

Development application—decision under delegated authority

Reconfiguring a Lot—Subdivision (1 Lot into 3 Lots) at 111 Ezzy Road, Mundubbera on land described as Lot 8 on RP46422—Code assessable development application under the *Planning Act 2016*

Application reference: DA210026

1 Proposal summary

- (1) The applicant seeks a Development permit for Reconfiguring a Lot—Subdivision (1 lot into 3 lots) at 111 Ezzy Road, Mundubbera on land described as Lot 8 on RP46422.
- (2) The site has a frontage at the eastern end of Ezzy Road however its longer frontage is to Benhams Road (approximately 641 metres long).
- (3) The stated objective of the application is to divide the site into three smaller Rural residential lots.
- (4) 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 the proposed Lots 1, 8 & 20.
- (5) Lot 8 will retain the existing house and contain an area of 34.56ha. The proposed Lots 1 and 20 will have area of 2.5 ha and 6.067ha respectively. All proposed lots comply with the assessment benchmarks, including meeting the minimum area and road frontage requirements in the planning scheme.
- (6) 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.

11 August 2021


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

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 111 Ezzy Road, Mundubbera on land described as Lot 8 on RP46422. 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 22 June 2021.
- (2) The application was deemed properly made on 23 June 2021.
- (3) The application did not trigger any referrals.
- (4) The application included sufficient information and it was not necessary to issue an information request.
- (5) 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 and watercourses;
 - (d) the effect of traffic along Ezzy and Benhams Road; and,
 - (e) 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 lots and near Rural and General residential zoned lots.
- (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 site includes land mapped as MSES regulated vegetation category R as well as a defined watercourse. The proposal subsequently requires assessment *against the 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 application¹.

4.3.3 Purpose of the Rural zone code

- (1) The proposal complies with the purpose of the *Rural residential zone code* as—
 - (a) the development would maintain rural residential amenity – i.e. predominantly low intensity residential scale, form and character – refer comments under 4.3.4 below;
 - (b) the Decision notice includes property notes to ensures future purchasers become aware that the approved lots would be provided with only limited services and would protect significant natural features – refer comments under 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) both the parent lot and proposed would be configured as regular-shaped lots;
 - (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 Benhams Road is available to Lots 1 and 20 (with a suitable access existing to proposed Lot 8). Provision of an access to Lots 4 and 20 is appropriately deferred to time of building given the length of frontage;
 - (v) no additional potential conflict of use would be introduced considering the relatively large proposed lot sizes and distance to neighbouring dwellings;
 - (vi) the decision notice requires retention of existing vegetation;
 - (vii) Lots 1 and 20 would have suitable building envelope areas free from any significant site constraints including natural hazards (with Lot 8 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;
 - (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 1 and 20 to be supplied by on-site means;
 - (iii) similarly, it would be appropriate for Lots 1 and 20 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;

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.

- (iv) Lots 1 and 20 will not 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;
- (v) Lot 1 and 20 would 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;
- (vi) 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;
- (vii) Technical Services did not advise of any required upgrades required to the local road network;
- (viii) Suitable vehicular access will be required to be provided for Lots 1 and 20 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 through the proposed lot configuration —
 - a) The site is intersected by MSES regulated vegetation category R areas as well as a defined watercourse. The Category R regulated vegetation is located mostly along the boundaries with a higher concentration in the northern sector of the site.
 - b) New boundaries are proposed over small category R areas and transect a small section of the mapped low-grade watercourses/waterway. Each proposed lot features adequate space for buffering between building site and the MSES regulated vegetation areas. Native vegetation – especially identified regulated vegetation is to be retained, regenerated and rehabilitated where possible.

4.4 Consultation

4.4.1 Internal stakeholder comments

- (1) Technical Services provided comment on the development in relation to vehicular access and driveway crossovers. The advice confirmed that vehicular access and driveway crossovers provided for each allotment be designed, constructed, and approved by Council's Civil Works Manager in accordance with—
 - (a) the *Infrastructure and operational work code*;
 - (b) Council's adopted standards; and
 - (c) Local laws

Technical Services provided further, specific advice requiring sight distances for each proposed access location to be measured in accordance with and meet the minimum requirements as per Austroads Guide to Road design Part 4A, Section 3.4 Sight Distance at Property Entrances.

4.4.2 External stakeholder comments

- (1) The application did not require referral to SARA 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) *Reconfiguring a lot – vehicular access* – the new lots will be required to be provided with a lawful, safe and practical access from Benhams Road in accordance with Council policy. Sight distances for each proposed access location will be required to be measured in accordance with and meet the minimum requirements as per Austroads Guide to Road design Part 4A, Section 3.4 Sight Distance at Property Entrances.
 - c) *Infrastructure (non-trunk) works* – water, sewer, electricity, and telecommunications access – considering that the new lots can be readily serviced by suitable onsite infrastructure connections.
 - d) *Natural features or resources* – separation to MSES regulated vegetation areas and watercourse—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. Native vegetation, especially identified regulated vegetation, is to be retained, regenerated and rehabilitated where possible.

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.