

9.4 NO. 624 BEAUFORT STREET, MOUNT LAWLEY - CHANGE OF USE TO UNLISTED USE (SHISHA LOUNGE) INCLUDING ALTERATIONS AND ADDITIONS (UNAUTHORISED EXISTING DEVELOPMENT)

Ward: South

- Attachments:
1. Consultation and Location Map
 2. Development Plans
 3. Applicant's Cover Letter
 4. Acoustic Report
 5. Land Use Context Plan
 6. Summary of Submissions - Administration's Response
 7. Determination Advice Notes

RECOMMENDATION:

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

1. **REFUSES** part of the application for Change of Use to Unlisted Use (Shisha Lounge) including Alterations and Additions (Fence and Gate) (Unauthorised Existing Development) at No. 624 Beaufort Street, Mount Lawley (Lot: 700; D/P: 400441), as shown in Attachment 2, for the following reasons:
 - 1.1 **As a consequence of the location of the Unlisted Use (Shisha Lounge) within an unenclosed patio and outbuilding at the rear of the subject site and adjoining sensitive residential land uses, with this exacerbated by the operating hours and intensity of the Unlisted Use (Shisha Lounge), the proposal:**
 - 1.1.1 **Would be inconsistent with the objectives of the District Centre zone and subsequently Clause 18(4)(c) of the City of Vincent's Local Planning Scheme No. 2 and is therefore not permitted, as the development would adversely impact the amenity of the adjoining properties and residential areas. This is because it would result in smoke, vapour and odour emissions, noise emissions, and impacts from the lack of management of the activities associated with the use. The off-site amenity impacts related to these emissions from and the activities of the proposal would negatively impact on adjoining properties;**
 - 1.1.2 **Would have an undue amenity impact on the adjoining sensitive residential land uses, and subsequently would not be compatible with its setting, as the proposal has not demonstrated that the emissions and activities associated with the use could be appropriately mitigated as outlined in reason 1.1.1 (Clause 67(m), (n) and (x) of the *Planning and Development (Local Planning Schemes) Regulations 2015*);**
 - 1.1.3 **Would be inconsistent with the Aims of the City of Vincent's Local Planning Scheme No. 2, as the development would not protect and enhance the health, safety and general welfare of the City's inhabitants and the social, environmental and cultural environment, as the proposal has not demonstrated that the emissions and activities associated with the use could be appropriately mitigated as outlined in reason 1.1.1 (Clause 67(a) of the *Planning and Development (Local Planning Schemes) Regulations 2015*);**
 - 1.1.4 **Would have an adverse impact on the amenity of the adjoining properties as evidenced through written objections received from surrounding owners and occupants (Clause 67(y) of the *Planning and Development (Local Planning Schemes) Regulations 2015*); and**
 - 1.1.5 **Would be inconsistent with orderly and proper planning as it would be inconsistent with the objectives and approach of the City's draft Local Planning Policy: Restricted Premises – Smoking. This is because the proposal has not demonstrated that the emissions and activities associated with the use could be appropriately mitigated as outlined in reason 1.1.1 (Clause 67(b) of the *Planning and Development (Local Planning Schemes) Regulations 2015*); and**

- 1.2 **As a consequence of the height and materials of the proposed Alterations and Additions (Fence and Gate) at the front of the subject site along the Beaufort Street frontage, the proposal:**
 - 1.2.1 **Would not satisfy the Element Objectives of Volume 3 Clause 1.7 – Public Domain Interface of the City’s Policy No. 7.1.1 – Built Form as it would not enhance the amenity and safety of the adjoining public domain; and**
 - 1.2.2 **Would not satisfy objectives of the District Centre zone under Local Planning Scheme No.2 as it would not result in high quality, pedestrian-friendly, street-orientated development that responds to and enhances key elements of the District Centre; and**
2. **APPROVES part of the application for Alterations and Additions (Patio) (Unauthorised Existing Development) at No. 624 Beaufort Street, Mount Lawley (Lot: 700; D/P: 400441), as shown in Attachment 2, subject to the following conditions and advice notes included in Attachment 7:**
 - 2.1 **This approval is for Alterations and Additions (Patio) to existing Shop as shown on the approved plans dated 21 December 2021. No other development forms part of this approval;**
 - 2.2 **The Alterations and Additions (Patio) shall not be used for the purpose of an Unlisted Use (Shisha Lounge) or the like; and**
 - 2.3 **Stormwater from all roofed and paved areas shall be collected and contained on site. Stormwater must not affect or be allowed to flow onto or into any other property or road reserve.**

PURPOSE OF REPORT:

To consider an application for development approval for an unauthorised change of use to Unlisted Use (Shisha Lounge) at No. 624 Beaufort Street, Mount Lawley (subject site).

PROPOSAL:

The application proposes a change of use to Unlisted Use (Shisha Lounge) along with associated alterations and additions including signage, a patio at the rear of the site and a fence and gate along the Beaufort Street frontage.

Details of the application include:

- The shisha lounge operating as ‘Petra Lounge’, involving the sale of shisha (a generally flavoured tobacco product) to patrons in a ready-to-smoke form. It would be consumed onsite within a seating area provided for patrons within an unenclosed patio at the rear of the subject site;
- Access to the patio area through an access way along the northern boundary of subject site and through an entry foyer off Beaufort Street;
- Operating hours between:
 - 5:00pm and 10:00pm Sunday to Wednesday;
 - 5:00pm and 12:00am Thursday to Saturday;
- A maximum of 40 patrons and 3 staff on-site at any time;
- Signage on the fence along the frontage to Beaufort Street; and
- Works including a fence and gate addition along the Beaufort Street frontage, and a patio addition at the rear of the subject site between the existing building and Kaata Lane.

The business commenced operating in 2021 without approval. The use of the site has now ceased, pending the outcome of this application. The works have been completed without development approval and are unauthorised. The patio at the front of the subject site over the entry foyer off Beaufort Street and the outbuilding at the rear of the subject site are existing structures that are not subject to this application. The outbuilding would be used as an additional seating area for the consumption of shisha.

A location plan is included as **Attachment 1**. The development plans are included as **Attachment 2**. The applicant's supporting documentation, including a cover letter outlining written justification for the use and an acoustic report, are included as **Attachment 3** and **4** respectively.

BACKGROUND:

Landowner:	Alexandros Lazidis, Peter Lazidis and Chris Lazidis
Applicant:	Peter Davidson
Date of Application:	7 January 2022
Zoning:	MRS: Urban LPS2: Zone: District Centre R Code: No R Code
Built Form Area:	Town Centre
Existing Land Use:	Vacant
Proposed Use Class:	Unlisted Use (Shisha Lounge)
Lot Area:	442m ²
Right of Way (ROW):	Yes (Kaata Lane) East – 3.0m wide, seal and drained. State owned.
Heritage List:	No

Site Context

The subject site is zoned District Centre under the City's Local Planning Scheme No. 2 (LPS2) and is located within the Town Centre 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 adjoining properties to the north and south along Beaufort Street are zoned District Centre under LPS2, and the adjoining properties to the east along Roy Street are zoned Residential R50.

The property adjoining the subject site to the north is No. 628 Beaufort Street and to the south is No. 620 Beaufort Street, with these both accommodating restaurants (Solo Pasta and The Modern Eatery respectively) with active street frontages.

The properties adjoining the subject site to the east on the opposite side of Kaata Lane are Nos. 15, 19 and 21 Roy Street, with these comprising single residential dwellings.

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

- Restaurants and cafés;
- Offices for varying tenants including a radio station, a publisher and accountants;
- Beauty and health uses including a chemist, hairdressers, beauty therapy and laser clinic;
- Shops including a book store, florist, clothing store and supplements store;
- Private recreation facilities including a pilates studio and a wellness studio;
- A vocational and education training provider (Kingston International College);
- A supermarket (IGA);
- A tavern (The Elford);
- A tobacco and lottery sales store (Lucky Dollar Lottery/TSG Tobacco Station);
- A fast food outlet (Hungry Jack's); and
- Residential uses including apartments in mixed use developments.

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

Noise and Compliance Investigations

Following a complaint received in August 2021 relating to the business operations at the site including associated noise and waste issues, the City's compliance team undertook an investigation of the premises.

This occurred in accordance with the City's Policy No. 4.1.22 – Prosecution and Enforcement (Enforcement Policy) as well as the assessment of noise in accordance with the *Environmental Protection (Noise) Regulations 1997* (the Noise Regulations).

The following is summary of the history of the noise and compliance investigations:

- September 2021 – The City wrote to the business operators requesting the business to cease operating as the use of the subject site had not been approved or alternatively advising of a need for a development application to be submitted by the end of the month. The operators indicated they would be preparing an application. Noise monitoring occurred with log sheets and a sound level monitor provided to the complainant. This found that the business had exceeded the relevant assigned levels in the Noise Regulations;
- October 2021 – A development application had not been submitted, the use had not ceased and complaints were still being received. The City imposed a trial on the business for reduced operating hours that included limitation on amplified music while continuing to seek the submission of a development application;
- January 2022 – The previously agreed trial was ended due to continued complaints being received. Monitoring from the City resulted in four Planning Infringement Notices being issued and the business was required to cease operating by 21 January 2022;
- February 2022 – City monitoring and liaison with complainants confirmed that the business had ceased operating late in the month; and
- April 2022 – Complaints were received that the business had started operating again. Further monitoring was conducted by the City at the end of the month identifying that the business wasn't operating but that the business operators were still occupying the premises in the evenings.

Since April 2022 no further complaints have been received regarding the business' operations.

DETAILS:

Summary Assessment

The table below summarises the planning assessment of the proposal against the provisions of the City of Vincent Local Planning Scheme No. 2 (LPS2), the City's Built Form Policy and other relevant local planning policies. In each instance where the proposal requires the discretion of Council, the relevant planning element is discussed in the Detailed Assessment section following from this table.

Planning Element	Use Permissibility/ Acceptable Outcome	Requires the Discretion of Council
Land Use		✓
Car & Bicycle Parking		✓
Signage	✓	
Side and Rear Setbacks	✓	
Public Domain Interface		✓
Pedestrian Access and Entries	✓	
Roof Design	✓	

Detailed Assessment

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

Land Use	
Use Class Permissibility	Proposal
LPS2 – Zoning Table 'P' use.	A Shisha Lounge is an Unlisted Use. It is not a land use defined within LSP2.

Car and Bicycle Parking	
Requirements	Proposal
<p>Policy No. 7.7.1 – Non-Residential Development Parking Requirements (Parking Policy)</p> <p>There is no specified car or bicycle parking standard for an Unlisted Use. This is to be determined on a site specific parking management plan.</p>	<p>A parking management plan has not been provided.</p> <p><u>Car Parking</u> 1 bay provided.</p> <p><u>Bicycle Parking</u> None provided.</p>
Public Domain Interface	
Acceptable Outcomes	Proposal
<p>Built Form Policy Clause 1.7 – Public Domain Interface</p> <p>Front fencing includes visually permeable materials above 1.2m and the average height of solid walls or fences to the street does not exceed 1.2m.</p>	<p>The fence and gate along the Beaufort Street frontage would not include visually permeable materials and would have a maximum height of solid walls or fences of 2.0m.</p>

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

CONSULTATION/ADVERTISING:

Community Consultation

Community consultation was undertaken for a period of 35 days in accordance the *Planning and Development (Local Planning Schemes) Regulations 2015*, from 7 April 2022 to 12 May 2022. The consultation period was extended to account for the Easter holiday period, and the method of advertising included 535 letters being mailed to all owners and occupiers within a 200 metre radius of the subject site, a sign being erected on site, a notice in the local newspaper and a notice on the City's website in accordance with the City's Community and Stakeholder Engagement Policy.

At the conclusion of the consultation period, 28 submissions were received.

- Three submissions were received in support; and
- 25 submissions were received in objection.

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

- Impacts of noise on the adjoining residential dwellings due to the location of the shisha lounge activities at the rear of the subject site within an unenclosed patio. Additional concerns that the acoustic report is inaccurate and does not reflect how the business has operated previously;
- The operating hours, closing times and patron numbers of the use, including associated impacts of noise and anti-social behaviour on the adjoining residential dwellings. Additional concerns that the use and scale of the premises is not consistent or compatible with the area;
- Inadequate onsite parking being provided and concerns with increased parking demand along Beaufort Street and the surrounding streets, including associated impacts of reduced parking availability, noise and safety;
- The use would promote tobacco/shisha use and smoking which is a direct risk to individuals and the public health of the City's community. This would adversely impact users and the amenity of the adjoining residential dwellings, Beaufort Street and the surrounding area, including from impacts of second hand smoke from the premises;
- The unauthorised nature of the business, with it previously operating and having significant impacts on adjoining residential dwellings and Kaata Lane in terms of noise, staff and patron behaviour, parking and waste management;
- The use would not comply with the relevant tobacco legislation, and concerns that non-compliance with this and any conditions would continue to occur given the previous history of the business;

- The use would attract anti-social behaviour and subsequently impact the surrounding area, with this already occurring when the business has operated previously, particularly along Kaata Lane; and
- The use does not satisfy the objectives of LPS2, the City's *Public Health Plan 2020-2025* and State policies.

A summary of all the submissions received and Administration's response is included as **Attachment 6**. The applicant's response is included as follows:

- *Whilst it is acknowledged that there are differing community morals in relation to tobacco smoking, we note it is not the role of town planning to adjudicate on the topic.*
- *From a Town Planning perspective, it is important to focus on the locational factors of the proposal and determine whether it is appropriate at the proposed location. In this regard, a shisha lounge is like those businesses which sell alcohol and cigarettes, or those offering gambling services, which are legitimate businesses, despite the products they sell being subject to differing community morals (noting such businesses are located at the in close proximity to the site along Beaufort Street – Cloud 9, Freechoice Tobacco, TSG, BWS, and the numerous bars along Beaufort Street which sell alcohol).*
- *Several submissions raised concerns regarding the prominent location within an area frequented by families and children and the impacts this may have on 'normalising' tobacco smoking via shisha. It is important to note in this respect that entry to the proposed shisha lounge is restricted to adults (persons 18 years and over).*
- *It is difficult to agree with the argument made by some submitters that the shisha smoke is a risk to their health, when considering the fact that Beaufort Street carries >40,000 vehicles per day, most of which are powered by internal combustion engines that produce hazardous emissions. It makes one inclined to suggest that the impact from emissions from these vehicles every day would far exceed the impact from pineapple flavoured shisha smoke a few hours a night.*

Updated Proposal

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

- A reduction in operating hours, with these reduced hours including earlier closing times from Sunday to Wednesday;
- A reduction in patron numbers; and
- Additional details on operation of the business, including relating to waste management, use of the premises and venue management.

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

Department of Planning, Lands and Heritage (DPLH)

The application was referred to DPLH as the subject site is affected by the road reservation for Beaufort Street which is a Category 2 Other Regional Road under the Metropolitan Region Scheme, as well as by an associated restrictive covenant for this reservation.

DPLH advised that they had no objection to the proposal on Other Regional Road planning grounds.

Design Review Panel (DRP):

Referred to DRP: No

LEGAL/POLICY:

- *Planning and Development Act 2005;*
- *Planning and Development (Local Planning Schemes) Regulations 2015;*
- *City of Vincent Local Planning Scheme No. 2;*
- *Community and Stakeholder Engagement Policy;*
- *Local Planning Policy – Signs and Advertising;*

- Policy No. 4.1.22 – Prosecution and Enforcement;
- Policy No. 7.1.1 – Built Form Policy;
- Policy No. 7.5.21 – Sound Attenuation;
- Policy No. 7.7.1 – Non-Residential Development Parking Requirements;
- *Tobacco Advertising Prohibition Act 1992*;
- *Tobacco Products Control Act 2006*; and
- Department of Health ‘Shisha and the Law’ Guidelines 2017.

Planning and Development Act 2005

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

Planning and Development (Local Planning Schemes) Regulations 2015

Schedule 2, Clause 73 of the Planning Regulations provides the ability for approval to be granted for a part or aspect 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 associated works would need to 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 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 initially satisfied that the operations of the business 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 the additions be removed while the application was being processed. This was subject to a trial imposed on the business for reduced operating hours that also included a limitation on amplified music.

As outlined in the Background section, this trial ceased in January 2022 and the use was required to cease following continued complaints and monitoring by the City confirming that the terms of the trial had been breached.

Draft Local Planning Policy: Restricted Premises – Smoking

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Tobacco Products Legislation

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

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

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

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

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

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

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

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

Delegation to Determine Applications:

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

RISK MANAGEMENT IMPLICATIONS:

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

STRATEGIC IMPLICATIONS:

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

Innovative and Accountable

We are open and accountable to an engaged community.

SUSTAINABILITY IMPLICATIONS:

The City has assessed the application against the environmentally sustainable design provisions of the Built Form Policy. These provisions are informed by the key sustainability outcomes of the City's Sustainable Environment Strategy 2019-2024, which requires new developments to demonstrate best practice in respect to reductions in energy, water and waste and improving urban greening.

PUBLIC HEALTH IMPLICATIONS:

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

Reduced smoking

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

FINANCIAL/BUDGET IMPLICATIONS:

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

COMMENTS:

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

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

Land Use

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

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

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

- a) *determine that the use is consistent with the objectives of a particular zone and is therefore a use that may be permitted in the zone subject to conditions imposed by the local government; or*

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

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

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

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

LPS2 District Centre Zone Objectives

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

- *To provide a community focus point for people, services, employment and leisure that are highly accessible and do not expand into or adversely impact on adjoining residential areas.*
- *To encourage high quality, pedestrian-friendly, street-orientated development that responds to and enhances the key elements of each District Centre, and to develop areas for public interaction.*
- *To ensure levels of activity, accessibility and diversity of uses and density is sufficient to sustain public transport and enable casual surveillance of public spaces.*
- *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 ensure the provision of a wide range of different types of residential accommodation, including affordable, social and special needs, high density residential and tourist accommodation, to meet the diverse needs of the community.*
- *To provide a broad range of employment opportunities to encourage diversity and self-sufficiency within the Centre.*
- *To encourage the retention and promotion of uses including but not limited to specialty shopping, restaurants, cafes and entertainment.*
- *To ensure that the City's District Centres are developed with due regard to State Planning Policy 4.2 - Activity Centres for Perth and Peel.*

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

- The use would operate as a retail tenancy that offers products for consumption in areas with seating provided. This would contribute towards employee opportunities and the activity centre as a community focus point for people, services and leisure, with the predominant retail offering and commercial activity along Beaufort Street. The retail aspect of the business is consistent with surrounding commercial activities including shops, restaurants, cafés and bars. These commercial activities provide goods or services for sale, are open to the general public, and provide day time and night time trade; consistent with the retail aspect of the proposed land use which would facilitate the retention and add to the diversity of these activities;
- Aside from the fencing and gate, no modifications are proposed to the building frontage. 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 fencing and gate would obscure this active frontage while reducing public interaction and not being consistent with key elements of the District Centre. They are not supported for the reasons outlined further below in this report;
- The signage proposed would be consistent with the Signs and Advertising Policy. It is supported for the reasons outlined further below in this report;

- The development, including the patio addition, does not impact on energy efficiency or water conservation principles. Waste would be collected by an external waste service provider, in line with the City ceasing commercial waste collection and a bin store is proposed at the rear off Kaata Lane; and
- The proposal would adversely impact on the amenity of adjoining residential areas by way of emissions and the activities of the use. This is discussed below.

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

One of the objectives of the District Centre zone under LPS2 is to ensure development does not expand into or adversely impact on adjoining residential areas. Clauses (m) and (n) of the matters to be considered by local government in the consideration of an application under the Planning Regulations relates to the compatibility of the development with its setting (Clause 67(2)(m)) and to the amenity of the locality, including character and social impacts of the development (Clause 67(2)(n)(ii) and (iii)).

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

The character and existing amenity of Beaufort Street is reflective of its town centre location as a community focal point for Mount Lawley and Highgate, providing for a mix of primarily commercial land uses and consisting of some mixed use and residential medium rise development. The area contains a wide range of commercial, retail, entertainment and residential land uses in close proximity to one another and with varying extents of intensity and activity.

In respect to future amenity, this section of Beaufort Street is zoned District Centre under LPS2 and is intended to provide for a mix of compatible commercial uses and street-orientated development that responds to the key elements of a town centre, with residential uses also contemplated. This area is also identified as a Town Centre built form area in the City’s Built Form Policy with a six storey height standard provided. The City’s Local Planning Strategy identifies this stretch of Beaufort Street as the core of the Mount Lawley/Highgate Town Centre and a prime example of inner urban, main-street development. The future amenity of the locality would be reflective of an area continuing to serve the retail, commercial and community needs of the area, with a strong, attractive town centre area and opportunities for the area to become a livelier, people-friendly locality enhanced by retail shops, cafés, restaurants and night-life that create a dynamic hub of activity.

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

- Use Permissibility: The Planning Regulations set out a variety of commonly proposed land uses that are specifically defined. This is not intended to be an exhaustive list of uses and where a proposal is not capable of reasonably falling within a defined use class, this is considered an ‘Unlisted Use’. An Unlisted Use requires discretion to be exercised by the decision maker for its approval. The proposed shisha lounge is capable of consideration within the Commercial zone, by virtue of it being an Unlisted Use and not an ‘X’ (not permitted) land use. LPS2 does not set out any specific locational requirements for an Unlisted Use, and where these should be situated in proximity to other commercial activities or residential dwellings. It is the role of the decision maker to consider the acceptability of the proposed use in the location proposed informed by the site context, objectives of the zone and other relevant matters;
- Broader Public Health Considerations: The business would involve the sale of shisha for consumption onsite in a ready-to-smoke form. Although there is a public health impact from smoking, smoking itself is not an illegal activity. The nature of the use is not associated with an illegal activity. Under the tobacco products legislation applicable to shisha bars or lounges set out in the Legal/Policy section above, it is not legal to sell or supply shisha to those under the age of 18. The applicant has advised that those under the age of 18 would not be permitted to enter the premises;
- Development Standards: Neither LPS2 nor the Built Form Policy include development standards which require businesses of this nature to be discrete or to limit the display of smoking-related products or implements. Conversely the provisions of the Built Form Policy require an active street frontage to be provided and maintained. Smoking-related products or implements would not be displayed or visible from the public realm as required under the applicable tobacco products legislation, but there would be advertising signage for the subject premises that would be visible. This signage would be on the fencing of the premises and would promote the business name which is ‘Petra Lounge’. The acceptability of this signage against the Signs and Advertising Policy is discussed further below in this report;

- Amenity Impact: In having regard for existing uses in the immediate and surrounding context of the premises, there would be an impact of the Unlisted Use on amenity. In the immediate context it is noted that there are existing residential uses adjoining the subject site, including single residential dwellings to the east along Roy Street. In considering impact on amenity, the following comments are relevant:
 - Nearby Community Spaces and Services: The premises is located within the Mount Lawley/Highgate Town Centre which is intended to be a community focal point for people, services, employment and leisure. There could be a perceived impact on existing users of the surrounding area which includes activities and public spaces associated with the Town Centre that cater for a diverse range of people. This is as a result of the visibility of the frontage of the premises to Beaufort Street and the operating hours of the business being from 5:00pm onwards everyday which is the peak activity time for the Town Centre. The applicant has advised that those under 18 years of age are not permitted in the premises. The Town Centre also includes a number of licenced venues including The Elford, The Beaufort and Queens Tavern, which facilitate the service and consumption of alcohol onsite. The operation of these businesses as part of the Town Centre would have some inherent impact and reduced amenity. Further to this the premises is directly opposite a convenience store selling tobacco products, and 300 metres from a similar premises in Cloud 9. In this regard the operation of an Unlisted Use (Shisha Lounge) in this context is unlikely to result in further reduced amenity than that currently experienced by being in close proximity to existing businesses which serve alcohol and sell tobacco and smoking-related products and implements that form part of the Town Centre.
 - Smoking Emissions: The nature of the use involving the consumption of shisha in a ready-to-smoke form onsite within an unenclosed patio and outbuilding, would inherently result in smoke, vapour and odour being emitted outward from the premises. This is as smoking, the use of smoking implements and the consumption of shisha is a legal activity, and under the tobacco products legislation the sale and consumption of shisha onsite is legally required to occur within an outdoor area that is not an enclosed public place. There would be a level of emissions affecting the surrounding locality as a consequence of these requirements under the tobacco products legislation. As a result of this requirement for shisha to be consumed within an unenclosed outdoor area, there is limited ability to control, filter or manage emissions from the business. The applicant has also not submitted any details or included any physical measures that would control or filter these emissions. They have stated in their response to submissions that the impact of hazardous emissions from the high volume of vehicles using Beaufort Street would exceed the impact from any flavoured shisha smoke emitted from the premises. Noting that it is accepted that the emission of smoke and vapour can be harmful to health, and that the emission of odour can be a nuisance, the lack of details and physical measures on how emissions would be controlled or filtered is particularly relevant for this application. This is given that the patio area and outbuilding would be either fully or partially unenclosed to the east where in this direction there are sensitive uses in the form of single residential dwellings. The patio and outbuilding are located a minimum of between approximately 3.0 and 8.0 metres from the adjoining properties to the north-east, east and south-east that contain established sensitive uses. This demonstrates that the use as proposed would not be capable of operating in a manner where emissions would be appropriately managed, and that it would adversely impact the amenity of the adjoining properties and the associated sensitive residential uses;
 - Operating Hours: The operating hours of the business, including its closing times of 10:00pm from Sunday to Wednesday and 12:00am from Thursday to Saturday, would also be similar to that of other business located along this District Centre zoned section of Beaufort Street, and would not have an adverse impact on the locality. This includes The Elford which has a closing time of 11:00pm from Monday to Wednesday and of 12:00am from Thursday to Sunday, as well as the Hungry Jack's which operates to 12:00am everyday. In this context the operating hours of use in itself would be compatible with the locality; and
 - Noise: The applicant has submitted an acoustic report, included as **Attachment 4**. The acoustic report concludes that the premises would comply with the *Environmental Protection (Noise) Regulations 1997* (Noise Regulations) subject to recommended operational measures. This includes that music is only played at a low background level, and that signage is to be installed to remind patrons that the subject site is near residential premises, and to request that they minimise any noise on departures after 10pm. The following comments are relevant:
 - This report has been reviewed by the City's Health team that has advised that it is not acceptable and does not satisfy the standards of the City's Policy No. 7.5.21 – Sound Attenuation (Sound Attenuation Policy). It is advised that the acoustic report does not include evidence that it has been completed by a registered acoustic consultant, and that it does not address key requirements of the Sound Attenuation Policy. This includes details on all existing surrounding noise sensitive land uses and comments on how the building should be designed

- to ensure that sounds levels emitted do not exceed the assigned levels in the Noise Regulations;
- It is noted that the findings of the acoustic report do not align with the noise investigations and monitoring conducted by the City, which found that when the business had previously operated it exceeded the relevant assigned levels in the Noise Regulations. This demonstrates that the use may not be capable of operating in a manner where noise would be appropriately managed, and that it may adversely impact the amenity of the adjoining residential uses; and
 - The lack of physical measures being recommended to limit noise is considered relevant given that the activities of the Unlisted Use (Shisha Lounge) would be concentrated within an unenclosed patio and outbuilding at the rear of the subject site that is located a minimum of between approximately 3.0 and 8.0 metres from the rear of the adjoining residential properties and between approximately 10 and 30 metres from a number of residential dwellings. This would be further exacerbated by the revised closing time of 12:00am from Thursday to Sunday, which the acoustic report does not account for. It is noted that the acoustic report was not updated following community consultation and following requests from Administration to address the requirements of the City's Sound Attenuation Policy;
- Venue Management: The applicant has not submitted a management plan to demonstrate how the operations of the business will be managed. The applicant has stated that in terms of complaint management and a code of conduct, the business operator will be the first point of contact and that their contact details will be provided to patrons if any issues arise. They also stated that they would be willing prevent access to the premises from Kaata Lane and to install signage to reflect this and that the parking at the rear off the premises is for staff only. Although these measures may assist with venue management, there is a lack of any documented procedures to address the management of activities and patrons of the business, including their potential impacts such as noise and anti-social behaviour, as well as any complaints management procedures if complaints were received from the adjoining properties. This is particularly relevant given the reasons stated above in relation to the location and unenclosed nature of the patio and outbuilding, their proximity to adjoining residential uses and their operating hours. This demonstrates that the use may not be capable of operating in a manner where venue operations would be appropriately managed, and that it may adversely impact the amenity of the adjoining residential uses; and
 - Location of Adjoining Properties: The adjoining residential uses to the east along Roy Street are located within a Residential zone. Where residential land adjoins commercial zoned land or development, some level of amenity impact can be expected, however it would be reasonable to expect that the level of impact is reduced by the design and operation of the commercial use. Given proximity to Beaufort Street and the Mount Lawley/Highgate Town Centre it is not unreasonable to expect some level of activity and noise, but it is generally expected that commercial land uses and their activities would orientated towards the street and Town Centre, and that they would be located within enclosed buildings or spaces that open onto the street. This is supported by the objectives of LPS2 and provisions of the Built Form Policy. The activities of the proposed shisha lounge would be concentrated in an area away from the street and Town Centre within a patio that is not enclosed and opens towards Kaata Lane at the rear and the adjoining residential uses beyond. In addition and as noted above, the acoustic report does not identify any measures to mitigate the noise impacts that were observed when the business was operating previously without approval.

Matters to be considered by Local Government

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

1. Clause 67(2)(a) – Aims of LPS2

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

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

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

There is also a perceived social impact on the health and wellbeing of those members of the community utilising the nearby activities and public spaces associated with the Mount Lawley/Highgate Town Centre, as well as those who may pass by the premises. Notwithstanding this, the use is capable of consideration and not prohibited under the provisions of LPS2.

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

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

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

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

The draft Policy includes provisions to guide the location of ‘Smoking Premises’, including that they are only permitted where they are not adjoining or adjacent to residential uses or restaurant/café. The subject site is adjoining and adjacent to restaurant/café uses to the north and south, and to residential uses to the east on the opposite side of Kaata Lane.

The draft Policy also includes provisions to guide the business operations of ‘Smoking Premises’, including that they are required to submit a detailed management plan and that they are limited to operating hours of 7:00am to 10:00pm Monday to Saturday and between the hours of 9:00am to 10:00pm on a Sunday and public holidays. The applicant has not submitted a management plan for the use, and the operating hours proposed would be consistent with the listed hours except for the closing times of 12:00am on Thursday to Saturday.

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

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

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

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

State Public Health Policy

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

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

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

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

City's Public Health Plan

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

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

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

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

The City's Local Planning Strategy was approved by the WAPC in December 2017 and identifies the subject site as being located within the Mount Lawley/Highgate Town Centre along Beaufort Street. This section of Beaufort Street is identified as the core of the town centre, with it continuing to service the retail, commercial and community needs of the area, and with there being opportunities for it to become a livelier, people-friendly locality enhanced by retail shops, cafés, restaurants and night-life that create a dynamic hub of activity.

The commercial nature of the use is consistent with this intent of the Local Planning Strategy by providing for commercial activity within the Town Centre.

5. Clause 67(2)(i) – Report of Review

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

The purpose of the report of review is to inform the future review of the City's LPS2 and Local Planning Strategy. It identifies that further guidance should be included in LPS2 for land use proposals that are either unlisted or undefined in the Scheme (such as 'Restricted Premises'), and that an amended Local Planning

Strategy should clarify and establish a position of emerging trends facing the community, including issues relating to public health.

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

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

6. Clause 67(2)(s) – Adequacy of Parking

The adequacy of car parking available onsite is acceptable and discussed in greater detail below.

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

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

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

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

28 submissions were received in response to community consultation. This included three supports and 25 objections.

A summary of the submissions received is included as **Attachment 6**, where Administration has provided a response to the concerns raised.

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

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

Acceptability of Land Use

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

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

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

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

Car and Bicycle Parking

The applicant has stated that there would be a maximum of 40 patrons and three staff onsite at any one time.

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

The application proposes one car parking bay for use of staff at the rear of the subject site and it does not propose any bicycle parking to be provided onsite.

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

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

- Location: The subject site is located along Beaufort Street and is within the Mount Lawley/Highgate Town Centre. This is a high amenity area connected with pedestrian paths, public transport and the Perth bicycle network;
- Surrounding Context: The nature of surrounding area, being a District Centre zone and a town centre with a number of other nearby commercial land uses, would allow for multi-purpose trips that would reduce the overall parking demand within the area. The applicant has stated that typically patrons of shisha bars or lounges visit these premises before or after attending other venues such as restaurant/cafes or bars, of which there are a number surrounding the subject site;
- Public Car Parking: A review of the on and off-street parking provided in the vicinity of the subject indicates that there is capacity to accommodate additional patron car parking, detailed as follows:
 - There are 15 two hour ticketed and general ticketed on-street parking bays located along Beaufort Street within approximately 80 metres of the subject site between Chelmsford Road and Walcott Street. The City's parking survey data captures Beaufort Street between Newcastle Street and Walcott Street, but does not break this down to smaller stretches along the street. In light of this a review of the aerial mapping was undertaken. This identifies that there are on average 10 bays available at any one time. This average is taken across days which were captured in the mapping, noting times of the photos taken is not available. Details of the parking demand for this area is as follows:
 - Friday 3 June 2022 – 4 cars parked (11 bays available);
 - Tuesday 5 April 2022 – 4 cars parked (11 bays available);
 - Sunday 30 January 2022 – 3 cars parked (12 bays available);
 - Wednesday 15 December 2021 – 3 cars parked (12 bays available);
 - Saturday 23 October 2021 – 3 cars parked (12 bays available);
 - Wednesday 25 August 2021 – 11 cars parked (4 bays available);

It is noted that the two hour ticketed restrictions for these bays apply from 8:00am to 3:15pm or 9:00am to 7:00pm Monday to Sunday. Beaufort Street is also a clearway southbound from 6:30am to 9:00am Monday to Friday and northbound from 4:00pm to 6:00pm on the same days. These time periods are generally outside the operating hours of the proposed use;

- The City's parking survey data identifies that there are 56 parking bays located within the Barlee Street car park which is located approximately 90 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 39 bays available at any one time. The busiest period was identified as being between 3:00pm and 5:00pm on Saturday where 23 bays were available;

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

- Public Transport: The subject site is located along Beaufort Street and is serviced by bus routes No. 67, 68 and 950 which provides high frequency services between the Morley, Mirrabooka and Perth Busport. The closest two bus stops associated with these services are located approximately 30 and 150 metres from the subject site. The subject site is also located a walking distance of approximately 1.3 kilometres from Mount Lawley Train Station which connects to the wider metropolitan area. The accessibility of these bus and train routes support travel to and from the subject site by means other than car; and
- Bicycle Parking: There are a number of existing publicly available bicycle parking spaces within the verge along Beaufort Street and the broader Mount Lawley/Highgate Town Centre in close proximity to the subject site that would be available for use by patrons. This includes 12 spaces within approximately 60 metres of the subject site within the verge on the same side of Beaufort Street. This would provide for conveniently located bicycle spaces for use by patrons and would support cycling as a convenient alternative to driving to the venue. The applicant has also stated that should additional bicycle parking be required onsite for patrons or staff, that there would be sufficient space available to accommodate this.

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

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

Works

The application includes works comprising a patio addition at the rear of the subject site between the existing building and Kaata Lane, along with a fence and gate addition along the Beaufort Street frontage.

Patio Addition

The patio addition satisfies all relevant acceptable outcomes of the Built Form Policy, including in relation to side and rear setbacks, pedestrian access and entries, and roof design.

It would also satisfy the element objectives of the Built Form Policy, as it relates to an ancillary single storey addition to the rear of an existing building. It is consistent with the nature of structures added to the rear of other buildings along Beaufort Street within the Town Centre to provide additional space for the operations and activities of tenants, and it is not required to be associated with a particular land use. As an unenclosed structure supported by slim posts it also contributes limited building bulk and it would be located over a previous bitumen hardstand area, not resulting in the removal of any landscaping or parking areas.

On this basis the patio addition is recommended for approval subject to standard conditions.

Fence and Gate Addition

The Built Form Policy acceptable outcomes relating to public domain interface outline that front fencing is to include visually permeable materials above a height of 1.2 metres, and the average height of solid walls or fences to the street is to not exceed 1.2 metres.

The application includes a fence and gate along Beaufort Street that would not include visually permeable materials and would have a maximum height of solid walls or fences of 2.0 metres

In addition, an objective of the District Centre zone under LPS2 is *to encourage high quality, pedestrian-friendly, street-orientated development that responds to and enhances the key elements of each District Centre, and to develop areas for public interaction.*

The proposed interface to Beaufort Street would not satisfy the element objectives of the Built Form Policy and the objectives of the District Centre zone under LPS2 for the following reasons:

- The transition between the private and public domain would not enhance the privacy and safety of residents, as the fence and gate would obscure passive surveillance from occurring between the premises and Beaufort Street by preventing views into and from the premises; and
- The fence and gate would not retain and enhance the amenity and safety of the adjoining public domain, as its height and materials would prevent the premises from having an active frontage while reducing public interaction, with this being a key element of the District Centre. This section of Beaufort Street consists of building frontages with nil setbacks to the street with large areas of glazing or

openings that allow tenancies to express their internal function and have an active and interactive relationship with the street and public realm. The fence and gate proposed would be inconsistent with this surrounding context.

It is noted the applicant has stated that they would be willing to modify the fence and gate, but updated development plans have not been provided demonstrating this. On this basis the fence and gate addition is recommended for refusal alongside the use.

Signage

The signage which forms part of this application has already been installed on the premises and consists of one sign on the fence along the Beaufort Street frontage. The sign consists of the operator's business name 'Petra Lounge'. A photo is included in **Attachment 2**.

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

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

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

This would be applicable to the application as it is for an Unlisted Use (Shisha Lounge) which would involve the sale of shisha in a ready-to-smoke form. This would be satisfied as there would only be a single sign for the purpose of identifying the business name, with this sign having an area of 0.6 square metres.

On this basis the signage would be acceptable in relation to the Signage and Advertising Policy as it satisfies all relevant standards and subsequently it is not recommended as a reason for refusal.

As the signage is associated with the proposed use and located on the fence addition, which are both recommended for refusal, it is expected that the signage would be removed if these elements of the application are refused.

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

LEGEND

METROPOLITAN REGION SCHEME RESERVES

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

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

CITY OF VINCENT LOCAL SCHEME RESERVES

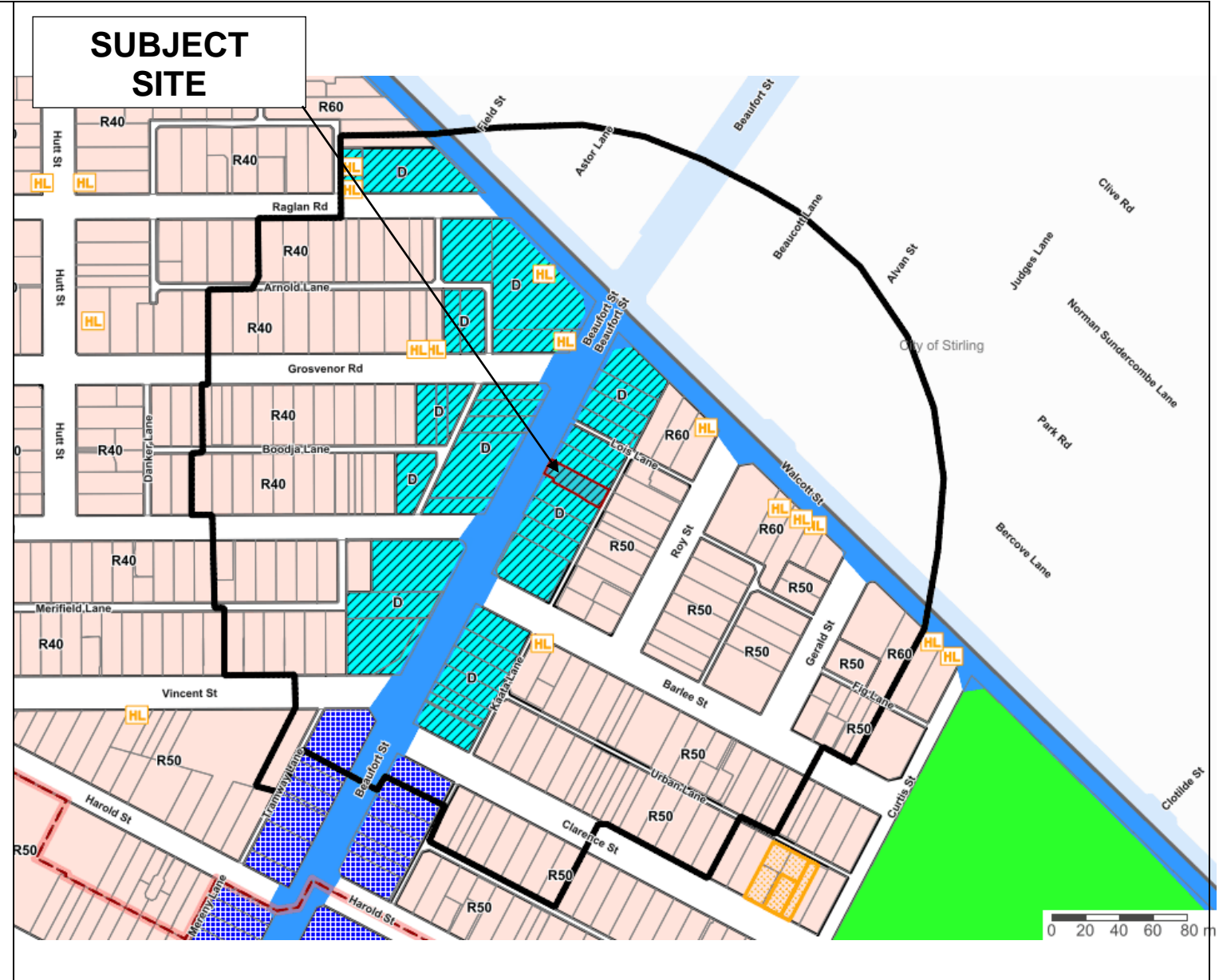
- PUBLIC OPEN SPACE**
- R Restricted
- PUBLIC PURPOSES**
Particular use denoted as follows:
- PS Primary School
- CP Car Park
- CU Civic Uses
- HS High School
- I Institute for the Deaf
- W Water Supply Sewerage and Drainage
- TS Technical School

CITY OF VINCENT SCHEME ZONES

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

ADDITIONAL INFORMATION & RESIDENTIAL PLANNING CODES

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



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Consultation and Location Map
No. 624 Beaufort Street, Mount Lawley

Extent of Consultation





**SUBJECT
SITE**



CITY OF VINCENT

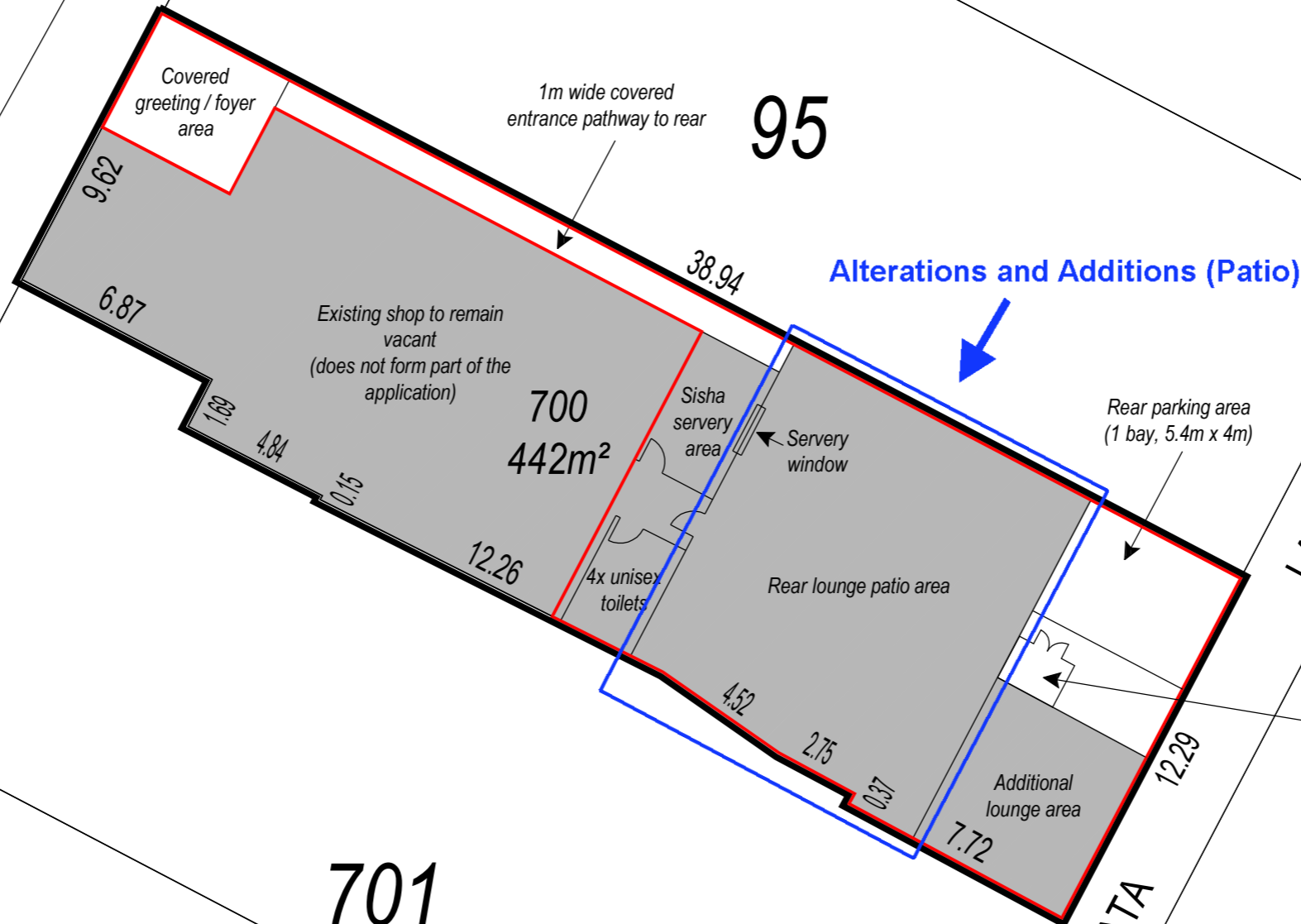
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No. 624 Beaufort Street, Mount Lawley



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BEAUFORT ST



95

Alterations and Additions (Patio)

Rear parking area
(1 bay, 5.4m x 4m)

LANE

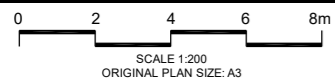
1 x 660L bin
2m (L) x 1.5m (W)

KAATA

701

106

92



SCALE 1:200
ORIGINAL PLAN SIZE: A3



NORTH

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Base Mapping
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LEGEND:

Subject Land..... Area subject of application.....

NOTE: Areas and dimensions are subject to survey.

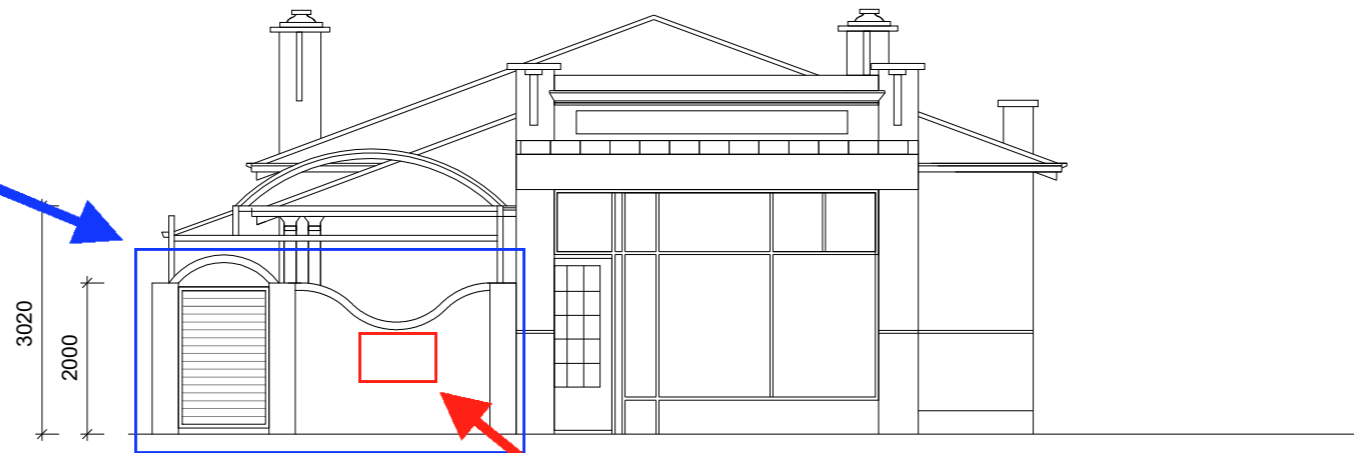
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SITE PLAN

LOT 700 (No. 624) BEAUFORT STREET
MOUNT LAWLEY
City of Vincent

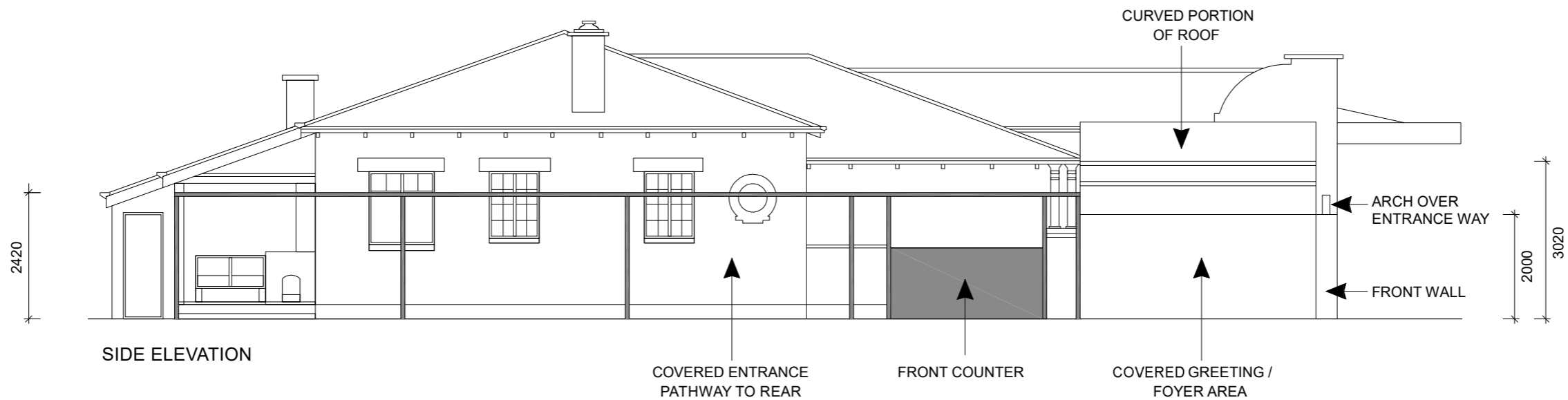
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Alterations and Additions
(Fence and Gate)



FRONT ELEVATION

Location of Sign



SIDE ELEVATION

0 1 2 3 4m
SCALE 1:100
ORIGINAL PLAN SIZE: A3

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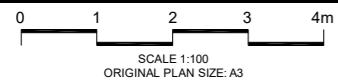
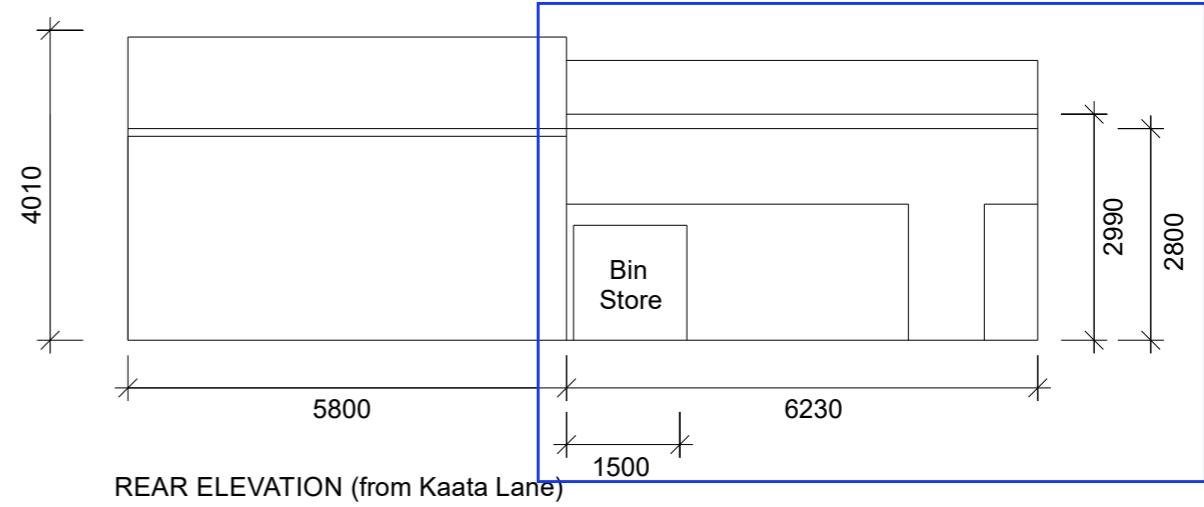
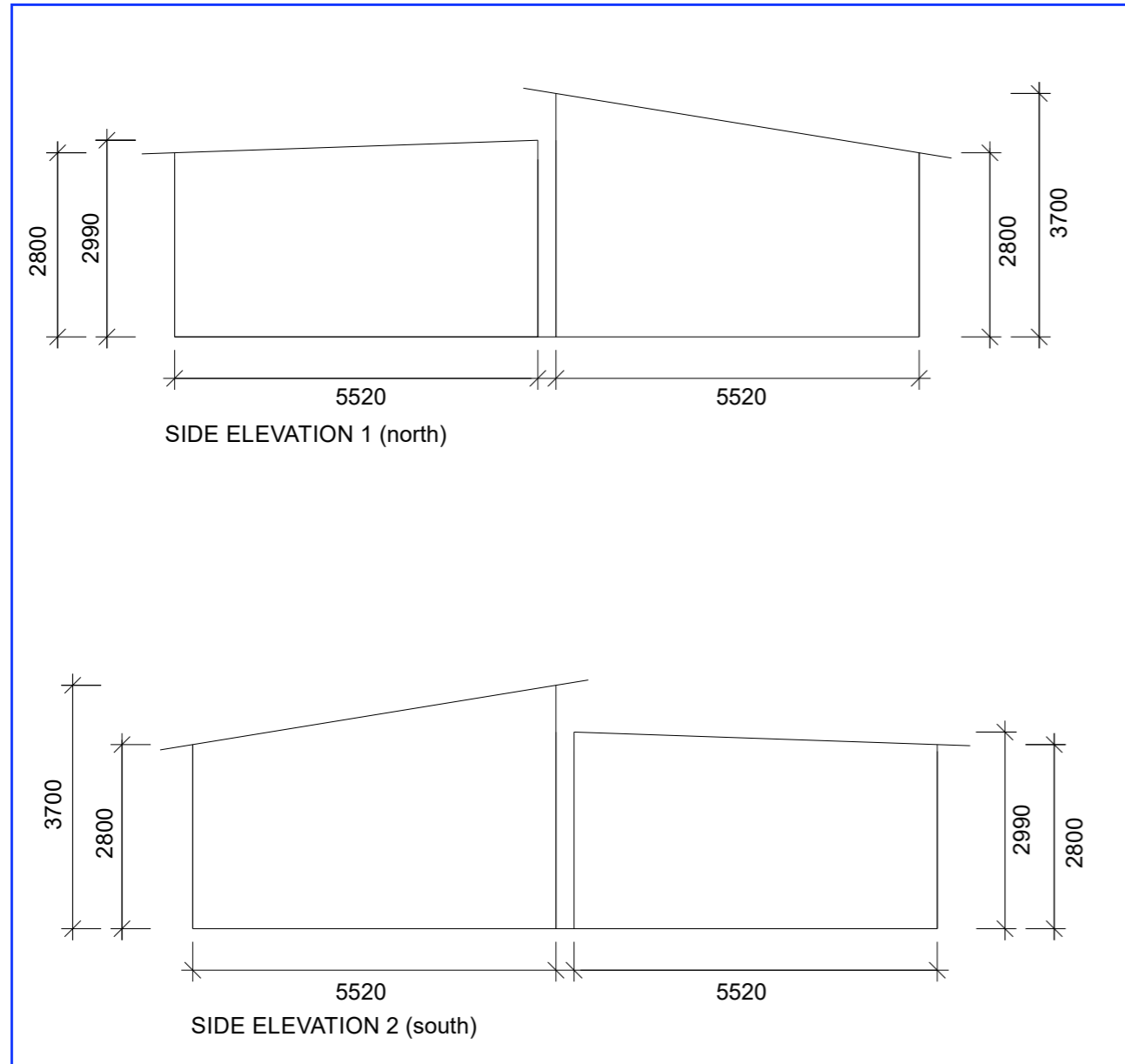
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**EXISTING SHOP &
ELEVATIONS**

LOT 700 (No. 624) BEAUFORT STREET
MOUNT LAWLEY
City of Vincent

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Alterations and Additions (Patio)



SCALE 1:100
ORIGINAL PLAN SIZE: A3

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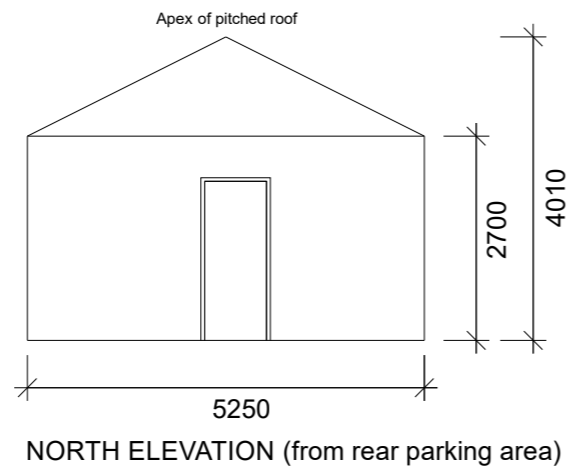
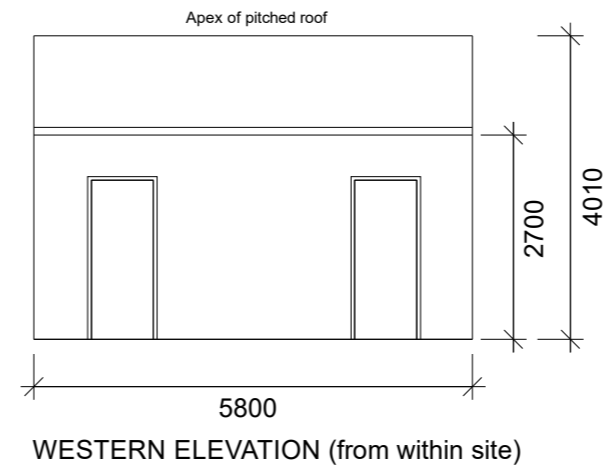
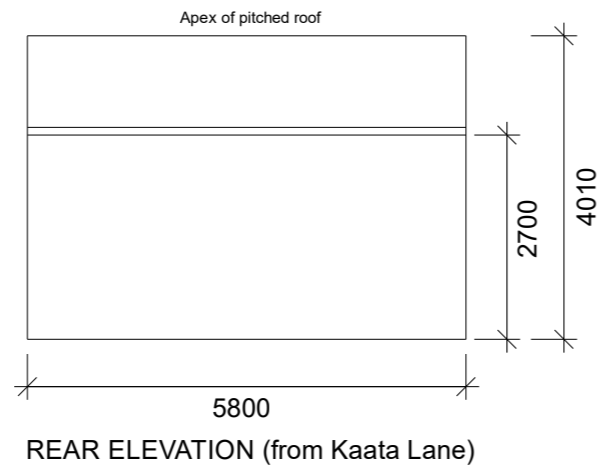
NOTE: Areas and dimensions are subject to survey.

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REAR PATIO
ELEVATIONS

LOT 700 (No. 624) BEAUFORT STREET
MOUNT LAWLEY
City of Vincent

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0 1 2 3 4m
SCALE 1:100
ORIGINAL PLAN SIZE: A3

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ADDITIONAL LOUNGE AREA ELEVATIONS

LOT 700 (No. 624) BEAUFORT STREET
MOUNT LAWLEY
City of Vincent

Alterations and Additions
(Fence and Gate)



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21 December 2021



Retrospective Change of Use (to Shisha Lounge)

Lot 700 (No. 624) Beaufort Street, Mount Lawley

December 2021

Contents

1.0	Background	3
1.1	Purpose.....	3
1.2	Property Description	3
2.0	Site History and Development	4
2.1	Site History	4
2.2	Development.....	5
2.2.1	Operating Hours	5
2.2.2	Employees and Customers	5
2.2.3	Deliveries	5
2.2.4	Waste Management.....	5
2.2.5	Ablutions	6
3.0	Planning Framework	6
3.1	Metropolitan Region Scheme ('MRS').....	6
3.2	City of Vincent Local Planning Scheme No. 2	6
3.3	Local Planning Framework	8
3.3.1	Local Planning Policy 7.1.1 - Built Form ('LPP 7.1.1')	8
3.3.2	Local Planning Policy 7.5.2 - Signs and Advertising ('LPP 7.5.2').....	9
3.3.3	Local Planning Policy 7.7.1 - Non-residential Development Parking Requirements ('LPP 7.7.1')	10
3.4	Planning and Development (Local Planning Schemes) Regulations 2015.....	11
3.5	Acoustic Report	13
3.6	Conclusion	14
	Attachment 1 - Department of Health Tobacco Licence	15
	Attachment 2 - City's 2 September 2021 Compliance Letter	16
	Attachment 3 - City's 7 October 2021 Compliance Letter.....	17
	Attachment 4 - Acoustic Report.....	18

1.0 Background

1.1 Purpose

This submission has been prepared by Altus Planning on behalf of Petra Lounge Pty Ltd to provide justification for an existing shisha lounge at Lot 700 (No. 624) Beaufort Street, Mount Lawley ('subject site' or 'site') under the relevant local planning framework.

In accordance with the City's requirements, the following is included with this application:

- City of Vincent Development Application Form;
- MRS Form 1;
- City of Vincent Development Application Checklist;
- Certificate of Title;
- Development plans; and
- An Acoustic Report.

Payment of the application fee will be made directly by the owner-operator upon receipt of an invoice from the City.

1.2 Property Description

The subject land measures approximately 442m² and exists as a rectangular, north-west facing lot in the street block bound by Walcott Street to the north, Roy Street to the east, Barlee Street to the south and Beaufort Street to the west. Within this locality are a number of right-of-ways ('ROWS'), one of which, Kaata Lane abuts the south-east boundary and provides rear vehicle access to the site. The site is otherwise located approximately 85m south-west of the Beaufort/Walcott Street intersection and is situated within the Beaufort Street main "café strip".

The surrounding area consists of a range of service and eatery businesses, located on small to medium sized lots which are zoned to accommodate a range of commercial uses.

An aerial image of the subject site and immediate surrounds with cadastral overlay is provided in Figure 1 overleaf.

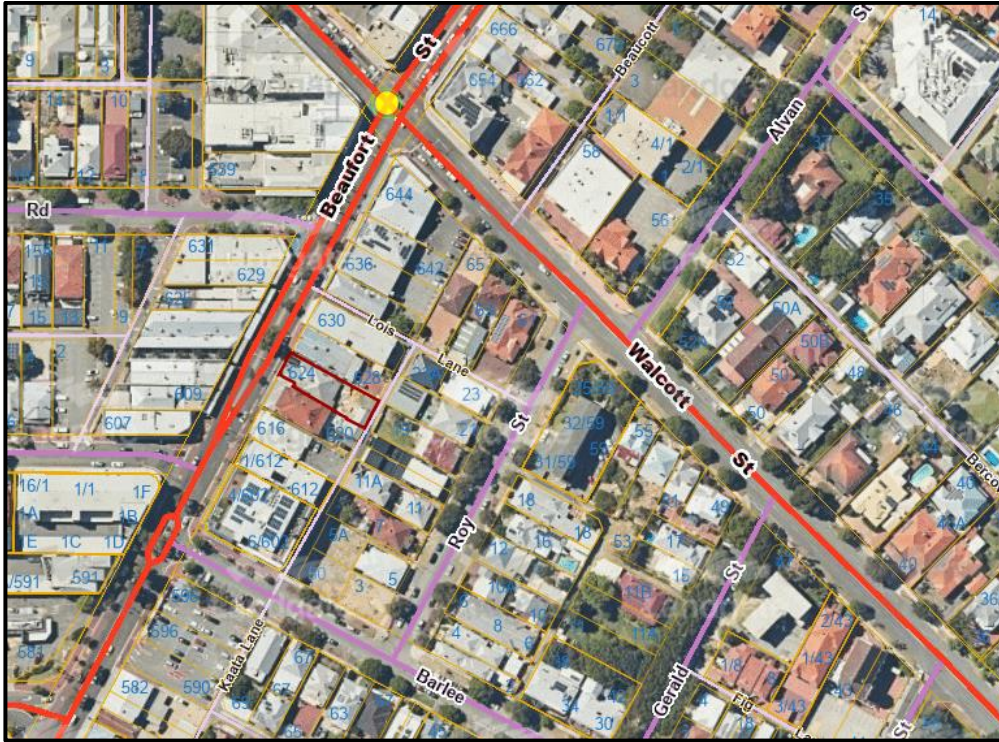


Figure 1: Aerial/cadastral of subject site and surrounds (Source: Landgate Map Viewer Plus 2021)

2.0 Site History and Development

2.1 Site History

The subject site was previously used as a shoe shop. The rear portion of this building has since been used as a servery area, as part of the shisha lounge use.

A licence to sell tobacco products, in the form of shisha, was granted by the Department of Health on 15 July 2021 in accordance with the *Tobacco Products Control Act 2006*. A copy of this licence is contained in **Attachment 1** of this Report.

On 2 September 2021, the City's Compliance Services wrote to the owner-operator advising that development approval had not been obtained for the shisha lounge (an 'unlisted use') and rear patio structure (*City's ref. DD3.2021.15941.1*). A copy of this letter is contained in **Attachment 2** of this Report.

On 29 September 2021, a telephone discussion with the City's compliance officer confirmed lodgement requirements for the retrospective change of use application, including that an acoustic report be submitted up-front in support of the development application.

On 7 October 2021, the City's Compliance Services again wrote to the owner-operator (*City's ref. DD3.2021.18495.1*) advising a time extension until 4 November 2021 was granted to facilitate obtaining quotes and producing an acoustic report to allow lodgement of a complete application. A copy of this letter is contained in **Attachment 3** of this Report.

2.2 Development

In response to the City's abovementioned letters, the owner-operator is seeking retrospective development approval for the following components that currently exist on-site:

1. A change of use (from Shop to Unlisted Use - a 'shisha lounge'); and
2. The rear patio (which provides weather protection to the lounge area).

The business serves tobacco to customers in a ready-to-smoke form and provides a lounge area for patrons to relax and socialise.

2.2.1 Operating Hours

The operating hours for the shisha lounge can be up to "24/7"; however more typically are between 2pm to 5am, seven (7) days per week.

2.2.2 Employees and Customers

The shisha lounge is personally run by the owner-operator and their wife, who both arrive at the site in the one (1) vehicle. There is otherwise only one (1) full-time employee to assist with the general upkeep of the premises and serving of packaged (non-alcoholic) drinks and cakes. They too will typically attend the site in the same vehicle.

The shisha lounge is designed to cater for up to 100 people; however this tends to be limited to infrequent occasions. More often, patron numbers are between 60 to 80 people.

2.2.3 Deliveries

As no cooking or serving of meals or alcohol occurs from the site, regular deliveries to the site are not required.

The limited selection of packaged drinks and cakes are brought to the site on an "as required" basis and are transported in the owner-operator's private commuter vehicle. On this basis, it is submitted that no formal loading bay is required.

2.2.4 Waste Management

As stated above, the absence of any cooking or serving of meals/alcohol on-site means waste generation is minimal. Accordingly, all waste can be contained within 1x 660L bulk refuse bin. This is currently stored within the hardstand area at the rear of the property and allows for waste collection to occur from Kaata Lane. A formal bin enclosure is proposed as part of this application.

Waste is collected weekly from the site via a private contractor.

2.2.5 Ablutions

There are currently four (4) unisex toilets within the rear portion of the existing building.

3.0 Planning Framework

3.1 Metropolitan Region Scheme ('MRS')

The subject site is zoned 'Urban' pursuant to the *MRS*.

3.2 City of Vincent Local Planning Scheme No. 2

Pursuant to the City's *Local Planning Scheme No. 2 ('LPS 2')*, the subject site is zoned 'District Centre'. As previously stated, the City advised in its 2 September 2021 email correspondence that the shisha lounge is an 'Unlisted Use'.

In accordance with Clause 18(4) of *LPS 2*, the local government may consider a use that is not specifically referred to in the zoning table, and that cannot reasonably be determined as falling within a particular use class, on the basis that it is consistent with the relevant zone objectives.

In this regard, the objectives of the District Centre zone are listed in the table below, with accompanying justification.

District Centre Zone Objectives	Justification
<ul style="list-style-type: none"> <i>To provide a community focus point for people, services, employment and leisure that are highly accessible and do not expand into or adversely impact on adjoining residential areas.</i> 	<p>The business provides a focal point for meeting and socialising with other customers and members of the public that is in a walkable catchment to residences and other attractors, and easily accessible by public transport.</p> <p>The lounge environment offers a relaxed environment that is conducive to leisure amongst patrons.</p> <p>The rear patio is where the outdoor smoking area is located (otherwise referred to as the 'lounge'). The lounge has been designed to allow smoke to naturally ventilate in an upwards direction to the roof, thereby preventing wind blown smoke onto adjoining properties. In this regard, and as previously mentioned, the Department of Health have issued the relevant licence under the <i>Tobacco Products Control Act 2006</i> for the shisha lounge.</p>

District Centre Zone Objectives	Justification
	<p>As detailed later in this Report, an acoustic report has been prepared which demonstrates that the business is able to comply with the <i>Environmental Protection (Noise) Regulations 1997</i> ('Noise Regulations').</p> <p>Based on the above, it is submitted that the proposal will not create any significant adverse amenity impacts, particularly having regard to the Town Centre designation of the surrounding commercial lots.</p>
<ul style="list-style-type: none"> <i>To encourage high quality, pedestrian-friendly, street-orientated development that responds to and enhances the key elements of each District Centre, and to develop areas for public interaction.</i> 	<p>There is a greeting/foyer area at the front of the building, facing the street, which provides a transitional entrance for visitors to the site.</p> <p>There is a front counter area within the foyer and internal signage directing customers to the rear lounge area where the shisha is served.</p>
<ul style="list-style-type: none"> <i>To ensure levels of activity, accessibility and diversity of uses and density is sufficient to sustain public transport and enable casual surveillance of public spaces.</i> 	<p>The greeting/foyer area provides casual passive surveillance of the street and presentation to the public realm.</p> <p>The shisha lounge contributes to the variety of uses within the locality and complements the existing predominate night-time activities (e.g. fast food outlets, restaurants etc.) along Beaufort Street.</p>
<ul style="list-style-type: none"> <i>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.</i> 	<p>Translucent sheeting is provided within the timber-lined roof of the patio structure. This provides natural light to the lounge area thereby eliminating the need for artificial lighting during the daylight hours of the use.</p> <p>The shisha lounge generates minimal waste given no cooking or serving of meals occurs and no alcohol is consumed on-site. Accordingly, waste is limited to 1x 660L bin which is emptied on an "as required" basis (typically once per week).</p>
<ul style="list-style-type: none"> <i>To ensure the provision of a wide range of different types of residential accommodation, including affordable, social and special needs, high density residential and tourist accommodation, to meet the diverse needs of the community.</i> 	<p>N/A - The shisha lounge seeks to retain the use of the property for a commercial purpose.</p>

District Centre Zone Objectives	Justification
<ul style="list-style-type: none"> <i>To provide a broad range of employment opportunities to encourage diversity and self-sufficiency within the Centre.</i> 	<p>The shisha lounge contributes to the diversity of commercial uses within the locality and provides full time employment for the owner-operator, his wife and one external employee.</p> <p>No deliveries are associated with the shisha lounge due to the small footprint of the tobacco product which is transported to the site in the owner-operators private vehicle.</p> <p>Due to the above and the minimal waste generation, it is submitted that the shisha lounge is a relatively self-sufficient use within the locality.</p>
<ul style="list-style-type: none"> <i>To encourage the retention and promotion of uses including but not limited to specialty shopping, restaurants, cafes and entertainment.</i> 	<p>The existing shop-front façade has been retained, ensuring consistency with the commercial nature of the streetscape. Its retention also provides flexibility to the site in the event this space is utilised for such purposes in the future.</p>
<ul style="list-style-type: none"> <i>To ensure that the City's District Centres are developed with due regard to State Planning Policy 4.2 - Activity Centres for Perth and Peel [SPP 4.2]</i> 	<p>Mount Lawley is a designated District Centre within SPP 4.2 for such purposes. The shisha lounge is consistent with the objectives of SPP 4.2 on the basis that it;</p> <ul style="list-style-type: none"> • Contributes to the diversity of uses within the Centre; • Generates activity outside normal business hours (in a manner that will not adversely impact the amenity of the locality); and • Increases employment opportunities within a small business owner-operator perspective.

Based on the above, it is submitted that the shisha lounge is consistent with the LPS 2 objectives for the District Centre Zone.

3.3 Local Planning Framework

3.3.1 Local Planning Policy 7.1.1 - Built Form ('LPP 7.1.1')

The site is located with the 'Town Centre' area identified in Figure 1 of LPP 7.1.1, with Volume 3, Section 1 of the Policy setting out various acceptable outcomes (and associated element objectives) for built form controls.

In this regard, the relevant provisions of the Policy that relate to the rear patio are including in the table overleaf:

LPP 7.1.1 Policy Provision	Justification
1.1 - Building height	The rear patio is single-storey in height which is sustainably less than the six-storeys height limit of the Policy.
1.3 - Side and rear setbacks	<i>LPP 7.1.1</i> permits non-residential built form to be constructed with a nil setback for ground floor development. As the patio is single-storey in height it therefore complies with this Provision.
1.4 - Orientation	<p>The patio is single-storey in height and will not result in any significant overshadowing on the abutting southern lot, noting also that it is similarly zoned District Centre.</p> <p>The translucent sheeting of the patio will also provide adequate solar access to customers of the shisha lounge</p>
1.9 - Vehicle access	<p>Due to the inner-city location, surrounding walkable environment and proximity to high frequency public transport, no on-site customer parking has been provided.</p> <p>One (1) staff bay is located at the rear of the site and located from Kaata Lane, which has a trafficable surface.</p>
1.10 - Car and bicycle parking	See above comments for Provision 1.9 and the following Section of this Report.
1.11 - Managing the impact of noise	As previously mentioned, an acoustic report has been prepared in support of this application and confirms that the use is able to comply with the <i>Noise Regulations</i> .
1.16 - Adaptive reuse	The patio is situated at the rear of the existing building. It is not visible from the street and its height is also less than the street-facing building. The patio therefore will not detract from the character and scale of the front building and provides an undercover area that could also be reused for any future alternative uses.

Based on the above, the rear patio complies with the relevant provisions of *LPP 7.1.1*.

3.3.2 Local Planning Policy 7.5.2 - Signs and Advertising ('LPP 7.5.2')

Due to the Department of Health's restrictions regarding the advertising of shisha, the signage for the business is limited to one (1) logo, affixed to the front fence of the site and facing

Beaufort Street which is a District Distributor A road. The logo is approximately 0.5m² and is flush mounted. The logo is of a subdued design and has a colour scheme that is consistent with the front fence materials and reads “Petra Lounge” (i.e. the business name).

Based on the above, the sign complies with the relevant requirements of Clause 3(xvi) of *LPP 7.5.2*.

3.3.3 Local Planning Policy 7.7.1 - Non-residential Development Parking Requirements ('LPP 7.7.1')

As the shisha lounge is an unlisted use, there are no prescribed parking standards within *LPP 7.7.1*. Notwithstanding, the following is considered relevant with respect to adequacy of parking:

- One (1) staff bay is provided, noting that the owner-operator and their wife access the site in the same private vehicle. This is typically also the case for the remaining employee who otherwise will utilise public transport to attend the property;
- The subject site abuts high frequency public transport (bus route no. 950). Furthermore, within an approximate 500m radius of the site are bus routes 41, 42, 48, 55 and 60. The Mount Lawley train station is also approximately 790m north-east of the site;
- There are three (3) large public parking stations within 100m of the subject site (Barlee Street, Chelmsford Road and Raglan Road car parks) which contain 201 bays in aggregate;
- There are 26 existing bicycle racks within Beaufort Street, for the portion between Walcott Street and Chelmsford Road, which are all less than 100m from the subject site;
- The typical operating hours for the shisha lounge are between 2pm to midnight which is compatible with the surrounding commercial uses, particularly those that have more traditional “9-5” business hours;
- The main portion of the existing street-front building is currently vacant and does not form part of the subject application. It is submitted that any parking demand that would have arisen from the use of the building can be allocated to the shisha lounge; and
- The Mount Lawley Town Centre has a high quality, well developed walkable environment, typical of an inner-city district centre designation.

Based on the above, it is submitted that there is adequate parking available for the shisha lounge in a location and manner that will not detrimentally impact on the amenity of the locality. Accordingly, the development is consistent with the objectives of *LPP 7.7.1*.

3.4 Planning and Development (Local Planning Schemes) Regulations 2015

In accordance with Schedule 2, Clause 67(2) ('Deemed Provisions') of the *Planning and Development (Local Planning Schemes) Regulations 2015* ('Regulations'), the local government is to have due regard to the matters for consideration outlined under this Clause, to the extent that they are relevant.

The following matters are considered relevant to the development and are addressed in the following table.

Deemed Provision 67 Matter	Justification
(a) The aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area;	The relevant provisions of the City's <i>LPS 2</i> have been addressed under Section 3.2 of this Report. It is submitted that the development is consistent with these provisions and appropriate for the site and the locality.
(b) The requirements of orderly and proper planning including any proposed local planning scheme or amendment to this Scheme that has been advertised under the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> or any other proposed planning instrument that the local government is seriously considering adopting or approving;	As mentioned in this Report, <i>LPS 2</i> provides the ability for an 'Unlisted Use' to be approved. This report has justified the development against the <i>LPS 2</i> objectives for the District Centre zone and the relevant design principles of <i>LPP 7.7.1</i> . It is submitted that the development is therefore in accordance with the requirements of orderly and proper planning.
(c) Any approved State planning policy;	As previously detailed, the development is consistent with the objectives of <i>SPP 4.2</i> .
fa) any local planning strategy for this Scheme endorsed by the Commission;	The shisha lounge is consistent with the objectives of the City's <i>Local Planning Strategy ('LPS')</i> , particularly Objective (j), which is "To assist employment and economic growth by ensuring suitable planning provisions to support a variety [of] retail, commercial, entertainment and tourism developments in key locations, to provide employment self-sufficiency and self-containment". Furthermore, the shisha lounge is consistent with the actions identified in Section 1.4.2 of the <i>LPS</i> as it is located within the District Centre zone, which allows for a variety of commercial uses.
(g) Any local planning policy for the Scheme area;	The rear patio complies with the relevant built form controls of <i>LPP 7.1.1</i> and is consistent with the objectives of <i>LPP 7.7.1</i> regarding parking.

Deemed Provision 67 Matter	Justification
<p>(m) the compatibility of the development with its setting, including –</p> <ul style="list-style-type: none"> (i) the compatibility of the development with the desired future character of its setting; and (ii) the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development; 	<p>The shisha lounge complements the existing predominate night-time activities (e.g. fast food outlets, restaurants etc.) along Beaufort Street.</p> <p>The abutting rear Kaata Lane provides a suitable buffer between the Town Centre area and the residences to the south-east of the site.</p> <p>In terms of built form, the use occupies the rear of the existing street-facing building and the patio structure is single-storey in height, which is less than the surrounding commercial tenancies.</p> <p>The effect of this is that the shisha lounge is compatible with its setting, both now and into the future.</p>
<p>(n) The amenity of the locality including the following –</p> <ul style="list-style-type: none"> (i) environmental impacts of the development; (ii) the character of the locality; (iii) social impacts of the development; 	<ul style="list-style-type: none"> (i) There are no environmental impacts as a direct result of the proposed development. (ii) The character of the locality is comprised of various fast food outlets, restaurants etc., most of which are night-time based activities. The shisha lounge contributes to the diversity of uses along Beaufort Street and will provide a meeting and leisure place for patrons. The associated patio is single-storey in height and provides a transitional built form from the existing commercial tenancies to the residences south-east of the site. (iii) It is considered there are no social impacts as a direct result of the proposed development.
<p>(s) the adequacy of –</p> <ul style="list-style-type: none"> (i) the proposed means of access to and egress from the site; and (ii) arrangements for the loading, unloading, manoeuvring and parking of vehicles; 	<p>Vehicle access is from Kaata Lane at the rear of the site. This existing hardstand area provides space for the staff bay that exceeds <i>Australian Standard 2890.1-2004 - Off-street car parking</i> minimum requirements, as well as adequate manoeuvring for waste collection.</p> <p>No dedicated delivery bay is required as all product is brought to site in the owner-operator's private vehicle.</p>
<p>(t) the amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety;</p>	<p>The majority of attendees to the site will travel via foot or public transport, particularly given customers of the shisha lounge tend to patron other businesses in the locality beforehand (e.g.</p>

Deemed Provision 67 Matter	Justification
	<p>dinner at a nearby restaurant before relaxing in the lounge).</p> <p>Given the small number of patrons who may drive to the locality, the development will not result in any significant adverse traffic or safety impacts on the existing road system, nor does it require a Transport Impact Statement.</p>
<p>(u) the availability and adequacy for the development of the following —</p> <ul style="list-style-type: none"> (i) public transport services; (ii) public utility services; (iii) storage, management and collection of waste; (iv) access for pedestrians and cyclists (including end of trip storage, toilet and shower facilities); (v) access by older people and people with disability; 	<p>The subject site is well serviced by high frequency public transport, with bus route No. 950 providing services along Beaufort Street, between the Perth CBD and Morley bus station.</p> <p>Due to its inner-city location, the site is also well suited to pedestrian activity as a means of transport to and from the shisha lounge.</p> <p>Numerous on-street bicycle parking spaces exist within 100m of the subject site and should additional bicycle parking be required on-site, there is sufficient room to accommodate this.</p>

Based on the above, it is submitted that the shisha lounge is consistent with the relevant matters of the *Regulations*.

3.5 Acoustic Report

In accordance with advice provided by the City, an Acoustic Report has been prepared by EcoAcoustics and is contained in **Attachment 4** of this Report. In summary, the relevant findings of the acoustic report are as follows:

- In the absence of any audible sound from the shisha lounge, the ambient noise from existing adjoining commercial premises already exceeds the assigned noise levels of the *Noise Regulations*;
- When background music from the televisions ('TVs') in the rear lounge area is included in the ambient noise calculations, the levels do not increase. Accordingly, noise from the TVs do not contribute to the measured noise levels at nearby noise sensitive premises;
- Notwithstanding the above, if existing ambient levels were set aside, the shisha lounge complies with the *Noise Regulations* at all time periods with background music playing through the TVs; and
- From a management perspective, the shisha lounge should install internal signage to remind patrons the site is near to residential premises to minimise any departure noise of patrons.

Based on the above, the shisha lounge is acceptable from an acoustic perspective.

3.6 Conclusion

The landowners are seeking retrospective development approval for an existing shisha lounge and associated rear patio on the subject site.

For the reasons outlined in this report, it is our view that the development is suitable for the site and is consistent with the local planning framework. Furthermore, the accompanying acoustic report has demonstrated that the site is able to comply with the *Noise Regulations*.

We trust that this information is to your satisfaction and welcome the opportunity to review any draft suite of conditions of approval prior to any determination. We otherwise look forward to your prompt and favourable determination.

Altus Planning

CITY OF VINCENT
RECEIVED
21 December 2021



EcoAcoustics

Noise Impact Assessment

Petra Lounge

624 Beaufort St Mount Lawley

Environmental Noise Assessment

22 November 2021

Report Number: 21100995-01

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Report: 21100995-01

EcoAcoustics Pty Ltd

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Eco Acoustics has exercised due and customary care in conducting this assessment but has not, save as specifically stated, independently verified any information provided by others. Therefore, Eco Acoustics assumes no liability or loss resulting from errors, omissions or misrepresentations made by others. This report has been prepared at the request of the Client. The use of this report by unauthorised third parties without the written permission of Eco Acoustics shall be at their own risk and Eco Acoustics accept no duty of care to any such third party.

Any recommendations, opinions or findings stated in this report are based on facts as they existed at the time Eco Acoustics performed the work. Any changes in such circumstances and facts upon which this report is based may adversely affect any recommendations, opinions or findings contained within this report.

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Revision History				
Revision	Description	Date	Author	Checked



Table of Contents

Executive Summary	i
1 Introduction	1
1.1 Site Locality & Surroundings	1
2 Criteria	3
3 Noise Monitoring	6
3.1 Methodology.....	6
4 Noise Impact Assessment	7
5 Discussion and Recommendations	9
5.1 Discussion.....	9
5.2 Recommendations.....	9
6 Conclusion	10
Appendix A	11



Executive Summary

EcoAcoustics Pty Ltd conducted a noise impact assessment of Petra Lounge located at 624 Beaufort Street, Mount Lawley. This noise impact assessment report has been completed to support the proposal as part of the development application for the outdoor area. The purpose of this report is to assess the noise emissions from the site in accordance with the prescribed standards contained in *Environmental Protection (Noise) Regulations 1997*.

The results show that the ambient noise, in the absence of any audible sound from Petra Lounge, already exceed the assigned noise levels from the *Environmental Protection (Noise) Regulations 1997*. When music noise from the Televisions at the Petra Lounge is included in these ambient noise levels, the results show that the levels do not increase. Thus it can be concluded that the music noise from the Petra Lounge is not significantly contributing to the measured noise levels at the nearby noise sensitive premises.

The noise measurements that were taken at the source of the music noise at the Petra Lounge were extrapolated to the nearby residential premises to predict the noise intrusion at these locations. The results show that, even with the inclusion of a penalty adjustment of +10dB for music, the Petra Lounge noise levels comply with the assigned noise levels.

It is recommended that the site ensure that music is played at a low background level, so as not to dominate the soundscape but to enhance the ambience of the space only. Normal vocal effort should be applicable with patrons sitting at 600mm apart.

In addition to the background music, it is recommended that signage be installed to remind patrons that the site is near residential premises, and to request that they minimise any noise on departure after 10pm.

Noise level measurements were taken to determine the impact that the Petra Lounge has on the surrounding noise sensitive premises. The results show that that the Petra Lounge outdoor dining area complies with the *Environmental Protection (Noise) Regulations 1997*, at all time periods with background music playing through the installed televisions.



1 Introduction

EcoAcoustics Pty Ltd conducted a noise impact assessment of Petra Lounge located at 624 Beaufort Street, Mount Lawley. This noise impact assessment report has been completed to support the proposal as part of the development application for the outdoor area. The purpose of this report is to assess the noise emissions from the site in accordance with the prescribed standards contained in *Environmental Protection (Noise) Regulations 1997*.

Appendix A contains a description of some of the terminology used throughout this report.

1.1 Site Locality & Surroundings

The site and surroundings are shown in an aerial photo in *Figure 1.1*. The site is located at 624 Beaufort Street, Mount Lawley, within the City of Vincent. The site is surrounded by existing commercial premises, to the north, south, and west. The nearest noise sensitive premises are located to the east on Roy Street, Mount Lawley. *Figure 1.2* shows a zoomed aerial photo with noise measurement locations and closest noise sensitive locations.

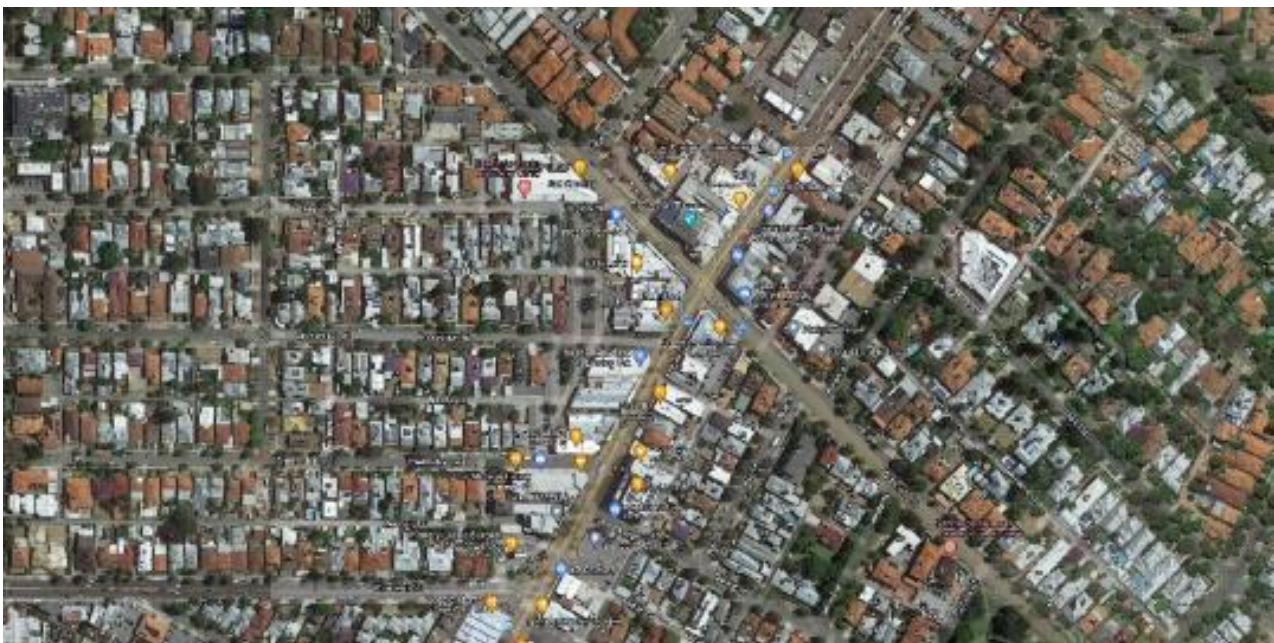


Figure 1.1: Site and Surroundings (Source: Google Earth)



Figure 1.2: Zoomed Site and Surroundings (Source: Google Earth)

1.2 Site Operations

The site is currently used as a Shisha bar, with communal smoking areas including lounges for patrons to sit and relax. The site has a roof and is enclosed with shade cloth to minimise any visual disturbance for the neighbouring premises. Owing to smoking legislation, it is not possible to fully enclose the outdoor area.

Three televisions are provided on the external wall areas, playing low level music. It is understood that the site intends to utilise only the television speakers to play background music for the future use.



2 Criteria

In Western Australia all Environmental noise is regulated by the *Environmental Protection Act 1986* and the *Environmental Protection (Noise) Regulations 1997*. Noise emissions from the site are required to satisfy the assigned noise levels specified in Regulations 7, 8 and 9.

The standard stipulated in Regulation 7 of the states:

7. (1) *Noise emitted from any premises or public place when received at other premises –*
- a) *Must not cause or significantly contribute to, a level of noise which exceeds the assigned level in respect of noise received at premises of that kind; and*
 - b) *Must be free of –*
 - o *Tonality;*
 - o *Impulsiveness; and*
 - o *Modulation.*

A... noise emission is taken to significantly contribute to a level of noise if the noise emission exceeds a value which is 5dB below the assigned level...

Regulation 9 defines tonality, impulsiveness and modulation. It is regarded that noise is free of these characteristics if:

- a) Tonality, impulsiveness and modulation cannot be equitably removed by means other than decreasing the overall level of noise emission; and
- b) Subsequent to any adjustments as displayed in *Table 2.1*, noise emissions remain compliant with the required standards when measured at the point of reception.

Table 2.1 Adjustments for Intrusive Characteristics

Adjustment Where Noise Emission is not Music (cumulative to maximum of 15 dB)			Adjustment Where Noise Emission is Music	
Tonality	Modulation	Impulsiveness	Where impulsiveness is not present	Where impulsiveness is present
+ 5dB	+ 5dB	+ 10dB	+10dB	+15dB

The baseline assigned levels (prescribed standards) are specified in Regulation 8 and are shown below in *Table 2.2*.



Table 2.2 Baseline Assigned Noise Levels

Premises Receiving Noise	Time Of Day	Assigned Level (dB)		
		L _{A10}	L _{A1}	L _{Amax}
Noise sensitive at locations within 15m of a building directly associated with a noise sensitive use	0700 to 1900 hours Monday to Saturday (Day)	45 + influencing factor	55 + influencing factor	65 + influencing factor
	0900 to 1900 hours Sunday and public holidays (Sunday)	40 + influencing factor	50 + influencing factor	65 + influencing factor
	1900 to 2200 hours all days (Evening)	40 + influencing factor	50 + influencing factor	55 + influencing factor
	2200 hours on any day to 0700 hours Monday to Saturday and 0900 hours Sunday and public holidays (Night)	35 + influencing factor	45 + influencing factor	55 + influencing factor
Commercial	All hours	60	75	80
Industrial	All hours	65	80	90

Table 2.3 shows the calculations used in determining the influencing factor at the nearest residential premises.

Table 2.3: Calculation of Influencing Factor

Premises Receiving Noise (ref Figure 1.1)	Description	Within 100 metre Radius	Within 450 metre Radius	Total
Rec 1 to 2	Industrial Land	0	0	0
	Commercial Land	33%	10%	2 dB
	Major Road	6 dB Beaufort Street	0	6 dB
	Minor Road	0	0	0
	Total Influencing Factor			8 dB

Based on the influencing factors contained in Table 2.3, the assigned noise levels are shown in Table 2.4.



Table 2.4: Assigned Noise Levels

Premises Receiving Noise	Time Of Day	Assigned Level (dB)		
		L _{A10}	L _{A1}	L _{Amax}
Noise sensitive at locations within 15m of a building directly associated with a noise sensitive use	0700 to 1900 hours Monday to Saturday (Day)	53	63	73
	0900 to 1900 hours Sunday and public holidays (Sunday)	48	58	73
	1900 to 2200 hours all days (Evening)	48	58	63
	2200 hours on any day to 0700 hours Monday to Saturday and 0900 hours Sunday and public holidays (Night)	43	53	63
Commercial	All hours	58	73	78



3 Noise Monitoring

3.1 Methodology

Noise measurements were conducted on the 4th November 2021, between 10:00pm and 11:30pm. Consecutive 5-minute noise level measurements were taken continuously at both the site and the closest noise sensitive premises. The following information was detailed:

- Measurements were completed using a Type 1 Norsonic Nor140 Sound Level Meter (SN: 1405472)
- The sound level meter holds current laboratory certificate of calibration, available upon request.
- The meter was calibrated before and after the measurements and was found to be within 0.2dB of the reference signal;
- The meter records both slow and fast time weighted sound levels, allowing relevant data to be collected;
- The microphone was fitted with a standard wind screen;
- During the measurements, the microphone was located at a height of 1.5 metres above the ground level and at least 3 metres from reflecting facades (other than the ground plane); as such no adjustments have been applied for reflected noise.

Average meteorological conditions at the time, recorded at the Bureau of Meteorology's Perth site, were:

- Temperature: 12 to 17°C
- Relative Humidity (avg): 50%
- Wind Speed (avg): 4.7 m/s



4 Noise Impact Assessment

4.1 Noise Measurements

Measurements were taken at 23 Roy St, Mount Lawley, approximately 3 metres from the nearest façade on Kaata Lane. Measurements were taken with music noise from the televisions at Petra Lounge and without any music noise from the televisions. These measured levels are presented in *Table 4.1*. The volume of music at the Petra Lounge was at a level that allowed normal vocal effort for patrons at a distance of 600mm, and equated to background music.

The surrounding area is located within a commercial area and has significantly high background noise levels during all time periods. It is important to note that there are two commercial buildings located closer to the residential premises at 23 Roy St Mount Lawley. Both sites have large refrigeration condenser units with measured noise levels in excess of the Regulations.

Table 4.1: Noise Measurements

Location	Scenario	Time	L _{A10}	L _{A1}	L _{Amax}
23 Roy St (from rear in Kaata Lane)	Petra Lounge inaudible with music/TVs off	22:30 to 22:50pm	53 to 56 dB	50 to 54 dB	55 to 62 dB
23 Roy St (from rear in Kaata Lane)	Music from TVs at Petra Lounge	21:30 to 22:00	53 to 54 dB	50 to 52 dB	57 to 62 dB
Petra Lounge (1 m from back gate)	Music from TVs at Petra Lounge	21:15	61 dB	64 dB	74 dB

It can be seen in *Table 4.1* that the noise levels in the area do not significantly change with the Petra Lounge music/TVs on. A number of measurements taken with the Petra Lounge inaudible were found to be higher, when compared to music playing from the TV units at the Petra Lounge. It is likely that this was due to the refrigeration condensers cycling on and off during the measurement periods.

Due to the high ambient noise levels in the area, it is unreasonable and incorrect to assess the noise levels based purely on the measured level taken at the surrounding noise sensitive receivers. The measurements show that the assigned noise levels are exceeded at these locations without any noise from the Petra Lounge. To accurately ascertain the impact that the Petra Lounge is having on the nearby premises, and to determine compliance or otherwise with the assigned noise levels, measurements were taken within close proximity to the site and were then extrapolated using standard acoustical theories. The standard acoustical theories include calculating the distance attenuation, calculating any attenuation from intervening buildings or walls or topography, and extrapolating the measurement to the noise sensitive premises. It is important to note that the noise source is relatively continuous in nature, thus the appropriate parameter is the L_{A10}.



4.2 Calculated Noise Levels

Table 4.2 provides an extrapolation of noise levels based on the noise measurements taken at 1 metre from the back gate at the Petra lounge, while music was playing from the TV's and then calculated at the nearby residential premises.

Table 4.2: Extrapolated Noise Levels

Location	Scenario	Noise Levels		Complies with Nighttime assigned noise level of 43dB(A)
		L_{A10} ¹	L_{A10} Adjusted for music (+10dB)	
23 Roy St	Music from TVs at Petra Lounge	33 dB	43 dB	Complies
21 Roy St	Music from TVs at Petra Lounge	29 dB	39dB	Complies
19 Roy St	Music from TVs at Petra Lounge	29 dB	39 dB	Complies
15 Roy St	Music from TVs at Petra Lounge	26 dB	36 dB	Complies

- Note: No Penalty Adjustments have been added to these measurements



5 Discussion and Recommendations

5.1 Discussion

The high noise levels shown in *Table 4.1*, illustrate that the ambient noise, in the absence of any audible sound from Petra Lounge, is already above the assigned noise levels from the *Environmental Protection (Noise) Regulations 1997*. When music noise from the TVs at the Petra Lounge is included in these ambient noise levels, the results show that the levels do not increase. Thus it can be concluded that the music noise from the Petra Lounge is not significantly contributing to the measured noise levels at the nearby noise sensitive premises.

By taking noise measurements at the source of the music noise at the Petra Lounge and extrapolating these measurements to the nearby residential premises, the results show that, even with the inclusion of a penalty adjustment of +10dB for music, the Petra Lounge noise levels comply with the assigned noise levels.

5.2 Recommendations

It is recommended that the site ensure that music is played at a low background level, so as not to dominate the soundscape but to enhance the ambience of the space only. Normal vocal effort should be applicable with patrons sitting at 600mm apart.

In addition to the background music, it is recommended that signage be installed to remind patrons that the site is near residential premises, and to request that they minimise any noise on departure after 10pm.



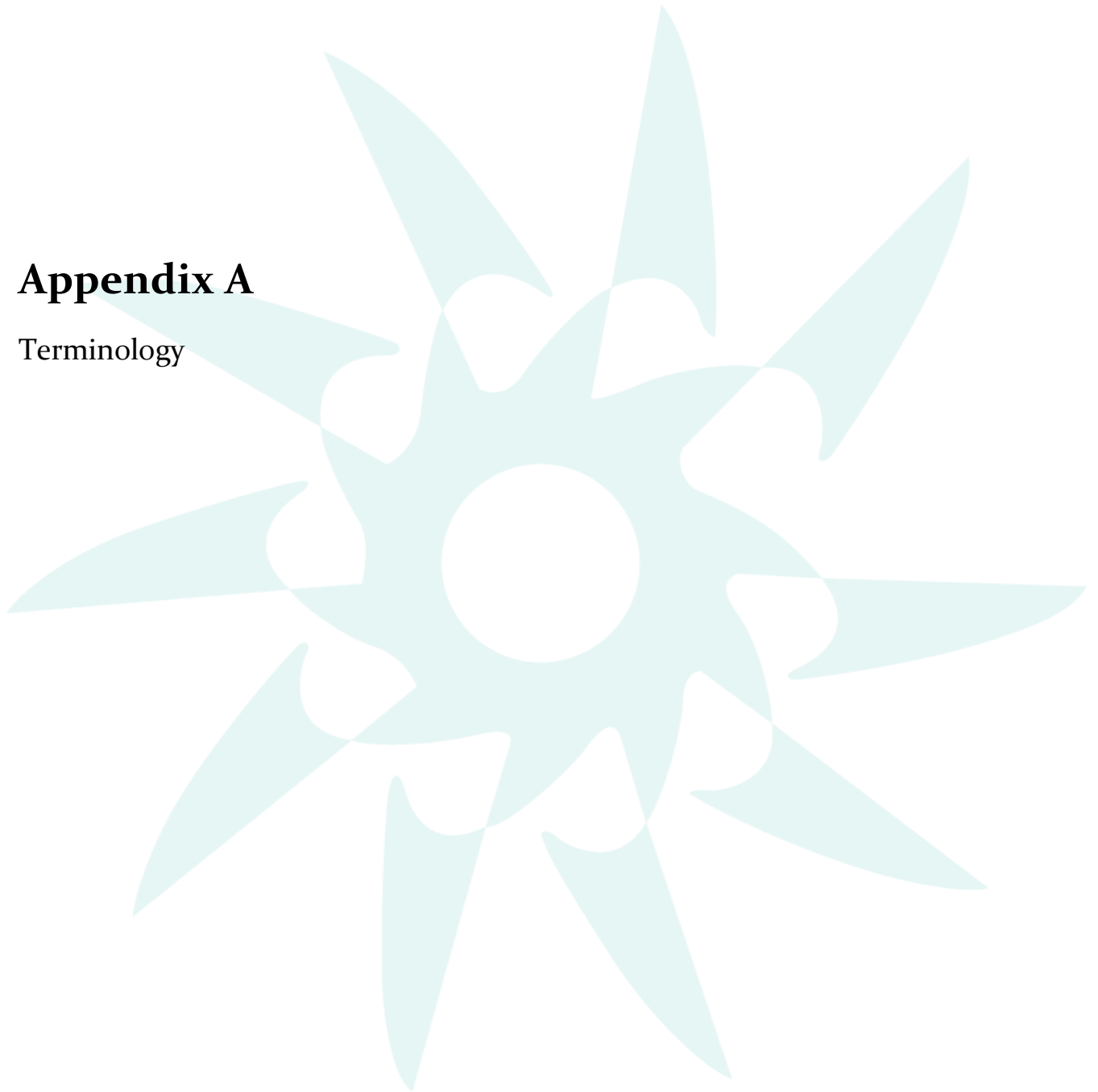
6 Conclusion

Noise level measurements were taken to determine the impact that the Petra Lounge has on the surrounding noise sensitive premises. The results show that that the Petra Lounge outdoor dining area complies with the *Environmental Protection (Noise) Regulations 1997*, at all time periods with background music playing through the installed televisions.



Appendix A

Terminology





Terminology

Ambient Noise

Ambient noise refers to the level of noise from all sources, including background noise as well as the source of interest.

A-Weighting

An A-weighted noise level is a noise level that has been filtered as to represent the way in which the human ear distinguishes sound. This weighting indicates the human ear is more sensitive to higher frequencies than lower frequencies. The A-weighted sound level is described as L_A dB.

Background Noise

Background noise is the noise level from sources other than the source of interest. Background may originate from such things as traffic noise, wind induced noise, industrial noise etc.

Decibel (dB)

The decibel is the unit that characterises the sound power levels and sound pressure of a noise source. It is a logarithmic scale with regard to the threshold of hearing.

Impulsive Noise

An impulsive noise source is a short-term impact noise which may originate from such things as banging, clunking or explosive sound.

L_{A1}

An L_{A1} level is the A-weighted noise level which is overreached for one percent of a measurement period. It represents the average of the maximum noise levels measured.

L_{A10}

An L_{A10} level is the A-weighted noise level which is exceeded for 10 percent of the measurement period and is considered to represent the “intrusive” noise level.

L_{A90}

An L_{A90} level is the A-weighted noise level which is overreached for 90 percent of the measurement period. It represents the “background” noise level.

L_{Aeq}

L_{Aeq} refers to the comparable steady state of an A-weighted sound which, over a specified time period, contains the same acoustic energy as the time-varying level during the specified time period. It represents the “average” noise level.

L_{AFast}

The noise level in decibels, obtained using the A frequency weighting and the F time weighting as specified in AS1259.1-1990. L_{AFast} is used when examining the presence of modulation.

L_{Amax}

The L_{Amax} level is the maximum A-weighted noise level throughout a specified measurement.



$L_{A\text{Peak}}$

The $L_{A\text{Peak}}$ level is the maximum reading (measured in decibels) during a measurement period, using the A frequency weighting and P time weighting AS1259.1-1990.

$L_{AS\text{low}}$

A $L_{AS\text{low}}$ level is the noise level (measured in decibels) obtained using the A frequency weighting and S time weighting as specified in AS1259.1-1990

Maximum Design Sound Level

Maximum Design Sound Level is the level of noise beyond hearing range of most people occupying the space start, become dissatisfied with the level of noise.

Modulating Noise

A modulating source is an audible, cyclic and regular source. It is present for at least 10% of a measurement period. The quantitative definition of tonality is:

a fluctuation in the discharge of noise which;

- a) is more than 3 dB $L_{A\text{Fast}}$ or is more than 3 dB $L_{A\text{Fast}}$ in any one-third octave band;
- b) is present for at least 10% of the representative

One-Third-Octave Band

One-Third-Octave-Band are frequencies that span one-third of an octave which have a centre frequency between 25 Hz and 20 000 Hz inclusive.

Reverberation Time

Reverberation time refers to an enclosure for a sound of a specified frequency or frequency band as well as the time that would be necessary for the reverberantly decaying sound pressure level in the enclosure to decrease by 60 decibels.

RMS

The root mean square level is used to represent the average level of a wave form such as vibration.

Satisfactory Design Sound Level

Satisfactory Design Sound Level refers to the level of noise that has been found to be acceptable for the environment in question, which is also to be non-intrusive.

Sound Pressure Level (L_p)

Sound Pressure Level refers to a noise source which is dependent upon surroundings, and is influenced by meteorological conditions, topography, ground absorption; distance etc. Sound Pressure Level is what the human ear actually hears. Noise modelling predicts the sound pressure level from the sound power levels whilst taking into account the effect of relevant factors (meteorological conditions, topography, ground absorption; distance etc).



Sound Power Level (L_w)

A sound power level of a noise source cannot be directly measured using a sound level meter. It is calculated based on measured sound pressure levels at recognised distances. Noise modelling includes source sound power levels as part of the input data.

Specific Noise

Specific Noise relates to the component of the ambient noise of interest. It can be specified as the noise of interest or the noise of concern.

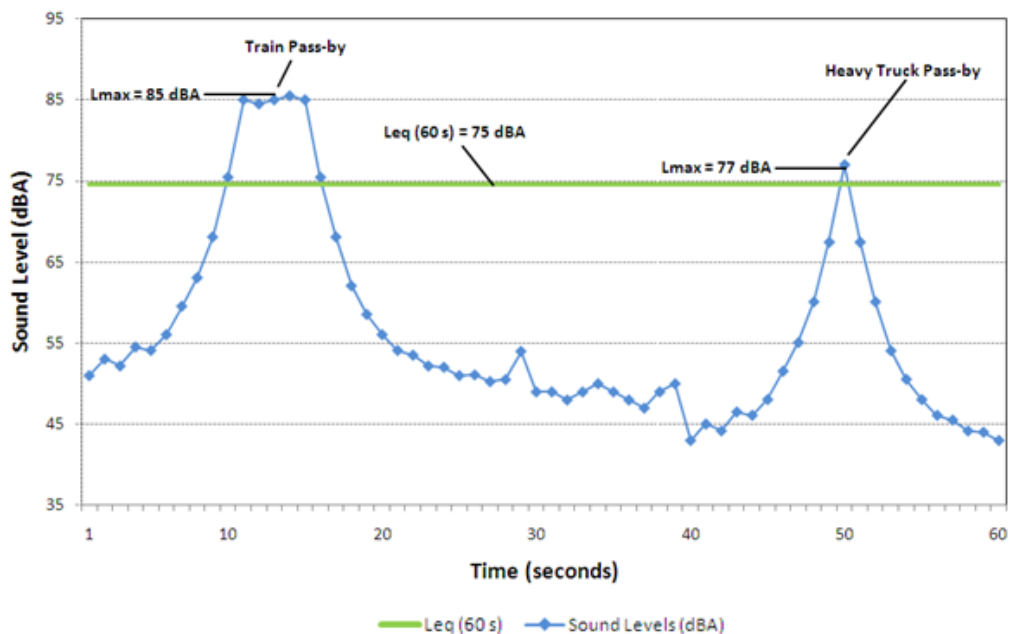
Tonal Noise

A tonal noise source can be designated as a source that has a specific noise emission over one or several frequencies, such as droning. The quantitative definition of tonality is:

the presence in the noise emission of tonal characteristics where the difference between —

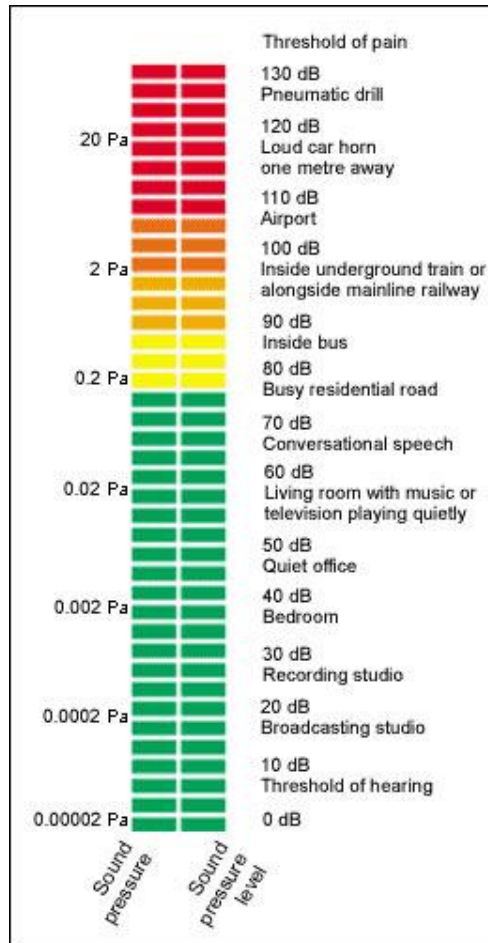
- a) the A-weighted sound pressure level in any one-third octave band; and
- b) the arithmetic average of the A-weighted sound pressure levels in the 2 adjacent one-third octave bands, is greater than 3 dB when the sound pressure levels are determined as $L_{Aeq,T}$ levels where the time period T is greater than 10% of the representative assessment period, or greater than 8 dB at any time when the sound pressure levels are determined as $L_{A\text{ Slow}}$ levels.

Chart of Noise Level Descriptors





Typical Noise Levels



Walcott Street		Beaufort Street			
71-77	Restaurant/Cafés Shops – Chemist		644-648	Restaurant/Cafes	
634-643	Tavern – The Elford		642	Restaurant/Café, Office	
Grosvenor Road			636-638	Shop – Book Store, Office	
629-631	Shop – Supermarket (IGA)		634	Restaurant/Café	
625-627			Lois Lane		
609			630	Restaurant/Café, Shop	
Restaurant/Cafés Shops – Skin Care, Tobacco and Lottery Store – TSG			628	Restaurant/Café – Solo Pasta	
607			624	Subject Site	
Restaurant Cafe, Kingston International College			620	Restaurant/Café	
Chelmsford Road			616	Restaurant/Café	
595A- 595C	Mixed Use Development – Apartments, Restaurant/Café		612	Apartments, Offices, Pilates	
591	Shops, Apartments		602-610	Mixed Use Development – Apartments, Restaurant/Café	
581-583	Fast Food Outlet – Hungry Jack’s		Barlee Street		
Vincent Street			596	Car Park	
565-567	Shops – Furniture, Book Private Recreation – Gym Office – Real Estate		594		
561	Shop – Hairdresser		590		
559	Shops		582	Shop – Supplements Store	
555	Office		580	Wellness Studio	
539-545	Mixed Use Development – Apartments, Retail Tenancies		574	Restaurant/Cafés	
Harold Street			Clarence Street		
527	Shop – Cloud 9		566-570	Restaurant/Cafés, Small Bar	
521-525	Tavern – The Beaufort		564- 564A	Restaurant/Café	
519	Restaurant/Café		560	Restaurant/Café	
515-517	Restaurant/Café, Small Bar		556	Restaurant/Café	
511-513	Small Bar – El Publico		550-552	Restaurant/Café	
507	Restaurant/Café		554	Apartments, Office	
Mary Street			Harold Street		
497	Office, Restaurant/Café		153	Mixed Use Development – Apartments, Restaurant/Café, Liquor Store (BWS)	
493-495	Shop – Deli		512-522	Tavern – Queens Tavern	
489	Shop, Restaurant/Café		500	Mixed Use Development – Apartments, Restaurant/Cafés, Shops (Hairdresser, Skincare)	
485-487	Shop, Restaurant/Café		488-492	Tavern – Beaufort Tavern (including TAB)	
Kaadadjiny Lane			484		
483	Restaurant/Café		476	Shop – Florist	
475-481	Shops, Restaurant/Café				
Chatsworth Road			Broome Street		

Summary of Submissions:

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

Comments Received in Support:	Administration Comment
<u>General</u> The venue is a good addition to the area.	Noted.
Comments Received in Objection:	Administration Comment
<u>Noise – General</u> <ul style="list-style-type: none">When the business was operating unauthorised, music and noise can be clearly heard from the adjoining residential properties along Kaata Lane. Noise from the premises significantly impacts these properties as it's one of the few businesses in the area which operates this late, generates this level of noise and which has a public area which is not enclosed and is located at the rear of the premises instead of the front. Considering these noise impacts the proposal would not be consistent with the District Centre zone objectives as it would adversely impact on adjoining residential areas.The unauthorised patio area faces onto Kaata Lane and is enclosed only in shade cloth. Neighbours are then exposed visually and audibly to patrons and noise from the TVs used in this space. Additional noise is also created by cars associated with the business using Kaata Lane at night and creating excessive noise.The noise assessment is disputed, as when the business first opened music was played at excessively loud volumes until 3am and sometimes 7am. Alongside loud talking and noises from patrons, this impacts on the neighbours residences, particularly at night. Concerns raised that the business would go back to operating like this into the early morning.Concerns raised about the operating hours as the business can attract noisy people, loud music and anti-social behaviour which can be heard from neighbouring residential properties.	<p>The applicant has submitted an acoustic report which concludes that the premises would comply with the <i>Environmental Protection (Noise) Regulations 1997</i> (Noise Regulations) subject to recommended operational measures. This includes that music is only played at a low background level, and that signage is to be installed to remind patrons that the subject site is near residential premises, and to request that they minimise any noise on departures after 10pm.</p> <p>This report has been reviewed by the City's Health team who have advised that it is not acceptable and does not satisfy the standards of the City's Policy No. 7.5.21 – Sound Attenuation (Sound Attenuation Policy). It is advised that the acoustic report does not include evidence that it has been completed by a registered acoustic consultant, and that it doesn't address key requirements of the Sound Attenuation Policy. This includes details on all existing surrounding noise sensitive land uses and comments on how the building should be designed to ensure that sounds levels emitted do not exceed the assigned levels in the Noise Regulations.</p> <p>It is noted that the findings of the acoustic report do not align with the noise investigations and monitoring conducted by the City's Officers, which found that when the business had previously operated it exceeded the relevant assigned levels in the Noise Regulations. This demonstrates that the use may not be capable of operating in a manner where noise would be appropriately managed, and that it may adversely impact the amenity of the adjoining residential uses.</p>

Summary of Submissions:

Comments Received in Objection:	Administration Comment
<ul style="list-style-type: none"> • The additions have not taken into consideration the noise that emanates from the premises - especially after 10pm. The shade cloth used does nothing to soften the noise. Ambient noise from other premises backing onto Kaata Lane is very quiet as they are all indoor facilities. The only noise that can be heard is from this business, as they are outside open to the environment. Prior to the business being closed, the music was loud enough to be heard clearly from Roy Street which is disturbing for residents. • Concerned about noise impacts late at night, particularly when the premises is close to residential homes on Kaata Lane and Roy Street. These houses are already built with a high density which calls for respect for noise management to ensure neighbours aren't impacted. Concerns that noise from music/patrons won't be able to be managed for a venue with 100 people and which would be open 24/7. • The noise and anti-social behaviour from the business disrupts nearby residents and contributes to sense of being unsafe. It would negatively impact on the neighbourhood community. 	<p>In addition, the lack of physical measures being recommended to limit noise is considered relevant given that the activities of the Unlisted Use (Shisha Lounge) would be concentrated within an unenclosed patio and outbuilding at the rear of the subject site that is located a minimum of between approximately 3.0 and 8.0 metres from the rear of the adjoining residential properties and between approximately 10 and 30 metres from a number of residential dwellings. This would be further exacerbated by the revised closing time of 12:00am from Thursday to Sunday, which the acoustic report does not account for. This would be further exacerbated by the revised closing time of 12:00am from Thursday to Sunday, which the acoustic report does not account for. Refer to additional comments under 'Land Use – General' and 'Anti-Social Behaviour' regarding impacts on the adjoining residential uses.</p> <p>The concerns are therefore supported, as the above demonstrates that the use may not be capable of operating in a manner where venue operations would be appropriately managed, and that it may adversely impact the amenity of the adjoining residential uses.</p> <p>It is noted that the acoustic report was not updated following community consultation.</p>
<p><u>Noise – Acoustic Report</u></p> <ul style="list-style-type: none"> • The noise measurements in the acoustic report are disputed and do not reflect how the business has operated for the following reasons: <ul style="list-style-type: none"> ○ The measurements do not outline the level of music that was being played or the number of patrons present. ○ At the time of measurement they were not permitted to play music after 10pm, but they now propose to be open 24 hours. The measurements therefore don't reflect what they propose. ○ The acoustic report notes that this area is impacted by high levels of ambient noise. This area should be considered more vulnerable for this reason and a more cautious approach should be taken to additional noise production. ○ The measurements were taken at ground level outside No. 23 Roy Street. Although this is standard, the noise would be reduced at ground level due to partial sheltering from walls and fences, and may not be reflective of the actual noise production. 	<p>Refer to the comments above under 'Noise'.</p>

Summary of Submissions:

Comments Received in Objection:	Administration Comment
<ul style="list-style-type: none"> ○ In Clause 9 of the Noise Regulations, the adjustment for music is 10dB and is 15dB if impulsiveness is present. From observation, the music played meets the criteria for impulsiveness and this would alter the acceptability of the measurements. ○ The City has taken noise measurements from an adjoining residential property on two different occasions and the business has exceeded the Noise Regulations. ○ The use of the premises for tobacco related activities should not be an excuse to avoid implementing noise minimising structural works. ● There is a discrepancy in the report where it refers to the operating hours being more typically between 2pm and 5am, and later in the report where it says that typical operating hours are between 2pm and midnight. ● The acoustic report states that multiple screens playing music 24 hours a day would never be louder than surrounding ambient noise. This is disputed as from approximately 9pm onwards the local area is largely quiet, apart from the very occasional passing car, during the early hours of the morning. It's questioned whether sound levels were taken at the Walcott/Beaufort St intersection during peak hour, rather than in the area that would be directly affected by the noise from the business, being the adjacent residential premises along Kaata Lane. 	
<p><u>Operating Hours and Patron Numbers</u></p> <ul style="list-style-type: none"> ● Up to 100 people being in the outside area of the premises 24 hours a day will adversely affect the amenity of the area for neighbours and residents, particularly in terms of noise. ● The application requests to be open 24 hours a day, seven days a week and typically has operated until 5am. This would be out of place with the surrounding area and businesses in the District Centre zone along Beaufort Street. It operates similar to a nightclub and should not be permitted. Also, of the 11 businesses surrounding the premises on the same side of Beaufort Street, seven of these close at 10pm or earlier and three close at a latest time of 11:30pm on peak nights. ● The operating hours should be reduced as 24 hours a day would create excessive noise. ● There are a high risk of disturbances to residential properties in close proximity to the premises due to the proposed maximum patron numbers and the operating hours of 24 hours, 7 days a week. ● The excessive trading hours proposed are clearly inappropriate for the size of the site and the setting of the premises. It would add to the already present anti-social behaviour with the 24 hour operations likely to draw more people to the area in the early hours of the morning. This would adversely impact noise levels and adversely impact local resident and business community amenity. 	<p>Following community consultation, the maximum patron numbers proposed were reduced to 40 people and the operating hours proposed were reduced to:</p> <ul style="list-style-type: none"> ● 5:00pm to 10:00pm from Sunday to Wednesday; and ● 5:00pm to 12:00am from Thursday to Saturday. <p>The updated operating hours of the business, including its closing times of 10:00pm from Sunday to Wednesday and 12:00am from Thursday to Saturday, would also be similar to that of other business located along this District Centre zoned section of Beaufort Street, and in itself would not have an adverse impact on the locality. This includes The Elford which has a closing time of 11:00pm from Monday to Wednesday and of 12:00am from Thursday to Sunday, as well as the Hungry Jack's which operates to 12:00am everyday. Refer to the comments above and below under 'Noise' and 'Land Use – General'.</p>

Summary of Submissions:

Comments Received in Objection:	Administration Comment
<ul style="list-style-type: none">• Concerns with the potential use and scale of the premises, once approved, beyond the patron and staff numbers specified. The City should not grant unconditional approval for the development for this reason, and concerns are raised with any conditional approval as this would be difficult to enforce given the past history of operations for the premises. The patron numbers and daily trading hours should be significantly reduced.• Operating 24 hours means late night noise and it invites people to the area late at night. This would adversely impact the homes which back onto Kaata Lane.• There are no 24/7 outlets in the immediate vicinity, with the majority closing around midnight. Further to this public transport doesn't operate past midnight and in the early hours of the morning. The information included in the application does not address the security and/or management of patrons upon leaving the premises, there is just a recommendation in the acoustic report that signage be installed to remind patrons of nearby residential premises and to minimise noise on departure. The hours of operation, particularly the closing time, should be reduced to be more in-line with surrounding businesses.• Issues have arisen already when the business has previously operated under reduced operating conditions, and these will only increase if it is allowed to have 100 patrons and operate 24 hours a day.• The operating hours are inappropriate and not consistent with other businesses in the area.• Object to the operating hours of 24 hours a day, 7 days a week.• The operating hours of 24/7 in a residential area is inappropriate. The nature of the business and it operating in the early morning would attract anti-social behaviour to the area and create unreasonable levels of noise. The business should not be located so close to a residential area.• The application claims that the main hours of operation will be between 2pm and midnight. If this is the case then it's questioned why permission is being sought for operations 24 hours a day. Even the main hours of operation are not consistent with the majority of businesses in the area, as the only venue nearby with similar operating hours is The Elford, which unlike the proposed business, is not immediately adjacent to residential properties. No other businesses operate until that late at night either.	

Summary of Submissions:

Comments Received in Objection:	Administration Comment
<p><u>Parking</u></p> <ul style="list-style-type: none"> Object to the lack of parking. Public transport, if people were going to use it, does not run frequently enough to service this business 24 hours a day, 7 days a week. People will invariably drive and park around the surrounding laneways streets, increasing parking demands and traffic at all hours. The application states that one parking spot is sufficient, however people entering the business have previously parked in various nearby businesses along Kaata Lane. People are parking in other parking spots of businesses along Kaata Lane, and enforcement or monitoring of this won't be able to occur in the later operating hours of the business. Even if half of the patrons arrived via public transport, a significant number of car parking bays would still be needed for patrons. In winter it's more likely that people will park in the parking areas of adjacent businesses rather than walk up the laneway to the premises. During normal business hours, congested local traffic and parking in the locality along Beaufort Street and the surrounding residential laneways and streets is already strained and has been a significant problem for many years. The proposal should therefore be required to provide acceptable parking for the proposed use on, or near to, the premises. Concerns with the lack of parking for the business. There are often multiple cars parked at the business, and cars from staff of the business often overflow into other properties on Kaata Lane, creating parking issues. 	<p>Following community consultation, the maximum patron numbers and operating hours proposed were updated and reduced. Refer to comments above under 'Operating Hours and Patron Numbers'. Subsequently the parking provision is acceptable for the following reasons:</p> <ul style="list-style-type: none"> The subject site is located along Beaufort Street and is within the Mount Lawley/Highgate Town Centre. This is a high amenity area connected with pedestrian paths, public transport and the Perth bicycle network; The nature of surrounding area, being a District Centre zone and a town centre with a number of other nearby commercial land uses, would allow for multi-purpose trips that would reduce the overall parking demand within the area. The applicant has stated that typically patrons of shisha bars or lounges visit these premises before or after attending other venues such as restaurant/cafes or bars, of which there are a number surrounding subject site; A review of the on and off-street parking provided in the vicinity of the subject indicates that there is capacity to accommodate additional patron car parking. This includes the two hour ticked on-street parking bays along Beaufort Street, and the ticketed off-street parking bays available within the City's Barlee Street car park. The nature of the use is such that it is not expected that patrons would be attending the site for extended periods of time. This means that if patrons choose to drive their own cars to the premises, they would be able to use the two hour ticketed on-street car parking bays available and it ensures high turnover of these bays;
<ul style="list-style-type: none"> The business will result in increased traffic and parking congestion in the area. Since the business has started operating, Kaata Lane is filled with cars, including those parking illegally and blocking other cars. The additions to the premises have not allowed for parking at the rear which creates overflow into Kaata Lane and other parking areas of other businesses. Adequate parking should be provided, and more than one car has been observed at the premises. 	<ul style="list-style-type: none"> The subject site is located along Beaufort Street and is serviced by bus routes No. 67, 68 and 950 which provides high frequency services between the Morley, Mirrabooka and Perth Busport. The closest two bus stops associated with these services are located approximately 30 and 150 metres from the subject site. The subject site is also located a walking distance of approximately 1.3 kilometres from Mount Lawley Train Station which connects to the wider metropolitan area. The accessibility of these bus and train routes support travel to and from the subject site by means other than car.

Summary of Submissions:

Comments Received in Objection:	Administration Comment
<ul style="list-style-type: none"> The application information states that one parking bay is sufficient, however no verified or impartial evidence is provided that patrons will not drive to the venue and cause increased pressure on surrounding street. It also states that the venue will operate 24 hours a day, 7 days a week and that therefore only one bay is required for staff, and it's questioned when these staff will be coming and going given these operating hours. The claim that patrons will not drive to the venue is disproven by the evidence of heavy patronage of all businesses in the surrounding area by people who arrive by car and park in the carparks and surrounding streets, often illegally. The claim that the one parking bay is sufficient for staff is also disputed as they would need to all arrive and leave in the same vehicle, which would not be possible if the venue is operating 24 hours a day. A transport impact statement should be provided. 	<ul style="list-style-type: none"> There are a number of existing publicly available bicycle parking spaces within the verge along Beaufort Street and the broader Mount Lawley/Highgate Town Centre in close proximity to the subject site that would be available for use by patrons. This includes 12 spaces within approximately 60 metres of the subject site within the verge on the same side of Beaufort Street. This would provide for conveniently located bicycle spaces for use by patrons and would support cycling as a convenient alternative to driving to the venue. The applicant has also stated that should additional bicycle parking be required onsite for patrons or staff, that there would be sufficient space available to accommodate this; and The proposal with the reduced maximum patron numbers of 40 people is classified as low impact under the Western Australian Planning Commission's Transport Impact Assessment Guidelines and doesn't require a transport impact statement to be submitted. This only needs to be submitted when developments meet the threshold for moderate impact, with this being an entertainment venue with a minimum 100 seats/patrons. <p>If the application were to be approved and unauthorised parking were to occur in Kaata Lane, it would be subject to investigation and action by the City's Rangers team.</p>
<p><u>Tobacco Use/Sale</u></p> <ul style="list-style-type: none"> Passive smoking impacts are a huge issue, and the City has a responsibility to protect people from these impacts. The relevant legislation for a tobacco licence requires that shisha only be smoked in areas where food or drink is not being consumed. Within the application they state that they will provide food, which wouldn't be compliant with this legislation. On-site sale of tobacco products (which are unhealthy) does not service the community and may attract smokers of illegal substances. 	<ul style="list-style-type: none"> Refer to the comments below under 'Land Use – Consistency with Local Planning Scheme No.2 (LPS2)' and 'Licence Requirements'. As the use and consumption of shisha is a legal activity and regulated under separate State legislation, including the <i>Tobacco Products Control Act 2006</i> and <i>Tobacco Advertising Prohibition Act 1992</i>, the associated broader public health impacts are not a material planning consideration. However, the compatibility of the proposal with its surrounding locality and its extent of impact on amenity are valid planning considerations, and are discussed in further detail below.

Summary of Submissions:

Comments Received in Objection:	Administration Comment
<ul style="list-style-type: none">• The business is a risk to individual and public health. The use of tobacco products cause and contribute to significant risks of disease and death, and is the leading cause of preventable death and disease in Australia (attributed to 13% of all deaths in 2018). These risks are magnified when tobacco is smoked socially because of the serious harms associated with second-hand smoke. As with other tobacco products, use of shisha poses significant health risks. This practice is not safe and is associated with many of the same risks as smoking cigarettes (and may be worse), including direct negative health effects for users and serious second-hand smoke impacts for bystanders. Water pipe smoking is significantly associated with various cancers, diseases and illnesses. Water pipe smokers tend to smoke over a longer period than cigarette smokers, and it has been estimated that during a session of water pipe smoking of an hour, a person would inhale more than 100 times the volume of smoke produced by a single cigarette. This exposes users to nicotine and other harmful substances contained in the smoke. Waterpipe smoking can act as a gateway to cigarette initiation and emissions can harm non-smokers in the same way second-hand tobacco smoking does. In addition to the above health risks, there is documented evidence of acute health impacts from water pipe smoking.• The Department of Health (WA) summarises the requirements in relation to shisha in a guideline titled 'smoking and selling shisha'. It is unclear whether the proposed use is compliant with these legislative requirements and the Tobacco Control Branch of the Department of Health should be consulted for advice.• The business activity encourages people to ignore the intrinsic health risks associated with tobacco smoking. It is clearly not consistent with the established Council smoking policy objectives, nor the apparent local community views on this issue. Approval of this application would potentially create a detrimental and adverse precedent that others may also attempt to follow.	

Summary of Submissions:

Comments Received in Objection:	Administration Comment
<ul style="list-style-type: none"> • The business activity should not be supported as a shisha lounge promotes smoking addiction and nicotine use. The novelty of shisha attracts and appeals to young patrons, including those who are non-smokers. Although the premises has an outdoor smoking area, there is nothing to prevent people from smoking indoors which would contradict State requirements. Studies have shown that the air in enclosed spaces where shisha is consumed contains high levels of air pollutants, such as carbon monoxide, and this second-hand smoke can than affect adjacent rooms separated from the shisha consumption area. The toxic agents in shisha and that it's consumption allows you to inhale a high level of smoke at one time can result in several severe health conditions, including various cancers, reduced organ function and heart and other diseases. Studies have shown that nicotine and carcinogen levels increase significantly in people who have spent one night consuming shisha at these types of businesses. • Concerns with smoking which is adverse to health. • The unauthorised patio area faces onto Kaata Lane and is enclosed only in shade cloth which exposes neighbours to shisha smoke. • Concerns with the impact of tobacco emissions in the air in close proximity to residential homes on Kaata Lane and Roy Street. The risks and impacts of tobacco smoke on young people are well documented and researched, and there is a social impact of perceived encouragement of smoking habits within the area. • Shisha smoking creates an unacceptable level of acrid smoke. As it's consumed in outdoor areas and with this site backing onto businesses and residential properties, the emissions will adversely impact surrounding residents and businesses. • The City's proposal to create smoke free town centres, including this section of Beaufort Street, is supported. The area is a busy section of road and is frequented by many children and young people. Allowing easy access to the sale and promotion of tobacco products is a concern, particularly as shisha is 	<ul style="list-style-type: none"> • During the assessment of the application Administration liaised with the Tobacco Compliance Branch of the Department of Health. Administration referred the business to the Tobacco Control Branch of the Department of Health, who advised the following: <ul style="list-style-type: none"> ○ Premises such as shisha bars or lounges may apply for a retail tobacco licence under the <i>Tobacco Products Control Act 2006</i> in order to sell tobacco products including shisha; ○ The use of the tobacco product in or near enclosed public places is governed by the <i>Tobacco Products Control Regulations 2006</i> and is not linked to the licensing process. There is no process within the tobacco products legislation for approval or assessment of smoking areas within the retail tobacco licensed premises; and ○ Tobacco licensed premises are inspected routinely and where written complaints are received alleging a breach of the tobaccos products legislation. The Tobacco Control Branch would investigate allegations relating to smoking in enclosed public places, and any areas where smoking was found to be taking place would be assessed for compliance with the tobacco products legislation. <p style="margin-left: 40px;">It would be the business operator's responsibility to comply with this applicable legislation, including not smoking in an enclosed public place, with the responsible authority for monitoring compliance then being the Department of Health. These responsibilities are separate to the consideration of the application under the planning framework.</p> • The nature of the use involving the consumption of shisha in a ready-to-smoke form onsite within an unenclosed patio, would inherently result in smoke, vapour and odour being emitted outward from the premises. The applicant has not submitted any details or included any physical measures that would control or filter emissions from the premises. They have stated in their response to submissions that the impact of hazardous emissions from the high volume of vehicles using Beaufort Street would exceed the impact from any flavoured shisha smoke emitted from the premises. Noting that it is accepted that the emission of smoke and vapour can be harmful to health, and that the emission of odour can be a nuisance, the lack of details and physical measures on how emissions would be controlled or filtered is considered particularly relevant for this application. This is given that the patio area and outbuilding would be either fully or partially unenclosed to the east where in this direction there are sensitive uses in the form of single residential dwellings. The patio and outbuilding are located a minimum of between approximately 3.0 and 8.0

Summary of Submissions:

Comments Received in Objection:	Administration Comment
<p>toxic and the chemicals it contains are bad for people's health and those around them.</p> <ul style="list-style-type: none"> • Shisha is an addictive substance with serious health impacts, worse than those proposed by cigarette smoking. This is outlined in a fact sheet from the US Centre for Disease Control. For these reasons alone this business should not be encouraged any public or private space. • The application states that harmful emissions from the smoking of shisha will not impact local residents. However, the venue is separated from residential properties by a laneway, and the smoking area is located outside at the back of the property and is immediately adjacent to that laneway. As evidenced by current fast-food businesses on Beaufort Street, fumes and smoke can travel significant distances and impact residential properties. • Approval of this proposal would legitimise the smoking of shisha and thereby give the false impression that these types of venues are encouraged while the smoking of cigarettes is highly discouraged. This could well delude impressionable people into the belief that shisha is safer than cigarette smoking when this is clearly not the case. • Given that the smoking of tobacco is discouraged in all other areas due to proven risks to health/life expectancy, approving a premises whose sole purpose is the ingestion of nicotine products, would not only put patrons of neighbouring businesses, neighbouring business owners, passing pedestrian traffic, neighbouring residents and the businesses patrons health at risk, but it would also send a message that smoking is condoned and therefore encouraged by the City of Vincent. 	<p>metres from the adjoining properties to the north-east, east and south-east that contain established sensitive uses. The concerns are therefore supported, as the above demonstrates that the use may not be capable of operating in a manner where emissions would be appropriately managed, and that it may adversely impact the amenity of the adjoining properties and the associated sensitive uses.</p>
<p><u>Land Use – General</u></p> <ul style="list-style-type: none"> • The premises is not in keeping with the types of businesses in the vibrant District Centre zone along Beaufort Street in its operation or character. As the premises is an Unlisted Use it should be interpreted conservatively because it's a use that does not add to the local character. • A shisha lounge is not a high quality area for public interaction as envisaged by the District Centre zone objectives. A 24 hour smoking place also doesn't fit in with the nature of Beaufort Street and Mount Lawley which is a gentrified area including restaurant strips and family-friendly businesses. • The application seeks to significantly increase the level of business activity in terms of its scope and scale. The operating hours, patron numbers and lack of parking results in a scale of operation which is unwarranted and far exceeds acceptable and established commercial business restrictions for the area. 	<p>Refer to the comments below under 'Land Use – Consistency with Local Planning Scheme No.2 (LPS2)'. Although there is a public health impact from smoking, smoking itself is not an illegal activity. The nature of the use is not associated with an illegal activity. The premises is located within the Mount Lawley/Highgate Town Centre which includes a number of licenced venues including The Elford, The Beaufort and Queens Tavern, which facilitate the service and consumption of alcohol onsite. The operation of these businesses would have some inherent impact on the area and reduced amenity. The premises is also directly opposite a convenience store selling tobacco products, and 300 metres from a similar premises in Cloud 9. In this context the proposal is unlikely to result in further reduced amenity or to set an undesirable precedent than that currently experienced or set by there being multiple existing businesses which serve alcohol and sell tobacco and smoking-related products and implements in close proximity.</p>

Summary of Submissions:

Comments Received in Objection:	Administration Comment
<ul style="list-style-type: none"> • Having a 24/7, 100 patron capacity shisha lounge operating on the other side of a small laneway from a row of occupied residential homes is unreasonable. Kaata Lane would turn into a thoroughfare with foot traffic, noise pollution and street pollution which would disrupt the peace in this section of the neighbourhood. • The business and its proposed operations do not comply with the objectives of the City's Local Planning Scheme No. 2 and it should not be permitted. The business is not a community focused business and it is not accessible for the local community for public interaction or leisure. The operations will adversely impact adjoining businesses. It does not encourage high quality, pedestrian friendly, street-orientated development that responds to and enhances the key elements of the District Centre zone. It does not develop areas for public interaction. • The objectives of the District Centre state that development must ensure that they don't expand into or adversely impact adjoining residential areas. The business has already adversely impacted adjoining residential areas from disruptions late at night, anti-social behaviour and noise impacting properties and residents along Lois and Kaata Lane. This is in addition to concerns with the proposed operating hours, patron numbers and lack of parking. The business would not help bring vibrancy and people to the area. • The proposal poses significant adverse amenity impacts, does not enhance key elements of the District Centre and contributes no value to the community. 	<p>In regards to the objectives of the District Centre zone under LPS2:</p> <ul style="list-style-type: none"> • The use would operate as a retail tenancy that offers products for consumption in areas with seating provided. This would contribute towards employee opportunities and the activity centre as a community focus point for people, services and leisure, with the predominant retail offering and commercial activity along Beaufort Street. The retail aspect of the business is consistent with surrounding commercial activities including shops, restaurants, cafés and bars. These commercial activities provide goods or services for sale, are open to the general public, and provide day time and night time trade; consistent with the retail aspect of the proposed land use which would facilitate the retention and add to the diversity of these activities; • Aside from the fencing and gate, no modifications are proposed to the building frontage. 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 fencing and gate would obscure this active frontage while reducing public interaction and not being consistent with key elements of the District Centre. Refer to the comments below under 'Built Form'; • The signage proposed would be consistent with the Signs and Advertising Policy. It is supported for the reasons outlined further below in this report; • The development, including the patio addition, does not impact on the energy efficiency or water conservation principles. Waste would be collected by an external waste service provider, in line with the City ceasing commercial waste collection and a bin store is proposed at the rear off Kaata Lane; • The proposal would detrimentally impact the amenity of the adjoining residential areas, as a satisfactory acoustic report and a management plan have not been submitted to demonstrate how the activities of the use would be appropriately managed to limit impacts. As set out above under 'Tobacco Use/Sale', the nature of the use involving the consumption of shisha in a ready-to-smoke form onsite within an unenclosed patio and outbuilding, would inherently result in smoke, vapour and odour being emitted outward from the premises. The applicant has not submitted any details or included any physical measures that would control or filter these emissions. This demonstrates that the use as proposed would not be capable of operating in a manner where emissions of smoke, vapour and odour, noise emissions and the activities of the use would be appropriately managed, and that it would adversely impact the amenity of the adjoining properties and the associated sensitive uses that

Summary of Submissions:

Comments Received in Objection:	Administration Comment
	<p>area in close proximity to the subject site and the unenclosed patio area and outbuilding. Refer to the additional comments above and below under 'Noise', 'Operating Hours and Patron Numbers', 'Anti-Social Behaviour' and 'Parking'.</p>
<p><u>Land Use – Consistency with Local Planning Scheme No.2 (LPS2)</u></p> <ul style="list-style-type: none"> • The use is non consistent with the following matters to be considered under Clause 67(2) of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> for the following reasons: <ul style="list-style-type: none"> ○ Clause 67(2)(a) – The health, safety and general welfare of the City's inhabitants is not protected and enhanced by the application. It poses a direct risk to the individual and public health of the City's inhabitants by promoting tobacco use in the form of shisha, where it is known to have significant health risks. The proposed hours of operation, 24 hours a day, 7 days a week, could give rise to safety concerns in arriving and leaving the premises at times where there may be limited visibility from others. ○ Clause 67(2)(f) – Reducing tobacco use and smoking is a key State priority and is reflected in State policy. These policies include the Sustainable Health Review, the WA Health Promotion Strategic Framework, the State Public Health Plan for WA and the WA Cancer Plan, all of which identify the priority to reduce tobacco use and provide high-level strategic direction to achieve this end. Approving this application would undermine the intent of State policies in this area. ○ Clause 67(2)(m) – A shisha lounge with the dominant purpose of encouraging the sale and use of shisha is not compatible with the desired future character of a town centre as an environment that supports healthy living and quality of life, and that is to be smoke-free by 2025 as outlined in the Beaufort Street Town Centre Place Plan and City of Vincent's Public Health Plan. There may also be smoke-drift in respect of the proposed use onto adjacent properties and Beaufort Street itself, which may adversely impact on the character of the area. A high density of tobacco and associated businesses may adversely impact on the character of the area. It should be noted that there are already premises in the vicinity selling tobacco and associated products and accessories. This may give the impression that smoking and related behaviours are acceptable in the City of Vincent community, when they are not. ○ Clause 67(2)(n) – Refer to comments above under 67(2)(m). In addition, the social impacts are that the development promotes an activity that poses a significant risk to public health and that detrimentally impacts on the health of those who visit the premises and staff. This is exacerbated by the proposed opening hours. The development has the potential to glamourise shisha use 	<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 sale of shisha in a ready-to-smoke form is not an illegal activity. An Unlisted Use requires discretion to be exercised by the decision maker for its approval. The proposed shisha bar is capable of consideration within the Commercial zone, by virtue of it being an Unlisted Use and not an 'X' (not permitted) land use; • Broader public health policy at the state level seeks to reduce the impacts caused by smoking. These policies do not identify opportunities for this to be controlled or influenced through the planning framework. The selling of smoking implements and consumption of shisha is not illegal and there are other controls in place through the tobacco products legislation (regulated by the Department of Health) to control how this is sold and consumed; • The City does not have any approved local planning policies which are relevant to the assessment of the use. Amongst other initiatives, the Public Health Plan seeks to deliver smoke-free town centres by 2025. The Public Health Plan also seeks to support the implementation of smoke-free environments including festivals, events, activities and/or clubs, and to advocate for reduced exposure to tobacco advertising, marketing, promotion and sponsorship. Notwithstanding the aims and priorities of the City's Public Health Plan, this is not a relevant consideration under the planning framework. The initiatives of the Public Health Plan do not extend to private property or contemplate strategies to restrict businesses selling shisha for consumption onsite; • Accounting for the adjoining residential areas, the nature and operation of the use may further diminish the existing amenity of these properties. Refer to the comments above and below under 'Noise', 'Operating Hours and Patron Numbers', 'Anti-Social Behaviour' and 'Tobacco Use/Sale'. In contemplating the surrounding context of the locality and Beaufort Street, the use 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

Summary of Submissions:

Comments Received in Objection:	Administration Comment
<p>and portray it as a social activity (when in reality, it exposes users and bystanders to toxic and carcinogenic smoke). Allowing such a business to operate in a busy town centre may contribute to re-normalising tobacco use and smoking, which is a detrimental social impact.</p> <ul style="list-style-type: none">○ Clause 67(2)(r) – A shisha lounge in a town centre is not appropriate, taking into account the possible risk to human health or safety. A town centre with its increased pedestrian traffic is not suitable for a development that is, by its inherent nature, a significant risk to individual and public health. If it were allowed to be positioned with an entry from a high pedestrian traffic area, it could entice a significant number of people who may not otherwise use tobacco products, to try using them. This could have the effect of re-normalising tobacco use and exposing another group of people to nicotine addiction and significant health risk. Further, the proposed hours of operation could give rise to safety concerns in arriving and leaving the premises at times where there may be limited visibility from others.○ Clause 67(2)(x) – The entry to the site is from Beaufort Street within the town centre. The City is pursuing smoke-free town centres by 2025 for the benefit of the community as a whole and is creating environments that support healthy living and quality of life. Approving the application would detrimentally impact on the community and directly undermines the City’s stated goals and plans for the town centres, including the Beaufort Street Town Centre Place Plan. It undermines the creation of an environment that supports healthy living and quality of life. Having a shisha lounge in the town centre would be harmful to individual and public health, and increases the opportunity for community members to access, use and become addicted to tobacco and windpipe smoking. This trajectory is totally avoidable and unnecessary.○ Clause 67(2)(y) – the City is to give due consideration to the comments made on the application during public consultation, including those above.○ Clause 67(2)(zb) – The City’s Public Health Plan, the Beaufort Street Town Centre Place Plan and the stated move towards smoke-free town centres by 2025 (as expressed in these documents) should be considered. Allowing such an application will undermine what is trying to be achieved in these documents.	<p>application. Receiving objections to the proposal alone is not a valid reason for the application to be refused.</p>

Summary of Submissions:

Comments Received in Objection:	Administration Comment
<p><u>Anti-Social Behaviour</u></p> <ul style="list-style-type: none"> The business allows people to enter and exit through the rear of the premises. This promotes gathering in Kaata Lane which is dark and where there have been past instances of people gathering, police incidents and other anti-social behaviour. This is not consistent with the District Centre zone objectives as the transition between the private and public domain would not enhance the privacy and safety of residents. Object to the proposal due to the high level of anti-social behaviour that has been observed since the business has started operating, including vandalism, noise until late at night, police incidents and misuse of Kaata Lane. The business contributes to a lack of safety in the area and does not belong on Beaufort Street. Concerns with the business resulting in an increased level of anti-social behaviour in the neighbourhood. As the application is retrospective, the businesses impacts have already been observed. This includes multiple instances of anti-social behaviour at the rear of the business and in Kaata Lane at all hours of the day. The premises is a concern for the general safety of other users of Kaata Lane and Beaufort Street, particularly in the evening. Other users of Kaata Lane have seen several disturbances associated with the business, and these instances of anti-social behaviour contribute to a reduced sense of safety for users of Kaata Lane. Concerned about access in Kaata Lane for other users and encountering anti-social behaviour. The lane already has a tendency to feel unsafe at night and the business would only increase this further. 	<p>The applicant has not submitted a management plan to demonstrate how the operations of the business will be managed. The applicant has stated that in terms of complaint management and a code of conduct, that the business operator will be the first point of contact and that their contact details will be provided to patrons if any issues arise. They also stated that they would be willing prevent access to the premises from Kaata Lane and to install signage to reflect this and that the parking at the rear of the premises is for staff only.</p> <p>Although these measures may assist with venue management, there is a lack of any documented procedures to address the management of activities and patrons of the business, including their potential impacts such as noise and anti-social behaviour, as well as any complaints management procedures if complaints were received from adjoining properties. This is considered relevant given the location and unenclosed nature of the patio, its proximity to adjoining residential uses and its operating hours. The concerns are therefore supported, as the above demonstrates that the use may not be capable of operating in a manner where venue operations would be appropriately managed, and that it may adversely impact the amenity of the adjoining residential uses.</p> <p>It is noted that the premises is located within the Mount Lawley/Highgate Town Centre which includes a number of licenced venues including The Elford, The Beaufort and Queens Tavern, which facilitate the service and consumption of alcohol onsite. The operation of these businesses as part of the Town Centre would have some inherent impact and reduced amenity. The premises is directly opposite a convenience store selling tobacco products, and 300 metres from a similar premises in Cloud 9. In this context the proposal is unlikely to result in further reduced amenity in the locality than that currently experienced by being in close proximity to existing businesses which serve alcohol and sell tobacco and smoking-related products and implements that form part of the Town Centre.</p>
<p><u>Waste Management</u></p> <ul style="list-style-type: none"> The business frequently has excess rubbish spilling out into the laneway. Although in the application they claim their current waste management is sufficient it has been observed that they have not been able to store all their rubbish. This is not consistent with the District Centre zone objectives as the business would not incorporate sustainability principles, with particular regard to waste management and recycling. The current bins of the business regularly overflow and rubbish blows up and down Kaata Lane. Rubbish associated with the business is often not contained in bins and is scattered through Kaata Lane. 	<p>The applicant has stated that waste would be collected by an external waste service provider with one 660 litre bulk refuse bin, and a bin store is proposed at the rear off Kaata Lane to accommodate any waste that would be associated with the business. This would assist to ensure that waste would be appropriately accommodated onsite and managed.</p> <p>On this basis waste management has not been included as a reason for refusal for the use.</p>

Summary of Submissions:

Comments Received in Objection:	Administration Comment
<p><u>Built Form</u></p> <ul style="list-style-type: none"> The unauthorised additions facing onto Kaata Lane are of poor quality build, are visually unappealing and do not enhance visual appearance Kaata Lane. The additions to the premises are not in keeping with the style of the original building. <ul style="list-style-type: none"> The relevant objectives for this zone are to encourage high quality, pedestrian friendly, street-orientated developments. This business is located behind a high wall with a locked door which gives the appearance that it's only open for select pre-authorized patrons. It does not satisfy these objectives. 	<p><u>Patio Addition</u></p> <p>The patio addition satisfies all relevant acceptable outcomes of the City's Built Form Policy, including in relation to side and rear setbacks, pedestrian access and entries, and roof design.</p> <p>It would satisfy the element objectives of the City's Built Form Policy, as it relates to an ancillary single storey addition to an existing building. It is consistent with the nature of structures added to the rear of other buildings along Beaufort Street within the Town Centre to provide additional space for the operations and activities of tenants, and it is not required to be associated with a particular land use. As an unenclosed structure supported by slim posts it also contributes limited building bulk and it would be located over a previous bitumen hardstand area, not resulting in the removal of any landscaping or parking areas.</p> <p>On this basis the patio addition has been recommended for approval subject to standard conditions.</p> <p><u>Fence and Gate Addition</u></p> <p>The fence and gate addition does not satisfy the City's Built Form Policy acceptable outcomes relating to height of solid walls or fences.</p> <p>The concerns received are supported, and the fence and gate addition would not satisfy the element objectives of the Built Form Policy and the objectives of the District Centre zone under LPS2 for the following reasons:</p> <ul style="list-style-type: none"> The transition between the private and public domain would not enhance the privacy and safety of residents, as the fence and gate would obscure passive surveillance from occurring between the premises and Beaufort Street; and The fence and gate would not retain and enhance the amenity and safety of the adjoining public domain, as its height and materials would prevent the premises from having an active frontage while reducing public interaction, with this being a key element of the District Centre. <p>On this basis the fence and gate addition has been recommended for refusal alongside the use.</p>

Summary of Submissions:

Comments Received in Objection:	Administration Comment
<p><u>Building Non-Compliance</u></p> <ul style="list-style-type: none"> • Concerns raised that the premises is not fit for use for the following reasons: <ul style="list-style-type: none"> ○ There is no adequate smoke extraction and ventilation system both inside the building and in the rear outdoor patio area. ○ The premises lacks the appropriate fire safety exits and the current rear exit could be obstructed by vehicles. It is not apparent if suitable facilities have been provided for fire brigade intervention. ○ The property is fully enclosed by mesh and non-fire-retardant laser light sheeting affixed from the boundary fencing to the walls and roof. ○ A new roof has been installed at the rear of the building which doesn't seem to have received the necessary building approvals. There appears to be a lack of compliance with the Building Code in relation to materials, openings, boundary walls, fire resistance and safety, exits and signage. ○ It appears that requirements haven't been addressed regarding disabled access, energy efficiency and the provision of suitable ablution facilities, ventilation and mechanical exhausts. <p>The proposal should be compliant with the relevant requirements and these works should be completed prior to the business re-opening.</p> • The building frontage to Beaufort Street is unsafe, and the gate and fence height and construction method has insufficient support. 	<ul style="list-style-type: none"> • As per the comments under 'Built Form' above, the patio addition is considered acceptable under the planning framework. Prior to the patio addition being used, a Building Approval Certificate Application would need to be submitted to the City that is prepared by a qualified Practicing Building Consultant and that demonstrates the building complying with the relevant Building Code of Australia (BCA) requirements. This includes requirements in relation to fire safety, ventilation, entries and exits, and signage. • As per the comments under 'Built Form' above, the fence and gate addition is not considered acceptable under the planning framework. Should the application be refused, the fence and gate addition would need to be removed in accordance with Section 214 of the <i>Planning and Development Act 2005</i>.
<p><u>Other</u></p> <ul style="list-style-type: none"> • Query whether the business would have a liquor licence, as many of the comments in the application information would then not apply. • Concerns that the business will not operate in accordance with their tobacco licence, particularly in that food will be served and consumed in the smoking area. • Concerns that the given the past history of non-compliance that the business will not adhere to any conditions of approval, including relating to operating hours, noise management and patron numbers. 	<ul style="list-style-type: none"> • The applicant has confirmed that no liquor would be sold or consumed from the premises. • The applicant has confirmed that no food of any kind would be sold or served within the patio area that would be used for the sale and consumption of shisha. • Noted. The previous history of non-compliance is not a valid planning consideration when making a decision on a development application. If the business were to not adhere to any conditions if were to be approved, it would be subject to investigation and action by the City's Compliance team in accordance with the City's Prosecution and Enforcement Policy.

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

Determination Advice Notes:

1. This is a development approval issued under the City of Vincent Local Planning Scheme No. 2 and the Metropolitan Region Scheme only. It is not a building permit or an approval to commence or carry out development under any other law. It is the responsibility of the applicant/owner to obtain any other necessary approvals and to commence and carry out development in accordance with all other laws.
2. If the development the subject of this approval is not substantially commenced within a period of two years, or another period specified in the approval after the date of determination, the approval will lapse and be of no further effect.
3. A further two years is added to the date by which the development shall be substantially commenced, pursuant to Schedule 4, Clause 4.2 of the Clause 78H Notice of Exemption from Planning Requirements During State of Emergency signed by the Minister for Planning on 8 April 2020.
4. If an applicant or owner is aggrieved by this determination there is a right of review by the State Administrative Tribunal in accordance with the *Planning and Development Act 2005* Part 14. An application must be made within 28 days of the determination.
5. All storm water produced on the subject land shall be retained on site, by suitable means to the full satisfaction of the City. No further consideration shall be given to the disposal of stormwater 'offsite' without the submission of a geotechnical report from a qualified consultant. Should approval to dispose of stormwater 'offsite' be subsequently provided, detailed design drainage plans and associated calculations for the proposed stormwater disposal shall be lodged together with the building permit application working drawings.
6. This approval is only for the patio addition associated with the existing Shop land use. The Unlisted Use (Shisha Lounge) will be required to remain ceased and any other works subject to the application will be required to be removed. Any use of the patio for a different activity that is not associated with the approved Shop land use, and that is not an Unlisted Use (Shisha Lounge) or the like, may require development approval prior to it occurring.
7. Within twenty eight days (28) days of the issue date of this approval, a Building Approval Certificate Application, including architectural drawings and building compliance report, prepared by a qualified Practising Building Consultant demonstrating the building complying with the relevant Building Code of Australia (BCA) requirements, shall be submitted to and approved by the City Building Services team. The cost of this service is to be borne by the applicant/owner(s).
8. This is approval is not an authority to ignore any constraint to development on the land, which may exist through statute, regulation, contract or on title, such as an easement or restrictive covenant. It is the responsibility of the applicant and not the City to investigate any such constraints before commencing development. This approval will not necessarily have regard to any such constraint to development, regardless of whether or not it has been drawn to the City's attention.
9. The applicant is responsible for ensuring that all lot boundaries as shown on the approved plans are correct.