



# Agenda

**Planning Decisions Committee**  
6.30pm, Tuesday 27 August 2024  
Richmond Town Hall

## The Planning Decisions Committee

The Planning Decisions Committee is a delegated committee of Council with full authority to make decisions in relation to planning applications and certain heritage referrals. The committee is made up of three Councillors who are rostered on a quarterly basis.

### Participating in the Meeting

Planning Decisions Committee meetings are decision-making forums and only Councillors have a formal role. However, Council is committed to ensuring that any person whose rights will be directly affected by a decision of Council is entitled to communicate their views and have their interests considered before the decision is made.

There is an opportunity for both applicants and objectors to make a submission to Council in relation to each matter presented for consideration at the meeting.

Before each item is considered, the meeting chair will ask people in attendance if they wish to make submission. Simply raise your hand and the chair will invite you to come forward, take a seat at the microphone, state your name clearly for the record and:

- speak for a maximum of five minutes;
- direct your submission to the chair;
- confine your submission to the planning permit under consideration;
- If possible, explain your preferred decision in relation to a permit application (refusing, granting or granting with conditions) and set out any requested permit conditions;
- avoid repetition and restating previous submitters;
- refrain from asking questions or seeking comments from the Councillors, applicants or other submitters; and
- if speaking on behalf of a group, explain the nature of the group and how you are able to speak on their behalf.

Once you have made your submission, please remain silent unless called upon by the chair to make further comment or to clarify any aspects.

Following public submissions, the applicant or their representatives will be given a further opportunity of two minutes to exercise a right of reply in relation to matters raised by previous submitters. Applicants may not raise new matters during this right of reply.

Councillors will then have an opportunity to ask questions of submitters. Submitters may determine whether or not they wish to take these questions.

Once all submissions have been received, the formal debate may commence. Once the debate has commenced, no further submissions, questions or comments from submitters can be received.

### Arrangements to ensure our meetings are accessible to the public

Planning Decisions Committee meetings are held at the Richmond Town Hall. The following arrangements are in place to ensure they are accessible to the public:

- Entrance ramps and lifts (via the entry foyer).
- Interpreting assistance is available by arrangement (tel. 9205 5110).
- Auslan interpreting is available by arrangement (tel. 9205 5110).
- A hearing loop and receiver accessory is available by arrangement (tel. 9205 5110).
- An electronic sound system amplifies Councillors' debate.
- Disability accessible toilet facilities are available.

## 1. Appointment of Chair

Councillors are required to appoint a meeting chair in accordance with the City of Yarra Governance Rules 2020.

## 2. Statement of recognition of Wurundjeri Woi-wurrung Land

*“Yarra City Council acknowledges the Wurundjeri Woi Wurrung people as the Traditional Owners and true sovereigns of the land now known as Yarra.*

*We acknowledge their creator spirit Bunjil, their ancestors and their Elders.*

*We acknowledge the strength and resilience of the Wurundjeri Woi Wurrung, who have never ceded sovereignty and retain their strong connections to family, clan and country despite the impacts of European invasion.*

*We also acknowledge the significant contributions made by other Aboriginal and Torres Strait Islander people to life in Yarra.*

*We pay our respects to Elders from all nations here today—and to their Elders past, present and future.”*

## 3. Attendance, apologies and requests for leave of absence

Anticipated attendees:

### Councillors

- Cr Edward Crossland Councillor
- Cr Michael Glynatsis Councillor
- Cr Amanda Stone Councillor

### Council officers

- Lara Fiscalini Statutory Planning Coordinator
- John Theodosakis Principal Planner
- Phil De Losa Manager Governance and Integrity
- Mel Nikou Governance Officer

## 4. Declarations of conflict of interest

Any Councillor who has a conflict of interest in a matter being considered at this meeting is required to disclose that interest either by explaining the nature of the conflict of interest to those present or advising that they have disclosed the nature of the interest in writing to the Chief Executive Officer before the meeting commenced.

## 5. Confirmation of Minutes

### **RECOMMENDATION**

That the minutes of the Planning Decisions Committee held on Tuesday 28 May 2024 be confirmed.

## 6. Committee business reports

Item		Page	Rec. Page
6.1	PLN23/0730 - 442-444 Nicholson St Fitzroy North	5	28

## 6.1 PLN23/0730 - 442-444 Nicholson St Fitzroy North

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### Report Summary

#### Purpose

1. This report provides the Planning Decisions Committee with an assessment of planning permit application PLN23/0730 which is for partial demolition and buildings and works to a hotel (with existing use rights) in association with a terrace.

#### Key Planning Considerations

2. Key planning considerations include:
  - (a) Existing use rights;
  - (b) Heritage;
  - (c) Built form and urban design;
  - (d) Off-site amenity impacts; and
  - (e) Car parking.

#### Key Issues

3. The key issues for Council in considering the proposal relate to:
  - (a) Existing use rights;
  - (b) Heritage;
  - (c) Noise and off-site amenity impacts; and
  - (d) Car parking.

#### Submissions Received

4. Sixteen (16) objections were received to the application, these can be summarised as:
  - (a) Loss of on-street parking and increased traffic due to increased patronage of Hotel;
  - (b) Noise impacts from roof terrace on residential amenity;
  - (c) Noise impacts from service equipment;
  - (d) Increase in littering resulting from proposed works;
  - (e) Construction noise impacts on residential amenity;
  - (f) Devaluation of property;
  - (g) Overdevelopment;
  - (h) Inappropriate response to heritage and neighbourhood character;
  - (i) Overlooking, overshadowing and visual bulk of terrace to existing secluded private open space;
  - (j) Acoustic report and management plan not provided with application;
  - (k) Obstruction of laneway at rear from delivery vehicles and waste;
  - (l) Impacts of increased patrons on existing infrastructure;
  - (m) Laneway safety; and
  - (n) The first floor of the building does not have existing use rights as a hotel.

## Conclusion

5. Based on the following report, the proposal is considered to comply with the relevant planning policy and should therefore be supported subject to the following key recommendations:
- (a) The new portion of southern wall set back 1.75m from the southern boundary, including any required reconfigurations to the floorplan layout of the terrace;
  - (b) Demonstrate compliance with the objective of Clause 54.04-6 (Overlooking) of the Yarra Planning Scheme in relation to views from the eastern perimeter of the terrace to the west-facing habitable room window of No. 6 Freeman Street, with subsequent modifications to the screening to mitigate impacts if necessary; and
  - (c) The colour finish of the acoustic screens and frame below the acoustic screens on the Freeman Street frontage to be white or a light to mid grey.

**CONTACT OFFICER:** Erryn Megennis  
**TITLE:** Senior Statutory Planner  
**TEL:** 0392055485

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## 6.1 PLN23/0730 - 442-444 Nicholson St Fitzroy North

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<b>Reference</b>	D24/273564
<b>Author</b>	Erryn Megennis - Senior Statutory Planner
<b>Authoriser</b>	Principal Planner
<b>Disclosure</b>	The authoriser, having made enquiries with members of staff involved in the preparation of this report, asserts that they are not aware of any general or material conflicts of interest in relation to the matters presented.

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<b>Ward:</b>	Nicholls
<b>Proposal:</b>	Partial demolition and buildings and works to a hotel (with existing use rights) in association with a terrace.
<b>Existing use:</b>	Hotel
<b>Applicant:</b>	Priority Planning Pty Ltd
<b>Zoning / Overlays:</b>	Neighbourhood Residential Zone – Schedule 1 Heritage Overlay – Schedule HO327 Special Building Overlay
<b>Date of Application:</b>	17 October 2023
<b>Application Number:</b>	PLN23/0730

### Planning History

1. Planning permit PL07/0481 was issued on 4 January 2008 for *buildings and works and waiver of the car parking associated with the conversion of the first floor service deck (in part) to a licensed terrace to be used in conjunction with the existing hotel*. It appears these works were not undertaken and the permit is no longer valid.
2. Planning permit PLN15/1209 was issued on 14 July 2016 at the direction of the Victorian Civil and Administrative Tribunal (VCAT) to increase liquor licence on-premises operating hours for the existing hotel:
  - (a) On 21 February 2017 the application was amended at the direction of VCAT in relation to Condition 3(e) and 3(f). These conditions relate to Friday, Saturday and the eve of public holiday licence hours.

### The Proposal

3. The application is for partial demolition and buildings and works to a hotel (with existing use rights) in association with a terrace. Further details of the proposal are as follows:

#### Demolition

- (a) Demolition to existing internal walls on the first floor (planning permit not required);
- (b) Demolition of the balustrading and chain wire fencing around the perimeter of the existing first floor terrace as well as the timber and steel stairs connecting the terrace to the inside of the building;

#### Buildings and works

- (c) Internal buildings and works at first floor for the fit-out of additional bar floorspace (planning permit not required);
- (d) Fit-out of the existing first floor terrace for the expansion of the bar floorspace. The bar will be located on the southern side of the terrace, new timber flooring;

- (e) Construction of a 2.5m high (above floor level) galvanised steel open pergola on the northern side of the existing terrace, measuring 4.91m wide and 6.43m long;
- (f) Construction of a 5.58m long, 2.23m high (above floor level) wall on the southern boundary. The wall will have an overall height of 6.1m above ground level (measured in *Objective Trapeze*). The material of the wall has not been specified;
- (g) Construction of a 2.5m high (above floor level) acoustic screen around the northern and eastern perimeters of the existing terrace. The screen will be constructed of metal frames (in Federation Red) with amber-coloured glass panels. The screens to the east of the proposed bar will have obscure glass;
- (h) The acoustic screens will have a maximum height of 6.16m above ground level;
- (i) Construction of new external stairs connecting the internal areas of the first floor to the existing terrace; and
- (j) Provision of two external speakers on the eastern façade of the hotel, facing outwards to the terrace.

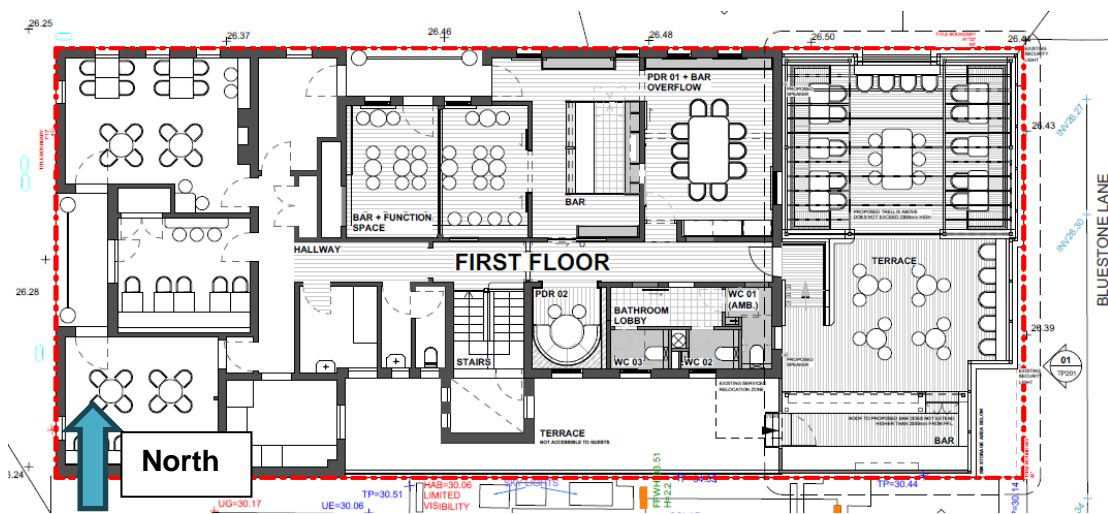


Figure 1: Proposed site plan (terrace to the right)



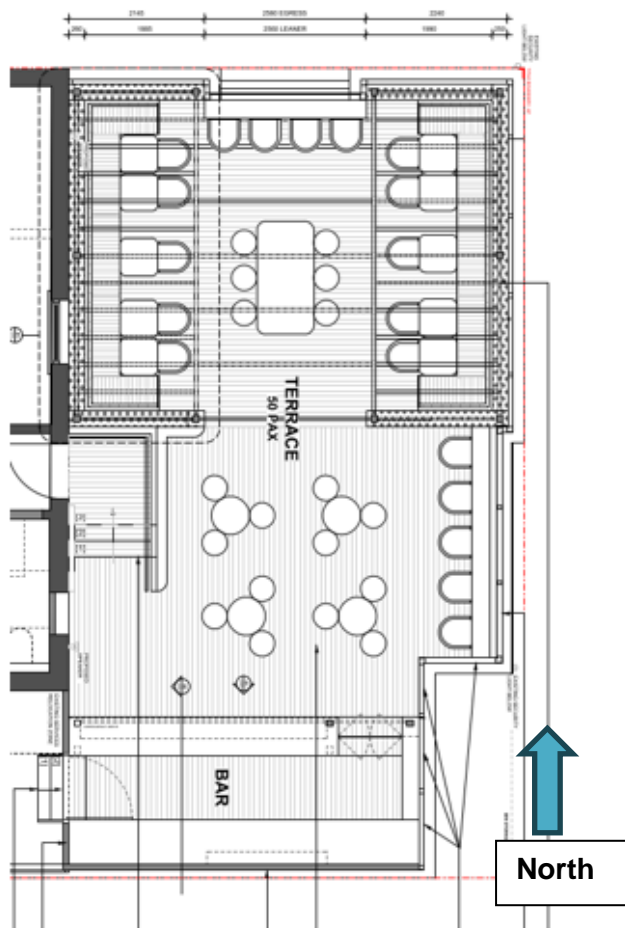


Figure 2: Proposed floor plan for the existing terrace

## Existing Conditions

### Subject Site

4. The subject site is located on the eastern side of Nicholson Street, on the south-east corner of Nicholson Street and Freeman Street, in Fitzroy North. The site has a frontage of 12.8m to Nicholson Street and a depth of 28.95m, with an overall area of approximately 370sqm. There are no restrictive covenants or easements present on the certificate of title.
5. The site is developed with a double storey Victorian-era building known as the Royal Oak Hotel. The building is constructed to all title boundaries and steps down to single storey scale at the rear (eastern boundary) of the site where a roof terrace is located at first level. The terrace has chain wire fencing around its perimeter. The roof terrace is currently used by hotel staff as well as guests of the existing hotel accommodation. There are two entrances along Nicholson Street to the public bar and four entrances along Freeman Street (bottle shop, lounge, lobby and club bar). The Hotel also has outdoor parklet seating along the Freeman Street frontage.
6. The site has an existing use right as a Hotel, as will be discussed later in the report. The Hotel operates under Liquor License 31913002, which is a General Licence allowing a maximum of 259 patrons and to operate the following hours:
7. Trading hours for consumption off the licenced premises:
  - (a) Sunday: 10am to 11pm;
  - (b) Good Friday and ANZAC Day: 12pm to 11pm; and
  - (c) Any other day: 7am to 11pm.

8. Trading hours for consumption on the licenced premises:

- (a) Sunday: 10am to 11pm;
- (b) Good Friday: 12pm to 11pm;
- (c) ANZAC Day (not being a Sunday): 12pm to 11pm;
- (d) On the eve of public holidays: 10am to 12:45am the following morning;
- (e) Thursday: 7am to 12 midnight;
- (f) Friday and Saturday: 7am to 12:45am the following morning; and
- (g) Any other day: 7am to 11pm.



Figure 3: View of subject site from Nicholson Street (Planning Officer, July 2024)



Figure 4: View of subject site from Freeman Street (Planning Officer, July 2024)

Surrounding Land

- 9. The surrounding land is zoned residential (Neighbourhood Residential Zone) with a mixture of residential and commercial uses fronting Nicholson Street, which is identified as being within the Transport Zone 2 and has a tram line running along the centre of the road. A tram stop is located approximately 50m north of the subject site, providing access between East Brunswick and St Kilda (via the city).
- 10. Commercial properties can be identified within the vicinity of the site, with a medical centre located north of the site on the opposite side of Freeman Street.
- 11. To the east (rear) of the site is a 3.8m wide laneway. Opposite the laneway is a single storey, Victorian-era dwelling. The western side boundary of the dwelling is abutting the laneway, with a garage constructed on the boundary and three windows facing the subject site, set back approximately 2.6m from the western boundary. A solid, 2.5m to 3m high (approximately) brick wall is constructed along the length of this site's western boundary.

12. The property immediately to the south of the site is a Victorian-era terrace house with a frontage to Nicholson Street. The dwelling has a contemporary, two storey extension approved under planning permit PLN20/0584. The dwelling has a car parking space/outdoor dining area at ground level to the east of the site. A first floor roof deck is located on the western side of the upper level addition. There is one, ground floor habitable room addressing the subject site, however this window, and the roof deck, are not located opposite where the proposed works will be situated.
13. To the west of the site, on the opposite side of Nicholson Street, are a number of residential developments located within the Neighbourhood Residential Zone.

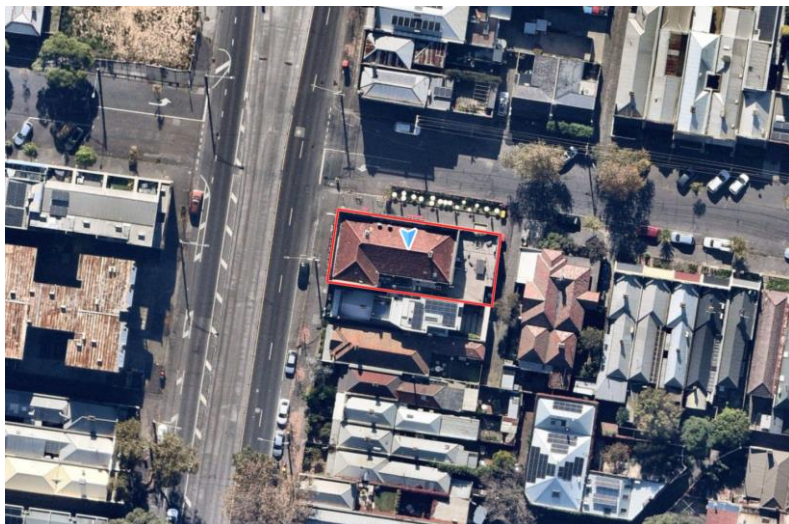


Figure 5: Nearmap aerial imagery of subject site and surrounds (May 2024)



Figure 6: Laneway to east of site (Planning Officer, July 2024)



Figure 7: Dwellings on the northern side of Freeman Street (Planning Officer, July 2024)

## Planning Scheme Provisions

### Zoning

14. The subject site is located in the Neighbourhood Residential Zone – Schedule 1. The following provisions apply:
  - (a) Pursuant to Clause 32.09-2 of the Yarra Planning Scheme (the Scheme), the use of the land as a Hotel (nested under the broader Food and Drink Premises land use at Clause 73.04 of the Scheme) is a Section 2 use and requires a planning permit;
  - (b) As will be discussed later in the report, the Hotel has established existing use rights; and
  - (c) Pursuant to Clause 32.09-10, a planning permit is required to construct a building or construct or carry out works for a use in Section 2 of Clause 32.09-2.

### Overlays

15. The subject site is affected by the Heritage Overlay – Schedule HO327 (North Fitzroy Heritage Precinct). The following provisions apply:
  - (a) Pursuant to Clause 43.01-1, a planning permit is required to demolish/remove a building and to construct a building or construct or carry out works, including internal alterations to a building if the schedule to this overlay specifies the heritage place as one where internal alteration controls apply. Schedule HO327 does not apply internal alteration controls. As such, a planning permit is not required for the internal alterations of the building. External paint controls also do not apply to this heritage precinct; and
  - (b) “Database of Heritage Significant Areas” March 2024 (Clause 72.04 Incorporated Documents) identifies the site as being of “individually significant” heritage grading.
16. The subject site is affected by the Special Building Overlay. The following provisions apply:
  - (a) Pursuant to Clause 44.05-2, a planning permit is required to construct a building or construct or carry out works. This does not apply to:
    - (i) An upper storey extension to an existing building; and
  - (b) A planning permit is therefore not required for the proposed buildings and works within the Special Building Overlay.
17. The subject site is affected by the Development Contributions Plan Overlay – Schedule 1. This overlay applies to all land in the City of Yarra and to all new development where there is an increase in the number of dwellings and/or an increase in retail, commercial and industrial floor space. As the proposed works do not increase the gross floor area of the Hotel, the requirements of the DCPO do not apply.

### Particular Provisions

#### Clause 52.06 – Car Parking

18. Pursuant to Clause 52.06-1, Clause 52.06 applies to an increase in the floor area or site area of an existing use, or an increase to an existing use by the measure specified in Column C of Table 1 in Clause 52.06-5 for that use.
19. Clause 52.06-5 prescribes a car parking rate of 3.5 spaces per 100sqm of leasable floor area for a Hotel.
20. As there will be no increase to the gross and/or leasable floor area of the Hotel, nor an increase to the site area, the car parking requirements of Clause 52.06-5 do not apply to this application.

#### Clause 52.34 – Bicycle Facilities

21. Pursuant to Clause 52.34-1, a new use must not commence or the floor area of an existing use must not be increased until the required bicycle facilities and associated signage has been provided on the land.
22. As there will be no increase to the floor area of the existing Hotel, the bicycle parking requirements of Clause 52.34-5 do not apply to this application.

### General Provisions

#### Clause 63 – Existing Uses

23. Pursuant to Clause 32.09-1, the use of the land for a Food and Drink Premises (Hotel) is a Section 2 Use and requires a planning permit. In accordance with Clause 63.01 (Extent of Existing Use Rights) of the Scheme, an existing use right (EUR) is established in relation to the use if the use was lawfully carried out immediately before the approval date and/or proof of continuous use as a Hotel for 15 years is established under Clause 63.11.
24. As will be discussed in the Assessment section of this report, the applicant has provided sufficient information to establish EUR as a Hotel for the property at No. 442-444 Nicholson Street, Fitzroy North.
25. A planning permit is required for buildings and works in association with a Section 2 land use, pursuant to Clause 63.05 (Section 2 and 3 Uses) of the Scheme. Pursuant to Clause 63.05, a permit must not be granted unless the buildings or works complies with any other buildings or works requirement in this Scheme.

#### Clause 65 – Decision Guidelines

#### Planning Policy Framework (PPF)

26. The following clauses of the PPF are relevant to the proposal:

##### *Clause 13.07-1S – Land Use Compatibility*

27. This policy seeks to *protect community amenity, human health and safety while facilitating appropriate commercial, industrial, infrastructure or other uses with potential adverse off-site impacts*. Relevant strategies include:
  - (a) *Ensure that use or development of land is compatible with adjoining and nearby land uses; and*
  - (b) *Avoid or otherwise minimise adverse off-site impacts from commercial, industrial and other uses through land use separation, siting, building design and operational measures.*

##### *Clause 13.07-1L-01 – Interfaces and Amenity*

28. This policy applies to applications for non-residential development. The objectives of this policy are:
  - (a) *To protect the operation of business and industrial activities from new residential use and development;*

- (b) *To provide a reasonable level of amenity to new residential development within or adjacent to land in commercial and industrial zones; and*
- (c) *To support the growth and operation of surrounding non-residential development and uses.*

29. Clause 13.07-1L-01 contains various strategies to guide the assessment of non-residential development, including the consideration of noise, fumes and air emissions, storage and waste, light spill and overlooking and unsightly views.

*Clause 15.01-1S – Urban Design*

30. This policy seeks to create urban environments that are safe, healthy, functional and enjoyable and that contribute to a sense of place and cultural identity. Relevant strategies include:

- (a) *Require development to respond to its context in terms of character, cultural identity, natural features, surrounding landscape and climate;*
- (b) *Ensure the interface between the private and public realm protects and enhances personal safety; and*
- (c) *Ensure that development, including signs, minimises detrimental impacts on amenity, on the natural and built environment and on the safety and efficiency of roads.*

*Clause 15.01-1L – Urban Design*

31. This Clause comprises Council's local planning policies for urban design and includes strategies for the public realm, wind, weather protection, projections over public realm, development adjoining land in a Heritage Overlay, laneways, boulevards and development adjacent to public open space.

*Clause 15.01-2S – Building Design*

32. This policy seeks to achieve building design and siting outcomes that contribute positively to the local context, enhance the public realm and support environmentally sustainable development. Relevant strategies include:

- (a) *Ensure development responds and contributes to the strategic and cultural context of its location;*
- (b) *Ensure the form, scale, and appearance of development enhances the function and amenity of the public realm;*
- (c) *Ensure buildings and their interface with the public realm support personal safety, perceptions of safety and property security; and*
- (d) *Ensure development is designed to protect and enhance valued landmarks, views and vistas.*

*Clause 15.01-2L – Building Design*

33. This Clause comprises Council's local planning policies for building design and includes strategies for building form, building heights, building setbacks, walls on boundaries, site coverage, internal amenity, impact of development on adjoining properties, roof form, materials, landscaping, pedestrian access, frontages, front fences and gates, car parking, loading facilities and outbuildings, service equipment and overshadowing of the public realm.

*Clause 15.01-5S – Neighbourhood character*

34. This policy seeks to recognise, support and protect neighbourhood character, cultural identity, and sense of place. Relevant strategies include:

- (a) *Support development that respects the existing neighbourhood character or contributes to a preferred neighbourhood character; and*

- (b) *Ensure development responds to its context and reinforces a sense of place and the valued features and characteristics of the local environment and place by respecting the:*
  - (i) *Pattern of local urban structure and subdivision;*
  - (ii) *Underlying natural landscape character and significant vegetation; and*
  - (iii) *Neighbourhood character values and built form that reflect community identity.*

*Clause 15.03-1S – Heritage Conservation*

35. This policy seeks to ensure the conservation of places of heritage significance. Relevant strategies include:
- (a) *Provide for the conservation and enhancement of those places that are of aesthetic, archaeological, architectural, cultural, scientific or social significance;*
  - (b) *Encourage appropriate development that respects places with identified heritage values; and*
  - (c) *Retain those elements that contribute to the importance of the heritage place.*

*Clause 15.03-1L – Heritage*

36. This Clause comprises Council's local planning policies for land within a Heritage Overlay. Relevant objectives are:
- (a) *To conserve and enhance Yarra's natural and cultural heritage; and*
  - (b) *To preserve the scale and pattern of streetscapes in heritage places.*
37. Clause 15.03-1L comprises various strategies to guide new development, alterations or additions, demolition, roof terraces and roof decks, and development in commercial and industrial heritage places (amongst others).

## Advertising

38. The application was advertised under the provisions of Section 52 of the *Planning and Environment Act 1987* by 11 letters sent to surrounding owners and occupiers and by two (2) signs displayed on site (Nicholson Street and Freeman Street frontages). Council received 18 objections in total and 16 from individual properties. Objection grounds are summarised as follows:
- (a) Loss of on-street parking and increased traffic due to increased patronage of Hotel;
  - (b) Noise impacts from roof terrace on residential amenity;
  - (c) Noise impacts from service equipment;
  - (d) Increase in littering resulting from proposed works;
  - (e) Construction noise impacts on residential amenity;
  - (f) Devaluation of property;
  - (g) Overdevelopment;
  - (h) Inappropriate response to heritage and neighbourhood character;
  - (i) Overlooking, overshadowing and visual bulk of terrace to existing secluded private open space;
  - (j) Acoustic report and management plan not provided with application;
  - (k) Obstruction of laneway at rear from delivery vehicles and waste;
  - (l) Impacts of increased patrons on existing infrastructure;
  - (m) Laneway safety; and,
  - (n) The first floor of the building does not have existing use rights as a hotel.

## Referrals

### External Referrals

39. The application was not required under the Scheme to be referred to external authorities.

### Internal Referrals

40. The application was referred to the following units within Council:

(a) Heritage.

41. Referral comments have been included as attachments to this report.

## OFFICER ASSESSMENT

42. The primary considerations for this application are as follows:

(a) Buildings and Works, including Heritage;

(b) Existing Use Rights;

(c) Objector Concerns; and

(d) Other Matters.

### Buildings and Works, including Heritage

43. The following assessment will be informed by the relevant objectives and decision guidelines of the Neighbourhood Residential Zone and Heritage Overlay, as well as local policies relating to non-residential development and heritage.

#### *Character and Heritage*

44. Relevant to the proposed development, a key purpose of the Neighbourhood Residential Zone is *to manage and ensure that development respects the identified neighbourhood character, heritage, environmental or landscape characteristics*. Given the site's location with the Heritage Overlay, the preferred neighbourhood character is guided by the policies of Clause 15.03-1L (Heritage) of the Scheme.

45. The surrounding built form context consists primarily of single and double storey residential development of the Victorian and Edwardian era. A number of roof terraces are observed on nearby residential buildings including at No 440 Nicholson Street, immediately south of the subject site, No. 436 Nicholson Street, No. 32 St Georges Road, Nos. 16-30 Newry Street & No. 415 Nicholson Street and No. 439-441 Nicholson Street & Nos. 1-7 Curtain Street.

46. As observed widely throughout Yarra, Hotels are typically found in residential neighbourhoods and are typically two storey in scale with high site coverage and feature both indoor and outdoor dining spaces. The Royal Oak Hotel is graded 'individually significant' and is cited in the Victorian Heritage Database as being significant for its Neo-Grecian, two storey hotel building with significant dado tiles and upper level colonnaded verandahs and detailing. The site is also located within the North Fitzroy heritage precinct (Schedule 327 to the Heritage Overlay) and the statement of significance for this precinct recognises the significance of corner hotels.

47. The proposed buildings and works will repurpose the existing roof terrace to the east of the building for patron use and will include a bar with in-built and free-standing seating covered by a pergola. An acoustic screen will be constructed around the perimeter of the terrace and will be painted to match the colour theme of the existing building (dark red frames). These works will require the removal of the existing chain wire fencing around the perimeter of the terrace as well as the relocation of some site services.



48. Pursuant to Clause 15.03-1L, demolition of parts of individually significant buildings can be contemplated where their removal will not adversely affect the heritage significance of the place. The existing terrace and fencing are non-original additions and do not contribute to the significance of the site or wider heritage precinct. The removal of the existing chain wire fencing from the terrace's perimeter is therefore supported, with this confirmed by Council's Heritage Advisor.
49. In relation to new additions and alterations, Clause 15.03-1L encourages development to provide a respectful design response by:
- (a) *Maintaining the heritage character of the existing building or streetscape;*
  - (b) *Respecting the scale and massing of the existing heritage building or streetscape;*
  - (c) *Retaining the pattern and grain of streetscapes in heritage places;*
  - (d) *Not visually dominating the existing heritage building or streetscape;*
  - (e) *Not detracting from or competing with the significant elements of the existing heritage building or streetscape; and*
  - (f) *Maintaining the prominence of significant and contributory elements of the heritage place.*
50. This clause also seeks to maintain views to the front of an individually significant building or views to a secondary façade where the building has two street frontages by not:
- (a) Building over the front of it;
  - (b) Extending into the air space above the front of it; and
  - (c) Obscuring views of its principal façades.
51. In relation to commercial heritage places policy encourages development to (as is relevant):
- (a) *Retain the visual prominence of both façades of buildings on corner sites (not including laneways).*
52. The proposed buildings and works will be visible from the secondary frontage on Freeman Street only and will not be visible from Nicholson Street. The proposed works will have an overall maximum height of 6.16m above ground level; an increase of 0.14m from existing conditions (measured to the top of the chain wire fencing) and will sit below the overall height of the building parapet. As such, the proposed works are not considered to dominate the original heritage building. The additions will not obscure or cover up views to original heritage fabric, pursuant to policy.
53. The proposed acoustic screens will be constructed with metal frames powdercoated in "Federation Red"; a deep red finish similar to the red used on the trims of the existing building's façade. The glass panels will have an amber-coloured decal applied to them. The glass panels to the rear parts of the screening will have obscure glazing to address overlooking towards the south and east of the site (discussed later in this assessment). Council's heritage advisor does not object to the acoustic screens, noting the existing chain wire fencing is of a similar scale. However, the acoustic screens will have a greater degree of visibility from the street due to their solid nature (in comparison to the existing permeable chain wire fencing) and concern was raised in the heritage advice that the use of a dark red finish will result in the acoustic screens reading as an architectural feature in their own right, thus detracting from the heritage significance of the building.
54. A condition will therefore require the finish of the acoustic screens to be a white or light to mid grey colour so it is visually distinguishable from heritage fabric without dominating the original building, consistent with the heritage recommendation. The colour decal to the glazing panels may also be revised to match the revised finish of the screens.

55. The height of the pergola as well as the roof structure over the southern bar area will match the finished height of the perimeter screening and as such will be reasonably concealed from view from Freeman Street. The roof material of the bar has not been notated and will be required via condition. The material PT-04 has not been included in the materials schedule and this will also be addressed via condition.
56. Clause 15.01-1L (Urban Design – Laneways) promotes development abutting laneways that (as is relevant):
- (a) *Provides a safe and well-lit environment for users of the laneway;*
  - (b) *Reflects the character of the laneway;*
  - (c) *Respects the scale of surrounding built form; and*
  - (d) *Provides windows and balconies to facing laneways to enhance surveillance but do not unreasonably overlook neighbouring private open spaces or habitable rooms on the opposite side of the laneway.*
57. The proposed works will repurpose the existing terrace for use by hotel patrons. The terrace is currently used by hotel staff and guests of the accommodation. However, the intensification of the use of the terrace will increase opportunities for passive observation of the laneway to the east, as encouraged by policy. The proposed works will not result in any unreasonable overlooking opportunities as will be discussed later in this report. The proposed construction of acoustic screening around the perimeter of the terrace will not overwhelm the existing scale of the laneway. Under existing conditions, a 1.9m high chain wire fence is constructed around the terrace perimeter. The proposed acoustic screens will be 0.6m higher than the existing chain wire fence and as such, the works are not considered to add unreasonable bulk to the existing building and the rear of the Hotel will continue to read as a single storey form. The glazed panels within the screening will also provide for some views between the roof terrace and the public realm and will soften built form.
58. Overall, the proposed works to the rear terrace are not considered to detract from the heritage significance of the site or wider heritage precinct. The works are consistent with the policy directions for new additions in Heritage Overlay areas (Clause 15.03-1L) and are acceptable in relation to the site and surrounding area's character, with all of the proposed works, including demolition, supported by Council's Heritage Advisor.

#### *Off-site amenity*

59. Clause 13.07-1L-01 (Interfaces and Amenity) and Clause 15.01-2L (Building Design) of the Scheme provide guidance on the assessment of off-site amenity impacts. In relation to off-site amenity impacts relating to the use of the Hotel (such as noise from music, patrons and service equipment, patron behaviour, light spill etc.), this will be considered under the Existing Use Rights assessment in the following section of the report.
60. In relation to noise (not including from activities in association with the Hotel use), policy seeks to ensure that *plant and equipment are located away from noise-sensitive habitable rooms and private open space, where appropriate*. Existing site services, such as air-conditioning units, will be relocated to the southern side of the terrace, west of the proposed bar area. Pursuant to Clause 66.02 (Buildings and works not requiring a permit unless specifically required by the planning scheme), a planning permit is not required to construct services normal to a building (such as heating or cooling systems, flues etc.). A planning permit is also not required for these services under the Heritage Overlay as they will not be visible from the street (other than a laneway) or public park, pursuant to Clause 43.01-1.
61. Notwithstanding, the relocated site services area will not have an unreasonable amenity impact as they will be located opposite the existing, two storey boundary wall of No. 440 Nicholson Street and will not directly interface with habitable room windows or secluded private open space (SPOS). Further, this services area within the southern setback will not be accessible to hotel patrons. In addition, the location of the waste storage area remains unchanged and will continue to be located at ground level in the south-east corner of the site.

It is acknowledged that some of the objections raised concerns about the use of the eastern-abutting laneway to store waste bins and empty beer kegs. Should waste be stored not in a manner that is in accordance with the endorsed plans, it will be a matter for Council's Planning Enforcement Unit to investigate.

62. Clause 13.07-1L-01 also seeks to *minimise the potential for unreasonable overlooking of private open space areas and into habitable room windows of adjoining residential properties, through appropriate siting, setbacks and screening*. Whilst not strictly applicable, ResCode Standard A15 at Clause 54.04-6 (Overlooking) provides guidance on acceptable overlooking measures, which include the use of fixed external screens or obscure glazing up to 1.7m above floor level of a proposed habitable room window, balcony, terrace, etc. The Standard only applies to existing habitable room windows or SPOS within a 9m radius of a proposed balcony, terrace, etc.
63. There will be no unreasonable overlooking from the proposed roof terrace. The perimeter of the terrace will be constructed with a mixture of acoustic screens and solid walls which will have a maximum height of 2.5m above the terrace's finished floor level. There are no existing habitable room windows or SPOS within a 9m radius of the northern perimeter of the terrace and as such, no additional overlooking treatments are required in this direction.
64. Views from the eastern perimeter of the terrace, adjacent to the bar area, to existing habitable room windows and SPOS at No. 440 Nicholson Street and No. 6 Freeman Street will be managed with obscure glazing up to 2.23m above floor level, as part of the acoustic screens, consistent with Standard A15. The northern section of the acoustic screening along this boundary does not have obscure glazing. Council's overlooking template in Objective Trapeze confirms that a west-facing habitable room window falls within a 9m radius of the eastern perimeter of the terrace which does not have any overlooking treatments. A condition will therefore be required to demonstrate that there will be no unreasonable overlooking from this section of the terrace to the west-facing window at No. 6 Freeman Street in accordance with the objective of Clause 54.04-6 of the Scheme. If necessary, the obscure glazing to the acoustic panels will be required to extend further to the north to alleviate any impacts.
65. There will be no overlooking from the southern perimeter of the roof terrace as a 2.23m high solid wall is proposed on the southern boundary. Screening to the services yard within the first floor southern setback is not considered necessary given it will not be publicly accessible and would only be used for maintenance purposes for the services equipment. A notation on the plans confirms this section of terrace is not trafficable.
66. The proposed works include the construction of a new, 2.23m high solid wall on the southern boundary, opposite the SPOS of No. 440 Nicholson Street. The proposed new section of wall will result in a maximum overall height of 6.1m from natural ground level.
67. The endorsed plans for No. 440 Nicholson Street (PLN20/0584) confirm that this ground level SPOS opposite the proposed boundary wall doubles as a car parking space, with an outdoor seating area and barbecue located on the northern boundary. Nearmap aerial imagery (viewed over multiple dates since construction was completed) confirms that this area is often used as a car parking space. However, this area is still considered the dwelling's primary SPOS as, pursuant to Clause 54.05-2 (Private Open Space) of the Scheme:
  - (a) The SPOS is directly accessible from a living room;
  - (b) The SPOS is located to the rear of the dwelling; and
  - (c) The SPOS has an area of approximately 40sqm (exceeding the 25sqm minimum requirement), with a minimum dimension of 6.41m (minimum 3m required).

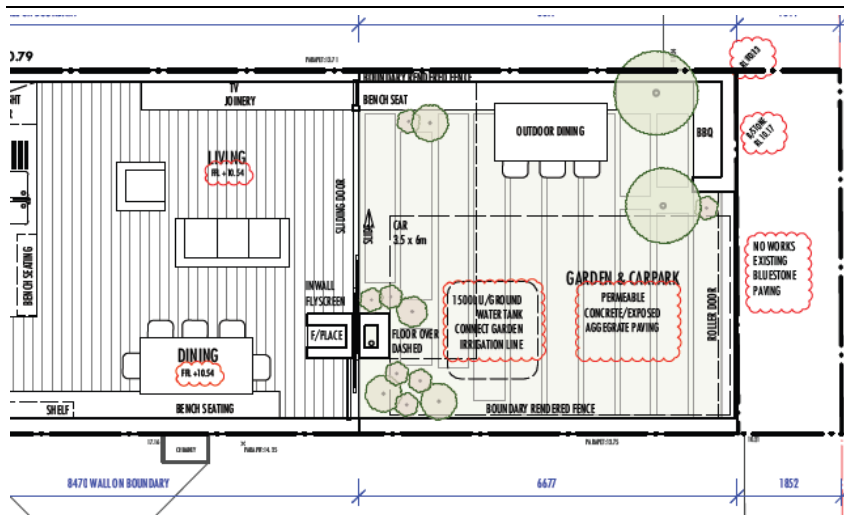


Figure 8: Extract of PLN20/0584 endorsed plans showing ground floor car park and SPOS

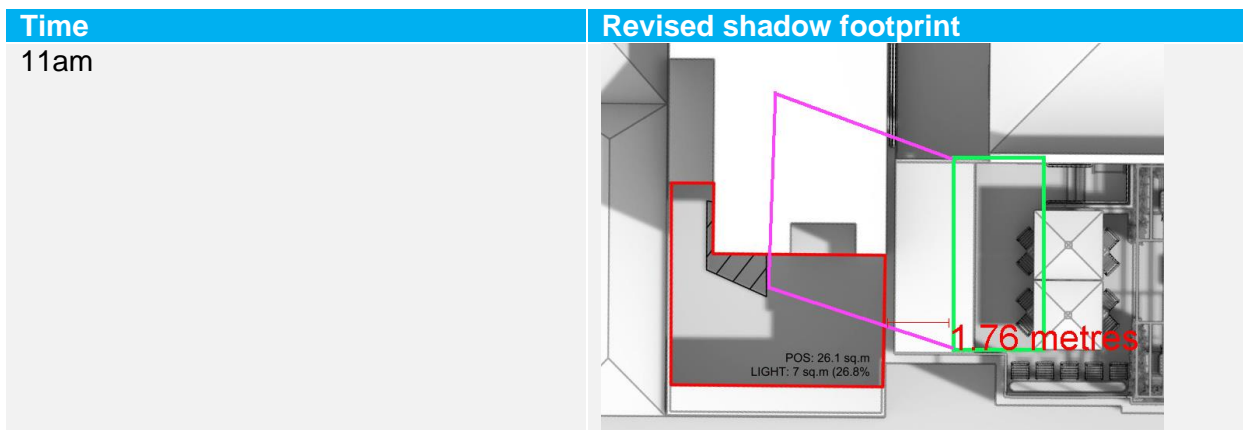
68. Standard A11 at Clause 54.04-2 of the Scheme (Walls on boundaries) prescribes a maximum boundary wall height of 3.6m, with an average height of no more than 3.2m. At 3.8m, the existing southern boundary wall is not compliant with Standard A11. The increase to the height of the existing boundary wall by 2.3m is not supported. Whilst boundary walls that exceed 3.6m are observed within the wider area, consideration must also be given to the immediate site context. The proposed boundary wall will be constructed opposite SPOS and will have an unreasonable visual bulk impact. As will be discussed in the following section of the report, the wall will result in additional overshadowing of this SPOS which will unreasonably impact the use and enjoyment of this space.
69. To mitigate the impacts of visual bulk (and by extension, overshadowing impacts), a condition will require the proposed southern boundary wall to be set back in accordance with Standard A10 (Side and rear setbacks) of Clause 54.04-1 of the Scheme. For a 6.1m high wall, Standard A10 prescribes a setback of 1.75m. The southern wall of the bar will therefore be required to be set back 1.75m from the southern boundary. Reconfigurations to the floorplan layout of the terrace may also be permitted. The material of the southern wall of the bar has not been notated and will be required via condition.
70. This setback will reduce visual impacts from the adjacent SPOS to an acceptable degree.
71. Given the east-west orientation of the site, the proposed works will result in additional overshadowing of the ground floor SPOS of No. 440 Nicholson Street. This is due to the construction of a new solid wall on the southern boundary, with a maximum height of 2.23m above floor level. As discussed above, the new wall as proposed increases the overall height of the southern boundary wall from 3.8m to 6.1m. While the condition requiring a setback of this wall as outlined will reduce overshadowing impacts, the discussion below will be based on the current proposal.
72. Whilst not strictly applicable, Clause 54.04-5 (Standard A14) provides guidance on the assessment of overshadowing impacts and will be relied upon in the following assessment of overshadowing to SPOS at No. 440 Nicholson Street. The overshadowing objective seeks to ensure buildings do not unreasonably overshadow existing SPOS of dwellings or small second dwellings and considers overshadowing at the September equinox only.

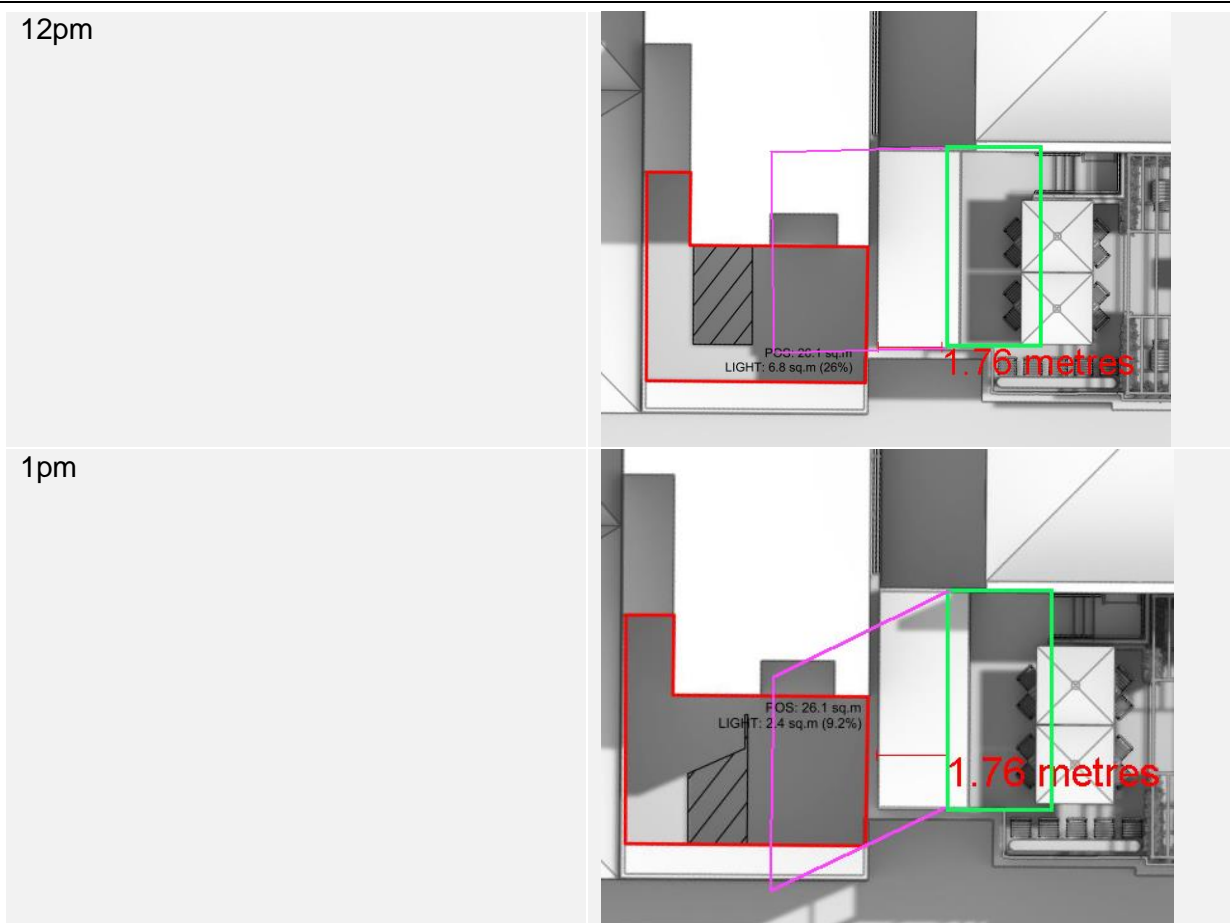
73. The following table summarises the overshadowing impacts of the proposed development on the SPOS of No. 440 Nicholson Street:

No. 440 Nicholson Street total SPOS: 26.1sqm			
Time	Existing sunlight to SPOS	Proposed sunlight to SPOS	Additional shadow
9am	0.4sqm (1.5%)	0.4sqm (1.5%)	No change
10am	4.4sqm (16.8%)	4.4sqm (16.8%)	No change
11am	8.7sqm (33.3%)	7sqm (26.8%)	+1.7sqm
12pm	11.5sqm (44%)	6.8sqm (26%)	+4.7sqm
1pm	5.7sqm (21.8%)	2.4sqm (9.2%)	+3.3sqm
2pm	0sqm (0%)	0sqm (0%)	No change
3pm	0sqm (0%)	0sqm (0%)	No change

Table 1: Overshadowing of SPOS summary of No. 440 Nicholson Street

74. Due to existing built form conditions, the ground level SPOS of No. 440 Nicholson Street is largely in shadow during most hours of the day. This SPOS receives the most meaningful amount of sunlight between 11am and 1pm, with the maximum amount of sunlight at 12pm (44% of SPOS in sunlight). The proposed development will result in additional overshadowing of SPOS during these key hours of the day with the maximum amount of sunlight reducing to 26.8% (at 11am) under proposed conditions.
75. The extent of additional overshadowing is not supported as the area of sunlight remaining is not considered to be sufficient for the recreation and service needs of occupants. The condition to set back the southern wall of the proposed terrace by 1.75m will result in no additional overshadowing of SPOS. In addition, the amount of sunlight to SPOS at 12pm and 1pm would increase due to the increased setback of building form from the southern boundary and removal of the chain wire fencing, as demonstrated in the following images.
76. The marked-up shadow diagrams show the revised location of the bar (in green) and the revised shadow footprint (in pink). Due to the limitations of the scaling device within *Objective Trapeze*, the setback is shown as 1.76m instead of 1.75m however this will not have an impact on the revised shadow footprint (i.e. there is still no additional overshadowing).





**Table 2: Revised shadow footprints with 1.75m setback, prepared in Objective Trapeze (Planning Officer, July 2024)**

- 77. The revised shadow footprint will not result in any additional overshadowing of SPOS at No. 6 Freeman Street.
- 78. The proposed works will not be constructed opposite existing habitable room windows at No. 440 Nicholson Street. The proposed acoustic screens will be set back a minimum 6.4m from the west-facing habitable room window of No. 6 Freeman Street to the east, ensuring that this window continues to have a substantial lightcourt and no additional loss of daylight to the habitable room within. Overall, and subject to the changes discussed above, the proposed works are not considered to have an unreasonable amenity impact on adjoining residential properties and are supported.

Existing Use Rights

- 79. Pursuant to Clause 32.09-2, the use of land for a Hotel (Food and Drink Premises) is a Section 2, permit required use. In accordance with Clause 63.01 (Extent of Existing Use Rights) of the Scheme, an EUR is established in relation to the use if the use was lawfully carried out immediately before the approval date and/or proof of continuous use as a Hotel for 15 years is established under Clause 63.11.
- 80. The Hotel operates under General Liquor Licence 31913002. Existing Use Rights for a Hotel were last established under the previous planning permit issued for the site (PLN15/1209) on 21 February 2017. As such, in order to provide proof of continuous use of the land for a Hotel since 21 February 2017, it must be demonstrated that the use has not stopped for a continuous period of two years, or has not stopped for two or more periods which together total two years in any period of three years. In order to demonstrate proof of continuous use as a Hotel since 21 February 2017, the following supporting documentation has been provided, in addition to Council’s records:

Year	Document
2018	<ul style="list-style-type: none"> <li>Valuation property improvement record dated 7 June 2018 recognising the building at 442-444 Nicholson Street as a Hotel*</li> <li>PBS Radio Station website extract dated 1 August 2018 identifying the Royal Oak Hotel as a supporting music venue and references food and drink, trivia, live music as activities. Includes address of subject site.</li> </ul>
2019	<ul style="list-style-type: none"> <li>Pub review from the Footy Almanac blog, including the Royal Oak Hotel at 440-442 Nicholson Street, Fitzroy North dated 10 July 2019</li> </ul>
2020	<ul style="list-style-type: none"> <li>Valuation property improvement record dated 11 March 2020 recognising the building at 442-444 Nicholson Street as a Hotel*</li> <li>Footpath trading/parklet permit issued by Council to the Royal Oak Hotel on 20 October 2020*</li> <li>2020 Yellow Pages listing of Royal Oak Hotel at 440-442 Nicholson Street, Fitzroy North, retrieved from State Library of Victoria</li> </ul>
2022	<ul style="list-style-type: none"> <li>Urban List review of the Royal Oak Hotel, dated 22 August 2022</li> <li>Footpath trading permit issued by Council to the Royal Oak Hotel on 14 September 2022*</li> <li>The Age newspaper review of the Royal Oak Hotel, dated 20 September 2022</li> <li>Delicious Magazine review of the Royal Oak Hotel, dated 21 October 2022</li> </ul>
2023	<ul style="list-style-type: none"> <li>Trip Advisor reviews of the Royal Oak Hotel, various dates throughout 2023</li> <li>Open Table reviews of the Royal Oak Hotel, various dates throughout 2023</li> </ul>
2024	<ul style="list-style-type: none"> <li>Open Table reviews of the Royal Oak Hotel, various dates in 2024 up to 12 April 2024.</li> </ul>

\*Denotes Council record

**Table 2: Supporting documentation for Existing Use Rights**

81. In addition to the above, general internet searches do not reveal any evidence that the site has ever been used for another purpose aside from a Hotel.
82. The first town planning controls in Victoria were introduced under the *Town and County Planning Act 1994 (Vic)*. The use of the subject land for the purpose of a Hotel therefore existed well before the introduction of town planning controls in Victoria and well before the gazettal of the Yarra Planning Scheme on 27 May 1999.
83. The information provided above as well as Council's records are sufficient to establish continuous use since existing use rights were previously established in 2017. The Hotel is therefore recognised as continuing to benefit from existing use rights at the time of writing this report.
84. An objector has raised concern that the first floor of the building does not have EUR as a hotel as it was previously being used for residential purposes. Pursuant to Clause 73.03 of the Scheme (Land Use Terms), a Hotel is defined as "*land used to sell liquor for consumption on and off the premises. It may include accommodation, food for consumption on the premises, entertainment, dancing, amusement machines, and gambling*" (emphasis added). The existing use of the first floor of the building for accommodation purposes is commensurate with the use of land as Hotel as recognised within the Scheme. As such, existing use rights for a Hotel therefore extends to the first floor of the building.

85. Pursuant to Clause 63.05 of the Scheme (Section 2 and 3 uses), a Section 2 use of a zone for which an existing use right is established can continue provided the following:
- (a) *No building or works are constructed or carried out without a permit. A permit must not be granted unless the building or works complies with any other building or works requirement in this scheme;*
  - (b) *Any condition or restriction to which the use was subject continues to be met. This includes any implied restriction on the extent of the land subject to the existing use right or the extent of activities within the use; and*
  - (c) *The amenity of the area is not damaged or further damaged by a change in the activities beyond the limited purpose of the use preserved by the existing use right.*
86. As has been considered in the previous section of the report, the proposed buildings and works have been assessed against the relevant provisions of the Scheme and have been deemed to satisfy the applicable policy requirements.
87. In relation to the second dot point under Clause 63.05 (*any condition or restriction to which the use was subject continues to be met*), Council relies on the *Insite Architects Pty Ltd v Kingston CC [2023] VCAT 1076 decision (Insite Architects v Kingston CC) VCAT decision*. This decision rules that the second dot point under Clause 63.05 does not require “*observance of conditions or restrictions first imposed on an existing use right after the date of the establishment of an existing use right...*” [63]. In other words, “*the conditions and restrictions that must continue to be met are those conditions and restrictions that were in existence on the establishment of the existing use right*” [65].
88. In *Stonnington v Abgol Pty Ltd [2005] VCAT 2346*, the Tribunal considered whether the existing layout of a hotel, which enjoyed existing use rights, was a condition or restriction on the use such that conversion of the first floor to a function room was impermissible. Member Rickards (legal member) held that it was not, and said:
- [16] Although Mr Peake has submitted that the placement of the various activities on the land, in some way acts as a condition or restriction on the use, no conditions or restrictions were placed on the use of the site as a hotel. Whilst it may have been convenient in the past to conduct activities such as the bar, bistro, restaurant, kitchen and service facilities on the ground floor and allocate the first floor for accommodation, the placement of these activities in those locations is not a condition of the use of the land as a hotel, nor is it a restriction on the use of the land. The use still remains as a hotel incorporating all of those activities; namely the sale of liquor and food and the provision of accommodation. Nor does the extent of those activities undertaken on the site place an implied restriction upon the use.*
89. The Royal Oak Hotel’s current liquor licence and red line plan, as well as planning permit PLN15/1209 were not in existence as at the approval date of the Yarra Planning Scheme under Clause 63.01 (being 27 May 1999). Further, the current layout of the Hotel, which includes a bar and dining area at ground floor and accommodation at first floor, are not a condition or restriction on the existing use of the Hotel. As such, any restrictions imposed under the licence or the planning permit or the current layout of the Hotel cannot constitute a condition or restriction to which the existing use was subject at the approval date of the Yarra Planning Scheme.
90. In relation to the third dot point under Clause 63.05 (*the amenity of the area is not damaged or further damaged by a change in the activities beyond the limited purpose of the use preserved by the existing use right*), the *Insite Architects v Kingston CC decision in 2023* rules that this requirement does not apply to “*changes in activities that are activities in furtherance of the purpose of the existing use established under Clause 63.01*” [90] (for example, an increase in the licence hours, or patron numbers). This position relies on the ruling from *Wellington & Ors v Surf Coast SC (includes summary) (Red Dot) [2011] VCAT 2317 (Wellington v Surf Coast SC)* as follows:
-



[160] “...change in activities beyond the limited purposes of the use must mean a change in the activities that amounts to a change in the purpose of the use ... if the nature of activities changed to a sufficient degree such that the purpose of the use could no longer be described in the same terms according to ordinary terminology

[161] “... it follows that an existing use right may be continued, even with additional amenity impacts, provided the purpose of the use does not change.”

91. In *Kevak Hotels Pty Ltd v Darebin CC (Corrected) [2022] VCAT 318*, the Tribunal held that a permit was not required under clause 52.27 to modify or extend the hours within which liquor may be sold or consumed at the hotel because it enjoys existing use rights. The Tribunal went on to find:

[21] *The establishment of existing use rights not only protects the use of the subject land for the purpose of a hotel but also allows the uses and activities that comprise that use to intensify over time. The Supreme Court in *in the City of Nunawading v Harrington*[18] said the use and the activities on the land – ... may change, increase or decrease, so long as the same purpose is served.*

[22] *I consider the changes to the hotel's operating hours to be an intensification of the existing hotel use, and not a use for a new or different purpose. In *Wellington v Surf Coast Shire Council & Ors*, Deputy President Dwyer stated:*

[153] *Moreover, cases such as *Norman v Gosford Shire Council* make it clear that a use may be intensified over time, even with a change in activities within the use, without changing the purpose of use. The use to which land may be put and the activity on it may change, increase or decrease, so long as the same purpose is served. There may even be greater amenity impacts created through the intensification of the use, without the purpose of the use changing (emphasis added)*

92. This application is for buildings and works to the existing roof terrace, to create a new outdoor area for hotel patrons. Whilst the works would result in an intensification of the use, as stated in *Insite Architects v Kingston CC* [93], “*the buildings and works are all to be used in conjunction with the existing use of the land for the purpose of a Hotel. Accordingly, the proposed buildings and works are not related to, or are for the purposes of, activities beyond the limited purposes of the preserved existing use.*”
93. The above decisions confirm that an existing use right may be continued, even with additional amenity impacts, provided the purposes of the use do not change. The proposed buildings and works are all to be used in conjunction with the existing use of the land for the purpose of a Hotel and therefore additional activities allowed for by the buildings and works and any associated off-site amenity impacts fall squarely within the existing use right.
94. It follows that Council is unable to consider the potential off-site amenity impacts in association with the expansion of the Hotel use within the subject land (such as patron and music noise, light spill, patron behaviour, traffic impacts, noise from service equipment etc.). For clarity, it also follows that a planning permit is not required under Clause 52.27 (Licenced Premises) of the Scheme for any changes in the Hotel's red line plan, licence hours, patron numbers etc, because of the Hotel's existing use right.
95. Accordingly, objector concerns about off-site amenity impacts arising from the increase in the scale and intensity of an existing use are now governed by the Liquor Licence and cannot be considered and controlled under a planning permit. This has been most recently recognised by the Tribunal in *Insite v Kingston CC* where it said:

[95] Finally, the following passage from Wellington is worth extracting in light of Council's submissions reproduced above:

[164] Secondly, commentators have in the past suggested that it is inconsistent with the rest of the Planning and Environment Act 1987 that the adverse effects of an increase in the scale and intensity of an existing use cannot be considered and controlled by planning schemes, in the same way that the adverse effects of uses other than existing uses are able to be regulated. Off-site noise impacts are obviously one of the more annoying and insidious adverse effects in this regard, and this has clearly created the tension in this proceeding. However, given the decision in cases such as Norman, referred to above, the statutory protection afforded existing uses in s 6 of the Planning and Environment Act 1987, legislative reform may be required to deal effectively with the intensification of existing use rights. That is also something that this proceeding cannot deal with.

[96] The legislative regime has not changed since Wellington and therefore those observations, with which I agree, remain apt today.

96. In summary against Clause 63.05, the proposed works to the existing terrace will not greatly impact or alter the existing use (i.e. Hotel) beyond what is currently in existence. The terrace will continue to be used as part of the Hotel and this is evidenced by the proposed buildings and works to construct an external bar with seating and a pergola, for use by hotel patrons. As such, the amenity of the area would not be further damaged as a result of the proposed works, nor is the proposed development considered to result in a change to any implied restrictions. It is also noted that the proposed acoustic screening around the perimeter of the terrace as well as the solid wall to the south of the terrace would assist in mitigating acoustic impacts.
97. Overall, it is considered that the proposed development would be generally compliant with the controls under Clause 63 of the Scheme as discussed throughout this report and it is supported on this basis.

#### Objector Concerns

98. The majority of objector concerns are discussed in the body of the report, including:
- (a) Loss of on-street parking and increased traffic due to increased patronage of Hotel at paragraphs 18-20 and 90-94;
  - (b) Amenity impacts to nearby residential properties including from noise, service equipment, littering, patron behaviour, infrastructure overloading etc. at paragraphs 90-95;
  - (c) Amenity impacts to nearby residential properties including overshadowing, overlooking and visual bulk at paragraphs 59-78;
  - (d) Heritage and neighbourhood character impacts at paragraphs 44-58;
  - (e) Existing Use Rights of the Hotel at paragraphs 79-84; and
  - (f) Laneway safety at paragraphs 56-57.
99. Outstanding objector concerns are addressed as follows:
- (a) *Construction noise impacts on residential amenity:*

Noise impacts during the construction phase of the development are not matters that can be considered under the *Planning and Environment Act 1987*. These matters are typically dealt with through the building permit process. However, Council's Local Law requires that a person must not engage in demolition or construction works as follows:

    - (i) Monday-Friday (excluding public holidays) before 7 am or after 6 pm;

- (ii) Saturdays and public holidays (other than ANZAC Day, Christmas Day and Good Friday) before 9 am or after 3 pm; or
- (iii) Sundays, ANZAC Day, Christmas Day and Good Friday at any time.

This will also be included as a condition should a permit issue. Noise and truck movements during the construction phase of development are a temporary and unavoidable consequence of development and not justification to reject development of the site.

- (b) *Devaluation of property:*

VCAT has consistently found that property values are speculative and a perceived impact on property values is not a relevant consideration in assessing an application under the provisions of the *Planning and Environment Act 1987*;

- (c) *Overdevelopment:*

The layout of the proposal does not indicate that the site cannot accommodate the works proposed. The works are to an existing terrace and include furniture, a pergola, acoustic screening and a bar for use by hotel patrons. The proposed works do not result in an increase to the overall building envelope;

- (d) *Acoustic report and management plan not provided with application:*

As discussed within the Existing Use Rights assessment of the report, a planning permit is not required for the intensification of the Hotel use as a result of the roof terrace works. As such, Council is unable to assess noise impacts or require an acoustic report or management plan; and

- (e) *Obstruction of laneway at rear from delivery vehicles and waste:*

As previously stated, due to the Hotel's existing use rights, a planning permit is not required for the intensification of the Hotel use. As such, Council is unable to consider waste management practices as part of this application. However, the submitted plans show a dedicated waste storage area at ground level in the south-east corner of the site. If waste is being stored within the laneway, it is a matter for Council's Planning Enforcement Unit to investigate.

### Other matters

- 100. The title boundary dimensions as shown on the development plans are in imperial format and will be required to be updated to metric format via condition.

### Conclusion

- 101. The proposed development is considered to demonstrate a high level of compliance with the policy objectives contained within the Planning Policy Framework. The proposal, subject to the conditions recommended, is an acceptable planning outcome that demonstrates clear compliance with the relevant Council policies.

## RECOMMENDATION

That having considered all objections and relevant planning policies, the Committee resolves to issue a Notice of Decision to Grant Planning Permit PLN23/0730 for partial demolition and buildings and works to a hotel (with existing use rights) in association with a terrace at 442-444 Nicholson Street, Fitzroy North VIC 3068 subject to the following conditions:

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be drawn to scale with dimensions, and must be generally in accordance with the decision plans prepared by Bergman & Co and dated 29 April 2024 but modified to show:
  - (a) The new portion of southern wall set back 1.75m from the southern boundary, including any required reconfigurations to the floorplan layout of the terrace;
  - (b) The material of the new portion of southern wall notated on the southern elevation and included in the materials schedule;
  - (c) All roof materials notated on relevant plans and included in the materials schedule;
  - (d) The colour finish of the acoustic screens and frame below the acoustic screens on the Freeman Street frontage to be white or a light to mid grey and the colour decals to the acoustic glass updated to match;
  - (e) The material of PT-04 included in the materials schedule;
  - (f) Demonstrate compliance with the objective of Clause 54.04-6 (Overlooking) of the Yarra Planning Scheme in relation to views from the eastern perimeter of the terrace to the west-facing habitable room window of No. 6 Freeman Street, with subsequent modifications to the screening to mitigate impacts if necessary; and
  - (g) Proposed plans updated to show the title boundary dimensions in metric format.
2. The development as shown on the endorsed plans must not be altered (unless the Yarra Planning Scheme specifies that a permit is not required) without the prior written consent of the Responsible Authority.
3. Before the first-floor terrace is occupied, or by such later date as approved in writing by the Responsible Authority, all screening and other measures to prevent overlooking as shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. Once installed the screening and other measures must be maintained to the satisfaction of the Responsible Authority.
4. Within 2 months of the completion of the development, or by such later date as approved in writing by the Responsible Authority, any damage to Council infrastructure resulting from the development must be reinstated:
  - (a) At the permit holder's cost; and
  - (b) To the satisfaction of the Responsible Authority.
5. Except with the prior written consent of the Responsible Authority, demolition or construction works must not be carried out:
  - (a) Monday to Friday (excluding public holidays) before 7 am or after 6 pm;
  - (b) Saturdays and public holidays (other than ANZAC Day, Christmas Day and Good Friday) before 9 am or after 3 pm; or
  - (c) Sundays, ANZAC Day, Christmas Day and Good Friday at any time.

6. This permit will expire if:
- (a) The development is not commenced within two years of the date of this permit; or
  - (b) The development is not completed within four years of the date of this permit.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires or within six months afterwards for commencement or within twelve months afterwards for completion.

**Notes**

This site is subject to a Heritage Overlay. A planning permit may be required for any further external works.

Provision must be made for drainage of the site to a legal point of discharge. Please contact Council's Building Services on 9205 5555 for further information.

A building permit may be required before development is commenced. Please contact Council's Building Services on 9205 5555 to confirm.

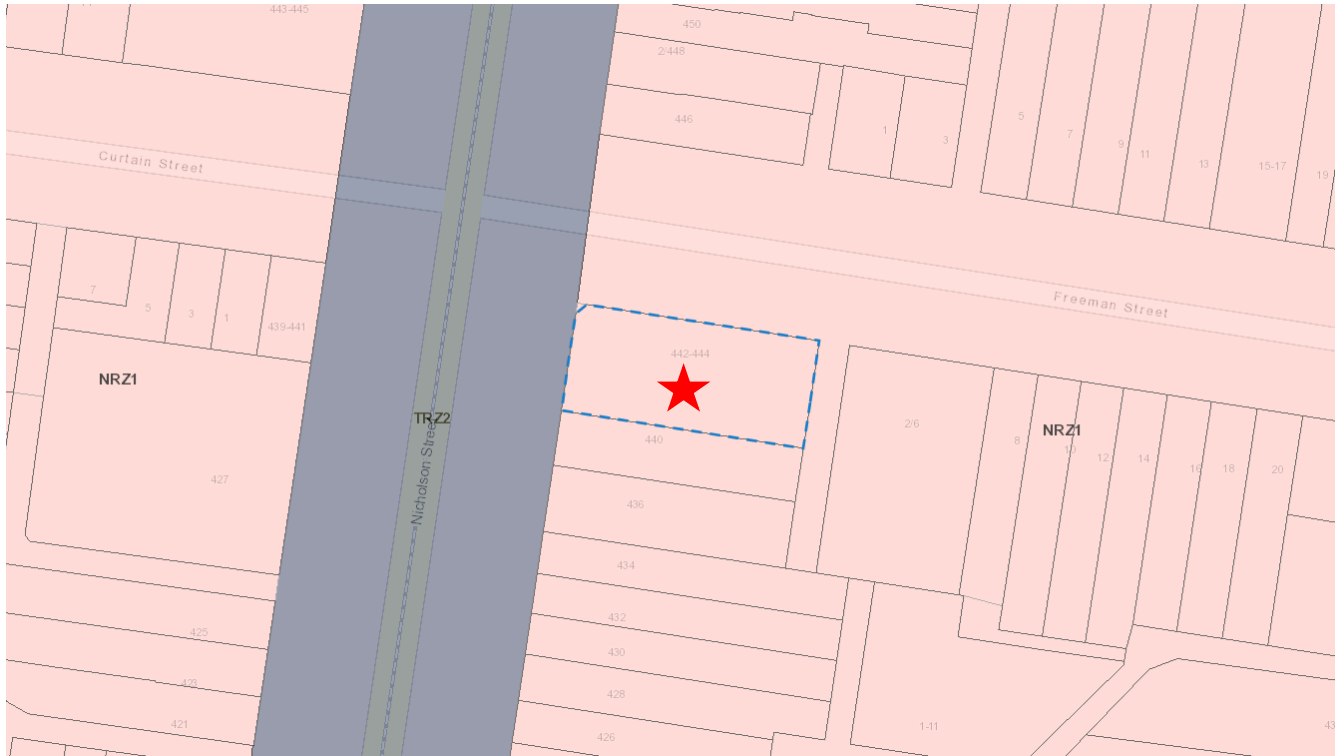
A local law permit (e.g. Asset Protection Permit, Road Occupation Permit) may be required before development is commenced. Please contact Council's Construction Management Branch on Ph. 9205 5555 to confirm.

**Attachments**

- 1 [↓](#) Attachment 1 - 442-444 Nicholson St, Fitzroy North - Site Context Map
- 2 [↓](#) Attachment 2 - 442-444 Nicholson St, Fitzroy North - Advertised Plans
- 3 [↓](#) Attachment 3 - 442-444 Nicholson St, Fitzroy North - Heritage Referral Comments

**PLN23/0730 – 442-444 Nicholson Street, Fitzroy North**

**Land Use Zoning Map**



Source: VicPlan, July 2024

# THE ROYAL OAK - LVL 01

442 NICHOLSON ST, FITZROY NORTH, VIC 3068

DRAWING INDEX

DWG	TITLE	SCALE	REVISION
TP000	TITLE PAGE	N.T.S.	A
TP005	SITE PLAN	1:300 @ A3	A
TP025	EXISTING GROUND FLOOR PLAN	1:200 @ A3	A
TP026	EXISTING LEVEL 1 PLAN	1:200 @ A3	A
TP027	EXISTING ROOF PLAN	1:200 @ A3	A
TP050	EXISTING ELEVATION - NORTH	1:100 @ A3	A
TP051	EXISTING ELEVATION - EAST	1:100 @ A3	A
TP052	EXISTING ELEVATION - SOUTH	1:100 @ A3	A
TP100	PROPOSED LEVEL 1 PLAN	1:200 @ A3	B
TP101	ACOUSTIC PANEL SETOUT	1:50 @ A3	B
TP102	PROPOSED TERRACE PLAN	1:50 @ A3	B
TP103	PROPOSED ROOF PLAN	1:200 @ A3	B
TP200	PROPOSED EXT. ELEVATION - NORTH	1:100 @ A3	A
TP201	PROPOSED EXT. ELEVATION - EAST	1:100 @ A3	A
TP202	PROPOSED EXT. ELEVATION - SOUTH	1:100 @ A3	A
TP300	ACOUSTIC PANEL ISOMETRIC	N.T.S.	A
TP400	SHADOW DIAGRAMS	1:250 @ A3	A
TP401	SHADOW DIAGRAMS	1:250 @ A3	A
TP402	SHADOW DIAGRAMS	1:250 @ A3	A
TP403	SHADOW DIAGRAMS	1:250 @ A3	A
TP404	SHADOW DIAGRAMS	1:250 @ A3	A
TP405	SHADOW DIAGRAMS	1:250 @ A3	A
TP406	SHADOW DIAGRAMS	1:250 @ A3	A

TP RFI 240412

Bergman & Co.

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DO NOT SCALE DRAWINGS - Dimensions shown are nominal and shown in millimeters unless noted otherwise.

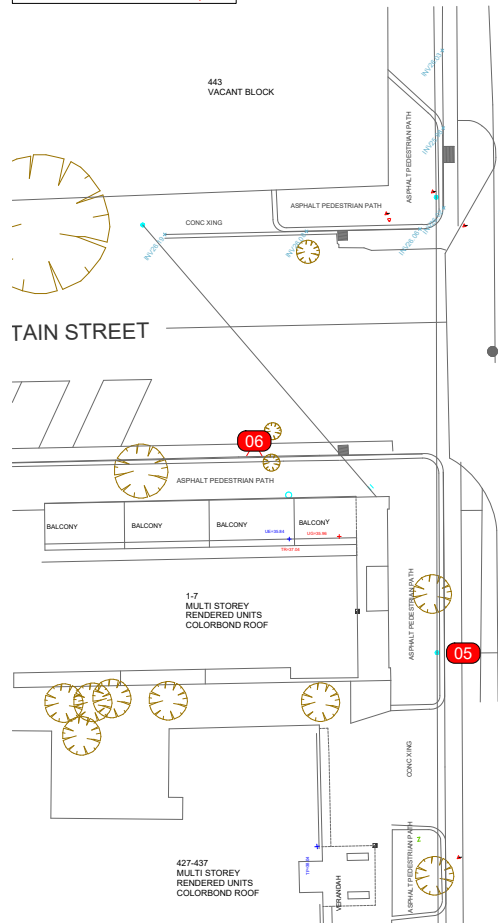
Builder/Contractors shall verify all dimensions and notified the Designer of any discrepancies for review and instructions before any work commences. Figure dimensions should take precedence over scaled dimensions.

All shop drawings shall be submitted for review and manufacture shall not commence prior to return of approved shop drawings. Drawing to be read in conjunction with full Bergman and Co Design Intent Issues, all Structural, Services, Architectural Consultation and Specialist Consultant information.

REVISION NO + DETAIL: -- TOWN PLANNING A - TOWN PLANNING RFI B - TOWN PLANNING RFI - 240412 .	DATE: 25/08/2023 18/03/2024 29/04/2024 .	DRAWN: SC CT SC	CHECKED: CT CT CT	PROJECT ADDRESS: 442 NICHOLSON ST FITZROY NORTH VIC 3068	PROJECT NAME: THE ROYAL OAK - LVL 01	DWG Title: TITLE PAGE	DRAWN BY: SC CT
				CLIENT: The Royal Oak	ISSUE: TOWN PLANNING	DWG No: TP000	SCALE: N.T.S.
							REV: B DATE: 29/04/2024

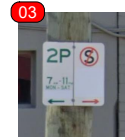
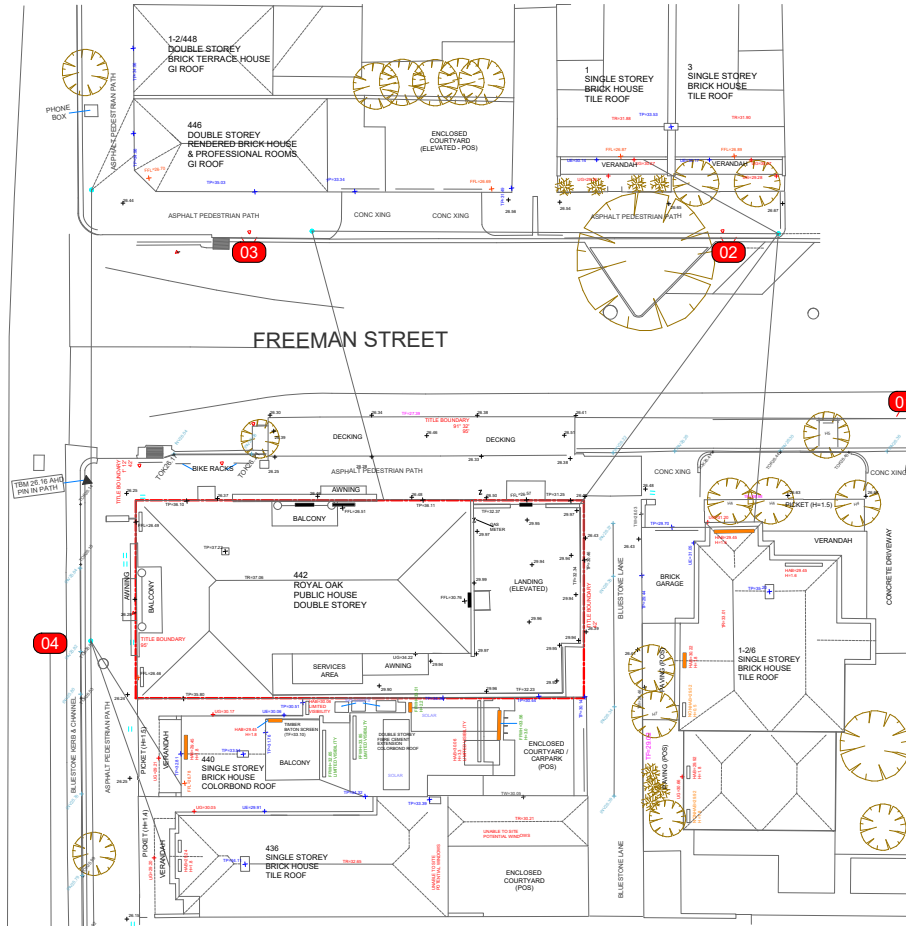
# Attachment 2 Attachment 2 - 442-444 Nicholson St, Fitzroy North - Advertised Plans

**KEY**  
**TITLE BOUNDARY** - - - - -  
**IMAGE VIEWING DIRECTION** <



1 SITE PLAN

NICHOLSON STREET



2 PARKING SIGNAGE

Bergman & Co.



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All shop drawings shall be submitted for review and manufacture shall not commence prior to return of approved shop drawings. Drawing to be read in conjunction with full Bergman & Co. Design from House at Structure, Services, Architectural, Candidate and Specialist Candidate information.

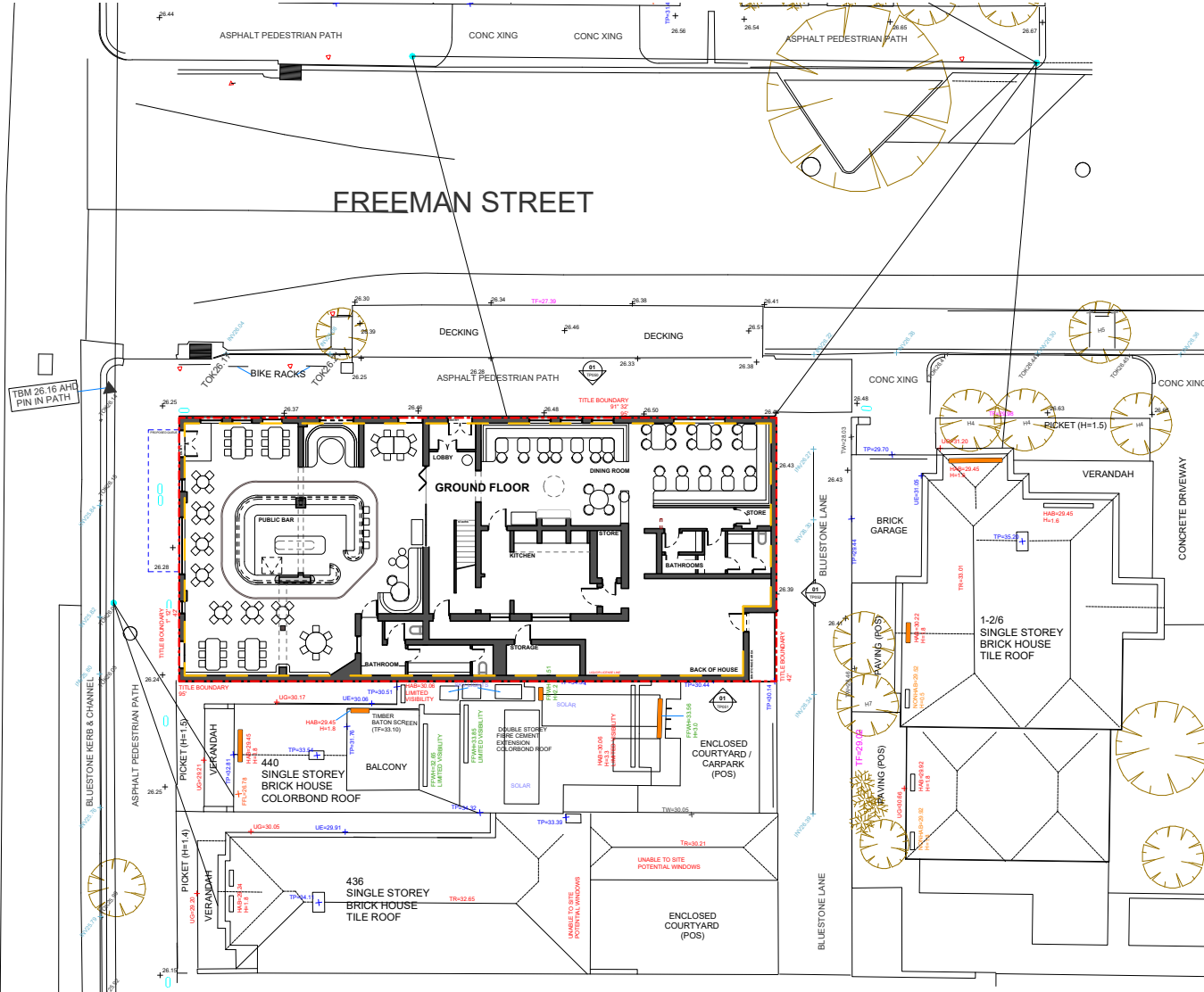
<b>REVISION NO - DETAIL:</b> A - TOWN PLANNING REV - TOWN PLANNING	<b>DATE:</b> 18/03/2024 25/08/2023	<b>DRAWN:</b> SC CT	<b>CHECKED:</b> CT CT	<b>PROJECT ADDRESS:</b> 442 NICHOLSON ST FITZROY NORTH VIC 3068	<b>PROJECT NAME:</b> THE ROYAL OAK - LVL 01	<b>DWG Title:</b> SITE PLAN	<b>DRAWN BY:</b> SC
				<b>CLIENT:</b> The Royal Oak	<b>ISSUE:</b> TOWN PLANNING	<b>DWG No:</b> TP005	<b>CHECKED:</b> CT
							<b>SCALE:</b> 1:300 @ A3
							<b>REV:</b> A
							<b>DATE:</b> 18/03/2024



Attachment 2 Attachment 2 - 442-444 Nicholson St, Fitzroy North - Advertised Plans

<b>NOTES</b>	
NO CHANGES TO EXISTING GROUND FLOOR	
<b>KEY</b>	
TITLE BOUNDARY	---
LIQUOR LICENSE	---
QUEUE LOCATION	---
<b>INTERNAL GROUND FLOOR AREA</b>	
NET (Ex. Int. Walls)	315.1m <sup>2</sup>
GROSS	337m <sup>2</sup>

NICHOLSON STREET



Bergman & Co.



All existing building elements are shown indicatively. Clearing information of existing building taken from drawings provided by Surveyor. Full extents to be verified on site before proceeding with proposed work.  
 DO NOT SCALE DRAWINGS: Dimensions shown are typical and shown in millimeters unless noted otherwise. Builders/Contractors shall verify all dimensions and confirm the Designer of any discrepancies for stone and construction before any work commences. Figure dimensions should take precedence over scaled dimensions.  
 All site drawings shall be submitted for review and endorsement prior to commencement of any approved site drawings. Drawing to be read in conjunction with full Bergman & Co. Design from House at Structure, Services, Architectural Consultancy and Specialist Consultancy information.

REVISION NO - DETAIL: A - TOWN PLANNING RFP - TOWN PLANNING	DATE: 18/02/2024 25/08/2023	DRAWN: SC CT	CHECKED: CT CT	PROJECT ADDRESS: 442 NICHOLSON ST FITZROY NORTH VIC 3068	PROJECT NAME: THE ROYAL OAK - LVL 01	DWG Title: EXISTING GROUND FLOOR PLAN	DRAWN BY: SC CT
				CLIENT: The Royal Oak	ISSUE: TOWN PLANNING	DWG No: TP025	SCALE: 1:200 @ A3
							REV: A
							DATE: 18/03/2024

Attachment 2 Attachment 2 - 442-444 Nicholson St, Fitzroy North - Advertised Plans

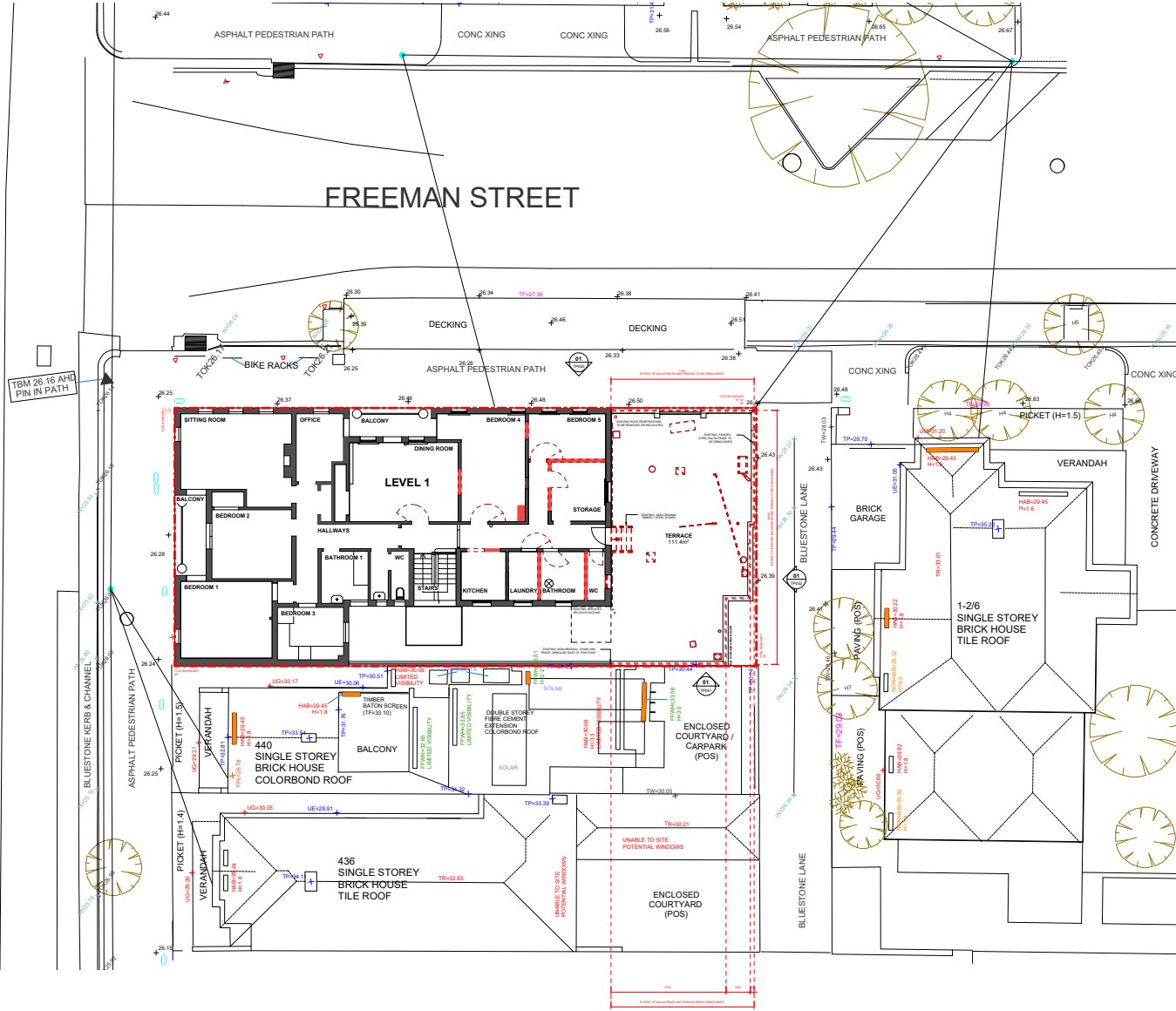
**NOTE**  
CONTRACTOR TO RELOCATE ALL EXISTING SERVICES BY ROUTING UNDERNEATH PROPOSED DECK.  
LOCATION TBC ON SITE BUT ALL TO BE OBTAINED BY PROPOSED BAR JOINERY.

**KEY**  
TITLE BOUNDARY - - - - -

**INTERNAL GROUND FLOOR AREA**  
NET (Ex. Int. Walls) 315.1m<sup>2</sup>  
GROSS 337m<sup>2</sup>

**LEVEL ONE FLOOR AREA**  
NET (Ex. Int. Walls) 195.7 sq.m  
GROSS 220.4 sq.m

**TERRACE FLOOR AREA**  
NET 105.1 sq.m  
GROSS 110.4 sq.m



Bergman & Co.



All existing building elements are shown inductively. Crossing information of existing building taken from drawings provided by Surveyor. Full access to site before proceeding with proposed work.

**DO NOT SCALE DRAWINGS** - Dimensions shown are typical and shown in millimeters unless noted otherwise. Builders/Contractors must verify all dimensions and confirm the Designer of any discrepancies for items and construction before any work commences. Figure dimensions should take precedence over scaled dimensions.

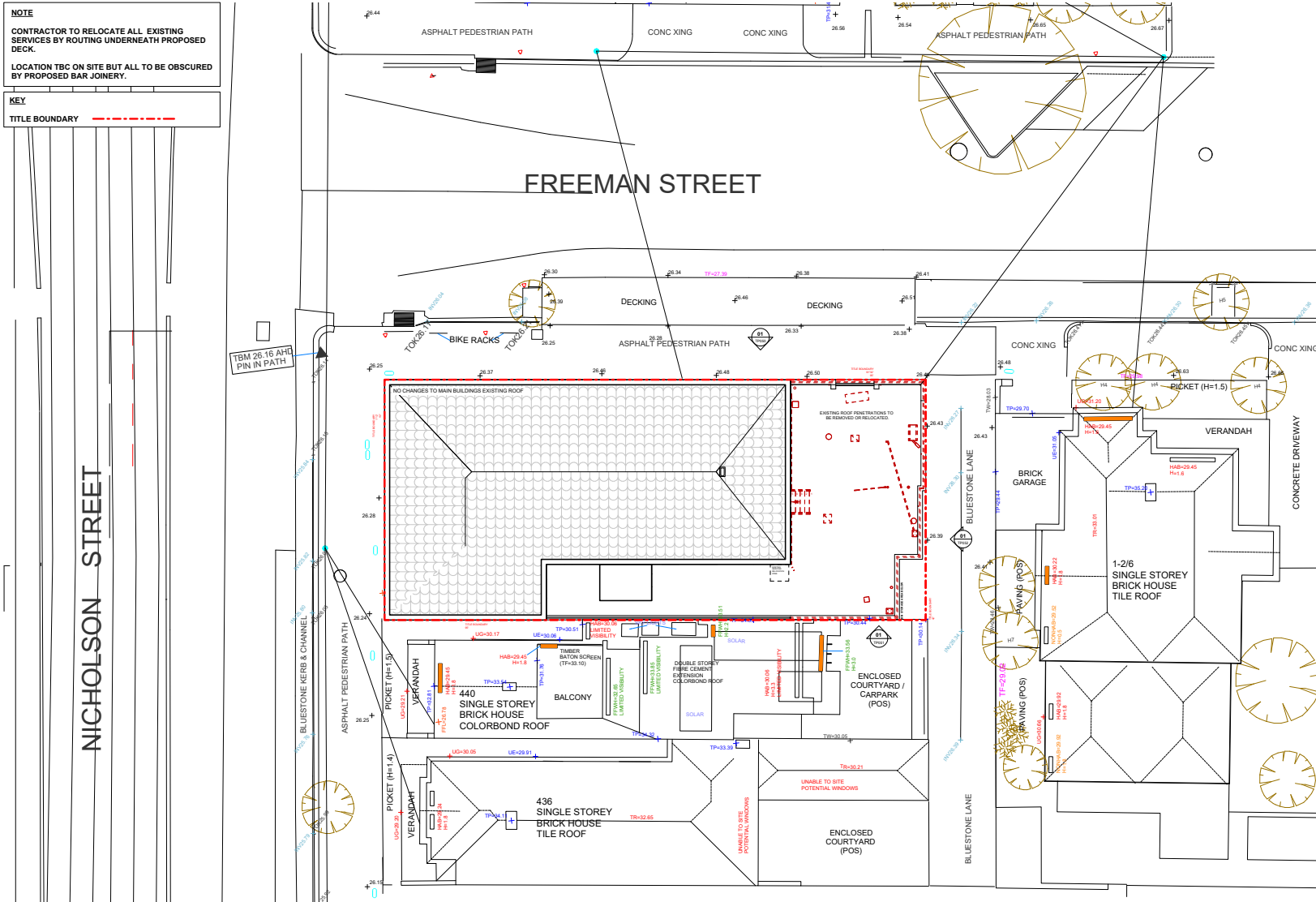
All shop drawings shall be submitted for review and modification shall not commence until in receipt of approved shop drawings. Drawing to be read in conjunction with full Bergman & Co. Design from House at Structure, Services, Architectural, Candidate and Specialist Consultant information.

<b>REVISION NO - DETAIL:</b> A - TOWN PLANNING RFP	<b>DATE:</b> 18/02/2024	<b>DRAWN:</b> SC	<b>CHECKED:</b> CT	<b>PROJECT ADDRESS:</b> 442 NICHOLSON ST FITZROY NORTH VIC 3068	<b>PROJECT NAME:</b> THE ROYAL OAK - LVL 01	<b>DWG Title:</b> EXISTING LEVEL 1 PLAN	<b>DRAWN BY:</b> SC
	<b>DATE:</b> 25/08/2023	<b>DRAWN:</b> SC	<b>CHECKED:</b> CT	<b>CLIENT:</b> The Royal Oak	<b>ISSUE:</b> TOWN PLANNING	<b>DWG No.:</b> TPO25	<b>CHECKED:</b> CT
							<b>SCALE:</b> 1:200 @ A3
							<b>REV:</b> A
							<b>DATE:</b> 18/03/2024

# Attachment 2 Attachment 2 - 442-444 Nicholson St, Fitzroy North - Advertised Plans

**NOTE**  
 CONTRACTOR TO RELOCATE ALL EXISTING SERVICES BY ROUTING UNDERNEATH PROPOSED DECK.  
 LOCATION TBC ON SITE BUT ALL TO BE OBTAINED BY PROPOSED BAR JOINERY.

**KEY**  
 TITLE BOUNDARY - - - - -



**Bergman & Co.**



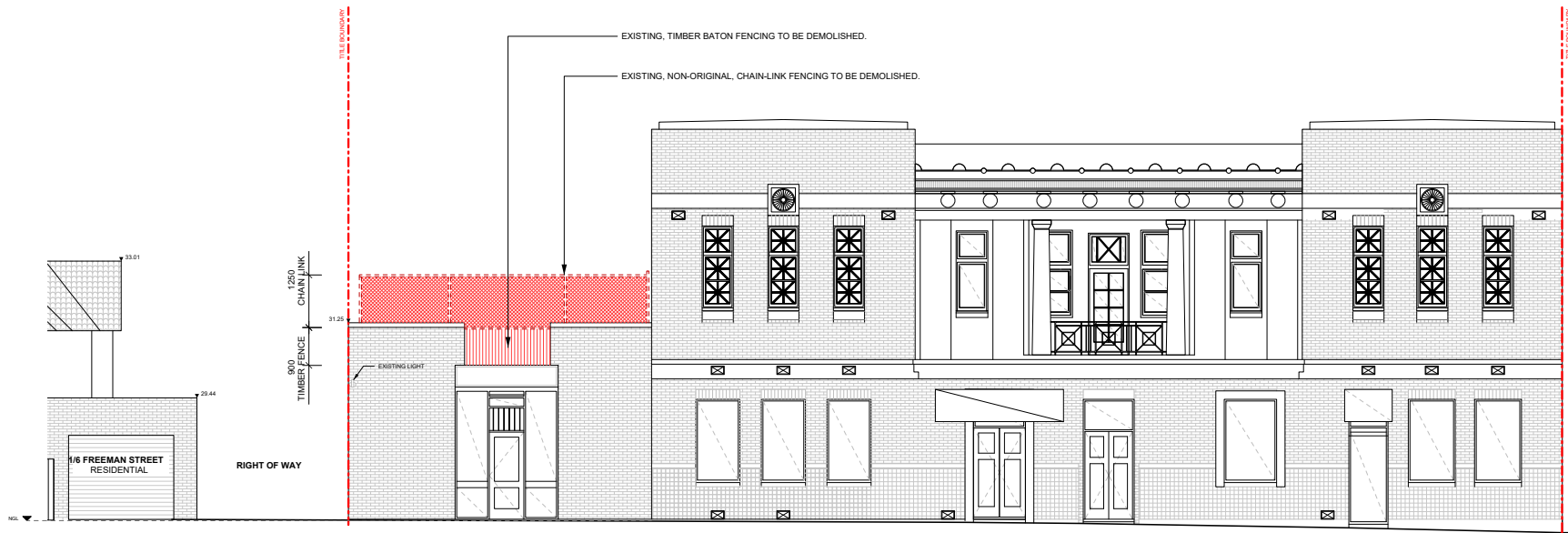
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All site drawings shall be submitted for review and modification shall not commence prior to receipt of approved shop drawings. Drawing to be read in conjunction with full Bergman and Co. Design from House All Structural, Services, Architectural, Civil and Specialist Consultant information.

<b>REVISION NO - DETAIL:</b> A - TOWN PLANNING RFP - - TOWN PLANNING	<b>DATE:</b> 18/02/2024 25/08/2023	<b>DRAWN:</b> SC CT	<b>CHECKED:</b> CT CT	<b>PROJECT ADDRESS:</b> 442 NICHOLSON ST FITZROY NORTH VIC 3068	<b>PROJECT NAME:</b> THE ROYAL OAK - LVL 01	<b>DWG Title:</b> EXISTING ROOF PLAN	<b>DRAWN BY:</b> SC CT
				<b>CLIENT:</b> The Royal Oak	<b>ISSUE:</b> TOWN PLANNING	<b>DWG No:</b> TP027	<b>CHECKED:</b> 1:200 @ A3
							<b>REV:</b> A
							<b>DATE:</b> 18/03/2024

# Attachment 2 Attachment 2 - 442-444 Nicholson St, Fitzroy North - Advertised Plans



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REVISION NO + DETAIL:

A - TOWN PLANNING REF  
 -- TOWN PLANNING  
 --  
 --  
 --

DATE:

18/03/2024

DRAWN:

SC

CHECKED:

CT

PROJECT ADDRESS:

442 NICHOLSON ST  
 FITZROY NORTH VIC 3068

PROJECT NAME:

THE ROYAL OAK - LVL 01

CLIENT:

The Royal Oak

ISSUE:

TOWN PLANNING

DWG Title:

EXISTING ELEVATION - NORTH

DWG No:

TPO50

DRAWN BY:

SC

CHECKED:

CT

SCALE:

1:100 @ A3

REV:

A

DATE:

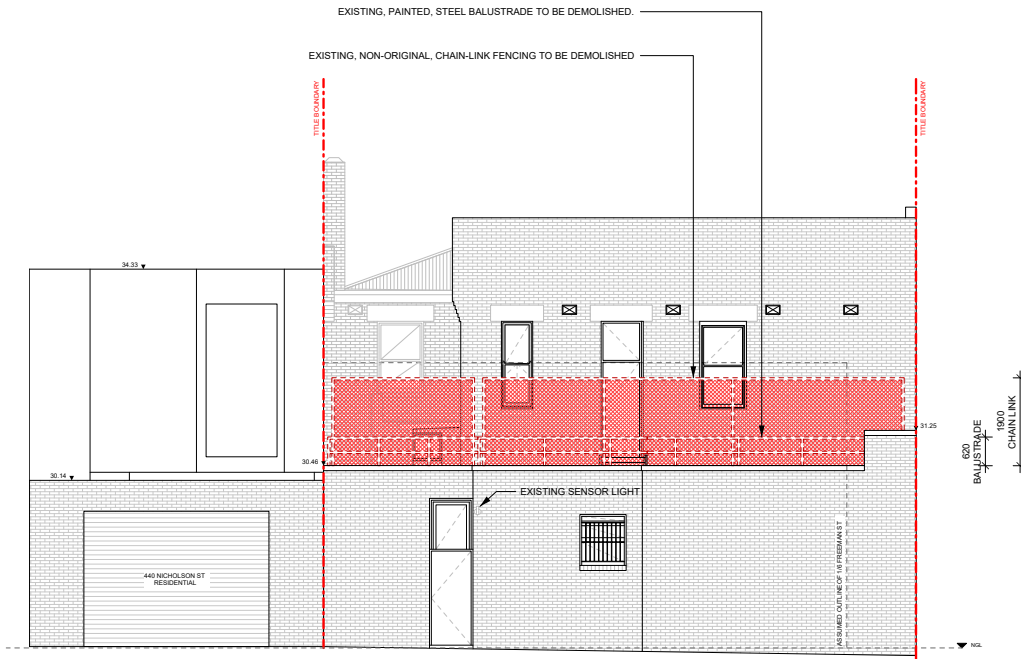
18/03/2024

pg 6 of 24

# Attachment 2 Attachment 2 - 442-444 Nicholson St, Fitzroy North - Advertised Plans

**EXISTING MATERIALS**

	<b>WALLS LINTELS COLUMNS</b>		<b>ARCHITRAVES DOOR AND WINDOW FRAMES METAL FRETWORK MOULDING</b>		<b>AWNINGS OVER WINDOWS</b>		<b>EXISTING BALUSTRADE</b>
	<b>LOWER LEVEL WALLS</b>		<b>AWNINGS OVER DOORS</b>		<b>EXISTING CHAIN LINK FENCE</b>		<b>EXISTING TIMBER BATON FENCE</b>



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**REVISION NO - DETAIL:**

A - TOWN PLANNING REF  
 - - TOWN PLANNING  
 - -  
 - -  
 - -

**DATE:**

18/03/2024

**DRAWN:**

SC  
 CT

**CHECKED:**

CT  
 CT

**PROJECT ADDRESS:**

442 NICHOLSON ST  
 FITZROY NORTH VIC 3068

**PROJECT NAME:**

THE ROYAL OAK - LVL 01

**CLIENT:**

The Royal Oak

**ISSUE:**

TOWN PLANNING

**DWG Title:**

EXISTING ELEVATION - EAST

**DWG No:**

TPOS1

**DRAWN BY:**

SC

**CHECKED:**

CT

**SCALE:**

1:100 @ A3

**REV:**

A

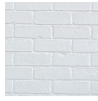

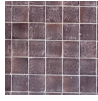
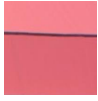


**DATE:**

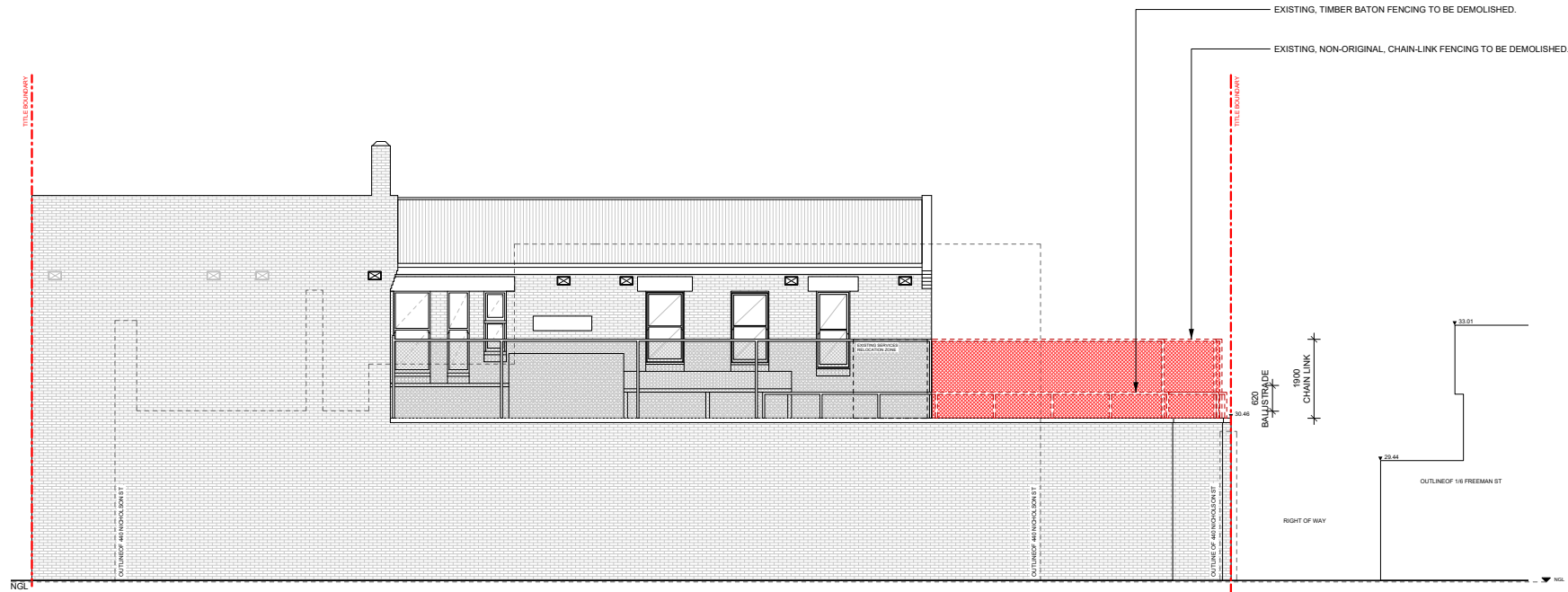
18/03/2024

pg 7 of 24

# Attachment 2 Attachment 2 - 442-444 Nicholson St, Fitzroy North - Advertised Plans

**EXISTING MATERIALS**

	<b>WALLS LINTELS COLUMNS</b>		<b>ARCHITRAVES DOOR AND WINDOW FRAMES METAL FREYWORK MOULDING COPING</b>		<b>AWNINGS OVER WINDOWS</b>		<b>EXISTING BALUSTRADE</b>
	<b>LOWER LEVEL WALLS</b>		<b>AWNINGS OVER DOORS</b>		<b>EXISTING CHAIN LINK FENCE</b>		<b>EXISTING TIMBER BATON FENCE</b>



**Bergman & Co.**

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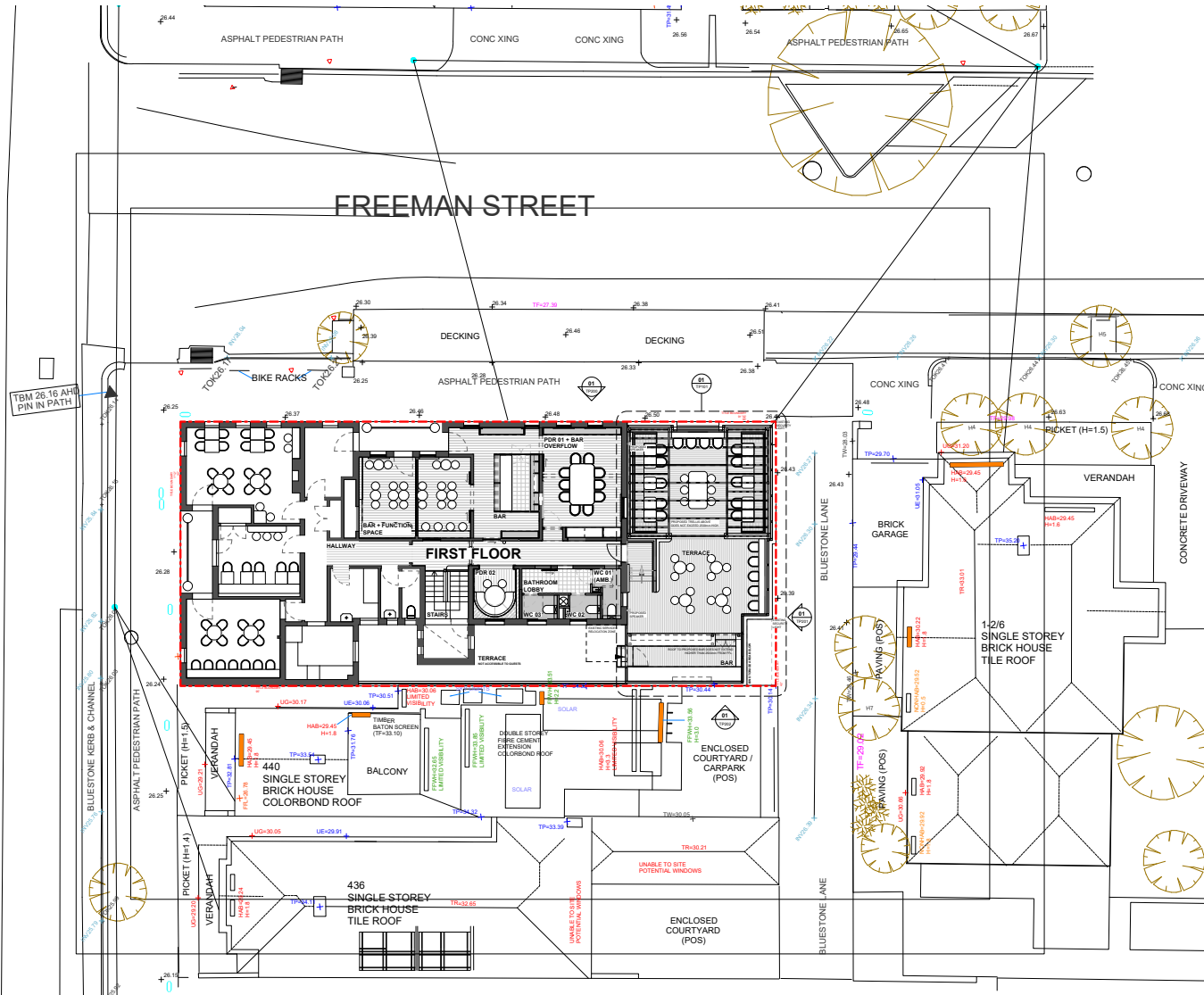
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<b>REVISION NO - DETAIL:</b> A - TOWN PLANNING RFI	<b>DATE:</b> 18/03/2024	<b>DRAWN:</b> SC	<b>CHECKED:</b> CT	<b>PROJECT ADDRESS:</b> 442 NICHOLSON ST FITZROY NORTH VIC 3068	<b>PROJECT NAME:</b> THE ROYAL OAK - LVL 01	<b>DWG Title:</b> EXISTING ELEVATION - SOUTH	<b>DRAWN BY:</b> SC
				<b>CLIENT:</b> The Royal Oak	<b>ISSUE:</b> TOWN PLANNING	<b>DWG No:</b> TPO52	<b>CHECKED:</b> CT
							<b>SCALE:</b> 1:100 @ A3
							<b>REV:</b> A
							<b>DATE:</b> 18/03/2024

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pg 8 of 24

KEY	
TITLE BOUNDARY	---
<b>LEVEL ONE FLOOR AREA</b>	
NET (Ex. Int. Walls)	196.7 sq.m
GROSS	220.4 sq.m
<b>TERRACE FLOOR AREA</b>	
NET	100 sq.m
GROSS	110.4 sq.m



TP RFI 240412:  
POINT 4) REMOVE LIQUOR LICENSE BOUNDARY

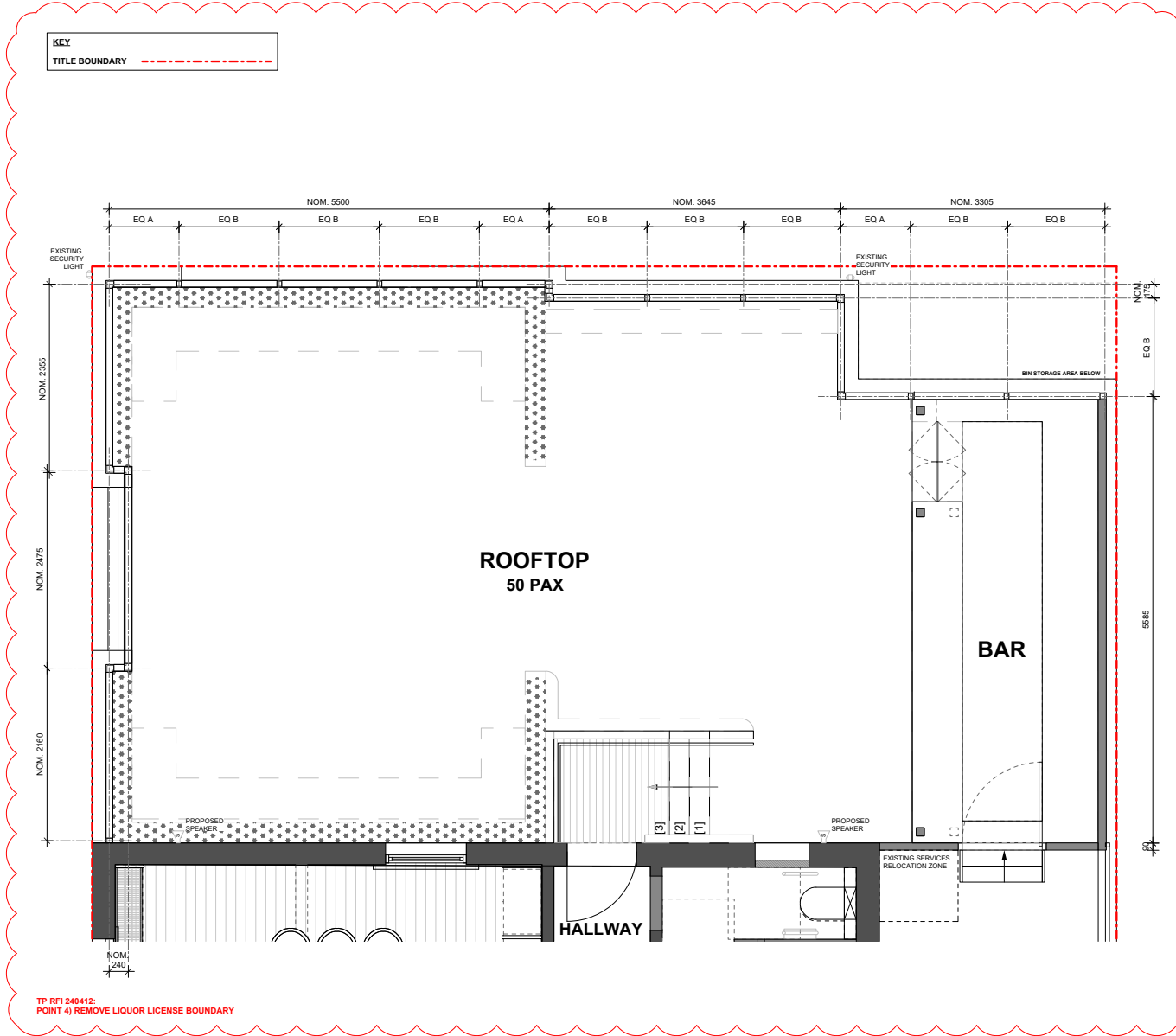
Bergman & Co.



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REVISION NO + DETAIL: B - TOWN PLANNING RFI - 240412 A - TOWN PLANNING RFI - TOWN PLANNING RFI - 240412	DATE: 29/04/2024 18/03/2024 29/08/2023	DRAWN: SC CT CT	CHECKED: CT CT CT	PROJECT ADDRESS: 442 NICHOLSON ST FITZROY NORTH VIC 3068	PROJECT NAME: THE ROYAL OAK - LVL 01	DWG Title: PROPOSED LEVEL 1 PLAN	DRAWN BY: SC CT
				CLIENT: The Royal Oak	ISSUE: TOWN PLANNING	DWG No: TP100	SCALE: 1:200 @ A3
							REV: B
							DATE: 29/04/2024

Attachment 2 Attachment 2 - 442-444 Nicholson St, Fitzroy North - Advertised Plans



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<b>REVISION NO + DETAIL:</b>	<b>DATE:</b>	<b>DRAWN:</b>	<b>CHECKED:</b>
B - TOWN PLANNING RFI - 240412	29/04/2024	SC	CT
A - TOWN PLANNING RFI	18/03/2024	SC	CT
- TOWN PLANNING	25/08/2023	SC	CT

<b>PROJECT ADDRESS:</b>	<b>PROJECT NAME:</b>
442 NICHOLSON ST FITZROY NORTH VIC 3068	THE ROYAL OAK - LVL 01
<b>CLIENT:</b>	<b>ISSUE:</b>
The Royal Oak	TOWN PLANNING

<b>DWG Title:</b>	<b>DWG No:</b>
ACOUSTIC PANEL SETOUT	TP101

<b>DRAWN BY:</b>	<b>CHECKED:</b>
SC	CT
<b>SCALE:</b>	<b>REV:</b>
1:50 @ A3	B
<b>DATE:</b>	<b>DATE:</b>
29/04/2024	29/04/2024

<b>DWG Title:</b>	<b>DWG No:</b>
ACOUSTIC PANEL SETOUT	TP101

<b>DRAWN BY:</b>	<b>CHECKED:</b>
SC	CT
<b>SCALE:</b>	<b>REV:</b>
1:50 @ A3	B
<b>DATE:</b>	<b>DATE:</b>
29/04/2024	29/04/2024

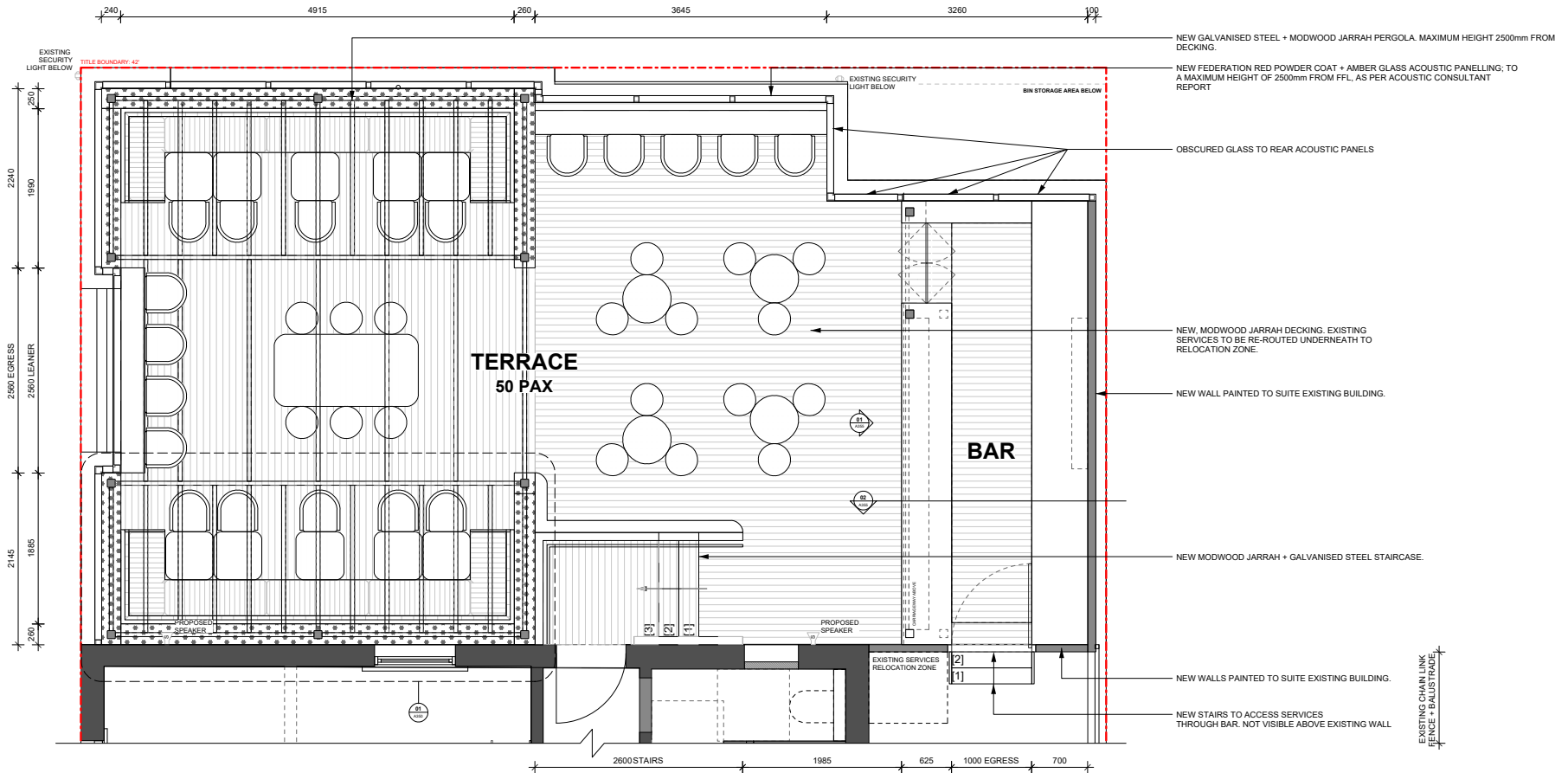
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pg 10 of 23



Attachment 2 Attachment 2 - 442-444 Nicholson St, Fitzroy North - Advertised Plans

KEY  
TITLE BOUNDARY - - - - -



TP RFI 240412:  
POINT 4) REMOVE LIQUOR LICENSE BOUNDARY

Bergman & Co.



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REVISION NO + DETAIL:	DATE:	DRAWN:	CHECKED:
B - TOWN PLANNING RFI - 240412	29/04/2024	SC	CT
A - TOWN PLANNING RFI	18/03/2024	SC	CT
- TOWN PLANNING	25/08/2023	SC	CT

PROJECT ADDRESS:	PROJECT NAME:
442 NICHOLSON ST FITZROY NORTH VIC 3068	THE ROYAL OAK - LVL 01

CLIENT:	ISSUE:
The Royal Oak	TOWN PLANNING

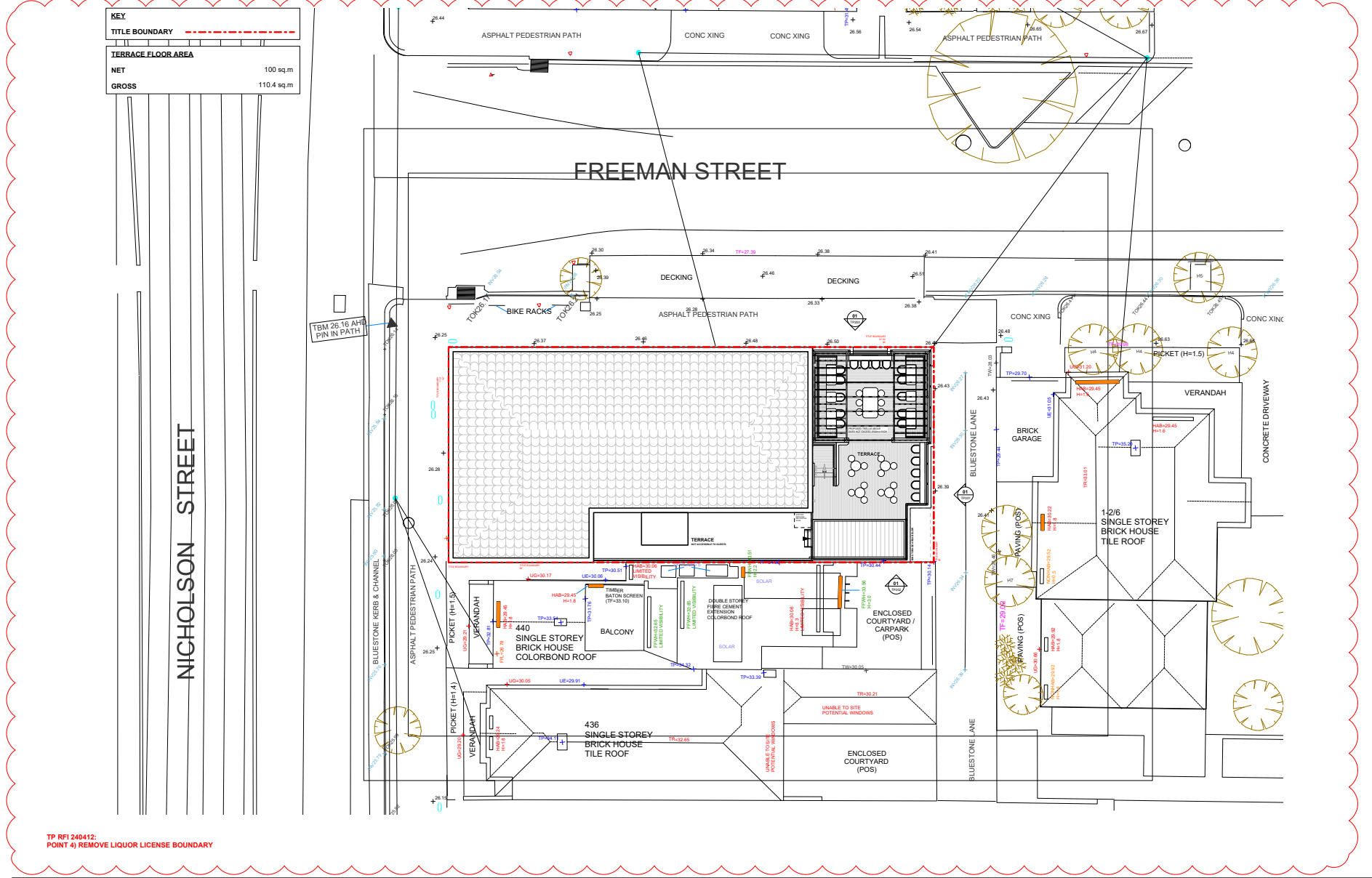
DWG Title:	DWG No:
PROPOSED TERRACE PLAN	TP102

DRAWN BY:	CHECKED:	SCALE:
SC	CT	1:50 @ A3

REV:	DATE:
B	29/04/2024

pg 11 of 23

Attachment 2 Attachment 2 - 442-444 Nicholson St, Fitzroy North - Advertised Plans



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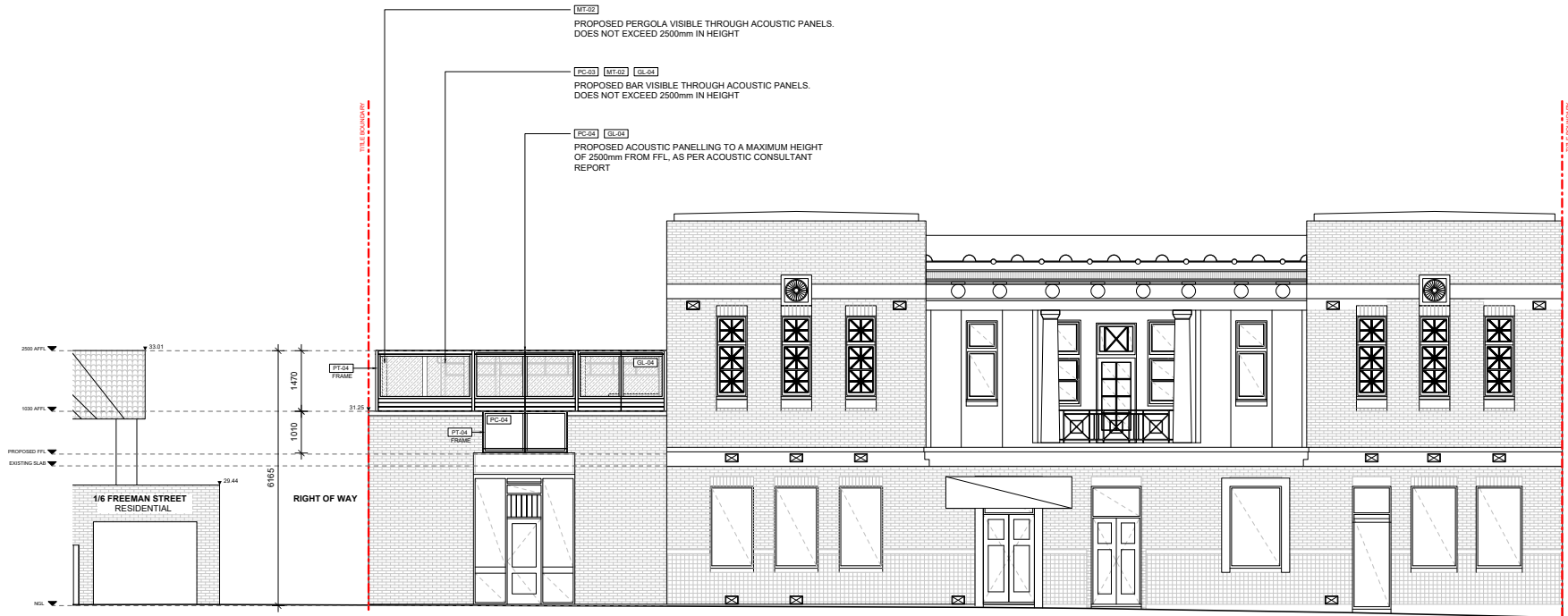
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<b>REVISION NO - DETAIL:</b> B - TOWN PLANNING RFI - 240412 A - TOWN PLANNING RFI - TOWN PLANNING	<b>DATE:</b> 29/04/2024 18/03/2024 25/08/2023	<b>DRAWN:</b> SC CT SC	<b>CHECKED:</b> CT CT CT	<b>PROJECT ADDRESS:</b> 442 NICHOLSON ST FITZROY NORTH VIC 3068	<b>PROJECT NAME:</b> THE ROYAL OAK - LVL 01	<b>DWG Title:</b> PROPOSED ROOF PLAN	<b>DRAWN BY:</b> SC <b>CHECKED:</b> CT
				<b>CLIENT:</b> The Royal Oak	<b>ISSUE:</b> TOWN PLANNING	<b>DWG No:</b> TP103	<b>SCALE:</b> 1:200 @ A3  <b>REV:</b> B <b>DATE:</b> 29/04/2024

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# Attachment 2 Attachment 2 - 442-444 Nicholson St, Fitzroy North - Advertised Plans

PROPOSED EXTERNAL MATERIALS			
	MT-02 GALVANISED STEEL		PC-04 POWDERCOAT FEDERATION RED
	PC-03 POWDERCOAT HAMMERSLEY BROWN		GL-04 ACOUSTIC GLASS WITH COLOUR DECAL
	PT-08 WHITE PAINT TO MATCH EXISTING		GL-05 OBSCURED GLASS WITH COLOUR DECAL TO MATCH GL-04



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REVISION NO + DETAIL:

A - TOWN PLANNING  
 -- TOWN PLANNING  
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DATE:

18/03/2024

DRAWN:

SC

CHECKED:

CT

PROJECT ADDRESS:

442 NICHOLSON ST  
 FITZROY NORTH VIC 3068

PROJECT NAME:

THE ROYAL OAK - LVL 01

DWG Title:

PROPOSED EXT. ELEVATION - NORTH

DRAWN BY:

SC

CHECKED:

CT

SCALE:

1:100 @ A3

CLIENT:

The Royal Oak

ISSUE:

TOWN PLANNING

DWG No:

TP200

REV:

A

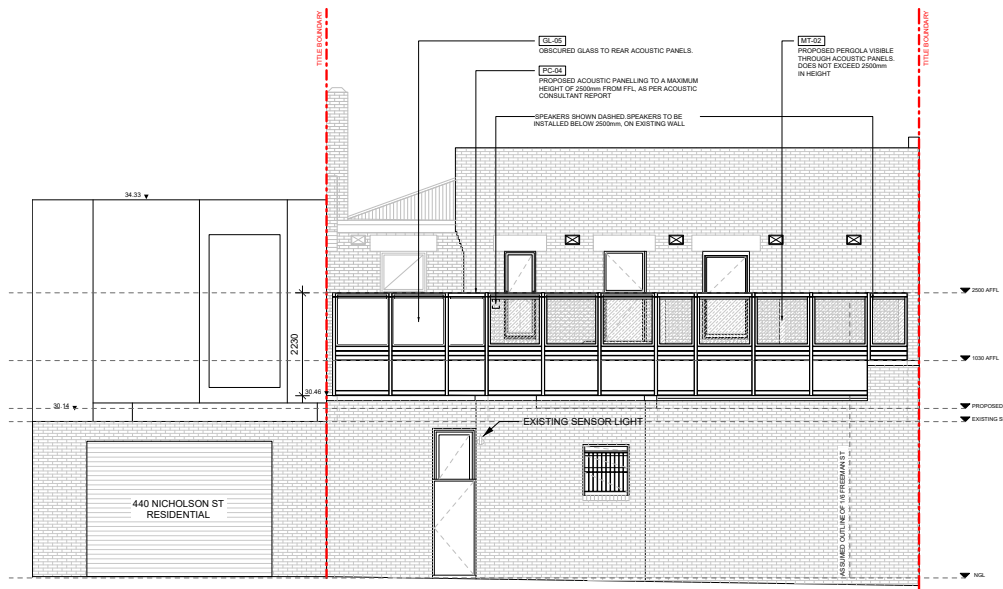
DATE:

18/03/2024

pg 13 of 24

# Attachment 2 Attachment 2 - 442-444 Nicholson St, Fitzroy North - Advertised Plans

PROPOSED EXTERNAL MATERIALS			
	MT-02 GALVANISED STEEL		PC-04 POWDERCOAT FEDERATION RED
	PC-03 POWDERCOAT HAMMERSLEY BROWN		GL-04 ACOUSTIC GLASS WITH COLOUR DECAL
			PT-08 WHITE PAINT TO MATCH EXISTING
			GL-05 OBSCURED GLASS WITH COLOUR DECAL TO MATCH GL-04



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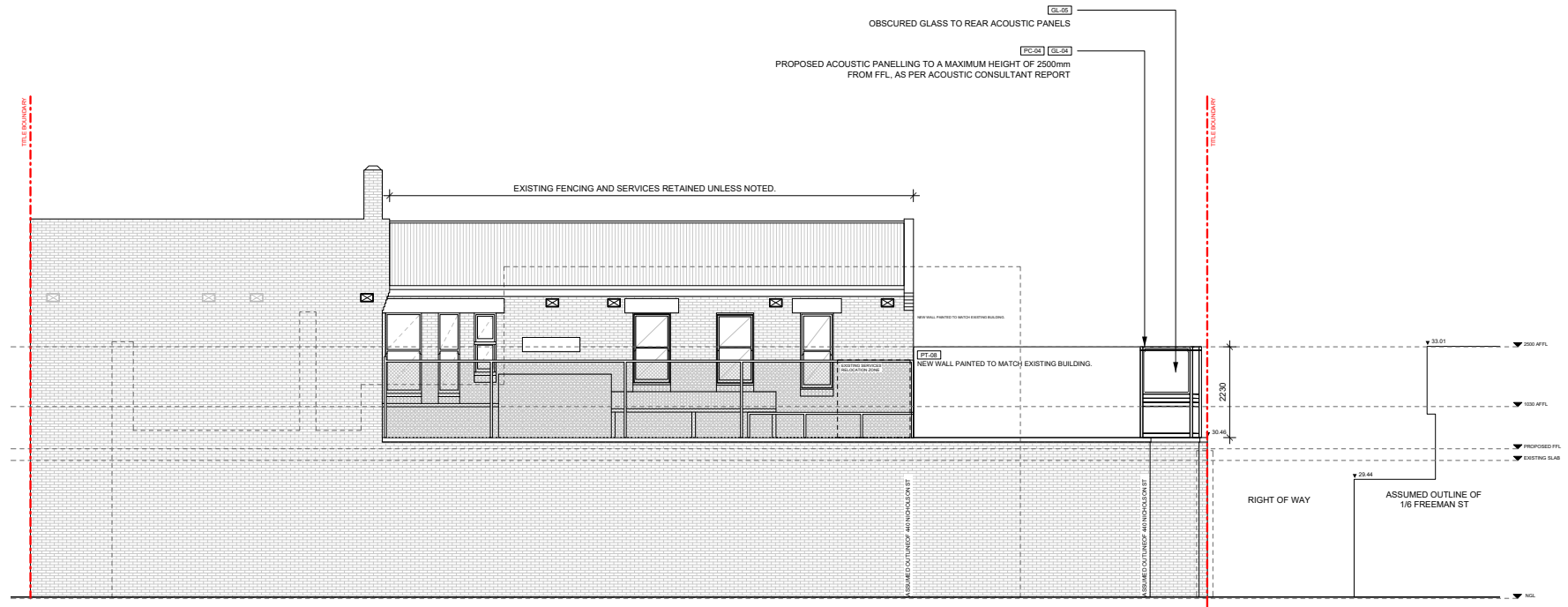
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<b>REVISION NO + DETAIL:</b> A - TOWN PLANNING REV	<b>DATE:</b> 18/03/2024	<b>DRAWN:</b> SC	<b>CHECKED:</b> CT	<b>PROJECT ADDRESS:</b> 442 NICHOLSON ST FITZROY NORTH VIC 3068	<b>PROJECT NAME:</b> THE ROYAL OAK - LVL 01	<b>DWG Title:</b> PROPOSED EXT. ELEVATION - EAST	<b>DRAWN BY:</b> SC
				<b>CLIENT:</b> The Royal Oak	<b>ISSUE:</b> TOWN PLANNING	<b>DWG No:</b> TP201	<b>CHECKED:</b> CT
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						<b>DATE:</b> 18/03/2024	<b>DATE:</b> 18/03/2024

# Attachment 2 Attachment 2 - 442-444 Nicholson St, Fitzroy North - Advertised Plans

PROPOSED EXTERNAL MATERIALS		
	MT-02 GALVANISED STEEL	
	PC-03 POWDERCOAT HAMMERSLEY BROWN	
	PT-08 WHITE PAINT TO MATCH EXISTING	
		GL-05 OBSCURED GLASS WITH COLOUR DECAL TO MATCH GL-04



**Bergman & Co.**

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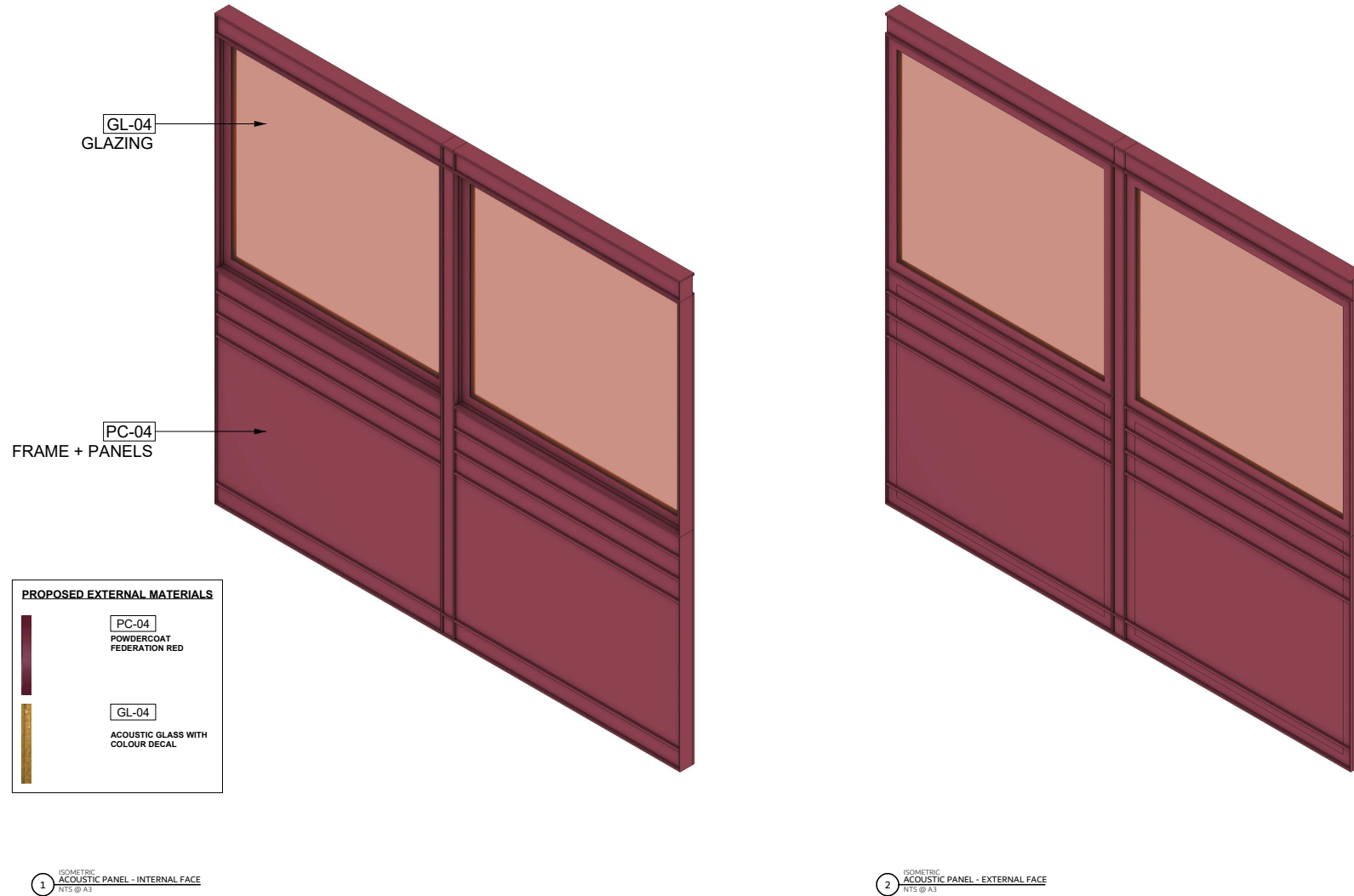
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<b>REVISION NO + DETAIL:</b> A - TOWN PLANNING REV	<b>DATE:</b> 18/03/2024	<b>DRAWN:</b> SC	<b>CHECKED:</b> CT	<b>PROJECT ADDRESS:</b> 442 NICHOLSON ST FITZROY NORTH VIC 3068	<b>PROJECT NAME:</b> THE ROYAL OAK - LVL 01	<b>DWG Title:</b> PROPOSED EXT. ELEVATION - SOUTH	<b>DRAWN BY:</b> SC
				<b>CLIENT:</b> The Royal Oak	<b>ISSUE:</b> TOWN PLANNING	<b>DWG No:</b> TP202	<b>CHECKED:</b> CT
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							<b>REV:</b> A
							<b>DATE:</b> 18/03/2024

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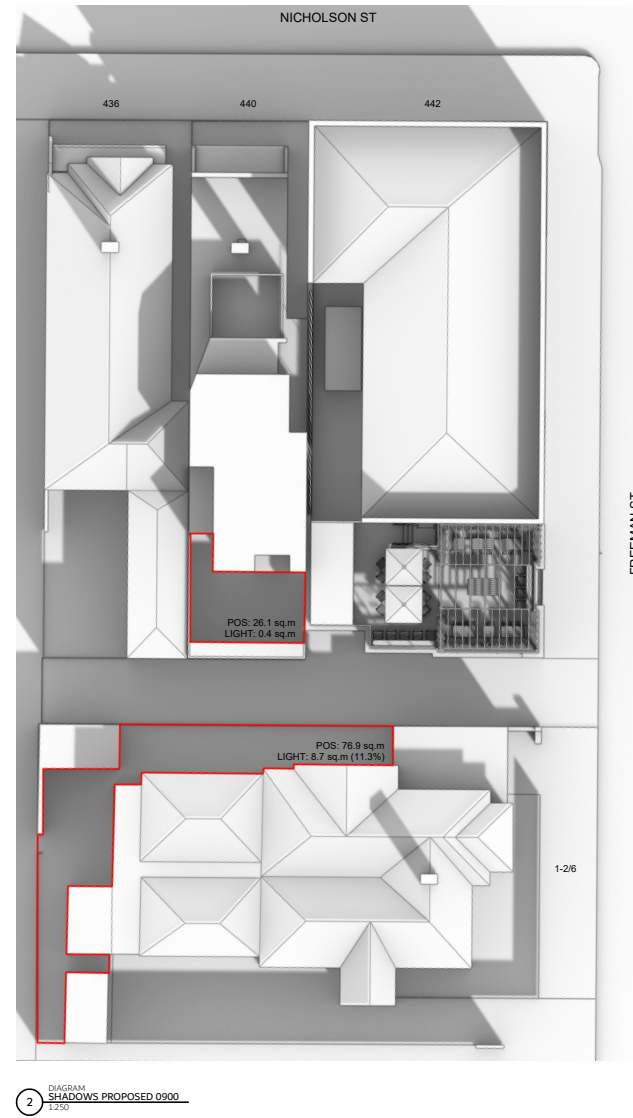
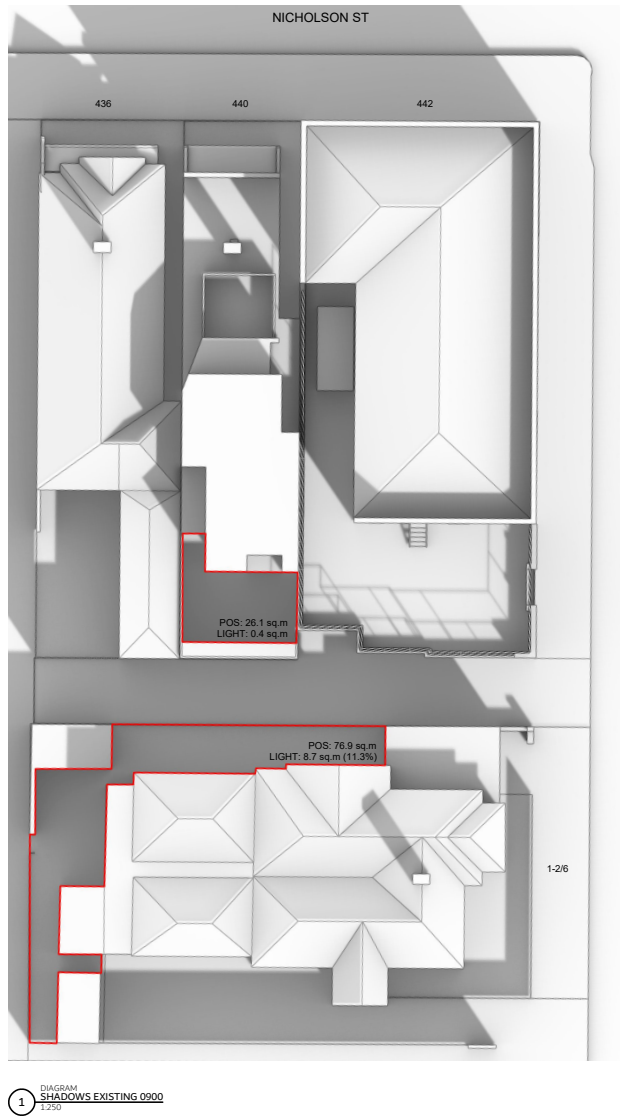
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---	---	---	---	<b>CLIENT:</b> The Royal Oak	<b>ISSUE:</b> TOWN PLANNING	<b>DWG No:</b> TP300	<b>CHECKED:</b> CT
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---	---	---	---				<b>REV:</b> A
---	---	---	---				<b>DATE:</b> 18/03/2024

Attachment 2 Attachment 2 - 442-444 Nicholson St, Fitzroy North - Advertised Plans



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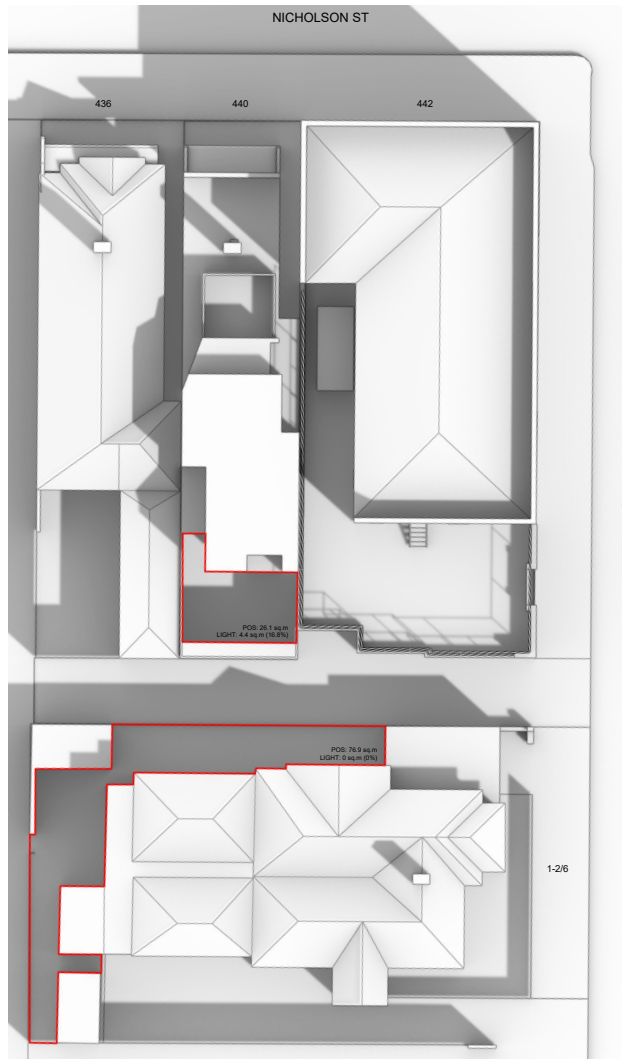
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REVISION NO + DETAIL: A - TOWN PLANNING REF	DATE: 18/03/2024	DRAWN: SC	CHECKED: CT	PROJECT ADDRESS: 442 NICHOLSON ST FITZROY NORTH VIC 3068	PROJECT NAME: THE ROYAL OAK - LVL 01	DWG Title: SHADOW DIAGRAMS	DRAWN BY: SC
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							REV: A
							DATE: 18/03/2024

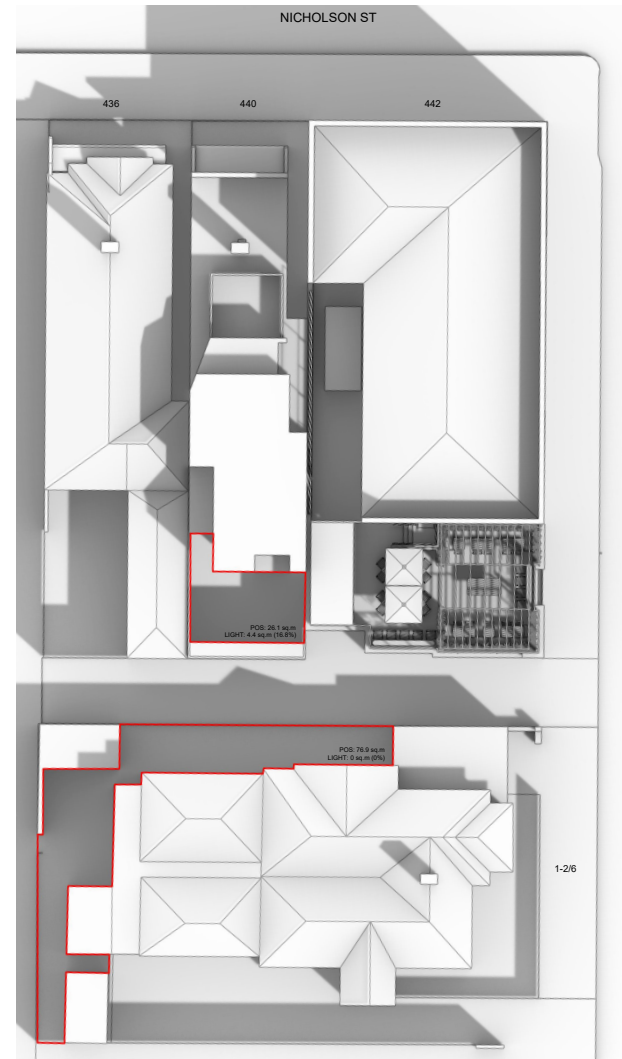
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Attachment 2 Attachment 2 - 442-444 Nicholson St, Fitzroy North - Advertised Plans



1 DIAGRAM SHADOWS EXISTING 1000 1:250



2 DIAGRAM SHADOWS PROPOSED 1000 1:250

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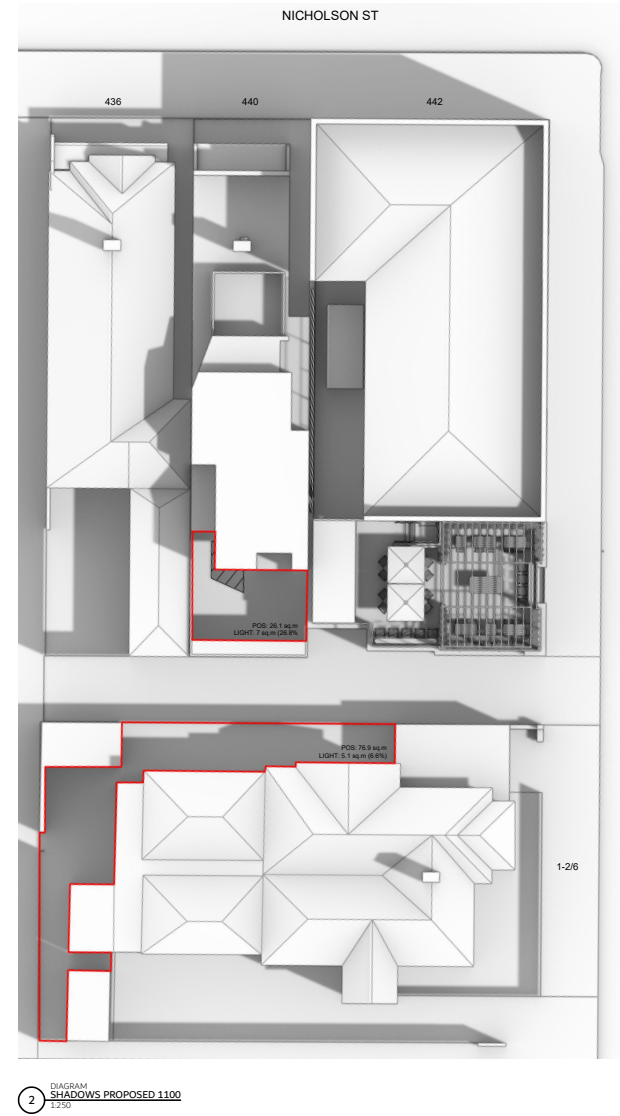
REVISION NO + DETAIL: A - TOWN PLANNING REF	DATE: 18/03/2024	DRAWN: SC	CHECKED: CT	PROJECT ADDRESS: 442 NICHOLSON ST FITZROY NORTH VIC 3068	PROJECT NAME: THE ROYAL OAK - LVL 01	DWG Title: SHADOW DIAGRAMS	DRAWN BY: SC
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							SCALE: 1:250 @ A3
							REV: A
							DATE: 18/03/2024

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Attachment 2 Attachment 2 - 442-444 Nicholson St, Fitzroy North - Advertised Plans



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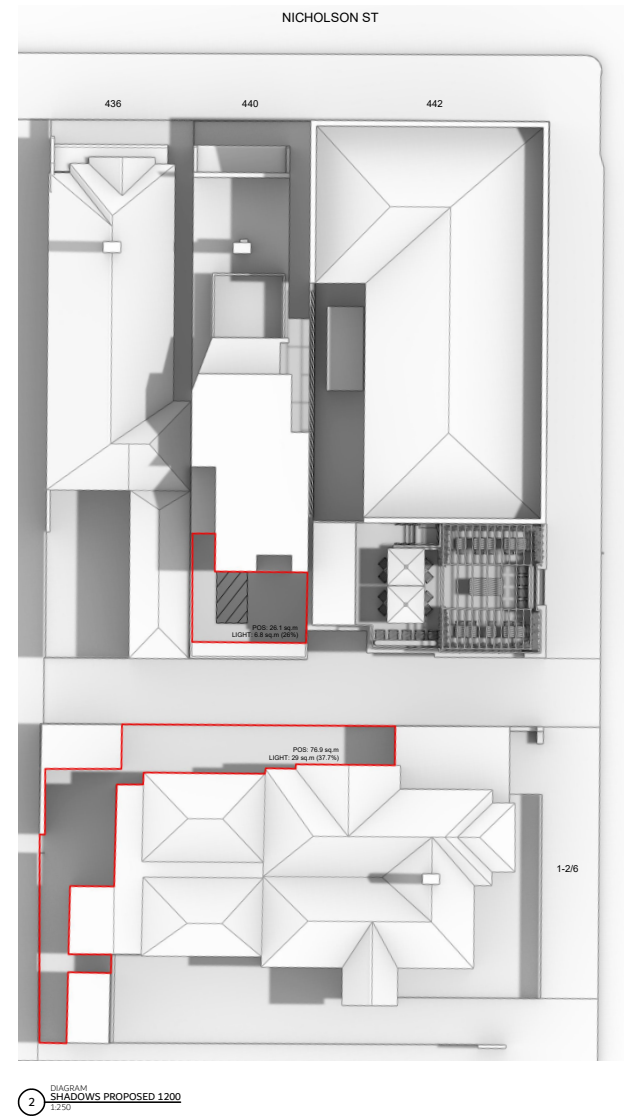
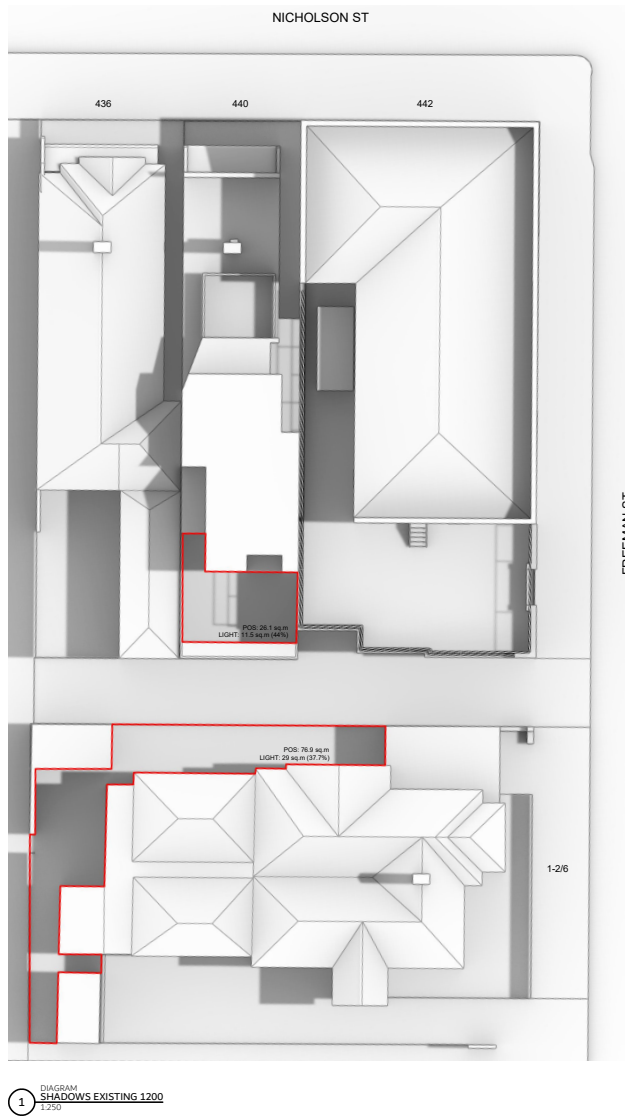
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REVISION NO + DETAIL: A - TOWN PLANNING REF	DATE: 18/03/2024	DRAWN: SC	CHECKED: CT	PROJECT ADDRESS: 442 NICHOLSON ST FITZROY NORTH VIC 3068	PROJECT NAME: THE ROYAL OAK - LVL 01	DWG Title: SHADOW DIAGRAMS	DRAWN BY: SC
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							REV: A
							DATE: 18/03/2024

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Attachment 2 Attachment 2 - 442-444 Nicholson St, Fitzroy North - Advertised Plans



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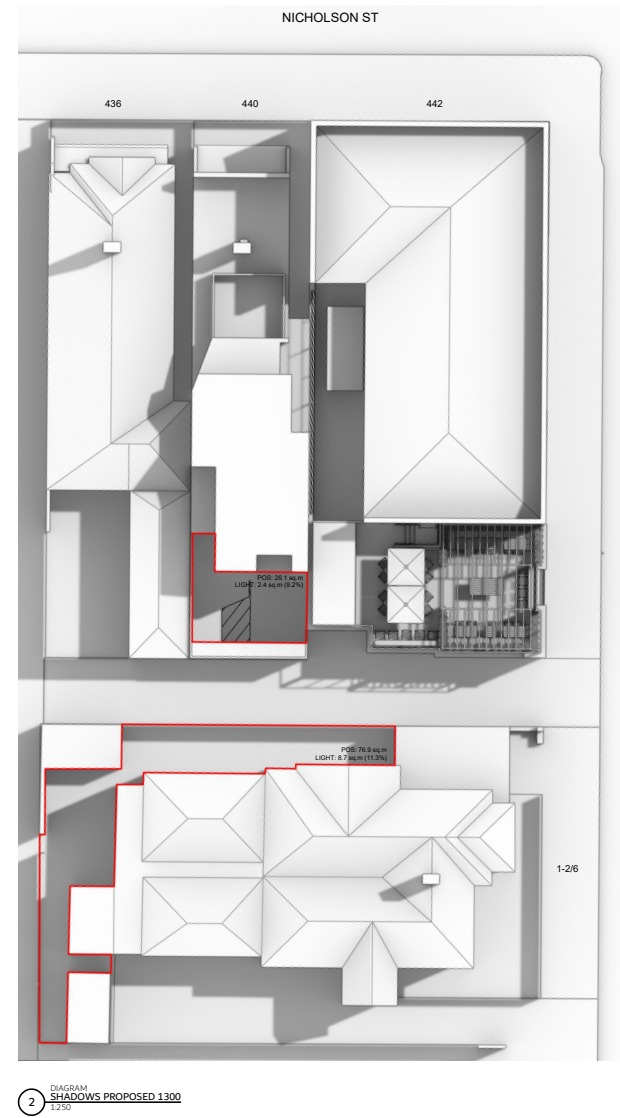
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REVISION NO + DETAIL: A - TOWN PLANNING REV	DATE: 18/03/2024	DRAWN: SC	CHECKED: CT	PROJECT ADDRESS: 442 NICHOLSON ST FITZROY NORTH VIC 3068	PROJECT NAME: THE ROYAL OAK - LVL 01	DWG Title: SHADOW DIAGRAMS	DRAWN BY: SC
				CLIENT: The Royal Oak	ISSUE: TOWN PLANNING	DWG No: TP403	CHECKED: CT
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							REV: A
							DATE: 18/03/2024

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Attachment 2 Attachment 2 - 442-444 Nicholson St, Fitzroy North - Advertised Plans



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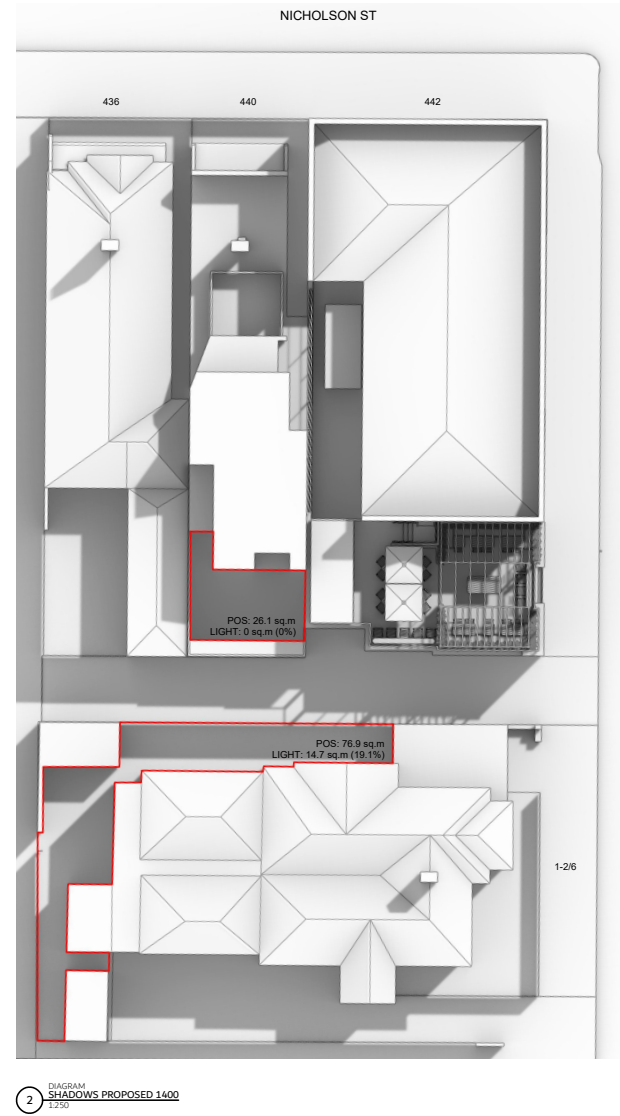
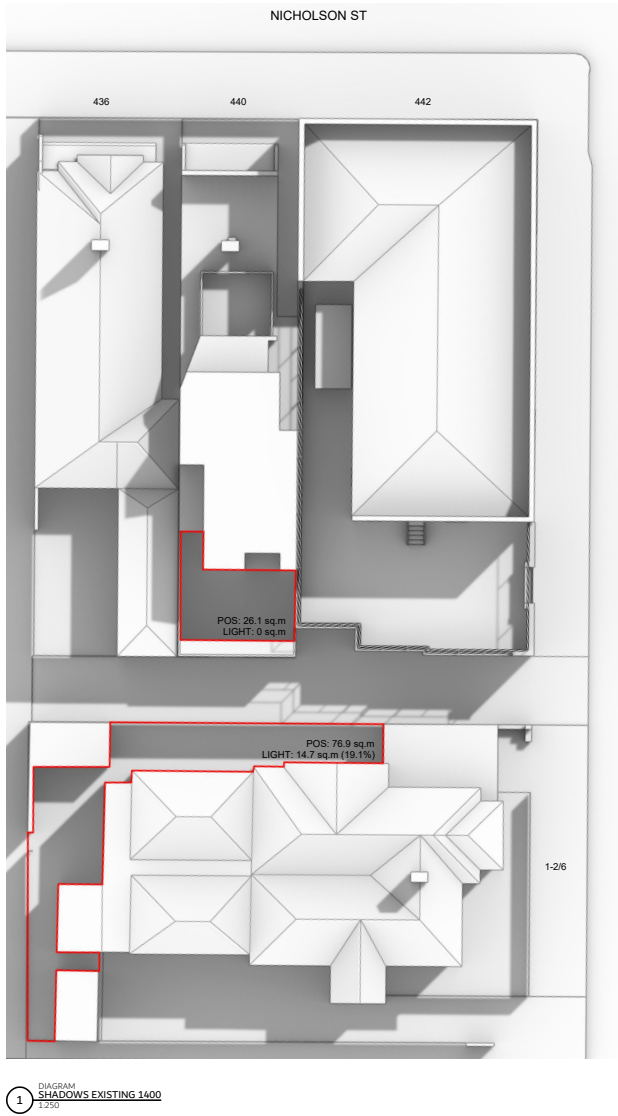
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REVISION NO + DETAIL: A - TOWN PLANNING REV	DATE: 18/03/2024	DRAWN: SC	CHECKED: CT	PROJECT ADDRESS: 442 NICHOLSON ST FITZROY NORTH VIC 3068	PROJECT NAME: THE ROYAL OAK - LVL 01	DWG Title: SHADOW DIAGRAMS	DRAWN BY: SC
				CLIENT: The Royal Oak	ISSUE: TOWN PLANNING	DWG No: TP404	CHECKED: CT
							SCALE: 1:250 @ A3
							REV: A
							DATE: 18/03/2024

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Attachment 2 Attachment 2 - 442-444 Nicholson St, Fitzroy North - Advertised Plans



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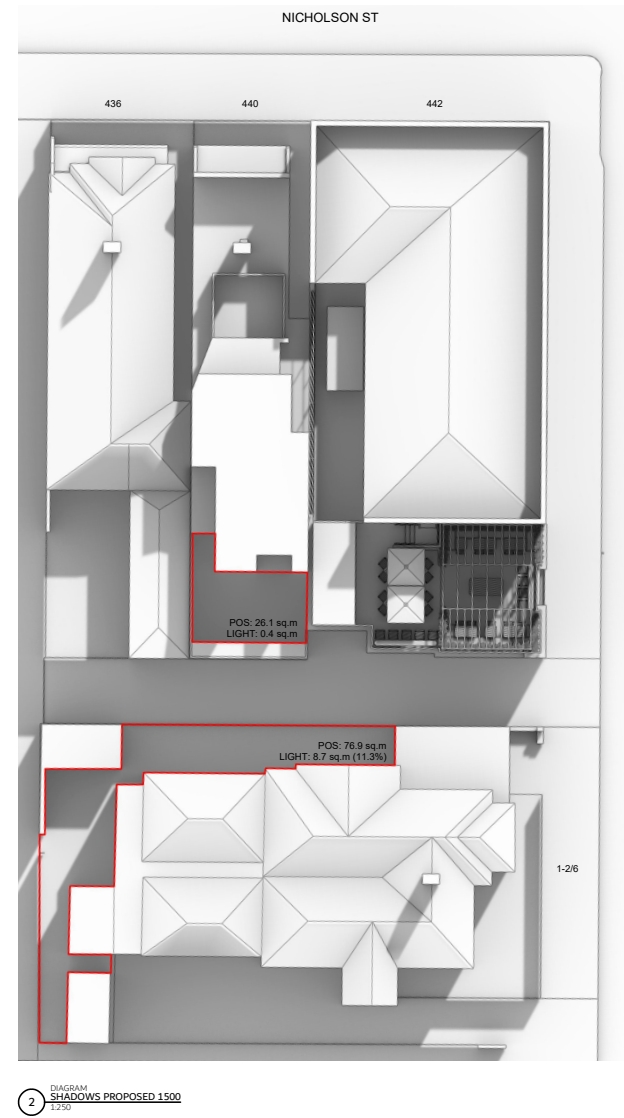
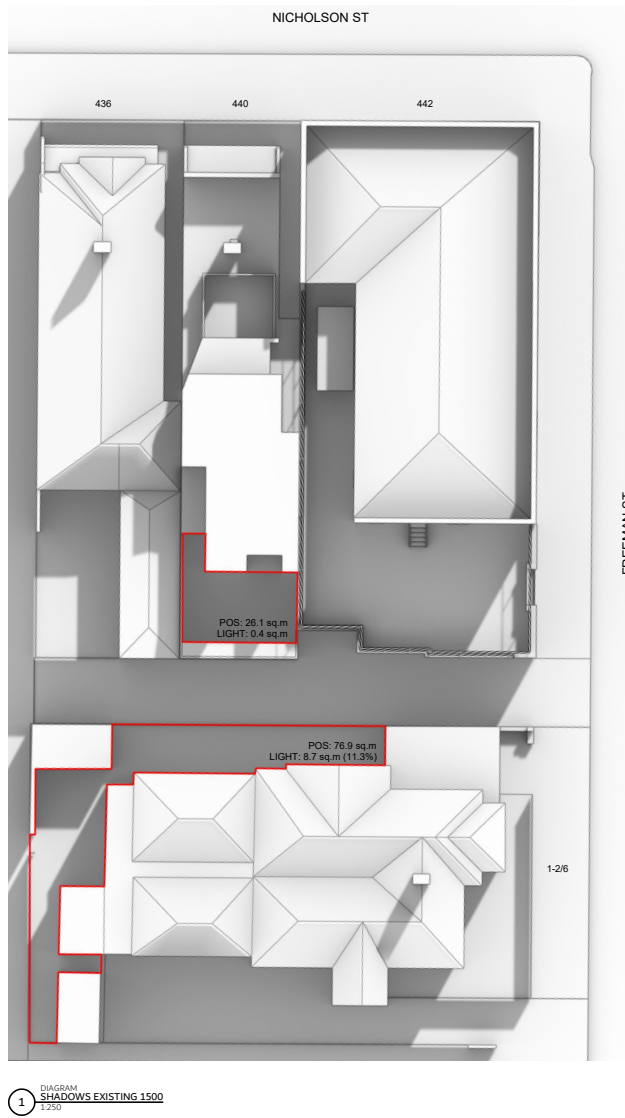
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							SCALE: 1:250 @ A3
							REV: A
							DATE: 18/03/2024

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Bergman & Co.



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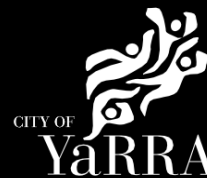
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				CLIENT: The Royal Oak	ISSUE: TOWN PLANNING	DWG No: TP405	CHECKED: CT
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							REV: A
							DATE: 18/03/2024

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# Heritage Formal Referral Response

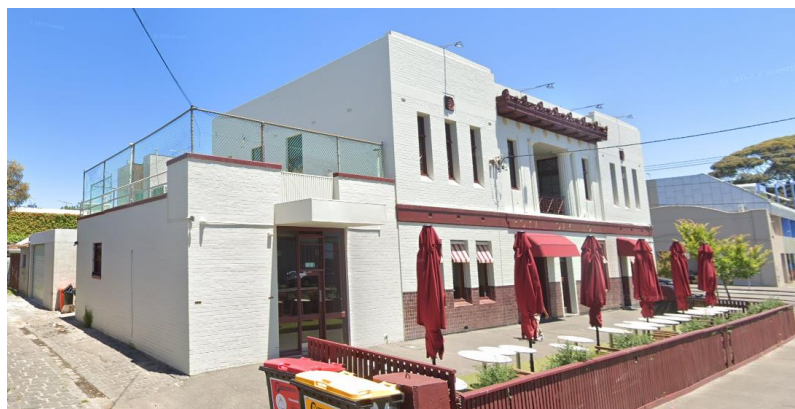


## Application Information:

<b>Referral Officer:</b>	<b>Erryn Megennis</b>
<b>Officer:</b>	Diahnn McIntosh
<b>Council Reference:</b>	PLN23/0730
<b>Address:</b>	442-444 Nicholson St, Fitzroy North VIC 3068
<b>Proposal:</b>	Part demolition and buildings and works to a hotel (with existing use rights) to construct a terrace
<b>Relevant Overlays</b>	Heritage Overlay – HO327 Development Contributions Plan Overlay – Schedule 1 <b>Heritage Grade:</b> Individually Significant
<b>Yarra Planning Scheme</b>	<ul style="list-style-type: none"><li>• Clause 02.01-6 Municipal planning strategy - Built environment and heritage</li></ul>
<b>References</b>	<ul style="list-style-type: none"><li>• Clause 02.03-4 Strategic directions – Built environment and heritage</li><li>• Clause 15.03-1S Heritage conservation</li><li>• Clause 15.03-1L Heritage</li><li>• Clause 43.01 Heritage Overlay</li></ul> <p>As per the Schedule to the Heritage Overlay, there are no internal alteration, external paint, or tree controls. Solar energy system controls apply.</p>
<b>Comments Sought:</b>	Comments on the application from a Heritage perspective are requested on the following: <ul style="list-style-type: none"><li>• Demolition of existing fencing around rear terrace</li><li>• Proposed works to rear terrace including acoustic screening around perimeter, new pergola and bar infrastructure</li></ul>
<b>Disclaimer:</b>	Council's Heritage Advisor provides the following information which is based on the information provided in the referral request memo referenced above.
<b>Prev. Responses:</b>	

## Context Images

Street Frontage:



## Assessment of Proposed Works

### PROPOSED DEMOLITION WORKS

The extent of demolition proposed by this application includes:

- Demolition of existing fencing around rear terrace

In accordance with *Clause 43.01-8*, the key consideration for assessing this aspect of the works is whether the proposed demolition will adversely affect the significance of the heritage building or the broader heritage precinct.

### In Regard to Removal of Part of a Heritage Place or Contributory Elements

*Clause 15.03-1S* of the Yarra Planning Scheme states that it is policy to:

- *Retain those elements that contribute to the importance of the heritage place.*

*Clause 15.03-1L* of the Yarra Planning Scheme states that it is policy to:

- *Prevent the demolition of any part of an individually significant or contributory building unless all of the following can be demonstrated:*
  - *The demolition will not adversely affect the significance of the heritage place.*
  - *The partial demolition will contribute to the long-term conservation of the heritage place.*
  - *The fabric does not contribute to the significance of the place or the area of demolition is not visible from:*
    - *The street frontage (other than a laneway), unless:*
      - *The principal façade addresses the laneway; or*
      - *The fabric visible from the laneway is identified in the Statement of*

*Significance.*

- *A park or public open space immediately adjoining the site.*
- *The demolition of part of the building allows its three-dimensional form to be retained and does not result in the retention of only the visible façade of the building and demolishing the remainder.*

Proposed demolition of:	Heritage comments
Existing fencing associated with upper level open deck.	<p><i>It is unknown when the existing timber batten and galvanised chain-wire fencing and associated pipe balustrading was erected on the roof of the single-storey rear addition, but it is certainly not part of the hotel's original heritage fabric.</i></p> <p><i>The demolition of the various components of the existing roof balustrading will have no impact on the significance of the original heritage building.</i></p>

**The proposed extent of demolition is acceptable on the basis that it is not part of the original heritage building so its removal will have no impact on the significance of the place.**

**PROPOSED ALTERATIONS AND ADDITIONS / NEW DEVELOPMENT**

**In Regard to Alterations to the Remaining Heritage Building**

The proposed alterations to the remaining heritage buildings include:

- Alterations to rear terrace including the introduction of acoustic screening around perimeter, new pergola and bar infrastructure

In accordance with *Clause 43.01-8*, the key consideration for alterations is:

- *Whether the external alteration will adversely affect the significance of the heritage place.*

*Clause 15.03-1S* of the planning scheme states that it is state policy to:

- *Provide for the conservation and enhancement of those places that are of aesthetic, archaeological, architectural, cultural, scientific or social significance*
- *Encourage appropriate development that respects places with identified heritage values.*
- *Encourage the conservation and restoration of contributory elements of a heritage place.*
- *Ensure an appropriate setting and context for heritage places is maintained or enhanced.*

*Clause 15.03-1L* of the planning scheme states that its objective is:

- *To ensure the adaptation of heritage places is consistent with the principles of good conservation practices.*

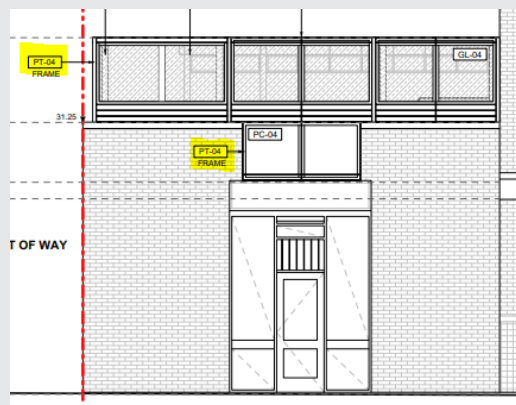
Specific strategies regarding alterations to heritage buildings are also set out in *Clause*



15.03-1L.

Proposed alteration:	Heritage comments
Introduction of acoustic screening around perimeter, new pergola and bar infrastructure	<p><i>Clause 15.03-1L states that it is policy to:</i></p> <ul style="list-style-type: none"><li><i>Set back roof terraces/roof decks so that they are concealed when viewed from the street and where on a corner, when viewed from the side street.</i></li><li><i>Encourage roof terraces/roof decks that are set back a minimum of one metre from chimneys and parapets.</i></li></ul> <p><i>The proposed works are located at the rear of the original heritage building fronting Nicholson Street, above a later addition.</i></p> <p><i>There has been an existing roof deck associated with the subject building for some time. <u>This is not a new roof deck but a refurbishment on an existing one.</u></i></p> <p><i>The policy regarding setting the roof deck back so that it is concealed from the side street main is not considered relevant to this application because the deck is located at the rear of the main heritage building – not on top of it where its visibility would have altered the appreciation of the building's appearance.</i></p> <p><i>The height of the proposed acoustic panelling will effectively ensure that most activity on the existing roof deck will be substantially concealed from the side street – unlike the current arrangement where all activity and paraphernalia is clearly visible.</i></p> <p><i>The character and appearance of the original heritage building will not be affected by the proposed works even though the screening, pergola and bar infrastructure will be visible from Freeman Street.</i></p>

Colours and materials



The colouring of the proposed frame is shown as PT-04 on most drawings however there is no key to this code.

Drawing no. TP300 shows the frame as PC-04 (powder coated federation red) with acoustic glass with coloured decals to the internal face.

It is strongly recommended that the proposed works to the deck are finished in a colouring that minimises it's visibility and does not draw attention away from the main heritage building.

Ideally the external colouring of the proposed works fronting Freeman Street should be consistent with the main wall colour of the main heritage building or alternatively finished in a light-mid grey neutral tone.

### Summary of Recommendations

On heritage grounds, the works proposed in this application are supported, subject to the following permit conditions:

Suggested condition	Heritage explanation
That the external colouring of the proposed works fronting Freeman Street should be consistent with the main wall colour of the main heritage building or alternatively finished in a light-mid grey neutral tone	<i>the proposed works to the deck are finished in a colouring that minimises its visibility and does not draw attention away from the main heritage building.</i>

Heritage Officer: Diahnn McIntosh

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Signature:

A handwritten signature in black ink, appearing to read "D. Mac", written in a cursive style.

Date: 24 July 2024

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