of the approval require a fill area of 1000m<sup>2</sup> on each new lot to cater for the future self-assessable development of a house and associated onsite wastewater treatment. The applicant has reiterated a request that the fill areas be provided at a later date by each respective future land owner prior to the construction of building works on the land. However, it is appropriate that the fill areas are provided through the associated operational works thereby enabling the released lots to be immediately capable of development. The request to change conditions regarding the timing of providing the fill is not supported.

The design relocates the existing stormwater drain to the centre of the land utilising the current discharge point to the ocean. The new stormwater drain will be a drainage reserve and will be of sufficient width and profile to allow access and maintenance by Council. The applicant has reiterated the request to provide a geomesh fabric lining for the new stormwater drain. This is considered to be an inappropriate finish. Council's annual maintenance usually includes the scraping of the drainage easement of any sediment to enable the reserve area to flush through to the ocean.

The condition requiring a 3m wide strip of concrete to the base of the drain enables a suitable maintenance program. The request to change the condition is not supported.

## TOWN PLANNING CONSIDERATIONS

### Background

The land is constrained by the existing drainage channel, the low lying nature of the land, an existing lake, the foreshore area and the natural, underlying sand dune swale system.

The land previously supported the Redback's Resort and Tavern. During this period of use, the former Douglas Shire Council constructed a wide, open, stormwater drain along the southern and eastern boundaries to the foreshore area, with the former owner's consent. No formal drainage easement was created to accompany these works. Council has maintained the clearing of this drain including annual clearing of the channel mouth to the sea. During its history of use, the drain has caused problems due to the low lying nature of the land and lack of significant discharge to enable self-opening through to the sea.

At the Ordinary Meeting held on 19 September 2017 Council resolved to approve the reconfiguration of the land into seven residential lots, a drainage reserve and new road subject to conditions. The proposal plan is indicated below.

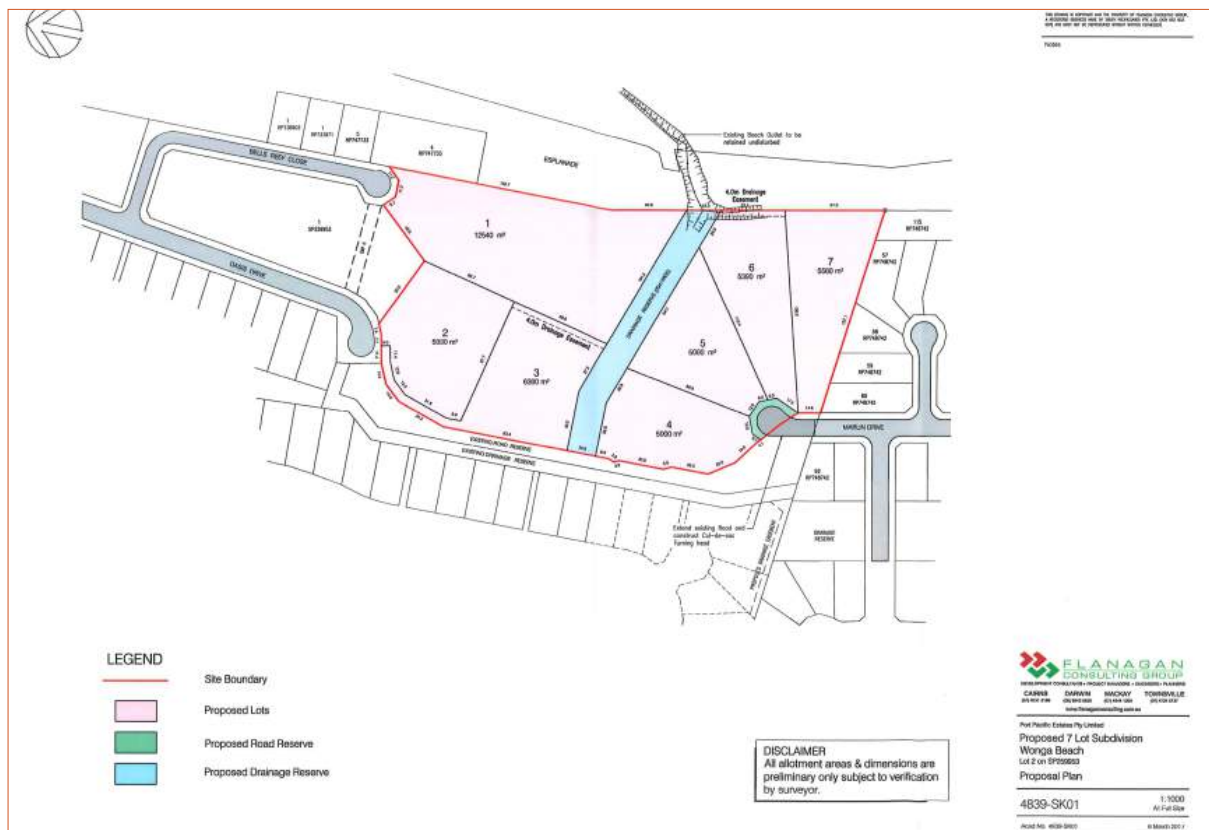


Figure 2.

## Applicant's Request

The applicant has requested a negotiated decision regarding conditions 4, 13 and 17 and the details of the request are summarised below together with a planning comment.

### Conditions 4 and 13 - Provision of building envelopes

The conditions, respective to the issue of building envelopes, currently read as follows.

#### *"Street Layout and Design*

4. *The street layout and design is to be generally in accordance with Flanagan Consulting Group Proposal Plan, Sketch 4839-SK01 subject to:*

...

- b. *Provision of a minimum fill area of 1000m<sup>2</sup> on each lot for building work and onsite waste water disposal whereby:*
- i. *Fill areas must not include any covenant areas as required by a concurrence agency;*
  - ii. *Setback of fill areas a minimum of 6m from the property boundary from all roads and Esplanade;*
  - iii. *Setback of fill areas a minimum of 3.0 metres from the southern boundary of proposed Lot 7;*
  - iv. *The fill pad for proposed Lots 1 and 2 must be extended to the respective northern boundary and retained or setback a minimum of 3.0 metres from the northern boundary;*
  - v. *Fill areas for the lots are at a level to provide an immunity to a 1% storm tide event and a 1% flood event;*
  - vi. *Fill for proposed lots must be graded away from the east to the west and must not result in ponding of water between the fill pad and the existing road reserve to the west; and*
  - vii. *All fill is to drain to lawful point of discharge and must not detrimentally impact on upstream, downstream or surrounding land and/or proposed lots;*

...

*The detailed design plans incorporating the above requirements must be submitted to the satisfaction of the Chief Executive Officer with the application for a Development Permit for Operational Works.*

*All works must be carried out in accordance with the approved plans, to the requirements and satisfaction of the Chief Executive Officer prior to the issue of a Compliance Certificate for the Plan of Survey."*

*“Building Envelope Plan*

13. *A building envelope plan for each of the lots must be lodged with Council prior to the issue of a Compliance Certificate for the Plan of Survey. The building envelope plan must comply with the following requirements:*
- a. *The building envelope must be pegged on site to the requirements and satisfaction of the Chief Executive Officer; and*
  - b. *No building, structure, infrastructure or fill shall be sited or vehicle /pedestrian access provided through to the Esplanade within the conservation covenant area for proposed lots 1, 6 or 7.*

*The applicant / owner must also ensure that the endorsed building envelope plans are made known to all prospective purchasers of the lots.”*

The applicant reiterates the representations made to Council through the Response to the Request for Information, regarding the requirement to place fill on the lots and nominate a building location envelope (BLE) be provided at a later date by future land owners. The reasons for the request are as follows.

- a. *“Given the size of the proposed allotments, the Applicant prefers an area being identified (e.g. up to 1,000m<sup>2</sup>) within each lot that may be suitable for construction of a dwelling and onsite waste disposal to allow maximum flexibility within that area. However, to allow flexibility for the lot purchaser (the end user) the Applicant suggests that it is premature to fix the future building location by providing fill for up to 1,000m<sup>2</sup> on each lot. The large lots provide an opportunity for varied locations for a dwelling within each lot and consequently decisions about the position of the building platform should be left to the future owner who will determine the most suitable location and shape of the building platform and wastewater disposal area.”*
- b. *“Similarly, the Applicant considers that defining an exact BLE on each lot within the 1,000m<sup>2</sup> nominated fill area is premature in that this does not provide maximum flexibility for the end purchaser, and may result in unnecessary costs for the purchaser to relocate the fill should the defined BLE not be suitable for their requirements.”*

The applicant requests that Council amend Condition 4 to read below.

*“Street Layout and Design*

...

- (b) *A plan identifying a nominated fill area for building work and suitable onsite waste disposal area on each of the seven (7) lots, must be lodged with Council prior to the issue of a Development Permit for Operational Works.*

*The Applicant for a Building Permit will be responsible for providing the fill on each allotment, following approval of the Building Application by Council for each lot.*

- i. Fill areas must not include any covenant areas as required by a concurrence agency;*
- ii. Setback of fill areas a minimum of 6m from the property boundary from all roads and Esplanade;*
- iii. Setback of fill areas a minimum of 3.0 metres from the southern boundary of proposed Lot 7;*
- iv. The fill pad for the proposed Lots 1 and 2 must be extended to the respective northern boundary and retained or setback a minimum of 3.0 metres from the northern boundary;*
- v. Fill areas for the lots are at a level to provide an immunity to a 1% storm tide event and a 1% flood event;*
- vi. Fill for proposed lots must be graded away from the east to the west and must not result in ponding of water between the fill pad and the existing road reserve to the west; and*
- vii. All fill is to drain to a lawful point of discharge and must not detrimentally impact on upstream, downstream or surrounding land and/or proposed lots;*

The Applicant requests that Condition 13 of the Decision Notice is deleted on the basis that:

- “a. a plan will be submitted to Council nominating a fill area for building work and onsite waste disposal.*
- b. Council can approve a building location envelope within the nominated fill area at the Building Application stage.*
- c. The future land owner can provide the fill platform once the Building Application for the proposed dwelling area and onsite waste disposal area has been approved by Council.”*

### **Officer Comment**

At the finalisation of the survey plan and the release of lots, the development needs to be fit for purpose. There is flexibility in the conditions for the relocation of the fill within a lot should a future owner require an alternative siting.

The provision of fill on each lot is a cost to the applicant associated with the development.

This cost is minimised as the condition requires a minimum area of fill on each lot and not the whole of each lot is to be filled.

The condition is considered reasonable and relevant and the request is not supported.

## Condition 17 – Drainage construction

The condition currently reads as follows.

### *“Drainage Construction*

17. *The applicant / owner must undertake the development of the land generally in accordance with the findings of the Drainage Study dated 28 November 2013 prepared by DHI Water and Environment Pty Ltd, (or as updated in accordance with Condition 9). The drainage reserve profile is to be generally as detailed by Flanagan Consulting Group Sketch 4839-SK02 and SK03 except that a 3m base width concrete channel lining is to be provided to facilitate trafficability and maintenance to the satisfaction of the Chief Executive Officer. The geoweb cellular confinement lining nominated on FCG Sketch 4839-SK03 is not approved.*

*Provision for the proposed maintenance access must be made on the northern side of the drainage reserve.*

*Drainage works in the western drainage swale to regrade the swale and direct runoff to the new drainage path are to be nominated on plans included in the application for operational works. The plans must show pre and post development surface levels and contours and must identify any significant trees that will be removed to construct the works.*

*A landscaping plan is required to show revegetation works in both the western swale and the new drainage reserve through to the Esplanade.*

*Associated earthworks and landscaping must be completed in accordance with the approved plans prior to the issue of a Compliance Certificate for the Plan of Survey.”*

The Applicant considers the requirement to provide a 3m base width concrete channel lining unreasonable and does not represent best environmental engineering practices.

The applicant provides the following reasons to support the use of the geoweb lining.

- “a. The site is situated behind a frontal sand dune with interface with the inter-dunal catchment. A southern catchment conveys flows through a drainage easement with a channel on the western boundary of the site. Catchment flows build up from approx. 11ha catchment located to the south of the site within this drain, until they are overtopped and are conveyed through the site in an open unlined drain of less than 3m in width.*
- b. The proposed site layout has allowed for reshaping of the man-made lake and allowance for infill of the southern drain and grading of lots to direct flows towards a 20m wide drainage easement located centrally, providing connectivity to the western drainage easement and the outlet through the coastal dune.*



- c. *The soil profile in the locality includes sandy soils which allow stormwater to naturally seep through the sandy soils. The centrally located drainage easement will include a trapezoidal drain within the easement which will be significantly larger than the total current drainage area within the site, resulting in better conveyance than under existing conditions.*

*Notwithstanding, the proposed drain has been designed as a wider flatter drain to allow stormwater drainage to naturally seep into the sandy soils for lower flow situations. The requirement to provide a 3m base width impermeable concrete lined channel will result in water ponding in the drain under low flow conditions.*

- d. *The proposed geoweb lining for the drain allows water to naturally seep into the sandy soil. Specifically, a geoweb lined channel is more erosion-resistant and improves channel stability. The advantages as detailed on the Geofabrics website include:*
- i. Manufactured to ISO 9001 quality standards. It is robust and UV resistant;*
  - ii. It is an eco-friendly soil stabilisation solution that blends into the natural environment; and*
  - iii. Its strong three-dimensional structure means it can easily withstand construction activities.*

*In this regard, it is considered that there will be no maintenance issues for Council as the geoweb can be easily driven upon, allowing Council access to the drain. Further, geoweb is considered to optimise environmental / best engineering practice and is considered appropriate treatment in the context of the locale.”*

The applicant requests the ability for the drain to be lined with geoweb as originally proposed and suggests Condition 17 (1st paragraph only) reads as follows.

*“The applicant / owner must undertake the development of the land generally in accordance with the findings of the Drainage Study dated 28 November 2013 prepared by DHI Water and Environment Pty Ltd, (or as updated in accordance with Condition 9). The drainage profile is to be generally as detailed by Flanagan Consulting Group Sketch 4839-SK02 and SK03, including the proposed geoweb lined drainage channel as detailed on SK03.”*

#### **Officer Comment**

The condition requires a 3m wide concrete wide base to the drainage reserve which is considered commensurate in cost to the geo web lining. It has been Council’s experience with the existing drain that it requires to be scraped annually to maintain the levels and profile enabling stormwater movement.



The drainage reserve is of sufficient width to gain vehicle access to the esplanade along the top bank. The alternative 3m wide concrete base is considered to have a longer life than the geoweb fabric and sediment can be more easily maintained by Council.

### **COUNCIL'S ROLE**

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following area outlines where Council has a clear responsibility to act:

**Regulator:** Meeting the responsibilities associated with regulating activities through legislation or local law.

Under the *Sustainable Planning Act 2009* and the *Sustainable Planning Regulation 2009*, Council is the assessment manager for the application.

### **ATTACHMENTS**

Nil