

Your Reference:

Our Reference: KH: RR: mw: 20-09 (FID75750, MCU012-19/20, 12185-10000-000, ID1555849)

Contact: Rentia Robertson

23 September 2020

James Kelly
124 Kariboe Street
BILOELA QLD 4715

Dear Sir/Madam

Decision Notice – Approval

(Given under section 63 of the Planning Act 2016)

Application Number: MCU012-19/20
Description: Indoor Activity (Gymnasium)
Level of Assessment: Code Assessable
Site Address: 17 DUNN STREET, BILOELA
Lot & Plan Details: Lot 300 on CP859887

On 21 September 2020, under delegated authority, the above development application was approved in full subject to conditions. The conditions of this approval are set out in Attachment 1. These conditions are clearly identified to indicate whether the assessment manager or a concurrence agency imposed them.

1. Details of Approval

The following approval is given:

	Planning Regulation 2017 reference	Development Permit	Preliminary Approval
Making a Material Change of Use assessable under the planning scheme	s20	<input checked="" type="checkbox"/>	<input type="checkbox"/>

2. Approved Plans

The approved plan for this development approval are listed in the following table:

Plan/Document number	Plan/Document name	Date
none	Site Plan	Received 05/06/2020

3. Further Development Permits

Please be advised that there are no further development permits required.

4. Conflict with relevant instrument and reasons for the decision despite the conflict.

The assessment manager does not consider that the assessment manager's decision conflicts with a relevant instrument.

5. Submissions

Not applicable (Public Notification not required)

6. Currency Period for the Approval

This development approval will lapse at the end of the period set out in section 85 of the *Planning Act 2016*.

7. Statement of Reasons

Description of the development	Material change of use for the purposes of an Indoor Activity (Gymnasium)
Assessment Benchmarks	Town Zone Code Development Standards Code Commercial Development Code
Reasons for Decision	<u>Town Zone Code</u> The proposal complies with the performance outcomes or has been conditioned to ensure compliance. <u>Development Standards Code</u> The proposal complies with the performance outcomes or has been conditioned to ensure compliance. <u>Commercial Development Code</u> The proposal complies with the performance outcomes or has been conditioned to ensure compliance.

8. Appeal rights

The rights of an applicant to appeal to a tribunal or the Planning and Environment Court against a decision about a development application are set out in chapter 6, part 1 of the Planning Act 2016. For particular applications, there may also be a right to make an application for a declaration by a tribunal (see chapter 6, part 2 of the Planning Act 2016).

Appeal by an applicant

An applicant for a development application may appeal to the Planning and Environment Court against the following:

- the refusal of all or part of the development application
- a provision of the development approval
- the decision to give a preliminary approval when a development permit was applied for
- a deemed refusal of the development application.

An applicant may also have a right to appeal to the Development tribunal. For more information, see schedule 1 of the Planning Act 2016.

The timeframes for starting an appeal in the Planning and Environment Court are set out in section 229 of the Planning Act 2016.

Attachment 2 is an extract from the Planning Act 2016 that sets down the applicant's appeal rights and the appeal rights of a submitter.

The Planning and Environment Court appeals database lists all the appeals lodged in the Planning and Environment Court since 15 March 2008, which the department has been notified of. It contains information about the appeal, including the appeal number, site address, local government area, and a copy of the appeal notice, including grounds for the appeal. The appeal database is an easy way for anyone to obtain information about an appeal or check if an appeal has been lodged for a specific development application or approval.

The appeal database is available at <https://planning.dsdmip.qld.gov.au/planning/our-planning-system/dispute-resolution>.

Should you require further assistance in relation to this matter, please do not hesitate to contact Council's Development Services section on (07) 4992 9500, quoting you application number of MCU012-19/20.

Yours Sincerely



Dr Keith Halford
MANAGER ENVIRONMENT & PLANNING

Enc Attachment 1 – Part A Conditions imposed by the Assessment Manager
Attachment 1 – Part B Assessment Manager Notes
Attachment 2 – Appeal Rights
Attachment 3 – Approved Drawings

MCU012-19/20 Attachment 1

Part A - Conditions imposed by the Assessment Manager

General

- 1 The proposed Material Change of Use is to be completed and carried out generally in accordance with the following approved plans and reports submitted with the Development Application, except where modified by the conditions of this Development Approval –

Plan/Document number	Plan/Document name	Date
none	Site Plan	Received 05/06/2020

- 2 Comply with all of the conditions of this Development Approval prior to the commencement of the use, unless otherwise stated within this Decision Notice, and maintain compliance for the duration of the approved use.
- 3 Exercise the approval and complete all associated works, including any relocation or installation of services, at no cost to Council.
- 4 Alterations to public utilities, mains and services made necessary in connection with any of the works arising from this approval including works to restore and reinstate all roads are to be completed at no cost to Council.

Approved Use

- 5 The approved use of the premises is for Indoor Entertainment – Gymnasium, and ancillary use: Massage Therapy.
- 6 Operating hours for the approved use: Gymnasium:
Monday to Friday 5am – 6am, 5.20pm – 6.20pm and 6.30 pm- 7.30pm
Wednesdays and Thursday: 9.30am – 10.30am
Saturdays: 7.30am -8.30am

Massage Therapist: 7am -5pm Monday to Friday
- 7 The total number of visitors/customers associated with the gymnasium must not exceed 12 persons per class/ lesson.

Parking

- 8 Vehicle parking must be contained onsite. The car park shown on the approved plans must be allocated for customer parking during operating hours.

- 9 All car parking areas and access driveways must be maintained exclusively for vehicle parking and manoeuvring and kept in a tidy and safe condition at all times.
- 10 No vehicle storage or parking is permitted on the adjoining road reserve.

Waste Management

- 11 Waste must not be burned at the premises.

END OF CONDITIONS

MCU012-19/20 Attachment 1

Part B – Assessment Manager Notes

- A** In carrying out the activity or works associated with the development, all reasonable and practical measures are to be taken to minimise releases and the likelihood of releases of contaminants to the environment, except as otherwise provided by the conditions of this development approval.
- B** The applicant and or owner/s of the land and the person/s responsible for the management of the premise is/are to ensure ongoing compliance with conditions of this Development Permit including Conditions relating to the ongoing use of the premise, and the design and layout of the development.
- C** Pursuant to section 75 of the *Local Government Act 2009*, Council's written approval is required to carry out works on a road, or interfere with a road or its operation. This requirement applies to all Council-controlled roads within its local government area. The process for obtaining approval is set out in Council's *Local Law No. 1 (Administration) 2011*. Approval must be obtained prior to the commencement of the works.
- D** Building works are to comply with the *Building Act 1975*, the Building Code of Australia and other relevant authorities.
- E** Failure to ensure ongoing compliance with the conditions of this Development Approval including conditions relating to the ongoing use of the premise, and the design and layout of the development may constitute an offence under the Planning Act.
- F** Where further development is proposed it is the applicant's / developer's responsibility to ensure further approvals are sought as required by the Banana Planning Scheme.

Building

- A** Due to the classification of the building any alteration to the building will constitute building work for which a development approval for building work will be required this includes works for a tenancy fitout.

General

- A** The *Environmental Protection Act 1994* places a general environmental duty on everyone. Activity that causes or is likely to cause environmental harm must not be carried out unless all reasonable and practicable measures are taken to prevent or minimise the harm. Anyone becoming aware of serious or material environmental harm being caused or threatened by an activity they are involved in, has a duty to report that harm.

- B** It is an offence under the *Environmental Protection Act 1994* to cause environmental nuisance. Environmental nuisance includes unreasonable interference caused by noise, dust, fumes, odour, smoke, aerosols, particles or light.

Noise

- A** Activities must be managed such that noise emissions from the premises do not cause harm or nuisance to adjoining residents and comply with the requirements of the *Environmental Protection Act 1994* and *Environmental Protection (Noise) Policy 2019*.
- B** Section 440W of the *Environmental Protection Act 1994* imposes the following noise restrictions –

Indoor venues

- *An occupier of a building must not use, or permit the use of, the building as an indoor venue on any day–*
 - (a) before 7a.m, if the use makes an audible noise; or*
 - (b) from 7a.m. to 10p.m, if the use makes a noise of more than 5dB(A) above the background level; or*
 - (c) from 10p.m. to midnight, if the use makes a noise of more than 3dB(A) above the background level.*

Air and Light

- A** All artificial illumination is to be designed and installed so as not to cause a nuisance to occupants of nearby premises and any passing traffic. Security and flood lighting is to be directed away from adjacent premises to minimise the protrusion of light outside the site.

Waste Management

- A** It is an offence under the *Waste Reduction and Recycling Act 2011* to leave litter behind or allow litter to blow from site. All waste must be appropriately contained on site prior to removal.
- B** All waste to be removed from site should be collected by a licensed contractor and taken to an approved waste disposal facility by an approved transporter.
- C** Trap Gully Landfill is the only approved waste facility within the Banana Shire for the disposal of commercial waste. No commercial waste is to be deposited at other Banana Shire landfills or transfer stations without prior written approval from Council.

- D** It is an offence under the *Environmental Protection Regulation 2019* to fail to comply with signage or directions at a waste facility.
- E** Any building repairs involving asbestos material must be undertaken in accordance with Workplace Health and Safety requirements.
- G** Regulated waste (including asbestos) is only to be disposed of at Trap Gully Landfill and an application form must be completed and approved prior to disposal.
- H** Council will not enter onto private property to service wheelie bins, any bins to be serviced by Council will be required to be placed at the kerbside for collection.

Cultural Heritage

- A** This development approval does not authorise any activity that may harm Aboriginal cultural heritage. Under the Aboriginal Cultural Heritage Act 2003 you have a duty of care in relation to such heritage. Section 23(1) provides that, "A person who carries out an activity must take all reasonable and practicable measures to ensure the activity does not harm Aboriginal cultural heritage".

Council does not warrant that the approved development avoids affecting Aboriginal cultural heritage. It may therefore be prudent for you to carry out searches, consultation, or a cultural heritage assessment to ascertain the presence or otherwise of Aboriginal cultural heritage. The Act and the associated duty of care guidelines explain your obligations in more detail and should be consulted before proceeding.

END OF NOTES

Attachment 2

Planning Act 2016 Extract on Appeal Rights

Part 1 Appeal rights

229 Appeals to tribunal or P&E Court

(1) Schedule 1 states–

(a) matters that may be appealed to–

(i) either a tribunal or the P&E Court; or

(ii) only a tribunal; or

(iii) only the P&E Court; and

(b) the person–

(i) who may appeal a matter (the appellant); and

(ii) who is a respondent in an appeal of the matter; and

(iii) who is a co-respondent in an appeal of the matter; and

(iv) who may elect to be a co-respondent in an appeal of the matter.

(2) An appellant may start an appeal within the appeal period.

(3) The appeal period is–

(a) For an appeal by a building advisory agency–10 business days after a decision notice for the decision is given to the agency; or

(b) For an appeal against a deemed refusal–at any time after the deemed refusal happens; or

(c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises–20 business days after a notice is published under section 269(3)(a) or (4); or

(d) for an appeal against an infrastructure charges notice–20 business days after the infrastructure charges notice is given to the person; or

(e) for an appeal about a deemed approval of a development application for which a decision notice has not been given–30 business days after the applicant gives the deemed approval notice to the assessment manager; or

(f) for any other appeal–20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person. Note– See the P&E Court Act for the court's power to extend the appeal period.

(4) Each respondent and co-respondent for an appeal may be heard in the appeal.

(5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.

(6) To remove any doubt, it is declared that an appeal against an infrastructure charges notice must not be about–

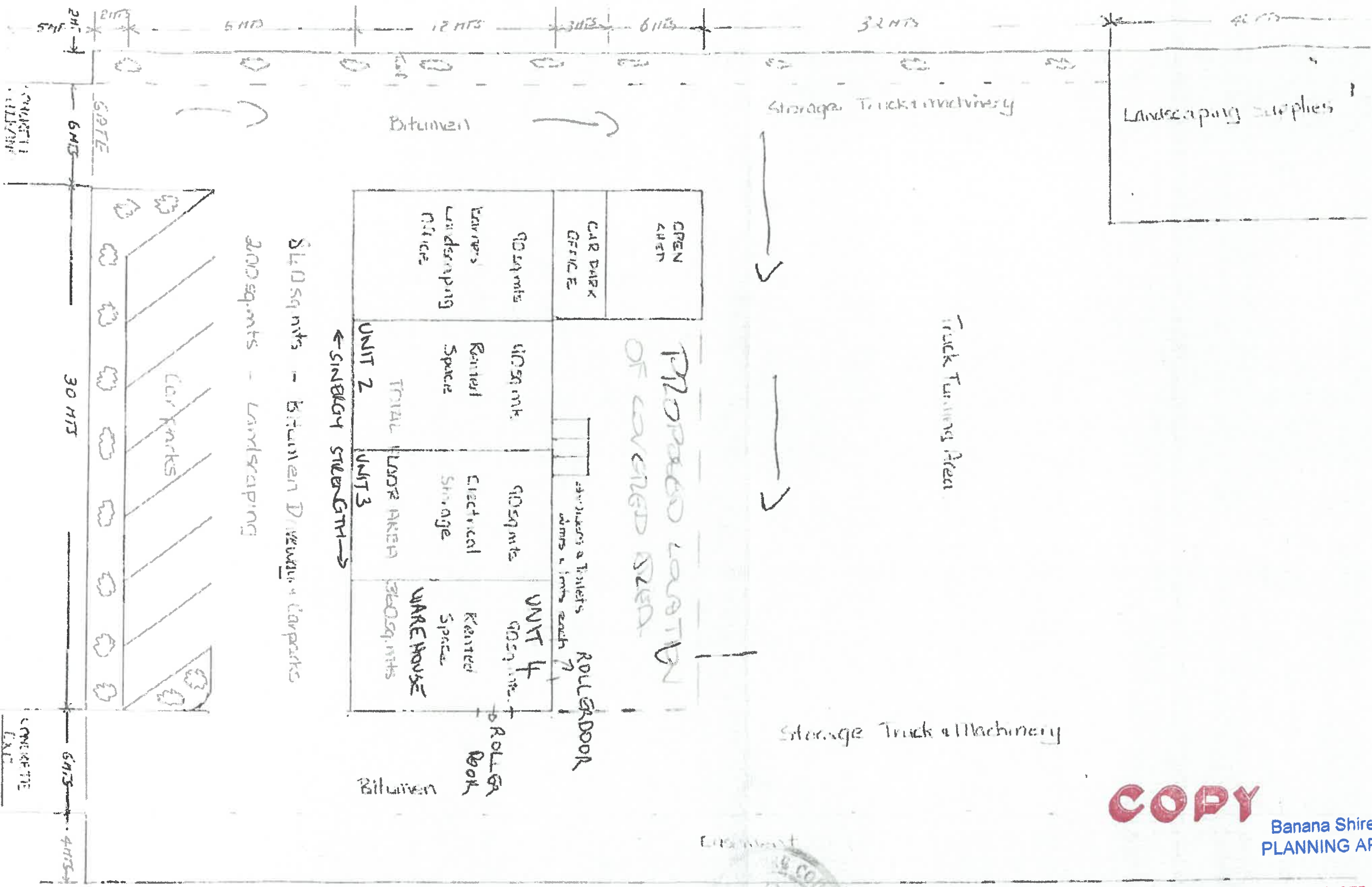
(a) the adopted charge itself; or

(b) for a decision about an offset or refund–

(i) the establishment cost of trunk infrastructure identified in a LGIP; or

(ii) The cost of infrastructure decided using the method included in the local government's charges resolution.

Attachment 3
Approved Drawings



~~APPROVED~~



COPY

Banana Shire Council
PLANNING APPROVAL

19 SEP 2020

MC012-1920