

Development application—decision under delegated authority

Reconfiguring a Lot—Boundary realignment (2 lot into 2 lots) at 125 Netzs Road and 1051 Abercorn Road, Glenleigh on land described as Lot 3 on SP130859 and Lot 36 on RW90—Code assessable development application under the *Planning Act 2016*

Application reference: 09-20

1 Proposal summary

- (1) The applicant seeks a Development permit for Reconfiguring a Lot—Boundary realignment (2 lot into 2 lots) at 125 Netzs Road and 1051 Abercorn Road, Glenleigh on land described as Lot 3 on SP130859 and Lot 36 on RW90.
- (2) Existing Lot 36 is dissected by Abercorn Road, with approximately 90.3ha on the western side and 67.5ha on the eastern side. Existing Lot 3 is used for cattle grazing. The eastern part of existing Lot 36 contains a dwelling house and is used for cultivation.
- (3) Existing Lot 3 has an area of 305.3ha, and existing Lot 36 has an area of 157.8ha. Proposed Lot 3 would have an area of 395.6ha and be fully bound by road reserve (including 1,848m frontage) to Abercorn Road; proposed Lot 36 would have an area of 67.5ha, full western road frontage of 816m to Abercorn Road, and full eastern frontage to Three Moon Creek.
- (4) The objective of the application is to realign the boundaries using Abercorn Road as the new boundary (thus eliminating any lots being comprised of parts) to separate existing uses and improve operational efficiency and safety.
- (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) and s60(5). The attached Statement of reasons sets out the rationale for deciding to approve the application.
- (6) 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 & Environment Manager
(Delegate of North Burnett Regional Council)

11-2-20

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—Boundary realignment (2 lot into 2 lots) at 125 Nets Road and 1051 Abercorn Road, Glenleigh on land described as Lot 3 on SP130859 and Lot 36 on RW90. The statement is required under **section 63 Notice of decision** of the *Planning Act 2016*.

4.1 Facts and circumstances

- (1) Lot 3 on SP130859 is zoned Rural—Hinterland precinct, and Lot 3 on RW90 zoned Rural—Intensive agricultural precinct. The lots are surrounded by Rural zone lots in the Hinterland precinct, Intensive agricultural precinct, and Conservation precinct.
- (2) The application was lodged and deemed properly made on 20 January 2020.
- (3) The application does not require referral under Schedule 10 of the *Planning Regulation 2017*.
- (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 plan 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 application was properly made prior to the adoption of the current North Burnett Regional Planning 2014 v1.3 (Amendments incorporated to 3 February 2020). Assessment is therefore under the superseded North Burnett Regional Planning Scheme 2014 v1.2, with weight given to the current planning scheme where considered relevant and appropriate.
- (2) The proposal is identified as Code assessable against the *Reconfiguring a lot (boundary realignment) and associated operational work code*. Schedule 12 of the *Planning Regulation 2017* is not applicable.
- (3) The proposal also requires assessment against the following overlay codes—
 - (a) *Bushfire hazard overlay code* as the site is partly within a medium hazard bushfire risk area;
 - (b) *Flood hazard overlay code* as the site is partly within a flood hazard area;
 - (c) *Infrastructure overlay code* as the site is adjacent to an identified road corridor (significant local road) and the stock route network;
 - (d) *Natural features or resources overlays code* as the site contains Agricultural Land Classification and MSES areas.
- (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 and it is not necessary to carry out a more detailed assessment for compliance.

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's interests, policies or benchmarks relevant to this application¹.

4.3.3 Reconfiguring a lot (boundary realignment) and associated operational work 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 reconfiguration would result in functional and practical lots as they would no longer be dissected by Abercorn Road;
 - (d) proposed Lot 3 has available a suitable building envelope outside the flood hazard area and any biodiversity values but in a potential impact buffer. Vegetation within this buffer can be cleared as it is not regulated. Mapped access to Abercorn Road is outside the flood hazard area;
 - (e) proposed Lot 36 is entirely in the flood hazard area but has an existing dwelling house;
 - (f) the new lot layout would be compatible with other development in the locality considering the area, proportion, orientation and road frontage;
 - (g) the lots would still be regular in shape.
 - (h) suitable on-site infrastructure, such as water supply, wastewater disposal, road access, etc are already or would be provided to meet the needs of users.

4.3.4 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 have existing road accesses and existing/potential building envelopes within potential impact buffers but outside any other bushfire prone areas;
 - (d) the realignment would not increase or otherwise alter current bushfire hazard with no additional lots or material change of use proposed.
- (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) proposed Lot 3 has available a suitable building envelope and existing road access outside the flood hazard area;

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.

- (d) while proposed Lot 36 is entirely in a flood hazard area, the dwelling house is existing and reported by the applicant to be above the 2013 defined flood level.
 - (e) the realignment would not increase or otherwise alter current flood hazard with no additional lots or material change of use proposed.
- (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) proposed Lot 3 would have adequate distance from Abercorn Road to setback and buffer any future dwelling house as required;
 - (d) current setback of the existing dwelling house on proposed Lot 36 to Abercorn Road would remain unchanged (and compliant);
 - (e) the realignment would not compromise the stock route with no additional lots or material change of use 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;
 - (c) the use of Abercorn Road as the new boundary avoids any impacts upon environmental values; and
 - (d) the site's ALC Class A and B land currently fragmented by Abercorn Road with the realignment not introducing additional fragmentation.

4.4 Consultation

4.4.1 Internal stakeholder comments

- (1) No officers were invited or commented on the application, considering the minor nature of the proposal.

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) *Assessment benchmarks*—the proposal fully complies with the relevant assessment benchmarks.
 - (b) *Lot size*—the realignment would achieve a neutral outcome in regards to lot size (i.e. convert Lot 36 from a compliant-sized lot to one less than the minimum 100ha prescribed for Rural (Intensive agriculture precinct) lots but convert Lot 3 to one of nearly 400ha, the minimum area prescribed for the Rural (Hinterland precinct)) – but improve the individual lot configuration to better reflect and accommodate existing uses.
 - (c) *Encroachment*—the dwelling house on Lot 36 encroaches onto Lot 178 on RW227 but this is an existing situation that is not caused or exacerbated by the proposed realignment.

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.