

9.1 NO. 1/278 (LOT: W108; D/P: 223022) BEAUFORT STREET, PERTH - UNAUTHORISED CHANGE OF USE TO RESTRICTED PREMISES

Ward: South

Attachments:

1. Consultation and Location Plan
2. Development Plan
3. Outline of Activities
4. Summary of Submissions - Administration's Response
5. Summary of Submissions - Applicant Response
6. Parking Management Plan
7. Determination Advice Notes
8. Beaufort Street Land Use Context Plan

RECOMMENDATION:

That Council, in accordance with the provisions of the City of Vincent Local Planning Scheme No. 2 and the Metropolitan Region Scheme:

1. **APPROVES** part of the application for unauthorised Change of Use to Restricted Premises and Signage at No. 1/278 Beaufort Street, Perth (Lot: W108; D/P: 223022), in accordance with the plans provided in Attachment 2, subject to the following conditions and advice notes included in Attachment 7:
 - 1.1 This approval is for Change of Use to Restricted Premises and Signage as shown on the approved plans dated 23 March 2021. No other development forms part of this approval;
 - 1.2 This approval is for Restricted Premises as defined in the City of Vincent Local Planning Scheme No.2. Use of the subject land for a different use may require further development approval in accordance with the provisions of the City's Local Planning Scheme No. 2 and the *Planning and Development (Local Planning Schemes) Regulations 2015*;
 - 1.3 A minimum of three on-site parking bays shall be provided for use of the premises;
 - 1.4 A minimum of two short-term bicycle bays shall be provided within the verge adjoining the development. The bicycle bays shall be designed in accordance with AS2890.3 and installed within 28 days from the date of this determination to the satisfaction of the City;
 - 1.5 The proposed Restricted Premises shall be limited to the following hours of operation:
 - Monday to Sunday – 10:00am to 7:00pm;
 - 1.6 Doors and windows and adjacent floor areas fronting Beaufort Street shall maintain an active and interactive relationship with this street. Ground floor glazing and/or tinting shall be a minimum of 70 percent visually permeable to provide unobscured visibility. Darkened, obscured, mirrored or tinted glass or other similar materials as considered by the City is prohibited;
 - 1.7 Within 28 days from the date of this determination, all signage the subject of this approval is to be installed in accordance with Elevation 01 on the approved plans dated 23 March 2021. Thereafter the signage shall be:
 - 1.7.1 Kept in strict accordance with the City's Policy No. 7.5.2 – Signs and Advertising, unless further development approval is obtained;
 - 1.7.2 Kept in a good state of repair, safe, non-climbable, and free from graffiti for the duration of its display on-site; and

1.7.3 Be wholly contained within the subject lot; and

- 2. REFUSES part of the application for unauthorised roller shutters at No. 1/278 Beaufort Street, Perth (Lot: W108; D/P: 223022), in accordance with the plans provided in Attachment 2, for the following reasons:**
- 2.1 The development does not satisfy the objectives of the Commercial zone under Clause 16 of the City's Local Planning Scheme No. 2, as the roller shutters are incompatible with the design of facades within the streetscape. This is as a result of the roller shutters providing for reduced activation to the street frontage;**
- 2.2 The development does not satisfy the Local Housing Objectives of Clause 1.13 Façade Design of the City's Policy No. 7.1.1 – Built Form Policy as:**
- 2.2.1 The appearance of the roller shutters as a security measure adversely impacts on and does not reflect the character of the local area;**
- 2.2.2 The roller shutters reduce activation provided to the street frontage, which reduces visibility of the internal use from the street; and**
- 2.2.3 As a result of the roller shutters, the use does not provide for a visual connection with the adjoining public spaces and does not adhere to the performance criteria of the Western Australian Planning Commissions, Designing Out Crime Planning Guidelines; and**
- 2.3 As a consequence of the adverse appearance of the roller shutter addition and subsequent reduced street surveillance outlined in Refusal Reasons 1 and 2, the roller shutter additions:**
- 2.3.1 Are not compatible nor complimentary to the area in which it is located (Clause 67(2)(m) of the Deemed Provisions in Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*); and**
- 2.3.2 Would detract from the amenity and character of the locality, and would set an undesirable precedence (Clause 67(2)(n)(ii) and (iii) of the Deemed Provisions in Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*); and**
- 2.4 Within 28 days from the date of this determination, the roller shutters must be removed from the façade and the affected areas of the façade made good, to the satisfaction of the City.**

PURPOSE OF REPORT:

To consider an application for development approval for an unauthorised change of use to Restricted Premises at No. 1/278 Beaufort Street, Perth (subject site).

PROPOSAL:

The application seeks approval for a change of use to Restricted Premises along with works associated with the premises including the installation of roller shutters and signage.

Details of the application include:

- The tenancy operating as 'Up in Smoke' selling shisha related accessories including:
 - Hookahs (a pipe used for smoking flavoured tobacco) and accessories including additional mouthpieces, glass bases and flavoured charcoal. The applicant has advised that the premises does not sell tobacco or nicotine products;
 - Vapes and other accessories including spare batteries and coils;
 - E-Juice (nicotine-free flavoured vaping liquids); and
 - Scales and other accessories;

- The tenancy operating between 10:00am and 7:00pm Monday to Sunday;
- Signage to the window and awning; and
- Roller shutter additions to each of the external windows and door fronting Beaufort Street. The roller shutters are open during business hours and closed outside of these.

The applicant has advised that persons under 18 years of age are not permitted within the premises. There is no legislation restricting those persons under the age of 18 from entering a premises that sells shisha related accessories.

The restriction that would apply is that it is illegal to sell tobacco products or smoking implements to persons under 18 as set out in the *Tobacco Products Control Act 2006*.

Tobacco is not being sold from the premises.

The development plans are included as **Attachment 2** and a cover letter outlining the activities of the use is included as **Attachment 3**.

This development application was lodged on 10 February 2021 and sought approval for a proposed change of use and signage. Following the lodgement of this application the use of the premises commenced and the signage was installed. The roller shutters were also installed at this time. The application has since been amended to seek approval for the roller shutters in addition to the use and signage components.

BACKGROUND:

Landowner:	Georgina MacDougall
Applicant:	Kareem Hassan
Date of Application:	10 February 2021
Zoning:	MRS: Urban LPS2: Zone: Commercial R Code: No R Code
Built Form Area:	Activity Corridor
Existing Land Use:	Shop
Proposed Use Class:	Restricted Premises
Lot Area:	761m ²
Right of Way (ROW):	No
Heritage List:	No

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 west which is an Other Regional Road under the Metropolitan Region Scheme. A location plan is included in **Attachment 1**.

The subject site was previously known as No. 276-282 Beaufort Street. A development application was previously supported by Council at its meeting on 26 March 2013, and approved by the Western Australian Planning Commission (WAPC) on 30 April 2013. The application was required to be determined by the WAPC is it related to public works being undertaken by the (then) Department of Housing. This approval related to the demolition of a heritage-listed building and construction of shops and a night shelter, and 13 car parking bays.

The subject site consists of three tenancies:

- The subject tenancy is Unit 1 which abuts Beaufort Street to the west and the vehicle access way to the on-site parking area to the south. The subject tenancy was originally approved as a shop and was previously vacant until being occupied by the current use;
- Unit 2 is located next to Unit 1 and abuts a pedestrian access way secured by a gate to the north. This tenancy was originally approved as a shop and is currently operated as an accountancy; and
- The rear building on the subject site accommodates Tom Fischer House (No. 278A Beaufort Street) which is operated by St Vincent De Paul and provides support for those experiencing homelessness. Tom Fischer House accommodates up to 12 people and is open between 5:30pm and 8:30am every night.

The property adjoining the subject site to the north is No. 286-288 Beaufort Street that accommodates the Association for Services to Torture and Trauma Survivors (ASeTTS). ASeTTS provides services to people who have experienced torture or trauma, including support for family and children, youth, counselling and

community development. ASeTTS operates from 9:00am to 5:00pm Monday to Friday and is closed on weekends. This site is owned by the City and leased to ASeTTS.

Adjoining the southern and eastern boundaries of the subject site is a five storey mixed use development at No. 250 Beaufort Street. To the west of the subject site across Beaufort Street is a five storey mixed use development at No. 273 Beaufort Street.

Outside of this immediate context the broader area of Beaufort Street consists of a mix of residential and commercial uses. Within 250 metres of the subject (between Parry Street and Bulwer Street), these uses include:

- Restaurants and cafes;
- Offices for varying tenants including lawyers, engineers, financial advisors and accountants;
- Beauty and health uses including dentists, orthodontist, hair dresser, laser clinics;
- Photography and printing studios;
- Shops including furniture and clothing stores;
- Performing arts venue (The Saraswati Mahavidhyala Centre for Performing Arts and Education);
- Lodging houses including Northlodge City Central and Monger House;
- Convenience store selling day-to-day goods, and a supermarket specialising in Asian groceries;
- Tavern (The Brisbane Hotel);
- 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 8**.

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 Policy No. 7.1.1 – Built Form (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/ Deemed-to-Comply	Requires the Discretion of Council
Land Use		✓
Car & Bicycle Parking		✓
Facade Design		✓
Signage		✓

Detailed Assessment

The deemed-to-comply assessment of the element that requires the discretion of Council is as follows:

Land Use	
Deemed-to-Comply Standard	Proposal
Local Planning Scheme No. 2 'P' use.	Restricted Premises is an 'A' use.
Car and Bicycle Parking	
Deemed-to-Comply Standard	Proposal
Policy No. 7.7.1 – Non-Residential Development Parking Requirements <u>Car Parking Bays</u> 5 bays required. <u>Bicycle Spaces</u>	3 bays provided for use by staff.

1 long term and 2 short term spaces required.	No on-site bicycle spaces provided.
Façade Design	
Deemed-to-Comply Standard	Proposal
Built Form Policy Clause 1.13	
A1.13.1 – Active frontage to be provided to the public realm to ensure activity, interaction and surveillance of the street.	Roller shutters installed on external openings which do not permit an active frontage when closed.
A1.13.10 – Security measures shall be transparent and visually permeable to allow views into the building and enable light sources to be seen from the street.	Roller shutters are solid and not transparent or visually permeable.
Signage	
Deemed-to-Comply Standard	Proposal
Policy No. 7.5.2 – Signage and Advertising	
<u>Standards common to all signs</u>	
Total signage area not to exceed 10 percent of total area of building wall.	Signage occupies 19.3 percent of front façade.

The above elements of the proposal does not meet the specified deemed-to-comply standards and is discussed in the Comments section below.

CONSULTATION/ADVERTISING:

Community consultation was undertaken in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015* for a period of 24 days from 18 March 2021 to 11 April 2021. The consultation period was extended to account for the Easter holiday period, and the method of consultation included a sign on-site, an advertisement in the local newspaper and 349 letters mailed to all owners and occupiers adjoining the site (as shown in **Attachment 1**) in accordance with the City's Policy No. 4.1.5 – Community Consultation.

The City received a total of 16 submissions during the community consultation period, including 15 objections and one expressing concern but not specifically objecting to or supporting the application. A summary of the concerns received in opposition of the application is as follows:

- The use having commenced operating and roller shutters being installed which is detrimental to the amenity of the streetscape;
- The use displays products that promotes smoking and would be visible to surrounding residents, commercial business, and parent and school children passing on their way to parks and schools in the area. This would further diminish the little amenity of an area which needs revitalisation;
- The use would not comply with relevant tobacco legislation and would promote illegal activity;
- There is limited parking proposed on site for staff and the street parking is already congested;
- The use will attract anti-social behaviour which will impact on the residents of the surrounding apartments; and
- The use is contrary to the objectives of LPS2 and State policy.

A summary of submissions and Administration's response is included in **Attachment 4**. The applicant has provided a response to the submissions and this is included in **Attachment 5**.

Administration contacted the Highgate Primary School to notify of the application, despite the school being outside of the consultation radius. No comment was received from Highgate Primary School.

During the consultation of the application it was brought to Administration's attention that roller shutters had been installed on the premises. These were not proposed as part of the application lodged with the City and were not included as part of the consultation documentation. The applicant subsequently amended the application to include the roller shutters.

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;
- Policy No. 4.1.5 – Community Consultation;
- Policy No. 4.1.22 – Prosecution and Enforcement;
- Policy No. 7.1.1 – Built Form Policy;
- Policy No. 7.5.2 – Signage and Advertisements;
- Policy No. 7.7.1 – Non-Residential Development Parking Requirements;
- *Tobacco Advertising Prohibition Act 1992*;
- *Tobacco Products Control Act 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* 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.

Planning and Development (Local Planning Schemes) Regulations 2015

Schedule 2, Clause 73 of the *Planning and Development (Local Planning Schemes) Regulations 2015* provides the ability for approval to be granted for a part of the development for which approval is sought.

Unauthorised Development

Schedule 2 of the *Planning and Development Regulations 2009* outlines that the applicable fee for determining a development application where the development has commenced or been carried out is the standard fee plus, by way of penalty, twice that fee. The applicant has paid a total fee of \$885 for the subject application. This amount reflects the fee for a change of use and associated works, and twice that fee by way of penalty.

Schedule 2, Clause 65 of the *Planning and Development (Local Planning Schemes) Regulations 2015* provides the ability for a development application where the development has already commenced or carried out to be approved, approved with conditions or refused.

Should the application be refused, the use would need to cease and the signage and roller shutters be removed in accordance with Section 214 of the *Planning and Development Act 2005*. Similarly if the application were to be approved, the development would be required to comply with any conditions imposed.

Policy No. 4.1.22 – Prosecution and Enforcement

The City’s Policy No. 4.1.22 – Prosecution and Enforcement (Enforcement Policy) provides discretion to allow a use to continue to operate until the development application is determined and establishes that this may be in circumstances where there is reasonable prospect of approval.

Administration was satisfied that the current operation of the premises did not present an immediate danger, hazard, health or safety risk to a person or the property, consistent with the City’s Enforcement Policy, and did not require the use to cease or additions be removed while the application was being processed.

Delegation to Determine Applications:

In accordance with the City’s Register of Delegations, Authorisations and Appointments, the application is required to be presented to Council as it has received more than five objections during the 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 Comment section.

FINANCIAL/BUDGET IMPLICATIONS:

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

COMMENTS:

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

1. Whether the land use can be contemplated in the zone (the Restricted Premises use is permissible within the Commercial zone as it is an 'A' use);
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 is provided for under Clause 67 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (Planning Regulations).

Tobacco Products Legislation

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

The use of shisha and smoking implements 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 and smoking implements.

The premises sells accessories related to the smoking of shisha, including pipes (hookahs), charcoal, vapes, and E-Juice. The premises does not sell tobacco or nicotine products, or provide for tobacco or nicotine products to be consumed on site.

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. The applicant has advised that tobacco is not sold or supplied from the premises. The premises sells smoking implements as well as flavoured charcoal and vaping liquids and would not require a tobacco seller's licence to be obtained as a result. This has been confirmed by the Department of Health.

During the consultation period, the City received complaints relating to the use of the premises having commenced, and it selling tobacco and smoking implements in contravention of the *Tobacco Products Control Act 2006*.

Administration referred the matter to the Tobacco Control Branch of the Department of Health. In investigating the matter, the Tobacco Control Branch advised:

- A tobacco seller's licence is required for the retail sale of tobacco products. If a premises has a tobacco seller's licence it is against the law to display smoking implements such as hookahs and pipes;
- It had inspected the subject premises, and confirmed that it does not hold a tobacco seller's licence. As the premises does not currently hold a tobacco seller's licence there are no restrictions regarding the display of smoking implements;
- Flavoured charcoal is not a tobacco product and E-Juice is not within the scope of the *Tobacco Products Control Act 2006*; and
- Outside of the relevant tobacco legislation, the Department of Health does not have a position on the appropriateness of premises selling smoking implements.

Should the premises seek to sell or advertise tobacco products in the future, it would be required to comply with this applicable legislation irrespective of any planning approval granted.

As smoking and the use of smoking implements is a legal activity and regulated under separate State legislation, the associated health impacts are not a material planning consideration. However the use and its compatibility with the surrounding locality and extent of impact on amenity are a valid considerations, and are discussed in further detail below.

Land Use

The premises falls within the definition of the Restricted Premises which is defined as (emphasis added):

'Restricted premises means premises used for the sale by retail or wholesale, or the offer for hire, loan or exchange, or the exhibition, display or delivery of –

- a) publications that are classified as restricted under the Classification (Publications, Films and Computer Games) Act 1995 (Commonwealth); or*
- b) materials, compounds, preparations or articles which are used or intended to be used primarily in or in connection with any form of sexual behaviour or activity; or*
- c) **smoking-related implements.***

The subject site is zoned Commercial under LPS 2 and Restricted Premises is an 'A' use. An 'A' use means that the land use can be approved, but at the discretion of the local government after community consultation has been undertaken.

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 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. This is detailed below.

LPS2 Commercial Zone Objectives

Council is to have 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 premises is operating as a retail tenancy that offers products on display for sale. This would contribute towards economic development, a predominant day time retail offering and commercial activity along Beaufort Street. The retail nature of the business is consistent with surrounding commercial activities and include shops, offices, consultants, restaurants and cafes. These commercial activities provide goods or service for sale, are open to the general public, and provide day time and night time trade; consistent with the nature of the proposed land use;
- Aside from the roller shutters, no modifications are proposed to the 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 roller shutters would obscure this active frontage during the hours when the business is closed, and are not supported for the reasons outlined further in this report. The development does not impact on the energy efficiency or water conservation principles. Waste will be collected by an external waste service provider, in line with the City ceasing commercial waste collection by 1 July 2021; and
- The potential impact on the amenity of adjoining owners and residential properties 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 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 *'means 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 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 extent of Beaufort Street is zoned Commercial under LPS2 that is intended to provide for a mix of compatible commercial uses, with residential uses also contemplated. This area is also identified as Activity Corridor built form area in the City's Built Form Policy with a five-storey height limit permitted. 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:

- A Restricted Premises is a permissible use within the Commercial zone, by virtue of not being an 'X' (not permitted) land use. In this respect a premises of this nature that is permitted to sell smoking-related implements as per its definition under LPS2 can be contemplated under the planning framework. LPS2 does not set out any specific locational requirements for a Restricted Premises, and where these should be situated in proximity to other commercial activities or residential dwellings;
- The premises is selling smoking implements, however does not sell tobacco. 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. A comparison is made to the consumption of alcohol from licenced premises. A Liquor Store is a 'P' permitted use within the Commercial zone. The provision of alcohol is

not an illegal activity, however the consumption of alcohol results in an impact on public health. Similarly, the Brisbane Hotel, located at No. 292 Beaufort Street approximately 60 metres from the subject premises, is a Tavern which provides for the service and consumption of alcohol on site. The consumption of alcohol from within a licenced premises is not illegal despite its public health impact. As with relevant liquor legislation, there are restrictions on the selling of smoking implements to those under the age of 18, which is administered through the *Tobacco Products Control Act 2006*. The applicant has advised that those under the age of 18 are not permitted to enter the store;

- The use operates by displaying products for retail sale in a commercial setting. This is not dissimilar to the function of a shop;
- A Cloud 9 premises that sells smoking implements is located at No. 527 Beaufort Street, Highgate, approximately 850 metres from the subject site. Prior to LPS2 coming into effect in May 2018, Restricted Premises was not a land use under the City's previous Town Planning Scheme No. 1 (TPS1), nor was there a separate land use which related to the sale of smoking implements. This means that these premises at the time would have fallen within the Shop land use. The Shop land use under TPS1 is defined as '*means any building wherein goods are exposed or offered for sale by retail*'. Cloud 9 was operating prior to the gazettal of LPS2 and would have fallen within the Shop land use under TPS1. No. 527 Beaufort Street was zoned Commercial under TPS1 and a Shop was a 'P' permitted use. The store's products related to smoking are displayed and visible from the public realm;
- Approximately 60 metres from the subject tenancy at No. 2/250 Beaufort Street, there is an existing convenience store that sells a range of everyday products. This business also sells cigarettes and other tobacco products, as well as smoking implements. The premises has been operating since prior to LPS2 coming into effect. Under TPS1 the premises would have fallen under the Shop land use. No. 250 Beaufort Street was zoned Commercial under TPS1 and a Shop was a 'P' permitted use. Smoking related products sold by this business are not displayed and visible from the public realm;
- Neither LPS2 nor the Built Form Policy include development standards which require premises of this nature to be discrete or to limit the display of smoking-related implements. Conversely the provisions of the Built Form Policy require an active street frontage to be provided and maintained. Smoking implements and advertising signage are visible from the public realm for the subject premises, and are not discrete from view of the passing public. This is due to the tenancy providing for an active and open relationship with the street which is consistent with the design intent of the Built Form Policy during operating hours. This means that smoking implements for sale are on display and visible from outside of the premises. Advertising signage on the awning and windows promote the business name which is 'Up in Smoke'. The extent of signage is acceptable as discussed further in this Report, though it contributes to the exposure of the business;
- In having regard for existing uses in the immediate and surrounding context of the premises, there could be a perceived impact of the Restricted Premises on the amenity of the locality. The premises is located on the same site as Tom Fischer House (located at the rear of the subject site) and adjacent to ASeTTS. Both of these uses provide services for vulnerable and at-risk members of the community. The subject premises is approximately 75 metres from Birdwood Square which is public open space, and approximately 315 metres from Highgate Primary School. There could be a perceived impact on existing users of the surrounding area which includes community services, a primary school and public open space. This is as a result of the visibility of the products given the active frontage and operating hours of the premises are predominantly during the day between 10:00am and 7:00pm. The applicant has advised that those under 18 years of age are not permitted in the premises. These services are currently operating in close proximity to a licenced venue being the Brisbane Hotel, which facilitates the service and consumption of alcohol on site. The operation of the Brisbane Hotel in close proximity to vulnerable and at-risk community groups would have some inherent impact and reduced amenity. Further to this and as noted above the premises is 60 metres from a convenience store selling tobacco products, and 850 metres from a similar premises in Cloud 9. In this regard the operation of a Restricted Premises in this context is unlikely to result in further reduced amenity for that currently experienced by being on close proximity existing premises which serve alcohol and sell tobacco and smoking implements in proximity to services for vulnerable community members and the Highgate Primary School;
- In having regard for these at-risk and vulnerable groups supported By Tom Fischer House and ASeTTS more immediately within the vicinity of the premises:
 - The operating hours of the premises is between 10:00am and 7:00pm. These operating hours are similar to the operating hours of other businesses located along Beaufort Street, and would not have an adverse impact on surrounding residential properties, including those in the mixed use developments at No. 250 and No. 273 Beaufort Street. In particular Tom Fisher House operates between 5:30pm and 8:30am every day of the year, while ASeTTS operates between 9:00am and 5pm Monday to Friday. This results in an overlap of operating times with the Restricted Premises.

- During these hours there would be exposure of and availability to purchase products on offer to passers-by; and
- o Administration is unaware of any evidence to support or substantiate the claim that clientele to the premises would be responsible for anti-social behaviour. Anti-social behaviour perpetrated by any person would be a matter for the Police to investigate and take appropriate action.

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. The other relevant matters are set out below.

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 product 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. This is potentially due to the diverse cultural backgrounds as well as the prominence of shisha bars and restaurants located within Australia and overseas.

The use is inconsistent with the aim to protect and enhance the health and welfare of inhabitants and the social environment. Although the use is not illegal and tobacco is not being sold from the site, smoking implements are being offered for sale and there is a public health impact related to smoking. 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 Tom Fischer House and ASeTTS, as well as those utilising the nearby public open space at Birdwood Square and school children who may pass the premises. Notwithstanding this the use is permissible under the provisions of LPS2.

2. Clause 67(b) – Orderly and Proper and Planning

Orderly and proper planning requires the consideration of whether an application is consistent with the objectives of the Scheme and relevant planning policies. The Development Assessment Panel Practice Notes: Making Good Planning Decisions 2017 provides the following clarification on the basis of which orderly and proper planning decisions can be made:

'...considerations are irrelevant unless they manifest in a physical impact on amenity. If a use is permitted under the scheme, and is not illegal in a general sense, then there are no grounds to refuse it on that basis alone. That said, a development application can be refused provided the decision is made on proper planning grounds.... it should [not] turn its back on considerations of urban amenity and aesthetics'

As detailed in this report, the suitability of the use has been assessed having regard to the relevant scheme objectives, the City's local planning framework, and the impact of the premises on the local amenity, consistent with the principles of orderly and proper planning.

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

There are no State Planning Policies approved by the WAPC which relate to a premises 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 premises. 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 premises does sell smoking implements, the activity is not illegal and there are other controls in place through tobacco legislation to control how this is sold and used. Smoking-related products being visible from shopfronts is also not regulated and is not prohibited where a tobacco retailer's licence is not required.

City's Public Health Plan

The State public health framework has fed into 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. 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.

There is evidence that a greater tobacco outlet density within a community can result in an increased uptake of smoking, reduce the number of smokers who wish to quit, increase exposure to young people, and contribute towards the normalisation of tobacco use. The subject premises does not sell tobacco, and Administration is not aware of any evidence which indicates that premises selling smoking implements results in a similar public health impact.

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 premises selling smoking implements.

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 Beaufort Street town centre. 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)(s) – Adequacy of Parking

The premises utilises existing vehicle access and there is parking available on site. The adequacy of car parking available on site is acceptable and discussed in greater detail below.

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

As detailed above, the use would have limited impact on the immediate area, aside from perceptions related to the nature of the use. The premises does not sell tobacco, and the selling of smoking-related implements is not illegal. While smoking has been demonstrated to have a broader health impact on the community, this is not reflected in the local planning framework as it does not restrict premises located on private property that involve the retail sale of smoking-related implements.

LPS2 specifically defines such a land use which sells smoking implements and sets out that it is permissible in the subject Commercial zone. By doing so it could be argued that the broader impacts of this use have been contemplated and deemed acceptable through the preparation of LPS2. The impact on the community needs to be considered in the context that the land use is specifically contemplated and is a permissible use, and weighted in Council's decision accordingly.

There are existing uses in the area that sell tobacco and products related to tobacco smoking, and venues that serve alcohol that already exist in the area and that would reasonably have an impact on the community. In this regard, the associated impacts on the community inherent with the Restricted Premises land use is not deemed to have a broader social impact than that which currently exists in the locality as a result of these other premises.

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

16 submissions were received in response to community consultation. This included 15 objections and one submission which expressed concerns.

A summary of the submissions received is included as **Attachment 4**, where Administration has provided a response to the issues raised.

The issues raised in the submissions have been considered as part of Administration's assessment of this application. Receiving objections to the proposal alone is not a valid reason for the application to be refused.

Acceptability of Land Use

The Restricted Premises land use is provided for and contemplated in the Commercial zone as per the planning framework. The premises also satisfies the matters to be given due regard in considering an application under the Planning Regulations.

Accounting for the immediate surrounding context of the subject site and broader context of Beaufort Street, the nature and operation of the use would not further diminish the existing amenity.

Administration notes the perception of approving 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 matters demonstrates that these public health initiatives do not translate to a planning system that restricts or prohibits businesses from offering smoking implements by retail sale. Given the legality of the use of smoking implements associated with shisha, and the lack of any detailed guidance in respect to uses of this nature under the local planning framework, the application is recommended for approval, subject to conditions.

Should Council be of the view that the land use is not appropriate at the subject site and in having due regard for the matters to be considered under the Planning Regulations, it would be open to Council to refuse this application.

In refusing the application, the use would be required to cease and roller shutters and signage be removed from the tenancy, with enforcement by Administration to be undertaken in accordance with the City's Enforcement Policy. The applicant would also have the ability to seek a review of Council's decision through the State Administrative Tribunal.

Car and Bicycle Parking

Car Parking

The parking requirements for the development for three premises on the site approved by the WAPC in 2013 consisted of:

- 16.1 parking bays were required for the entire development, being:
 - 10.1 bays for the two shop tenancies (which equates to five bays for each tenancy); and
 - 6 bays for the staff of the night shelter; and
- 13 bays were approved on-site. This was a shortfall of 3.1 bays. A cash in lieu contribution was paid for 1.45 bays for the entire development.

The WAPC approval did not specify the number of bays to be provided for each premises, and the strata plan does not allocate parking bays to any of the tenancies.

The subject site is configured to provide three parking bays located at the rear of each of the two premises fronting Beaufort Street (which includes the subject Restricted Premises tenancy), and seven parking bays (one of which is an accessible bay) located in front of the building located to the rear.

In accordance with the City's current Policy No. 7.7.1 – Non-Residential Development Parking (Parking Policy), a Restricted Premises requires the provision of 4.9 parking bays (rounded to five). The applicant's cover letter outlines that there are three bays located at the rear of the tenancy, which would be used by staff. This results in a shortfall of two bays.

During the consultation period the City received submissions in relation to the adequacy of parking in the area to accommodate customers.

A Parking Management Plan has been submitted by the applicant as justification for the parking arrangement. This is included **Attachment 6** and is summarised as follows:

- Three on-site bays will be available for staff. Staffing numbers would typically be one staff member to open the premises, and be on-site during the morning and early afternoon periods. From mid-afternoon until close of business there would typically be a second staff member on-site. Customers would utilise existing parking in the area, and are anticipated to spend approximately 20 minutes in the premises at any time;
- Access is available to 237 public parking bays, including 35 on-street bays within 150 metres of the subject site and 202 bays within the Brisbane Street car park which is within 250 metres;
- The subject site is approximately one kilometre from Mclver Station and within 250 metres of bus stops which connect to five different routes along Beaufort Street; and
- Beaufort Street provides for pedestrian paths connecting to local amenities, as well as dedicated bus, taxi and cycle ways.

The 13 on-site parking bays are located behind an access gate. Condition 16 of the WAPC approval required the gate to be appropriately managed to ensure that these bays are readily accessible. This was to ensure that access to on-site bays is managed and readily available for staff and customers of the homeless shelter and the (then) shop tenancies. This condition is not proposed to be modified as part of this application.

The parking provision is suitable for the following reasons:

- The parking standards under the Parking Policy are the same for Restricted Premises and Shop uses. The Restricted Premises does not result in any increased parking requirement or intensity of activity compared to the previous Shop use. These parking arrangements are not being altered or modified as part of this application;
- A review of the on and off-street parking provided in the vicinity of the subject indicates that there is capacity to accommodate customer parking for the premises, detailed as follows:
 - There are 35 two hour ticketed on-street parking bays located along Beaufort Street within approximately 130 metres of the subject site. 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 30 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:
 - Saturday 27 February 2021 – 10 cars parked (25 bays available);
 - Sunday 3 January 2021 – three car parked (32 bays available);
 - Friday 20 November 2020 – 12 car parked (23 bays available);
 - Saturday 10 October 2020 – one car parked (34 bays available);
 - Saturday 30 August 2020 – two cars parked (33 bays available); and
 - Sunday 3 May 2020 – four cars parked (31 bays available);
 - There are 49 on-street parking bays along Brisbane Street that are located approximately 55 metres from the subject site. Of these bays, 45 are two hour ticketed parking, two bays are 15 minutes and two bays are 30 minutes. The City has parking data resulting from a survey undertaken on Wednesday 28 November, Friday 30 November and Saturday 1 December 2018 and captured the occupancy of bays for the hours of 9:00am to 11:00am, 1:00pm to 2:00pm, 3:00pm to 5:00pm, and 6:00pm to 8:00pm. The City's parking data identifies that there are on

- average 17 bays available at any one time. The busiest period was identified as being between 12:00pm and 2:00pm on Friday and Saturday where nine bays were available; and
- The City's parking survey data identifies that there are 214 parking bays located within the Brisbane Street car park which is located approximately 115 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 subject site is located along Beaufort Street and is serviced by bus routes 67, 68 and 950 which provides high frequency services between the Morley, Mirrabooka and Perth Busports. There are four bus stops associated with these services which are located between approximately 177 metres and 273 metres from the subject site. The accessibility of these bus routes support travel to and from the subject site by means other than car; and
 - Bicycle parking facilities are recommended to be provided as a condition of the approval. Two short term bicycle parking bays can be provided in the verge area in front of the subject tenancy. This is discussed in further detail below, and would provide for conveniently located bicycle spaces for use by customers and would support cycling as a convenient alternative to driving to the venue.

Sufficient on-site parking is provided for staff and customers of the development together with the 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.

Bicycle Parking

The Restricted Premises requires a total of two short term and one long term bicycle parking bays under the current Parking Policy. The applicant has not proposed the provision of any on-site bicycle parking spaces for the subject tenancy.

Condition 17 of the development approval issued by the WAPC in 2013 required the provision of bicycle parking facilities. It did not specify the number, however the approved plans show one bicycle rack to be provided in the enclosed courtyard which forms part of the rear building. This area is not readily accessible to customers of the tenancies on-site fronting Beaufort Street. There are currently no on-site bicycle parking spaces provided for either of the two street fronting tenancies.

The applicant's Parking Management Plan, included as **Attachment 6**, identifies there being seven bicycle parking spaces located in the verge on the opposite side of Beaufort Street. Administration has confirmed that there are 10 bicycle parking spaces in close proximity to the subject site, being:

- Eight bicycle bays located within the verge area in front of No. 273 Beaufort Street; and
- Two bicycle bays located within the verge area in front of No. 283-289 Beaufort Street.

While these bicycle parking spaces are available for use by the public, they are not necessarily convenient for use by customers of the Restricted Premises given they would need to cross Beaufort Street to do so. These bicycle parking spaces are located in front of three Restaurant/Café tenancies, and may be used by the customers of these businesses. This may mean that these spaces are not always readily available.

Administration recommends that two short-term bicycle parking spaces be provided for within the Beaufort Street verge in front of the premises. While this is one space less than that required by the current Parking Policy, it is consistent with the number of bicycle bays considered appropriate for these tenancies set out in the previous approval issued by the WAPC.

Bicycle parking standards for a Restricted Premises use is the same as that for the previous Shop use under the City's Parking Policy. The floor area of the tenancy is not being increased and as a result there is no intensification of activity.

The City's Technical Services confirmed that there is adequate space within the verge for two bicycle spaces to be provided which would comply with AS2890.3 and maintain adequate space so as to not impede pedestrian movement along the path.

The nature of the Restricted Premises is such that it is not expected that customers would be attending the site for extended periods of time. This means that the provision of short-term bicycle bays would be more suitable than a dedicated long-term bicycle bay in a locker. Adequate parking is also available on-site to cater for the demands of staff as noted above.

The provision of two short-term bicycle spaces within the verge is consistent with the objectives of the Parking Policy as it would be adequate to cater for the demand of customers attending the premises, be conveniently located for use by customers of the premises, and support cycling as an alternative to driving.

Façade Design

The Built Form Policy requires developments to provide uninterrupted activation to street frontages to maximise street surveillance. The Built Form Policy also requires any security measure to be visually permeable and located internally or to be recessed between elements in the façade.

Visually impermeable roller shutters have been installed to all street facing windows and doors that reduce activation to Beaufort Street. The roller shutters are located externally and are not recessed between elements of the façade.

The City received comments during the community consultation that raised concerns in regards to adverse visual impacts as a result of the roller shutters. The applicant has advised that the roller shutters were installed in response to graffiti and damage to the windows of the tenancy.

The roller shutters do not meet the local housing objectives of the Built Form Policy for the following reasons:

- The roller shutters are proposed to be open during business operating hours and closed outside of the operating hours. The roller shutters would be closed between 7:00pm and 10:00am Monday to Sunday based on the operating hours of the Restricted Premises. The roller shutters would affect the visual connection of the tenancy with adjoining public spaces outside of the business operating hours;
- The roller shutters provide a solid, blank and unarticulated facade that results in a bulky and visually imposing structure to the street. The solid form of the roller shutters appear obtrusive to the streetscape and are not in keeping with the scale and character of the established streetscape or locality. The roller shutters adversely impact the quality of the pedestrian environment and the overall appeal and aesthetics of the area;
- The Built Form Policy promotes commercial developments within Activity Corridors to have an 'active frontage' providing interaction between the development and the street. While the roller shutters are closed, all visual connection and passive surveillance from the shopfront into public spaces is absent. As a result, the liveliness, interest, comfort and safety of the surrounding public spaces is reduced; and
- The WAPC's Designing Out Crime Guidelines (the Guidelines) detail that active frontages have a positive impact on safety. The Guidelines advise that the inclusion of roller shutters could detract from the amenity of an area, resulting in an increase in the perception or fear of crime, and that all other security measures should be investigated prior to introducing roller shutters. As the subject site is located within an activity corridor area, an active and engaging frontage is fundamental to providing actual and perceived surveillance which is lost as a result of the installation of the roller shutters.

The applicant has indicated that they are willing to remove the roller shutters and investigate other alternative security measures which would be consistent with the Built Form Policy.

Signage

The signage which forms part of this application has already been installed on the premises and consists of:

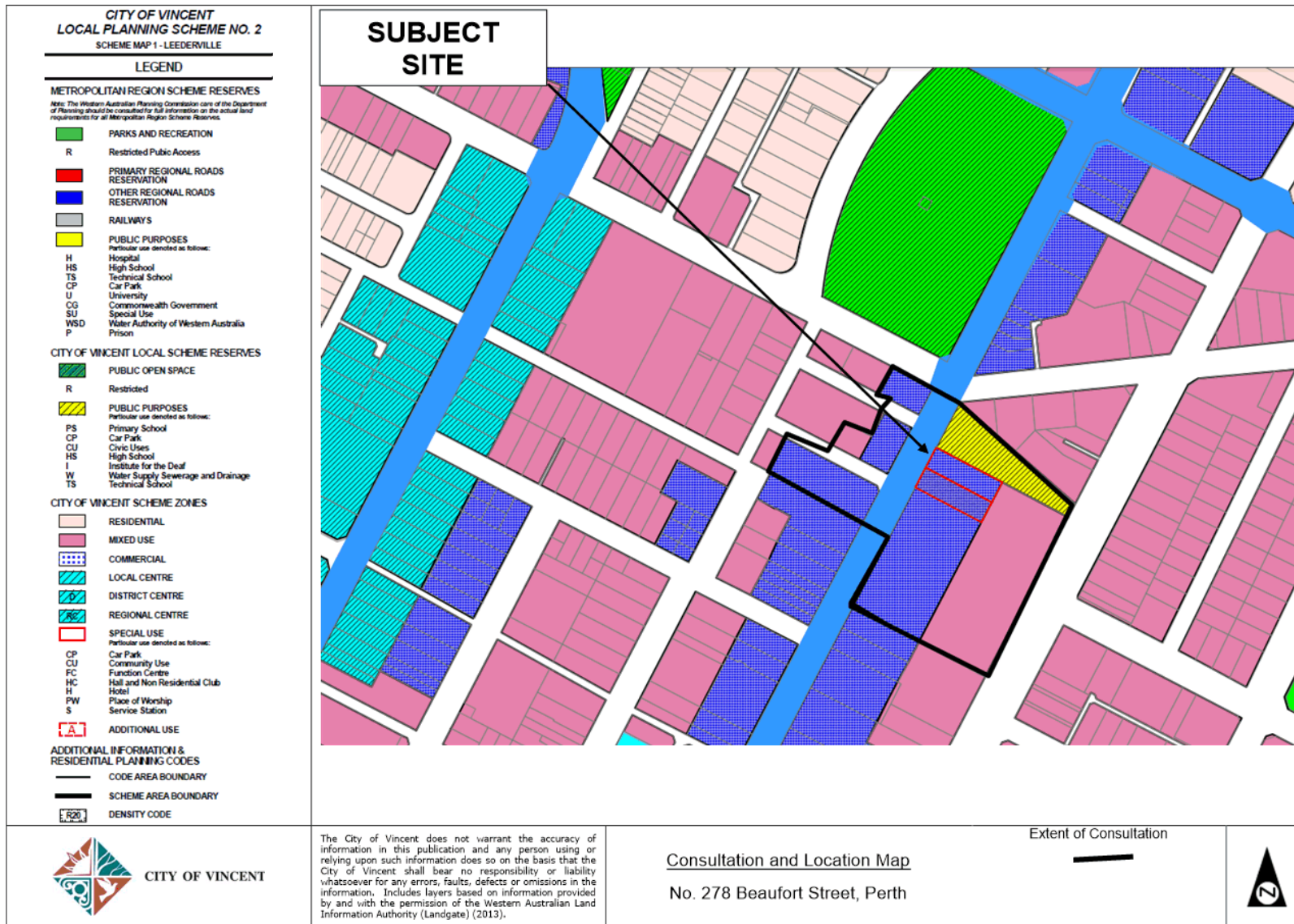
- Four 'logo' signs, with one on each of the windows. The 'logo' sign consists of the operator's branding 'Up in Smoke';
- One 'shop info' sign above the door, displaying operating hours; and
- One sign on the awning which consists of the 'logo' and 'shop ethos'. The 'shop ethos' displays the website and products available. The products described on this sign are gifts, accessories, charcoal, vapes and e-juice.

The signage complies with the requirements of the City's Policy No. 7.5.2 – Signage and Advertising (Signage Policy), with the exception of the total area of signage. This is required to not exceed 10 percent of the total area of a wall. The extent of signage as a result of those signs listed above covers 19.3 percent of the front façade.

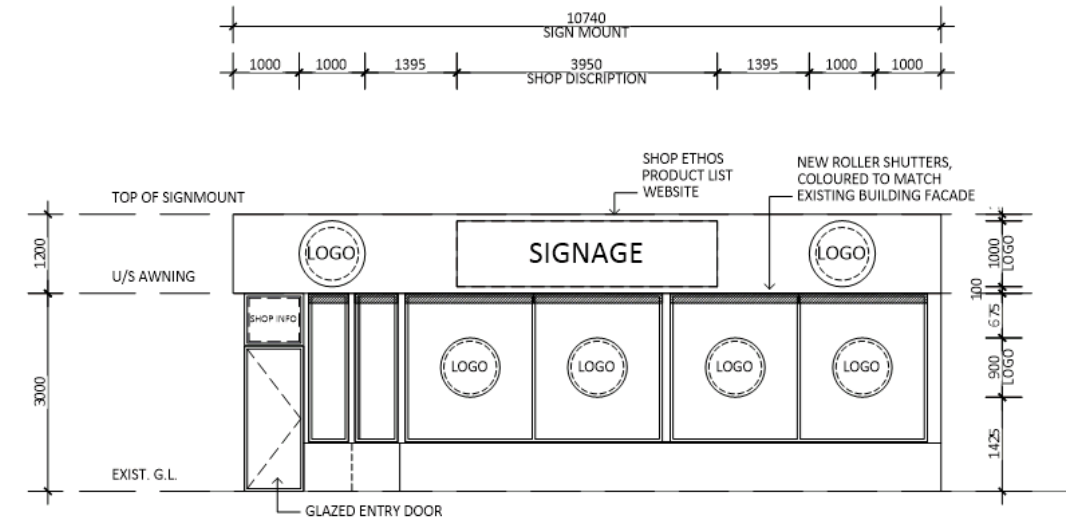
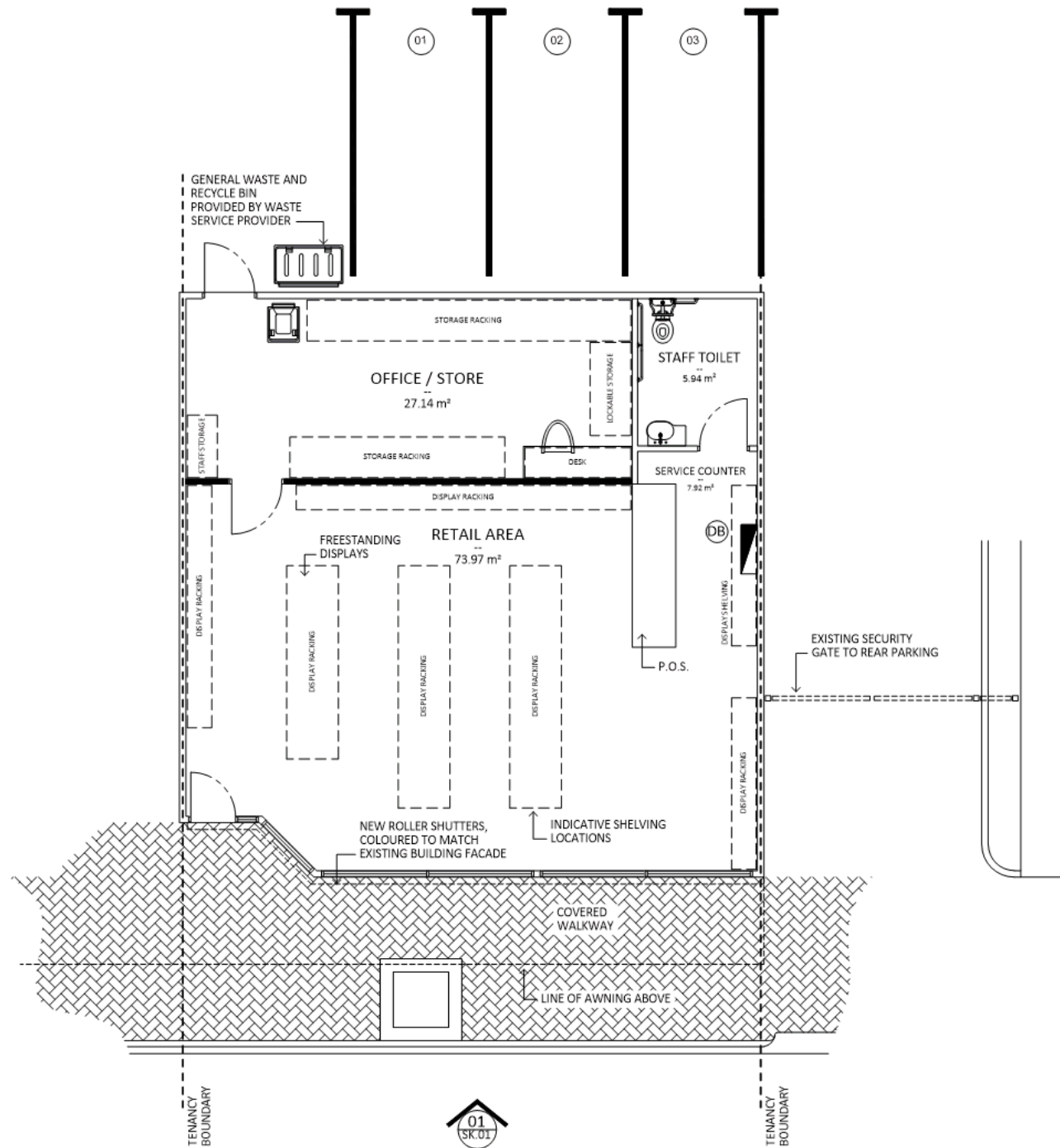
The extent of signage satisfies the principles of the Signage Policy for the following reasons:

- The scale of the signage is minimal and does not detract from the building due to the design. The 'logos' have a cumulative area of 2.4 square metres on the windows. The signage on the windows occupies approximately 15 percent of the glazed area, leaving 85 percent unobscured. This maintains the opportunity for passive and active surveillance of the street;
- The awning signage is consistent with the deemed-to-comply standard of the Signage Policy which does not include any size limitations on an awning sign;
- The building is of a relatively modest design and the signage does not obscure or impact any architectural detailing;
- The signage is compatible with the surrounding development context. The surrounding context consists of a mix of commercial uses, all of which include advertising signage, and is similar in nature to the subject signage. The signage is not detrimental to the amenity of the locality in this respect; and
- The extent of the signage that advertises products available from the premises is minimised, and is generic in describing the types of products available. The signage relates to the premises, has not been designed to target particular demographics, and is commensurate with the realistic need to advertise products available from the site.

As part of its assessment, Administration has identified that the current 'logo' signs installed on each of the windows are larger than what is indicated on the elevations plan ('Elevation 01', included as **Attachment 2**). In response the applicant has confirmed that they are seeking approval for the signage as shown on the elevation plan - not what is currently installed, and would make the necessary modifications to bring this into accord with the plans if approved. A condition is recommended for these modifications to the existing signage to be made within 28 days should the application be approved.



<p>SUBJECT SITE</p>			
 <p>CITY OF VINCENT</p>	<p>The City of Vincent does not warrant the accuracy of information in this publication and any person using or relying upon such information does so on the basis that the City of Vincent shall bear no responsibility or liability whatsoever for any errors, faults, defects or omissions in the information. Includes layers based on information provided by and with the permission of the Western Australian Land Information Authority (Landgate) (2013).</p>	<p>No. 278 Beaufort Street, Perth</p>	



01 ELEVATION SHOPFRONT SIGNAGE
 -- SCALE 1:100

TOTAL SHOPFRONT GLAZING APPROX 21m²
 SIGNAGE COVERS APPROX. 3.5m²
 AWNING SIGN CONSTRAINED TO EXTENT OF AWNING
 SIGNAGE COMPLIES WITH POLICY NO. 7.5.2
 SIGNS AND ADVERTISING



FLOOR PLAN PROPOSED LAYOUT
 -- SCALE 1:100

CITY OF VINCENT
 RECEIVED
 23 March 2021

VENUELINE
 food service and venue design

PROJECT TITLE / CLIENT	UP IN SMOKE - PERTH OUTLET UNIT 1, 278 BEAUFORT STREET, PERTH
DRAWING TITLE	FLOOR PLAN AND SHOPFRONT ELEVATION

REV.	BY	REVISION DESCRIPTION	CAD REF:	VL20.074
--	--	--	SCALE	SHEET SIZE
--	--	--	1:100	A3
C	DO	ROLLER SHUTTER DETAIL ADDED	DRAWING No.	REVISION
B	DO	REVISED TO COMMENT - IMAGE ADDED	SK - 01	C
A	DO	ISSUED FOR APPROVAL	ISSUE DATE	23.03.2021

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Unit 1/278 Beaufort Street, Perth

Project: **UP IN SMOKE –
CHANGE OF USE APPLICATION
REPORT**

OPERATIONAL DISCRIPTION

- **Up in Smoke** has joined the ranks of being the best retailer when it comes to Shisha and Shisha related accessories. **Up in Smoke** are the premium quality and service provider for the Shisha industry, with both online shopping and stores located across Perth in Bedford, Ellenbrook, Cannington, Malaga, Bayswater, Midland and Armadale. The latest addition is the **Up in Smoke Shisha Café** located at Coventry Village Shopping Centre in Morley.
- The operational fit out of the premises will include the installation of a partition wall and access door allowing for a secure delivery, storage and office area. The shop will also require a drop panel suspended ceiling with lighting strips to be installed, painted white.
- Opening hours for the business will be from 10a.m. to 7 p.m. Monday to Sunday. Staffing numbers during these times of operation are expected to be 1 member of staff to open in the morning through to the midafternoon period, with an additional member of staff in the evening during busy periods and to close.
- Patronage of the operation is expected to be steady over the operational hours and would estimate than no more than 8-10 customers would be in the store over a 20 min period during these times.
- Retail displays will make up most of the floor space displaying the various items, with a dedicated P.O.S. and back counter display. There is no equipment/machinery used as part of the retail offering that would cause an audible impact to surrounding businesses.
- There are 3 dedicated bays located to the rear of the store in shared parking space, accessed through a secure gate for proprietor use. Customer parking will be available at the nearby Brisbane Street Carpark (115 meters away) or on-street parking along the adjacent Tiverton Street or Fore Street.
- In line with the removal of the City's commercial waste collection service, the Waste Management Plan will utilise an external waste service provider on a fortnightly basis and as required. The majority of waste is expected to be recyclable packaging, cardboard and soft plastics.

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RECEIVED
10 February 2021

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RECEIVED
10 February 2021

PRODUCT DEFINITION AND PRODUCT LIST

- **Definition of smoking implement (Hookah)** - A pipe traditionally used for smoking flavoured tobacco in which tobacco is placed in a bowl and heated with burning charcoal, producing smoke that is drawn through an urn of water that cools it and then into a long tube with an attached mouthpiece. In some modern versions, the charcoal-heated bowl is replaced with a battery-powered vaporizer containing a liquid mixture similar to that used in an e-cigarette. Also called *hubble-bubble* . Also called *narghile* . Also called *shisha* .
- For a full list of products that will be offered instore, please refer to the website <https://upinSmokeperth.com.au/#> A brief list of products on offer will be:
Hookahs and accessories - i.e. optional glass base, optional mouthpiece, flavored charcoal etc.
Vapes and accessories – i.e. spare batteries and coils.
E-Juice – Flavoured vaping liquids (**nicotine free**)
Scales and other related accessories.

Thank you for your time, please contact me if there are any questions or queries in regard to the above information.

Regards,

REDACTED FOR PRIVACY PURPOSES



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 Objection:	Officer Technical Comment:
<p><u>Land Use – Amenity</u></p> <ul style="list-style-type: none"> • The use would impact on the amenity of the locality in the following ways: <ul style="list-style-type: none"> ○ Children and adults are passing by an advert for a dangerous product on their way to school, parks, restaurants and cafes; ○ There is little amenity in the locality due to existing anti-social behaviour and people utilising Tom Fischer House, and the use would further diminish this; ○ The use will attract criminal and anti-social behaviour and further undermine the safety of the area and surrounding residents; and ○ The use will negatively impact on all of the surrounding restaurants in the immediate locality which specialise in high quality healthy food. • The use would conflict with the services offered by Tom Fischer House which provides a safe environment to those experiencing homelessness, an interventions to those suffering from trauma, mental health, chronic health, and alcohol and drug misuse. The use would impact on the service delivery of Tom Fisher House and further impact on the physical well-being and additions due to the health effects of shisha tobacco smoking. The operating hours would build further negative stigmas within the community relating to anti-social behaviour. • The use is not a good reflection for a similar business which operates along Beaufort Street with the necessary approvals. 	<p>In regards to the impact (perceived or actual) on the amenity of the surrounding area by the Restricted Premises, Administration notes the following:</p> <ul style="list-style-type: none"> • The use is contemplated under LPS2 and there are no criteria around the location of such premises; • The premises sells smoking implements but not tobacco, which is legal. Aside from the nature of the products, the operation of the premises is no different to that of a shop; • There is an existing premises in close proximity which sells tobacco products, albeit in a discrete manner. The subject tenancy maintains an active frontage consistent with the Built Form Policy which results in the products being more readily visible from the street. this could result in a perceived impact on those utilising the services of Tom Fischer House and ASeTTS, as well as Highgate Primary School and the users of Birdwood Square; • In addition to this existing premises which sells tobacco products, the subject site and surrounding community services are also in close proximity to the Brisbane Hotel and Cloud 9 store. Accounting for this context, the nature and operation of the use would not further diminish the existing amenity; and • Administration is unaware of any evidence to suggest premises of this nature result in increased anti-social behaviour, which would ultimately be investigated by the WA Police. <p>Given the legality of the use of smoking implements associated with shisha, and the lack of any detailed guidance in respect to uses of this nature under the local planning framework, the application is recommended for approval, subject to conditions.</p>

Summary of Submissions:

Comments Received in Objection:	Officer Technical Comment:
<p><u>Land Use – Consistency with Local Planning Scheme No. 2 (LPS2)</u></p> <ul style="list-style-type: none"> • The use is not consistent with 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"> ○ Clause 67(2)(a) – the use does not protect or enhance the health, safety and general welfare of the City’s inhabitants by selling tobacco products and smoking implements which pose a threat to public health. ○ Clause 67(f) – the Sustainable Health Review and State Public Health Plan both aim to reduce smoking rates and exposure to second hand smoke to reduce ongoing public health conditions. ○ Clause 67(g) – the City has three broad policies which apply to the Scheme area, including the Strategic Community Plan 2018-2028, Corporate Business Plan 2020/21 – 2023/24, and the Public Health Plan 2020-2025. While approving the use may support local business it would contradict broader aims relating to healthy and safe communities. The Public Health Plan also seeks to have smoke-free town centres by 2025. Approving the use would increase the availability and use of tobacco products and smoking implements, contrary to these policies. ○ Clause 67(m) – Although located in a Commercial zone the premises is within proximity to public open space, residential and commercial properties. The desired character is for smoke-free town centres as per the Public Health Plan, which this use is not compatible with. There is also Freechoice Tobacco and Cloud 9 located along Beaufort Street. A third premises would create the impression that smoking is acceptable. ○ Clause 67(n) – the surrounding premises in the locality consists of residential, retail and public open spaces. Anecdotally a diverse range of people are attracted to the area, including those in the 18-24 year old demographic. A tobacco retailer would have adverse social impacts relating to the proliferation and promotion of smoking. ○ Clause 67(x) – the potential impacts on the community as a result of the use are significant with regards to normalising smoking. Public health, and potential for addiction to products. ○ Clause 67(y) – the City is to give due consideration to the comments made on the application during public consultation. 	<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"> • 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 premises does not sell tobacco products and the use related to selling smoking implements is permissible within the zone under LPS2 and is not illegal; • 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 is not illegal and there are other controls in place through tobacco legislation to control how this is sold and used.; • The City does not have any local planning policies which are relevant to the assessment of a Restricted Premises. 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 premises selling smoking implements; • Accounting for the surrounding context, the nature and operation of the use would not further diminish the existing amenity as is outlined above; • The use is permissible within the zone under LPS2 which would have contemplated and accepted the broader impacts on the community by virtue of making it a permissible use. In contemplating the surrounding context, the Restricted Premises would not have a more detrimental impact on the community than what is currently experienced; and • 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.

Summary of Submissions:

Comments Received in Objection:	Officer Technical Comment:
<p><u>Building Design</u></p> <ul style="list-style-type: none"> The roller shutters installed are contrary to the City's policy framework, and have been previously refused within the City due to their detrimental impact on the streetscape. These roller shutters should be refused as they give the appearance of the 'dead end of town'. The façade would need to be completely obscured to comply with requirements of the Department of Health in respect to selling shisha, which does not permit the display of products. 	<ul style="list-style-type: none"> The roller shutters are unauthorised. Administration does not support the roller shutters due to these having a detrimental impact on the streetscape by not providing for street surveillance or activation when they are closed, which is inconsistent with the intent of the Built Form Policy. The Department of Health has advised that as the premises is not selling a tobacco product, it does not require a tobacco seller's licence. There are no restrictions regarding the display of products for premises which do not require a tobacco seller's licence.
<p><u>Car Parking</u></p> <p>Five parking bay are required for the premises, but access is provided to three bays only. It does not appear as though a Parking Management Plan has been submitted with the application which may be grounds for reason for refusal.</p>	<p>The applicant has provided a Parking Management Plan which is included in Attachment 6. There is adequate access to on-street and public parking in the surrounding area, as well as alternative transport methods to accommodate the demand of the premises.</p>
<p><u>Other</u></p> <ul style="list-style-type: none"> The signage and roller shutters were installed without approval and should be removed until the application has been considered. Given the disingenuous approach of the business owner to date it is not clear what premises would be considered for approval in terms of the façade appearance, and marketing material. The use is not a good reflection for a similar business which operates along Beaufort Street with the necessary approvals. The premises could engage in 'under the counter drug trading' as has happened with other similar premises. The use will devalue surrounding apartment buildings and properties. The City should be proactive in its approach to assisting the Department of Health in respect to enforcing tobacco legislation, by ensuring that the proponent is fully licenced. In 2016 the WA Supreme Court interpreted the <i>Tobacco Products Control Act 2006</i> broadly to prohibit the sale and supply of e-cigarettes. 	<ul style="list-style-type: none"> During community consultation Administration became aware that the premises had commenced operating and installed the signage and roller shutters. The roller shutters did not form part of the initial application submitted to the City, and the applicant subsequently amended this to include them. The City's Enforcement Policy provides discretion to allow a use to continue to operate until the planning application is determined and establishes that this may be in circumstances where there is reasonable prospect of approval. Administration was satisfied that the current operation of the premises did not present an immediate danger, hazard, health or safety risk to a person or the property, consistent with the City's Enforcement Policy, and did not require the use to cease or additions removed while the application was processed and as provided for in the planning framework. If the application were to be approved, the development would need to comply with any conditions imposed as well as other applicable building and health legislation. Instances of non-compliance would be investigated by the City and relevant authorities including the Department of Health. Concerns regarding illegal activities occurring from the premises should be reported to the WA Police to investigate. Property values are not a relevant planning consideration.

Summary of Submissions:

Comments Received in Objection:	Officer Technical Comment:
	<ul style="list-style-type: none"> • During the assessment of the application Administration liaised with the Tobacco Compliance Branch of the Department of Health. This included the Tobacco Compliance Branch undertaking an investigation to confirm that the premises was operating in accordance with the <i>Tobacco Products Control Act 2006</i>. The advice provided from the Tobacco Compliance Branch included: <ul style="list-style-type: none"> ○ The premises does not hold a tobacco seller's licence, and as a result there are no restrictions regarding the display of smoking implements; ○ Flavoured charcoal is not a tobacco product and E-Juice is not within the scope of the <i>Tobacco Products Control Act 2006</i>; and ○ It is illegal to sell e-cigarettes as they are deemed to resemble a tobacco product. The premises does not sell e-cigarettes.
<p><u>Building Design</u></p> <p>The roller shutters have been fitted and are contrary to the City's policy framework.</p>	<p>The roller shutters are not consistent with the City's Built Form Policy as noted above.</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 Objection:	Applicant Response
<p><u>Land Use – Amenity</u></p> <ul style="list-style-type: none"> • The use would impact on the amenity of the locality in the following ways: <ul style="list-style-type: none"> - Children and adults are passing by an advert for a dangerous product on their way to school, parks, restaurants and cafes; - There is little amenity in the locality due to existing anti-social behaviour and people utilising Tom Fischer House, and the use would further diminish this; - The use will attract criminal and anti-social behaviour and further undermine the safety of the area and surrounding residents; and - The use will negatively impact on all of the surrounding restaurants in the immediate locality which specialise in high quality healthy food. • The use would conflict with the services offered by Tom Fischer House which provides a safe environment to those experiencing homelessness, an interventions to those suffering from trauma, mental health, chronic health, and alcohol and drug misuse. The use would impact on the service delivery of Tom Fisher House and further impact on the physical well-being and additions due to the health effects of shisha tobacco smoking. The operating hours would build further negative stigmas within the community relating to anti-social behaviour. • The use is not a good reflection for a similar business which operates along Beaufort Street with the necessary approvals. 	<p>The majority of this objection is not planning related, however in response to amenity there are many remarks raised that the business is not responsible for and it is not clear how and no evidence is provided to back up the negative hypothetical claims made.</p> <p>We are unsure how the change of use application reflects on the similar business that has approvals and is not planning related. We note that this approved operation referred to has roller shutters installed, multiple security cameras and window displays to the footpath.</p>
<p><u>Land Use – Consistency with LPS2</u></p> <ul style="list-style-type: none"> • The use is not consistent with 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"> - Clause 67(2)(a) – the use does not protect or enhance the health, safety and general welfare of the City's inhabitants by selling tobacco products and smoking implements which pose a threat to public health. - Clause 67(f) – the Sustainable Health Review and State Public Health Plan both aim to reduce smoking rates and exposure to second hand smoke to reduce ongoing public health conditions. - Clause 67(g) – the City has three broad policies which apply to the Scheme area, including the Strategic Community Plan 2018-2028, Corporate Business Plan 2020/21 – 2023/24, and the Public Health 	<p>No tobacco products are sold on the premises.</p> <p>The remaining points of the objection are not relevant and planning related.</p>

Comments Received in Objection:	Applicant Response
<p>Plan 2020-2025. While approving the use may support local business it would contradict broader aims relating to healthy and safe communities. The Public Health Plan also seeks to have smoke-free town centres by 2025. Approving the use would increase the availability and use of tobacco products and smoking implements, contrary to these policies.</p> <ul style="list-style-type: none"> - Clause 67(m) – Although located in a Commercial zone the premises is within proximity to public open space, residential and commercial properties. The desired character is for smoke-free town centres as per the Public Health Plan, which this use is not compatible with. There is also Freechoice Tobacco and Cloud 9 located along Beaufort Street. A third premises would create the impression that smoking is acceptable. - Clause 67(n) – the surrounding premises in the locality consists of residential, retail and public open spaces. Anecdotally a diverse range of people are attracted to the area, including those in the 18-24 year old demographic. A tobacco retailer would have adverse social impacts relating to the proliferation and promotion of smoking. - Clause 67(x) – the potential impacts on the community as a result of the use are significant with regards to normalising smoking. Public health, and potential for addiction to products. - Clause 67(y) – the City is to give due consideration to the comments made on the application during public consultation. 	
<p><u>Building Design</u></p> <ul style="list-style-type: none"> • The roller shutters installed are contrary to the City’s policy framework, and have been previously refused within the City due to their detrimental impact on the streetscape. These roller shutters should be refused as they give the appearance of the ‘dead end of town’. • The façade would need to be completely obscured to comply with requirements of the Department of Health in respect to selling shisha, which does not permit the display of products. 	<p>The roller shutters can be removed or installed internally as the city requires. The department of health only restricts display of tobacco products. This point is not planning related.</p>
<p><u>Car Parking</u></p> <ul style="list-style-type: none"> • Five parking bay are required for the premises, but access is provided to three bays only. It does not appear as though a Parking Management Plan has been submitted with the application which may be grounds for refusal. 	<p>Adequate on street and dedicated parking lots are located nearby. The business does not require 5 bays to operate and this is supported in the management plan. The parking management plan has been submitted.</p>
<p><u>Other</u></p> <ul style="list-style-type: none"> • The signage and roller shutters were installed without approval and 	<p>The roller shutters can be removed or installed internally as the city requires.</p>

Comments Received in Objection:	Applicant Response
<p>should be removed until the application has been considered.</p> <ul style="list-style-type: none"> Given the disingenuous approach of the business owner to date it is not clear what premises would be considered for approval in terms of the façade appearance, and marketing material. The use is not a good reflection for a similar business which operates along Beaufort Street with the necessary approvals. The premises could engage in 'under the counter drug trading' as has happened with other similar premises. The use will devalue surrounding apartment buildings and properties. The City should be proactive in its approach to assisting the Department of Health in respect to enforcing tobacco legislation, by ensuring that the proponent is fully licenced. In 2016 the WA Supreme Court interpreted the <i>Tobacco Products Control Act 2006</i> broadly to prohibit the sale and supply of e-cigarettes. 	<p>The second point is not clear but does not appear to be planning related. The remaining points are not planning related, no tobacco products are sold on the premises. We are unsure how the application reflects on the similar business and does not relate to the application. Devaluation is an unproven hypothetical claim, no evidence is provided and is not planning related. The last point is directed to the City and does not relate to the application.</p>

Comments Received Expressing Concern:	Applicant Response
<p><u>Building Design</u></p> <ul style="list-style-type: none"> The roller shutters have been fitted and are contrary to the City's policy framework. 	<p>The roller shutters can be removed and installed internally as the City requires.</p>

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

CITY OF VINCENT PLANNING AND BUILDING POLICY MANUAL
POLICY NO: 7.7.1
NON-RESIDENTIAL DEVELOPMENT PARKING REQUIREMENTS

APPENDIX 2 – PARKING MANAGEMENT PLAN FRAMEWORK

Owner/Applicant Details	
Name:	REDACTED FOR PRIVACY PURPOSES
Address:	
Phone:	
Email:	
Applicant Signature:	

Property Details	
Lot Number:	W108
Address:	1/278 BEAUFORT STREET, PERTH

Parking Allocation:

The following table should be prepared for inclusion in this Parking Management Plan to outline the parking available for the different users of this development application.

Parking Allocation	
Total Number Car Parking Spaces:	3
Total Number Short Term Bicycle Parking Spaces:	8
Total Number Long Term Bicycle Parking Spaces:	0
Total Number Other Bays:	237
	35 on street (within 150m) 202 Brisbane St car park (within 250m)

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CITY OF VINCENT PLANNING AND BUILDING POLICY MANUAL
 POLICY NO: 7.7.1
 NON-RESIDENTIAL DEVELOPMENT PARKING REQUIREMENTS

Development Type	Development Users	Parking Allocation			
		Type / Duration	No. Car spaces	No. Bicycle Spaces	No. Other Spaces
E.g. Private Recreation Town Centre	Staff	Employee (> 3 hours)	2	1	-
	Customers	Visitor (< 3 hours)	7	2	-
	Other	Service (15 minute)	-	-	1
	Other	Disabled	-	-	1
Retail Restricted Activity Corridor	Staff	6-8 hrs	3		
	Customer	20 min.	233	8	4 Disabled

Note: In a mixed use development the parking allocation for residential and non-residential portions must be provided separately in the above table.

Alternative Transport:

The following table should be prepared for inclusion in this Parking Management Plan to outline the alternative transport options available to users of this development application.

Transport Option	Type & Level of Service
Public Transport	
Train	Approx. 1000m+ to Mclver Station
Bus	66, 67, 68, 653, 950 (150m & 250m to stop)

CITY OF VINCENT PLANNING AND BUILDING POLICY MANUAL
POLICY NO: 7.7.1
NON-RESIDENTIAL DEVELOPMENT PARKING REQUIREMENTS

Pedestrian	
Paths	Footpath along Beaufort Street
Facilities	
Cycling	
Paths	Dedicated Bus Taxi and cycle way on Beaufort Street
Facilities	
Secure Bicycle Parking	N/A
Lockers	N/A
Showers/Change Room	N/A

Public Parking:

Identify the number of on street and off street public parking in the vicinity in the following table.

	No. Marked Spaces	Location	Parking Restrictions
On Street Parking	35	Fore St and Tiverton St	2 Hr and 1/2 Hr
Off Street Parking	202	Brisbane Street car park	1 Hr Free

Parking Management Strategies

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CITY OF VINCENT PLANNING AND BUILDING POLICY MANUAL
POLICY NO: 7.7.1
NON-RESIDENTIAL DEVELOPMENT PARKING REQUIREMENTS

Parking management strategies providing implementation details must be provided to ensure that the 'Parking Allocation' is used as demonstrated in this Parking Management Plan.

The allocation of bays as specified in the Parking Management Plan shall be included in the development application and planning approval.

The following information shall be provided, where applicable, within the Parking Management Plan:

1. Details of who will be responsible for management, operation and maintenance of parking (inclusive of car stackers);
2. Management of allocation of parking bays as specified in this Parking Management Plan including signage and enforcement;
3. Management of Tandem Parking for staff/tenants;
4. Way finding measures to ensure efficient use of parking facilities; and
5. Promotion of alternative transport modes such as the provision of well-maintained bicycle and end of trip facilities, use of active transport initiatives or public transport promotion.

