

Cloncurry Shire Council

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Our ref: DWES:LT-TP03/20

27 July 2020

Phuong Linh Vu – Kristy's Eyelash and Beauty
c/- Kristy Vu
87 Uhr Street
CLONCURRY QLD 4824
Email: vp114121997@gmail.com

DECISION NOTICE APPROVAL - DEVELOPMENT APPLICATION FOR MATERIAL CHANGE OF USE- HOME BASED BUSINESS (BEAUTY THERAPY) – 87 UHR STREET, CLONCURRY (LOT 5 ON RP712864)

(made under section 282 of the Planning Act 2016 for a decision notice (approval) under section 63(2) of the Planning Act 2016)

<i>Application reference number</i>	TP03/20
<i>Contact name</i>	Kristy Vu
<i>Contact number</i>	0424 969 797
<i>Notice date</i>	27 July 2020
<i>Applicant's name</i>	Phuong Linh Vu
<i>Applicant's address</i>	87 Uhr Street CLONCURRY QLD 4824

I acknowledge receipt of the above application on 26 May 2020 and confirm the following:

RE: Development application for Material Change of Use – Home Based Business (Beauty Therapy)
87 Uhr Street, CLONCURRY (Lot 5 on RP712864)

Dear Kristy

I advise that, on 21 June 2020 the above development application was:

approved in full with conditions* (refer to the conditions contained in **Attachment 1**)

*Note: The conditions show which conditions have been imposed by the assessment manager and which conditions have been imposed by a referral agency.

1. Details of the approval

This application is taken to have been approved under section 64(5) of the *Planning Act 2016*.

The following approvals are given:

	Planning Regulation 2017 reference	Development Permit	Preliminary Approval
Development assessable under the planning scheme, superseded planning scheme, a temporary local planning instrument, a master plan or a preliminary approval which includes a variation approval - building work assessable under the planning scheme - plumbing or drainage work - material change of use - reconfiguring a lot - operational work	N/A	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

2. Conditions

This approval is subject to the conditions in Attachment 1.

3. Approved plans, specifications and drawings

Copies of the following approved plans, specifications and/or drawings are enclosed.

Drawing/report title	Prepared by	Date	Reference no:	Version/issue
Aspect of development: Material Change of Use – Home Based Business (Beauty Therapy)				
Site Plan – 87 Uhr Street		Undated	N/A	N/A
Floor Plan – 87 Uhr Street		Undated	N/A	N/A

4. Currency period for the approval (s.85 of the Planning Act)

This development approval will lapse unless substantially started at the end of the period set out in section 85 of *Planning Act 2016* which is 6 years after this approval starts to take effect.

5. 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 certain 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*.

Appeal by an eligible submitter

An eligible submitter for a development application may appeal to the Planning and Environment Court against the decision to approve the application, to the extent the decision relates to:

- any part of the development application that required impact assessment
- a variation request.

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 out the applicant's appeal rights and the appeal rights of a submitter.

To stay informed about any appeal proceedings which may relate to this decision visit:
<https://planning.dsdmip.qld.gov.au/planning/our-planning-system/dispute-resolution/pe-court-database>.

Should you have any questions or concerns in respect of this matter please contact Council's Planning and Development Officer, Larinda Turrell, at this office.

Yours faithfully



David Bezuidenhout
Chief Executive Officer

Enc: **Attachment 1—Conditions of the approval**
Attachment 2—Extract on appeal rights
Attachment 3 – Statement of Reasons
Attachment 4 - Approved Plans
Attachment 5 – SARA Response

ATTACHMENT 1 – CONDITIONS OF APPROVAL

NATURE OF DECISION		
A Cloncurry Shire Council issues a development permit for Development application - Reference TP03/20 Material Change of Use for Home based business (Beauty therapy) under the <i>Planning Act 2016</i> .		
GENERAL		
1. Site Layout		
The development must generally comply with the approved proposal plans as referenced in the table below, which forms part of this application, except as otherwise specified by any condition of this approval.		
Report/Plan/Drawing Number	Plan/Document Name	Date
N/A	Site Plan – 87 Uhr Street	Undated
N/A	Floor Plan – 87 Uhr Street	Undated
2. Compliance with conditions		
(a) All conditions must be complied with prior to the commencement of the use, unless specified in an individual condition.		
(b) The conditions of this development approval are to be read in conjunction with the approved plans /drawings/ documents at all times. Where a conflict occurs between the conditions of this approval and the approved plans / documents, the conditions of this development approval shall prevail.		
3. Approved Use		
(a) The Home based business does not compromise or adversely affect amenity of the immediate neighbouring properties or the surrounding area.		
(b) Limit the operation of the home based business to the area identified on the approved plan as “work area”.		
(c) The home based business use is to be conducted only by residents of the premises, further written approval will need to be obtained from Council for any non-resident employees.		
4. Signage		
One (1) freestanding advertising device is permitted, any further advertising devices that are erected will require written approval from Council.		
5. Parking and Access		
Provide one (1) car parking space on site for customers.		
6. Waste Material		
No waste material is to be discharged or placed in a position that material is reasonably likely to move into or enter the stormwater system or adjoining land.		
7. Noise Management		
Appropriate noise mitigation measures shall be put in place to contain and manage noise levels so as not to give rise to unacceptable effects on nearby sensitive receiving land uses.		
8. Odours		
The odour emissions from the premises is to contained and managed to a level that will not give rise to unacceptable affect on adjoining or nearby sensitive land uses.		
9. Referral agency conditions		
No.	Conditions	Condition timing
Planning Regulation 2017, Schedule 10, Part 9, Division 4, Subdivision 2, Table 4, Item 1—The chief executive administering the Planning Act 2016 nominates the Director-General of the Department of Transport and Main Roads to be the enforcement authority for the development to which this development approval relates for the administration and enforcement of any matter relating to the following condition(s):		
1.	The development must be carried out generally in accordance with the plan titled, Uhr Street Site Plan, author unknown, received 10/06/20.	At all times

2.	Any works on the land must not: create any new discharge points for stormwater runoff onto the railway; Interfere with and /or cause damage to the existing stormwater drainage on the railway; Cause surcharge of any existing culvert or drain on a railway; Reduce the quality of stormwater discharge onto the railway.	At all times
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ADVICE – Please note that these are not conditions

A. The Applicant is responsible for securing all necessary approvals, permits and tenure, providing statutory notifications and complying with all relevant laws. Nothing in this development approval alleviates the need for the Applicant to comply with all relevant Local, State and Commonwealth laws and to ensure appropriate tenure arrangements have been made where the use of/reliance upon land other than that owned by the Applicant is involved. Without limiting this obligation, the Applicant is responsible for:

- (a) Obtaining all other/further necessary approvals, licences, permits, resource entitlements etc by whatever name called (this may include further development approvals under the “*Planning Act 2016*” and the planning scheme) required by law before the development the subject of this approval can be lawfully commenced and to carry out the activity for its duration;
- (b) Providing any notifications required by law (by way of example only, to notify the administering authority pursuant to the “*Environmental Protection Act 1994*” of environmental harm being caused/threatened by the activity, and upon becoming aware the premises is being used for a ‘notifiable activity’); and
- (c) Ensuring the correct siting of structures on the land. An identification survey demonstrating correct siting and setbacks of structures may be requested of the Applicant to ensure compliance with this decision notice and applicable codes.

B. Indigenous Cultural Heritage Legislation and Duty of Care Requirement

The “*Aboriginal Cultural Heritage Act 200*” (ACHA) establishes a duty of care to take all reasonable and practicable measures to ensure any activity does not harm Aboriginal cultural heritage. This duty of care:

- (a) Is not negated by the issuing of this development approval;
- (b) Applies on all land and water, including freehold land;
- (c) Lies with the person or entity conducting an activity; and
- (d) If breached, is subject to criminal offence penalties.

Those proposing an activity involving surface disturbance beyond that which has already occurred at the proposed site must observe this duty of care. Details of how to fulfil this duty of care are outlined in the duty of care guidelines gazetted with the ACHA. The Applicant should contact NRW’s Cultural Heritage Coordination Unit on (07) 3238 3838 for further information on the responsibilities of developers under the ACHA.

C. Limitation of Approval

The Council and its officers make no representations and provide no warranties as to the accuracy of the information contained in the development application including its supporting material provided to it by the Applicant.

The Council and its officers rely upon the applicant concerning the accuracy and completeness of the application and its supporting material and accepts the development application and supporting material as constituting a representation by the applicant as to its accuracy and completeness.

Chapter 6 Dispute resolution

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.

230 Notice of appeal

- (1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that—
 - (a) is in the approved form; and
 - (b) succinctly states the grounds of the appeal.
- (2) The notice of appeal must be accompanied by the required fee.
- (3) The appellant or, for an appeal to a tribunal, the registrar, must, within the service period, give a copy of the notice of appeal to—
 - (a) the respondent for the appeal; and
 - (b) each co-respondent for the appeal; and
 - (c) for an appeal about a development application under schedule 1, table 1, item 1—each principal submitter for the development application; and
 - (d) for an appeal about a change application under schedule 1, table 1, item 2—each principal submitter for the change application; and
 - (e) each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph (c) or (d); and
 - (f) for an appeal to the P&E Court—the chief executive; and
 - (g) for an appeal to a tribunal under another Act—any other person who the registrar considers appropriate.
- (4) The *service period* is—
 - (a) if a submitter or advice agency started the appeal in the P&E Court—2 business days after the appeal is started; or
 - (b) otherwise—10 business days after the appeal is started.
- (5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).
- (6) A person elects to be a co-respondent by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.
- (7) Despite any other Act or rules of court to the contrary, a copy of a notice of appeal may be given to the chief executive by emailing the copy to the chief executive at the email address stated on the department's website for this purpose.

231 Other appeals

- (1) Subject to this chapter, schedule 1 and the P&E Court Act, unless the Supreme Court decides a decision or other matter under this Act is affected by jurisdictional error, the decision or matter is non-appealable.
- (2) The *Judicial Review Act 1991*, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.
- (3) A person who, but for subsection (1) could have made an application under the *Judicial Review Act 1991* in relation to the decision or matter, may apply under part 4 of that Act for a statement of reasons in relation to the decision or matter.
- (4) In this section—
 - (a) conduct engaged in for the purpose of making a decision; and
 - (b) other conduct that relates to the making of a decision; and
 - (c) the making of a decision or the failure to make a decision; and
 - (d) a purported decision; and
 - (e) a deemed refusal.

non-appealable, for a decision or matter, means the decision or matter—

- (a) is final and conclusive; and
- (b) may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the *Judicial Review Act 1991* or otherwise, whether by the Supreme Court, another court, any tribunal or another entity; and
- (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, any tribunal or another entity on any ground.

232 Rules of the P&E Court

- (1) A person who is appealing to the P&E Court must comply with the rules of the court that apply to the appeal.
- (2) However, the P&E Court may hear and decide an appeal even if the person has not complied with rules of the P&E Court.

ATTACHMENT 3 – STATEMENT OF REASONS – TP 03-20

NOTICE ABOUT DECISION - STATEMENT OF REASONS

The following information is provided in accordance with section 63(5) of *the Planning Act 2016*

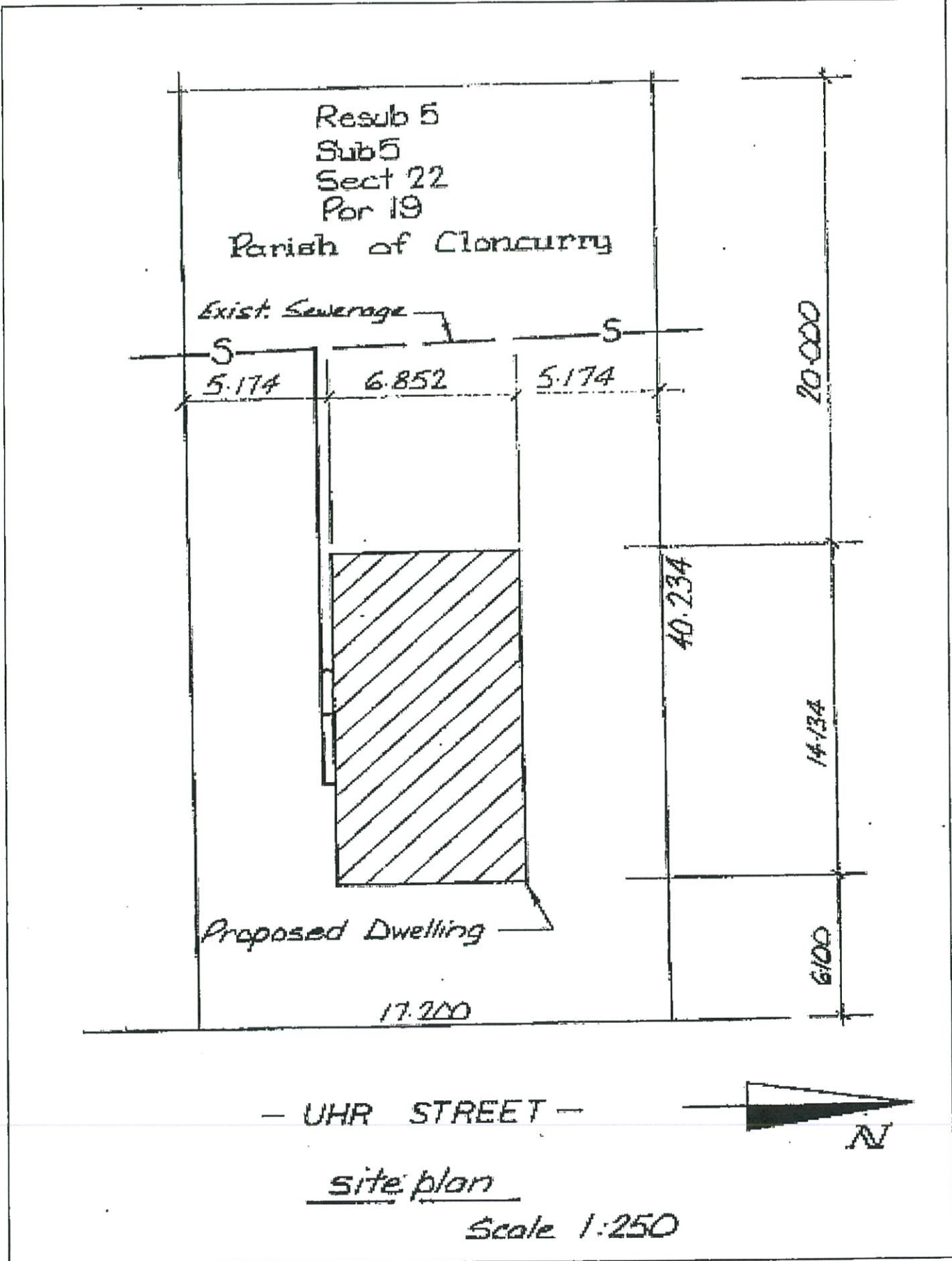
Details of the Development

The development application seeks a development permit for a Material Change of Use (MCU) on land at 87 Uhr Street, Cloncurry (Lot 5 on RP712864). The proposal involves an MCU for Home based business (Beauty Therapy).

On 21 July 2020, the above development application was approved in full, with conditions.

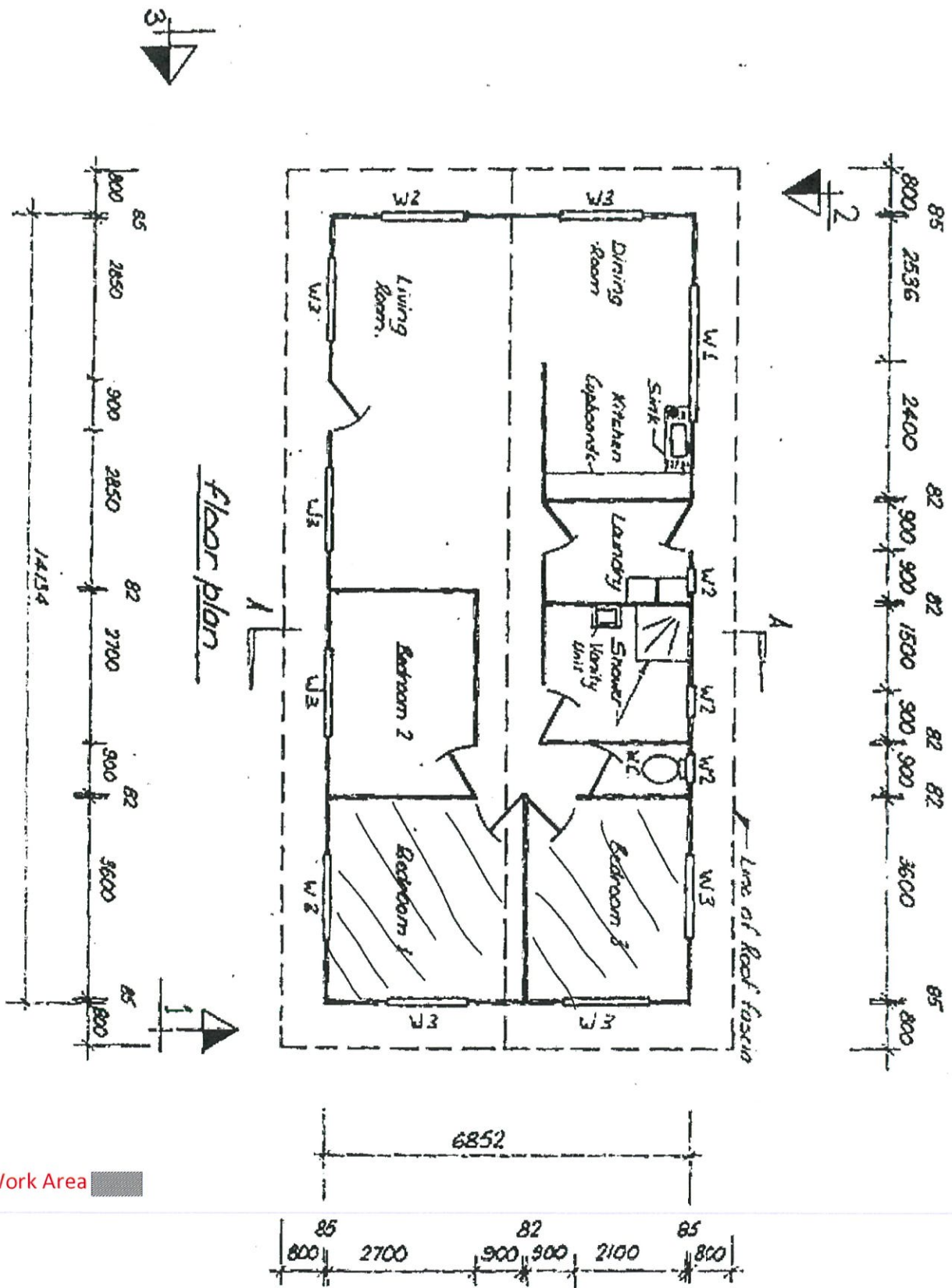
Reasons for the decision

A detailed assessment of the application by Council assessing officers has been undertaken and it is concluded as documented in the Development Assessment Report that the applicant has satisfactorily demonstrated compliance with the applicable benchmarks of the relevant planning scheme codes to enable Council to support the proposed development in granting its approval, subject to reasonable and relevant conditions being imposed.



SITE PLAN
87 Uhr Street
CLONCURRY QLD 4824

Cloncurry Shire Council
Town Planning
Approved with Conditions
Approved Date: 21 JUN 2020.....
TP 03/20



FLOOR PLAN
 87 Uhr Street
 CLONCURRY QLD 4824

Cloncurry Shire Council
 Town Planning
 Approved with Conditions
 21 JUN 2020
 Approved Date:

TP 03 / 20