

# Development application—decision under delegated authority

Reconfiguring a Lot—Boundary realignment (2 lots into 2 lots) & access easement at 295 whartons Road, Gayndah on land described as Lot 4 on SP210501 & Lot 201 on MZ915—Code assessable development application under the *Planning Act 2016*

Application reference: DA210024

## 1 Proposal summary

- (1) The applicant seeks to reconfigure a lot at 295 Whartons Road, Gayndah Qld 4625 to realign the boundaries between two lots and include an access easement.
- (2) The application seeks approval to create proposed Lot 201 with an area of 128.5 ha and proposed Lot 4 with an area of 13.5 ha and an access easement within Lot 201 to service Lot 4.
- (3) The site is used for a Dwelling house and accommodates a dwelling and other buildings/structures. Proposed Lot 4 will retain the existing house and contain all improvements.
- (4) The proposed lots 4 and 201 will have an area of 13.5 ha and 128.5 ha respectively. All proposed lots meet the minimum area and road frontage requirements in the planning scheme.
- (5) 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) of the *Planning Act 2016*. The Statement of reasons sets out the rationale for deciding to approve the application.

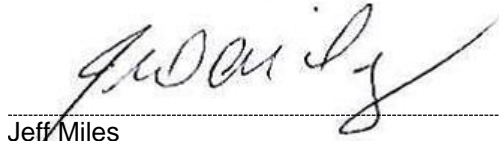
## 2 Recommendations

- (1) That the Council or its delegate, having regard to the matters set out in the 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 Decision notice.
- (3) That the Council publish the Decision notice, including the Statement of reasons, on its website.
- (4) Council can no longer issue a charges notice in accordance with its Charges Resolution (No. 2) 2015 as it did not make a Local Government Infrastructure Plan by 1 July 2018.

(5)

### 3 Decision

I concur with the above recommendations—please issue the Decision notice as recommended.



21 July 2021

Jeff Miles

Date

**Planning & Environment Manager  
(Delegate of North Burnett Regional Council)**

## 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 (2 lots into 2 lots) with access easement at 295 Whartons Road, Gayndah on land described as Lot 4 on SP210501 & Lot 201 on MZ915. The statement is required under **section 63 Notice of decision** of the *Planning Act 2016*.

### 4.1 Facts and circumstances

- (1) The application was lodged on 30 March 2021.
- (2) An Action Notice was issued to the applicant on 22 June 2021. The applicant responded to the Action Notice on 22 June 2021 whereupon the application was deemed properly made.
- (3) A Confirmation Notice was issued to the applicant on 29 June 2021.
- (4) The application triggered referral to Ergon Energy as the lots to be reconfigured are subject to an electricity easement—although Ergon had no requirements.
- (5) The application included sufficient information and it was not necessary to issue an information request.
- (6) 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.
  - (d) Flood hazard information, remnant vegetation and electricity infrastructure, where relevant.

### 4.2 Category of assessment

- (1) The site is in the Intensive agricultural precinct of the Rural zone.
- (2) The proposal is identified as Code assessable against the *Reconfiguring a lot (boundary realignment) and associated operational work code*.
- (3) The proposal also requires assessment against the following overlay codes—
  - (a) *Flood hazard overlay code* as both lots are identified in the flood hazard overlay map OM-FH-007.
  - (b) *Natural features or resources overlays code* (agricultural land classified as class A and B and matters of environmental significance identified, regulated vegetation (category R) and Wildlife habitat (special least concern animal))
  - (c) *Infrastructure overlay code* (major electricity infrastructure identified on SPP mapping)

### 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, however a more detailed assessment for compliance is attached.

#### 4.3.2 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*— the State’s interests were relevant to deciding this application to the following extent<sup>1</sup>.
- (a) *Agriculture*—the development outcomes associated with the proposal do not conflict with or are consistent with the State’s interests in protecting Agricultural Land Classification Class A and B land for sustainable agriculture; the proposed development complies with the assessment benchmarks;
  - (b) *Biodiversity*— the development outcomes associated with the proposal do not conflict with or are consistent with the State’s interests in avoiding significant impacts on matters of environmental significance; the proposed development complies with the assessment benchmarks;
  - (c) *Natural hazards, risk and resilience*—the development outcomes associated with the proposal do not conflict with or are consistent with the State’s interests in avoiding or mitigating risks associated with natural hazards to protect people and property; the assessment benchmarks do not apply to the subject site.
  - (d) *Energy and water supply* — the development outcomes associated with the proposal do not conflict with or are consistent with the State’s interests in protecting energy and water supply. The application required referral to Ergon Energy as the lots to be reconfigured are subject to an easement or near a substation site (major electricity infrastructure).

#### **4.3.3 Reconfiguring a lot (boundary realignment) and associated operational work 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, specifically —
  - (c) the proposal complies with the intended use that being rural agricultural usage having regard to the zone in which the site is included and does not compromise the future development of adjoining premises.
  - (d) while not complying with the maximum length requirement of an access strip or easement of 50 metres in acceptable outcome AO3.3, extension of the access length is required to provide access to proposed Lot 4. The position of Lot 4 as well as the site’s topographical constraints directs access via proposed easement B. Alternative access along the western boundary is impractical as evidenced by the existing access and placement of easement A.
  - (e) The proposed realignment (2 into 2) – Boundary realignment does not increase any existing planning scheme non-compliance.
  - (f) The boundary realignment will ensure adequate space is available across both proposed Lot 4 and Lot 201 for further residential development, including relevant supporting infrastructure.
  - (g) The boundary realignment provides for a better overall outcome for agricultural land as it reduces the prospect of alienating good quality agricultural land.
  - (h) The realignment will not alter current drainage characteristics, nor are any earthworks proposed or anticipated as required to effect the realignment.
  - (i) the new lot layout would be compatible with other development in the locality considering the area, proportion, and orientation.

#### **4.3.4 Infrastructure overlay code**

- (1) The proposal complies with the *Infrastructure and operational work code* as—
- (a) it achieves the purpose and overall outcomes of the code;

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<sup>1</sup> 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.

- (b) it complies with the performance outcomes of the code, specifically—
  - (i) suitable on-site infrastructure is available to meet the anticipated needs of users;
  - (ii) Technical Services only advised of concerns and requirements for the new easement. No upgrades are required to the local road network;
  - (iii) Suitable vehicular access will be required to be provided for Lot 4 in accordance Council's Design and construction standards for development works policy.

#### **4.3.5 Overlay codes**

- (1) The proposal does not fully comply with some acceptable outcomes in the *Flood hazard overlay code* as—
  - (a) Existing habitable and non-habitable buildings as well as trafficable access to the public road are mapped within the 1% AEP flood area (as shown on the flood hazard overlay map OM-FH-007.7). However, due to the nature of the proposed development where no additional allotments are created and the proposed development of a boundary realignment will not have any increased risk to property or life.
- (2) The proposal complies with the Natural features or resources overlay code as –
  - (a) Agricultural land classification is identified for category Important agricultural areas and class A & B. The proposed realignment avoids the loss or fragmentation of Agricultural Land, compliance with the planning scheme is considered appropriate.

### **4.4 Consultation**

#### **4.4.1 Internal stakeholder comments**

- (1) Technical Services provided comment on the development in relation to road access. The advice confirmed that there needs to be formalised access easements to reflect the current access arrangements.

#### **4.4.2 External stakeholder comments**

- (1) The application required referral to Ergon energy under Schedule 10 of the *Planning Regulation 2017*. The advice confirmed —
  - a) The development is to be carried out in accordance with plans submitted for Ergon's review. Any changes to the plans should be resubmitted to Ergon for further review and comment.
  - b) The conditions of any easements in favour of Ergon must be maintained at all times.

#### **4.4.3 Public consultation**

- (1) The application did not require public notification.

### **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 lots would be compatible with other development in the locality considering the area, proportion and orientation.
  - (b) *Access*— Proposed easement B to run adjacent to existing easement A. Whilst the current and proposed easement do not comply with the maximum length requirement of an access strip or easement of 50 metres, to enable access to Lot 4, this is the only alternative as the site's topographical constraints prevents access along the western boundary of the property. The site's constraints provide justification for the current placement of easement A.

- (c) Overlays—
- New boundaries are clear of identified MSES areas Regulated vegetation category R & Wildlife habitat (special least concern animal)
  - Existing habitable, non-habitable buildings and access do not fully comply with some acceptable outcomes in the *Flood hazard overlay code*. However, consideration of existing use rights and the nature of the proposed development indicates there is no increased risks to property or life if the existing use is maintained.
  - There is small area in the south-eastern corner of proposed Lot 4 available for development outside the mapped 1% AEP flood area. Most of proposed Lot 201 is not included in the 1% AEP flood area, therefore providing a larger flood free area available for development as well as temporary relocation in the event of flooding.
  - The proposed realignment is not anticipated to have any effect on the identified major electricity infrastructure in accordance with the SPP mapping.

## 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.