

Development application—decision under delegated authority

Material Change of Use for Food and Drink Outlet at 63-69 Lyons Road, Mundubbera on land described as Lot 71 on M586—Code assessable development application under the *Planning Act 2016*

Application reference: DA230022

1 Proposal summary

- (1) The applicant seeks a Development Permit for Material Change of Use for Food and Drink Outlet at 63-69 Lyons Road, Mundubbera on land described as Lot 71 on M586.
- (2) The site accommodates a retail shop and awning. All existing improvements would be fully contained within the site.
- (3) The proposed development is for a café including kitchen, storage areas and customer seating areas.
- (4) 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 

11 May 2023

Rachael Duncan
Planning and Environment Manager
(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 Material Change of Use for Food and Drink Outlet at 63-69 Lyons Road, Mundubbera on land described as Lot 71 on M586. 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 27 April 2023.
The application does not trigger any referrals.
- (2) The application included sufficient information, and it was not necessary to issue an information request.
- (3) The following matters have been key considerations for the assessment manager—
 - (a) material about the application, including the proposal documents.
 - (b) the North Burnett Regional Planning Scheme 2014 v1.4 (amendments commenced 14 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 bordered by other Centre zone lots and general residential zoned lots.
- (2) The proposal is identified as code assessable against AO1.1 to AO5.1 of the Centre zone code.
- (3) The proposal does not require assessment against any other codes.
- (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

A basic assessment against the assessment benchmarks is provided in the report and associated documentation submitted with the application. Such assessment confirms that the matter is relatively straightforward and it is not necessary to carry out a more detailed assessment for compliance.

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*—there are no State interest statements, policies or benchmarks relevant to this application.

4.3.2 Centre zone code

- (1) The proposal complies with the Centre zone code as—
 - (a) it achieves the purpose and overall outcomes of the code;
 - (b) it complies with the performance outcomes of the code, specifically —
 - (i) the proposal complies with the intended uses that being business/retail usage having regard to the zone in which the site is included and would support a high level of amenity and variety of uses. This in turn would support the dominant main street role in Mundubbera.
 - (c) the development provides a better overall outcome for the zone as it increases the variety of activities within the locality without compromising further development options or creating reverse amenity.
 - (d) no change to services, parking or access is proposed.
 - (e) the development would not alter current site characteristics, nor involves any assessable operational works.

4.4 Consultation

4.4.1 Internal stakeholder comments

- (1) Advice from Technical Services was not provided. Comments from Technical Services were 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) *infrastructure*—there would be no adverse impact on the Council’s infrastructure networks;
 - (c) Nuisance for neighbouring sensitive land uses (residential lots)—the development would be compatible with neighbouring sensitive land uses considering the area, separation, requirements for operating hours and waste management as well as the buildings orientation.

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.