

9.5 LOCAL PLANNING POLICY: RESTRICTED PREMISES - SMOKING

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

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 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 other submissions 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 applications 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	Submitter One	The City of Vincent (City) would like to thank the Submitter One 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	Submitter One	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	Submitter One	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.	Submitter One	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' in line with WA legislation.	<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. These include:</p> <p><u>a) cigarette papers;</u> <u>b) cigarette rolling machines;</u> <u>c) pipes; and</u> <u>d) other things designed to be used in the process of smoking a tobacco product or preparing a tobacco product for smoking.</u></p>
1.5	Reference to 'vape and smoke shops' in the Policy is recommended to be clarified with Submitter Two to determine if they would constitute an illegal use for which development applications should be refused.	Submitter One	Submitter Two 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 Submitter Two directly 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	<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> <i>Tobacco Products Control Act Regulations 2006</i> <u><i>Medicines and Poisons Act 2014</i></u> <u><i>Liquor Licence Control Act 1988</i></u></p>

No.	Submitter Comment	Submitter	Administration Comment	Recommended Modification
			assumed to be adhered to, it is not necessary to remove these references.	<p><i>City of Vincent Public Health Plan 2020 - 2025</i></p> <p><i>City of Vincent Waste Strategy 2018 – 2023</i></p> <p><i>City of Vincent Local Government Property Local Law 2021</i></p>
1.6	<p>Submitter One 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. 	Submitter One	<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 Submitter One 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>. To avoid delays in the adoption of this Policy, it is recommended that these uses are included in an amendment to the Policy.</p> <p>Future review of this Policy, and of the LPS2 will consider further restrictions in line with the PHP.</p>	No modification.
1.7	It is also recommended that smoking-related uses be restricted within a stated	Submitter One	Imposing a set distance restricting smoking-related uses from operating in relation to	No modification.

No.	Submitter Comment	Submitter	Administration Comment	Recommended Modification
	<p>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 Submitter One.</p>		<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>. As such, no modifications are recommended to avoid further delays in the adoption of this Policy. As per this research it is recommended that the Policy be amended to include a radius of 500-metres be applied to new development of smoking-related uses around educational establishments.</p>	
1.8	<p>Submitter One supports the City in addressing the normalisation of tobacco use and smoking by reducing the</p>	Submitter One	Noted.	No modification.

No.	Submitter Comment	Submitter	Administration Comment	Recommended Modification
	visibility of smoking and related uses.			
Clause 1.3				
1.9	It is recommended that the uses outlined in clause 1.3 are clarified and specified.	Submitter One	Reducing the exposure to tobacco advertising, marketing, promotion and sponsorship is a key objective in the PHP and would be further strengthened by specifying the uses to which this Policy applies.	It is recommended to modify clause 1.3 of the Policy as follows: <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	Submitter One 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.	Submitter One	Noted.	No modification.
Clause 3.2				
1.11	Submitter One supports the requirement of a Management Plan for development applications relating to Smoking Premises.	Submitter One	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	Submitter One	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	No modification.

No.	Submitter Comment	Submitter	Administration Comment	Recommended Modification
	added requirement to the Management Plan in Smoking Premises' development applications.		this clause in order to be considered for approval.	
1.13	It is further recommended that development applications address how any proposed 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.	Submitter One	The Management Plan is to include noise control and management.	No modification.
Clause 4.1				
1.14	Submitter One supports the inclusion of clause 4.1 and notes that it is not in the public interest to approve an illegal use.	Submitter One	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>	Submitter One	Noted.	As above.
Scheme Amendment				

No.	Submitter Comment	Submitter	Administration Comment	Recommended Modification	
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>Submitter One would be pleased to contribute to any discussions and consultations to progress a scheme amendment that further restricts smoking-related land uses within the City.</p>	Submitter One	<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 Submitter One's support and commitment to progress future strengthening of smoking restrictions, and welcomes future discussions.</p>	No modification.	
2.	2.1	The Submitter Two supports the principle of the Policy and supports the City of Vincent further restricting the sale and use of tobacco through a scheme amendment.	Submitter Two	The City would like to thank Submitter Two 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.	Submitter Two	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> . Nicotine vaping products	Submitter Two	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	As per recommended modifications referred to at 1.5 and 1.15.

No.	Submitter Comment	Submitter	Administration Comment	Recommended Modification
	<p>can only be prescribed by a registered medical practitioner (or other authorised prescriber) and may only be dispensed by a registered pharmacy.</p> <p>Products that are designed to resemble tobacco products, including e-cigarette devices and their components, whether or not they contain nicotine, cannot be sold by tobacco or general retailers'. As such, use of the term 'vape' shop in the definition of 'restricted premises' (smoking) should be reconsidered.</p>		<p>under the 'Related policies, procedures and supporting documentation.</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 policy recommendations which do not permit their use in any area where smoking is restricted.</p>	Submitter Two	<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 	No modification.

No.	Submitter Comment	Submitter	Administration Comment	Recommended Modification
			<p>where there is activity that caters for children and/or young people; or</p> <p>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> <p>It also defines smoke and/or smoking as to:</p> <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>	
3.	<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.</p>	Submitter Two	As per the response to comment 1.12 of Submitter One'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 Submitter One's submission.	Submitter Three	Noted.	No modification.

No.	Submitter Comment	Submitter	Administration Comment	Recommended Modification	
4.	4.1	Submitter Four 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 strategy should be referenced as one of the related policies, procedures supporting and documentation.	Submitter Four	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.
5.	5.1	Submitter Five strongly endorses Submitter One'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.	Submitter Five	Noted.	No modification.
6.	6.1	Endorses Submitter One's submission.	Submitter Six	Noted.	No modification.
7.	7.1	Endorses Submitter One's submission.	Submitter Seven	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.	Submitter Eight	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.

No.	Submitter Comment	Submitter	Administration Comment	Recommended 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 venues pose a potential for anti-social behaviour as they tend to be alcohol-free.	Submitter Nine	As above.	No modification.
	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	Submitter Nine	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.	Submitter One	Noted.	It is recommended that the Policy wording be modified as follows: 'consumption' ' <u>use</u> '
	1.18	It is recommended that the word 'Uses' is not capitalised in clause 2.1.	Submitter One	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	Submitter One	As above.	It is recommended that the wording and formatting be modified within the Policy to reflect the correct use.

No.	Submitter Comment	Submitter	Administration Comment	Recommended Modification
	be italicised, and the relevant year should not be in brackets.			
1.20	Reference to the Liquor Licence Control Act (1998) should read ' <i>Liquor Control Act 1988</i> '.	Submitter One	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.
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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.

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 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.

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 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. These include:

- a) Cigarette papers;
- b) Cigarette rolling machines;
- c) Pipes; and
- d) Other things designed to be used in the process of smoking a tobacco product or preparing a tobacco product for smoking.

LOCAL PLANNING POLICY: RESTRICTED PREMISES – SMOKING



POLICY

1. General Requirements

- 1.1 Restricted Premises – Smoking, Shop (Tobacco) and Smoking Premises uses will only be considered where they are not adjoining or adjacent to ~~residential or accommodation uses~~ Home based businesses, Child care premises, Educational establishments, Family day care, Consulting rooms, Medical centres, Offices, Places of worship, Reception centres, Restaurants/cafes, Aged or dependent persons dwelling, Bed and Breakfast, Betting agency, Caretakers' dwelling, Cinemas / Theatre, Corrective institution, Dwelling (grouped), Dwelling (multiple), Dwelling (single house), Fast food outlet, Funeral parlour, Holiday Accommodation, Hotel, Lunch bar, Market, Motel, Recreation – private, Residential building (whether temporary or permanent), Serviced apartment 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; and
 - Parks and Recreation
- 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.

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 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
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LOCAL PLANNING POLICY: RESTRICTED PREMISES – SMOKING



OFFICE USE ONLY	
Responsible Officer	Manager Policy & Place
Initial Council Adoption	DD/MM/YYYY
Previous Title	N/A
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LOCAL PLANNING POLICY: RESTRICTED PREMISES – SMOKING



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LOCAL PLANNING POLICY: RESTRICTED PREMISES – SMOKING



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LOCAL PLANNING POLICY: RESTRICTED PREMISES – SMOKING



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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



Strategic Planning Department
City of Vincent
PO Box 82
Leederville WA 6902

By email: mail@vincent.wa.gov.au

Dear Strategic Planning Department

Proposed Local Planning Policy: Restricted Premises - Smoking

Please find attached Cancer Council WA's submission in respect of the City of Vincent's proposed Local Planning Policy: Restricted Premises – Smoking (**Proposed Policy**).

As the peak non-government cancer control organisation in Western Australia, Cancer Council WA advises government and other bodies on practices and policies to help prevent, detect and treat cancer. We develop, promote and contribute to policy and initiatives to reduce the impact of cancer on the Australian community.

Cancer Council WA is supportive of the intent of the Proposed Policy and commends the City of Vincent for progressing this matter and showing leadership to advance the public health of its community. Cancer Council WA's submission is directed at further strengthening and clarifying the Proposed Policy.

If any questions or comments arise during the review of this submission, please contact [redacted] on [redacted] or [redacted]

Thank you for your consideration of our submission. We look forward to reading the outcomes of this consultation in due course.

Yours faithfully,

[redacted signature block]

20 October 2022

Funded by community donations
Call us on 13 11 20
cancerwa.asn.au

Cancer Council Western Australia
420 Bagot Road
Subiaco WA 6008
T: 08 9212 4333
F: 08 9212 4334
ABN: 15 190 821 561

@CancerCouncilWA
 @CancerCouncilWA
 @CancerCouncilWestAus



**Submission
City of Vincent – Proposed Local Planning
Policy: Restricted Premises - Smoking**

October 2022



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Cancer Council WA

Cancer Council Western Australia (Inc) (**Cancer Council WA**) welcomes the opportunity to provide a submission as part of the consultation on the City of Vincent's Proposed Local Planning Policy: Restricted Premises – Smoking (**Proposed Policy**).

Cancer Council WA is a leading health promotion charity in Western Australia (WA). Our vision is a cancer-free future for all Western Australians and, over the last 60 years, we have strived to achieve this vision through cancer research, advocacy, education, and support. We are highly regarded in the community and work closely with a diverse range of stakeholders to help deliver outstanding, client-centred customer service and health equity throughout our communities.

In the spirit of deepening relationships, Cancer Council WA acknowledge all the traditional custodians and owners of country throughout Western Australia and recognise their continuing connection to land, waters and community. We also pay our respect to their Elders and extend that respect to all Aboriginal peoples living and working in this area.

1. Health impacts of tobacco (and similar product) use

Use of tobacco products

The use of tobacco products, such as tobacco cigarettes, are universally known to cause and contribute to significant risks of disease and death. Tobacco use is the leading cause of preventable death and disease in Australia. In 2018, nearly 20,500 deaths (13% of all deaths) were attributed to tobacco use¹. These risks are magnified when tobacco is smoked socially because of the serious harms associated with second-hand smoke².

Cigars

Cigars are made of tobacco wrapped in tobacco leaf or material with added tobacco³. Cigar smoke is at least as harmful as cigarette smoke (and may be more harmful)³. Cigar smoking has been shown to increase the risk of a range of cancers as well as the risk of coronary heart disease, aortic aneurysm and stroke³. Second-hand smoke from a lit cigar contains most of the harmful compounds as cigarette smoke³.

Waterpipe smoking (also known as smoking 'shisha')

As with other tobacco products, use of shisha poses significant health risks⁴. This practice is not safe and is associated with many of the same risks as smoking cigarettes (and may be worse), including direct negative health effects for users and serious second-hand smoke impacts for bystanders⁴. Waterpipe smoking is significantly associated with lung cancer, oesophageal cancer, head and neck cancers, respiratory illness, low birthweight, periodontal disease, impaired lung function, respiratory diseases, metabolic syndrome, poor mental health and the spreading of infectious diseases³.

Waterpipe smokers tend to smoke over a longer period than cigarette smokers, with a typical session being between 45 minutes to an hour⁵. It has been estimated that during a session of waterpipe smoking of an hour, a person would inhale more than 100 times the volume of smoke produced by a single cigarette⁶. This exposes users to nicotine and other harmful substances such as carbon monoxide and heavy metals contained in the smoke^{7,8}.

Waterpipe smoking can act as a gateway to cigarette initiation⁹. Waterpipe smoking emissions can harm non-smokers in the same way second-hand tobacco smoking does, by generating high levels of toxins into the surrounding air, putting bystanders at significant risk³.

In addition to the above health risks, there is documented evidence of acute health impacts (including vomiting, syncopal episodes, carbon monoxide poisoning and burns) from waterpipe smoking^{10,11}.

Electronic cigarette use (also known as 'e-cigarette use' or 'vaping')

The use of an e-cigarette device mimics the use of conventional cigarettes, and is increasing in the community, and is most common among young people¹². E-cigarette use involves breathing in an aerosol, usually containing nicotine (amongst other ingredients)¹³.

The most up-to-date comprehensive systematic review of the global evidence, undertaken recently by The Australian National University (ANU), found¹⁴:

- identified risks of e-cigarettes include addiction, intentional and unintentional poisoning; acute nicotine toxicity, including seizures; burns and injuries; lung

injury;

- less direct evidence indicates adverse effects of e-cigarettes on cardiovascular health markers, including blood pressure and heart rate, lung function and adolescent brain development and function; and
- there is strong evidence that non-smokers who use e-cigarettes are three times as likely to go on to smoke combustible tobacco cigarettes as non-users, supportive of a gateway effect.

According to a report of the US Surgeon General, exposure to nicotine during adolescence may have long-term consequences for brain development, impacting learning, memory and attention, and increasing the risk for rapid and lasting addiction and future use of other drugs¹⁵.

2. Legislative context

The *Tobacco Products Control Act 2006 (WA) (TPC Act)* and the *Tobacco Products Control Regulations 2006 (TPC Regulations)* are central parts of the legislative framework in respect of tobacco control in WA.

The TPC Act is an Act to:

- prohibit the supply of tobacco products and smoking implements to young persons;
- regulate the sale and promotion of tobacco products;
- prohibit the sale of products that resemble tobacco products; and
- reduce the exposure of people to tobacco smoke from tobacco.

It provides a licensing scheme that requires retailers and wholesalers of tobacco products to be licensed.

Shisha and cigar lounges

A licence to sell tobacco products under the TPC Act may mean that the sale of tobacco products by the licensee will not be an offence (provided relevant legislation is complied with). It does not however, authorise a premises to be used for the smoking of tobacco products. Indeed, these matters are not part of the licensing process.

It should be noted that the *Tobacco Products Control Regulations 2006 (TPC Regulations)*, prohibit smoking in an "enclosed public place" (see regulation 10 of the TPC Regulations) and if a person commits such an offence, the occupier of the enclosed public place also commits an offence (see regulation 11 of the TPC Regulations). Further there are prohibitions on smoking near enclosed public places including "within 5 m of a public entrance to the enclosed public place" and "within 10 m of an air intake for air conditioning equipment that is in or on the enclosed public place" (see regulation 13A of the TPC Regulations).

A "public place" is defined in the TPC Act Glossary clause 1 as:

"a place or vehicle that —

(a) the public, or a section of the public, is entitled to use; or

(b) is open to, or is being used by, the public, or a section of the public,

whether on payment of money, by virtue of membership of a club or other body, by invitation, or otherwise".

An enclosed public place is defined in regulation 8 (with reference to regulation 9) of the TPC Regulations as follows:

"8. Enclosed public places

(1) A public place or a part of a public place that has the features mentioned in subregulations (2) and (3) is an enclosed public place for the purposes of this Part.

(2) An enclosed public place is covered by a roof or a part of a roof.

(3) An enclosed public place is configured so that the total vertical surface area of the solid material in the walls is more than 50% of the notional vertical surface area of the place as assessed in accordance with regulation 9.

(4) The total vertical surface area of the solid material in the walls is to be assessed by —

(a) multiplying the following —

(i) the length of each wall under the roof or the part of a roof plus the length of each wall and each section of a wall that is 1 m or less beyond the perimeter of the roof or the part of a roof when measured horizontally from the perimeter of the roof or the part of the roof;

(ii) the actual height of the walls and wall sections mentioned in subparagraph (i);

and

(b) deducting the total vertical surface area of the open parts of the walls or wall sections mentioned in paragraph (a)(i).

(5) The total vertical surface area of solid material in a wall is to be assessed as if each window, door or vertical retractable covering in or adjacent to the wall —

(a) is closed; and

(b) forms part of the wall.

(6) A place is not an enclosed public place for the purposes of this Part if it is covered by a roof or a part of a roof and is bounded by only —

(a) one straight wall; or

(b) 2 straight walls that are set in an angle of 90 degrees or more.

(7) A part of a public place may be an enclosed public place even though —

(a) it is part of a public place that is not an enclosed public place; or

(b) it is part of another part of a public place that is not an enclosed public place.

9. Notional vertical surface area

(1) The notional vertical surface area of a public place is to be assessed by multiplying the following —

(a) the length of the perimeter of the roof, or the part of a roof, covering the public place;

(b) the average height of the roof, or the part of a roof, covering the public place.

(2) The notional vertical surface area of a part of a public place is to be assessed by multiplying the following —

(a) the length of the perimeter of the roof, or the part of a roof, covering the part of the public place;

(b) the average height of the roof, or the part of a roof, covering the part of the public place."

For further information please see [Smoking restrictions in enclosed public places](#)¹⁶ and [Smoking and selling shisha](#)¹⁷.

E-cigarette products

The TPC Act also provides at section 106 that:

"A person must not sell any food, toy or other product that is not a tobacco product but is —

(a) designed to resemble a tobacco product or a package; or

(b) in packaging that is designed to resemble a tobacco product or a package."

In the case of *Hawkins v Van Heerden* [2014] WASC 127 it was held that the e-cigarettes were "designed to resemble" a tobacco product contrary to section 106 of the TPC Act (an appeal from this decision was dismissed).

The Department of Health (WA) website¹³ states:

"It is illegal to sell, supply or possess an e-cigarette or any liquid that contains nicotine in Australia without a doctor's prescription. Nicotine is a dangerous poison, even in small quantities, and it is strictly regulated in WA under the Medicines and Poisons Act 2014 (external site).

In Western Australia, products that are designed to resemble tobacco products, including e-cigarette devices and their components, whether or not they contain nicotine, cannot be sold by tobacco or general retailers under the Tobacco Products Control Act 2006 (external site)."

For further information on e-cigarettes, please see [Electronic cigarettes in Western Australia](#)¹³.

Cancer Council WA understands the TPC Act is currently under review, which may lead to a strengthening of the legislation in due course.

3. Local planning policy

The general function of a local planning policy (LPP) is not clearly articulated in the *Planning and Development (Local Planning Schemes) Regulations 2015 (PD(LPS) Regulations)*. Clause 3 of Schedule 2 of the PD(LPS) Regulations provides however:

"(1) The local government may prepare a local planning policy in respect of any matter related to the planning and development of the Scheme area.

(2) A local planning policy —

(a) may apply generally or in respect of a particular class or classes of matters specified in the policy; and

(b) may apply to the whole of the Scheme area or to part or parts of the Scheme area specified in the policy.

(3) A local planning policy must be based on sound town planning principles and may address either strategic or operational considerations in relation to the matters to which the policy applies.

(4) The local government may amend or repeal a local planning policy.

(5) In making a determination under this Scheme the local government must have regard to each relevant local planning policy to the extent that the policy is consistent with this Scheme."

A LPP assists a local government with the guidance of discretion, such as where the application for development approval is a discretionary use in a particular zone under the relevant planning scheme. The procedure for making a LPP is set out in Schedule 2 of the PD(LPS) Regulations.

Further, in considering an application for development approval under clause 67(2) of Schedule 2 of the PD(LPS) Regulations, the local government is to have due regard to the matters set out in that clause to the extent that, in the opinion of the local government, those matters are relevant to the development the subject of the application. A relevant matter set out under clause 67(2) of Schedule 2 of the PD(LPS) Regulations includes:

(g) any local planning policy for the Scheme area;.....

In *Permanent Trustee Australia Ltd v City of Wanneroo* (1994) 11 SR(WA) 1, it was held that the weight to be given to a policy requires consideration of the following criteria:

- whether it is based on sound town planning principles;
- whether it is a public, rather than a secret, policy;
- whether it is a public policy conceived after considerable public discussion;
- the length of time the policy has been in operation; and
- whether it has been continuously applied.

In *Caratti Holding Co Pty Ltd and City of Belmont* [2021] WASAT 105 the following principles were enunciated:

"Principles relating to the application of policy

62 *The development of government policy guides the exercise of statutory discretion and has the benefit of aiding consistency in decisionmaking: Re Drake and Minister for Immigration and Ethnic Affairs (No 2) (1979) 2 ALD 634 (Re Drake) at 644 (Brennan J). The existence of a policy is a factor to be taken into consideration but it cannot replace the discretion of the decision-maker. A policy cannot be inflexibly applied regardless of the merits of the particular case: Tah Land Pty Ltd v Western Australian*

Planning Commission [2009] WASC 196 at [37] citing Clive Elliott Jennings & Co Pty Ltd v Western Australian Planning Commission [2002] WASCA 276; (2002) 122 LGERA 433 (Clive Elliott Jennings) at [24][26] (Barker J).

- 63 *The legal principles relevant to the application of policy are set out in Clive Elliott Jennings at [25]-[26] in which Barker J referred to Falc Pty Ltd v State Planning Commission (1991) 5 WAR 522 and Re Drake, among other authorities:*

25 *Much has been written about the use of policy in administrative decision-making. Administrators do not act unlawfully in adopting policies to structure their discretionary powers. Indeed, courts have accepted that it is desirable that they should do so: British Oxygen Co Ltd v Minister of Technology [1971] AC 610; R v Eastleigh Borough Council; ex parte Betts [1983] 2 AC 613; Sawyer v Secretary to Department of Primary Industry (1998) 15 ALD 742. However, an administrator exercising discretionary power will be found to have acted ultra vires if the discretion is exercised inflexibly, by application of a policy without regard to the merits of a particular case, as the decision in Falc Pty Ltd v State Planning Commission (1991) 5 WAR 522 illustrates. This principle aside, the importance of the use of "policies" in the exercise of discretionary planning powers in Western Australia is well recognised: see, eg, Hebe Pty Ltd v Metropolitan Region Planning Authority (1981) 2 APAD 428.*

26 *A relevant policy, provided it is not ultra vires, may therefore be regarded as one relevant consideration which the administrator is, effectively, bound to take into account. In Drake v Minister for Immigration and Ethnic Affairs (1979) 24 ALR 577, the Full Federal Court held that the Administrative Appeals Tribunal is entitled to treat Commonwealth government policy as a relevant factor in making its decision, but is not entitled to abdicate its function of independently considering and assessing the propriety of the policy. In Re Drake v Minister for Immigration and Ethnic Affairs (No 2) (1979) 2 ALD 634, Brennan J confirmed the freedom of the Administrative Appeals Tribunal to apply or not apply the policy. He noted, however, that departures from government policy would be 'cautious and sparing', occurring only where there were 'cogent reasons': 644 - 5.*

- 64 *As stated by Pritchard J in Marshall v Metropolitan Redevelopment Authority [2015] WASC 226:*

[I]f the exercise of discretion is to be an orderly one, the planning principles identified as relevant to an application should not be lightly departed from without the demonstration of a sound basis for doing so, which basis is itself grounded in planning law or principle[.]

- 65 *In Land Alliance Pty Ltd and City of Belmont [2005] WASAT 100, the Tribunal adopted the criteria set out in Permanent Trustee Australia Ltd v City of Wanneroo (1994) 11 SR (WA) 1 at [51] for determining the weight to be given to a policy. The criteria included whether the policy is public (as opposed to secret) and conceived after considerable public discussion. The length of time that the policy has been in operation and whether it has been continuously applied are also relevant criteria. In the decision of Marsh and Commissioner of Police [2018] WASAT 139 at [27] and [39], the Tribunal found that the weight attached to a policy may be influenced by the extent of public consultation that preceded it and whether it originated from a political or departmental process."*

The exercise of discretion should have regard to the underlying purposes of the instrument empowering the decision-maker to exercise their discretion: *Slusarczyk and City of Stirling* [2008] WASAT 194 at [41]. In *In situ Contemporary Design Pty Ltd v City of Geraldton-Greenough* [2008] WASAT 202 at [46], it was held that although a discretion under a local planning scheme can be guided by an adopted planning policy, in order to guide the exercise of a discretion under a scheme, the assessment criteria under a policy must relate to the discretion available under a scheme.

4.The Proposed Policy

The introduction in the Proposed Policy provides (in part) that:

"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..."

Federal and State legislation governs matters such as packaging and advertising for premises whose primary function is the sale and 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".

The objectives of the Proposed Policy are stated to be:

"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;

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".

The Proposed Policy is proposed to apply as follows:

"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" (LPS2).

Consequently, the Proposed Policy is proposed to provide guidance for the exercise of discretion in relation to development applications in respect of the following types of premises:

- *"Premises who sell smoking related implements and paraphernalia;*
- *Premises who offer the consumption of tobacco products (including shisha bars) on site; and*
- *Some shops that primary [sic] sell tobacco and tobacco products (not otherwise exempt from approval under the City's Local Planning Scheme)".¹⁸*

The City of Vincent's Ordinary Council Meeting Agenda for 23 August 2022, Item 9.7¹⁹ further explains the way in which the Proposed Policy is proposed to apply at pages 1-2:

"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 Proposed Policy appears to be proposed to apply as follows:

Nature of the Premises	Definition in the Proposed Policy	Proposed Policy Requirements	Restrictions on Proposed Policy Application
Restricted Premises (Smoking)	<p>A "Restricted premises", as defined by the 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:</p> <p>a) Vape and smoke shops.</p>	<ul style="list-style-type: none"> • Restrictions on the location of the premises. They will only be permitted where they are not adjoining or adjacent to the use set out in clause 1.1 of the Proposed Policy. • Will only be permitted where they are not on the ground floor of a premises. • Products for sale or use are not to be directly displayed or visible from the street. • Must comply with the City's Local Planning Policy – Signs and Advertising. • Limited to the hours of 7:00am to 10:00pm 	<p>The Proposed Policy could apply to all these applications (as Restricted Premises is a discretionary use in all zones of the LPS2).</p>

		<p>Monday to Saturday and between the hours of 9:00am to 10:00pm on a Sunday and public holidays.</p> <ul style="list-style-type: none"> Any application which includes the sale and consumption of tobacco is to comply with any other relevant legislation including the TPC Act, TPC Regulations and <i>Liquor Control Act 1988</i>. 	
Shop (Tobacco)	<p>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:</p> <p>a) Tobacco shops; and b) Tobacconists.</p>	<ul style="list-style-type: none"> Restrictions on the location of the premises. They will only be permitted where they are not adjoining or adjacent to the uses set out in clause 1.1 of the Proposed Policy. Will only be permitted where they are not on the ground floor of a premises. Products for sale or use are not to be directly displayed or visible from the street. Must comply with the City's Local Planning Policy – Signs and Advertising. Limited to the hours of 7:00am to 10:00pm Monday to 	<p>As "Shop" is a discretionary use in the residential and mixed-use zones under LPS2, the Proposed Policy could apply to development applications for a 'Shop' whose primary purpose is the sale of tobacco products in these locations.</p>

		<p>Saturday and between the hours of 9:00am to 10:00pm on a Sunday and public holidays.</p> <ul style="list-style-type: none"> Any application which includes the sale and consumption of tobacco is to comply with any other relevant legislation including the TPC Act, TPC Regulations and <i>Liquor Control Act 1988</i>. 	
Smoking Premises	<p>Any premises whose primary purpose is the consumption of tobacco and other products to be used for smoking. These include:</p> <p>a) "Shisha" bars; and b) Cigar lounges.</p>	<ul style="list-style-type: none"> Restrictions on the location of the premises. They will only be permitted where they are not adjoining or adjacent to the uses set out in clause 1.1 of the Proposed Policy. Products for sale or use are not to be directly displayed or visible from the street. Must comply with the City's Local Planning Policy – Signs and Advertising. 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. 	Use is not listed under LPS2, therefore the Proposed Policy could apply to these development applications.

		<ul style="list-style-type: none">• A detailed Management Plan is required in accordance with clause 3.2 of the Proposed Policy.• Any application which includes the sale and consumption of tobacco is to comply with any other relevant legislation including the TPC Act, TPC Regulations and <i>Liquor Control Act 1988</i>.	
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5. Comments on the Proposed Policy

Cancer Council WA welcomes and is supportive of the intent of the Proposed Policy. Reducing the supply and use of tobacco and related products in the City of Vincent is a crucial step in increasing smoke-free environments, supporting healthy lifestyles and reducing chronic disease risk factors within the City of Vincent community. The Proposed Policy would also have a beneficial impact on the amenity of the area and its character.

A higher density of tobacco retailers is associated with a greater uptake and continuation of smoking^{20,21}. The City of Vincent is well placed to send a strong message that it does not endorse by its actions, the normalisation of smoking and related behaviours in the community. Cancer Council WA commends the City of Vincent on its approach to this issue.

As previously stated, tobacco use is the leading cause of preventable death and disease in Australia. There is significant community support for more smoke-free areas and that tobacco should be less available to buy in WA or not available at all²². Cancer Council WA agrees with the City of Vincent’s move to prioritise and embed public health into the City’s policies and planning processes, consistent with its Public Health Plan 2020-2025²³ and in alignment with one of the key aims of LPS2, being “to protect and enhance the health, safety and general welfare of the City’s inhabitants and the social, environmental and cultural environment” (see clause 9(b) of LPS2).

Cancer Council WA strongly advocates for the integration of public health considerations into planning frameworks to directly address chronic disease risk factors (such as tobacco use, alcohol use, overweight and obesity, poor diet and physical inactivity). Local planning frameworks should promote public health and reflect the values and needs of the community. Once the Proposed Policy is finalised, this may be a precedent that could be used to illustrate that a local government has integrated public health considerations in planning.

Notwithstanding the above, Cancer Council WA has suggestions for amendments and comments for consideration in relation to specific aspects of the Proposed Policy. These are contained in the table below.

Aspect of the Proposed Policy	Suggestion for amendment and/or Cancer Council WA comment
The Proposed Policy is stated to provide guidance on the exercise of discretion.	<p><u>Comment 1</u></p> <p>Cancer Council WA is concerned that where the Proposed Policy applies and the use does not contravene the Proposed Policy, the public may consider that the use will be approved without a broader consideration of the development application. There may be circumstances where refusal of the development application is still appropriate on its merits, despite compliance with the Proposed Policy.</p> <p>Cancer Council WA suggests it be clarified that while due regard is to be given to the Proposed Policy when relevant to the development</p>

	<p>application, this does not replace the discretion of the decision-maker.</p>
<p>The Proposed Policy is stated to provide guidance on the exercise of discretion.</p>	<p><u>Comment 2</u></p> <p>In addition to the above point regarding discretion, it is suggested that further information be included in the Proposed Policy regarding how the assessment criteria in the Proposed Policy relates to discretion under LPS2 and the exercise of that discretion.</p>
<p>The definition of "Restricted Premises (Smoking)" in the Proposed Policy means "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."</p>	<p><u>Comment 1</u></p> <p>It is noted that the definition of Restricted Premises (Smoking) is based on the definition of "restricted premises" in LPS2. The definition in LPS2 and the Proposed Policy refers to "smoking-related implements". The Proposed Policy states that Restricted Premises (Smoking) uses may include "vape and smoke shops".</p> <p>There may be some ambiguity as to whether "smoking-related implements" includes e-cigarette devices and related products. The term "smoking-related implements" is not defined in LPS2. This may result in some ambiguity in the Proposed Policy.</p> <p>When LPS2 is reviewed, it would be appropriate to give consideration to whether the definition of "restricted premises" requires amendment for clarity and to ensure appropriate scope.</p>
<p>The definition of "Restricted Premises (Smoking)" in the Proposed Policy means "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."</p>	<p><u>Comment 2</u></p> <p>The Department of Health (WA) states that "In Western Australia, products that are designed to resemble tobacco products, including e-cigarette devices and their components, whether or not they contain nicotine, cannot be sold by tobacco or general retailers under the Tobacco Products Control Act 2006".¹³</p> <p>In <i>Pearce and City of Wanneroo</i> [2010] WASAT 77 it was noted at [35] that:</p> <p><i>"Having regard to the evidence as to what activity is, in reality, proposed by a development application, it</i></p>

	<p><i>is for the planning authority to characterise the proposed land use and then determine the application on its planning merits. As it would be contrary to orderly and proper planning to grant development approval for an illegal activity, a sham development application that, in reality, proposes an illegal activity will generally be refused development approval."</i></p> <p>Consequently, Cancer Council WA recommends that the City of Vincent seek advice from the Department of Health (WA) in relation to development applications in respect of "vape shops" to determine if they would constitute an illegal activity for which development approval should be refused.</p>
<p>Clause 1.1 of the Proposed Policy focuses on restricting smoking related uses from operating adjoining or adjacent to sensitive uses</p>	<p>Cancer Council WA supports restricting smoking related uses from operating adjoining or adjacent to the sensitive uses set out in clause 1.1 of the Proposed Policy. However, it is recommended that consideration be given to including other sensitive uses within clause 1.1 of the Proposed Policy, such as (but not limited to) the following uses:</p> <ul style="list-style-type: none"> • Betting agency; • Cinema/Theatre; • Corrective institution; • Funeral parlour; • Fast food outlet; • Lunch bar; • Market; • Recreation – private. <p>Including these additional uses in clause 1.1 would likely further limit the exposure to groups who may be disproportionately affected by tobacco and related products sale, and/or use (including people of lower socio-economic status, older adults, or children).</p> <p>Further, or in the alternative, the Proposed Policy could be strengthened from a public health and amenity perspective by restricting smoking related uses from within a stated distance (such as 500 metres) of the sensitive uses set out in clause 1.1. This would further reduce smoking related uses in the City of Vincent than if the Proposed Policy only restricted smoking related uses operating adjoining or adjacent to sensitive uses. Should the Proposed Policy be able to include a</p>

	broader restriction of this nature, it is supported by Cancer Council WA.
Clauses 1.2; 1.3 and 2.1 of the Proposed Policy are directed at reducing visibility of smoking related uses	Cancer Council WA supports reducing the visibility of smoking related uses in the City of Vincent and considers this is important for denormalising tobacco use and smoking. It also improves the streetscape and amenity of the area.
Clause 3.1 of the Proposed Policy restricts the permitted hours of operation of smoking related uses	Cancer Council WA supports limits on the hours of operation of smoking related uses. This will reduce the availability of tobacco and related products in the City of Vincent and advance public health and wellbeing in the City of Vincent community.
Clause 3.2 of the Proposed Policy requires a detailed Management Plan for Smoking Premises or other premises whose business primarily involves the consumption of tobacco on site.	<p>Cancer Council WA supports the requirement for the provision of a Management Plan to City of Vincent in relation to Smoking Premises development applications.</p> <p>It is unclear whether the "odour and air quality assessment" which is part of the proposed Management Plan, will address the risk of the smoke to human health. It is suggested the report be required to address this issue. Further, it is suggested the report be prepared by someone with relevant qualifications and experience, as is proposed with the acoustic assessment.</p> <p>Cancer Council WA suggests that applicants should also be required to address how any proposed noise mitigation measures (such as partially enclosing an area) would impact on the smoke from the site and whether implementing such measures would have implications for complying with the TPC Regulations (in relation to smoking in an enclosed public place).</p>
Clause 4.1 of the Proposed Policy requires that any application which includes the sale and consumption of tobacco is to comply with any other relevant legislation.	<p>Cancer Council WA supports the inclusion of clause 4.1 of the Proposed Policy and notes it is not in the public interest to approve a use which is illegal.</p> <p>However it is suggested that clause 4.1 of the Proposed Policy be reworded as follows:</p> <p><i>"Any application within the scope of this policy is to comply with applicable legislation. This may include</i></p>

	<p><i>the Tobacco Products Control Act 2006, Tobacco Products Control Regulations 2006 and/or the Liquor Control Act 1988."</i></p>
<p>Particular wording in the Proposed Policy</p>	<ul style="list-style-type: none"> • Cancer Council WA suggests that the word "consumption" in the Proposed Policy be replaced by the word "use" when used in connection with tobacco, to reflect that tobacco is not a benign consumer product to be consumed. • In relation to clause 1.3 of the Proposed Policy it is recommended it be clarified what uses this clause is to apply to. • In clause 2.1 of the Proposed Policy, the word "Uses" should not be capitalised. • The reference to "Tobacco Products Control Act Regulations (2006)" in the Proposed Policy should read "<i>Tobacco Products Control Regulations 2006</i>". • The reference to the Liquor Licence Control Act (1988) should read "<i>Liquor Control Act 1988</i>". • It is unclear why there are brackets around the year number when legislation is referred to in the Proposed Policy (when the year is part of the legislation title). It is suggested this be amended.

6. Scheme amendment

While Cancer Council WA is supportive of the City of Vincent's Proposed Policy, it would be desirable to also progress a scheme amendment to further restrict the smoking related land uses within the City of Vincent. Cancer Council WA supports the position of the City of Vincent Administration, as expressed in the Council Briefing Agenda of 5 October 2021 (Item 5.7, page 2)²⁴ as follows:

"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...".

It is noted that the City of Vincent Council adopted a recommendation on 12 October 2021 at an Ordinary Council Meeting (see the Ordinary Council Meeting Minutes of 12 October 2021 at page 33)²⁵ that provided (in part) 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."*

In the City of Vincent's Council Meeting Agenda of 23 August 2022 for Item 9.7 at page 3¹⁹, it was commented that:

"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."

Cancer Council WA would be pleased to contribute to any discussions and consultations to progress a scheme amendment that further restricts smoking related land uses within the City of Vincent.

7. Conclusion

Cancer Council WA supports the intent of the Proposed Policy and commends the City of Vincent for progressing this matter and showing leadership to advance the public health of its community. We consider that the Proposed Policy would make a beneficial difference to the health and wellbeing of the City of Vincent community and the amenity of the area. Its adoption could also have broader ramifications for advancing public health at the local government level by serving as a precedent to integrate public health considerations in planning. In addition, Cancer Council WA is supportive of a longer-term plan to progress a scheme amendment that would further restrict smoking related land uses in the City of Vincent.

Cancer Council WA would like to thank the City of Vincent for the opportunity to comment on the Proposed Policy and for its consideration of this submission.

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From: [REDACTED]
Sent: Friday, 21 October 2022 2:07 PM
To: City Of Vincent
Subject: Endorsement: Cancer Council WA submission regarding Proposed Local Planning Policy: Restricted Premises – Smoking
Attachments: 22_10_21 Dear City of Vincent.pdf; 221020 City of Vincent - Cancer Council WA Submission - Proposed LPP (Restricted Premises - Smoking).pdf

EXTERNAL email.

ATT: Strategic Planning Department

To whom it may concern,

Please find attached a letter of endorsement for the *Cancer Council WA submission* regarding Proposed Local Planning Policy: Restricted Premises – Smoking.

Please do not hesitate to contact me should you require any further clarification.

Warm wishes,

[REDACTED]



[REDACTED]
 334 Rokeby Road, Subiaco, WA 6008
 [REDACTED]

Stronger together | Make a difference | Change the future | Build connections | Act with integrity



For heart health information visit heartfoundation.org.au

The Heart Foundation acknowledges the Traditional Owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respect to them and their cultures, and Elders past, present and future.

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21 October 2022

City of Vincent
Strategic Planning Department
PO Box 82, Leederville WA 6902

National Heart Foundation
of Australia
ABN 98 008 419 761
334 Rokeby Rd
Subiaco WA 6008
W: heartfoundation.org.au

Proposed Local Planning Policy: Restricted Premises – Smoking

On behalf of the Heart Foundation, I write to strongly endorse the Cancer Council WA submission (attached) regarding the Proposed Local Planning Policy: Restricted Premises – Smoking.

The Heart Foundation is the trusted peak body working to improve heart disease prevention, detection, and support for all Australians. We work together with the generosity of our supporters, donors, fundraisers, volunteers, corporate partners, government and non-government partners to deliver on the vision of an Australia free of heart disease.

Tobacco smoke is one of the main risk factors for heart disease and is responsible for 12% of the burden (death and illness) of cardiovascular disease in Australia.

Despite the harms, tobacco remains one of the most readily available consumer products, with limited restrictions on who can sell it and where it can be purchased. The visibility of tobacco sellers and shops selling e-cigarettes normalises smoking and vaping and undermines tobacco control efforts.

Smoke-free environments have a positive impact on heart health by:

- De-normalising smoking
- Encouraging people to quit smoking, and
- Reducing exposure to second-hand smoke

Exposure to second-hand smoke is associated with immediate and longer-term risks for heart disease. Smoke-free environments protect non-smokers from the dangers of second-hand smoke.

The Local Planning Policy: Restricted Premises – Smoking proposed by the City of Vincent is an important initiative towards reducing the promotion and marketing of tobacco and e-cigarettes and increasing the number of smoke-free environments in Western Australia.

Thank you for the opportunity to provide this important endorsement of the Proposed Local Planning Policy: Restricted Premises – Smoking.

The Heart Foundation would be pleased to remain engaged in future reforms by the City of Vincent in the form of a scheme amendment that strengthens restrictions on smoking and other products such as e-cigarettes.

Please do not hesitate to contact me should you wish to discuss further.

Yours sincerely

[Redacted Signature]

[Redacted Name]

[Redacted Name], Heart Foundation Western Australia

From: [REDACTED]
Sent: Monday, 24 October 2022 8:12 AM
To: City Of Vincent
Cc: [REDACTED]
Subject: NMHS Public Health Support Letter for the Restriction of Tobacco Related Businesses
Attachments: Letter from NMHS to City Vincent Local Planning Policy Restricted Premises Smoking - Oct 22.pdf

EXTERNAL email.

Good morning [REDACTED]

Please find attached a letter from North Metropolitan Health Service supporting the City of Vincent's proposed Local Planning Policy to restrict the location of new shops whose primary purpose is the sale and/or consumption of tobacco and tobacco related products.

Thank you

Kind regards

[REDACTED]
North Metropolitan Health Service
Mental Health, Public Health and Dental Services
1/311 Wellington Street PERTH WA 6000

W: www.nmhs.health.wa.gov.au

Our Vision: Excellence in health care for our community.

Our Values: Care | Respect | Innovation | Teamwork | Integrity



We acknowledge the Noongar people as the traditional owners and custodians of the land on which we work, and pay respect to their elders both past and present.

North Metropolitan Health Service recognises, respects and values Aboriginal cultures as we walk a new path together

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Government of Western Australia
North Metropolitan Health Service
Mental Health, Public Health and Dental Services

One team, many dreams.
Care / Respect / Innovation / Teamwork / Integrity



[REDACTED]
Strategic Planner
City of Vincent
244 Vincent Street
LEEDERVILLE WA 6007

Email: mail@vincent.wa.gov.au

Dear [REDACTED]

DRAFT LOCAL PLANNING POLICY RESTRICTED PREMISES – SMOKING

Thank you for the opportunity to comment on the City of Vincent's draft Restricted Premises – Smoking Local Planning Policy (Policy). The Public Health Unit, North Metropolitan Health Service (NMHS) welcomes and supports the Policy, which is designed to reduce the number of businesses whose primary purpose is the sale and/or consumption of tobacco and tobacco related products in future City developments.

NMHS aims to promote and improve the health of our communities, which includes more than 729,000 people in north metropolitan Perth. The Public Health Unit collaborates with local governments and other agencies to reduce lifestyle risk factors such as smoking. We are a supportive partner and strong advocate of the City's Smoke Free Town Centres project, which seeks to reduce community exposure to the harmful effects from second-hand cigarette smoke and e-cigarette aerosol.

It is pleasing to note that the Policy aligns to the City's Public Health Plan 2020-2025¹ and national and state strategic plans such as the National Drug Strategy 2017-2026² and State Public Health Plan for Western Australia 2019-2024³, which recommend policy interventions to reduce the availability of drugs such as tobacco products.

The need for the City's proposed Policy is clear:

- Tobacco smoking remains the number one cause of preventable disease and death in Western Australia⁴, with 13,087 tobacco-related hospitalisations recorded between 2018-2019 and 1,484 tobacco-related deaths in WA in 2017-2018⁵.
- E-cigarette use among young people is a growing public health concern. Recent Australian research found 38% of adults aged 18-24 years were current vapers⁶.
- Priority communities, including Aboriginal and Torres Strait Islander people, people with mental health issues, some culturally and linguistically diverse groups and LGBTIQ+ people are more likely to experience higher levels of drug-related harm, including from tobacco². These populations reside in and/or are visitors to the City of Vincent.

Mental Health, Public Health and Dental Services, 54 Salvado Road, Wembley WA 6014

[REDACTED]
www.nmhs.health.wa.gov.au

2

- After supermarkets, tobacco smokers are most likely to purchase cigarettes from a tobacconist. Australian data has shown that the proportion of smokers who purchased tobacco from tobacconists increased from 18% in 2013 to 24% in 2019⁷.
- Although it is illegal to sell tobacco products to children under the age of 18 years in all states and territories of Australia, 16% of current smokers aged 12–17 years in 2017 reported that they bought their last cigarette⁸.

Widespread access to tobacco falsely normalises smoking, increases the amount people smoke and makes it difficult for people wanting to quit⁹⁻¹⁰. The literature shows that comprehensive tobacco control strategies, which include raising public awareness together with policy measures, are essential for reducing tobacco related harm¹¹. The Policy is not stand-alone. It is part of a suite of strategies implemented by the City, demonstrating its strong commitment to improving the health and wellbeing of its community.

It is also worth noting that cigarette butts comprise approximately 30% of Western Australia's litter stream¹². The Policy is likely to contribute to a reduction in the environmental impact of cigarette butts and e-cigarette littering. This is in line with the City's Waste Strategy 2018-2023, which could be referenced as one of the related policies, procedures and supporting documentation.

The City of Vincent's public health leadership in prioritising smoking reduction in the community using a comprehensive multi-strategic approach is to be applauded.

Should you have any queries or require additional information, please contact [REDACTED] on [REDACTED] or via email [REDACTED].

Yours sincerely

[REDACTED]

[REDACTED]

[REDACTED]

21 October 2022

References

- ¹ City of Vincent. Public Health Plan 2020-2025. Perth: City of Vincent, 2020.
- ² Department of Health. National Drug Strategy 2017-2026. Canberra: Department of Health, 2017.
- ³ Public and Aboriginal Health Division, Department of Health of Western Australia. State Public Health Plan for Western Australia 2019-2024. Perth: Department of Health Western Australia.
- ⁴ Epidemiology Directorate, Department of Health Western Australia. Western Australian Burden of Disease Study 2015: Contribution of risk factors to burden in WA. Perth: Department of Health, 2020.
- ⁵ Epidemiology Directorate, Department of Health Western Australia. Tobacco-attributable hospitalisation, deaths and hospital costs 2009/10 to 2018/19. Perth: Department of Health, 2020.
- ⁶ Associate Professor Becky Freeman, 11 October 2022. Towards Tobacco Free by 2030 Symposium, Perth.
- ⁷ Australian Institute of Health and Welfare. Data tables: National Drug Strategy Household Survey 2019 - 2. Tobacco smoking chapter, supplementary data tables. Canberra: AIHW, 2020. Available from: <https://www.aihw.gov.au/reports/illicit-use-of-drugs/national-drug-strategy-household-survey-2019/data>.
- ⁸ Guerin N and White V. Australian secondary school students alcohol and drug (ASSAD) survey 2017 second edition. Melbourne: Cancer Council Victoria, 2020.
- ⁹ Hastings G, Angus K. Forever cool: the influence of smoking imagery on young people. London: British Medical Association, Board of Science, 2008. Available from: <https://www.stir.ac.uk/media/stirling/services/faculties/management/documents/Angus---Forever-Cool-the-influence-of-smoking-imagery.pdf>.
- ¹⁰ Watts C, Burton S, Phillips F, Kennington K, Scollo M, Lindorff K, et al. Understanding why some Australian retailers have stopped selling tobacco, some might and some are unlikely. *Tob Control*. 2020;29(e1):e63-e70.
- ¹¹ Chronic Disease Prevention Directorate, Department of Health Western Australia. Western Australian Health Promotion Strategic Framework 2017-2021. Perth: Department of Health, Western Australia, 2017.
- ¹² Cigarette butts. Keep Australia Beautiful WA. Available from: www.kabc.wa.gov.au.

From: [REDACTED]
Sent: Monday, 24 October 2022 11:31 AM
To: City Of Vincent
Cc: [REDACTED]
Subject: City of Vincent Strategic Planning Department Draft Restricted Premises - Smoking Policy
Attachments: CoV ACOSH submission Restricted premises smoking 20221020 docx; 221020 City of Vincent - Cancer Council WA Submission - Proposed LPP (Restricted Premises Smoking) pdf

EXTERNAL email.

Good morning

Please forward to the relevant officer at the City of Vincent this response to the call for comments on the Draft Restricted Premises - Smoking Policy [link](#)

Attached to this email are:

Letter from the Australian Council on Smoking and Health
Submission by the Cancer Council Western Australia

Please contact me if there are any issues in reading the documents provided.

Many thanks for this opportunity to provide feedback.

[REDACTED]

[REDACTED]

Australian Council on Smoking & Health

acosh

334 Rokeby Road, Subiaco WA 6008

www.acosh.org



24 October 2022

City of Vincent
Proposed Local Planning Policy: Restricted Premises - Smoking

Dear Sir/Madam

I write on behalf of the Australian Council on Smoking and Health to strongly endorse the attached submission from the Cancer Council WA regarding the Proposed Local Planning Policy: Restricted Premises – Smoking.

ACOSH is an independent, non-government, not for profit coalition established in 1971, and represents a further 35 prominent medical, public health and community organisations with a shared concern about smoking and its harmful consequences. ACOSH works through advocacy and collaboration to create comprehensive strategies to reduce the health consequences of smoking.

ACOSH is very supportive of this initiative and recognises the leadership demonstrated by the City of Vincent in tackling use of tobacco that remains the leading cause of preventable disease and premature death in Western Australia.

Two important components of a comprehensive approach to tobacco control are policies to:

- limit the availability of tobacco and other addictive nicotine products; and
- ensure protection in public places from tobacco smoke and aerosol from e-cigarettes.

These make significant contributions to the de-normalisation of smoking in our community.¹

The widespread availability of tobacco from a variety of retail outlets, and the visible display of tobacco products at point of sale can fuel deceptive perceptions about the normalcy and acceptability of smoking in the community. There is also evidence that the more frequently young people observe smoking occurring in a range of settings, the more likely they are to have the view that smoking is both socially acceptable and normal.

Therefore policies that reduce the promotion of tobacco and e-cigarettes, reduce the number of businesses where tobacco and other products are used on the premises, and reduce smoking and e-cigarette use in public places will lead to a reduction in the 'normalcy' of seeing people smoking, thereby helping to reshape community norms and perceived social acceptability.

Restrictions or bans also physically decrease the opportunities for children and young people to be in the presence of smoking or e-cigarette use.¹ Restrictions on smoking in public places also have health benefits by reducing exposure to toxins and promoting quit attempts.²

Thank you for the opportunity to provide this important endorsement of the Proposed Local Planning Policy: Restricted Premises – Smoking.

Consideration to strengthen restrictions on smoking and other nicotine products such as e-cigarettes through a scheme amendment would be further advancements for the health of community members in the City of Vincent that ACOSH is keen to support.

Yours sincerely



ACOSH

ⁱ Greenhalgh, EM., and Scollo, M. 5.24 The profound effects of the denormalisation of smoking. In Scollo, MM and Winstanley, MH [editors]. Tobacco in Australia: Facts and issues. Melbourne: Cancer Council Victoria; 2018. <https://www.tobaccoinaustralia.org.au/chapter-5-uptake/5-24-denormalising-smoking>

ⁱⁱ Greenhalgh, EM., and Scollo, M. 15.9 Effectiveness of smokefree legislation in reducing exposure to tobacco toxins, improving health, and changing smoking behaviours. In Scollo, MM and Winstanley, MH [editors]. Tobacco in Australia: Facts and issues. Melbourne: Cancer Council Victoria; 2018. <http://www.tobaccoinaustralia.org.au/chapter-15-smokefree-environment/15-9-effectiveness-of-smokefree-legislation-in-reducing-exposure-to-tobacco>

From: [REDACTED]
Sent: Monday, 24 October 2022 12:50 PM
To: City Of Vincent
Cc: [REDACTED]
Subject: City of Vincent submission TSANZ
Attachments: 221020 City of Vincent - Cancer Council WA Submission - Proposed LPP (Restricted Premises Smoking) pdf; CoV Restricted premises smoking TSANZ (002).pdf

EXTERNAL email.

To Whom it may concern,

Please find attached a letter from the TSANZ [REDACTED], regarding the Proposed Local Planning Policy Restricted Premises Smoking

We thank you for the opportunity to provide this feedback, and look forward to continuing the conversation around smoking to help improve respiratory health for all Australians.

Kind regards,

[REDACTED]



A/ GPO Box 1491 Sydney, NSW 2001
P/ 02 9222 6200 F/ 02 9221 0438
W/ thoracic.org.au

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The Thoracic Society of Australia and New Zealand acknowledges Aboriginal and Torres Strait Islander people as the Traditional Custodians of the land and waters of Australia. We acknowledge Te iwi Māori, tangata whenua o Aotearoa New Zealand me o rātou tikanga - the indigenous Maori people of the land of Aotearoa New Zealand and their traditions. Our staff acknowledge the Nyoongar Wadjuk, the Larrakia, and the Gadigal Elders and their people as the Traditional Custodians of the land on which our staff work and live.



A/ GPO Box 1491
Sydney, NSW 2001
P/ 02 9222 6200
F/ 02 9221 0438
E/ TSANZoffice@thoracic.org.au
W/ thoracic.org.au

Strategic Planning Department
City of Vincent

24 October 2022

RE: Proposed Local Planning Policy: Restricted Premises - Smoking

I am writing on behalf of the Thoracic Society of Australia and New Zealand (TSANZ) to comment on the Proposed Local Planning Policy: Restricted Premises – Smoking.

The TSANZ is an active leader in advocating for lung health. We provide evidence-based policy and advice in the field of respiratory medicine and related areas. Our purpose is to promote the highest standards of patient care; develop and apply knowledge about respiratory health and disease and promote the highest quality air standards.

The TSANZ strongly supports prioritising smoking cessation and denormalisation of the tobacco industry as a guiding principle, given the cascading impacts that will be seen across all other stated objectives for tobacco control.

The policy proposed by the City of Vincent will have an impact on the field of respiratory health, TSANZ members, and subsequently the many patients who we support and treat whose lives are impacted by tobacco.

The TSANZ endorses the submission on the Proposed Local Planning Policy: Restricted Premises – Smoking prepared by the Cancer Council WA (see attachment).

Yours sincerely,

[Redacted signature]

[Redacted name]
Thoracic Society of Australia and New Zealand

From: [REDACTED]
Sent: Monday, 24 October 2022 11:45 AM
To: City Of Vincent
Subject: Stroke Foundation submission to consultation on the 'City of Vincent Proposed Local Planning Policy: Restricted Premises - Smoking'
Attachments: Stroke Foundation Submission to City of Vincent Proposed Local Planning Policy.pdf

EXTERNAL email.

Dear Sir/Madam

Please see attached a copy of Stroke Foundation's submission to the consultation on the 'City of Vincent Proposed Local Planning Policy: Restricted Premises - Smoking'.

Warm regards

[REDACTED]
[REDACTED]

Stroke Foundation
Level 7, 461 Bourke St. Melbourne VIC 3000
[REDACTED]
StrokeLine: 1800 STROKE (1800 787 653)
[REDACTED]





Stroke Foundation acknowledges the ancestors and traditional custodians of the land on which our offices stand and pay respect to Elders past, present and emerging.

This e-mail may contain confidential information. This message and any attachments are for the addressee only. If you have received it in error, please notify the sender. The legal effect of this e-mail is subject to its compliance with the Stroke Foundation. All e-mails sent to the Stroke Foundation may be monitored, stored and used by the company for any lawful purpose. The Stroke Foundation prohibits transmission of inappropriate material to its e-mail addresses. Any personal comments contained within this message are those of the sender not of the Stroke Foundation. The Stroke Foundation provides no assurance that this e-mail or any attachments are free of software viruses or that the opening or execution of the attachment will not cause harm to the computer systems of the Recipient and accepts no liability whatsoever for any damage of whatsoever nature, caused by such a virus.

24 October 2022



City of Vincent
Strategic Planning Department
PO Box 82
Leederville WA 6902

Sent via email: mail@vincent.wa.gov.au

Registered Charity
ABN 42 006 173 379
Level 7, 461 Bourke Street
Melbourne VIC 3000
Telephone 03 9670 1000
StrokeLine 1800 STROKE (1800 787 653)
strokefoundation.org.au

To whom it may concern

Re: City of Vincent Proposed Local Planning Policy: Restricted Premises - Smoking

Stroke Foundation is a national charity that partners with the community to prevent stroke, save lives and enhance recovery. We do this through raising awareness, facilitating research and supporting stroke survivors. As the voice of stroke in Australia, Stroke Foundation welcomes the opportunity to comment on the City of Vincent Proposed Local Planning Policy: Restricted Premises – Smoking.

This year, 27,428 Australians will experience stroke for the first time, and there are more than 445,000 survivors of stroke living in our community¹ - many with an ongoing disability. Unless action is taken, it is estimated by 2050, Australians will experience an additional 23,000 new strokes annually, and there will be an additional 374,000 survivors of stroke living in the community.¹

Research indicates that 80 percent of strokes can be prevented.² People who smoke are twice as likely to have a stroke compared with those who have never smoked.³⁻⁶ The more an individual smokes the greater their risk of stroke.⁴ Importantly, an individual's risk of stroke decreases after they quit smoking and stopping smoking has been shown to have both immediate and long-term health benefits. Two to five years after quitting, there is a large drop in an individual's risk of stroke⁷, and after 15 years their risk of stroke is similar to that of a person who has never smoked.⁷ Therefore, Stroke Foundation is strongly supportive of measures to reduce the prevalence of smoking in the Australian community.

Stroke Foundation supports the intent of the City of Vincent's Proposed Local Planning Policy: Restricted Premises – Smoking, and endorses Cancer Council WA's submission to this consultation.

Thank you for the opportunity to provide comment on the Proposed Local Planning Policy.

Yours sincerely,

[Redacted signature block]

Stroke Foundation

References

1. Deloitte Access Economics. 2020. No postcode untouched, Stroke in Australia 2020.
2. O'Donnell MJ, Chin SL, Rangarajan S et al; INTERSTROKE investigators. Global and regional effects of potentially modifiable risk factors associated with acute stroke in 32 countries (INTERSTROKE): a case-control study. *Lancet*. 2016; 388(10046):761-75.
3. United States Department of Health and Human Services. The health consequences of smoking: a report of the Surgeon General. Atlanta, GA: US Department of Health and Human Services, Centres for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office of Smoking and Health; 2004.
4. United States Department of Health and Human Services. The health consequences of smoking – 50 years of progress: a report of the Surgeon General. Rockville, MD: US Department of Health and Human Services, Centres for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office of Smoking and Health; 2014.
5. Thun MJ, Carter BD, Feskanich D et al. 50 year trends in smoking-related mortality in the United States. *N Engl J Med*. 2013; 368:351-364.
6. O'Donnell MJ, Xavier D, Liu L et al; INTERSTROKE investigators. Risk factors for ischaemic and intracerebral haemorrhagic stroke in 22 countries (the INTERSTROKE study): a case-control study. *Lancet*. 2010; 376:112-123.
7. IARC. IARC Handbooks of cancer prevention, Tobacco Control, Vol 11: Reversal of risk after quitting smoking. Lyon, France: International Agency for Research on Cancer; 2007.

From: [REDACTED]
Sent: Wednesday, 12 October 2022 12:06 PM
To: City Of Vincent
Subject: Restricted Premises - Smoking Policy

EXTERNAL email.

Dear City of Vincent,

RE: Restricted Premises - Smoking Policy

I strongly support the development and implementation of this smoking policy. I believe it should go further and that any applications from businesses whose primary purpose is the consumption of tobacco and other products be REJECTED regardless of whether they meet the provisions outlined in the policy. There are enough tobacco retailers, we don't need any more!

Kind regards,

[REDACTED]

From: [REDACTED]
Sent: Friday, 26 August 2022 2:22 PM
To: City Of Vincent
Subject: <spam>Smoking policy

EXTERNAL email.

Hello,

I am writing regarding the proposed Smoking Policy available on the Imagine Vincent webpage.

I support most of the policy, however I would like you to reconsider the restricted trading hours for smoking premises. Shisha lounges are popular, inoffensive to the public and support the night-time economy - something that inner city high streets need - and I do not believe they have the potential for behavioural problems as they tend to be alcohol free.

Despite having never smoked (cigarettes or shisha) and will never patronise them personally I appreciated the one being (briefly) open on Beaufort St until it was forced to close, and supported it during the Vincent's community consultation. Petra lounge is/was good because they also maintained a late night coffee option on the street frontage - something often not available on Beaufort St.

I requirement I would appreciate is separate entry/exits for restaurants which also function as shisha lounges. I don't mind sharing the premises but would prefer children dining at the restaurant didn't need to walk past smokers, as is the case at Little Lebanon (in City of Stirling) or Sesh Besh (when going to the loos).

I support all proposed restrictions on tobacco/smoke shops - Cloud 9 in particular is a blight on Beaufort Street.

Thanks,

[REDACTED]