

Development application—decision under delegated authority

Reconfiguring a lot – Boundary Realignment (3 into 2) on Lot 33 & 34 MZ335 at 100 Beckers Road, Boynewood and Lot 35 MZ1109 at 689 Dykehead Road, Boynewood

Application reference: DA210015

1 Proposal summary

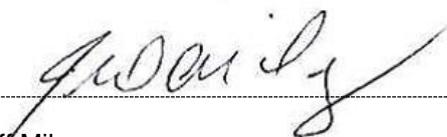
- (1) The applicant seeks to realign the boundaries at 100 Beckers Road, Boynewood and 689 Dykehead Road, Boynewood. The realignment is between Lots 33 & 34 on MZ335 and Lot 35 on MZ1109, the change will amalgamate 34 with lot 35 (3 lots into 2 lots).
The purpose of the realignment is to realign the boundaries three (3) into two (2), adding additional productive area of part lots 33 & 34 on MZ335 to Lot 35 on MZ1109. Existing Lot 34 has been developed for grape production and this development will allow for the expansion of the grape growing area with Lot 34 being totally placed under grape vines. Lot 33 will continue to be used for citrus production in conjunction with adjoining owned properties. The proposal enhances the productivity of an all-important agricultural area.
Lot 33 was already under the minimum area of (100 ha) so this proposal will improve the overall situation by increasing the area of Lot 35 to 137.6Ha and reducing the total number of lots from three (3) to two (2).
- (2) The Council must assess the application against the assessment benchmarks, having regard to those matters set out in the *Planning Act 2016 and Planning Regulation 2017*, and decide the application in accordance with the decision rules in s60(2) and s60(5). The attached Statement of Reasons sets out the rationale for deciding to approve the application.

2 Recommendations

- (1) That the Council or its delegate, having regard to the matters set out in the attached Statement of reasons, decide the application under s60(2) of the *Planning Act 2016* by approving all of it subject to conditions.
- (2) That the Council notify the applicant of its decision in accordance with the attached Notice of decision.
- (3) That the Council publish the Notice of decision, including the Statement of reasons, on its website.

3 Decision

I concur with the above recommendations—please issue the Notice of decision as recommended.



Jeff Miles
Planning & Environment Manager

17/06/2021

Date

4 Statement of reasons

This statement explains the reasons for the assessment manager's decision in relation to a development application for Reconfiguring a Lot—Boundary Realignment (3 Lot into 2 Lots) at 100 Beckers Road, Boynewood and 689 Dykehead Road, Boynewood on land described as Lots 33 & 34 on MZ3335 and Lot 35 on MZ1109.

This statement is required under **section 63 Notice of decision** of the *Planning Act 2016*.

4.1 Facts and circumstances

- (1) The lot is in the Rural zone—in the (Intensive Agriculture Precinct) surrounded by equivalent rural zoned land.
- (2) The application was deemed properly made on *20th May 2021*. Council did not issue a confirmation notice as it was not necessary under s2.2 of the Development Assessment Rules.
- (3) The applicant stated that they agree to accept an information request, but the application included sufficient information and it was not necessary to issue an information request.
- (4) The following matters have been key considerations for the assessment manager—
 - (a) material about the application, including the proposal plans and the applicant's report;
 - (b) the North Burnett Regional Planning Scheme, to the extent relevant; and
 - (c) the SPP, to the extent that it is not appropriately integrated in the planning scheme.

4.2 Category of assessment

- (1) The proposal is identified as Code assessable against the *Reconfiguring a lot (boundary realignment) and associated operational work code*.
- (2) The proposal requires assessment against the following overlay codes—
 - (a) *Bushfire hazard overlay code* as State mapping identifies Lots 33 & 34 MZ3335 as locating within small portion of lot 33 as Medium Potential Bushfire Intensity and along the Burnett River on both northern boundaries Potential Impact Buffer bushfire intensity.
 - (b) *Natural features or resources overlays code* is Within Agricultural Land Classifications – Important agricultural areas and Class A and B and contain MSES areas – Regulated Vegetation categories B,C & R and (intersecting a watercourse) are identified. Advice was sought from The Department of Natural Resources and Mines advised that clearing for a fence line in Category R is considered an exempt activity and will not require referral under Schedule 10 of the Planning Regulation 2017.
 - (c) *Flood hazard overlay code* identifies existing lot 33 and 34 being affected due to adjoining the Burnett River.

4.3 Assessment benchmarks

- (1) A basic assessment against the assessment benchmarks is provided in the report and associated documentation submitted with the application. Such assessment confirms that the matter is relatively straightforward.

State planning instruments

- (1) *Regional plan*—the Wide Bay Burnett Regional Plan is appropriately integrated in the planning scheme and does not require further or separate consideration for Council to decide the application.

- (2) *State planning policy*—there are no State interest statements, policies or benchmarks relevant to this application¹. Due to the nature of the proposal and insignificant departure of the SPP from the planning scheme, compliance with the planning scheme is considered appropriate.

North Burnett Regional Planning Scheme

4.3.3.1 Reconfiguring a lot code

- (1) The proposal complies with the Reconfiguring a lot (boundary realignment) and associated operational work code as—
- (a) it achieves the purpose and overall outcomes of the code;
 - (b) it complies with the performance outcomes of the code;
 - (c) The proposal complies with the intended use that being rural usage of important agricultural areas and is enhanced by this proposal extending the productivity of the grape growing area.
 - (d) The proposal of (3 into 2) does not satisfy the required minimum area of 100 hectares as Lot 33 was already under the minimum area of (100 ha) however this proposal will improve the overall situation by increasing the area of Lot 35 to 137.6Ha and reducing the total number of lots from three (3) to two (2).
 - (e) The site is encumbered by an easement as the whole of lot 33 on MZ335 is in favour of Burnett Water. There currently is an easement for a waterline through Lot 34 benefiting Lot 35 on MZ1109. This easement will be cancelled as there will be no requirement for it following the registration of the new plan.
 - (f) The realignment will not alter current drainage characteristics, nor are any earthworks proposed or anticipated as required to affect the realignment.
 - (g) The new lot layout would be compatible with other development in the locality considering the area, proportion and orientation.

4.3.3.2 Overlay codes

- (1) The proposal complies with the *Bushfire hazard overlay code* as—
- (a) it achieves the purpose and overall outcomes of the code;
 - (b) it complies with the performance outcomes of the code; and
 - (c) The Dwelling on lot 33 is well clear of any boundaries and well separated from any timbered areas. The remaining land identified in the Bushfire prone area which is only a small portion along the Burnett River, does not have houses and is used for grape production.
 - (d) There is ample area on both new lots for a dwelling and associated infrastructure for farming that is outside of the bushfire hazard area.
- (2) The proposal complies with the *Natural features or resources overlays code* as—
- (a) it achieves the purpose and overall outcomes of the code;
 - (b) it complies with the performance outcomes of the code; and
 - (c) Regulated Vegetation categories B,C & R and (intersecting a watercourse) are identified. Advice was sought from The Department of Natural Resources and Mines advised that clearing for a fence line in Category R is considered an exempt activity and will not require referral under Schedule 10 of the Planning Regulation 2017.
- (3) The proposal complies with the *Flood hazard overlay code* as—
- (a) it achieves the purpose and overall outcomes of the code;
 - (b) it complies with the performance outcomes of the code; and

¹ When the planning scheme commenced on 3 November 2014 it appropriately integrated all aspects of the State Planning Policy then in force. The SPP that commenced on 3 July 2017 is quite similar, however the *Planning Act 2016* requires the assessment manager to assess the application against the SPP Part E (State Assessment Benchmarks) because the planning scheme does not identify it as having been 'appropriately integrated' into the scheme.

- (c) Over half of the existing lot 33 is identified as being flood affected and Lot 34 to a much lesser extent with except for the area that adjoins the Burnett River and small portion on the northern boundary with lot 33.
- (d) There is ample area on both new lots for a dwelling and associated infrastructure for farming that is outside of the flood inundation area, road accesses are outside of the flood inundation area.

4.4 Consultation

Internal stakeholder comments

- (1) No officers were invited or commented on the application, considering the minor nature of the proposal.

External stakeholder comments

- (1) The application did not require referral to Department of State Development, Infrastructure, Local Government and Planning under Schedule 9 or 10 of the *Planning Regulation 2017*.

Other

- (1) The application did not require referral
- (2) The application did not require public notification and as such Council did not receive any submissions about the application.

4.5 Key issues for this application

- (1) The assessment manager considers that the following matters have been instrumental in its decision—
 - (a) *Land use configuration*— all three parcels would be regular in shape and be compatible with other development in the locality considering the area, proportion, orientation and road frontage.
 - (b) *Access*— The two lots will have adequate frontage to a constructed road.
 - (c) *Overlays*—New boundaries are not clear of identified MSES areas regulated vegetation (category R) and (intersecting a watercourse).

4.6 Decision rules under the *Planning Act 2016*

- (1) The assessment manager—
 - (a) must approve if the proposal complies with all the assessment benchmarks;
 - (b) may approve if the proposal does not comply with some assessment benchmarks;
 - (c) may impose conditions;
 - (d) may refuse the application only if the proposal does not comply with some of the benchmarks and conditions cannot achieve compliance;
 - (e) may give a preliminary approval for all or part of the proposal.

Section 60(2) of the Planning Act 2016 sets out the decision rules for code assessment.
- (2) Development conditions must—
 - (a) be relevant to but not an unreasonable imposition; and
 - (b) be reasonably required as a consequence of the development.

Section 65 of the Planning Act 2016 limits the nature of approval conditions.
- (3) Having regard to the above matters and after assessing the application against the assessment benchmarks, the assessment manager decides to approve the application and impose conditions in accordance with the decision rules.