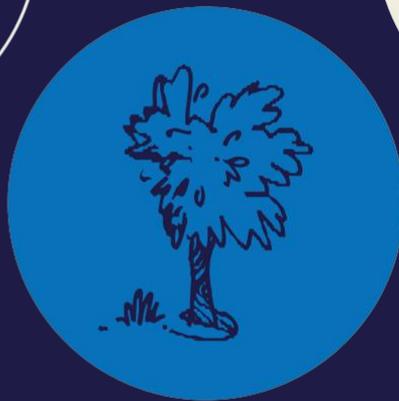
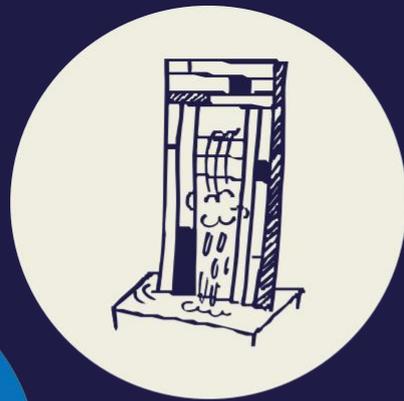


HAMILTON CITY COUNCIL – STAFF SUBMISSION

Proposals for the Smoked Tobacco Regulatory Regime (January 2023 Consultation Document)

Ministry of Health



22 March 2023



**Hamilton
City Council**
Te kaunihera o Kirikiriroa

Improving the Wellbeing of Hamiltonians

Hamilton City Council is focused on improving the wellbeing of Hamiltonians through delivering to our five priorities of shaping:

- **A city that's easy to live in**
- **A city where our people thrive**
- **A central city where our people love to be**
- **A fun city with lots to do**
- **A green city**

The topic of this submission is aligned to the priority '**A city where our people thrive**'.

Council Approval and Reference

This staff submission was approved by Hamilton City Council's Chief Executive on 22 March 2023.

Hamilton City Council Reference D-4585925 - Submission # 729.

It should be noted that the following submission is from staff at Hamilton City Council and does not therefore necessarily represent the views of the Council itself.

Key Messages

1. Overall, we support the regulatory proposals outlined in the Ministry of Health's January 2023 Consultation Document **Proposals for the Smoked Tobacco Regulatory Regime**.
2. We also support the overall direction and intent of LGNZ's submission to the Ministry of Health's Consultation Document.
3. We recognise and support the intention of the proposed regulations to reduce retail availability and to create a 'Smokefree Generation', which supports the Government's goal of reducing daily smoking rates to less than 5 percent of the population by 2025.
4. The **Smokefree and Vapefree Outdoor Areas Policy** ([refer here](#)) reflects Hamilton City Council's position with regard to smoking and vaping and is in alignment with the Government's Smokefree 2025 goal.
5. We support **Remit #5 - Density and Proximity of Vaping Retailers** that was endorsed at LGNZ's 28 July 2022 Annual General Meeting - [refer here](#). We therefore support the regulatory proposals to restrict Specialist Vape Retailer premises proximity to sensitive locations and have provided a list of proposed locations for Hamilton.
6. We support the considerations made to allocate the 600 retail premises evenly across the country and agree with the concept that urban and rural areas should be treated differently to ensure the premises are not clustered in cities.
7. As a Metro Council, we seek further assurance from the proposed regulations that there would be measures to ensure no clustering of smoked tobacco retailers occurs within our city borders.
8. We continue to advocate for the extension of restrictions on the density of smoked tobacco product retailers to include Specialist Vape Retailers.
9. We support the requirement for smoked tobacco retail premises to be operated by vendors who are assessed as 'fit and proper' by the Director-General of Health.
10. We support the proposed minimum requirements for the smoked tobacco premises, and advocate that a number of the additional evaluative requirements, as set out in Appendix 3 of the Consultation Document, be raised to be minimum requirements.
11. We support the proximity and location ranking criteria to limit clustering of smoked tobacco retailers within our city, particularly in lower socio-economic neighbourhoods.
12. We support evaluating the nature of the businesses that sell smoked tobacco products and agree that placing tobacco products for sale alongside everyday grocery items normalises these products.
13. We seek clarification on the administrative process for application assessment, and whether Local Government would be expected to play a role in the regulatory or enforcement process.
14. We support the proposal to require an insert into all smoked tobacco product packages about the upcoming changes to product availability and potency.
15. We support the proposed restrictions on vaping packaging and product restrictions to reduce the appeal of these products for young people. We are concerned that vaping prevalence continues to rise among young people, including those who have never previously smoked.

16. We support the proposal to restrict flavour names of vaping products which would appeal to young people.
17. We agree with the proposal to extend product safety requirements for disposable vaping products. We support restrictions put in place to improve the safety and wellbeing of our community. We acknowledge the proactive response to the foreseen popularity rise of single-use vaping products.
18. We consider the following as sensitive sites for Hamilton: any library, museum, community hall or recreational facility, any place of worship, school, childcare facilities, or other educational institution, any premises occupied by a social welfare agency such as Work and Income or similar agency, pharmacies and medical centres, Civic Square, Garden Place, the Hamilton High/District Court, Embassy Park, the River Walkway, stand-alone public toilets, the Hamilton Transport Centre and key bus stops. These sites were identified in our **Psychoactive Substances Policy** ([refer here](#)), with a rule that stores not be within 100m from an identified sensitive site, nor within 500m of each other.
19. We advocate for the Specialist Vape Retailer regulations to identify similar locations as sensitive sites, and to set similar proximity restrictions. Although the Psychoactive Substances Policy is not a policy response to vaping or smoked tobacco products, it was developed in response to a similar concern for the wellbeing of our community.

Introduction

20. Hamilton City Council appreciate the opportunity to make a submission to the Ministry of Health's January 2023 Consultation Document **Proposals for the Smoked Tobacco Regulatory Regime** (referred to as the Consultation Document).
21. Overall, we support the regulatory proposals outlined in the Consultation Document.
22. We also support the overall direction and intent of LGNZ's submission to the Ministry of Health's Consultation Document.
23. The regulatory proposals will provide the operational detail needed to establish the new regulatory regime, as well as changes to regulatory requirements for notifiable products (vaping, heated tobacco and now herbal smoking products).
24. We note and support the statement on the Ministry of Health's website that *"The Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act came into force on 1 January 2023. This amendment means that the Smokefree Environments and Regulated Products Act 1990 (the Act) now restricts the sale of smoked tobacco products to a limited number of approved retail outlets and prohibits anyone from selling or supplying smoked tobacco products to people born on, or after, 1 January 2009. This is intended to significantly reduce retail availability and to create a 'Smokefree Generation' to prevent our tamariki, and the generations born after them, from ever taking up smoking"*.
25. We have also used the Ministry of Health's official submission form to provide our specific feedback - refer **Appendix 1**.
26. **Note:** Some feedback areas in the Consultation Document are of a technical nature and fall outside of our areas of expertise. In these sections, we have therefore not provided a response.

Submissions to the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill

27. On 23 August 2022, Hamilton City Council staff made a submission to the **Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill** - [refer here](#)

Health Related Hamilton City Council Policies

28. On 27 September 2012, Hamilton City Council adopted a **Smokefree Outdoor Areas Policy**, with the first major review occurring in September 2020 where the policy was updated to a **Smokefree and Vapefree Outdoor Areas Policy** ([refer here](#)). The next review is scheduled for September 2023.
29. The purpose and scope of Council's Smokefree and Vapefree Outdoor Areas Policy is to:
- Identify the areas in the city where smoking and vaping is prohibited; and
 - Enable a collaborative action plan with agencies representing the Council's commitment to the national goal of supporting New Zealand to become a Smokefree nation by 2025.
30. This policy reflects Hamilton City Council's stance against smoking and vaping and is in alignment with the Government's Smokefree 2025 goal.
31. On 27 February 2014, Hamilton City Council adopted a **Psychoactive Substances Policy (Local Approved Products Policy)** - [refer here](#).
32. The policy identifies proximity restrictions for identified sensitive sites within Hamilton City. The policy also reflects Hamilton City Council's existing recognition of the importance of considering the location of retail premises which sell products that can cause harm.
33. The following locations are identified in this policy as sensitive sites for Hamilton: any library, museum, community hall or recreational facility, any place of worship, school, childcare facilities, or other educational institution, any premises occupied by a social welfare agency such as Work and Income or similar agency, pharmacies and medical centres, Civic Square, Garden Place, the Hamilton High/District Court, Embassy Park, the River Walkway, stand-alone public toilets, the Hamilton Transport Centre and key bus stops.

LGNZ's Remit on Restricting the Sale of Vaping Stores

34. On 28 July 2022, Local Government New Zealand (LGNZ) members passed a remit on vaping at their Annual General Meeting.
35. **Remit #5 - Density and Proximity of Vaping Retailers** seeks for LGNZ to request the Government to restrict the sale of vaping products to R18 specialist vape retailers and develop proximity limits to prevent the clustering of vaping product retailers and protect young people.
36. This remit passed with 79 percent support (including support from Hamilton City Council), signalling that a large proportion of councils throughout New Zealand are concerned about the harmful effects of vaping and support changes being made in the vape retail space. LGNZ's media release on remits can be [accessed here](#).
37. We continue to advocate to restrict the sale of all vaping products to specialist vape stores, however, because the importance of the voice of Local Government was not recognised during the review of the legislation, these restrictions are now out of scope for the Smoked Tobacco Regulatory Regimes and would require further legislative changes.

38. To ensure Local Government's voice is heard on these issues, ***we recommend a formalised process each year through which the sector proposes, and central government is required to give active consideration to, new legislation*** - as proposed in Hamilton City Council's 3 March 2023 submission to the Panel for the Review into the Future for Local Government - points 75 and 298 - [refer here](#)
39. We acknowledge that the proposal to introduce proximity restrictions for Specialist Vape Retailers answers only one portion of Remit #5, to *develop proximity limits to prevent the clustering of vaping product retailers and protect young people.*

Further Information and Opportunity to Discuss our Submission

40. Should the Ministry of Health require clarification of the submission from Hamilton City Council staff, or additional information, please contact **Rebecca Whitehead** (Unit Director - Community Services) on **027 808 6392** or email rebecca.whitehead@hcc.govt.nz in the first instance.
41. Hamilton City Council representatives would welcome the opportunity to discuss the content of our submission with the Ministry of Health in more detail and to be involved in any further targeted consultation.

Yours faithfully



Lance Vervoort
CHIEF EXECUTIVE

Appendix 1

Submission Form: Proposals for the Smoked Tobacco Regulatory Regime

Privacy

We intend to publish the submissions from this consultation, but **we will only publish your submission if you give permission**. We will remove personal details such as contact details and the names of individuals.

If you do not want your submission published, please tick this box:

Do not publish this submission.

Your submission will be subject to requests made under the Official Information Act (even if it hasn't been published).

Commercial interests

Do you have any commercial interests?

I have a commercial interest in smoked tobacco products

I have a commercial interest in other regulated products (vaping products, other notifiable products)

I have commercial interests in both smoked tobacco and other regulated products (vaping products, other notifiable products)

I do not have any commercial interests in smoked tobacco or other regulated products (vaping products, other notifiable products)

Commercially sensitive information

We will redact commercially sensitive information before publishing submissions or releasing them under the Official Information Act.

If your submission contains commercially sensitive information, please tick this box:

This submission contains commercially sensitive information.

If so, please let us know where.

Click or tap here to enter text.

Protection from commercial and other vested interests of the tobacco industry

New Zealand has an obligation under Article 5.3 of the World Health Organisation Framework Convention on Tobacco Control (FCTC) when 'setting and implementing public health policies with respect to tobacco control ... to protect these policies from the commercial and other vested interests of the tobacco industry'.

The internationally agreed Guidelines for Implementation of Article 5.3 recommend that parties to the treaty 'should interact with the tobacco industry only when and to the extent strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products'.

The proposals in this discussion document are relevant to the tobacco industry and we expect to receive feedback from companies in this industry. We will consider all feedback when analysing submissions.

To help us meet our obligations under the FCTC and ensure transparency, all respondents are asked to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry.

Please provide details of any tobacco company links or vested interests below.

Not applicable.

Please return this form:

By email to: smokefree2025@health.govt.nz

By post to: Smokefree Consultation, PO Box 5013, Wellington 6140.

Consultation questions

The Ministry of Health is seeking comments on the following.

Regulatory proposal 1a: Number of smoked tobacco retail premises and their distribution across Aotearoa

This section focusses on how stores that sell tobacco products will be spread across the country. In this section you can tell us if there's anything you think we should know about how areas should be defined, how many stores should be in each area, and anything important about your area.

This proposal relates to the written notice under section 20M of the Act to set a maximum number of retail premises in areas of New Zealand. Currently there are around 6,000 retailers of smoked tobacco products in Aotearoa. The recent changes to the Act mean that no more than 600 approved retail premises will be permitted to sell smoked tobacco products across the country. We propose that New Zealand be divided into areas based on whether they are urban or rural.

We have suggested an example scenario for smoked tobacco retail premises summarised by region. It is likely that the final distribution will need to be adjusted to take into account feedback from consultation, so this is a starting point for discussion only.

1. Do you agree with dividing Aotearoa into areas and having a separate maximum number of smoked tobacco retail premises for each one?

- Yes
 No

2. Do you agree with the concept that urban and rural areas should be treated differently?

- Yes
 No

If you have any comments on how we have defined rural and urban, or how the geographic nature of the area required by the Act should be taken into account, write them here.

We support the considerations made to allocate the 600 retail premises evenly across the country. We agree with the concept that urban and rural areas should be treated differently to ensure the premises are not clustered in cities. As a Metro Council, we are affected by one identified urban area - Hamilton. We seek further assurance in the regulations that there would be measures to ensure no clustering occurred within our city borders.

3. Do you agree with our suggested allocation scenario, as described in Table 1 of the consultation document and the supplementary maps we have produced?

- Yes
 No

How else could you determine the maximum number of retail premises for each area, bearing in mind the Act allows for a maximum of 600 retail premises?

Click or tap here to enter text.

4. We are interested in understanding the needs of different areas of Aotearoa. What is your area?

- | | |
|--|---|
| <input type="checkbox"/> Northland (Te Tai Tokerau) | <input type="checkbox"/> Manawatū/Whanganui |
| <input type="checkbox"/> Auckland (Tāmaki Makaurau) | <input type="checkbox"/> Wairarapa/Wellington (Te Whanganui-a-Tara) |
| <input checked="" type="checkbox"/> Waikato | <input type="checkbox"/> Nelson/Marlborough (Whakatū/Te Taihu-o-te-waka) |
| <input type="checkbox"/> Bay of Plenty (Te Moana a Toi-te-Huatahi) | <input type="checkbox"/> Tasman/West Coast (Te Tai o Aorere/Te Tai Poutini) |
| <input type="checkbox"/> Tairāwhiti/Hawkes Bay (Te Matau-a-Māui) | <input type="checkbox"/> Canterbury/Chatham Islands (Waitaha/Wharekauri/Rēkohu) |
| <input type="checkbox"/> Taranaki | <input type="checkbox"/> Otago/Southland (Ōtākou/Murihiku) |
| <input type="checkbox"/> Other/I am not in New Zealand
<i>(please specify):</i> | |

Regulatory proposal 1b: Minimum requirements for approval as a smoked tobacco retailer

This section focusses on minimum requirements for selling smoked tobacco products. In this section you can tell us about who should be allowed to sell and what type of systems you think they should have.

This proposal relates to key criteria under 20I and regulation making powers under 82A of the Act to require the retailer to meet certain criteria before they can be approved.

The Director-General of Health must be satisfied that retail premises are run by people who are 'fit and proper'. Further requirements that need to be met can be set in regulations for security, training, delivery, other business systems, and other relevant criteria. We have proposed some requirements which are intended to ensure that the retail scheme works as intended.

1. Do you agree with the proposed requirements for a 'fit and proper' person in Appendix 2 of the consultation document?

- Yes
 No

If you have any comments on the proposed requirements for a 'fit and proper person, please write them here.

We support the requirement for smoked tobacco retail premises to be run by those who are assessed as 'fit and proper' by the Director-General of Health.

2. Do you agree with the minimum requirements we have proposed for security systems, training, sales systems, delivery systems and other business systems?

- Yes
 No

Do you have any other suggestions?

Click or tap here to enter text.

Regulatory proposal 1c: Approval processes and decision-making criteria

This section focusses on the retail application process for smoked tobacco retailers. The Act requires that the Director-General determine and publish a process for applications. We are seeking feedback on 2 main parts: firstly, how the application process will be run, and secondly how we will compare applications against each other if there are too many applicants for an area.

Here you can tell us what you think is important to consider.

You can find more details on this proposal in the consultation document.

1. Do you agree with the proposed application process?

Yes

No

2. Are there any aspects that need to be clearer?

We seek clarification on the administration process for application assessment, and in particular, whether the Ministry of Health will carry out the assessments autonomously. It is not yet clear whether councils may be expected to play a role in the regulatory or enforcement process. Should the need for council's participation be identified, then the Ministry of Health must engage with councils very early in the process to determine and address gaps in funding and capacity that this will cause.

3. If you have any changes or additions to the criteria we have proposed, please write them here.

We support the proposed minimum requirements for the smoked tobacco premises and advocate that a number of the additional evaluative requirements, as set out in Appendix 3 of the Consultation Document, be raised to be minimum requirements.

In particular:

- **A regularly maintained security system that addresses stock loss prevention and safety of staff and customers, and appropriate store layout.**
- **Training that ensures a good understanding of the Act, and security training.**
- **Supply chain management plans.**

4. What do you think are the most and least important things to take into account when assessing an application?

We support the *proximity and location* ranking criteria to limit clustering of smoked tobacco retailers within our city, and in particular, our lower socio-economic neighbourhoods. We support evaluating the nature of the businesses and agree with the notion that tobacco products alongside everyday grocery items normalises these products.

Additional retail questions

1. Do you have any feedback on additional decision-making criteria and processes for selling smoked tobacco products online?

Click or tap here to enter text.

2. Do you have any feedback on possible support for retailers who are no longer able to sell smoked tobacco products?

Click or tap here to enter text.

Regulatory proposal 2: Low nicotine requirements

From 1 April 2025 only low nicotine smoked tobacco products will be allowed in Aotearoa. This section focusses on the details of testing and product requirements, application processes as well as product packaging updates needed.

You can find more details on this proposal in the consultation document.

1. Do you agree that a suitable testing method may include a method based on WHO SOP4, validated to account for the low nicotine levels prescribed?

- Yes
- No

2. Do you have any other suggestions for suitable chemical analytical methods?

Click or tap here to enter text.

3. Do you agree with the proposal that the main packaging change should be to allow the words 'very low nicotine' on qualifying smoked tobacco products?

- Yes
- No

4. Do you agree with the proposal to require an insert in smoked tobacco product packs?

- Yes
- No

If you have any additional feedback on smoked tobacco packaging, please comment here.

We support the proposal to require an insert into all smoked tobacco product packages which informs people of the upcoming changes to product availability and appeal. We support targeted information and guidance about the legislation changes to our community members who smoke, as well as ensuring all health warnings are up to date and relevant.

5. Do you agree with the product application requirements?

- Yes
- No

If you have further comments on product application requirements, please write them here.

Click or tap here to enter text.

6. Do you agree with the proposed requirements for temporary approvals?

- Yes
- No

If you have any comments on the proposed requirements for temporary approvals, please write them here.

Click or tap here to enter text.

Regulatory proposal 3: Fees

This section focusses on fees for applications, registrations and product approvals.

You can find more details on this proposal in the consultation document.

1. Do you agree that Manatū Hauora should charge for these processes?

- Yes
- No

What processes do you suggest we charge for?

Click or tap here to enter text.

2. Do you agree with the level of each of the fees?

- Yes
- No

If not, how much do you suggest we charge?

Click or tap here to enter text.

3. Do you agree with our cost recovery approach?

- Yes
- No

If not, what approach do you suggest we use?

Click or tap here to enter text.

Regulatory proposal 4: Notification requirements

This section is about the process for distributors of smoked tobacco products and retailers of notifiable products to tell the Director-General about their business.

You can find more details on this proposal in the consultation document.

1. Do you agree with the proposal that distributors and general retailers be required to re-register annually?

- Yes
 No

If you have any further comments (including how frequently registration should be required) please write them here.

Click or tap here to enter text.

Regulatory proposal 5: Youth vaping

Youth vaping rates are currently increasing. We propose extending vaping packaging and product restrictions to further improve product safety and reduce the appeal of these products to young people, specifically through restricting flavour names and introducing product safety requirements for single use vaping products.

You can find more details on this proposal in the consultation document.

1. Do you agree with the proposal to restrict the flavour names of vaping products to minimise their appeal to youth?

- Yes
 No

If not, why not? If you agree, which names do you think should be excluded or replaced on the example e-liquid flavour wheel set out in the consultation document?

We support the proposed restrictions on vaping packaging and product restrictions to reduce the appeal of these products for young people. We are concerned that vaping prevalence continues to rise among young people, including those who have never previously smoked. We support the proposal to restrict flavour names of vaping products which would appeal to young people.

2. Do you agree with the proposal to extend product safety requirements for disposable vaping products?

- Yes
 No

If you have further comments on the proposal to extend product safety requirements for disposable vaping products, please write them here.

We agree with the proposal to extend product safety requirements for disposable vaping products. We support restrictions put in place to improve the safety and wellbeing of our community. We acknowledge the proactive response to the foreseen popularity rise of single-use vaping products.

3. Do you agree with the proposal to restrict where Specialist Vape Retailers can be located?

- Yes
 No

If you have any further comments on where Specialist Vape Retailers are located (including any particular locations that are important to you), please write them here.

We consider the following sensitive sites for Kirikiriroa Hamilton; any library, museum, community hall or recreational facility, any place of worship, school, childcare facilities, or other educational institution, any premises occupied by a social welfare agency such as Work and Income or similar agency, pharmacies and medical centres, Civic Square, Garden Place, the Hamilton High/District Court, Embassy Park, the River Walkway, stand-alone public toilets, the Hamilton Transport Centre and key bus stops.

The sensitive sites listed above were identified in our Psychoactive Substances Policy, with a rule that stores not be within 100m from an identified sensitive site, nor within 500m of each other. The Psychoactive Substances Policy is not a policy response to vaping or smoked tobacco products, but it was developed in response to a similar concern for the wellbeing of our community. We advocate for the Specialist Vape Retailer regulations to identify similar locations as sensitive sites, and to set similar proximity restrictions.

Hamilton City Council
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 /HamiltonCityCouncil

 @hamiltoncitycouncil

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hamilton.govt.nz