

**9.7 RESPONSE TO NOTICE OF MOTION - LOCAL PLANNING SCHEME NO. 2 AMENDMENT REGARDING TOBACCO OUTLETS**

**Attachments:** 1. May 2021 Minutes Extract - Notice of Motion

**RECOMMENDATION:**

That Council REQUESTS the Chief Executive Officer:

1. prepare a new local planning policy to address provisions relating to Restricted Premises and businesses whose primary means of trade are through the sale and consumption of tobacco products; and
2. consider the definition of 'Restricted Premises', and the Use Permissibility and Additional Site and Development Requirements for this land use as part of the next Local Planning Scheme Review.

**PURPOSE OF REPORT:**

To present options that could prohibit smoking/cigar rooms, tobacconists, and other outlets whose primary purpose of the premises is where tobacco and other products to be used for smoking are offered for sale or consumed, under the planning framework.

**BACKGROUND:**

Vincent's Public Health Plan 2020-2025 (PHP) includes a key priority area of reducing the levels of smoking within the community. Consistent with this priority, the PHP sets a priority health outcome to reduce smoking in the Vincent community and aims to embed public health into the Vincent's policies and plans.

At the 18 May 2021 Ordinary Council Meeting (OCM), Council endorsed a Notice of Motion (NoM) as shown in **Attachment 1**. The NoM requested the CEO provide a report to Council exploring options to change the planning framework to effectively prohibit uses whose primary purpose is for the sale or consumption of tobacco and other smoking products.

**DETAILS:**

The City's Local Planning Scheme No. 2 (the Scheme) defines most businesses that sell tobacco as a 'Shop' land use, as follows:

*premises other than a bulky goods showroom, a liquor store – large or a liquor store – small used to sell goods by retail, to hire goods, or to provide services of a personal nature, including hairdressing or beauty therapy services.*

Shops' are exempt from the requirement for planning approval in commercial, centre and mixed use zones.

Businesses that primarily sell smoking implements, however, are classed as 'Restricted Premises', defined as:

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

- ...  
(c) *smoking-related implements;*

Under the Scheme, 'Restricted Premises' are not permitted in any zone unless they have been granted development approval following public advertising.

If the primary purpose of a land use is the consumption of tobacco or the smoking of other products on site (such as a cigar room or shisha bar), this land use would not reasonably be covered by any of the existing land uses under the Scheme and would be assessed against clause 18(4) (Unlisted Uses) of the Scheme. Clause 18(4) requires that unlisted uses are assessed against the objectives of the zone to determine

whether it should be permitted. A premises primarily dedicated to smoking on site could be consistent with the objectives of any of the Scheme zones, which could result in these types of uses being permitted to operate in undesirable areas, without proper Scheme and policy guidance.

#### Prohibited Uses Option

With respect to the NoM, in order to effectively prohibit uses primarily dedicated to smoking on site, or the sale or consumption of tobacco and other smoking products, the Scheme requires amendment to:

1. Split the current 'Restricted Premises' land use into two uses, one whose primary purpose is the consumption of tobacco or smoking of other products on site as well as the sale of smoking relating products (Restricted Premises - Smoking) and the other that relates to all other aspects of the current 'Restricted Premises' land use; and;
2. Apply an 'X' classification to the 'Restricted Premises – Smoking land use in all zones.

The Department of Planning, Lands and Heritage (DPLH) have advised that these changes would not be favourable, as they deviate from the 'Model Scheme Text' on which all local planning schemes are based. DPLH also advised that the proposal would not be outright refused just because it is inconsistent with the model.

#### Guidance

In addition to pursuing the above Scheme amendment to wholly prohibit 'Restricted Premises – Smoking', Council could use policies to implement assessment criteria for this type of land use. Such policies could:

- Prohibit such premises in certain locations, such as on the ground floor of any tenancy;
- Restrict the extent and type of signage permitted; and
- Not support the continued operation of unauthorised smoking related land uses while retrospective approval was being sought.

This would remove these types of business from street level and their visual prominence. This would be backed through a policy statement and objective of reducing the sale and consumption of smoking in Vincent.

Administration recommends a combination of both changes to the Scheme and policy guidance as being the best way to use the planning framework to limit the availability and visual prominence of smoking focused commercial premises in Vincent, in line with the PHP.

The City is beginning the process for a local planning scheme and strategy review and it is recommended that the Scheme changes form part of this process. Embedding the issues around smoking within the Strategy and Scheme would reinforce consistent decision making around these types of uses and activities. The development of policy provisions would be progressed as soon as practicable, with a draft policy to be presented to Council this financial year.

#### **CONSULTATION/ADVERTISING:**

Any amendments to the City's Local Planning Scheme No. 2 or a new local planning policy would be advertised in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015* and the City's Community Consultation Policy.

#### **LEGAL/POLICY:**

- *Planning and Development Act 2005*;
- *Planning and Development (Local Planning Schemes) Regulations 2015*;
- Local Planning Scheme No. 2;
- Public Health Plan 2020-2025; and
- Policy No. 4.1.5 Community Consultation.

**RISK MANAGEMENT IMPLICATIONS**

Low. Restricting uses whose primary purpose is the sale and consumption of tobacco and smoking products will not be supported by some members of the community. The reputational risk this poses to the City can be managed through community consultation and clear engagement around the public health implications of these types of uses. This reputational risk must be balanced against the clear evidence of that smoking and secondhand smoke leads to disease and disability.

**STRATEGIC IMPLICATIONS:**

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

Thriving Places

*Our town centres and gathering spaces are safe, easy to use and attractive places where pedestrians have priority.*

Sensitive Design

*Our planning framework supports quality design, sustainable urban built form and is responsive to our community and local context.*

Innovative and Accountable

*We are open and accountable to an engaged community.*

**SUSTAINABILITY IMPLICATIONS:**

This does not contribute to any specific sustainability outcomes of the *City's Sustainable Environment Strategy 2019-2024*.

**PUBLIC HEALTH IMPLICATIONS:**

This is in keeping with the following priority health outcomes of the *City's Public Health Plan 2020-2025*:

*Reduced smoking*

**FINANCIAL/BUDGET IMPLICATIONS:**

Nil.

**13.1 NOTICE OF MOTION - CR JONATHAN HALLETT - LOCAL PLANNING SCHEME NO. 2  
AMENDMENT REGARDING TOBACCO OUTLETS**

That Council:

**1. NOTES that:**

- 1.1 31 May is *World No Tobacco Day* which is held annually to inform the public on the dangers of using tobacco, the business practices of tobacco companies, what the World Health Organization is doing to fight the tobacco epidemic, and what people around the world can do to claim their right to health and healthy living and to protect future generations; and
- 1.2 the promotion of tobacco use is inconsistent with the intent of the City of Vincent Public Health Plan 2020-2025, the State Government's Sustainable Health Review 2019, Western Australian Health Promotion Strategic Framework 2017-2021 and State Public Health Plan 2019-2024, the Federal Government's National Drug Strategy 2017-2026 and Draft National Preventive Health Strategy, and the *WHO Framework Convention on Tobacco Control* of which Australia is a signatory; and

**2. REQUESTS the:**

- 2.1 the Chief Executive Officer provide a report to Council by 31 October 2021 outlining options for changes to the planning framework to list smoking/cigar rooms, tobacconists, and other outlets whose primary purpose of the premises is where tobacco and other products to be used for smoking are offered for sale or consumed as uses that are not permitted in future developments; and
- 2.2 the Chief Executive Officer/Mayor advocate to the WA Departments of Health and Planning/Ministers for Health and Planning to instigate measures that reduce the number of outlets whose primary purpose of the premises is where tobacco and other products to be used for smoking are offered for sale or consumed.

**COUNCIL DECISION ITEM 13.1**

**Moved:** Cr Hallett, **Seconded:** Cr Castle

That the recommendation be adopted.

**CARRIED UNANIMOUSLY (8-0)**

**For:** Mayor Cole, Cr Gontaszewski, Cr Castle, Cr Fotakis, Cr Hallett, Cr Loden, Cr Topelberg and Cr Wallace

**Against:** Nil

(Cr Smith was an apology for the Meeting.)