

9.7 ADVERTISING OF NEW POLICY - RESTRICTED PREMISES - SMOKING POLICY

Attachments: 1. **Draft Restricted Premises - Smoking Local Planning Policy**

RECOMMENDATION

That Council PREPARES the Draft Restricted Premises – Smoking Local Planning Policy included in Attachment 1, for the purposes of community consultation, pursuant to Schedule 2, Part 2, Clause 4 (1)(2) of the *Planning and Development Act (Local Planning Schemes) Regulations 2015*.

PURPOSE OF REPORT:

For Council to consider the Draft Restricted Premises – Smoking Local Planning Policy (Policy) for consultation with the community as detailed in **Attachment 1**.

BACKGROUND:

At the [20 October 2020 Ordinary Council Meeting](#) (OMC), Council endorsed the City's Public Health Plan (PHP) which sets the framework for public health initiatives within the City for the next five years. An identified top priority outcome was reducing smoking, 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 consultation of tobacco and other products to be used for smoking 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.

In accordance with the City's Policy Development and Review Policy, the Policy was circulated to Council from 3 June to 17 June 2022 with no changes recommended at the end of this period.

DETAILS:**Proposed Local Planning Policy**

The Draft Policy (**Attachment 1**) provides a framework to guide the exercise of discretion for 'Restricted Premises' and 'Use not listed' proposals whose primary purposes is the sale or consumption of tobacco and other products to be used for smoking (i.e. Shisha Bars and Cigar Lounges).

Some of these premises would fit within existing land uses already defined under the City of Vincent Local Planning Scheme No. 2 (LPS2). A premises whose primary purpose is the sale of tobacco products (Tobacco Shop or Tobacconist) would fall under the definition of 'shop', while a premises whose primary purpose is the sale of smoking-related products or implements (Smoking Related Products Shop) would be defined as a 'restricted premises'. It should be noted that most businesses who sell tobacco in a retail format, including Tobacco Shop or Tobacconist, generally are not primarily based in the sale of tobacco products. These sales would often be ancillary to the main products sold at the premises (i.e. newsagents, gift shops and convenience stores).

Under LPS2, both 'shop' and 'restricted premises' are permissible in all zones throughout Vincent.

'Shop' is permitted and exempt from the need for development approval in the commercial and centre zones and so this policy would not apply to a Tobacco Shop or Tobacconist in commercial and centre zones. 'Shop'

is a discretionary use in the residential and mixed-use zones and so a policy could apply to development applications for a 'Shop' whose primary purpose is the sale of tobacco products in these locations.

'Restricted premises' is a discretionary use in all zones and so the policy could be applied to all development applications for a Smoking-Related Products Shop.

Similarly, a premises whose primary purpose is the consumption of tobacco or smoking related products (Smoking Premises) would likely not fall within any land use definition under LPS2 and so would be considered a use not listed. The policy could also be applied to these land uses.

The land use permissibility in LPS2 must be maintained by any policy that applies to these uses. As LPS2 states that Tobacco Shop or Tobacconist and Smoking-Related Products Shop are permissible uses in all zones, the policy needs to set out what the requirements would be in order for them to be approved. The policy cannot subvert LPS2 by prohibiting these uses in all or particular zones, as the appropriate manner to achieve this is through a scheme amendment, which will be pursued through the Scheme Review.

The criteria proposed as part of the Draft Policy aim to restrict Tobacco Shops and Smoking-Related Product Shops away from sensitive land uses and off ground floor tenancies to reduce their impact on the public and surrounding residents and businesses. Additional policy measures are proposed which reinforce the need for strong management of any premises which involves the consumption of tobacco related products on site (i.e. Shisha Bars).

Supporting the principles are five objectives that speak to reducing the impact on the community and the amenity of surrounding land uses.

CONSULTATION/ADVERTISING:

In accordance with the City's [Community and Stakeholder Engagement Policy](#), community consultation of all new and significantly amended policies must be provided for a period exceeding 21 days in the following ways:

- notice published on the City's website;
- notice posted to the City's social media;
- notice published in the local newspapers;
- notice exhibited on the notice board at the City's Administration and Library and Local History Centre; and
- letters distributed to relevant local businesses and community groups.

Community consultation of this proposed new policy is proposed to commence in late 2022.

LEGAL/POLICY:

Schedule 2, Clause 4 of the *Planning and Development (Local Planning Schemes) Regulations 2015* sets out the requirements to make a local planning policy.

The City's Policy Development and Review Policy sets out the process for the development and review of the City's policy documents.

RISK MANAGEMENT IMPLICATIONS

Low: It is low risk for Council to undertake community consultation of the proposed new policy.

STRATEGIC IMPLICATIONS:

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

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 environmental sustainability outcomes. This action/activity is environmentally neutral.

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:

Community consultation of the proposed new policy will be met by operational budgets.

COMMENTS:

The Policy has been designed to provide meaningful provisions to reflect the City's commitment to prohibition of premises whose primary purpose is the sale and consumption of tobacco. This policy is envisaged to exist in its current form until changes are pursued as part of the Local Planning Scheme review, which will go further to prohibit these types of use classes.

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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