

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:
<p><u>Amenity Impact</u></p> <ul style="list-style-type: none"> The business has been operating at the proposed hours without impact on the local community, including noise, parking and patron behaviour and is well managed. The subject site is located within a Regional Centre zone. Properties that abut a Regional Centre zone should not expect the same level of amenity as those who live centrally within a Residential Zone. Impact of noise and smoke can be addressed through conditions of approval. 	<ul style="list-style-type: none"> Noted. The City has separately received complaints regarding the operations of the business regarding noise and smoke/odour impacts. The adjoining residential land adjoins the Regional Centre zone where commercial land uses and development up to six storeys is permissible. The level of impact created by commercial development should be reduced by the design and operation of the commercial use as it transitions away from Oxford Street and towards the Residential zone. The Acoustic Report provided by the applicant sets out that the development exceeds the Assigned Levels under the <i>Environmental Protection (Noise) Regulations 1997</i> to residential properties but that this could be attenuated. It is noted that the report has not been prepared by a member of the Australian Acoustical Society, Engineers Australia, or the Association of Australian Acoustical Consultants as is required under the City's Policy No. 7.5.21 – Sound Attenuation. <p>Administration does not accept that the conclusions and recommendations of the acoustic report can be relied upon and the potential for the use under an unenclosed area to detrimentally impact noise-sensitive residential land uses located as close as 3 metres away across the ROW.</p> <ul style="list-style-type: none"> There has been no evidence provided by the applicant to support the proposition that the emission of smoke, vapour and odour could be appropriately managed.
<p><u>Positive Social Impact</u></p> <p>Although smoking is a health issue, the business adds vibrancy to Leederville and operates as a community hub for younger immigrants where they can take part in cultural activities from their country of origin, including the smoking of shisha.</p>	<p>Noted.</p>
<p><u>Acoustic Barrier</u></p> <p>Support for the construction of an acoustic barrier to reduce the impact of noise on nearby residential properties.</p>	<p>Noted.</p>

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Comments Received in Objection:	Administration Comment:
<p><u>Parking</u></p> <ul style="list-style-type: none"> The surrounding area suffers from a scarcity of on-street car parking that would be exacerbated by the approval of this development. Additionally there have been instances of other private properties being used to park vehicles for patrons of the subject site. Query whether sufficient car parking could be provided for Restaurant/Café use. 	<ul style="list-style-type: none"> An analysis of the City's on-street car parking data shows that there is limited parking capacity within Melrose Street, however the site is within walking distance to the Loftus Centre Car Park, on-street car parking bays on Oxford Street and on Richmond Street to the east of Oxford Street. The City's car parking data indicates that these public car parking options available in the area have sufficient capacity to support patrons visiting the subject site. <p>The nature of surrounding area, being a Regional 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 in the area.</p> <ul style="list-style-type: none"> The subject site has an existing valid approval to operate as a Restaurant/Café without the provision of car parking on-site.
<p><u>Amenity Impact</u></p> <ul style="list-style-type: none"> The emissions from the business, including odour, smoke and vapour permeates through the nearby neighbourhood and causes nuisance and potential health impacts. Suggest that the business should enclose the smoking lounge area and install an extraction system. The existing operations are noisy and operate late into the night. Noise sources include patrons and waste disposal on-site and patrons leaving the premises who park cars on the nearby residential streets which negatively impacts the amenity of the residential areas. The acoustic report notes that the development exceeds the Assigned Levels under the <i>Environmental Protection (Noise) Regulations 1997</i>. 	<ul style="list-style-type: none"> The proposal has not demonstrated that the use can operate in a manner where emissions would be appropriately managed. This would adversely impact the amenity of nearby properties. This would cause a nuisance and potential health impacts to nearby residents, visitors to the Leederville Town Centre, as well as employees and patrons of the shisha bar and restaurant/cafe. The applicant has not proposed this as part of the application. There would be implications under the <i>Tobacco Products Control Act 2006</i>. This is because under the tobacco products legislation, the consumption of shisha on-site is required to occur within an unenclosed outdoor area. The acoustic report has not been prepared by a member of the Australian Acoustical Society, Engineers Australia, or the Association of Australian Acoustical Consultants as is required under the City's Policy 7.5.21 – Sound Attenuation. While the report includes recommendations to attenuate the noise from the subject site to comply with the Assigned Levels under the <i>Environmental Protection (Noise) Regulations 1997</i>, Administration does not accept that the conclusions and recommendations of the acoustic report can be relied upon. This is particularly given the close urban environment and proximity of the subject site to residential properties as close as 3 metres away across the ROW. Details of waste management for the ongoing operations of the business have not been provided.

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<ul style="list-style-type: none"> • There will likely be smoke drift in respect of the proposed use onto surrounding properties and Oxford Street itself, depending on wind direction (and other factors) which will adversely impact on the amenity of the area. • Concern that the business would not adhere to the proposed 12am closing time, due to the existing business having operated after 12am previously. 	<ul style="list-style-type: none"> • The application does not propose measures for the control or management of emissions from the subject site. There would be the uncontrolled release of smoke, vapours and odour from the site given the unenclosed nature of the patio which has the ability to adversely affect the amenity of the locality. • Development applications must be determined based on the information before the decision maker. There is a compliance and enforcement regime to ensure compliance with the terms of any approval under the City's Development Compliance Enforcement Policy. • Notwithstanding this, Administration is not supportive of the use operating until 12:00am. This is because it is immediately adjacent to the Residential zone and it has not been adequately demonstrated that the shisha lounge could operate without unduly impacting the amenity of the surrounding area by way of noise and odour, smoke and vapour emissions. This means that any discretion afforded to the operator to extend operating hours beyond those set out in the City's Smoking Policy would intensify the land use and activities occurring on site. This would only further detrimentally impact the amenity of the surrounding area.
<p><u>Materials</u></p> <ul style="list-style-type: none"> • The use of acrylic for the acoustic barrier should be discouraged because it is inconsistent with sustainable development principles. • The shade-cloth, attachment of plastic shrubbery and proposed acoustic barrier present a fire risk to adjoining properties. Details as to the fire-rating of the proposed acoustic barrier have not been provided. • No details have been provided explaining how a variety of materials would be able to provide the same level of acoustic attenuation. 	<ul style="list-style-type: none"> • The City's Built Form Policy does not specifically restrict the use of acrylic material, although there may be other more sustainable materials that could be used. It would be available to consider alternate materials that met the minimum density of material required to attenuate noise. • The City's Building Services have advised fire separation is provided from properties to the west by the right of way. If the use were approved, an Occupancy Permit would be required to be obtained for the use which would consider the fire hazard properties of the ceiling lining. This is a matter dealt with under the Building Code of Australia. • The acoustic report advises that a variety of materials would be able to achieve the required sound attenuation, provided that it meets a minimum density. Details of the specifications of the acoustic barrier have not been provided with the application.
<p><u>Social Impact</u></p> <p>The use would not be consistent with the family-oriented nature of the Leederville Precinct because of anti-social behaviour.</p>	<p>The proposed use would not inherently result in antisocial behaviour, and the City is not aware of a correlation between smoking shisha and antisocial behaviour.</p>

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<p><u>Health Impacts</u></p> <ul style="list-style-type: none"> The smoking of shisha and tobacco products causes harm to people's health. It is the leading cause of preventable death and disease in Australia and should not be permitted. The proposed use promotes and normalises this activity in society and should not be permitted. The development has the potential to glamourise and normalise shisha use which is a detrimental social impact. Estimates that the use of a waterpipe (hookah) for smoking results in greater inhalation of nicotine and harmful substances including heavy metals. The emissions from the smoking of shisha would present a hazard to residents, patrons to the restaurant and those working in the business and would contribute to a greater healthcare burden. The use would be inconsistent with the public health policy statements of the State Government and City of Vincent, including the Public Health Plan. 	<ul style="list-style-type: none"> The nature of the use involves the smoking of tobacco. There are health impacts of smoking tobacco and there is no known safe level of inhalation of tobacco products. The emission of smoke and vapour can be harmful to health, and the emission of odour can be a nuisance. The lack of details and physical measures on how emissions would be controlled or filtered is considered particularly relevant for this application. This is given that the patio area would either be fully or partially unenclosed to the west and south and near residential dwellings. The use as proposed would not be capable of operating in a manner where emissions would be appropriately managed, and would adversely impact the amenity of nearby properties and their sensitive uses. Documents from the State Government include the Sustainable Health Review 2019 (SHR), the Western Australian Health Promotion Strategic Framework 2017-2021 (HPSF) and the State Public Health Plan 2019-2024 (SPHP). These documents include objectives and aims in relation to smoking, but do not identify opportunities for this to be controlled or influenced by the current planning framework. The WAPC has not approved any state planning policies relating to a shisha bar use. 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 on site.
<p><u>Location</u></p> <ul style="list-style-type: none"> The location of the use is inappropriate as it is opposite Leederville TAFE. The use would given the impression to younger members of society that smoking is an acceptable activity. The premises is situated in an activity corridor in the Leederville Town Centre and should promote a welcoming, pleasant and healthy environment for community members and visitors. A shisha bar with the purpose of encouraging the sale and use of shisha is not compatible with the character of a town centre that supports healthy living and quality of life. 	<ul style="list-style-type: none"> The subject site is located 20 metres from the Leederville campus of the North Metropolitan TAFE and at the northern end of the Leederville Town Centre. The town centre is intended to be a community focal point for people, services, employment, and leisure. The proposal does not include measures for the control of smoke, vapour or odour. There could be an impact on existing users of the surrounding area which includes activities and public spaces due to the uncontrolled emissions from the subject site.

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<ul style="list-style-type: none"> There are eight tobacco sellers in Leederville. A high density of tobacco and associated businesses may adversely impact on the character of the area and is not compatible with a town centre that supports healthy living and quality of life. A higher density of tobacco retailers is associated with a greater uptake and continuation of smoking. 	<ul style="list-style-type: none"> The Department of Health has advised that there are seven tobacco sellers in Leederville, including supermarkets, bottle stores and licensed venues. The planning framework does not approve outlets that may sell tobacco where this is not the predominant use of the site, for example supermarkets. A higher concentration of tobacco retailers would not be consistent with the objectives of the City's Public Health Plan to reduce smoking, including through the introduction of smoke-free town centres.
<p><u>Compliance with Other Legislation</u></p> <p>Concern that following the erection of the acoustic barriers, the rear patio area would not be an unenclosed area and therefore would not be permitted under the <i>Tobacco Products Control Regulations 2006</i>.</p>	<p>During the assessment of similar applications for shisha lounges, Administration liaised with the Tobacco Compliance Branch of the Department of Health, that advised the following:</p> <ul style="list-style-type: none"> Premises such as shisha lounges may apply for a retail tobacco licence under the <i>Tobacco Products Control Act 2006</i> 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>. This is not linked to the licensing process. The Tobacco Control Branch does not provide advice or assessment of smoking areas within the retail tobacco licensed premises. and Tobacco licensed premises are inspected routinely and where written complaints are received. 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>It would be the operator's responsibility to comply with this legislation, including not smoking in an enclosed public place. The responsible authority for monitoring compliance with these regulations is the Department of Health. These responsibilities are separate to the consideration of the application under the planning framework.</p>
<p><u>Inconsistency with Scheme Aims</u></p> <p>The use would not be consistent with Clause 9(b) of the City of Vincent Local Planning Scheme No. 2 which states that an aim of the scheme is to "<i>protect and enhance the health, safety and general welfare of the City's inhabitants and the social, environmental and cultural environment</i>".</p>	<p>The development would not satisfy the Aims of LPS2 because it would not protect or enhance the health and welfare of the City's inhabitants due to the impact on amenity of the adjoining properties and broader public health impact related to tobacco use.</p>

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<p><u>Inconsistency with State Policy</u></p> <p>Reducing tobacco use and smoking is a key State priority and is reflected in State policy, including the 'Sustainable Health Review: Final Report', the 'State Public Health Plan for Western Australia: Objectives and Policy Priorities' for 2019-2024', the 'Western Australian Health Promotion Strategic Framework 2017-2021' and the 'WA Cancer Plan 2020-2025' which identify the priority to reduce tobacco use and provide high-level strategic direction to achieve this end. Approval of this use would undermine the intent of these State policies.</p>	<p>While these State policies are noted, these include objectives and aims in relation to smoking, but do not identify opportunities for this to be controlled or influenced by the current planning framework.</p> <p>Sale and consumption of tobacco products is not illegal and there are other controls in place through the applicable tobacco products legislation to control how this is sold and used.</p> <p>The primary consideration of the development application against the planning framework is to determine the appropriateness of the shisha bar in this location and its compatibility with the setting. Administration is of the view that the proposed shisha bar would not be appropriate or compatible and should be refused.</p>
<p><u>Inconsistency with City of Vincent Public Health Plan 2020-2025</u></p> <ul style="list-style-type: none"> • The use would be inconsistent with and would undermine the City of Vincent Public Health Plan 2020-2025, the Leederville Town Centre Place Plan which include the provision of smoke-free town centres. • Although the subject site is not located within the City of Vincent smoke-free area, the approval of the use would undermine the intent of the smoke-free area and may contribute to smoking at the boundary of the smoke-free area. 	<p>In November 2022, the City introduced smoke-free town centres. The City's restrictions on smoking within the town centre apply to public land only. While the approval of the use could be seen as undermining the smoke-free town centre, it is noted that the Leederville smoke-free area does not extend to the subject site.</p>
<p><u>Other</u></p> <ul style="list-style-type: none"> • The bin gates are sometimes opened out into the laneway, these should be required to open into the property. • The proposed land use does not address Clause 67(2)(f) of Schedule 2 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> and would be inconsistent with several state policies that target the reduction of smoking. 	<ul style="list-style-type: none"> • The approval for the site issued by the City in 2000 shows the bin store gates to swing inwards. The application does not propose the doors to swing outwards and this would not be supported by the City. • There are no State Planning Policies approved by the WAPC which relate to a use of this nature. • There are broader State policies that include objectives and aims in relation to smoking, but do not identify opportunities for this to be controlled or influenced by the current planning framework.

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<ul style="list-style-type: none"> The proposed land use is detrimental to human health and safety and is in a prominent location. The proposal does not address Clause 67(2)(r) of Schedule 2 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>. 	<ul style="list-style-type: none"> Clause 67(2)(r) states that the decision maker is to consider '<i>the suitability of the land for the development taking into account the possible risk to human health or safety</i>'. The emission of smoke and vapours can be harmful to health and the emission of odours can be a nuisance. The location of the site in proximity to residential and non-residential sensitive land uses that is in a highly pedestrianised environment is not suitable for the development.
<ul style="list-style-type: none"> Submissions received should be considered in the determination of this application in accordance with Clause 67(2)(y) of Schedule 2 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>. 	<ul style="list-style-type: none"> The concerns raised in the submissions have been considered as part of Administration's assessment of this application and the potential amenity impact of the use. This forms a reason for Administration's recommendation for refusal of the application.

Comments Received Expressing Concern:	Administration Comment
<p><u>Noise</u></p> <p>Concern that the rear area may be used for bands or live music.</p>	<p>The applicant has advised that this is not an intended part of their business model. Though Administration is of the view that the Acoustic Report prepared cannot be relied upon, it is also a recommendation of that report for no music to be played in order to comply with the <i>Environmental Protection (Noise) Regulations 1997</i>.</p>

Note: Submissions are considered and assessed by issue rather than by individual submitter. Matters raised have been restructured compared to the Applicant's response to submissions.