

Change application—decision under delegated authority

Change application (other change) at 16316 Burnett Highway, Gayndah (Lot 16 on BN37491)—Impact assessable development application under the *Planning Act 2016*

Application reference: 259-18

1 Statement of reasons

This statement explains the reasons for the assessment manager's decision in relation to a change application (other) for a material change of use—extractive industry (screening sand) at 16316 Burnett Highway, Gayndah (described as Lot 16 on BN37491). The statement is required under **section 83 Notice of decision** of the *Planning Act 2016*.

1.1 Proposal summary

- (1) The applicant seeks to make a change to DA 175-14: Material change of use for Low impact industry (Earthmoving contractor's depot) at 16316 Burnett Highway, Gayndah (described as Lot 16 on BN37491). DA 175-14 was approved by Council on 16 February 2015; it approved extensions to an existing machinery shed, and new ancillary external stockpiling areas for materials associated with the business.
- (2) The applicant has recently obtained approval for an Extractive industry—Extraction of riverine quarry material from the Burnett River adjacent to Lot 26 on BN37525 and Lot 18 on SP257829 (DA 139-18). This change application seeks to allow this riverine quarry material to be screened and processed on-site at the depot.
- (3) Unprocessed material extracted from the Burnett River would be transported to the site by semi-trailers and body truck and dogs. The principal haulage route would be Boyd Road—Boyd Street—Dalgangal Road—Burnett Highway—TTE depot. 50-100 truck movements per year are anticipated.
- (4) Screening 5,000t or more of material in a year is an environmentally relevant activity under Schedule 2, Part 4, Section 16 of the *Environmental Protection Regulation 2008*. DA 139-18 limits extraction up to 999t of material per annum from the Burnett River. It is therefore unlikely that the applicant would process 5,000t or more of material per annum on this site, including imported materials.
- (5) The application is impact assessable.

1.2 Facts and circumstances

- (1) The lot is in the Industry zone and surrounded by lots in the Rural zone—Intensive agricultural precinct.
- (2) The application was lodged and deemed properly made on 5 December 2018. A confirmation notice was issued on 7 December 2018.
- (3) The applicant stated they agree to accept an information request. Council issued a request for additional information on 18 December 2018, and the applicant provided all of the information requested on 2 January 2019.
- (4) The application required referral to the Department of State Development, Manufacturing, Infrastructure and Planning under Schedule 10, Part 9, Division 4, Subdivision 2 of the *Planning Regulation 2017* as it involves development within 25m of a State transport corridor. The application was referred on 17 December 2018. The Department issued a request for additional information on 8 January 2019, and the applicant provided all of the information requested on 6 February 2019. The Department issued a concurrence agency response on 1 March 2019.

- (5) The application required public notification, and it was publicly notified for 15 business days from 28 March to 18 April 2019. Notice of public notification compliance was issued to Council on 8 May 2019. Council received no properly made submission.
- (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 and requires assessment against the entire planning scheme to the extent relevant. The site is partly within overlays and is 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) Industry zone code;
 - (c) Extractive industry code;
 - (d) Infrastructure and operational work code;
 - (e) Infrastructure overlay code; and
 - (f) Natural features or resources overlays code.

1.4 Assessment benchmarks

- (1) An 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 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.

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) Settlement pattern—the proposal would efficiently use land to minimise adverse impacts on the environment, and maintain a variety of employment possibilities.
 - (c) Infrastructure, services and facilities—the proposal would be provided with appropriate infrastructure.

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.

1.4.3.2 Industry zone code

- (1) The proposal complies with the Industry 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 provide a high impact industrial use that enables employment and economic growth;
 - (d) it would contain all potential adverse environment effects within the site and not prejudice or impact adversely on other surrounding activities and sensitive land uses;
 - (e) 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) it would be undertaken safely and so that disturbance to surrounding land uses is minor, having regard to hours of operation, and visual, noise, dust and other impacts;
 - (d) vehicular access to the site would be adequate for the type and volume of traffic anticipated.

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.

1.4.3.5 Overlay codes

- (1) The proposal complies with the Infrastructure 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 be located to mitigate any potential adverse impacts caused by the road corridor, including traffic noise, vehicle movements and headlights.
- (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.

1.4.4 Other relevant matters

- (1) There are no other relevant matters under s45(5)(b) of the *Planning Act 2016*.

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. Officers support approval of the application, subject to reasonable and relevant conditions being included in any development permit.

1.5.2 Referral agency response

- (1) The application was referred to the Department of State Development, Manufacturing, Infrastructure and Planning under Schedule 10 of the *Planning Regulation 2017*. The Department support approval of the application, subject to reasonable and relevant conditions being included in any development permit.

1.5.3 Public notification

- (1) The application required public notification, and it was publicly notified for 15 business days from 28 March to 18 April 2019. Notice of public notification compliance was issued to Council on 8 May 2019. Council received no properly made submission.
- (2) The applicant was required to place a notice on two publicly accessible road frontages of the site, but a notice was only placed on one frontage. Section 53(3) of the *Planning Act 2016* allows Council to assess and decide a development application even if some of the requirements about the notice of not been complied with, if Council considers any non-compliance has not—
 - (a) “adversely affected the public’s awareness of the existence and nature of the application; or
 - (b) restricted the public’s opportunity to make properly made submissions about the application”.
- (3) The site is a corner lot and the notice was placed at the intersection of the Bruce Highway and Abbots Road. The notice would therefore have been visible to all motorists. Furthermore, Council directly contacted the owners of lots along Abbots Road to confirm they were aware of the application and if they had any objections. In this instance, the non-compliance would not have adversely affected the public’s awareness of the existence and nature of the application.

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 impact on the surrounding environment and community from noise, odour, dust and visual impacts. The proposed screening levels each year would be low and not expected to have a significant impact on the amenity of surrounding properties.

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.