

Development application—decision under delegated authority

Material Change of Use—Dual Occupancy at 271 Cania Road, Moonford Q on land described as Lot 93 on RW159—Code assessable development application under the *Planning Act 2016*

Application reference: 008/20

1 Proposal summary

- (1) The applicant seeks a Development permit for Material Change of Use—Dual Occupancy at 271 Cania Road, Moonford on land described as Lot 93 on RW159
- (2) The existing Lot 93 is in the rural zone – intensive agricultural precinct (121.35ha) and is subject to a boundary realignment and building works assessable against the planning scheme development permit 169/19 approved 6 Nov 2019.
- (3) The applicant has sort this approval as they are seeking a short term solution to enable the construction of the second dwelling associated with the development permit 169/19 and as such a sunset clause has been identified at application stage.
- (4) The current lot arrangement will change once the survey plan SP316724 is registered with Department of Natural Resources, Mines and Energy – Titles Office and the two houses will be on separate lots.
- (5) Development permit 169/19 also assessed the proposed dwelling location within the flood hazard overlay, no further assessment has been conducted against the flood hazard overlay code and no further conditions have been added.
- (6) The application is code assessable against the rural zone code, dual occupancy use code, flood hazard overlay code, bushfire hazard overlay code, natural features and resources overlay code and Infrastructure overlay code.
- (7) The application did not require referral to State Assessment Referral Agency.
- (8) 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.
- (9) 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.



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

13-2-2020

Date

4 Statement of reasons

This statement explains the reasons for the assessment manager's decision in relation to a development application for Material Change of Use—Dual Occupancy at 271 Cania Road Moonford on land described as Lot 93 on RW159. 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—Intensive Agricultural Precinct.
- (2) The application was lodged and deemed properly made on the 24 January 2020.
- (3) The application did not required referral to State Assessment Referral Agency.
- (4) Although the site contain matters of state environmental significance being regulated vegetation, the application does not require referral under Schedule 10 of the *Planning Regulation 2017* as there is no clearing proposed and if clearing is to be done as part of the building process it would be classified as residential in nature
- (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) previously issued development permits 169/19 and 223/19.
 - (c) The North Burnett Regional Planning Scheme, to the extent relevant; and
 - (d) 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 Rural Zone Code and Dual Occupancy Use Code.
- (2) The proposal also requires assessment against the following overlay codes—
 - (a) Bushfire hazard overlay code as the lot is within a very high to medium hazard bushfire risk area, though the proposed second dwelling is outside of the bushfire hazard area;
 - (b) Flood hazard overlay code as the allotment is within the flood hazard area;
 - (c) Infrastructure overlay code as the site adjoins a state controlled road;
 - (d) Natural features or resources overlays code as the site contains Matters of State Environmental Significance—Regulated vegetation and agricultural land classification Class A and B.
- (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 for the rural zone code and dual occupancy code is provided in the submitted.

4.3.1 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 application¹. 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.

4.3.2 North Burnett Regional Planning Scheme

4.3.2.1 Rural Zone Code

- (1) The proposal complies with the Reconfiguring a lot (boundary realignment) and associated 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;
 - (c) Location of the dwelling will allow cropping and agricultural land to be utilised for a full range of agricultural practises and will not have a detrimental impact adjoining lots for agricultural purposes.

4.3.2.2 Dual Occupancy Code

- (1) The proposal complies with dual occupancy code as—
 - (a) it achieves the purpose and overall outcomes of the code;
 - (b) it complies with the performance outcomes of the code;
 - (c) as lot 93 is under a development permit to realign the boundaries the new proposed dual occupancy will not be applicable and the proposed new dwelling is compliant to the self-assessable provision of a dwelling in the rural zone;

4.3.2.3 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) all 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) the proposed second dwelling location on the hill on the southern boundary, and has suitable building envelope. Vehicle access would be is achievable with a 5%AEP.
- (3) 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
 - (c) the proposal would have minimal impact on state controlled road (Cania Road), as there is no intensification of the existing uses or new driveways proposed.
- (4) The proposal complies with the Natural features or resources overlays 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; and

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.

- (c) impacts on the environmental values and good quality agricultural land are minimised due to the location of the proposed dwelling.

4.4 Consultation

4.4.1 Internal stakeholder comments

- (1) The application was not internally referred as the matters raised in this application had already been raised in development permit 169/19 and 223/19 and these application were used as reference material for this application.

4.4.2 External stakeholder comments

- (1) The application did not require referral to State Assessment Referral Agency under the *Planning Regulation 2017*.

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) *Compliance with the assessment benchmarks*—the proposal is fully compliant with the relevant assessment benchmarks;
 - (b) *Hazards*—all lots would contain an appropriate building envelope and vehicle access that are outside identified bushfire and flood hazards.

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.