AN OVERVIEW OF THE LEGAL REGULATORY FRAMEWORK GOVERNING LOCAL PLANNING IN WESTERN AUSTRALIA: HOW IS COMMUNITY HEALTH PROTECTED?

A REPORT
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AUTHORS (FROM THE LAW SCHOOL, UNIVERSITY OF WESTERN AUSTRALIA)
ASSOCIATE PROFESSOR MEREDITH BLAKE
MS JULIA SYMONS
DR MARILYN BROMBERG
MR WILLIAM CONTI

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Introduction

The Western Australian Government has set an ambitious goal of reducing obesity over the period to 2025. Current trends indicate that Western Australia will not meet this target.

The influence of built environments, which can facilitate or inhibit health behaviours like physical activity and healthy eating, means that the urban planning laws are a potentially powerful tool for influencing health, and therefore reducing obesity. The pervasive availability of unhealthy food and drinks is the single greatest driver of overweight and obesity (Sacks, 2019). Consequently, as part of this goal, the Sustainable Health Review Final Report recommended that changes to the planning laws be made to limit unhealthy food outlets and to support access to healthy food options, including near schools (Government of Western Australia, Department of Health, 2019).

WA's *Public Health Act 2016* puts the impetus on local government to promote health and wellbeing within their local areas. However, WA planning laws do not adequately allow for consideration of community health when planning applications are put forward for review. This paper focuses on a number of community health concerns affected by the operation of the planning regulatory framework.

Obesity

Fast food outlets are allowed to open near schools. For example, in May 2020, approval was granted for a second McDonalds store in Albany. The store on the corner of Le Grande Avenue and Albany Highway is less than a kilometre from North Albany Senior High School and directly opposite Albany TAFE. Despite opposition from health groups including Cancer Council WA, the Development Assessment Panel was not able to take into account these public health concerns in its deliberations because of the absence of health as a consideration in the law. This was despite the City of Albany having clear obesity prevention objectives in its Public Health Plan.[1] More recently, a second McDonalds store in Ellenbrook was approved. The development will be located directly opposite Aveley Secondary College. Despite concerns raised by public health groups, the school and the Department of Education, the application was approved.[2] The pervasive marketing and availability of unhealthy food and drinks is the single greatest driver of overweight and obesity.

Skin cancer

More than 95% of skin cancers are caused by over-exposure to the sun, specifically ultraviolet radiation (UVR) (Cancer Council Cancer. (n.d.). Causes of skin cancer[3]). Reducing exposure to UVR at any age reduces the lifetime risk of skin cancer. Skin cancers are considered to be almost entirely

[1] https://www.dplh.wa.gov.au/departmentofplanninglandsheritage/media/daps/regional%20jdap/agenda/2020/june/20200604%20-%20agenda%20-%20no.%205%20-%20city%20of%20albany.pdf

[2] https://www.dplh.wa.gov.au/departmentofplanninglandsheritage/media/daps/metro%20outer%20jdap/minutes/2020/september/20200918%20-%20minutes%20-%20no%2039%20-%20city%20of%20swan.pdf

[3] https://www.cancer.org.au/cancer-information/types-of-cancer/skin-cancer/causes-of-skin-cancer

preventable through good UV control (Cancer Council Victoria, SunSmart. (n.d.)[4]). Risks for skin cancer. The provision of appropriate shade, both natural and manmade, in public open spaces is crucial to reducing exposure to UVR (Cancer Council Western Australia. 2020. The shade handbook: A practical guide for shade development in Western Australia, Cancer Council Western Australia, Perth). Shade is referred to in various framework documents such as the State Planning Policy SPP7.0 Design of the Built Environment; however it is limited to heat mitigation, rather than UVR protection. This framework document fails to include health outcomes, focusing on social, environmental and economic outcomes (Western Australian Planning Commission. (February, 2019). State planning policy 7.0, Design of the built environment[5]).

Tobacco

Cigar bars/smoking lounges are businesses which seek to circumvent the prohibition on smoking in enclosed public places by establishing a 'private members' club'. Their applications usually state that a swipe card will be used to access the building, and that the area is not an enclosed *public* place.

This highlights a problem with the Town Planning Schemes for LGAs in WA, that being they do not include 'specialist tobacconists' or 'cigar lounge' in the Zoning Tables that determine the Use of Land. Where the use is not listed and does not reasonably fall into any other category, then the Council usually has discretion to allow or reject the application. The Council may be guided by the objectives and purposes of the Zone and can also have regard to strategic plans, local policies etc. But in some cases, there may not be a smoke-free environments policy or tobacco section within a Public Health Plan which could be the foundation of a strong argument opposing the approval of the application. If promotion of community health is not a key objective of the planning scheme, then some Councillors may not be persuaded that the application should be rejected on health grounds. In practice, the decision may depend largely on the personal values and beliefs of the Councillors and it is therefore difficult to predict the outcome of applications on the basis of any objective criteria.

Alcohol

Applications for the establishment of liquor outlets are primarily determined through the application of the Liquor Licensing legislation. That legislation does have the capacity to consider health as a relevant factor to the granting of a licence, albeit through the indirect criteria of …For the reasons already identified it is difficult to object to the granting of planning permission for an alcohol outlet on the basis of the planning laws.

Amending planning laws to incorporate community health concerns is therefore an important tool in addressing obesity and overweight, alcohol- and tobacco-related illness, and skin cancer.

[4] https://www.sunsmart.com.au/skin-cancer/risk-factors-for-skin-cancer
[5] https://www.dplh.wa.gov.au/getmedia/30f0b7b9-9ac0-4711-8b68-c2d2708e5764/SPP-7-0-Design-of-the-Built-Environment

This report examines the following three questions:

1. What elements of the State Planning Law currently prevent Local Governments from being able to implement the invocations found in the Public Health Act?

2. What opportunities currently exist to incorporate health concerns?

3. What opportunities are there to amend Planning Law to enable Local Governments and other planning authorities to further the Cancer Council's key outcomes?

Each will be considered in turn.

What elements of the State Planning Law currently prevent Local Governments from being able to implement the invocations found in the Public Health Act?

It is first necessary to give an overview of both public health law and the state planning law.

PUBLIC HEALTH LAW

The *Public Health Act*

1. *Public Health Act*

The main legislation governing public health in Western Australia is the *Public Health Act 2016* (WA) ('**the PHA**').

The definition of Public Health in the PHA is adapted from the World Health Organization's definition. It is defined as the health of individuals in the context of "the wider health and wellbeing of the community" and "the combination of safeguards, policies and programmes to protect, maintain, promote and improve the health of individuals and their communities and to prevent and reduce the incidence of illness and disability". It "moves away from the historical focus on sanitation and the containment of disease and towards a broader notion of public health that includes the promotion of health and wellbeing" (Government of Western Australia, Legislative Assembly, 26 November 2014). Its predecessor *Health Act 1911* (WA) was prescriptive in nature and provided regulation in respect of specific risks to public health. It also contained several antiquated provisions, such as for the 'management of lepers' (Government of Western Australia, Legislative Assembly, 26 November 2014).

Objects

The PHA provides for the "promotion and protection of public health and wellbeing".

The objects of the PHA are broad and include:

- the promotion and improvement of "public health and wellbeing";
- to provide a "healthy environment for all Western Australians";
- to encourage individuals to "plan for, create and maintain a healthy environment"; and
- to "reduce the inequalities in public health of disadvantaged communities".

"Healthy environment", "wellbeing" and "emerging risk[s] to public health" are not legislatively defined.

Additionally, the Act provides several principles that are to be borne in mind when interpreting its provisions.

- Sustainability: "public health, social, economic and environmental factors should be considered in decision making, with the objective of improving community wellbeing and the benefit to future generations"
- Precautionary principles:

- The principle of proportionality: decisions made and actions taken in the administration of the public health act should be proportionate to the public health risk at hand;
- Intergenerational equity: "public health is maintained or enhanced for future generations".

Parts of the Act

Part 2 of the PHA provides for responsibility for public health to be shared between state and local governments.

Part 3 contains a general public health duty owed by all individuals (Section 34, PHA 2016 (WA)). It is "capable of capturing both known and emerging risks to public health" and provides for the promotion of health and wellbeing. The explanatory memorandum states that "the Public Health regulations clarify the application of the general public health duty and provide guidance as to the measures that will constitute compliance and non-compliance with the general duty in a range of specific contexts". However, the *Public Health Regulations 2017* do not provide this guidance: they specify notifiable infectious diseases and related conditions, and contain miscellaneous other provisions. **As such there is a lack of clarity as to the extent and requirements of the "general public health duty", and whether this could extend to include the undertaking of precautions relevant to planning proposals and decisions.**

Parts 5 and 6 have not yet come into force. They will come into force on a date set by proclamation, along with parts 7 and 8. At the time of writing, proclamation has not occurred, although this was anticipated to occur in 2020 or 2021. (See table in Appendix 1).

Part 5 requires the preparation of two types of public health plans (state and local). Public health planning focuses on preventative health and "aims to achieve long term public health outcomes through the planning process" (Public Health Bill 2014 (WA)). The Public Health Act requires each local government to produce a public health plan that applies to its local district.

A Public Health plan is a document that:

- identifies the public health needs of the local government district;
- includes an examination of data relating to health status and health determinants in the local government district;
- establishes objectives and policy priorities for the promotion and protection of public health in the local government district;
- describes the development and delivery of public health services in the local government district; and
- includes a report on the local government's performance of its functions under the Act (Government of Western Australia, Department of Health, 2020[6]).

[6] https://ww2.health.wa.gov.au/Articles/N_R/Public-health-planning

The requirement for public health planning aims to align the objectives and priorities of State and local governments. Local governments must make a Public Health Plan that is consistent with the State Public Health Plan. However, while the making of a plan is a statutory requirement, adhering to and carrying out the plan is not a legislative requirement (above and beyond the "general public health duty", the meaning and scope of which is ambiguous, as noted above). The Public Health plan itself is therefore aspirational and not directive in nature. As noted by one interviewee, "public health plans contain some fantastic information on improving public health, but they're too loose and aspirational to apply to planning law".

This Part of the Act is also designed to complement the "integrated planning process" required under section 5.56 of the *Local Government Act 1995* (WA) (see below).

PLANNING LEGISLATION AND APPROVALS

The primary legislation that governs planning in Western Australia is the *Planning and Development Act 2005* (PD Act). In particular, the PD Act establishes the Western Australian Planning Commission ('WAPC') which has the power to make State Planning Policies, Regional Planning Schemes, Regional Interim Development Orders, Planning Control Areas, Improvement Plan Areas and Improvement Schemes. It also gives power to local governments to make local planning schemes for their areas.

What is the role of local governments?

Local governments do the majority of day-to-day planning controls relating to development in Western Australia. As noted above, they are given power to make local planning schemes. Local planning policies are made pursuant to a Local Planning Scheme. Local planning schemes set out the way land is to be used and developed, classify areas for land use and include provisions to coordinate infrastructure and development within the local government area (Western Australian Government, Department of Planning, Lands and Heritage, 2020. Planning schemes have the status of subsidiary legislation - that is they must be treated as 'law', and are therefore enforceable.

Before a local planning scheme is made, a local planning strategy is required (Regulation 11(2) of the *Planning and Development (Local Planning Schemes) Regulations 2005)*. Section 2.4 of the *Local Government Act* empowers Local Governments to control civic development within their district, by designating a district a city, town or shire.

Local Governments also have the power to designate zones and reserves in its local planning scheme, which must be illustrated in the scheme map. Zones and reserves assign a particular use to designated lots within a district, and may specify the form of development for that land. The "purpose of zoning is to group together similar uses and to manage potential land use conflicts" (Western Australian Government, Department of Planning, 2014). Local governments therefore

have a degree of control over land use and this may impact on the planning application process where that involves developments which are inconsistent with the nature of the designated zone.

Examples of zones commonly used in local planning schemes include 'regional centre', 'district centre', 'neighbourhood centre', 'local centre', 'mixed use - residential', 'mixed use - commercial', 'tourism', 'residential', 'private community purpose', 'service commercial', 'light industry', 'general industry', 'rural', 'urban development', 'industrial development' and 'special use'. Similarly, reserved land under a local planning scheme is that set aside for a public purpose like 'public open space', 'environmental conservation', 'civic and community', 'education', 'infrastructure services', 'cemetery', 'drainage', 'district distributor road', 'local distributor road', and 'local road'. Each local planning scheme developed by a Local Government will define its own zones and reserves, and these may be unique to the local area.

PUBLIC HEALTH LEGISLATION AND PLANNING LEGISLATION – HOW DO THEY FIT TOGETHER?

Schedule 2 of the *Local Planning Scheme Regulations* 2015 provides that a set of 'deemed provisions' apply automatically to all local planning schemes. This automaticity is designed to promote uniformity of decision-making processes and procedures across local planning schemes. The deemed provisions cannot be altered, varied or excluded and local planning schemes must make explicit reference to the existence of the deemed provisions during publication.

Moreover, clause 67 of the deemed provisions stipulates a list of considerations that Local Governments must have 'due regard' for in assessing a local development proposal. These range from consideration of "any environmental protection policy approved under the *Environmental Protection Act 1986*" to consideration of any approved State planning policy, policy of the WAPC, or any local planning policy for the Scheme area.

Clause 67 *can* be used to promote public health interests. Planners must consider, process and determine an application based on its merits. Two interviewees described a situation where a cigar bar was proposed in a commercial zone. This activity aligned with the land use, but the council was able to refuse the application under Clause 67 by considering the nuisances on amenities, as the building did not have adequate filtration to properly cater for the ultra-fine particles developed from smoking. This particular decision demonstrates the potential for Clause 67 to address public health concerns.

However, Clause 67 does not contain any **explicit requirement** for Local Governments to consider how a proposed development may impact public or community health. As observed by one interviewee, stores that will likely have a direct health impact on the community at large (smoke stores, alcohol stores, fast-food outlets etc) are not differentiated from regular retail stores under Local Planning Schemes. The closest requirements which clause 67 identifies are consideration of:

- "the suitability of the land for the development, taking into account the possible risk to human health and safety" (subclause R);

- “the impact of the development on the community as a whole notwithstanding the impact of the development on particular individuals” (subclause X);
- “any submission received on the application” (subclause Y) and;
- “any other planning consideration the local government considers appropriate” (subclause ZB).

OUR PROPOSAL: INCORPORATING HEALTH AS A MANDATORY RELEVANT CONSIDERATION

Incorporating health as a mandatory factor will provide grounds for judicial review of a planning decision that failed to take 'public health' into consideration. This ground of review can only be made out if a decision maker fails to take into account a consideration which it is *bound* to take into account.

- Mandatory factors can be expressly stated in the statute, or inferred from the subject matter, purpose and scope.
- However, not every failure to take into account a mandatory consideration will justify the court setting aside the impugned decision: a factor might be so insignificant in the relevant context that failing to take it into account could not have materially affected the decision.
- Unless the statute specifies otherwise, the decision maker will determine the appropriate weight to give to the matter which is required to be taken into account (*Minister for Aboriginal Affairs v Peko-Wallsend* (1986) 162 CLR 24).

HOW WOULD IT WORK?

The amendment would provide an inclusive, not exhaustive, list of matters that constitute 'community wellbeing' such as the promotion of physical activity and sunshade into Clause 67. An example from a different context is instructive. The *Guardianship and Administration Act 2019* (Vic) refers to matters which must be included in an application to the tribunal. It requires that contact details be provided of any person who has a direct interest in the application. It provides:

> '**Note**
>
> **Persons having a direct interest includes, amongst others, the proposed represented person's relatives, any primary carer, close friends, any attorney…'**

The proposed amendment could also contain examples to guide decision-makers as to what considerations they might take into account.

For example, the *Public Health Act* provisions provide examples:

> –S117(1)(b) A public health order may require the person to whom it applies to refrain from carrying out specified activities (**For example, without limitation, employment, use of public transport or participation in certain events*)*** either absolutely or unless specified conditions are satisfied

Alternatively, a note or example at the foot of the relevant provision could be included. This is to assist understanding. It does not form part of the substantive law.

Two interviewees observed that the difficulty of introducing public health as a consideration for planning is that planning is a very 'black and white' area of law (MJ and JN, Interview, January 2021). To have developers comply with physical infrastructure provisions is straightforward and

easy to measure. The advantage of providing examples to guide decision makers is that this would provide more certainty in the decision-making process. Ideally, this amendment would be accompanied by the education of decision makers to ensure that they understand the different types of community health interests that can be affected by planning and infrastructure proposals and decisions.

One interviewee observed that an explicit consideration in Clause 67 isn't, in and of itself, going to lead to the desired outcome, as reliance on SAT interpretation represents a reactive approach, whereas health concerns should be considered *at every level* (MP, Interview, January 2021). Other interviewees noted that for an amendment to be successful at achieving the aim of incorporating community health interests, it would need to stipulate achievable and mandatory requirements for developers (MJ and JN, Interview, January 2021). The purpose of introducing this amendment, with examples clearly stipulated, aligned with education for decision makers, is to encourage the consideration of health at all stages throughout the planning approval process. Indeed, one interviewee noted that "Training materials for local government would be a great way to educate decision makers on public health." (SH, Interview, January 2021).

It therefore might be appropriate to rely not solely on an amendment of Clause 67. Instead, an amendment of clause 67, *coupled with* education for decision makers on community health issues, would allow for greater consideration of health issues in planning decisions.

HOW CAN COUNCILS AND INDIVIDUALS CURRENTLY INCORPORATE HEALTH INTERESTS?

At present, there is no bullet-proof way of ensuring that health interests will be considered in planning proposals and considerations. This section considers the following available options: individual objections; use of local planning schemes and the use of development approval conditions.

Individual objections

Interested parties, such as private individuals (usually local residents), may exercise their right to make submissions on proposed developments, pursuant to s.242 of the P&D Act. Theoretically, local residents could seek leave to oppose a development based on its potential detrimental impact on individual or community health. Submissions would need to include sufficient supporting evidence showing how a proposed fast-food development would adversely impact health. Given the research scarcity in this space, finding appropriate supporting evidence would be impractical and costly for individual residents or groups of residents opposing local developments on a case-by-case basis. One of the interviewees referred to a rare instance in which an application for a liquor licence was refused. The regulatory framework regarding liquor licensing is described below; public interest considerations under the relevant legislation include health considerations (unlike under the general planning regulatory frameworks). Nonetheless, the interviewee's consideration of the reasons for the successful objection provide a significant insight for future action:

'The City of Belmont successfully objected against a liquor license application for a multitude of reasons. Firstly, they had a great internal relationship with their planners, providing the initial avenue to influence and inform an objection. This is an opportunity most local government would not otherwise have. Secondly, the City of Belmont had substantial evidence of violent and antisocial behaviour exhibited by the previous introduction of an alcohol venue. The evidence contained rising complaints, police data and increased callouts to their crime safety team.' (Interviewee SB)

Use of Local Planning Schemes and Zoning tables

The City of Nedlands recently amended their Local Planning Scheme to ban fast food chains from all areas except Urban Development Zones. This demonstrates a significant step taken at a local level. Indeed, Local Councils could theoretically proscribe certain land uses (such as tobacco bars or alcohol) in their LPS or zoning tables. One interviewee observed that governments could decide on a certain number of allowable fast-food, smoke and alcohol stores within their town, with a prescription that this number not be exceeded (MO, interview, January 2021).

However, there are challenges associated with this approach. First, amendments to LPS have to be approved by the Western Australian Planning Commission. A City of Nedlands report warned councillors that "by proposing a scheme amendment that is likely to be incapable of support from

the WAPC, there is the danger of raising community hopes and expectations beyond what is achievable in the current planning framework" (Rifici, 2021).

Even if this approach were to garner support from the WAPC, further issues remain: first, the inconsistency between local council areas would create a patchwork approach. Second, such changes are subject to the partisan interests of council members, which can vary considerably. Third, Local Planning Schemes are often poorly drafted, making it difficult to interpret provisions in a consistent way – as one judge put it, a person seeking to understand Local Planning Schemes must have "a talent for understanding gobbledygook… and a very strong capacity for perseverance." (*AAD Nominees Pty Ltd v Resource Management and Planning Tribunal and Kingsborough Council and Ors* [2011] TASFC 5 (per Blow J)).

Development Approval Conditions:

The *Planning and Development Act 2005* (WA) enables planning decision makers to make development approvals "subject to conditions". These are known as 'development approval conditions' ('DACs'). There is certainly some scope for decision makers to set DACs that achieve outcomes that are favourable for community health (especially in the context of active transport). However, DACs do not seem to be a viable way of guaranteeing that community health is factored into *all* planning approvals.

In Western Australia, DACs must be set for a relevant planning purpose, and they must 'fairly and reasonably' relate to a proposed development (*Reid v Western Australian Planning Commission* [2016] WASCA 181).

In the absence of 'community health' as a consideration in any legislation, it is unclear whether it would constitute a 'proper planning purpose'. This has been described in one of the main authorities as a purpose:

> "…that implements a planning policy whose scope is ascertained by reference to the legislation that confers planning functions on the authority, not by reference to some preconceived general notion of what constitutes planning" (*Western Australian Planning Commission v Temwood Holdings* [2004] HCA 63 at [57] (per McHugh J)).

Further, a DAC condition must be related to the specific development, rather than in pursuit of a broader societal/policy purpose. Existing authority suggests that a DAC imposed for a 'societal' concern will likely fail. For example, in the case of *Reid v Western Australian Planning Commission* [2016] WASCA 181, the WAPC granted planning approval to the applicant, making it conditional on (relevantly) the developer granting a restrictive covenant in favour of the Department of Parks and Wildlife (which would also bind future registered proprietors) to conserve approximately 23 hectares of land. This would have essentially prevented any future development or use of that part of the land. The State Administrative Tribunal upheld the DAC, ruling that the second limb of the test would be satisfied where the DAC serves 'societal aims'. However, the Court of Appeal overturned this decision, holding that the condition could not be justified in that case, based on

the fact that it sought to further a planning purpose of a broader societal aim without establishing how the condition *directly related to the proposed subdivision.*

Third, and in any event, local government authorities and/or joint development assessment panels appear to be able to choose whether or not they will impose a DAC. This means that whether or not DACs are applied to a particular planning approval could very well depend on the partisan interests of individual LGA/JDAP members.

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HEALTH CONSIDERATIONS IN ACTION: THE LIQUOR ACT

The *Liquor Control Act 1988* (WA) (and its subsequent amendments) is the main legislation that governs the sale, supply and consumption of alcohol in Western Australia.

It purports to balance the dual aims of harm minimization and reducing the prevalence of alcohol related "ill health" against the purpose of "catering for the requirements of consumers for liquor" and the proper development of industries in the State such as the liquor, tourism and hospitality industries (Section 5 of the Act). It is important to note that "harm minimization" does not equate to "harm elimination" (Liquor Commission decision of *Australian Leisure and Hospitality Group Pty Ltd v City of South Perth and others (LC 28/2019)* at [35]), and that the Act seeks to balance public health interests with those of the hospitality and tourism industries.

Section 74 of the *Liquor Control Act* prescribes grounds of objection for licensing. These grounds include "that the grant of the application would not be in the public interest" and, relevantly, "that the grant of the application would cause *undue harm or ill-health to people, or any group of people, due to the use of liquor".*

Under Section 69(8a)(b), the Chief Health Officer may intervene in matters before the Licensing Authority and provide evidence or submissions regarding harm or ill-health caused to people (or any group of people) due to the use of liquor, and the need for the minimization of harm or ill-health.

Section 8 of the Liquor Control Act establishes the Liquor Commission, a body that, amongst other things:

- determines liquor licensing matters referred by the Director of Liquor Licensing;
- conducts reviews of certain decisions made by the Director, or a single Member of the Commission;
- conducts reviews into decisions based on a question of law;
- Makes binding, high-level decisions in accordance with the *Liquor Control Act 1988*.

Decisions of the Liquor Commission may be appealed to the Supreme Court of Western Australia.

How does the ill-health objection work in practice?

The Supreme Court decision of *Carnegies Realty Pty Ltd v Director of Liquor Licensing* [2015] WASC 208 provides guidance on how the ill-health objection is to be made. According to this authority, the Commission should:

a. make findings that specifically identify the existing level of harm and ill-health in the relevant area due to the use of liquor;

b. make findings about the likely degree of harm and ill-health to result from the grant of the application;

c. assess the likely degree of harm and ill-health to result from the grant of the application against the existing degree of harm; and

d. weigh the likely degree of harm and ill-health, so assessed, together with any other relevant factors to determine whether the applicant has satisfied the Commission that it is in the public interest to grant the application.

Another Supreme Court decision, *Executive Director of Health v Lilly Creek International Pty Ltd* [2001] WASCA 410 states that, as a matter of statutory interpretation, the mere possibility, rather than probability of harm or ill-health is a matter relevant to the consideration of public interest in all the circumstances (at [47]). It is important to note that the Act does not provide any indication of the weight to be given to this consideration (there is an absence of language such as 'primary' or 'dominant'). The Liquor Commission may therefore decide the appropriate weight to give to these considerations.

It is important to note that the Commission must make its decisions within the Scope and Purpose of the Liquor Control Act. In other words, it must consider the purposes of the Act (as outlined above) when making its decisions.

This section is included to highlight how a health consideration may operate. It is important to emphasise that this is not a perfect scheme. One interviewee noted "the adverse health risks to a community are not sufficient to pursue an objection. Although there are legal grounds to object a liquor license for "undue harm or ill-health" to the community, the vague nature of this statement will compel an inherently weak argument". (SB, Interview, January 2021).

Appendix 2 provides an illustrative – but not exhaustive – series of examples of Liquor Commission decisions.

Health as a legislative purpose: NSW case study

In 2013, a new *Planning Bill* was proposed for NSW. "Promoting *health, amenity and quality* in the design and planning of the built environment*"* was an objective of the draft legislation. The Minister for Planning and Minister for Health both supported the objective (Harris, Kent and Sainsbury, 2017). The *Planning Bill* stalled in the Upper House for reasons unrelated to the introduction of the health objective -- the *Bill* as a whole was perceived as being too favorable to developers (Harris, Kent and Sainsbury, 2017). The *Planning Bill* stalled in the Upper House and was subsequently withdrawn. (Harris, Kent and Sainsbury, 2017).

In 2016, amendments to the existing planning legislation (as opposed to an entirely new bill) were proposed. Health was removed as a legislated objective for urban planning. In 2017, the amendments were passed as the *Environmental Planning and Assessment Amendment Act 2017* (NSW). Health was still omitted. Some commentators suggest health disappeared from the legislative agenda because of "inertia and neglect", rather than any conscious decision (Harris et al, 2018).

APPENDIX 1: Public Health Act

STAGE	WHAT HAPPENS	WHEN	WHAT DOES IT MEAN
Stage 1 and 2	These 2 stages involved various technical matters required to facilitate the transition from the *Health Act 1911* to the *Public Health Act 2016*. The *Health Act 1911* and its associated regulations, by-laws and local laws remained in force in during these stages.	• Stage 1 came into operation upon the date of Royal Assent of the *Public Health Act 2016* (25 July 2016).	
Stage 3	Key elements of the administrative framework provided by Part 2 of the *Public Health Act 2016* came into operation: replaced administrative framework provided by Part II of the *Health Act 1911*	24 January 2017	
Stage 4	On stage 4 the following key provisions were enacted: • Part 3 – General public health duty • Part 4 – Serious public health risks and material public health risks • Part 9 – Notifiable infectious diseases & related conditions • Part 10 – Non-infectious diseases and physical or	September 2017	

	functional abnormalities • Part 11 – Serious public health incident powers • Part 12 – Public health emergencies • Part 15 – Inquiries Equivalent provisions under the *Health (Miscellaneous Provisions) Act 1911* relating to notifiable infectious diseases and related conditions were repealed at stage 4.		
Stage 5	At stage 5, equivalent provisions in the *Health (Miscellaneous Provisions) Act 1911* and regulations and by-laws made under that Act will be repealed. The following provisions will also commence at stage 5: • Part 5 - Public Health Planning • Part 7 - Public Health Assessments and • Part 8 - Registration and licensing Equivalent provisions in the *Health (Miscellaneous Provisions) Act 1911* and regulations and by-laws made under that Act will be repealed.	Anticipated for 2020-2021 on a date fixed by proclamation	Stage 5 is the most significant stage of implementation for local government enforcement agencies as it represents the point at which they move from the framework provided by the *Health (Miscellaneous Provisions) Act 1911* to the *Public Health Act 2016*.

Adapted from https://ww2.health.wa.gov.au/Improving-WA-Health/Public-health/Public-Health-Act/Timeline-to-implement-the-new-Public-Health-Act-2016

APPENDIX 2: Liquor Commission decisions involving the 'ill health' consideration

Name of Decision	Facts	Reasons for Decision and Outcome
Australian Leisure and Hospitality Group Pty Ltd v city of South Perth and others (LC 28/2019)	Applicant, an existing license holder, sought to upgrade their existing facilities, and replace a BWS liquor store with a Dan Murphy's. The City of South Perth (and other objectors) objected to the application, noting variously: • there are potential impacts on social amenity as a result of providing a large format liquor store in a predominantly suburban context, such as increased violence. • evidence of alcohol abuse within the community • the high public prominence of the location will result in a very significant increase in exposure to alcohol advertising and submit that there is still a strong potential for increased consumption as a	**License granted subject to conditions** **Reasons:** The material relied upon by objectors is generic. South Perth is an affluent area with lower than average levels of alcohol related harm. There is no evidence that the granting of that application would cause the harm and ill-health issues identified by the objectors. Applicant has a proven track record of responsible service and the implementation of harm minimization measures.

	result of this proposal.	
Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police and ors (LC 26/2018)	Application for approval to redevelop the Peninsula Tavern in Maylands and the accompanying BWS Bottle Shop. Proposed location was close to premises of providers of services to the following client groups: people with mental health issues compounded by easier availability of alcohol; people experiencing homelessness who had issues of substance dependency Application previously refused by Liquor Commission. Supreme Court of Western Australia upheld an appeal against this original decision, and ordered that the decision be quashed and remitted for reconsideration.	**Application refused** Whilst the predictability of the increase in harm and ill-health across the community due to the increased economic availability of liquor likely to result from the introduction of a Dan Murphy's store is imprecise, the direct evidence of the Service Providers and those involved in addressing, and familiar with, the social impacts of alcohol on the local community is clear – the impact on the clients of the Service Providers and the operation of the Service Provider agencies themselves is likely to be significant.
Australian Leisure and Hospitality Group Pty Ltd vs Commissioner of Police and Others (LC 26/2017)	Applicant applied for a licence to redevelop and upgrade the Leisure Inn Hotel. The Executive Director of Public Health intervened to represent that the characteristics of the proposed Dan Murphy's store (large format, cheap alcohol, high volume capacity, convenience)	**Licence granted subject to conditions** The Commission considered that there is a likelihood that there will be an increase in the level of harm and ill-health but that this will not be of such a degree that the granting of the application would be rejected solely on that finding.

	when combined with the vulnerabilities of the local community, are likely to cause harm or ill-health to people, or a group of people, if the application is granted	

Appendix 3:

Not all words or phrases used within a statute are legislatively defined, nor are their definitions to be found in the *Interpretation Act 1984* (WA). Principles of statutory construction provide rules for how phrases within a statute (or subsidiary legislation) is to be construed in such ambiguity. (See appendix for a basic outline of statutory interpretation).

The basic approach to interpreting a statute is set out in a much-cited passage from *SZTAL v Minister for Immigration and Border Protection* [2017] HCA 34 at [14]:

- The starting point for the ascertainment of the meaning of a statutory provision is the text of the statute whilst at the same time regard is had to its context and purpose.
- Context should be regarded at this first stage and in its widest sense.
- Regard should then be had to the purpose of the statute (I.e., what is the statute trying to achieve? What wrong is it seeking to remedy?)

The above process may result in a 'constructional choice' I.e. choice of different meanings. Where this occurs, the meaning that best fits the purpose of the Act is to be preferred. In some instances this is mandated by legislation: Section 18 of the *Interpretation Act* provides that a construction that would promote the purpose or object underlying the written law is to be preferred to a construction that would not promote that purpose or object.

Appendix 4: Summaries of interviews with planning community health professionals

Interviewee: LM, (Architect)

Passive elements in architecture
Passive elements involves using using bits of the building to mitigate and ameliorate the environment internally in response to the external environment, right sun, the wind, the temperature outside, and those sorts of things. And for many architects, particularly those and most are now interested in sustainability, that impacts on our energy performance, and that's the main driver. So if we can find ways of designing buildings that insulate, ventilate, and protect our shade, then we don't need to use as much energy to make the buildings comfortable when it's not comfortable outside, basically.

Role of building codes
There are now building codes setting minimum standards now strengthening how it deals with some of those passive elements, Currently shading is not adequate, and not enough to protect the people in the buildings, or the people around the buildings, to be honest. It doesn't talk about shade with regards to exposure to UV light, right, and its role in skin cancer. The national building code is very prescriptive, and it sets a minimum benchmark. Its primary aim is really setting minimum benchmarks for safety. The national Construction Code deals with building by building but obviously, the buildings don't exist in the middle of an empty paddock. They're all part of a much bigger sort of fabric if you like suburban or urban fabric. And people move around that fabric.

Role of planning legislation
Planning legislation that helps with the design guiding the design of those interstitial or interconnecting parts of that fabric that connect project to project. The tricky thing is: who owns those interconnecting parts? This is where it becomes really complex and multi layered -- how's the journey between those destinations designed to provide for the health and well being? Walking is really good but obviously, if you're walking in the sun, and there's no shade, then it has been that that affects people's motivation. As an architect, some of the planning laws can help. Some of the pending regulations can help with that some of the local council requirements can help with that.

The policy and regulations are open to interpretation, so people can read them how they want to read them.

Competing priorities
If I'm designing a house, and it has certain setback, and I need to make sure that its height doesn't overshadow the block to the north, it's about providing solar access, not about providing shade. It’s access to the sun that is valued from an energy point of view. Not shade

shade. That need for solar access is important because then we can warm the houses along the building's naturally with the sun, rather than relying on heating. The planning code prescribe height in terms of solar access. As a sustainable architect I try and find ways of letting the sun into the buildings that I am designing in winter and keeping them out in summer. And so, from a Sunsmart point of view, that may not necessarily work.

Stadiums are another really good example. People sit there for a very long time and they're often unshaded. Even though sometimes shade is provided, it's not the right kind of shade, because it doesn't shade from the full spectrum of sunlight. It doesn't cover diffuse light and things like that. I would argue that the shading shading patrons in a stadium is a priority. But there are very many other competing ones such as view and ticket price.

There's a proportionality about the different interests. If I go back to the national Construction Code that says all buildings must have stairs. The fire stairs are usually really horrible places to be cheap, so nobody takes the stairs because they're crap. So if there's ways of dressing that by saying, Yes, we have to have these stairs, but can we provide these stairs in ways that also help to promote physical activity and encourage people to take the stairs rather than that lift? And then being and that's where the interpreting the code can be useful. And then the level of prescription around the code can limit or can promote that sort of thing as well. The code is a minimum. So you can rise above that? Often, because it's a minimum, once it's made, job done.

Schools
the voice often comes from the school community rather than the the owners that are typically a government or All independent school associations, but once again, it may conflict with other strategies that they came to put forward around passive design and the thermal performance and comfort of people when they're in the buildings as opposed to outside the buildings. Because the government provides for many of the schools, so all the public schools, they have standard patterns. to provide more bikes, you have to provide less than something else. Basically, there's not a never ending bucket of money that provides financing. There's templates that are set up for the provision of those things, it's a little bit like the codes, there's minimums.

Interviewee: SH (Landscape Architect, State Design review Tribunal)

Public Health Plan
Many landscape architects and local government planners are not aware that a Public Health Plan exists. When planners have been referred to their Public Health Plans, they won't usually follow those directions. Public health plans contain some fantastic information on improving public health, but they're too loose and aspirational to apply to planning law. These policies are also inherently subjective that achieving a minimum standard will meet the requirement.

Planning law
The State Design Review Panel contains an established group of experts that review state projects; however, local governments are eligible to refer largescale designs. This Panel give recommendations that are considered more rigorous than local government reviews. If local governments were to legislate for planning law to consider public health, reviewers could finally see legitimate outcomes from their commentary on public health.

For example, local government street tree policies have enabled reviewers to object to applications and make substantial recommendations that will genuinely make an impact further development. Nedlands didn't have this specific policy; this meant the environmental recommendations no longer had legal grounds and weren't followed.

Specificity is a major requirement when creating substantial change in planning law. For public health to be a proper consideration, the policy must stipulate achievable and mandatory requirements for developers.

This new consideration must also ensure that it does not create overregulation in planning law, as the developments need to remain economically viable. Although, there is always going to be an economic impact at some point. Local governments are currently hesitant to restrict planning, due to the contemporary market.

Next step
The community have significant power to influence change, as they're exceptional advocates and encourage great conversations / agendas. All they require is the appropriate information and education, but they're rarely approached.

Training materials for local government would be a great way to educate decision makers on public health.

Local government and developers are always looking for ways to show to the community that they're meeting certain standards and are great actors in society. An independent rating system that could be used to measure and promote public health could work.

Public health could also be seen as a great substitute to other social needs to promote a city or town. For example, it is much easier than developing an environmentally sustainable waste management system.

Interviewee: SB (East Metropolitan Health Service, Councillor)

Liquor License Objections
A planner can approve a liquor license application without any consideration of health, and there is no requirement to consult internally or externally. Thus, local governments are rarely met with

the opportunity to object a liquor license application. In a circumstance where a local government can object to a liquor license, they will not regularly pursue the objection as the process can last approximately 1-2 years, and require intensive resources, time and costs.

The regular avenue for local government to influence planning is through a Local Planning Scheme. A Local Planning Scheme stipulates the requirements for developments in certain areas (Economic hub, shopping hub etc). However, this can still be overridden by the Local Planning Commission.

The City of Belmont successfully objected against a liquor license application for a multitude of reasons. Firstly, they had a great internal relationship with their planners, providing the initial avenue to influence and inform an objection. This is an opportunity most local government would not otherwise have. Secondly, the City of Belmont had substantial evidence of violent and antisocial behaviour exhibited by the previous introduction of an alcohol venue. The evidence contained rising complaints, police data and increased callouts to their crime safety team.

Finally, the City of Belmont were proactively developing their Public Health Plan and had hired a consultant to understand the perceptions of alcohol within the local community. This was organised prior to the liquor license application. The findings demonstrated a disinterest in increasing the availability of alcohol due to a fear of increasing anti-social behaviours. If the community had exhibited a desire for more alcohol alternatives, this could have negatively influenced the objection.

The adverse health risks to a community are not sufficient to pursue an objection. Although there are legal grounds to object a liquor license for “undue harm or ill-health” to the community, the vague nature of this statement will compel an inherently weak argument.

Fast-food Objections

The lack of immediate risk and community urgency surrounding fast-food has made it inherently difficult to pursue planning objections. Some local governments have created zones and reserves to manage the way in which land can be used, developed and subdivided. A matrix will stipulate what can be in each zone e.g. fast-food may not be allowed in a residential zone.

Residential Design Codes (**R-codes**) are also a potential means of deterring fast-food from particular areas. However. R-codes that have been carefully portrayed as a restaurant cannot be objected to beyond that initial objection. Thus, it could also make the fast-food objection process more difficult.

There is a further post-COVID perspective to take on objecting to fast-food that is yet to be explored. With a new focus on supporting local local businesses, planning could also follow suit. This could potentially involve a system prioritising the development of local stores, rather than large fast-food franchises.

Education
It is currently required of elected members to complete some basic training before their term. Currently this training contains nothing in regard to planning or public health. This is a potential avenue to pursue on the education front.

Interviewee: MO (Safe Neighbourhoods Officer, Vic Park)

Planning law
Planning legislation does not require any consideration of the physical and mental health for its surrounding community. Stores that will likely have a direct health impact on the community at large (smoke stores, alcohol stores, fast-food etc) are not differentiated from regular retail stores under Local Planning Schemes.

Local Planning Schemes are required of local governments to determine the way in which land is to be used and developed. This scheme provides provisions of what type of infrastructure is permitted in certain areas. Property developers apply for specific lots in the scheme and town planners review the application. A negotiation process occurs to ensure the developer meets the required planning standards. This can be a very lengthy process and planning approval is either endorsed or refused by the planner.

A Local Planning Scheme is already quite an extensive and detailed plan of the town, however local governments could create an incredibly specific category under its Local Planning Scheme that specifies certain conditions and areas for fast food.

Corporations and developers are comfortable with contemporary planning law, as the frameworks will only stipulate physical barriers, like car parks and footpaths. If their plans were rejected for any reason outside of the physical, the State Administrative Tribunal (**SAT**) would most likely overturn the objection.

Dan Murphy's submitted a planning application to become a retail store in Victoria Park. The town was able to successfully refuse the application for parking requirements. This is considered a robust refusal from a SAT perspective and Dan Murphy's didn't pursue an appeal. The anti-social behaviour that would have been exhibited from the introduction of a Dan Murphy's didn't play a significant role in the objection, although it was helpful information for the internal decision makers

The difficulty of introducing public health as a consideration for planning is that this is a very black and white area of law. To have developers comply with physical infrastructure provisions is straightforward and easy to measure.

Public Health Plan
If Public Health Plans were supposed to be a mechanism for local governments to refuse the development of fast-food and alcohol outlets, it has been unsuccessful. A fast-food restaurant will win in SAT if they were denied due to a Public Health Plan.

Public Health Plans have helped with advocacy, awareness raising and service-delivery.

Community influence
A handful of residents with a concentrated lobbying effort can have enormous influence over council decisions. The reactive and outrage-based lobbying from the local community is effective due to the inherently political nature of local governments. There is currently no political will to deter fast-food restaurants due to public health.

A synthetic turf and arena were to be constructed in Victoria park. This caused a large backlash and a petition containing thousands of signatures. The council eventually changed its plan to keep it as open space.

Suggestions
There would be very little impact on planning if corporations were to do a health evaluation before submitting to a town planner. Corporations have the resources and money to create a health report that works in their favour. This could also potentially backfire as local governments do not have the equivalent resources to retaliate.

Local governments could decide on a certain number of fast-food, smoke and alcohol stores allowed within their town, and not exceed this.

Interviewee: MK (Community Development Coordinator)

Planning law
The Western Australian Planning Commission (**WAPC**) have the power to quash the voices of the local community and council on planning matters. Even if the WAPC are met with great backlash and scrutiny from residents and local government, they can still continue with proposed infrastructure and developments.

A mandatory consideration of health in planning would assist the contemporary culture and approach to public health.

Local community influence
Although the community is regularly consulted, there is rarely ever action made on their behalf. Indigenous Australians and people with disabilities are consistently consulted for planning matters, however, find that their perspective is often disregarded.

The community will often respond to developments in outrage if it is perceived to affect their immediate livelihood. For example, the local government amalgamation was set to occur, but the community response was so strong that it was put to a vote. All amalgamations were abandoned as a result of this outcry.

The community can feel suspicious of the government, defeated and that they have no power to object planning decisions.

Education
A regulatory and holistic approach is necessary to successfully combat dangers to public health, as reforming planning law will not completely resolve the issues. Local communities require more accessible information and open discussions around health conditions that carry certain stigmas, such as alcoholism and obesity. This can be just as effective as legal change, creating a new and positive sense of belonging for those who require it.

Children are currently being bombarded with health information at schools but are regularly faced with fast-food advertisements that normalise unhealthy eating. Thus, when approaching youth its integral to understand that unhealthy eating habits can envelop from both approaches.

A great prospective strategy to target community issues is through Asset Based Community Development (**ABCD**). ABCD looks at the skills displayed by the community and embraces these skills to solve the prevalent issues. Local governments will commonly use ABCD to ensure community members feel their passions and motivations are catered for.

Interviewee: NJ

NB: the audio was very unclear. Only 1/3 of audio could be heard.

Development approval conditions
The only option to impose conditions on any kind of development is through the planning legislation or through the planning application. Partners don't realise that that there may be an opportunity for a health impact assessment, whatever you want to call them.

We have a development control unit or whatever - they call it different things in each council - where every application gets looked at by the various disciplines such as, engineering, and environmental health. And we get to assess the application and possibly tweak it, make changes and put conditions on the planning approval. And those conditions you expect to be managed by the environmental health team. So there's a whole range of things that certain councils do. Our assessment conditions to try and minimise typical types of impacts, such as odour and dust noise. But around the world, our colleagues in the UK look at obesity, healthy lifestyles, and smoking and that kind of thing. And put some kind of conditions on those types of applications as well.

Local councils
So they are realising that public health is all encompassing, integrated, already doing that, but you don't need to do any of that is not gonna make any changes, not a change, not change anything. Because local government, I'm not going to get into the business of providing health services in any way from the entire country. We're not not responsible for health in the same way as state in the Commonwealth.

Now, most councils don't have somebody change processes so fast, it's not funny. A couple of weeks to comment, it doesn't give you enough time to go. policy. On behalf of counsel, we very often object against licence applications that we try not to comment.

Interviewee: MF, JN (Built Environment, Development. City of Vincent)

City of Vincent approach
From the perspective of the City of Vincent, their recently implemented Public Health Plan has been used to assist them when reports are made to council. This has meant that public health implications are regularly assessed, even for planning. This is a very pro-public health council, with multiple Councillors coming from the public health industry. They acquired funding to employ an in-house public health officer, rather than hiring an external consultant.

The City of Vincent is unique with its culture, education and progressive views in regard to public health. Some local councils are pro-business, and don't want to consider public health. For example, the City of Wanneroo's primary concern relates to construction and building up the area. This is still necessary for a LG, but a Public Health Plan is not a major consideration for them.

There has been a stronger push from LG and SG to encourage development through deregulation, thus it'll be more challenging to address this shift in mindset.

Clause 67
Planning Regulations are a subsidiary to the Planning and Development Act. Relying on Clause 67 will not appropriately fix the public health / obesity gap. It does not provide the necessary weighting and is more of a backend procedure.

It is misleading to suggest that the planning regime doesn't have regard for community health. As Clause 67 facilitates 'due regard' for multiple requirements that could fall under community health.

Cigar bar proposal – City of Wanneroo
Planners must consider, process and determine an application based on its merits. When a cigar bar was proposed in a commercial zone, this activity unfortunately aligned with the land use. There was no explicit public health recommendation, however, when it went to council, they refused it under Clause 67 by considering the nuisances on amenities. The building did not have

adequate filtration to properly cater for the ultra-fine particles developed from smoking. This case demonstrates public health's potential position in Clause 67.

However, this filtration system argument would struggle if it went to SAT, as the cigar bar is technically an encouraged activity in the scope of the commercial zone.

Informing at an early stage
LG's must be influenced and inform from an early stage of development to ensure front-end regard for public health. Inform policies that would guide the subsequent land development (Zoning etc). Inform the proposal, before developers put pen to paper, to create policy.

If there is going to be substantive change made in LG in regard to public health and planning, the policies must be quantitative and explicit. Upfront and in-policy framework (e.g. 'you must be X distance from this').

Proximity to vulnerable groups
Planners can't reject an application on the appropriateness of that location. Thus, there is no provision to establish proximity from land being used by people potentially vulnerable to a new development.

Under Liquor Control Act the LG can pursue a public interest assessment for liquor licensing. This assessment determines the venues proximity to potentially vulnerable respondents. However, this only occurs after planning approval, as there's no financial reason to consider vulnerable groups if the developers haven't acquired the land.

Sunshade – City of Vincent
The City of Vincent have successfully established policy that requires awnings / proper sunshade for any developments that occur. This policy can be used to reject planning applications if shade isn't properly addressed by the developers. However, planning policies is only one 'due regard' item if it were to go up to the SAT, but is useful at the making changes at the front-end.

This is a properly adopted local planning policy, as per the procedures set out in the planning regulations as awnings didn't require state approval.

The City of Vincent is also trying to get an environmentally sustainable design principle imbedded into new builds. However, this does not fall within planning regulations and the state hasn't signed off on it yet. It has been problematic to enforce, however the City of Vincent is providing education on sustainable design principles for developers.

Issues
There are potential issues with outcome-based legislation. If the plan is to create a mandatory legislative change, then the SG requires the necessary resources to provide sufficient oversite

to LG. The SG would be in charge of maintaining the new legislation and they have not previously been particularly great at monitoring third parties.

For example, the National Food Regulation Agreement wanted to *minimise* regulatory burden, and subsequently didn't speak to planning at all. If there was an application for a food business and they didn't have development refusal – there is technically no grounds for refusal.

MP (Department of Transport)

Brabham Primary School – Case Study
A primary school had a structure plan that was approved by SG and LG for an area in Brabham. Developer commenced the development with certain lot yields anticipated. In this particular case, the LG also missed the fact that developer is not putting in walking and cycling infrastructure.

The SG influence is limited to the structure plan level and there is little opportunity to influence after that point. The SG couldn't influence where the school was located, so the school could be located on primary distributor road (reducing opportunities to walk and ride there) or located in an area lacking facilities to support walking and cycling to school (such as lack of cycle/walking paths).

These planning decisions were also premised on certain population levels; however, lot yields can be changed after structure planning without governmental input. The actual population was significantly higher than projected population and on day 1 of school opening, more kids enrolled than school's capacity. SG hasn't been able to influence any change as a result of increasing population. This circumstance could be resolved via site selection.

A LG may not have the resources or education necessary to prevent poor planning decisions. There was an obvious failure to consider community health and not enough consultation with relevant bodies (PTA and public transport).

Proactive approach
There are constraints and inconsistencies between SG and LG. However, there are also various plans and a process around local planning schemes where you *can* influence (district planning, etc.). The government can actually influence at those levels, but 'have to catch it along the way' and in order to 'catch it along the way' you have to have relevant processes in place.

Policies are fundamental, although they may not be legislated. The WAPC will endorse those policies and they will bear such weight on outcomes in the community. LG planners could include developmental approval conditions in their Local Strategic Plan (she was unaware of the legal application).

A consideration in Clause 67 isn't going to lead the desired outcome, as relying on SAT interpretation is more of a reactive approach. Influence must occur at every level. Health must be built into the process.

Education
Healthy Active By Design have great resources.

Lack of coordination and strategic objectives
There is a lack of coordination and strategic objectives. For example, the education department is using parking bay planning guidelines based on information developed in 1992.

For kids to walk to school, they require a school crossing guard. To acquire a crossing guard, the WA Police require evidence of enough kids walking / riding. However, everyone is driving due to the mass parking availabilities encouraged by old information.

Strategy
First Protection: Initial planning scheme, that also ensures mandatory consultation on a range of concerns (including health).

Second protection: Health as a mandatory consideration, thus upheld in SAT.

Third protection: Conditions on development approval (and have the condition speak to community health).

Also, could the LGA set planning approval conditions upon a development that it cannot have schools located within **X** kilometres of a fast-food outlet.

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Legislative Instruments

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- *Guardianship and Administration Act 2019* (Vic)
- *Interpretation Act 1984* (WA)
- *Liquor Control Act 1988* (WA)
- *Local Government Act 1995* (WA)
- *Planning and Development (Local Planning Scheme) Regulations 2015* (WA)
- *Public Health Act 2016* (WA)

Judicial and quasi-judicial decisions

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- *Australian Leisure and Hospitality Group Pty Ltd v city of South Perth and others* (LC 28/2019)
- *Carnegies Realty Pty Ltd v Director of Liquor Licensing* [2015] WASC 208
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