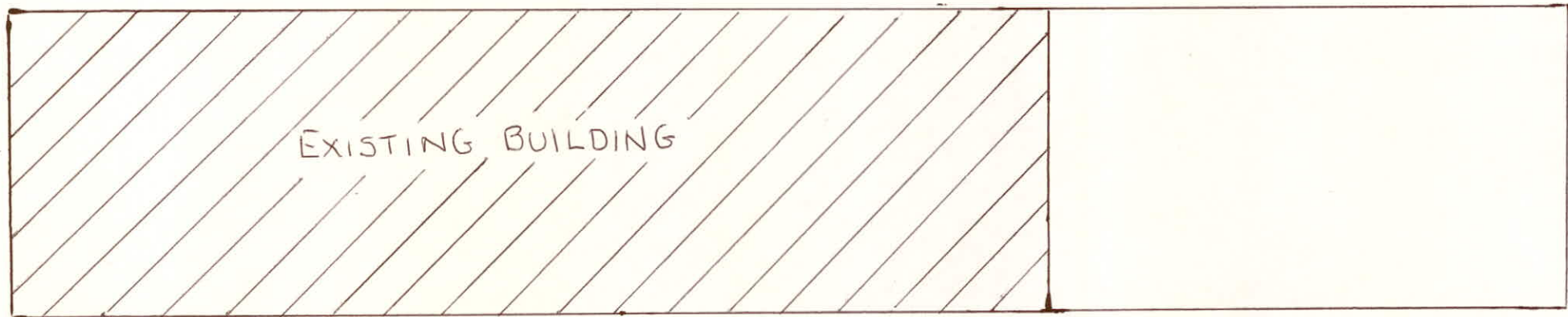


# SITE PLAN - 140 Fitzroy Street.

FITZROY STREET

9.78m

KING LANE

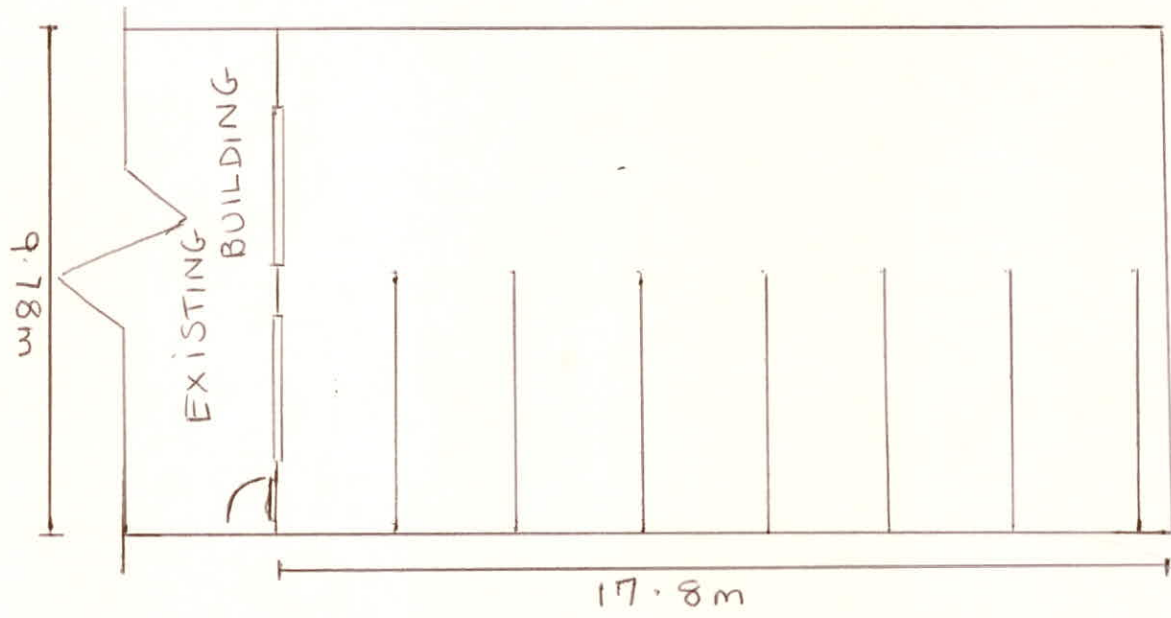


EXISTING BUILDING

34m

17.8m

51.8m

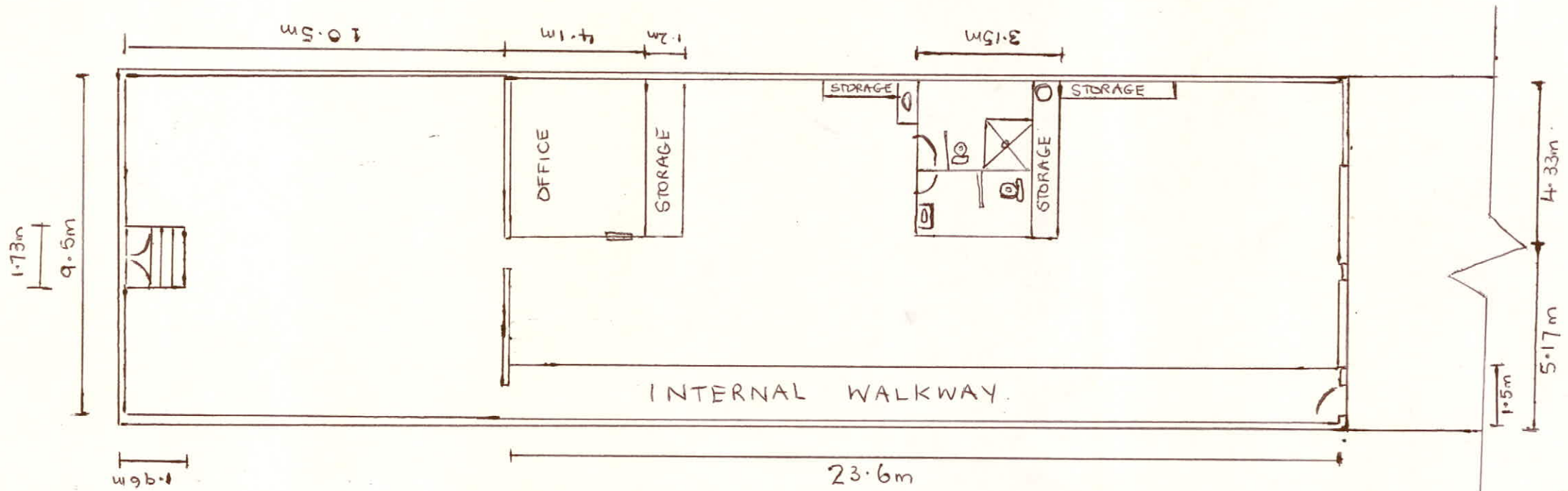


Parking as required by standard - 2.4m wide x 5.4m Long

KING LANE

Scale 1 : 150

# FLOOR PLAN - 140 Fitzroy Street.

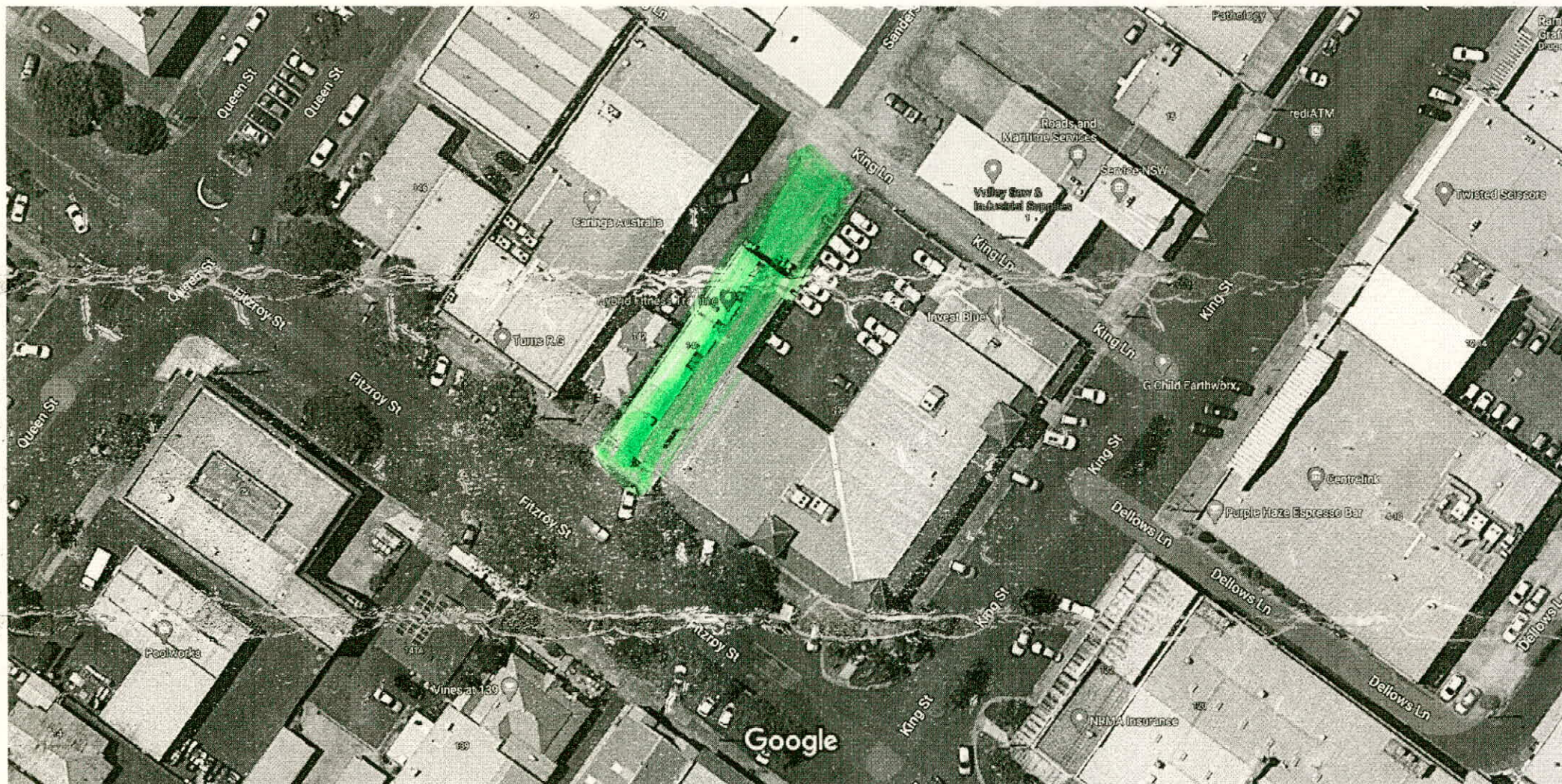


Scale:  
1:150

Total Floor Area: Approx - 323m<sup>2</sup>

Usuable Floor Area: Approx - 250m<sup>2</sup>

Google Maps



Map data ©2021, Map data ©2021 10 m

Google Maps



Map data ©2021 10 m

Google

**SECTION 4.15 EVALUATION FOR DA2021/0074**  
**- Lot 6 DP 6959- 140 Fitzroy Street GRAFTON NSW 2460**

**Proposal:** The applicant is proposing a change of use to a recreation facility (indoor), named Hybrid Fitness Training.

The proposal is for one-hour to 45-minute classes on varying days and times. Open hours Monday to Friday are 5am to 11am and 1pm to 7pm. One (1) class is scheduled at 9.30am and member numbers being capped at 12. Larger classes are held before 8.30am and after 5.30pm therefore outside of peak hours.

Classes during business hours of 8.30am to 5.30pm are Personal Training clients and they are capped at 4 people per 45-minute session.

History of the site includes:

DA approved 7 November 1980 for proposed alterations and additions to existing dwelling to permit establishment of commercial premises. Condition 8; The car parking area shall be constructed at the rear of the premises in accordance with the submitted plan. Conditions 9; Such are parking area shall be constructed with a hard-standing surface, and each space shall be delineated.

BA80/332 New commercial building & renovations to existing dwelling to convert to workshop

DA88/103 Alterations & additions to existing commercial premises, approved 1 December 1988. Condition 4; application to provide six (6) on-site car parking spaces in accordance with the submitted plans. The parking surface must be of any hard standing all-weather material, with each space clearly delineated. (Section 90 (1) (i))

**(1) Matters for consideration – General**

**In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:**

**(a) the provisions of:**

**(i) any environmental planning instrument, and**

State Environmental Planning Policy No 55—Remediation of Land

Clause 7 Contamination and remediation to be considered in determining development application.

(1) A consent authority must not consent to the carrying out of any development on land unless—

(a) it has considered whether the land is contaminated, and

- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

#### Comment

The subject land has no known contamination, consists of hardstand surfaces and has been used for a significant number of years for commercial purposes since 7 November 1980 which have been subject to previous development assessment. The proposed change of use will require an internal fit-out of the existing building and therefore there will be no land disturbance. As the use will remain commercial in nature it is considered that a land contamination report is not required, and the proposal is suitable for the site.

#### State Environmental Planning Policy (Coastal Management) 2018

The subject land is located within the coastal zone and coastal environment area under the SEPP.

Coastal Environment Area are land adjacent to coastal waters, estuaries, coastal lakes and coastal lagoons where impacts of development on the use and enjoyment of the beaches, foreshores, dunes, estuaries, lakes and the ocean needs to be considered.

#### *Clause 13 – Development on land within the coastal environment area*

The development is not considered likely to cause an adverse impact on the following:

- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- (b) *coastal environmental values and natural coastal processes,*
- (c) *the water quality of the marine estate (within the meaning of the [Marine Estate Management Act 2014](#)), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) *Aboriginal cultural heritage, practices and places,*
- (g) *The use of the surf zone.*

The development is designed, sited and will be managed to avoid / minimise any adverse impact referred to above.

The proposal is for a change of use in an existing building approximately 300m from the Clarence River foreshore. Therefore, it is deemed the proposal will not impact the coastal environment area identified under the SEPP, as there is no impediment to public foreshore access.

#### *Clause 15 - Development in coastal zone generally—development not to increase risk of coastal hazards*

The proposed development is not likely to cause increased risk of coastal hazards on that land or other land. The development is not inconsistent with the coastal management plans applying to the land.

*Clause 16 - Development in coastal zone generally—coastal management programs to be considered*

The proposed development is not considered to be inconsistent with the Clarence Estuary Management Plan. The development is considered to be consistent with the aim of this plan.

Clarence Valley Local Environmental Plan 2011

The subject land is zoned B3 Commercial Core under the provisions of the *Clarence Valley Local Environmental Plan 2011* (herein referred to as “the LEP”). The proposed change of use to a recreation facilities (indoor) is permissible with consent in the zone. The proposed development is consistent with the objectives of the zone:

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To reinforce Grafton/South Grafton as the major regional business centre in the Clarence Valley that is to accommodate major state and regional services, professional services and provide higher order shopping.*
- *To ensure the maintenance and improvement of the historic, architectural and aesthetic character of the commercial core area.*
- *To enable development that promotes high end retail uses and maintains the retail continuity of the streetscape.*

The proposal is not considered to be inconsistent with the objectives of the zone and is consistent with the character of commercial core development. The development is considered to provide a business use that will serve the needs of people in the local area by providing a fitness service.

Clause 4.3: Height of buildings:

There is no proposed change to the existing building height.

Clause 5.10: Heritage Conservation:

The subject land is within a heritage conservation area and in proximity to a heritage item. An AHIMS search on 11 May 2021 of the property did not reveal any items or areas of Aboriginal significance within a 200m radius of the site, appropriate conditions will be imposed to ensure the developer is aware of their obligation to cease work should anything be uncovered during works. The proposal does not include exterior work and is not considered to have an impact on the heritage values within the area as it is similar to surrounding development character. The business identification signs are to meet the exempt development criteria under Schedule 2 of the LEP.

Clause 7.1: Acid Sulfate Soils:

The subject land is identified as being Class 4 land under the Acid Sulfate Soils Map. Works below 2m of the ground surface or likely to lower the water table 2m below the ground surface require an acid sulfate management plan. The proposed change of use is within an existing building and is considered to not result in disturbance of these soils.



Therefore, the proposed development is not considered to be inconsistent with the clause objectives.

**Clause 7.3: Flood Planning:**

The subject site is identified as being flood prone. The proposal does not require any fill being imported to the site that may impact on the behavior or intensity of a flood event. The proposed development is within an existing commercial building and it is expected that the proposal will not increase potential risk to human life or property. The proposed development is considered to be generally not inconsistent with the clause.

**Clause 7.8: Essential Services:**

The subject site and existing building have access to reticulated water, electricity and sewer. Storm water from the existing building will be discharged into Council's drainage system. The site has access to Fitzroy Street and King Lane, which are both Council maintained roads

- (ii) **any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and**

N/A – There are no current draft EPIs relevant to the Development Application.

- (iii) **any development control plan, and**

Clause	Control	Complies
C.3: Streetscape Requirements	Proportions, rooflines, frontage that is not dominating the streetscape and corner buildings strongly designed.	N/A – No proposed changes to the existing building, there will be business signage as part of the proposal.
C.4: Disabled Access and Facilities	Provide details on plans of accessible facilities	The existing building is on ground level and accessible. There are no new additions to the existing building proposed.
C.5: Awnings and Verandahs	Style considerations for main street awnings and verandahs	N/A – Existing building, no external modifications proposed.
C.6: Building Height	Maximum height limits 14m for Grafton CBD	N/A – No proposed changes to the existing building.
C.8: Setbacks	Zero front, side and rear setbacks, and a setback of 1.5m from services.	N/A – No changes to the existing building.
C.9: Landscaping, paving and street furniture	Street frontages to enhance amenity and provide screening.	N/A – Development within an existing building.
C.10: Colour	Specific for coastal	N/A

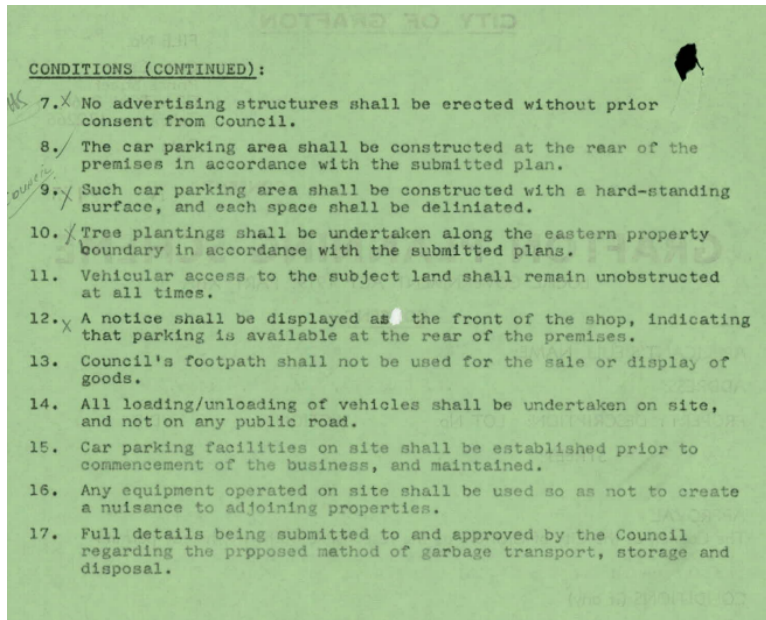
Clause	Control	Complies
	towns and inland towns in heritage conservation areas	
C.11: Crime prevention	Inclusion of crime prevention measures	Measures are included as part of the existing building.
C.12: Development on flood prone land	No net filling is allowed below 4.2m AHD. Flood free storage above 1 in 100 year flood level.	The proposal development is for a change of use within an existing building and will not include any filling works. Flood free storage is available above the office and toilet within the existing building. Noting the floor level is approximately 6.5m and the 1 in 100 year flood level is 7.08m.
C.13: Air, water and noise pollution		Subject to the imposition of appropriate advice and conditions of consent.
C.14: Waste management	To be safe, tidy environmentally responsible. Dispose of waste suitably	The proposed development for a change of use in an existing building will include the internal fit out and ongoing operation of a fitness service. The waste management is considered to be of low risk to the community and will utilise existing waste services.
Part D: Floodplain Management Controls		The proposal development is for a change of use within an existing building and will not include any filling works.
Part E: Heritage Conservation		The proposal is within a Heritage Conservation Area and is a change of use within an existing building. There is no significant change to the exterior of the building fronting Fitzroy Street. Window signage is proposed that fills the full window and is not semi transparent, however, it is deemed consistent with surrounding business development within the

Clause	Control	Complies
		CBD precinct. The signage provides some privacy for recreation activities being held within the building and is considered to assist in not detracting from the character and visual amenity within the streetscape because the removal of fitness classes being visible from the street is consistent with the objectives and general heritage principles.
Part F: Car parking requirements	1 parking space per 25m <sup>2</sup> for recreation facilities (indoor)	See the below comments.
Part H: Erosion and sediment controls	Prevent land degradation and soil erosion	N/A - No submitted erosion and sediment control plan is required as it is within an existing building.

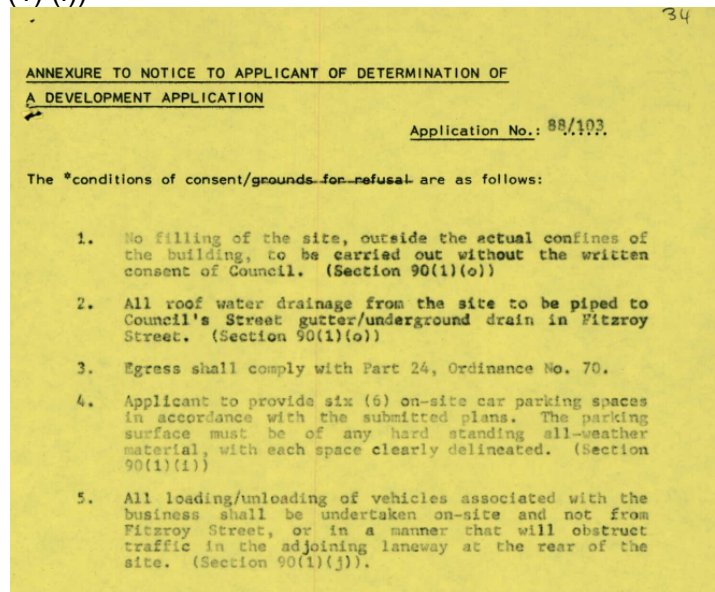
Part F: Car parking requirements:

There is an existing car parking area to the rear of the building which gains access off King Lane. The existing carparking located on Lot 6 DP 6959 consists of the following approvals:

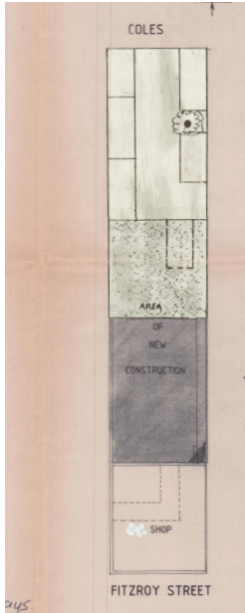
DA approved 7 November 1980 for proposed alterations and additions to existing dwelling to permit establishment of commercial premises. Condition 8; The car parking area shall be constructed at the rear of the premises in accordance with the submitted plan. Conditions 9; Such are parking area shall be constructed with a hard-standing surface, and each space shall be delineated.



DA88/103 Alterations & additions to existing commercial premises, approved 1 December 1988. Condition 4; application to provide six (6) on-site car parking spaces in accordance with the submitted plans. The parking surface must be of any hard standing all-weather material, with each space clearly delineated. (Section 90 (1) (i))



There are plans located on the property file indicating a stacked carparking layout and correspondence regarding the upgrade works of the carparking area.



P.1838

The Manager  
Repairs & Spares Pty Ltd  
PO Box 274  
GRAFTON NSW 2460

Dear Sir,

I wish to acknowledge receipt of your Development Application No. 88/103 dated 14th November, 1988, concerning alterations and additions to existing commercial building, Lot 6, Section 21, 140 Fitzroy Street, Grafton.

The following points are raised in relation to the provision of on-site car parking spaces.

1. Original Development Consent 2475 issued on 7th November, 1980, required six spaces to be provided.
2. The proposed 95 square metre extension will require the provision of a further two spaces in accordance with Council's Car Parking Code.
3. Therefore a total of eight on-site spaces is required. The submitted plans indicate six spaces being provided, leaving a shortfall of two spaces.
4. As these spaces cannot be provided on-site you will be required to pay a monetary contribution to Council of \$8,000 (\$4,000 for each space not provided on site).

Should you have any particular enquiries, please do not hesitate to contact Mr Scott Lee, Development Control Officer, quoting File No. P1838.

Yours faithfully,

R.J. PAVITT  
CHIEF TOWN PLANNER.

15th November, 1988

The Manager  
Repairs & Spares  
PO Box 274  
GRAFTON NSW 2460

P.1838

Dear Sir


Re: Development Application 88/103  
140 Fitzroy Street, Grafton

I refer to your telephone enquiry of 17th November, 1988, regarding the requirements for on-site car parking spaces for the abovementioned development.

Upon further investigation it is considered that six (6) on-site spaces as proposed by you is adequate for the development. This is based upon the workshops at the rear of the building not being used for retail purposes. Obviously the car parking requirements would be re-assessed should the area of retail activity increase at some stage in the future.

A determination of your application will be forthcoming as soon as possible.

Yours faithfully,

  
R.J. PAVITT,  
CHIEF TOWN PLANNER.

17th November, 1988

DCO:JK  
E/11

The Manager,  
Repairs & Spares Pty. Ltd.,  
P.O. Box 274,  
GRAFTON. 2460.

P.1838

Dear Sir,

re: Commercial Premises: 140 Fitzroy  
Street, Grafton

As Council has not received a reply to its letter of the 15th March, 1982, you are again advised that approval for this development was issued, dependant upon the fulfilment of the conditions of consent. In proceeding with the development, you have agreed to comply with these conditions.

You will be aware that Conditions 8, 9 and 10 stated:


"8. The car parking area shall be constructed at the rear of the premises in accordance with the submitted plan.

9. Such car parking area shall be constructed with a hard-standing surface, and each space shall be delineated.

10. Tree plantings shall be undertaken along the eastern property boundary, in accordance with the submitted plans."

You are again advised that such works should be carried out in accordance with the approved plan, or works completed to the satisfaction of Council, within four (4) weeks of the date of this letter, otherwise Council may have no alternative but to instigate legal proceedings.

Yours faithfully,

  
J.A. GAUDRY,  
TOWN CLERK.

21st April, 1982.

J 21/4  
TPS:JRK

## **F2. Number of Car Parking Spaces & F3. Variations to Car Parking Requirements**

The proposal for a recreation facilities (indoor) has a car parking requirement under the current Business zones DCP of 1 space per 25m<sup>2</sup>, with a gross floor area (GFA) of approximately 250m<sup>2</sup> the proposed development requires 10 car parking spaces. The site does not have any formal carparking spaces but has 6 approved car parking spaces that have been constructed to previous development standards being crushed gravel.

The applicant is seeking a variation to the number of carparking spaces required to be provided for the proposed development because of

- the land size constraint, and
- the peak demand for parking generated by the proposal is outside of general business hours.
- adequate on-street car parking is available within a close proximity to the site, such as along the Fitzroy Street frontage.

The development provides fitness classes with all classes during normal business hours not generating additional demand for on-street parking due to limited class sizes and numbers. This enables all clients to use car parking at the rear on-site. Larger classes are held before 8.30am and after 5.30pm therefore outside of peak hours.

Taking into consideration the matters under Clause F3, the scale and volume of traffic generated by the use, Council staff support the variation of this DCP requirement. Access to the car parking space is off King Lane and peak demand for parking is deemed to be outside of primary business hours (8.30am to 5.30pm). The parking impact of the proposed change of use is therefore deemed to be minimal.

DA88/103 for alterations & additions to existing commercial premises was approved 1 December 1988, the following condition 4 was included in the approval; application to provide six (6) on-site car parking spaces in accordance with the submitted plans. The parking surface must be of any hard standing all-weather material, with each space clearly delineated. (Section 90 (1) (i))

Therefore, the existing parking was deemed to be adequate for the existing building historically approved for a commercial premise however the DCP requires pavement construction under Part F for the current proposal, requiring the car parking area to be upgraded to current development standards.

The applicant has been advised of the requirement to upgrade the carparking area and has provided reasons for why it is unreasonable:

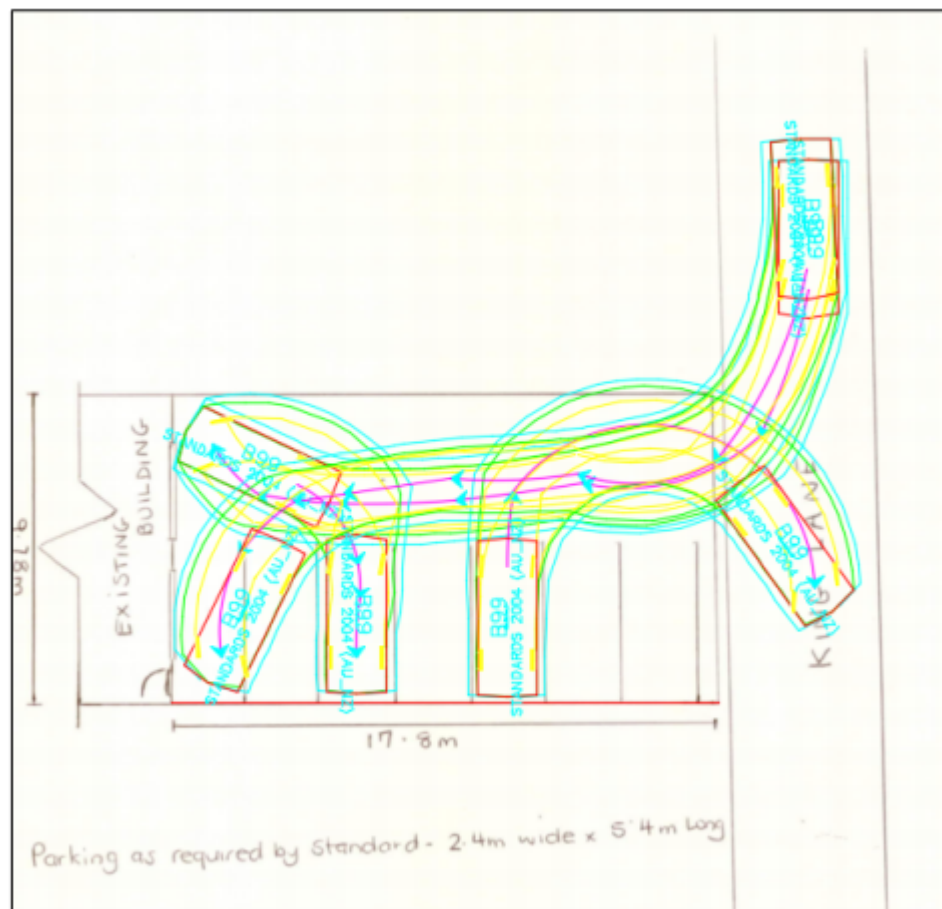
- Low usage, the parking use at the rear of the building (King Lane) is exceptionally low.
- The owner of the business does not own a car
- One (1) staff member needs a car park
- The entrance of the building is from the front (Fitzroy Street), parking at the rear of the building is not used by clients in any significant number.

Previous assessment of the site has determined adequate parking and the proposal does not increase the GFA as it is a change of use. Therefore, the variation sought by the applicant is supported and has adequately addressed the car parking requirements under Part F of the DCP. Due the percentage of the variation being four (4) parks or 40%, the applicant must be reported to Council for determination and the recommendation will be to support the variation because of the justification provided.

### F6. Access to the Site

The clause requires that all vehicles enter and leave the site in a forward direction.

The proposal included seven (7) carparking spaces, however assessment of the carparking layout determined only five (5) could access and exit the site in a forward motion. An additional one (1) space can be used on-site however any vehicle would exit or enter the site in a backward motion. A variation in this instance is suitable as access is via King Lane which does not experience large volumes of traffic as it only services the rear of adjoining commercial properties. The rear section is reasonably open and is deemed to have adequate site distance visible for vehicular traffic.





- (iia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and

N/A

- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,

The proposed development is not considered to be inconsistent with the prescribed matters, *Environmental Planning and Assessment Regulation 2000 – Clause 92*.

- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.**

The proposal is changing the use of an existing commercial premise, not requiring any external changes. There are no clearing or major earthworks proposed for the development, furthermore the proposed development is not considered to impact on natural waterways or biodiversity. The development sustainably utilises existing infrastructure and services.

The proposed development is considered to result in increased economic activity and employment generation for the Grafton business precinct. The proposed recreation facilities (indoor) will assist in providing additional services to meet the needs of the community. There may be minor economic benefits if local labour and materials are used daily operations. The development is not considered to impact on social wellbeing or cohesion.

The development will provide employment opportunity in the centre of Grafton, which is an accessible location and within the centre of the CBD area. The development will result in an active presence at the site and reinforce the Grafton business district. The site is within walking distance of the centre of the CBD area and is in close proximity to public transport.

- (c) the suitability of the site for the development,**

The proposal is in accordance with development in the surrounding and is providing an additional business use within the B3 Commercial Core zoned land of the Grafton CBD area to meet the needs to the community. The subject site is deemed to be suitable for the proposed change of use to a recreation facilities (indoor).

- (d) any submissions made in accordance with this Act or the regulations,**

The proposed development was notified in accordance with the Community Participation Plan (CPP) and no submissions were received regarding the proposal during the exhibition period.

Whilst there were no submissions received, Council is in receipt of a compliant prior to lodgement of the application. Therefore, imposition of suitable advice and conditions of consent will address public concern regarding the noise and car parking on the land and generated from the business and the public.

**(e) the public interest.**

The proposed development is in the public interest by being generally consistent with relevant policies adopted by Council and meeting the objects of the Act.

**Officer: Alex Clark, Trainee Planner**

**Date: 4 May 2021**

**Advices**

Code **ABld88**

**Alterations and Works to a Heritage Item or in a Heritage Conservation Area.**

Owners are advised of the consent requirements of Clause 5.10 of Clarence Valley LEP 2011 in relation to the need to obtain prior consent for all works including tree removal, new fences, and any alterations to the fabric, finish and appearance of a heritage item or building in a Heritage Conservation Area. Many works can be approved through the 'no fee' minor works and maintenance heritage exemptions of Clause 5.10(3) but must be put in writing and approved prior to commencement. See application form on Council's website.

**Conditions**

**Code: CSign04**

~ A separate development application will be required for any business identification signs or advertisements that are not defined as "exempt development" under the *Clarence Valley Local Environmental Plan 2011*.

**Code: CFree**

~ All activities associated with the conduct of the business are to be wholly contained within Lot 6 DP 6956.

Code **CFree**

Effective measures are to be taken to prevent any nuisance being caused by noise, vibration, smell, fumes, dust, smoke, wastewater products and the like at all times.