

**Report to the Future Melbourne (Environment) Committee**

Agenda item 6.(

**Proposed Local Law amendment**

**5 May 2020**

**Presenter:** Kim Wood, Chief Legal Counsel

**Purpose and background**

1. The purpose of this report is to seek approval to commence the statutory process proposing the Activities (Greening Melbourne, Vaping and Miscellaneous Amendments) Local Law 2020 (Proposed Local Law) to amend the Council's Activities Local Law 2019 and Environment Local Law 2019 (Local Laws).

**Key issues**

2. The Local Laws came into effect on 1 July 2019 with the previous local laws sunsetting on 30 June 2019.
3. In accordance with the resolution of the Future Melbourne Committee of 5 February 2019 proposing the Local Laws, the Local Laws were made in substantially the same form as the previous local laws.
4. The Proposed Local Law (Attachment 2), proposes to amend the Local Laws by:
  - 4.1. including in the Activities Local Law 2019:
    - 4.1.1. a definition of green infrastructure and a new part 4A, 'Greening Melbourne', to enable a permit process to facilitate green infrastructure
    - 4.1.2. extending the definition of smoking to include vaping using an e-cigarette, to align the Local Law with the *Tobacco Act 1987*
  - 4.2. amending the Environment Local Law 2019 to support the changes to the Activities Local Law 2019 in respect to green infrastructure
  - 4.3. making other minor updates to the Local Laws.
5. In relation to e-cigarettes and vaping, Quit Victoria states that e-cigarettes are not proven to be an effective cessation tool and although the long term health impacts are unknown, early evidence suggest they can be harmful and can lead to uptake of smoking in young people.

**Recommendation from management**

6. That the Future Melbourne Committee:
  - 6.1. Pursuant to Part 5 of the *Local Government Act 1989* (the Act), proposes to make the Activities (Greening Melbourne, Vaping and Miscellaneous Amendments) Local Law 2020 at Attachment 2 (Proposed Local Law).
  - 6.2. Endorses management carrying out the necessary steps to progress the proposal in accordance with the Act.

**Attachments:**

1. Supporting Attachment (Page 2 of 8)
2. Activities and Environment (Greening Melbourne, Vaping And Miscellaneous Amendments) Local Law 2020 (Page 4 of 8)

## Supporting Attachment

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### Legal

1. Council's powers to make a local law are set out in Part 5 of the Act. The procedure for making a local law is set out in Section 119 of the Act.
2. Prior to making a local law a Council must publish a notice in a newspaper circulating in the Council district and in the Government Gazette stating:
  - 2.1. the purpose and general purport of the proposed local law
  - 2.2. that a copy of the proposed local law can be obtained from the Council.
  - 2.3. that any person affected by the proposed local law may make a submission pursuant to section 223 of the Act.
3. Any person who makes a written submission has a right to be heard by the Council's Submissions (section 223) Committee which has the role of considering any submissions received and making a recommendation to the Council. If no submissions are received, the local law can be made under delegation. When a local law is made, a further notice must be published in the newspaper and the Government Gazette.

### Finance

4. The cost of placing notices in the newspaper (The Age) and the Government Gazette will be absorbed within the current budget.

### Conflict of interest

5. No member of Council staff, or other person engaged under a contract, involved in advising on or preparing this report has declared a direct or indirect interest in relation to the matter of the report.

### Health and Safety

6. Local laws are one of the key methods available to a local government to regulate and control activities and behaviour within the municipality to protect the health and safety of its community.

### Stakeholder consultation

7. The Proposed Local Law will be the subject of a statutory public notice and submission process. The provisions in respect to green infrastructure arose from Community Greening in the Public Realm, a report prepared by GHD dated 5 February 2019.

### Relation to Council policy

8. The Proposed Local Law addresses a number of Council policy objectives in:
  - 8.1. Council Plan 2017 – 2021
  - 8.2. Resilient Melbourne 2016
  - 8.3. Climate Change Adaptation Strategy 2017
  - 8.4. Green Our City Strategic Action Plan
  - 8.5. Nature in the City Strategy

- 8.6. Street Activity Policy 2011
- 8.7. Urban Forest Strategy 2012 - 2032
- 8.8. Food Policy 2012.

**Environmental sustainability**

- 9. Local laws allow a local government to regulate and control activities and behaviour within the municipality. The Proposed Local Law will enable a permit process to support the appropriate installation of green infrastructure in the City of Melbourne to support and expand biodiversity.



**MELBOURNE CITY COUNCIL**

**ACTIVITIES AND ENVIRONMENT  
(GREENING MELBOURNE, VAPING  
AND MISCELLANEOUS AMENDMENTS)  
LOCAL LAW 2020**

**ACTIVITIES AND ENVIRONMENT (GREENING MELBOURNE AND MISCELLANEOUS AMENDMENTS) LOCAL LAW 2020**

**AMENDING LOCAL LAW**

**PART A**

**PRELIMINARY**

**Title**

- 1.1 This Local Law is called the *Activities and Environment (Greening Melbourne, Vaping and Miscellaneous Amendments) Local Law 2020*.

**What are the objectives of this Local Law?**

- 1.2 This Local Law is made for the purposes of:
- (a) amending the Melbourne City Council Activities Local Law 2019 so as to:
    - a. insert a definition of green infrastructure and a new part 4A, 'Greening Melbourne', to enable a permit process to facilitate green infrastructure;
    - b. extend the definition of smoking to include vaping using an e-cigarette;
    - c. make miscellaneous consequential changes to clarify the intent and purpose of various provisions;
  - (b) amending the Melbourne City Council Environment Local Law 2019 to support the changes to the Activities Local Law 2019;
  - (c) making other minor updates and changes to the Activities Local Law 2019 and the Environment Local Law 2019; and
  - (d) providing for the peace, order and good government of the *municipality*.

**What authorises this Local Law?**

- 1.3 This Local Law is made under section 111 of the *Local Government Act 1989*.

**When does this Local Law commence?**

- 1.4 This Local Law commences on the date of its publication in the Victorian Government Gazette.

**Sunset Provision**

- 1.5 This Local Law ceases to operate when the Melbourne City Council's Activities Local Law 2019 and Environment Local Law 2019 cease to operate.

**To what part of the *municipality* does this Local Law apply?**

1.6 This Local Law applies throughout the whole of the *municipality*.

**PART B**

**AMENDMENTS TO THE *ACTIVITIES LOCAL LAW 2019***

2.1 In clause 1.11:

(a) Insert the following new definitions:

“*e-cigarette*” has the same meaning as in the *Tobacco Act 1987*.’

“*green infrastructure*” means:

- (a) plants, including street and community gardens
- (b) plants contained within a pot or container which may be on the ground or suspended from or connected to a building or structure
- (c) composting facilities
- (d) any item or thing attached to a *tree*
- (e) any other infrastructure that supports greening in the *municipality* as *prescribed* by the *Council*.’

(b) Delete the current definition of ‘smoke’ and substitute the following:

“*smoke*” means to:

- (a) smoke, hold or otherwise have control over an ignited *tobacco product*,
- (b) light a *tobacco product*, or
- (c) use an *e-cigarette* to generate or release an aerosol or vapour.’

(c) Amend the definition of *construction management plan* by:

a. inserting a new sub-clause (c):

‘(c) the impact on *green infrastructure* is minimised;’

b. re-numbering the existing sub-clauses (c) – (g) as a result.

(d) Amend the definition of ‘*design and construction standards*’ by deleting ‘in the Dockland Area’.

- 2.2 In clause 2.8:
- a. amend the title to read:  
**'Protection of *trees* and *green infrastructure*'**
  - b. add the words 'or *green infrastructure*' after the word '*tree*' in both instances.
- 2.3 In clause 2.11 change '2.101' to '2.10'.
- 2.4 In clause 3A.4, change 'Part 2' to 'Part B'.
- 2.5 Insert a new Part 4A immediately after Part 4 as follows:

**PART 4A**

***GREENING MELBOURNE***

Introduction: This Part aims to support greening of and biodiversity within the *municipality* by creating a *permit* process to enable the placing of *green infrastructure* on *Council land* and any other *public place prescribed* by the *Council*.

**Authorisation required for *green infrastructure***

4A.1 Without limiting the generality of clause 4.6 of this Local Law, unless:

- (a) in accordance with a *permit*, or
- (b) to do so is specifically authorised by and in accordance with the *Planning Scheme* or a planning permit issue under it, on which an animal hospital or veterinary practice is located;

*a person must not place or erect green infrastructure in, on or over Council land or any other public place prescribed by the Council.'*

- 2.6 In clause 7.3:
- (a) delete 'the Office of Gas Safety' and insert 'Energy Safe Victoria'; and
  - (b) delete 'Gasnet, VicGas and TXU' and insert 'relevant gas distributors as identified by Energy Safe Victoria'.
- 2.7 Amend the table in Schedule 1, by inserting a new row:

.1	Unauthorised <i>green infrastructure</i>	2.5
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**PART C**

**AMENDMENTS TO THE *ENVIRONMENT LOCAL LAW 2019***

3.1 In clause 1.1, insert the following new definitions:

*“approved green infrastructure” means green infrastructure permitted or authorised pursuant to clauses 4A.1(a) or (b) of the Activities Local Law.’*

*“green infrastructure” has the same meaning as in the Activities Local Law.’*

3.2 In clause 3.1 change ‘his *premises*’ to ‘the *premises*’.

3.3 In clause 2 of the *Environment Management Plan*:

(a) delete the full stop at the end of sub-clause (c) and insert a semicolon; and

(b) insert a new sub-clause (d):

‘(d) support *approved green infrastructure* throughout the *municipality*.’

3.4 In clause 6 of the *Environment Management Plan* ‘Council Guidelines’:

(a) delete ‘or’ at the end of sub clause 6.1.4;

(b) insert a new clause 6.1.5:

‘6.1.5 supporting *approved green infrastructure*; or’; and

(c) re-number the current clause 6.1.5 as a result.