

Development application—decision under delegated authority

Reconfiguring a Lot at 367-385 Airport Rd, Three Moon on land described as Lot 86 on SP227537—Code assessable development application under the *Planning Act 2016*

Application reference: DA 135/18

1 Proposal summary

- (1) The applicant seeks a Development Permit for Reconfiguring a Lot at 367-385 Airport Rd, Three Moon (described as Lot 86 on SP227537).
- (2) The stated objective of the proposal is to separate the area used for rural activities of animal husbandry (cattle grazing) and cropping from the area used for non-rural uses including air services (Monto Airport), emergency services (Rural Fire Brigade), motor sport facility (go-kart club), outdoor sport and recreation (polocrosse club) and caretaker's accommodation.
- (3) 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*, 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) It is noted Council can no longer issue a charges notice in accordance with its Charges Resolution (No. 2) 2015 given 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.



R Burton
Interim Chief Executive Officer
(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 at 367-385 Airport Rd, Three Moon on land described as Lot 86 on SP227537. 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 the Community facilities zone and the Intensive Agricultural Precinct of the Rural zone.
- (2) The application was lodged on 22 June 2018 and deemed properly made on 29 June 2018 upon payment of the application fee.
- (3) Council issued the Confirmation notice on 29 June 2018.
- (4) The application did not trigger any referrals. (While the site partially contains a wetland protection area wetland and wetland protection area trigger area, State referral was not triggered in accordance with Schedule 10 Division 4 table 2 Item 1 of the *Planning Regulation 2017*.)
- (5) The application included sufficient information in the application 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 SPP, to the extent that it is not appropriately integrated in the planning scheme;
 - (c) development approvals and the lawful use of adjacent land.

4.2 Category of assessment

- (1) Through pre-lodgement communications, officers determined that the appropriate reading of Table 5.6.1 of the Planning Scheme that this application would be Code assessable because of existing use rights and involved no material change of use. Proposed Lot 7 complies with the minimum 100ha area and 100m frontage prescribed for Rural lots in the Intensive Agricultural Precinct. Increasing the number of lots in the Community facilities zone is also Code assessable.
- (2) Proposed Easements A and B in Lot 7 are to benefit proposed Lot 8 with the water pipeline traversing proposed Lot 7. The easements are not assessable development and therefore do not form part of the assessment or the decision notice.
- (3) The proposed reconfiguring required assessment against the Reconfiguring a lot (except excluded reconfiguration) code, Infrastructure and operational work code, and the purpose of the Community facilities and Rural zone codes.
- (4) The site is partly within scheme overlays and is therefore also assessable against the following overlay codes—
 - (a) Bushfire hazard overlay code
 - (b) Flood hazard overlay code;
 - (c) Natural features or resources overlays code.

4.3 Assessment benchmarks

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.

4.3.3 Overlay codes

- (1) The proposal complies with the Planning Scheme 8.2.2 Bushfire hazard overlay code as—
 - (a) only the north-western extremity of the site is in a potential impact buffer for a bushfire prone area with most of the site including the existing and proposed accesses to Airport Road outside a bushfire prone area. As such, no further assessment of the Bushfire hazard overlay code is considered warranted;
- (2) The proposal complies with the Planning Scheme 8.2.3 Flood hazard overlay code as—
 - (a) proposed Lot 8 would have sufficient area for a suitable building envelope outside the Flooding and inundation area for any future residential use;
 - (b) all existing buildings are outside the Flooding and inundation area;
 - (c) the site's full frontage to Airport Road is outside the Flooding and inundation area;
- (3) The proposal complies with the Planning Scheme 8.2.5 Natural features or resources overlays code as—
 - (a) significant impacts on the site's environmental values are avoided with the new boundaries aligning for the most part to the existing, long-established fencing;
 - (b) no loss of ALC land would directly result from the subdivision given the existing, long-established non-rural uses currently operating on the site.

4.3.4 Other development codes

- (1) The proposed realignment complies with the Planning Scheme 9.4.5 Reconfiguring a lot (except excluded reconfiguration) code as—
 - (a) the area and frontage of proposed Lot 7 exceeds the minimum 100ha and 100m prescribed by 2014 Planning Scheme Table 9.4.10 "Minimum areas and frontages" for Rural-zoned lots in the Intensive agriculture precinct;
 - (b) the area and frontage of proposed Lot 8 exceeds the minimum 4000m² and 40m prescribed by 2014 Planning Scheme Table 9.4.10 "Minimum areas and frontages" for Community-zoned lots;
 - (c) maintenance of the existing stock-proof fence would minimise conflict between the current uses;
- (2) The proposed realignment complies with the Planning Scheme 9.4.3 Infrastructure and operational work code as—
 - (a) each proposed lot either contains the infrastructure servicing its buildings within its boundaries and/or under easement;
 - (b) existing accesses to Airport Road will service proposed Lot 8;
 - (c) a new access to Airport Road will service proposed Lot 7.

4.4 Consultation

4.4.1 Internal stakeholder comments

- (1) Council's Technical Services provided comments to the application on 29 June 2018 being maintenance of a stock-proof fence for the full extent of the boundaries between the proposed lots, and compliance with any Civil Aviation Safety Authority (CASA) requirements now and in the future.
- (2) These have not been included as conditions of approval as it is considered fencing and CASA requirements would be more appropriately and adequately applied and enforced through other instruments including lease agreements and the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*. Further, the relevant assessment benchmarks of the planning scheme do not include such matters.
- (3) No other officers were invited or commented on the application

- (2) *State planning policy*—the State’s interests were relevant to deciding this application to the following extent¹—
- (a) *Agriculture*—the site is in an Important agricultural area and contains Agricultural land classification class A and B land. The subdivision contains most of the agricultural land into one lot and separates the non-rural uses from the rural uses. As such, the site’s sustainable agricultural capacity would not be compromised by the subdivision.
 - (b) *Biodiversity*—the site contains matters of state environmental significance being regulated vegetation (categories C and R, and intersecting a watercourse) and high ecological significance wetlands. While the north-west corner of the runway overlaps with regulated vegetation (category R and intersecting a watercourse), no adverse impact was foreseen with the boundaries within this area conforming with existing, long-established fencing and uses with no material change of use proposed.
 - (c) *Natural hazards, risk and resilience (bushfire)*—only the north-western extremity of the site is in a potential impact buffer for a bushfire prone area. The subdivision would not result in additional risk to people or property with most of the site – including most of its frontage to Airport Road – not subject to bushfire hazard.
 - (d) *Natural hazards, risk and resilience (flooding)*—the north-east part of the site is subject to flood hazard from Three Moon Creek. The subdivision would not result in additional risk to people or property with most of the site – including its full frontage to Airport Road – not subject to flood hazard.

4.3.2 Zone code

- (1) The proposal complies with the purpose of the Planning Scheme 6.2.2 Community facilities zone code as—
 - (a) proposed Lot 8 would be entirely zoned Community facilities and fully contain current *non-rural* activities, facilities and infrastructure thereto including Community (emergency services), Recreation (motor sport facility, outdoor sport and recreation), Residential (caretaker’s accommodation) and Other (air services) activities.
- (2) The proposal complies with the purpose of the Planning Scheme 6.2.7 Rural zone code as—
 - (a) the creation of proposed Lot 7 would fully contain the area used for rural activities of animal husbandry and cropping and thus allow its continued conduct;
 - (b) proposed Lot 7 would contain most of the site’s mapped natural features (*biodiversity*) and resources (agriculture);
 - (c) the formal separation of the rural and non-rural uses of the site along (for the most part) the existing stock-proof fencing would also facilitate the minimisation of any potential conflict of uses with proposed Lot 7 accommodating the non-rural uses that appropriately require isolation from urban areas.
- (3) Any future zoning revisions of the Planning Scheme could “tidy up” the hybrid zoning of proposed Lot 7.

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.

4.5 Key issues for this application

- (1) The assessment manager considers that the following matters have been instrumental in its decision—
- (a) the subdivision conforms to the long-established uses operating on the site;
 - (b) the new boundaries align for the most part with the long-established fencing;
 - (c) the proposed lots essentially conform to the hybrid zoning of the site;
 - (d) the subdivision would not result in any loss of agricultural capacity or adverse impact upon environmental values.

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.