

5.5 LOCAL PLANNING POLICY: RESTRICTED PREMISES - SMOKING

- Attachments:**
1. **Advertised Draft Local Planning Policy: Restricted Premises - Smoking**
 2. **Summary of Submissions**
 3. **Local Planning Policy: Restricted Premises - Smoking (Tracked)**
 4. **Local Planning Policy: Restricted Premises - Smoking**

RECOMMENDATION:

That Council PROCEEDS with Local Planning Policy: Restricted Premises – Smoking, pursuant to Clause 5 of Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015* at Attachment 4.

PURPOSE OF REPORT:

To present the outcome of community consultation and seek approval of the Local Planning Policy: Restricted Premises – Smoking.

BACKGROUND:

At its [20 October 2020 Ordinary Council Meeting](#) (OMC), Council endorsed the City's Public Health Plan 2020-2025 (PHP) which sets the framework for public health initiatives within the City for the next five years.

Objectives within the PHP are guided by five public health pillars including:

- Public Health Leadership - lead by example and influence public health commitment through leadership, advocacy and engagement; and
- Health Protection - deliver evidence-based health protection services and programs for the community.

'Reducing smoking' was established as a key priority, with the PHP outlining deliverables including establishing and expanding 'Smoke-Free Town Centres', advocacy to state and federal government regarding smoking accessibility as well as incorporating this priority into any new City policy.

At the [18 May 2021 OMC](#), Council endorsed a Notice of Motion (NoM) that requested the Chief Executive Officer (CEO) provide a report to Council outlining options for changes to the planning framework to list smoking/cigar rooms, tobacconists, and other outlets whose primary purpose is the sale or use of tobacco or tobacco-related products, as uses that are not permitted in future developments.

At the [12 October 2021 OMC](#), Council considered a report outlining these options and resolved to request that the CEO 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. Council also requested the CEO 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.

At its [23 August 2022 OMC](#), Council approved community consultation of the Local Planning Policy: Restricted Premises – Smoking (Policy).

DETAILS:

In accordance with the City's [Community and Stakeholder Engagement Policy](#), community consultation was undertaken between 24 August and 24 October 2022 for the advertised Policy as at **Attachment 1**.

A total of nine submissions were received.

A summary of the submissions, associated administration comments and modifications to the Policy is at **Attachment 2**.

Summary of Submissions

Of the nine submissions received, seven were from organisations within the public health sector, and two were public submissions. A comprehensive and considered submission was received from the Cancer Council of Western Australia (CCWA), with a further four parties expressing strong support for this submission. The Department of Health (Department) also provided a submission with key considerations.

The intent of the Policy and its alignment with State and Federal strategies was well received, with support for the Policy unanimous across all submissions. Several parties commended the City on their efforts to reduce the supply and use of tobacco and related products, tackle the normalisation of smoking and prioritise public health.

While generally supportive of the Policy, one submission was concerned about the restricted trading hours of Shisha Bars impacting the night-time economy within town centres.

Key considerations from CCWA and the Department are summarised below:

Ambiguity of the terms 'vape', 'vape and smoke shops', and 'smoking-related implements'

The *Tobacco Products Control Act 2006* prohibits the sale of e-cigarettes or products designed to resemble tobacco in Western Australia. As such, 'vape shops' as referenced in the Policy would constitute an illegal activity for which development applications could not be accepted by the City.

The purpose of the Policy is to provide guidance on the determination of development applications for Restricted Premises (Smoking). Development application could only be accepted where the proposed Restricted Premises (Smoking) does not involve the illegal sale of e-cigarettes or products designed to resemble tobacco. As such the Policy has been modified to remove reference to 'vape shops' as these would be illegal and so could not be considered by the City. Applicable Western Australian State legislation by which applications must comply is listed in the 'Related policies, procedures and supporting documentation.'

There is ambiguity as to whether the term 'smoking-related implements' includes e-cigarettes. The Policy has been modified to include the definition for 'Smoking-related Implements' and specific examples of what this includes.

Attachment 3 highlights modifications that were made as an outcome of community consultation, as reflected in the updated Policy at **Attachment 4**.

Sensitive uses

To further limit exposure of smoking related uses to groups disproportionately affected by tobacco and tobacco-related products it was recommended to expand the list of sensitive uses by which smoking-related uses are restricted from operating.

Further to this was the suggestion of setting a minimum distance by which smoking-related uses are prohibited from operating.

Modification to include these changes would constitute a significant change requiring further advertisement and consultation of the Policy or community review as per Clause 5 of Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

Any future Policy changes would be required to be based upon amenity impacts to adjoining and adjacent sensitive uses, as a well-tested and strong planning basis is required for inclusion in a local planning policy. These public health related provisions suggested by the public health bodies would be considered as part of the review of the Local Planning Scheme No. 2.

CONSULTATION/ADVERTISING:

The advertised Policy was published on the City of Vincent website, social media channels and through the following public notices:

- Vincent Reporter – 30 August 2022;
- Perth Voice – 3 September 2022; and
- City of Vincent Administration and Library and Local History Centre notice boards.

LEGAL/POLICY:

- *Planning and Development Act 2005;*
- *Planning and Development (Local Planning Schemes) Regulations 2015;*
- *Tobacco Products Control Act 2006;*
- *Tobacco Products Control Act Regulations 2006;*
- *Medicines and Poisons Act 2014;*
- *Liquor License Control Act 1988;*
- *City of Vincent Public Health Plan 2020 – 2025;*
- *City of Vincent Waste Strategy 2018 – 2023; and*
- *City of Vincent Local Government Property Local Law 2021.*

RISK MANAGEMENT IMPLICATIONS

Low: Council approving the Policy is low risk.

STRATEGIC IMPLICATIONS:

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

Enhanced Environment

We have minimised our impact on the environment.

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 is in keeping with the following key sustainability outcomes of the *City's Sustainable Environment Strategy 2019-2024*.

Waste Reduction

The Policy is likely to contribute to a reduction in the environmental impact of cigarette butts and e-cigarette waste.

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.

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Legislation / local law requirements	This Policy has been prepared under the provisions of Schedule 2, Part 2 and 3 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> .
Relevant delegations	16.1.1 Determination of various applications for development approval under the City's Local Planning Scheme.
Related policies, procedures and supporting documentation	<ul style="list-style-type: none"> • <i>Tobacco Products Control Act (2006)</i> • <i>Tobacco Products Control Act Regulations (2006)</i> • <i>Liquor Licence Control Act (1988)</i> • <i>City of Vincent Public Health Plan (2020 – 2025)</i>

PRELIMINARY

INTRODUCTION

Tobacco smoking has significant detrimental impacts to the health and well-being of the community, both directly from the persons who are active smokers and indirectly from those who suffer the effects of environmental, or 'second hand', tobacco smoke.

Smoking is a leading cause of preventable death and disease in Australia and there is no safe level of exposure to second-hand smoke as all exposure carries risk. Within the City of Vincent's Public Health Plan (2020–2025), a priority health outcome is 'Reduced smoking' focusing on prioritising and embedding public health principles into City policies and planning processes.

A reduction in the sale and consumption of tobacco and tobacco related products could encourage smoking cessation, reduce relapse for smokers who have quit and prevent uptake of smoking by young people within the community.

Federal and State legislation governs matters such as packaging and advertising for premises whose primary function is the sale or consumption of tobacco and tobacco related products. Local government is responsible for tailoring its local planning framework to guide the assessment of these types of businesses.

PURPOSE

The purpose of this policy is to provide guidance on the exercise of discretion on the operations and location of businesses whose primary purpose is the sale of smoking implements or consumption of tobacco and tobacco related products on site.

OBJECTIVES

This policy seeks to:

1. Reduce the number of businesses whose primary purpose is the consumption of tobacco and other products to be used for smoking;
2. Reduce the promotion of tobacco and smoking within the City;
3. Ensure that any businesses whose primary purpose is the sale of tobacco and other products to be used for smoking are located in such a manner that they would not negatively impact on the amenity of the area, including the public realm and the surrounding existing land uses, by means of associated emission of harmful smoke and/or vapours, noise, odour or anti-social behaviour;

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4. Ensure business and advertising signs do not promote the sale of tobacco and other products to be used for smoking, smoking implements or the consumption of tobacco or smoking on site; and
5. Ensure businesses that include the sale or consumption of tobacco and other products to be used for smoking maintain an active and engaging street frontage by means of clear sight lines and visual surveillance between the street and the business.

SCOPE

The provisions of this policy apply to uses whose primary purpose is the sale of tobacco, smoking implements or consumption of tobacco and tobacco related products on site.

This policy does not apply where 'Restricted Premises' or 'Shop' uses are exempt from the need to obtain development approval in accordance with the City's Local Planning Scheme No. 2.

POLICY PROVISIONS

DEFINITIONS

Restricted Premises (Smoking) means is a 'Restricted premises', as defined by Local Planning Scheme No. 2, used for the sale by retail or wholesale, or the offer for hire, loan or exchange, or the exhibition, display or delivery of smoking-related implements. These may include:

- a) Vape and smoke shops.

Shop (Tobacco) means a 'Shop', as defined by Local Planning Scheme No. 2, whose primary purpose is the sale by retail of tobacco products. These may include, though are not limited to:

- a) Tobacco Shops; and
- b) Tobacconists.

Smoking Premises means any premises whose primary purpose is the consumption of tobacco and other products to be used for smoking. These include:

- a) 'Shisha' bars; and
- b) Cigar Lounges.

POLICY

1. General Requirements

- 1.1 Restricted Premises – Smoking, Shop (Tobacco) and Smoking Premises uses will only be permitted where they are not adjoining or adjacent to residential or accommodation uses (whether temporary or permanent), home based businesses, child care premises, educational establishments, family day care, consulting rooms, medical centres, offices, places of worship, reception centres, restaurants/cafes under the City's operative local planning scheme and where the proposed development (lot) is not an adjoining property to the following Local Planning Scheme and Metropolitan Region Scheme reserves;
 - Public Purpose;
 - Public Open Space;
 - Parks and Recreation.

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1.2 Restricted Premises – Smoking and Shop (Tobacco) uses will only be permitted where they are not on the ground floor of a premises.

1.3 Products for sale or use are not to be directly displayed or visible from the street.

2. Signage

2.1 Restricted Premises – Smoking and Smoking Premises Uses must comply with the City's Local Planning Policy – Signs and Advertising.

3. Business Operations

3.1 Restricted Premises – (Smoking), Shop (Tobacco) and Smoking Premises uses are limited to the hours of 7:00am to 10:00pm Monday to Saturday and between the hours of 9:00am to 10:00pm on a Sunday and public holidays.

3.2 A detailed Management Plan is required for Smoking Premises or other premises whose business primarily involves the consumption of tobacco on site. The Management Plan is to be submitted as part of a development application and is to address the following:

- Noise control and management, including the provision of an acoustic assessment prepared by an Acoustic Consultant/Engineer with relevant qualifications and experience;
- The number of patrons;
- Car parking and parking management;
- Hours of operation;
- Patron and anti-social behaviour;
- Complaints management procedures;
- Rubbish collection and disposal; and
- Odour and air quality management assessment.

4. Compliance with other legislation

4.1 Any application which includes the sale and consumption of tobacco is to comply with any other relevant legislation including the *Tobacco Products Control Act (2006)*, *Tobacco Products Control Act Regulations (2006)* and *Liquor Licence Control Act (1988)*.

OFFICE USE ONLY	
Responsible Officer	Manager Policy & Place
Initial Council Adoption	DD/MM/YYYY
Previous Title	N/A
Reviewed / Amended	DD/MM/YYYY
Next Review Date	MM/YYYY

Attachment 2. Summary of Submissions – Draft Local Planning Policy: Restricted Premises – Smoking

No.	Submitter Comment	Submitter	Administration Comment	Recommended Modification	
1.	1.1	Cancer Council WA (CCWA) welcomes and is supportive of the intent of the Draft Local Planning Policy: Restricted Premises – Smoking (Policy). They strongly advocate for the integration of public health considerations into planning frameworks and suggest that once finalised, the Policy could set a precedent for this is planning in local government.	Cancer Council WA	The City of Vincent (City) would like to thank the Cancer Council WA for their time and comprehensive response taken in their response to the draft Policy and welcomes the opportunity to working with them in addressing the reduction of smoking and related issues within the community.	No modification.
Discretion					
	1.2	CCWA raises concern that by 'providing guidance on the exercise of discretion', development applications may comply with the Policy despite having potential grounds for refusal. They suggest this be clarified by stating that while due regard is to be given to the Policy, it does not replace the discretion of the decision-maker.	Cancer Council WA	The purpose of the Policy is to provide guidance on the determination of development applications for Restricted Premises. The Policy is the tool to guide the application of discretion. As per the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> (Regulations), due regard is to be given to Local Planning Policies.	No modification.
	1.3	It is also suggested that information be included in the Policy regarding how the assessment criteria in the Policy relates to discretion under the Local Planning Scheme No. 2 (LPS2) and the exercise of that discretion.	Cancer Council WA	As above.	No modification.

No.	Submitter Comment	Submitter	Administration Comment	Recommended Modification
Definition of 'Restricted premises'				
1.4	Consideration should be given to the amendment of the definition of 'Restricted premises' in the LPS2, as there is ambiguity as to whether the term 'smoking-related implements' includes e-cigarettes and related products which could further complicate this definition in the Policy.	Cancer Council WA	The Regulations, provide model definitions which have been used in the City's LPS2. The Policy definition is proposed to be expanded to provide guidance as to what is considered 'smoking-related implements.'	<p>The 'Definition' section of the Policy is proposed to be amended as follows:</p> <p><u>The following definition is not defined in the Planning and Development (Local Planning Scheme) Regulations 2015 and is provided to guide the application of discretion.</u></p> <p><u>Smoking-related Implements</u> means any smoking implement which may be used for smoking tobacco or tobacco-related products or any product that resembles these. These include:</p> <p><u>Tobacco cigarettes;</u> <u>Cigars;</u> <u>Waterpipe smoking devices (or hookahs);</u> <u>E-cigarette devices or components (or 'vapes');</u> <u>Cigarette papers;</u> <u>Pipes;</u> <u>Cigarette holders; and</u> <u>Rolling machines.</u></p>
1.5	Reference to 'vape and smoke shops' in the Policy is recommended to be clarified with the Department of Health to determine if they would constitute an illegal use for which development applications should be refused.	Cancer Council WA	The Department of Health (Department) submitted a response to the draft Policy in which Western Australian (WA) legislation prohibiting the sale of e-cigarette devices and nicotine vaping products by tobacco or general retailers was discussed. Reference to the term 'vape and vape shops' was further clarified with the Department directly	<p>The 'Related policies, procedures and supporting documentation' section of the Policy is proposed to be amended as follows:</p> <p><i>Tobacco Products Control Act 2006</i></p>

No.	Submitter Comment	Submitter	Administration Comment	Recommended Modification
			and the Policy is recommended to be modified to reference <i>Medicines and Poisons Act 2014</i> . As all relevant state and federal legislation is assumed to be adhered to, it is not necessary to remove these references.	<p><i>Tobacco Products Control Act Regulations 2006</i> <i>Medicines and Poisons Act 2014</i> <i>Liquor Licence Control Act 1988</i> <i>City of Vincent Public Health Plan 2020 - 2025</i> <i>City of Vincent Waste Strategy 2018 – 2023</i> <i>City of Vincent Local Government Property Local Law 2021</i></p>
1.6	<p>CCWA recommends that consideration be given to the extension of the sensitive uses set out in clause 1.1 of the Policy to further limit the exposure of smoking related uses to groups disproportionately affected by tobacco and tobacco related products.</p> <p>They suggest expanding the uses outlined in the Policy to include (but not be limited to):</p> <ul style="list-style-type: none"> - Betting agency; - Cinema/Theatre; - Corrective institution; - Funeral parlour; - Fast food outlet; - Lunch bar; - Market; - Recreation – private. 	Cancer Council WA	<p>One of the key priorities outlined in the City's Public Health Plan 2020-2025 (PHP) is the delivery of evidence-based health protection services and programs for the community in relation to smoking. A key deliverable of this is Objective 18.4 – to advocate for reduced exposure to tobacco advertising, marketing, promotion and sponsorship. Along with the City's Smoke-Free Town Centres, this Policy is a crucial step in achieving the PHP's objectives.</p> <p>Inclusion of all of the sensitive uses as suggested by CCWA is deemed to be a significant modification, thus requiring further advertising and consultation as per clause 4 of Schedule 2 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>.</p> <p>Future review of this Policy, and of the LPS2 will consider restrictions in line with the PHP.</p>	No modification.
1.7	It is also recommended that smoking-related uses be restricted within a stated	Cancer Council WA	Imposing a set distance restricting smoking-related uses from operating in relation to	No modification.

No.	Submitter Comment	Submitter	Administration Comment	Recommended Modification
	distance of the sensitive uses set out in clause 1.1 (for example by 500-metres). By broadening the restrictions to that outside of solely adjoining or adjacent sensitive uses, the public health and amenity benefits would be strengthened within the City and would be supported by CCWA.		<p>sensitive uses further strengthens the objectives outlined in the PHP. Research has found that children and adolescents with frequent exposure to tobacco advertising are 1.6 times more likely to try smoking and 1.3 times more likely to smoke in the future (Robertson et al. 2016). International studies have recommended adopting a 500-metre zoning prohibiting tobacco retailers around educational facilities, and a minimum of 100-metres of exposure to tobacco advertising (Astuti et al. 2019). The distance of 500-meters has been benchmarked using New Zealand based public health protocols for outdoor advertising near school zones (Mackay et al. 2017).</p> <p>Modifying the Policy to include restrictions surrounding schools would be significant and require an additional advertisement and consultation period as per clause 4 of schedule 2 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>.</p> <p>Future review of this Policy, and of the LPS2 will consider restrictions in line with the PHP.</p>	
1.8	CCWA supports the City in addressing the normalisation of tobacco use and smoking by reducing the visibility of smoking and related uses.	Cancer Council WA	Noted.	No modification.
Clause 1.3				
1.9	It is recommended that the uses outlined in clause 1.3 are clarified and specified.	Cancer Council WA	Reducing the exposure to tobacco advertising, marketing, promotion and	It is recommended to modify clause 1.3 of the Policy as follows:

No.	Submitter Comment	Submitter	Administration Comment	Recommended Modification
			sponsorship is a key objective in the PHP and would be further strengthened by specifying the uses to which this Policy applies.	<u>Restricted Premises – (Smoking), Shop (Tobacco) and Smoking Premises uses are not to directly display products for sale or use are not to be directly displayed or nor have them visible from the street.</u>
Clause 3.1				
1.10	CCWA supports limiting the hours of operation of smoking-related uses as it will reduce the availability of tobacco and related products, further advancing public health and wellbeing within the City of Vincent.	Cancer Council WA	Noted.	No modification.
Clause 3.2				
1.11	CCWA supports the requirement of a Management Plan for development applications relating to Smoking Premises.	Cancer Council WA	Noted.	No modification.
1.12	There are concerns that the 'odour and air quality assessment' will not address the risk of smoke to human health. It is suggested that an assessment of odour and air quality by a suitably qualified and experienced person be an added requirement to the Management Plan in Smoking Premises' development applications.	Cancer Council WA	The Management Plan that must be provided with any development applications relating to smoking- related uses is required to address odour and air quality management on the site. As per the development assessment process, applications not meeting this condition would be required to provide evidence to satisfy this clause in order to be considered for approval.	No modification.
1.13	It is further recommended that development applications address how any proposed	Cancer Council WA	The Management Plan is to include noise control and management.	No modification.

No.	Submitter Comment	Submitter	Administration Comment	Recommended Modification
	noise mitigation measures would impact on the smoke from the site and comply with the <i>Tobacco Products Control Regulations 2006 (WA)</i> in relation to smoking in a public enclosed space.			
Clause 4.1				
1.14	CCWA supports the inclusion of clause 4.1 and notes that it is not in the public interest to approve an illegal use.	Cancer Council WA	In reviewing this clause, it is recommended that the clause 4 be removed, as compliance with all relevant state and federal legislation is assumed.	It is recommended that the Policy be modified to remove clause 4.1.
1.15	<p>Clause 4.1 is suggested to be reworded as follows:</p> <p>"Any application within the scope of this policy is to comply with applicable legislation.</p> <p>This may include the <i>Tobacco Products Control Act 2006</i>, <i>Tobacco Products Control Regulations 2006</i> and/or the <i>Liquor Control Act 1988</i>."</p>	Cancer Council WA	Noted.	As above.
Scheme Amendment				
1.16	<p>It is suggested that the progression of a scheme amendment would be desirable to further restrict the smoking-related land uses within the City.</p> <p>CCWA would be pleased to contribute to any discussions and consultations to progress a</p>	Cancer Council WA	<p>The City is reviewing the Local Planning Scheme No. 2 and will consider further restrictions in line with the PHP.</p> <p>The City appreciates the Cancer Council's support and commitment to progress future strengthening of smoking restrictions, and welcomes future discussions.</p>	No modification.

No.	Submitter Comment	Submitter	Administration Comment	Recommended Modification	
	scheme amendment that further restricts smoking-related land uses within the City.				
2.	2.1	The Department of Health supports the principle of the Policy and supports the City of Vincent further restricting the sale and use of tobacco through a scheme amendment.	Department of Health	The City would like to thank the Department of Health for their time and consideration in response to the proposed Policy.	No modification.
	2.2	Given that under the <i>Tobacco Products Control Act 2006</i> , smoking may be permitted in up to 50% of an outdoor eating area of liquor licenced premises, it should not be only premises with a primary purpose of consuming tobacco or other products used for smoking which this Policy relates to.	Department of Health	The City has provided guidance for the development of Restricted Premises. There are many places in which smoking will still be allowed however the City does not have suitable resources to implement a ban for existing uses which also allow use of tobacco-related products. This may be suitable at the time the PHP and the Local Planning Policy: Restricted Premises – Smoking is reviewed.	No modification.
	2.3	The Policy should be in line with the <i>Tobacco Products Control Act 2006</i> and <i>Medicines and Poisons Act 2014</i> . These legislations state that electronic cigarette devices (e-cigarettes) and their components may only be prescribed by a registered medical practitioner, and only dispensed by a registered	Department of Health	The purpose of the Policy is to provide guidance on the determination of development applications for Restricted Premises. Applicable WA State legislation by which applications must comply is listed under the 'Related policies, procedures and supporting documentation.	As per recommended modifications referred to at 1.5 and 1.15.

No.	Submitter Comment	Submitter	Administration Comment	Recommended Modification
	<p>pharmacy. As such, use of the term 'vape' shop in the definition of 'restricted premises' (smoking) should be reconsidered.</p>			
2.4	<p>Restrictions on the use (or consumption) of e-cigarettes may be considered in the Policy and should also be in line with legislation which does not permit their use in any area where smoking is restricted.</p>	<p>Department of Health</p>	<p>The City's Local Government Property Local Law 2021 (LGP Local Law) prohibits smoking in a smoke-free area.</p> <p>The LGP Local Law defines a smoke-free area as:</p> <ul style="list-style-type: none"> a) An Activity Centre (as defined in the State Planning Policy 4.2 – Activity Centres for Perth and Peel); b) A Public Open Space that is local government property (recreation, sport and nature spaces defined by the Department of Local Government, Sport and Cultural Industries Public Open Space Classification); c) A thoroughfare (but does not include vehicles within the thoroughfare) adjacent to a business or facility where there is activity that caters for children and/or young people; or d) A thoroughfare (but does not include vehicles within the thoroughfare) adjacent to a business or facility where trading with an outdoor eating area as an extension of food premises or licensed premises. <p>It also defines smoke and/or smoking as to:</p>	<p>No modification.</p>

No.	Submitter Comment	Submitter	Administration Comment	Recommended Modification
			<p>a) smoke, hold or otherwise have control over an ignited tobacco product;</p> <p>b) light a tobacco product; or</p> <p>c) use an e-cigarette;</p> <p>As such, a person must not smoke (including e-cigarettes or 'vaping') in a smoke-free area. The City's rangers have authority to fine people if they smoke/vape in a smoke-free area, however as the LGP Local Law is for public property, it is not enforceable in private spaces. Restricting the use of e-cigarettes outside of this is captured within State legislation as listed in the Policy.</p>	
2.5	The criterion of qualified persons when conducting odour and air quality management assessments should be included as a part of the detailed Management Plans required to be submitted with development applications.	Department of Health	As per the response to comment 1.12 of CCWA's submission above, the Management Plan will address odour and air management of development applications. Applications will not be considered for approval unless the conditions are suitably met.	No modification.
3.	3.1 Strongly endorses Cancer Council WA's submission.	Heart Foundation WA	Noted.	No modification.
4.	4.1 NMHS are a strong supporter and advocate of the City's Smoke-Free Town Centres, and welcome and support this Policy. They state that the Policy is likely to contribute to a reduction in the environmental impact of cigarette butts and e-cigarette waste which aligns with the City's Waste Strategy 2018-2023. As such, this	North Metropolitan Health Services	Noted. The Policy is recommended to be modified to include the City's Waste Strategy in the related policies, procedures and supporting documentation.	The proposed Policy is recommended to be modified to include the City's Waste Strategy 2018 – 2023 in the related policies, procedures and supporting documentation section.

No.	Submitter Comment	Submitter	Administration Comment	Recommended Modification	
	strategy should be referenced as one of the related policies, procedures supporting and documentation.				
5.	5.1	ACOSH strongly endorses Cancer Council WA's submission. They would be keen to support considerations to strengthen restrictions on smoking and other nicotine products such as e-cigarettes through a scheme amendment.	Australian Council on Smoking & Health (ACOSH)	Noted.	No modification.
6.	6.1	Endorses Cancer Council WA's submission.	Thoracic Society of Australia and New Zealand	Noted.	No modification.
7.	7.1	Endorses Cancer Council WA's submission.	Stroke Foundation	Noted.	No modification.
8.	8.1	Strongly supports the draft Policy. Further suggests that all applications for businesses whose primary purpose is the consumption of tobacco and tobacco-related products be rejected.	Michelle Isabel Jongenelis	Noted. The intent of the Policy and other initiatives such as the City's Smoke-Free Town Centres is to reduce smoking within the City. By restricting the sale and use of tobacco and tobacco-related products, the City will demonstrate its commitment to limit community exposure to second-hand smoke, help change attitudes towards smoking and improve health as per the objectives of the PHP.	No modification.
9.	9.1	Mostly supports the draft Policy however would like the City to reconsider the restricted trading hours for smoking premises. Notes that while never having been a smoker, the presence of Shisha Bars adds to the night-time economy and does not believe that these	Phil Bryant	As above.	No modification.

No.	Submitter Comment	Submitter	Administration Comment	Recommended Modification	
	venues pose a potential for anti-social behaviour as they tend to be alcohol-free.				
9.2	Consideration should however be given for the requirement of separate entry and exit points to mitigate the impact of second-hand smoke on children and other patrons	Phil Bryant	WA State legislation acts to reduce the exposure of people to tobacco smoke. The <i>Tobacco Products Control Regulations 2006</i> prohibits smoking within 5-metres of a public entrance and within 10-metres of the air intake for an air conditioning unit which mitigates the impact of second-hand smoke.	No modification.	
Wording within the Policy					
1.	1.17	It is suggested that the word 'consumption' be replaced with the word 'use' when used in connection with tobacco to reflect the severity of tobacco use.	Cancer Council WA	Noted.	It is recommended that the Policy wording be modified as follows: 'consumption' 'use'
	1.18	It is recommended that the word 'Uses' is not capitalised in clause 2.1.	Cancer Council WA	As above.	It is recommended that the Policy be modified as follows: Restricted Premises – Smoking and Smoking Premises <u>Uses</u> must comply with the City's Local Planning Policy – Signs and Advertising.
	1.19	Reference to legislation throughout the Policy should be italicised, and the relevant year should not be in brackets.	Cancer Council WA	As above.	It is recommended that the wording and formatting be modified within the Policy to reflect the correct use.
	1.20	Reference to the Liquor Licence Control Act (1998) should read ' <i>Liquor Control Act 1988</i> '.	Cancer Council WA	As above.	It is recommended that the wording be modified as follows: ' <i>Liquor Control Act 1988</i> '.

References

Astuti, Putu et al. "Cigarette retailer density around schools and neighbourhoods in Bali, Indonesia: A GIS mapping." *Tobacco Induced Diseases*, vol. 17, no. July, 2019, 55. doi:10.18332/tid/110004.

Henriksen, Lisa, Ellen C. Feighery, Nina C. Scheicher, David W. Cowling, Randolph S. Kilne, and Stephen P. Fortmann. "Is adolescent smoking related to the density and proximity of tobacco outlets and retail cigarette advertising near schools?" *Preventative Medicine*, April 2008; doi:10.1016/j.ypmed.2008.04.008.

Mackay, Sally; Molloy, Janine; Vandevijvere, Stefanie. *INFORMAS protocol: Outdoor advertising (school zones)*. The University of Auckland, 2017; <https://doi.org/10.17608/k6.auckland.5701102.v2>.

Robertson L, Cameron C, McGee R, et al. "Point-of-sale tobacco promotion and youth smoking: a meta-analysis." *Tobacco Control*, 2016; 25:e83-e89.

Trapp G, Hooper P, Thornton LE, et al. "Exposure to unhealthy food and beverage advertising during the school commute in Australia." *Epidemiol Community Health*, June 2021; doi:10.1136/jech-2021-217032.

LOCAL PLANNING POLICY: RESTRICTED PREMISES – SMOKING



Legislation / local law requirements	This Policy has been prepared under the provisions of Schedule 2, Part 2 and 3 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> .
Relevant delegations	16.1.1 Determination of various applications for development approval under the City's Local Planning Scheme.
Related policies, procedures and supporting documentation	<ul style="list-style-type: none"> • Tobacco Products Control Act (2006) • Tobacco Products Control Act Regulations (2006) • Medicines and Poisons Act 2014 • Liquor Licence-Control Act (1988) • City of Vincent Public Health Plan (2020 – 2025) • City of Vincent Waste Strategy 2018 – 2023 • City of Vincent Local Government Property Local Law 2021

PRELIMINARY

INTRODUCTION

Tobacco smoking has significant detrimental impacts to the health and well-being of the community, both directly from the persons who are active smokers and indirectly from those who suffer the effects of environmental, or 'second-hand', tobacco smoke.

Smoking is a leading cause of preventable death and disease in Australia and there is no safe level of exposure to second-hand smoke as all exposure carries risk. Within the City of Vincent's Public Health Plan (2020–2025), a priority health outcome is 'Reduced smoking' focusing on prioritising and embedding public health principles into City policies and planning processes.

A reduction in the sale and ~~consumption-use~~ of tobacco and tobacco-related products could encourage smoking cessation, reduce relapse for smokers who have quit and prevent uptake of smoking by young people within the community.

Federal and State legislation governs matters such as packaging and advertising for premises whose primary function is the sale or ~~consumption-use~~ of tobacco and tobacco-related products. Local government is responsible for tailoring its local planning framework to guide the assessment of these types of businesses.

PURPOSE

The purpose of this policy is to provide guidance on the exercise of discretion on the operations and location of businesses whose primary purpose is the sale of smoking-related implements or ~~consumption~~the use of tobacco and tobacco-related products on site.

OBJECTIVES

This policy seeks to:

1. Reduce the number of businesses whose primary purpose is the ~~consumption-use~~ of tobacco and other products to be used for smoking;
2. Reduce the promotion of tobacco and smoking within the City;

LOCAL PLANNING POLICY: RESTRICTED PREMISES – SMOKING



3. Ensure that any businesses whose primary purpose is the sale of tobacco and other products to be used for smoking are located in such a manner that they would not negatively impact on the amenity of the area, including the public realm and the surrounding existing land uses, by means of associated emission of harmful smoke and/or vapours, noise, odour or anti-social behaviour;
4. Ensure business and advertising signs do not promote the sale of tobacco and other products to be used for smoking, [smoking-related](#) implements or the [consumption-use](#) of tobacco or smoking on site; and
5. Ensure businesses that include the sale or [consumption-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.

SCOPE

The provisions of this policy apply to uses whose primary purpose is the sale of tobacco, [smoking-related](#) implements or [consumption-use](#) of tobacco and tobacco-related products on site.

This policy does not apply where 'Restricted Premises' or 'Shop' uses are exempt from the need to obtain development approval in accordance with the City's Local Planning Scheme No. 2.

POLICY PROVISIONS

DEFINITIONS

Restricted Premises (Smoking) means ~~is~~ a 'Restricted premises', as defined by Local Planning Scheme No. 2, used for the sale by retail or wholesale, or the offer for hire, loan or exchange, or the exhibition, display or delivery of smoking-related implements. ~~These may include:~~

~~a) — Vape and smoke shops.~~

Shop (Tobacco) means a 'Shop', as defined by Local Planning Scheme No. 2, whose primary purpose is the sale by retail of tobacco products [and/or smoking-related implements](#). These may include, though are not limited to:

- a) Tobacco Shops; and
- b) Tobacconists.

Smoking Premises means any premises whose primary purpose is the [consumption-use](#) of tobacco and other products to be used for smoking. These include:

- a) 'Shisha' bars; and
- b) Cigar Lounges.

[The following definition is not defined in the Planning and Development \(Local Planning Scheme\) Regulations 2015 and is provided to guide the application of discretion.](#)

[Smoking-related Implements](#) means any smoking implement which may be used for smoking tobacco or tobacco-related products or any product that resembles these. These include:

- a) [Tobacco cigarettes;](#)
- b) [Cigars;](#)
- c) [Waterpipe smoking devices \(or hookahs\);](#)
- d) [E-cigarette devices or components;](#)
- e) [Cigarette papers;](#)

LOCAL PLANNING POLICY: RESTRICTED PREMISES – SMOKING



- f) [Pipes;](#)
- g) [Cigarette holders; and](#)
- h) [Rolling machines.](#)

POLICY

1. General Requirements

- 1.1 Restricted Premises – Smoking, Shop (Tobacco) and Smoking Premises uses will only be permitted where they are not adjoining or adjacent to residential or accommodation uses (whether temporary or permanent), home based businesses, child care premises, educational establishments, family day care, consulting rooms, medical centres, offices, places of worship, reception centres, restaurants/cafes under the City's operative local planning scheme and where the proposed development (lot) is not an adjoining property to the following Local Planning Scheme and Metropolitan Region Scheme reserves:

- o Public Purpose;
- o Public Open Space;
- o Parks and Recreation

- 1.2 Restricted Premises – Smoking uses will only be ~~considered~~permitted where they are not on the ground floor of a premises.

- 1.3 [Restricted Premises – \(Smoking\), Shop \(Tobacco\) and Smoking Premises uses must not directly display products for sale or use, nor have them visible from the street.](#)

~~Products for sale or use are not to be directly displayed or visible from the street.~~

2. Signage

- 2.1 Restricted Premises – Smoking and Smoking Premises ~~U~~uses must comply with the City's Local Planning Policy – Signs and Advertising.

3. Business Operations

- 3.1 Restricted Premises – (Smoking), Shop (Tobacco) and Smoking Premises uses are limited to the _____ hours of 7:00am to 10:00pm Monday to Saturday and between the hours of 9:00am to 10:00pm on a _____ Sunday and public holidays.

- 3.2 A detailed Management Plan is required for Smoking Premises or other premises whose business primarily involves the ~~consumption-use~~ of tobacco [or tobacco-related products](#) on site. The Management Plan is to be submitted as part of a development application and is to address the following:

- Noise control and management, including the provision of an acoustic assessment prepared by an Acoustic;
- Consultant/Engineer with relevant qualifications and experience;
- [The number of patrons;](#)
- Car parking and parking management;
- Hours of operation;
- [Patron and anti-social behaviour;](#)
- [Complaints management procedures;](#)
- [Rubbish collection and disposal; and](#)

LOCAL PLANNING POLICY: RESTRICTED PREMISES – SMOKING



- Odour and air quality management assessment.

4. Compliance with other legislation

4.1 Any application which includes the sale and consumption of tobacco is to comply with any other relevant legislation including the *Tobacco Products Control Act (2006)*, *Tobacco Products Control Act Regulations (2006)* and *Liquor Licence Control Act (1988)*.

OFFICE USE ONLY	
Responsible Officer	Manager Policy & Place
Initial Council Adoption	DD/MM/YYYY
Previous Title	N/A
Reviewed / Amended	DD/MM/YYYY
Next Review Date	MM/YYYY

LOCAL PLANNING POLICY: RESTRICTED PREMISES – SMOKING



Legislation / local law requirements	This Policy has been prepared under the provisions of Schedule 2, Part 2 and 3 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> .
Relevant delegations	16.1.1 Determination of various applications for development approval under the City's Local Planning Scheme.
Related policies, procedures and supporting documentation	<ul style="list-style-type: none"> • <i>Tobacco Products Control Act 2006</i> • <i>Tobacco Products Control Regulations 2006</i> • <i>Medicines and Poisons Act 2014</i> • <i>Liquor Control Act 1988</i> • <i>City of Vincent Public Health Plan 2020 – 2025</i> • <i>City of Vincent Waste Strategy 2018 – 2023</i> • <i>City of Vincent Local Government Property Local Law 2021</i>

PRELIMINARY

INTRODUCTION

Tobacco smoking has significant detrimental impacts to the health and well-being of the community, both directly from the persons who are active smokers and indirectly from those who suffer the effects of environmental, or 'second-hand', tobacco smoke.

Smoking is a leading cause of preventable death and disease in Australia and there is no safe level of exposure to second-hand smoke as all exposure carries risk. Within the City of Vincent's Public Health Plan 2020–2025, a priority health outcome is 'Reduced smoking' focusing on prioritising and embedding public health principles into City policies and planning processes.

A reduction in the sale and use of tobacco and tobacco-related products could encourage smoking cessation, reduce relapse for smokers who have quit and prevent uptake of smoking by young people within the community.

Federal and State legislation governs matters such as packaging and advertising for premises whose primary function is the sale or use of tobacco and tobacco-related products. Local government is responsible for tailoring its local planning framework to guide the assessment of these types of businesses.

PURPOSE

The purpose of this policy is to provide guidance on the exercise of discretion on the operations and location of businesses whose primary purpose is the sale of smoking-related implements or the use of tobacco and tobacco-related products on site.

OBJECTIVES

This policy seeks to:

1. Reduce the number of businesses whose primary purpose is the use of tobacco and other products to be used for smoking;
2. Reduce the promotion of tobacco and smoking within the City;

LOCAL PLANNING POLICY: RESTRICTED PREMISES – SMOKING



3. Ensure that any businesses whose primary purpose is the sale of tobacco and other products to be used for smoking are located in such a manner that they would not negatively impact on the amenity of the area, including the public realm and the surrounding existing land uses, by means of associated emission of harmful smoke and/or vapours, noise, odour or anti-social behaviour;
4. Ensure business and advertising signs do not promote the sale of tobacco and other products to be used for smoking, smoking-related implements or the use of tobacco or smoking on site; and
5. 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.

SCOPE

The provisions of this policy apply to uses whose primary purpose is the sale of tobacco, smoking-related implements or the use of tobacco and tobacco-related products on site.

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- b) Cigars;
- c) Waterpipe smoking devices (or hookahs);
- d) E-cigarette devices or components;
- e) Cigarette papers;
- f) Pipes;
- g) Cigarette holders; and
- h) Rolling machines.

LOCAL PLANNING POLICY: RESTRICTED PREMISES – SMOKING



POLICY

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- Public Purpose;
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- 1.2 Restricted Premises – Smoking uses will only be considered where they are not on the ground floor of a premises.
- 1.3 Restricted Premises – (Smoking), Shop (Tobacco) and Smoking Premises uses must not directly display products for sale or use, nor have them visible from the street.

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 - The number of patrons;
 - Car parking and parking management;
 - Hours of operation;
 - Patron and anti-social behaviour;
 - Complaints management procedures;
 - Rubbish collection and disposal; and
 - Odour and air quality management assessment.

LOCAL PLANNING POLICY: RESTRICTED PREMISES – SMOKING



OFFICE USE ONLY	
Responsible Officer	Manager Policy & Place
Initial Council Adoption	DD/MM/YYYY
Previous Title	N/A
Reviewed / Amended	DD/MM/YYYY
Next Review Date	MM/YYYY