

# Development application—decision under delegated authority

Material Change of Use – Food and Drink Outlet at 44 Walsh Street, Biggenden Q on land described as Lot 63 on RP79469 - code assessable development application under the *Planning Act 2016*

Application reference: 101-20

## 1 Proposal summary

- (1) The applicant seeks a development permit for a material change of use for food and drink outlet at 44 Walsh Street, Biggenden on land described as Lot 63 on RP79456.
- (2) The subject site is located within the general residential zone and an material change of use for food and drink outlet under 50m<sup>2</sup> is code assessable against the following codes from the North Burnett Regional Council Planning Scheme:
  - General Residential Zone Code;
  - Infrastructure Overlay Code; and
  - Infrastructure and Operational Works Code.

The stated objective of the application is to provide a Food and Drink outlet that serves the motel as well as general public.

- (3) 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 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

21-8-20  
-----  
Date

## 4 Statement of reasons

This statement explains the reasons for the assessment manager's decision in relation to a development application Material Change of Use – food and drink outlet at 44 Walsh Street, Biggenden on land described as Lot 63 on RP79456. 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 general residential rural zone and on a corner lot, it is the last property within the general residential zone on the southern side of Biggenden, and is adjoining one residential property along Kent Street
- (2) The application triggered any referral to State referral and Assessment Agency due to Department of Transport and Main Roads controlled road adjoining this property.
- (3) In accordance with section 2.2 of the Development Assessment (DA) Rules, Council was required to give a Confirmation Notice.
- (4) The application included sufficient information in the application 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, 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 proposed material change of use is code assessable requiring assessment against—
  - (a) the *General Residential Zone Code* and *Infrastructure and Operational Works Code*; and
  - (b) *Infrastructure overlays code* as the lot adjoin a state controlled road.
- (2) The site is not within any other scheme overlays and therefore does not require further assessment against relevant codes.

### 4.3 Assessment benchmarks

- (1) The application is compliant with the General Residential Zone Code; infrastructure and Operational Works Code; and Infrastructure Overlay Code. Much of the code is not applicable to the application as there is an existing use for a Motel and historical abandoned use as a service state with characteristic of the site remaining the same. As such the assessment is relatively straightforward.

#### 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<sup>1</sup>.

---

<sup>1</sup> When the v1.3 of the planning scheme commenced on 3 February 2020 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.

### 4.3.3 General Residential Zone Code

- (1) The proposal complies with the general residential zone code codes as—
  - (a) it achieves the purpose and overall outcomes of the codes;
  - (b) it complies with the performance outcomes of the codes; and
  - (c) it would not adversely affect the character, setting or appearance of the general residential zone.

### 4.3.4 Infrastructure and Operational Works Code

- (1) The proposal complies with the rural zone code codes as—
  - (a) it achieves the purpose and overall outcomes of the codes;
  - (b) it complies with the performance outcomes of the codes; and
  - (c) .

### 4.3.5 Infrastructure Overlay Code

- (1) The proposal complies with the rural zone code codes as—
  - (a) it achieves the purpose and overall outcomes of the codes;
  - (b) it complies with the performance outcomes of the codes; and
  - (c) the development will not adversely affect the state road corridor and relevant infrastructure.

## 4.4 Consultation

### 4.4.1 Internal stakeholder comments

- (1) Council's consulting engineer, Works and Environment Health were invited to comment on the application. They raised no objections to the proposal, and they required conditions to be included in development permit.

### 4.4.2 External stakeholder comments

- (1) The application required referral to the chief executive under Schedules 10, Part 9, Division 4, Subdivision 2, Table 4 of the *Planning Regulation 2017 – Material Change of Use of premises near a State Transport Corridor or that is a future state transport corridor*..

### 4.4.3 Public consultation

- (1) The application did not require public notification and Council did not receive any submissions about the application.

## 4.5 Key issues for this application

- (1) The assessment manager considers that the following matters have been instrumental in its decision—
  - (a) *Building size and scale*—As the size and scale of existing structures on the site, the development will not change in external characteristics or size and it is compliant to all acceptable outcomes in the codes. It will have the minimal impact in the residential zone.
  - (b) *Hours of operation*—Proposed hours of use are outside the acceptable hours of use in the general residential zone code, though considering the existing use as a motel and previous historical use a service station a food and drink outlet open between 6.30am-8pm would have minimal impact. The site location as the last allotment within the general residential zone on the southern entry to Biggenden and being on a corner lot was as considered.
  - (c) *Vehicle Access*—the existing lot has two existing access points, on onto Walsh Street (state-controlled road) and Kent Street (local-controlled road). A third access was

proposed but as it is on the adjoining allotment, and the application did not include this allotment as part of the application. Turning circles for vehicles may not have been complaint, no further information was provided.

#### **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 approves the application and imposes conditions in accordance with the decision rules.