

Development application—decision under delegated authority

Development permit for building work assessable against the planning scheme for a Dwelling house (Secondary Dwelling) at 165 Biggenden Mines Road, Biggenden on land described as Lot 48 on C37976—Code assessable development application under the *Planning Act 2016*

Application reference: DA230003

1 Proposal summary

- (1) The applicant seeks a development permit for Building Work assessable under the planning scheme for a Dwelling house (Secondary Dwelling) at 165 Biggenden Mines Road, Biggenden on land described as Lot 48 on C37976.
- (2) The proposal is to construct a new primary dwelling to the east of the existing dwelling and sheds on the lot. The existing dwelling will then become the secondary dwelling on the lot.
- (3) The applicant advises that the secondary dwelling would be occupied by relatives or friends of the occupier of the primary dwelling and would access the site via the existing driveway.
- (4) The application involves—building work that is assessable under the planning scheme as it does not comply with all assessment benchmarks in the dwelling house code;
- (5) The site has an area of approximately 56.624 hectares, and is located in the Rural zone – intensive agriculture precinct.
- (6) 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) of the *Planning Act 2016*. The 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.



David Rowland
Interim Planning & Environment Manager
(Delegate of North Burnett Regional Council)

03/02/2023

Date

4 Statement of reasons

This statement explains the reasons for the assessment manager's decision in relation to a development application for a development permit for Building Work assessable under the planning scheme for a Dwelling house (Secondary Dwelling) at 165 Biggenden Mines Road, Biggenden on land described as Lot 48 on C37976. 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 rural zone intensive agricultural precinct and abuts other rural zoned land.
- (2) The application was properly made on 3 February 2023.
- (3) The application did not trigger any referrals.
- (4) The application included sufficient information for assessment, and no Information request was necessary.
- (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 SPP, to the extent that it is not appropriately integrated in the planning scheme;
 - (c) the location of the proposed building towards the centre of the site and its separation from other buildings on or adjacent to the site;
 - (d) the extent of MSES on the site—the proposed building is outside the mapped MSES area.

4.2 Category of assessment

- (1) A material change of use for a dwelling house (including a secondary dwelling) is accepted development in the rural zone. Building work for a secondary dwelling is accepted subject to requirements.
- (2) Since the gross floor area of the proposed primary dwelling would be more than the 60 m² limit in the assessment benchmark, the building work is code assessable against the relevant performance outcome.

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.
- (2) *State planning policy*—the State Planning Policy is appropriately integrated in the planning scheme and does not require further or separate consideration for Council to decide the application.

4.3.2 Assessment against the planning scheme

- (1) The proposed development is only assessable against the one performance outcome in the Dwelling house code of the planning scheme due to the effect of section 5.3.3(4)(a)(ii).
- (2) A more comprehensive assessment against the performance outcome been completed, however in summary, due to the location of the existing and proposed dwellings being

- (3) separated from any adjoining property dwellings and boundaries of the site, the proposal would comply with the relevant performance outcome.
- (4) As the Council's assessment is limited to the one performance outcome, any conditions must only relate to that assessment benchmark.

4.4 Consultation

4.4.1 Internal stakeholder comments

- (1) The proposal is sufficiently minor in scale, and without potential effects on Council's infrastructure, that Development and Building Services did not seek the advice of other Council officers.

4.4.2 Referral agency response

- (1) Not applicable—the application did not require referral.

4.4.3 Public consultation

- (1) The application did not require public notification as it was code assessable.

4.5 Key issues for this application

- (1) The assessment manager considers that the following matters have been instrumental in its decision—
 - (a) Appropriateness of intensity and scale of development—the proposal would not detrimentally impact the amenity of the locality or capacity for the lot or adjoining lots to be utilised for agricultural purposes;
 - (b) Adequacy of building separation distances—the proposal would be sufficiently clear of existing property boundaries.

These matters have been derived from the assessment benchmark—the one performance outcome.

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) Development conditions must result from the assessment against the one performance outcome.
- (4) 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.