

9.3	NO. 209 OXFORD STREET (LOT: 4; P:1239), LEEDERVILLE - PROPOSED CHANGE OF USE FROM EATING HOUSE TO RESTAURANT/CAFE AND UNLISTED USE (SHISHA BAR) AND ASSOCIATED ALTERATIONS AND ADDITIONS (EXISTING UNAUTHORISED DEVELOPMENT)
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Ward: South

Attachments:

1. Consultation and Location Plan
2. Development Plans
3. Cover Letter and Justification
4. Acoustic Report
5. Parking Management Plan
6. Waste Management Plan
7. Context Plan
8. Summary of Submissions - Administration's Response
9. Summary of Submissions - Applicant's Response
10. 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, **REFUSES** the application for Change of Use from Eating House to Restaurant/Café and Unlisted Use (Shisha Bar) and Associated Alterations and Additions at No. 209 (Lot: 4; P: 1239) Oxford Street, Leederville, as shown in Attachment 2, for the following reasons:

1. As a consequence of the location of the Unlisted Use (Shisha Bar), within an unenclosed patio at the rear of the subject site, proximity to adjoining residential and other sensitive land uses, operating hours and intensity of the Unlisted Use (Shisha Bar), the development:
 - 1.1 Would be inconsistent with the Objectives of the Regional Centre zone and subsequently Clause 18(4)(c) of the City of Vincent's Local Planning Scheme No. 2 and therefore not permitted. The development would be detrimental to the amenity of the adjoining and adjacent properties because it would result in noise, smoke, vapour and odour emissions associated with the use which would negatively impact adjoining and adjacent properties;
 - 1.2 Would have an undue amenity impact on the adjoining residential and sensitive land uses, and would not be compatible with its setting in accordance with Clause 67(2)(m), (n), (r) and (x) of the *Planning and Development (Local Planning Schemes) Regulations 2015*;
 - 1.3 Would be inconsistent with the Aims of the City of Vincent's Local Planning Scheme No. 2, as the development would not protect and enhance the health, safety and general welfare of the City's inhabitants and the social, environmental and cultural environment, as the proposal has not demonstrated that the noise, smoke, vapour and odour emissions associated with the use could be appropriately mitigated as outlined in reason 1.1 (Clause 67(2)(a) of the *Planning and Development (Local Planning Schemes) Regulations 2015*); and
2. Pursuant to Schedule 2, Part 9, Clause 67(2)(g) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, the would not satisfy the Objectives of the City of Vincent Local Planning Policy: Restricted Premises – Smoking for the following reasons:
 - 2.1 The development would not reduce the number of businesses whose primary purpose is the use of tobacco; and
 - 2.2 The would negatively impact on the amenity of the area, including existing sensitive land uses, by means of associated emission of harmful smoke, vapours and odour.

PURPOSE OF REPORT:

To consider an application for development approval for an unauthorised change of use from Eating House to Restaurant/Café and Unlisted Use (Shisha Bar) at No. 209 Oxford Street, Leederville (subject site).

PROPOSAL:

The application proposes a change of use from Eating House to Restaurant/Café and Unlisted Use (Shisha Bar) along with associated alterations and additions including a patio and acoustic barrier at the rear of the site.

Details of the application include:

- The Shisha Bar operating as 'Shesh Besh Shisha Bar and Restaurant', involving the sale of shisha (a tobacco product) to patrons in a ready-to-smoke form through a water pipe (also known as a 'Hookah'). The shisha would be consumed on-site in a seating area provided for patrons within patios at the rear of the subject site. The business would not sell any other tobacco, nicotine or smoking-related products or their associated accessories.
- Access to the patio area through an access way along the northern boundary of the subject site through an entry foyer off Oxford Street.
- A restaurant use is operating within the existing building on site, fronting Oxford Street. The restaurant has a separate entry off Oxford Street.
- Operating hours of:
 - 4:00pm to 12:00am Monday;
 - 2:00pm to 12:00am Tuesday to Friday; and
 - 12:00pm to 12:00am Saturday and Sunday.
- A maximum of 50 patrons and 3 staff within the rear shisha bar area, and four staff in the restaurant.
- An existing patio addition measuring 3 metres by 3.5 metres at the rear of the subject site located between the existing building and the right of way; and
- Proposed acrylic acoustic barrier additions to the existing fence to the northern and western lot boundaries to a height of 2.4 metres above ground level.

The Shisha Bar use commenced operating in 2019 without development approval and continues to operate. The patio measuring 3 metres by 3.5 metres at the rear of the subject site was constructed between 17 October 2019 and 8 December 2019 without development or building approvals. The patio would be used as an additional seating area for the consumption of shisha. The Shisha Bar use and patio works are unauthorised development.

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, an acoustic report, parking management plan and waste management plan are included as **Attachments 3, 4, 5 and 6** respectively.

BACKGROUND:

Landowner:	Mont Blanc Group Pty Ltd
Applicant:	Hany Ayad
Client:	MKZD Investments Pty Ltd
Date of Application:	6 May 2022
Zoning:	MRS: Urban LPS2: Zone: Regional Centre R Code: N/A
Built Form Area:	Town Centre
Existing Land Use:	Restaurant/Café
Proposed Use Class:	Restaurant/Café and Unlisted Use (Shisha Bar)
Lot Area:	412m ²
Right of Way (ROW):	Yes. Located to the west of the site – 3.0 metres wide, sealed and drained. Privately owned.
Heritage List:	No

Site Context and Zoning

The subject site is zoned Regional Centre under the City's Local Planning Scheme No. 2 (LPS2). The subject site is bounded by Oxford Street to the east, a 3-metre-wide ROW to the west and commercial properties to the north and south. The adjoining properties to the north and south are zoned Regional Centre and contain single and two-storey commercial developments. The subject site and properties to the north, south and west are within the Town Centre built form area under the City's Policy 7.1.1 – Built Form (Built Form Policy).

The property to the north of the subject site is Nos. 213-215 Oxford Street, Leederville. The eastern half of the site to Oxford Street accommodates a two storey office development, with an open-air car park on the rear half of the site that adjoins the Shisha Bar on the subject site. The building accommodates a healthcare provider, an accountant and an office.

The property to the south is Nos. 205-207 Oxford Street, Leederville which contains a one and two storey office and shop selling automotive parts. The building is setback approximately 9.5 metres from Oxford Street, with a boundary wall to the subject site for the remainder of the side lot boundary, including to the Shisha Bar at the rear of the site.

To the west of the ROW are No. 105 Richmond Street and No. 8 Melrose Street that are zoned Residential R60. These lots contain single storey single houses with outdoor living areas at the rear of their respective lots towards the ROW.

On the eastern side of Oxford Street is the North Metropolitan TAFE Leederville Campus. This property is zoned Public Purpose - Technical School.

Outside of this immediate context, the broader area consists of a mix of residential and commercial uses, with commercial uses concentrated along Oxford Street. Land uses in the area within 250 metres of the subject site include:

- Restaurants and cafes;
- Offices for a range of tenants including lawyers, financial advisors and accountants;
- Shops including food and groceries, clothing, health and beauty, dentist and massage premises;
- Cinema (Luna Cinemas);
- Foyer Oxford providing accommodation to homeless youth;
- Residential properties including single houses, grouped dwellings and multiple dwellings in mixed use developments. All properties fronting Muriel and Richmond Streets to the west of Oxford Street are residential homes.

A context plan indicating the uses of properties along Oxford Street between Muriel Street and Vincent Street is included as **Attachment 7**.

Site History

At its 28 April 1995 meeting, Council resolved to approve an Eating House (Restaurant) on the subject site. The development provided five car parking bays on site. The application advised that 50 patrons would be catered for within the restaurant, however the approval was not subject to any conditions of approval restricting the number of patrons.

At its 23 May 2000 meeting, Council resolved to approve Alterations and Additions to an existing Eating House (including an Outdoor Dining Area). The rear area was to be used in conjunction with the existing Eating House (Restaurant) on the site.

The approval was subject to conditions limiting the outdoor dining area to 130 square metres and provision of two bicycle parking rails at the entrance from Oxford Street. The development provided nil car parking bays in lieu of 41 bays required. No cash-in-lieu of car parking was required to be paid. No conditions restricting patron numbers or hours of operation were applied. The outdoor dining area now forms the area of the subject site for the proposed shisha bar.

The restaurant component of the subject site is currently set-up to cater for 54 patrons.

Development Compliance Actions

The table below provides an overview of the development compliance and enforcement actions undertaken by the City for the existing unauthorised development.

Date	Action
July 2020	The City wrote to the operator of the premises in July 2020 to advise that development approval was required for the use of the premises for the sale and consumption of shisha.
November 2021	The City received a complaint about the amenity impact of the use of the property. The City wrote to the business operators requesting that they either cease operations of the Shisha Bar or submit a development application for the unlisted use that is existing and unauthorised.
May 2022	The City received the development application that is the subject of this report. The premises continued to operate during this period.
October 2022	<p>The City adopted the Development Compliance Enforcement Policy (Enforcement Policy). The Enforcement Policy includes consideration of the following factors in allowing an unauthorised development to continue during the development application assessment process:</p> <p><i>“(i) Impact to neighbouring properties, public property or the community; (ii) Consideration of the objectives of the City’s Public Health Plan; and (iii) Reasonable prospect of Development and/or Building Approval being obtained;”.</i></p> <p>The City received a further complaint about the amenity impact of the late operating hours, parking and smoke and odour from the premises.</p> <p>After the lodgement of the development application and by October 2022, the City prepared and advertised Local Planning Policy: Restricted Premises – Smoking (Smoking Policy) and applications for two Shisha Lounges on Beaufort Street had been considered and refused by Council. This informed the reasonable prospect of Development Approval being obtained.</p> <p>In considering the matters (i) to (iii) above in the Enforcement Policy, the City issued a letter requiring the use of the property as a Shisha Bar to cease within two weeks, and for operations to cease by 10:00pm daily. The premises continued to operate.</p>
November 2022	<p>The City commenced prosecution proceedings against the operators, ‘MKZD Investments Pty Ltd’, under Section 218(b) of the <i>Planning and Development Act 2005</i> (P&D Act) for unauthorised development of the use.</p> <p>Lawyers acting on behalf of the applicant requested that the development application be withdrawn.</p> <p>The <i>Planning and Development (Local Planning Scheme) Regulations 2015</i> (Planning Regulations) do not provide a formal mechanism for the applicant to withdraw an application once lodged.</p> <p>The City is proceeding with the determination of the application to consider the appropriateness of the use in this location.</p>

The prosecution and continued unauthorised use of the subject site as a shisha bar does not impact the assessment of the application under the planning framework and does not preclude the City from determining the application.

DETAILS:**Summary Assessment**

The table below summarises the planning assessment of the proposal against the provisions of LPS2, the Built Form Policy and other relevant planning policies. In each instance where the proposal requires the discretion of Council, the relevant planning element is discussed in the Detailed Assessment section following from this table.

Planning Element	Use Permissibility/ Deemed-to-Comply	Requires the Discretion of Council
Land Use		✓
Building Setbacks/Boundary Wall	✓	
Building Height/Storeys	✓	
Roof Form	✓	
Landscaping	✓	
Parking & Access		✓
Bicycle Facilities		✓
Ground Floor Design	✓	
Smoking Policy		✓

Detailed Assessment

The deemed-to-comply assessment of the elements that require the discretion of Council is as follows:

Land Use	
Use Class Permissibility	Proposal
LPS2 – Zoning Table ‘P’ use.	A Shisha Bar is an Unlisted Use. It is not a land use defined in LSP2.
Local Planning Policy: Restricted Premises – Smoking <u>Location Requirements</u> Smoking Premises considered where they are not adjoining specified land uses including Restaurant/Café, Dwelling (Single House) and Office. Smoking Premises not to be on the ground floor. <u>Hours of Operation</u> Smoking Premises limited to the following hours of operation: <ul style="list-style-type: none"> • Monday to Saturday: 7:00am to 10:00pm • Sunday and Public Holidays: 9:00am to 10:00pm 	The Shisha Bar would be on the same site as a Restaurant/Café and would adjoin Dwelling (Single House) and Office land uses. The Shisha Bar would be located on the ground floor. Shisha Bar would have the following hours of operation: <ul style="list-style-type: none"> • Monday: 4:00pm to 12:00am • Tuesday to Friday: 2:00pm to 12:00am • Saturday and Sunday: 12:00pm to 12:00am

Car and Bicycle Parking	
Requirements	Proposal
<p>Policy No. 7.7.1 – Non-Residential Development Parking Requirements (Parking Policy)</p> <p>For unlisted uses, car and bicycle parking arrangements to be determined by the City based on a site-specific Parking Management Plan.</p> <p>For Restaurant/Café use:</p> <ul style="list-style-type: none"> • Nine car parking bays on-site • One short term bicycle bay on-site • Two long term bicycle bays on-site. 	<p>A parking management plan has been submitted, included as Attachment 5.</p> <p>Nil car bays provided on-site.</p> <p>Nil bicycle parking facilities provided on-site.</p>

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

CONSULTATION/ADVERTISING:

Community Consultation

Community consultation was undertaken in accordance with the Planning Regulations for a period of 39 days, from 18 July 2022 to 26 August 2022. The method of advertising included 607 letters being mailed to all owners and occupiers within a 200 metre radius of the subject site as shown in **Attachment 1**, 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 as follows:

- Four submissions in support;
- 23 submissions in objection; and
- One submission that neither objected nor supported the proposal but expressed concerns.

An additional late submission in support of the proposal was received on 3 November 2022.

A summary of all the submissions received and Administration's response is included as **Attachment 8**. The applicant's response is included as **Attachment 9**.

Key comments in support are as follows:

- 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 within a Residential Zone;
- The impacts of noise and smoke can be addressed through conditions of approval;
- 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; and
- The acoustic barrier would reduce the impact of noise on nearby residential properties.

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

- Operating hours, closing times and patron numbers of the use, including associated impacts of noise and anti-social behaviour on the adjoining residential dwellings the premises is not consistent with or compatible with the area;
- Inappropriate location for a Shisha Bar use due to the proximity to residential properties, the Leederville smoke-free town centre and Leederville campus of the North Metropolitan TAFE, and would not be not compatible with the character of a town centre that supports healthy living and quality of life;

- Inadequate on site parking being provided and concerns with increased parking demand along Oxford Street and the surrounding residential streets, including associated impacts of reduced parking availability, noise and safety;
- The use would promote and normalise 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, Oxford Street and the surrounding area, including from impacts of second-hand smoke from the premises;
- The emissions from the business, including noise, odour, smoke and vapour permeates through the nearby neighbourhood and causes nuisance and potential health impacts to adjoining residential properties;
- 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 use would not comply with the relevant tobacco legislation;
- The use would attract anti-social behaviour that would not be consistent with the family-friendly nature of the Leederville Town Centre; and
- The use does not satisfy the objectives of LPS2, the City's *Public Health Plan 2020-2025* and State policies.

Design Review Panel (DRP):

Referred to DRP: No

The application was not referred to the City's DRP. This is because no physical works are proposed to the primary frontage of the premises that faces Oxford Street.

LEGAL/POLICY:

- *Planning and Development Act 2005*;
- [Tobacco Advertising Prohibition Act 1992](#);
- [Tobacco Products Control Act 2006](#);
- *Planning and Development (Local Planning Schemes) Regulations 2015*;
- City of Vincent Local Planning Scheme No. 2;
- Community and Stakeholder Engagement Policy;
- Development Compliance Enforcement Policy;
- Policy No. 7.1.1 – Built Form;
- Policy No. 7.5.21 – Sound Attenuation;
- Policy No. 7.7.1 – Non-Residential Development Parking Requirements;
- Local Planning Policy – Restricted Premises – Smoking;
- Local Planning Policy – Signs and Advertising;
- Leederville Master Plan Built Form Guidelines; 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 Regulations and Part 14 of the P&D Act, 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

In accordance with [Clause 67\(2\)](#) of the Deemed Provisions in the Planning Regulations and in determining a development application, Council is to have due regard to a range of matters to the extent that these are relevant to the development application.

The relevant matters are addressed in the Comments section below.

LPS2

Council is to have due regard to the objectives of the Regional Centre zone under LPS2 in determining the appropriateness of the land use. The objectives of the Regional Centre zone are as follows:

- *To provide a range of services and uses to cater for the local and regional community, including but not limited to specialty shopping, restaurants, cafes and entertainment;*
- *To provide a broad range of employment opportunities to encourage diversity and self-sufficiency within the Centre.*
- *To encourage high quality, pedestrian-friendly, street-orientated development that responds to and enhances the key elements of the Regional 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 provide residential opportunities within the Regional Centre including high density housing, affordable housing, social and special needs housing, tourist accommodation and short term accommodation.*
- *To ensure that the centres are developed with due consideration to State Planning Policy 4.2 – Activity Centres for Perth and Peel.*

Local Planning Policy: Restricted Premises – Smoking

At its Ordinary Meeting on 13 December 2022, Council adopted Local Planning Policy: Restricted Premises – Smoking (Smoking Policy). The Smoking Policy provides guidance on 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, including shisha bars or lounges.

Council is to have due regard for the objectives of the Smoking Policy which are as follows:

- *Reduce the number of businesses whose primary purpose is the use of tobacco and other products to be used for smoking;*
- *Reduce the promotion of tobacco and smoking within the City;*
- *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;*
- *Ensure business and advertising signs do not promote the sale of tobacco and other products to be used for smoking, smoking-related implements or the use of tobacco or smoking on site; and*
- *Ensure businesses that include the sale or use 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.*

Draft Leederville Precinct Structure Plan (Draft LPSP)

At its meeting on 14 September 2021, Council endorsed the Draft LPSP to be forwarded to the Western Australian Planning Commission (WAPC) for determination. At the same meeting Council resolved to proceed with the preparation of Amendment 7 to LPS2, to rezone the subject site and surrounding properties from 'Regional Centre' to 'Centre'. Amendment 7 has been forwarded to the Minister for determination. The subject site would be zoned 'Mixed Use R-AC0' and in the Urban Frame Type C precinct under the Draft LPSP.

The Draft LPSP includes 28 general objectives that apply across the whole structure plan area, as well as the following precinct objectives for the Urban Frame precincts:

- a) *A medium to large-scale residential (Urban Frame Type B) and mixed use area (Urban Frame Types A and C).*
- b) *Carefully designed to avoid impacts on existing neighbours.*
- c) *An attractive and safe entry point to the core of Leederville for pedestrian, cyclists and vehicles.*
- d) *Well-landscaped with lots of shade, green spaces and places to relax.*

The Draft LPSP and Amendment 7 to LPS2 have not been determined by the WAPC or the Minister, respectively. This means that the provisions of the Draft LPSP are to be given regard only in determining a development application.

Leederville Masterplan Built Form Guidelines

The Leederville Masterplan Built Form Guidelines (Masterplan Guidelines) were adopted by Council at its 16 March 2009 Ordinary Meeting and is to be given due regard in the consideration of the application.

The Masterplan Guidelines apply to the eastern portion of the subject site. The eastern portion of the site is within the Oxford Street precinct of the Masterplan Guidelines. The Masterplan Guidelines aim to maintain and extend the continuous activated edge to Oxford Street and increase the intensity of uses and activity on the street.

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 on a premises 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 *Tobacco Products Control Act 2006* requires a retailer's licence to be issued by the Department of Health. Under *Tobacco Products Control Regulations 2006*, shisha cannot be smoked in an enclosed public place. Where a premises does not have a liquor licence, shisha can only be smoked in an outdoor area where food or drink is not being consumed.

A public space is considered 'enclosed' when it has a ceiling or roof and is more than 50 percent enclosed by walls or other vertical structures or coverings.

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

Previous advice from the Tobacco Control Branch of the Department of Health, is that:

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

The business currently has a valid retail tobacco licence. It would be incumbent on the business operator to comply with this legislation. It is the Department of Health's responsibility to monitor and enforce compliance with these requirements.

Unauthorised Development

The planning framework includes the following in relation to unauthorised development:

- Under Clause 60 of the Planning Regulations, a person must not commence or carry out any works or use land unless development approval has been obtained. Pursuant to Clause 218 of the P&D Act a person who undertakes development without development approval commits an offence.
- Schedule 2, Clause 65 of the Planning Regulations provides the ability for a development application where the development has already commenced or carried out to be approved, approved with conditions or refused.

- 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.
- Under the P&D Act, the approval of a development application for unauthorised development does not apply retrospectively. The approval sought would not apply to the period during which the use operated without development approval.
- Should the application be refused, the use would need to cease, and any associated works refused would need to be removed in accordance with Section 214 of the P&D Act. Similarly, if the application were to be approved, the development would be required to comply with any conditions imposed.

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 City's Policy No. 7.1.1 – Built Form. 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:Summary Assessment

In assessing the application against the planning framework, it is recommended for refusal. The following key comments are of relevance:

- The development would negatively impact on the amenity of the area, including existing sensitive land uses. This would be by way of the emission of harmful smoke, vapours and odour, and would not satisfy the objectives of the Regional Centre zone or objectives of the Smoking Policy.
- 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.

Land Use

The proposed Shisha Bar is not specifically referred to in the zoning table of LPS2 and cannot reasonably be determined as falling within the interpretation of one of the listed land uses.

The Shisha Bar is not incidental to the existing approved Eating House (Restaurant) use operating from the building on site to Oxford Street. The Shisha Bar is accessed via a separate entry from Oxford Street and operates independently from the restaurant. There is no requirement for patrons to purchase food from the restaurant. The smoking area cannot be used for the service of food or drink under Clause 107b of the *Tobacco Products Control Act 2006*.

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

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

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

An Unlisted Use is not a prohibited land use and can be approved at the discretion of the local government, in consideration of the objectives of the zone and following community consultation.

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

LPS2 Regional Centre Zone Objectives

The following is relevant to the assessment of the proposed use against the objectives of the Regional Centre Zone objectives:

- The use would operate as a hospitality venue offering products for consumption in areas with seating provided. This would contribute to employment opportunities and the concentration of activity in the town centre as a focus for people, services and leisure. The Shisha Bar would add to the diversity of activities. The existing restaurant fronting Oxford Street would be consistent with nearby commercial activities including shops, restaurants, cafés and bars within the town centre;
- No building modifications are proposed to the Oxford Street elevation of the premises. This would ensure that the subject site maintains an open and interactive relationship that is consistent with the existing and future Oxford Street streetscape; and
- The development, including the patio addition, would not impact on energy efficiency or water conservation principles because it is unenclosed and covers an existing hardstand area. The City does not undertake commercial waste collection. Waste would be collected by a private waste contractor. The 3.4 metres by 3 metres bin store would continue to be located in the south west corner of the site.

Matters to be Considered by Local Government

Clause 67(2) of Schedule 2 (Deemed Provisions) of the Planning Regulations contains matters to be given due regard in determining an application. These matters are detailed below.

Clauses 67(2)(m) and (n) – Impact on Amenity, and Clause 67(2)(r) – Suitability of the Land

Clauses 67(2)(m) and (n) of the Deemed Provisions relate to the compatibility of the development with its setting and the amenity of the locality, including character and social impacts of the development. The objectives of the Smoking Policy also requires consideration of the impact of the use on the amenity of the surrounding area. Clause 67(2)(r) of the Deemed Provisions relates to the suitability of the land for the development taking into account the possible risk to human health or safety.

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 the subject site is reflective of its location at the northern end of the Leederville Town Centre. The surrounding area contains a range of commercial uses along Oxford Street directly adjacent to residential land uses.

The proposal would adversely impact on the amenity of adjacent residential properties and sensitive uses in the area, by way of emissions and activities associated with the Shisha Bar as detailed below.

- Location:
 - Residential Properties: Adjacent residential properties to the east along Melrose Street and Richmond Street are located within a Residential zone. These residential properties adjoin the Regional Centre zoned 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. This is supported by the objectives of LPS2 and provisions of the Built Form Policy. The activities of the proposed Shisha Bar would be located away from the Oxford Street frontage and within a patio to the rear of the subject site, adjacent to residential properties beyond. The patio would not be enclosed, as is required under the Tobacco Regulations. This has implications on noise and smoke being emitted from the site and as addressed further below.
 - Commercial Properties: The adjoining commercial properties directly to the north and south have been designed to incorporate boundary walls and car parking areas adjacent to the Shisha Bar at the rear of the site subject site. This would reduce the impact of the Shisha Bar on these commercial properties.
 - Sensitive Uses: 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. There could be an impact on existing users of the surrounding area which includes activities and public spaces associated with the town centre due to the uncontrolled emissions of smoke, vapours and odour from the subject site.
- Noise: The applicant submitted an acoustic report in support of the proposal, which is included as **Attachment 4**. The acoustic report assesses noise generated from the proposed use and its impact on surrounding properties. The City’s Policy 7.5.21 – Sound Attenuation (Sound Attenuation Policy) requires acoustic reports be prepared by a qualified person, who is a member of the Australian Acoustical Society, the Association of Australasian Acoustical Consultants or Engineers Australia, to the satisfaction of the City. The Acoustic Report has been prepared by Ian Burman of ‘AAP Acoustic & Audio Production’, who, to Administration’s knowledge, is not a member of any of the above industry bodies.
 - The acoustic report concludes that the premises would comply with the *Environmental Protection (Noise) Regulations 1997* (Noise Regulations) subject to the construction of an acoustic barrier and recommended operational measures. This includes a maximum of 50 patrons, no music and the television within the smoking area being set to a level that is inaudible from any point outside of the property.
 - The acoustic report recommends an acoustic barrier be provided to a minimum height of 2.4 metres along the northern and western property boundaries, adjoining the bin store area and must meet minimum density requirements. The development plans do not show the acoustic barrier provided adjoining the bin store and do not indicate the density of materials.

The City’s Public Health team does not accept that the conclusions and recommendations of the acoustic report can be relied upon. This is because the acoustic report has been prepared by a person who is not sufficiently qualified and in the context of the subject site being located as near as 3 metres away across the ROW from noise-sensitive residential land uses.

- Emissions: The applicant has advised that the Tobacco Licence issued by the Department of Health demonstrates that the business complies with air quality and ventilation standards. They have not provided technical information to support the claims about the air quality in and around the subject site nor any details of control measures that mitigate or filter these emissions. Under the tobacco products legislation, the consumption of shisha on-site is required to occur within an unenclosed outdoor area. This means that there is limited ability to control, filter or manage emissions from the use. This would result in smoke, vapours and odour being emitted from the premises. The emission of smoke and vapours can be harmful to health, and the emission of odours can be a nuisance. The proposal has not demonstrated that the use can operate in a manner where emissions would be appropriately managed, and it would adversely impact the amenity of nearby properties. The land is unsuitable for Shisha Bar located to the rear of the site, due to the location of the site and health implications of the uncontrolled emission of smoke and vapours in close proximity to residential land uses and other sensitive uses in the area.
- Venue Management: The applicant has not provided operational details to demonstrate that the venue would not adversely impact the amenity of the adjoining residential properties. The Smoking Policy requires the submission of a detailed management plan for the operation of the venue. The applicant's venue management controls are included as **Attachment 3**. The venue management information does not provide details of management procedures to address and minimise the impacts from activities occurring on site and patrons of the business such as noise, odour prevention, anti-social behaviour or a complaints management procedure. These measures are necessary given the subject site's proximity to adjacent residential land uses and the unenclosed nature of a Shisha Bar.

Clause 67(2)(a) – Aims of LPS2

LPS2 contains aims that are applicable to the entire Scheme area. The Shisha Bar as considered against the aims of LPS2 is as follows:

- Diversity: The proposal would be consistent with the aim to cater for a diversity of interests and lifestyles. This is by facilitating a land use that would contribute towards a greater range of businesses and economic opportunities. The smoking of shisha tobacco products in a waterpipe or 'hookah' is a tradition in the Middle East, India and Africa. The use would assist in catering for a diversity of lifestyles and cultures within the City.
- Amenity, Health and Welfare: The use would be inconsistent with the aim to protect and enhance the health and welfare of the City's inhabitants, specifically in relation to the adverse impact on the amenity of the adjoining properties and particularly sensitive residential uses. There is a public health impact related to tobacco use. 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. 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.

Clause 67(2)(g) – Local Planning Policies (Smoking Policy)

A Shisha Bar would be classified as a 'Smoking Premises' under the Smoking Policy and subject to the provisions of the Policy.

As set out in the Detailed Assessment section above, the proposed Shisha Bar does not comply with locational requirements or operating hours prescribed in the Smoking Policy.

The Smoking Policy also requires the submission of a detailed management plan that addresses noise, patron management, car parking, operation hours, complaints management, waste management and odour and air quality management. The applicant's management plan does not include complaints management procedures, ongoing waste collection and disposal details, or any measures to control or monitor air quality or odour from the premises.

The proposed use does not satisfy the following objectives of the Smoking Policy for the following reasons:

- Primary Purpose of the Business: A greater proportion of the publicly accessible area of the subject site would be dedicated to the Shisha Bar use rather than the restaurant/café use. The Shisha Bar would also operate independently from the café/restaurant and the smoking of tobacco would be its primary purpose. The proposal would not reduce the number of businesses whose primary purpose is the use of tobacco.

- Amenity Impact:
 - Location: The location of the proposed use would negatively impact on the amenity of the area. The applicant has not provided evidence or measures for the control and management of the emission of harmful smoke and/or vapours or odour that would result from the use of the rear of the site as a Shisha Bar.
 - Hours of Operation: Though the site is zoned Regional Centre, it is immediately adjacent to the Residential zone. It has not been adequately demonstrated that the Shisha Bar 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.
 - Waste: An existing bin store is located to the rear of the site, next to the ROW and that is enclosed by timber and sheet-metal fencing and gates. The bin store location is consistent with the location of the bin store shown on the plans approved by Council for the site in 2000, except its size has been reduced from 18.6 square metres to 10.2 square metres. The location of the bin store means that it is located 3 metres to the east of the single house at No. 105 Richmond Street that has an outdoor living area that faces the ROW. The waste management plan submitted and included as **Attachment 6** does not provide details as to how the bin store would accommodate the waste generated on-site, its storage and collection without impact on the amenity of the locality. The City received and verified a complaint in October 2020 that residential bins of a property on Richmond Street were being used for waste from the subject site.

The proposed use would satisfy the following objective of the Smoking Policy:

- Street Activation: The proposed use would be located to the rear of the subject site, with a narrow entrance from Oxford Street. Smoking implements and/or tobacco products would not be visible from Oxford Street as is required under the tobacco products legislation. The predominant use fronting Oxford Street would be the restaurant/café which would maintain an active and engaging street frontage consistent with the aims of the Built Form Policy and Regional Centre zone objectives.

Clauses 67(2)(c) and (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 Unlisted Use. These include:

- The Sustainable Health Review 2019 (SHR): The SHR provides 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 HPSF sets 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 SPHP supports 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 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 use would allow for the consumption of shisha on-site, 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 has delivered smoke-free town centres, including the Leederville Town Centre. 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 on site.

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

The sale and consumption of shisha is not illegal. While smoking has been demonstrated to have a health impact on the community, LPS2 does not prohibit businesses located on private property solely on the basis that they involve the retail sale or consumption of tobacco products.

The planning framework including the Smoking Policy reflect the need to protect the amenity of nearby sensitive land uses from incompatible land uses, such as smoking premises. The proposed use would have an impact on the amenity of these adjoining land uses through the emission of smoke, vapours and odour.

In the broader area, there are existing uses in the locality that operate late at night involving the sale and service alcohol. This includes Liquor Barons at No. 256 Oxford Street and Roberts on Oxford at No. 173 Oxford Street. These uses influence the existing amenity of the broader area, and would reasonably have an impact on the community. This is reflective of the amenity associated with a 'high street' environment located in a Regional Centre zone. The proposed use would not have a broader community impact than that which currently exists in the locality considering these other uses.

Clause 67(2)(y) – Submissions Received

At the conclusion of the community consultation period, 28 submissions were received. A further late submission was received in November 2022. These submissions included five submissions in support, 23 objections and one submission that neither objected nor supported the proposal but expressed concerns.

A summary of the submissions received is included as **Attachment 8**, 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 amenity impact of the use.

Car and Bicycle Parking

The applicant has stated that there would be a maximum of 50 patrons and three staff within the rear Shisha Bar and additional patrons and four staff within the restaurant fronting Oxford Street.

The applicant has not nominated a maximum capacity for the restaurant use. In accordance with the National Construction Code a maximum of 60 people could be accommodated within the restaurant space. The venue is currently fit-out with tables and chairs to cater for 54 patrons.

The City's Policy No. 7.7.1 – Non-Residential Development Parking Requirements (Parking Policy) standard for a 60-person restaurant in the Town Centre built form area is nine car parking bays, one short-term and three long-term bicycle bays.

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

The Draft LPSP permits nil car parking bays be provided, up to a maximum of two car parking bays for the entire site. Two bicycle parking bays for staff and visitors are to be provided under the Draft LPSP.

The application proposes nil car parking bays and bicycle facilities to be provided on-site.

During the consultation period the City received submissions raising concerns that there would be inadequate on-site car parking and associated on-street parking impacts on Oxford, Richmond and Melrose Streets.

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

- Venue Patron Numbers: The proposal would result in a lesser number of patrons than that which would currently be permitted for the existing approved restaurant/café and its outdoor dining area. The approved plans for the restaurant/café showed 62 seats in the outdoor area. Under the National Construction Code, an outdoor dining area of 130 square metres in area would be capable of accommodating up to 130 people. The subject site is approved for use as a restaurant/café providing nil car parking bays on-site. The proposed development would not result in any additional floor area or generate the need for additional car parking than that previously approved;
- Approved Shortfall and Cash-In-Lieu: The City has previously approved a 41-bay car parking shortfall for the subject site, as calculated under the applicable framework in 2000. In accordance with Clause 6 of the Parking Policy, any cash-in-lieu would be calculated based on the number of bays shortfall the City has previously approved. As the City has previously approved a 41-bay car parking shortfall, no cash-in-lieu of car parking would be applicable to this proposal;
- Location: The subject site is located along Oxford Street and is within the Leederville Town Centre. This is a high amenity area connected with pedestrian paths, public transport and with the Perth bicycle network through dedicated on-street bicycle lanes. The subject site is approximately 580 metres from the Leederville train station and adjoins the high frequency No. 15 bus route that connects the Perth CBD and Glendalough, via Leederville and Mount Hawthorn. The accessibility of these services would support travel to and from the subject site by means other than private car;
- Surrounding Context: The nature of the 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 within the area;
- Public Car Parking: The Parking Policy requires consideration of the availability of on-street and public car parks. 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:
 - On-Street Parking:
 - Melrose Street contains a total of 34 car parking bays. 12 of these bays are 1P time restricted, and 22 are 2P restricted from 8:00 am to 5:30pm on Monday to Friday and 8:00am to 12:00pm on Saturday. The City's car parking survey data shows utilisation rates of 85 percent or above on every day between 6:00pm and 8:00pm. Use was highest on Friday between 9:00am and 11:00am at 91 percent. On Saturday the lowest utilisation was between 9:00am and 11:00am at 74 percent. The City's car parking data indicates that there is minimal car parking capacity within Melrose Street.
 - Richmond Street contains 150 car parking bays between Loftus Street and the western end of Richmond Street. To the west of Oxford Street, Richmond Street is characterised by residential dwellings including single houses, grouped and multiple dwellings. Parking is 2P restricted 8:00am to 5:30PM weekdays. To the east of Oxford Street, Richmond Street is characterised by residential single houses to its north, and the TAFE and Loftus Centre car park to the south. Car bays on the northern side of Richmond Street are subject to 1/4P and 1P parking restrictions between 8:00am to 5:30pm Monday to Friday and 8:00am to 12:00pm on Saturdays. Bays to the south are subject to ticket parking restrictions between 8:00am and 7:00pm daily. Utilisation peaked on Friday between 6:00pm and 8:00pm at 43 percent. The City's car parking data does not differentiate between the western and eastern portions of Richmond Street. However, data is available for P Ticket parking bays to the east of Oxford Street. Utilisation of the ticketed bays peaked at 27 percent on Saturday between 12:00pm and 2:00pm. Utilisation of the 2P bays peaked at 64 percent on Wednesday and Saturday between 9:00am and 11:00am and Saturday between 12:00pm and 2:00pm. This indicates that there is on-street car parking capacity within the ticketed bays on Richmond Street, to the east of Oxford Street.

- The City's car parking survey provides data for Oxford Street between Leederville Parade and Bourke Street. Bays are subject to a variety of restrictions, including 1/4P, P 10min, 1P and P Ticket. 76 percent of the bays are 1P or P Ticket bays. The hospitality nature of the proposed use means that it is unlikely that 1/4P or P 10min bays would be used. Of the 1P and P Ticket bays, use peaked at 87 percent on Friday between 9:00am and 11:00am. Use was lowest on Wednesday morning between 9:00am and 11:00am at 48 percent. Friday was the busiest day, with 1P and P Ticket bays averaging 79 percent use. The data indicates that there is some on-street car parking capacity along Oxford Street. However, since the collection of the car parking data in 2018 there have been developments on and around Oxford Street that may have increased on-street car bay use. The introduction of more parklets has also removed on-street car parking bays. The result is that there is likely a reduced capacity of on-street car parking along Oxford Street.
- Off-Street Parking: The subject site is approximately 330 metres from the Loftus Centre Car Park and contains 385 Parking Bays. These bays are free with 1.5P and 3P time limited on weekdays and 5P time limited on weekends. The City's parking survey data identified the busiest period as being Wednesday between 9:00am and 11:00am when the car park was at 62 percent capacity. The period of lowest usage was Saturday evenings between 4:00pm and 6:00pm and 6:00pm and 8:00pm with 13 percent usage;
- Bicycle Parking: Within 50 metres of the subject site there are 11 bicycle parking facilities in the Oxford Street verge. Although the City does not have data to confirm the utilisation rates of these facilities, the facilities would provide for conveniently located bicycle spaces for use by patrons and would support cycling as a convenient alternative to driving to the venue. It is noted that a condition of the previous approval for the restaurant/café was for two bicycle facilities be provided in close proximity to the entrance to the premises. The City has no record of this being provided. There is adequate area in the adjacent Oxford Street verge for additional bicycle facilities to be provided.

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

Works

The application includes works comprising of an existing patio addition at the rear of the subject site adjoining two existing patios as well as acoustic barriers to the northern and western elevation of the subject site.

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 the other alfresco structures added to the rear of the subject site.

As an unenclosed structure supported by slim posts it also contributes limited building bulk and it would be located over an existing hardstand area.

Acoustic Barrier

The proposed acoustic barrier as shown on the development plans would be treated as a boundary wall for the purposes of assessment under the Built Form Policy. It satisfies all relevant acceptable outcomes of the Built Form Policy relating to length and height.

The proposed acoustic barrier would be 2.4 metres high in accordance with the recommendations of the Acoustic Report. The development plans show this to be provided to only portions of the northern and western lot boundaries. This is not consistent with the recommendations in the Acoustic Report which show the screen to be provided to the entirety of the northern and western elevations of the patios.

Notwithstanding that Administration is of the view that the submitted Acoustic Report cannot be relied upon, if the acoustic barrier were extended in length to be consistent with the recommendations of the Acoustic Report, it would meet the Built Form Policy acceptable outcomes and element objectives.

The patio addition and acoustic barrier works are capable of approval in isolation, and do not form part of the reasons for refusal.

Given the unauthorised nature of the use which has continued to operate and is subject to prosecution proceedings, the entirety of the application is recommended for refusal.

**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

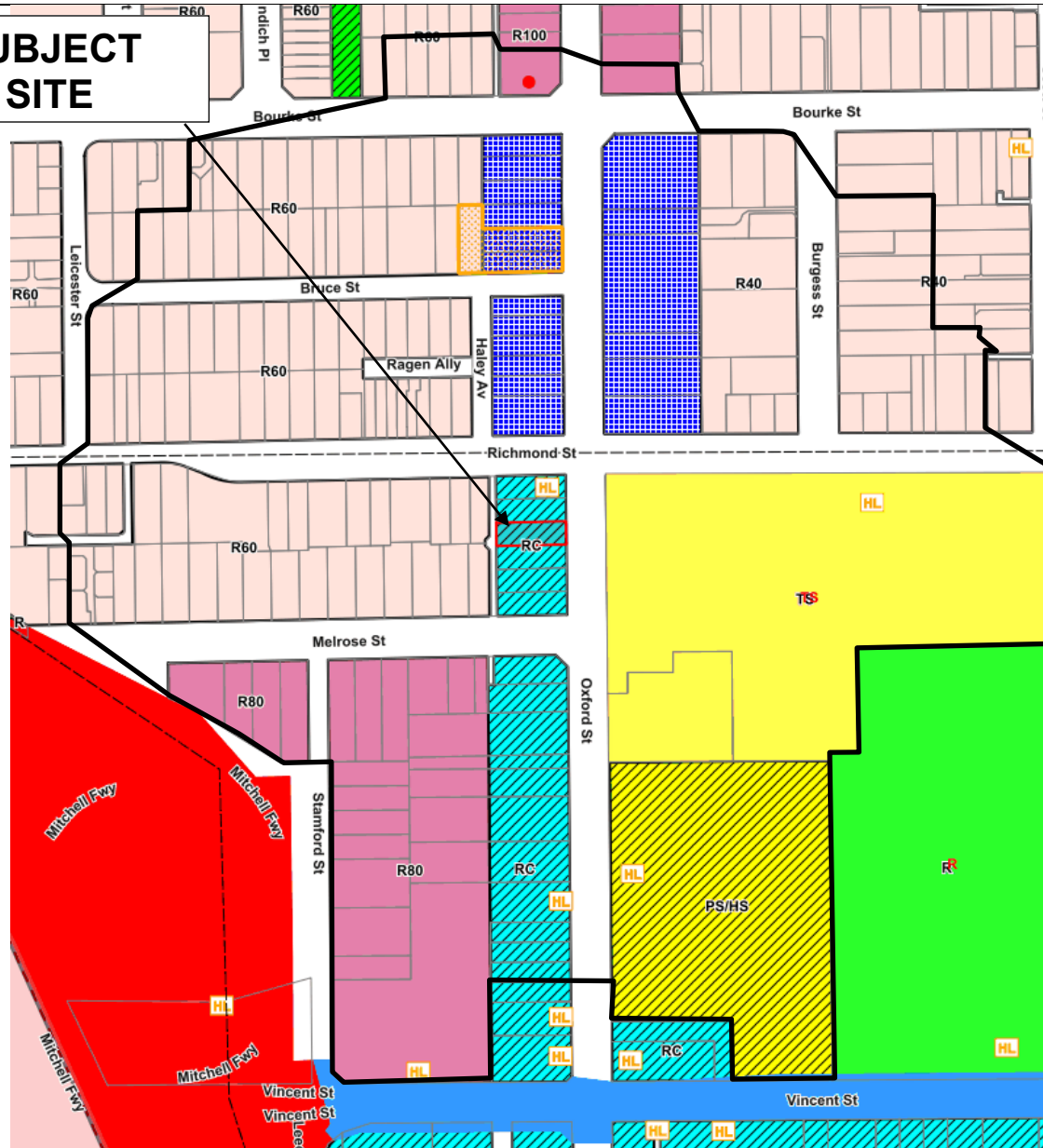
ADDITIONAL USE

- ADDITIONAL USE**

ADDITIONAL INFORMATION & RESIDENTIAL PLANNING CODES

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

SUBJECT SITE



CITY OF VINCENT

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Consultation and Location Map
No. 209 Oxford Street, Leederville

Extent of Consultation





CITY OF VINCENT

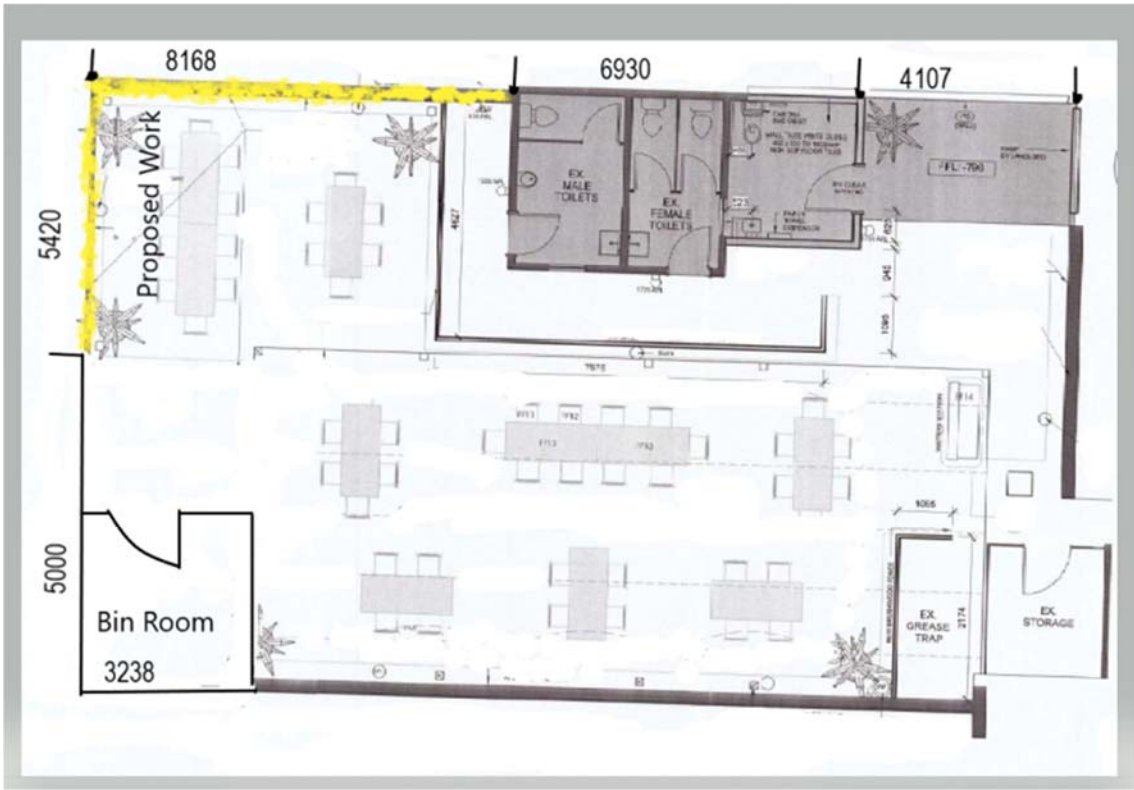
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No. 209 Oxford Street, Leederville

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Floor Plan Shisha Lounge

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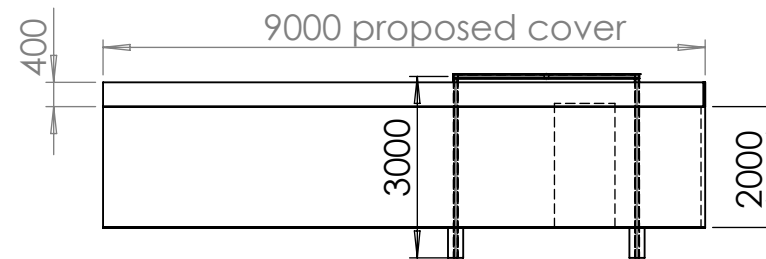
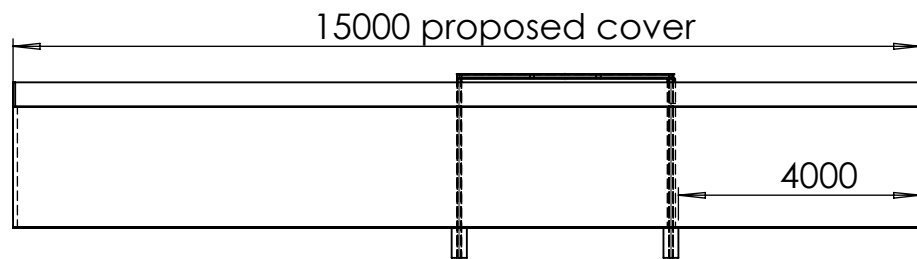
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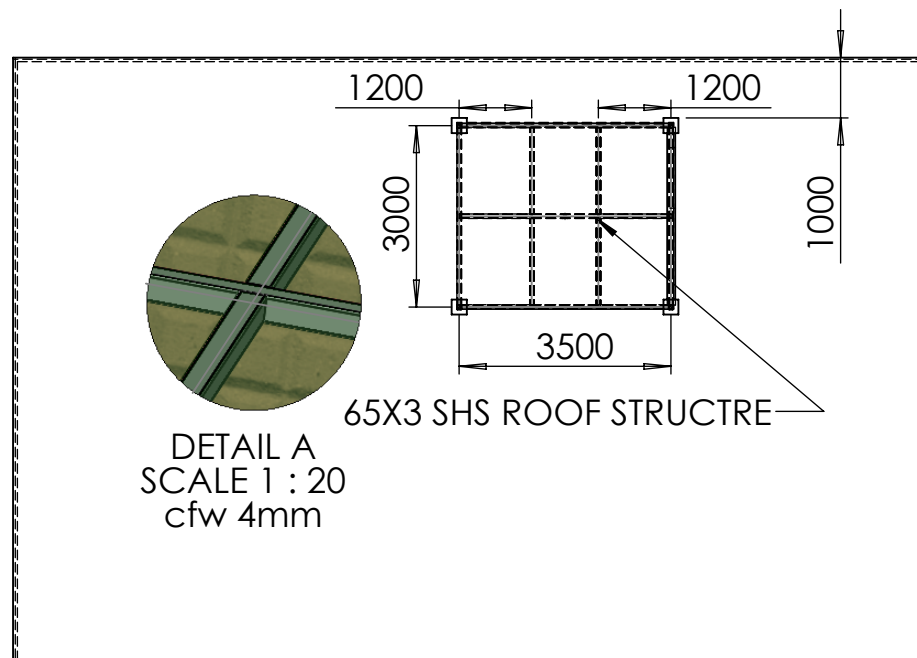
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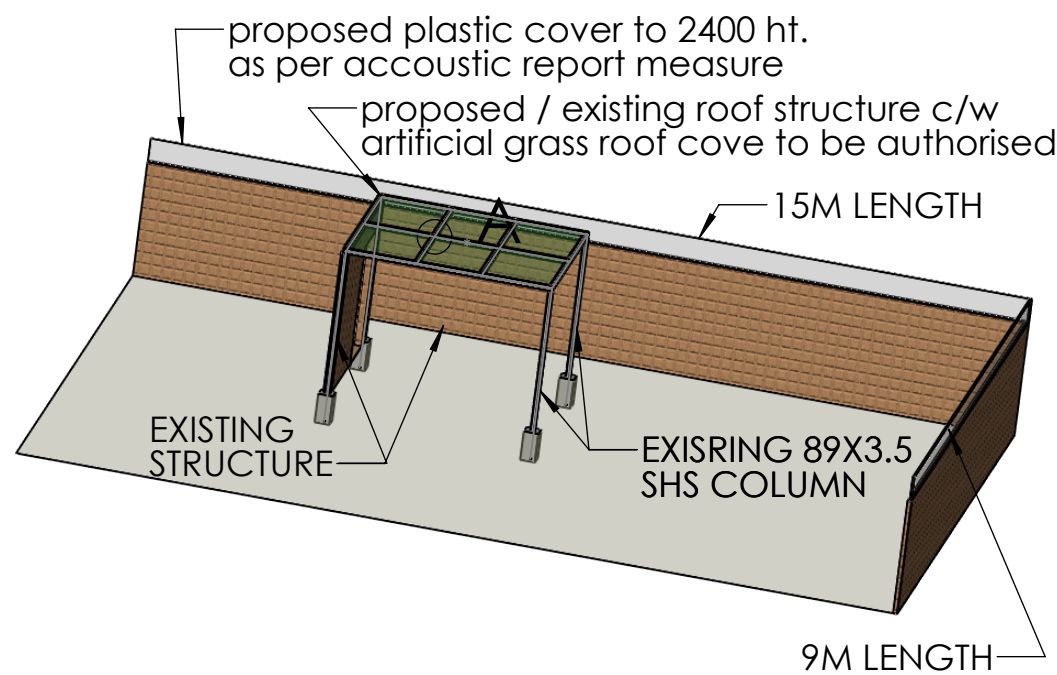
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ZAID / MAHMOUD REVISION A

Address:
209 OXFORD STREET, LEEDERVILLE

	NAME	SIGNATURE	DATE
DRAWN			
CHK'D			
APPV'D			
MFG			
QA			

TITLE:
SHESHA BAR/ SMOOKING AREA
AUTHORIZATION FOR
SHESH-BESH RESTAURANT

DWG NO. HDC - 050422 - 01 A4

UNLESS OTHERWISE SPECIFIED:
DIMENSIONS ARE IN MILLIMETERS
SURFACE FINISH:
TOLERANCES:
WEIGHT:

SCALE:1:200 SHEET 1 OF 2

- 1- 300X3500 ROOF COVER TO BE AUTHORISED
- 2- EXTENDED FENCING PREMETER HEIGHT AS REQUIRED BY ACC. REPORT

CITY OF VINCENT
RECEIVED
6 May 2022

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HA-DEC GROUP

Design & Engineering Consultants

Shesh Besh Shisha Bar and Restaurant

Shesh Besh Shisha Bar and Restaurant located at 209 Oxford street, Leederville, WA, 6007 is a restaurant and shisha bar which also has an outdoor shisha smoking area recently in operation for its patrons. A maximum of 50 patrons is allowed within the shisha bar smoking area at any given time, and hookah smoking devices are utilised together with the sale of beverages for patrons within the establishment. There are no live/pre-recorded music plays on the venue. A 1x flat screen TV is situated on the eastern facing wall of the outdoor area.

Operational Hours		No: of Staffs	Maximum No: of customers at one time
Monday	4pm – 12am	3 (shisha bar) 4(restaurant)	50
Tuesday to Friday	2pm – 12am		
Saturday and Sunday	12pm – 12am		

Any anti-social behaviour inside the venue will be initially managed by the management like approach the patrons and tell them to stop and leave, if they don't comply then the management will seek assistance from WAPOL (000) or city's Ranger service (92736000 or 92736061-after hours).

Proposed Work

Installation of plastic barrier as per acoustic report, Plastic barriers are ready made and hence no cutting are required to perform onsite. The readymade

plastic barrier will be installed directly and hence no loud noise or other hazards will be occurred.

The proposed work does not affect the business operation. The intended work will be performed and finishes before business hour of the business.

The use of plastic barriers as an extension to the walls will actually reduce the noise levels from reaching outside the venue, the business will operate alongside with this use.

Equipment's Used- No heavy machineries or equipment's are used. Just required cordless screwdrivers.

Hours of work- 1 Day

Number labours required to perform work- 2

Car Parking

There is no allocated parking for the customers and they need to park on street. Contractors assigned for the job will park their vehicle on street and will perform their work. This vehicle won't cause any sort of parking or traffic issues on the street. Kindly see attached parking management plan.

Waste Management Plan

No wastes are occurred during the installation of the barriers -Attached PDF

Scheme No 2

Part3 Clause 16- Zones and the Use of Land

Regional Centre Zone Objective	Proposed Business Assessment
To provide a range of services and uses to cater for the local and regional community, including but not limited to specialty shopping, restaurants, cafes and entertainment.	The proposed business presents a combined services of dining in restaurant and a separate access for shisha lounge that perfectly integrates with the developing nature of the community. A hub of and social gathering that provides entertainment for local community.
To provide a broad range of employment opportunities to encourage diversity and self-sufficiency within the centre.	Our business provides employment opportunities to over 20 staff from various traditions and on different employment basis. The diversity within our employment platform is well presented and considered to be a value add to our business that enhances the interaction with the community
To encourage high quality pedestrian-friendly street orientated development that responds to and enhances the key element of the Regional Centre, and to develop areas for public interaction.	The glass frontage of our restaurant ensures perfect interaction and connectivity with the community and the outside pedestrians. The warm back ground music at the restaurant and the state of the art internal fit out provisions have become a source of attraction to pedestrians. Our business ensures design tonality with the businesses in Leederville central and hence places the regional area in different position that meets the community's expectations.
To ensure level of activity, accessibility and diversity of uses and density to sustain public transport and enable casual surveillance of public space.	The location of our business and the close proximity to bus stops and train station encourage the customers to use means of public transport services, which in turn sustain TransPerth WA. Please note that wide spectrum of our customers and staff benefiting from the bus stop that is literally in front of our restaurant entrance. In addition, the unique glass frontage and the location of our restaurant facilitate an uninterrupted overlook in and to the neighbouring areas.
To provide residential opportunities within the Regional Centre including high density housing affordable housing, social and special needs housing, tourist accommodation and short term accommodation.	Our business employs staff from various background, ages and working permit conditions which makes it easier for them to reside within the area and therefore enhances the residential and accommodation opportunities .
To ensure that the centres are developed with due consideration to State Planning Policy 4.2 Activity Centres for Perth and Peel.	In light of the above responses, it is evident that our business is perfectly in keeping with the referred to Policy. Its provisions communicate with the Policy's objectives

Policy No 7.7.1 Non-residential development parking requirements

We note your comment that the City's Parking Policy doesn't include a specified car parking standard for an unlisted land use. The usual capacity of our business at any one time i.e 50 customers and the trading hours of both the restaurant and the shisha lounge qualify the dependency on the City's car parking provisions that are spread throughout the area without violating the private parking allowance of neighbouring premises. In addition, the close proximity of and the tendency of our customers to use public transport provisions have added further assurance that our business is in fact operate without the need for dedicated car parking bays. We have implemented certain trading hours for both functions (restaurant and shisha lounge) to properly manage the car parking requirements. Our trading hours that commence after 5 Pm avoid the busy hours of neighbouring businesses which has been evident throughout the previous 3 years.

It is unfortunate that the physical location of our property preclude us from accommodating an easy accessible car parking bays and therefore request to consider our case based on the above circumstances.

Other Information

- **Waste Management Plan**

Please be informed that the waste management plan was developed by our service provider (JJ Richards and Sons) trading as JJ's Waste and Recycling. We have conveyed your requirements to them and the below clarifications were received from their end:-

Description	Clarification
waste generation volumes for three waste streams	Please refer to the attached Service Calendar provided by JJ's Waste and Recycling
number and volume of bins	Please refer to the attached Service Calendar provided by JJ's Waste and Recycling
bin store location and structural details, including wash down amenity	We have 1x 1100 litre waste bin that is allocated at a designated lockable area easily accessible from the rear lane so it can be emptied by JJ's Waste and Recycling on the specified frequency i.e 3 times per week and washed by our staff
waste collection frequency	Please refer to the attached Service Calendar provided by JJ's Waste and Recycling
collection point	From the designated area mentioned above
bin presentation point	Not applicable as JJ's Waste and Recycling are appointed as our incumbent service provider

- **Max number of customers at any one time**

We hereby confirm that the maximum number of customers at any one time that we have so far entertained is 50 customers as mentioned in the acoustic report. The reference to 80 customers is a type error

-

- **Licences and permits**

Please see attached licence to sell tobacco product/retailer sale issued by WA Government – Department of Health/ Tobacco Control Branch.

Consultation Comments

Please see attached table confirming our response to all comments as required.



Acoustics & Audio Production
ABN: 42 797 265 577
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acoustics.ap@gmail.com
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Ref: HADE001.2022
23rd February 2022

ACOUSTIC REPORT

SHESH BESH SISHA BAR & RESTAURANT

209 OXFORD STREET, LEEDERVILLE WA 6007

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INTRODUCTION

Acoustics & Audio Production has been engaged to undertake an acoustic assessment of the *Shesh Besh Shisha Bar & Restaurant* currently in operation at 209 Oxford Street, LEEDERVILLE WA 6007.

It is understood approval is being sought from the City of Vincent to operate the outdoor smoking area under a maximum capacity of 50 patrons at any one time, therefore this assessment has been compiled to determine if the site can achieve compliance with the Assigned Outdoor Noise Level. Also, if determined to be required, provide recommendations with the aim of achieving compliance with the assigned outdoor noise during the entirety of the site's operations.

This assessment considers the following:

- Noise associated with:
 - Patron noise within the proposed site under maximum occupancy; and
 - Mechanical Services.
- Existing ambient noise levels received at the nearest noise sensitive receivers identified.
- The City of Vincent's Sound Attenuation Policy 7.5.21.
- Environmental Protection (Noise) Regulations 1997 assessment criterion.

This report contains the results of onsite noise levels measured at the boundary of the noise sensitive receivers closest to site under a 'worst-case' scenario of 50 patrons conversing within the outdoor shisha smoking area during the night-time period of after 10pm, including noise associated with mechanical services, all occurring simultaneously. Noise monitoring was carried out during the hours of 10:15pm to 10:45pm, Friday 18th February 2022 which was considered by the owners as the busiest time for the establishment when it is under full capacity in the outdoor smoking area.

SUMMARY

The objective of this assessment was to establish noise levels attributable to *Shesh Besh Shisha Bar & Restaurant*, particularly patron conversational noise and assess the results against the applicable regulatory criteria. For this assessment L_{A10} criteria has been used for the purpose of this study as it represents the most practical criterion for this business.

Based on our onsite noise survey, noise levels under a 'worst case scenario' have been found to exceed the most stringent assigned outdoor level (night-time) by up to +10dB(A). This can be compared to the regulatory criteria where noise emissions are not to exceed L_{A10} 44 dB(A) at the nearest residential premises located approximately 4m to the West of the business and L_{A10} 60 dB(A) at the surrounding commercially zoned premises.

Therefore, in order achieve compliance to the most stringent night-time assigned outdoor level it is recommended to extend the barrier wall to the West and North of the business to a minimum height of 2.4m or, if feasible, to the ceiling height of the establishment.

SITE DESCRIPTION

Shesh Besh Shisha Bar & Restaurant (see figure 1 below) is a restaurant and shisha bar which also has an outdoor shisha smoking area recently in operation for its patrons. The owner has noted a maximum of 50 patrons is allowed within the shisha bar smoking area at any given time, and hookah smoking devices are utilised together with the sale of beverages for patrons within the establishment. Live/Pre-Recorded music does not occur within this area. A 1x flat screen TV is situated on the Eastern facing wall of the outdoor area; however, it is noted that the sound level at which the TV is set is inaudible at any point outside of the establishment.

The busiest time for the outdoor smoking area has been found to be between 9pm and 12am on Friday and Saturday night whereas at other times of the day/evening throughout the establishment's operation patron numbers in this area is significantly lower. The operating hours of the establishment is as follows:

Operating Hours

Day	Time Period
Monday	4pm – 12am
Tuesday to Friday	2pm – 12am
Saturday and Sunday	12pm – 12am



*Figure 1: Shesh Besh Shisha Bar & Restaurant
(Source: Google StreetView)*

The layout of outdoor smoking area is shown in Figures 2.1 and 2.2 below.



Figure 2.1: Outdoor smoking area of Shesh Besh Shisha Bar & Restaurant



Figure 2.2: Outdoor smoking area of Shesh Besh Shisha Bar & Restaurant

During our onsite testing we noted that the barrier wall screening the outdoor smoking area at the rear of the property (as shown in Figures 3.1 and 3.2 below) is of comparable height to the thin wooden boundary fencing of the nearest noise sensitive receiver approximately 4m West of the site. Wooden slats which are spaced with an approximate gap of 1inch between slats are situated on top of the brick boundary wall at a height of up to approximately 1 to 1.5 feet above the brickwork; however, they are considered to have little effect on screening sound emitting from the premises. We note that conversational noise was the primary noise source from the establishment was passing over the screening boundary wall and through the wooden slats at the rear Western and Northern side of the establishment.



Figure 3.1: Rear boundary of Shesh Besh Shisha Bar & Restaurant
(Source: Google StreetView)



Figure 3.2: Rear boundary of Shesh Besh Shisha Bar & Restaurant
(Source: Google StreetView)

ACOUSTIC ENVIRONMENT

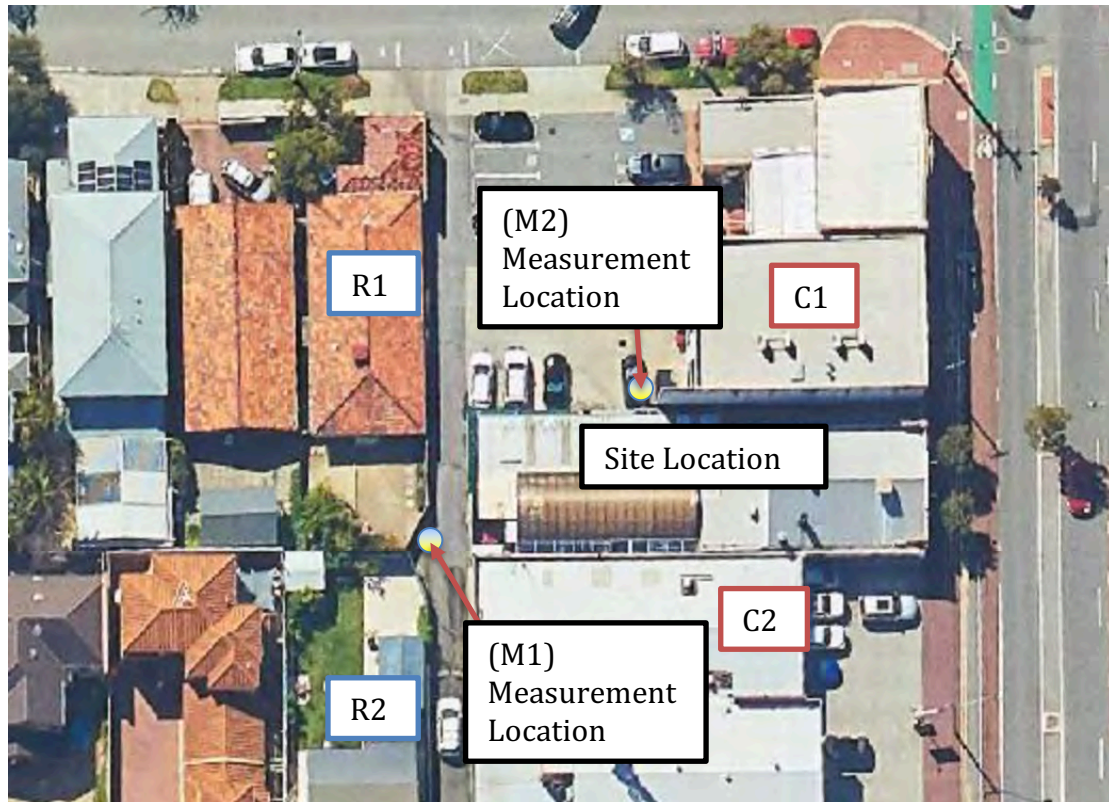
The *Shesh Besh Shisha Bar & Restaurant* is located at 209 Oxford Street, LEEDERVILLE WA 6007, with commercial properties directly adjacent to the site, residential properties to the rear of the establishment at a boundary distance of approximately 4 meters from the site with North Metropolitan TAFE situated across the road to the East. The site is identified as being located within the LPS2 Zone of 'Regional Centre' with the noise sensitive residential properties to the West identified as being situated in the LPS2 Zone of R60 'Residential'. Zoning was confirmed through the City of Vincent Intra-maps, Public Planning Scheme.

The secondary road within the 100m radius is identified as Oxford Street, with 5 major roads situated within 450m from the noise sensitive receivers. The major roads are identified as the following:

- Mitchell Freeway;
- Vincent Street;
- Loftus Street; and
- Newcastle Street

RECEIVERS & NOISE MONITORING PROCEDURES

The locations below have been chosen as representative of the surrounding nearest noise receivers. Refer to Figure 4 below for site location.



*Figure 4: Noise Sensitive Receiver Locations & Proposed Site Location.
(Source: City of Vincent - Intramaps)*

FIGURE 1: LEGEND

1. (R1) 105 Richmond Street, LEEDERVILLE;
2. (R2) 8 Melrose Street, LEEDERVILLE;
3. (C1) 213 – 215 Oxford Street, LEEDERVILLE;
4. (C2) 205 – 207 Oxford Street, LEEDERVILLE; and
5. (M1) Onsite Noise Measurement Location

EQUIPMENT

The following equipment was used to record existing ambient noise levels:

- Cirrus CR171 Type 1 Sound Level Meter
- Cirrus CR515 Acoustic Calibrator

Both the Cirrus Sound Level Meter and Acoustical Calibrator hold current NATA Laboratory Certification and had been field calibrated before and after the noise-monitoring period. No significant drift from the reference signal was recorded. Laboratory certificates may be provided upon request.

NOISE MONITORING

A Cirrus CR171 Type 1 Sound Level Meter was used at the boundary of the noise sensitive premises identified in figure 1. The purpose of this was to measure the noise levels associated with the *Shesh Besh Shisha Bar & Restaurant* outdoor smoking area under a worst-case scenario of maximum capacity and mechanical plant in full operation being received at the nearest noise sensitive locations identified within this report.

The monitor was located in a free field position, with the microphone approximately 1.4m above the ground surface level. Noise monitoring was conducted generally in accordance with Australian Standard AS1055:1997 Acoustics - Description and measurement of environmental noise.

MEASURED NOISE LEVELS

Table 1 below, shows the measured noise levels from our onsite attended noise survey conducted at the closest boundary of the nearest noise sensitive receiver. Noise monitoring was conducted after 10pm on Friday night indicative of the common operating hours with which the site will be under full capacity within the outdoor smoking area and is considered as a 'worst-case' scenario for noise emissions expected from the site.

Table 1 – Measured Ambient Noise Levels dB(A) the nearest noise sensitive receiver location

Date/Time	Location	Measured Level (dB)				
		L _{Aeq}	L _{A10}	L _{A1}	L _{A(max)}	L _{A90}
Friday 18 th Feb 2022	M1	52.3	53.9	57.2	66.4	49.6
10:15pm to 10:45pm	M2	50.7	52.1	54.9	66.2	48.7

METEOROLOGICAL DATA

The following meteorological conditions were present during the onsite monitoring conducted on the night of Friday, 18th February 2022.

Table 2 – Meteorological Conditions 18th February 2022

Parameter	Result
Temperature (°C)	21°C
Wind Speed (m/s)	5m/s
Wind Direction	South South West
Humidity (%)	31%

NOISE CRITERIA

This assessment is based on the requirements stipulated in the Environmental Protection (Noise) Regulations 1997 in order to ensure that the nearest noise sensitive receivers are protected from unreasonable noise associated with proposed development.

ENVIRONMENTAL PROTECTION (NOISE) REGULATIONS 1997

The allowable noise levels at the surrounding noise sensitive areas are determined by the Environmental Protection (Noise) Regulations 1997. Regulations 7 & 8 stipulate that the allowable external noise levels determined by the calculation of an influencing factor (Table 3.2), which is then added to the base levels (see Table 3.3 below).

Table 3.1 – Baseline Assigned Outdoor Noise Level

Premises Receiving Noise	Time of Day	Assigned Level (dB)		
		L _{A10}	L _{A1}	L _{Amax}
Noise Sensitive Premises	0700 – 1900 hours Monday to Saturday	45 + IF	55 + IF	65 + IF
	0900 – 1900 hours Sunday and Public Holidays	40 + IF	50 + IF	65 + IF
	1900 – 2200 hours all days	40 + IF	50 + IF	55 + IF
	2200 hours on any day to 0700 hours Monday to Saturday and 0900 hours Sunday and Public Holidays	35 + IF	45 + IF	55 + IF
Commercial	All Hours	60	75	80

Note: L_{A10} is the noise level exceeded for 10% of the time.
L_{A1} is the noise level exceeded for 1% of the time.
L_{Amax} is the maximum noise level.
IF is the influencing factor.

Table 3.2 – Influencing Factor Calculation (Residential)

Description	100m Radius	450m Radius	Influencing Factors
Commercial	42%	16%	2.9dB
Industrial	0%	0%	dB
Major Roads	NIL	Yes = Mitchell Freeway Yes = Vincent Street Yes = Loftus Street Yes = Newcastle Street	6dB
Secondary Roads	Yes = Oxford Street	N/A	
Sports Venues	NIL	Yes = Leederville Oval	0dB
Total Influencing Factor = 8.9 dB, i.e. 9dB			

Based on the information in Table 3.2, an influencing factor is applied to the base line assigned noise levels for the noise sensitive receivers identified and the adjusted assigned outdoor noise levels have been compiled in Table 3.3 below, Table 3.4 below indicates the assigned outdoor noise level for the surrounding commercial premises.

Table 3.3 – Assigned Outdoor Noise Level (Residential)

Premises Receiving Noise	Time of Day	Assigned Level (dB)		
		L _{A10}	L _{A1}	L _{Amax}
Noise Sensitive Premises	0700 – 1900 hours Monday to Saturday	54	64	74
	0900 – 1900 hours Sunday and Public Holidays	49	59	74
	1900 – 2200 hours all days	49	59	64
	2200 hours on any day to 0700 hours Monday to Saturday and 0900 hours Sunday and Public Holidays	44	54	64
Commercial	All hours	60	75	80

Table 3.4 – Assigned Outdoor Noise Level (Commercial)

Premises Receiving Noise	Time of Day	Assigned Level (dB)		
		L _{A10}	L _{A1}	L _{Amax}
Commercial	All hours	60	75	80

ASSESSMENT

The measured results from our onsite noise survey have been summarised below for ease of reporting, and are shown in Table 4.1. The L_{A10} parameter has been used in this assessment as it represents the noise level exceeded for 10% of the overall time and believe this parameter to be the most suitable for this assessment.

Table 4.1 – Measured Noise Level Results at Receiver Locations

Location	Description	Scenario	Measured Noise Level, L_{A10} dB(A)
R1	'Worst-case' Scenario	All	54
R2	Outdoor smoking area under full capacity, with mechanical plant in full operation	windows and doors open	54
C1			52
C2			54

The applicable adjustments to the calculated noise levels, in accordance with the Environmental Protection (Noise) Regulations 1997, are listed above. Based on calculated noise levels relative to the measured background noise levels, at the nearest premises, noise levels are likely to contain tonal characteristics and therefore adjustments to the predicted noise levels for tonality have been applied in Table 4.2.

Table 4.2 – Applicable Adjustments to the Measured Noise Emissions L_{A10} dB(A)

Receiver	Measured Noise Level, dB(A)	Applicable Adjustments to the Measured Noise Levels, dB(A)			Assessable Noise Level, L_{A10} dB(A)
		Where Noise Emission is Not Music			
		Tonality	Modulation	Impulsiveness	
R1	54	-	-	-	54
R2	54	-	-	-	54
C1	52	-	-	-	52
C2	54	-	-	-	54

RESULTS

Table 5 assess the adjusted levels for compliance against Environmental Protection (Noise) Regulations 1997 outdoor noise criterion, with the results shown in the table below.

TABLE 5 – Assessment of Noise Levels Against the Assigned Outdoor Noise Criterion

LOCATION	SCENARIO	'Worst-case' Scenario Outdoor smoking area under full capacity, with mechanical plant in full operation occurring simultaneously		Assigned outdoor noise level target L _{A10} SPL dB(A)	Compliance to the applicable assigned outdoor noise criterion
		Time	L _{A10}		
R1	Windows and doors open	Day	54	54	Yes
R2			54		Yes
C1			52		Yes
C2			54		Yes
R1	Windows and doors open	Evening	54	49	+5
R2			54		+5
C1			52		Yes
C2			54		Yes
R1	Windows and doors open	Night	54	44	+10
R2			54		+10
C1			52		Yes
C2			54		Yes

As shown in Tale 5 above, compliance to the Environmental Protection (Noise) Regulations 1997 can be achieved during the day assessment period however exceedances to the regulations were found during both the evening and night periods therefore we provide the following recommendations in order to reduce the receivers noise exposure as far as practicable, and achieve compliance to the Environmental Protection (Noise) Regulations 1997 assigned outdoor noise criterion throughout the entirety of the site's operation, provided the following recommendations are adhered too.

Acoustic modelling has been compiled to determine the predicted reduction in noise associated with the standard operations of the establishment post recommendations and are shown below.

ACOUSTIC MODELLING

Our mathematical predictions of the sound levels reaching both residential and the surrounding commercially zoned locations post implementation of the recommendations put forth within this report is based on our onsite field measurements and technical data compiled. The predictions have included the following parameters.

- a) The structure and layout of the building.
- b) Sound transmission through the building walls and roof.
- c) Attenuation provided over distance to the nearest residential receivers and surrounding commercially zoned premises identified within this report.
- d) Acoustic screening provided via the surrounding structures i.e. boundary fences.
- e) Ground reflections.

- f) Reflection from the façades of the surrounding receivers identified.

Weather conditions for the modelling were as stipulated in the Environmental Protection Authority’s “Draft Guidance for Assessment of Environmental Factors No.8 – Environmental Noise” and for the day periods are as listed in Table 6 below.

Table 6 – Acoustic Modelling: Weather Conditions

Condition	Day
Temperature	20°C
Relative Humidity	50%
Pasquil Stability Class	E
Wind Speed	4m/s*

* From sources, towards receivers.

METHODOLOGY

As part of the study, onsite noise level measurements were conducted at the boundary of the nearest noise sensitive receiver closest to the *Shesh Besh Shisha Bar & Restaurant* during the busiest trading period of the venue under a full capacity on Friday night after 10pm. The results of our onsite noise monitoring are shown on page 6 of this report.

Noise imissions¹ expected at the nearest neighbouring premises after the implementations of the recommendations put forth within this report, have been modelled with the computer program SoundPLAN 8.0. Sound Power levels used in our assessment are shown in Tables 7.1 to 7.2, we have assumed that all sound sources occur simultaneously, in order to model a ‘worst-case-scenario’ for noise emissions expected from the site when in full operation.

CONVERSATION NOISE EMISSIONS

Table 7.1 below identifies the Sound Power Level expected from standard conversational noise. Modelling has been conducted based on 50% of patrons conversing at the same time.

Table 7.1: People Talking Outdoors, Sound Power Levels, $L_{Aeq, 15-minute}$ dB(A)

Description	Sound Power levels (dB) at Octave Band Centre Frequencies (Hz)								
	Sum dB(A)	63	125	250	500	1k	2k	4k	8k
1 person talking with normal voice	66	57	57	63	66	59	55	51	46

MECHANICAL PLANT

Table 7.2 identifies the Sound Power Level from the mechanical plant (air conditioner condenser unit) located at the rear of the establishment.

Table 7.2: Mechanical Plant, Sound Power Levels, $L_{Aeq, 15-minute}$ dB(A)

Description	Sound Power levels (dB) at Octave Band Centre Frequencies (Hz)								
	dB(A)	63	125	250	500	1k	2k	4k	8k
A/C condenser unit	70	74	76	76	66	61	54	43	40

CAR PARK NOISE EMISSIONS

The site does not provide parking for patrons therefore has been omitted in this assessment.

RECOMMENDATIONS

- Extend the barrier walls across the Western and Northern sides of the property to a minimum height of 2.4m or (if feasible) to the ceiling height of the establishment, the walls extension can be comprised of a variety of construction materials (as shown below) and is to achieve a minimum surface density of 15kg/m². In all instances the barrier wall extension must be continuous and without airgaps as to not degrade the acoustic performance of the structure.

The barrier wall may be comprised of the following construction elements.

- Brickwork;
- Precast Concrete Panels;
- Limestone blocks;
- Concrete Blockwork;
- Timber;
- Transparent Acrylic
- Fibre Cement; or
- Recycled Plastic.



Figure 5: Recommended Barrier Wall Extension Locations

ASSESSMENT POST IMPLEMENTATION OF RECOMMENDATIONS

Table 8 below shows the calculated noise levels expected at the receivers identified within this report post the implementation of the barrier wall extensions.

TABLE 8 – Assessment of Expected Noise Levels Post-Implementation of Recommendations

LOCATION	SCENARIO	'Worst-case' Scenario Outdoor smoking area under full capacity, with mechanical plant in full operation occurring simultaneously Post implementation of Recommendations		Assigned outdoor noise level target L _{A10} SPL dB(A)	Compliance to the applicable assigned outdoor noise criterion
		Time	L _{A10}		
R1	Windows and doors open	Day	44	54	Yes
R2			44		Yes
C1			42		Yes
C2			44		Yes
R1	Windows and doors open	Evening	44	49	Yes
R2			44		Yes
C1			42		Yes
C2			44		Yes
R1	Windows and doors open	Night	44	44	Yes
R2			44		Yes
C1			42		Yes
C2			44		Yes

As shown in table 8 above full compliance to the Environmental Protection (Noise) Regulation 1997 assigned outdoor noise criterion is expected to be achieved once the recommendations put forth within this report are implemented.

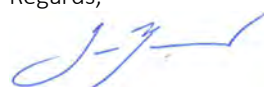
CONCLUSION

The objective of this assessment was to establish noise levels attributable to the *Shesh Besh Shisha Bar & Restaurant*, particularly conversational noise, assess the associated noise emissions against the Environmental Protection (Noise) Regulation 1997 assigned outdoor noise criterion and if exceedances are found, provide mitigation measures in order to reduce associated noise to a compliant level.

Noise levels calculated under a 'worst case scenario' have been found to exceed the evening and night-time assigned outdoor noise criterion by up to +10dB(A). However, with the implementation of the recommendations put forth within this report we believe that associated noise being received by the nearest noise sensitive receivers can be reduced to level compliant to the Environmental Protection (Noise) Regulation 1997 during the entirety of the business's operation.

I trust the above meets your requirements on the matter. Should you have any queries do not hesitate to contact our office.

Regards,




Ian Burman
(A.A.A.S)
Noise Officer: 14009

ACOUSTICS & AUDIO PRODUCTION



Parking Management Plan

<u>Owner/Applicant Details</u>	
Name:	Hany Ayad, HA-DEC GROUP PVT LTD
Address:	1C, Katoomba Pl, Belmont, WA, 6104
Phone:	0401 166 622
Email:	hany@hadecgroup.com.au
Applicant Signature:	

<u>Property Details</u>	
Lot Number:	4
Address:	Shesh Besh shisha Bar and Restaurant, 209 Oxford street, Leederville, WA, 6007

Parking Allocation:

The following table outlines the parking available for the different users of this development application, Shesh Besh shisha bar and restaurant doesn't have any allocated parking space as the business is on the city limit, Owner and all staffs rely on street parking

<u>Parking Allocation</u>	
Total Number Car Parking Spaces	Nil- The Business does not have any allocated parking spaces
Total Number Short Term Bicycle Parking Spaces	Nil
Total Number Long Term Bicycle Parking Spaces	Nil
Total Number Other Bays	Nil

Development Type	Development Users	Parking Allocation			
		Type/Duration	No: Car Spaces	No: Bicycle Spaces	No: Other Spaces
Installation of plastic barrier as per acoustic report on Shesh Besh shisha bar	Staff	Employee (>3 hours)	Nil	Nil	Nil
	Customers	Visitor (<3 hours)	Nil	Nil	Nil
	Other	Service/Delivery (15 minute)	Nil	Nil	Nil

Public Parking

Shesh Besh shisha bar and restaurant doesn't have any allocated parking space as the business is on the city limit and the only parking access for staff and customers is public parking available on the street.

	Location	No. Marked Spaces/ Unmarked Spaces	Parking Restrictions
On Street Parking	Oxford street	0 marked spaces, 4-5 cars can be parked on unmarked spaces	Ticket with time restrictions (15min, 1P) 8hrs-1730hrs- Free after 1730hrs and on Sundays
	Melrose street East	0 marked spaces, 10 cars can be parked on unmarked bays	Time restrictions (1P, 2P) 8hrs-1730hrs- Free after 1730hrs and on Sundays
	Richmond street East	0 marked spaces, 10-15 cars can be parked on unmarked bays	Time restrictions (1P, 2P) 8hrs-1730hrs- Free after 1730hrs and on Sundays

	Richmond street West	15-20 marked spaces	Ticket with time restrictions (15min, 1P) 8hrs-1730hrs- Free after 1730hrs and on Sundays
Off Street Parking	Nil	Nil	N/A

Alternative Parking

Transport Option	Type and Level of Service
Public Transport	
Train	Nearest train station is on Leederville and it's a 10 min walk to the business
Bus	Bus: 15,388,402,84,970 have routes that pass near shesh besh shisha bar and there is a bus stop in front of the business and a bus waiting shed across the road.
Pedestrian	
Paths	Footpath parallel to all roads near to business
Facilities	Bus waiting shed, North metropolitan Tafe, Restaurants
Cycling	
Paths	Cycle path on both side of Oxford street
Facilities	Push bikes can be parked and locked on bike hoop core drilled into concrete situated on oxford street and Richmond street.

- As there are no allocated spaces for parking, the management and staff parks on street at their own responsibility and some staffs uses public transport as a mode to reach the business.
- Staff and Management always makes aware to customers about the parking and makes sure the customers have parked responsibly based on the street signs.
- Contractors assigned to install the plastic barriers will also park on street and as authorized personnel related to this job, I will be responsible related to parking of contractor's vehicles.
- Staffs and management always promote public transportation as an alternative transport mode to the customers as there is no designated parking spots for the business. Bus waiting sheds and bus stops are available in front of the business.



HA-DEC GROUP

Design & Engineering Consultants

Waste Management Plan

Introduction

- Shesh Besh shisha bar -209 Oxford street, Leederville WA 6007
- Nature of work- Installation of plastic barrier as per acoustic report, certify unauthorized extension.
- Number of workers and days involved: 2 workers, 1 day
- Projected number of tenants during development- 3

Waste Composition and Generation

We are using cut to size plastics for the completion of job and hence the amount of wastes generated during this process is 0.00cubic meters of plastic.

Waste Management System- Internal

Bin Storage Area

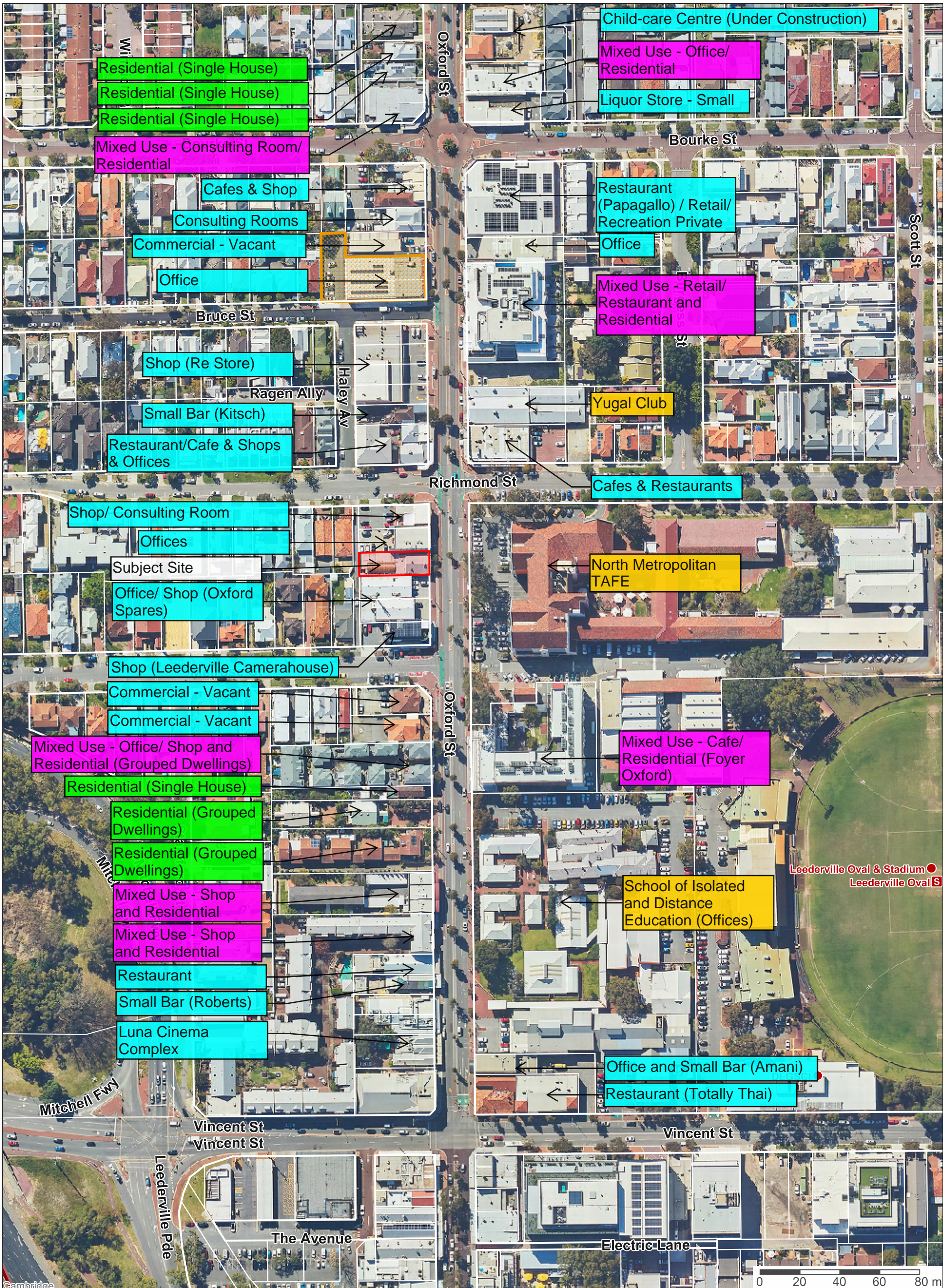
- The business got 1x1100L wheelie bin(1470mmx1170mmx880mm) which is been placed at the rear of the building and is easily accessible for the staffs.

Waste Management System

The waste management system is mainly based on general waste as the majority of waste is from the restaurant. There is no waste is occurred from shisha bar as its just a smoking zone.

The business got separate small bins inside the venue so the wastes are generally disposed first on that and later being disposed to the main bin.

- Collection Method- The waste collection is contracted to waste company and they got appropriate vehicles for waste collection and comes 3 times a week for waste collection.
- Waste service provider- JJ Richards and sons
- The glass and plastic bottles are been collected and is been taken to the containers for change program- Business owner transports that to the destination
- Cardboards- The cardboards are been taken to the Balcatta recycling centre by the business owner in his own transport, 10-12 cardboard boxes are generated in a week.



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>

Summary of Submissions:

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.

Summary of Submissions:

Comments Received in Objection:	Administration Comment:
<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>

Summary of Submissions:

Comments Received in Objection:	Administration Comment:
<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 give 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.

Summary of Submissions:

Comments Received in Objection:	Administration Comment:
<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>

Summary of Submissions:

Comments Received in Objection:	Administration Comment:
<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.

Summary of Submissions:

Comments Received in Objection:	Administration Comment:
<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.

Summary of Submissions: DA5.2022.142.1 No. 209 OXFORD STREET, LEEDERVILLE – UNLISTED USE (SHISHA LOUNGE)

The tables below summarise the comments received during the advertising period of the proposal. Please provide your comment against each item in the 'Applicant Comment' section.

Overall, the City received 28 submissions during the consultation period. The City received 23 comments of objection, 4 comments of support and 1 comments of neither support or object.

Comments Received Neither in Support nor Objection:	Applicant Comment
<p><u>General</u></p> <ol style="list-style-type: none"> 1. The proposal will reduce the amount of conversational noise that comes from the venue. 2. The proposal raises concerns that the venue will now accommodate live music, which will create excessive noise. 	<ol style="list-style-type: none"> 1. Noise management plan detailing necessary acoustic measures have been developed by an accredited acoustic engineer based on site tests and forwarded to council. 2. Live music was not and shall never be part of the business model.

Comments Received in Support:	Applicant Comment
<p><u>General</u></p> <ol style="list-style-type: none"> 3. The existing business has been operating with not disruption to locals for some time and is well run. 4. Issues like noise and smoke can be addressed through management conditions. 	<ol style="list-style-type: none"> 3. Noted 4. Please refer to item 1 response. Regarding smoke related concern, please note that the setup and ventilation measures were inspected and approved by the State Government - Department of Health. Please refer to the Shisha and the law – WA health for easy reference (ww2.health.wa.gov.au)
<p><u>Locality</u></p> <ol style="list-style-type: none"> 5. The business is located in the Regional Centre zone and those that adjoin the zone should not expect the same level of amenity afforded to residential houses in the residential zone. 	<ol style="list-style-type: none"> 5. noted

<p>6. The business brings vibrancy to the area of Leederville. 7. The business does not produce notable impacts such as parking difficulties, loitering or antisocial behaviour. 8. The moderately late opening hours have not caused noise issues.</p>	<p>6. noted 7. noted 8. noted</p>
<p><u>Cultural</u> 9. The business is a community hub for younger immigrants and provides a safe place to take part in cultural activities, which should be promoted by the City. 10. The smoking of tobacco is a health issue, however it should be recognised as part of a cultural practice for the immigrant community and should coexist with western norms.</p>	<p>9. Our business (restaurant and shisha bar) is open to all age profiles and in keeping with applicable WA Regulations and Acts 10. Shisha is not connected and/or related to any culture in particular. Please refer to item 9 response</p>

Comments Received in Objection:	Applicant Comment
<p><u>Land Use</u> 11. Land uses involving smoking should not be permitted. 12. The business is located across the road from a TAFE, which is close to the younger population who may be susceptible to taking up smoking. 13. The site is not capable of accommodating such a busy business as other land uses will occupy the public car parking areas. 14. The land use should cease immediately as it is not approved.</p>	<p>11. Our business has obtained proper licence from state government – health department 12. Please refer to item 9 response. In addition, please note that our business opening time is set after TAFE’s operating hours. Nevertheless, there are multiple of tobacco selling outlets in close proximity to TAFE which should be the focus of the comment in question 13. The proposed business is similar in capacity to the previously approved restaurant business, which was operating before our time. The paid parking bays provided by the Council have been used which are available to all users. 14. We have endeavoured since day one by all means to obtain all approvals from all concerned departments on state and local government levels. Through collaboration and opened communication with government staff, we progressed</p>

<p>15. Retrospective approval should not be permitted as it undermines the authority of the Council and sets a bad precedent for others to follow if successful.</p> <p>16. The land use is proposed just 3 metres from a residential dwelling and not appropriately located to minimise the impacts of odour and noise.</p>	<p>with our applications.</p> <p>15. Please refer to item 14 response</p> <p>16. Disagree. The area where our business is located is a commercial area in which various businesses operate. The owner of the referred to Residential Dwelling should be aware of this fact. More to this, our Business has obtained the necessary approval from the Health Department which confirms that our business is compliant with the required air quality levels. Our noise management plan and acoustic measures address the noise concern (refer to item 1 response)</p>
<p><u>Health</u></p> <p>17. Smoking is unhealthy and harms people.</p> <p>18. Smoking results in the exposure to nicotine, carbon monoxide and heavy metals contained in the smoke.</p> <p>19. The approval of the land use will result in greater nicotine addiction in the state.</p> <p>20. The venue causes passive smoking to the residents of the area.</p> <p>21. The business has resulted in a poor air quality in the locality.</p> <p>22. Approving the business will be a step back in the City's work to make the area a healthier place.</p> <p>23. The business will result in more lung cancer to the residents.</p> <p>24. The Department of Health has directly stated that the City should not encourage smoking.</p> <p>25. Smoking Shisha is worse than smoking regular tobacco.</p>	<p>17. Noted</p> <p>18. Noted</p> <p>19. Not supported argument.</p> <p>20. Disagree. Our business has obtained the necessary approval from the Health Department which confirms that our business is compliant with the required air quality levels.</p> <p>21. Disagree. Please refer to item 20 response</p> <p>22. Noted</p> <p>23. Disagree. Please refer to item 20 response</p> <p>24. Signage illustrating the impact of smoking is available as stipulated by the Tobacco Control Branch – State Health Department</p> <p>25. Not supported argument</p>

<p>26. Waterpipe smokers tend to smoke over a longer period than cigarette smokers.</p> <p>27. Waterpipe smoking can act as a gateway to cigarette initiation.</p> <p>28. Concerns of health issues with sharing a mouthpiece.</p> <p>29. The presence of the smoking business will normalise smoking, which will make the City of Vincent an unhealthy place.</p>	<p>26. Irrelevant comment</p> <p>27. Irrelevant comment</p> <p>28. Individual (brand new sealed) mouthpiece is provided to each customer. Please note that such mouth pieces are disposable (one time use)</p> <p>29. Noted, however please note that there are multiple of tobacco outlets selling tobacco to public located within the city of Vincent</p>
<p><u>Social</u></p> <p>30. The proposal may encourage vaping within Leederville, which is a widespread issue with young people.</p> <p>31. Concerns of people smoking opium at the premises.</p> <p>32. The business encourages bachelors to the area, which will remove the family vibe of the Leederville area.</p> <p>33. A smoking premises may negatively influence kids in the area.</p>	<p>30. Irrelevant comment.</p> <p>31. Rejected comment. Such accusation is not acceptable. Our business is legitimate and strictly adhere to all laws and regulations</p> <p>32. Irrelevant comment. Great number of our customers is families</p> <p>33. Kids are not permitted to shish bar area. In addition, the shisha lounge is located at the back of house which makes it isolated from general public.</p>
<p><u>Odour</u></p> <p>34. The odour is pungent and unpleasant. The odour is notable down the entire street and should not be able to spread to residential areas.</p> <p>35. The smoking of Shisha usually occurs in outdoor areas, which will result in bad odours.</p> <p>36. The business tends to leave its gates to the laneway open to provide more ventilation, but this results in odours being spread further to the residential properties close by.</p>	<p>34. Disagree. Please refer to item 20</p> <p>35. Incorrect. Our shisha lounge is located at the back of house. Moreover, we have stated earlier that our business has obtained approval from the Health Department which confirms compliance with air quality level and ventilation requirements</p> <p>36. Disagree. The rear gate is only used to deliver goods into the storage area and to discard the rubbish out through the bins.</p>

<p><u>Operational</u></p> <p>37. Smoking is banned in indoor venues. The smoking area appears to be enclosed and should not be accepted.</p> <p>38. The business currently operates with an enclosed smoking area and should not be permitted to operate at all.</p> <p>39. The operating hours allow for people to loiter in the area at late hours, which is disruptive to the locality and residents in the area.</p> <p>40. Light spills out into residential properties that are close by.</p> <p>41. The opening hours stated in the development application do not match the opening hours listed on the internet.</p> <p>42. The maximum number of patrons varies between 50 and 80 in the report. This should be confirmed as it will impact the technical reports submitted.</p> <p>43. The site cannot physically fit the car parking required for the Shisha Lounge component.</p>	<p>37. Incorrect. According to the tobacco control Act, the shisha lounge is classified as an outdoor area. In addition, we have obtained approval from the Health Department which confirms that the required ventilation has been achieved</p> <p>38. refer to item 37 response</p> <p>39. Not supported argument</p> <p>40. Incorrect. Only one external light fixture (12 volt) is installed and its oriented towards our premises.</p> <p>41. Incorrect. Please refer to our internet website</p> <p>42. The maximum number of customers at any one time for that we have entertained so far is around 50 people. The number "80" is a type error.</p> <p>43. Please refer to item 13 response</p>
<p><u>Car Parking</u></p> <p>44. The business does not provide any car parking. The solution in the Parking Management Plan (PMP) involves calling the City of Vincent Rangers, which is not effective or appropriate.</p> <p>45. All other properties on Oxford Street have provided car parking. This business should also provide some car parking.</p> <p>46. Visitors to the business illegally park on other properties.</p> <p>47. The approval of the development without any car parking on-site and without any cash in lieu results in a 100% car parking concession, which is not acceptable.</p>	<p>44. Please refer to item 13 response. Please note that the behaviour of any patron in any business outside the premises is the liability of the individual and shall only be controlled by local and state authority.</p> <p>45. See item 13</p> <p>46. We have not received any complains from other businesses in this regard nor we encourage our customers to park illegally anywhere.</p> <p>47. There are plenty of paid and free car parking around the establishment, which are also, used daily by other businesses in the area.</p>

<p><u>Noise</u></p> <p>48. The noise barrier is a cheap option and will only do the bare minimum. The business should do more to protect the amenity of the residents.</p> <p>49. The noise barrier will not be effective as it leaves gaps for noise and smells to escape the venue.</p> <p>50. Plastic options should be banned as plastic is bad for the environment and is not durable to last a long time. The existing plastic enclosure is currently deteriorating and does little to reduce noise and odour.</p> <p>51. The acoustic barrier is not enough to stop sharp, piercing noises.</p> <p>52. The noise management procedures are ineffective as numerous complaints were made regarding the noise generated from the premises, but no change occurred.</p> <p>53. Bins are emptied at the end of the night, which can be up to 2am, which causes disruptive noise.</p> <p>54. Insufficient information has been provided regarding the thickness and composition of the acoustic wall.</p>	<p>48. This has been developed by a professional accredited acoustic engineer licensed by the state government and all other applicable professional bodies. Remedial measures as stated therein shall be actioned immediately after DA approval.</p> <p>49. please refer to item 48 response</p> <p>50. please refer to item 48 response</p> <p>51. please refer to item 48 response</p> <p>52. please refer to item 48 response. In addition, we have not received since day one any complaints regarding the noise except from one source even though other dwelling is within the same proximity</p> <p>53. This practice has been seized over a year ago and since then, we made sure to empty the bins no later than 9 pm. Please note that we close at 12.00 am, this means the alleged 2am noise must be resulting from somewhere else other than our business.</p> <p>54. please refer to our acoustic management report provided.</p>
<p><u>Safety</u></p> <p>55. The business has gates that swing open into the laneway, which is unsafe and is not permitted.</p> <p>56. Visitors of the business tend to speed in the local streets when leaving the business.</p> <p>57. The business poses a fire risk due to the deteriorating materials that are left on the site.</p> <p>58. The deteriorating plastic is left in the rear laneway and is not cleaned up.</p>	<p>55. The gate must be installed to swing outward as part of the emergency exit procedure. However, it can be altered if so is approved by the Council.</p> <p>56. We are unaware of this issue, however, please refer to item 44 response for more clarification.</p> <p>57. Disagree, We do not have any deteriorating materials on site.</p> <p>58. Our rubbish always located in the rubbish bin, and get collected on a strict timetable.</p>

Legislative

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| <p>59. Should the application be approved, the health, safety and general welfare of the residents is not protected. This does not address Clause 67(2)(a) of Schedule 2 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>, as the proposal does not address the City of Vincent's Local Planning Scheme No. 2 to protect and enhance the health, safety and general welfare of the City's inhabitants.</p> <p>60. There would not be a reduction in tobacco use and smoking should the application be approved. This does not address Clause 67(2)(f) of Schedule 2 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>, as several state policies target the reduction of smoking.</p> <p>61. The Shisha Lounge is not compatible with the desired future character of the town centre as an environment that supports healthy living and quality of life, and the aim to be smoke free by 2025 as outlined in the Leederville Town Centre lace Plan and the City of Vincent Public Health Plan 2020-2025. This does not address Clause 67(2)(m) of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>.</p> <p>62. The premises does not promote a welcoming, pleasant and healthy environment. The business also poses a significant risk to public health as it glamourises the smoking of shisha as a public activity. As a result, it does not satisfy Clause 67(2)(n) of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>.</p> <p>63. The proposed land use is detrimental to the possible risk of human health and safety and is located in a prominent area. The proposal doesn't address Clause 67(2)(r) of Schedule 2 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>.</p> <p>64. The application is significantly at odds with the City of Vincent's Public Health Plan 2020-2025. The establishment is also not in line with community expectations. The proposal</p> | <p>59. We have been granted a licence to sell tobacco on this premises from the Government of WA department of health, tobacco control department. All points in the question has been addressed before the issuing of the licence. Please refer to item 4 response</p> <p>60. Please refer to item 59 response</p> <p>61. The Business is complying with the citation.</p> <p>62. The Business is complying with the citation.</p> <p>63. The Business is complying with the citation.</p> <p>64. The Business is complying with the citation.</p> |
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<p>has not addressed Clause 67(2)(x) of Schedule 2 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>, which considers the impact of the development on the community as a whole.</p> <p>65. The content of any submission 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>.</p> <p>66. The City of Vincent's Public Health Plan 2020-2025, Leederville town Centre Place Plan have stated the move towards smoke-free town centres. The proposal does not address Clause 67(2)(zb) of Schedule 2 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>.</p>	<p>65. The Business is complying with the citation.</p> <p>66. The Business is complying with the citation.</p>
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Determination Advice Notes:

1. 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.
2. The use of the premises as a Shisha Bar, involving the sale and consumption of shisha (tobacco) on-site must immediately cease. Pursuant to Section 218 of the *Planning and Development Act 2005* the continued operation of the premises for the sale and consumption of shisha constitutes an offence.