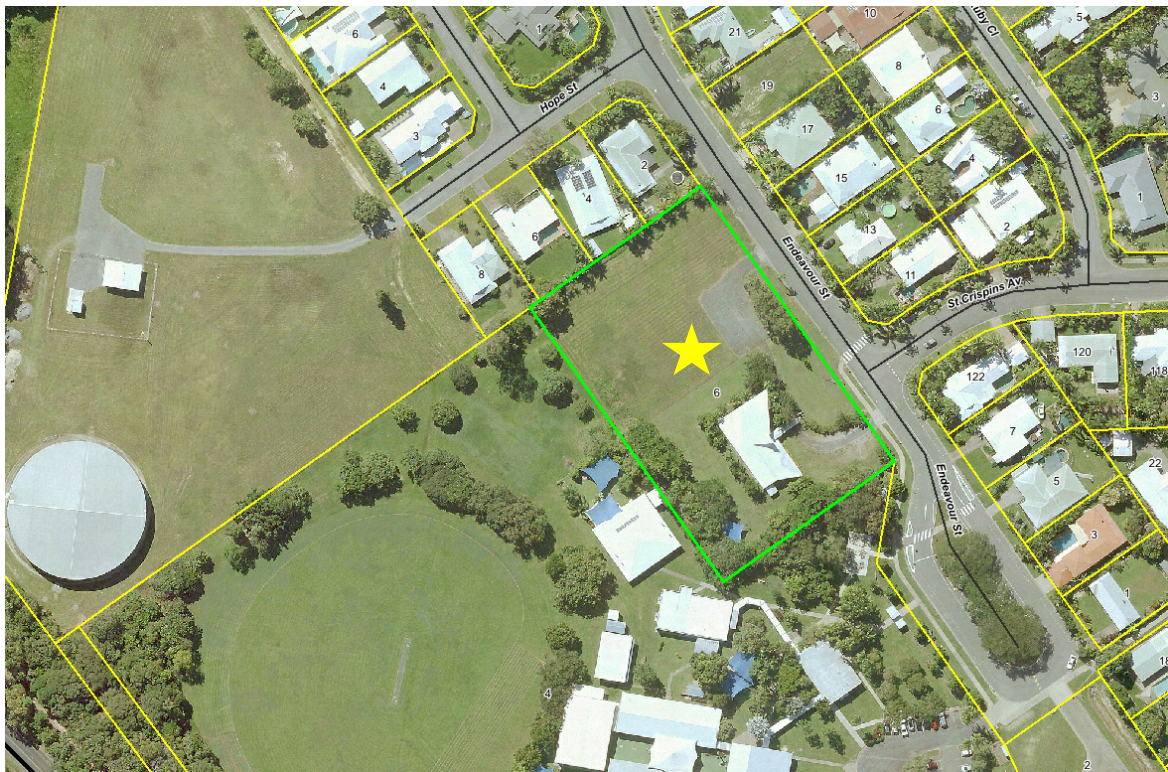


## **5.1. REQUEST FOR A NEGOTIATED DECISION FOR THE COMBINED APPLICATION FOR 6 ENDEAVOUR STREET, PORT DOUGLAS**

<b>REPORT AUTHOR(S)</b>	Jenny Elphinstone, Senior Planning Officer
<b>GENERAL MANAGER</b>	Michael Kriedemann, Acting General Manager Operations
<b>DEPARTMENT</b>	Development Assessment and Coordination
<b>PROPOSAL</b>	Negotiated Decision for the combined application to reconfigure the land into five lots and for a preliminary approval to vary the effect of the Planning Scheme for a material change of use for a house on four of the new lots.
<b>APPLICANT</b>	The Corporation of the Diocesan Synod of North Queensland C/- Planz Town Planning PO Box 181 Edge Hill QLD
<b>LOCATION OF SITE</b>	6 Endeavour Street Port Douglas
<b>PROPERTY</b>	Lot 2 on RP739097

### **LOCALITY PLAN**



**Figure 1 - Locality Plan**

<b>LOCALITY</b>	Port Douglas and Environs
<b>PLANNING AREA</b>	Community & Recreation Facilities
<b>PLANNING SCHEME</b>	Douglas Shire Planning Scheme 2006
<b>REFERRAL AGENCIES</b>	None Applicable.
<b>NUMBER OF SUBMITTERS</b>	Three.
<b>STATUTORY ASSESSMENT DEADLINE</b>	18 May 2018
<b>APPLICATION DATE</b>	29 June 2017

## **RECOMMENDATION**

**A. That Council issues a Negotiated Decision for the combined development application over land described as Lot 2 on RP739097, located at 6 Endeavour Street, Port Douglas, for: the reconfiguration of a lot (1 into 5 lots); and for a Preliminary Approval varying the effect of the 2006 Douglas Shire Planning Scheme (as amended) for a plan of development where the Material Change of Use for a House is self assessable development (subject to requirements) on proposed lots 1, 2, 3 and 4, whereby:**

- 1. The Conditions of approval for the Reconfiguration of the Lot into five lots are amended as follows.**
  - a. Condition 3 of the approval is amended as follows.**

### **Lot Design**

- 3. The lot design is to be generally in accordance with Best Overend & Associates Drawing, Proposed Rectory Site Plan, WD0,3 Revision D dated 27 September 2017 subject to:**
  - a. Proposed Lots 1, 2, 3 and the balance Church lot (Lot 5) must be regraded to drain directly to Endeavour Street;**
  - b. Provision for the future manse, on the balance Church lot (proposed Lot 5) to drain directly to Endeavour Street;**
  - bc. Proposed Lot 4 is to may drain to the west, whereby provided:**
    - i. An easement is created over proposed Lot 4 to accept stormwater discharge from neighbouring properties that front Hope Street; and**
    - ii. The drainage is to a lawful point of discharge In discharging at this location, the design must meet the requirements of Queensland Urban Drainage Manual (QUDM) 3.9.1 (i); and**
    - iii. There is a no actionable nuisance or negligible impact to neighbouring or surrounding land or**

~~catchment area for 100% of post development flows on the proposed Lot (consider full development (100%) site coverage) and the existing stormwater discharge from neighbouring Hope Street land in a 1% AEP rainfall event;~~

**Otherwise**

**Proposed Lot 4 must drain to Endeavour Street and ensure a no actionable nuisance or negligible impact to surrounding land and the catchment area;**

**Or**

**Proposed Lot 4 is removed from the plans.**

- ~~c. Suitable provision is to be made to accept the current storm water from lots north of the land (neighbouring Hope Street properties) and to discharge these waters to a lawful point of discharge that has a no actionable nuisance or negligible impact on upstream, downstream or surrounding land;~~
- d. Remove the drainage easement from proposed Lot 4 and the balance Church lot (being the easement at the rear of proposed Lots 1, 2 and 3);**
- e. Relocate the new sewer extension line to the front of the lots, with a standard off-set alignment as per FNQROC Development Manual. The plan must identify a single sewer connection for each lot at the Endeavour Street frontage. The connection for proposed Lot 4 must be adjacent to the Endeavour Street frontage. Only one sewer connection is to be provided to the balance Church lot (proposed Lot 5);**
- f. Update street lighting at the intersection of Endeavour Street and St Crispin's Avenue (refer to Condition 21);**
- g. Construct a two (2) metre wide footpath is to be constructed along the frontage of the land to Endeavour Street;**
- h. Any fill on the land, necessary to achieve a immunity of flood level for the 1 in 100 year ARI event (1% AEP rainfall event) plus a freeboard of 300mm, must be suitably graded away from the neighbouring houses that front Hope Street; and**
- i. Provide a low screen, deep planted landscaped buffer of approximately 500mm high to the front setback of the Church balance land (proposed Lot 5).**

**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.

- b. Condition 4 of the approval is amended as follows.

**~~Drainage Study of Site and Construction~~**

4. ~~Having regard to Condition 3 above revise the local drainage study by Civil Walker (GLF Developments Pty Ltd) for the subject land to determine drainage impacts on downstream properties and the mitigation measures required to minimise such impacts.~~

~~In particular, the study must establish the flood level for the 1 in 100 year ARI event (1% AEP event) for the site. The study must also confirm the allotment fill levels required to provide the freeboard of 300mm to the land as nominated in the Planning Scheme, the FNQROC Development Manual and Queensland Urban Drainage Manual.~~

~~The study must also confirm the post-development discharge of stormwater from the site and local external catchment for the point of reference being the kerb and piped drainage at the northern end of the site frontage. The capacity of the road and pipe drainage at this point is to be advised. The study must also identify the need and location of any drainage easements to convey stormwater to the lawful point of discharge. The drainage study must be provided with the application for a Development Permit for Operational Works.~~

~~The resultant post development drainage design (assuming a 100% development on the land) must result in no actionable nuisance, or negligible, impact. Where works are required to achieve a no actionable nuisance or negligible impact, the applicant is only responsible to a cost commensurate with the change caused by the development.~~

~~The applicant / owner must undertake the development of the land in accordance with the findings of the Drainage Study as required above. Associated earthworks and landscaping must be completed in accordance with the approved plans prior to the lodgement for the signing and dating of the Plan of Survey.~~

**Internal Works**

4. Associated earthworks, landscaping and provision of infrastructure required under the approval must be completed and provided in accordance with the approved plans prior to the lodgement for the signing and dating of the Plan of Survey.

- c. Condition 15 of the approval is amended as follows.

**Lawful Point of Discharge**

- ~~15. With the exception proposed Lot 4, where compliance is achieved under condition 3 above, all stormwater from the property must be directed to a lawful point of discharge being Endeavour Street, such that it does not adversely affect surrounding properties or properties downstream from the development to the requirements and satisfaction of the Chief Executive Officer.~~

d. Condition 21 is amended as follows.

#### Street Lighting

21. With the exception of lighting to the adjacent pedestrian crossing, ~~t~~The following arrangements for the installation of street lighting within the proposed subdivision must be provided prior to the lodgement for the signing and dating of the Plan of Survey:

- a. Prior to the approval and dating of the Plan of Survey, a Rate 2 lighting scheme is to be prepared by Ergon Energy or its approved consultant and submitted to the Chief Executive Officer for approval. The Rate 2 lighting scheme is to be designed in accordance with the relevant Road Lighting Standard AS/NZS 1158 and the FNQROC Development Manual. The applicable lighting category is to be determined from the Road Hierarchy Table D1.1 and the corresponding applicable Lighting Categories Table D8.1 as identified in the FNQROC Development Manual.

The design must provide the applicable illumination level specified in the Road Lighting Standard AS/NZS 1158 at the following road elements:

- i. Intersections
- ii ~~—~~ Pedestrian Refuges
- iii ~~—~~ Cul-de-sacs
- iv ~~—~~ LATM Devices (Including Roundabouts)

~~LATM Devices are to be shown on the civil layout design,~~  
~~t~~The electrical services and street lighting design must be submitted in accordance with Ergon Energy's latest Distribution Design Drafting Standard.

At a minimum a new light is to be provided at the intersection of St Crispins Avenue and Endeavour Street.

- b. Prior to the issue of a Compliance Certificate for the Plan of Survey written confirmation that the relevant capital contribution required by Ergon Energy has been paid must be submitted, to ensure that the street lighting will be constructed.

- c. Where a new intersection is formed on an existing roadway for the purpose of accessing a new subdivision development, the intersection and existing road approaches must be provided with street lighting for a distance equivalent to at least two (2) spans either side of the intersection to the relevant Lighting Category.
  - d. Where an existing intersection is required to be upgraded as part of a development approval, the intersection and existing road approaches must be provided with street lighting for a distance equivalent to at least two (2) spans either side of the intersection to the relevant Lighting Category.
- 2. The remaining conditions be renumbered accordingly.
  - 3. The advices attached to the approval are amended as follows.

**Advices**

- 25. For information relating to the Sustainable Planning Act 2009 and the Planning Act 2016 log on to [www.dsdmip.qld.gov.au](http://www.dsdmip.qld.gov.au) [www.dilgp.qld.gov.au](http://www.dilgp.qld.gov.au). To access the FNQROC Development Manual, Local Laws and other applicable Policies, log on to [www.douglas.qld.gov.au](http://www.douglas.qld.gov.au).
- 6. In regards to Conditions 3 and 4 of the approval Council accepts responsibility for the requirement for stormwater associated with discharge onto Endeavour Street, Port Douglas.
- 4. The Negotiated Decision Notice include the following additional ground on which it is considered sufficient to overcome the conflict with the Planning Scheme in this particular instance.
  - 7. The conditions of the approval for the reconfiguration of the lot requires stormwater from proposed Lots 1, 2, 3 and the balance Church lot (proposed lot 5) to discharge to Endeavour Street. This requirement increases the amount of stormwater discharging to Endeavour Street, a legal point of discharge. In this instance the impact of the increase is Council's responsibility as it is preferred that the stormwater discharge to the road.
- B. Council resolves to consider, in the next budget considerations, the allocation of funding for investigation and development of pedestrian access:
  - a. along St Crispin's Avenue, between Agincourt Street and Endeavour Street, including suitable access across St Crispin's Avenue through this area; and
  - b. westwards along Endeavour Street to connect to the existing pedestrian crossings.
- C. That Council separately advise the submitters of recommendation B above, explaining the need to provide a more suitably located pedestrian access in the immediate area, and Council's commitment to achieving this access.



---

## EXECUTIVE SUMMARY

The land lies at the head of the intersection of St Crispin's Avenue and Endeavour Street, Port Douglas, in the Reef Park estate. The lot was created through a rezoning approval under the former Douglas Shire Council in 1986 and was provided to the Anglican Diocesan. Part of the land has been developed by the Anglican Diocesan for a local church with associated onsite car parking.

At the Ordinary Meeting held on 15 May 2018, Council approved a combined application to vary the Planning Scheme and to reconfigure the land to create four residential lots, each of 800m<sup>2</sup> area, and one balance lot. The application allows for the further development of a House on each of the residential lots to be self assessable development, subject to siting parameters reflecting the Queensland Development Code MP 1.2 for lots of area greater than 450m<sup>2</sup>. The Church will be retained on the balance lot with sufficient area for a rectory. The approval was subject to a number of conditions.

The Applicant has requested a negotiated decision in regards to the conditions requiring a redesign of the stormwater drainage generated from the new lots. A condition of the approval requires the majority of the land to drain to Endeavour Street without exacerbating impact beyond a negligible extent. The conditions also cater for the continued receiving of stormwater from the abutting Hope Street residential houses. The applicant contends that the existing stormwater is insufficient and the requirement to drain the lots to Endeavour Street will detrimentally impact on nearby land. The applicant has provided further post development stormwater calculations.

It is acknowledged that the existing stormwater drainage in the Reef Park estate requires further investigation and improvements. The impact resulting from the new development is not considered to be substantial. It is recommended that the conditions be amended maintaining a requirement for the majority of the new lots to drain to Endeavour Street and an advice statement be included to acknowledge Council's responsibility.

Further consideration has been given to the street lighting condition, in particular the requirement to provide new lighting to the existing pedestrian crossing that is located adjacent to the new vehicle crossing. In the current position, the pedestrian crossing is inappropriately located at the street intersection. The requirement to upgrade the lighting, in this instance, is considered unreasonable. It is recommended that the condition be suitably amended. The safe pedestrian access in this area needs to be separately addressed and a separate recommendation seeks appropriate budgeting and funding.

## TOWN PLANNING CONSIDERATIONS

### Background

Part of the land has been developed with a Church and a considerable remainder of the land is undeveloped and has been identified by the church as being no longer required. The application seeks to vary the Planning Scheme and reconfigure the land to develop the majority of the unused part of the land for four additional lots and for a house to be

established on each of these additional lots. Part of the unused land will be remain with the Church for the development of a rectory, an ancillary use to the place of worship.

The application was lodged under the *Sustainable Planning Act 2009* and the Douglas Shire Planning Scheme 2006 (as amended). Three properly made submissions were lodged in respect to the application. The submissions included concerns of the existing stormwater drainage and possible further impact on the neighbouring lots that front Hope Street.

Stormwater drainage received over the land currently discharges to both Endeavour Street and at the northwest corner of the site over the neighbouring Port Douglas State Primary School. The applicant's design sought the construction of a stormwater drain on proposed Lot 4 to collect and discharge stormwater from the new residential lots that would front Endeavour Street.

At the Ordinary Meeting held on the 15 May 2018 Council supported the application and resolved to approve the development subject to conditions. Condition 3 of the Decision Notice required a re-design of the new residential lots, requiring proposed lots 1, 2, 3 and the balance Church lot (proposed Lot 5) to drain to Endeavour Street. Condition 4 of the approval required the applicant to undertake a local drainage study. The conditions also required the applicant to ensure the stormwater design had, "no actionable nuisance" or a "negligible impact on upstream downstream or surrounding land."

The grounds of the properly made submissions also raised safety concerns with the location of the new vehicle crossing near to the existing pedestrian access across Endeavour Street. A condition of the approval requires the street lighting to be provided to current standards and this includes the lighting to the pedestrian crossing.

### Applicant's request

Council has been advised that the applicant's appeal period has been suspended and the applicant has requested the conditions 3 and 4 could be replaced with the following:

3. The lot design is to be generally in accordance with Best Overend & Associates Drawing, Proposed Rectory Site Plan, WD0,3 Revision D dated 27 September 2017 subject to:
  - a. Each lot is to be drained to a Lawful Point of Discharge to the satisfaction of the Chief Executive Officer.
  - b. The spoon drain on proposed Lot 4, is to be drained to a Lawful Point of Discharge to the satisfaction of the Chief Executive Officer.

The applicant advises that there is an existing flooding issue in the area and that Council should undertake works to mitigate this impact, together with works to mitigating the additional flow contributed from tipping development lots to Endeavour Street. The Applicant also seeks that in the event that the development occurs before Council undertake these works, Council indemnifies the Developer from any resulting action. The applicant considers that the existing conditions present unintended, unnecessary and inappropriate risks to the applicant with regard to stormwater / flooding. The applicant notes that while the conditions require the applicant to address the post development discharge issues, there is no commitment from Council to undertake any works with regard to the existing flooding.

The applicant considers Condition 4, requiring the drainage study to be undertaken by the applicant, puts the cost of determining the existing flooding characteristics etc. on the



applicant. In the circumstances, the applicant contends that it is a reasonable proposition that Council undertake such a study as part of any works to mitigate the existing flooding issue. The applicant would then take this study and determine how to mitigate the increases associated with the development. The applicant advises that this would allow the stormwater drainage design to be addressed at Operational Works stage.

The applicant has also requested the requirement to provide updated lighting of the pedestrian crossing, which is approximately \$25,000 of work, is considered unnecessary as:

- a. The project which delivers an additional 4 lots to the catchment;
- b. The proximity of the crossing to the site is not a reasonable trigger for an upgrade, it is a catchment consideration;
- c. The primary time for use of the crossing is daylight hours associated with the school; and
- d. There is no evidence that the upgrade is needed.

The applicant acknowledges Council's intention to achieve the very best for the community, however in this instance the applicant contends that the lighting upgrade is not required and as a result the level of service to the community is not diminished.

### Officer comment

#### Stormwater

It is appropriate that the stormwater design be determined at the planning stage.

Discharge from the northwest corner of the site currently travels west and then north over the Port Douglas State Primary School land and then Council's reservoir land. Access to the Council land is locked and there are no formal drainage easements over land to the west, nor to the north.

Considerable concern is held with new stormwater designs, as it includes drainage easements to be positioned "out of sight" behind residential lots, on private land, where there is no direct access from road. Access to these properties can be difficult and would require land owner's consent. Timely access is required, in particular during severe weather events. Council has a greater ability to address stormwater issues where discharge is directly to a road. The condition requiring the majority of the new lots to discharge to Endeavour Street addresses the issue of limited access to the proposed rear easement.

During the recent severe rainfall event, where the rainfall was greater than the 1% AEP rainfall event, flooding occurred in Egret Street due to a ponding effect of Egret Street essentially being at the same level as Endeavour Street.

Further calculations of the post-development stormwater discharge from the land to the local drainage system have been provided by the Applicant's Engineer.

Directing the stormwater to Endeavour Street increases the flow to the road, however, these flows are within the capacity of the road at this point. The alternative scenario, to discharge stormwater to the northwest corner, would increase the flows to the school and then Council lot and concern is raised with the capacity at the Hope Street culvert crossing. The capacity of the existing drain has not been identified. The existing flooding issues at Egret Close are primarily due to the lack of an overland flow path and limited underground capacity. It is not

clear whether external catchments (Endeavour Street from south and the school/Council/Church from west) contribute to the flooding, however, this cannot be discounted on the calculations determined to date. The change that could occur from the development is assessed as approximately an 8% increase.

Additional infrastructure is required to resolve the current flooding issues and this can include capacity to mitigate the impacts of the development (noting that it may impact regardless of which way the lots grade). Council is aware of the need for further review and actions for stormwater design in this locality.

Given the broader issues with Crees Creek flooding and recent history in the Reef Park area, it is recommended that Council maintain its position that the lots be filled above the 1%AEP (Q100) level plus freeboard AND that the lots fronting Endeavour Street be graded to the road frontage to avoid rear of allotment drains. It is considered that the impacts of increased flows from the development are best managed on road rather than through the less certain open earth drainage systems in the school and Council land.

It is acknowledged that sufficient stormwater drainage investigation has been undertaken to date, and condition 4 can requiring a further drainage study be replaced with a requirement for works to be undertaken prior to the release of the survey plan. It is recommended that the conditions be amended to clearly reflect the preferred stormwater discharge, for the majority of the land to Endeavour Street, and the inclusion of an advice regarding Council's responsibility for stormwater in the local area.

An additional statement is to be included acknowledging that there may be an impact of the development on the local stormwater drainage and this is considered, in this instance, to be Council's responsibility. The amended approval retains conditions addressing the neighbouring Hope Street residential properties.

### **Pedestrian Crossing**

The use of storm tide shelter in times of emergency and for sporting activities and the like, extends the use of the primary school land beyond normal school hours and school terms. The Church land and other Church land nearby provide for social and community use to the surrounding community and need to be accompanied by safe pedestrian access.

It is agreed that the existing pedestrian crossing, adjacent to the land, over Endeavour Street is inappropriately located having regard to the intersection of Endeavour Street and St Crispin's Avenue. Pedestrian access, along St Crispin's Avenue, between Agincourt and Endeavour Street needs to be redesigned and developed to current standards. The current requirement for the applicant to upgrade lighting including the pedestrian crossing is contradictory as the crossing is incorrectly located. The concerns raised by the submitters are acknowledged and while the conditions of the approval are recommended to be amended to remove the applicant's obligations in this issue, a separate recommendation seeks Council to commit resources to address safe pedestrian access in this immediate area.

## 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