



Comhairle Cathrach Chorcaí Cork City Council

Halla na Cathrach, Corcaigh - City Hall, Cork - T12 T997

Auchun Chen,



04/09/2024

RE: Section 5 Declaration R866/24, 111 Old Youghal Road, Dillons
Cross, Cork, T23ADX8

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 14/08/2024, I wish to advise as follows:

The Planning Authority in view of the above and having regard to –

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended), and
- Articles 6, and 9 of the Planning and Development Regulations 2001 (as amended)

It is considered that 'permission to operate as a public house serving food **IS DEVELOPMENT** and **IS NOT EXEMPTED DEVELOPMENT** at 111 Old Youghal Road, Dillons Cross, Cork, T23ADX8

Under Section 5(3)(a) of the Planning and Development Act, 2000, you may, on payment of the appropriate fee, refer this declaration for review by An Bord Pleanála within 4 weeks of the date it is issued, 04/09/2024.

Is mise le meas,


Rob Keating

Development Management Section
Community, Culture and Placemaking Directorate
Cork City Council



We are Cork.

PLANNER'S REPORT		Cork City Council Culture, Community and Placemaking
Ref. R 866/24		
Application type	Section 5 Declaration	
Description	Permission to operate as a public house serving food	
Location	111 Old Youghal Road, Dillons Cross	
Applicant	Auchun Chen	
Date	02/09/2024	
Recommendation	Is Development and Is Not Exempted Development	

In this report 'the Act' means the Planning and Development Act 2000 (as amended) and 'the Regulations' means the Planning and Development Regulations 2001 (as amended), unless otherwise indicated.

1. Requirements for a Section 5 Declaration

Section 5(1) of the Planning and Development Act 2000 as amended states,

5.—(1) If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

The requirements for making a section 5 declaration are set out in the Act.

2. The Question before the Planning Authority

In framing the question to the planning authority, the applicant states in Q3 of the application form:

Permission to operate as a public house serving food.

In the additional details section the form states:

The existing ground floor of the above premises is currently vacant. It was last operating as a 'betting office'. See planning ref. 08 32834. Prior to that it had been a public house for many years. The current owner now wishes to revert to its previous use being that of a public house and given that little has changed in the vicinity regarding commercial or residential development it would be reasonable to suggest that the formality of a planning application could be avoided.

It would also be desirable to serve food & the application for a Restaurant Certificate Licence would also be a consideration with perhaps a take-away outlet as a further option. As there is only one other take away & bar in the immediate vicinity, we feel this would be a welcome boost to the area.

We do not believe that the proposed development would be in contravention of S.I. No. 600/2001 – Planning and Development Regulations, 2001 Part 2 Article 9 (Restrictions on Exemption)

It is our contention that the works required consist of fit-out or 'minor works', repair /renewal of existing and as such are not subject to Part A of the Building Regulations and therefore do not consist of 'material alterations' as defined under S.I. No. 351/2009 – Building Control (Amendment) Regulations 2009.

Should our application be successful the requirements for compliance with Part B and Part M would be assessed accordingly for that of a public bar serving food.

3. Site Description

The property in question is a two storey commercial building on the south west corner of Dillon's Cross. It was formerly in use as a betting office and has been vacant for some time.

4. Recent Relevant Planning History

(Valid and determined files only)

12/35142 Demolition of part of the rear of no. 111 Old Youghal Road to allow for the removal of the existing upper floor extension, new roof and retention of rear of the Paddy Power structure below to cover the permitted use (ABP Ref PL 8.228994). Permission is also sought for retention of part of the excavation to the rear and full planning permission for the provision of a retaining wall to allow for part of the excavated area to be in-filled; change of use of the first floor area to storage use, retention of smoking shelter within the yard at the rear, retention of projecting sign to the front of the premises, retention of 3 no. satellite dishes on the flat roof of the rear extension and retention of 4 no. wall mounted condenser units fixed to the side wall within the rear yard

Outcome Granted 12/04/2012

08/32834 Change of use of existing public house to bookmakers office
Appeal ABP Ref. No. 228994 – First Party appeal against refusal
Outcome Granted 27/02/2029

04/28032 To construct 3 no. two-storey townhouses and associated works at rea
Outcome Refused 18/03/2004

5. Legislative Provisions

5.1 The Act

Section 2(1),

"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3(1),

In this Act, "development" means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or 'the making of any material change in the use of any structures or other land'

Section 4(1)(h),

The following shall be exempted developments for the purposes of this Act-development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

Section 4(2),

Section 4(2) provides that the Minister may, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations 2001-2013.

Section 5(1),*(See section 1 of this report)***Section 177U (9) (screening for appropriate assessment)***In deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.***5.2 The Regulations****Article 9 (1)***Development to which article 6 relates shall not be exempted development for the purposes of the Act*

- (a) (i) if the carrying out of such development would... contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,*
- (a) (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,*

Article 10 (1)*Development which consists of a change of use within any one of the classes of use as specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not –*

- (c) be inconsistent with any use specified or included in such a permission, or*
- (d) be development where the existing use is an unauthorised, save where the change of use consists of resumption of a use which is not unauthorised and which has not been abandoned*

6. ASSESSMENT

It should be stated at the outset that the purpose of this report is not to determine the acceptability or otherwise of the proposal at this location in respect to the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development.

6.1 Development

The first issue for consideration is whether or not the matter at hand is 'development'.

'Development' as defined in the Act (3)(1) comprises two possible chief components: 'the carrying out of any works on, in, over or under land', or 'the making of any material change in the use of any structures or other land'. In order to ascertain whether or not the subject use is considered to be development as so defined, consideration must first be given to whether any works on, in, over or under land have or will be carried out, and secondly to whether any material change in the use of any structures or other land have or will take place.

'Works' is defined in section 2(1) of the Act as 'the carrying out of any works on, in, over, or under land' including 'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal, and in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.'

I consider that the proposed change of use is a material change and both it and any works associated with the change are therefore development.

6.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development. Certain changes of use are exempted development. These are set out in the *Planning and Development Regulations 2001* (as amended). Following a review of the relevant provisions in the regulations, including Schedule 2 – Part 4 – *Exempted Development - Classes of Use*, I am satisfied that there is no exemption for a change of use from Betting Office (which is listed in Class 2 (c)) to Public House (Class 12).

The proposed change of use, notwithstanding the previous use of the property as a public house, is therefore not exempted development. The associated works, being required as part of the change of use, also therefore require planning permission.

I note that the applicant has referred to the Building Regulations as part of their application. It should be noted that Building Regulations are separate to the planning process and cannot be used in order to demonstrate materiality or other such matters.

7. ENVIRONMENTAL ASSESSMENT

7.1 Screening for Environmental Impact Assessment

Having regard to the contents of Article 103 (as amended by Article 14 of the Planning and Development (Amendment) (No 3) Regulations 2011) and Schedule 7 of the Planning and Development Regulations 2001 (as amended) it is considered that the proposed development by reason of its nature, scale and location would not be likely to have significant effects on the environment. Accordingly it is considered that an environmental impact statement is not required to be submitted.

7.2 Screening for Appropriate Assessment

Section 177U (9) of the Act requires planning authorities to screen applications for a section 5 declaration for appropriate assessment. The provisions of the *Habitats Directive*, the *Appropriate Assessment Guidelines for Planning Authorities 2009* (revised 2010) and the Act are noted. The relevant European sites are the Cork Harbour SPA (site code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to the location of the proposed development site relative to these European sites and related watercourses and to the nature and scale of the proposed development it is considered that the proposed development would not affect the integrity of the European sites referred to above. Accordingly it is considered that appropriate assessment is not required.

8. Conclusion

The question has been asked:

Permission to operate as a public house serving food.

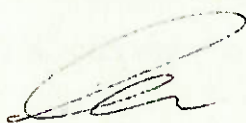
Having considered the particulars submitted with the application and the relevant legislation as set out above, it is considered that the proposed change of use is development and is not exempted development.

9. RECOMMENDATION

In view of the above and having regard to —

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended), and
- Articles 6, and 9 of the Planning and Development Regulations 2001 (as amended),

It is considered that proposed change of use **Is Development** and is **Not Exempted Development**.



Martina Foley
A/Senior Executive Planner



Tivoli Design Associates

Ocon House, 2 Tivoli Gardens, Silversprings ,Cork T:021 4551260 M: 087 9971433 E:cclarken.tda@gmail.com

Ref: 2402

12th August 2024

Cork City Council,
Community, Culture & Placemaking Directorate,
Cork City Council,
City Hall,
Anglesea Street,
Cork.

Re: Section 5 Declaration 111 Dillons Cross, Old Youghal Road, Cork ,T23 ADX8

A Chara,

Please find enclosed

2Copies Drg. 2402-01 Rev A EXISTING & PROPOSED GROUND FLOOR PLANS

2 Copies Drg. 2402--101 Rev A SITE LAYOUT

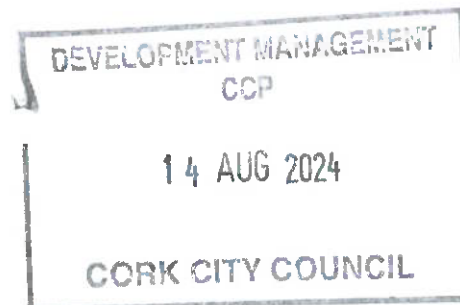
2 Copies Front Elevation Photograph

1 Copy Section 5 Declaration Application Form

Cheque for €80 Application Fee

Yours sincerely,

Colm Clarken
Tivoli Design Associates Ltd.



COMHAIRLE CATHRACH CHORCAÍ CORK CITY COUNCIL

Community, Culture & Placemaking Directorate,
Cork City Council, City Hall, Anglesea Street, Cork.

R-Phost/E-Mail planning@corkcity.ie

Fón/Tel: 021-4924029

Líonra/Web: www.corkcity.ie

SECTION 5 DECLARATION APPLICATION FORM under Section 5 of the Planning & Development Acts 2000 (as amended)

1. NAME OF PERSON MAKING THE REQUEST

Auchun Chen

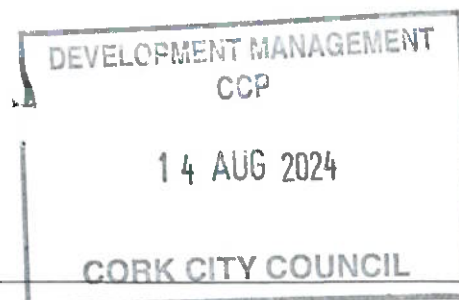
2. POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION IS SOUGHT

111 Old Youghal Road, Dillons Cross, Cork ,T23ADX8

3. QUESTION/ DECLARATION DETAILS

PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT:

Permission to operate as a public house serving food.



ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

The existing ground floor of the above premises is currently vacant . It was last operating as a 'betting office'. See planning ref 08 32834 . Prior to that it had been a public house for many years. The current owner now wishes to revert to its previous use being that of a public house and given that little has changed in the vicinity regarding commercial or residential development it would be reasonable to suggest that the formality of a planning application could be avoided.

It would also be desirable to serve food & the application for a Restaurant Certificate License would also be a consideration with perhaps a take- away outlet as a further option.

As there is only one other take away & bar in the immediate vicinity, we feel this would be a welcome boost to the area.

We do not believe that the proposed development would be in contravention of **S.I. No. 600/2001 - Planning and Development Regulations, 2001 PART 2 Article 9 (Restrictions on Exemption)**

It is our contention that the works required consist of fit-out or 'minor works', repair /renewal of existing and as such are not subject to Part A of the Building Regulations and therefore do not consist of 'material alterations' as defined under S.I. No. 351/2009 - **Building Control (Amendment) Regulations 2009**

Should our application be successful the requirements for compliance with Part B & Part M would be assessed accordingly for that of a public bar serving food.

4. **Are you aware of any enforcement proceedings connected to this site?**
If so please supply details:

E7188 Unauthorised change of use from off-licence to restaurant at first floor level of premises and unauthorised excavation of ground to the rear of the premises.

Case resolved.

5. **Is this a Protected Structure or within the curtilage of a Protected Structure?** ☐

If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 been requested or issued for the property by the Planning Authority? ☐

6. **Was there previous relevant planning application/s on this site?** ☒
If so please supply details:

0125357 08 32834 (ABP PL 28.228994) 12/35142 (current)

7. APPLICATION DETAILS

Answer the following if applicable. Note: Floor areas are measured from the inside of the external walls and should be indicated in square meters (sq. M)

(a) Floor area of existing/proposed structure/s	130 m ²
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 st October, 1964, (including those for which planning permission has been obtained)?	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please provide floor areas. (sq m)
(c) If concerning a change of use of land and / or building(s), please state the following:	

7. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner <input checked="checked" type="checkbox"/>	B. Other <input type="checkbox"/>
Where legal interest is 'Other', please state your interest in the land/structure in question		
If you are not the legal owner, please state the name of the owner if available		

8. I / We confirm that the information contained in the application is true and accurate:

Signature:

Date: 02-08-2024

Planning Pack Map

PROPERTY SUBJECT TO APPLICATION
SHOWN OUTLINED IN RED

ADJACENT LANDS OWNED
BY APPLICANT SHOWN
OUTLINED IN BLUE



Tailte
Éireann

CENTRE
COORDINATES:
ITM 568708.573089

PUBLISHED:
26/06/2024

ORDER NO.:
50406718_1

MAP SERIES:
1:1,000
1:1,000
1:1,000
1:1,000

MAP SHEETS:
6338-21
6338-22
6383-01
6383-02



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Tailte Éireann,
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Dublin 8,
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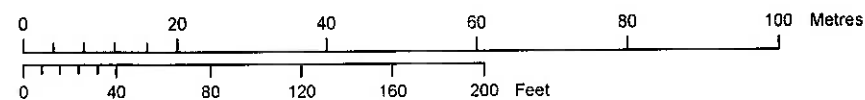
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OUTPUT SCALE: 1:1,000

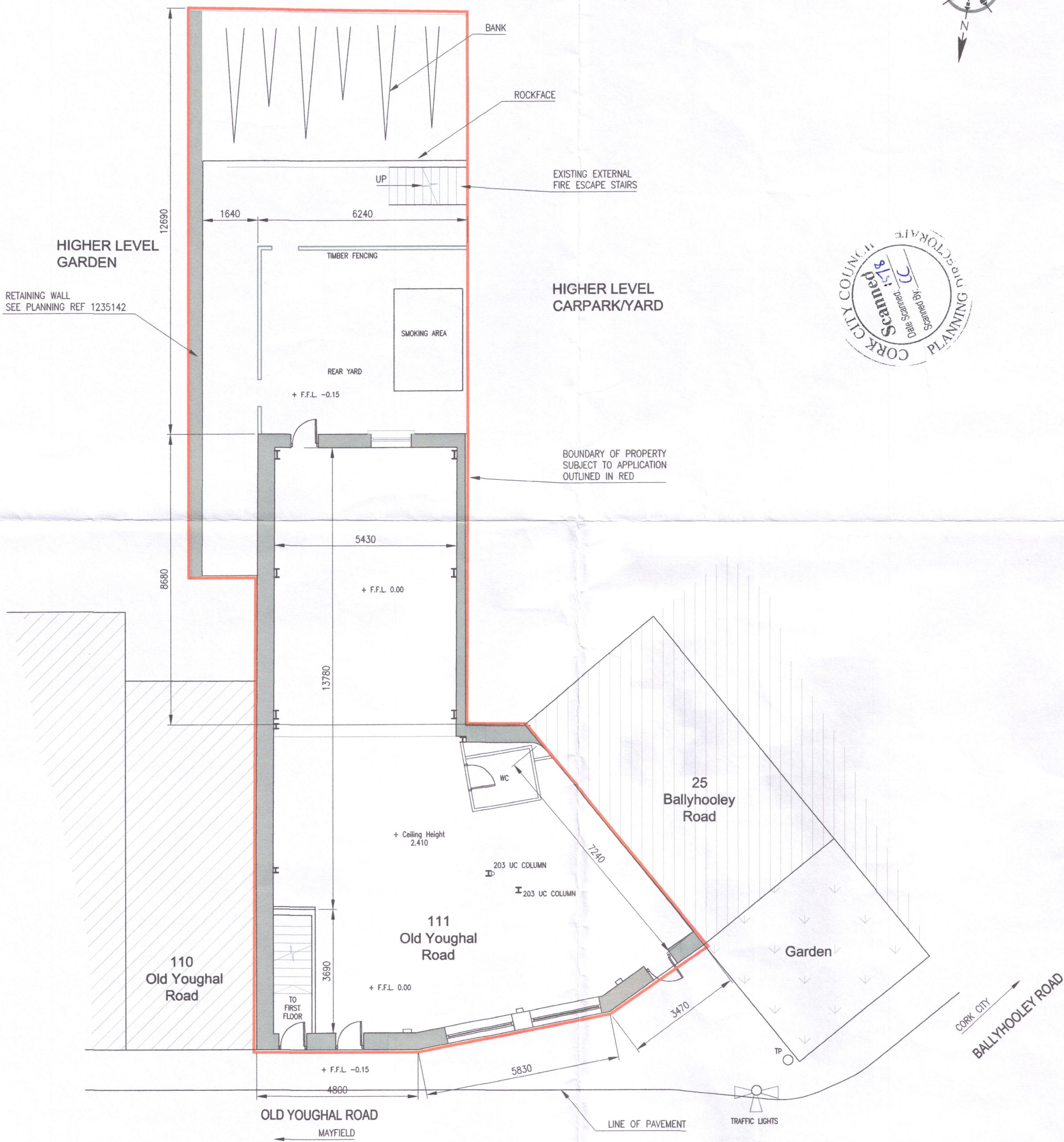
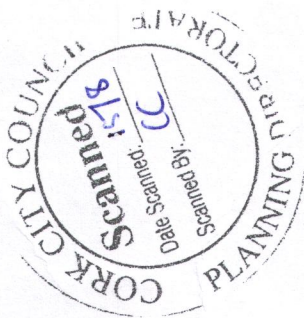
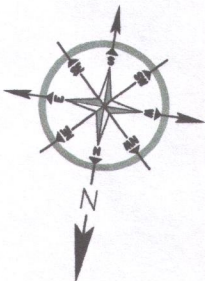
CAPTURE RESOLUTION:
The map objects are only accurate to the
resolution at which they were captured.
Output scale is not indicative of data capture scale.
Further information is available at
www.tailte.ie, search 'Capture Resolution'

LEGEND:
To view the legend visit
www.tailte.ie and search for
'Large Scale Legend'





- NOTES
1. DIMENSIONS ARE TO THE NEAREST 25mm.
 2. SEE DRAWING 2402-01 FOR INTERNAL LAYOUT
 3. READ WITH SITE LOCATION MAP



SITE LAYOUT

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ISSUE	AMENDMENT	BY	DATE
P0	ISSUED TO CLIENT FOR APPROVAL	C.C	30-07-24
A	ISSUED TO COUNCIL	C.C	06-08-24

Job:	111 DILLONS CROSS
Title:	SITE LAYOUT



Tivoli Design Associates

CONSULTING ENGINEERS

Address:
Ocon House, 2 Tivoli Gardens, Silversprings, Cork
Phone: 021 4551260, Mob 087 9971433
Email: cclarken.tda@gmail.com

Tech. Check:

Eng. Check:

Approved:

Stage: SECTION 5

Scale: 1:100

Drawn: C.C.

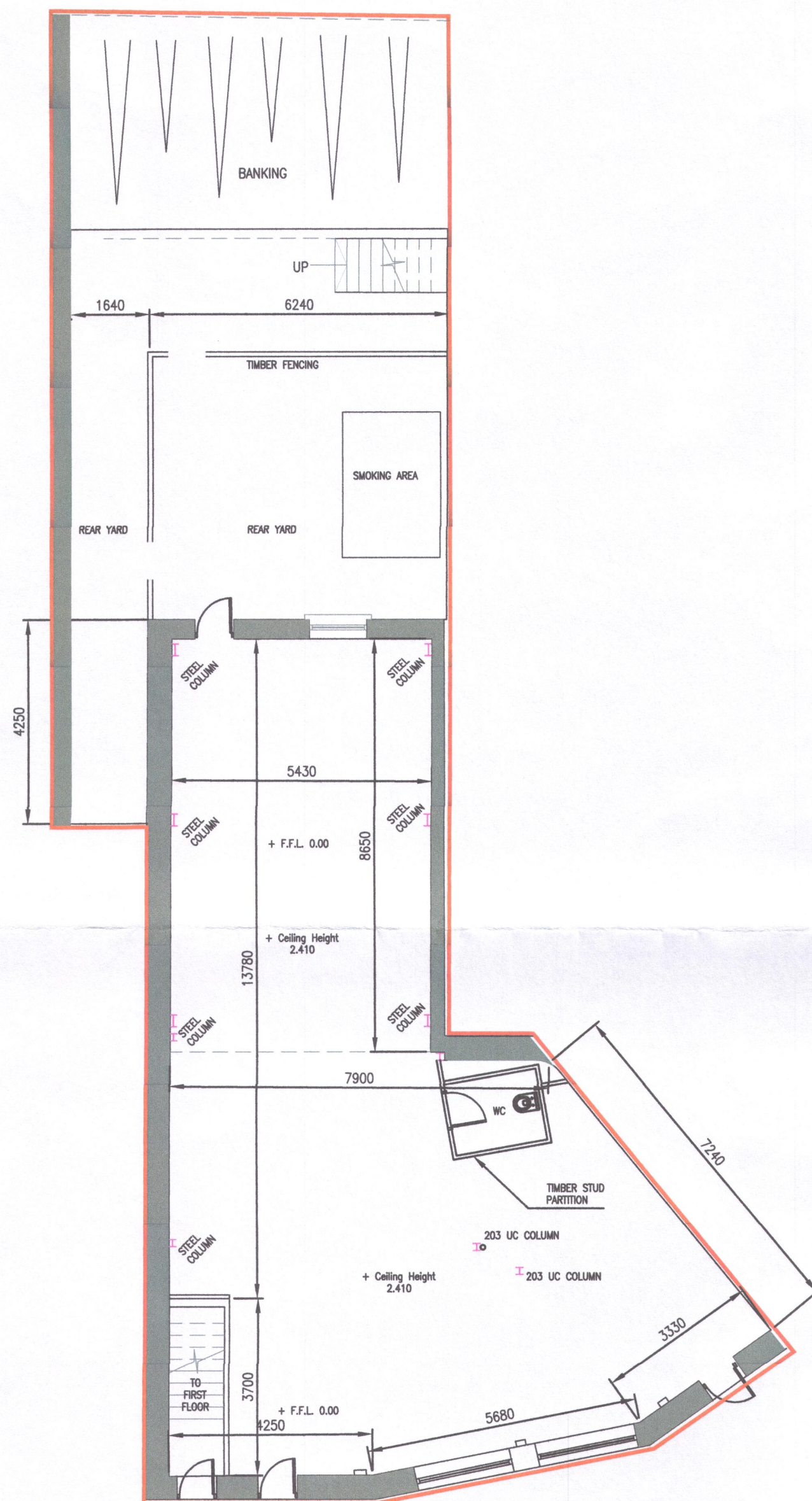
Date: July 2024

Drawing No:

2402-101

Rev:

A



EXISTING EXTERNAL FIRE ESCAPE STAIRS

TIMBER FENCING

REFUSE

SMOKING AREA

REAR YARD

PROPOSED KITCHEN

1460

3850

BAR

+ Ceiling Height 2.410

PROPOSED SEATING

+ F.F.L. 0.00

PROPOSED DINING/SEATING AREA

MALE WC

DISABLED WC

FEMALE WC

STAFF TOILET

LOBBY

+ Ceiling Height 2.410

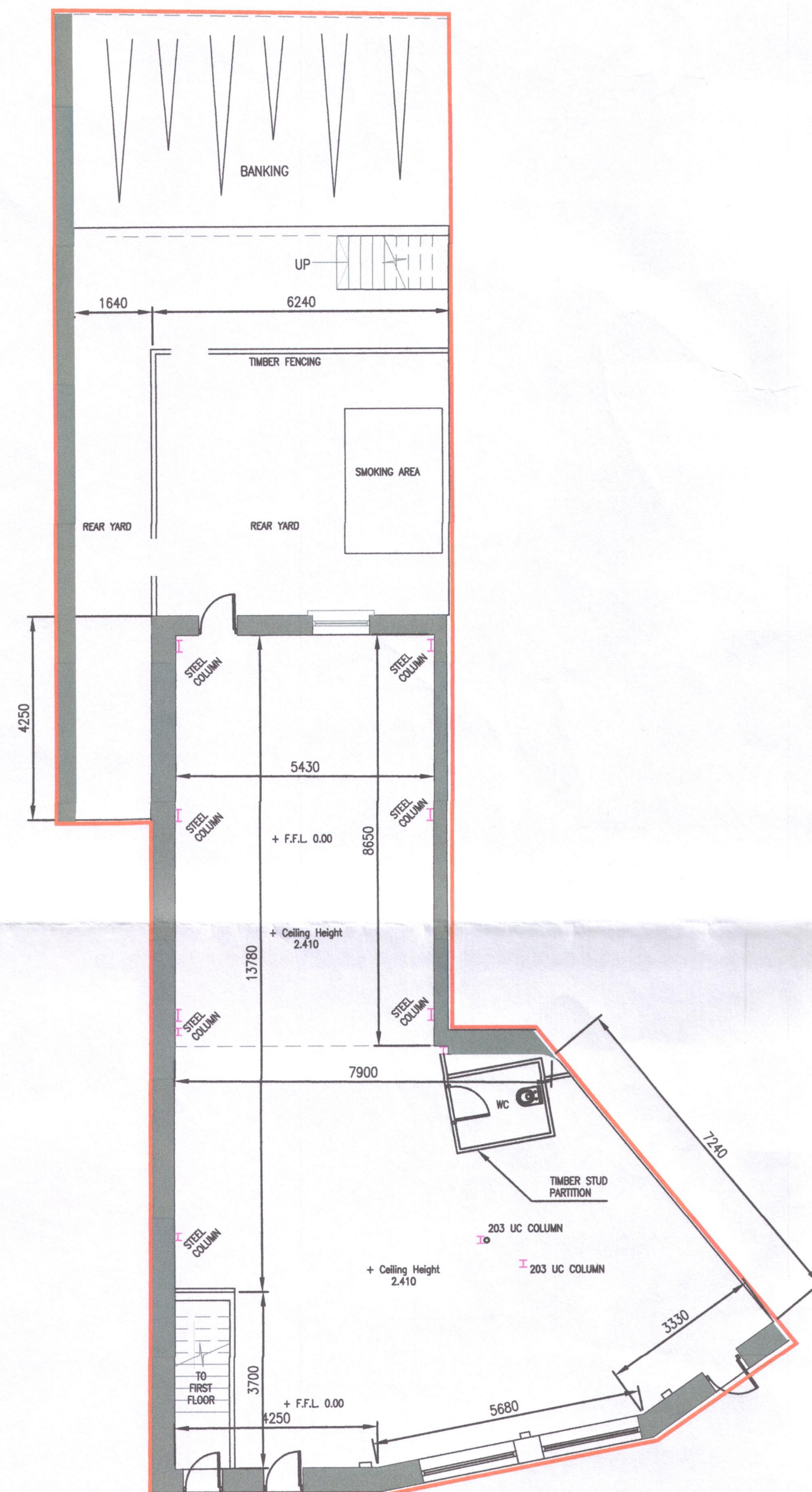
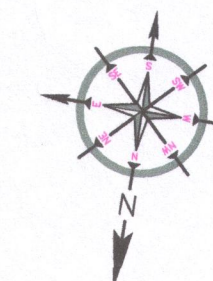
FIRE EXIT

NO ALTERATIONS

2402-01



1. DIMENSIONS ARE TO THE NEAREST 25mm.
2. SEE DRAWING 2402-100 FOR SITE LAYOUT
3. READ WITH SITE LOCATION MAP



Architectural floor plan of a proposed building layout. The plan shows a rear yard with timber fencing, a refuse area, and a smoking area. The building footprint includes a proposed kitchen, bar, and dining/seating area. The dining area features several tables and chairs, with a ceiling height of 2.410. The kitchen area has a ceiling height of 2.410. The plan also shows a lobby, male and female restrooms, disabled restrooms, and a staff toilet. A fire exit is located near the dining area. The plan is marked with dimensions: 1460 and 3850. A red line indicates the boundary of the proposed building footprint. A north arrow is located in the bottom right corner.

GROUND FLOOR -PROPOSED

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All dimensions to be checked on site.
Consultants to be informed immediately of any
discrepancies before work proceeds.*

ISSUE	AMENDMENT	BY	DATE
P0	PRELIMINARY ISSUE FOR APPROVAL	C.C.	07-07-24
P1	LAYOUT REVISED FOR APPROVAL	C.C.	08-07-24
P2	LAYOUT REVISED FOR APPROVAL	C.C.	31-07-24
P3	LAYOUT REVISED FOR APPROVAL	C.C.	01-08-24
A	ISSUED TO COUNCIL	C.C.	02-08-24

Title: EXISTING & PROPOSED GROUND FLOOR LAYOUTS



Tivoli Design Associates

PLANNING & DESIGN CONSULTANTS

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Email: ccclarken.tda@gmail.com

Approved:

Drawn: C.C.

Drawing No:

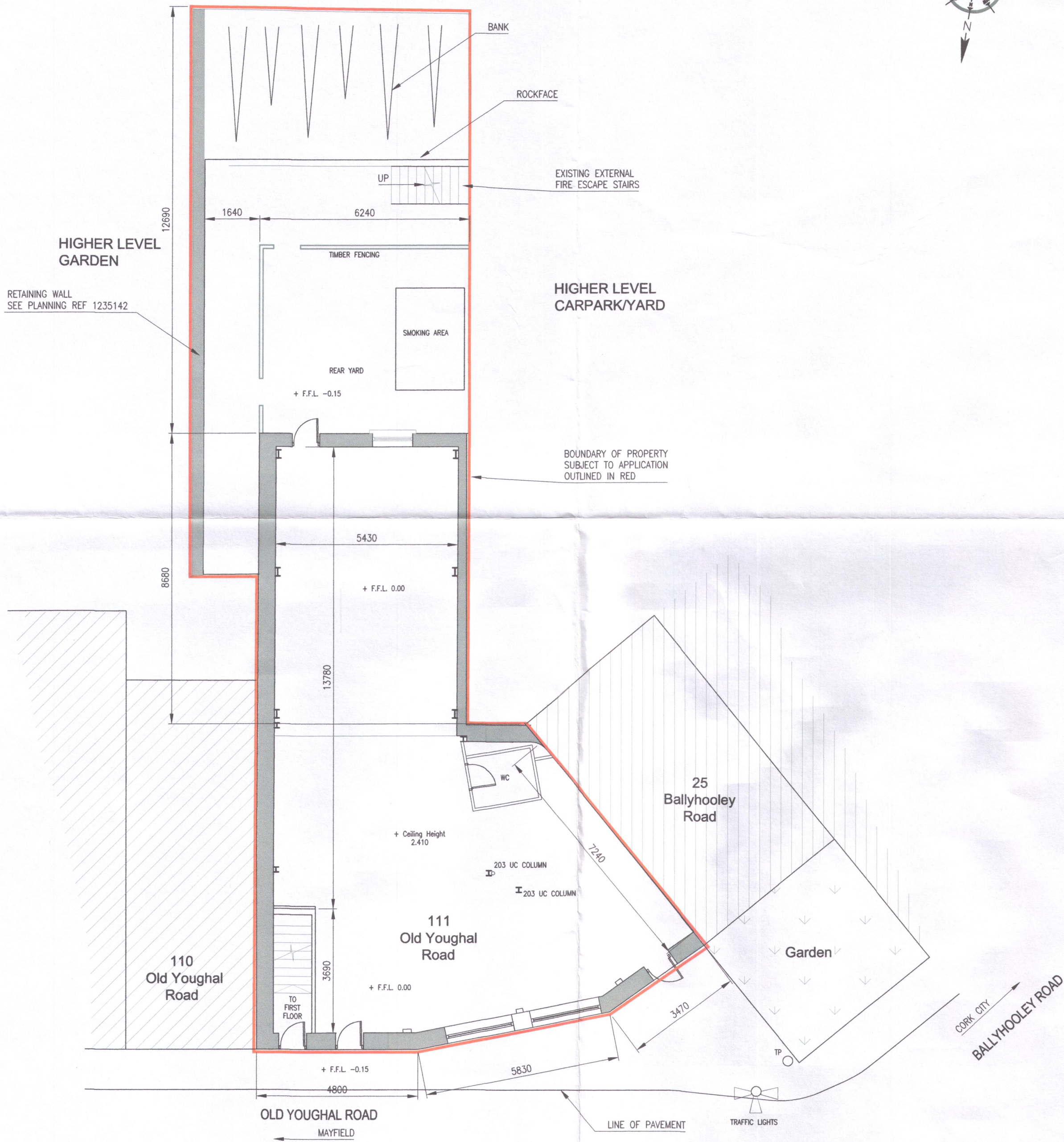
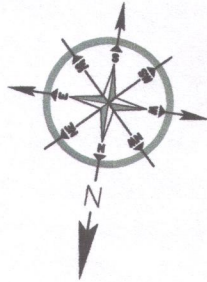
Drawing No:

2402-01

Rev:

A

- NOTES
1. DIMENSIONS ARE TO THE NEAREST 25mm.
 2. SEE DRAWING 2402-01 FOR INTERNAL LAYOUT
 3. READ WITH SITE LOCATION MAP



SITE LAYOUT

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P0	ISSUED TO CLIENT FOR APPROVAL	C.C	30-07-24
A	ISSUED TO COUNCIL	C.C	06-08-24

Job:	111 DILLONS CROSS
Title:	SITE LAYOUT



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Phone: 021 4551260, Mob 087 9971433
Email: i.clarke@tda@gmail.com

Tech. Check:	
Eng. Check:	
Approved:	

Stage:	SECTION 5
Scale:	1:100
Drawn:	C.C.
Date:	July 2024
Drawing No:	2402-101
Rev:	A

Planning Pack Map

PROPERTY SUBJECT TO
APPLICATION SHOWN
OUTLINED IN 'RED'

ADJACENT LANDS OWNED
BY APPLICANT SHOWN
OUTLINED IN 'BLUE'



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Éireann

CENTRE
COORDINATES:
ITM 568708,573089

PUBLISHED:
26/06/2024

ORDER NO.:
50406718_1

MAP SERIES:
1:1,000
1:1,000
1:1,000
1:1,000

MAP SHEETS:
6338-21
6338-22
6383-01
6383-02



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0 20 40 60 80 100 Metres
0 40 80 120 160 200 Feet

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LEGEND:
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