



GLEN EIRA  
CITY COUNCIL

BENTLEIGH  
BENTLEIGH EAST  
BRIGHTON EAST  
CARNEGIE  
CAULFIELD  
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GARDENVALE  
GLEN HUNTLY  
MCKINNON  
MURRUMBEENA  
ORMOND  
ST KILDA EAST

# GLEN EIRA CITY COUNCIL PROPOSED SMOKE-FREE ZONES LOCAL LAW

## COMMUNITY IMPACT STATEMENT



Community Impact Statement – Proposed Smoke-Free Zones Local Law

Glen Eira City Council

Community Impact Statement – Proposed Smoke-Free Zones Local Law

12 October 2021

**Contents**

Part A – General Comments ..... 3

    Introduction ..... 3

    Development and making of local laws ..... 3

    Development of the proposed Local Law ..... 3

    Drafting of the proposed Local Law ..... 5

    Community engagement..... 5

    Public Notice ..... 6

    Drop-in public information sessions ..... 6

    Table 1: Drop-in public information sessions ..... 6

    Submissions ..... 6

    Legislative background ..... 7

    Tobacco Act 1987..... 7

    Table 2: Victorian controls on smoking..... 7

    Novel smoke-free areas..... 9

    Operation of the proposed Local Law..... 9

Part B – Comments on proposed Local Law..... 10

    Template assessment tool..... 10

    Table 3: Template assessment tool..... 11

    Table 4: Responses to the template assessment tool ..... 13

    Table 5: Data from the Victorian Population Health Survey 2019 – (Proportion (%) of the adult population)..... 13

    Table 6: Benchmarking of adjoining Councils' local laws ..... 19

    Appendix 1: Novel smoke-free areas..... 22

    Table 7: Novel smoke-free areas..... 22

Appendix 2 - Risk Assessment..... 30

    Table 8: Consequence rating scale ..... 30

    Table 9: Risk likelihood rating..... 31

    Table 10: Likelihood and consequence map – Tolerances ..... 31

    Table 11: Tolerance levels..... 31

Appendix 2 – Assessment of Compliance against Human Rights Charter ..... 33

## Part A – General Comments

Glen Eira City Council (**Council**) provides the following information to the municipal community in respect of the proposed Smoke-Free Zones Local Law (**proposed Local Law**) and to assist any member of the public who may wish to make a submission to Council during the public consultation process required under Council's *Community Engagement Policy*.<sup>1</sup>

This Community Impact Statement is to be read in conjunction with the proposed Local Law, available on [www.haveyoursaygleneira.com.au/proposed-smoke-free-local-law](http://www.haveyoursaygleneira.com.au/proposed-smoke-free-local-law).

### Introduction

All Councils in Victoria have a form of local regulation called a local law. One of the legislative functions given to Councils is making and enforcing local laws to aid the achievement of their legislative objectives. The broad objectives of Councils are set out in the *Local Government Act 2020 (the Act)*. Councils may make a local law for or with respect to any act, matter or thing in respect of which it has a function or power under the *Local Government Act 2020* or any other Act.

The Act sets out the process which must be followed in the making of local laws. A local law is made by passing a resolution. Before a Council can make a local law, it must strictly comply with the procedure in the Act.

### Development and making of local laws

The *Better Practice Local Law Strategy* (December 2008) and the *Guidelines for Local Law Manual* (2010) (**the Guidelines**), released by the Minister for Local Government, set out a model scheme for developing and making local laws.<sup>2</sup>

The Guidelines detail best practice for the creation and enforcement of local laws. The key features of these best practice guidelines are summarised as follows:

- to improve accessibility, accountability, compliance, consistency, currency, efficiency, enforceability, necessity and transparency;
- regulation should be viewed as a last resort because it imposes a burden of compliance on the community and a burden of enforcement on the Council;
- the community should be involved from the commencement of the law-making process, not just at the final formal submissions stage under section 73(3)(d) of the *Local Government Act 2020*;
- a local law should incorporate relevant Council policies;
- a local law should not allow discretions on the part of those administering/enforcing them without clear guidelines;
- where a local law relies on other documents, such as Council policies or permit conditions, those documents should be as accessible to the public as the local law; and
- Council's should produce a Community Impact Statement for all new or materially altered local laws.

### Development of the proposed Local Law

On 2 July 2019, Council resolved that officers prepare a report on the most appropriate means for Council to introduce smoke-free zones into the retail areas of our activity centres, over and above those areas that are

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<sup>1</sup> <https://www.gleneira.vic.gov.au/media/4956/community-engagement-policy.pdf>

<sup>2</sup> [www.localgovernment.vic.gov.au/\\_data/assets/pdf\\_file/0028/48718/Local\\_Laws\\_Manual.pdf](http://www.localgovernment.vic.gov.au/_data/assets/pdf_file/0028/48718/Local_Laws_Manual.pdf)

provided for under State legislation.<sup>3</sup>

On 3 September 2019, the report titled 'Smoke-Free Zones in Retail Areas of Council activity centres' was presented to Council. Council resolved to note the report and explore approaches 1 and 2 within the report, which provided for:

- (a) the administration of a smoke-free outdoor policy which is self-policing and includes a communication plan of community education and awareness to influence behaviour; and
- (b) the development of a Local Law that establishes smoke-free zones in retail areas of our activity centres.<sup>4</sup>

On 5 May 2020, the *Smoke-Free Outdoor Policy* was presented to Council. At the meeting, Council resolved to:

1. endorse the draft Glen Eira *Smoke-Free Outdoor Policy* for targeted community and stakeholder consultation;
2. note the *Smoke-Free Outdoor Policy – Communication and Education Campaign Plan*;
3. approve the proposed approach for the development of a new Local Law to implement Smoke-Free Zones in Glen Eira activity centres;
4. request that officers develop a draft Local Law for the implementation of Smoke-Free Zones; and requests that officers consult with key stakeholders and the community on the draft *Smoke-Free Outdoor Policy* and associated draft Local Law when complete.
5. endorse a trial of Smoke-Free Zones which cover the entire shopping strip ('Main Street') of the Carnegie, Bentleigh and Elsternwick activity centres; and
6. request that the officers conduct the targeted community and stakeholder consultation at the appropriate time post Covid-19 impacts.<sup>5</sup>

On 21 July 2020, Council resolved to:

1. acknowledge the feedback received during the community engagement process and thanks all submitters;
2. adopt the Glen Eira Smoke-Free Outdoor Policy (**Policy**); and
3. endorse the development of a Smoke-Free Outdoor Policy Local Law to enable the enforcement of smoke-free areas.<sup>6</sup>

The Policy, adopted by Council on 21 July 2020, provides for an extension of smoking controls to Activity Centres. The objectives of the Policy are to:

- Provide community leadership to protect the health and wellbeing of the community;
- Reduce the rates of smoking in the community;
- Improve the health and wellbeing of the Glen Eira community;
- Raise community awareness of the health issues associated with smoking;
- Reduce the impact of smoking on the community by promoting Smoke-Free Zones;
- Improve public amenity and maintenance of Council property; and
- Reduce tobacco-related litter in our environment.<sup>7</sup>

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<sup>3</sup> <https://www.gleneira.vic.gov.au/media/4854/07022019-minutes-ordinary-council-meeting.pdf> / <http://webcast.gleneira.vic.gov.au/archive/video19-0702.php#placeholder>

<sup>4</sup> <https://www.gleneira.vic.gov.au/media/files/Council-Meeting-Agenda-3-September-2019.pdf> / <https://www.gleneira.vic.gov.au/media/5233/03092019-council-meeting-minutes.pdf> /

<http://webcast.gleneira.vic.gov.au/archive/video19-0903.php#placeholder>

<sup>5</sup> <https://www.gleneira.vic.gov.au/media/6630/5-may-2020-minutes.pdf> /

<https://www.gleneira.vic.gov.au/media/files/050520%20Agenda.PDF> / <http://webcast.gleneira.vic.gov.au/archive/video20-0505.php#placeholder>

<sup>6</sup> <https://www.gleneira.vic.gov.au/media/7100/210720-minutes-ordinary-council-meeting.pdf> /

<https://www.gleneira.vic.gov.au/media/files/Agenda-210720.pdf> / <http://webcast.gleneira.vic.gov.au/archive/video20-0721.php#placeholder>

<sup>7</sup> <https://www.gleneira.vic.gov.au/media/files/Agenda-210720.pdf> / <https://www.gleneira.vic.gov.au/media/7100/210720-minutes-ordinary-council-meeting.pdf>

## Community Impact Statement – Proposed Smoke-Free Zones Local Law

In August 2020, a trial covering the activity centres of Carnegie, Bentleigh and Elsternwick commenced, which focuses on education, community awareness, and relies on community self-regulation.<sup>8</sup>

### Drafting of the proposed Local Law

The drafting of the proposed Local Law was undertaken with input from Council's experts (being the Community Safety and Compliance department and advice from Council's external solicitors).

Extensive consultation on the proposed Local Law was undertaken across Council with relevant staff at all levels. Staff comment was extensive and is reflected in the proposed Local Law.

Councillors were briefed, and opportunities were given to all Councillors to provide input in drafting the proposed Local Law.

In addition, the following key external stakeholders have been notified of the proposed Local Law and their feedback sought:

- Bentleigh East Traders Group
- Bentleigh Traders Association
- Cancer Council Victoria
- Carnegie Traders Association
- Caulfield Commerce Association
- Caulfield Community Health Services
- Connect Health & Community
- Elsternwick Traders Association
- Heart Foundation
- Lung Foundation Australia
- Metro Trains Melbourne
- Murrumbeena Traders Association
- Ormond Traders Association
- Patterson Traders Group
- Victoria Police

### Community engagement

A key focus of the *Guidelines* is the community's involvement from the commencement of the law-making process, not just at the final formal submissions stage.

In response to the recommendation that best practice requires wide consultation from the commencement of the process, Council completed two rounds of community consultation.

The first round of consultation was between 1 – 21 June 2020 when Council sought community feedback on the Policy.<sup>9</sup> Feedback from the community and stakeholders reflected support for smoke-free zones in Glen Eira activity centres. Comments indicated that awareness of health impacts arising from second-hand smoke is a key reason for support for the Policy, with 64% of survey respondents identifying as being affected by smoking in shopping areas in Glen Eira.

The second round of consultation was between 2 – 23 August 2021 on the proposed smoke-free zones.<sup>10</sup> The comments received reflected a high level of support for the proposed smoke-free zones, particularly

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<sup>8</sup> <https://www.gleneira.vic.gov.au/services/support-and-safety/public-health/smoke-free-zones>

<sup>9</sup> <https://www.haveyoursaygleneira.com.au/draft-glen-eira-smoke-free-outdoor-policy>

<sup>10</sup> <https://www.haveyoursaygleneira.com.au/proposed-smoke-free-zones>

## Community Impact Statement – Proposed Smoke-Free Zones Local Law

amongst non-smokers.

An article regarding the proposed smoke-free zones appeared in the August 2021 edition of the Glen Eira News.<sup>11</sup>

An article regarding the proposed Local Law appeared in the October 2021 edition of the Glen Eira News.<sup>12</sup>

### Public Notice

Public notice of Council's intention to make the proposed Local Law and the opportunity for public comment are provided as required by section 73(3)(c) of the Act by a notice at Glen Eira Town Hall<sup>13</sup> and on Council's website.<sup>14</sup> Notice is also provided in the agenda of the Council meeting on 12 October 2021, which is a public document available online.<sup>15</sup>

If social distancing measures allow Glen Eira Town Hall and Council's libraries to be open to members of the public, copies of this Community Impact Statement and the proposed Local Law can be viewed at those locations during office hours. Copies of these documents can also be viewed and downloaded from Council's website<sup>16</sup> and the HaveYourSay<sup>17</sup> website. Upon request, copies can also be sent by email or by post.

### Drop-in public information sessions

During the consultation period, Council will conduct two (2) drop-in public information sessions where community members can come along, ask questions and find out more about the proposed Local Law, what it means and how to make a submission. No RSVP is necessary. The dates and times of these sessions are detailed below in Table 1.

Table 1: Drop-in public information sessions

Public Information Session	Date	Place	Time
1	20 October 2021	If social distancing measures allow, these sessions will take place in the Town Hall. Otherwise, it will be held online. For further information, see <a href="http://www.haveyoursaygleneira.com.au/proposed-smoke-free-local-law">www.haveyoursaygleneira.com.au/proposed-smoke-free-local-law</a> for further details.	6 pm–7 pm
2	27 October 2021	As above	As above

For further information regarding the public information sessions, contact Michael O'Connor, Principal Legal Officer, on 03 9524 3333 or email [smokefreelocallaw@gleneira.vic.gov.au](mailto:smokefreelocallaw@gleneira.vic.gov.au).

### Submissions

Submissions must be in writing and received by Council by 3 November 2021. Submissions can be in writing, marked 'Proposed Smoke-Free Zones Local Law Submission' and addressed to Brooke Ranken, Manager Community Safety and Compliance, Glen Eira City Council, PO Box 42 Caulfield South 3162.

<sup>11</sup> <https://www.gleneira.vic.gov.au/about-council/news/glen-eira-news/editions-of-glen-eira-news>

<sup>12</sup> <https://www.gleneira.vic.gov.au/about-council/news/glen-eira-news/editions-of-glen-eira-news>

<sup>13</sup> Glen Eira City Council office at the corner Glen Eira and Hawthorn Roads, Caulfield;

<sup>14</sup> <https://www.gleneira.vic.gov.au/>

<sup>15</sup> [www.gleneira.vic.gov.au/Council/Meetings-and-agendas/Council-meeting-agendas-and-minutes](http://www.gleneira.vic.gov.au/Council/Meetings-and-agendas/Council-meeting-agendas-and-minutes)

<sup>16</sup> <https://www.gleneira.vic.gov.au/>

<sup>17</sup> [www.haveyoursaygleneira.com.au/proposed-smoke-free-local-law](http://www.haveyoursaygleneira.com.au/proposed-smoke-free-local-law)

Submissions in writing may also be delivered either to Council's Service Centre, corner Glen Eira and Hawthorn Roads, Caulfield or to the post-box at the main entrance to the Town Hall or by email to [smokefreelocalaw@gleneira.vic.gov.au](mailto:smokefreelocalaw@gleneira.vic.gov.au).

Council will consider any written submission relating to the proposed Local Law in accordance with its Community Engagement Policy.

Any person who has made a written submission to Council and has requested to be heard in support of their written submission may appear in person or be represented by a person specified in the submission at a Council meeting on 23 November 2021 commencing at 7.30 pm. Council meetings are normally held in the Council Chamber, Glen Eira Town Hall, corner Glen Eira and Hawthorn Roads, Caulfield.

The *COVID-19 Omnibus (Emergency Measures) Act 2020*, which received Royal Assent on 24 April 2020, amends the Act by inserting a new Part 12 – COVID-19 temporary measures. The provisions in Part 12 allows Councillors to participate in a Council meeting by electronic means of communication. The public is invited to view Council meetings on Council's website.<sup>18</sup>

If Councillors are to participate in the Council meeting, scheduled to be held on 23 November 2021, by electronic means of communication, then arrangements will be made for anyone wishing to speak to their written submission or have someone speak on their behalf to speak at the meeting by electronic means of communication.

All submissions will be handled as authorised or required by law, including under the *Privacy and Data Protection Act 2014* (Vic). Submitters should note that all submissions are made available to the public in full (including any personal information contained therein) including on Council's website. Details from submissions received (including any personal information contained therein) may also be included within the official Council agenda and minutes, which are permanent public documents available on Council's website.<sup>19</sup>

## Legislative background

Legislation and policies for smoke-free environments are now commonplace in Australia.<sup>20</sup> Since the late-1980s, all Australian states and territories have progressively implemented smoke-free legislation, banning smoking in workplaces and many public spaces such as sporting venues, shopping centres, restaurants, and building entryways.<sup>21</sup>

### Tobacco Act 1987

The Victorian Government has progressively strengthened the Tobacco Act 1987 to control smoking. Controls over smoking in the State legislation, such as the Tobacco Act, can be broadly categorised as applying to the following areas: sporting or activity venues; education facilities; Victorian public premises; workplaces; transport; hospitality venues and entertainment venues. The current controls applying to smoking in these categories are set out in Table 2.

Table 2: Victorian controls on smoking

Type of area	Controls
Sporting or activity venues	<ul style="list-style-type: none"><li>outdoor area of a swimming pool complex that is a public place;<sup>22</sup></li></ul>

<sup>18</sup> <https://www.gleneira.vic.gov.au/about-council/meetings-and-agendas/watch-a-meeting-online>

<sup>19</sup> <https://www.gleneira.vic.gov.au/about-council/meetings-and-agendas/council-agendas-and-minutes>

<sup>20</sup> <https://www.tobaccoinaustralia.org.au/chapter-15-smokefree-environment/15-7-legislation>

<sup>21</sup> <https://www.tobaccoinaustralia.org.au/chapter-15-smokefree-environment/15-7-legislation>

<sup>22</sup> S. 5RC(1) - *Tobacco Act 1987*



Type of area	Controls
	<ul style="list-style-type: none"> <li>• subject to certain exception, at or within 10 metres of children's playground equipment that is in an outdoor public place;<sup>23</sup></li> <li>• subject to certain exemptions, at or within 10 metres of a skate park that is in an outdoor public place;<sup>24</sup></li> <li>• subject to certain exemptions, at or within 4 metres of any part of a pedestrian access point to a children's indoor play centre;<sup>25</sup></li> <li>• at certain areas of a patrolled beach;<sup>26</sup></li> <li>• subject to certain exemptions, at or within 10 metres of a sporting venue that is an outdoor public place during—               <ul style="list-style-type: none"> <li>○ an organised underage sporting event; or</li> <li>○ a training or practice session to prepare for participation in an organised underage sporting event; or</li> <li>○ any break or interval during the course of the organised underage sporting event or training or practice session.<sup>27</sup></li> </ul> </li> </ul>
<b>Education facilities</b>	<ul style="list-style-type: none"> <li>• the outdoor area of education and care service premises while they are being used to provide an education and care service;<sup>28</sup></li> <li>• the outdoor area of a children's service premises while they are being used to provide a children's service;<sup>29</sup></li> <li>• subject to certain exemptions, at or within 4 metres of any part of a pedestrian access point to education and care service premises while they are being used to provide an education and care service;<sup>30</sup></li> <li>• subject to certain exemptions, at or within 4 metres of any part of a pedestrian access point to children's service premises while they are being used to provide a children's service;<sup>31</sup></li> <li>• in an unenclosed area that is within school premises;<sup>32</sup></li> <li>• subject to certain exemptions, at or within 4 metres of any part of a pedestrian access point to school premises<sup>33</sup></li> </ul>
<b>Victorian public premises</b>	subject to certain exemptions, at or within 4 metres of any part of a pedestrian access point to Victorian public premises <sup>34</sup>
<b>Workplaces</b>	subject to certain exceptions, enclosed workplaces <sup>35</sup>
<b>Transport</b>	<ul style="list-style-type: none"> <li>• a public transport vehicle;<sup>36</sup></li> <li>• a tram stop shelter or bus stop shelter;<sup>37</sup></li> <li>• a train platform;<sup>38</sup></li> <li>• a compulsory ticket area other than a train platform;<sup>39</sup></li> <li>• a tram stop platform;<sup>40</sup></li> <li>• any other public transport premises or part of public transport premises</li> </ul>

<sup>23</sup> S. 5RE(1) - Tobacco Act 1987

<sup>24</sup> S. 5RG(1) - Tobacco Act 1987

<sup>25</sup> S. 5RF(1) - Tobacco Act 1987

<sup>26</sup> S. 5RA - Tobacco Act 1987

<sup>27</sup> S. 5RI - Tobacco Act 1987

<sup>28</sup> S. 5RB(1)(a) - Tobacco Act 1987

<sup>29</sup> S. 5RB(1)(b) - Tobacco Act 1987

<sup>30</sup> S. 5RB(2)(a) - Tobacco Act 1987

<sup>31</sup> S. 5RB(2)(b) - Tobacco Act 1987

<sup>32</sup> S. 5RD(1) - Tobacco Act 1987

<sup>33</sup> S. 5RD(2) - Tobacco Act 1987

<sup>34</sup> S. 5RH(1) - Tobacco Act 1987

<sup>35</sup> S. 5A - Tobacco Act 1987

<sup>36</sup> Reg. 32(1)(a) - Transport (Compliance and Miscellaneous) (Conduct on Public Transport) Regulations 2015

<sup>37</sup> Reg. 32(1)(b) - Transport (Compliance and Miscellaneous) (Conduct on Public Transport) Regulations 2015

<sup>38</sup> Reg. 32(1)(c) - Transport (Compliance and Miscellaneous) (Conduct on Public Transport) Regulations 2015

<sup>39</sup> Reg. 32(1)(d) - Transport (Compliance and Miscellaneous) (Conduct on Public Transport) Regulations 2015

<sup>40</sup> Reg. 32(1)(e) - Transport (Compliance and Miscellaneous) (Conduct on Public Transport) Regulations 2015

Type of area	Controls
	where a notice is displayed that smoking on that property or part is prohibited; <sup>41</sup> <ul style="list-style-type: none"> <li>• in a motor vehicle, whether or not the motor vehicle is in motion, if another person is present in the motor vehicle and the other person is under the age of 18 years<sup>42</sup></li> </ul>
<b>Hospitality venues</b>	<ul style="list-style-type: none"> <li>• in certain outdoor drinking areas;<sup>43</sup></li> <li>• outdoor dining areas in a public place;<sup>44</sup></li> <li>• an outdoor area in a public place at which a food fair is held;<sup>45</sup></li> <li>• within 10 metres of a food stall or food vendor at organised events;<sup>46</sup></li> </ul>
<b>Entertainment venues</b>	in any area or premises while an underage music/dance event is taking place there <sup>47</sup>

### Novel smoke-free areas

There is a growing trend for local governments to introduce a power to establish additional smoking controls in outdoor spaces not covered in State legislation. Table 7 in Appendix 1 lists 29 Victorian municipalities with a local law with the power to create novel smoke-free areas. Twelve Victorian Councils have been identified as exercising their power to introduce a smoke-free area.

### Operation of the proposed Local Law

The objectives of the proposed Local Law are to:

- (1) provide for the peace, order and good government of the municipality;
- (2) promote a physical and social environment free from hazards to health, in which the residents of and visitors to the municipality can enjoy a quality of life that meets the general expectations of the community;
- (3) promote the health and wellbeing of residents of and visitors to the municipality;
- (4) provide mechanisms for Council to declare parts of the municipality as smoke-free zones; and
- (5) provide mechanisms for Council to proclaim parts of the municipality as smoke-free zones.

The proposed Local Law:

- will provide mechanisms for Council to prescribe and declare areas within the municipality to be smoke-free;
- applies to the extent that it is not inconsistent with any other applicable Act or regulation or the Glen Eira City Council Planning Scheme; and
- will not apply to any areas expressly regulated by the Tobacco Act 1987 or the Transport (Compliance and Miscellaneous) (Conduct on Public Transport) Regulations 2015.

With regard to prescribing areas within the municipality to be smoke-free, the proposed Local Law provides that when determining a smoke-free zone Council must have regard to the following factors:

- a. the size of the proposed smoke-free zone;
- b. the proximity of the proposed smoke-free zone to a public place, part or all of which is not in a smoke-free zone;
- c. the opinions of any person who is the owner or occupier of any part of the proposed smoke-

<sup>41</sup> Reg. 32(1)(f) - Transport (Compliance and Miscellaneous) (Conduct on Public Transport) Regulations 2015

<sup>42</sup> S. 5S - Tobacco Act 1987

<sup>43</sup> S. 5C - Tobacco Act 1987

<sup>44</sup> S. 5EA(1) - Tobacco Act 1987

<sup>45</sup> S. 3F(b) - Tobacco Act 1987

<sup>46</sup> S. 3F(c) - Tobacco Act 1987

<sup>47</sup> S. 15(F)(1)

- free zone;
- d. the opinions of any person who is the owner or occupier of any part of the area immediately adjoining the proposed smoke-free zone;
  - e. the extent and outcome of any community engagement on the proposed smoke-free zone;
  - f. any evidence of benefits to the community which would be achieved by Council prescribing the proposed smoke-free zone;
  - g. any evidence of detriments to the community which would be caused by Council prescribing the proposed smoke-free zone; and
  - h. any other factors that Council considers relevant.

The proposed process accounts for a range of considerations that will assist decision making in terms of both community and stakeholder interests and procedural fairness. Should Council ultimately determine to adopt the proposed Local Law, the process, inclusive of consultation outlined above, will need to be followed before prescribing any area as a Smoke-Free Zone.

The proposed Local Law creates three offences (clauses 10(1), 10(2) and 10(4)), attracting a maximum penalty of 5 penalty units, with an infringement penalty of 1 penalty unit.<sup>48</sup>

*10 Smoke-Free Zone: offence by smoker*

*(1) A person must not smoke in a smoke-free zone.*

*(2) A person must not smoke or otherwise have control over an ignited shisha pipe or associated apparatus in a smoke-free zone.*

*Penalty: 5 penalty units.*

...

*(4) A person to whom a direction is given under subclause (3) must comply with that direction.*

*Penalty: 5 penalty units.*

The proposed Local Law will be administered and enforced by Community Safety and Compliance. The proposed Local Law, when implemented, will then give power to authorised Council officers, if required, to issue warnings, impose fines or prosecute people found smoking in smoke-free zones and require them to extinguish the tobacco product and dispose of it appropriately.

It is the intention that enforcement will only commence six months after an area has been prescribed as a smoke-free zone.

While enforcement options are available, it is anticipated that the proposed Local Law will be self-enforcing with wilful compliance being achieved through community education and expectations that de-normalise smoking in prescribed and declared smoke-free zones.

## **Part B – Comments on proposed Local Law**

### [Template assessment tool](#)

Table 4 contains a template assessment of the proposed Local Law. The template assessment provides a framework for assessing the compatibility of the Parts and clauses of the proposed Local Law against the

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<sup>48</sup> From 1 July 2021 to 30 June 2022, the value of the penalty unit is \$181.74.

*Guidelines for Local Law Manual.* A description of the purpose and content of each of the 17 elements of the template assessment used in Table 4 are detailed below in Table 3.

Table 3: Template assessment tool

<b>Framework Number and Title</b>	<b>Description</b>
(1) (a)	Part Number(s) and Title(s) of the proposed Local Law.
(1) (b)	Clause(s) Number(s) and Title(s) of the proposed Local Law.
(2) Identify the Problem(s)	A brief description of the problems identified which are addressed by the proposed Local Law.
(3) Relating the Problem to Council's policy objectives: Identifying if it is a Council problem	A brief description of the linkage between the objectives of the proposed Local Law and Council's policy objectives. The statement would identify: <ul style="list-style-type: none"> <li>– where Council's objectives are set out and may be read,</li> <li>– how the proposed Local Law would assist Council to achieve its objectives or remove an impediment to the achievement of its objectives.</li> </ul>
(4) Identifying existing legislation that might be used instead of the proposed Local Law	A brief description of other legislation that has been identified which touches on issues dealt with by the proposed Local Law and an explanation as to why these provisions are not suitable to resolve the problem.
(5) Measures of success of proposed Local Law	A brief description of the indicators by which Council will measure the success of the proposed Local Law and the frequency with which success will be measured and reported on to the community.
(6) Identifying existing legislative provisions that may be overlapped by a Local Law	A brief description: <ol style="list-style-type: none"> <li>1) of any existing legislation on the issue covered by the proposed Local Law; and</li> <li>2) where required, clarifying why the proposed Local Law does not overlap, duplicate or cause inconsistency with that legislation.</li> </ol>
(7) A risk management approach to Local Law	This section details the rating of the severity of the problem according to the frequency and consequences (assuming no local law was in place either now or in the future) and the reduction in rating that is anticipated as a result of the proposed Local Law.
(8) Considering and deciding on different Local Law approaches	A brief description of the regulatory approach taken and whether it is considered low, medium or high impact. Within this framework, the controls may be: <ul style="list-style-type: none"> <li>• low impact – 'light touch' controls that generally carry no barriers to activity, save that they encourage the type of conduct one might normally expect to ensure safety and amenity;</li> <li>• medium impact – these include permit controls that may present a barrier or impediment to activity, or local law requirements that might require an entity to set in place processes to ensure compliance; or</li> </ul>

Framework Number and Title	Description
	<ul style="list-style-type: none"> <li>• high impact – where significant barriers to entry exist, or the controls in place carry an inspection and compliance regime that is materially onerous and time-consuming.</li> </ul> <p>The decision regarding which regulatory approach to take varies according to the extent of risk, the perceived extent of non-compliance and the enforcement resources available.</p>
(9) The least burden / greatest advantage test for Local Law	A brief description of how the proposed Local Law meets the least burden / greatest advantage test.
(10) Considering and deciding on penalties	<p>A brief description of the penalties in the proposed Local Law for each operative clause that imposes a penalty.</p> <p>Any variation between the penalty levels adopted by Council compared to that of the neighbouring municipalities is addressed.</p>
(11) Considering and deciding on the purpose and conditions of permits and fees	<p>A brief description of the purpose and conditions of permits and fees.</p> <p>Any significant differences between the level of fees to be adopted by Council and those of neighbouring Councils should be explained here.</p>
(12) Review with consideration to neighbouring Councils	Detail of those Councils whose local laws have been compared, the points of comparison and the result of the comparison.
(13) Possible restriction of competition by Local Law	<p>The application of the National Competition Policy (<b>NCP</b>) to Local Government in Victoria results from the Competition Principles Agreement signed by the Commonwealth, State and Territory Governments in 1995.</p> <p>NCP principles require, among other matters:</p> <ul style="list-style-type: none"> <li>○ the removal of legislative restrictions on competition, unless there is a net public benefit; and</li> <li>○ the adoption of competitive neutrality policies; and</li> <li>○ processes to recognise and offset the advantages enjoyed by government businesses.</li> </ul>
(14) Identifying (and staying within) the power to make a Local Law	A brief statement confirming that Council considers that it is within its power to make the proposed Local Law.
(15) Considering possible alternatives to Local Law	A brief description of the possible alternatives to the proposed Local Law.
(16) Considering if a State Act is more	Details of whether any State Government legislation is more appropriate to deal with the problem identified in item (2) of the framework.

Framework and Title	Number	Description
appropriate than a Local Law	a	
(17) Planning requirements with which a Local Law may be inconsistent	Identifying Scheme	A brief description: 1) of any existing Planning Scheme on the issue covered by the proposed Local Law; and 2) where required, clarifying why the proposed Local Law does not overlap, duplicate or cause inconsistency with that Planning Scheme.

The responses to the assessment of the proposed Local Law against the template assessment tool in Table 3 above are as detailed in Table 4.

Table 4: Responses to the template assessment tool

Framework Number and Title	Description																																																					
(1) (a) and (b)	A title precedes each Part and clause of the proposed Local Law. A title does not form part of the proposed Local Law. It is provided to assist understanding.																																																					
(2) Identify the Problem(s)	<p><b>Background</b></p> <p>The Victorian Population Health Survey 2019<sup>49</sup> indicates that, in South Eastern Melbourne, 12.8% of the adult population currently smoke tobacco at least daily.</p> <p>Table 5: Data from the Victorian Population Health Survey 2019 – (Proportion (%) of the adult population)</p> <table border="1"> <thead> <tr> <th></th> <th>Primary Health Network</th> <th>Daily smoker</th> <th>Occasional smoker</th> <th>Current smoker (Daily + Occasional)</th> <th>Ex-smoker</th> <th>Non-smoker</th> </tr> <tr> <td></td> <td></td> <td>%</td> <td>%</td> <td>%</td> <td>%</td> <td>%</td> </tr> </thead> <tbody> <tr> <td rowspan="2"><b>Men</b></td> <td>South Eastern Melbourne</td> <td>14.6</td> <td>8.0</td> <td>22.6</td> <td>27.1</td> <td>49.4</td> </tr> <tr> <td>Victoria</td> <td>14.5</td> <td>5.1</td> <td>19.6</td> <td>27.5</td> <td>52.2</td> </tr> <tr> <td rowspan="2"><b>Women</b></td> <td>South Eastern Melbourne</td> <td>10.5</td> <td>3.4</td> <td>13.9</td> <td>23.7</td> <td>61.6</td> </tr> <tr> <td>Victoria</td> <td>10.3</td> <td>3.8</td> <td>14.1</td> <td>21.8</td> <td>63.0</td> </tr> <tr> <td rowspan="2"><b>People</b></td> <td>South Eastern Melbourne</td> <td>12.8</td> <td>5.7</td> <td>18.5</td> <td>25.1</td> <td>55.4</td> </tr> <tr> <td>Victoria</td> <td>12.4</td> <td>4.5</td> <td>16.9</td> <td>24.4</td> <td>57.8</td> </tr> </tbody> </table> <p>As of 2017, 11.6% of adults in Glen Eira identified as current smokers.<sup>50</sup> Of the 11.6% of smokers in Glen Eira, most identified as daily smokers (8.0%) and the remainder identified</p>		Primary Health Network	Daily smoker	Occasional smoker	Current smoker (Daily + Occasional)	Ex-smoker	Non-smoker			%	%	%	%	%	<b>Men</b>	South Eastern Melbourne	14.6	8.0	22.6	27.1	49.4	Victoria	14.5	5.1	19.6	27.5	52.2	<b>Women</b>	South Eastern Melbourne	10.5	3.4	13.9	23.7	61.6	Victoria	10.3	3.8	14.1	21.8	63.0	<b>People</b>	South Eastern Melbourne	12.8	5.7	18.5	25.1	55.4	Victoria	12.4	4.5	16.9	24.4	57.8
	Primary Health Network	Daily smoker	Occasional smoker	Current smoker (Daily + Occasional)	Ex-smoker	Non-smoker																																																
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<sup>49</sup> <https://www.bettersafercare.vic.gov.au/reports-and-publications/vphs2019>

<sup>50</sup> *Victorian Population Health Survey 2017*. <https://www2.health.vic.gov.au/Api/downloadmedia/%7B1AF5D560-4144-4AFE-BDBA-7CFA431865E5%7D> or <https://www2.health.vic.gov.au/public-health/population-health-systems/health-status-of-victorians/survey-data-and-reports/victorian-population-health-survey/victorian-population-health-survey-2017>

Framework Number and Title	Description
	<p>as occasional smokers (3.6%). Both forms of smoking pose risks of tobacco-related harm over a lifetime.<sup>51</sup></p> <p>In relation to smoking and gender, smoking has typically been higher among males than females. However, this gap has narrowed over time, largely through tobacco industry marketing targeting women. Although females and males who smoke share excess risks for diseases such as cancer, heart disease, and emphysema, females also experience unique smoking-related disease risks related to pregnancy, oral contraceptive use, menstrual function, and cervical cancer.<sup>52</sup></p> <p>In relation to smoking and age groups of young people in Glen Eira, results from the Resilience Survey 2017 show that 4.0% of the 4,350 students surveyed in Years 3 to 12 reported they smoke.<sup>53</sup> This result is lower than the 2018 results reported for Southern Melbourne (5.6%) and Victoria (8.0%).<sup>54</sup></p> <p>Tobacco smoking is Australia's single most important preventable cause of ill health and death.<sup>55</sup> Smoking harms almost every organ of the body, causing many diseases and reducing smokers' general health. Diseases caused by smoking include abdominal aortic aneurysm, acute myeloid leukaemia, cataract, cervical cancer, emphysema, kidney cancer, lung cancer, pancreatic cancer, periodontitis, pneumonia and stomach cancer.<sup>56</sup></p> <p>In 2015, tobacco smoking was the leading risk factor contributing to disease in Australia, accounting for 9.3% of the total burden.<sup>57</sup></p> <p>The most recent estimate of deaths caused by tobacco in Australia is for the year 2015. Tobacco use caused a total of 20,933 deaths in that year. This includes deaths from active smoking and exposure to second-hand smoke.<sup>58</sup></p> <p>The estimated social cost for tobacco use in 2015–16 was \$136.9 billion.<sup>59</sup></p> <p>The problems associated with smoking in Activity Centres are:</p> <ul style="list-style-type: none"> <li>• seeing smoking normalises the behaviour leading to smoking experimentation and uptake among youth</li> <li>• cigarette butt litter pollutes the natural environment</li> <li>• second-hand smoke reduces the amenity of an area</li> <li>• inconsistency in enforcement between tobacco and e-cigarettes may lead to confusion</li> </ul>

<sup>51</sup> Ibid

<sup>52</sup> *Women's Health Atlas: Avoidable Mortality Fact Sheet – Glen Eira Metro South East.*

<https://victorianwomenshealthatlas.net.au/reports%2Ffactsheets%2FAvoidable%20Mortality%2FGlen%20Eira%2FVWHAAtlas%20Fact%20Sheet%20Avoidable%20Mortality%20Glen%20Eira.pdf>

<sup>53</sup> *Glen Eira Student Resilience Survey 2017 Report.* Available at <https://www.gleneira.vic.gov.au/services/youth/youth-consultation> and <https://www.gleneira.vic.gov.au/media/3032/ge-youth-resilience-survey-2017-report.pdf>

<sup>54</sup> *Victorian Child and Adolescent Monitoring System.* <https://www.education.vic.gov.au/about/research/Pages/vcamsindicator.aspx>

<sup>55</sup> *Smoking overview.* <https://www.aihw.gov.au/reports-data/behaviours-risk-factors/smoking/overview>

<sup>56</sup> Winstanley, MH & Greenhalgh, EM. (2019). The health effects of active smoking. In Scollo, MM and Winstanley, MH [editors]. *Tobacco in Australia: Facts and issues.* Melbourne: Cancer Council Victoria. <https://www.tobaccoinustralia.org.au/chapter-3-health-effects/3-0-background> and <https://www.tobaccoinustralia.org.au/chapter-3-health-effects/3-4-lung-cancer>

<sup>57</sup> <https://www.aihw.gov.au/reports/australias-health/tobacco-smoking>

<sup>58</sup> <https://www.quit.org.au/resources/fact-sheets/deaths-and-disease-smoking/>

<sup>59</sup> <https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/impacts/economic-impacts>

Framework Number and Title	Description
	<ul style="list-style-type: none"> <li>• second-hand smoke may pose a health risk</li> <li>• seeing smoking may trigger a relapse among people who have quit smoking or who intend to quit</li> </ul>
<p>(3) Relating the Problem to Council's policy objectives: Identifying if it is a Council problem</p>	<p>This is a Council problem because it supports:</p> <ul style="list-style-type: none"> <li>• principle 3 of Council's 2040 Community Vision - Inclusive and Healthy Community;</li> <li>• theme 3 of Council's Council and Community Plan 2017–2021 - A strong and safe community that connects people and enhances health and wellbeing;</li> <li>• priority 4 of Council's Municipal Public Health &amp; Wellbeing Plan 2017-2021 - Reduce tobacco, alcohol and other drug consumption; and</li> <li>• the objectives of Council's Smoke-Free Outdoor Policy - reduce the impact of smoking on the community by promoting Smoke-Free Zones.</li> </ul> <p>The proposed Local Law will help achieve Council's objectives by reducing the prevalence of smoking in Activity Centres.</p> <p>The ability for Council to deliver on these objectives requires the use of clear and reliable laws and enforcement mechanisms. The proposed Local Law provides clear requirements and enforcement mechanisms to regulate smoking in smoke-free zones.</p>
<p>(4) Identifying existing legislation that might be used instead of the proposed Local Law</p>	<p>There is no existing legislation that could be used instead of the proposed Local Law.</p>
<p>(5) Measures of success of proposed Local Law</p>	<p>Measuring the success of a local law can be difficult; however, some quantitative and qualitative measures can be assessed. Some of the measures to be used include how many:</p> <ul style="list-style-type: none"> <li>○ warnings are issued;</li> <li>○ infringement notices are issued;</li> <li>○ prosecutions are undertaken.</li> </ul> <p>However, success should not be assessed in isolation based on these criteria. The assessment and reporting by Council staff on current trends, anomalies and emerging problems will also be used to measure the success of the proposed Local Law.</p>



Framework Number and Title	Description																																												
	Council will report annually to the community on the operation of the proposed Local Law.																																												
(6) Identifying existing legislative provisions that may be overlapped by a Local Law	<p>Existing State legislation that deals with issues which are also dealt with by the proposed Local Law include the:</p> <ul style="list-style-type: none"> <li>• <i>Tobacco Act 1987; and</i></li> <li>• <i>Transport (Compliance and Miscellaneous) (Conduct on Public Transport) Regulations 2015.</i></li> </ul> <p>The proposed Local Law complements existing legislation and provides a more appropriate local response, whilst not overlapping, duplicating or conflicting with existing State legislation.</p>																																												
(7) A risk management approach to Local Law	<p>A risk assessment was completed for the operative provisions of the proposed Local Law using the Risk Assessment framework in Appendix 2 of this report on pages 30 to 32 comprising Table 8: Consequence rating scale, Table 9: Risk likelihood rating, Table 10: Likelihood and consequence map – Tolerances and Table 11: Tolerance levels.</p> <table border="1" data-bbox="451 846 1360 1793"> <tr> <td rowspan="6" style="text-align: center; vertical-align: middle;">Likelihood</td> <td style="text-align: center;">Almost certain</td> <td style="background-color: yellow;"></td> <td style="background-color: orange;"></td> <td style="background-color: red;"></td> <td style="background-color: red;"></td> <td style="background-color: red;"></td> </tr> <tr> <td style="text-align: center;">Likely</td> <td style="background-color: yellow;"></td> <td style="background-color: yellow;"></td> <td style="background-color: orange;"></td> <td style="background-color: red;"></td> <td style="background-color: red;"></td> </tr> <tr> <td style="text-align: center;">Possible</td> <td style="background-color: green;"></td> <td style="background-color: yellow;"></td> <td style="background-color: yellow; text-align: center;">X</td> <td style="background-color: orange;"></td> <td style="background-color: red;"></td> </tr> <tr> <td style="text-align: center;">Unlikely</td> <td style="background-color: green;"></td> <td style="background-color: green; text-align: center;">O</td> <td style="background-color: yellow;"></td> <td style="background-color: yellow;"></td> <td style="background-color: orange;"></td> </tr> <tr> <td style="text-align: center;">Very Unlikely</td> <td style="background-color: blue;"></td> <td style="background-color: blue;"></td> <td style="background-color: green;"></td> <td style="background-color: yellow;"></td> <td style="background-color: yellow;"></td> </tr> <tr> <td></td> <td style="text-align: center;">Insignificant</td> <td style="text-align: center;">Minor</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Critical</td> </tr> <tr> <td colspan="7" style="text-align: center;">Consequence</td> </tr> </table> <p><b>Results: Before X After O</b></p>	Likelihood	Almost certain						Likely						Possible			X			Unlikely		O				Very Unlikely							Insignificant	Minor	Moderate	Major	Critical	Consequence						
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	Very Unlikely																																												
		Insignificant	Minor	Moderate	Major	Critical																																							
Consequence																																													

Framework Number and Title	Description
	As a result of the introduction of the Local Law, the risk is projected to move from a medium tolerance level to a more acceptable low tolerance level. Considering the cost of risk treatment, this is considered a worthwhile use of the local law regulatory mechanism.
(8) Considering and deciding on different Local Law approaches	<p>Council has taken a low impact regulatory approach to ensure there is a minimal regulatory burden placed on the municipal community and businesses and has approached the development of the proposed Local Law by:</p> <ul style="list-style-type: none"> <li>• providing for reasonable penalties;</li> <li>• ensuring that a minimum possible number of provisions create offences;</li> <li>• ensuring the proposed Local Law does not conflict with, overlap or duplicate State legislation, including other statutory rules;</li> <li>• developing reasonable enforcement procedures, including an educational approach, official warnings where appropriate and an internal review process for infringement notices.</li> </ul> <p>Given that the purpose of the local law is to prohibit smoking in certain areas, it is framed in prescriptive terms. While the ultimate sanction of an infringement notice or prosecution is important, self-enforcement is the goal. Low key enforcement approaches will undoubtedly prove the best method to achieve this.</p>
(9) The least burden / greatest advantage test for Local Law	<p>Council considers that the municipal community would want problems prevented if possible or solved as quickly as possible and with the least cost to all concerned. A local law provides for quick resolution of the problem. State Legislation is not adequate for managing the issues identified in item (2) of the framework.</p> <p>Smoking is legal, and it is an individual's choice to smoke, but smoking is already prohibited in many public places, and smoke-free zones prescribed or declared by Council will simply be an extension of these.</p> <p>Depending on the locations that Council chooses to prescribe or declare as smoke-free zones, there may be costs to businesses located in the smoke-free zones. However, there is substantial evidence showing that revenue loss (if any) is short-lived or never actually realised when a smoke-free policy is introduced. A 2009 World Health Organization International Agency for Research on Cancer report found that there was sufficient evidence that smoke-free policies do not cause a decline in the business activity of the restaurant and bar industry.<sup>60</sup></p> <p>The benefits of smoke-free zones are broadly considered to outweigh any perceived or demonstrated social implications.</p>
(10) Considering and deciding on penalties	The proposed Local Law creates three offences (clauses 10(1), 10(2) and 10(4)), attracting a maximum penalty of 5 penalty units, with an infringement penalty of 1 penalty unit. The monetary value for each penalty unit is controlled by State Legislation <sup>61</sup> and is currently set at \$181.74.

<sup>60</sup> <https://www.tobaccoaustralia.org.au/chapter-15-smokefree-environment/15-9-effectiveness-of-smokefree-legislation-in-reducing-exposure-to-tobacco>

<sup>61</sup> Clause 90 of Schedule 1 of the *Local Government Act 2020* provides that a local law penalty unit made under the *Local Government Act 2020* will no longer be determined under section 110(2) of the *Sentencing Act 1991* but instead under section 110(1) of the *Sentencing Act 1991*. Section 110(1) will then set the penalty unit for a local law as the amount determined by section 5(3) of the *Monetary Units Act 2004* which in turn is the amount fixed by the Treasurer as published from time to time in the *Government Gazette*. The maximum penalty under a local law made under the *Local Government Act 2020* will be \$908.70 (based on the current value of the penalty unit).

Framework Number and Title	Description
	<p>The level of penalties in the proposed Local Law generally reflects:</p> <ul style="list-style-type: none"> <li>• relative risks to community amenity;</li> <li>• the potential cost to the community of a breach; and</li> <li>• the deterrent in each case.</li> </ul> <p>For the proposed Local Law clauses to be effective, penalties have been set at a level that is considered a deterrent.</p> <p>The penalties applying to the proposed Local Law were compared to those imposed by adjoining Bayside, Kingston, City of Port Phillip and Monash municipalities. The proposed penalties are generally within the range of the penalties in adjoining municipalities with a local law prohibiting smoking.</p> <p>An Infringement Notice penalty is normally significantly less than the potential maximum penalty a Court might impose for the same offence. The Attorney-General's Guidelines<sup>62</sup> provide that an infringement penalty should generally be approximately no more than 20 – 25% of the maximum penalty for the offence.<sup>63</sup> Council's penalties for breaches of the proposed Local Law are compliant with the Attorney-General's Guidelines.</p>
(11) Considering and deciding on the purpose and conditions of Permits and fees	<p>The proposed Local Law makes no provision for permits or the imposition of fees.</p>
(12) Review with consideration to Neighbouring Councils	<p>Benchmarking was undertaken against similar local laws in all adjoining Councils (Bayside, Kingston, City of Port Phillip, Monash and Stonnington).</p> <p>The benchmarking of the operative provisions of the proposed Local Law, which impose a penalty against the local laws in adjoining municipalities, are detailed in Table 6 below.</p>

<sup>62</sup>

[www.justice.vic.gov.au/sites/default/files/embridge\\_cache/emshare/original/public/2018/10/e4/35939b25a/infringementsact2006\\_attorneygeneralguidelines-051018.pdf](http://www.justice.vic.gov.au/sites/default/files/embridge_cache/emshare/original/public/2018/10/e4/35939b25a/infringementsact2006_attorneygeneralguidelines-051018.pdf)

<sup>63</sup> Annexure A, Attorney-General's Guidelines to the Infringements Act 2006 (Vic).

Framework Number and Title	Description																														
	<p data-bbox="360 268 1039 300"><b>Table 6: Benchmarking of adjoining Councils' local laws</b></p> <table border="1" data-bbox="360 300 1485 1669"> <thead> <tr> <th data-bbox="360 300 522 336">Clause</th> <th colspan="5" data-bbox="522 300 1485 336">Similar clause in adjoining Council:</th> </tr> <tr> <th data-bbox="360 336 522 409"></th> <th data-bbox="522 336 714 409">Bayside<sup>64</sup></th> <th data-bbox="714 336 909 409">Kingston<sup>65</sup></th> <th data-bbox="909 336 1096 409">City of Port Phillip<sup>66</sup></th> <th data-bbox="1096 336 1279 409">Monash<sup>67</sup></th> <th data-bbox="1279 336 1485 409">Stonnington<sup>68</sup></th> </tr> </thead> <tbody> <tr> <td data-bbox="360 409 522 772">10(1) - A person must not smoke in a smoke-free zone.</td> <td data-bbox="522 409 714 772">Yes - clause 60(3) – 2 penalty units* for infringement notice / 20 penalty units* maximum penalty</td> <td data-bbox="714 409 909 772">Yes - clause 200A – 2 penalty units* for infringement notice / 5 penalty units* maximum penalty</td> <td data-bbox="909 409 1096 772">Yes - clause 55(1) – 1 penalty units* for infringement notice / 10 penalty units* maximum penalty</td> <td data-bbox="1096 409 1279 772">Yes - clause 9.1 – 2 penalty units* for infringement notice / 5 penalty units* maximum penalty</td> <td data-bbox="1279 409 1485 772">n/a</td> </tr> <tr> <td data-bbox="360 772 522 1304">10(2) - A person must not smoke or otherwise have control over an ignited shisha pipe or associated apparatus in a smoke-free zone.</td> <td data-bbox="522 772 714 1304">Yes - clause 60(3) – 2 penalty units* for infringement notice / 20 penalty units* maximum penalty</td> <td data-bbox="714 772 909 1304">n/a</td> <td data-bbox="909 772 1096 1304">n/a</td> <td data-bbox="1096 772 1279 1304">n/a</td> <td data-bbox="1279 772 1485 1304">n/a</td> </tr> <tr> <td data-bbox="360 1304 522 1669">10(4) – power of direction</td> <td data-bbox="522 1304 714 1669">n/a</td> <td data-bbox="714 1304 909 1669">Yes - clause 200C – 2 penalty units* for infringement notice / 5 penalty units* maximum penalty</td> <td data-bbox="909 1304 1096 1669">Yes - clause 55(3) – 1 penalty units* for infringement notice / 10 penalty units* maximum penalty</td> <td data-bbox="1096 1304 1279 1669">Yes - clause 9.4 – 2 penalty units* for infringement notice / 5 penalty units* maximum penalty</td> <td data-bbox="1279 1304 1485 1669">n/a</td> </tr> </tbody> </table> <p data-bbox="360 1707 1485 1774">The assessment found that Council's proposed Local Law is broadly consistent with the intent of the other Councils' local laws that regulate smoking.</p> <p data-bbox="360 1816 1193 1848">*Penalty units for local law made pre 1 July 2021 are set at \$100.00.</p>	Clause	Similar clause in adjoining Council:						Bayside <sup>64</sup>	Kingston <sup>65</sup>	City of Port Phillip <sup>66</sup>	Monash <sup>67</sup>	Stonnington <sup>68</sup>	10(1) - A person must not smoke in a smoke-free zone.	Yes - clause 60(3) – 2 penalty units* for infringement notice / 20 penalty units* maximum penalty	Yes - clause 200A – 2 penalty units* for infringement notice / 5 penalty units* maximum penalty	Yes - clause 55(1) – 1 penalty units* for infringement notice / 10 penalty units* maximum penalty	Yes - clause 9.1 – 2 penalty units* for infringement notice / 5 penalty units* maximum penalty	n/a	10(2) - A person must not smoke or otherwise have control over an ignited shisha pipe or associated apparatus in a smoke-free zone.	Yes - clause 60(3) – 2 penalty units* for infringement notice / 20 penalty units* maximum penalty	n/a	n/a	n/a	n/a	10(4) – power of direction	n/a	Yes - clause 200C – 2 penalty units* for infringement notice / 5 penalty units* maximum penalty	Yes - clause 55(3) – 1 penalty units* for infringement notice / 10 penalty units* maximum penalty	Yes - clause 9.4 – 2 penalty units* for infringement notice / 5 penalty units* maximum penalty	n/a
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(13) Possible restriction of	An assessment has been made against National Competition Policy Principles.																														

<b>Framework Number and Title</b>	<b>Description</b>
competition by Local Law	<p>It is recognised that there will be some instances where business is affected by the costs, potential limitations and restrictions applied by the proposed Local Law.</p> <p>The proposed Local Law may restrict competition by distinguishing business premises in smoke-free zones from other locations where business premises are outside of smoke-free zones.</p> <p>Smoke-free zones may attract prospective customers from other areas or discourage attendance by smokers.</p> <p>If the proposed Local Law has the effect of restricting competition, the benefits of the restriction outweigh the disbenefits of the restriction and can be characterised as being in the public interest.</p>
(14) Identifying (and staying within) the power to make a Local Law	<p>Council has broad powers to make local laws for or with respect to any act, matter or thing in respect of which it has a function or power under the <i>Local Government Act 2020</i> or any other Act.</p> <p>The proposed Local Law identifies the authority on which it is based and remains within that power. A local law is made under section 74 of the <i>Local Government Act 2020</i>. A local law is a 'subordinate instrument' governed by the <i>Interpretation of Legislation Act 1984</i>.</p> <p>Council has reviewed the proposed Local Law and considers that its clauses are within its power to make a local law.</p>
(15) Considering possible alternatives to Local Law	<p>Council has considered whether there is a possible alternative to the proposed Local Law that might better suit the community's needs.</p> <p><b>State legislation</b></p> <p>A local law is considered the most appropriate legislative approach at this stage, given the uncertainty surrounding the introduction of similar controls by the State Government.</p> <p><b>Self-enforcement</b></p> <p>It is considered that self-enforcement alone is not achievable in relation to the problems identified in item (2) of the framework.</p>
(16) Considering if a State Act is more	<p>The proposed Local Law allows for the management of the municipality on a local level tailored to the community's needs. Any overlap or conflict with State legislation (for example, the <i>Tobacco Act 1987</i>) will result in the State legislation taking precedence over the proposed Local Law and the proposed Local Law being inoperative, to the extent of the inconsistency.</p>

<sup>64</sup> [https://www.bayside.vic.gov.au/sites/default/files/trees\\_parks\\_and\\_beaches/neighbourhood\\_amenity\\_local\\_law\\_2021\\_-\\_final.pdf](https://www.bayside.vic.gov.au/sites/default/files/trees_parks_and_beaches/neighbourhood_amenity_local_law_2021_-_final.pdf)

<sup>65</sup> <https://www.kingston.vic.gov.au/files/assets/public/local-laws/local-laws-files/local-laws/17-150995-community-local-law-consolidated-december-2017.pdf>

<sup>66</sup> <https://www.portphillip.vic.gov.au/media/uxyj0vjw/copp-local-law-number-1-community-amenity.pdf>

<sup>67</sup> [https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.mon-shape.files/7616/2321/4108/City\\_of\\_Monash\\_-\\_Smoke\\_Free\\_Areas\\_Local\\_Law\\_2021.pdf](https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.mon-shape.files/7616/2321/4108/City_of_Monash_-_Smoke_Free_Areas_Local_Law_2021.pdf)

<sup>68</sup> <https://www.stonnington.vic.gov.au/About/About-Council/Corporate-documents/Local-Laws>

Framework Number and Title	Description
appropriate than a Local Law	
(17) Identifying Planning Scheme requirements with which a Local Law may be inconsistent	None of the proposed Local Law clauses was identified as inconsistent with the <i>Planning and Environment Act 1987</i> or the <i>Planning Scheme</i> . The proposed Local Law is subordinate to the provisions of the <i>Planning and Environment Act 1987</i> and the <i>Planning Scheme</i> . To the extent of any inconsistency, the provisions of the <i>Planning and Environment Act 1987</i> and the <i>Planning Scheme</i> will prevail.

Appendix 1: Novel smoke-free areas

Table 7: Novel smoke-free areas

No.	Municipality	Instrument	Power to create a novel smoke-free area	Novel smoke-free areas
1.	Ararat Rural City Council	General Local Law 2012 <sup>69</sup>	Power to declare a municipal place or part of a municipal place to be a smoke-free area.	No information available
2.	Ballarat City Council	Community Local Law 2017	Power to declare any part of a Road, Reserve, or Municipal Place to be a Smoke-Free Area	Council has not used its local law to declare a smoke free area.
3.	Banyule City Council	General Local Law No. 1 (2015) <sup>70</sup>	Clause 8.5 (b) - A person must comply with any requirement set out in a sign erected by the Council and located in a municipal place or on Council Land.	<p>The following specified outdoor areas have been designated as smoke-free areas:-</p> <ul style="list-style-type: none"> <li>○ Along Greensborough Walk and Town Square</li> <li>○ Within ten (10) metres of children's playground equipment;</li> <li>○ At all events run or sponsored by Banyule Council (including funding grants for events);</li> <li>○ Within 10 metres of council owned building entrances where Smoke-free Zone signs are displayed)<sup>71</sup></li> </ul>

<sup>69</sup>

<https://www.ararat.vic.gov.au/sites/default/files/document/General%20Local%20Law%202012%20inc%20amend%20s32%20CM2019%2006%2025.pdf>

<sup>70</sup> [https://www.banyule.vic.gov.au/files/assets/public/\\_operating-images-amp-docs/documents/general-local-law-1.pdf](https://www.banyule.vic.gov.au/files/assets/public/_operating-images-amp-docs/documents/general-local-law-1.pdf)

<sup>71</sup> Smoke free Outdoor Areas Policy (2013) - <https://www.banyule.vic.gov.au/files/assets/public/about-us/documents-reports-plans/outdoor-areas-smokefree-policy.doc>

Community Impact Statement – Proposed Smoke-Free Zones Local Law

No.	Municipality	Instrument	Power to create a novel smoke-free area	Novel smoke-free areas
4.	Bass Coast Shire Council	Local Law No. 1 Neighbourhood Amenity 2012 <sup>72</sup>	Power to declare a Municipal Place or part of a Municipal Place to be a Smoke-Free Area	Council has not used its local law to declare a smoke free area.
5.	Baw Baw Shire Council	Community Local Law 2016 <sup>73</sup>	Power to designate any area or areas within which a person must not smoke and the times and dates during which a person must not smoke.	No information available
6.	Bayside City Council	Neighbourhood Amenity Local Law 2021 <sup>74</sup>	Power to prescribe a municipal place or part of a municipal place to be a smoke-free area.	The smoking ban applies to the sand areas of all Bayside beaches, including Ricketts Point Marine Sanctuary and surrounds, and the Brighton Dunes <sup>75</sup>
7.	Brimbank City Council	General Local Law 2018 - Local Law No.2 <sup>76</sup>	Power to designate any area within the Municipality to be a smoke-free area	Council has not used its local law to declare a smoke free area.
8.	Campaspe Shire Council	Local Law No. 8 2015 General Local Law <sup>77</sup>	Power to designate any area within the municipality to be a smoke-free area.	Council has not used its local law to declare a smoke free area.

<sup>72</sup> [https://d2n3eh1td3vwdm.cloudfront.net/general-downloads/Community-Health-and-Wellbeing/2012\\_BCSC\\_Local\\_Law\\_No1\\_-\\_August\\_2014\\_review.pdf.pdf](https://d2n3eh1td3vwdm.cloudfront.net/general-downloads/Community-Health-and-Wellbeing/2012_BCSC_Local_Law_No1_-_August_2014_review.pdf.pdf)

<sup>73</sup> [https://www.bawbawshire.vic.gov.au/files/sharedassets/public/compliance/documents/adopted-community-local-law-2016\\_signed.pdf](https://www.bawbawshire.vic.gov.au/files/sharedassets/public/compliance/documents/adopted-community-local-law-2016_signed.pdf)

<sup>74</sup> [https://www.bayside.vic.gov.au/sites/default/files/trees\\_parks\\_and\\_beaches/neighbourhood\\_amenity\\_local\\_law\\_2021\\_-\\_final.pdf](https://www.bayside.vic.gov.au/sites/default/files/trees_parks_and_beaches/neighbourhood_amenity_local_law_2021_-_final.pdf)

<sup>75</sup> <https://www.bayside.vic.gov.au/news/smoking-ban-introduced-bayside-beaches>

<sup>76</sup>

<https://records.brimbank.vic.gov.au/ExternalLinkAPI/api/document/?docKey=anBaMWZIdIVFZGNvbiU5SE93SG1PaVRZM2ItWnc1ZW5uMkILc0I5QU9EYW9VcE1oZmJHcXJlc1VtMXp4b1ZsVA2>

<sup>77</sup> <https://www.campaspe.vic.gov.au/files/assets/public/our-council/local-law-general.pdf>



Community Impact Statement – Proposed Smoke-Free Zones Local Law

No.	Municipality	Instrument	Power to create a novel smoke-free area	Novel smoke-free areas
9.	Casey City Council	Casey Community Local Law 2018 <sup>78</sup>	Clause 44 of the Local Law	A person must not smoke; (b) within 10 metres of the entrance to a building on Council Land; (c) within 10 metres of a building on a reserve located on Council Land; (d) within 10 metres of a playground on any Council Land; except where indicated in a designated smoking area
10.	Frankston City Council	Community Local Law 2020 <sup>79</sup>	Power to prescribe any area within the municipality to be a smoke-free area.	Designated outdoor areas of the Frankston central activity district <sup>80</sup>  Frankston Foreshore smoke-free outdoor areas are also in place: <ul style="list-style-type: none"> <li>• 200 m either side of Frankston Pier</li> <li>• 500 m around Keast Park, Seaford</li> </ul>
11.	Gannawarra Shire Council	Local Law No. 1 Community Amenity 2012 <sup>81</sup>	Power to declare in part or whole any Municipal Place, Road or other Council Land within the Municipal District to be a Smoke-Free Area.	KERANG – Atkinson Park, Adams Court, Egg Park, Gannawarra Children's Centre, Lyall Ave, McCann Crescent and Kerang Swimming Pool.  COHUNA – Youngs Park, Cohuna Swimming Pool, Cohuna Maternal Child & Health and Pre School Centre, Cullen Street Playground and Apex Park.  QUAMBATOOK – Swimming Pool, Recreation Reserve and Lions Park

<sup>78</sup> [https://www.casey.vic.gov.au/sites/default/files/user-files/City%20%26%20Council/Policies%20%26%20strategies/ECM\\_13598376\\_v1\\_Community%20Local%20Law%20-%20Version%201.0.pdf](https://www.casey.vic.gov.au/sites/default/files/user-files/City%20%26%20Council/Policies%20%26%20strategies/ECM_13598376_v1_Community%20Local%20Law%20-%20Version%201.0.pdf)

<sup>79</sup> [https://www.frankston.vic.gov.au/files/assets/public/our-community/local-laws-and-permits/pdf/community\\_local\\_law\\_2020\\_-\\_final.pdf](https://www.frankston.vic.gov.au/files/assets/public/our-community/local-laws-and-permits/pdf/community_local_law_2020_-_final.pdf)

<sup>80</sup> <https://www.frankston.vic.gov.au/Our-Community/Local-Laws-and-Permits/Smoke-Free-Outdoor-Areas>

<sup>81</sup> <https://www.gannawarra.vic.gov.au/files/assets/public/document-resources/strategic-documents/gsc-local-law-no1-community-amenity-2012-amended-january-2014.pdf>

Community Impact Statement – Proposed Smoke-Free Zones Local Law

No.	Municipality	Instrument	Power to create a novel smoke-free area	Novel smoke-free areas
				<p>LEITCHVILLE – Trigg Park, Swimming Pool, Recreation Reserve, Keath Street Playground and Maternal Child &amp; Health and playground</p> <p>KOONDROOK – Apex Park and Maternal Child &amp; Health Centre and swimming pool</p>
12.	Greater Geelong City Council	Neighbourhood Amenity Local Law 2014	Power to declare a Municipal Place or part of a Municipal Place to be a Smoke-Free Area in accordance with the Guidelines in the Local Laws Procedure Manual.	No information available
13.	Hobsons Bay City Council	Community Local Law 2015 <sup>82</sup>	Power to designate any area or areas within the municipal district within which a person must not smoke and the times and dates during which such restrictions are to be in place.	No information available
14.	Hume City Council	General Local Law No.1 - 2013	Power to prescribe an area where smoking is prohibited	Council has not used its local law to declare a smoke free area.
15.	Kingston City Council	Community Local Law	Power to determine any area within the	Five areas are prescribed as smoke-free <sup>84</sup>

<sup>82</sup> [https://www.hobsonsbay.vic.gov.au/files/assets/public/documents/council/local-laws/2015\\_community\\_local\\_law.pdf](https://www.hobsonsbay.vic.gov.au/files/assets/public/documents/council/local-laws/2015_community_local_law.pdf)

<sup>84</sup> <https://www.kingston.vic.gov.au/About-Us/Local-Laws-and-Health/Smoke-Free-Zones>

Community Impact Statement – Proposed Smoke-Free Zones Local Law

No.	Municipality	Instrument	Power to create a novel smoke-free area	Novel smoke-free areas
		[consolidated] <sup>83</sup>	municipal district to be a smoke-free area	<ul style="list-style-type: none"> <li>• Cheltenham activity centres,</li> <li>• Mentone activity centres,</li> <li>• Mordialloc activity centres,</li> <li>• Chelsea activity centres and</li> <li>• Moorabbin</li> </ul>
16.	Knox City Council	Amenity Local Law 2020 <sup>85</sup>	Power to determine, by resolution, any area within the municipality to be a smoke-free area.	Council has not used its local law to declare a smoke free area.
17.	Latrobe City Council	Community Amenity Local Law No. 2 2016 <sup>86</sup>	Power to declare any Municipal Property or Municipal Place or any part of a Municipal Property or Municipal Place to be a smoke-free area.	Council has not used its local law to declare non-smoking areas.
18.	Macedon Ranges Shire Council	General Purposes and Amenity Local Law No 10 of 2013 <sup>87</sup>	A person using Council land or a road must comply with any conditions of use applied to that land or road by the Council and notified by way of signs , conditions of entry or	<p>All outdoor dining and drinking areas on Council footpaths and roads adjacent to a food premises.</p> <p>Within 5 meters from the entrance of any Council owned, operated and leased building.</p> <p>Within 10 meters from the external perimeter of all</p>

<sup>83</sup> <https://www.kingston.vic.gov.au/files/assets/public/governance/local-law-review/community-local-law-no.4.pdf>

<sup>85</sup> <https://www.knox.vic.gov.au/sites/default/files/knox-files/our-council/legislation-and-local-laws/amenity-local-law-2020.pdf>

<sup>86</sup> [https://www.latrobe.vic.gov.au/sites/default/files/Local\\_Law\\_No2\\_adopted\\_15\\_June\\_2009.pdf](https://www.latrobe.vic.gov.au/sites/default/files/Local_Law_No2_adopted_15_June_2009.pdf)

<sup>87</sup> <https://www.mrsc.vic.gov.au/About-Council/Our-Council/How-Council-Works/Local-Laws?BestBetMatch=local%20law|d13b95b2-5146-4b00-9e3e-a80c73739a64|4f05f368-ecaa-4a93-b749-7ad6c4867c1f|en-AU#section-2>

Community Impact Statement – Proposed Smoke-Free Zones Local Law

No.	Municipality	Instrument	Power to create a novel smoke-free area	Novel smoke-free areas
			conditions of membership.	playing fields, sporting grounds and sporting facilities and council owned sporting clubrooms/pavilions. <sup>88</sup>
19.	Maroondah City Council	Local Law No. 11 - General Local Law <sup>89</sup>	Power to prescribe any area within the Municipal District to be a Smoke-Free Area.	Two Smoke-Free Areas <ul style="list-style-type: none"> <li>• Croydon Town Square<sup>90</sup></li> <li>• Ringwood Town Square<sup>91</sup></li> </ul>
20.	Melbourne City Council	Activities Local Law 2019 <sup>92</sup>	Power to prescribe smoke-free areas <sup>93</sup>	12 areas are prescribed as smoke-free <ul style="list-style-type: none"> <li>○ Bourke Street (between Elizabeth Street and Russell Place, including Bourke Street Mall)</li> <li>○ Goldsbrough Lane (off Bourke Street between William and King streets)</li> <li>○ QV Melbourne (corner of Lonsdale and Swanston streets)</li> <li>○ The Causeway (off Bourke Street between Swanston and Elizabeth streets)</li> <li>○ Howey Place (off Little Collins Street between Swanston and Elizabeth streets)</li> <li>○ Equitable Place (runs between Collins and Little Collins streets between Elizabeth and Queen streets)</li> <li>○ Block Place (runs between Collins and Little Collins streets between Swanston and Elizabeth streets)</li> <li>○ The Tan running track</li> </ul>

<sup>88</sup> <https://www.mrsc.vic.gov.au/About-Council/Laws-Regulations/Cigarettes-and-smoke-free-areas>

<sup>89</sup> <https://www.maroondah.vic.gov.au/files/assets/public/documents/planning-health-local-laws/local-laws/local-law-11-general.pdf>

<sup>90</sup> [https://yoursay.maroondah.vic.gov.au/should-croydon-town-square-be-a-smoke-free-zone/news\\_feed/croydon-town-square-will-be-smoke-free](https://yoursay.maroondah.vic.gov.au/should-croydon-town-square-be-a-smoke-free-zone/news_feed/croydon-town-square-will-be-smoke-free)

<sup>91</sup> <https://yoursay.maroondah.vic.gov.au/smoke-free-ringwood-town-square>

<sup>92</sup> <https://www.melbourne.vic.gov.au/SiteCollectionDocuments/activities-local-law-2019.pdf>

<sup>93</sup> <https://www.melbourne.vic.gov.au/community/health-support-services/health-services/Pages/smoking-and-tobacco.aspx>

Community Impact Statement – Proposed Smoke-Free Zones Local Law

No.	Municipality	Instrument	Power to create a novel smoke-free area	Novel smoke-free areas
				<ul style="list-style-type: none"> <li>○ Princes park running track</li> <li>○ Collins Way (off Little Collins Street between Elizabeth and Queen streets)</li> <li>○ Fulham Place (off Flinders Lane between Elizabeth and Queen streets)</li> <li>○ Market Street Park, between Collins Street and Flinders Lane.</li> </ul>
21.	Melton City Council	General Local Law 2015 <sup>94</sup>	Power to designate any area within the Municipal District to be a Smoke-Free Area.	Council has not used its local law to declare a smoke free area.
22.	Monash City Council	Smoke-Free Areas Local Law (2021) <sup>95</sup>	Power to prescribe other parts of its Municipal District as Smoke-Free Areas.	Kingsway and Eaton Mall are designated smoke-free. <sup>96</sup>
23.	Moonee Valley City Council	Activities and General Amenities Local Law 2018 <sup>97</sup>	Power to declare an area of the municipal district to be a smoke-free area, in accordance with Council's Smoke-Free Areas Guidelines	Council has not used its local law to declare a smoke free area.
24.	Moreland City Council	General Local Law 2018 <sup>98</sup>	Power to prescribe any area within the municipality to	One section of a street is Gazetted as smoke-free under the General Local Law 2018. This is Victoria Street Coburg (at

<sup>94</sup> [https://www.melton.vic.gov.au/files/assets/public/regulations/local-laws/general-local-laws/adopted\\_general\\_local\\_law-2015.pdf](https://www.melton.vic.gov.au/files/assets/public/regulations/local-laws/general-local-laws/adopted_general_local_law-2015.pdf)

<sup>95</sup> [https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.mon-shape.files/7616/2321/4108/City\\_of\\_Monash\\_-\\_Smoke\\_Free\\_Areas\\_Local\\_Law\\_2021.pdf](https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.mon-shape.files/7616/2321/4108/City_of_Monash_-_Smoke_Free_Areas_Local_Law_2021.pdf)

<sup>96</sup> <https://shape.monash.vic.gov.au/smoke-free-areas>

<sup>97</sup> <https://mvcc.vic.gov.au/wp-content/uploads/2020/07/Activities-and-General-Amenities-Local-Law-2018-2028-amended-2020-.pdf>

<sup>98</sup> <https://www.moreland.vic.gov.au/globalassets/website-moreland/areas/my-council/local-laws-legislation/moreland-local-laws/moreland-city-council-general-local-law-2018.pdf>

Community Impact Statement – Proposed Smoke-Free Zones Local Law

No.	Municipality	Instrument	Power to create a novel smoke-free area	Novel smoke-free areas
			be a smoke-free area	the Coburg post office), an alfresco-style closed street.
25.	Port Phillip City Council	Local Law No. 1 (Community Amenity) <sup>99</sup>	Council may designate any area within the municipality to be a smoke-free area.	Council has not used its local law to declare a smoke free area.
26.	Pyrenees Shire Council	General Local Law 2019 <sup>100</sup>	Power to declare a Public Place or part of a Public Place to be a Non Smoking Area	Council has not used its local law to declare non-smoking areas.
27.	Surf Coast Shire Council	Community Amenity Local Law No 1 <sup>101</sup>		It is an offence for a person on the sand area of any beach within the municipal district, smoke a cigarette, cigar, pipe or like tobacco substance at any time.
28.	Swan Hill Rural City Council	Community Local Law No. 2 <sup>102</sup>	Power to designate any area within the municipal district to be a smoke-free area	Council has not used its local law to declare non-smoking areas.
29.	Wellington Shire Council	Wellington Shire Council Community Local Law 2021 <sup>103</sup>	Power to declare any part of a road reserve or municipal place to be a smoke-free area.	Council has not used its local law to declare a smoke free area.

<sup>99</sup> <https://www.portphillip.vic.gov.au/media/uxyj0vjw/copp-local-law-number-1-community-amenity.pdf>

<sup>100</sup> <https://www.pyrenees.vic.gov.au/About-Pyrenees-Shire-Council/Local-Laws/General-Local-Law-2019>

<sup>101</sup> <https://www.surfcoast.vic.gov.au/files/assets/public/council-community-amenity-local-law-no-1.pdf>

<sup>102</sup> [https://www.swanhill.vic.gov.au/wp-content/uploads/2020/08/Local\\_Law\\_No.2\\_Amendment.pdf](https://www.swanhill.vic.gov.au/wp-content/uploads/2020/08/Local_Law_No.2_Amendment.pdf)

<sup>103</sup> [https://assets-global.website-files.com/6021ed7c89cc1c1c01fccf29/60c938860644a6591cba7118\\_Community%20Local%20Law%202021.pdf](https://assets-global.website-files.com/6021ed7c89cc1c1c01fccf29/60c938860644a6591cba7118_Community%20Local%20Law%202021.pdf)

Appendix 2 - Risk Assessment

Table 8: Consequence rating scale

Consequence Rating	Financial Impact	People Effects	Reputation	Service Outputs	Legal Compliance	& Organisational Impact
<b>5 - Critical</b>	>\$3m	One or more fatalities or severe irreversible disability to one or more people.	National media coverage; Council dismissed; criminal charges against senior employee; long-term loss of community confidence.	Total cessation of multiple services for many months.	Major and/or litigation penalty >\$3m; investigation by regulatory body resulting in long-term interruption of operations.	Restructuring of organisation, loss of senior managers. Workforce disengages; Significant change management required
<b>4 - Major</b>	\$1m –\$3m	Extensive injury or impairment to one or more persons.	State media coverage; Adverse findings by oversight body; CEO or a Director departs; Councillor disciplined;	Disruption of multiple or a priority service for a month or more.	Major breach of regulation with punitive fine, and significant litigation involving many weeks of senior management time and up to \$3m legal costs.	Significant disruption that will require considerable senior management time over several weeks; Reduction in employee engagement
<b>3 - Moderate</b>	\$300k – \$1m	Short-term disability to one or more persons.	Local media coverage over several days; senior managers depart; noticeable loss of confidence and active public adverse comments	Total cessation of one service for up to a week.	Breach of regulation with investigation by authority and possible moderate fine, and litigation and legal costs up to \$999k.	Disruption that will require senior management time over several weeks.
<b>2 - Minor</b>	\$20k– \$299k	Significant medical treatment; lost injury time <two weeks.	Local media coverage, and complaint to management or external body	Some service disruption in the area.	Breach of regulations; minor fine or legal costs; minor litigation.	Will require some senior management time over multiple days.
<b>1 - Insignificant</b>	<\$20k	First aid or minor medical treatment.	No media coverage; complaint to employee.	Minimal disruption.	Minor legal issues or breach of regulations.	Will require some management attention over several days.

Table 9: Risk likelihood rating

Likelihood Rating	Descriptor	Definition
5	Almost certain	The event is very likely to occur — estimated probability more than 90%
4	Likely	The event is more likely than not to occur — estimated probability of >60%-90%
3	Possible	The event may occur — estimated probability of >30%-60%
2	Unlikely	The event is unlikely to occur — estimated probability of >10%-30%
1	Very Unlikely	The event is very unlikely to occur — estimated probability of less than 10%

Table 10: Likelihood and consequence map – Tolerances

Likelihood (see Table 9)	<b>5 Almost Certain</b>	Medium (5)	High (10)	Very High (15)	High (20)	Very High (25)	High (30)
	<b>4 Likely</b>	Medium (4)	Medium (8)	High (12)	High (16)	Very High (20)	High (24)
	<b>3 Possible</b>	Low (3)	Medium (6)	Medium (9)	High (12)	Very High (15)	High (18)
	<b>2 Unlikely</b>	Low (2)	Low (4)	Medium (6)	Medium (8)	High (10)	High (12)
	<b>1 Very Unlikely</b>	Very Low (1)	Very Low (2)	Low (3)	Medium (4)	Medium (5)	High (6)
		<b>1 Insignificant</b>	<b>2 Minor</b>	<b>3 Moderate</b>	<b>4 Major</b>	<b>5 Critical</b>	
<b>Consequence (see Table 8)</b>							

Table 11: Tolerance levels

Risk Level	Description and Action Needed
Very High	This is above Council's defined tolerance level. The consequences of the risk materialising would have a disastrous impact on the Council's reputation and business continuity. Comprehensive action is required immediately to mitigate the risk. Detailed risk treatment plans and allocation of resources required. Very high risks should be considered for elevation to the strategic risk register.
High	The consequences of this risk materialising would be severe but not disastrous. Some immediate action is required to mitigate the risk, plus the development of a comprehensive mitigation strategies and urgent implementation. High risks should be considered for elevation to the strategic risk register



Medium	<p>The consequences of this risk materialising would have a moderate impact on day-to-day delivery. Some immediate action might be required to address risk impact, plus the development of an action plan. Status of the risk should be monitored regularly. This level of risk should not automatically be accepted for risk mitigation but rather an analysis is required to determine if treatment is possible and necessary.</p>
Low	<p>The consequences of this risk materialising would have a minor impact. No immediate action is required, but an action plan should be actively considered. Status of the risk should be monitored periodically. Treatment when resources are available. The risk should be able to be managed via existing controls and normal operating procedures.</p>
Very Low	<p>Rating represents no concerns. Council accepts this risk. Impact of risk would be insignificant. Status of the risk should be reviewed occasionally.</p>

Appendix 2 – Assessment of Compliance against Human Rights Charter

Section 72(a) of the *Local Government Act 2020* provides that a local law must not be inconsistent with any Act (including the Charter of Human Rights and Responsibilities Act 2006) or regulations

The *Charter of Human Rights and Responsibilities Act 2006* (**Charter**) contains twenty (20) basic rights that promote and protect the values of freedom, respect, equality and dignity. Councils must not knowingly breach these rights and must always consider them when creating local laws, developing policies, and delivering services.

Council as a 'public authority' under the Charter must also ensure that a local law made by it is not incompatible with a human right. If a proposal restricts or interferes with a right, consideration will need to be given to determining whether the restrictions are reasonable and demonstrably justified under the Charter.

Council has assessed the proposed Local Law for compatibility with the Charter. On balance, the proposals in the proposed Local Law are not incompatible with the rights in the Charter. Even if it could be said that the proposals are incompatible with the Charter, Council considers that the approach in the proposed Local Law is demonstrably justifiable, such that no incompatibility with the Charter exists.

In keeping with section 28 of the Charter, this statement of compatibility is made with respect to the proposed Glen Eira City Council Smoke-Free Zones Local Law.

*The proposed Glen Eira City Council Smoke-Free Zones Local Law is compatible with the human rights protected by the Charter.*

Community Impact Statement – Assessment of Compliance against Human Rights Charter

Will any person feel their rights are limited / What human rights may be impacted?	Relevant Part(s)/clause(s) of the proposed Local Law	What are the interests you have to balance?	Is the limitation reasonable?	What practical solutions are available to reduce the limitation?
Right to privacy and reputation – section 13 <sup>104</sup>	<p>10 (1) A person must not smoke in a smoke-free zone.</p> <p>10 (2) A person must not smoke or otherwise have control over an ignited shisha pipe or associated apparatus in a smoke-free zone.</p>	<p>On the assumption (which is denied) that the activity of smoking is sufficiently close to the right to</p> <ul style="list-style-type: none"> <li>• the integrity of identity,</li> <li>• the development of personality, or</li> <li>• the ability to establish and develop relationships with others</li> </ul> <p>then these rights must be balanced against protecting the population from exposure to second-hand smoke.</p>	<p>The proposed Local Law does not restrict personal autonomy because it does not prohibit smoking but merely regulates where it may occur.</p> <p>If the proposed Local Law impairs rights, it will only do so minimally by prohibiting smoking in specific zones.</p> <p>Any limitation on the privacy and reputation of smokers imposed by the proposed local law has the important public health aim of protecting the public (especially children and young people) from exposure to second-hand smoke, which may pose a health risk.</p>	<p>Council is aware that a number of population groups in Australia have higher smoking rates than the general population. These population groups include:</p> <ul style="list-style-type: none"> <li>• the unemployed - 5.9% of Glen Eira residents are unemployed;<sup>105</sup></li> <li>• single parents - 7.9% of Glen Eira residents are single parents<sup>106</sup>;</li> <li>• those suffering from mental health issues - In 2017, 21.1% of adults in Glen Eira indicated</li> </ul>

<sup>104</sup> A [person](#) has the right—  
 (a) not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and  
 (b) not to have his or her reputation unlawfully attacked.

<sup>105</sup> <https://economy.id.com.au/glen-eira/unemployment> (24 August 2021)

<sup>106</sup> <https://profile.id.com.au/glen-eira/households-with-children?SWebID=120&WebID=10> (24 August 2021)

Community Impact Statement – Assessment of Compliance against Human Rights Charter

Will any person feel their rights are limited / What human rights may be impacted?	Relevant Part(s)/clause(s) of the proposed Local Law	What are the interests you have to balance?	Is the limitation reasonable?	What practical solutions are available to reduce the limitation?
				<p>they had been diagnosed with anxiety or depression;<sup>107</sup></p> <ul style="list-style-type: none"> <li>• the homeless - 35.3 persons per 10,000 Glen Eira residents are homeless;<sup>108</sup></li> <li>• Aboriginal and/or Torres Strait Islander people – there are 252 Aboriginal and/or Torres Strait Islander people in the Glen Eira community.<sup>109</sup></li> </ul> <p>Communication about and enforcement of the proposed Local Law will be carried out in a manner that respects the dignity of all concerned, particularly vulnerable members of the community.</p>

<sup>107</sup> <https://www.gleneira.vic.gov.au/media/9450/health-and-wellbeing-profile-20202021.pdf> - page 81

<sup>108</sup> <https://www.gleneira.vic.gov.au/media/9450/health-and-wellbeing-profile-20202021.pdf> - page 53

<sup>109</sup> <https://profile.id.com.au/glen-eira/population> - (24 August 2021)

Community Impact Statement – Assessment of Compliance against Human Rights Charter

Will any person feel their rights are limited / What human rights may be impacted?	Relevant Part(s)/clause(s) of the proposed Local Law	What are the interests you have to balance?	Is the limitation reasonable?	What practical solutions are available to reduce the limitation?
Yes – Freedom of movement – section 12 <sup>110</sup>	<p>10 (1) A person must not smoke in a smoke-free zone.</p> <p>10 (2) A person must not smoke or otherwise have control over an ignited shisha pipe or associated apparatus in a smoke-free zone.</p>	<p>On the assumption (which is denied) that smoking is sufficiently close to the right to</p> <ul style="list-style-type: none"> <li>• move freely within Victoria and to enter and leave it and</li> <li>• the freedom to choose where to live</li> </ul> <p>this right must be balanced against protecting the population from exposure to second-hand smoke.</p>	<p>The proposed Local Law does not restrict the right to move freely because it does not prohibit smoking but merely regulates where it may occur.</p> <p>If the proposed Local Law impairs rights, it will only do so minimally by prohibiting smoking in specific zones.</p> <p>Any limitation on the right to move freely imposed by the proposed local law has the important public health aim of protecting the public (especially children and young people) from exposure to second-hand smoke, which may pose a health risk.</p>	See above

<sup>110</sup> Every [person](#) lawfully within Victoria has the right to move freely within Victoria and to enter and leave it and has the freedom to choose where to live.

Community Impact Statement – Assessment of Compliance against Human Rights Charter

Will any person feel their rights are limited / What human rights may be impacted?	Relevant Part(s)/clause(s) of the proposed Local Law	What are the interests you have to balance?	Is the limitation reasonable?	What practical solutions are available to reduce the limitation?
Yes - A fair hearing - section 24 <sup>111</sup>	Clause 12 provides that as an alternative to prosecution, an Authorised Officer may issue an infringement notice on a person who the Authorised Officer believes has committed an infringement offence.	Council acknowledges that every individual has the right to a fair hearing.	<p>The <i>Infringements Act 2006</i> contains provisions for individuals to challenge Infringement Notices and for Council to waive Infringement Notices upon consideration of correspondence from the individual.</p> <p>The right to a fair hearing applies to "a person charged with a criminal offence or a party to a civil proceeding" (section 24(1)). This does not extend to Infringement Notice offences.</p>	In the event of service of an Infringement Notice, any limitation can be further reduced by continuing to the Magistrates Court for a decision.

<sup>111</sup> A [person](#) charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial [court](#) or tribunal after a fair and public hearing.



GLEN EIRA  
CITY COUNCIL

## Glen Eira City Council

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### National Relay Service

If you are deaf, hearing-impaired, or speech-impaired, we ask that you call us via the National Relay Service and then ask for (03) 9524 3333.

Online: <https://internet-relay.nrscall.gov.au>

Teletypewriter (TTY): 13 36 77

Speak and Listen: 1300 555 727

### Social media

#### Glen Eira City Council:

[www.facebook.com/GlenEiraCityCouncil](http://www.facebook.com/GlenEiraCityCouncil)

#### @cityofgleneira:

[www.instagram.com/cityofgleneira](http://www.instagram.com/cityofgleneira)

#### Glen Eira arts, gallery and events:

[www.facebook.com/gleneiraarts](http://www.facebook.com/gleneiraarts)

#### Glen Eira Leisure:

[www.facebook.com/GESACOnline](http://www.facebook.com/GESACOnline)

<https://www.instagram.com/gleneiraleisure>

[www.twitter.com/GESACOnline](http://www.twitter.com/GESACOnline)

#### Glen Eira Libraries and Learning Centres:

[www.facebook.com/GlenEiraLibraries](http://www.facebook.com/GlenEiraLibraries)

<https://www.instagram.com/gleneiralibraries>

#### Glen Eira Youth Services:

[www.facebook.com/GlenEiraYouthServices](http://www.facebook.com/GlenEiraYouthServices)

[www.instagram.com/gleneirayouthservices](http://www.instagram.com/gleneirayouthservices)

#### Glen Eira sustainable living:

[www.facebook.com/sustainablelivinggleneira](http://www.facebook.com/sustainablelivinggleneira)

