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Submission to Proposed Smoked Tobacco Regulatory Regime

Thank you for the opportunity to submit on the proposals outlined in the Ministry of Health's consultation document, **Proposals for the Smoked Tobacco Regulatory Regime**.

Background and Context

The Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act came into force on 1 January 2023. It amends the **Smokefree Environments and Regulated Products Act 1990** by:

- limiting the number of approved retail outlets
- prohibiting anyone from selling or supplying smoked tobacco products to people born on, or after, 1 January 2009, and
- extends the Act's regulatory powers over the composition of smoked tobacco products (eg nicotine levels).

Your consultation document canvases for input on a regulatory regime for implementing the policies as set in the amended Act and also sets out proposals to tighten current restrictions on vaping product safety requirements and packaging, and potentially some restrictions on the location of Specialist Vape Retailers (SVR's).

Please find below Kapiti Coast District Council's views on the matters raised in the Consultation Document.

Outlet numbers, location, and proximity

Council supports:

- the Act's intent to limit the number of Smoked Tobacco Retailers to 600 nationwide thereby limiting visibility and access to smoked tobacco products

- the proposed approach treating urban and rural areas differently to ensure outlets aren't clustered in high deprivation communities in urban areas, and rural people still have reasonable access to smoked tobacco products.

However, Council has some general caveats to the approach to allocating outlets in urban and rural areas:

- for urban areas, how will expanding urban boundaries be managed over time within the fixed allocation of approved outlets
- generally, how will the number of outlets be managed with increasing or decreasing population changes
- in rural areas, finding suitable locations that aren't close to sensitive sites (eg schools) may be difficult with schools often forming the centre of most rural "hubs" where other facilities, such as a shop or service station are also sited
- the regime should give some indication of how these matters will be managed

More generally, for overall system clarity, the regulations should explain the overall management of approvals, by:

- explaining how the number of outlets will be reviewed and managed over time, and what the frequency of any reviews will be
- indicating whether, when reviewed, a sinking lid approach to overall numbers will be taken, and
- whether the number of outlets within each area, and/or urban and rural parts of each area, would be reviewed and potentially changed/reduced and what would trigger a change/reduction
- stating under what circumstances this would happen (eg if an outlet is sold, does the approval go with the outlet (providing the new owner is a fit and proper person and meets all other requirements)), or
- does the approval become available to other applicants in the area, or
- is the number of outlets permanently reduced for the area.

Outlets and areas

Council notes:

- there are 34 pins shown on the Wellington Region map. However, there are only 32 outlets listed in the Table. Which is correct?
- For the Kapiti Coast District, the map shows eight locations, but the list only notes seven in our district. The Raumati Beach/Raumati South locality is marked on the map, but not listed. What is the reason for this?

Council supports the general overarching criteria for assessing and selecting outlets from the applicant pool, but:

- would like to see the regulations strengthen the penalty for non-compliance in the operation of an outlet, through either temporary or permanent loss of approval to sell smoked tobacco products (depending on severity of non-compliance and/or any repetition of the non-compliance)
- a possible model is the suspension or loss of alcohol licences for non-compliance to the Sale and Supply of Alcohol Act or to licence conditions
- Council further considers that any past non-compliance by an applicant should disqualify the applicant from further consideration as an approved outlet.

Online sales: While Council can see the rationale for approving online sales, it believes that the following should apply:

- an online vendor must also hold an approval to sell from a physical address (ie be one of the approved vendors)
- online sales must be to a definable physical area (ie a remote rural area) and not overlap where smoked tobacco products can be purchased from an approved outlet (ie not a substitute for buying locally).

Approval allocation and location parameters

Over-arching criteria for approving an applicant (person/outlet) is that the applicant is a fit and proper person, a New Zealand resident, or if an entity, incorporated under New Zealand law. However, there also needs to be greater clarity that the applicant and the intended premise they will operate from are legally connected (ownership/lease etc).

The regulatory regime divides the parameters for selecting approved retailers into three broad categories or considerations:

Business and other systems: Security systems, internal and external shop security; Staff training: in requirement and restrictions of the Act and shop processes and procedures; Sale systems, to ensure there are no sales to minors; Delivery systems, ensuring delivery is only made to the person purchasing, and not to a minor.

- Acknowledging that the Delivery system criteria is predominantly aimed at internet sales, Council is unclear how the delivery systems parameter can be monitored and enforced by the outlet owner. While they can ensure there are no sales to a minor, once the product leaves the shop, they have no control as to who it goes to. Asking for valid ID at point of delivery has become problematic for e-retail alcohol sales and is likely to be so for smoked tobacco products. The vendor will not have control over the delivery person, who may be a third-party provider (eg Courier Post driver) and it is unfair to place this responsibility on the delivery driver, who may not even know what is in the parcel. This is a similar issue as encountered in the sale and supply of alcohol. On this basis, Council considers allowing for internet sales is highly problematic and does not support the Smokefree 2025 goal.

Proximity and location: allocation of premises within specific areas will be ranked by proximity to sensitive locations (eg schools, marae):

- as noted above, this may be difficult for rural areas. Proximity to sensitive sites in urban areas will need to be sensibly set and is a function of school commuting routes (children walking past shops selling smoked tobacco products) as much as adjacent proximity siting.

Other factors: Parameters for ranking: applicants compliance history, nature of the business, opening hours, whether it is a specialist outlet (70% of smoked tobacco sales are for non-cigarette products (eg cigars)) etc are listed as the criteria for assessment.

- Council agrees with the fit and proper person test, as it is standard in a number of other regulated retail businesses (alcohol, car sales etc) and is an appropriate test, however,
- there should be some consequence for the outlets licence/approval to sell, as outlined above, for non-compliance (additional to the fines under the Act).

Approval process

- Council agrees that the application assessment process is fair and logical, but notes that it will need to be quite fine grained in its ability to differentiate between quality of applications given the absolute maximum number of approvals that can be given, and the approach to refuse both if two or more applications tie in their assessment. As currently proposed, the criteria lack that fine definition.

Fees

Council acknowledges that fees are appropriate, however, we wonder whether Assessment fees for applications to become an approved smoked tobacco retailer should perhaps be split into two phases. Noting a range is given, and should the likely cost be in the upper half of that range, it seems a significant outlay for a small business given the uncertainty of the process and the likely significant competition for approvals. Perhaps a smaller set fee for the assessment against eligibility criteria could be levied, and should an applicant make it through to a “short list” for their area, a further fee charged reflecting the further in-depth assessment required, including perhaps shop, site and neighbourhood visits to assess appropriateness of premises and locality.

Youth Vaping

Council agrees with the proposals:

- to restrict flavour names to minimise appeal to youth. However, we consider that, if feasible, this should be taken a step further and the flavours themselves should be restricted
- to extend product safety requirements to include user safety mechanisms, removeable/replaceable batteries, substance container labelling, nicotine concentrations in non-refillable products, and serial/batch numbers. These requirements are no greater than those a range of other consumption products are required to achieve
- Council also considers that nicotine should be a banned ingredient in vape products.

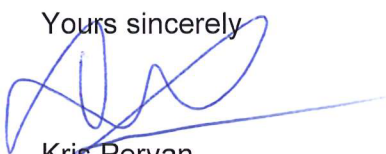
With respect to proximity restrictions for Specialist Vape Retailers, Council believes these should reflect the proximity and location requirements for Smoked Tobacco products, and that an overall maximum number of SVRs should also be established and include non-SVRs that sell Vape products. Council considers this step a prerequisite if Government is serious in achieving a smoke-free Aotearoa New Zealand.

Additionally, with respect to Vaping and Vape products:

- the importation of disposable vapes and liquid nicotine, for sale and distribution in Aotearoa New Zealand, should be limited
- disposable vapes and their components must be biodegradable.

Should you have any questions to us on this submission, please contact Chris Worth, Principal Policy Advisor (Chris.Worth@kapiticoast.govt.nz) in the first instance.

Yours sincerely



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