

Summary of Submissions:

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

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

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

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

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

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

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

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

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

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<ul style="list-style-type: none"> The proposal is of great concern, as it is wholly unsuitable due to its use and associated noise and pollution which will have a strongly detrimental effect on the residential amenity of adjoining properties. It would be adjacent to a main outdoor living courtyard and two bedrooms on an adjoining property. These will be directly negatively impacted by the noise and pollution from this proposed development which will operate until 1am, seven days a week. 	<ul style="list-style-type: none"> Refer to the comments above under 'Noise' and 'Tobacco Use/Sale'.
<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. Clause 67(2)(a) – A shisha bar, which is for the smoking of harmful tobacco products is entirely contrary to Aim (b) of the City’s LPS2 which is <i>‘to protect and enhance the health, safety and general welfare of the City’s inhabitants and the social, environmental and cultural environment’</i>. 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)(f)(a) – the first objective of the City’s Local Planning Strategy is <i>‘to promote and safeguard the health, safety and convenience and general welfare of the inhabitants of the City’</i>. The shisha bar does not support promotion of the health of the inhabitants of the City, and there is nothing in LPS2 or the Local Planning Strategy that supports the establishment of land uses, such as a shisha bar, that are plainly destructive to human health. Clause 67(2)(m) – A high density of tobacco and associated businesses may adversely impact on the character of the area and is not compatible with an activity corridor that supports healthy living and quality of life. It should be noted that there are already premises in the vicinity selling tobacco and associated products 	<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 surrounding context, the nature and operation of the use would not further diminish the existing amenity. Refer to the comments below against the objectives of the Commercial zone under

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

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

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

Summary of Submissions:

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

Summary of Submissions:

Comments Received in Objection:	Administration Comment:
<p><u>Licence Requirements</u></p> <ul style="list-style-type: none"> The development does not comply with the legal requirements of the <i>Tobacco Products Control Act (2006)</i> and the <i>Tobacco Products Control Act Regulations (2006)</i>. These requirements include that 'Shisha cannot be smoked in an enclosed public place'. An 'enclosed public place' is defined as a public place which has a ceiling or roof and is more than 50 per cent enclosed by walls or other vertical structures or coverings. This definition includes an outdoor area that is enclosed by café blinds. The proposed development does not comply, because the shisha bar is fully enclosed on two sides – one being the rear wall of the existing building, the being the required 'noise wall' which fully encloses the structure on the northern side. It's also further enclosed by the male and female toilets, which partially enclose the western side, and additionally, the entire structure is enclosed (currently) with café blinds. This also means that the proposed development is directly contrary to aim (b) of the City's LPS2 and the law. 	<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>Following community consultation, the noise management plan was updated to consider the applicable requirement under the <i>Tobacco Products Control Regulations 2006</i> for shisha to not be smoked in an enclosed public place. Figure 3.1 of the noise management plan demonstrates that the set back and extent of the recommended acoustic barriers have been designed so that they do not enclose more than 50 percent of the patio area and that the premises would be capable of achieving compliance with this requirement if the acoustic barriers were installed. This was achieved by reducing the length of the recommended acoustic barrier on the northern side of the patio to be no more than 75% of the total length of the patio façade.</p> <p>It would be the business operator's responsibility to comply with this applicable legislation, with the responsible authority for monitoring compliance then being the Department of Health. These responsibilities are separate to the consideration of the application under the planning framework. Subsequently the above is not included as recommended reasons for refusal.</p>

Summary of Submissions:

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

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