

Development application—decision under delegated authority

Reconfiguring a Lot at 845 Fireclay Rd, Kalpowar on land described as Lot 6 on YL270—Code assessable development application under the *Planning Act 2016*

Application reference: DA210003

1 Proposal summary

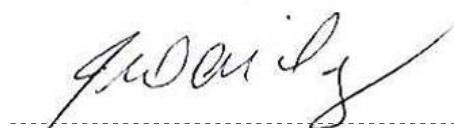
- (1) The applicant seeks a Development Permit for Reconfiguring a Lot—Subdivision (1 Lot into 2 Lots) at 845 Fireclay Rd, Kalpowar (described as Lot 6 on YL270).
- (2) The stated objective of the application is to subdivide Lot 6 on YL270 along a natural ridgeline for the creation of Proposed Lot 1 with an approximate area of 1800 Ha and Proposed Lot 2 with an approximate area of 1280 Ha
- (3) The site is currently improved with a dwelling house and other buildings/structures. Proposed Lot 2 will retain the existing house and contain all improvements.
- (4) The proposed Lots 1 and 2 will have an area of 1800ha and 1280ha respectively. All proposed lots will 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) 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 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.

3 Decision

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



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

17 November 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—Subdivision (1 Lot into 2 Lots) at 845 Fireclay Rd, Kalpowar on land described as Lot 6 on YL270. The statement is required under **section 63 Notice of decision** of the *Planning Act 2016*.

4.1 Facts and circumstances

- (1) The application was deemed properly made on 24 June 2021.
- (2) Council issued the Notice of Missed Referral on 20 July 2021
- (3) Council issued the Confirmation notice on 27 July 2021
- (4) The application triggered referral to the State in relation to—
 - (a) infrastructure—state-transport corridors: Reconfiguring a lot near a State transport corridor.
 - (i) Kalpowar Road is a State-controlled road and part of the site is closer than 25 metres. Under Schedule 10, Part 9. Division 4, Subdivision 2, Table 1 of the *Planning Regulation 2017* the application required referral.
 - (b) Though the site has mapped MSES features, as the proposed lots are larger than 25ha the application did not require referral to the chief executive for this matter.
- (5) Further information was requested by way of a Further Advice Notice issued on 5 August 2021 to request code assessment against the Reconfiguring a lot (except excluded reconfiguration) code and to seek clarity on the proposed site access points;
 - (a) The applicant provided a response on 16 August 2021, consisting of—
 - (i) Reconfiguring a lot (except excluded reconfiguration) response;
 - (ii) Annotated map showing proposed access points.
- (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 2014 v1.4 (amendments commenced 17 Aug 2021), to the extent relevant; and

4.2 Category of assessment

- (1) The site is in the Rural zone (Hinterland Precinct)
- (2) The proposal is identified as Code assessable against the Reconfiguring a lot (except excluded reconfiguration) code; Infrastructure and operational work code; and the purpose of the Rural zone code.
- (3) The proposed also requires assessment against the following overlay codes—
 - (a) Bushfire hazard overlay code;
 - (b) Natural features or resources overlays code;
 - (c) Infrastructure overlays code.

4.3 Assessment benchmarks

- (1) A basic assessment against the assessment benchmarks is provided in the report and associated documentation submitted with the application and in response to the Further Advice Notice. Such assessment confirms that the matter is relatively straightforward and it is not necessary to carry out a more detailed assessment for compliance.

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 Planning Policy is appropriately integrated in the planning scheme and does not require further or separate consideration for Council to decide the application.

4.3.3 Purpose of the Rural zone code

- (1) The proposal complies with the Rural zone code as—
 - (a) It achieves the purpose and overall outcomes of the zone code, specifically—;
 - (b) The lots would still provide for existing and future rural uses and activities;
 - (c) Significant natural features and resources of the site are proposed to be maintained and the reconfiguration would not result in serious environmental harm;
 - (d) The lots would not introduce conflicting land uses or impact sensitive land uses;

4.3.4 Reconfiguring a lot (except excluding reconfiguration) code

- (1) The proposal complies with the Reconfiguring a lot (except excluded reconfiguration) code as—
 - (a) It achieves the purpose and overall outcomes of the code;
 - (b) It complies with the performance and acceptable outcomes of the code, specifically—
 - (c) Both lots' proposed areas and frontages exceed the minimum 400ha area and 200m road frontage requirements prescribed by Table 9.4.10;
 - (d) Access is currently gained via a permit to occupy over Lot 1 on AP3115 and Lot 1 on PER6471 connecting to Fireclay East Road. This would need to be maintained for proposed Lot 2. The acceptable access points have been shown on the approved Access Point Plan.
 - (e) Proposed Lot 1 would also require a permit to occupy over Lot 1 on AP3115 to gain access. The acceptable access point has been shown on the approved Access Point Plan.
 - (f) No additional potential conflict of use would be introduced with the new boundaries
 - (g) Significant habitat and natural features to be retained and protected
 - (h) The proposal will not alter current drainage characteristics, nor are any earthworks proposed or anticipated as required

4.3.5 Infrastructure and operational work code

- (1) The proposal complies with the *Infrastructure and 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) Given the size of Lot 1 and the site locating outside the water and sewerage service areas, it would be appropriate for Lot 1 to be supplied by on-site means if required;

- (d) Lot 2 currently has an existing connection to reticulated electricity. Given the size of Lot 1, it would be appropriate to establish an on site electricity solution
- (e) Technical Services did not advise any required upgrades to the local road network;
- (f) Technical Services did not advise any stormwater concerns with no changes to current stormwater drainage characteristics anticipated;
- (g) Lot 1 will be required to be supplied with an electricity connection if it is improved with a residential use. Given the significant lot size this would be appropriate;
- (h) Lot 1 will not be required to be connected to fixed-line telecommunications with current access to the nbn broadband access network by fixed wireless connection deemed reasonable and aligned with general community expectations.
- (i) Given the extensive vegetation and lot sizes, landscaping would not be required;

4.3.6 Overlay codes

- (1) The proposal complies with the *Bushfire overlay 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 existing building is located within the area of lowest hazard on the site. Lot 2 would have sufficient area of medium bushfire hazard to the north that could be cleared for bushfire management purposes to establish any buildings in an area of least hazard.
 - (d) Cleared access tracks and fire break trails are existing throughout the site which would be available for use by emergency vehicles
- (2) The proposal complies with the *Infrastructure overlay code* as—
 - (a) It achieves the purpose and overall outcomes of the code'
 - (b) It complies with the performance outcomes of the code for stock routes, specifically—
 - (c) It does not propose development that would compromise the network's primary use or capacity for stock movement. The establishment of 1 extra lot that is not immediately adjacent to the network would have a negligible impact.
- (3) 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, specifically—
 - (c) Though containing regulated vegetation, the size of the proposed lots means that the application is not referable to the Chief Executive for this matter;
 - (d) significant impacts on environmental values would be avoided and all natural features and resources are proposed to be retained and will not be impacted by the development;
 - (e) there are no wetland values on site;
 - (f) The development does not propose introduction of non-native species;
 - (g) The site is not located within an ecological corridor;
 - (h) The site is not within a KRA or LRA area;
 - (i) The site has a small amount of mapped Agricultural Land. The reconfiguration would wholly contain this mapped land within Lot 1, which would retain its ability to be used for agricultural uses;
 - (j) The proposal does not propose conflicting land uses;
 - (k) The new boundary is topographically located ensuring catchments are not fragmented.

4.4 Consultation

4.4.1 Internal stakeholder comments

- (1) Technical Services did not provide any comments or concerns on the development

4.4.2 External stakeholder comments

- (1) The application required referral to the Chief Executive under Schedule 10, Part 9, Division 4, Subdivision 2, Table 1 of the *Planning Regulation 2017* for infrastructure—state-transport corridors: Reconfiguring a lot near a State transport corridor.
 - (a) The application was deemed to be properly referred on 19 August 2021;
 - (b) The chief executive nominated the Director-General of Department of Transport and Main Roads (TMR) to be the enforcement authority for this development;
 - (c) The referral response was received on 30 September 2021;
 - (d) A condition was imposed by TMR prohibiting direct access between the site and the State controlled Kalpowar Road.
- (2) Given access to Kalpowar Rd is prohibited, the remaining identified access points (Unnamed Roads 4714 and 4715) are located within Bundaberg Regional Council's (BRC) local government area. Advice was sought from BRC regarding the standard of access. The advice was provided by BRC's Technical Services, and indicated that—
 - (a) A Property Access can be established by the property owner to a Rural Track through the road reserve;
 - (b) A subsequent *application to carry out works on roads* would be required;
 - (c) The property owner would be responsible to maintain the access;
 - (d) Advice and/or permission from TMR should be obtained regarding the intersection between the Unnamed roads and Kalpowar Rd;
 - (e) Unless a road closure under the Land Act 1994 is obtained, the road reserves must remain open for public use;

BRC's standard drawing R3004 for an Unsealed Rural Track is therefore the most relevant standard.

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) *Compliance with the assessment benchmarks*—the proposal is compliant with the relevant overall and performance outcomes of the applicable assessment benchmarks;
 - (b) *Land use configuration*—both lots would be compatible with other land uses in the locality. Both lots would significantly exceed the minimum lot size requirement for the zone. The common boundary of proposed lots would be topographically located, which would be sympathetic to localised catchments.

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.