

Development application—decision under delegated authority

Development Permit for Reconfiguring a lot - Boundary Realignment (2 into 2 lots) and Access Easement Amendment at 48-50 and 52-56 Lyons Street, Mundubbera on land described as Lot 3SP180560 and Lot 8 on SP193730—Code assessable development application under the Planning Act 2016

Application reference: DA230021

1 Proposal summary

- (1) The applicant seeks a Development Permit for Reconfiguring a Lot – Boundary Realignment (2 into 2 lots) and access easement amendment at 48-50 and 52-56 Lyons Street, Mundubbera; Land Described as Lot 3 on SP180560 and Lot 8 on SP193730.
- (2) The stated objective of the proposal is to realign the boundary between Lot 3 on SP180560 and Lot 8 on SP193730. The boundary will be realigned to encompass some existing buildings currently located within Lot 8 to instead form part of Lot 3. In addition, the existing access easement is proposed to be amended to align with the new boundary which involves cancelling Easement D and replacing it with proposed Easement E, reducing the size of the easement from 251.46m² to 129m². The access easement burdens Lot 3 and benefits Lot 8. The applicant advocates reducing the width of the access easement from 5m to 4.75m, so to accommodate a pedestrian footpath along the eastern side of the easement to connect the entrance of the supermarket with the carparking area. As a result, vehicular access via the access easement from Lyons Street is proposed as entry only.
- (3) Proposed Lot 3 and 8 will have an area of 3805m² and 313m² respectively.
- (4) The site is currently used for various commercial activities (shops) with associated buildings.
- (5) Three (3) existing vehicular accesses which are to be retained provide access to Lot 3 allowing vehicular access to the existing supermarket carparking area from different street frontages including Lyons, Burnett and Bouverie Street. Lot 8 gains vehicular access via the access easement that links to Lyons Street.
- (6) All existing connections to urban services will be retained within respective lot boundaries.
- (7) The site (specifically Lot 3 on SP180560), has a gravity main running from east to west. The gravity main is clear of the new boundary line and would not be impacted by the proposed development.
- (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.

2 Recommendations

- (1) That the Council or its delegate, having regard to the matters set out in the 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 Decision Notice.
- (3) That the Council publish the Decision Notice, including the Statement of reasons, on its website.
- (4) 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.

3 Decision

I concur with the above recommendations—please issue the Decision Notice as recommended.

for 

18/07/2023

Mick Jarman

Date

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

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 into 2 lots) and access easement amendment at 48-50 and 52-56 Lyons Street, Mundubbera; land described as 3SP180560 and Lot 8 on SP193730. The statement is required under **section 63 Notice of decision** of the *Planning Act 2016*.

4.1 Facts and circumstances

- (1) The application was deemed properly made on 21 April 2023
- (2) Council did not issue a confirmation notice as it was not required under s2.2 of the Development Assessment Rules
- (3) The application does not trigger any referrals.
- (4) The application included sufficient information and it was not necessary to issue an information request.
- (5) 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 2014 v1.4 (amendments commenced 17 August 2020), 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 site is in the Centre zone and is surrounded by other Centre zone lots.
- (2) The proposal is identified as code assessable against Reconfiguring a lot (boundary realignment) and associated operational works code.
- (3) The proposed does not trigger assessment against an overlay code
- (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.
- (2) Such assessment confirms that the matter is relatively straightforward, however, a more detailed assessment for compliance has also been completed for the record.

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 interest statements, policies or benchmarks relevant to this application.

4.3.3 Reconfiguring a lot (Boundary realignment) and associated operational works code

- (1) The proposal complies with the reconfiguring a lot (boundary realignment) and associated operational works code—
 - (a) it achieves the purpose and overall outcomes of the code;
 - (b) it complies with the performance and acceptable outcomes of the code;
 - (c) the boundary realignment results in functional and practical lots having regard to the existing commercial/retail activities established on site, consistent with the Centre zone;
 - (d) lots have appropriate non-trunk infrastructure with existing internal connections to be retained within lot boundaries;
 - (e) suitable vehicular and pedestrian accesses having regard to the zone and the context of the land are existing and to be retained;
 - (f) Minimal to no impact on adjoining development;
 - (g) Not considered to compromise any surrounding premises future development potential;
 - (h) No changes to environmental values occur.

4.3.4 Overlay codes

- (1) Not applicable.

4.4 Consultation

4.4.1 Internal stakeholder comments

- (1) Technical Services did not provide comment on the development as it was not deemed necessary.

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) *Compliance with the assessment benchmarks*—the proposal complies with the relevant assessment benchmarks;
 - (b) *Access easement*—an access easement benefits Lot 8 providing access from Lyons Street and burdens Lot 3. Discussions took place between the applicant and the assessment manager regarding the proposed change to the access easement,

- (c) specifically restricting it to ‘entry only’ from Lyons Street. The assessment manager raised concern that there was no exit point for Lot 8 without having to traverse Lot 3 and as such, suggested the access easement be extended to exit at existing access points on Lot 3, namely Burnett or Bouverie Street. Alternatively, the applicant proposed an additional clause in the easement documentation to allow vehicles to either exit via Lot 3 at Burnett or Bouverie Street or if/when not possible, allow exit to Lyons Street. This arrangement was accepted by the assessment manager.
- (d) *Infrastructure*—the site has access to constructed roads
- (e) *Hazards*—the proposed realignment would not alter any existing hazards
- (f) *Infrastructure (non-trunk) works- parking, access, and service connections*—Access to Lot 3 is obtained from Lyons Street, Bouverie Street and Burnett Street. Access to Lot 8 is obtained from Lyons Street via an access easement. All accesses are constructed to an appropriate standard. The applicant proposes an amendment to the existing access arrangement, with the access strip proposed as entry only, with appropriate line marking and signage to articulate this. This is to allow for a suitable pedestrian pathway proposed on the eastern side of the easement linking Lyons Street/entrance to the supermarket with the carparking area on Lot 3. The development has suitable service connections including electricity, water and sewer which are to be retained. Car parking areas are existing and support the existing established uses.
- (g) *Draft conditions*—Draft conditions were issued to the applicant on the 12/07/23. The applicant responded via email on the 13/07/23. The applicant confirmed that all buildings are to remain on site and that no boundary setbacks are required in the Centre zone. The applicant requested if Council would consider amending Condition 5 from “Ensure all **existing and proposed** utility services and connections (e.g. electricity, telecommunications, water, and sewerage) are wholly located within the lot they serve” to “Ensure all **future** proposed utility services and connections (e.g. electricity, telecommunications, water, and sewerage) are wholly located within the lot they serve”. The applicant seeks to remove the word “existing”. All existing utility services and connections need to be located wholly within the lot they serve and if they are not, they will need to be relocated as such. It was recommended the condition remain as is. As a result, the applicant requested Condition 5 to alternatively include the following wording “Ensure all existing and proposed utility services and connections (e.g. electricity, telecommunications, water, and sewerage) are wholly located within the lot they serve or **alternatively are located within an easement**”. This amendment was considered acceptable and the condition has been amended accordingly.

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.