

**9.3 NO. 221 BEAUFORT STREET, PERTH - CHANGE OF USE FROM EATING HOUSE TO RESTAURANT/CAFÉ AND UNLISTED USE (SHISHA BAR) INCLUDING ALTERATIONS AND ADDITIONS (SIGNAGE)**

**Ward:** South

**Attachments:**

1. Consultation and Location Map
2. Development Plans
3. Noise Management Plan
4. Venue Management Plan
5. Land Use Context Plan
6. Previous Approvals
7. Summary of Submissions - Administration's Response
8. Summary of Submissions - Applicant's Response

**RECOMMENDATION:**

That Council, in accordance with the provisions of the City of Vincent Local Planning Scheme No. 2 and the Metropolitan Region Scheme, **REFUSES** the application for Change of Use from Eating House to Restaurant/Café and Unlisted Use (Shisha Bar) including Alterations and Additions (Signage) at No. 221 (Lot: 3; D/P: 1879) Beaufort Street, Perth, as shown in Attachment 2, for the following reasons:

1. As a consequence of the location of the Unlisted Use (Shisha Bar) within an unenclosed patio at the rear of the subject site and adjoining residential and other sensitive land uses, with this exacerbated by the operating hours and intensity of the Unlisted Use (Shisha Bar), the proposal:
  - 1.1 Would be inconsistent with the objectives of the Commercial zone and subsequently Clause 18(4)(c) of the City of Vincent's Local Planning Scheme No. 2 and is therefore not permitted, as the development would be detrimental to the amenity of the adjoining properties. This is because it would result in smoke, vapour and odour emissions associated with the use. The off-site amenity impacts related to these emissions from the proposal would negatively impact on adjoining properties;
  - 1.2 Would have an undue amenity impact on the adjoining residential and sensitive land uses, and subsequently would not be compatible with its setting, as the proposal has not demonstrated that the emissions associated with the use could be appropriately mitigated as outlined in reason 1.1 (Clause 67(m), (n) and (x) of the *Planning and Development (Local Planning Schemes) Regulations 2015*);
  - 1.3 Would be inconsistent with the Aims of the City of Vincent's Local Planning Scheme No. 2, as the development would not protect and enhance the health, safety and general welfare of the City's inhabitants and the social, environmental and cultural environment, as the proposal has not demonstrated that the emissions associated with the use could be appropriately mitigated as outlined in reason 1.1 (Clause 67(a) of the *Planning and Development (Local Planning Schemes) Regulations 2015*);
  - 1.4 Would have an adverse impact on the amenity of the adjoining properties as evidenced through written objections received from surrounding owners and occupants (Clause 67(y) of the *Planning and Development (Local Planning Schemes) Regulations 2015*); and
  - 1.5 Would be inconsistent with orderly and proper planning as it would be inconsistent with the objectives and approach of the City's draft Local Planning Policy: Restricted Premises – Smoking. This is because the proposal has not demonstrated that the emissions associated with the use could be appropriately mitigated as outlined in reason 1.1 (Clause 67(b) of the *Planning and Development (Local Planning Schemes) Regulations 2015*); and
2. As a consequence of the extent of the proposed Alterations and Additions (Signage), the proposal:
  - 2.1 Would not satisfy the objectives of the City's Local Planning Policy – Signs and

**Advertising as it would result in a proliferation of advertisement that is not aligned with the City's Public Health Plan objective to reduce exposure of tobacco advertising; and**

**2.2 Would be inconsistent with orderly and proper planning as it would be inconsistent with the objectives and approach of the City's draft Local Planning Policy: Restricted Premises – Policy for the reasons outlined in reason 2.1 (Clause 67(b) of the *Planning and Development (Local Planning Schemes) Regulations 2015*).**

#### **PURPOSE OF REPORT:**

To consider an application for development approval for a change of use to Restaurant/Café and Unlisted Use (Shisha Bar) at No. 221 Beaufort Street, Perth (subject site).

#### **PROPOSAL:**

The application proposes a change of use from Eating House to Restaurant/Café and Unlisted Use (Shisha Bar) along with associated signage.

Details of the application include:

- The shisha bar operating as 'Marihana Café', involving the sale of shisha (a generally flavoured tobacco product) to patrons in a ready-to-smoke form. It would be consumed onsite within a seating area provided for patrons within an unenclosed patio at the rear of the subject site. The front of the subject site would be used as a café selling snack food and non-alcoholic hot and cold drinks;
- Access to the patio area through the existing building and its entrance from Beaufort Street;
- Operating hours between:
  - 4:00pm and 11:30pm Monday to Thursday;
  - 4:00pm and 12:00am on Friday;
  - 12:00pm and 12:00am on Saturday; and
  - 12:00pm and 11:30pm on Sunday.
- A maximum of 20 patrons onsite at any one time associated with the Unlisted Use and a maximum of two staff onsite across both uses; and
- Signage on the windows of the premises to Beaufort Street.

The business has not started operating. The patio at the rear of the subject site has received previous development approval and the outbuilding beyond is an existing structure. The outbuilding would be used for toilets and storage associated with the proposal.

A location plan is included as **Attachment 1**. The development plans are included as **Attachment 2**. The applicant's supporting documentation, including a noise management plan (NMP) and a venue management plan, are included as **Attachment 3** and **4** respectively.

The application was lodged on 20 April 2022 and sought approval for a proposed change of use. Following the lodgement of this application, the City became aware that signage had already been installed. The application has since been amended to seek approval for the signage in addition to the use.

#### **BACKGROUND:**

<b>Landowner:</b>	Ambergate Nominees Pty Ltd
<b>Applicant:</b>	Giday Hailu
<b>Date of Application:</b>	20 April 2022
<b>Zoning:</b>	MRS: Urban LPS2: Zone: Commercial R Code: No R Code
<b>Built Form Area:</b>	Activity Corridor
<b>Existing Land Use:</b>	Eating House
<b>Proposed Use Class:</b>	Unlisted Use (Shisha Bar)
<b>Lot Area:</b>	515m <sup>2</sup>
<b>Right of Way (ROW):</b>	No
<b>Heritage List:</b>	No

Site Context

The subject site is zoned Commercial under the City's Local Planning Scheme No. 2 (LPS2) and is located within the Activity Corridor Built Form Area. The subject site abuts Beaufort Street to the east which is an Other Regional Road under the Metropolitan Region Scheme. A location plan is included in **Attachment 1**.

The adjoining properties to the north and south along Beaufort Street are zoned Commercial under LPS2, and the adjoining properties to the west along Monger Street and Lindsay Street are zoned Mixed Use.

The property adjoining the subject site to the north is Nos. 225-227 Beaufort Street and accommodates a lodging house (North Lodge Central City Apartments). To the south is No. 211 Beaufort Street a five storey mixed use development, with commercial uses on the ground floor and apartments above.

The property adjoining the subject site to the west is No. 46 Lindsay Street and accommodates a car park. To the north-west is Nos. 5 and 7 Monger Street and to the south-west is No. 44 Lindsay Street, with these accommodating standalone residential dwellings.

Outside of this immediate context, the broader area of Beaufort Street consists of a mix of residential and commercial uses. Within 200 metres of the subject site (between Newcastle Street and Brisbane Street), these uses include:

- Restaurants and cafes;
- Offices for varying tenants including developers, engineers, financial advisors and accountants;
- Beauty and health uses including a pharmacy, hair dresser and laser clinic;
- Photography and printing studios;
- Shops including furniture and clothing stores;
- A performing arts venue (The Saraswati Mahavidhyala Centre for Performing Arts and Education);
- Lodging houses including North Lodge Central City Apartments and Monger House;
- A convenience store selling day-to-day goods, and a supermarket specialising in Asian groceries;
- A paint and sip venue (Pinot and Picasso);
- A tavern (The Brisbane Hotel) and a small bar (Tom's Providore & Wine Bar);
- A nightclub (The Ellington Jazz Club);
- A restricted premises selling shisha and smoking related accessories (Up in Smoke);
- A fast food outlet (McDonald's); and
- Residential uses including standalone dwellings and apartments in mixed use developments.

A context plan indicating the types and locations of uses for this portion of Beaufort Street between Bulwer Street and Newcastle Street is included as **Attachment 5**.

#### Previous Approvals

On 22 March 2018, a development application was approved for an Eating House at the subject site. This included three car parking bays being provided onsite and was subject to conditions of approval, including a maximum number of patrons of 20 people at any one time.

On 28 July 2021, a development application was lodged proposing a patio addition at the rear of the subject site, with this removing the three car parking bays previously approved onsite. The applicant for this application confirmed that approval was only sought for the patio addition, with no change of use component. Subsequently the application was considered as an addition to the previously approved Eating House.

The application for the patio addition was approved on 12 October 2021 by Administration under delegation, with the Eating House subsequently having nil car parking bays onsite. The patio has now been constructed and is shown on the development plans included as **Attachment 2**.

A copy of the previous approval notices and approved plans are included as **Attachment 6**.

#### **DETAILS:**

##### **Summary Assessment**

The table below summarises the planning assessment of the proposal against the provisions of the City of Vincent Local Planning Scheme No. 2 (LPS2), the City's Built Form Policy and other relevant local planning

policies. In each instance where the proposal requires the discretion of Council, the relevant planning element is discussed in the Detailed Assessment section following from this table.

Planning Element	Use Permissibility/ Acceptable Outcome	Requires the Discretion of Council
Land Use		✓
Car & Bicycle Parking		✓
Signage		✓

### Detailed Assessment

The assessment of the elements that require the discretion of Council are as follows:

Land Use	
Use Class Permissibility	Proposal
<b>LPS2 – Zoning Table</b>  'P' use.	A shisha bar is an Unlisted Use.  It is not a land use defined within LSP2.
Car and Bicycle Parking	
Requirements	Proposal
<b>Policy No. 7.7.1 – Non-Residential Development Parking Requirements (Parking Policy)</b>  There is no specified car or bicycle parking standard for an Unlisted Use. This is to be determined on a site specific parking management plan.	A parking management plan has not been provided.  <u>Car Parking</u> None provided.  <u>Bicycle Parking</u> None provided.
Signage	
Requirements	Proposal
<b>Local Planning Policy: Signs and Advertising (Signs and Advertising Policy)</b>  For a smoking premises - no more than one sign, which shall be used for the purpose of identifying a registered business name, to a maximum of 2.0 square metres.	The premises would have two signs for the purpose of identifying the business name with a total area of 5.0 square metres.

The above elements of the proposal do not meet the specified provisions and are discussed in the Comments section below.

### CONSULTATION/ADVERTISING:

Community consultation was undertaken for a period of 28 days in accordance the *Planning and Development (Local Planning Schemes) Regulations 2015*, from 17 May 2022 to 14 June 2022. The method of advertising included 1,345 letters being mailed to all owners and occupiers within a 200 metre radius of the subject site, a sign being erected on site, a notice in the local newspaper and a notice on the City's website in accordance with the City's Community and Stakeholder Engagement Policy.

At the conclusion of the consultation period, 25 submissions were received.

- Seven submissions were received in support;
- 17 submissions were received in objection; and
- One submission was received neither in support or objection but expressed some concerns.

Following the conclusion of the consultation period, an additional submission was received in objection.

The key concerns raised during the consultation period were as follows:

- Impacts of noise on the adjoining residential dwellings and neighbouring lodging house due to the location of the shisha bar activities at the rear of the subject site within an unenclosed patio. Additional concerns that the noise management plan would be insufficient to address noise impacts;
- The operating hours and closing times of the use, including associated impacts of noise and anti-social behaviour on the adjoining residential dwellings;
- Inadequate onsite car parking being provided and concerns with increased parking demand along Beaufort Street and the surrounding streets, including associated impacts of reduced parking availability, noise and safety;
- The use would promote tobacco/shisha use and smoking which is a direct risk to individuals and the public health of the City's community. This would adversely impact users and the amenity of the adjoining residential dwellings, Beaufort Street and the surrounding area, including from impacts of second hand smoke from the premises;
- The use would not comply with the relevant tobacco legislation and that this would not be monitored;
- The use would attract anti-social behaviour and subsequently impact the surrounding area which is already affected significantly by this; and
- The use does not satisfy the objectives of LPS2, the City's *Public Health Plan 2020-2025* and State policies.

A summary of all the submissions received and Administration's response is included as **Attachment 7**. The applicant's response is included as **Attachment 8**.

#### *Updated Proposal*

Following community consultation the applicant revised the details of the proposal and submitted additional information in response to the concerns raised during the consultation period. These are summarised as follows:

- A reduction in operating hours, with these reduced hours including earlier closing times from Sunday to Thursday;
- Submission of an updated NMP to address the applicable tobacco products legislation, along with a venue management plan; and
- Updated plans with details of signage.

As the changes did not significantly alter the proposal in relation to the key concerns raised during consultation, a second consultation period was not required in accordance with the Community and Stakeholder Engagement Policy. The submitters were notified prior to the Council Meeting of the details of the updated proposal and of the response to submissions from Administration and the applicant.

#### **Design Review Panel (DRP):**

Referred to DRP: No

#### **LEGAL/POLICY:**

- *Planning and Development Act 2005*;
- *Planning and Development (Local Planning Schemes) Regulations 2015*;
- City of Vincent Local Planning Scheme No. 2;
- Community and Stakeholder Engagement Policy;
- Local Planning Policy – Signs and Advertising;
- Policy No. 7.1.1 – Built Form Policy;
- Policy No. 7.5.21 – Sound Attenuation;
- Policy No. 7.7.1 – Non-Residential Development Parking Requirements;
- *Tobacco Advertising Prohibition Act 1992*;
- *Tobacco Products Control Act 2006*;
- *Tobacco Products Control Regulations 2006*; and
- Department of Health 'Shisha and the Law' Guidelines 2017.

Planning and Development Act 2005

In accordance with Schedule 2, Clause 76(2) of the *Planning and Development (Local Planning Schemes) Regulations 2015* (Planning Regulations) and Part 14 of the *Planning and Development Act 2005*, the applicant would have the right to apply to the State Administrative Tribunal for a review of Council's determination.

Draft Local Planning Policy: Restricted Premises – Smoking

At its Ordinary Meeting on 12 October 2021, Council considered and adopted a recommendation requesting the Chief Executive Officer to prepare a new local planning policy to address provisions relating to Restricted Premises and businesses whose primary means of trade are through the sale and consumption of tobacco products. This was in response to a Notice of Motion endorsed by Council at its Ordinary Meeting on 18 May 2021.

At its Ordinary Meeting on 23 August 2022, Council considered and adopted a recommendation to prepare a draft Local Planning Policy: Restricted Premises – Smoking (the draft Restricted Premises – Smoking Policy) for the purpose of community consultation. The draft Policy provides a framework to guide the exercise of discretion for 'Restricted Premises' and 'Unlisted Use' proposals where the primary purpose is the sale or consumption of tobacco and other products to be used for smoking, with this including shisha bars or lounges.

Community consultation on the draft local planning policy has now started in accordance with Clause 4(1)(2) of the Planning Regulations.

In accordance with Clause 67(2)(b) of the Planning Regulations, orderly and proper planning requires the consideration of whether an application is consistent with the objectives of the Scheme and relevant planning policies, including any proposed planning instrument that the local government is seriously considering adopting or approving.

The draft Policy would be classified as a proposed planning instrument. As community consultation has started, it would also be classified as a proposed planning instrument that the City is seriously considering adopting or approving.

On this basis the draft Policy is a relevant matter to be considered in the determination of this application, and Council is required to give due regard to the extent to which this application is consistent with the objective and approach reflected in the draft Policy.

The State Administrative Tribunal has made decisions relating to the weight that should be given to a draft planning instrument or local planning policy. The following four criteria have been established as the principle criteria to consider:

1. *The degree to which the draft addresses the specific application;*
2. *The degree to which the draft is based on sound town planning principles;*
3. *The degree to which its ultimate approval could be regarded as 'certain'; and*
4. *The degree to which its ultimate approval could be regarded as 'imminent'.*

In considering the weight that should be given to the draft Policy:

1. *The degree to which the draft addresses the specific application;*

The draft Policy specifically addresses this application, as an Unlisted Use (Shisha Bar) would be classified as a 'Smoking Premises' under the draft Policy. It also includes specific provisions to guide the location and business operations of 'Smoking Premises'.

2. *The degree to which the draft is based on sound town planning principles.*

The draft Policy is a local planning policy that has been prepared under the Planning Regulations and provides guidance on the location and business operations of 'Smoking Premises' in considering adjoining or adjacent sensitive uses and potential off-site amenity impacts on these. This is consistent with the aims of LPS2 and objectives of the Commercial Zone under LPS2, and is based on sound town planning principles.

3. *The degree to which its ultimate approval could be regarded as 'certain'.*

Council has the responsibility for the ultimate approval of the draft Policy. Community consultation on the draft Policy has not yet been completed, and following a review of the submissions received, the form and provisions of the Policy may change in response to these. The ultimate approval of the draft Policy in the form in which it has been advertised for public comment is not certain.

4. *The degree to which its ultimate approval could be regarded as 'imminent'.*

The draft Policy is currently undergoing community consultation that will finish on 24 October 2022. Following this Administration would undertake a review of any submissions received and respond accordingly, and this may involve changes to the form and provisions of the Policy. Administration would then need to prepare a report to Council on the outcomes of community consultation and consideration of the final draft Policy for adoption. This is not expected to occur until an Ordinary Council Meeting in 2023 and the ultimate approval of the draft Policy is not imminent.

The ultimate approval of the draft Policy cannot be regarded as being 'certain' or 'imminent' in the form that it was advertised. This means that of the matters to be given due regard in the determination of this application under Clause 67 of the Planning Regulations, lesser weight is afforded to this draft Policy.

The draft Policy is considered further in the Comments section below.

#### Tobacco Products Legislation

The *Tobacco Advertising Prohibition Act 1992* includes restrictions on the advertising of smoking, purchase or use of tobacco products.

The use and consumption of shisha is legal within Western Australia and is regulated by the Department of Health through the *Tobacco Products Control Act 2006*. The Department of Health also has a guideline titled 'Shisha and the Law' that outlines the specific requirements relating to the sale and use of shisha.

The business would sell shisha, which is a generally flavoured tobacco product, to patrons for consumption onsite in a ready-to-smoke form through a water pipe (also known as a 'Hookah'). The business would not sell any other not tobacco, nicotine or smoking-related products or their associated accessories.

The *Tobacco Products Control Act 2006* requires a retailer's licence to be issued by the Department of Health if tobacco products are to be sold or supplied. Under this and the *Tobacco Products Control Regulations 2006*, shisha cannot be smoked in an enclosed public place and where a premises doesn't have a liquor licence, it can only be smoked in an outdoor area where food or drink is not being consumed. An enclosed public space is considered a publicly accessible area which has a ceiling or roof, and is more than 50 percent enclosed by walls or other vertical structures or coverings. Holders of a retailer's licence are not permitted to display shisha or any other products that can be smoked, or to display water pipes or other smoking-related accessories.

During the consultation period, the City received concerns that the business would operate in contravention of the *Tobacco Products Control Act 2006*, including that it would be an enclosed public place.

Administration referred the business to the Tobacco Control Branch of the Department of Health, that advised the following:

- Premises such as shisha bars or lounges may apply for a retail tobacco licence under the *Tobacco Products Control Act 2006* in order to sell tobacco products including shisha;
- The business currently has a valid retail tobacco licence;
- The use of the tobacco product in or near enclosed public places is governed by the *Tobacco Products Control Regulations 2006* and is not linked to the licensing process. There is no process within the tobacco products legislation for approval or assessment of smoking areas within the retail tobacco licensed premises; and
- Tobacco licensed premises are inspected routinely and where written complaints are received alleging a breach of the tobacco products legislation. The Tobacco Control Branch would investigate allegations relating to smoking in enclosed public places, and any areas where smoking was found to be taking place would be assessed for compliance with the tobacco products legislation.

It would be the business operator's responsibility to comply with this applicable legislation, with the responsible authority for monitoring compliance then being the Department of Health.

**Delegation to Determine Applications:**

This matter is being referred to Council for determination in accordance with the City's Register of Delegations, Authorisations and Appointments. This is because the delegation does not extend to applications for development approval that receive more than five objections during the City's community consultation period.

**RISK MANAGEMENT IMPLICATIONS:**

There are minimal risks to Council and the City's business function when Council exercises its discretionary power to determine a planning application.

**STRATEGIC IMPLICATIONS:**

This is in keeping with the City's Strategic Community Plan 2018-2028:

Innovative and Accountable

*We are open and accountable to an engaged community.*

**SUSTAINABILITY IMPLICATIONS:**

There are no sustainability implications applicable to this application.

**PUBLIC HEALTH IMPLICATIONS:**

This is not in keeping with the following priority health outcomes of the City's *Public Health Plan 2020-2025*:

Reduced smoking

The Public Health Plan implications are discussed further in the Comments section.

**FINANCIAL/BUDGET IMPLICATIONS:**

There are no financial or budget implications applicable to this application.

**COMMENTS:**

Council is required to exercise its discretion to determine this application. Relevant to this are the following considerations:

1. Whether the land use can be contemplated in the zone. A Shisha Bar is a land use that is not listed under LPS2 and is not expressly prohibited;
2. The development standards and requirements that apply, such as car parking provision and signage; and
3. Matters to be given due regard in determining an application. These matters that provide guidance as to how discretion is to be exercised are provided for under Clause 67 of the Planning Regulations.

As smoking, the use of smoking implements and the consumption of shisha is a legal activity and regulated under separate State legislation, as set out in the Legal/Policy section above, the associated broader public health impacts are not a material planning consideration. The compatibility of the proposal with its surrounding locality and its extent of impact on amenity are valid planning considerations, and are discussed in further detail below.

Land Use

The proposed land use of a shisha bar is not specifically defined in the zoning table of LPS2 and could not reasonably be determined as falling within the interpretation of one of the listed land uses.



The use is required to be considered as an Unlisted Use in accordance with Clause 18(4) of LPS2 which states:

*The local government may, in respect of a use that is not specifically referred to in the zoning table and that cannot reasonably be determined as falling within a use class referred to in the zoning table –*

- a) *determine that the use is consistent with the objectives of a particular zone and is therefore a use that may be permitted in the zone subject to conditions imposed by the local government; or*
- b) *determine that the use may be consistent with the objectives of a particular zone and give notice under clause 64 of the deemed provisions before considering an application for development approval for the use of the land; or*
- c) *determine that the use is not consistent with the objectives of a particular zone and is therefore not permitted in the zone.*

An Unlisted Use is not a prohibited land use and can be approved at the discretion of the local government in considering the objectives of the zone and after community consultation has been undertaken. The subject site is zoned Commercial under LPS2.

The City received submissions during the consultation period relating to the land use, including its consistency with the objectives of LPS2, impacts on the amenity of the locality and the adjoining sensitive uses, and broader health and anti-social behaviour impacts.

Administration has assessed the acceptability of the land use against relevant considerations set out in the planning framework.

#### *LPS2 Commercial Zone Objectives*

Council is to have due regard to the objectives of the Commercial zone in determining the appropriateness of the land use, which are as follows:

- *To facilitate a wide range of compatible commercial uses that support sustainable economic development within the City;*
- *To ensure development design incorporates sustainability principles, with particular regard to waste management and recycling and including but not limited to solar passive design, energy efficiency and water conservation;*
- *To maintain compatibility with the general streetscape, for all new buildings in terms of scale, height, style, materials, street alignment and design of facades; and*
- *To ensure that development is not detrimental to the amenity of adjoining owners or residential properties in the locality.*

The following is relevant to the assessment of the proposal against these objectives:

- The use would operate as a retail tenancy that offers products for consumption in areas with seating provided. This would contribute towards economic development, with the predominant retail offering and commercial activity along Beaufort Street. The retail aspect of the business is consistent with surrounding commercial activities including shops, restaurants, cafes and bars. These commercial activities provide goods or services for sale, are open to the general public, and provide day time and night time trade; consistent with the retail aspect of the proposed land use;
- Aside from the signage, no works are proposed to the existing building. This would ensure that it maintains compatibility with the streetscape through its overall built form. This includes its building height and scale and the provision of an active street frontage that are consistent with the Built Form Policy;
- The signage proposed would exceed the amount prescribed under the Signs and Advertising Policy. It is not supported for the reasons outlined further below in this report;
- The development does not impact on energy efficiency or water conservation principles. Waste would be collected by an external waste service provider, in line with the City ceasing commercial waste collection; and
- The proposal would detrimentally impact on the amenity of adjoining owners and residential properties by way of emissions. This is discussed below.

*Impact on Amenity – LPS2 Commercial Zone Objectives and Clauses 67(2)(m) & (n) of the Planning Regulations*

One of the objectives of the Commercial zone under LPS2 is to ensure development is not detrimental to the amenity of adjoining owners or residential properties. Clauses (m) and (n) of the matters to be considered by local government in the consideration of an application under the Planning Regulations relates to the compatibility of the development with its setting (Clause 67(2)(m)) and to the amenity of the locality, including its character and social impacts of the development (Clause 67(2)(n)(ii) and (iii)).

The Planning Regulations defines amenity as ‘...all those factors which combine to form the character of an area and include the present and likely future amenity’.

The character and existing amenity of Beaufort Street is reflective of its location in an inner city setting that serves as an activity corridor, providing for a mix of primarily commercial land uses and consisting of predominantly low to medium rise development. The area is located between and within close proximity to the Northbridge entertainment district and the Mount Lawley/Highgate Town Centre. The area contains a wide range of commercial, retail, entertainment and residential land uses in close proximity to one another and with varying extents of intensity and activity.

In respect to future amenity, this section of Beaufort Street is zoned Commercial under LPS2 and is intended to provide for a mix of compatible commercial uses, with residential uses also contemplated. This area is also identified as an Activity Corridor built form area in the City’s Built Form Policy with a five storey height standard provided. The objective of the Activity Corridor is to improve the built form connection and design between the City’s town centres, and is envisaged to undergo intensification in line with this. The City’s Local Planning Strategy identifies this stretch of Beaufort Street as intending to provide a conduit between Mount Lawley and Northbridge, with commercial activities to be focused along this corridor. The future amenity of the locality would be reflective of an area envisaged for greater intensity of commercial activities having regard to these planning instruments.

In considering whether or not the development is likely to be detrimental to the amenity of adjoining businesses or residential properties in the locality, Council must consider the practical impacts of the proposal. The following comments are relevant in considering the amenity impact of the use in this context:

- **Use Permissibility:** The Planning Regulations set out a variety of commonly proposed land uses that are specifically defined. This is not intended to be an exhaustive list of uses and where a proposal is not capable of reasonably falling within a defined use class, this is considered an ‘Unlisted Use’. An Unlisted Use requires discretion to be exercised by the decision maker for its approval. The proposed shisha bar is capable of consideration within the Commercial zone, by virtue of it being an Unlisted Use and not an ‘X’ (not permitted) land use. LPS2 does not set out any specific locational requirements for an Unlisted Use, and where these should be situated in proximity to other commercial activities or residential dwellings. It is the role of the decision maker to consider the acceptability of the proposed use in the location proposed informed by the site context, objectives of the zone and other relevant matters;
- **Broader Public Health Considerations:** The business would involve the sale of shisha for consumption onsite in a ready-to-smoke form. Although there is a public health impact from smoking, smoking itself is not an illegal activity. The nature of the use is not associated with an illegal activity. Under the tobacco products legislation applicable to shisha bars or lounges set out in the Legal/Policy section above, it is not legal to sell or supply shisha to those under the age of 18. The applicant has advised that those under the age of 18 would not be permitted to enter the premises;
- **Development Standards:** Neither LPS2 nor the Built Form Policy include development standards which require businesses of this nature to be discrete or to limit the display of smoking-related products or implements. Conversely the provisions of the Built Form Policy require an active street frontage to be provided and maintained. Smoking-related products or implements would not be displayed or visible from the public realm as required under the applicable tobacco products legislation, but there would be advertising signage for the subject premises that would be visible. This signage would be on the windows of the premises and would promote the business name which is ‘Marihana Café’. The acceptability of this signage against the Signs and Advertising Policy is discussed further below in this report;
- **Amenity Impact:** In having regard for existing uses in the immediate and surrounding context of the premises, there would be an impact of the Unlisted Use on amenity. In the immediate context it is noted that the site is adjoining and adjacent to established residential and sensitive land uses. This includes apartments to the south at No. 211 Beaufort Street, single residential dwellings to the north-west and south-west along Monger Street and Lindsay Street, and North Lodge Central City Apartments to north,

which provides short term residential accommodation for visitors. In considering impact on amenity, the following comments are relevant:

- Nearby Community Spaces and Services: The premises is located nearby to Tom Fischer House and the Association for Services to Torture and Trauma Survivors. Both of these uses provide services for vulnerable and at-risk members of the community. The subject site is also approximately 80 metres from Weld Square which is public open space. There could be a perceived impact on existing users of the surrounding area which includes community services and public open space. This is as a result of the visibility of the frontage of the premises to Beaufort Street and the operating hours of the business during the day, from 4:00pm on weekdays and 12:00pm on weekends. The applicant has advised that those under 18 years of age are not permitted in the premises. These community services are currently operating in close proximity to licenced venues including The Ellington Jazz Club and the Brisbane Hotel, which facilitate the service and consumption of alcohol onsite. The operation of these businesses in close proximity to vulnerable and at-risk community groups would have some inherent impact and reduced amenity. Further to this the premises is 80 metres from a convenience store selling tobacco products, and 150 metres from a similar premises in Up in Smoke. In this regard the operation of an Unlisted Use (Shisha Bar) in this context is unlikely to result in further reduced amenity than that currently experienced by being in close proximity to existing businesses which serve alcohol and sell tobacco and smoking-related products and implements in proximity to services for vulnerable community members and public open space;
- Smoking Emissions: The nature of the use involving the consumption of shisha in a ready-to-smoke form onsite within an unenclosed patio, would inherently result in smoke, vapour and odour being emitted outward from the premises. This is as smoking, the use of smoking implements and the consumption of shisha is a legal activity, and under the tobacco products legislation the sale and consumption of shisha onsite is legally required to occur within an outdoor area that is not an enclosed public place. There would be a level of emissions affecting the surrounding locality as a consequence of these requirements under the tobacco products legislation. As a result of this requirement for shisha to be consumed within an unenclosed outdoor area, there is limited ability to control, filter or manage emissions from the business. The applicant has also not submitted any details or included any physical measures that would control or filter these emissions. They have stated in their venue management plan that there would be a limited amount of smoke in the venue due to the number of patrons being limited to a maximum 20 patrons at any time. They also stated that four ceiling fans installed on the roof of the patio would assist to ensure smoke doesn't spread to residential areas, noting that no evidence was provided to demonstrate that this would be the case and that it wouldn't instead further exacerbate emissions outward from the patio area. Noting that it is accepted that the emission of smoke and vapour can be harmful to health, and that the emission of odour can be a nuisance, the lack of details and physical measures on how emissions would be controlled or filtered is particularly relevant for this application. This is given that the patio area would either be fully or partially unenclosed to the north, west and south, where in these directions there are sensitive uses in the form of residential dwellings or apartments and short term accommodation. The patio is located between a minimum of approximately 1.0 and 9.0 metres from the adjoining properties to the north, north-west, south-west and south that contain established sensitive uses. This demonstrates that the use as proposed would not be capable of operating in a manner where emissions would be appropriately managed, and that it would adversely impact the amenity of the adjoining properties and the associated sensitive uses;
- Operating Hours: The operating hours of the business, including its closing times of 11:30pm from Sunday to Thursday and 12:00am on Friday and Saturday, would be similar to that of other businesses located along this Commercial zoned section of Beaufort Street, and would not have an adverse impact on the locality. This includes The Ellington Jazz Club which has a closing time of 10:00pm from Monday to Thursday and of 1:30am on Friday and Saturday, as well as the McDonald's which operates 24 hours a day. In this context the operating hours of use in itself would be compatible with the locality;
- Noise: The applicant has submitted a NMP, included as **Attachment 3**, in accordance with the City's Policy No. 7.5.21 – Sound Attenuation (Sound Attenuation Policy). The NMP concludes that the premises would comply with the *Environmental Protection (Noise) Regulations 1997* (Noise Regulations) subject to recommended physical measures. This includes the installation of acoustic barriers in the form of a 2.0 metre high noise barrier fence located 1.2 metres to the west of the patio and a full-height noise barrier enclosure along 75 percent of the northern side of the patio. The following comments are relevant:
  - The proposed measures have been reviewed by the City's Health team that has advised this would be acceptable and satisfies the standards of the Sound Attenuation Policy;

- The identified measures would assist to ensure the use operates in a manner where noise would be appropriately managed through physical measures to limit impacts on the amenity of the adjoining residential uses;
- The NMP has considered the applicable requirement under the *Tobacco Products Control Regulations 2006* where shisha is not permitted to be smoked in an enclosed public place. Figure 3.1 of the NMP demonstrates that the set back and extent of the recommended acoustic barriers have been designed so that they do not enclose more than 50 percent of the patio area and that the premises would be capable of achieving compliance with this requirement if the acoustic barriers were installed. This was updated following community consultation; and
- The NMP was not updated to reflect the revised hours of operation of the use, with earlier closing times of either 11:30pm or 12:00am now proposed rather than 1:00am as stated in the NMP. The Noise Regulations requirements do not differ between these time periods and the NMP demonstrates that the use would still comply at this later hour and is not required to be updated. The earlier closing times would further assist to limit impacts on the amenity of the adjoining residential uses, with the earliest closing time of 11:30pm also being proposed on all nights except Friday and Saturday night to assist this further;
- Venue Management: The applicant has submitted a venue management plan, included as **Attachment 4**. This includes details and management procedures to demonstrate how the operations of the business will be managed, including:
  - Contact details for the business operator;
  - A complaints management procedure;
  - That no amplified music will be played;
  - That signage will be displayed to notify patrons to keep noise down after 10pm and to notify that anti-social behaviour won't be tolerated; and
  - That patrons will only enter and exit through the front of the premises to Beaufort Street. These measures would assist to ensure the use operates in a manner where its activities would be appropriately managed to limit impacts on the amenity of the adjoining residential uses; and
- Location of Adjoining Properties: The adjoining residential and accommodation uses to the north and south are located within a Commercial zone and those to the north-west and south-west are located within a Mixed Use zone. In these zones a range of commercial land uses are permitted or are permissible, with a number of existing commercial land uses operating in the surrounding area. With their zoning and proximity to central Perth, it is reasonable for these adjoining uses to expect a higher level of activity and noise associated with commercial land uses.

#### *Matters to be considered by Local Government*

Clause 67(2) of the Planning Regulations contains matters to be considered as part of the application. In exercising its discretion Council is to have due regard to these matters. Clauses 67(2)(m) & (n) have been detailed above, and the other relevant matters are set out below, including Clause 67(2)(b) and the draft Restricted Premises Smoking – Policy which is to be given due regard but is of a lesser weight as set out in the Legal/Policy section.

#### 1. Clause 67(2)(a) – Aims of LPS2

LPS2 contains broader aims applicable to the entire Scheme area, separate to more specific objectives of the Commercial zone that have been previously detailed.

The use is consistent with the aim to facilitate and encourage businesses which cater for a diversity of interests and lifestyles. Shisha refers to the smoking of tobacco or other products through a water pipe known as a 'Hookah' and is a common past time amongst family and friends in Middle Eastern, African and Indian cultures. The use of shisha is becoming increasingly popular within Australia.

The use is inconsistent with the aim to protect and enhance the health and welfare of inhabitants and the social environment, specifically in relation to the adverse impact on the amenity of the adjoining properties and associated sensitive uses from smoking emissions, as set out above. Although the use is not illegal, there is a public health impact related to smoking and tobacco use. Evidence shows that smoking is the single biggest contributor to preventable disease and death in Australia and there is no safe level of exposure to second-hand smoke as all exposure carries risk, and even minimal exposure can affect the wellbeing of the community. Smoking has been proven to lead to a range of cancers, as well as other health impacts relating to the cardiovascular system and ongoing issues associated with addiction.

There is also a perceived social impact on the health and wellbeing of those members of the community accessing the support and services provided for by nearby businesses, as well as those utilising the nearby public open space or who may pass by the premises. Notwithstanding this, the use is capable of consideration and not prohibited under the provisions of LPS2.

2. Clause 67(2)(b) – Orderly and Proper Planning and draft Restricted Premises – Smoking Policy

As set out in the Legal/Policy section above, the consistency of the proposal with the objective and approach in the draft Restricted Premises – Smoking Policy is a relevant matter that Council is required to give due regard to in considering this application.

Under the draft Policy, a shisha bar or lounge would be classified as a ‘Smoking Premises’ use. The objectives of the draft Policy are as follows:

1. *Reduce the number of businesses whose primary purpose is the consumption of tobacco and other products to be used for smoking;*
2. *Reduce the promotion of tobacco and smoking within the City;*
3. *Ensure that any businesses whose primary purpose is the sale of tobacco and other products to be used for smoking are located in such a manner that they would not negatively impact on the amenity of the area, including the public realm and the surrounding existing land uses, by means of associated emission of harmful smoke and/or vapours, noise, odour or anti-social behaviour;*
4. *Ensure business and advertising signs do not promote the sale of tobacco and other products to be used for smoking, smoking implements or the consumption of tobacco or smoking on site; and*
5. *Ensure businesses that include the sale or consumption of tobacco and other products to be used for smoking maintain an active and engaging street frontage by means of clear sight lines and visual surveillance between the street and the business.*

The draft Policy includes provisions to guide the location of ‘Smoking Premises’, including that they are only permitted where they are not adjoining or adjacent to residential uses or to accommodation uses (whether temporary or permanent). The subject site is adjoining and adjacent to residential uses to the south, north-west, south-west and on the opposite side of Beaufort Street, while also adjoining an accommodation use to the north.

The draft Policy also includes provisions to guide the business operations of ‘Smoking Premises’, including that they are required to submit a detailed management plan and that they are limited to operating hours of 7:00am to 10:00pm Monday to Saturday and between the hours of 9:00am to 10:00pm on a Sunday and public holidays. The applicant has submitted a venue management plan as part of the application and the operating hours proposed would be consistent with the listed hours except for the closing times of 11:30pm on Sunday to Thursday and 12:00am on Friday and Saturday.

The draft Policy also includes provisions stating that ‘Smoking Premises’ must comply with the Signs and Advertising Policy, and advising that these uses are to comply with the relevant tobacco products legislation. The application’s consistency with these are discussed in the report above and below.

In considering the use against the objectives and provisions of the draft Policy, along with the comments set out above on the likely amenity impact of the use, particularly in relation to the emissions of harmful smoke and vapours as well as odour, the use has not been located appropriately so that it would not negatively impact on the amenity of the surrounding existing land uses.

3. Clauses 67(2)(c) & (f) – State Policies

There are no State Planning Policies approved by the WAPC which relate to a use of this nature.

*State Public Health Policy*

As referenced in the submissions received through consultation, there are broader state policies which would be relevant to the use. These include:

- The Sustainable Health Review 2019 (SHR): The purpose of the SHR is to provide direction for the WA health system. The SHR identifies collaborating and investing in prevention to maximise good public health outcomes, including through tobacco control;

- The Western Australian Health Promotion Strategic Framework 2017-2021 (HPSF): The purpose of the HPSF is to set out a strategic plan for reducing the prevalence of chronic disease and injury. The HPSF identifies strategic measures related to the 'make smoking history' campaign. These measures include the development and implementation of healthy policies, legislation and regulation, economic and targeted interventions, development of supportive environments, and public awareness and engagement; and
- The State Public Health Plan 2019-2024 (SPHP): The purpose of the SPHP is to support local governments in the preparation of their own public health plans to ensure consistency with the objectives and priorities of the State. The SPHP identifies making smoking history as a policy priority. The SPHP identifies measures to include which includes lowering smoking rates, eliminating exposure to second-hand smoke, reducing smoking in groups with higher smoking rates, improve regulation of contents, product disclosure and supply, and monitoring emerging products and trends.

These documents include broader objectives and aims in relation to smoking, but do not identify opportunities for this to be controlled or influenced by the current planning framework.

While the business would sell shisha for consumption in a ready-to-smoke form, the activity is not illegal and there are other controls in place through the applicable tobacco products legislation to control how this is sold and used.

#### *City's Public Health Plan*

The State public health framework informed the preparation of the City's Public Health Plan 2020-2025. This identifies reduced smoking in the community as one of the long term health outcomes.

Amongst other initiatives, the Public Health Plan seeks to deliver smoke-free town centres by 2025, this project is expected to launch at the end of 2022. The Public Health Plan also seeks to support the implementation of smoke-free environments including festivals, events, activities and/or clubs, and to advocate for reduced exposure to tobacco advertising, marketing, promotion and sponsorship.

The City's Public Health Plan itself is not a specific relevant consideration under the planning framework. The initiatives of the Public Health Plan do not extend to private property or contemplate strategies to restrict businesses selling shisha for consumption onsite.

#### 4. Clause 67(2)(fa) - Local Planning Strategy

The City's Local Planning Strategy was approved by the WAPC in December 2017 and identifies the subject site as being located outside of the Mount Lawley/Highgate Town Centre. This section of Beaufort Street is identified as providing a conduit between Mount Lawley and Northbridge, with commercial activities to be focused along this corridor.

The commercial nature of the use is consistent with this intent of the Local Planning Strategy by providing for commercial activity along this corridor.

#### 5. Clause 67(2)(i) – Report of Review

The report of review for the City's LPS2 and Local Planning Strategy was endorsed by Council at its Ordinary Meeting on 17 May 2022. Following review by the Western Australian Planning Commission, the report of review has now been published in accordance with the Planning Regulations.

The purpose of the report of review is to inform the future review of the City's LPS2 and Local Planning Strategy. It identifies that further guidance should be included in LPS2 for land use proposals that are either unlisted or undefined in the Scheme (such as 'Restricted Premises'), and that an amended Local Planning Strategy should clarify and establish a position of emerging trends facing the community, including issues relating to public health.

Although it identifies matters related to the subject application, the report of review does not make any conclusions or comments specific to uses such as what is proposed or their acceptability.

It is noted that the review of LPS2 and the Local Planning Strategy is expected to be initiated and community consultation to start in 2023.

#### 6. Clause 67(2)(x) – Impact on the Community

The sale and consumption of shisha is not illegal, and while smoking has been demonstrated to have a broader health impact on the community, this is not reflected in the current local planning framework or draft Restricted Premises – Smoking Policy as neither outright prohibits businesses located on private property solely on the basis that they involve the retail sale of or consumption of tobacco products. The current local planning framework and the draft Restricted Premises – Smoking Policy do reflect that the amenity of the adjoining land uses is an important consideration for the appropriateness of the use, and as set out above, the proposal would have an impact on the amenity of these adjoining land uses through the emission of smoke, vapour and odour.

In terms of amenity of the broader locality and community, there are existing uses in the area that operate late at night, sell tobacco and smoking-related products and implements, and involve the sale and service alcohol, and these uses would all influence the existing amenity of the broader area and reasonably have an impact on the community. The impacts on the community associated with the Unlisted Use (Shisha Lounge) is not deemed to have a broader community impact than that which currently exists in the locality as a result of these other uses.

#### 7. Clause 67(2)(y) – Submissions Received

25 submissions were received in response to community consultation. This included seven supports, 17 objections and one submission which expressed concerns.

A summary of the submissions received is included as **Attachment 7**, where Administration has provided a response to the concerns raised.

The concerns raised in the submissions have been considered as part of Administration's assessment of this application, including the comments set out above on the potential amenity impact of the use. The proposal was also revised following community consultation to somewhat address concerns regarding impacts on amenity, including by reducing operating hours and the submission of a venue management plan alongside an updated NMP. This did not include the submission of details or physical measures to address the control or filtering of emissions from the premises.

The number of objections received is not a measure of the acceptability of a proposal and is not a valid reason for the application to be refused. Rather, the nature of the comments in submissions is relevant as a matter to be given due regard in the determination of the application.

#### *Acceptability of Land Use*

Although the Unlisted Use is capable of consideration and not prohibited under the provisions of LPS2, it does not satisfy the objectives of the Commercial zone. This is as a result of the likely detrimental impact on the amenity of the adjoining properties from emissions associated with the use. Subsequently the Unlisted Use would also not satisfy the matters to be given due regard in considering an application under the Planning Regulations (specifically Clause 67(2)(m),(n) & (x) and Clause 67(2)(y) in relation to this being reinforced by the submissions received).

Noting that as the ultimate approval of the draft Restricted Premises – Smoking Policy is neither 'certain' nor 'imminent', a relevant consideration of lesser weight is that the Unlisted Use would not satisfy Clause 67(b) of the Planning Regulations. This is because the Unlisted Use would not be consistent with orderly and proper planning in considering the objectives and approach of the draft Policy.

On this basis the Unlisted Use (Shisha Lounge) is recommended for refusal.

Administration also notes that a use of this nature would be in contrast with the efforts of the State and the City to reduce public health impacts from smoking. The consideration of this application against relevant planning matters demonstrates that these public health initiatives do not translate to a planning system that outright restricts or prohibits businesses from offering shisha for consumption onsite. Given the legality of the consumption of shisha, the application cannot be refused on public health grounds.

#### Car and Bicycle Parking

The previous development approvals considered the car parking for the subject site, with nil car parking bays being approved for an Eating House with 20 patrons under the most recent approval.

The Eating House land use (now known as a Restaurant/Café land use under LPS2) would remain as part of the application, with an additional Unlisted Use proposed.

The applicant has stated that there would be a maximum of 20 patrons onsite at any one time associated with the Unlisted Use, with no additional staff required for the Unlisted Use as a maximum of two staff would be onsite at any one time. The applicant has also indicated that they have an agreement to be able to use two car parking bays in the adjoining car park to the west at No. 46 Lindsay Street. As these car parking bays are not located within the subject site and the applicant has not provided further details of this agreement, it has been considered for the purpose of this application that no car parking bays would be provided onsite.

The Parking Policy does not include specified car parking or bicycle parking standards for an Unlisted Use, and it sets out that this is to be determined by the City based on a site specific parking management plan.

The application does not propose any car or bicycle parking to be provided onsite.

During the consultation period the City received submissions raising concerns that there would be inadequate onsite car parking and associated impacts on Beaufort Street and the surrounding streets.

The parking provision is acceptable and would satisfy the objectives of the Parking Policy for the following reasons:

- Previous Approval: A Restaurant/Café land use was previously approved at the subject site and as part of a subsequent approval it was approved with no car parking bays provided onsite. As part of this application the number of staff onsite would not increase and staff car parking demand would not change, noting the applicant has stated there would be a maximum of two staff onsite at one time. The additional car parking demand over what has been previously approved at the subject site would be associated with the 20 patrons of the Unlisted Use;
- Location: The subject site is located along Beaufort Street in close proximity to the Northbridge/William Street Town Centre and central Perth. This is a high amenity area connected with pedestrian paths, public transport and the Perth bicycle network;
- Surrounding Context: The nature of surrounding area, being a Commercial zone and activity corridor with a number of other nearby commercial land uses, would allow for multi-purpose trips that would reduce the overall parking demand within the area. The applicant has stated that typically patrons of shisha bars or lounges visit these premises before or after attending other venues such as restaurant/cafes, bars and nightclubs, of which there are a number surrounding the subject site;
- Public Car Parking: A review of the on and off-street parking provided in the vicinity of the subject indicates that there is capacity to accommodate additional patron car parking, detailed as follows:
  - There are 31 two hour ticketed on-street parking bays located along Beaufort Street within approximately 130 metres of the subject site between Parry Street and Tiverton Street. The City's parking survey data captures Beaufort Street between Newcastle Street and Walcott Street, but does not break this down to smaller stretches along the street. In light of this a review of the aerial mapping was undertaken. This identifies that there are on average 18 bays available at any one time. This average is taken across days which were captured in the mapping, noting times of the photos taken is not available. Details of the parking demand for this area is as follows:
    - Friday 3 June 2022 – 11 cars parked (20 bays available);
    - Tuesday 5 April 2022 – 8 cars parked (23 bays available);
    - Sunday 30 January 2022 – 6 cars parked (25 bays available);
    - Wednesday 15 December 2021 – 4 cars parked (27 bays available);
    - Saturday 23 October 2021 – 26 cars parked (5 bays available);
    - Wednesday 25 August 2021 – 24 cars parked (7 bays available);It is noted that the two hour ticketed restrictions for these bays apply from 9:00am to 5:30pm or 8:00am to 4:00pm Monday to Friday, and 8:00am to 12:00pm on Saturday. Beaufort Street is also a clearway southbound from 6:30am to 9:00am Monday to Friday and northbound from 4:00pm to 6:00pm on the same days. These time periods are generally outside the operating hours of the proposed use;
  - The City's parking survey data identifies that there are 214 parking bays located within the Brisbane Street car park which is located approximately 280 metres from the subject site and provides for ticketed parking between 7:00am to midnight Monday to Sunday. The City's parking survey data identifies that there are on average 178 bays available at any one time. The busiest period was identified as being between 6:00pm and 8:00pm on Saturday where 153 bays were available;



The nature of the use is such that it is not expected that patrons would be attending the site for extended periods of time, with the applicant stating that a typical usage period for shisha is 45 minutes. This means that if patrons choose to drive their own cars to the premises, they would be able to use the two hour ticketed on-street car parking bays available and ensure high turnover of these bays;

- **Public Transport:** The subject site is located along Beaufort Street and is serviced by bus routes No. 67, 68 and 950 which provides high frequency services between the Morley, Mirrabooka and Perth Bus port. The closest bus stops associated with these services are located approximately 90 and 100 metres from the subject site. The subject site is also located a walking distance of approximately 1.0 kilometre from Perth Train Station which connects to the wider metropolitan area. The accessibility of these bus and train routes support travel to and from the subject site by means other than car; and
- **Bicycle Parking:** There are a number of existing publicly available bicycle parking spaces within the verge along Beaufort Street in close proximity to the subject site that would be available for use by patrons. This includes four spaces within the verge in front of the southern adjoining property at No. 211 Beaufort Street. This would provide for conveniently located bicycle spaces for use by patrons and would support cycling as a convenient alternative to driving to the venue.

There is sufficient availability of alternate modes of transport and public parking in the area to support the use, without the need for a cash-in-lieu contribution from the applicant.

On this basis the parking provision is not included as a reason for refusal.

### Works

The application does not propose any works apart from the signage, with the patio at the rear subject to a previous development approval.

To implement the recommended measures included in the NMP, works would be required. This would involve the installation of acoustic barriers in the form of a 2.0 metre high noise barrier fence located 1.2 metres to the west of the patio and a full-height noise barrier enclosure along 75 percent of the northern side of the patio.

These works would satisfy all relevant acceptable outcomes of the Built Form Policy, including in relation to side and rear setbacks.

They would also satisfy the element objectives of the Built Form Policy, as they relate to ancillary additions to the side and rear of an existing previously approved patio, facilitating the use of this space for the operations and activities of tenants. The noise barrier fence and enclosure are of a low scale height and length, contributing limited building bulk and not affecting any landscaping or parking areas. They are also designed to still allow access around and through to the rear of the subject site.

On this basis the works required as part of the implementation of the NMP are not included as a reason for refusal.

### Signage

The signage which forms part of this application has already been installed on the premises and consists of two signs, with one on each of the windows on the existing building to Beaufort Street. The signs consists of the operator's business name 'Marihana Café'. A photo is included in **Attachment 2**.

The signage satisfies the general standards and sign specific standards of the City's Local Planning Policy: Signs and Advertising (Signs and Advertising Policy) applicable to window signs.

In addition, the Signs and Advertising Policy states the following:

*Any premises where the primary purpose is the sale of tobacco or other smoking products; or the consumption of tobacco and other products to be used for smoking shall be permitted no more than one sign, which shall be used for the purpose of identifying a registered business name, to a maximum of 2 square metres.*

This would be applicable to the application as it is for a Restaurant/Café and Unlisted Use (Shisha Bar) which would involve the sale of shisha in a ready-to-smoke form. The application includes two window signs with a total area of 5.0 square metres.

The draft Restricted Premises – Smoking Policy also includes a provision stating that ‘Smoking Premises’ uses must comply with the Signs and Advertising Policy.

In considering the signage against the objectives of the Signs and Advertising Policy, it would not be acceptable for the following reason:

- The signage would result in a proliferation of advertisement and would not align with the City’s Public Health Plan objective of advocating for reduced exposure to alcohol and tobacco advertising. Although the signs would not advertise any tobacco products or their sale or availability for consumption onsite, the extent of the signage is not necessary considering its purpose of identifying and advertising the name of the business. This could be achieved with a single sign of a lesser size, which would be consistent with the realistic need to advertise the name of the business without resulting in an unnecessary level of exposure of the business name and its associated activities involving the sale of shisha for consumption onsite. These comments would also be applicable to the objectives of the draft Restricted Premises – Smoking Policy, which include reducing the promotion of tobacco and smoking within the City, and ensuring business and advertising signs do not promote the consumption of tobacco or smoking on site.

In considering the other aspects of the signage, it would not be inconsistent with the other objectives of the Signs and Advertising Policy for the following reasons:

- The signage would not be illuminated and would not present a hazard or obstruction to pedestrians or motorists;
- The signage would be suitably designed and located on the windows of the existing building which is consistent with the commercial nature of the area and this section of Beaufort Street, along with the type and amount of signage present on other businesses;
- The existing building is not heritage listed and the signage, by being located on the windows, would not obscure any architectural detailing. The signage location and design would maintain and enhance the amenity of the surrounding locality;
- The signage would be for the purpose of identifying the name of the business and would not relate to services or products which are not available on the subject site; and
- The signage would maintain an active frontage as it is for one sign on each window, and would not exceed the sign specific standard for window signs of 30 percent of the glazed area of the window. The signs would be located centrally on each window, allowing views and surveillance to be maintained between the premises and Beaufort Street above and below the signs.

On this basis the signage is recommended for refusal alongside the use and it would need to be removed from the premises, unless the applicant chose to solely operate the business as a Restaurant/Café under the previous development approval.

**CITY OF VINCENT  
LOCAL PLANNING SCHEME NO. 2  
SCHEME MAP 1 - LEEDERVILLE**

**LEGEND**

**METROPOLITAN REGION SCHEME RESERVES**

*Note: The Western Australian Planning Commission acts on behalf of the Department of Planning and should be consulted for full information on the actual land requirements for all Metropolitan Region Scheme Reserves.*

- PARKS AND RECREATION**
- R Restricted Public Access
- PRIMARY REGIONAL ROADS RESERVATION**
- OTHER REGIONAL ROADS RESERVATION**
- RAILWAYS**
- PUBLIC PURPOSES**  
Particular use denoted as follows:
- H Hospital
- HS High School
- TS Technical School
- CP Car Park
- U University
- CG Commonwealth Government
- SU Special Use
- WSD Water Authority of Western Australia
- P Prison

**CITY OF VINCENT LOCAL SCHEME RESERVES**

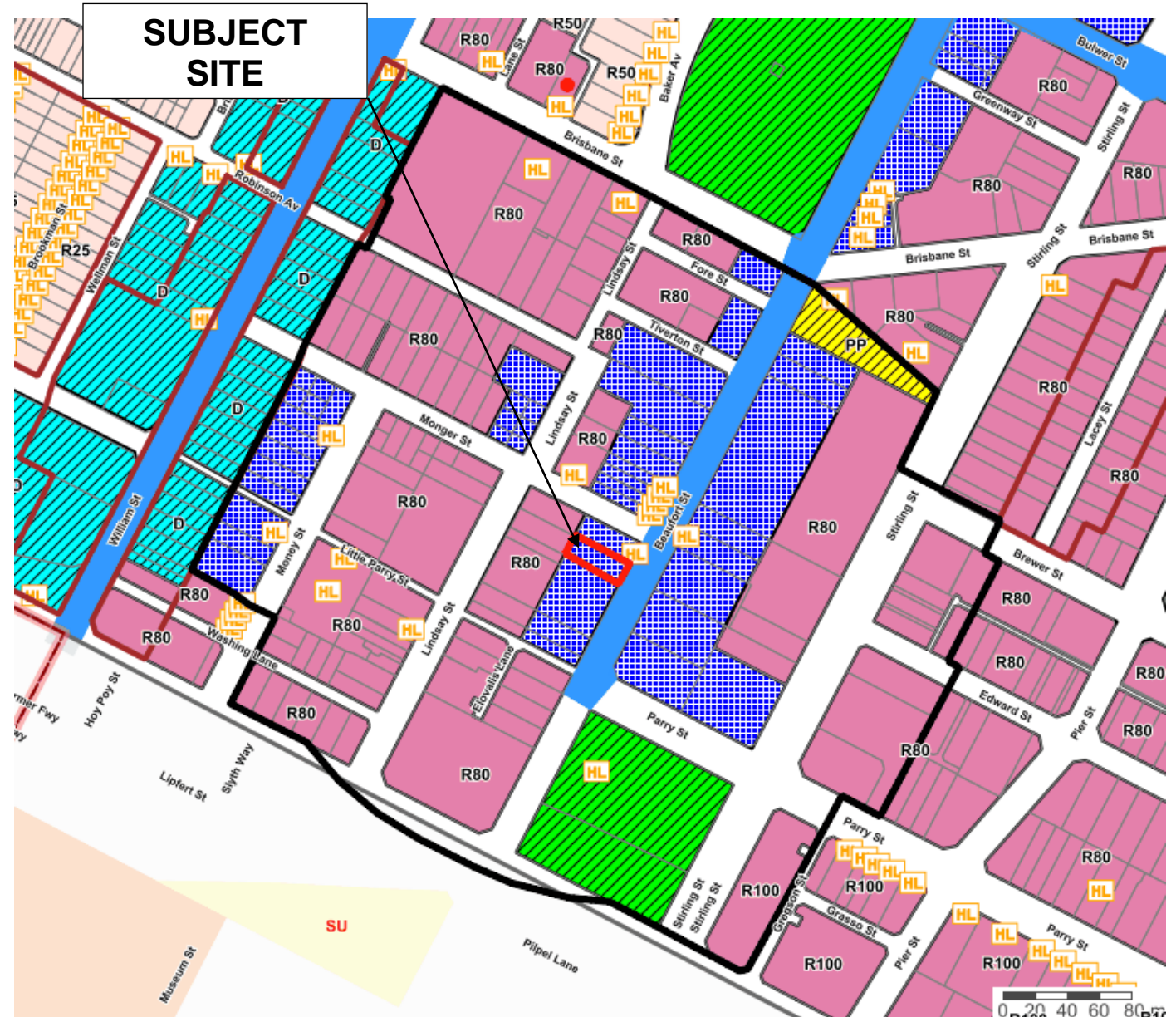
- PUBLIC OPEN SPACE**
- R Restricted
- PUBLIC PURPOSES**  
Particular use denoted as follows:
- PS Primary School
- CP Car Park
- CU Civic Uses
- HS High School
- I Institute for the Deaf
- W Water Supply Sewerage and Drainage
- TS Technical School

**CITY OF VINCENT SCHEME ZONES**

- RESIDENTIAL**
- MIXED USE**
- COMMERCIAL**
- LOCAL CENTRE**
- DISTRICT CENTRE**
- REGIONAL CENTRE**
- SPECIAL USE**  
Particular use denoted as follows:
- CP Car Park
- CU Community Use
- FC Function Centre
- HC Hall and Non Residential Club
- H Hotel
- PW Place of Worship
- S Service Station

**ADDITIONAL INFORMATION & RESIDENTIAL PLANNING CODES**

- CODE AREA BOUNDARY**
- SCHEME AREA BOUNDARY**
- DENSITY CODE**



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Consultation and Location Map

No. 221 Beaufort Street, Perth

Extent of Consultation





**SUBJECT SITE**

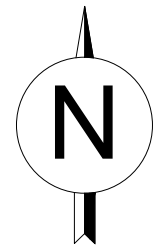


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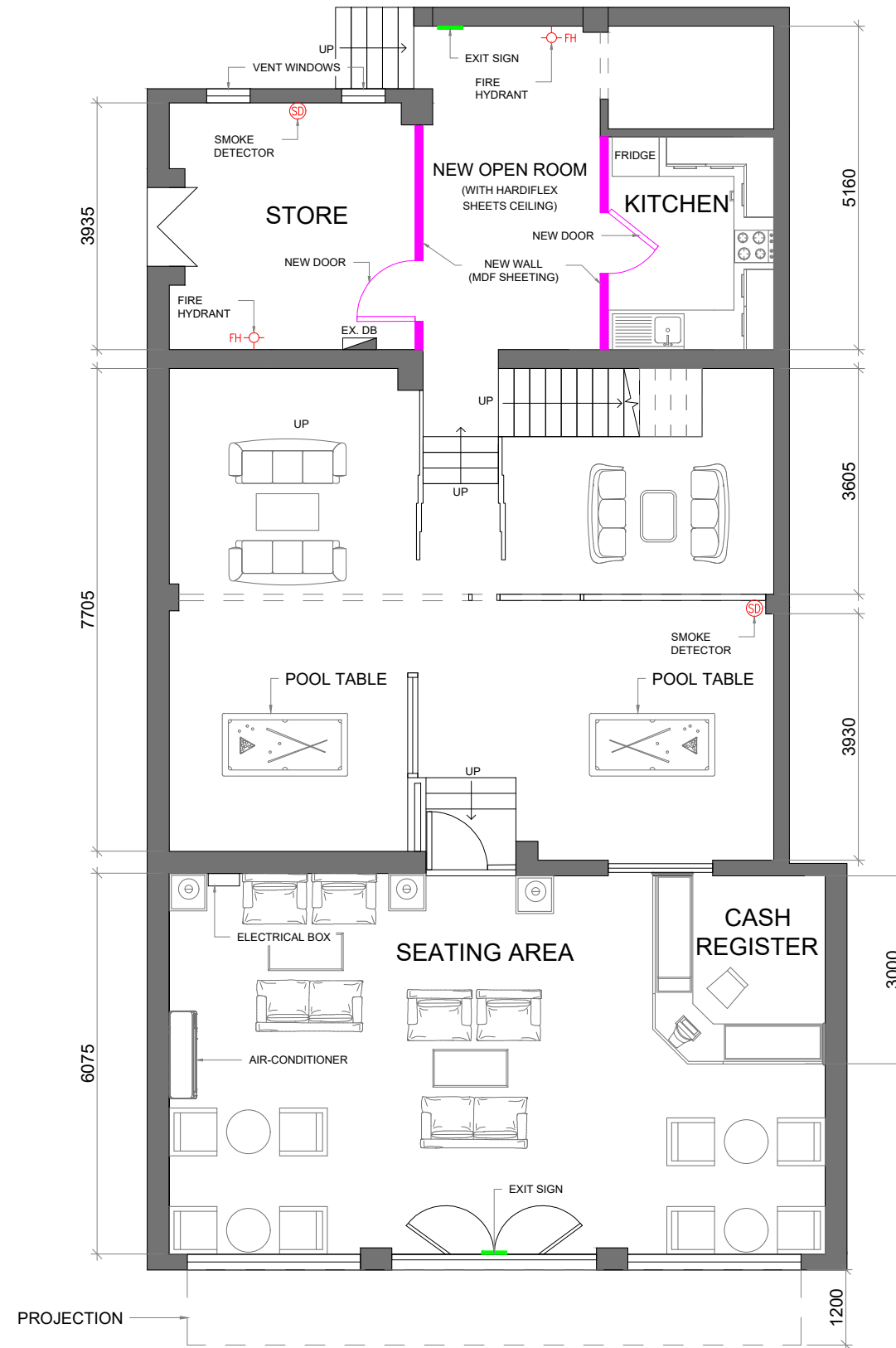
No. 221 Beaufort Street, Perth





**SITE PLAN**  
SCALE 1:200

PROJECT NAME: CAFE FIT-OUT & PATIO ADDITION	JOB NO: 114
PROJECT TITLE:	DRAWN BY : JK
	SCALE: AS SHOWN

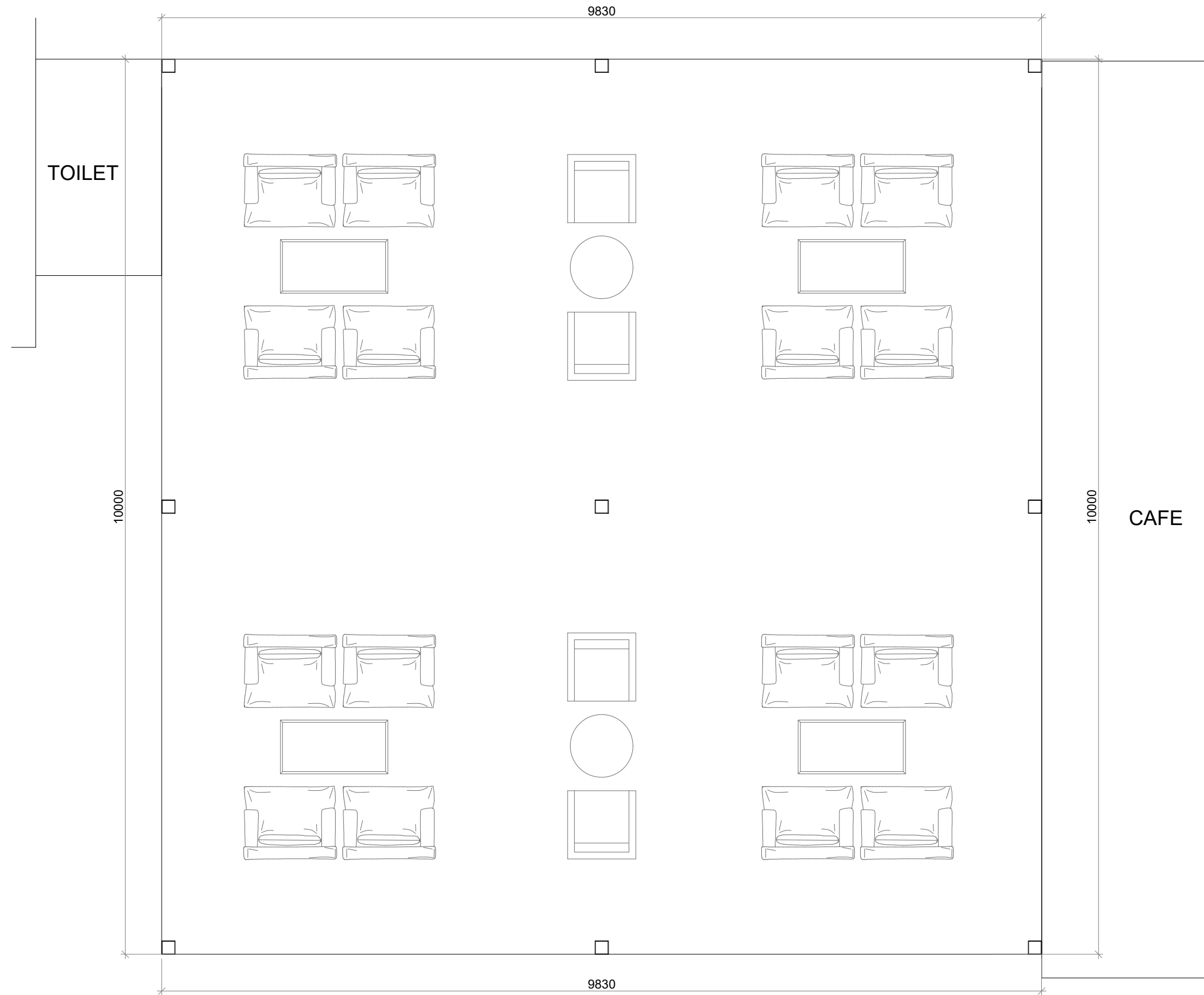


**PROPOSED FLOOR PLAN**

SCALE 1:100

PROJECT NAME: CAFE FIT-OUT & PATIO ADDITION	JOB NO: 114
PROJECT TITLE:	DRAWN BY : JK
	SCALE: AS SHOWN

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### PROPOSED PATIO FLOOR PLAN

SCALE  1:50  
(20 SEATING CHAIRS)

PROJECT NAME:  
CAFE FIT-OUT &  
PATIO ADDITION

JOB NO: 114

PROJECT TITLE:

DRAWN BY : JK

SCALE: AS SHOWN

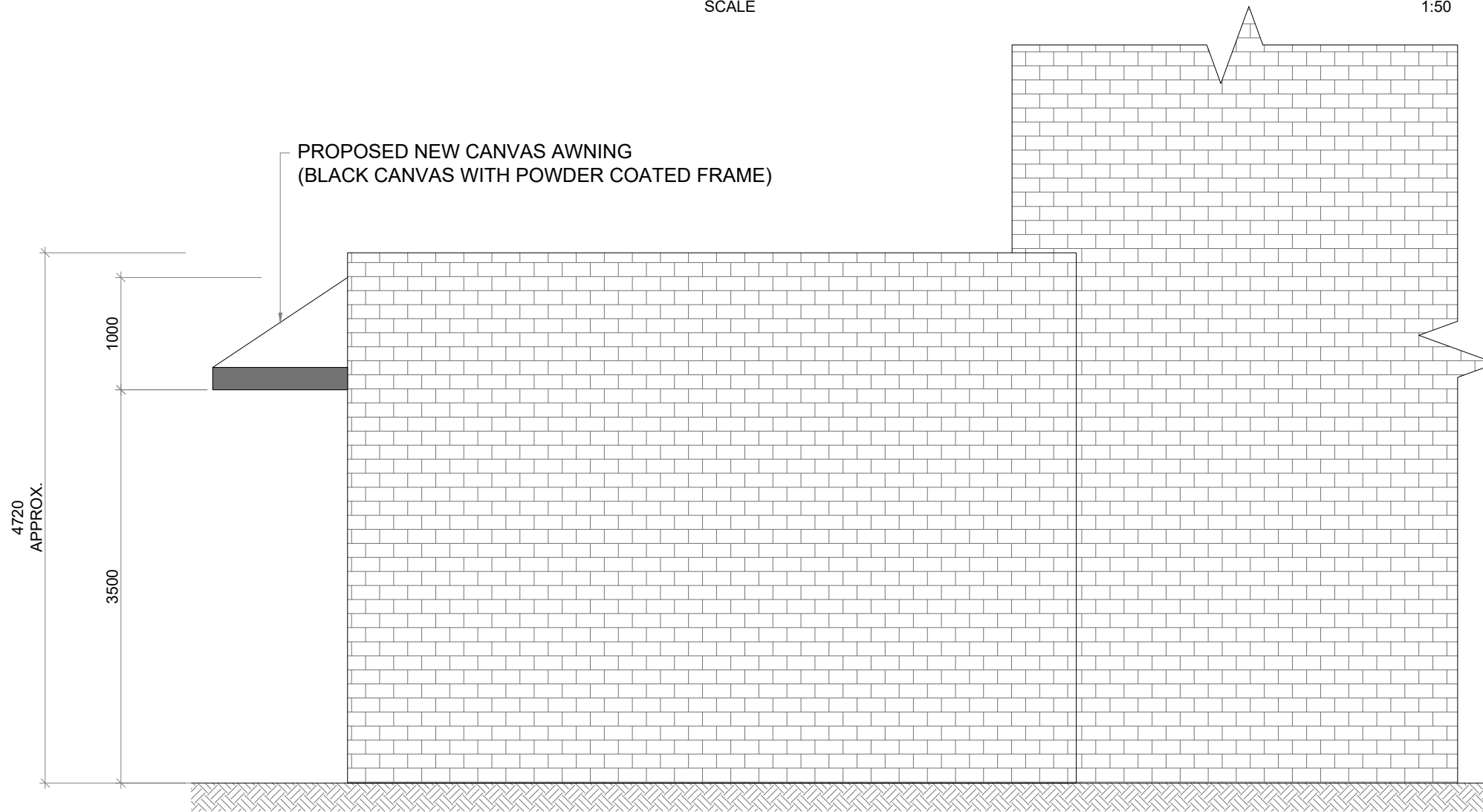
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PROPOSED NEW CANVAS AWNING  
(BLACK CANVAS WITH POWDER COATED FRAME)

FRONT / BEAUFORT STREET ELEVATION

SCALE 1:50



PROPOSED NEW CANVAS AWNING  
(BLACK CANVAS WITH POWDER COATED FRAME)

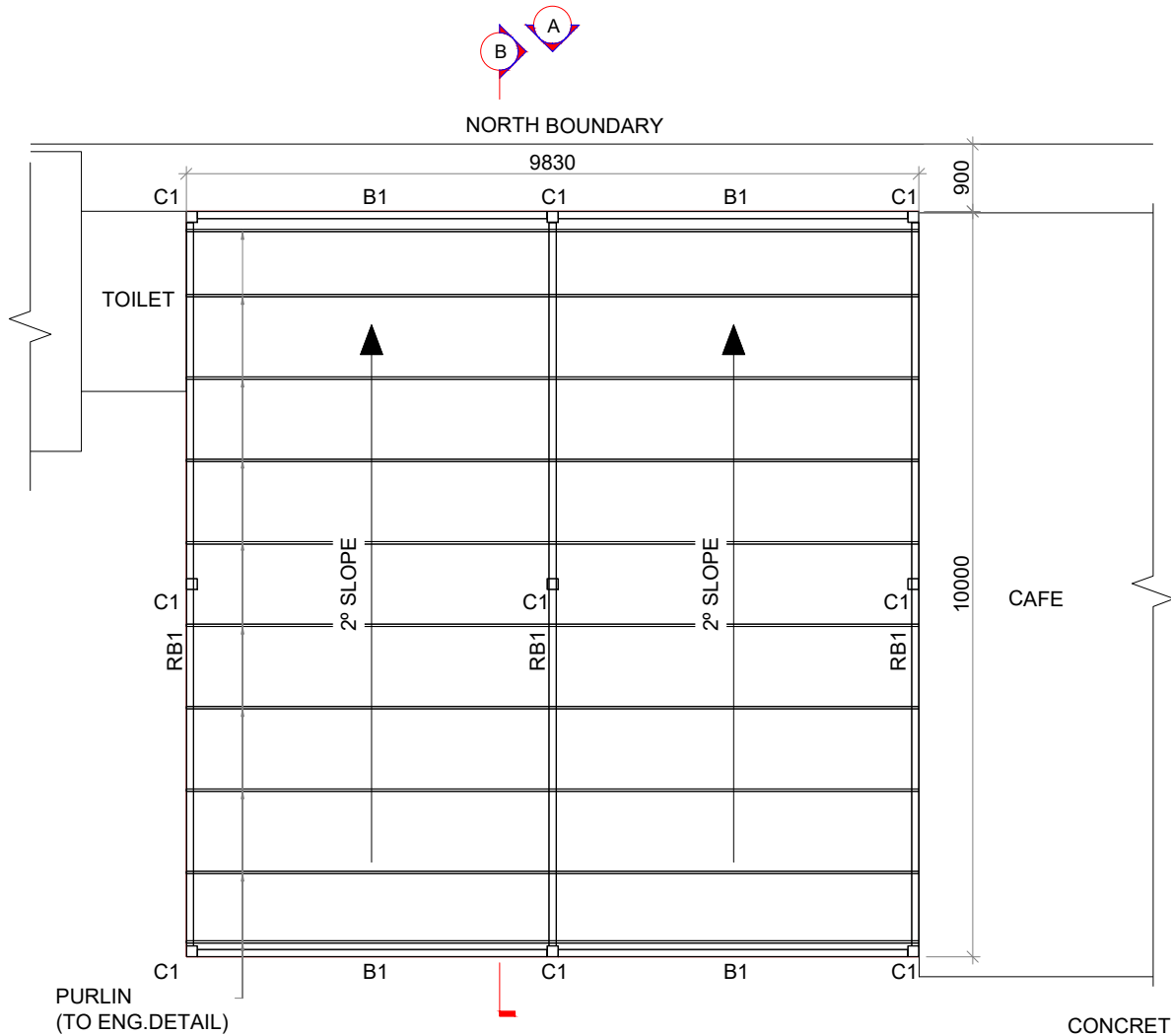
NORTH ELEVATION

SCALE 1:50

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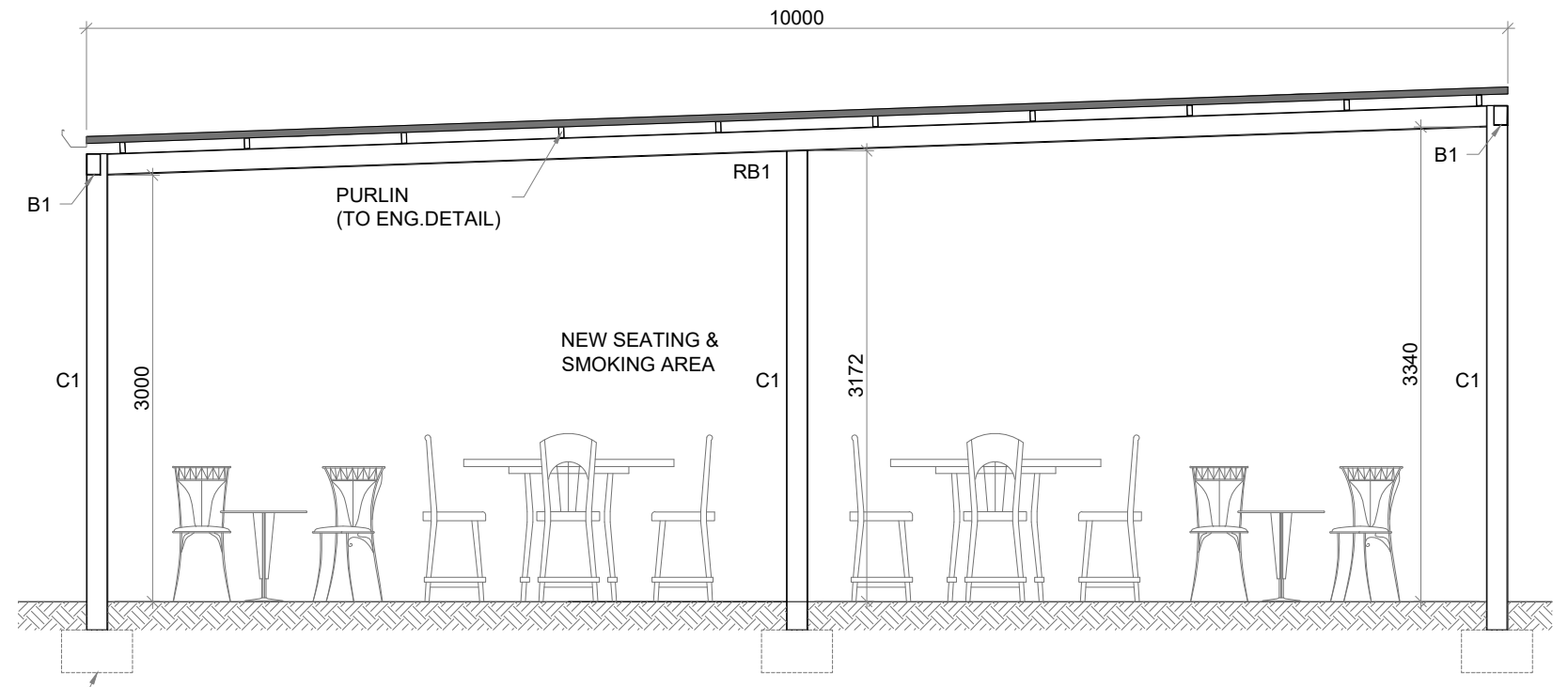


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PROPOSED PATIO ROOF FRAME LAYOUT

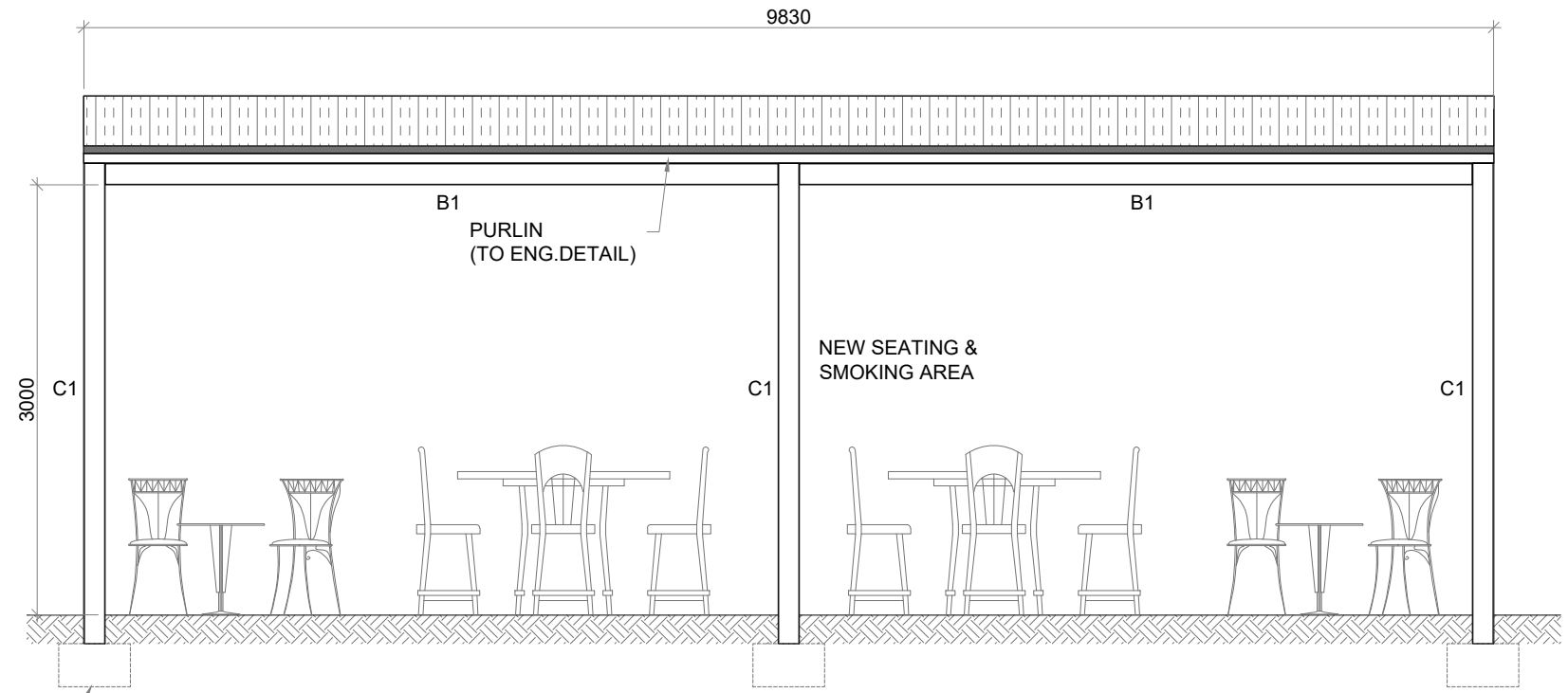
SCALE 1:100



SECTION - B

SCALE 1:50

SCHEDULE OF STRUCTURAL FRAMING	
BEAM/ COLUMN TAG NO	SIZE
C1	TO ENG.DETAIL
B1	
RB1	



ELEVATION - A

SCALE 1:50

PROJECT NAME: CAFE FIT-OUT & PATIO ADDITION	JOB NO: 114
PROJECT TITLE:	DRAWN BY : JK
	SCALE: AS SHOWN



ARTS

Marina

Marina  
Cafe

# Noise Management Plan

Proposed patio area (sitting and smoking area) of the shisha bar at 221 Beaufort Street, Perth WA

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Elite Compliance Pty Ltd


Project No.: ATP220111


Project Name: Proposed patio area of the shisha bar at 221 Beaufort Street, Perth WA

Document No.: ATP220111-R-NMP-03

August 2022

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# Executive Summary

ATP Consulting Engineers (ATP) was engaged by Elite Compliance Pty Ltd to carry out an acoustic assessment for the proposed patio area (sitting and smoking area) at 221 Beaufort Street in Perth.

The proposed patio area has potential to cause noise impacts on the adjoining noise sensitive land uses. This report assesses the potential external noise impact from the proposed patio area on the nearest noise sensitive places in accordance with *Environmental Protection (Noise) Regulations 1997 (EPNR 1997)*.

Issue 2 was previously issued in response to comments from council regarding the location of the proposed noise barrier fence.

This is Issue 3 which has been prepared in response to a requirement by the Government of Western Australia's Department of Health shisha smoking laws that require the walls of the outdoor shisha patio area be minimum 50% open.

Detailed noise propagation modelling was carried out considering the patron noise emissions associated with daytime, evening and night-time operation of the proposed patio area (seating and smoking area), to determine the potential noise impact on the nearest noise sensitive places.

The following noise mitigation measures are recommended to protect the noise amenity at the nearest noise sensitive places:

- An acoustic barrier (noise barrier fence) 2.0m high must be constructed at a minimum setback of 1.2m from the rear of the new patio (seating and smoking area). The alignment of this acoustic barrier is presented in Figure 3.1.
- An additional full-height acoustic barrier must be constructed along the north-east boundary of the new patio area. The wall must cover 75% of the total length of the façade. The barrier must span from the floor to roof with no gaps as per the alignment in Figure 3.1.
- The acoustic barriers must be constructed of a material with minimum superficial mass of 12.5 kg/m<sup>2</sup>, such as concrete blockwork, brick, autoclaved aerated concrete, minimum 9mm thick compressed fibre cement sheeting, minimum 10mm thick toughened glass, minimum 25mm thick overlapping timber palings or approved modular wall system by Modular Walls, Poly-Tek, or equivalent. There shall be no gaps on the surface and at the base of the acoustic barrier and enclosure.
- The alignment of the recommended acoustic barriers at ground level are presented in Figure 3.1.

With the recommended noise mitigation measures in place the results of noise propagation modelling considering day-time, evening and night-time operation of the proposed patio (seating and smoking area) indicate compliance with the noise criteria from the EPNR 1997 at the nearest noise-sensitive receivers.

Compliance is also achieved with the WA Department of Health's law for shisha bar and smoking areas requiring walls to be 50% open in order to provide adequate ventilation.

Provided the recommended noise control measures are fully implemented, there are no further acoustic constraints for the proposed patio area at 221 Beaufort Street in Perth.

# Table of Contents

Acoustics Glossary .....	vi
1. Introduction .....	8
1.1 Study objectives.....	8
1.2 Subject site .....	8
1.3 Proposed Development .....	8
2. Operational Noise Assessment .....	10
2.1 Noise receptors.....	10
2.2 Noise criteria .....	12
2.2.1 Environmental Protection (Noise) Regulations 1997.....	12
2.2.2 Influencing factor .....	13
2.2.3 Noise Criteria Summary.....	13
2.3 Noise propagation modelling .....	14
2.3.1 Modelling methodology.....	14
2.3.2 Noise Sources.....	15
2.4 Operational Noise Calculation Results .....	17
3. Recommendations.....	18
3.1 Noise mitigation measures .....	18
4. References .....	20
5. Appendices .....	21

## Tables

Table 2.1 List of noise-sensitive receptors .....	10
Table 2.2 Assigned noise levels .....	12
Table 2.3 Determination of influencing factor.....	13
Table 2.4 Noise Criteria.....	13
Table 2.5 Noise descriptor conversion factors .....	14
Table 2.6 Data and assumptions – Operational noise model .....	15
Table 2.7 Details of operational noise levels.....	16
Table 2.8 Operational noise levels – Noise-sensitive receivers.....	17

## Figures

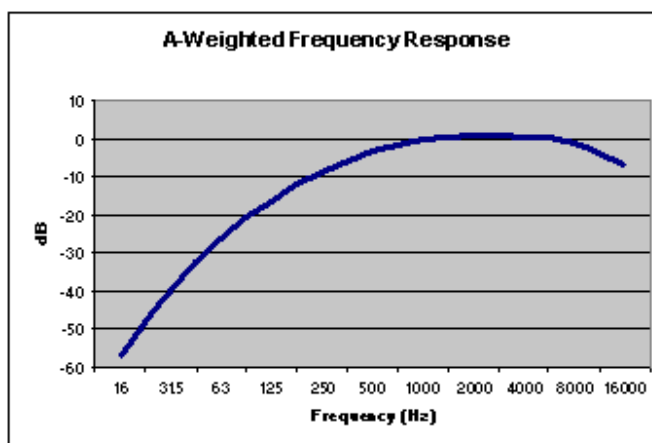
Figure 1.1 Site location .....	9
Figure 2.1 Noise Sensitive Receptors – City of Vincent Zoning Map.....	11
Figure 3.1 Acoustic Barrier Alignment.....	19

## Appendices

Appendix A – Development Layout	
Appendix B – ISO9613 Calculations	
Appendix C – Operational Noise Levels – Tabulated Results	

## Acoustics Glossary

**A-weighting** The A-weighting filter suppresses low frequency sounds and some of the higher frequency sounds to which the human ear is less sensitive. It is a correction to sound pressure levels to mimic the response of the human ear at low sound pressure levels. The A-weighted sound pressure level correlates well with the perceived loudness at low sound levels. The A-weighted sound pressure level is used extensively for general purpose noise measurements.



**Broadband sound** Sound distributed across the whole audible frequency range.

**dB(A)** The A-weighted sound pressure level.

**Fast time-weighting** The Fast ("F") time weighting is defined in AS 1259.1-1990. Instruments set to "F" time weighting use a time constant of 125 milliseconds in their exponential averaging circuit.

**Hz (Hertz)** Hertz is the standard measure of the frequency of oscillations in a wave motion. The frequency is most often measured in cycles per second (cps) or Hertz (Hz). Frequency of 1 Hz is one cycle per second.

**Impulsive noise and impulsiveness adjustment** Noise having a high peak of short duration or a sequence of such peaks. According to the *Environmental Protection (Noise) Regulations 1997*, impulsive noise is present where the difference between  $L_{A\ peak}$  and  $L_{A\ Slow\ max}$  is more than 15dB when determined for a single representative event.

**$L_{Amax,T}$  (Slow)** Maximum sound pressure level with A frequency weighting and Slow time weighting over the measurement time T.

**$L_{Aeq,T}$  (Slow)** "Average-energy" sound pressure level with A frequency weighting and Slow time weighting over the measurement time T. Used in situations where sound varies over time. The  $L_{Aeq,T}$  sound level has the same energy as the fluctuating sound over the time period T sec.

**$L_{A1,T}$  (Slow)** Measure of the maximum sound level.  $L_{A01,T}$  (Slow) is a statistical parameter that is sound pressure level with A frequency weighting and Slow time weighting that is exceeded for 1% of the measurement time T.

**$L_{A10,T}$  (Slow)**  $L_{A10,T}$  (Slow) is a statistical parameter that is the sound pressure level with A frequency weighting and Slow time weighting that is exceeded for 10% of the measurement time T.



<b>L<sub>A90,T</sub> (Slow)</b>	Background sound level. L <sub>A90,T</sub> is a statistical parameter that is the sound pressure level with A frequency weighting and Slow time weighting that is exceeded for 90% of the measurement time T.
<b>Noise</b>	Unwanted sound.
<b>Octave bands and 1/3 octave bands</b>	<p>A range of frequencies whose upper frequency limit is twice that of its lower frequency limit. In acoustics, the audible spectrum (20Hz to 20kHz) is divided into 10 parts (octaves) with centre frequencies of 31.5Hz, 63Hz, 125Hz, 250Hz, 500Hz, 1kHz, 2kHz, 4kHz, 8kHz and 16kHz.</p> <p>For more detailed frequency analysis, octave bands are further divided into more discrete bands. For examples, 1/3 octaves bands are is where each octave band is divided into three parts.</p> <p>IEC 61260:1995, <i>Electroacoustics — Octave-band and fractional-octave band filters</i></p>
<b>Slow time-weighting</b>	<p>The Slow (“S”) time weighting is defined in AS 1259.1-1990. Instruments set to “S” time weighting use a time constant of 1000 milliseconds in their exponential averaging circuit.</p> <p>Sound levels must be measured with Slow time weighting as per the <i>Environmental Protection (Noise) Regulations 1997</i>.</p>
<b>Sound power</b>	The sound energy radiated per unit time by a sound source in all directions, measured in Watts (W).
<b>Sound Power Level, L<sub>w</sub> (SWL)</b>	The sound power level in decibels (dB) is 10 times the base 10 logarithm of the ratio of the sound power in W to the reference sound power of 1 x 10 <sup>-12</sup> W (hearing threshold).
<b>Sound pressure</b>	The difference between the pressure caused by a sound wave and the ambient pressure of the medium the sound wave is passing through. Measured in Pascals (Pa).
<b>Sound Pressure Level, L<sub>p</sub> (SPL)</b>	The sound power level in decibels (dB) is 20 times the base 10 logarithm of the ratio of the sound pressure in Pa to the reference sound pressure of 2 x 10 <sup>-5</sup> Pa (hearing threshold).
<b>Tonal noise, tonality and tonality adjustment</b>	Tonal noise is characterised by one or more distinct frequency components (“tones”) that emerge audibly from the total sound. Tonal noise is generally far more annoying than non-tonal noise. Presence of tonal sound (“tonality”) can be identified by analysing the sound levels in adjacent 1/3 octave bands. According to the <i>Environmental Protection (Noise) Regulations 1997</i> , tonality is present if the A-weighted sound pressure level in any 1/3 octave band exceeds the arithmetic average of the A-weighted sound pressure levels in the two adjacent 1/3 octave bands by greater than 3dB when the sound pressure levels are determined as L <sub>Aeq,T</sub> levels where the time period T is greater than 10% of the representative assessment period, or greater than 8dB at any time when the sound pressure levels are determined as L <sub>A Slow</sub> levels.
<b>Weighted Sound Reduction Index (R<sub>w</sub>)</b>	A single-number quantity which characterises the airborne sound insulation of a material or building element over a range of frequencies.

## 1. Introduction

ATP Consulting Engineers (ATP) was engaged by Elite Compliance Pty Ltd to carry out an acoustic assessment for the proposed patio area (sitting and smoking area) at 221 Beaufort Street in Perth.

The proposed patio area has potential to cause noise impacts on the adjoining noise sensitive land uses. This report assesses the potential external noise impact from the proposed patio area on the nearest noise sensitive places in accordance with *Environmental Protection (Noise) Regulations 1997 (EPNR 1997)*.

Issue 2 was previously issued in response to comments from council regarding the location of the proposed noise barrier fence.

This is Issue 3 which has been prepared in response to a request by council to meet the requirement of the Government of Western Australia's Department of Health shisha smoking laws that require the walls of the outdoor shisha patio area be minimum 50% open.

### 1.1 Study objectives

Study objectives are as follows:

- Determine the Assigned Noise Levels at the nearest noise-sensitive receptors in accordance with EPNR 1997.
- Noise propagation modelling, considering noise emissions associated specifically with the operation of the patio area, to determine the potential noise impact on the nearest noise receptors.
- Assessment of the external noise levels at the facades of the nearest buildings against the noise criteria for noise-sensitive receptors from EPNR 1997.

### 1.2 Subject site

The subject site is located at Lot 301 on D/P: 302352, 221 Beaufort Street in Perth within the City of Vincent local government area.

An existing café sits on the boundary facing Beaufort Street whilst an existing store-room sits in the north-west corner of the allotment.

### 1.3 Proposed Development

The proposed patio area is to comprise of outdoor seating for the Shisha Bar and have a capacity of up to twenty (20) people at one time.

The subject site is presented in Figure 1.1 overlaid a snip of the City of Vincent Intramap.



**Figure 1.1 Site location**

The proposed hours of operation are 4:00pm to 1:00am Monday to Friday and 12:00pm to 1:00am Saturday and Sunday.

The plans of the proposed patio area are presented in Appendix A.

## 2. Operational Noise Assessment

### 2.1 Noise receptors

The *Environmental Protection (Noise) Regulations 1997* (EPNR 1997) specifies Assigned Noise Levels which must be met at different types of receptors. The Assigned Noise Levels at “noise sensitive premises” are the lowest, with higher levels permitted at commercial and industrial premises.

“Noise sensitive premises” is defined in Schedule 1 Part C of the Noise Regulations and includes premises used for residential or accommodation purposes, rural premises, education facilities, childcare centres and other uses.

The area where the proposed patio is located is zoned as “Commercial” with the surrounding receptors being primarily residential and commercial.

The noise-sensitive receptors considered in this assessment, are listed in Table 2.1.

**Table 2.1 List of noise-sensitive receptors**

Noise receptor	Lot and Plan	Type of premises
225-227 Beaufort Street	Lot 134 on D/P: 613	Residential (Lodgings)
5 Monger Street	Lot 2 on STR: 72355	Residential (House)
46 Lindsay Street	Lot 136 on D/P: 594	Vacant Lot
44 Lindsay Street	Lot 137 on D/P: 594	Residential (House)
211 Beaufort Street	Lot 1 on STR: 63180	Residential (Apartments)
214-222 Beaufort Street	Lot 800 on D/P: 301679	Mixed Use (Residential and Commercial)
226 Beaufort Street	Lot 1 on STR: 59828	Residential (Apartment Houses)

The nearest noise receptors in the area are primarily residential in direct vicinity of the proposed patio area.

The nearest receptors are identified in Figure 2.1, overlaid on the Intramap from the City of Vincent.

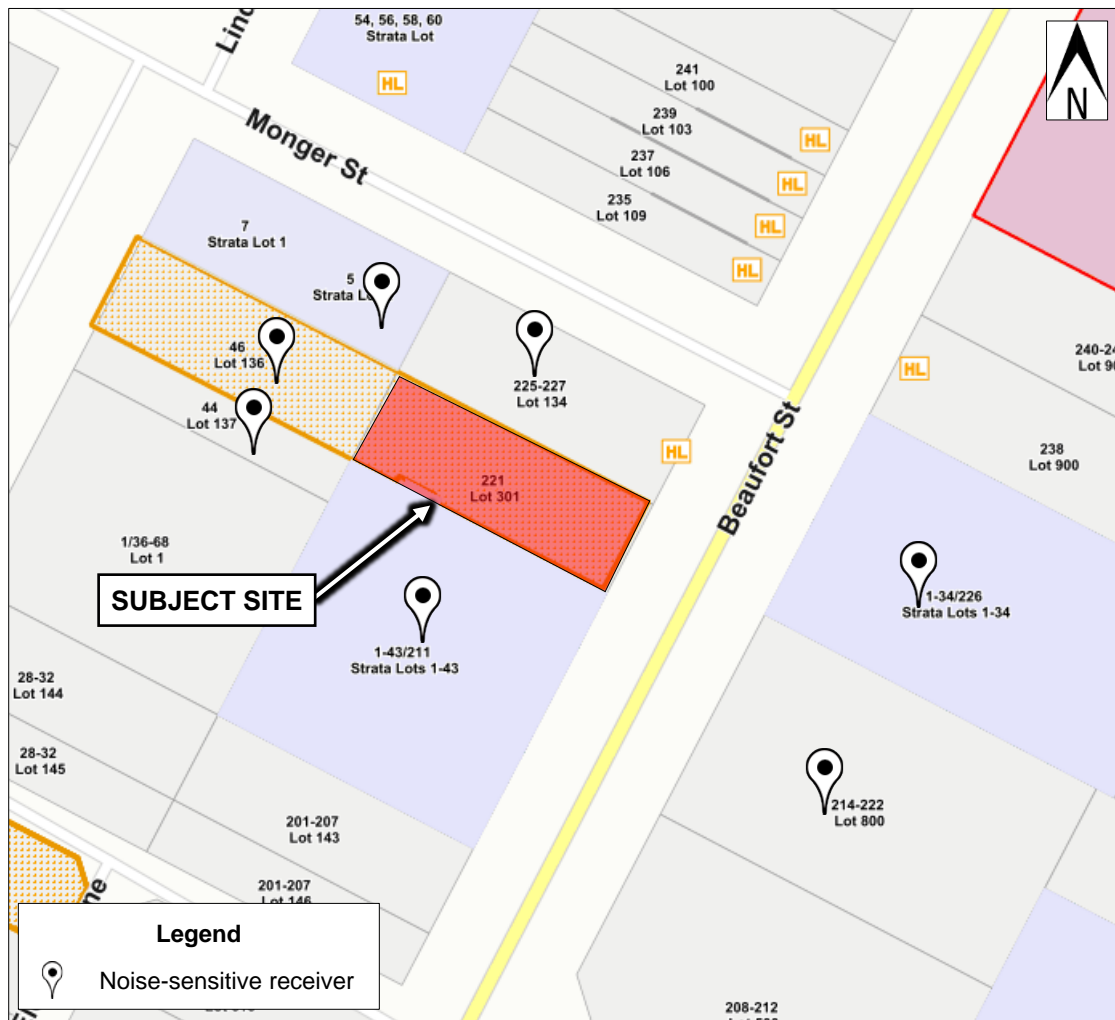


Figure 2.1 Noise Sensitive Receptors – City of Vincent Zoning Map

## 2.2 Noise criteria

### 2.2.1 Environmental Protection (Noise) Regulations 1997

The environmental noise criteria were determined with consideration of Table 1 (Assigned Noise Levels) from the EPNR 1997. The assigned noise levels take into consideration the type of land use around the site and the existing environmental noise sources.

The assigned noise levels are presented in Table 2.2.

**Table 2.2 Assigned noise levels**

Type of premises receiving noise	Time of day	Assigned level, dB		
		LA10	LA01	L <sub>Amax</sub>
Noise sensitive premises: highly sensitive area	Day 0700 hours to 1900 hours Monday to Saturday	45 + influencing factor	55 + influencing factor	65 + influencing factor
	Day 0900 hours to 1900 hours Sunday and public holidays	40 + influencing factor	50 + influencing factor	65 + influencing factor
	Evening 1900 hours to 2200 hours All days	40 + influencing factor	50 + influencing factor	55 + influencing factor
	Night 2200 hours on any day to 0700 hours Monday to Saturday and 0900 hours Sunday and Public holidays	35 + influencing factor	45 + influencing factor	55 + influencing factor
Noise sensitive premises: any area other than highly sensitive area	All hours	60	75	80
Commercial premises	All hours	60	75	80
Industrial and utility premises other than those in the Kwinana Industrial Area	All hours	65	80	90

The types of premises relevant to this assessment are the noise sensitive premises. The hours of operation cover all four time periods for this type of premises.

## 2.2.2 Influencing factor

The Influencing factor for the nearest noise sensitive premises was calculated in accordance with Schedule 3 of EPNR 1997. The various factors considered in determination of the influencing factor for the key noise sensitive receptors are presented in Table 2.3.

**Table 2.3 Determination of influencing factor**

Noise sensitive premises	Inner Circle – 100m		Outer Circle – 450m		Transport factor, dB	Influencing factor, dB
	% Area Type A	% Area Type B	% Area Type A	% Area Type B		
5 Monger Street	0	0.64	0	22.8	6	7
44 Lindsay Street	0	4.77	0	25.2	6	7
211 Beaufort Street	0	11.6	0	28.8	6	8
214-222 Beaufort Street	0	2.23	0	25.0	6	7
226 Beaufort Street	0	0	0	22.2	6	7
225-227 Beaufort Street	0	11.6	0	27.7	6	8

## 2.2.3 Noise Criteria Summary

As the proposed operating hours of the patio outdoor smoking area are to be 4pm to 1am Monday to Friday and 12pm to 1am Saturday and Sunday, if the strictest criteria for residential receptors (night-time) is met at all nearby noise-sensitive receivers, then all relevant evening and day-time criteria are also met. Therefore, the night-time criteria is critical for this assessment.

The finalised noise criteria that must be met at each noise-sensitive receiver in the vicinity of the proposed patio (sitting and smoking area) is presented in Table 2.4.

**Table 2.4 Noise Criteria**

Noise sensitive premises	Time of Day	Assigned level, dB(A)		
		LA10	LA01	L <sub>Amax</sub>
5 Monger Street	Night, 2200 hours on any day to 0700 hours Monday to Saturday and 0900 hours Sunday and Public holidays	42 (35 + 7)	52 (45 + 7)	62 (55 + 7)
44 Lindsay Street		42 (35 + 7)	52 (45 + 7)	62 (55 + 7)
211 Beaufort Street		43 (35 + 8)	53 (45 + 8)	63 (55 + 8)
226 Beaufort Street		42 (35 + 7)	52 (45 + 7)	62 (55 + 7)
225-227 Beaufort Street		43 (35 + 8)	53 (45 + 8)	63 (55 + 8)
214-222 Beaufort Street		42 (35 + 7)	52 (45 + 7)	62 (55 + 7)

## 2.3 Noise propagation modelling

### 2.3.1 Modelling methodology

A 3D model of the site and surroundings was developed using SoundPLAN noise propagation software considering the proposed development plans of the proposed Service station.

The calculations were carried out as per the procedures specified in the International Standard ISO9613 (*Acoustics – Attenuation of sound during propagation outdoors*).

The calculation method for a single frequency is as follows:

$$L_S = [ L_W + K_I + K_T + K_0 ] - [ A_{div} + A_{gr} + A_{bar} + A_{atm} + A_{misc} + A_{DI} + d_{Lrefl} + d_{Lw} ]$$

Where:	<b>L<sub>S</sub></b>	Sound pressure for a single frequency
	<b>L<sub>W</sub></b>	Sound power of source
	<b>K<sub>I</sub></b>	Correction for source impulsiveness
	<b>K<sub>T</sub></b>	Correction for source tonality
	<b>K<sub>0</sub></b>	Correction for propagation in limited spacial angle
	<b>A<sub>div</sub></b>	Mean attenuation due to geometrical spreading
	<b>A<sub>gr</sub></b>	Mean attenuation due to ground effect
	<b>A<sub>bar</sub></b>	Mean attenuation due to screening
	<b>A<sub>atm</sub></b>	Mean attenuation due to air absorption
	<b>A<sub>misc</sub></b>	Mean attenuation due to foliage, industrial areas and building areas
	<b>A<sub>DI</sub></b>	Mean directivity correction
	<b>d<sub>Lrefl</sub></b>	Level increase due to reflections
	<b>d<sub>Lw</sub></b>	Correction due to source operation time

The noise propagation losses are calculated as a combination of distance attenuation (geometrical spreading), screening, ground attenuation and other factors.

The results of noise modelling as per ISO9613 are in terms of L<sub>Aeq</sub>. The study *Prediction of Noise from Small to Medium Sized Crowds (2011)* was used to acquire conversion factors to apply to L<sub>Aeq</sub> to obtain results in terms of the assessment criteria L<sub>A10</sub>, L<sub>A01</sub> and L<sub>ASmax</sub> used in EPNR 1997.

The conversion factors used in this assessment are presented in Table 2.5.

**Table 2.5 Noise descriptor conversion factors**

Type of noise	Conversion factors		
	L <sub>Aeq</sub> to L <sub>A10</sub>	L <sub>Aeq</sub> to L <sub>A01</sub>	L <sub>Aeq</sub> to L <sub>ASmax</sub>
Patron Noise	L <sub>10</sub> = L <sub>eq</sub> + 3 dB	L <sub>01</sub> = L <sub>eq</sub> + 8 dB	L <sub>max</sub> = L <sub>eq</sub> + 12 dB



The parameters and assumptions considered in the 3D noise propagation model are described in Table 2.6.

**Table 2.6 Data and assumptions – Operational noise model**

<b>Terrain</b>	<ul style="list-style-type: none"> <li>Natural surface levels were sourced from Geoscience Australia – Digital Elevation Model (DEM) of Australia derived from LiDAR 5 Metre Grid.</li> </ul>
<b>Buildings</b>	<ul style="list-style-type: none"> <li>The proposed cafe building and outdoor patio area was included in the model along with neighbouring buildings.</li> <li>The development layout is presented in Appendix A.</li> </ul>
<b>Noise sources</b>	<ul style="list-style-type: none"> <li>Refer to Section 2.3.2 of this report for the sound power levels considered in the SoundPLAN model.</li> </ul>
<b>Receivers</b>	<ul style="list-style-type: none"> <li>Receivers were attached to the facades of the nearest buildings at a height of 1.5m above each floor level.</li> <li>SoundPLAN adds +2.5dB(A) to the calculated noise levels when the receivers are attached to the buildings, thus the tabulated traffic noise levels are façade adjusted.</li> <li>5m grid spacing was used for calculation of noise contour maps.</li> </ul>
<b>Noise mitigation measures</b>	<ul style="list-style-type: none"> <li>The recommended noise control measures are discussed in Section 3 of this report.</li> </ul>
<b>Distance attenuation</b>	<ul style="list-style-type: none"> <li>3D model of the subject site and surroundings was developed using cadastral and survey data using SoundPLAN software. The source-receiver distances and geometrical spreading are automatically calculated in SoundPLAN to a high level of accuracy in accordance with the ISO9613 procedure.</li> <li>Separation distances and distance attenuation values are presented in Appendix B.</li> </ul>
<b>Barrier attenuation / screening</b>	<ul style="list-style-type: none"> <li>Screening by topography and buildings has been considered in the model. The screening has been calculated in SoundPLAN in accordance with the ISO9613 procedure.</li> <li>Barrier Attenuation / screening values are presented in Appendix B.</li> </ul>
<b>Ground attenuation</b>	<ul style="list-style-type: none"> <li>Sound reflecting surfaces such as pavement are modelled with ground absorption coefficient of 0 (no absorption). Grassed and vegetated areas are modelled with ground absorption coefficient of 1 (100% absorption) in accordance with ISO9613.</li> <li>Ground attenuation values are presented in Appendix B.</li> </ul>

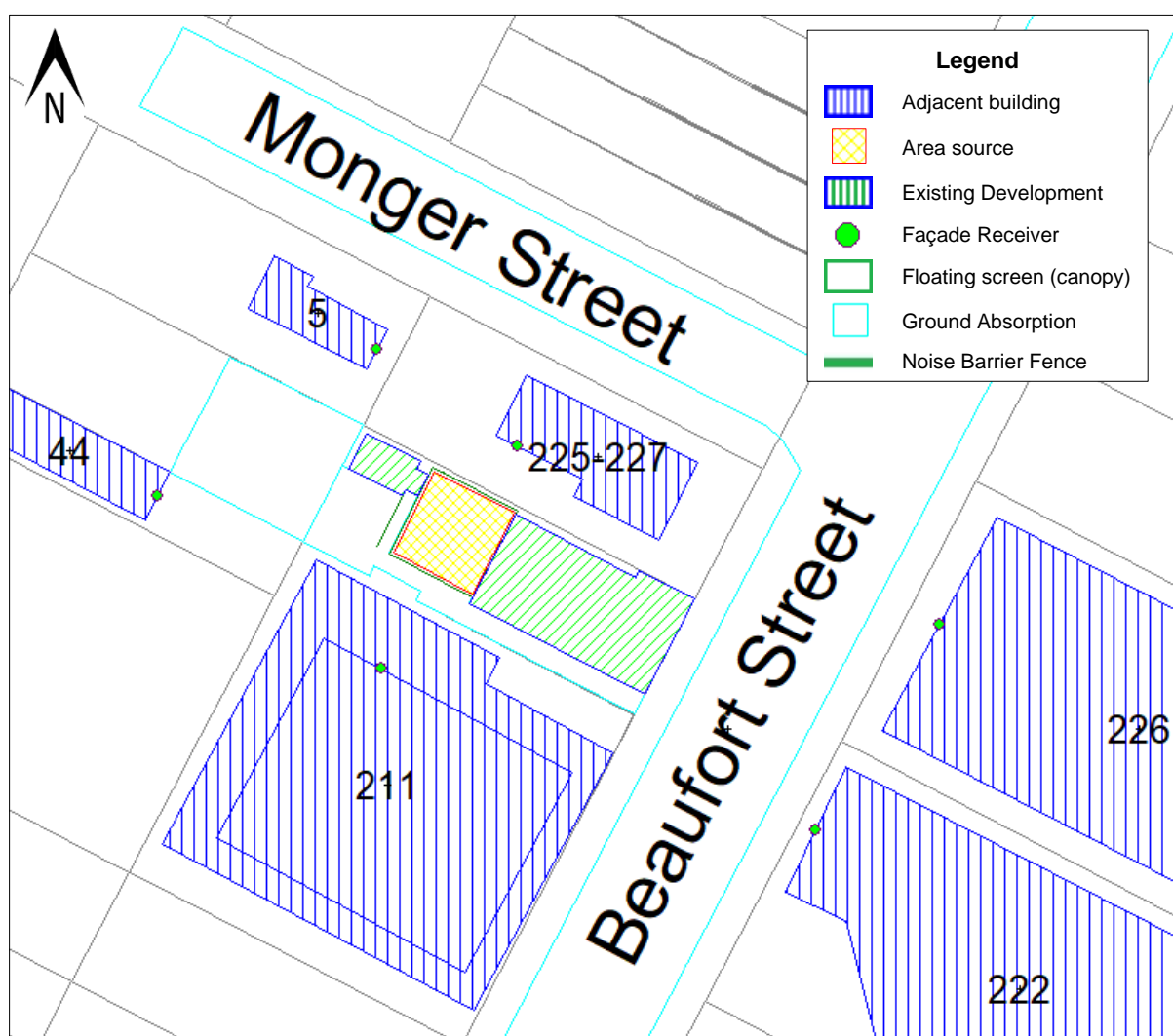
### 2.3.2 Noise Sources

The sound power levels, tonality/impulsiveness adjustment factors for the proposed service station and adjacent tenancy in the model are presented in Table 2.7.

**Table 2.7 Details of operational noise levels**

Operational noise source	Location	Sound power level dB(A) (re 10 <sup>-12</sup> W)	Operational scenario	Tonality/impulsiveness
Patron Noise	Outdoor patio area	Patron Noise, crowd of 20 people – Sound power of 82dB(A) <sup>1</sup>	Day time (12pm to 6pm): Continuous use  Evening (6pm to 10pm): Continuous use  Night (10pm to 1am): Continuous use	n/a

Extracts from the 3D noise propagation model developed in SoundPLAN is presented in Figure 2.2.



**Figure 2.2 SoundPLAN Model extract – Birds Eye view**

<sup>1</sup> Based on the methodology of the Prediction of Noise from Small to Medium Sized Crowds (2011) study to calculate patron noise emissions. (School of Mechanical and Mining Engineering, The University of Queensland, Brisbane, Australia 4072, *Prediction of Noise from Small to Medium Sized Crowds*).

## 2.4 Operational Noise Calculation Results

The highest calculated noise levels at the most exposed façades of the nearest noise sensitive receivers were compared against the Assigned Noise Levels. The results of the assessment are presented in Table 2.8.

**Table 2.8 Operational noise levels – Noise-sensitive receivers**

Noise receptor	Floor	Façade	Calculated noise levels, dB(A)									Compliance with noise criteria
			Day			Evening			Night			
			LA10,adj,T	LA01,adj,T	LASMax	LA10,adj,T	LA01,adj,T	LASMax	LA10,adj,T	LA01,adj,T	LASMax	
5 Monger Street	F1	SE	42	47	51	42	47	51	42	47	51	Yes
44 Lindsay Street	GF	SE	42	47	51	42	47	51	42	47	51	Yes
211 Beaufort Street	F3	NE	40	45	49	40	45	49	40	45	49	Yes
214-222 Beaufort Street	GF	NW	26	31	35	26	31	35	26	31	35	Yes
225-227 Beaufort Street	F1	SW	43	48	52	43	48	52	43	48	52	Yes
226 Beaufort Street	F2	NW	29	34	38	29	34	38	29	34	38	Yes

The full calculation results at all noise receptors are presented in Appendix C.

### 3. Recommendations

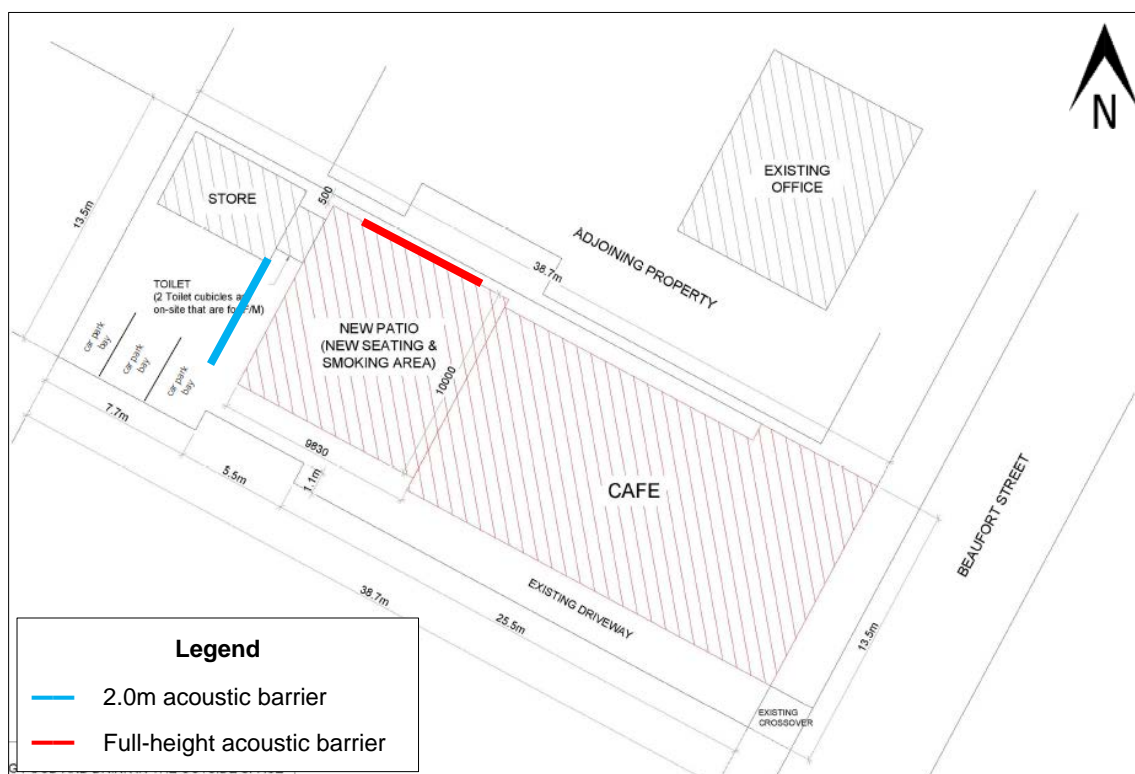
#### 3.1 Noise mitigation measures

Detailed noise propagation modelling was carried out considering the patron noise emissions associated with daytime, evening and night-time operation of the proposed patio area (seating and smoking area), to determine the potential noise impact on the nearest noise sensitive places.

The noise levels were assessed against the relevant noise criteria from the *Environmental Protection (Noise) Regulation 1997* at the nearest noise sensitive places.

The following noise mitigation measures are recommended to protect the noise amenity at the nearest noise sensitive places:

- An acoustic barrier (noise barrier fence) 2.0m high must be constructed at a minimum setback of 1.2m from the rear of the new patio (seating and smoking area). The alignment of this acoustic barrier is presented in Figure 3.1.
- An additional full-height acoustic barrier must be constructed along the north-east boundary of the new patio area. The wall must cover 75% of the total length of the façade. The barrier must span from the floor to roof with no gaps as per the alignment in Figure 3.1.
- The acoustic barriers must be constructed of a material with minimum superficial mass of 12.5 kg/m<sup>2</sup>, such as concrete blockwork, brick, autoclaved aerated concrete, minimum 9mm thick compressed fibre cement sheeting, minimum 10mm thick toughened glass, minimum 25mm thick overlapping timber palings or approved modular wall system by Modular Walls, Poly-Tek, or equivalent. There shall be no gaps on the surface and at the base of the acoustic barrier and enclosure.
- The alignment of the recommended acoustic barriers at ground level are presented in Figure 3.1.



**Figure 3.1 Acoustic Barrier Alignment**

With the recommended noise mitigation measures in place the results of noise propagation modelling considering day-time, evening and night-time operation of the proposed patio (seating and smoking area) indicate compliance with the noise criteria from the EPNR 1997 at the nearest noise-sensitive receivers.

Compliance is also achieved with the WA Department of Health’s law for shisha bar and smoking areas requiring walls to be 50% open in order to provide adequate ventilation.

Provided the recommended noise control measures are fully implemented, there are no further acoustic constraints for the proposed patio area at 221 Beaufort Street in Perth.

## 4. References

- *City of Vincent Local Planning Scheme No. 2*
- *Environmental Protection (Noise) Regulations 1997.*
- *Prediction of Noise from Small to Medium Sized Crowds, 2011.*

## 5. Appendices

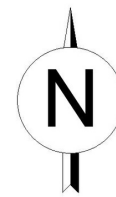
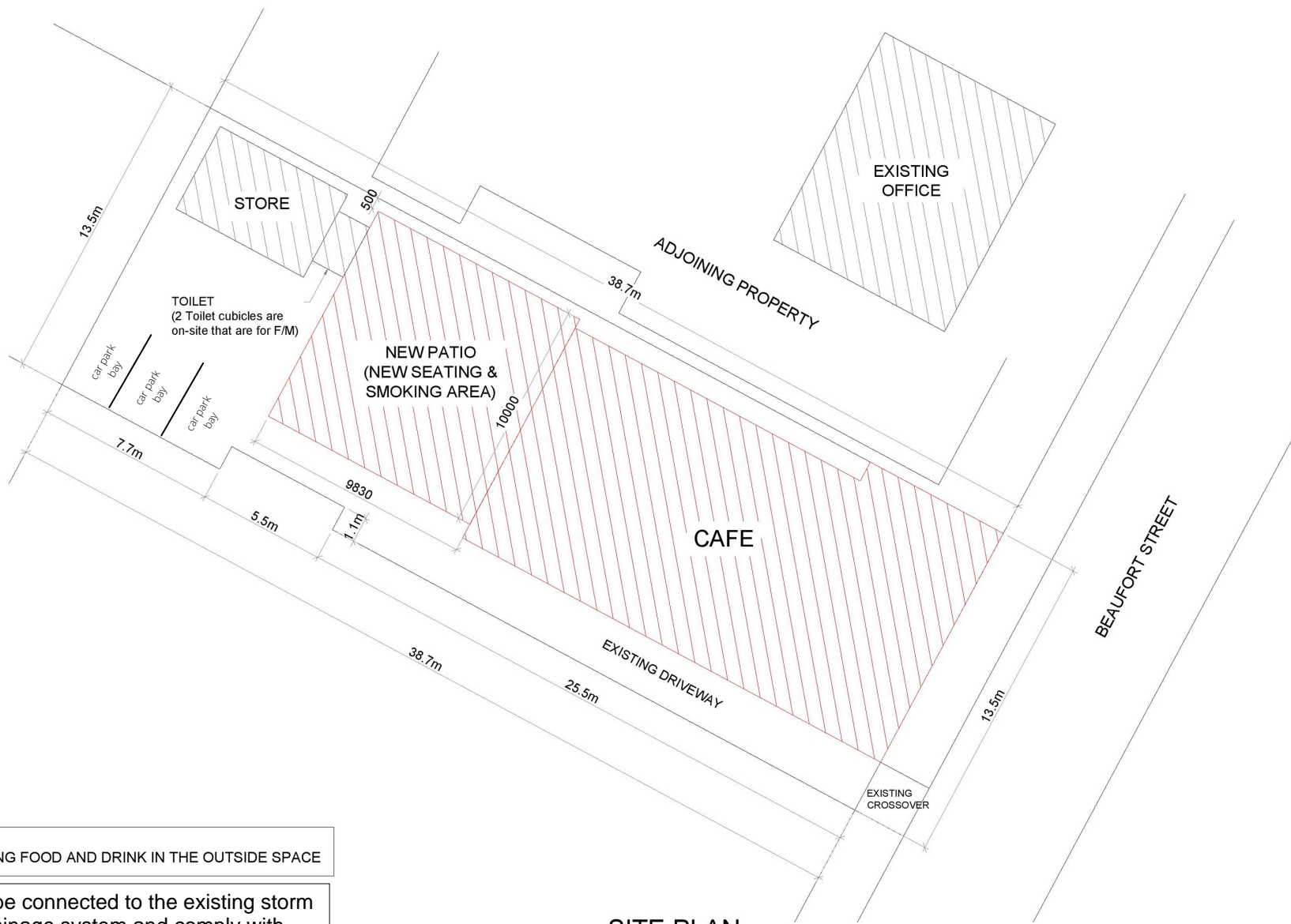
Appendix A – Development Layout

Appendix B – ISO9613 Calculations

Appendix C – Operational Noise Levels – Tabulated Results

## Appendix A – Development Layout





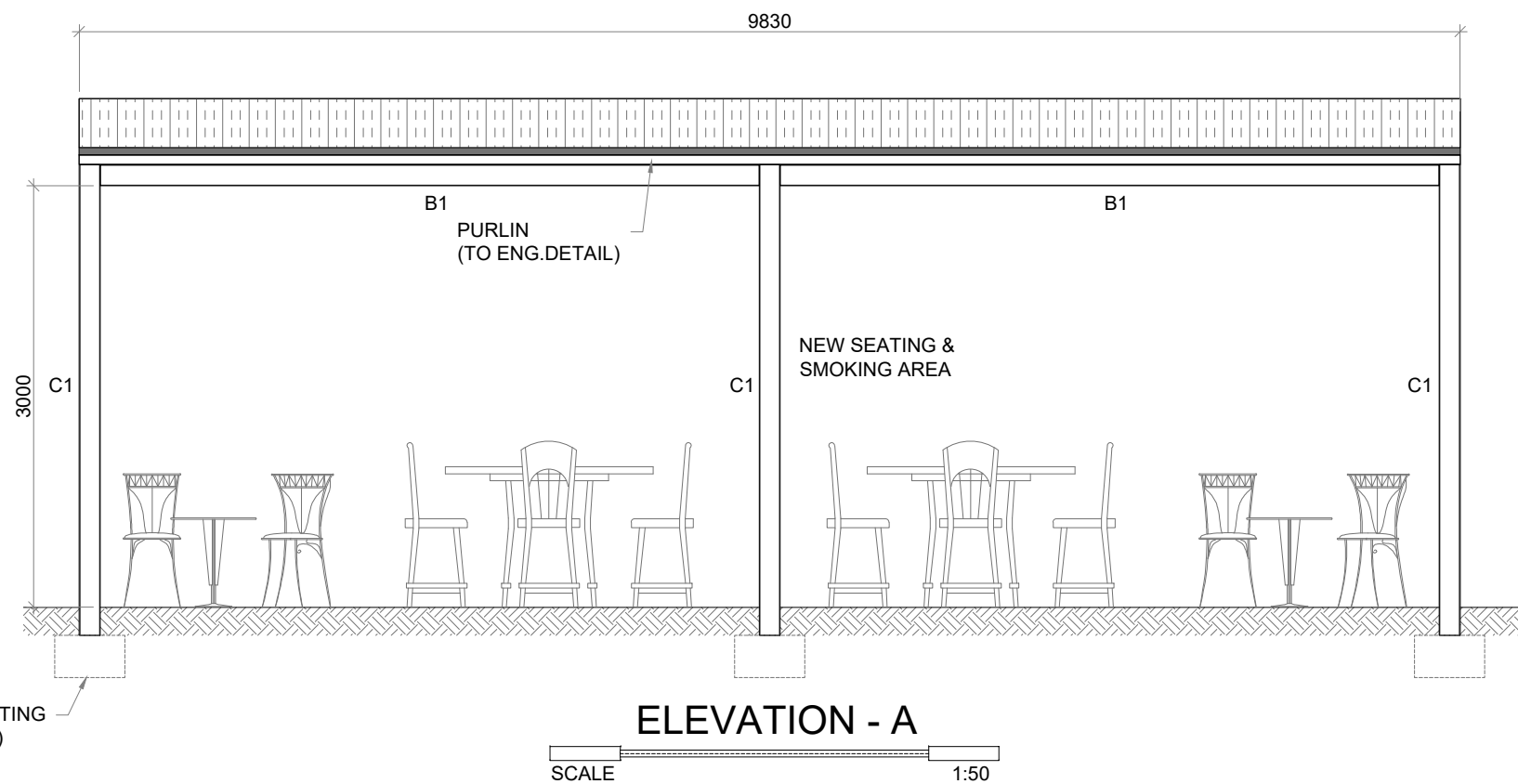
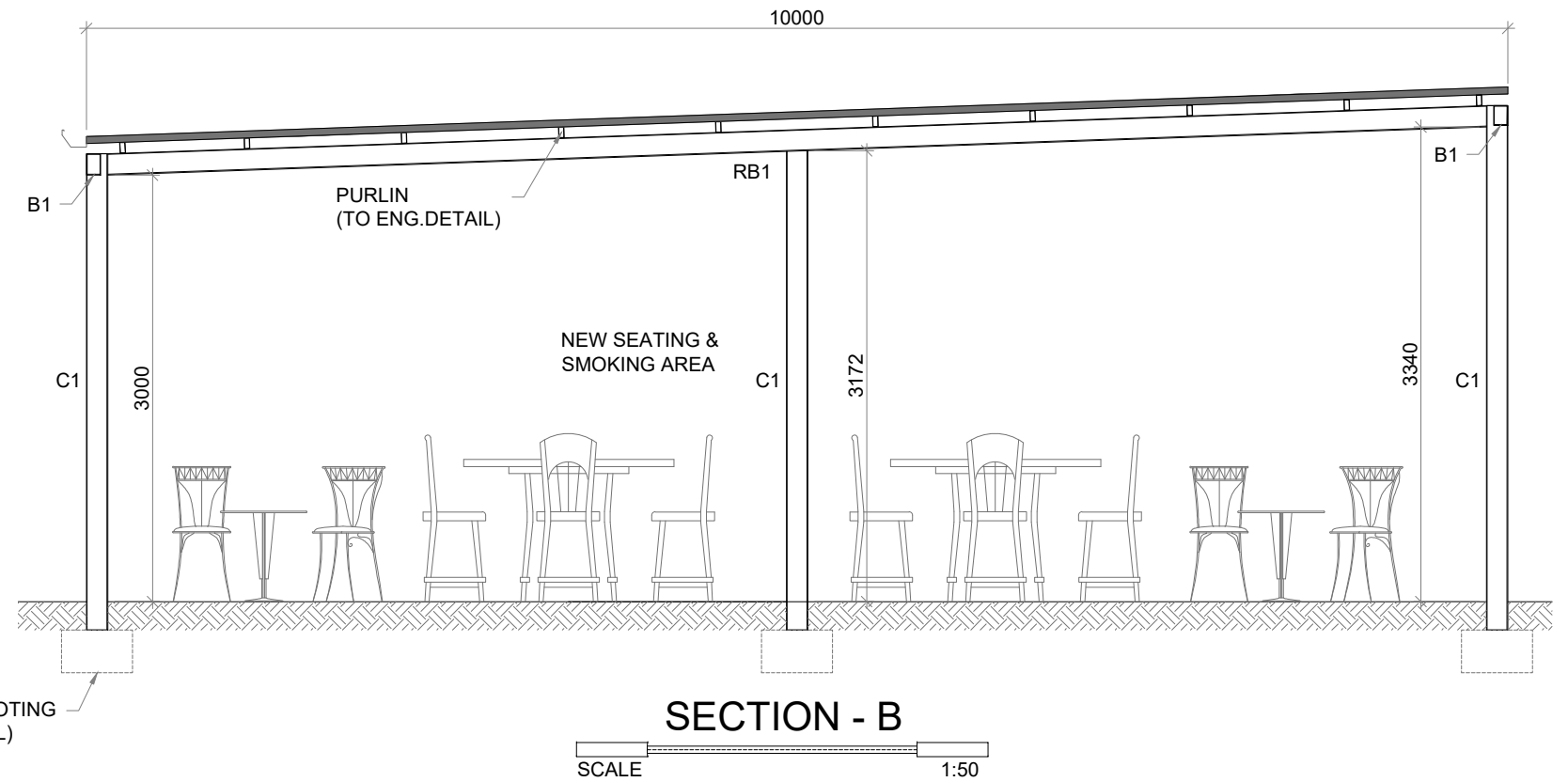
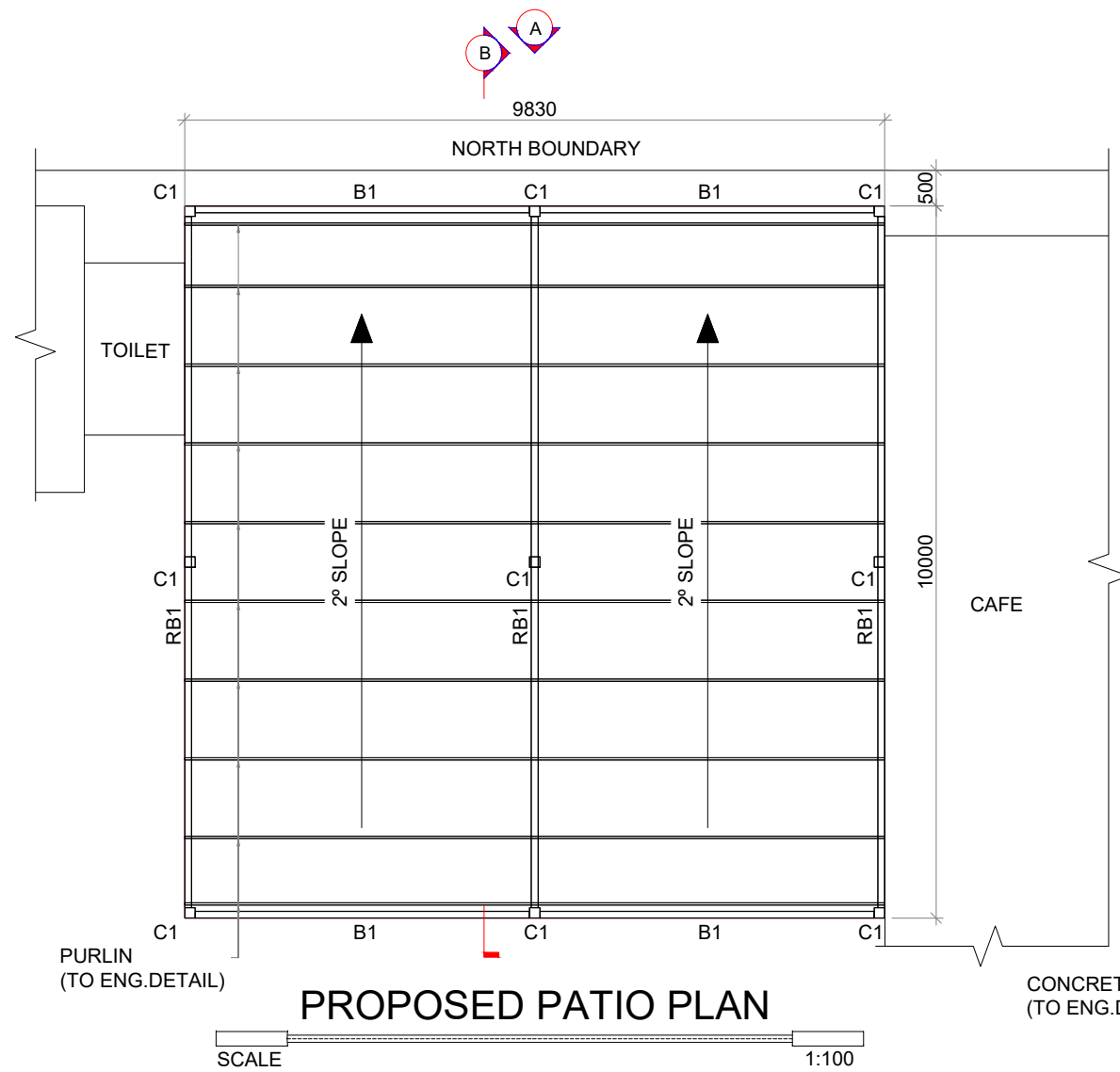
NOTE:  
\*NO SERVICING FOOD AND DRINK IN THE OUTSIDE SPACE

Patio to be connected to the existing storm water drainage system and comply with shire specifications for storm water containment

**SITE PLAN**  
SCALE 1:200

**Drawing A01; Rev 1**  
**13/08/2021**

PROJECT NAME: CAFE FIT-OUT & PATIO ADDITION	JOB NO: 11
PROJECT TITLE:	DRAWN BY
	SCALE: AS SH



SCHEDULE OF STRUCTURAL FRAMING	
BEAM/ COLUMN TAG NO	SIZE
C1	TO ENG.DETAIL
B1	
RB1	

Patio to be connected to the existing storm water drainage system and comply with shire specifications for storm water containment

**Drawing A05; Rev 1  
13/08/2021**

PROJECT NAME: CAFE FIT-OUT & PATIO ADDITION	JOB NO: 114
PROJECT TITLE:	DRAWN BY : JK
	SCALE: AS SHOWN

## Appendix B – ISO9613 Calculations

221 Beaufort Street  
 ISO9613 Calculation Method  
 Predicted Operational Noise Levels at Adjacent Uses From Activities at Proposed Development

**Legend**

Source		Source name
Source type		Type of source (point, line, area)
L'w	dB(A)	Sound power level per m, m <sup>2</sup>
Lw	dB(A)	Sound power level per unit
l or A	m,m <sup>2</sup>	Size of source (length or area)
KI	dB	Correction for source impulsiveness
KT	dB	Correction for source tonality
Ko	dB	Correction for propagation in limited spacial angle
S	m	Distance source - receiver
Adiv	dB	Mean attenuation due to geometrical spreading
Agr	dB	Mean attenuation due to ground effect
Abar	dB	Mean attenuation due to screening
Aatm	dB	Mean attenuation due to air absorption
Amisc	dB	Mean attenuation due to foliage, industrial areas and building areas
ADI	dB	Mean directivity correction
dLrefl	dB(A)	Level increase due to reflections
Ls	dB(A)	Unassessed sound pressure level at receiver $L_s=Lw+Ko+ADI+Adiv+Agr+Abar+Aatm+Afol\_site\_house+Awind+dLrefl$
dLw 1hr,D	dB	Correction due to source operation time
dLw 1hr,E	dB	Correction due to source operation time
dLw 1hr,N	dB	Correction due to source operation time
Leq 1hr,D	dB(A)	Leq,adjacent,1hr Day
Leq 1hr,E	dB(A)	Leq,adjacent,1hr Evening
Leq 1hr,N	dB(A)	Leq,adjacent,1hr Night

**221 Beaufort Street**  
**ISO9613 Calculation Method**  
**Predicted Operational Noise Levels at Adjacent Uses From Activities at Proposed Development**

Source	Source type	L'w dB(A)	Lw dB(A)	l or A m,m <sup>2</sup>	Kl dB	KT dB	Ko dB	S m	Adiv dB	Agr dB	Abar dB	Aatm dB	Amisc dB	ADI dB	dLrefl dB(A)	Ls dB(A)	dLw 1hr,D dB	dLw 1hr,E dB	dLw 1hr,N dB	Leq 1hr,D dB(A)	Leq 1hr,E dB(A)	Leq 1hr,N dB(A)
Receiver 5 Monger Street FI GF Leq,adj,1h 39 dB(A) Leq,adj,1h 39 dB(A) Leq,adj,1h 39 dB(A)																						
Patron Noise	Area	62.6	82.0	87.4	0.0	0.0	0	20.17	-37.1	-2.0	-4.5	-0.1		0.0	0.3	38.6	0.0	0.0	0.0	38.6	38.6	38.6
Receiver 5 Monger Street FI F 1 Leq,adj,1h 39 dB(A) Leq,adj,1h 39 dB(A) Leq,adj,1h 39 dB(A)																						
Patron Noise	Area	62.6	82.0	87.4	0.0	0.0	0	20.56	-37.3	-1.6	-4.1	-0.1		0.0	0.4	39.4	0.0	0.0	0.0	39.4	39.4	39.4
Receiver 44 Lindsay Street FI GF Leq,adj,1h 39 dB(A) Leq,adj,1h 39 dB(A) Leq,adj,1h 39 dB(A)																						
Patron Noise	Area	62.6	82.0	87.4	0.0	0.0	0	30.55	-40.7	0.8	-5.7	-0.1		0.0	2.2	38.5	0.0	0.0	0.0	38.5	38.5	38.5
Receiver 211 Beaufort Street FI F 2 Leq,adj,1h 31 dB(A) Leq,adj,1h 31 dB(A) Leq,adj,1h 31 dB(A)																						
Patron Noise	Area	62.6	82.0	87.4	0.0	0.0	0	17.61	-35.9	-0.7	-14.7	0.0		0.0	0.2	30.9	0.0	0.0	0.0	30.9	30.9	30.9
Receiver 211 Beaufort Street FI F 3 Leq,adj,1h 36 dB(A) Leq,adj,1h 36 dB(A) Leq,adj,1h 36 dB(A)																						
Patron Noise	Area	62.6	82.0	87.4	0.0	0.0	0	19.55	-36.8	-0.7	-9.3	-0.1		0.0	0.7	35.9	0.0	0.0	0.0	35.9	35.9	35.9
Receiver 211 Beaufort Street FI F 4 Leq,adj,1h 37 dB(A) Leq,adj,1h 37 dB(A) Leq,adj,1h 37 dB(A)																						
Patron Noise	Area	62.6	82.0	87.4	0.0	0.0	0	21.88	-37.8	-0.7	-7.6	-0.1		0.0	0.7	36.6	0.0	0.0	0.0	36.6	36.6	36.6
Receiver 222 Beaufort Street FI GF Leq,adj,1h 23 dB(A) Leq,adj,1h 23 dB(A) Leq,adj,1h 23 dB(A)																						
Patron Noise	Area	62.6	82.0	87.4	0.0	0.0	0	48.31	-44.7	-2.4	-14.0	-0.2		0.0	2.4	23.2	0.0	0.0	0.0	23.2	23.2	23.2
Receiver 222 Beaufort Street FI F 1 Leq,adj,1h 23 dB(A) Leq,adj,1h 23 dB(A) Leq,adj,1h 23 dB(A)																						
Patron Noise	Area	62.6	82.0	87.4	0.0	0.0	0	48.46	-44.7	-2.0	-13.9	-0.2		0.0	2.2	23.4	0.0	0.0	0.0	23.4	23.4	23.4
Receiver 225-227 Beaufort Street FI GF Leq,adj,1h 40 dB(A) Leq,adj,1h 40 dB(A) Leq,adj,1h 40 dB(A)																						
Patron Noise	Area	62.6	82.0	87.4	0.0	0.0	0	10.51	-31.4	-1.2	-12.4	0.0		0.0	2.7	39.7	0.0	0.0	0.0	39.7	39.7	39.7
Receiver 225-227 Beaufort Street FI F 1 Leq,adj,1h 40 dB(A) Leq,adj,1h 40 dB(A) Leq,adj,1h 40 dB(A)																						
Patron Noise	Area	62.6	82.0	87.4	0.0	0.0	0	11.34	-32.1	-1.0	-11.7	0.0		0.0	2.4	39.6	0.0	0.0	0.0	39.6	39.6	39.6
Receiver 226 Beaufort Street FI GF Leq,adj,1h 26 dB(A) Leq,adj,1h 26 dB(A) Leq,adj,1h 26 dB(A)																						
Patron Noise	Area	62.6	82.0	87.4	0.0	0.0	0	51.04	-45.1	-3.0	-8.8	-0.3		0.0	1.0	25.8	0.0	0.0	0.0	25.8	25.8	25.8
Receiver 226 Beaufort Street FI F 1 Leq,adj,1h 26 dB(A) Leq,adj,1h 26 dB(A) Leq,adj,1h 26 dB(A)																						
Patron Noise	Area	62.6	82.0	87.4	0.0	0.0	0	51.19	-45.2	-2.6	-8.8	-0.3		0.0	1.0	26.2	0.0	0.0	0.0	26.2	26.2	26.2
Receiver 226 Beaufort Street FI F 2 Leq,adj,1h 26 dB(A) Leq,adj,1h 26 dB(A) Leq,adj,1h 26 dB(A)																						
Patron Noise	Area	62.6	82.0	87.4	0.0	0.0	0	51.51	-45.2	-2.6	-8.6	-0.2		0.0	0.9	26.2	0.0	0.0	0.0	26.2	26.2	26.2


## Appendix C – Operational Noise Levels – Tabulated Results

Proposed Development at 221 Beaufort Street  
 Predicted Operational Noise Levels at Adjacent Uses  
 From Activities at Proposed Development

Receiver Name	Floor	Facade	Leq,adj,1h Day dB(A)	Leq,adj,1h Evening dB(A)	Leq,adj,1h Night dB(A)
5 Monger Street	GF	SE	39	39	39
5 Monger Street	F 1	SE	39	39	39
44 Lindsay Street	GF	SE	39	39	39
211 Beaufort Street	F 2	NE	31	31	31
211 Beaufort Street	F 3	NE	36	36	36
211 Beaufort Street	F 4	NE	37	37	37
222 Beaufort Street	GF	NW	23	23	23
222 Beaufort Street	F 1	NW	23	23	23
225-227 Beaufort Street	GF	SW	40	40	40
225-227 Beaufort Street	F 1	SW	40	40	40
226 Beaufort Street	GF	NW	26	26	26
226 Beaufort Street	F 1	NW	26	26	26
226 Beaufort Street	F 2	NW	26	26	26

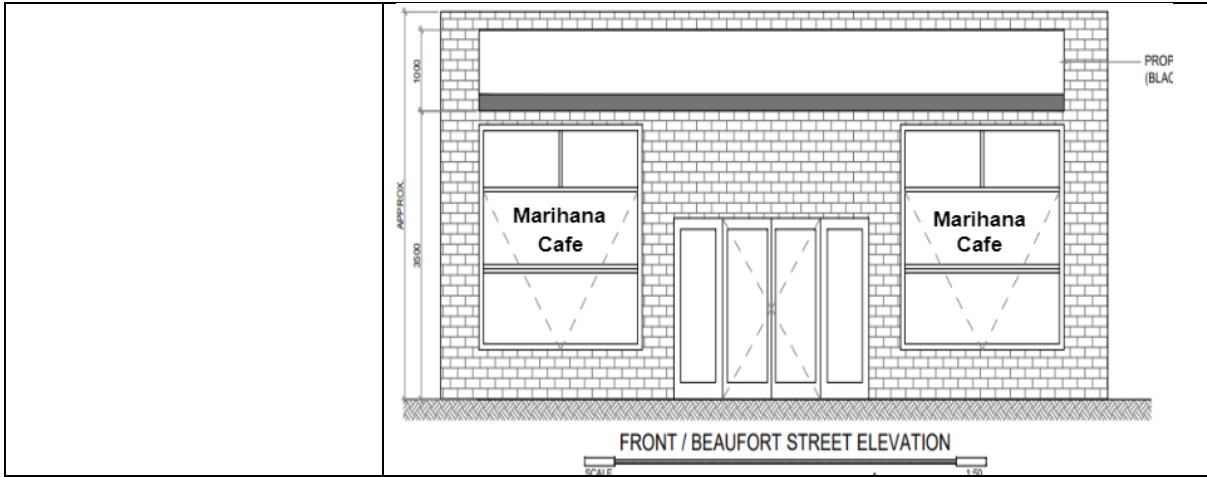
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Marihana Café – Venue Management Plan

Criteria	Applicant/Operator Response or Management Procedure
Venue Address	221 Beaufort Street, Perth, WA, 3000
Venue Operator Name/s	<u>Giday Hailu</u>
Venue Operator Contact Details	
Patron Numbers	<u>Maximum of 20 patrons at one time.</u>
Days and Hours of Operations	<u>On Friday, 4pm - 12am, Saturday 12pm - 12am, Sunday 12pm - 11:30pm and Monday to Thursday 4pm - 11:30pm.</u>
Car Parking Arrangement and Management	<u>Some of the customers will be traveling by transport. Some other customers that will drive, will only be in the venue for maximum of 45 minutes and the street parking is up to 2 hours.</u>
Noise Control and Management Procedures	<p><u>- There will be no loud music played in the venue and up to 20 patrons at one time.</u></p> <p><u>- In terms of the noise management, if there is a patron that is Drunk or noisy, they will be asked to leave the venue. We will display a sign to notify people to keep the noise down after 10pm.</u></p>
Patron and Anti-social Behaviour Management and Procedures.	<u>- CCTV will be active in the premises, signs will be displayed to notify patrons that any kind of anti-social behaviour will not be tolerated and they will be asked to leave.</u>
Staff and Patron Code of Conduct	<u>Staff members are to treat customers and fellow workers with respect and make sure customers comply with the rules of the venue. Patrons, will follow set rules of the venue, respect the staff members.</u>



<p>Access and Exit to the Venue for Staff and Patrons</p>	<p><u>Both staff and patrons will exit and enter through the front entrance of the venue, to get to the patio</u></p>
<p>Complaints Management Procedures, including:</p> <ul style="list-style-type: none"> <li>• contact details for relevant person/s</li> <li>• expected response times</li> <li>• process for how complaints will be dealt with, particularly in later hours</li> </ul>	<p><u>If there is any complaints, contact details will be available at the front of the venue. Response times will be immediately and it will be dealt with accordingly to the complaint.</u></p>
<p>Rubbish Collection and Disposal</p>	<p><u>We have a 660 litre general rubbish bin. It will be collected once a week, starting from when the venue opens. The location of the rubbish bin is beside the patio. For the future we might consider getting another bin, but for this time, there is no need to due to not selling food. At this time, we believe 1 is enough because we don't expect to have a lot of rubbish.</u></p>
<p>Odour and Air Quality Management and Assessment</p>	<p><u>There will not be a lot of smoke in the venue, due to the number of patrons being limited to 20 patrons. 20 patrons, is the maximum of patrons at 1 time, but most of the time they will be less at 1 time. The 4 fans on the roof of the patio will help with the smoke, not spreading to residential areas.</u></p>
<p>Delivery Management and Procedures</p>	<p><u>Delivery will be arriving and entering through the front entrance, once a week at certain times in a day.</u></p>
<p>Any signage within and outside of the venue linked to the above</p>	<p><u>- The sign will be 30% covered according to their rules.</u></p>



Bulwer Street			
<b>Birdwood Square</b>		338-340	Shop – Chemist Office – Recruitment
		334-336	Shop – Bike Store
	<b>Greenway Street</b>		
		60-78	Carpark
		292	Tavern - Brisbane Hotel
<b>Brisbane Street</b>		<b>Brisbane Street</b>	
283-289	Restaurant/Cafés Photographer Studio	290	Shop, Restaurant/Café and Small Bar – Tom’s Providore and Wine Bar
		286-288	Office – ASeTTS
<b>Fore Street</b>		278	Restricted Premises – Up in Smoke Office – Accountant Unlisted Use – Homeless Shelter (Tom Fischer House)
273	Mixed Use Development – • Apartments • Restaurant/Café • Office		
<b>Tiverton Street</b>		250	Mixed Use Development – • Apartments • Offices – Lawyers, Accountant • Shop – Hair Dresser, Laser Clinic, Convenience Store, Coin Store • Photography and Printing Studio
259-263	Performing Arts School (Krishna Campus) Office – Engineering		
255	Office – Accountants		
247	Office – Financial advisor		
243	Shop – Furniture store		
241	Dwelling		
239	Dwelling		
237	Dwelling	240-242	Shop – Clothing Store
235	Consulting Room – Dentist	238	Short Term Accommodation – Monger House
<b>Monger Street</b>		226	Mixed Use Development – • Apartments • Offices – Nursing Agency, Construction
225-227	Short Term Accommodation – North Lodge City Central		
<b>221</b>	<b>Subject Site</b>	214-222	Shop – Supermarket
211	Mixed Use Development – • Apartments • Private Recreation – Pinot & Picasso • Office		
201-207	Commercial – Catering Office – Radio Station	208-212	Fast Food Outlet – McDonalds’s
<b>Little Parry Street</b>		<b>Parry Street</b>	
195	Vacant Cleared Site	<b>Weld Square</b>	
193	Night Club – The Ellington Jazz Club		
191			
189	Short Term Accommodation – Welfare Housing		
154	Mixed Use Development – • Apartments • Shop – Pharmacy, IGA		
<b>Newcastle Street</b>			

*Planning and Development Act 2005*

City of Vincent

**Notice of determination on application for development approval**

Location: No. 221 Beaufort Street PERTH

Lot, Plan/Diagram: LOT: 2 D/P: 52504

Vol. No: 556

Folio No: 163A

Application date: 22/11/2017

Received on: 29/11/2017

Serial No: 5.2017.432.1

Description of proposed development: Change of Use from Shop, Office and Warehouse to Eating House

Plans dated: 9 November 2017 and 14 February 2018

This application for development approval is approved subject to the following conditions:

1. This development approval is for an Eating House, as shown on the approved plans dated 9 November 2017 and 14 February 2018.
2. The maximum number of patrons for the eating house at any one time shall be limited to 20 persons.
3. The hours of operation of the Eating House shall be 7:00am to 5:00pm Monday to Friday and 7:00am to 4:00pm Saturday to Sunday.
4. All external fixtures and building plant, including air conditioning units, piping, ducting and water tanks, shall be located so as to minimise any visual and noise impact on surrounding landowners, and screened from view from the street, and surrounding properties to the satisfaction of the City.
5. The development shall maintain an active and interactive relationship and uninterrupted views between the Eating House and Beaufort Street during the hours of the development's operation to the satisfaction of the City. Darkened, obscured, mirror or tinted glass or the like is prohibited. Curtains, blinds and other internal or external treatments that obscure the view of the Eating House, as shown on the approved ground floor plan, from Beaufort Street are not permitted to be used during the hours of the development's operation;
6. A minimum of two Class 1 or 2 bicycle bays a minimum of three Class 3 bicycle bays are to be provided on the site, to the satisfaction of the City.
7. A cash-in-lieu contribution shall be paid to the City for the shortfall of 1 car parking bay, based on the cost of \$5,400 per bay as set out in the City's 2017/2018 Schedule of Fees and Chargers, being a contribution of \$5,400 prior to the commencement of development or by entering into a written agreement with the City to pay the cash-in-lieu over an agreed period up to five years.

ADVICE NOTES:

1. This is a development approval issued under the City of Vincent Town Planning Scheme No. 1 and the Metropolitan Region Scheme only. It is not a building permit or an approval to commence or carry out development under any other law.
2. Any new signage that does not comply with the City's Policy No. 7.5.2 - Signs and Advertising shall be subject to a separate Planning Application and all signage shall be subject to a Building Permit application, being submitted and approved prior to the erection of the signage.
3. The applicant is hereby advised that prior to the commencement of the change of use herein approved, a Change of Building Classification approval may be required to be obtained from the City's Building Services.
4. The car parking area(s) which form part of this approval shall be sealed, drained, paved and line marked in accordance with the approved plans prior to the first occupation of the development and maintained thereafter by the owner/occupier to the satisfaction of the City.
5. All storm water produced on the subject land shall be retained on site, by suitable means to the full satisfaction of the City. No further consideration shall be given to the disposal of storm water 'off site' without the submission of a geotechnical report from a qualified consultant. Should approval to dispose of storm water 'off site' be subsequently provided, detailed design drainage plans and associated calculations for the proposed storm water disposal shall be lodged together with the building permit application working drawings.
6. The movement of all path users, with or without disabilities, within the road reserve, shall not be impeded in any way during the course of the building works. This area shall be maintained in a safe and trafficable condition and a continuous path of travel (minimum width 1.5m) shall be maintained for all users at all times during construction works. Permits are required for placement of any material within the road reserve.

Date of determination: 22 March 2018

- Note 1: If the development the subject of this approval is not substantially commenced within a period of 2 years, or another period specified in the approval after the date of determination, the approval will lapse and be of no further effect.
- Note 2: Where an approval has so lapsed, no development must be carried out without the further approval of the local government having first been sought and obtained.
- Note 3: If an applicant or owner is aggrieved by this determination there is a right of review by the State Administrative Tribunal in accordance with the *Planning and Development Act 2005* Part 14. An application must be made within 28 days of the determination.

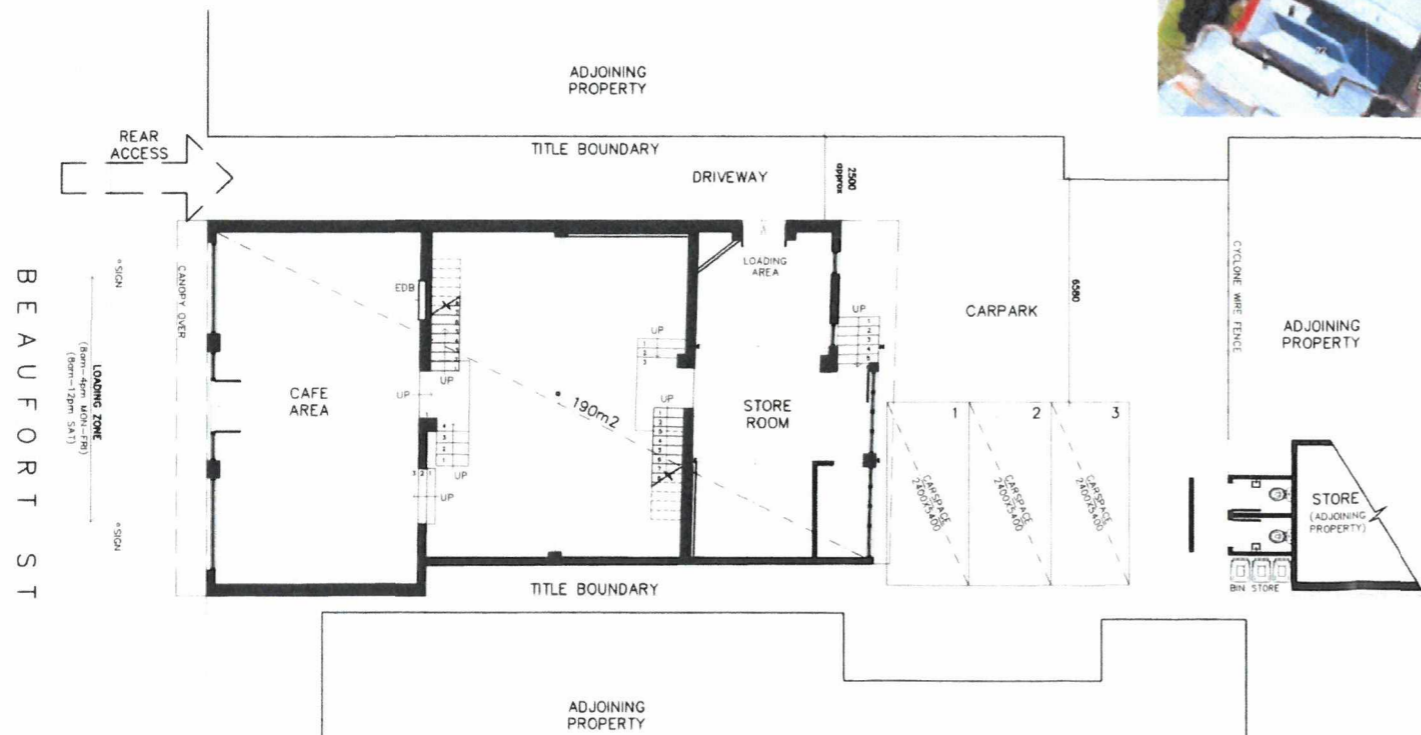
Signed:  \_\_\_\_\_ Dated: 22 March 2018

**JOSLIN COLLI**  
**COORDINATOR APPROVAL SERVICES**  
for and on behalf of the City of Vincent



SUBJECT SITE  
221 BEAUFORT ST  
PROPOSED CAFE

site map  
nts



site plan

CITY OF VINCENT  
DA SERIAL No 5.2017.432.1  
22 MAR 2018  
APPROVED *fi*  
for *fi* MANAGER APPROVAL SERVICES

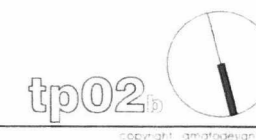


amato design  
e robert@amatodesign.com.au  
w www.amatodesign.com.au  
m 0433 083 988

site analysis  
scale 1:150 @ A2

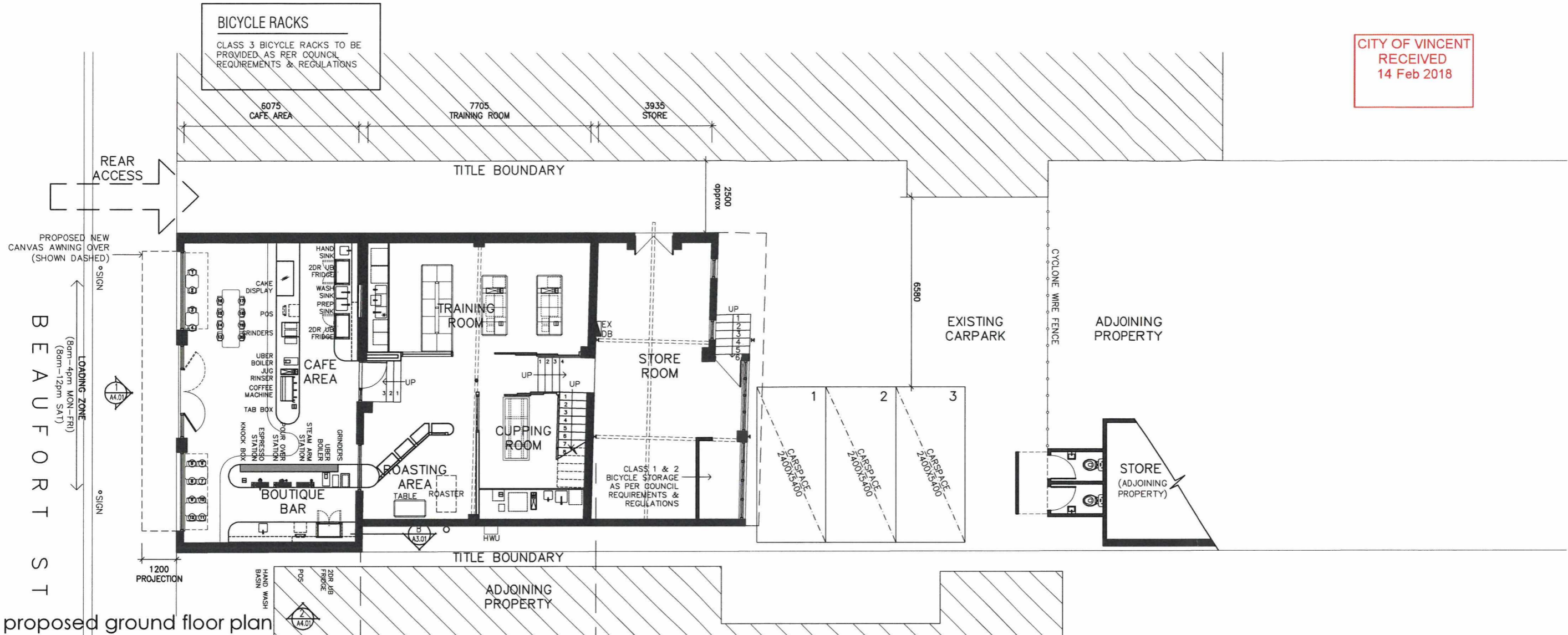
veneziano coffee  
17018

town planning submission  
221 beaufort st, perth western australia

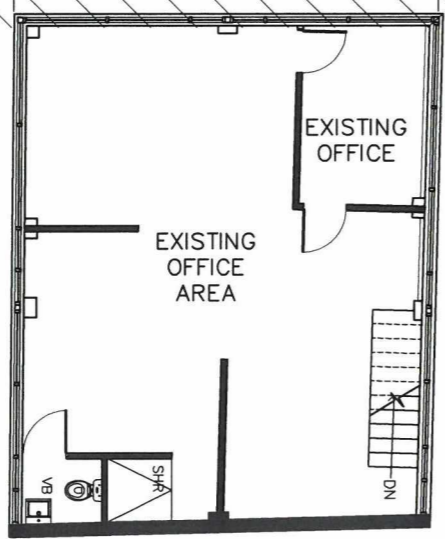


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CITY OF VINCENT  
RECEIVED  
14 Feb 2018



proposed ground floor plan



proposed first floor plan

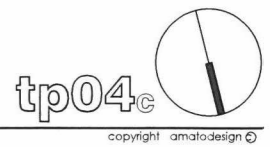
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DA SERIAL No S-2017.432.1  
22 MAR 2018  
APPROVED  
MANAGER APPROVAL SERVICES



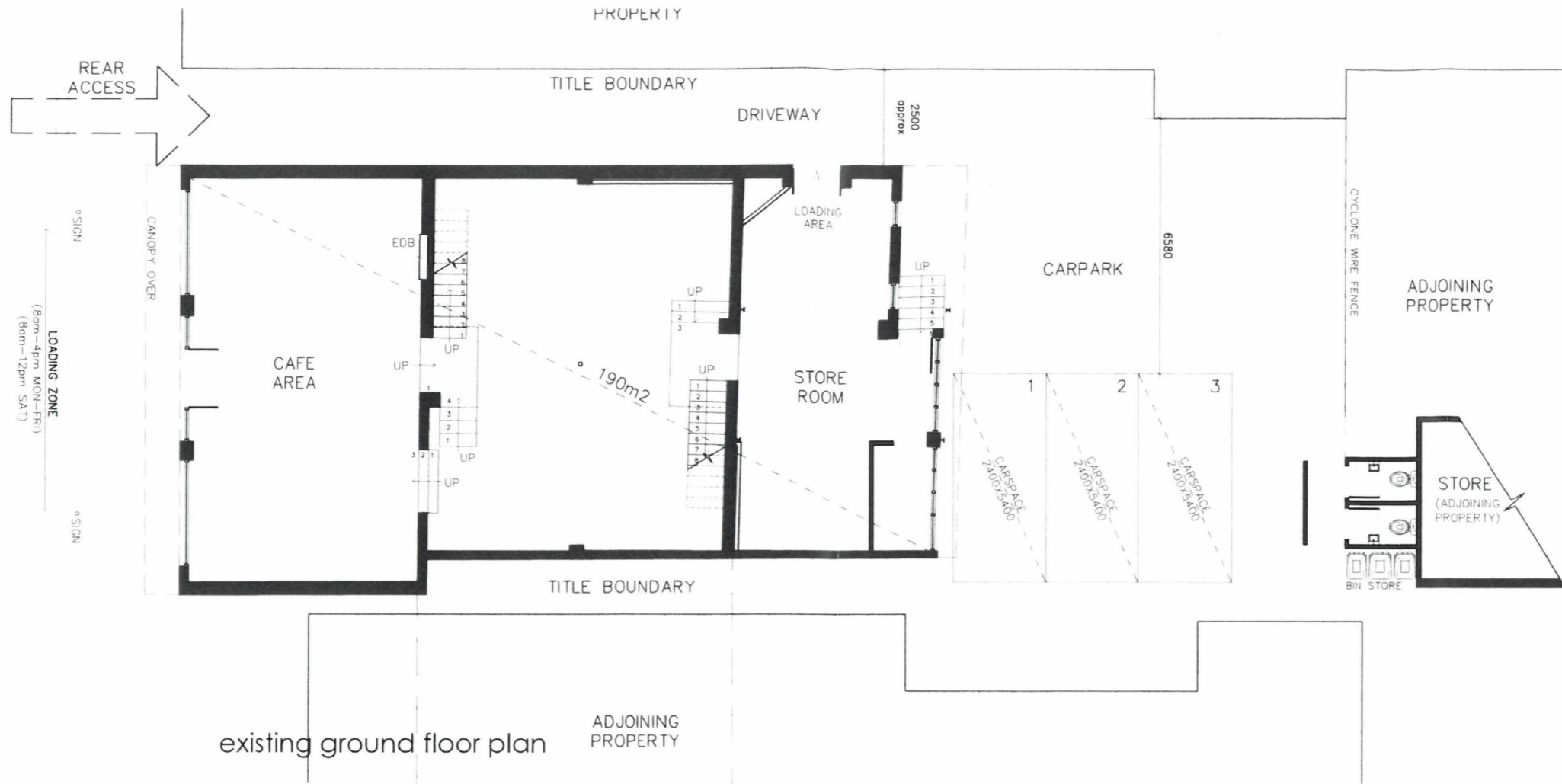
robert@amatodesign.com.au  
www.amatodesign.com.au  
0433 083 988

proposed floor plans (ground & first)  
scale 1:100 @ A2  
veneziano coffee  
17018

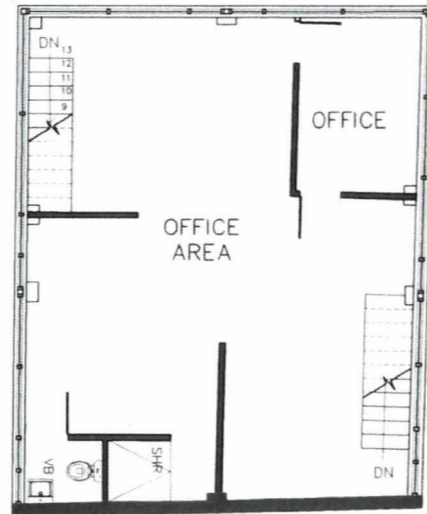
town planning submission  
221 beaufort st, perth western australia



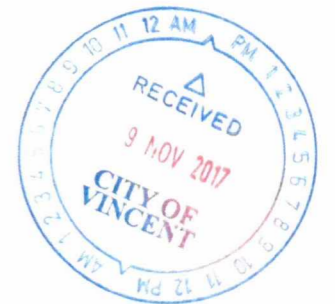
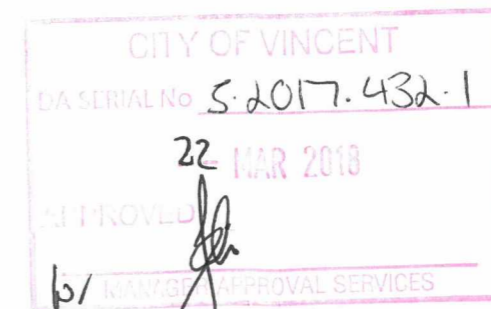
BEAUFORT ST



existing ground floor plan



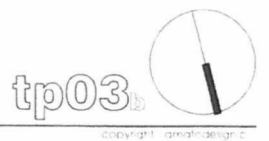
existing first floor plan



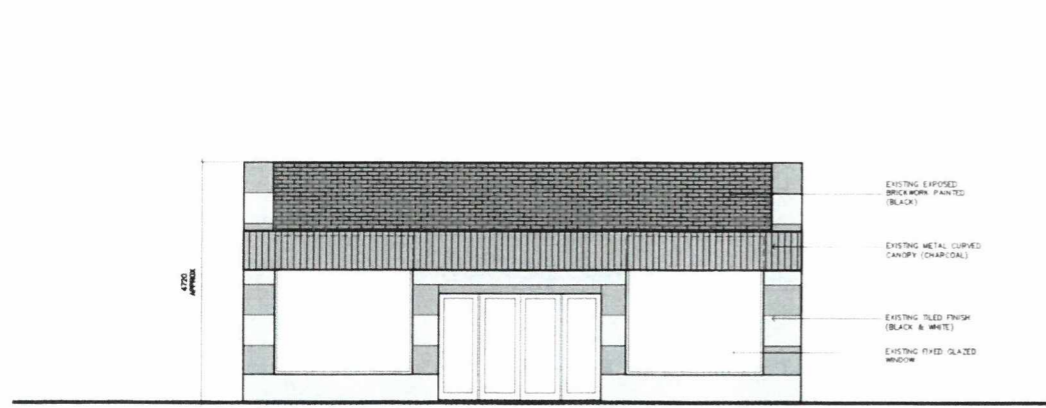
amato design  
e robert@amatodesign.com.au  
w www.amatodesign.com.au  
m 0433 083 988

existing floor plans ( ground & first )  
scale 1:100 @A2 veneziano coffee  
17018

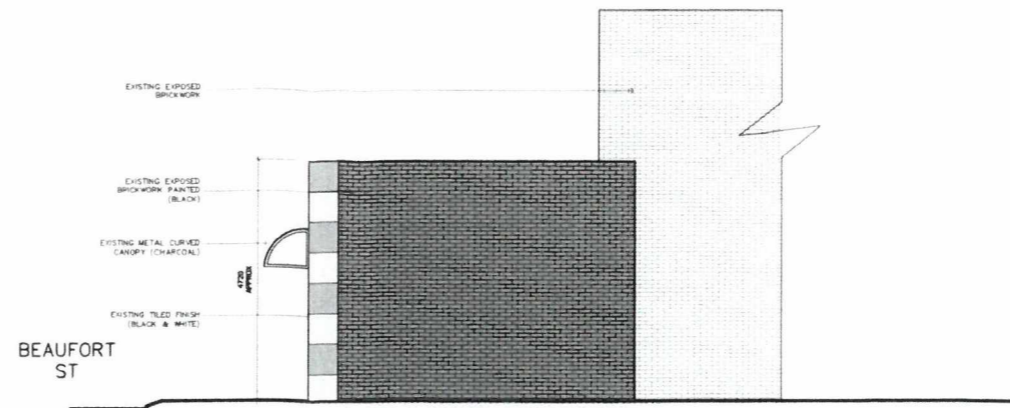
town planning submission  
221 beaufort st, perth western australia



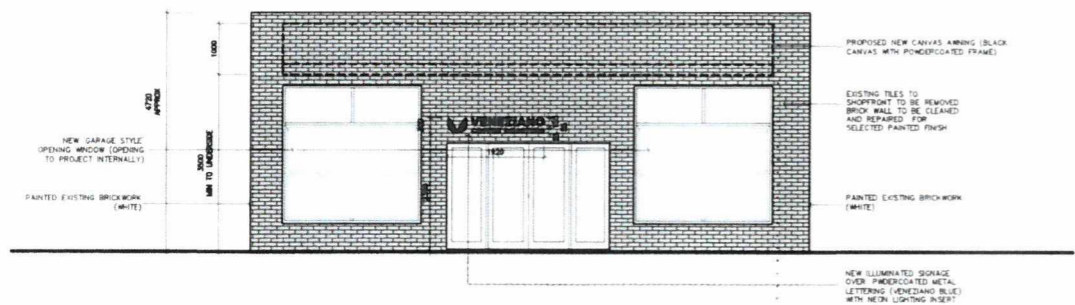




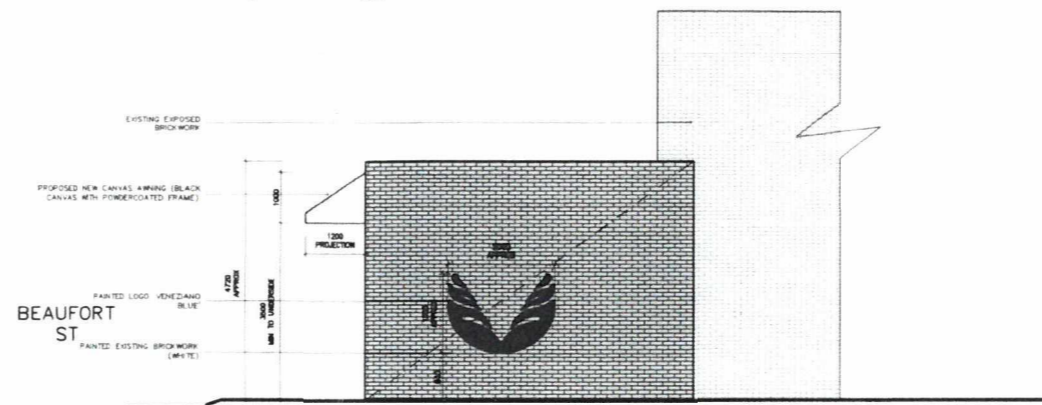
beaufort st elevation (existing)



north elevation (existing)



beaufort st elevation (proposed)

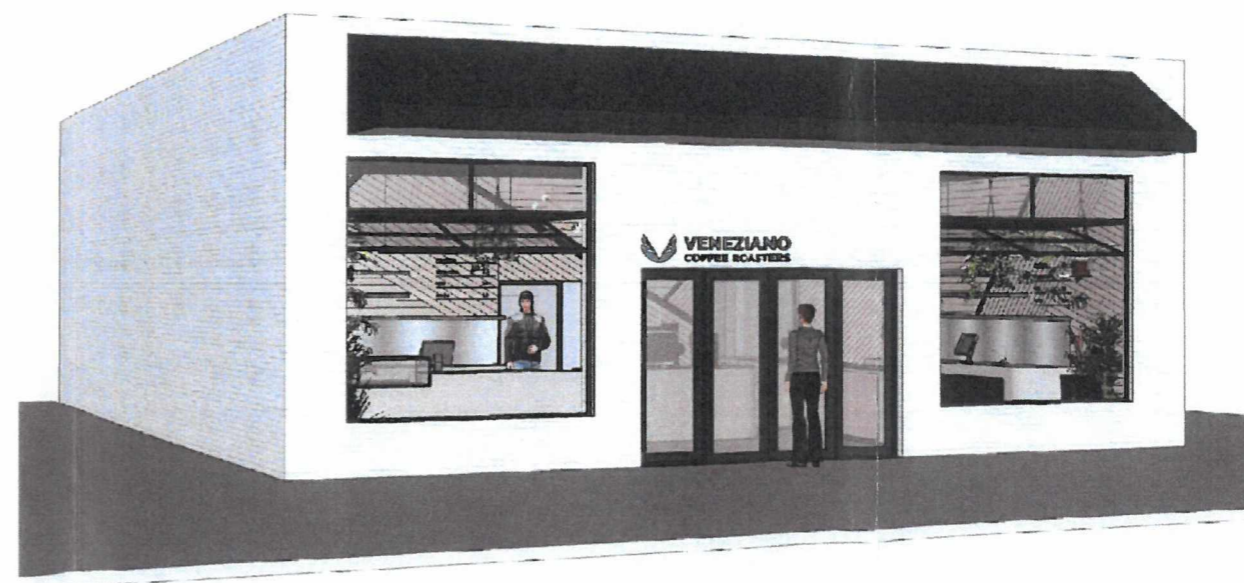


north elevation (proposed)

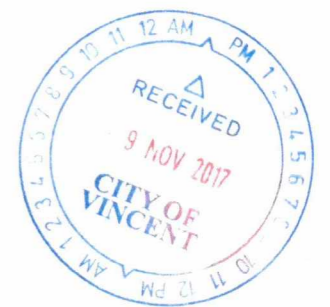
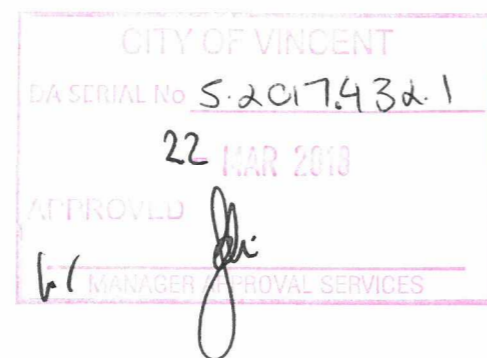


proposed awning style

proposed painted brickwork



proposed 3d image



amato design  
 e robert@amatodesign.com.au  
 w www.amatodesign.com.au  
 m 0433 083 988

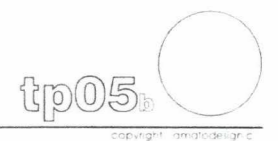
elevations (existing & proposed)

scale 1:100 @ A2

veneziano coffee  
 17018

town planning submission

221 beaufort st, perth western australia



copyright amato design c

*Planning and Development Act 2005*

City of Vincent

**Notice of determination on application for development approval**

Location: No. 221 Beaufort Street PERTH

Lot, Plan/Diagram: LOT: 301 D/P: 302352

Vol. No: 556

Folio No: 163A

Received on: 20 July 2021

Serial No: 5.2021.293.1

Description of proposed development: Addition to Café (Patio)

Plans dated: 26 July 2021

This application for development approval is approved subject to the following conditions:

1. This approval is for Patio as shown on the approved plans dated 26 July 2021. No other development forms part of this approval.
2. The roof of the patio shall be Colorbond colour "Shale Grey" or other colour with a solar absorptance value not exceeding 0.43 when tested in accordance with 'ASTM E903 Standard Test Method for Solar Absorptance, Reflectance, and Transmittance of Materials Using Integrating Spheres', to the satisfaction of the City of Vincent.
3. Stormwater from all roofed and paved areas shall be collected and contained on site. Stormwater must not affect or be allowed to flow onto or into any other property or road reserve.

**ADVICE NOTES:**

1. This is a development approval issued under the City of Vincent Local Planning Scheme No. 2 and the Metropolitan Region Scheme only. It is not a building permit or an approval to commence or carry out development under any other law. It is the responsibility of the applicant/owner to obtain any other necessary approvals and to commence and carry out development in accordance with all other laws.
2. If the development the subject of this approval is not substantially commenced within a period of 2 years, or another period specified in the approval after the date of determination, the approval will lapse and be of no further effect.
3. Where an approval has so lapsed, no development must be carried out without the further approval of the local government having first been sought and obtained.
4. If an applicant or owner is aggrieved by this determination there is a right of review by the State Administrative Tribunal in accordance with the *Planning and Development Act 2005* Part 14. An application must be made within 28 days of the determination.
5. In relation to Advice Note 2 a further two years is added to the date by which the development shall be substantially commenced, pursuant to Schedule 4, Clause 4.2

of the Clause 78H Notice of Exemption from Planning Requirements During State of Emergency signed by the Minister for Planning on 8 April 2020. For further information regarding the Ministerial direction, please contact the assessing officer James Jago on 08 9273 6035.

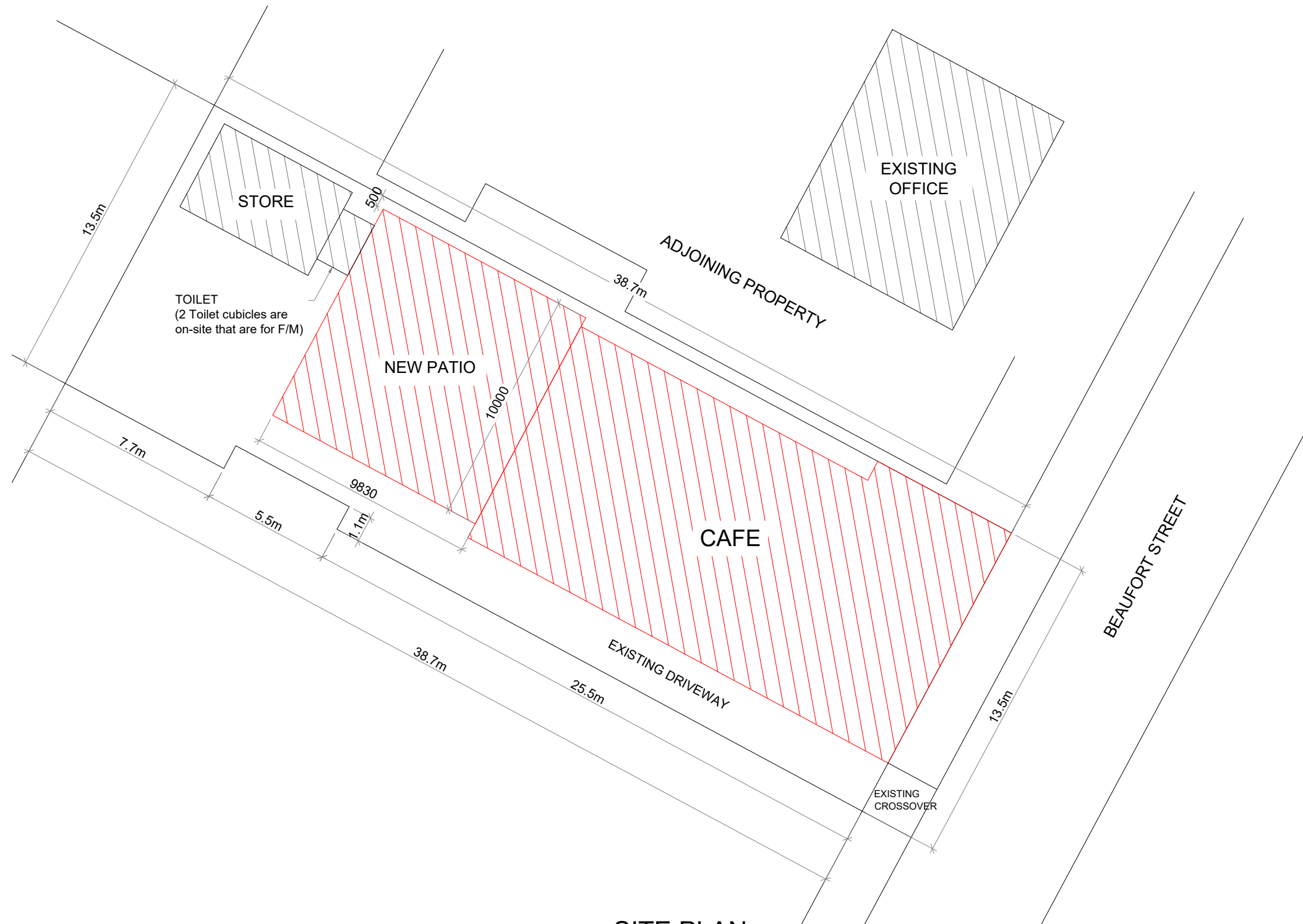
6. This approval is not an authority to ignore any constraint to development on the land, which may exist through statute, regulation, contract or on title, such as an easement or restrictive covenant. It is the responsibility of the applicant and not the City to investigate any such constraints before commencing development. This approval will not necessarily have regard to any such constraint to development, regardless of whether or not it has been drawn to the City's attention.
7. The applicant is responsible for ensuring that all lot boundaries as shown on the approved plans are correct.
8. **No** verge trees shall be **REMOVED**. The verge trees shall be **RETAINED** and **PROTECTED** from any damage including unauthorized pruning.
9. An Infrastructure Protection Bond together with a non-refundable inspection fee shall be lodged with the City by the applicant, prior to commencement of all building/development works, and shall be held until all building/development works have been completed and any disturbance of, or damage to the City's infrastructure, including verge trees, has been repaired/reinstated to the satisfaction of the City. An application for the refund of the bond must be made in writing. This bond is non-transferable.
10. The movement of all path users, with or without disabilities, within the road reserve, shall not be impeded in any way during the course of the building works. This area shall be maintained in a safe and trafficable condition and a continuous path of travel (minimum width 1.5m) shall be maintained for all users **at all times** during construction works. Permits are required for placement of any material within the road reserve.

Date of determination: 8 October 2021

Signed: 

**KARSEN REYNOLDS**  
**A/COORDINATOR PLANNING SERVICES**  
for and on behalf of the City of Vincent

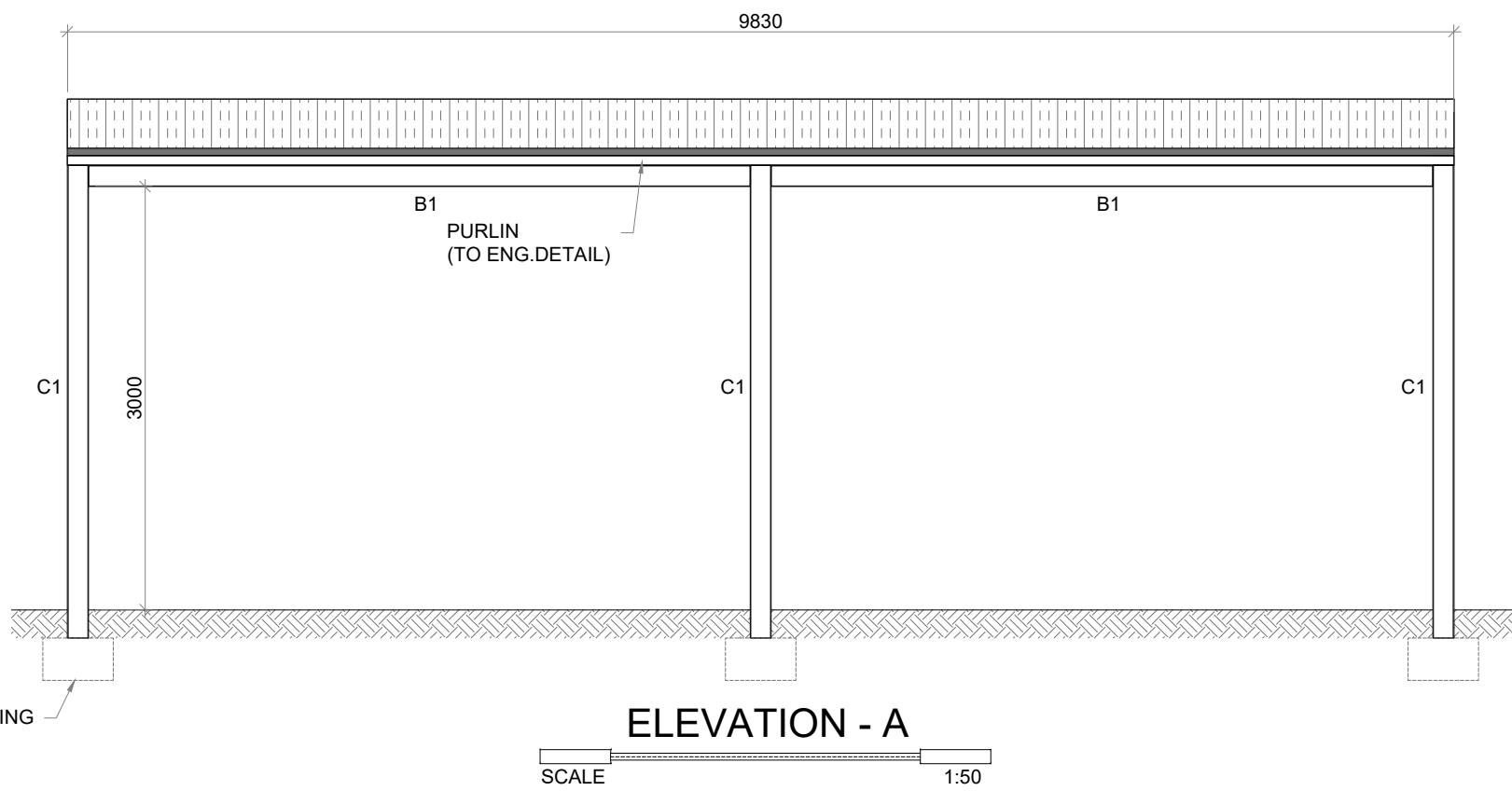
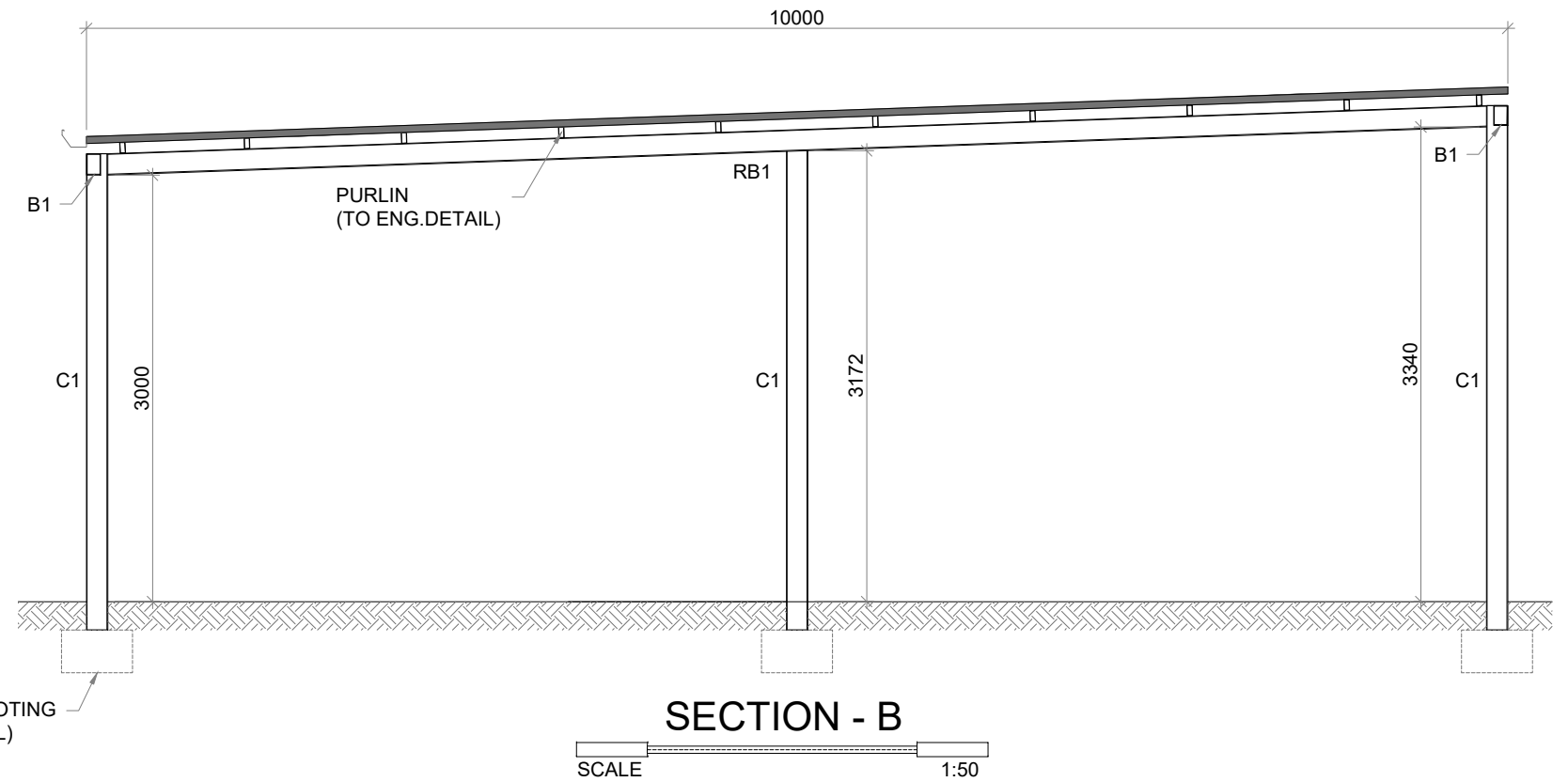
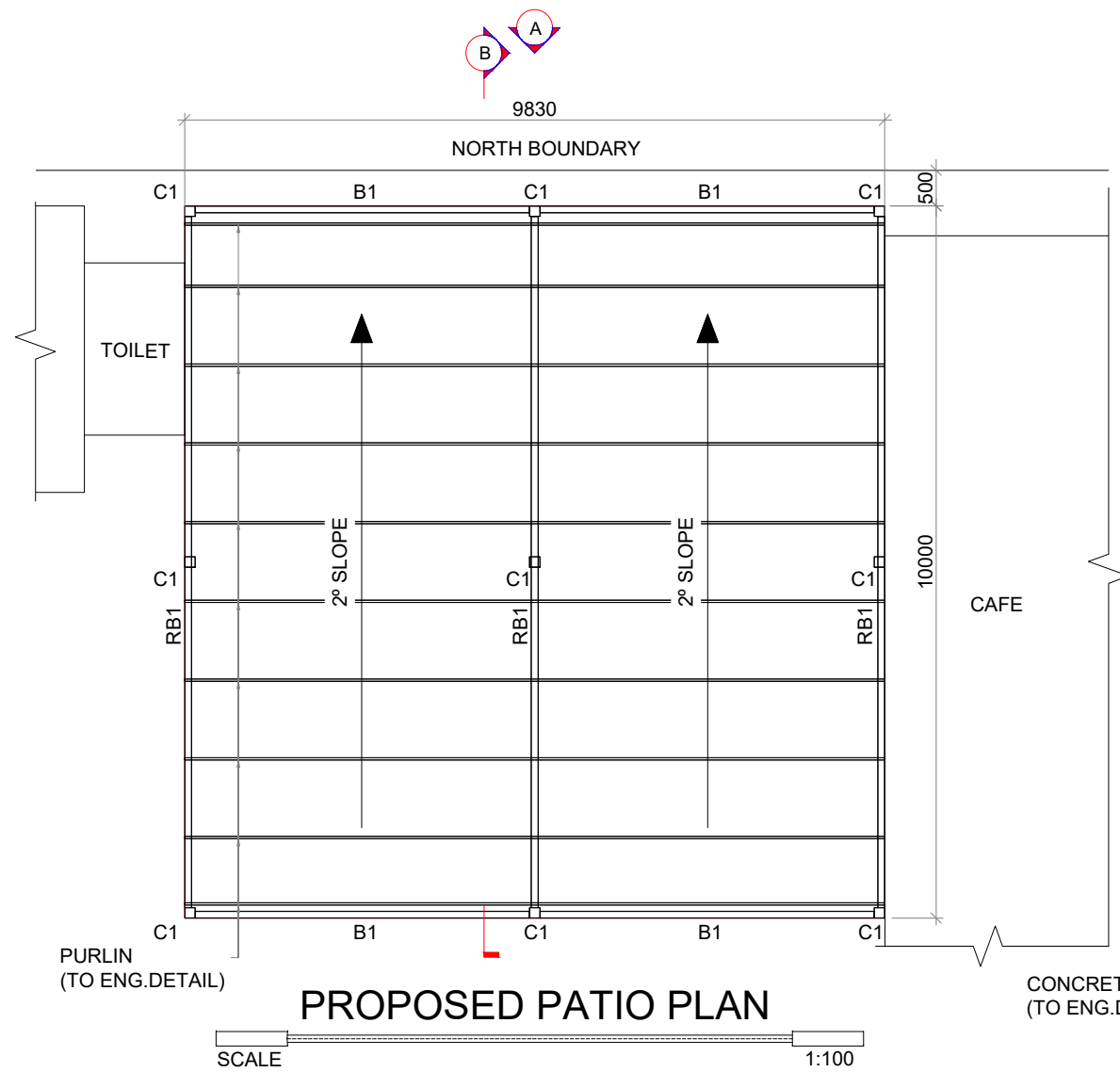
CITY OF VINCENT  
RECEIVED  
26 July 2021



**SITE PLAN**  
SCALE 1:200

**CITY OF VINCENT**  
**DA No. 5.2021.293.1**  
**8 October 2021**  
**APPROVED**  
**Refer to Decision Notice**  
**A/ Coordinator Planning Services**

PROJECT NAME: CAFE FIT-OUT & PATIO ADDITION	JOB NO: 114
PROJECT TITLE:	DRAWN BY : JK
	SCALE: AS SHOWN



SCHEDULE OF STRUCTURAL FRAMING	
BEAM/ COLUMN TAG NO	SIZE
C1	TO ENG.DETAILED
B1	
RB1	

**CITY OF VINCENT**  
**DA No. 5.2021.293.1**  
**8 October 2021**  
**APPROVED**  
**Refer to Decision Notice**  
**A/ Coordinator Planning Services**

PROJECT NAME: CAFE FIT-OUT & PATIO ADDITION	JOB NO: 114
PROJECT TITLE:	DRAWN BY : JK
	SCALE: AS SHOWN

## Summary of Submissions:

The tables below summarise the comments received during the advertising period of the proposal, together with the City's response to each comment.

Comments Received in Support:	Administration Comment:
<p><u>General</u></p> <ul style="list-style-type: none"> <li>Supported as it will be place to go and meet up with friends.</li> <li>Supported as more local businesses should always be encouraged in a city.</li> <li>Support a currently empty building being used and additional nightlife being added to the area.</li> <li>The proposal sounds nice for an outing and younger people would be attracted to it.</li> </ul>	<p>Noted.</p>
<p><u>Bicycle Parking</u></p> <p>Bicycle parking is limited along Beaufort Street, and increased parking would be appreciated.</p>	<p>There are existing publicly available bicycle parking spaces within the verge along Beaufort Street in close proximity to the subject site that would be available for use by patrons. This includes four spaces within the verge in front of the southern adjoining property at No. 211 Beaufort Street.</p>

Comments Received in Objection:	Administration Comment:
<p><u>Noise</u></p> <ul style="list-style-type: none"> <li>The location of the shisha bar at the rear of the property is in close proximity to residential bedrooms and balconies of adjacent buildings. The noise will be disrupting to all residents in these buildings, and will require them to close their windows every night.</li> <li>The proposed noise management is deficient in dealing with noise impact to the adjacent apartment block and noise modelling is also just that – modelling. Particularly at night when background noise finishes, the neighbouring properties would be subject to an unacceptable amenity impact. The outdoor area by its very nature cannot be enclosed, meaning that sufficient noise attenuation cannot be achieved regardless of what the theoretical modelling claims, particularly a night-time when any background noise is diminished.</li> <li>The proposed noise management is insufficient in dealing with noise impacts to the nearby apartment block and would cause an unacceptable amenity impact, particularly at night without background noise being present.</li> </ul>	<ul style="list-style-type: none"> <li>The applicant has submitted a noise management in accordance with the City's Policy No. 7.5.21 – Sound Attenuation (Sound Attenuation Policy). The noise management plan concludes that the premises would comply with the <i>Environmental Protection (Noise) Regulations 1997</i> (Noise Regulations) subject to recommended physical measures.</li> </ul> <p>This includes the installation of acoustic barriers in the form of a 2.0 metre high noise barrier fence 1.2 metres to the west of the patio and a full height noise barrier enclosure along 75 percent of the northern side of the patio.</p> <p>The proposed measures have been reviewed by the City's Health team who have advised this would be acceptable and satisfies the standards of the Sound Attenuation Policy. The identified measures would assist to ensure the use operates in a manner where noise would be appropriately managed through physical measures to limit impacts on the amenity of the adjoining residential uses.</p> <p>Following community consultation, the proposed closing times were reduced to 11:30pm or 12:00am rather than 1:00am. The earlier closing</p>

**Summary of Submissions:**

<b>Comments Received in Objection:</b>	<b>Administration Comment:</b>
<ul style="list-style-type: none"><li>• The noise management plan for the proposed development indicates a 2.0 metre high noise barrier fence within the car park. There are no details as to how such a fence will be constructed. Additionally, the fence will prevent access to the car park. It does not appear that the noise barrier fence will include any gate access, which if it did would no doubt reduce the already questionable effectiveness of this proposed noise treatment.</li><li>• The shisha bar is located next to North Lodge which is a Private Hotel that is a residential property for travellers and has been operating for over 40 years. The noise factor will adversely impact the business at No. 225 Beaufort Street (North Lodge) as bedrooms are located along the adjacent side to the shisha bar. The possibility of 20 persons outside these bedroom windows talking, playing music and/or participating in karaoke until 1:00am throughout the week is concerning. There is also apartments on the other side and also to the rear of the shisha bar. The property should not be used for outdoor entertainment at any time due to this context.</li></ul>	<p>times would further assist to limit impacts on the amenity of the adjoining residential uses, with the earliest closing time of 11:30pm also being proposed on all nights except Friday and Saturday night to assist this further. The applicant also submitted a venue management plan, which includes details and management procedures to demonstrate how the operations of the business will be managed. This includes a complaints management procedure, that signage will be displayed to notify patrons to keep noise down after 10pm and that anti-social behaviour won't be tolerated, and that no amplified music will be played. This would assist to further limit impacts of noise.</p> <p>In addition, the adjoining residential uses to the south are located within a Commercial zone and those to the north-west and south-west are located within a Mixed Use zone. In these zones a range of commercial land uses are permitted or are permissible, with a number of existing commercial land uses operating in the surrounding area. With their zoning and their proximity to central Perth, it is reasonable for these adjoining residential uses to expect a higher level of activity and noise associated with commercial land uses.</p> <ul style="list-style-type: none"><li>• Following community consultation the noise management plan was revised to ensure that the 2.0 metre noise barrier fence would still allow access to the car park by reducing its length and moving it closer to the western edge of the patio area. A gap would be provided between the noise barrier fence and the southern boundary of the subject site to allow access to the car park without the need for a gate. Details on how the noise barrier fence would need to be constructed are included in the noise management plan recommendations.</li><li>• Refer to the comments above. The application is for the use of the patio area as a shisha bar, and not for karaoke or the like. The applicant has confirmed that no amplified music will be played as part of their venue management plan that they have submitted.</li></ul>

**Summary of Submissions:**

Comments Received in Objection:	Administration Comment:
<p><u>Operating Hours</u></p> <ul style="list-style-type: none"> <li>Opening to 1am on weeknights will disrupt the sleep of all residents in adjacent buildings. Since many residents work, the health and economic impact will be devastating.</li> <li>The operating hours of shisha bar will lead to a number of issues in this area. Opening until the early hour of morning can lead to noise and unacceptable disturbance to the existing residents.</li> <li>The trading hours until 1am is an issue for noise to surrounding properties. This premise is surrounded by apartments and townhouses with more being added constantly - putting a venue which is open until 1am for smoking (and subsequently drinking and noise) is a huge risk to residents without adding any positive amenity to the neighbourhood.</li> <li>The operating hours of the proposed development to 1am every morning will have a continuous detrimental impact on directly adjoining residential neighbours from noise and associated disturbance by customers and staff. Mere compliance with noise regulations (although it is doubtful that this is in fact can be achieved, particularly considering the absence of any detail of the proposed 2 metre high 'noise barrier fence') is not sufficient to protect the amenity of adjoining residential uses. The proposed development outdoor living areas and bedrooms on adjoining properties which would make the use more acute and unacceptable from an amenity perspective.</li> <li>The operating hours will increase the probability of excessive noise and substance abuse in the area.</li> </ul>	<p>Following community consultation, the operating hours proposed were reduced to:</p> <ul style="list-style-type: none"> <li>4:00pm and 11:30pm Monday to Thursday;</li> <li>4:00pm and 12:00am on Friday;</li> <li>12:00pm and 12:00am on Saturday; and</li> <li>12:00pm and 11:30pm on Sunday.</li> </ul> <p>The updated operating hours of the business, including its closing times of 11:30pm from Sunday to Thursday and 12:00am on Friday and Saturday, would be similar to that of other business located along this Commercial zoned section of Beaufort Street, and in itself would not have an adverse impact on the locality. This includes The Ellington Jazz Club which has a closing time of 10:00pm from Monday to Thursday and of 1:30am on Friday and Saturday, as well as the McDonald's which operates 24 hours a day.</p> <p>Refer to the comments above and below under 'Noise' and 'Anti-Social Behaviour'.</p> <p>The applicant has advised that the premises is not intended to hold a liquor license and would not be serving alcohol at the premises.</p>
<p><u>Parking</u></p> <ul style="list-style-type: none"> <li>The street parking available on Beaufort Street which the applicant states will be used by patrons is in very high demand from other businesses and there are rarely free spaces at day or night. This would push patron parking into residential streets, creating potentially noise impacts from patron movement. No justification has been provide to demonstrate that street parking will be available for patrons.</li> <li>Concerns regarding parking issues.</li> <li>The proposal does not include any parking, so by attracting potentially more people to this shisha bar at night it will likely cause more issues for street parking in the area for residents and other businesses nearby.</li> <li>The car parking for the proposed development is entirely unsatisfactory as they layout does not support three car parking bays for staff (as shown on the plans), as there is insufficient space for access and turning movements.</li> </ul>	<p>The parking provision is acceptable for the following reasons:</p> <ul style="list-style-type: none"> <li>A Restaurant/Café land use was previously approved at the subject site and as part of a subsequent approval it was approved with no car parking bays provided onsite. As part of this application the number of staff onsite would not increase and staff car parking demand would not change, noting the applicant has stated there would be a maximum of two staff onsite at one time. The additional car parking demand over what has been previously approved at the subject site would only be associated with the 20 patrons of the Unlisted Use;</li> <li>The subject site is located along Beaufort Street in close proximity to the Northbridge/William Street Town Centre and central Perth. This is a high amenity area connected with pedestrian paths, public transport and the Perth bicycle network;</li> </ul>



**Summary of Submissions:**

Comments Received in Objection:	Administration Comment:
<ul style="list-style-type: none"> <li>There will be insufficient parking available on Beaufort Street for patrons, and this will lead to patrons parking in the adjacent streets. These streets are already heavily used by people in the area attending other businesses, and this has noise and safety impacts.</li> </ul>	<ul style="list-style-type: none"> <li>The nature of surrounding area, being a Commercial zone and activity corridor with a number of other nearby commercial land uses, would allow for multi-purpose trips that would reduce the overall parking demand within the area. The applicant has stated that typically patrons of shisha bars or lounges visit these premises before or after attending other venues such as restaurant/cafes, bars and nightclubs, of which there are a number surrounding the subject site;</li> <li>A review of the on and off-street parking provided in the vicinity of the subject site indicates that there is capacity to accommodate additional patron car parking. This includes the two hour ticketed on-street parking bays along Beaufort Street, and the ticketed off-street parking bays available within the City's Brisbane Street car park. The nature of the use is such that it is not expected that patrons would be attending the site for extended periods of time, with the applicant stating that a typical usage period for shisha is 45 minutes. This means that if patrons choose to drive their own cars to the premises, they would be able to use the two hour ticketed on-street car parking bays available and it ensures high turnover of these bays;</li> <li>The subject site is located along Beaufort Street and is serviced by bus routes No. 67, 68 and 950 which provides high frequency services between the Morley, Mirrabooka and Perth Bus port. The closest bus stops associated with these services are located approximately 90 and 100 metres from the subject site. The subject site is also located a walking distance of approximately 1.0 kilometre from Perth Train Station which connects to the wider metropolitan area. The accessibility of these bus and train routes support travel to and from the subject site by means other than car; and</li> <li>There are existing publicly available bicycle parking spaces within the verge along Beaufort Street in close proximity to the subject site that would be available for use by patrons. This includes four spaces within the verge in front of the southern adjoining property at No. 211 Beaufort Street.</li> </ul> <p>Following community consultation the application was revised to confirm that three onsite car parking bay wouldn't be provided due to there being insufficient space for access and turning movements. The applicant has also indicated that they have an agreement to be able to use two car parking bays in the adjoining car park to the west at No. 46 Lindsay Street. As these car parking bays are not located within the subject site and the applicant has not provided further details of this agreement, it has been considered for the purpose of this application that no car parking bays would be provided onsite.</p>
Tobacco Use/Sale	

**Summary of Submissions:**

<b>Comments Received in Objection:</b>	<b>Administration Comment:</b>
<ul style="list-style-type: none"><li>Given that the smoking of tobacco is discouraged in all other areas due to proven risks to health/life expectancy, approving a shisha bar whose sole purpose is the ingestion of nicotine products, in a manner that from scientific studies has been shown to result in a massively greater ingestion of noxious ingredients in a shorter space of time, would not put patrons of neighbouring businesses, neighbouring business owners, passing pedestrian traffic, neighbouring residents and the businesses patrons health at risk. It would also send a message that smoking, indeed smoking in a manner that is far more detrimental to health than smoking cigarettes, is condoned and therefore encouraged by the City.</li><li>The location of the shisha bar at the rear of the property is in close proximity to residential bedrooms and balconies of adjacent buildings. The smoke will be disrupting to all residents in these buildings, and will require them to close their windows every night. It is well recognised that breathing in even small amounts of shisha smoke can increase your risk of and worsen many diseases and illnesses. Therefore having a shisha bar next to residential buildings where there are children, pregnant women and elderly should not be allowed. Furthermore, how can it be ensured that no other tobacco products or illicit substances are smoked on the premises? These also have harmful health effects on nearby residents.</li></ul>	<ul style="list-style-type: none"><li>Refer to the comments below under 'Land Use – Consistency with Local Planning Scheme No.2 (LPS2)' and 'Licence Requirements'. As the use and consumption of shisha is a legal activity and regulated under separate State legislation, including the <i>Tobacco Products Control Act 2006</i> and <i>Tobacco Advertising Prohibition Act 1992</i>, the associated broader public health impacts are not a material planning consideration. However, the compatibility of the proposal with its surrounding locality and its extent of impact on amenity are valid planning considerations, and are discussed in further detail below.</li><li>The nature of the use involving the consumption of shisha in a ready-to-smoke form onsite within an unenclosed patio, would inherently result in smoke, vapour and odour being emitted outward from the premises. The applicant has not submitted any details or included any physical measures that would control or filter emissions from the premises. They have stated in their venue management plan that there would be a limited amount of smoke in the venue due to the number of patrons being limited to a maximum 20 patrons at any time. They also stated that four ceiling fans installed on the roof of the patio would assist to ensure smoke doesn't spread to residential areas, noting that no evidence was provided to demonstrate that this would be the case and that it wouldn't instead further exacerbate emissions outward from the patio area. Noting that it is accepted that the emission of smoke and vapour can be harmful to health, and that the emission of odour can be a nuisance, the lack of details and physical measures on how emissions would be controlled or filtered is considered particularly relevant for this application. This is given that the patio area would either be fully or partially unenclosed to the north, west and south, where in these directions there are sensitive uses in the form of residential dwellings or apartments and short term accommodation. The patio is located between a minimum of approximately 1.0 and 9.0 metres from the adjoining properties to the north, north-west, south-west and south that contain established sensitive uses. The concerns are therefore supported, as the above demonstrates that the use may not be capable of operating in a manner where emissions would be appropriately managed, and that it may adversely impact the amenity of the adjoining properties and the associated sensitive uses.</li></ul> <p>Refer to the comments below under 'Other' regarding other substances besides shisha.</p>

**Summary of Submissions:**

<b>Comments Received in Objection:</b>	<b>Administration Comment:</b>
<ul style="list-style-type: none"><li>• The shisha bar in a densely populated area like this will have significant negative effects on the health and safety of the residents and reduce quality of life. Shisha smoke is toxic as it contains chemicals which are harmful to health, it's also worse than cigarettes and second hand smoke is harmful even in an outdoor area. It can also increase the risk of and worsen many diseases and illnesses.</li><li>• Health impacts from secondary shisha smoke is well documented and would particularly impinge upon the health and amenity of the adjacent apartments which have windows and balconies overlooking the proposed area that would inevitably mean those residents would have their health and amenity compromised.</li><li>• The health impacts of secondary shisha smoke will impact nearby residents, as well as the smell.</li><li>• Shisha smoke is heavily flavoured and has a resulting strong smell, as does the charcoal used to heat the water pipe of a shisha. This tobacco smoke as well as charcoal smoke cannot be contained within the premises and therefore will impact on adjacent properties. Use of the outdoor area and my balcony which directly overlooks the front of the property will have its amenity negatively impacted by this, and neighbouring residents risk the use of second hand smoke inhalation as a result.</li><li>• There are already a number of "smoke shops" in the area such as the recent "up in smoke" business which opened up the road. They attract people day and night who then smoke outside the buildings which affects both passers-by and residents of the buildings. The City should not support businesses which don't support a healthy environment.</li><li>• Smoking should never be encouraged in anyway. The World Health Organisation has deemed that smoking causes diseases/cancers, and this proposal would be a backward step for encouraging and promoting community health.</li><li>• The business is a risk to individual and public health. The use of tobacco products cause and contribute to significant risks of disease and death, and is the leading cause of preventable death and disease in Australia (attributed to 13% of all deaths in 2018). These risks are magnified when tobacco is smoked socially because of the serious harms associated with second-hand smoke. As with other tobacco products, use of shisha poses significant health risks. This practice is not safe and is associated with many of the same risks as smoking cigarettes (and may be worse), including direct negative health effects for users and serious second-hand smoke impacts for bystanders. Water pipe smoking is significantly associated with various cancers,</li></ul>	

**Summary of Submissions:**

Comments Received in Objection:	Administration Comment:
<p>diseases and illnesses. Water pipe smokers tend to smoke over a longer period than cigarette smokers, and it has been estimated that during a session of water pipe smoking of an hour, a person would inhale more than 100 times the volume of smoke produced by a single cigarette. This exposes users to nicotine and other harmful substances contained in the smoke. Water pipe smoking can act as a gateway to cigarette initiation and emissions can harm non-smokers in the same way second-hand tobacco smoking does. In addition to the above health risks, there is documented evidence of acute health impacts from water pipe smoking.</p> <ul style="list-style-type: none"> <li>• The shisha bar is a use which promotes the smoking of tobacco products which is known to be highly detrimental to human health.</li> <li>• The shisha bar is inconsistent with the zone and would it would not help reduce the exposure of people to smoking, particularly children and students who may walk past.</li> </ul>	
<p><u>Land Use – General</u></p> <ul style="list-style-type: none"> <li>• The application does not meet the objectives of the zone as 20 patrons smoking will not contribute significantly to the principles referenced including the economic development of the area, energy efficiency and recycling. The nature of a shisha bar, in particular the potential health impacts on clients and neighbouring residents &amp; business owners, as well as the noise of the operation and of clients arriving and leaving, means it will have a highly detrimental effect on the local area.</li> <li>• This proposal if approved could also set an unacceptable precedent for other proposals wishing to establish smoking in or around multi-unit developments. Smoking in all forms should be discouraged and not permitted.</li> <li>• The City is trying to facilitate a healthy environment and to get more pedestrians and walkers in the neighbourhood - this proposal goes against this vision as the smoke from venues like this is a disincentive to walkers and negatively impacts the neighbourhood.</li> <li>• Object to the proposed shisha bar because it's an unlisted use and has the potential to disrupt the surroundings and pollute the environment in the vicinity. There are nearby residential buildings and school children in the area which would be impacted, and a shisha bar is not the right use of the property.</li> <li>• The shisha bar would detract from the character and identify of the City of Vincent.</li> </ul>	<ul style="list-style-type: none"> <li>• Refer to the comments below under 'Land Use – Consistency with Local Planning Scheme No.2 (LPS2)'. Although there is a public health impact from smoking, smoking itself is not an illegal activity. The nature of the use is not associated with an illegal activity. The premises would be located in close proximity to licenced venues including The Ellington Jazz Club and the Brisbane Hotel, which facilitate the service and consumption of alcohol onsite. The operation of these businesses would have some inherent impact on the area and reduced amenity. The premises is also 80 metres from a convenience store selling tobacco products, and 150 metres from a similar premises in Up in Smoke. In this context the proposal is unlikely to result in further reduced amenity or to set an undesirable precedent than that currently experienced or set by there being multiple existing businesses which serve alcohol and sell tobacco and smoking-related products and implements in close proximity.</li> </ul>

**Summary of Submissions:**

Comments Received in Objection:	Administration Comment:
<ul style="list-style-type: none"> <li>The proposal is of great concern, as it is wholly unsuitable due to its use and associated noise and pollution which will have a strongly detrimental effect on the residential amenity of adjoining properties. It would be adjacent to a main outdoor living courtyard and two bedrooms on an adjoining property. These will be directly negatively impacted by the noise and pollution from this proposed development which will operate until 1am, seven days a week.</li> </ul>	<ul style="list-style-type: none"> <li>Refer to the comments above under 'Noise' and 'Tobacco Use/Sale'.</li> </ul>
<p><u>Land Use – Consistency with Local Planning Scheme No. 2 (LPS2)</u></p> <ul style="list-style-type: none"> <li>The use is non consistent with the following matters to be considered under Clause 67(2) of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> for the following reasons: <ul style="list-style-type: none"> <li><b>Clause 67(2)(a)</b> – The health, safety and general welfare of the City's inhabitants is not protected and enhanced by the application. It poses a direct risk to the individual and public health of the City's inhabitants by promoting tobacco use in the form of shisha, where it is known to have significant health risks.</li> <li><b>Clause 67(2)(a)</b> – A shisha bar, which is for the smoking of harmful tobacco products is entirely contrary to Aim (b) of the City's LPS2 which is <i>'to protect and enhance the health, safety and general welfare of the City's inhabitants and the social, environmental and cultural environment'</i>.</li> <li><b>Clause 67(2)(f)</b> – Reducing tobacco use and smoking is a key State priority and is reflected in State policy. These policies include the Sustainable Health Review, the WA Health Promotion Strategic Framework, the State Public Health Plan for WA and the WA Cancer Plan, all of which identify the priority to reduce tobacco use and provide high-level strategic direction to achieve this end. Approving this application would undermine the intent of State policies in this area.</li> <li><b>Clause 67(2)(f)(a)</b> – the first objective of the City's Local Planning Strategy is <i>'to promote and safeguard the health, safety and convenience and general welfare of the inhabitants of the City'</i>. The shisha bar does not support promotion of the health of the inhabitants of the City, and there is nothing in LPS2 or the Local Planning Strategy that supports the establishment of land uses, such as a shisha bar, that are plainly destructive to human health.</li> <li><b>Clause 67(2)(m)</b> – A high density of tobacco and associated businesses may adversely impact on the character of the area and is not compatible with an activity corridor that supports healthy living and quality of life. It should be noted that there are already premises in the vicinity selling tobacco and associated products</li> </ul> </li> </ul>	<p>In regards to the matters to be considered by local government under the <i>Planning and Development (Local Planning Schemes Regulations 2015)</i>:</p> <ul style="list-style-type: none"> <li>The use is not inconsistent with the aim to facilitate and encourage businesses which cater of a diversity of interests and lifestyles. While there is a demonstrated impact from the use of tobacco products, the sale of shisha in a ready-to-smoke form is not an illegal activity. An Unlisted Use requires discretion to be exercised by the decision maker for its approval. The proposed shisha bar is capable of consideration within the Commercial zone, by virtue of it being an Unlisted Use and not an 'X' (not permitted) land use;</li> <li>Broader public health policy at the state level seeks to reduce the impacts caused by smoking. These policies do not identify opportunities for this to be controlled or influenced through the planning framework. The selling of smoking implements and consumption of shisha is not illegal and there are other controls in place through the tobacco products legislation (regulated by the Department of Health) to control how this is sold and consumed;</li> <li>The City does not have any approved local planning policies which are relevant to the assessment of the use. Amongst other initiatives, the Public Health Plan seeks to deliver smoke-free town centres by 2025. The Public Health Plan also seeks to support the implementation of smoke-free environments including festivals, events, activities and/or clubs, and to advocate for reduced exposure to tobacco advertising, marketing, promotion and sponsorship. Notwithstanding the aims and priorities of the City's Public Health Plan, this is not a relevant consideration under the planning framework. The initiatives of the Public Health Plan do not extend to private property or contemplate strategies to restrict businesses selling shisha for consumption onsite;</li> <li>Accounting for the surrounding context, the nature and operation of the use would not further diminish the existing amenity. Refer to the comments below against the objectives of the Commercial zone under</li> </ul>

## Summary of Submissions:

Comments Received in Objection:	Administration Comment:
<p>and accessories. A higher density of tobacco retailers is associated with a greater uptake and continuation of smoking, and also gives the impression that smoking and related behaviours are acceptable in the City of Vincent community, when they are not. In addition, the business name "Marihana" closely resembles "marijuana" and is suggestive of illegal drug use which is detrimental to the character of the area.</p> <ul style="list-style-type: none"><li>○ <b>Clause 67(2)(n)</b> – The premises is situated in an activity corridor that connects Northbridge with the Mount Lawley town centre and should promote a welcoming, pleasant and healthy environment for community members and visitors. A shisha bar with the purpose of encouraging the sale and use of shisha is not compatible with the character of an activity corridor that supports healthy living and quality of life. The lack of an active street frontage, dominant signage and a name suggestive of illegal drug use would detrimentally impact on the character of the locality. It should also be noted that there will likely be smoke-drift in respect of the proposed use onto adjacent properties and Beaufort Street itself, which will adversely impact on the amenity of the area, including in relation to the owners and occupiers next door. In addition, the late hours of operation will likely have noise implications for owners and occupiers living nearby. Also, the social impacts are that the development promotes an activity that poses a significant risk to public health and that detrimentally impacts on the health of those who visit the premises and staff. This is exacerbated by the proposed opening hours. The development has the potential to glamourise shisha use and portray it as a social activity (when in reality, it exposes users and bystanders to toxic and carcinogenic smoke). Allowing such a business to operate may contribute to re-normalising tobacco use and smoking, which is a detrimental social impact.</li><li>○ <b>Clause 67(2)(r)</b> – The shisha bar land use in an activity corridor is not appropriate, taking into account the possible risk to human health or safety. The purpose of the shisha bar is to encourage the sale and use of shisha. An activity corridor with its increased pedestrian traffic is not suitable for a development that is, by its inherent nature, a significant risk to individual and public health. If it were allowed to be positioned with entry from a pedestrian traffic area, it could entice a significant number of people who may not otherwise use tobacco products, to try using them. This could have the effect of re-normalising tobacco use and exposing another group of people to nicotine addiction and significant health risk.</li></ul>	<p>LPS2 and under 'Anti-Social Behaviour'. In contemplating the surrounding context, the use would not have a more detrimental impact on the community than what is currently experienced; and</p> <ul style="list-style-type: none"><li>● The issues raised in the submissions have been considered as part of this application. Receiving objections to the proposal alone is not a valid reason for the application to be refused.</li></ul>

**Summary of Submissions:**

Comments Received in Objection:	Administration Comment:
<ul style="list-style-type: none"> <li>○ <b>Clause 67(2)(x)</b> – The application is significantly at odds with the City’s Public Health Plan which identifies smoking as one of six priority health areas, and includes key targets such as smoke-free town centres and supporting the implementation of smoke-free environments. Approving the current application does not align with the intent behind these targets, nor would it assist in policy implementation as it would make the availability and use of tobacco products more likely within the City. The establishment of another premises that promotes tobacco use (through the sale and use of shisha) is not in line with community expectations. The majority of WA adults support or strongly support more smoke-free areas, and nearly two-thirds of WA adults consider that tobacco should be less available to buy in WA or should not be available at all. The proposed shisha bar does not align with community expectations in this area and would consequently adversely impact on the community. The potential impact of the proposed development on the community is significant, particularly with regards to normalising the use and availability of tobacco products. Introducing a shisha bar that encourages the sale and use of shisha is harmful to public health and increases the opportunity for community members to access, use and become addicted to tobacco products.</li> <li>○ <b>Clause 67(2)(y)</b> – the City is to give due consideration to the comments made on the application during public consultation, including those above.</li> <li>○ <b>Clause 67(2)(zb)</b> – the establishment of shisha bars is entirely inconsistent with the City’s Public Health Plan and the stated aims and actions adopted by Council, which is a relevant consideration.</li> </ul>	
<ul style="list-style-type: none"> <li>● The use shisha bar is not consistent with the following objectives of the Commercial zone under LPS2: <ul style="list-style-type: none"> <li>○ <b>Objective #1</b> – the shisha bar is plainly not a compatible use in its setting, which in this case includes neighbouring residential uses. Further, the shisha bar involves the consumption of harmful tobacco products and cannot be regarded as a use which supports ‘sustainable’ economic development – there is nothing about the consumption of tobacco products that is sustainable.</li> <li>○ <b>Objective #2</b> – The use incorporates no sustainability principles in respect to environmental sustainability. Importantly, the law requires that shisha cannot be smoked in an enclosed public space because it is harmful to health, which is entirely contrary to the principles of environmental sustainability. The proposal does not satisfy these legal requirements for an unenclosed public space.</li> <li>○ <b>Objective #3</b> – this objective is not satisfied by the proposed</li> </ul> </li> </ul>	<p>In regards to the objectives of the Commercial zone under LPS2:</p> <ul style="list-style-type: none"> <li>● The use would operate as a retail tenancy that offers products for consumption in areas with seating provided. This would contribute towards economic development, with the predominant retail offering and commercial activity along Beaufort Street. The retail aspect of the business is consistent with surrounding commercial activities including shops, restaurants, cafes and bars. These commercial activities provide goods or services for sale, are open to the general public, and provide day time and night time trade; consistent with the retail aspect of the proposed land use;</li> <li>● Aside from the signage, no works are proposed to the existing building. This would ensure that it maintains compatibility with the streetscape through its overall built form. This includes its building height and scale and the provision of an active street frontage that are consistent with the</li> </ul>

**Summary of Submissions:**

<b>Comments Received in Objection:</b>	<b>Administration Comment:</b>
<p>change of use, given the use is located at the rear of the premises.</p> <ul style="list-style-type: none"><li>○ <b>Objective #4</b> – the proposed use directly offends this objective because it will be significantly detrimental to adjoining owners and, in particular, adjoining residential properties due to noise, odour, the impacts of extended trading hours to 1 am every day and lack of car parking.</li></ul>	<p>Built Form Policy. The signage proposed would exceed the amount prescribed under the Signs and Advertising Policy and is recommended for refusal;</p> <ul style="list-style-type: none"><li>• The development does not impact on energy efficiency or water conservation principles. Waste would be collected by an external waste service provider, in line with the City ceasing commercial waste collection; and;</li><li>• The proposal would detrimentally impact on the amenity of adjoining owners and residential properties by way of emissions. It is noted that a noise management plan and venue management plan have been submitted that demonstrate how noise and the activities of the use would be appropriately managed to limit impacts. However, as set out above under ‘Tobacco Use/Sale’, the nature of the use involving the consumption of shisha in a ready-to-smoke form onsite within an unenclosed patio, would inherently result in smoke, vapour and odour being emitted outward from the premises. The applicant has not submitted any details or included any physical measures that would control or filter these emissions. This demonstrates that the use as proposed would not be capable of operating in a manner where emissions of smoke, vapour and odour would be appropriately managed, and that it would adversely impact the amenity of the adjoining properties and the associated sensitive uses that area in close proximity to the subject site and the unenclosed patio area. In terms of the other considerations, refer to the additional comments above and below under ‘Noise’, ‘Operating Hours’ and ‘Anti-Social Behaviour’; and</li><li>• Refer to the comments below under ‘Licence Requirements’ regarding the enclosed public space requirements under the tobacco products legislation.</li></ul>



## Summary of Submissions:

Comments Received in Objection:	Administration Comment:
<p><u>Anti-Social Behaviour</u></p> <ul style="list-style-type: none"> <li>Concerns regarding anti-social behaviour.</li> <li>This area is already a problem in relation to anti-social behaviour. Attracting more people to an area for smoking as opposed to something of beneficial use or amenity to the neighbourhood would be another backwards step for this part of the community. It could compound existing and severe anti-social behaviour in the area.</li> <li>The shisha bar would attract further undesirable elements to this area, which already struggles with anti-social behaviour and homelessness.</li> </ul> <p>Oppose this proposal as previous venues or shops which operate nearby in Mt Lawley and elsewhere are known to attract anti-social behaviour. Already there are many instances of anti-social behaviour in the nearby area and indeed at the front entrance to the nearby apartments. To attract more attention to this area is negligent, and this venue would downgrade the area and disrupt the current residents.</p>	<p>Following community consultation the applicant submitted a venue management plan. This includes details and management procedures to demonstrate how the operations of the business will be managed, including the business operator contact details, a complaints management procedure, that signage will be displayed to notify patrons to keep noise down after 10pm and that anti-social behaviour won't be tolerated, and that patrons will only enter and exit through the front of the premises to Beaufort Street. This would assist to ensure the use operates in a manner where its activities would be appropriately managed to limit impacts on the amenity of the area, including from anti-social behaviour.</p> <p>The premises would also be located in close proximity to licenced venues including The Ellington Jazz Club and the Brisbane Hotel, which facilitate the service and consumption of alcohol onsite. The operation of these businesses would have some inherent impact on the area and reduced amenity. The premises is also 80 metres from a convenience store selling tobacco products, and 150 metres from a similar premises in Up in Smoke. In this context the proposal is unlikely to result in further reduced amenity than that currently experienced by being in close proximity to existing businesses which serve alcohol and sell tobacco and smoking-related products and implements in proximity to services for vulnerable community members and public open space (Weld Square).</p>
<p><u>Unauthorised Signage</u></p> <p>While not reflected on the plans before the City, the frontage of the premises is showing as having all front windows covered with signs with the business name and the front doors being made opaque. There is no active street frontage, and the front of the property does not allow surveillance of the street which may be contrary to the City's Built Form Policy. The signage on the premises is dominating and is incompatible with the design facades within the streetscape and may be contrary to the City's Signage Policy.</p>	<p>Following community consultation the application was amended to seek approval for the signage that has already been installed, and this has been considered as part of the application. The signage was also reduced in size to occupy no more than 30 percent of the glazed area of the windows, as per the sign specific standards of the City's Signs and Advertising Policy for window signs. The signage proposed would still exceed the amount prescribed under the Signs and Advertising Policy and subsequently is recommended for refusal, as it would not satisfy the objectives of the Signs and Advertising Policy. This is as it would result in a proliferation of advertisement and would not align with the City's Public Health Plan objective of advocating for reduced exposure to alcohol and tobacco advertising, with there being an unnecessary level of exposure of the business name and its associated activities involving the sale of shisha for consumption onsite.</p>

**Summary of Submissions:**

Comments Received in Objection:	Administration Comment:
<p><u>Licence Requirements</u></p> <ul style="list-style-type: none"> <li>The development does not comply with the legal requirements of the <i>Tobacco Products Control Act (2006)</i> and the <i>Tobacco Products Control Act Regulations (2006)</i>. These requirements include that 'Shisha cannot be smoked in an enclosed public place'. An 'enclosed public place' is defined as a public place which has a ceiling or roof and is more than 50 per cent enclosed by walls or other vertical structures or coverings. This definition includes an outdoor area that is enclosed by café blinds. The proposed development does not comply, because the shisha bar is fully enclosed on two sides – one being the rear wall of the existing building, the being the required 'noise wall' which fully encloses the structure on the northern side. It's also further enclosed by the male and female toilets, which partially enclose the western side, and additionally, the entire structure is enclosed (currently) with café blinds. This also means that the proposed development is directly contrary to aim (b) of the City's LPS2 and the law.</li> </ul>	<ul style="list-style-type: none"> <li>During the assessment of the application Administration liaised with the Tobacco Compliance Branch of the Department of Health. Administration referred the business to the Tobacco Control Branch of the Department of Health, who advised the following: <ul style="list-style-type: none"> <li>Premises such as shisha bars or lounges may apply for a retail tobacco licence under the <i>Tobacco Products Control Act 2006</i> in order to sell tobacco products including shisha;</li> <li>The use of the tobacco product in or near enclosed public places is governed by the <i>Tobacco Products Control Regulations 2006</i> and is not linked to the licensing process. There is no process within the tobacco products legislation for approval or assessment of smoking areas within the retail tobacco licensed premises; and</li> <li>Tobacco licensed premises are inspected routinely and where written complaints are received alleging a breach of the tobaccos products legislation. The Tobacco Control Branch would investigate allegations relating to smoking in enclosed public places, and any areas where smoking was found to be taking place would be assessed for compliance with the tobacco products legislation.</li> </ul> </li> </ul> <p>Following community consultation, the noise management plan was updated to consider the applicable requirement under the <i>Tobacco Products Control Regulations 2006</i> for shisha to not be smoked in an enclosed public place. Figure 3.1 of the noise management plan demonstrates that the set back and extent of the recommended acoustic barriers have been designed so that they do not enclose more than 50 percent of the patio area and that the premises would be capable of achieving compliance with this requirement if the acoustic barriers were installed. This was achieved by reducing the length of the recommended acoustic barrier on the northern side of the patio to be no more than 75% of the total length of the patio façade.</p> <p>It would be the business operator's responsibility to comply with this applicable legislation, with the responsible authority for monitoring compliance then being the Department of Health. These responsibilities are separate to the consideration of the application under the planning framework. Subsequently the above is not included as recommended reasons for refusal.</p>

**Summary of Submissions:**

Comments Received in Objection:	Administration Comment:
<ul style="list-style-type: none"> <li>The proponent would have to hold a tobacco seller's licence to sell or supply shisha from the Department of Health and to hold a permit from the local government to sell food. They would not be able to create a smoking zone in an outdoor eating area. Concerns raised how this will be monitored given the proposal is for a shisha bar located at the rear of the premises and open until 1am. It is also difficult to see how it will generate business given the restrictions on advertising that apply to businesses that sell shisha.</li> </ul>	<ul style="list-style-type: none"> <li>Under the <i>Tobacco Products Control Act 2006</i>, smoking is not permitted within an outdoor eating area. The applicant has advised that the front of the subject site would be used as a café selling snack food and non-alcoholic hot and cold drinks, with this being separate to the patio area that would used for the sale and consumption of shisha. Refer to the comments above, with the responsible authority for monitoring compliance being the Department of Health who complete inspections routinely and when written complaints are received alleging a breach of the legislation.</li> </ul>
<p><u>Other</u></p> <p>There is no mention as to how or what will be smoked and controlled. Concerns that there will be smoking of illicit substances which the business name is suggestive of.</p>	<p>The applicant has confirmed that shisha (a generally flavoured tobacco product) would be consumed by customers in a ready-to-smoke form through a water pipe, with this being legal under the <i>Tobacco Products Control Act 2006</i> and regulated by the Department of Health. If it occurred, smoking of illegal substances would be a matter for the Western Australian Police Force and the Department of Health.</p>
Comments Received Expressing Concern:	Administration Comment:
<p><u>Operating Hours</u></p> <ul style="list-style-type: none"> <li>The closing hour of 1am is not a consistent time for any other venues in this area. Late closing creates potential impacts of loud noise and extra car movements due to the lack of public transport and bicycle provisions.</li> <li>There is no alcohol proposed to be provided, so question why a shisha bar would be closing at such a late hour.</li> </ul>	<ul style="list-style-type: none"> <li>Refer to the comments above under 'Operating Hours'.</li> <li>The operating hours and whether these are appropriate in relation to business type and services provided is a matter for the applicant to decide and propose. The relevant planning considerations are whether these are appropriate in relation to the amenity of the surrounding properties and area. Refer to the comments above under 'Operating Hours'.</li> </ul>
<p><u>Parking</u></p> <p>Cars will come to the venue from outside the area, as no other venue in this part of Beaufort Street is open at this late time.</p>	<p>Refer to the comments above under 'Parking'.</p>
<p><u>Tobacco Use/Sale</u></p> <p>Question whether there is consideration into the smoke created from this site going into neighbouring apartments.</p>	<p>Refer to the comments above under 'Tobacco Use/Sale'.</p>

Note: Submissions are considered and assessed by issue rather than by individual submitter.

## Summary of Submissions:

The tables below summarise the comments received during the advertising period of the proposal, together with the Applicant's response to each comment.

Comments Received in Support:	Applicant Comment
<p><u>General</u></p> <ul style="list-style-type: none"> <li>Supported as it will be place to go and meet up with friends.</li> <li>Supported as more local businesses should always be encouraged in a city.</li> <li>Support a currently empty building being used and additional nightlife being added to the area.</li> <li>The proposal sounds nice for an outing and younger people would be attracted to it.</li> </ul>	
<p><u>Bicycle Parking</u></p> <ul style="list-style-type: none"> <li>Bicycle parking is limited along Beaufort Street, and increased parking would be appreciated.</li> </ul>	

Comments Received in Objection:	Applicant Comment
<p><u>Noise</u></p> <ul style="list-style-type: none"> <li>The location of the shisha bar at the rear of the property is in close proximity to residential bedrooms and balconies of adjacent buildings. The noise will be disrupting to all residents in these buildings, and will require them to close their windows every night.</li> <li>The proposed noise management is deficient in dealing with noise impact to the adjacent apartment block and noise modelling is also just that – modelling. Particularly at night when background noise finishes, the neighbouring properties would be subject to an unacceptable amenity impact. The outdoor area by its very nature cannot be enclosed, meaning that sufficient noise attenuation cannot be achieved regardless of what the theoretical modelling claims, particularly a night-time when any background noise is diminished.</li> <li>The proposed noise management is insufficient in dealing with noise impacts to the nearby apartment block and would cause an unacceptable amenity impact, particularly at night without background noise being present.</li> </ul>	<ul style="list-style-type: none"> <li>- There will be no loud music played in the venue and up to 20 patrons at one time.</li> <li>- In terms of the noise management, if there is a patron that is Drunk or noisy they will be asked to leave the venue. We will display a sign to notify people to keep the noise down after 10pm.</li> </ul>

Comments Received in Objection:	Applicant Comment
<ul style="list-style-type: none"> <li>The noise management plan for the proposed development indicates a 2.0 metre high noise barrier fence within the car park. There are no details as to how such a fence will be constructed. Additionally, the fence will prevent access to the car park. It does not appear that the noise barrier fence will include any gate access, which if it did would no doubt reduce the already questionable effectiveness of this proposed noise treatment.</li> </ul>	
<p><u>Operating Hours</u></p> <ul style="list-style-type: none"> <li>Opening to 1am on weeknights will disrupt the sleep of all residents in the building in adjacent buildings. Since many residents work, the health and economic impact will be devastating.</li> <li>The operating hours of shisha bar will lead to a number of issues in this area. Opening until the early hour of morning can lead to noise and unacceptable disturbance to the existing residents.</li> <li>The trading hours until 1am is an issue for noise to surrounding properties. This premise is surrounded by apartments and townhouses with more being added constantly - putting a venue which is open until 1am for smoking (and subsequently drinking and noise) is a huge risk to residents without adding any positive amenity to the neighbourhood.</li> <li>The operating hours of the proposed development to 1 am every morning will have a continuous detrimental impact on directly adjoining residential neighbours from noise and associated disturbance by customers and staff. Mere compliance with noise regulations (although it is doubtful that this is in fact can be achieved, particularly considering the absence of any detail of the proposed 2 metre high 'noise barrier fence') is not sufficient to protect the amenity of adjoining residential uses. The proposed development outdoor living areas and bedrooms on adjoining properties which would make the use more acute and unacceptable from an amenity perspective.</li> <li>The operating hours will increase the probability of excessive noise and substance abuse in the area.</li> </ul>	<p>- For the proposed hours, we are happy to reduce the hours. On Friday, 4pm - 12am, Saturday 12pm - 12am, Sunday 12pm - 11:30pm and Monday to Thursday 4pm - 11:30pm.</p>
<p><u>Parking</u></p> <ul style="list-style-type: none"> <li>The street parking available on Beaufort Street which the applicant states will be used by patrons is in very high demand from other</li> </ul>	

Comments Received in Objection:	Applicant Comment
<p>businesses and there are rarely free spaces at day or night. This would push patron parking into residential streets, creating potentially noise impacts from patron movement. No justification has been provide to demonstrate that street parking will be available for patrons.</p> <ul style="list-style-type: none"> <li>• Concerns regarding parking issues.</li> <li>• The proposal does not include any parking, so by attracting potentially more people to this shisha bar at night it will likely cause more issues for street parking in the area for residents and other businesses nearby.</li> <li>• The car parking for the proposed development is entirely unsatisfactory as they layout does not support three car parking bays for staff (as shown on the plans), as there is insufficient space for access and turning movements.</li> <li>• There will be insufficient parking available on Beaufort Street for patrons, and this will lead to patrons parking in the adjacent streets. These streets are already heavily used by people in the area attending other businesses, and this has noise and safety impacts.</li> </ul>	<p>- I have 2 staff car parks in the rear of the building behind the store room. In terms of the customers, some will be taking transport and some other customers that will drive, will only be in the venue for maximum of 45 minutes and the street parking is up to 2 hours.</p>
<p><u>Tobacco Use/Sale</u></p> <ul style="list-style-type: none"> <li>• Given that the smoking of tobacco is discouraged in all other areas due to proven risks to health/life expectancy, approving a shisha bar whose sole purpose is the ingestion of nicotine products, in a manner that from scientific studies has been shown to result in a massively greater ingestion of noxious ingredients in a shorter space of time, would not put patrons of neighbouring businesses, neighbouring business owners, passing pedestrian traffic, neighbouring residents and the businesses patrons health at risk. It would also send a message that smoking, indeed smoking in a manner that is far more detrimental to health than the smoking of cigarettes, is condoned and therefore encouraged by the City of Vincent.</li> <li>• The location of the shisha bar at the rear of the property is in close proximity to residential bedrooms and balconies of adjacent buildings. The smoke will be disrupting to all residents in these buildings, and will require them to close their windows every night. It is well recognised that breathing in even small amounts of shisha smoke can increase your risk of and worsen many diseases and illnesses. Therefore having a shisha bar next to residential buildings where there are children, pregnant women and elderly should not be allowed. Furthermore, how can it be ensured that no other tobacco products or illicit substances are</li> </ul>	<p>- There will be only 20 patrons at one time, there wont be a lot of smoke. We have 4 fans on the roof of the patio, which will blow the smoke away.</p>

Comments Received in Objection:	Applicant Comment
<p>smoked on the premises? These also have harmful health effects on nearby residents.</p> <ul style="list-style-type: none"> <li>• The shisha bar in a densely populated area like this will have significant negative effects on the health and safety of the residents and reduce quality of life. Shisha smoke is toxic as it contains chemicals which are harmful to health, it's also worse the cigarettes and second hand smoke is harmful even in an outdoor area. It can also increase the risk of and worsen many diseases and illnesses.</li> <li>• Health impacts from secondary shisha smoke is well documented and would particularly impinge upon the health and amenity of the adjacent apartments which have windows and balconies overlooking the proposed area that would inevitably mean those residents would have their health and amenity compromised.</li> <li>• The health impacts of secondary shisha smoke will impact nearby residents, as well as the smell.</li> <li>• Shisha smoke is heavily flavoured and has a resulting strong smell, as does the charcoal used to heat the water pipe of a shisha. This tobacco smoke as well as charcoal smoke cannot be contained within the premises and therefore will impact on adjacent properties. Use of the outdoor area and my balcony which directly overlooks the front of the property will have its amenity negatively impacted by this, and neighbouring residents risk the use of second hand smoke inhalation as a result.</li> <li>• There are already a number of "smoke shops" in the area such as the recent "up in smoke" business which opened up the road. They attract people day and night who then smoke outside the buildings which affects both passers-by and residents of the buildings. The City should not support businesses which don't support a healthy environment.</li> <li>• Smoking should never be encouraged in anyway. The World Health Organisation has deemed that smoking causes diseases/cancers, and this proposal would be a backward step for encouraging and promoting community health.</li> <li>• The business is a risk to individual and public health. The use of tobacco products cause and contribute to significant risks of disease and death, and is the leading cause of preventable death and disease in Australia (attributed to 13% of all deaths in 2018). These risks are magnified when tobacco is smoked socially because of the serious harms associated with second-hand smoke. As with other tobacco products, use of shisha poses significant health risks. This practice is</li> </ul>	

Comments Received in Objection:	Applicant Comment
<p>not safe and is associated with many of the same risks as smoking cigarettes (and may be worse), including direct negative health effects for users and serious second-hand smoke impacts for bystanders. Waterpipe smoking is significantly associated with various cancers, diseases and illnesses. Waterpipe smokers tend to smoke over a longer period than cigarette smokers, and it has been estimated that during a session of waterpipe smoking of an hour, a person would inhale more than 100 times the volume of smoke produced by a single cigarette. This exposes users to nicotine and other harmful substances contained in the smoke. Waterpipe smoking can act as a gateway to cigarette initiation and emissions can harm non-smokers in the same way second-hand tobacco smoking does. In addition to the above health risks, there is documented evidence of acute health impacts from waterpipe smoking.</p> <ul style="list-style-type: none"> <li>• The shisha bar is a use which promotes the smoking of tobacco products which is known to be highly detrimental to human health.</li> <li>• The shisha bar is inconsistent with the zone and would it would not help reduce the exposure of people to smoking, particularly children and students who may walk past.</li> </ul>	
<p><u>Land Use – General</u></p> <ul style="list-style-type: none"> <li>• The application does not meet the objectives of the zone as 20 patrons smoking will not contribute significantly to the principles referenced including the economic development of the area, energy efficiency and recycling. The nature of a shisha bar, in particular the potential health impacts on clients and neighbouring residents &amp; business owners, as well as the noise of the operation and of clients arriving and leaving, means it will have a highly detrimental effect on the local area.</li> <li>• This proposal if approved could also set an unacceptable precedent for other proposals wishing to establish smoking in or around multi-unit developments. Smoking in all forms should be discouraged and not permitted.</li> <li>• The City is trying to facilitate a healthy environment and to get more pedestrians and walkers in the neighbourhood - this proposal goes against this vision as the smoke from venues like this is a disincentive to walkers and negatively impacts the neighbourhood.</li> <li>• Object to the proposed shisha bar because it's an unlisted use and has the potential to disrupt the surroundings and pollute the environment in</li> </ul>	<p>- I have checked with the Tobacco Department, and they have told me that it is compliance with them, due to it being a 50% open area.</p> <p>- : For the proposed hours, we are happy to reduce the hours. On Friday, 4pm - 12am, Saturday 12pm - 12am, Sunday 12pm - 11:30pm and Monday to Thursday 4pm - 11:30pm.</p>



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<p>the vicinity. There are nearby residential buildings and school children in the area which would be impacted, and a shisha bar is not the right use of the property.</p> <ul style="list-style-type: none"> <li>• The shisha bar would detract from the character and identify of the City of Vincent.</li> <li>• The proposal is of great concern, as it is wholly unsuitable due to its use and associated noise and pollution which will have a strongly detrimental effect on the residential amenity of adjoining properties. It would be adjacent to a main outdoor living courtyard and two bedrooms on an adjoining property. These will be directly negatively impacted by the noise and pollution from this proposed development which will operate until 1am, seven days a week.</li> </ul>	
<p><u>Land Use – Consistency with Local Planning Scheme No.2 (LPS2)</u></p> <ul style="list-style-type: none"> <li>• The use is non consistent with the following matters to be considered under Clause 67(2) of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> for the following reasons: <ul style="list-style-type: none"> <li>○ <b>Clause 67(2)(a)</b> – The health, safety and general welfare of the City’s inhabitants is not protected and enhanced by the application. It poses a direct risk to the individual and public health of the City’s inhabitants by promoting tobacco use in the form of shisha, where it is known to have significant health risks.</li> <li>○ <b>Clause 67(2)(a)</b> – A shisha bar, which is for the smoking of harmful tobacco products is entirely contrary to Aim (b) of the City’s LPS2 which is ‘to protect and enhance the health, safety and general welfare of the City’s inhabitants and the social, environmental and cultural environment’.</li> <li>○ <b>Clause 67(2)(f)</b> – Reducing tobacco use and smoking is a key State priority and is reflected in State policy. These policies include the Sustainable Health Review, the WA Health Promotion Strategic Framework, the State Public Health Plan for WA and the WA Cancer Plan, all of which identify the priority to reduce tobacco use and provide high-level strategic direction to achieve this end. Approving this application would undermine the intent of State policies in this area.</li> <li>○ <b>Clause 67(f)(a)</b> – the first objective of the City’s Local Planning Strategy is ‘to promote and safeguard the health, safety and convenience and general welfare of the inhabitants of the City’. The</li> </ul> </li> </ul>	

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<p>shisha bar does not support promotion of the health of the inhabitants of the City, and there is nothing in LPS2 or the Local Planning Strategy that supports the establishment of land uses, such as a shisha bar, that are plainly destructive to human health.</p> <ul style="list-style-type: none"> <li>○ <b>Clause 67(2)(m)</b> – A high density of tobacco and associated businesses may adversely impact on the character of the area and is not compatible with an activity corridor that supports healthy living and quality of life. It should be noted that there are already premises in the vicinity selling tobacco and associated products and accessories. A higher density of tobacco retailers is associated with a greater uptake and continuation of smoking, and also gives the impression that smoking and related behaviours are acceptable in the City of Vincent community, when they are not. In addition, the business name “Marihana” closely resembles “marijuana” and is suggestive of illegal drug use which is detrimental to the character of the area.</li> <li>○ <b>Clause 67(2)(n)</b> – The premises is situated in an activity corridor that connects Northbridge with the Mount Lawley town centre and should promote a welcoming, pleasant and healthy environment for community members and visitors. A shisha bar with the purpose of encouraging the sale and use of shisha is not compatible with the character of an activity corridor that supports healthy living and quality of life. The lack of an active street frontage, dominant signage and a name suggestive of illegal drug use would detrimentally impact on the character of the locality. It should also be noted that there will likely be smoke-drift in respect of the proposed use onto adjacent properties and Beaufort Street itself, which will adversely impact on the amenity of the area, including in relation to the owners and occupiers next door. In addition, the late hours of operation will likely have noise implications for owners and occupiers living nearby. Also, the social impacts are that the development promotes an activity that poses a significant risk to public health and that detrimentally impacts on the health of those who visit the premises and staff. This is exacerbated by the proposed opening hours. The development has the potential to glamourise shisha use and portray it as a social activity (when in reality, it exposes users and bystanders to toxic and carcinogenic smoke). Allowing such a business to operate may contribute to re-normalising tobacco use and smoking, which is a detrimental social impact.</li> </ul>	

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<ul style="list-style-type: none"> <li>○ <b>Clause 67(2)(r)</b> – The shisha bar land use in an activity corridor is not appropriate, taking into account the possible risk to human health or safety. The purpose of the shisha bar is to encourage the sale and use of shisha. An activity corridor with its increased pedestrian traffic is not suitable for a development that is, by its inherent nature, a significant risk to individual and public health. If it were allowed to be positioned with entry from a pedestrian traffic area, it could entice a significant number of people who may not otherwise use tobacco products, to try using them. This could have the effect of re-normalising tobacco use and exposing another group of people to nicotine addiction and significant health risk.</li> <li>○ <b>Clause 67(2)(x)</b> – The application is significantly at odds with the City’s Public Health Plan which identifies smoking as one of six priority health areas, and includes key targets such as smoke-free town centres and supporting the implementation of smoke-free environments. Approving the current application does not align with the intent behind these targets, nor would it assist in policy implementation as it would make the availability and use of tobacco products more likely within the City. The establishment of another premises that promotes tobacco use (through the sale and use of shisha) is not in line with community expectations. The majority of WA adults support or strongly support more smoke-free areas, and nearly two-thirds of WA adults consider that tobacco should be less available to buy in WA or should not be available at all. The proposed shisha bar does not align with community expectations in this area and would consequently adversely impact on the community. The potential impact of the proposed development on the community is significant, particularly with regards to normalising the use and availability of tobacco products. Introducing a shisha bar that encourages the sale and use of shisha is harmful to public health and increases the opportunity for community members to access, use and become addicted to tobacco products.</li> <li>○ <b>Clause 67(2)(y)</b> – the City is to give due consideration to the comments made on the application during public consultation, including those above.</li> <li>○ <b>Clause 67(2)(zb)</b> – the establishment of shisha bars is entirely inconsistent with the City’s Public Health Plan and the stated aims and actions adopted by Council, which is a relevant consideration.</li> </ul>	

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<ul style="list-style-type: none"> <li>• The use shisha bar is not consistent with the following objectives of the Commercial zone under LPS2: <ul style="list-style-type: none"> <li>○ <b>Objective #1</b> – the shisha bar is plainly not a compatible use in its setting, which in this case includes neighbouring residential uses. Further, the shisha bar involves the consumption of harmful tobacco products and cannot be regarded as a use which supports ‘sustainable’ economic development – there is nothing about the consumption of tobacco products that is sustainable.</li> <li>○ <b>Objective #2</b> – The use incorporates no sustainability principles in respect to environmental sustainability. Importantly, the law requires that shisha cannot be smoked in an enclosed public space because it is harmful to health, which is entirely contrary to the principles of environmental sustainability. The proposal does not satisfy these legal requirements for an unenclosed public space.</li> <li>○ <b>Objective #3</b> – this objective is not satisfied by the proposed change of use, given the use is located at the rear of the premises.</li> <li>○ <b>Objective #4</b> – the proposed use directly offends this objective because it will be significantly detrimental to adjoining owners and, in particular, adjoining residential properties due to noise, odour, the impacts of extended trading hours to 1 am every day and lack of car parking.</li> </ul> </li> </ul>	
<p><u>Anti-Social Behaviour</u></p> <ul style="list-style-type: none"> <li>• Concerns regarding anti-social behaviour.</li> <li>• This area is already a problem in relation to anti-social behaviour. Attracting more people to an area for smoking as opposed to something of beneficial use or amenity to the neighbourhood would be another backwards step for this part of the community. It could compound existing and severe anti-social behaviour in the area.</li> <li>• The shisha bar would attract further undesirable elements to this area, which already struggles with anti-social behaviour and homelessness.</li> <li>• Oppose this proposal as previous venues or shops which operate nearby in Mt Lawley and elsewhere are known to attract anti-social behaviour. Already there are many instances of anti-social behaviour in the nearby area and indeed at the front entrance to the nearby apartments. To attract more attention to this area is negligent, and this venue would downgrade the area and disrupt the current residents.</li> </ul>	<p>- CCTV will be active in the premises, signs will be displayed to notify patrons that any kind of anti-social behaviour will not be tolerated and they will be asked to leave.</p>

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<p><u>Unauthorised Signage</u></p> <ul style="list-style-type: none"> <li>While not reflected on the plans before the City, the frontage of the premises is showing as having all front windows covered with by signs with the business name and the front doors being made opaque. There is no active street frontage, and the front of the property does not allow surveillance of the street which may be contrary to the City's Built Form Policy. The signage on the premises is dominating and is incompatible with the design facades within the streetscape and may be contrary to the City's Signage Policy.</li> </ul>	<p>- The sign will be 30% covered according their rules.</p>
<p><u>Licence Requirements</u></p> <ul style="list-style-type: none"> <li>The development does not comply with the legal requirements of the <i>Tobacco Products Control Act (2006)</i> and the Tobacco Products Control Act Regulations (2006). These requirements include that 'Shisha cannot be smoked in an enclosed public place'. An 'enclosed public place' is defined as a public place which has a ceiling or roof and is more than 50 per cent enclosed by walls or other vertical structures or coverings. This definition includes an outdoor area that is enclosed by café blinds. The proposed development does not comply, because the shisha bar is fully enclosed on two sides – one being the rear wall of the existing building, the being the required 'noise wall' which fully encloses the structure on the northern side. It's also further enclosed by the male and female toilets, which partially enclose the western side, and additionally, the entire structure is enclosed (currently) with café blinds. This also means that the proposed development is directly contrary to aim (b) of the City's LPS2 and the law.</li> <li>The proponent would have to hold a tobacco seller's licence to sell or supply shisha from the Department of Health and to hold a permit from the local government to sell food. They would not be able to create a smoking zone in an outdoor eating area. Concerns raised how this will be monitored given the proposal is for a shisha bar located at the rear of the premises and open until 1 am. It is also difficult to see how it will generate business given the restrictions on advertising that apply to businesses that sell shisha.</li> </ul>	
<p><u>Other</u></p>	

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<ul style="list-style-type: none"> <li>There is no mention as to how or what will be smoked and controlled. Concerns that there will be smoking of illicit substances which the business name is suggestive of.</li> </ul>	<p>- Their will be Shisha (Hookah) fruit flavoured. The smoke will be controlled and taken care of by my 4 fans on the roof of the patio. The selling of Shisha is legal, after getting a tobacco license, which we have.</p>

Comments Received Expressing Concern:	Applicant Comment
<p><u>Operating Hours</u></p> <ul style="list-style-type: none"> <li>The closing hour of 1am is not a consistent time for any other venues in this area. Late closing creates potential impacts of loud noise and extra car movements due to the lack of public transport and bicycle provisions.</li> <li>There is no alcohol proposed to be provided, so question why a shisha bar would be closing at such a late hour.</li> </ul>	<p>- For the proposed hours, we are happy to reduce the hours. On Friday, 4pm - 12am, Saturday 12pm - 12am, Sunday 12pm - 11:30pm and Monday to Thursday 4pm - 11:30pm.</p>
<p><u>Parking</u></p> <ul style="list-style-type: none"> <li>Cars will come to the venue from outside the area, as no other venue in this part of Beaufort Street is open at this late time.</li> </ul>	<p>- Some of the customers will be traveling by transport. Some other customers that will drive, will only be in the venue for maximum of 45 minutes and the street parking is up to 2 hours.</p>
<p><u>Tobacco Use/Sale</u></p> <ul style="list-style-type: none"> <li>Question whether there is consideration into the smoke created from this site going into neighbouring apartments.</li> </ul>	<p>- There will be only 20 patrons at one time, there wont be a lot of smoke. We have 4 fans on the roof of the patio, which will blow the smoke away.</p>

Note: Submissions are considered and assessed by issue rather than by individual submitter.