

# Development application—decision under delegated authority

Development application (MCU—Extractive industry and ERA16—Extractive and screening activities) at 133 John Taylors Road, Gayndah (Lots 1, 2 and 29 on RP32442 and Lot 2 on RP137483)—Impact assessable development application under the *Planning Act 2016*

Application reference: 181-19

## 1 Statement of reasons

This statement explains the reasons for the assessment manager's decision in relation to a development application for a material change of use—extractive industry (extraction of up to 9,900t of sand per year) and ERA 16—extractive and screening activities at 133 John Taylors Road, Gayndah on land described as Lots 1, 2 and 29 on RP32442 and Lot 2 on RP137483. The statement is required under **section 63 Notice of decision** of the *Planning Act 2016*.

### 1.1 Proposal summary

- (1) The applicant seeks a development permit for a material change of use—extractive industry and ERA 16—extractive and screening activities, being extraction of up to 9,900t of sand per year, at 133 John Taylors Road, Gayndah on land described as Lots 1, 2 and 29 on RP32442 and Lot 2 on RP137483.
- (2) The applicant proposes to extract up to 9,900 tonnes of sand per annum. No on-site screening is proposed. Screening would occur at the existing quarry in Abbots Road, Gayndah (described as Lot 2 on RP184598), which has appropriate approvals to allow screening (DA 88-13). The proposal would be an environmentally relevant activity under Schedule 2, s16 of the *Environmental Protection Regulation 2008* as it would exceed the 1000t/year extraction threshold.
- (3) The use would generally operate up to 2 days a week (between Monday to Saturday), with the hours of operation being 9am to 3pm. The days of operation would be dependent on the level of demand.
- (4) Material would be extracted using a front-end loader and excavator, and unprocessed material would be transported by semi-trailers, and body truck and dogs to the quarry in Abbots Road, Gayndah for screening. It is anticipated that there would be a maximum of approximately 16 to 18 one-way heavy vehicle movements per day.
- (5) Access to the site would be via Richards Road, and the haul route for screening would be Richards Road to John Taylors Road to Dalgangal Road to Abbots Road. Semi-trailers, and truck and dog combinations would be used to haul extracted material. Vehicles not associated with screening would be stored overnight at an existing concrete batching plant at 12 Mary Street, Gayndah (described as Lot 1 on BON1506)
- (6) The application is impact assessable.

### 1.2 Facts and circumstances

- (1) The site is in the Rural zone—Intensive agricultural precinct. It is surrounded by lots in either the Rural zone—Intensive agricultural precinct or Rural residential zone.
- (2) The application was deemed properly made on 26 September 2019. A confirmation notice was issued on 3 October 2019.
- (3) The application was referred to Department of State Development, Manufacturing, Infrastructure and Planning (DSDMIP) under Schedule 10, Part 5, Division 4 and Schedule 10, Part 19, Division 2 of the *Planning Regulation 2017* as it involves an environmentally relevant activity, and removing quarry material from a watercourse. The Department

provided a response on 11 and 14 November 2019 and raised no objections to the proposal but required conditions to be included in any development permit.

- (4) The applicant stated they agree to accept an information request, and a request for additional information was issued 17 October 2019. The applicant provided all of the information requested on 25 November 2019.
- (5) The application requires public notification, and was publicly notified for 15 business days from 29 November 2019 to 19 December 2019. Notice of public notification compliance was issued to Council on 6 January 2020. Council did not receive any properly made submissions.
- (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;
  - (c) the SPP, to the extent that it is not appropriately integrated in the planning scheme; and
  - (d) development approvals and lawful use of the land and adjacent land.

### 1.3 Category of assessment

- (1) The proposal is identified as Impact assessable, requiring assessment against the entire planning scheme to the extent relevant. The site is partly within overlays and is therefore also assessable against relevant overlay codes. The proposal has been assessed against the following assessment benchmarks as these are most suitable for Council's determination—
  - (a) Strategic framework;
  - (b) Rural zone code;
  - (c) Extractive industry code;
  - (d) Infrastructure and operational work code;
  - (e) Flood hazard overlay code;
  - (f) Natural features or resources overlays code.
- (2) The Council must assess the application against the assessment benchmarks, and having regard to those matters set out in the *Planning Act 2016* and *Planning Regulation 2017*. Assessment may also "...be carried out against, or having regard to, any other relevant matter other than a person's personal circumstances, financial or otherwise" [PA16 s45(5)(b)].
- (3) The Council must decide the application in accordance with s60(3) and s60(5) of the *Planning Act 2016*.

### 1.4 Assessment benchmarks

- (1) A full and detailed assessment against the assessment benchmarks is provided in the report and associated documentation submitted with the application.

#### 1.4.2 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 interest statement, policies or benchmarks relevant to this application<sup>1</sup>. Due to the nature of the proposal and insignificant departure of the SPP from the planning scheme, compliance with the planning scheme is considered appropriate.

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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.

### **1.4.3 North Burnett Regional Planning Scheme**

#### **1.4.3.1 Strategic framework**

- (1) The proposal complies with the Strategic framework as—
  - (a) Natural environment and sustainability—the proposal would conserve and not disturb the region’s natural environment and biodiversity;
  - (b) Strong rural economy and futures—the proposal would contribute to the region’s economic resilience, expand the region’s diverse rural sector, and increase the health of rural industry;
  - (c) Settlement pattern—the proposal would efficiently use land to minimise adverse impacts on the environment, and maintain a variety of employment possibilities;
  - (d) Infrastructure, services and facilities—the proposal would be provided with appropriate infrastructure.

#### **1.4.3.2 Zone code**

- (1) The proposal complies with the Rural zone code as—
  - (a) it complies with the purpose and overall outcomes of the code;
  - (b) it complies with the performance outcomes of the code;
  - (c) it would not prevent the use of land for agricultural production or have a detrimental impact on the use of adjoining premises for cropping as it is on the bed of a watercourse that is not suitable for rural purposes;
  - (d) it would be located where there is adequate separation and buffering to sensitive land uses;

#### **1.4.3.3 Extractive industry code**

- (1) The proposal complies with the Extractive industry code as—
  - (a) it complies with the purpose and overall outcomes of the code;
  - (b) it complies with the performance outcomes of the code;
  - (c) materials would be extracted in an efficient manner having regard to its location, design and operation, and adequate buffering would be provided to surrounding sensitive land uses to protect them from any potential visual, noise, dust, odour and other offensive emissions. Dust and noise issued would be addressed by the Decision Notice approval.
  - (d) the extent of the excavation area would be delineated by the applicant’s quarry material allocation notice (QMAN) and reinforced by the Decision Notice approval. The QMAN is currently capped at 3000m<sup>3</sup> per annum, which equates to approximately 4500t based on site specific bulk density data. The QMAN allocation holder is required to submit a written declaration to the Department of Natural Resources, Mines and Energy (DNRME) within seven days after the end of each month for all materials taken during that month, including a “nil return” if no materials were taken during that month. Failure to comply is an offence under the Water Act 2000.
  - (e) vehicular access to the site would be adequate for the type and volume of traffic. Access to the site would be via a road abutting land in the General residential zone and Rural zone, but the low volume and type of vehicles would not cause a nuisance;
  - (f) it would be carried out safely and so that disturbance to surrounding land uses is minor, having regard to hours of operation and display of safety and warning signs; and
  - (g) the site would be rehabilitated when the use is ceased. The QMAN requires the surface area of the removal site to be left at an even longitudinal grade, smooth and free of holds and ridges.

#### **1.4.3.4 Infrastructure and operational work code**

- (1) The proposal complies with the Infrastructure and operational work code as—

- (a) it complies with the purpose and overall outcomes of the code;
  - (b) it complies with the performance outcomes of the code;
  - (c) it would be provided with infrastructure that meets the needs of development;
  - (d) ability of Richards Road to accommodate the development traffic—The relatively low level of extraction activity would not significantly contribute to the deterioration of Richards Road nor measurably necessitate more frequent and/or more significant maintenance. The sealed section would be adequate to accommodate the development traffic given the nearby orchard. Maintenance of the unsealed section of Richards Road would be addressed by the Decision Notice approval.
- (2) Full details of the assessment against the code are provided in the material submitted with the application.

#### **1.4.3.5 Overlay codes**

- (1) The proposal complies with the Flood hazard overlay code as—
- (a) It complies with the purpose and overall outcomes of the code;
  - (b) It complies with the performance outcomes of the code;
  - (c) It would maintain the productivity and environmental functioning of identified natural features and resources.
- (2) The proposal complies with the Natural features and resource overlays code as—
- (a) It complies with the purpose and overall outcomes of the code;
  - (b) It complies with the performance outcomes of the code;
  - (c) It would maintain the productivity and environmental functioning of identified natural features and resources;
  - (d) DSDMIP, as referral agency, did not request further information nor impose any requirements in its response in relation to environmental impacts on waterways and vegetation given the proposed low annual extraction levels, expected insignificant impact on the watercourse, natural regular replenishment of sand during large flow events, and management of the extraction activity by the QMANs. DSDMIP provided advice about the site containing Category R (regrowth) regulated vegetation which is protected under the *Vegetation Management Act 1999*.
- (3) Full details of the assessment against the codes are provided in the material submitted with the application.

#### **1.4.4 Other relevant matters**

- (1) The following are other relevant matters under s45(5)(b) of the *Planning Act 2016*—
- (a) The planning need for the proposal—construction material is essential to operational, building and development works in the region;
  - (b) There are limited opportunities where extractive materials can be readily removed and transported without excessive impacts on the community or on infrastructure.

## **1.5 Consultation**

### **1.5.1 Internal stakeholder comments**

- (1) Council's Technical Services Department and Environmental Health Department were invited to comment on the application. They raise no objections to the proposal, and they require conditions to be included in any development permit.

### **1.5.2 Referral agency response**

- (1) The application was referred to DSDMIP under Schedule 10, Part 5, Division 4 and Schedule 10, Part 19, Division 2 of the *Planning Regulation 2017* as it involves an environmentally relevant activity, and removing quarry material from a watercourse. The

Department raise no objections to the proposal and require conditions to be included in any development permit.

### **1.5.3 Properly made submissions**

- (1) The application requires public notification, and it was publicly notified for 15 business days from 29 November 2019 to 19 December 2019. Notice of public notification compliance was issued to Council on 6 January 2020. Council did not receive any properly made submissions.

## **1.6 Key issues for this application**

- (1) The assessment manager considers that the following matters have been instrumental in its decision—
  - (a) *overall amenity*—steps must be taken to minimise the potential impacts on the surrounding environment and community from visual, noise, dust, odour and any other offensive emissions. Operation of extracting activities would be appropriately managed through an Environmentally Relevant Activity and Quarry Material Allocation Notice issued by DNRME. The proposed extraction levels each year would be low and not expected to have a significant impact on the amenity of surrounding properties or Burnett River.
  - (b) *limited alternative sites close to Gayndah*—there are limited opportunities to access extractive materials without a significant impact on the community, the natural environment, or on infrastructure—material can only be removed from locations where it occurs naturally.

*These matters have been derived from the assessment benchmarks.*

## **1.7 Decision rules under the *Planning Act 2016***

- (1) The assessment manager—
  - (a) may approve all or part of the application;
  - (b) may refuse the application;
  - (c) may impose conditions.

*Section 60(3) of the Planning Act 2016 sets out the decision rules for impact 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 all of the application and impose conditions in accordance with the decision rules.