

Development application—decision under delegated authority

Development Permit for Reconfiguring a lot - Boundary Realignment (2 into 2 lots) at 44 Walsh Street, Biggenden, on land described as Lot 63 RP79469 and Lot 1 RP166611—Code assessable development application under the *Planning Act 2016*

Application reference: DA240006

1 Proposal summary

- (1) The applicant seeks a Development Permit for Reconfiguring a lot - Boundary realignment (2 into 2 lots) at 44 Walsh Street, Biggenden; land described as Lot 63 RP79469 and Lot 1 RP79469.
- (2) The stated objective of the application is to realign the boundaries to enlarge the motel lot (Lot 63) to allow a future caretaker's residence.
- (3) The proposal would result in two lots, both complying with the minimum area and frontage requirements—
 - (a) proposed Lot 1 would contain the existing dwelling—1513m²
 - (b) proposed Lot 63 would contain the existing motel—2730m².
- (4) The proposed reconfiguration satisfies the minimum lot size and frontage requirements for land in the General Residential Zone
- (5) 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) The 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 

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

13 June 2024

Date

4 Statement of reasons

This statement explains the reasons for the assessment manager's decision regarding a development application for Reconfiguring a lot—boundary realignment (2 into 2 lots) at 44 Walsh Street, Biggenden; the land is described as Lot 63 RP79469 and Lot 1 RP79469. 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 22 February 2024
- (2) Council issued a Confirmation Notice on 28 February 2024.
- (3) The application triggered referral to State Assessment Referral Agency (SARA) in relation to frontage and proximity to a State-controlled road.
- (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 applicant's response to the Council information request;
 - (c) the North Burnett Regional Planning Scheme 2014 v1.4 (amendments commenced 17 August 2020), to the extent relevant; and
 - (d) 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 General residential zone and is surrounded by other rural lots.
- (2) The proposal is identified as code assessable against reconfiguring a lot (boundary realignment) and associated operational works
- (3) The proposed also requires assessment against the Infrastructure 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

4.3.1 State planning instruments

- (1) *Regional plan*—the Wide Bay Burnett Regional Plan 2023 does not contain an assessment benchmark relevant to this application and therefore does not require further or separate consideration for the 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 Assessment against the planning scheme

- (1) The application complies with the assessment benchmarks—as explained in the following sections.
- (2) A more comprehensive assessment against the performance outcome is in the attached table, however in summary, the proposal complies with all acceptable outcomes.

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 outcomes of the code—
 - (c) boundary setbacks and building density are consistent with other developments and character in the locality
 - (d) site is suitably sized to mitigate any nuisance and is consistent with expectations for development in the General residential zone
 - (e) a safe, lawful and practical access to both lots;
 - (f) no additional structures are proposed as part of this application, however the applicant has demonstrated that a dwelling (i.e. as a 'caretaker's residence') could be located at the south-western corner of proposed Lot 63 and be able to be serviced with urban services;
 - (g) access to the rear shed on proposed Lot 1 would need to be via the Kent Street frontage instead of via Walsh Street.

4.3.4 Overlay codes

- (1) The proposal complies with the *Infrastructure overlay code* as—
 - (a) it achieves the purpose and overall outcomes of the code;
 - (b) it complies with the performance outcomes of the code
 - (c) the acceptable outcomes of the code are not relevant to the proposed boundary realignment.

4.4 Consultation

4.4.1 Internal stakeholder comments

- (1) The application did not warrant an internal review by Civil Works, Water and Waste Water, or Disaster Management teams due to the minimal risks and assessment requirements for the existing development on the two lots.

4.4.2 External stakeholder comments

- (1) The application required referral to SARA under Schedule 10 of the *Planning Regulation 2017*.
- (2) The council decision notice would need to include the SARA response.

4.4.3 Public consultation

- (1) The application did not require public notification—an no submissions have been received.

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*—the site has access to constructed roads and urban services are already connected to the two lots;
 - (c) *Hazards*—the site is not affected by any known relevant natural hazards;

- (d) *The ability to develop the enlarged motel lot*—the applicant has demonstrated how a caretaker’s accommodation could be developed on the western end of the enlarged motel lot.

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.