10 JULY 2024

# **DEVELOPMENT PERMIT FOR A MATERIAL CHANGE OF USE FOR 2** FOOD AND DRINK OUTLETS - 128, 130-132, 134, & 136 PEASE **STREET, MANOORA - DIVISION 7**

8/8/1648 | #7272019

**PROPOSAL:** DEVELOPMENT PERMIT FOR MATERIAL CHANGE OF USE FOR 2 FOOD AND DRINK OUTLETS

IMPACT ASSESSMENT LEVEL OF ASSESSMENT:

S B MCKAY & T N ONG (LOT 2); LANDOWNER: 181 FRESHWATER PTY LTD (LOT 1); AND 134 PEASE STREET PTY LTD (LOTS 4 & 5)

PATONA DEVELOPMENT P/L **APPLICANT:** C/- MEWING PLANNING CONSULTANTS P/L GPO BOX 1506 **BRISBANE QLD 4001** 

**INTERESTED PARTIES:** PATONA DEVELOPMENT P/L MEWING PLANNING CONSULTANTS P/L **77 ARCHITECTURE** STANTEC CMG CONSULTING ENGINEERS FORESIGHT PARTNERS **RMA ENGINEERS** CIVIL WALKER CONSULTING ENGINEERS MD LAND SURVEYS JEREMY FERRIER LANDSCAPE ARCHITECT LOCATION IQ CONNOR O'MEARA

> Note: The identification of interested parties is provided on a best endeavours basis by Council Officers and may not be exhaustive.

4

LOCATION OF SITE: 128, 130-132, 134, & 136 PEASE STREET, MANOORA

> LOT 1 ON C198202, LOT 2 ON C198226, LOT 4 ON RP744008, & LOT 5 ON RP722608.

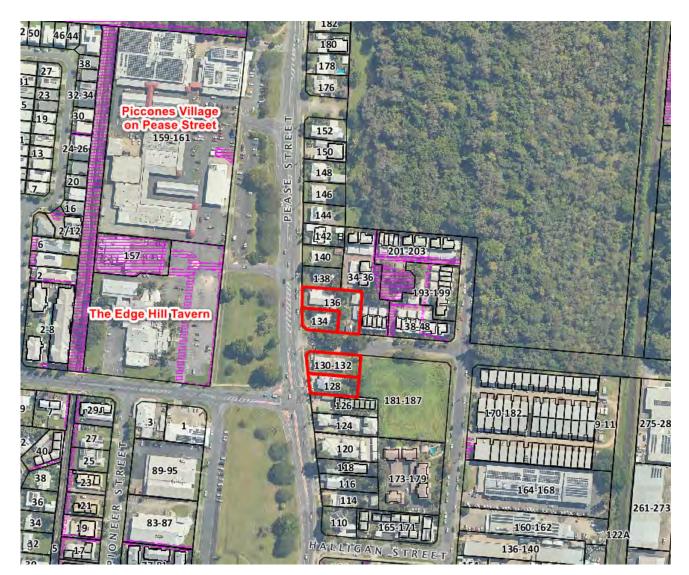
> > CAIRNSPLAN 2016 V3.1

**PROPERTY**:

PLANNING SCHEME:

ZONE:	MEDIUM DENSITY RESIDENTIAL
LOCAL PLAN:	NONE
REFERRAL AGENCIES:	NONE
NUMBER OF SUBMISSIONS:	SIXTY-ONE (61)
<u>STATUTORY ASSESSMENT</u> DEADLINE:	EXPIRED
APPLICATION DATE:	
<u>ATTEIO/(TION B/(TE.</u>	10 AUGUST 2023
DIVISION:	10 AUGUST 2023 7

LOCALITY PLAN



#### **RECOMMENDATION**

That Council refuse the application seeking a Development Permit for a Material Change of Use for two (2) Food and Drink Outlets over land formally described as Lot 2 on C198226, Lot 1 on C198202, Lot 5 on RP722608, and Lot 4 on RP744008 situated at 128, 130-132, 134, & 136 Pease Street, Manoora for the following reasons:

#### **Departure from Policy Direction**

- 1. The proposed development does not comply with the policy direction for the Planning Scheme expressed in Part 3 Strategic Framework in CairnsPlan 2016 Version 3.1 (Planning Scheme), in particular:
  - a. The development would lead to the establishment of a centre activity outside of a Centre Zone or the effective expansion of a Centre where such use of premises is not anticipated by the Planning Scheme and would undermine the role and function of the Centres within the hierarchy of Centres, as reflected in Specific Outcome 3.3.2.1(2);
  - b. The development does not consolidate within or contribute to the consolidation of existing, established Centres. The application does not demonstrate a sufficient need to warrant support for out of Centre development and compromises the amenity of the surrounding residential area and the role and function of the proximate Manoora District Centre, as reflected in Specific Outcome 3.3.2.1(3);
  - c. The development will result in the inappropriate use of well located and serviced medium density residential zoned land that can otherwise be used to provide for a variety of higher density residential living options that takes advantage of the range of activities, services, and public transport facilities proximate to the land, as reflected in Specific Outcome 3.3.2.1(4); and
  - d. The development proposes non-residential uses on residential land that are not considered to be appropriate for the location as they will detract from the residential amenity of the area and compromise the role and successful function of the proximate Manoora District Centre, as reflected in Specific Outcome 3.3.5.1(3).

Non-residential use on residential land

2. The Planning Scheme, through the Strategic Framework and Zone Code, provides clear planning policy that residential land, including that within the Medium Density Residential Zone, is used for its anticipated purpose and places stringent criteria on the establishment of non-residential uses. This is to ensure that there is appropriate land available to meet projected population growth and to contribute to the vitality and vibrancy of centres, such as the Manoora District Centre, by locating higher density residential development in proximity to such Centres.

The proposed development is inconsistent with the residential amenity that is reasonably expected to be achieved within the Medium Density Residential Zone. Whilst the Zone contemplates that non-residential uses may establish in particular circumstances, including where development does not detract from residential amenity; those are not present in this application. The intensity of the non-residential use will result in a different amenity from that associated with a residential development, including as a result of light, noise and traffic generation. Impacts from these matters are considered to be greater than what would reasonably be expected in the Zone and therefore, will detract from the desired residential amenity.

The proposed development involves the establishment of non-residential uses over four (4) lots within the Medium Density Residential Zone that are:

- 1. of a type not contemplated for the Zone, resulting in the loss of welllocated and serviced land able to accommodate higher density residential living.
- 2. are of a scale, both in terms of the design and distribution of the built form and the anticipated traffic (number of customers) to visit the site, that:
  - i. exceeds the form and function of a small scale service that supports local residents; and
  - ii. in conjunction with item (i) above, seeks to service a community that extends beyond the local trade area.

The proposed development, therefore, does not comply with:

- Part 3 Strategic Framework Section 3.2, Section 3.3.1(1)(c) and (l), Section 3.3.2.1(3), Section 3.3.2.1(4), Section 3.3.5.1(1) and (3), Section 3.3.5.1(4); and
- b. Part 6 Zones 6.2.12 Medium Density Residential Zone Code Purpose Statement 6.2.12.2(1)(a) and (b); Purpose Statement 6.2.12.2(2); Overall Outcome Section 6.2.12.2(3)(a), (b), (c), & (h); and Performance Outcomes PO3, PO4 and PO7.

Impact of centre activities and on the hierarchy of centres

3. The proposed development involves Centre activities of a design, scale, and intensity that will compromise the existing and ongoing role and function of the hierarchy of Centres through fragmentation, particularly the Manoora District Centre.

Additionally, the development is out of Centre development on land that has the ability to contribute to the vitality and vibrancy of an existing Centre through providing higher densities of residential development proximate to a District Centre/s.

Accordingly, the proposed development does not comply with:

- Part 3 Strategic Framework Section 3.2 Strategic Intent; Strategic Outcome in Section 3.3.1(1)(d); Specific Outcomes in Section 3.3.2.1(3) and Section 3.3.2.1(7)(b) of Element Centres and Centre Activities; and
- b. Part 9 Development Codes 9.3 Other Development Codes 9.3.1 Centre Design Code – Purpose Statement 9.3.1.2(1), Purpose Statement 9.3.1.2(2)(c)(v); Overall Outcome Section 9.3.1.2(2)(a) and (b), and Performance Outcomes PO3 and PO4.

#### Need

- 4. The application material fails to satisfactorily consider and demonstrate that there is insufficient:
  - a. capacity within existing Centre zoned land or other suitably zoned land inside the Primary Trade Area (PTA) to accommodate the proposed activities;
  - b. appropriately zoned land within the PTA to accommodate the proposed activities, which is not limited to vacant allotments; and
  - c. need for the land to accommodate:
    - i. residential development as anticipated by the Planning Scheme for the Medium Density Residential Zone; or
    - ii. medium density residential development in and around a District Centre.

The development does not demonstrate a level of need for the two (2) food and drink outlets that justifies the proposed location for the development. The level of demand identified by the proposal is insufficient to justify a departure from the planning purpose for the land for Medium Density Residential Development, particularly where the Planning Scheme supports activities that contribute to economic growth in more appropriate areas and there is capacity within existing Centres and Mixed Use Zones identified in the Planning Scheme for the PTA to accommodate these services. The proposed development does not comply with:

Part 3 – Strategic Framework – Section 3.2 Strategic Intent; Strategic Outcome in Section 3.3.2.1(3) and Section 3.3.2.1(7) of Element – Centres and Centre Activities; Strategic Outcome in Section 3.3.5.1 (3) and (4) of Element – Residential Areas and Activities, Strategic Outcome in Section 3.5.1(3); Strategic Outcome in Section 3.5.2.1(1) and Section 3.5.2.1(5) of Element – Strong and Diverse Economy.

### **RELEVANT MATTERS**

- 5. There are relevant matters which favour refusal of the application which include:
  - a. The Development Application has not demonstrated a level of economic, community and planning need of sufficient magnitude required to justify a departure from the clear policy direction of the Planning Scheme in relation to the appropriate use of Medium-Density Residential Zoned land;
  - b. The proposed development would adversely impact the availability of Medium Density Residential Zoned land in accommodating projected growth of the local area;
  - c. The non-compliance with assessment benchmarks is significant and is not capable of being addressed or mitigated by development conditions;
  - d. The proposed development is inconsistent with reasonable community expectations as informed by the Planning Scheme, existing uses, and development approvals for the land and adjoining land, which do not support commercial development on the land of this nature, scale or intensity;
  - e. The proposed development is not in the public interest (as reflected in the Planning Scheme); and
  - f. Refusal of the proposed development will advance the purpose of the *Planning Act 2016* (Qld).

#### Summary:

The proposed development complies with some assessment benchmarks (or could be conditioned to comply) and is supported by some of the relevant matters identified in the Development Application. However, a balanced assessment taking into account all the facts and circumstances of the development, including the nature and extent of the non-compliances with the assessment benchmarks as a whole and together with the relevant matters, weigh in favour of refusing of the development application.

## **EXECUTIVE SUMMARY**

Council is in receipt of a development application seeking a Development Permit for a Material Change of Use for two (2) Food and Drink Outlets over land located at 128, 130-132, 134, & 136 Pease Street, Manoora, formally described as Lot 2 on C198226, Lot 1 on C198202, Lot 5 on RP722608, and Lot 4 on RP744008.

The subject site is wholly located within the Medium Density Residential Zone of CairnsPlan 2016 v3.1 and is affected by the following Overlays:

- Acid Sulfate Soils;
- Airport Environs;
- Bushfire Hazard;
- Flood and Inundation Hazard, and
- Transport Network.

Further, under the *Far North Queensland Regional Plan 2009-2031 (FNQRP)*, the site is included wholly within the Urban Footprint.

The development is subject to Impact Assessment within the Medium Density Residential Zone of the CairnsPlan 2016 v3.1.

The application was publicly notified by the Applicant. A total of 61 submissions were received, comprising 28 properly made submissions and 33 not properly made submissions.

The application did not trigger referral to the State Assessment Referral Agency (SARA) for any matters of State interest.

The proposed development has been assessed in accordance with the legislative framework for Impact Assessment under the *Planning Act 2016* (Qld).

The ability of the proposal to comply with the relevant assessment benchmarks primarily depends on whether the proposed development:

- Is consistent with residential land use policy, the existing residential character, and the development contemplated by the relevant zone;
- Will result in any unacceptable amenity impacts that cannot be appropriately avoided, mitigated, or managed (by order of preference) through the imposition of lawful development conditions;
- Is for a use/s that are appropriate for the site; and
- Is supported by a demonstrated need (community, economic, and planning) for the proposed development on the subject land.

On balance, it is considered that the proposal to develop two (2) Food and Drink Outlets over the site departs from the provisions of CairnsPlan 2016 Planning Scheme v3.1, and the *State Planning Policy* (SPP 2017). The facts and circumstances of the proposed development, including the nature and extent of the non-compliances, the relevant matters identified to support the proposal, and the purpose of the Act, weigh in favour of refusing this application.

It is therefore recommended that Council, as Assessment Manager, refuse the Development Application in full.

#### TOWN PLANNING CONSIDERATIONS

#### Background

#### 130-132 Pease Street, Manoora (Lot 1 C198202):

On 28 February 2022, a Development Permit 8/30/365 was granted under Instrument of Delegation for Reconfiguring a Lot (1 Lot into 2 Lots) and a Material Change of Use for 2x Dual Occupancies. This approval sought to subdivide the existing land parcel into 2 separate allotments and allow for the establishment of a Dual Occupancy on each lot (Council Reference: #6920161).

On 8 August 2022, Development Permit 8/10/1207 was granted under Instrument of Delegation for Operational Works. This Permit approved the Civil Works associated with constructing the approved subdivision (Council Reference: #7017946).

#### **Development Application:**

December 2022: Pre-lodgement discussions have occurred about the proposed development between the Applicant and Council. The initial pre-lodgement request sought advice on establishing a single Food and Drink Outlet over land at 134 & 136 Pease Street, Manoora (Lot 4 on RP744008 & Lot 5 RP722608) (Council References: #7096471 & #7104517).

On 3 February 2023, A written prelodgement response was provided to the Applicant that advised that the preliminary needs assessment indicated a demand for the development, but that a more robust assessment would be required to be provided to Council. The Applicant was advised that so long as technical reports provided support for the development, that there was merit to the proposal (Council Reference: #7123248).

On 11 August 2023, The Development Application currently under consideration was lodged with Council for assessment (Council Reference: #7250692).

On 23 August 2023, A Confirmation Notice was issued to the Applicant confirming that the Development Application was properly made in accordance with section 51(5) of the *Planning Act 2016* (Qld) (Council Reference: #7256716).

On 31 August 2023, Council requested an extension to the Information Request period until 20 September 2023 (+10 BD) to allow additional time for a third-party, suitably qualified person to review the Economic Needs Assessment provided by the Applicant (Council Reference: #7262368). On 1 September 2023 the Applicant agreed to this extension, with the formal agreement issued by Council on 5 September 2023 (Council Reference: #7264375).

On 20 September 2023, Council issued the Information Request which sought further detailed information on which to complete the assessment of the application. The information requested related to establishing a sound economic need, adequate assessment against the applicable assessment benchmarks and recommendations to address noise impacts, landscaping, staging, and delivery which were not sufficiently addressed in the application material (Council Reference: #7274139).

On 17 October 2023, the Applicant responded to the Information Request (Council Reference: #7290773, #7290772, #7290768, #7290766, & #7290765).

On 17 October 2023, the Applicant provided a Notice of Intent to Commence to Council advising that public notification of the application would occur, starting on 19 October 2023 and ending on 10 November 2023 (Council Reference: #7288726).

On 13 November 2023, A Notice of Compliance confirming that all actions were undertaken in accordance with section 18.1 of the *Development Assessment Rules* (*DA Rules*) was provided to Council (Council Reference: #7304557).

A total of 61 submissions were received during the public notification period.

On 29 November 2023, the Applicant provided a response to the matters raised in the submissions (Council Reference: #7311783).

On 19 December 2023, Council issued a Further Advice notice which sought further information in respect to the Economic Need and Impact Assessment (Council Reference: #7317958).

On 21 December 2023, the Applicant provided a preliminary response to the above Further Advice notice (Council Reference: #7322366).

On 21 December 2023, an extension to the Decision Making Period (DMP) was requested to extend the DMP to 31 January 2024 to allow Council sufficient time to review the response to the Further Advice notice,. The Applicant agreed to this extension on 21 December 2023.

On 22 December 2023, an Applicable Event Extension Notice was issued by the Minister under Section 275R of the *Planning Act 2016* (Qld) which extended the Decision Period by 20 business days under part 5, section 22.1 of the *DA Rules*. This Extension Notice extended the DMP until 6 February 2024 and the Applicant was notified of this Extension Notice on 12 January 2024 (Council Reference: #7329106).

on 18 January 2024, a meeting was requested and held to discuss outstanding assessment matters(Council Reference: #7335190).

On 9 February 2024, Council issued a Notice of Intent to Refuse on the basis that the application material has not demonstrated sufficient need for the development in addition to a number of critical non-compliances with the relevant Planning Scheme provisions, where lawful development conditions would be unable to resolve the non-compliances (Council Reference: #7348371).

On 12 February 2024, the Applicant submitted a request to stop the clock until 16 February 2024 to allow the Applicant additional time to consider how they wish to proceed with the application (Council Reference: #7357037).

On 14 February 2024, the Applicant requested to extend the Stop the Clock period for an additional five (5) business days, up to and including 23 February 2024 (Council Reference: #7359446).

On 22 February 2024, the Applicant requested to extend the Stop the Clock period for an additional five (5) business days, up to and including 1 March 2024 (Council Reference: #7364177).

On 28 February 2024, the Applicant requested to extend the Stop the Clock period for an additional three (3) weeks, up to and including 22 March 2024 (Council Reference: #7367411)

On 21 March 2024, the Applicant requested to extend the Stop the Clock period for an additional five (5) business days, up to and including 28 March 2024 (Council Reference: #7385868).

On 19 March 2024, the Applicant submitted further independent economic need advice which sought to consider the findings and recommendations of both previous economic impact assessments prepared by Foresight Partners and the review letter prepared by Cummings Economics on behalf of Cairns Regional Council (third-party review) (Council Reference: #7385876).

On 27 March 2024, the Applicant requested to extend the Stop the Clock period for an additional three (3) weeks, up to and including 19 April 2024 (Council Reference: #7388573) to allow Council sufficient time to consider the additional information provided on 19 March 2024.

On 16 April 2024, the Applicant requested to extend the Stop the Clock period for an additional five (5) business days, up to and including 26 April 2024 (Council Reference: #7400484)

On 24 April 2024, the Applicant requested to extend the Stop the Clock period for an additional five (5) business days, up to and including 3 May 2024 (Council Reference: #7406167).

On 3 May 2024, Officers provided a response to the Applicant advising that Council has reviewed the additional material provided and seeks to maintain its position to refuse the Development Application (Council Reference: #7410957).

On the same day (3 May 2024), the Applicant requested to extend the Stop the Clock period for an additional five (5) business days, up to and including 10 May 2024 (Council Reference: #7411117).

On 8 May 2024, the Applicant provided a response to Council's email dated 3 May 2024 seeking to address Council's concerns around Planning Need and Planning Scheme non-compliances (Council Reference: #7419584).

### Site and Surrounds

The site comprises of four (4) land parcels and is located at 128, 130-132, 134, & 136 Pease Street, Manoora. The subject site is separated via Patience Street, with 128 & 130-132 Pease Street located on the southern side of the carriageway and 134 & 136 Pease Street located on the northern side of the carriageway. All land parcels are currently improved with residential dwellings with 136 Pease Street also including ancillary sheds.

The site is located approximately 4.1km northwest of the Cairns City Centre, sits directly opposite a District Centre (The Manoora District Centre), and is within proximity to a variety of community facilities. Two (2) of the four (4) land parcels are afforded direct access to Pease Street with the other two (2) land parcels accessed via Patience Street.

Pease Street is a Sub-arterial Road improved with turning slip lanes, a painted median strip and traffic islands, and connects the subject site to Edge Hill to the north, Whitfield to the west, Manunda to the east, and Westcourt & Earlville to the South. Patience Street is identified as an Access Road on Council's Road Hierarchy mapping and includes bollards to prevent a direct connection between Mayers Street and Pease Street. The section of Patience Street that would service the development currently only services the two (2) residential lots associated with the Development Application.

The subject site has road frontage to both Pease Street and Patience Street. The local area in Manoora is characterised by a mix of land use activities, including detached housing on a variety of lot sizes, townhouses, apartment buildings, retail, commercial and industry developments, special use (education), and public open space.

In addition to the above context considerations, the subject site has the following features:

Cumulative Site Area	2,191m <sup>2</sup>
Existing Use of Land	Residential (Dwelling Houses)
Road Frontage	43m to Pease Street and 49m to Patience Street
Topography	Generally flat (as all sites accommodate improvements).

#### Table 1: Site description and details

Infrastructure	unformali telecomm improved stormwat	Road access via Pease Street (Patience Street sed), reticulated water & sewer, power & nunications. The sites Pease Street frontage is by and connected to Council's underground er network, with Patience Street generally shaped rge waters to Pease Street.
Surrounding Land Uses	North:	single storey dwelling houses;
	East:	two-storey multiple dwellings, vacant land, a small industrial pocket and mixed use land accommodating a variety of commercial activities);
	West:	Manoora District Centre, including Piccones Shopping Village, the Edge Tavern, a variety of food outlets, and a variety of non-residential activities (including indoor spot and recreation activities (bowling alley) and a place of workshop. Beyond this, the area is categorised by higher density living options which is represented by a mix of small lots, duplexes, triplexes, and small to medium sized unit developments; and
	South:	two-storey multiple dwellings and commercial offerings along Anderson Street and Pease Street.

**Figure 1** (below) outlines the Centre and Mixed-use (Commercial & Trades and Services Precincts) zoned land in the Primary Trade Area (PTA).



Figure 1: Locations of Centre and Mixed-Use (Commercial and Trades & Services Precinct) Zoned Land within the PTA

It is considered that there are more suitable areas within the PTA to accommodate the proposed development when considering that the subject site presents as four (4) land parcels, separated by a road. Further, in Officers understanding of the proposal and the type / nature of the food outlet products on offer, the proposed buildings are not required to be delivered together or as one (1) single development (i.e., each outlet can be delivered separately and on different parcels of land), which is evident by the current proposed configuration of the development.

The Application material has only contemplated the requirement for the development to:

- (a) be delivered and contained on a single allotment (or lots adjoining each other); and
- (b) on vacant land.

Officers consider that this does not appropriately reflect the opportunities available within the PTA to accommodate this development on the basis that the subject site comprises of four (4) individual, improved parcels of land that do not directly adjoin each other and are separated by a road (Patience Street).

Officers are of the view that there are several more suitable locations in the PTA that can support the development proposal, whether it be together or separately.

Therefore, it is considered that the application material has not:

- (a) appropriately considered alternative sites within the PTA are appropriately zoned and would be more suitable to accommodate the proposed development, specifically without limiting the assessment to vacant land;
- (b) contrarywise to item (a), suitably demonstrated that there is no appropriate zoned and within the PTA to accommodate the proposed activities.

#### Planning Instruments

CairnsPlan2016, is the Planning Scheme for the City of Cairns; applying to all land contained within the Cairns Regional Council Local Government Area.

Under the current Planning Scheme, CairnsPlan 2016 v3.1, the subject site is zoned Medium Density Residential as shown in **Figure 2** (below).

The development seeks approval for two (2) x Food and Drink Outlets which is a defined use in Schedule 1 of the Planning Scheme.

As per Table 5.5.I – Medium Density Residential Zone table of assessment, the level of assessment for the proposed development is Impact Assessment.

A Food and Drink Outlet is a Centre Activity as per Schedule 1.1.1 of the Planning Scheme.

As per the current Zone and Overlays applying to the site, an Impact Assessable Development Application for a Material Change of Use is required. The full list of assessable benchmarks is found later in this report.



Figure 2: Extract from CairnsPlan 2016 showing zoning of subject site and surrounds

## Far North Queensland Regional Plan 2009-2031 (FNQRP)

CairnsPlan 2016 version 3.1 states 'the minister has identified that the planning scheme, specifically the strategic framework, appropriately advances the Far North Queensland Regional Plan 2009-2031, as it applies in the planning scheme area'.

The FNQRP designates the whole of the site within the Urban Footprint, as depicted in **Figure 3**.



Figure 3: Extract from Regional Planning mapping of the subject site and surrounds

The FNQRP is also considered to be an assessment benchmark for the assessment of this Development Application. However, a separate assessment of the development against the FNQRP is not required as all applicable provisions have been fully integrated into the CairnsPlan 2016 v3.1.

## Proposal

The Applicant seeks a Development Permit to develop the subject site for the purposes of establishing two (2) drive-thru Food and Drink Outlets, incorporating indoor and outdoor dining options.

The application material breaks the subject site into two (2) 'development sites' with Patience Street separating land. The first development site is the northern land parcels (134 (Lot 5) & 136 (Lot 4) Pease Street) while the second development site is associated with the southern land parcels (128 (Lot 2) & 130-132 (Lot 1) Pease Street).

Generally, each Food and Drink Outlet product presents as a single storey product, incorporating a drive-thru facility with two (2) ordering lanes, a waiting bay, off-street parking, and general landscaping inputs.

#### Development Site 1 (134-136 Pease Street):

The specific details of the proposal on Development Site 1 are noted in the below.

Use Proposed	Drive-Thru Food and Drink Outlet.
Gross Floor Area	236m <sup>2</sup>
Outdoor Dining	40m <sup>2</sup>
Site Cover	15.8%
Building Height	One (1) storey and 5.3m
Hours of Operation	10am to 10pm
Landscaping	22.6% (495m <sup>2</sup> )
Sewerage	There is an existing sewer main that services both land parcels. The development will connect into this existing main and any existing property connection branches (PCB) will be removed.
Water	There is an existing water main that traverses both street frontages that services the subject site.

#### Table 2: Development Site 1 - Proposal Overview

Drainage	All runoff from within the site will be captured via an internal drainage pit and pipe network and directed to the existing kerb and channel in Pease Street and Patience Street.
Access	The site allows ingress and egress movements from both Pease Street and Patience Street.
Vehicle Parking Spaces	24 car parking spaces, inclusive of one (1) PWD space.
Bicycle Parking Spaces	Two (2) bicycle spaces.

## Development Site 2 (128 & 130-132 Pease Street)

The specific details of the proposal on Development Site 1 are noted in the below.

Use Proposed	Drive-Thru Food and Drink Outlet.
Gross Floor Area	277m <sup>2</sup>
Outdoor Dining	Nil
Site Cover	14.9%
Building Height	One (1) storey and 6.1m
Hours of Operation	10am to 10pm
Landscaping	19% (354m²)
Sewerage	There is an existing sewer main that runs along the Patience Street frontage of the site that will be utilised to service this development site.
Water	There is an existing water main that runs along Pease Street that services this development site.
Drainage	All runoff from within the site will be captured via an internal drainage pit and pipe network and directed to the existing kerb and channel in Pease Street and Patience Street.
Access	The site allows ingress and egress movements from Patience Street only. No vehicular access is proposed from Pease Street.
Vehicle Parking Spaces	18 car parking spaces, inclusive of one (1) PWD space.
Bicycle Parking Spaces	Two (2) bicycle spaces.

Table 3: Develo	oment Site 1 -	- Proposal Overview

The Applicant submits, broadly, that the application should be approved on the following grounds:

- a. The site is located in a highly accessible location on the corners of Pease Street and Patience Street and opposite a District Centre;
- b. There is a clear planning intention to allow for non-residential uses within the Medium Density Residential Zone, having regard to particular criteria;
- c. The Economic Needs and Impact Assessment has concluded that the proposed development is sufficiently supported by existing demand and future demand due to population growth in the surrounding catchment area, demand growth, and will improve the variety of choice in Food and Drink Outlets, and will not adversely impact upon the hierarchy of Centres;
- d. The Economic Needs and Impact Assessment has undertaken an assessment of alternative sites and concluded that there are no alternate suitable sites and existing approvals are not suited to the particular nature of the Food and Drink Outlets proposed (i.e., to accommodate a drive-thru product);
- e. The development will provide for the identified convenience needs of the local community;
- f. The development will result in a positive economic and social benefit for the local community;
- g. The development will contribute to the local amenity and activation of the streetscape;
- h. The development will incorporate suitable acoustic fencing along all common boundaries to mitigate potential amenity impacts on adjoining residential uses; and
- i. Planning Need does not need to be demonstrated as the Medium Density Residential Zone Code anticipates that non-residential uses can be established within the zone, where achieving particular criteria expressed in overall outcome (3)(h) and PO4 of the Zone Code.

Importantly, while the application includes details of signage, this does not form part of the application and is assessed under Local Law No. 4. It must, however, be noted that Local Law No. 4 does not support signage with illuminated components in residential areas or in areas surrounded by sensitive receptors.

## Materials Assessed in the Application

The Applicant provided the following materials during the assessment process:

- Planning Assessment Report prepared by *Mewing Planning Consultants* (Council Reference: #7250692), which includes:
  - Plans of Development prepared by 77 Architecture;
  - Economic Need and Impact Assessment prepared by *Foresight Partners Pty Ltd*.
  - Traffic Impact Assessment prepared by *RMA Engineers Pty Ltd*;
  - Stormwater Management Plan prepared by *C.M.G. Consulting Engineers Pty Ltd*; and
  - Noise Impact Assessment prepared by *Stantec*.

- Applicant's response to Council's Information Request (Council Reference: #7290773, #7290772, #7290768, #7290766, #7290765, and #7290775), including:
  - Planning Response to Information Request prepared by *Mewing Planning Consultants*;
  - Updated Architectural Package prepared by 77 Architecture;
  - Landscape Concept Plan prepared by Jeremy Ferrier Landscape Architects;
  - Economic Need Response Letter prepared by Foresight Partners Pty Ltd;
  - Updated Economic Need and Impact Assessment prepared by Foresight Partners Pty Ltd;
  - Updated Noise Impact Assessment prepared by Stantec;
  - Amended CairnsPlan Code Assessment prepared by *Mewing Planning Consultants;*
  - Conceptual Earthwork Plan prepared by *CMG Consulting Engineers*;
  - Conceptual Roadworks Plan prepared by *CivilWalker Consulting Engineers;* and
  - Contour and Detail Survey prepared by *MD Land Surveys*.
- Applicant's response to Council's Further Advice Notice (Council Reference: #7345716), including:
  - Economic Response to Further Advice prepared by Foresight Partners Pty Ltd
- General application correspondence from the Applicant;
- Comments from internal stakeholders;
- Peer Review of Economic Need and Impact Assessment by *Cummings Economics* and *Urban Economics*, respectively (Council Reference: #7349475 & #7364178 respectively);
- Submissions made to the application;
- The Applicant's response to the submissions made to the application (Council Reference: #7311783);
- The Applicant's third-party Independent Analysis of Need prepared by *Location IQ* (Council Reference: #7385876); and
- Letter of Advice prepared by *Connor O'Meara Solicitors* (Council Reference: #7385876).

These materials have been considered in the assessment of the application.

# Relevant Assessment Benchmarks Criteria for Assessing Impact Assessable Development

Assessment Benchmarks (in effect when the application was properly made)	
Schedules 9, 10 & 12A of the Planning Regulation 2017 (PR)	There are no relevant assessment benchmarks under these Schedules.
State Planning Policy (SPP) 2017 - Part E	The SPP contains the State Interest Policies and Assessment Benchmarks which are applicable to the development. The subject site is affected by the following State Interests:
	<ul> <li>Flood Hazard Area – Level 1 – Queensland Floodplain Assessment Overlay;</li> </ul>
	• Flood Hazard area – Local Government Flood Mapping Area;
	Bushfire Prone Area;
	Medium Storm Tide Inundation Area;
	High Storm Tide Inundation Area;
	Obstacle Limitation Surface Area;
	Lighting Area Buffer 6km;
	Wildlife Hazard Buffer Zone;
	Aviation Facility.
	Section 2.1 of the CairnsPlan 2016 Planning Scheme v3.1 confirms that the July 2014 SPP has been appropriately integrated into the Planning Scheme, with the exception of the Natural Hazards, risk and resilience (for coastal hazards- erosion prone area).
	Accordingly, assessment of the Development Application against the assessment benchmarks in SPP 2017 Part E are required – Officer assessment commentary is provided below.
	The SPP states that the Performance Outcomes (assessment benchmarks) of 'Part $E$ – Assessment Benchmarks – Natural Hazards, Risk and Resilience' apply to the development and these benchmarks have been addressed in the application material, with compliance demonstrated.
Far North Queensland	The FNQRP designation is: Urban Footprint.
Regional Plan 2009-2031 (FNQRP)	The Regional Plan has been appropriately integrated and reflected through the CairnsPlan 2016 Planning Scheme v3.1.
Temporary Local Planning Instrument (TLPI)	There are currently no TLPI in effect over the subject land.
Variation Approval	There are currently no variation approvals affecting the subject site.

Council's Local Government Infrastructure Plan (LGIP).	Version 2.2 dated January 2019 was in effect when the application was properly made. The LGIP supports Council's policy position regarding urban development in the urban footprint. The proposed development is wholly located within the PIA and is within an existing urban area
	as identified within CairnsPlan 2016 v3.1.
Local Categorising Instrument	The current Planning Scheme in effect for the Cairns Local Government Area is the CairnsPlan 2016 Planning Scheme v3.1. Section 5.4(3)(b) states that Impact Assessable development must be assessed against the whole scheme to the extent relevant.
Local Categorising Instru	ment – CairnsPlan 2016 v3.1
Purpose of Instrument	Strategic Framework
Zone	Medium Density Residential Zone
Local Plan	N/A
Overlays	Acid Sulfate Soils Overlay Code:
	Land at or below 5m AHD.
	Airport Environs Overlay Code:
	Facilities Map – Area of Interest;
	Light Intensity – Lighting Area Buffer;
	OLS – 46m AHD; Duran kana fan Ain Navinstinn Dan ingen Ainmaft Onem tinnet
	Procedures for Air Navigation Services – Aircraft Operational (PANS-OPS) Surfaces; and
	Wildlife Hazard – 3 kilometre buffer zone.
	Bushfire Hazard Overlay Code:
	Potential Impact Buffer.
	Flood and Inundation Hazards Overlay Code:
	Precinct 3 – Sub-precinct Zone 2 – CBD and Environs;
	Storm Tide Inundation Hazard Area;
	Inundation Hazard Area; and
	Flood Inundation Trigger Area.
	Transport Network Overlay Code:
	Principal Route (Pease Street);
	Pedestrian Access Street (Pease Street);
	Sub-Arterial Road (Pease Street); and
	Access Road (Patience Street).

Development Codes	Centre Design Code
	Environmental Performance Code
	Excavation and Filling Code
	Infrastructure Works Code
	Landscaping Code
	Parking and Access Code
	Vegetation Management Code

## **Strategic Framework Assessment**

The development is subject to Impact Assessment and therefore requires assessment against the Strategic Framework of the CairnsPlan 2016, in accordance with section 45(5) of the *Planning Act 2016* (Qld).

Strategic Framework	Assessment	
3.2 Strategic Intent	The Strategic Intent states that the region offers a range of housing styles and living options that provide for the varying needs and life stages of the community; and that vibrant and well-connected centres provide higher density living opportunities around employment, entertainment, transport, and community services.	
	The proposed development will result in the loss of four (4) Medium Density Residential Zoned land parcels, all of which hold the ability to provide higher density residential products as supported by the Zone. As such it is considered that the development would be reducing the extent of housing styles and living options in the area; and subsequently reducing the residential density in the area which is inconsistent with the strategic intent given that there is an existing District Centre located on the western side of Pease Street (adjacent to the site).	
	The proposed development is inconsistent with the sections of the Strategic Intent for reasons outlined above.	
3.3 Settlement Pattern Theme		
3.3.1 Strategic Outcomes	The Applicant contends that <i>"it has been demonstrated as part of the Economic Needs Assessment that there is a clear economic and community need for the proposed development and the development does not adversely impact any existing, planned and future centres within the identified catchment area".</i>	

Α	Officers consider that the Economic Needs and Impact Assessment has not adequately demonstrated that the development:
•	will not compromise the existing and on-going hierarchy of centres; and
•	that there is not existing capacity within existing Centres and mixed Use Zones within the PTA; and
•	The land is suitable to accommodate the proposed Food and Drink Outlets to meet unmet demand without impacting the availability of medium-density residential land to provide for residential at higher densities as anticipated by the Zone.
e S n C a C	For example, there is land available, and capacity, on the existing Raintrees Shopping Centre site (33-63 Alfred Street, Manunda (Lot 4 on RP746531). There are also a number of vacancies within the Raintrees Shopping Centre and within the Centre more broadly that could accommodate an expanded array of Food and Drink Dutlet products that could cater to any demonstrated annet demand or economic and/or community need.
a ra n ta d t t l	Officers consider that there has been insufficient analysis of the need to retain or explore the impacts of emoving the ability for the subject site to provide for nedium density residential activities. This includes aking into account impacts that would be realised as a directly result of the proposed development; specifically he availability of medium density residential land in the ocality and the ability to accommodate projected population growth in Manoora.
h F v ti	Further, the Economic Need and Impact Assessment has not considered the capacity of the Medium Density Residential Zoned land to accommodate future growth within the PTA and the role of this Zone in contributing to he vitality and vibrancy of the existing Manoora District Centre, and the hierarchy of Centres more broadly.
5	The proposed development is inconsistent with the Strategic Outcomes of the Settlement Pattern Theme putlined above.

3.3.2 Element – Centres and Centre Activities	The Applicant states that <i>"the proposed</i> Food and Drink Outlets are small in scale and does not compromise the existing and ongoing hierarchy of centres. The proposed development does not compete or compromise the economic viability of the opposite District Centre".
	The proposed development is an out of centre, centre activity, which is considered as an effective expansion of the Manoora District Centre. The development compromises the role and successful function of the centre as a District Centre within the centre hierarchy and other centres which are intended to accommodate uses of the type proposed. The development does not demonstrate sufficient community need to justify the expansion of a Centre or the establishment of an out of centre, centre activity. It also fails to contribute to the achievement of consolidating centres. As a result, the development departs with the Planning Scheme's intent for Centres and Centre Activities.
	The Development Application does not consider vacancies and/or development opportunities within existing centres within the PTA, such as the Raintrees Shopping Centre (33-63 Alfred Street, Manoora (Lot 4 on RP746531) and the Manoora District Centre (145-155, 157, & 159-161 Pease Street (Lot 1 RP727285, Lot 2 RP891023, & Lot 3 RP891023).
	The sites for the proposed Food and Drink Outlets are on the inbound side of Pease Street which conflicts with the lunch and dinner focus of the proposed food chains (GYG & KFC). In addition to this, the proposed development is more internally located to the suburban area than that typically associated with Food and Drink Outlets of this nature.
	Further, this element encourages higher density residential development be provided to take advantage of the range of activities, services, and public transport facilities located within close proximity. There has been little-to-no analysis of the need to retain the subject site for higher density residential living options in proximity to a District Centre. The Economic Need and Impact Assessment does not sufficiently consider the capacity of the Medium Density Residential Zoned land to accommodate future growth within the PTA and the role of this Zone in contributing to the vitality and vibrancy of the existing Centre.
	The development conflicts with this Element of the Settlement Pattern Theme.

r

3.3.3 Element – Mixed Use Areas and Specialised Centres	The proposal does not compromise this element.
3.3.4 Element – Industry Areas and Activities	The proposal does not compromise this element.
3.3.5 Element – Residential Areas and Activities	The Applicant has stated that "the proposed Food and Drink Outlets are non-residential uses within a residential zone. The Economic Needs Assessment identifies that there is a community need, and the scale of the development and positioning, will not detract from the residential amenity of the area or compromise the role and successful function of the opposite centre".
	The Economic Needs and Impact Assessment states that a community need is demonstrated through:
	<ul> <li>the provision of an improved variety and choice in Food and Drink Outlets;</li> </ul>
	<ul> <li>the fact that drive-thru Food and Drink Outlets would provide significant co-locations and convenience benefits to residents in the PTA; and</li> </ul>
	• the fact that a modest number of construction jobs would be supported during the construction and on-going employment once operational.
	However, as previously advised, there is existing capacity to accommodate additional Food and Drink Outlets within existing Centres and Mixed Use Zones within the PTA which would more suitably address any community need and would reflect the intent of this Element that wasn't explored by the Economics Need Assessment.
	It is considered that even where economic need and community need can be demonstrated, there is existing capacity within and contemplated by the Scheme to allow for the expansion of the array and choice of Centre activities, including Food and Drink Outlets, within the PTA. Therefore, a sound planning need for the development has not been established.
	Further, the entire eastern side of Pease Street (98 – 208 Pease Street) comprises of Dwelling Houses and Multiple Dwelling developments, with no commercial or retail buildings located on this side of the street. These uses and activities are all consolidated within the existing District Centre on the western side of Pease Street.
	It is acknowledged that some of these existing Dwellings have been converted into Home Based Businesses (i.e.,

	gas fitting, refrigeration, etc.) or small Offices; however, these uses are considered to be small-scale residential activities that can be located outside of a Centre and have retained the residential appearance, character, and amenity of the dwelling house and area. The proposed development is not consistent with the existing local character along the eastern side of Pease Street and the application material has not provided sufficient evidence to justify a departure from the intent expressed in the Scheme for the Medium Density Residential Zone and compromising the role and function of Centres within the hierarchy of Centres.
	The development conflicts with this Element of the Settlement Pattern Theme.
3.3.6 Element – Rural Activities	The proposal does not compromise this element.
3.3.7 Element – Townships and Small Communities	The proposal does not compromise this element.
3.3.8 Element – Islands	The proposal does not compromise this element.
3.3.9 Element – Built Form, Design and City Image	The proposal does not compromise this element.
3.3.10 Element – Places of Significance and Neighbourhood Character	The proposal does not compromise this element.
3.4 Natural Areas and Fea	tures Theme
3.4.1 Strategic Outcomes	The proposal does not compromise the Strategic Outcomes of the Theme.
3.4.2 Element – Biodiversity	The proposal does not compromise this element.
3.4.3 Element – Waterways, Wetlands and Water Catchments	The proposal does not compromise this element.
3.4.4 Element – Landscapes	The proposal does not compromise this element.
3.4.5 Element – Coastal Areas	The proposal does not compromise this element.

3.4.6 Element – Natural Hazards	The proposal does not compromise this element.
3.4.7 Element – Resource Extraction	The proposal does not compromise this element.
3.5 Economic Theme	
3.5.1 Strategic Outcomes	Strategic Outcome 3 states that "economic benefits and opportunities are maximised through the promotion of appropriate land uses, minimisation of land use conflicts and the protection of significant infrastructure".
	The application material has demonstrated that the proposed development could lend itself to improve convenience and accessibility to Food and Drink Outlet products within the PTA; which indicates that there is a level of community need. However, this development must be considered in the context of:
	<ol> <li>more suitable land being available within the PTA to facilitate this type of development (a Food and Drink Outlet); and</li> </ol>
	2. would not compromise the availability of residential land or the role and function of centres.
	For example, the Development Application has not considered the consolidation of the existing Manoora District Centre. This could include exploring opportunities to reconfigure the existing carpark and/or expansion into the adjacent drainage reserve (to accommodate a new car park).
	Additionally, there is capacity at the Raintrees Shopping Centre that is of a size that could accommodate drive thru Food and Drink Outlets. This Centre also has several vacancies in the existing food court that could easily accommodate a range of food and drink outlets to cater for any demonstrated unmet demand and need. In this, it is emphasised that the Planning Scheme does not differentiate between drive thru and non-drive thru Food and Drink Outlets.
	The Planning Scheme encourages higher density development around Centre Zones. The proposed development would be removing the opportunity for high density development to be established on the subject site, including Multiple Dwellings. It is therefore considered that the development does not promote appropriate land uses and increases the extent of land use conflicts by establishing Centre activities outside of appropriately zoned land and in a residential area.

	The development is therefore considered to conflict with the Strategic Outcomes of this Element.
3.5.2 Element – Strong and Diverse Economy	The Applicant has stated that 'the proposed development contributes to diversifying the economy, as there are limited Food and Drink Outlets with associated drive through within the area. The proposed development is small in scale and compliments the opposite District Centre, and meets and economic need for such development in the local area. There are no impacts on the natural environment. The site is adjacent to Pease Street, a sub-arterial road, being a highly accessible area. The development will be provided with appropriate infrastructure necessary to meet the demand of the activity'.
	Specific Outcome 5 states 'development that contributes to diversifying the economy is facilitated in locations where it is:
	(a) compatible with the scale and character of the surrounds and does not adversely impact on the natural environment or supply of agricultural land;
	(b) highly accessible;
	(c) designed to avoid areas that are vulnerable to natural hazards; and
	(d) supported by infrastructure necessary to meet the demand of the activity'.
	The proposed development is not compatible with the scale and character of the site's surrounds. The development would disrupt the delineation between the District Centre and centre activities to the West of Pease Street (and beyond) and the residential uses to the East.
	The establishment of two (2) drive thru Food and Drink Outlets on two (2) sites of circa 1,000m <sup>2</sup> with a GFA of circa 250m <sup>2</sup> each accommodating national retailers is not a service that is compatible with the small-scale non- residential uses contemplated by the Medium Density Residential Zone or the character of the residential area that extends along the eastern side of Pease Street.
	The development has not demonstrated a level of need that would justify a departure from these aspects of the Scheme.
	As stated above, there is capacity in the Scheme for the proposed development to be established in existing Centres and within mixed use zones in a way that would further support planning intent of the Planning Scheme by consolidated existing Centres.

3.5.3 Element – Tourism	The proposal does not compromise this element.	
3.5.4 Element – Agriculture	The proposal does not compromise this element.	
3.5.5 Element – Ports, Aviation and Defence	The proposal does not compromise this element.	
3.6 Infrastructure Theme		
3.6.1 Strategic Outcomes	The proposal does not compromise the Strategic Outcomes of this element.	
3.6.2 Element – Energy	The proposal does not compromise this element.	
3.6.3 Element – Transport	The proposal does not compromise this element.	
3.6.4 Element – Water and Waste	The proposal does not compromise this element.	
3.6.5 Element – Open Space and Recreation	The proposal does not compromise this element.	

## **Purpose and Overall Outcomes Assessment**

The following discussion addresses the proposed development in relation to the Purpose and Overall Outcomes of relevant codes.

Medium Density Residential Zone			
Purpose Outcomes	and	Overall	The proposed development is unable to achieve compliance with the following element of the Purpose Statement of the Medium Density Residential Code 6.2.12.2, by providing for:
			(b) community uses, and small-scale services, facilities and infrastructure, to support local residents'.
			In addition to the above, the proposed development does not comply with the following Overall Outcomes:
			'(b) development provides a high level of amenity taking into account impacts such as traffic, noise, dust, odour, and lighting;
			(c) a medium residential density, scale and character of the area is achieved;
			(h) non-residential uses are established where they serve the local community, do not detract from the residential amenity of the area and do not adversely impact on the role and function of centres within the hierarchy of centres'.

The proposed development involves a change of use from four (4) existing medium density residential land parcels accommodating residential dwelling houses to two (2) drive thru Food and Drink Outlets outside of a Centre.
The development is a non-residential use that is not supported by the Zone as it is considered to be of a nature, size, and scale that extends beyond an activity that would typically considered a 'small-scale service'.
The applicant states that 'the Medium Density Residential Zone Code is not specific about what types of non- residential uses are anticipated, other than they be small- scale services to support local residents, do not detract from the residential amenity, and do not adversely impact on the role and function of centres within the hierarchy of centres'.
Further, the Letter of Advice provided by the Applicant and prepared by Connor O'Meara Solicitors states that 'Whether a use is small-scale involves a consideration of both built-form and intensity of use, but in the context in which the proposed use sits in the locality. In the present case, that context includes that the subject land is in the Medium density residential zone, has a frontage to a sub- arterial road (Pease Street) and is situated in close proximity to a district centre (Piccones Village Shopping Centre). In that context, the proposed use, comprising two single-storey fast food outlets, each with a GFA of 277m <sup>2</sup> or less and situated on separate parcels of land separated by a road, is accurately characterised as small-scale.'
The applicant contends that 'the proposed Food and Drink Outlets have a built-form and scale smaller than those otherwise anticipated for residential uses in the Medium Density Residential zone' (i.e., 4 storeys and 15 metres, plus 40% site cover).
However, the identified parameters (i.e., maximum height, site cover), in addition to setbacks are provided as a means to encourage higher density residential developments in these areas. The same parameters are not appropriate for the assessment of a Food and Drink Outlet in the Medium Density Residential Zone.
The Scheme does not define a small-scale service. Officers consider a small scale service to be similar to a corner store, Café, Coffee Shop, or Take Away shop with a small footprint that provide convenience based needs to service the local community and accommodate walk in and/or dining traffic (i.e., not drive thru). These activities are less likely to attract residents beyond their immediate locality compared with the national retailers in the proposed development.

Officers further consider that the traffic, lighting, noise, and
odour generated by the proposed development; as well as its drive thru component, are not consistent with the characteristics of a small-scale service.
The proposed development is not small-scale for the following reasons:
<ul> <li>The development comprises two (2) buildings each with a GFA of circa 250m<sup>2</sup> on lots with areas of circa 1,000m<sup>2</sup>;</li> </ul>
• The development incorporates a drive-thru facility intended to accommodate significant traffic movements; and
• The development accommodates national, large/popular brand retailers.
Accordingly, the establishment of non-residential uses that are not of a small scale in the proposed location is contrary to the purpose of the Medium Density Residential Zone Code.
The location of the proposed development on residential land, surrounded by existing residential development will detract from the amenity of the area. Even if suitable measures are introduced to minimise these impacts, the development will detract from the residential amenity of the area by introducing activities on land that is predominantly residential and currently separated and protected from commercial uses by a road.
The matters outlined above demonstrate the degree of importance placed on the protection of Medium Density Residential Land in the Planning Scheme. The Code ensures the availability of residential land to meet projected population growth and to contribute to the vitality and vibrancy of existing Centres through residential development proximate to Centres.
The proposed development would not contribute to the consolidation of Centres within the Centre Zone and would lead to an effective expansion of a Centre where not anticipated by the Planning Scheme, undermining the intent of the Planning Scheme to protect the role and function of Centres within the hierarchy of Centres.
There are no conditions available to remedy the non- compliances with the Medium Density Residential Zone Code due to the nature of the proposed development in this location. The unacceptable impact that the proposed development would have on the availability of the land for residential purposes and the residential character and amenity of the surrounding land cannot be mitigated by conditions.

Acid Sulfate Soils Overlay			
Purpose Outcomes	and	Overall	The proposed development can comply with the Purpose, Overall Outcomes, and applicable benchmarks of the Acid Sulfate Soils Overlay Code 8.2.1.2, where outcomes can be reasonable managed by conditions.
Airport En	virons	Overlay	
Purpose Outcomes	and	Overall	The proposed development is able to comply with the Purpose, Overall Outcome, and applicable benchmarks of the Airport Environs Overlay Code 8.2.2.2, where outcomes can be reasonable managed by conditions.
Bushfire H	lazard (	Overlay	
Purpose Outcomes	and	Overall	The proposed development is able to comply with the Purpose, Overall Outcome, and applicable benchmarks of the Bushfire Hazard Overlay Code 8.2.4.2, where outcomes can be reasonable managed by conditions.
Flood and	Inunda	tion Haza	ard Overlay
Purpose Outcomes	and	Overall	The proposed development is able to comply with the Purpose, Overall Outcome, and applicable benchmarks of the Flood and Inundation Hazard Overlay Code 8.2.7.2, where outcomes can be reasonable managed by conditions.
Transport	Networ	k Overla	у
Purpose Outcomes	and	Overall	The proposed development is able to comply with the Purpose, Overall Outcome, and applicable benchmarks of the Transport Network Overlay Code 8.2.15.2, where outcomes can be reasonable managed by conditions.
Centre Des	sign Co	de	
Purpose Outcomes	and	Overall	The proposed development is unable to comply with the following Purpose Statements of the Centre Design Code 9.3.1.2(1) by ensuring centre activities and activity centres:
			<ul><li>'(a) are developed to support community need and reinforce the hierarchy of centres;</li></ul>
			(b) are of a high quality design and appropriately respond to local character, environment and amenity considerations.'
			In addition to the above, the proposed development does not comply with the following elements Overall outcomes 9.3.1.2(2):
			(a) Development is established in accessible locations,

consolidate development within existing centre zones and established areas of commerce, or meet an existing need identified within a local plan area.
(b) Development complements and reinforces the role and function of the established hierarchy of centre across the region, and does not compromise the future of consolidated and cohesive activity centres.
(c)(v)integration with adjoining premises for cohesive streetscapes, and maintaining the character and quality of distinct places.
(c)(vii)mitigating adverse impacts on amenity of surrounding communities'.
While the development application material asserts a demonstratable level of economic and community need for the proposal, it is considered that an insufficient level of need to support the proposed development at this location has been demonstrated. The development is not responsive to the residential character of the residential area that extends along the eastern portion of Pease Street or the negative impacts on the amenity considerations for a residential area. The development will not contribute to a cohesive streetscape.
The proposed development will not contribute to the consolidation of Centres as it seeks to establish a Centre activity opposite to and outside of a Centre Zone. As a result, the development undermines the intent of the Scheme for the role and function of Centres in the hierarchy of Centres.
While the application material has demonstrated how amenity impacts could be managed through engineering solutions, the development cannot avoid irreversibly changing the residential amenity and character of the area entirely through the introduction of a commercial use, specifically an activity that is not a small-scale service. The development will still result in amenity impacts on the adjoining residential land, even if they are minor.
The application material also includes reference to large Pylon Signs, which are regulated under Council's Local Law No. 4. These devices are required to be separated from sensitive land uses if illuminated. While these devices are not assessed as part of this application, it is acknowledged that any future Local Law application for these devices would be assessed on a case-by-case basis and are unlikely to be supported in this location as the land is surrounded by sensitive land uses.
There are no conditions available to remedy the non- compliances due to the nature of the proposed development in this location. The unacceptable impact that

			the proposed development will have on the role and		
			function of Centres in the hierarchy of centres cannot be mitigated through the application of conditions.		
Environmental Performance Code					
Purpose Outcomes	and	Overall	The proposed development is able to comply with the Purpose, Overall Outcomes, and applicable benchmarks of the Environmental Performance Code 9.3.2.2		
Excavation and Filling Code					
Purpose Outcomes	and	Overall	The proposed development is able to comply with the Purpose, Overall Outcomes, and applicable benchmarks of the Excavation and Filling Code 9.3.3.2		
Infrastructure Works Code					
Purpose Outcomes	and	Overall	The proposed development is able to comply with the Purpose, Overall Outcomes, and applicable benchmarks of the Infrastructure Works Code 9.3.5.2		
Landscaping Code					
Purpose Outcomes	and	Overall	The proposed development is able to comply with the Purpose, Overall Outcomes, and applicable benchmarks of the Landscaping Code 9.3.6.2		
Parking and Access Code					
Purpose Outcomes	and	Overall	The proposed development is able to comply with the Purpose, Overall Outcomes, and applicable benchmarks of the Parking and Access Code 9.3.7.2		
Vegetation Management Code					
Purpose Outcomes	and	Overall	The proposed development is able to comply with the Purpose, Overall Outcomes, and applicable benchmarks of the Vegetation Management Code 9.3.9.2		

## **Assessment against Performance Outcomes**

The proposed development has been assessed against Performance Outcomes in the relevant codes of the assessment benchmarks of the *CairnsPlan 2016 v3.1*.

Medium Densi	Medium Density Residential 6.2.12.3 Criteria for Assessment			
Performance PO3 – Uses development	Outcome and other	PO3 of the Medium Density Residential Zone Code states that:		
		'Development is consistent with the purpose and overall outcomes sought for the zone'.		
		Refer to the above assessment of the Medium Density Residential Zone – Purpose Statement and Overall Outcomes.		
		The proposed development is unable to comply with the Performance Outcome and there are no conditions available to remedy the non-compliances because the development cannot be conditioned to be a small-scale service and is not a residential use anticipated by the Medium Density Residential Zone Code.		
Performance	Outcome and other	PO4 states that:		
PO4 – Uses development		'non-residential uses that serve the local community are established in appropriate locations and subject to detailed development requirements, including:		
		(a) being located in highly accessible locations;		
		(b) their proximity with other similar uses;		
		(c) providing for the identified convenience needs of the local community;		
		(d) not impacting on the role and function of the hierarchy of centres within the region;		
		(e) resulting in positive economic and social benefits for the local community;		
		(f) small scale extensions to existing non-residential uses.'		
		The development is not being established in an appropriate location because it will result in the loss of four (4) medium density residential land parcels that have the ability to accommodate residential development at higher density (i.e., multiple dwellings, etc.) in an area identified for that purpose.		
		The application material has not suitably addressed the impacts that would occur as a direct result of the loss of these parcels of land in terms of the future growth within the PTA.		

	The application material does not demonstrate that the development will not have an impact on the role and function of the hierarchy of Centres in the region.
	Furthermore, the application material has not sufficiently demonstrated that the proposed development would serve a convenience need of the local community and provide a positive economic and social benefit that outweighs the competing considerations in PO4 outlined above.
Performance Outcome	PO7 states that:
PO7 – Amenity	'Development does not adversely affect the residential character and amenity of the area in terms of traffic, noise, dust, odour, lighting or other physical or environmental impacts'.
	The proposed development represents a not insignificant form of non-residential development that will create a different form of amenity to that anticipate by the Code.
	The location of the proposed development on residential land, surrounded by existing residential development will detract from the residential amenity of the area. Even if suitable measures are introduced to minimise these impacts, the development will detract from the residential amenity of the area by introducing activities on land that is predominantly residential and currently separated and protected from commercial uses by a road. The residential amenity may also be impacted by the engineering controls required to be established to help mitigate other impacts of development i.e. the introduction of large acoustic fences were ordinarily, no such fences would be required.
	The application has not adequately demonstrated that the development will result in the protection of residential amenity.
Centre Design Code 9.3.1.	3 Criteria for Assessment
Performance Outcome PO3 – Site Requirements	PO3 states that: 'Development is located within: (a) an existing Centre zone;
And	(b) Mixed-use Zone Precinct 1 – Commercial;
	(c) Mixed-use Zone Precinct 2 – Trades and Services;
Performance Outcome PO4 – Site Requirements	(d) A building containing an existing centre activity; or
	(e) An identified centre precinct within a Local plan.
	Additionally, PO4 states that:
	'A centre activity is only established outside an appropriately identified area where:

(2)	Community need is demonstrated for the centre
(a)	activity;
(b)	The centre activity does not compromise the establishment of consolidated centres with distinct roles and functions across the Region;
(c)	The centre activity does not compromise the role and function of centres within the established hierarchy of centres for the Region;
(d)	The centre activity is located in a highly accessible place within the community it serves, not on the periphery;
(e)	The centre activity does not compromise the character and integrity of surrounding area.
wit	e proposed development provides for Centre activities h a combined GFA of circa 500m <sup>2</sup> on Medium Density sidential Zoned land.
	ile the proposed development may provide additional iety and choice, in doing so it will:
•	Compromise the establishment of consolidated centres;
•	Compromise the role and function of centres within the established hierarchy of centres for the Region; and
•	Compromise the character and integrity of the surrounding residential area.
wit Fo	ere is capacity in existing Centres and Mixed Use Zones hin the PTA to address any unmet community need for od and Drink Outlets without compromising the matters ught to be protected by PO4.
Pe	e proposed development is unable to comply with the rformance Outcome. This non-compliance cannot be nedied through the application of conditions.

# MATTERS TO HAVE REGARD TO - IMPACT ASSESSMENT

The following discussion addresses the proposed development in relation to other matters that must be considered for an impact assessable development.

# STATE PLANNING POLICY

PART E	Consideration	
Planning for Liveable Community and Housing		
Housing Supply and Diversity	Relevant. The Policy:	
	<ul> <li>seeks to ensure that the development of residential land is facilitated to address and cater for all groups in the current and projected demographic, economic, and social profile of the Local Government Area, including households on low to moderate incomes;</li> </ul>	
	<ul> <li>requires a diverse, affordable, and comprehensive range of housing options in accessible and well-serviced locations, facilitated through appropriate, responsive, and proactive zoning; and</li> </ul>	
	<ul> <li>promotes planning that facilitates residential development in accessible and well-serviced locations.</li> </ul>	
	In review of the application material, Officers acknowledge that there has been insufficient analysis of the need to retain the subject site/s for purposes as anticipated by the Planning Scheme for the Medium Density Residential Zone and the impacts that would be borne out of their loss.	
	The Economic Needs and Impact Assessment has not considered the capacity of the Medium Density Residential Zone to accommodate future growth within the PTA, specifically with an analysis of the quantum of residential land (vacant or otherwise) has been undertaken; along with exploring the impacts associated with the potential loss of the subject site in its location and on the availability of medium density residential land.	
Liveable Communities	Not Relevant	
Planning for Economic Growth		
Agriculture	Not Relevant	

Development and Construction	Relevant.
	The Strategic Framework of the Planning Scheme is considered to address this Policy element by providing sufficiently zoned land that is compatible with its natural hazards for commercial development to occur.
	The Policy also refers to a sufficient supply of suitable land for residential development that considers existing and anticipated demand, and land uses that are consistent with the Purpose of the Zone.
	The Policy does <u>not</u> support the establishment of centre activities outside Centre Zones and rather seeks to consolidate Centres and encourage increased density around established Centres.
	The Development Application material has not suitably demonstrated that there is sufficient need that warrants the loss of residential land that would result from the development.
Mining and Extractive Resources	Not Relevant
Tourism	Not Relevant
Planning for the Environment ar	d Heritage
Biodiversity	Broadly, the proposed development is considered to be compatible with this Policy.
Coastal Environment	Broadly, the proposed development is considered to be compatible with this Policy.
Cultural Heritage	Broadly, the proposed development is considered to be compatible with this Policy.
Water Quality	Broadly, the proposed development is considered to be compatible with this Policy.
Planning for Safe and Resilience to Hazards	
Emissions and Hazardous Activities	Broadly, the proposed development is considered to be compatible with this Policy.
Natural Hazards, Risk and Resilience	Relevant.
кезшенсе	Refer to the assessment benchmarks above.

Planning for Infrastructure		
Energy and Water Supply	Broadly, the proposed development is considered to be compatible with this Policy.	
Infrastructure Integration	Broadly, the proposed development is considered to be compatible with this Policy.	
Transport Infrastructure	Broadly, the proposed development is considered to be compatible with this Policy.	
Strategic Airports and Aviation Facilities	Broadly, the proposed development is considered to be compatible with this Policy.	
Strategic Ports.	Broadly, the proposed development is considered to be compatible with this Policy.	

# **RELEVANT MATTERS FOR REGARD IN AN ASSESSMENT**

The following matters were given regard to, or assessment carried out against in undertaking the assessment of this Development Application under section 45 of the *Planning Act 2016* (Qld) and section 30 of the *Planning Regulations 2017* (Qld).

#### 1. Purpose of the Act

For the reasons set out above, approval of the proposed development would not advance the Purpose of the Act in accordance with sections 3 and 5.

The development is for Centre activities located outside of an established Centre, resulting in development that is incompatible with the residential character of the subject site and compromises the longer term use of the land for future, higher density residential development to meet projected population growth. Therefore, the development:

- a. Reduces the land available for the development of housing choice, diversity, and affordability;
- b. Cannot contribute to economic development and community need without having an impact on the ability of future generations to meet their housing needs; or
- c. Provide for equity between present and future generations.

Refusal of the Development Application would further the purpose of the PA by protecting these interests.

#### 2. Need

As outlined at the beginning of this report, on a detailed review of the application material, it has been concluded that there is not a sufficient level of need to justify the approval of the development where the proposed use is incompatible with the zoning of the land.

The application material has been peer reviewed by a suitably qualified person/s where it has been determined that a modest level of economic and community need for the proposed development has been established as there is demand for additional Food and Drink Outlets and the proposed development could contribute to improvements in choice for the local community within the PTA.

However, there is capacity within existing Centres and Mixed Use Zones to accommodate additional Food and Drink Outlets and cater to any existing and future growth in demand for additional Food and Drink Outlets without compromising the intent for the Medium Density Residential Zone.

There has been insufficient analysis of the need to retain the subject site for medium density residential purposes, including the impacts that will be borne out of the loss of this land, or the benefits that could be realised due to the sites proximity to a District Centre. The reporting has not properly considered the capacity of the Medium Density Residential Zone to accommodate future growth with the PTA and the role of this zone in contributing to the vitality and vibrancy of the Centre.

## PUBLIC NOTIFICATION

In accordance with Impact Assessment procedures outlined in *Part 4: Public Notification* of the *DA Rules*, the development was publicly notified for a minimum of fifteen (15) business days from Thursday 19 October 2023 to Friday 10 November 2023.

A Notice of Compliance received on 13 November 2023 (Council Reference: #7304557) confirmed that the following actions had been carried out:

- Published a notice at least once in a hard copy local newspaper for the locality of the premises the subject of the application;
- Placed a notice on the premises the subject of the application that remained on the premises for the period time required under the regulation; and
- Given a notice to the adjoining owners of all lots adjoining the premises the subject of the application.

A total of 61 submissions were received during the Public Notification period, with 28 properly made.

Properly made	28	In support	1
Not properly made	33	Against	60

# MATTERS RAISED IN SUBMISSIONS FOR IMPACT ASSESSABLE DEVELOPMENT

Issue	How matter was dealt with
Aboriginal and General Cultural Heritage	The Applicant has advised that based on historical aerial photos, each of the existing land parcels have been developed/utilised for urban activities for the last 20+ years and are contained within an established urban locality. As such, the likelihood of any cultural significance being present on the site is considered 'low'. However, the Applicant is still bound by the duty of care guidelines established under the <i>Aboriginal Cultural Heritage Act 2003</i> (Qld) and <i>Torres Strait Islander Cultural Heritage Act 2003</i> (Qld) and will undertake all necessary actions should any artefacts be encountered during construction works. Further, the subject site is not mapped as a 'Heritage Place' by either the Queensland Government or Cairns Regional Council under the relevant mapping systems.
Existing Vegetation	Concerns were raised in respect to the potential removal of the existing mature Cycad tree located along the Patience Street frontage of the site. The Applicant has sought to revise the proposed upgrade works along Patience Street to provide for the protection of the existing mature Cycad tree. This tree has also been protected under earlier approval tying to the land.
Economic Need	An Economic Need and Impact Assessment was submitted by the Applicant as part of the which sought to demonstrate that there was a sufficient economic, planning, and community need to support the Development.
	However, Officers consider that this material has only been able to demonstrate a modest level of economic and community need, with inputs unable to substantiate a planning need. Accordingly, the development, on balance, has not been able to suitably demonstrate need altogether.
Zone Conflict	The Applicant has identified that 'the prevailing land use for this catchment area remains detached housing with approximately only 106 parcels currently developed for higher residential types (24% of locality) and therefore, considers that the land currently developed for dwelling houses is being underutilised'.
	In addition to this, the Applicant also states that 'while the development will result in the loss of four parcels of land currently zoned for residential activities, there remains a sufficient supply of residential zoned land within the surrounding locality to accommodate future demand for new dwellings'. However, no data or analysis has been provided to support this statement and no consideration of the development potential over these sites

The following matters were raised in properly made submissions.

	<ul><li>have been considered (i.e., four (4) storey multiple dwelling or other higher density options as supported by the Zone).</li><li>Accordingly, Officers hold concerns relating to this matter, noting that it cannot be remedied through the application of conditions and remains a conflict with the Purpose of the Zone and the Planning Scheme more broadly.</li></ul>
Traffic Flow and Generation	A Traffic Impact Assessment was prepared by RMA Engineers in support of the proposed development, which included an assessment of the estimated development traffic generation and distribution, operational impact at the key intersections, review of internal site and car parking layout/access points for vehicle manoeuvrability, and having consideration to turn warrant assessments and available sight distances. The findings and recommendations of the Traffic Impact Assessment have dealt with the issues raised in the submissions.
Health Impacts	Concern was raised in respect to approving additional fast food outlets and the impacts this would have on the general health of the community in terms of obesity. This matter is acknowledged; however, what the general public can and cannot eat or do are not at the discretion of Council and it is considered that this matter is not relevant to the assessment of the application.
Existing Wildlife	Concern was raised in regard to potential impacts on the existing wildlife as a result of the development. The Applicant did not address this matter in their response to the submissions. However, the site is not mapped as containing a wildlife habitat and the subject site already comprises of four (4) existing dwelling houses. Therefore, it can be reasonably considered that there are no wildlife habitats that apply to the subject site given that the land is already fully improved.
Drainage	A Stormwater Management Plan was provided with the application material that demonstrated how each development site could manage the control of stormwater over the site.
Antisocial Behaviour	This matter is acknowledged. Antisocial behaviour is captured under the Planning Scheme Policy - Crime Prevention Through Environmental Design requirements. The development has suitably demonstrated that the proposed development will offer casual surveillance, remove opportunities for concealment, and will be clearly legible in terms of vehicular and pedestrian access. The fact that the development may attract delinquent behaviour is not an assessment benchmark.

Litter	This matter is acknowledged. However, litter is not an assessment benchmark to consider other than the need to provide refuse to service the development, of which the development has provided and demonstrated on the development plans. Further, the Applicant has advised that refuse bins would be provided for customers to dispose of any waste and the development will be regularly cleaned by staff to reduce the amount of litter.
Noise Impacts	A Noise Impact Assessment was prepared by Stantec in support of the proposed development for the purposes of demonstrating compliance with the relevant noise assessment criteria under the Medium Density Residential Zone Code and acoustic quality objectives under the <i>Environmental Protection (Noise) Policy 2019</i> (Qld).
	The reporting determines that the proposed development achieves compliance with the specified noise assessment criteria and therefore, would not be expected to result in any adverse noise impacts to nearby sensitive receptors.
Odour Impacts	In response to the submissions, the Applicant has confirmed that future operators will install filtration units called electrostatic precipitator (ESP) to offset odour and smoke for nearby sensitive receptors. Furthermore, the outlet points for required filtration device will be orientated away from the nearby sensitive receptors.
	The Applicant requested that a condition be imposed to ensure that the Electrostatic Precipitator be installed as part of the proposed development to deal with this matter.
Light Impacts	Concern has been raised in respect to additional external lighting associated with the development and the impacts of vehicular headlights on the adjoining and surrounding residential premises.
	This matter has been contemplated and Officers consider that the erection of the Acoustic Barrier around all common property boundaries would shield vehicular headlights and external lighting would be restricted given the site's location within a Lighting Area Buffer under the Airport Environs Overlay Code.
Car Parking	The development provides sufficient car parking. This is detailed in and supported by the Traffic Impact Assessment Report.

Hours of Operation	Concerns were raised that the development would operate 24 hours a day, 7 days a week.
	The Applicant sought to revise the intended hours of operation and has confirmed that both sites will operate from 10am to 10pm Monday to Sunday.
	This is in keeping with the general hours of operations for the intended retailers and confirms that the development will not operate for 24 hours a day. The Noise Impact Assessment Report also supports these proposed hours of operation.
Devaluation of Property Values	While this issue is acknowledged, the devaluation of properties is not an assessment benchmark that can be considered.
Scale and Design	Concern was raised in terms of the scale and design of the proposed development.
	The Applicant has not provided a response to this matter. However, the application material has relied on the fact that the proposal is similar to other drive through Food and Drink Outlets in the surrounding area.
	However, given that the pattern of development along the entire eastern side of Pease Street (in the immediate vicinity) comprises of detached dwelling houses and Multiple Dwelling developments, with no commercial or retail buildings, Officers consider that the development's scale and design is inconsistent with the character of the area.
	Therefore, it is considered that this matter has not been suitably dealt with.
Advertising Devices	While the development plans detail Pylon Signs for each Outlet. Advertising Devices are not assessed as part of this Development Application as they are managed under Council's Local Laws (Local Law No.4 (Advertising Devices)).
	This type of assessment usually take place after a decision has been granted for the overarching land use approval. However, if the advertising device involves illuminated components, it is unlikely to be supported under the Local Law No. 4 given the sites location surrounded by residential zoned land and sensitive land uses.
Noise Barrier	Concerns were raised in respect to the height of the proposed Acoustic Barrier and the fact that it would not be sufficient to ameliorate all noise impacts associated with the development.
	The Noise Impact Assessment Report confirms that the proposed development achieves compliance with the specified noise assessment criteria and therefore, is not expected to result in any adverse noise impacts to nearby sensitive receptors.

# INFRASTRUCTURE CHARGES

Council's Infrastructure Charges Resolution No. 2 of 2021 identifies that an Infrastructure Charge should be levied for the development. However, in this instance as the Development Application is recommended for refusal, an Infrastructure Charges Notice has not been prepared nor charges levied on the land.

# LOCAL GOVERNMENT INFRASTRUCTURE PLAN (LGIP)

The proposed development is located within the Priority Infrastructure Area. The development does not require the delivery of trunk infrastructure to facilitate the development.

## **REASONS FOR DECISION**

### **Departure from Policy Direction**

- 1. The proposed development does not comply with the policy direction for the Planning Scheme expressed in Part 3 Strategic Framework in CairnsPlan 2016 Version 3.1 (Planning Scheme), in particular:
  - a. The development would lead to the establishment of a centre activity outside of a Centre Zone or the effective expansion of a Centre where such use of premises is not anticipated by the Planning Scheme and would undermine the role and function of the Centres within the hierarchy of Centres, as reflected in Specific Outcome 3.3.2.1(2);
  - b. The development does not consolidate within or contribute to the consolidation of existing, established Centres. The application does not demonstrate a sufficient need to warrant support for out of Centre development and compromises the amenity of the surrounding residential area and the role and function of the proximate Manoora District Centre, as reflected in Specific Outcome 3.3.2.1(3);
  - c. The development will result in the inappropriate use of well located and serviced medium density residential zoned land that can otherwise be used to provide for a variety of higher density residential living options that takes advantage of the range of activities, services, and public transport facilities proximate to the land, as reflected in Specific Outcome 3.3.2.1(4); and
  - d. The development proposes non-residential uses on residential land that are not considered to be appropriate for the location as they will detract from the residential amenity of the area and compromise the role and successful function of the proximate Manoora District Centre, as reflected in Specific Outcome 3.3.5.1(3).

### Non-residential use on residential land

2. The Planning Scheme, through the Strategic Framework and Zone Code, provides clear planning policy that residential land, including that within the Medium Density Residential Zone, is used for its anticipated purpose and places stringent criteria on the establishment of non-residential uses. This is to ensure that there is appropriate land available to meet projected population growth and to contribute to the vitality and vibrancy of centres, such as the Manoora District Centre, by locating higher density residential development in proximity to such Centres.

The proposed development is inconsistent with the residential amenity that is reasonably expected to be achieved within the Medium Density Residential Zone. Whilst the Zone contemplates that non-residential uses may establish in particular circumstances, including where development does not detract from residential amenity; those are not present in this application. The intensity of the non-residential use will result in a different amenity from that associated with a residential development, including as a result of light, noise and traffic generation. Impacts from these matters are considered to be greater than what would reasonably be expected in the Zone and therefore, will detract from the desired residential amenity.

The proposed development involves the establishment of non-residential uses over four (4) lots within the Medium Density Residential Zone that are:

- 1. of a type not contemplated for the Zone, resulting in the loss of well-located and serviced land able to accommodate higher density residential living.
- 2. are of a scale, both in terms of the design and distribution of the built form and the anticipated traffic (number of customers) to visit the site, that:
  - i. exceeds the form and function of a small scale service that supports local residents; and
  - ii. in conjunction with item (i) above, seeks to service a community that extends beyond the local trade area.

The proposed development, therefore, does not comply with:

- Part 3 Strategic Framework Section 3.2, Section 3.3.1(1)(c) and (l), Section 3.3.2.1(3), Section 3.3.2.1(4), Section 3.3.5.1(1) and (3), Section 3.3.5.1(4); and
- b. Part 6 Zones 6.2.12 Medium Density Residential Zone Code Purpose Statement 6.2.12.2(1)(a) and (b); Purpose Statement 6.2.12.2(2); Overall Outcome Section 6.2.12.2(3)(a), (b), (c), & (h); and Performance Outcomes PO3, PO4 and PO7.

#### Impact of centre activities and on the hierarchy of centres

3. The proposed development involves Centre activities of a design, scale, and intensity that will compromise the existing and ongoing role and function of the hierarchy of Centres through fragmentation, particularly the Manoora District Centre.

Additionally, the development is out of Centre development on land that has the ability to contribute to the vitality and vibrancy of an existing Centre through providing higher densities of residential development proximate to a District Centre/s.

Accordingly, the proposed development does not comply with:

- a. Part 3 Strategic Framework Section 3.2 Strategic Intent; Strategic Outcome in Section 3.3.1(1)(d); Specific Outcomes in Section 3.3.2.1(3) and Section 3.3.2.1(7)(b) of Element Centres and Centre Activities; and
- b. Part 9 Development Codes 9.3 Other Development Codes 9.3.1 Centre Design Code Purpose Statement 9.3.1.2(1), Purpose Statement 9.3.1.2(2)(c)(v); Overall Outcome Section 9.3.1.2(2)(a) and (b), and Performance Outcomes PO3 and PO4.

### Need

- 4. The application material fails to satisfactorily consider and demonstrate that there is insufficient:
  - 1. capacity within existing Centre zoned land or other suitably zoned land inside the Primary Trade Area (PTA) to accommodate the proposed activities;
  - 2. appropriately zoned land within the PTA to accommodate the proposed activities, which is not limited to vacant allotments; and
  - 3. need for the land to accommodate:
    - i. residential development as anticipated by the Planning Scheme for the Medium Density Residential Zone; or
    - ii. medium density residential development in and around a District Centre.

The development does not demonstrate a level of need for the two (2) food and drink outlets that justifies the proposed location for the development. The level of demand identified by the proposal is insufficient to justify a departure from the planning purpose for the land for Medium Density Residential Development, particularly where the Planning Scheme supports activities that contribute to economic growth in more appropriate areas and there is capacity within existing Centres and Mixed Use Zones identified in the Planning Scheme for the PTA to accommodate these services.

The proposed development does not comply with:

Part 3 – Strategic Framework – Section 3.2 Strategic Intent; Strategic Outcome in Section 3.3.2.1(3) and Section 3.3.2.1(7) of Element – Centres and Centre Activities; Strategic Outcome in Section 3.3.5.1 (3) and (4) of Element – Residential Areas and Activities, Strategic Outcome in Section 3.5.1(3); Strategic Outcome in Section 3.5.2.1(1) and Section 3.5.2.1(5) of Element – Strong and Diverse Economy.

# **Relevant Matters**

- 5. There are relevant matters which favour refusal of the application which include:
  - a. The Development Application has not demonstrated a level of economic, community and planning need of sufficient magnitude required to justify a departure from the clear policy direction of the Planning Scheme in relation to the appropriate use of Medium-Density Residential Zoned land;
  - b. The proposed development would adversely impact the availability of Medium Density Residential Zoned land in accommodating projected growth of the local area;
  - c. The non-compliance with assessment benchmarks is significant and is not capable of being addressed or mitigated by development conditions;
  - d. The proposed development is inconsistent with reasonable community expectations as informed by the Planning Scheme, existing uses, and development approvals for the land and adjoining land, which do not support commercial development on the land of this nature, scale or intensity;
  - e. The proposed development is not in the public interest (as reflected in the Planning Scheme); and
  - f. Refusal of the proposed development will advance the purpose of the *Planning Act 2016* (Qld).

## Summary

The proposed development complies with some assessment benchmarks (or could be conditioned to comply) and is supported by some of the relevant matters identified in the Development Application. However, a balanced assessment taking into account all the facts and circumstances of the development, including the nature and extent of the noncompliances with the assessment benchmarks as a whole and together with the relevant matters, weigh in favour of refusing of the development application.

# CONCLUSION

The proposed development has been assessed against the common material, including the peer review commissioned by Council.

The proposed development has been assessed in accordance with the relevant Assessment Benchmarks and on balance, Officers consider it to be inconsistent with the provisions of CairnsPlan 2016 Planning Scheme v3.1, the State Planning Policy 2017, and the FNQ Regional Plan.

The proposed development <u>does not</u> comply with Council's planning intent and the current policy direction for the Planning Scheme area and the Region (including the subject land), being to retain medium density residential land for high density residential development, especially in areas in proximity to established centres. This intent is expressed in the Far North Queensland Regional Plan 2009-2031 and Part 3 – Strategic Framework under Cairns Plan 2016 and is reflected in the Purpose and Overall Outcomes of the assessment benchmarks under the Planning Scheme referenced above.

In balancing the economic, community, and planning need for the proposal and the non-compliances of the proposed development with the relevant assessment benchmarks, it has been determined that it is in the public interest to refuse the Development Application.

The nature of the non-compliances with the assessment benchmarks are such that they cannot be addressed through the application of conditions.

The proposed development does not advance the purpose of the *Planning Act 2016* (Qld) pursuant to sections 3 and 5. Refusal of the application for the proposed development advances the purpose of the *Planning Act 2016* (Qld) and further the public interest (which is reflected in CairnsPlan 2016 Planning Scheme v3.1).

In light of the above, and having assessed the proposed development in accordance with section 60 of the *Planning Act 2016* (Qld), **it is recommended that the Development Application be refused.** 

#### RISK MANAGEMENT

#### **Council Finance and the Local Economy**

The development is to occur on privately owned land and development costs are the responsibility of the developer.

#### **Community and Cultural Heritage**

CairnsPlan 2016 sets out framework to ensure appropriate development occurs. The framework is reflected within the overlay, local plan, zone and development codes of which this development application has been assessed against.

#### Natural Environment

CairnsPlan 2016 sets out framework to ensure appropriate development occurs. The framework is reflected within the Strategic Framework, Overlay, Zone and Development Codes of which this development application has been assessed against.

# **ATTACHMENTS**

1. PLANS OF DEVELOPMENT - <u>#7438721</u>

EL .

Ed Johnson Director Planning, Growth & Sustainability

APPENDIX 1: PLANS OF DEVELOPMENT DM REF <u>#7438721</u>

# MANOORA DEVELOPMENT

DEVELOPMENT APPLICATION 17/10/2023



# **PROJECT DETAILS**

PROJECT CODE: PATN018 PROJECT NAME: MANOORA DEVELOPMENT PROJECT PHASE: DEVELOPMENT APPLICATION

# SITE DETAILS

SITE ADDRESS:

128 PEASE STREET MANOORA QUEENSLAND 4870 130-132 PEASE STREET MANOORA QUEENSLAND 4870 134 PEASE STREET MANOORA QUEENSLAND 4870 136 PEASE STREET MANOORA QUEENSLAND 4870 LOT DETAILS: LOT 2 C198226 LOT 1 C198202 LOT 5 RP 722608 LOTS 4 RP 744008 COUNCIL: CAIRNS REGIONAL COUNCIL

# **PROJECT TEAM**

CLIENT: PATONA DEVELOPMENTS ARCHITECT: 77 ARCHITECTURE PLANNER: MEWING PLANNING CONSULTANTS TRAFFIC: RMA ENGINEERS CIVIL: CMG ENGINEERS ACOUSTIC - KEIR CONSTRUCTIONS **ECOMONIC NEEDS - FORESIGHT PARTNERS** 

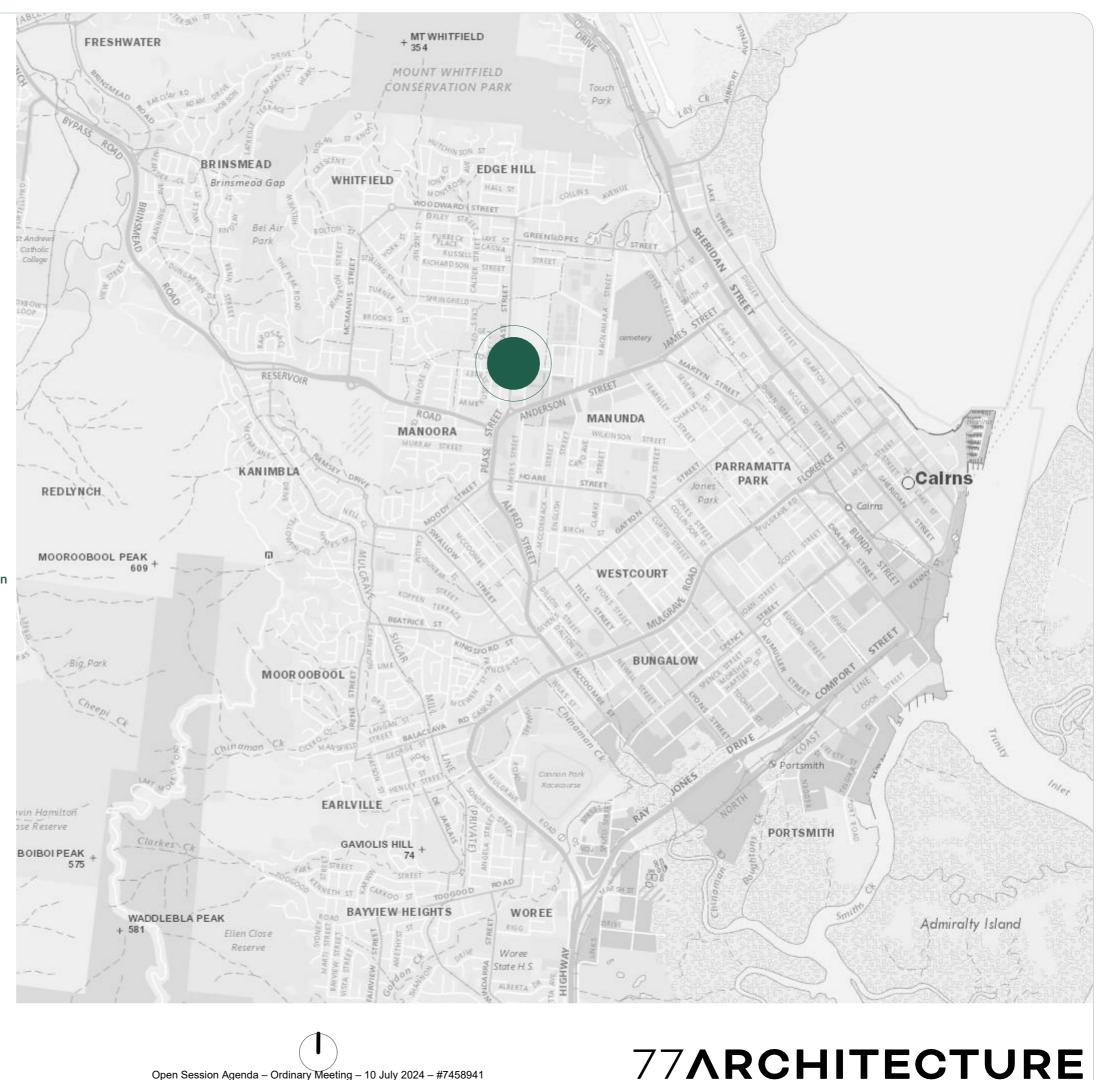
# **PROJECT DESCRIPTION**

Located in Manoora, Cairns, two new fast food developments are proposed on the corners of Pease street and Patience street.

# **CONTENTS**

- **PROJECT INFORMATION** 01
- 02 SITE CONTEXT
- 03 SITE PLAN
- 04 SITE ELEVATION AND SECTION
- 05 FAST FOOD 01 PLAN
- FAST FOOD 01 ELEVATIONS 06
- 07 FAST FOOD 01 ELEVATIONS
- 08 FAST FOOD 02 PLAN
- 09 FAST FOOD 02 ELEVATIONS
- FAST FOOD 02 ELEVATIONS 10
- DEVELOPMENT SUMMARY 11
- 12-23 **ARTISTIC IMPRESSIONS**
- 24 **END SHEET**



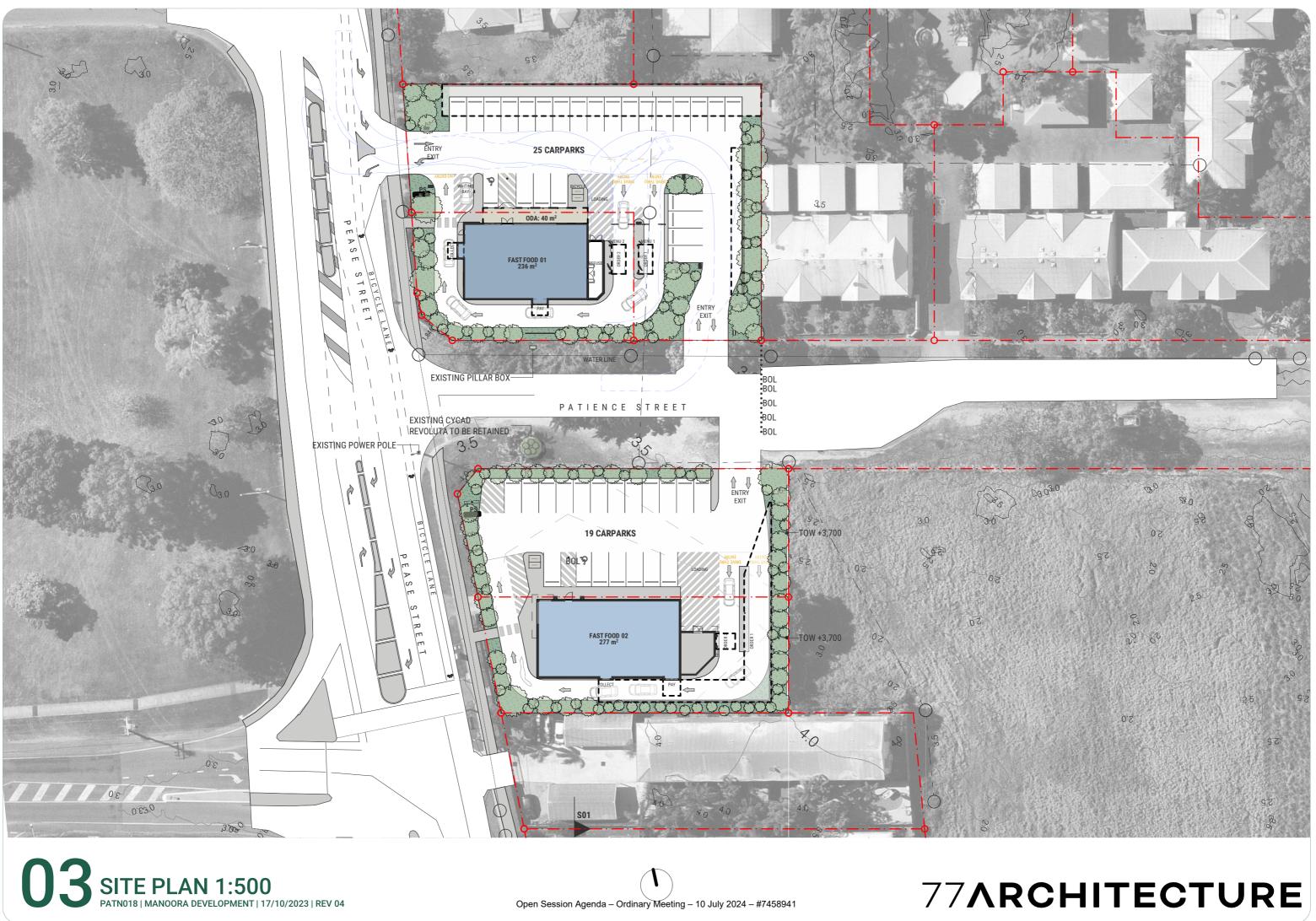


# KEY

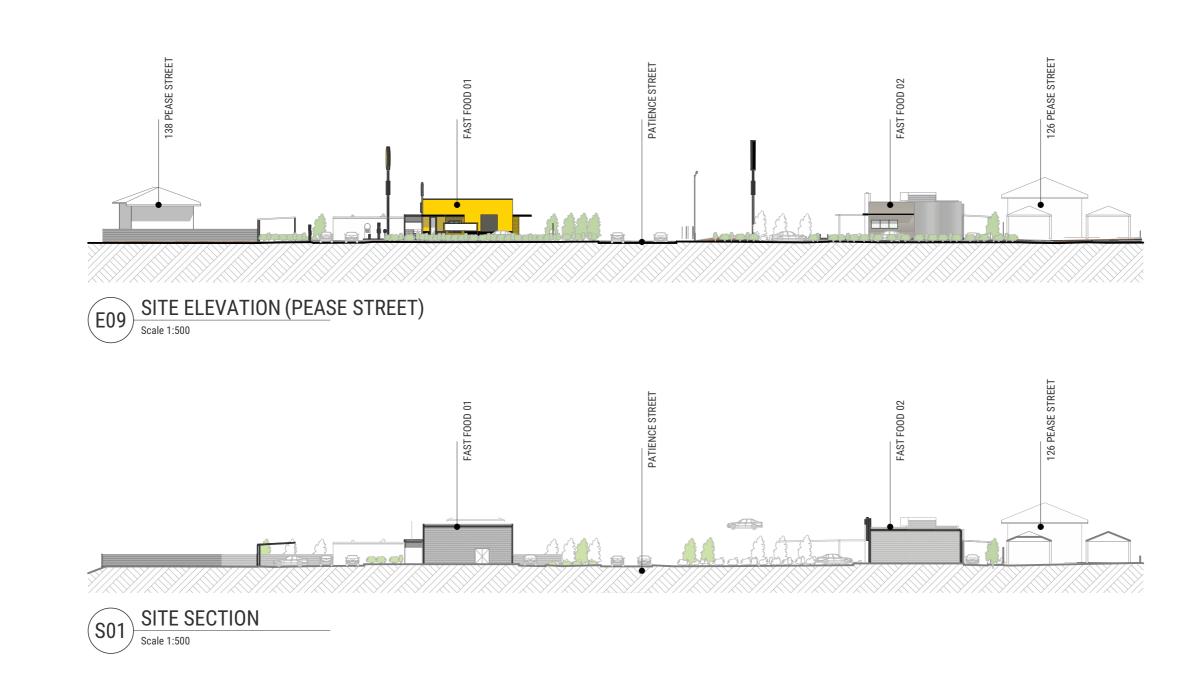
- 01 FAST FOOD SITE 01
- 02 FAST FOOD SITE 02
- PICCONES VILLAGE ON PEASE ST 03
- 04 MCDONALDS
- 05 BWS
- 06 DOMINOS





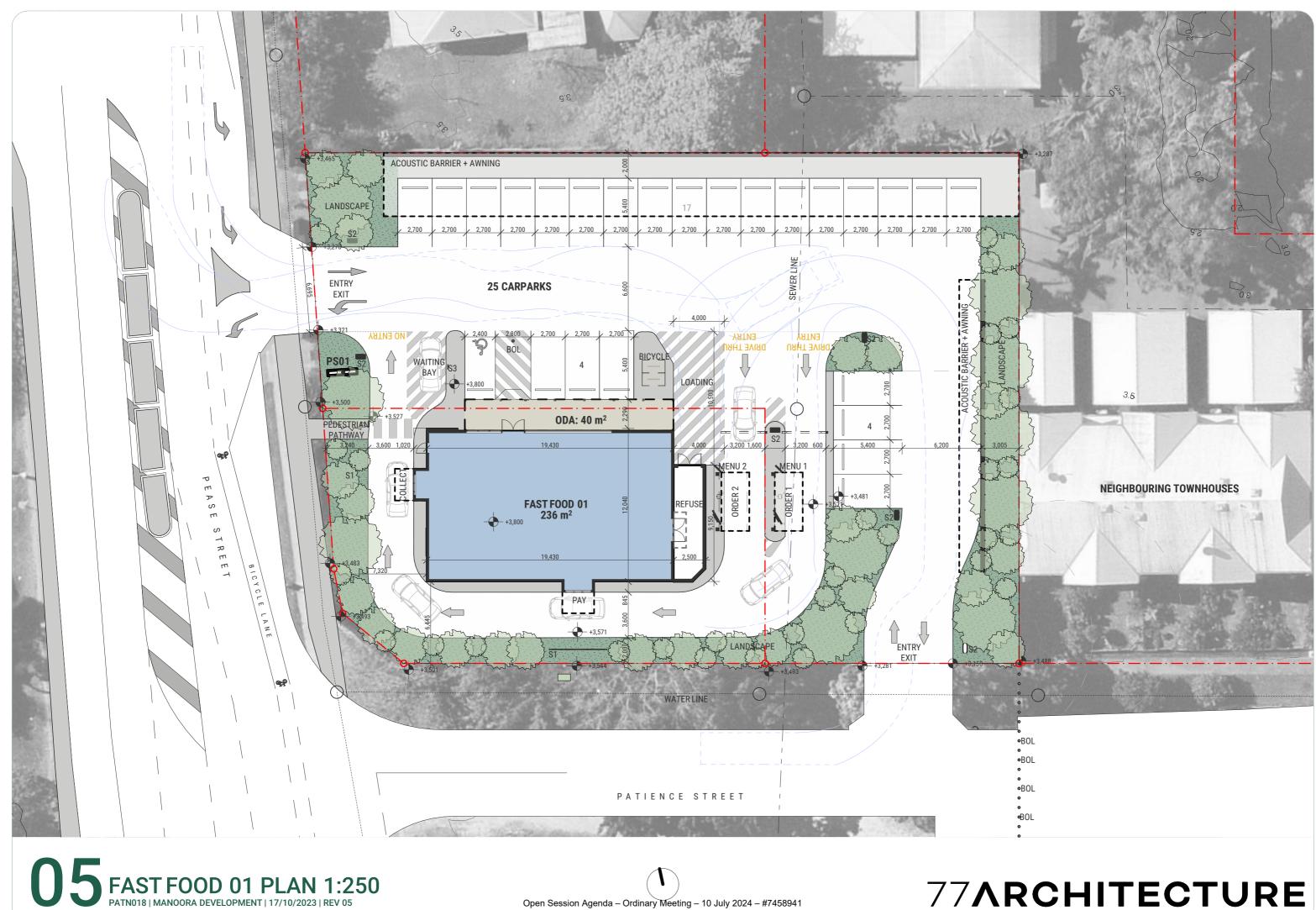








Open Session Agenda - Ordinary Meeting - 10 July 2024 - #7458941

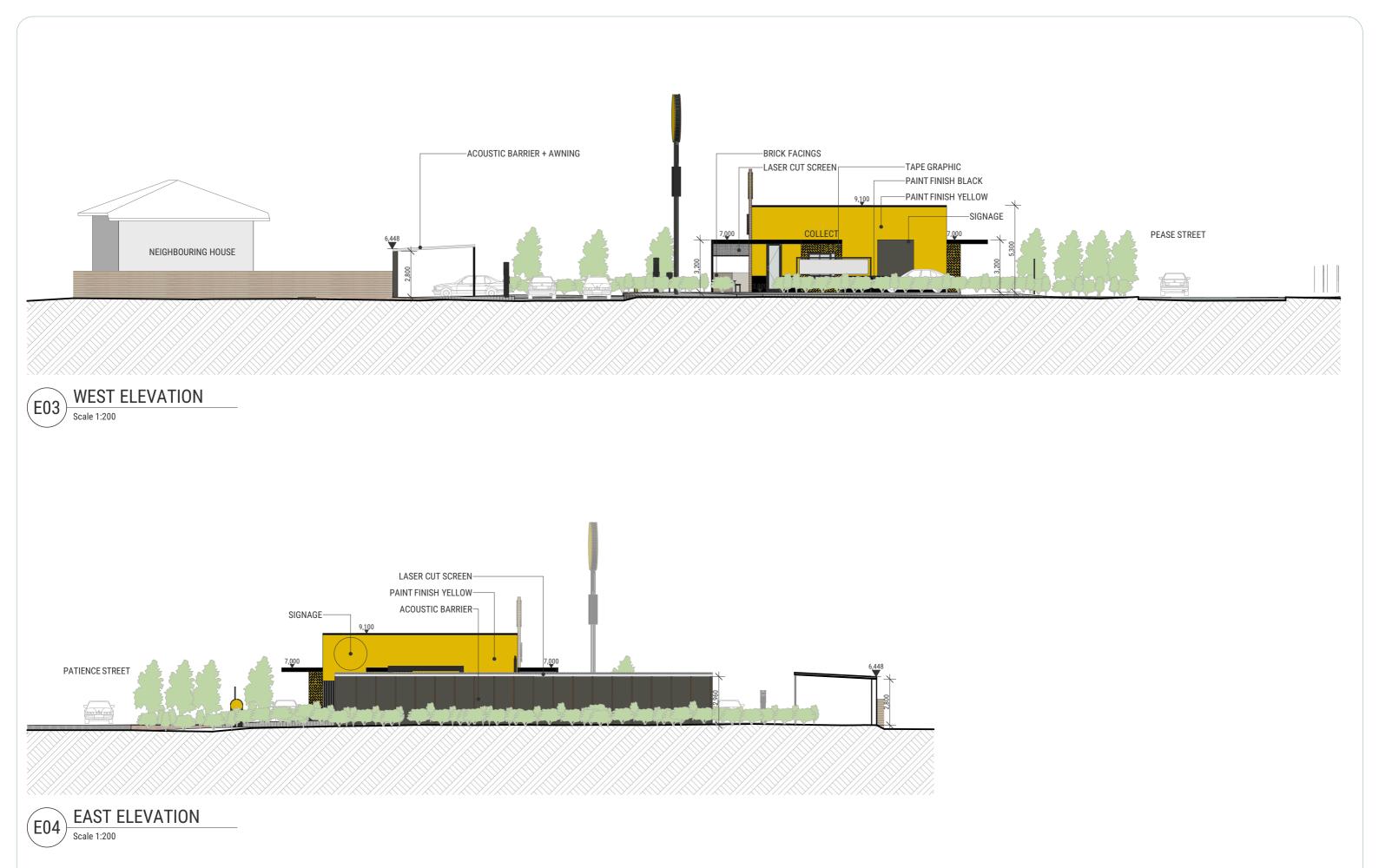


05 FAST FOOD 01 PLAN 1:250 PATN018 | MANOORA DEVELOPMENT | 17/10/2023 | REV 05

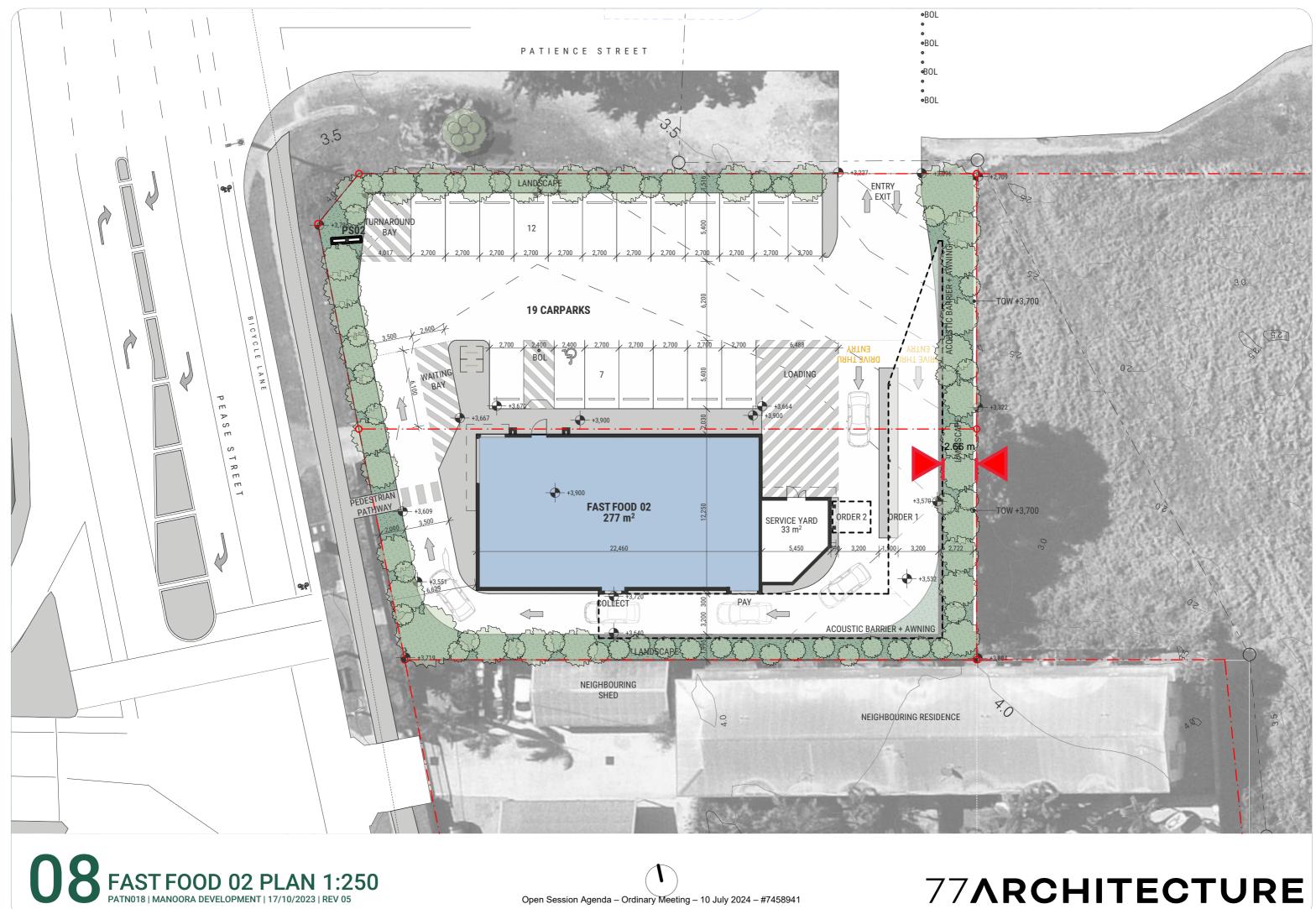


Scale 1:200





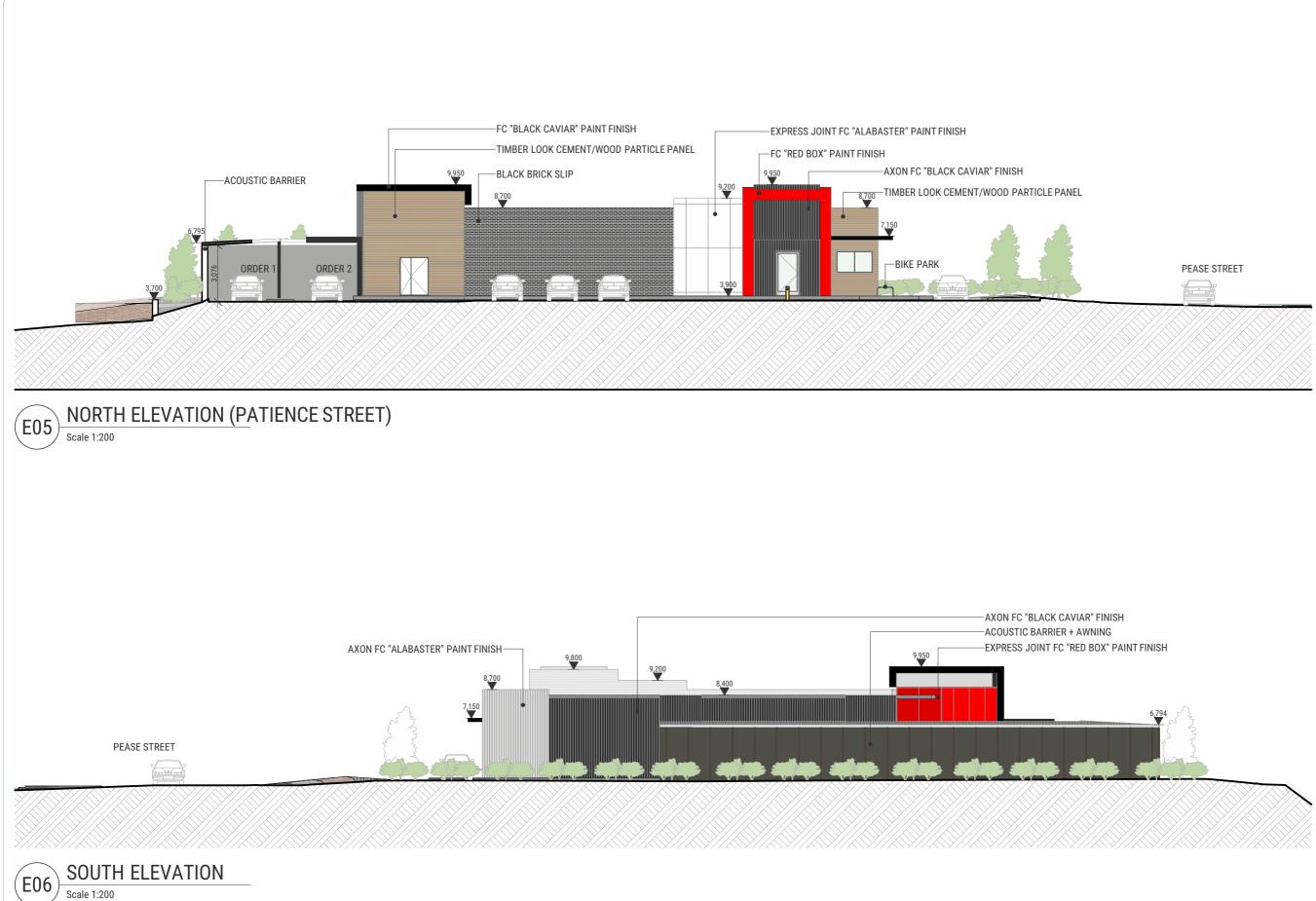




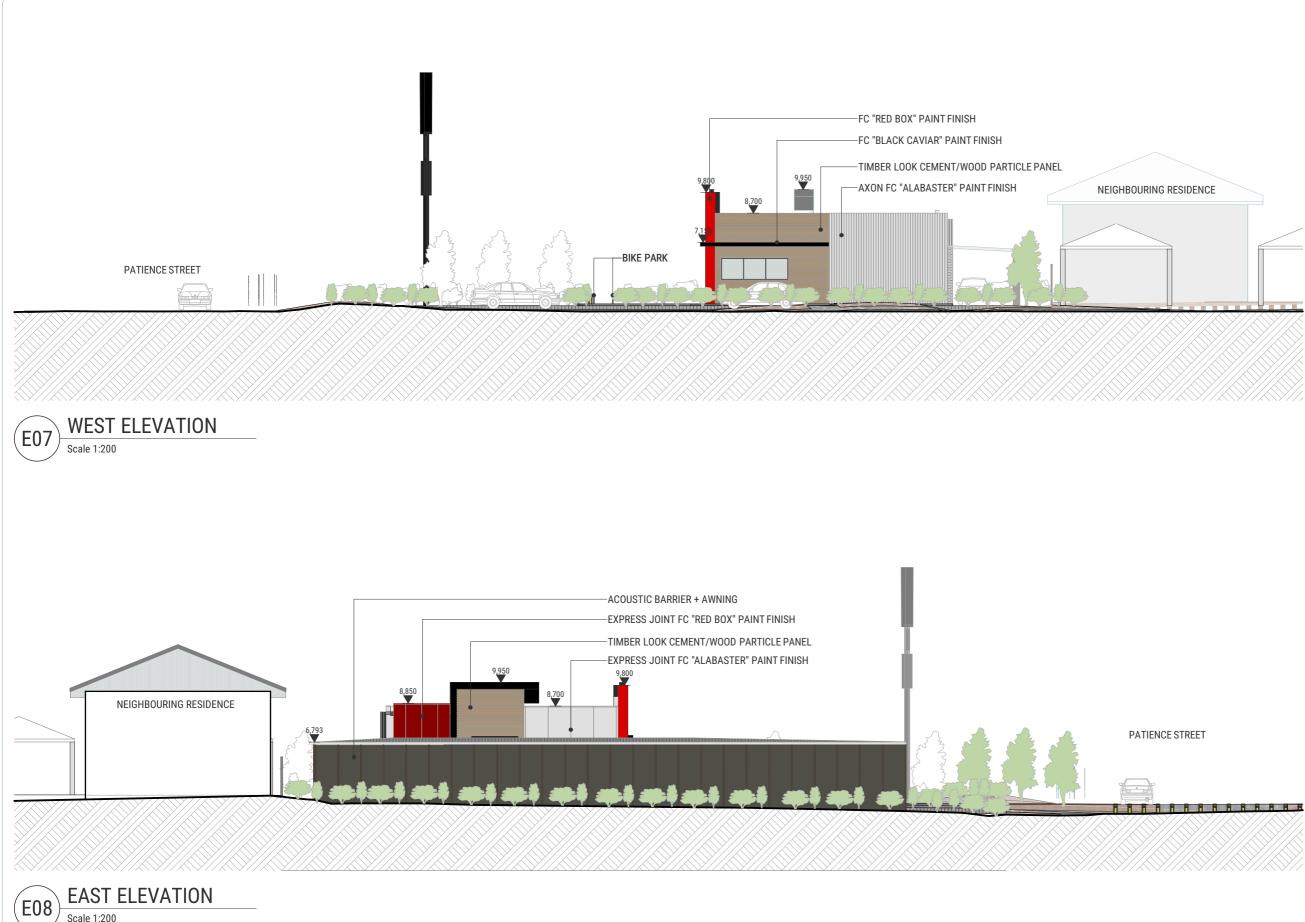


Open Session Agenda - Ordinary Meeting - 10 July 2024 - #7458941











Scale 1:200

# SITE AREA

TOTAL FAST FOOD 01 FAST FOOD 02 4055m<sup>2</sup> 2191m<sup>2</sup> 1864m<sup>2</sup>

**GFA** 

• • • •	
FAST FOOD 01 GFA	236m <sup>2</sup>
FAST FOOD 02 GFA	277m <sup>2</sup>

# SITE COVER

FAST FOOD 01 SITE COVER	325m <sup>2</sup>
PERCENTAGE OF SITE AREA	14.8%
FAST FOOD 02 SITE COVER	289m²
PERCENTAGE OF SITE AREA	15.5%

15.5%

# LANDSCAPING

FAST FOOD 01 LANDSCAPING	377m <sup>2</sup>
PERCENTAGE OF SITE AREA	17.2%
FAST FOOD 02 LANDSCAPING	324m <sup>2</sup>
PERCENTAGE OF SITE AREA	17.4%

# CARPARKING

FAST FOOD 01 STANDARD CARPARKS	24
FAST FOOD 01 ACCESSIBLE CARPARKS	1
FAST FOOD 01 BICYCLE PARKS	2

FAST FOOD 02 STANDARD CARPARKS 18 FAST FOOD 02 ACCESSIBLE CARPARKS 1 FAST FOOD 02 BICYCLE PARKS 2

#### 1. GFA

Gross floor area, for a building, means the total floor area of all storeys of the building, measured from the outside of the external walls and the centre of any common walls of the building, other than areas used for-

- (a) building services, plant or equipment; or
- (b) access between levels; or
- (c) a ground floor public lobby; or

(d) a mall; or

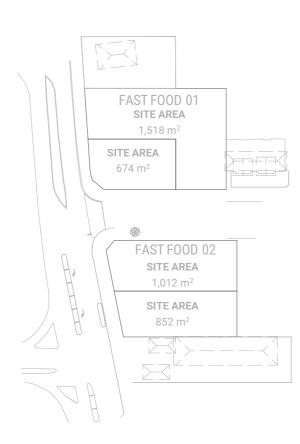
- (e) parking, loading or manoeuvring vehicles; or
- (f) unenclosed private balconies, whether roofed or not.

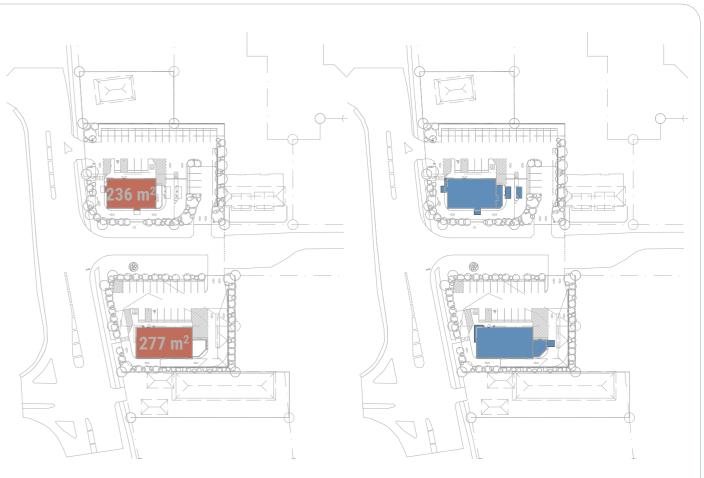
## 2. SITE COVER

Site cover, of development, means the portion of the site, expressed as a percentage, that will be covered by a building or structure, measured to its outermost projection, after the development is carried out, other than a building or structure, or part of a building or structure, that is

- (a) in a landscaped or open space area, including, for example, a gazebo or shade structure; or
  - (b) a basement that is completely below ground level and used for a car parking; or (c) the eaves of a building; or
  - (d) a sun shade







SITE AREA

CARPARKING

GFA



LANDSCAPE

# SITE COVER















































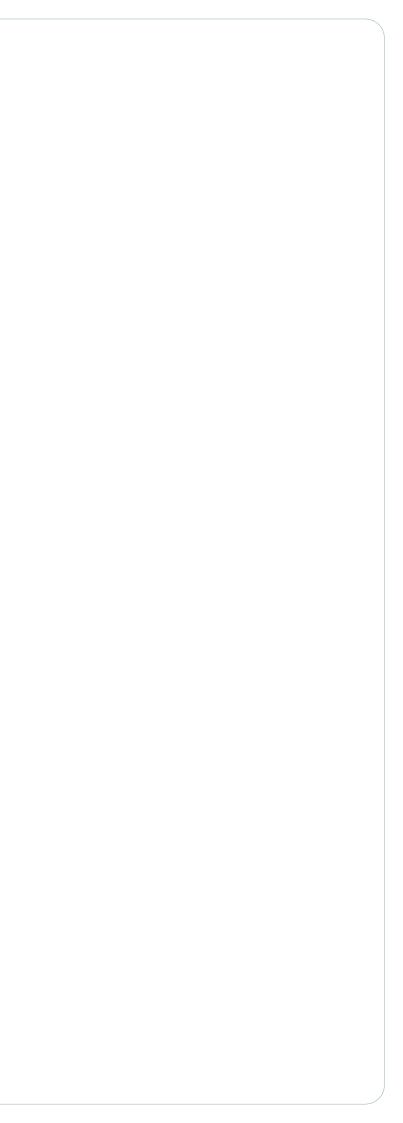








Open Session Agenda - Ordinary Meeting - 10 July 2024 - #7458941



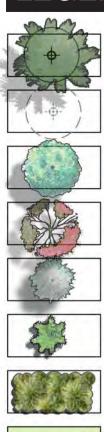


# PEASE STREET, MANOORA - FOOD AND DRINK OUTLETS Landscape Concept

CLIENT SCALE DATE ISSUE

PATONA DEVELOPMENTS PTY LTD 1:200 @ A1; 1:400 @ A3 OCTOBER 2023 DRAWING 2023-101 SK01 [B]





EXISTING TREE TO BE RETAINED EXISTING TREE TO BE REMOVED SHADE TREE

FEATURE TREE

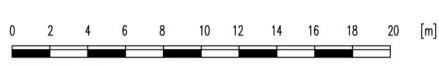
SCREENING TREE/LARGE SHRUB ACCENT PLANT

PLANTING BED

TURFED AREA

NOTE:

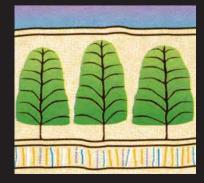
- Refer to Architects drawings for all hard landscaping details such as walls, paving, fencing, etc.
- Refer Engineers Drawings for all grading and drainage details & retaining walls.
- CPTED principals will be followed when providing construction drawings for the landscape design





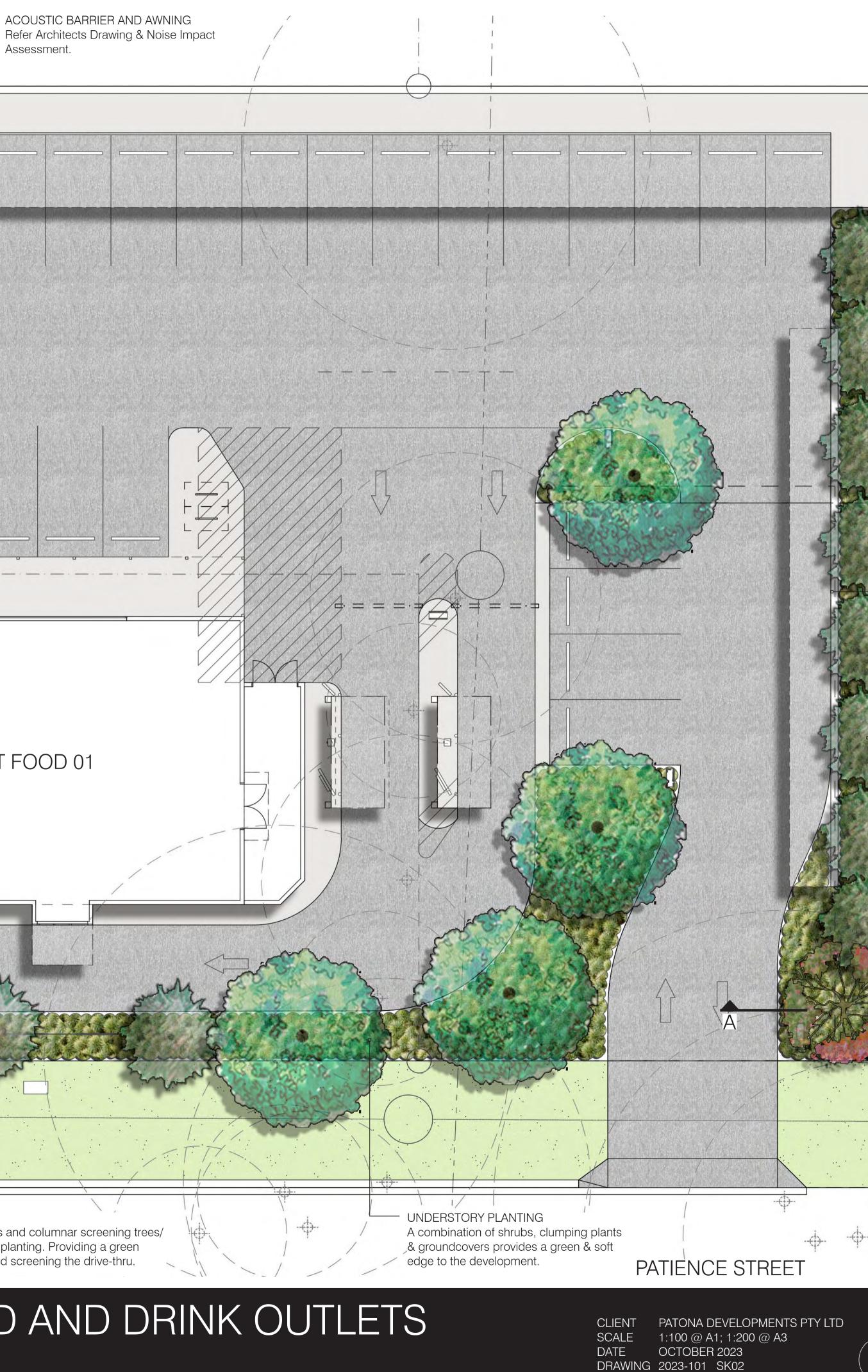
SCALE 1:200 @ A1

### JEREMY FERRIER LANDSCAPE ARCHITECT



## SHADE TREE PLANTING N Underplanted with shrubs, clumping plants & groundcovers. Assessment. S 5 H **ÞYLON SIGN** Refer Architects Drawings. GLO TURF TO DISTURBED -AREAS FAST FOOD 01 EXISTING FOOTPATH PEASE STREET SHADE TREE PLANTING Underplanted with shrubs, clumping plants & groundcovers. CP 2 SCREEN PLANTING A combination of shade trees and columnar screening trees/ large shrubs with understory planting. Providing a green frontage to the developed and screening the drive-thru.

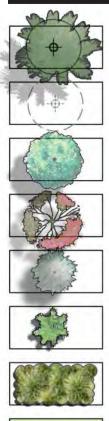
# PEASE STREET, MANOORA - FOOD AND DRINK OUTLETS Landscape Concept



ISSUE

[B]





EXISTING TREE TO BE RETAINED EXISTING TREE TO BE REMOVED SHADE TREE

FEATURE TREE

SCREENING TREE/LARGE SHRUB ACCENT PLANT

PLANTING BED

TURFED AREA

NOTE:

- Refer to Architects drawings for all hard landscaping details such as walls, paving, fencing, etc.
- Refer Engineers Drawings for all grading and drainage details & retaining walls.
  CPTED principals will be followed when
- CPTED principals will be followed when providing construction drawings for the landscape design

- ACOUSTIC BARRIER AND AWNING Refer Architects Drawing & Noise Impact Assessment.

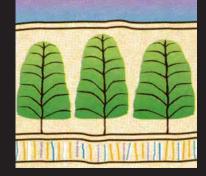
- SCREEN PLANTING Dense planting of screening trees/large shrubs providing a green edge to the development and softening the acoustic barriers.

 FEATURE TREE
 Accentuating entrance and softening the development when viewed from the street.
 Underplanted with shrubs, clumping plants & groundcovers.



JEREMY FERRIER LANDSCAPE ARCHITECT

SCALE 1:100 @ A1



0 1 2 3 4 5 6 7 8 9 10 [m]

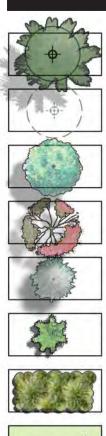


## PEASE STREET, MANOORA - FOOD AND DRINK OUTLETS Landscape Concept

CLIENT SCALE DATE ISSUE

PATONA DEVELOPMENTS PTY LTD 1:100 @ A1; 1:200 @ A3 OCTOBER 2023 DRAWING 2023-101 SK03 [B]

#### LEGEND



EXISTING TREE TO BE RETAINED EXISTING TREE TO BE REMOVED SHADE TREE

FEATURE TREE

SCREENING TREE/LARGE SHRUB ACCENT PLANT

PLANTING BED

TURFED AREA

NOTE:

- Refer to Architects drawings for all hard landscaping details such as walls, paving, fencing, etc.
- Refer Engineers Drawings for all grading and drainage details & retaining walls. CPTED principals will be followed when
- providing construction drawings for the landscape design

- ACOUSTIC BARRIER AND AWNING Refer Architects Drawing & Noise Impact Assessment.

- RETAINING WALLS Refer Engineers & Architects Drawings.

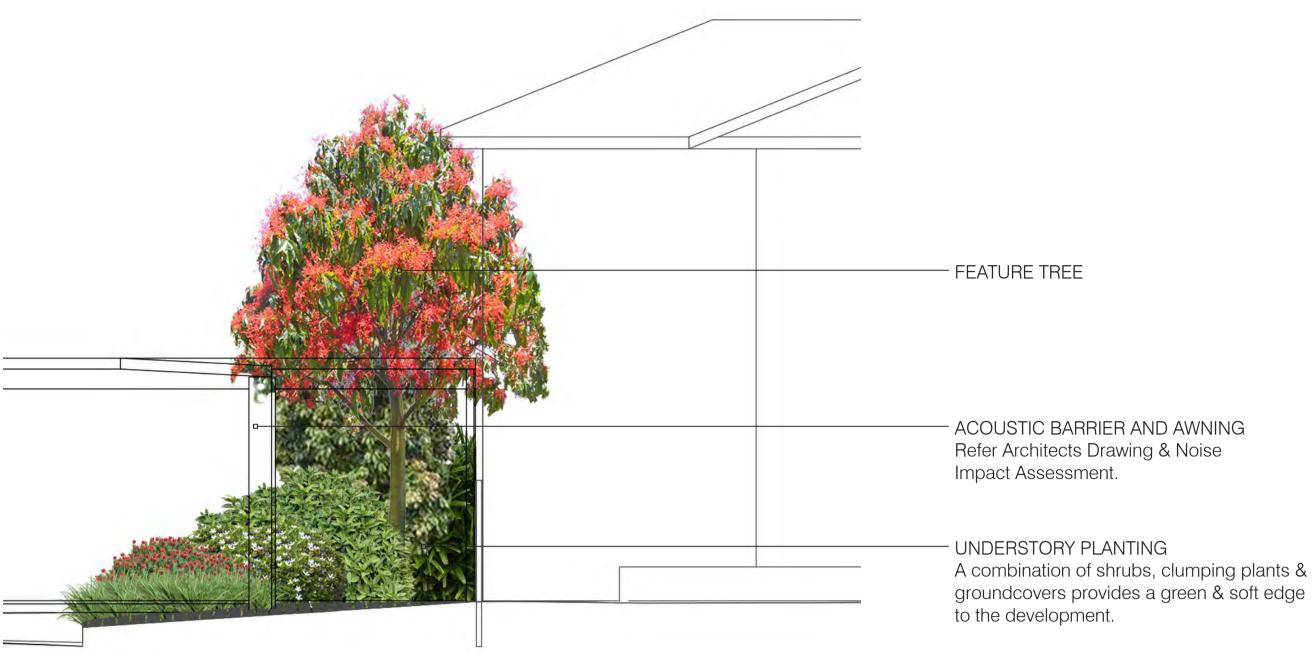
edge to the development and softening the acoustic barriers.

0 1 2 3 4 5 6 7 8 9 10 [m] SCALE 1:100 @ A1

### JEREMY FERRIER LANDSCAPE ARCHITECT







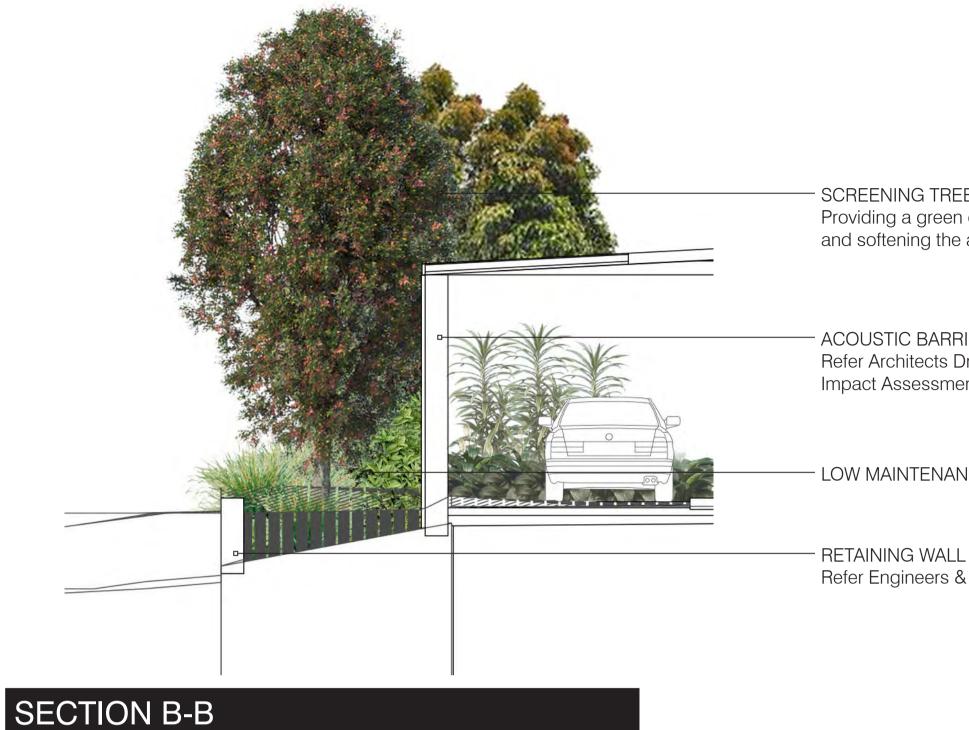
#### **SECTION A-A** SCALE 1:50 @A1; 1:100 @A3



## SECTION C-C

SCALE 1:50 @A1; 1:100 @A3

# PEASE STREET, MANOORA - FOOD AND DRINK OUTLETS Landscape Concept



SCALE 1:50 @A1; 1:100 @A3

CLIENT SCALE DATE ISSUE

PATONA DEVELOPMENTS PTY LTD 1:50 @ A1; 1:100 @ A3 OCTOBER 2023 DRAWING 2023-101 SK04 [B]

SCREENING TREES/LARGE SHRUBS Providing a green edge to the development and softening the acoustic barriers.

ACOUSTIC BARRIER AND AWNING Refer Architects Drawing & Noise Impact Assessment.

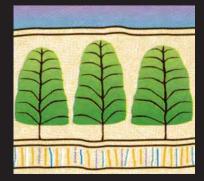
- LOW MAINTENANCE UNDERSTORY PLANTING

Refer Engineers & Architects Drawings.





JEREMY FERRIER LANDSCAPE ARCHITECT



### INDICATIVE PLANT PALETTE



ES/ 

CR

Š



Buckinghamia celsissima



Cupaniopsis anacardioides



Xanthostemon chrysanthus



TRI

ATURE

Syzygium luehmannii



Acmena smithii



Callistemon Dawson River



Elaeocarpus eumundi



Snowflake



Gardenia Florida



Alpinea Species.



Crinum pedunculatum



Hibiscus

Hymenocallis littoralis



Liriope Species.

# PEASE STREET, MANOORA - FOOD AND DRINK OUTLETS Landscape Concept



Carissa Desert Star



Ficus Green Island



BRACHYCHITON acerifolius



Xanthostemon Fairhill Gold



Hibiscus Rubra



Stenocarpus sinuatus





Cordyline petiolaris







Dracaena Species.





Ixora Species.



Murraya Min a Min



Philodendron Xanadu



Phyllanthus multiflorus



Lomandra hystrix



Lomandra Shara



Neoregelia Bossa Nova



Zamia furfuracea



CLIENT SCALE DATE ISSUE

PATONA DEVELOPMENTS PTY LTD NTS OCTOBER 2023 DRAWING 2023-101 SK05 [B]



Syzygium Resilience

GOUNDCOVERS



Gardenia Radicans

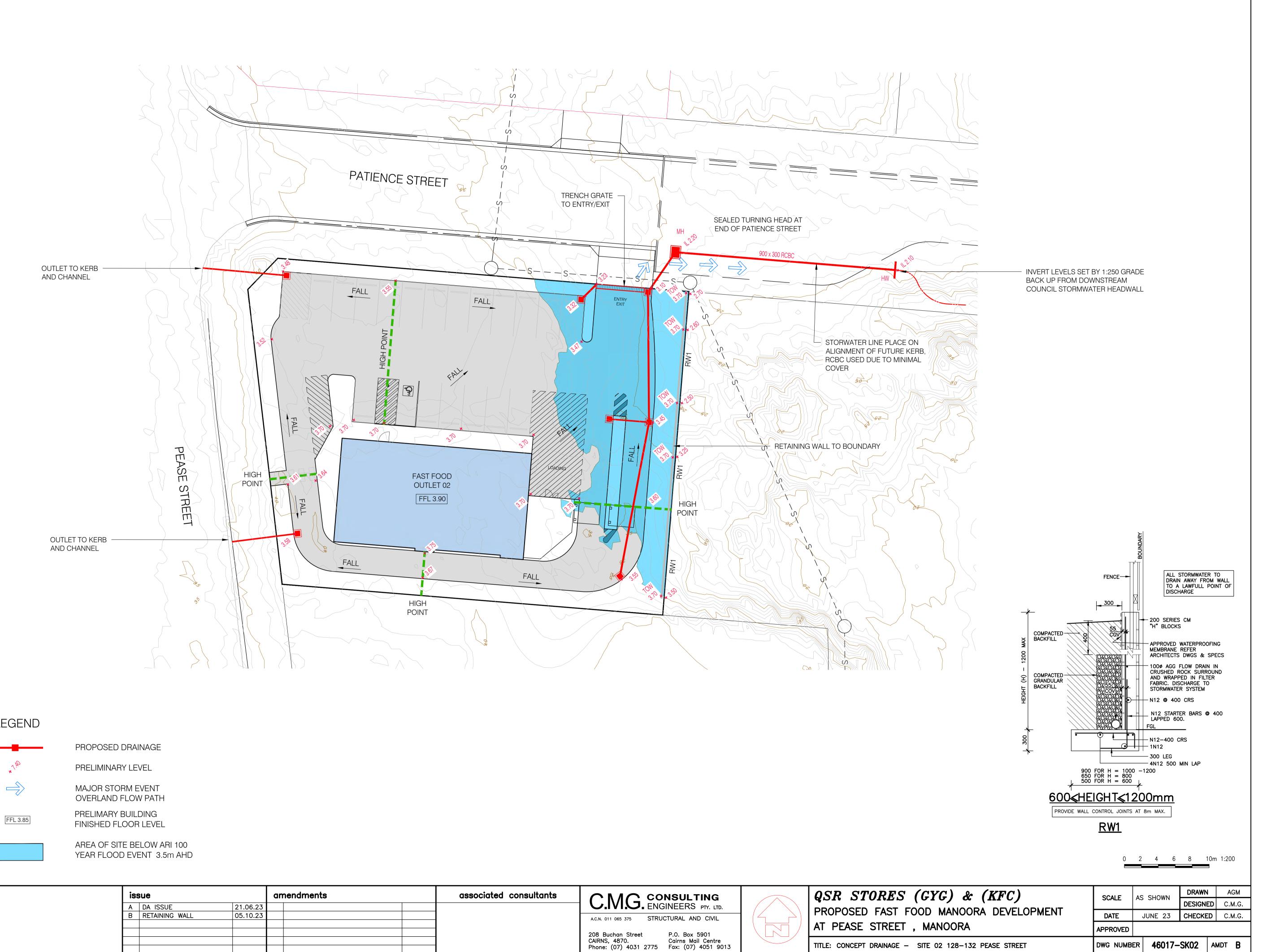


Hibbertia scandens



JEREMY FERRIER LANDSCAPE ARCHITECT





LEGEND



issue			amendments		
Α	DA ISSUE	21.06.23			
В	RETAINING WALL	05.10.23			

