

5.2. MATERIAL CHANGE OF USE- EXTENSION TO EXISTING RESTAURANT 7 ASHFORD AVENUE

REPORT AUTHOR	Daniel Lamond, Planning Officer
MANAGER	Paul Hoye, Manager Environment and Planning
DEPARTMENT	Environment and Planning
PROPOSAL	Material Change of Use (Extension to Existing Restaurant)
APPLICANT	Paynter Dixon Qld C/- Brazier Motti Pty Ltd PO Box 1185 CAIRNS QLD 4870
LOCATION OF SITE	7 Ashford Avenue PORT DOUGLAS
PROPERTY	Lease F on SR697 within Lot 5 on SP288958

LOCALITY PLAN



Figure 1 - Locality Plan

LOCALITY	Port Douglas and Environs
PLANNING AREA	Community & Recreation Facilities
PLANNING SCHEME	Douglas Shire Planning Scheme 2006
REFERRAL AGENCIES	None nominated
NUMBER OF SUBMITTERS	There were no submissions received as a result of this application
STATUTORY ASSESSMENT DEADLINE	29 March 2019
APPLICATION DATE	22 December 2017

RECOMMENDATION

That Council refuses the development application for a Material Change of Use (Extension to Existing Restaurant) over land described as Lot 5 on RP288958 (Lease F on SR697), located at 7 Ashford Avenue PORT DOUGLAS, for the following grounds:

- (1) The proposal conflicts with the Overall Outcomes of the Community and Recreational Facilities Planning Area Code;**
 - a. It does not reflect contemporary community needs insofar as it does not provide adequate on-site car parking to accommodate visitors; and
 - b. It has the potential to affect the amenity of adjacent areas by placing pressure on off-site parking areas including surrounding streets.

- (2) The proposal conflicts with the overall outcomes of the Vehicle Parking and Access Code;**
 - a. There is insufficient parking provided on site;
 - b. There is no known bicycle and end of trip facilities provided on site despite the lack of parking; and
 - c. The lack of parking has the potential to impact on the efficient function of the street network and on the surrounding parking space supply.

- (3) The proposal conflicts with Performance Criteria P1 of the Vehicle Parking and Access Code;**
 - a. The Schedule 1 requirement for car parking is 1 car space per 25 m² of Net Lettable Area; plus 1 bicycle space per 100 m² Net Lettable Area. The existing Club informally uses 21 car parking spaces situated adjacent to the club in a road reserve. An additional floor space of 399m² is proposed at the First Floor. Based on Schedule 1, additional car parking of 16 spaces is required. No additional spaces were

provided on site and insufficient information was provided to justify the shortfall.

(4) There are no relevant matters which would overcome the conflict with the planning scheme.

EXECUTIVE SUMMARY

Council is in receipt of a development application for a Material Change of Use (Extension to Existing Restaurant) which seeks approval for an extension of the existing Port Douglas and District Combined Club at 7 Ashford Avenue, Port Douglas.

The application was made at the time when the 2006 Douglas Shire Planning Scheme was in effect, and was assessed against this Planning Scheme. The site is within the Community and Recreational Facilities Planning Area of the 2006 Planning Scheme and Impact Assessment was required. The proposed works involve an extension at the upper level for the purpose of a Restaurant.

The proposal is not supported primarily due to the significant shortfall of parking available and lack of opportunity to provide additional spaces to cater for the needs of the club. There is considered to be a conflict with the 2006 Planning Scheme and insufficient information has been submitted to justify a planning decision to support the proposal despite the conflict.

The proposal has also been considered against the relevant provisions of the 2018 Douglas Shire Planning Scheme. The issues surrounding the lack of car parking remain largely the same as with the assessment under the 2006 Planning Scheme. No additional items of concern are raised under the 2018 Planning Scheme.

Due to the inability of the development to cater for car parking demand generated by the proposed extension, refusal of the application is recommended.

TOWN PLANNING CONSIDERATIONS

1.0 Background

The site and its improvements (buildings) have been used as the *Port Douglas and District Combined Clubs Inc* since 1980 with an extension in 1989.

Council granted an approval in June 2008 for an extension to the Club for the purposes of a kitchen and an outdoor dining area on a new deck overhanging the waterway. This extension was approximately 200m².

Council granted a further approval in August 2013 for an Undefined Use (extension to existing Licenced Club) to facilitate an extension of the ground floor facility of 142m² of Gross Floor Area (GFA) and construction of a new first floor (296m²). The first floor included a children's play area, foyer, new bar and lounge area, club operation and management area, reception, office and storage area.

The applicant attended a pre-lodgement meeting with Council in January 2018 and was advised of Council's concerns regarding the lack of on site car parking. A report was tabled at a Council meeting on 10 October 2017 in relation to the proposed development and Council resolved to provide the following (without prejudice) advice to the applicant:

1. In the event that the applicant proceeds to a formal application, the proposed extensions constitute a material change of use for either a restaurant or tavern use, being impact assessable development in the Community and Recreational Facilities Planning Area under the Douglas Shire Planning Scheme 2006 (as amended).

2. Any formal application would need to fully justify any proposed car parking arrangements via an evidence-based traffic study prepared by an appropriately qualified traffic consultant for the additional floor space.

2.0 Proposal

The proposed development includes the construction of a new upper floor of the existing Port Douglas and District Combined Club.

The extension will include an enclosed restaurant area of 143m² and an unenclosed deck area of 256m², as well as new toilets and fire stairs. This results in a proposed new Net Lettable Area (NLA) of 399m².

The works will require the first floor deck to be rebuilt to support the proposed upper deck, with the existing shade sails relocated to the upper level.

3.0 State Planning Requirements

There are no relevant State planning requirements.

The application material was unclear in relation to whether the reconstruction of the existing lower level deck (necessary to support the proposed upper level deck) involves operational works representing tidal works.

If it is determined that Tidal Works will be occurring, a further application for Tidal Works in a Coastal Management District could be lodged separately. Council is advised by the applicant that the previous extension did not trigger tidal works approval by the State.

Further, the applicant has advised that the enquiry has been made with the State but a decision has not been made as to whether the works trigger assessment by the State Assessment and Referral Agency. The applicant has advised that the work is not significant within the tidal area as the existing footings are being reused.

This application would trigger Impact Assessment and require referral to the Chief Executive Department of State Development, Manufacturing, Infrastructure and Planning.

4.0 Douglas Shire Planning Scheme Assessment

An assessment has been undertaken against the relevant codes of the **2006 Douglas Shire Planning Scheme** as identified in the below table.

Table 1.

	Douglas Shire	Code Applicability	Compliance
Locality	Port Douglas and Environs	✓	In part
Planning Area	Community & Recreation Facilities	✓	In part
Defined Use	Restaurant	x	Not Applicable. There is no applicable land use code.
Overlay Codes	Acid Sulfate Soils Code	x	Not Applicable. The site does not involve excavation or filling of the site.
	Cultural Heritage and Valuable Sites Code	x	Not Applicable. The site is not identified on the Cultural Heritage and Valuable Sites Overlay Map.
	Natural Hazards Code	x	Not Applicable. The site contains Low Risk Hazard for Bushfire
General Codes	Design and Siting of Advertising Devices Code	✓	Yes
	Filling and Excavation Code	x	Not Applicable. No filling or excavation is proposed.
	Landscaping Code	✓	Yes
	Natural Areas and Scenic Amenity Code	x	Not Applicable. The site is not within proximity to remnant vegetation or a watercourse.
	Reconfiguring a Lot Code	x	Not Applicable. Reconfiguring a lot is not proposed for the site.
	Vehicle Parking and Access Code	✓	In part
	Sustainable Development Code	x	Yes
	Vegetation Management Code	x	N/A

4.1 Compliance Issues

Desired Environmental Outcomes

The proposal has been reviewed against the Desired Environmental Outcomes (DEOs) within the Planning Scheme. The proposal is considered to not be inconsistent with the DEOs, however, the DEOs remain largely irrelevant as the proposal is essentially for the extension of an existing building in an existing urban area with no additional site coverage footprint proposed. The applicable development codes from the Planning scheme are where the compliance issues arise.

Codes:

The following sections include an assessment against the purpose of the relevant codes and includes tables which identify where performance outcomes are applicable to the assessment of the proposal:

1. Port Douglas and Environs Locality Code

The relevant outcomes of the purpose include:

- consolidate Port Douglas as the major tourist accommodation and tourist service centre in the Shire;
- consolidate the area between Macrossan Street and Marina Mirage as the major tourist, retail, dining and entertainment centre of the Shire;
- protect sensitive environments and natural features which give Port Douglas its distinctive character and identity, in particular Four Mile Beach, Dicksons Inlet and Flagstaff Hill;
- protect primary functions of the port (marine and fishing activities) from incompatible land uses and acknowledge the industrial and commercial land uses associated with the maritime industry, while also providing secondary opportunities for recreational use by residents and tourists.

Response:

The proposal is consistent with the outcomes in part. It helps consolidate Port Douglas as the major tourist service centre in the Shire and facilitates in consolidating the area between Macrossan Street and Marina Mirage (Crystalbrook Superyacht Marina) as the major tourist, retail, dining and entertainment centre of the Shire.

Table 2.

Provision	Response to non-compliance
Port Douglas and Environs Locality Code	
P1	Buildings and structures complement the Height of surrounding development, AND The height of buildings in the Port Douglas Waterfront transitions from single storey in the Community and Recreation Facilities Planning Area through to three storeys in the Port Douglas Waterfront North Planning Area. AND Buildings are limited to two storeys outside the Port Douglas Waterfront, except; in the High Scale locations depicted on the Locality Plan, where development of three storeys is appropriate.
A1.1	In the Planning Areas (and parts thereof) listed below the maximum Height of Buildings/structures is 6.5 metres. In addition, the roof (including any ancillary roof features) does not exceed a maximum Height of 3.5 metres above the intersection of the pitching part of the roof and the wall of the Building.
Response	The site is within the Community and Recreation Facilities Planning Area. The maximum building height, excluding the roof, is 6.8 metres. Including the roof pitch, the building height is approximately 8.2 metres. The minor variation in building height is considered inconsequential and compliant with the Performance Criteria.

Provision	Response to non-compliance
Port Douglas and Environs Locality Code	
P4	Development Sites are provided with efficient and safe vehicle access and maneuvering areas on Site and to the Site, to an acceptable standard for the Locality.
A4.1	All Roads, driveways and maneuvering areas on Site and adjacent to the Site are designed and maintained to comply with the specifications set out in the Planning Scheme Policy No 6 – FNQROC Development Manual.
Response	The development site does not contain roads, driveways or maneuvering areas. No changes are proposed to the same areas adjacent to the site.

2. Community and Recreational Facilities Planning Area Code

The relevant outcomes of the purpose include:

- accommodate community facilities such as schools, churches, community centres, State and Local Government facilities and major public utility depots or operations which are important to a locality or to the Shire, in locations which are convenient and accessible to the communities which the facilities serve;
- ensure that any expansion or redevelopment of community facilities is in keeping with the purpose and character of the facility and reflect contemporary community needs;
- ensure that the use of recreational or club facilities does not affect the amenity of adjacent areas, particularly residential or environmental areas, through the sensitive design and siting of facilities and through buffering of facilities from sensitive land uses;

Response:

The proposal is consistent with the outcomes in part. It helps represent an extension of a club which is open to the general public and visitors to the shire, however:

- it is not a conventional community facility;
- It does not reflect contemporary community needs insofar as it does not provide adequate on-site car parking to accommodate visitors; and
- It has the potential to affect the amenity of adjacent areas by placing pressure on off-site parking areas including surrounding streets.

Table 3.

Community and Recreational Facilities Planning Area Code	
P1	The establishment of uses is consistent with the outcomes sought for the Community and Recreational Facilities Planning Area.
A1.1	Uses identified as inconsistent uses in the Assessment Table are not established in the Community and Recreational Facilities Planning Area.
Response	The use, defined by Council as a Restaurant (using an existing building), is an Inconsistent Use in the Community and Recreational Facilities Planning Area. The use was established under a previous planning regime and is lawfully established. Compliance with P1 for this proposal is considered to be negligible in the current circumstances.

Community and Recreational Facilities Planning Area Code	
P2	Buildings/structures are Setback to ensure that they are compatible with the character of the area and do not adversely affect other uses, particularly residential uses.
A2.1	Buildings are Setback not less than: <ul style="list-style-type: none"> • a minimum of 8 metres from a State-Controlled Road; or • in other cases, a minimum of 6 metres from the Main Street Frontage; • 4 metres from any secondary Road Frontage; and • 3 metres from side and rear boundaries.
Response	The existing building is built to the boundary of the lease area and is not setback from the road frontage, or to the (southern) side and rear boundaries. The proposed extension is built within the curtilage of the existing building and therefore does not represent a change to the existing setbacks. For this reason the proposed works are considered to comply with the Performance Criteria.

3. Vehicle Parking and Access Code

The relevant outcomes of the purpose include:

- sufficient vehicle parking is provided on-Site to cater for all types of vehicular traffic accessing and parking on the Site, including staff, guests, patrons, residents and short term delivery vehicles;
- sufficient bicycle parking and end of trip facilities are provided on-Site to cater for customers and staff.
- the provision of on-Site parking, loading/unloading facilities and the provision of Access to the Site, do not impact on the efficient function of the street network or on the area in which the development is located;

Response:

The proposal is inconsistent with the outcomes as follows:

- There is insufficient parking provided on site;
- There is no known bicycle and end of trip facilities provided on site despite the lack of parking; and
- The lack of parking has the potential to impact on the efficient function of the street network and on the surrounding parking space supply.

Table 4.

Vehicle Parking and Access Code	
P1	Sufficient parking spaces are provided on the Site to accommodate the amount and type of vehicle traffic expected to be generated by the use or uses of the Site, having particular regard to: <ul style="list-style-type: none"> • the desired character of the area in which the Site is located; • the nature of the particular use and its specific characteristics and scale; • the number of employees and the likely number of visitors to the Site; • the level of local accessibility; • the nature and frequency of any public transport serving the area; • whether or not the use involves the retention of an existing Building and the

Vehicle Parking and Access Code	
A1.1	<p>previous requirements for car parking for the Building;</p> <ul style="list-style-type: none"> • whether or not the use involves an identified Valuable Conservation Feature and Valuable Site; and • whether or not the use involves the retention of significant vegetation. <p>The minimum number of vehicle parking spaces provided on the site is not less than the number prescribed in Schedule 1 of this Code for the particular use or uses. Where the number of spaces calculated from the Schedule is not a whole number, the number of spaces provided is the next highest whole number.</p>
Response	<p>The Schedule 1 requirement for car parking is: 1 car space per 25 m² of Net Lettable Area; plus 1 bicycle space per 100 m² Net Lettable Area.</p> <p>The existing Club informally uses 21 car parking spaces situated adjacent to the club in a road reserve. An additional floor space of 399m² is proposed at the First Floor. Based on Schedule 1, additional car parking of 16 spaces is required. No additional spaces were provided on site and insufficient information was provided to justify the shortfall. It is considered that there is conflict with the Performance Criteria.</p>
P2	<p>Parking spaces are provided to meet the needs of vehicle occupants with disabilities.</p>
A2.1	<p>For parking areas with a total number of ordinary vehicle spaces less than 50, wheelchair accessible spaces are provided as follows:</p> <ul style="list-style-type: none"> • Medical, higher education, entertainment facilities and shopping centres – 2 spaces; • All other uses – 1 space.
Response	<p>There are no parking spaces provided on site and therefore no PWD spaces. The car park at the front of the club does not include a wheelchair accessible space. There is conflict with the Performance Criteria.</p>

Assessment Discussion

Car parking

The existing club has undergone two significant extensions since the introduction of the Douglas Shire Planning Scheme in 2006. The first extension in 2008 is understood to have involved an extension of approximately 200m² which included the existing deck. The second extension in 2013 added an additional 142m² of GFA at the ground level (as an extension at the front of the building) and 296m² at the upper level. The total extensions under the current planning scheme total approximately 640m² which is more than double the size of the club prior to 2008 and equates to an existing undersupply of 26 car parks. The proposed extension brings that undersupply to 42 spaces.

The Applicant has argued (in summary) that:

- a) There is no opportunity to provide additional car parks on the lease;
- b) The club has historically used the 21 adjacent car parking spaces;
- c) The proposal represents an extension of an existing building footprint in an existing tourist, dining and entertainment area as distinct from the establishment of a new premises;
- d) There is on-street car parking available for patrons; and
- e) There are opportunities for the club to construct additional on-street parking in proximity to the site.

In response, it is noted that the club has previously been permitted to expand despite the lack of car parking, resulting in a 26 space undersupply of on-site car parking. It is therefore considered that the 21 adjacent car parks are fully utilised and cannot be relied on to justify additional extensions.

The provisions of the 2006 Planning Scheme relating to commercial development in the Tourist Centre of Port Douglas requires on site car parking of up to 100% (Refer P9/A9.1 of the Port Douglas and Environs Locality Code). While a similar provision is not applicable to the subject site, it demonstrates Council's consistent position in terms of requiring on site car parking for commercial uses (including extensions to commercial uses) in the tourist centre.

The applicant's suggestion that options are available for the club to construct additional on-street parking is acknowledged, however it is considered that this is not an appropriate solution. The Planning Act 2016 does not permit conditions of approval to require infrastructure agreements or to require other land to be relied upon. Land can only be considered as part of a development application if the application is also made over the additional land.

2018 Douglas Shire Planning Scheme

The 2018 Douglas Shire Planning Scheme version 1.0 came into effect on 2 January 2018. This is a statutory instrument that replaces the 2006 Douglas Shire Planning Scheme. Council can give weight to current planning instrument even though it is not the instrument the application was made under.

The comparable land use definition in the 2018 Scheme is for 'Food and Drink Outlet' however the use is arguably better defined as a 'Club', which is defined as *'premises used by persons associated for social, literary, political, sporting, athletic or other similar purposes for social interaction or entertainment. The use may include the ancillary preparation and service of food and drink'*.

Car parking for a Club is required at a rate of 1 space per 15m² plus bicycle spaces, and the rate for a Food and Drink Outlet is 1 space per 50m² where in Precinct 1 of the Port Douglas and Craiglie Local Plan.

If the use was assessed as a Club, additional car parking of 29 spaces is required or, where the use is determined to be a Food and Drink Outlet, 9 parking spaces are required.

Overall it is considered that the previous and current planning schemes are consistently aligned in relation to this site. Whilst the site has been included in the Centre Zone under the 2018 Planning Scheme, the focus for major tourist, retail, dining and entertainment facilities remains within precincts surrounding Macrossan Street and Marina Mirage.

The lack of on-site parking remains the primary area of non-compliance and the earlier comments made in relation to car parking and land use remain a concern.

Referral Agency Requirements

No referral agency assessment was triggered by the proposed development.

Public Notification / Submissions

Public notification commenced on 23 April 2018 and finished on 16 May 2018.

No submissions were received about the proposed development.

ADOPTED INFRASTRUCTURE CHARGES

The proposal triggers adopted infrastructure charges in accordance with Councils Local Government Infrastructure Plan (LGIP).

Under the LGIP, the Port Douglas and Environs Locality triggers a charge of \$129.34 per square metre of floor area for a commercial land use. Accordingly, the 399 square metre extension triggers a charge of \$51,606.66.

COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following area outlines where Council has a clear responsibility to act:

Regulator: Meeting the responsibilities associated with regulating activities through legislation or local law.

Under the *Planning Act 2016* and the *Planning Regulation 2017*, Council is the assessment manager for the application.

ATTACHMENTS

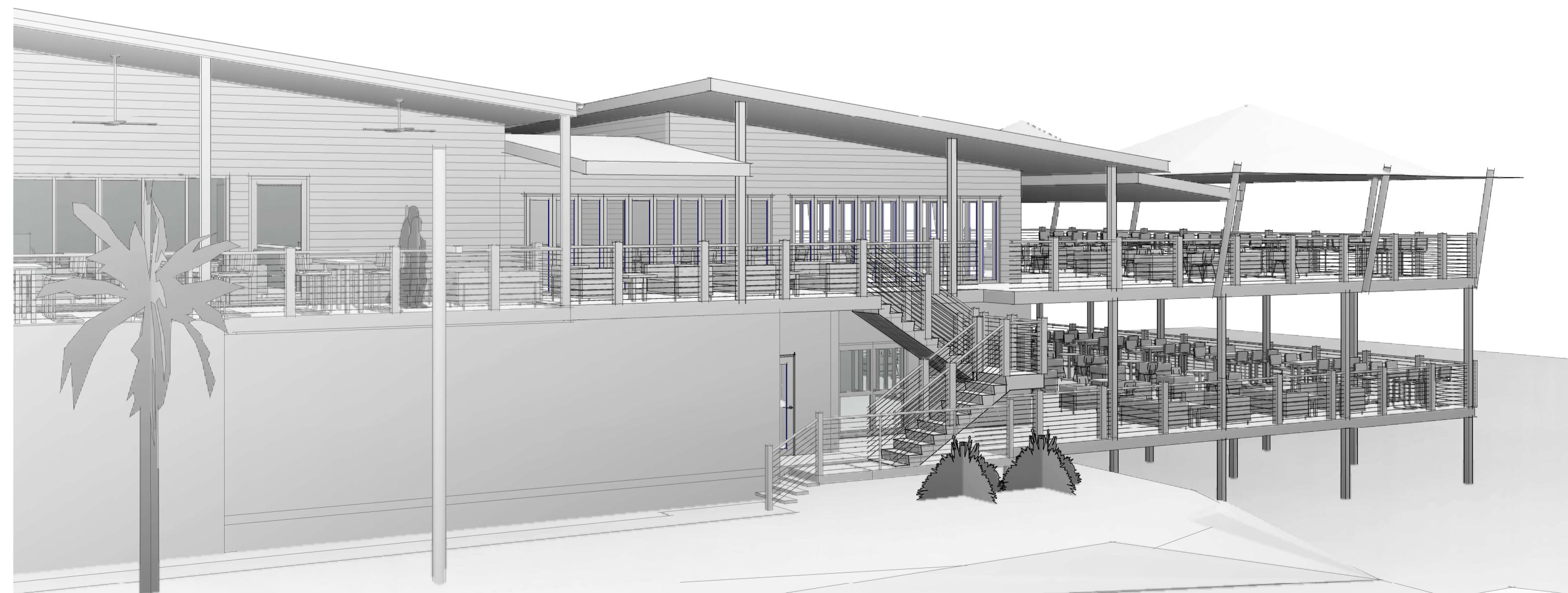
1. Attachment 1- Proposal Plans **[5.2.1]**



DECK EXTENSION TO FIRST FLOOR - OPTION 3

PDCC0103

THE TIN SHED, PORT DOUGLAS & DISTRICT CC
PORT DOUGLAS AND DISTRICT COMBINED CLUBS INC.



REV	DESCRIPTION	BY	DATE
A	DA ISSUE	GT	19/12/17

ORIGINAL SHEET SIZE: A1 (594mm x 841mm)

DRAWING STATUS

DA ISSUE

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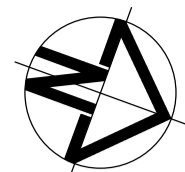
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 LEVEL 3/299 CORONATION DRIVE, MILTON, QLD 4064
 P.O. BOX 1208 MILTON, QLD, 4064
 TELEPHONE: 07-3368 5500 FAX: 07-3367 4600
 EMAIL: info@paynter.com.au
 WEB: www.paynter.com.au

PROJECT
 PORT DOUGLAS AND DISTRICT COMBINED CLUBS INC.
 DECK EXTENSION TO FIRST FLOOR - OPTION 3

TITLE
 PDCC0103
 COVERSHEET

DATE	19/12/17	DRAWN	GT
SCALE (A1)		CHECKED	RW
CLIENT REF		APPROVED	GW
PDCC REF NO.	PDCC0103	DRAWING NO.	00-00
		REVISION	A



TRUE NORTH

SITE CALCULATION:

SITE AREA	=	1225.6m ²
GROUND FLOOR:		
ENCLOSED AREA	=	495m ²
UNENCLOSED AREA	=	264m ²
FIRST FLOOR EXISTING:		
ENCLOSED AREA	=	215m ²
UNENCLOSED AREA	=	68m ²
FIRST FLOOR NEW:		
ENCLOSED AREA	=	172m ²
UNENCLOSED AREA	=	259m ²
SITE COVERAGE (EXISTING & PROPOSED)	=	759m ²

REV	DESCRIPTION	BY	DATE
A	DA ISSUE	GT	19/12/17



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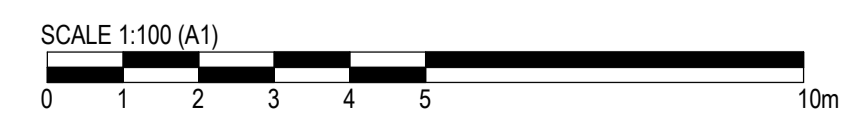
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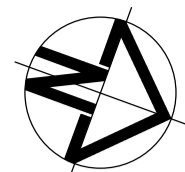
PROJECT
PORT DOUGLAS AND DISTRICT COMBINED CLUBS INC.

DECK EXTENSION TO FIRST FLOOR - OPTION 3

TITLE
PDCC0103
GROUND FLOOR PLAN

DATE	19/12/17	DRAWN	GT
SCALE (A1)	As indicated	CHECKED	RW
CLIENT REF		APPROVED	GW
PDCC REF NO.	PDCC0103	DRAWING NO.	02-01
		REVISION	A





TRUE NORTH

SITE CALCULATION:

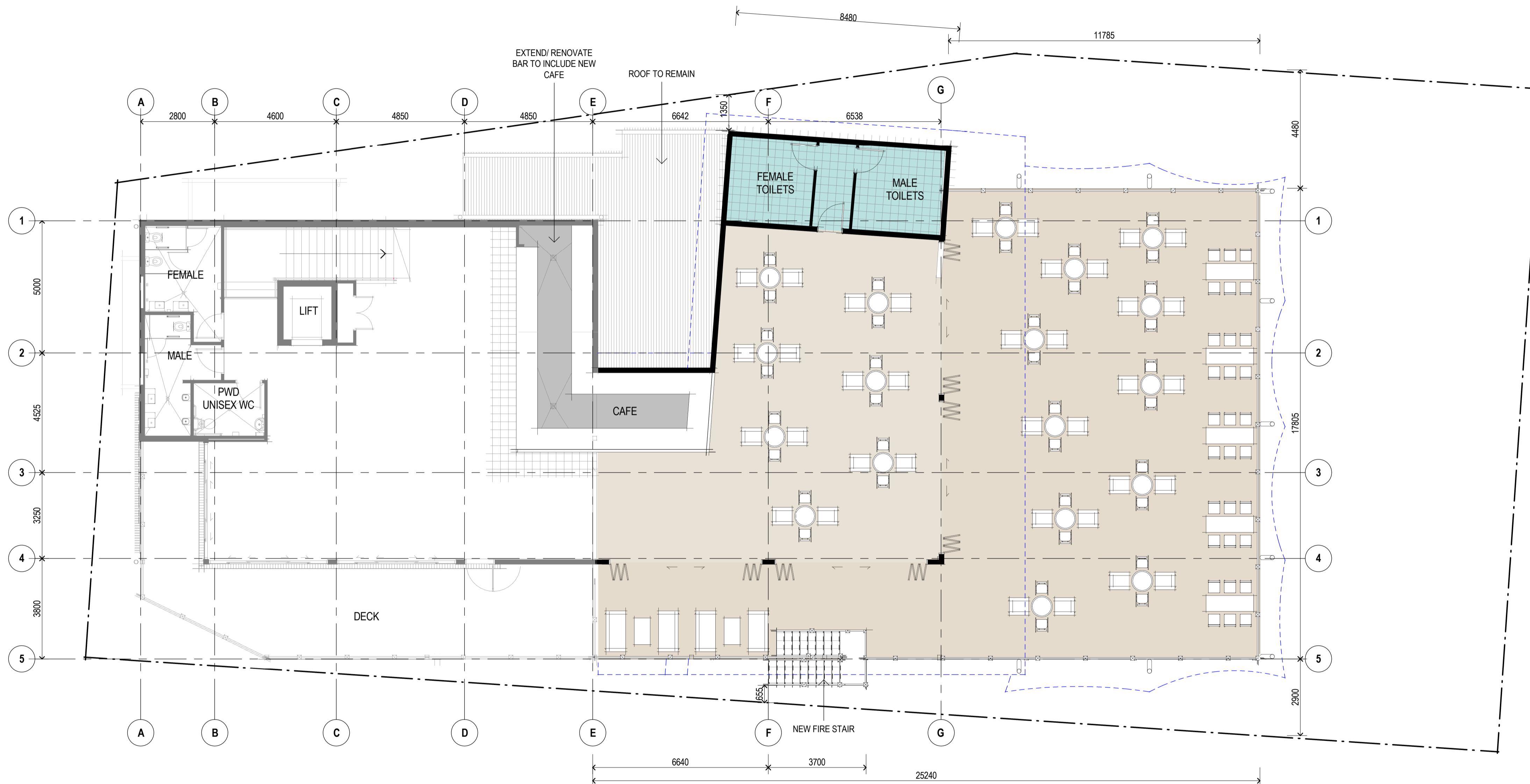
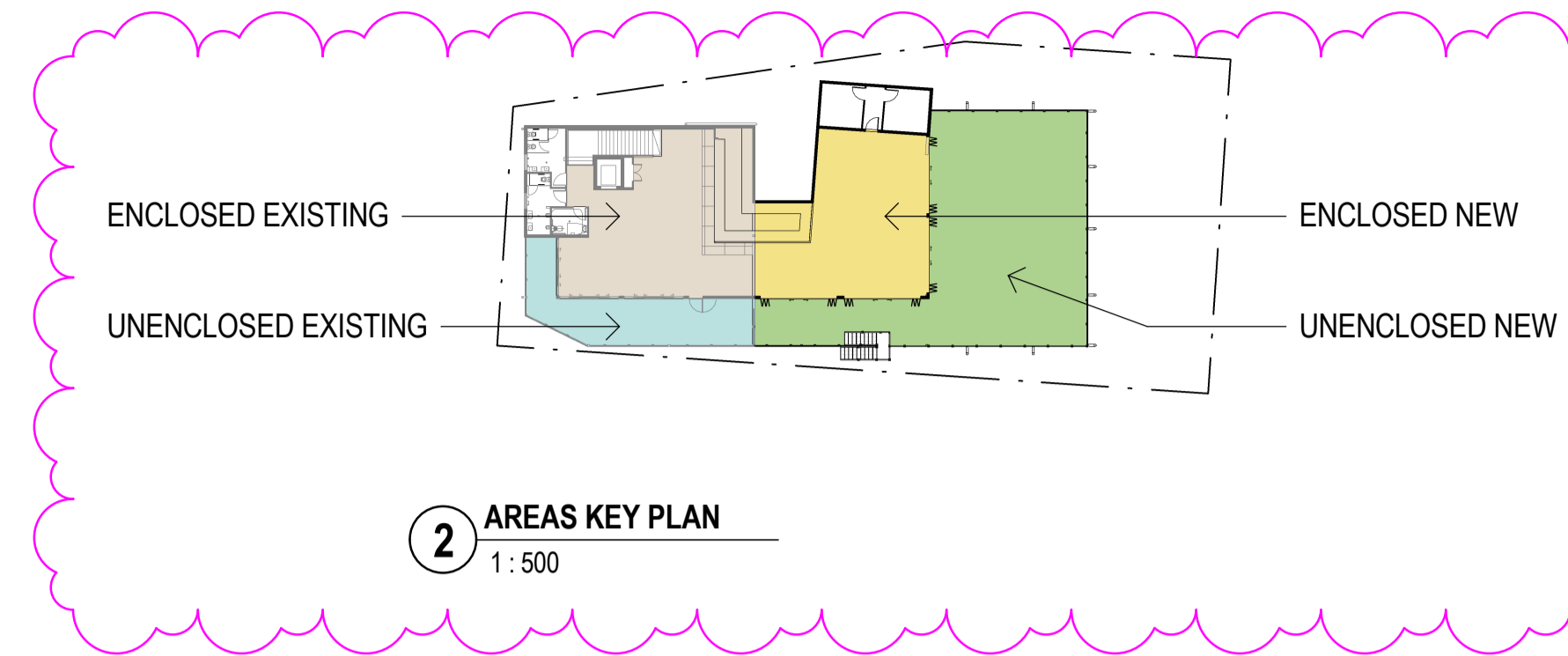
SITE AREA = 1225.6m²

GROUND FLOOR:
ENCLOSED AREA = 495m²
UNENCLOSED AREA = 264m²

FIRST FLOOR EXISTING:
ENCLOSED AREA = 159m²
UNENCLOSED AREA = 68m²

FIRST FLOOR NEW:
ENCLOSED AREA = 143m²
UNENCLOSED AREA = 256m²

SITE COVERAGE (EXISTING & PROPOSED) = 759m²



REV	DESCRIPTION	BY	DATE
A	DA ISSUE	GT	19/12/17
B	GFA CALCULATIONS REVIEWED	GT	25/01/18
C	ADDITIONAL DIMENSIONS	GT	08/03/18

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EMAIL: info@paynter.com.au WEB: www.paynter.com.au

PROJECT
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DECK EXTENSION TO FIRST FLOOR - OPTION 3

TITLE
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FIRST FLOOR PLAN

DATE	19/12/17	DRAWN	GT
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CLIENT REF		APPROVED	GW
PDCC REF NO.	PDCC0103	DRAWING NO.	02-02
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