Development application—decision under delegated authority

Reconfiguring a Lot—Subdivision (1 lot into 2 lots) at Apels Road, Toondahra on land described as Lot 5 on MZ455—Code assessable development application under the *Planning Act 2016*

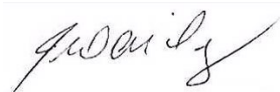**Application reference: 155/19**

1   Proposal summary

(1)   The applicant seeks a Development permit for Reconfiguring a Lot—Subdivision (1 lot into 2 lots) at Apels Road, Toondahra on land described as Lot 5 on MZ455.

(2)   The existing lot has an area of approximately 3485ha and a road frontage to Apels Road of approximately 10.4km. Proposed Lot 5 would have an area of approximately 2460ha and road frontage of approximately 5.65km, and proposed Lot 6 would have an area of approximately 1025ha and road frontage of approximately 4.75km.

(3)   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.

(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.

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.

19/09/2019

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Jeff Miles   *Date*
Planning and Environment Manager
(Delegate of North Burnett Regional Council)

Insite SJC
Town Planning | Surveying | Projects

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 Apels Road, Toondahra on land described as Lot 5 on MZ455. The statement is required under **section 63 Notice of decision** of the *Planning Act 2016*.

4.1 Facts and circumstances

(1) The site is in and surrounded by lots in the Rural zone—Hinterland precinct. The South Burnett Regional Council adjoins it to the east.

(2) The application was lodged and deemed properly made on 27 August 2019.

(3) Although the site contains regulated vegetation, the application does not require referral under Schedule 10 of the *Planning Regulation 2017* as the size of any lot created would not be 25ha or less.

(4) Council did not issue a confirmation notice as it was not required under s2.2 of the Development Assessment Rules.

(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.

4.2 Category of assessment

(1) The proposal is identified as Code assessable against the purpose of the Rural zone code, Reconfiguring a lot (except excluded reconfiguration) code, and Infrastructure and operational work code.

(2) The proposal also requires assessment against the following overlay codes—

    (a) Bushfire hazard overlay code as the site is within a high hazard bushfire risk area;

    (b) Flood hazard overlay code as the site is partly within a flood hazard area;

    (c) Natural features or resources overlays code as the site contains MSES—Regulated vegetation (Category R and Intersecting a watercourse).

(3) 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, and it is not necessary to carry out a more detailed assessment for compliance.

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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 States interests, policies or benchmarks relevant to this application[1].

4.3.3 Purpose of the Rural zone code

(1) The proposal complies with the purpose of the Rural zone code as—

    (a) it would maintain the ability to provide for a wide range or rural uses whilst managing significant natural features and processes; and

    (b) the lots would be suitably sized and configured for their intended rural use and any associated works.

4.3.4 Reconfiguring a lot 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 zone code;

    (b) it complies with the performance outcomes of the zone code;

    (c) the area and frontage of both lots would exceed the minimum 400ha area and 200m road frontage requirements prescribed by Table 9.4.10;

    (d) the lots would have a suitable building envelope with safe, lawful and practical access to a constructed road, and be outside identified hazard areas;

    (e) the new lot layout would be compatible with other development in the locality considering the area, proportion, orientation and road frontage.

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 zone code;

    (b) it complies with the performance outcomes of the zone code;

    (c) suitable non-trunk, on-site infrastructure would be available to meet the anticipated needs of users whilst not creating any significant adverse environmental effects;

4.3.6 Overlay codes

(1) The proposal complies with 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;

    (c) both lots would contain suitable building envelopes and vehicle access areas that are outside identified hazard areas.

(2) 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;

    (c) only a small portion of the lots would be within an identified flood hazard area, and suitable building envelopes and vehicle access would be available outside these areas.

(3) The proposal complies with the Natural features or resources overlays code as—

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[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.

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(a)   it achieves the purpose and overall outcomes of the zone code;

(b)   it complies with the performance outcomes of the zone code; and

(c)   significant impacts on the environmental values would be avoided as new boundaries would be sufficiently clear of identified MSES areas, and each lot would have suitable building envelopes outside MSES areas.

4.4   Consultation

4.4.1   Internal stakeholder comments

(1)   The application was referred to Council's Tech Services. Officers do not raise any objections to the proposal and do not require any special conditions to be included in any decision notice.

4.4.2   External stakeholder comments

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

(2)   Although the site contains regulated vegetation, the size of any lot created would not be 25ha or less.

4.4.3   Public consultation

(1)   The application did not require public notification as it was code assessable.

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*—both lots would be compatible with other development in the locality considering the area, proportion, orientation and road frontage.

(b)   *Hazards*—all lots would contain an appropriate building envelope and vehicle access that are outside identified bushfire and flood hazard areas and be significantly clear of matters of state environmental significance.

These matters have been derived from the assessment benchmarks.

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.

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