

# Development application—decision under delegated authority

Reconfiguring a Lot—Subdivision (1 lot into 3 lots) at 250 Swindon Road, Mount Perry on land described as Lot 209 on SP243274—Code assessable development application under the Planning Act 2016

Application reference: DA210006

## 1 Proposal summary

- (1) The applicant seeks a Development permit for Reconfiguring a Lot—Subdivision (1 lot into 3 lots) at 250 Swindon Road, Mount Perry on land described as Lot 209 on SP243274.
- (2) The stated objective of the application is to divide the site into three smaller Rural residential lots.
- (3) The site is used for the residential activity of Dwelling house and accommodates a dwelling and other buildings/structures. All improvements would be fully contained within approved Lot 210
- (4) Lot 210 will retain the existing house and contain an area of 13.4 ha. The proposed lots 209 and 211 will have an of 3.69 ha and 10.7 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.

## 3 Decision

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

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

10 June 2021

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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 3 lots) at 250 Swindon Road, Mount Perry on land described as Lot 209 on SP243274. 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 6 April 2021 and a revised Action Notice on 12 April 2021.
- (3) The applicant responded to the Action Notice on 21 April 2021 whereupon the application was deemed properly made and the Confirmation notice issued to the applicant on 21 April 2021.
- (4) The application did not trigger any referrals.
- (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 plan/s and the applicant's report;
  - (b) the North Burnett Regional Planning Scheme 2014 v1.4 (amendments commenced 17 August 2020), to the extent relevant;
  - (c) the extent of remnant vegetation;
  - (d) bushfire hazard;
  - (e) the effect of traffic along Swindon Road; and,
  - (f) the SPP, to the extent that it is not appropriately integrated in the planning scheme.

### 4.2 Category of assessment

- (1) The site is in the Rural residential zone, adjacent to and near other Rural residential-zoned lots and near lots in the Recreation and open space zone (racecourse) and Intensive agricultural precinct of the Rural zone.
- (2) The proposal is identified as Code assessable against the purpose of the *Rural residential zone code* as well as the *Reconfiguring a lot (except excluded reconfiguration) code*, and *Infrastructure and operational work code*.
- (3) The proposal also requires assessment against the following overlay codes—
  - (a) *Bushfire hazard overlay code*;
  - (b) *Natural features or resources overlays code*.
- (4) In accordance with s60(2) of the *Planning Act 2016*, to the extent the application involves development that requires code assessment, the Council—
  - (a) must decide to approve the application to the extent the development complies with all of the assessment benchmarks;
  - (b) may decide to approve the application even if the development does not comply with some of the assessment benchmarks; and
  - (c) may, to the extent the development does not comply with some or all the assessment benchmarks, decide to refuse the application only if compliance cannot be achieved by imposing development conditions.

### 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*—there are no State interests, policies or benchmarks relevant to this application<sup>1</sup>.

#### 4.3.3 Purpose of the Rural residential zone code

- (1) The proposal complies with the purpose of the *Rural residential zone code* as—
- (a) the development would maintain a rural residential amenity – i.e. predominantly low intensity residential scale, form and character – refer comments under 4.3.4 below;
- (b) the Decision notice (property notes) ensures the approved lots would not conflict with extractive industry (haulage), would be provided with limited services and infrastructure, would protect people and property from natural hazards and would protect significant natural features – refer comments under 4.3.5 and 4.3.6 below.

#### 4.3.4 Reconfiguring a lot (except excluded 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 outcomes of the code, specifically—
- (i) the parent lot is irregularly configured – the approved lots not more so;
- (ii) the proposed lots are appropriately configured for their intended use/s (rural residential activity);
- (iii) the area and road frontage of all approved lots exceed the minimum 2ha and 70m prescribed by Table 9.4.10 of the Planning Scheme;
- (iv) a safe, lawful and practical access to Swindon Road is available to Lots 209 and 211 (with a suitable access existing to proposed Lot 210). Provision of an access to Lots 209 and 211 is appropriately deferred to time of building given the length of frontage;
- (v) no additional potential conflict of use would be introduced considering the large proposed lot sizes and proximity to neighbouring racecourse/airstrip;
- (vi) The decision notice requires new boundaries to be separated from identified MSES areas; and,
- (vii) Lots 209 and 211 would have suitable building envelopes areas available free from any site constraints including natural hazards (with Lot 210 already built upon). A range of building sites are available within each of the proposed lots.

#### 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;

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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 would be required to be provided to meet the anticipated needs of users;
  - (ii) given the size of the proposed lots and the site's location outside the water service area, it would be appropriate for Lots 209 and 211 to be supplied by on-site means;
  - (iii) similarly, it would be appropriate for Lots 209 and 211 to treat and dispose of its effluent and other wastewater on-site given no reticulated sewerage infrastructure exists near the site and the size of lots is adequate;
  - (iv) Lot 209 and 211 8 will be required to be connected to suitable electrical supply. Each lot is of suitable size and appropriate location to be able to provide on-site electricity generation;  
 Lot 209 and 211 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;
  - (v) Technical Services did not advise of any stormwater concerns with no changes to current stormwater drainage characteristics are anticipated; the additional lots would not alter current discharge characteristics;
  - (vi) Technical Services did not advise of any required upgrades required to the local road network;
  - (vii) Suitable vehicular access will be required to be provided for Lots 209 and 211 in accordance Council's Design and construction standards for development works policy.

#### 4.3.6 Overlay codes

- (1) 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—
    - (i) significant impacts on environmental values would be avoided with new boundaries distant from identified MSES areas—
      - a) The site is intersected by various MSES regulated vegetation (defined watercourse) including Category B, C and R areas. The Category B and R regulated vegetation is located mostly along the boundaries with a higher concentration in northern sector of the site.
      - b) New boundaries are proposed over small Category C and R areas. Lot boundaries will be required to consider a 10m separation from mapped Category B areas;
    - (ii) Significant impacts on LRA transport route (Swindon Road) and users are avoided through the proposed lot size and configuration as—
      - a) the proposed lot sizes provide adequate separation for future uses from the LRA transport route;
      - b) future residential development should be sited the greatest distance practicable from Swindon Road and designed and orientated to minimize potential adverse impacts from existing and future extractive industries, including noise, air emissions and ground vibration.
- (2) 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, specifically—

- (a) only proposed lot 209 and 211 are included in the periphery of the bushfire hazard -medium potential bushfire intensity, with these areas quarantined by large break areas;
- (b) bushfire hazard areas are quarantined by large break areas across Lot 209 on SP243274 and the graded fire trail along proposed Lot 211 on SP243274;
- (c) the decision notice requires fire trails be maintained and new buildings be sited within areas of lowest bushfire hazard. Where possible, buildings are to be setback from hazardous vegetation.

## 4.4 Consultation

### 4.4.1 Internal stakeholder comments

- (1) Technical Services provided comment on the development in relation to water and wastewater expectations for the new lots.

### 4.4.2 External stakeholder comments

- (1) The application did not require referral to DSDMIP under Schedule 10 of the *Planning Regulation 2017*.

### 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 fully complies with the relevant assessment benchmarks;
  - b) *Infrastructure (non-trunk) works* – water, sewer, electricity, and telecommunications access – considering that the new lots can be readily serviced by suitable onsite infrastructure connections.
 

*Natural features or resources* – separation to MSES regulated vegetation areas and separation to LRA transport route—considering whether the reconfiguration adversely impacted on the site’s environmental values, it was concluded that the new lot boundaries aligned with waterways/watercourses and avoids areas of mapped regulated vegetation as best as practicable. Boundary separation for Category B regulated vegetation areas is required.

The proposed lots provide adequate separation for future uses from the LRA transport route though residential development should be set back from the LRA transport route (Swindon Road) to minimise potential adverse impacts from existing and future traffic associated with the Mount Rawdon mine.

## 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.