

1.5 FOOTPATH TRADING AND ACCESS POLICY – CONSULTATION FEEDBACK

Responsible Director: Peter Panagakos

RECOMMENDATION

That:

- 1) *Council notes that the consultation process on the Revised Footpath Trading and Access Policy 2018 closed on 9 May 2018.*
- 2) *Council notes that 923 submissions were received (902 via the on-line platform) including a submission from the Oakleigh Village Traders Association which was supported by 334 signatories.*
- 3) *Notes that 94.58% of submissions received did not support the changes proposed in the Revised Footpath Trading and Access Policy 2018 generally because of the effect it would have on smoking in outdoor trading areas.*
- 4) *That Council notes the options to move forward following the consultation which are:*
 - a) *simply note the report and the outcome of the consultation,*
or:
 - b) *adopt the Revised Footpath Trading and Access Policy 2018 and direct that it be implemented.*

BACKGROUND

At its meeting of 27 March 2018 Council resolved to release the *Revised Footpath Trading and Access Policy 2018* (Attachment One) for public consultation and, amongst other matters to receive a report on the outcome of the consultation process with a proposed way forward.

The revised policy identified that outdoor trading areas are utilised to attract visitors and create welcoming family environments and that outdoor trading areas on Council controlled land, across the entire municipality, should be available to be used at all times for the service of food. This report provides feedback on the outcome of the consultation process.

Council was concerned that the operation of outdoor drinking areas detracts from its vision for outdoor trading areas on Council controlled land.

The more recent practice of dedicating footpath trading areas for the sole purpose of consuming drinks and packaged snacks was never envisaged by Council. Council has always sought to ensure that outdoor trading areas add to the vibrancy and attractiveness of an area with a welcoming family friendly feel.

For this reason, Council resolved to consult on a revised Footpath Trading and Access Policy with the intention to ask people how they felt about Council proposing a policy that would require an outdoor trading area to always be available for the consumption of meals, as opposed to being solely dedicated as a drinking area where only pre-packaged snacks can only be consumed.

Whilst not the motivation, a consequence of making this revision to the policy would mean that a trader would be unable to operate outdoor drinking areas where a person may smoke, given recent amendments to the Tobacco Act 1987.

In undertaking the consultation there has been significant commentary from those who participated, that they viewed this proposal as an attempt to control smoking rather than introduce a means to ensure vibrancy and usability and reinforce the family dining culture that many Council outdoor trading areas have become known for.

Consultation on the *Revised Footpath Trading and Access Policy* commenced on 10 April 2018 and closed on 9 May 2018. Opportunities to take part in the consultation process were offered through participation in an on-line survey and by written submissions. The process was advertised on Council's website and in the April Bulletin which was delivered to every household within the municipality. Officers also wrote to all existing footpath trading permit holders and known trader associations.

Submissions

A total of 923 submissions were received. Twenty one were made in writing and 902 on-line surveys were completed. This included a submission from the Oakleigh Village Traders Association which was supported by 334 signatories.

Survey participants were asked if they supported the proposed changes (yes or no) and 287 participants took the opportunity to provide comments in support of their position.

94.58% of all submissions received indicated that the respondent did not support the changes.

Total	=	923	
Yes	=	49	or approximately 5.30%
No	=	873	or approximately 94.58%
Neither	=	1	or approximately 0.1%

Details of submissions are provided in Attachment Two, and any offensive language has been deleted. From these, the general following themes emerged:

Theme	Responses
The proposed changes will detract from the current alfresco experience and will be detrimental to traders	Responses attributed to this theme = 47
<p><i>Officer comment:</i></p> <p><i>This is not the intention of Council. Other than anecdotal statements Council has not been presented with any evidence to suggest that reaffirming the food culture and inviting families to enjoy outdoor trading would be detrimental to traders.</i></p>	
People have a right to smoke and should be able to smoke in alfresco areas	Responses attributed to this theme = 40
<p><i>Officer comment:</i></p> <p><i>The proposed policy change is unrelated to smoking and smoking bans. The aim is to reinforce the food based family culture of outdoor trading areas that Council permits traders to use on behalf of the broader community.</i></p>	
Smokers feel that they are being singled out and discriminated against. Not being able to smoke at a café will be detrimental to elderly and vulnerable patrons	Responses attributed to this theme = 45
<p><i>Officer comment:</i></p> <p><i>This is not Council's intention nor is it what is proposed. The ability or otherwise to smoke is unrelated to Council's proposal. It is certainly not Council's intention to discriminate against anyone. Council's focus is on the affirmation of the trading areas as food and family destinations.</i></p>	
Smoking in alfresco areas detracts from the outdoor experience and should be banned	Responses attributed to this theme = 34
<p><i>Officer comment:</i></p> <p><i>The proposed policy change is unrelated to smoking and smoking bans. Should the proposed changes be adopted, it would however mean that traders will be unable to operate outdoor drinking areas where a person may smoke.</i></p>	
People enjoy smoking and the experience of enjoying a cigarette and a coffee and the changes are unfair	Responses attributed to this theme = 39

<p><i>Officer comment:</i></p> <p><i>The proposed policy change is unrelated to smoking and smoking bans, however, a consequence of the proposed changes is that patrons are unable to smoke in outdoor trading areas.</i></p>	
<p>The proposed changes are a way of circumventing the state wide smoking controls, and traders could seek to challenge any changes made by Council as they consider them to be beyond power</p>	<p>Responses attributed to this theme = 31</p>
<p><i>Officer comment:</i></p> <p><i>Council has had previous policy positions with regard to smoking and the more recent controls that it considers do not go far enough. Council's proposal, however, is not concerned with smoking controls. It is open to Council to introduce requirements on land that it owns and makes available to traders to use for the benefit of the broader community. The proposed policy amendments are not seeking however to circumvent or replace any existing state controls. Council has been clear of its intention in speaking to people about the possible changes to the policy. It is open for Council to consider these and make a decision following consultation what it may do. As with many processes that Council administers, it is open for people to seek to review and challenge these if they wish.</i></p>	
<p>There is great atmosphere in our alfresco areas and this should not be changed</p>	<p>Responses attributed to this theme = 19</p>
<p><i>Officer comment:</i></p> <p><i>Council agrees that outdoor trading areas provide a great atmosphere. The proposed changes seek to enhance and improve this and make the areas even more attractive to families who wish to enjoy them. Council believes that making these dining areas as opposed to drinking areas where just alcohol could be consumed could enhance this atmosphere. It is accepted that these changes could affect some but not all traders as many traders already designate their outdoor trading areas as dining areas at all times.</i></p>	
<p>Priority should be given to pedestrians on footpaths and too much emphasis is placed on trading</p>	<p>Responses attributed to this theme = 13</p>
<p><i>Officer comment:</i></p> <p><i>Council has strict policy positions to ensure that footpath trading happens in an equitable way and does not restrict pedestrian movements. In most trading areas, pedestrian walkways of at least 1.5 metres wide exist with many areas in excess of this. Eaton Mall, for example, provides two walkways at 2.4 metres in width with</i></p>	

areas also set aside to enable pedestrians to cross from one side of the Mall to the other.

DISCUSSION

Changes to the Tobacco Act 1987 have brought about the notion of outdoor drinking areas and outdoor dining areas. This meant that, until recently, the notion of an outdoor trading area not being used for the service of food did not exist. It also means that Council had not faced a scenario whereby an area could be used exclusively as a drinking area, be that for coffee or alcohol. It is not how Council ever envisaged land that it makes available to traders to use on behalf of the community being used. The consequence is that a person cannot smoke in an outdoor dining area, however, a person may smoke in an outdoor drinking area in circumstances where service is limited to drinks and pre-packaged snacks.

Council sought to engage with the community and traders on whether a policy change should be made to reaffirm trading areas being exclusively used as dining areas.

The views expressed in the written submissions typically mirrored those in on-line submissions with the main focus being on the control of smoking.

Unfortunately, it is evident that Council's intention to revise the policy to support its vision for vibrant alfresco dining areas that focus on the service of food was lost in the consultation process as respondents were largely fixated on the pros and cons of smoking in outdoor drinking areas.

It is clear that many Eaton Mall patrons value the opportunity to drink and smoke in areas provided for that purpose as allowed under the existing State laws. A considerable proportion of respondents expressed a view that the proposed changes are solely designed to make places such as Eaton Mall, Oakleigh and Kingsway, Glen Waverley smoke free.

Whilst this is not Council's intention, it is clear from the responses that the majority of people, including those in favour of the changes, recognise and reflect that the changes will affect a person's ability to smoke in outdoor areas.

Whilst it remains open for Council to adopt the revised policy to enliven its vision for alfresco areas, doing so is not without issue. The response against the proposed changes is significant. Council could also find itself subject to challenge with regard to the validity of any change given the view held that these changes are proposed so as to circumvent existing State controls.

Alternatively, Council note the report and the outcome of the consultation, meaning that the status quo would remain in place, unless Council chose at some point in the future to revisit the issue.

POLICY IMPLICATIONS

If adopted, the revised policy will supersede the Footpath Trading and Access Policy 2016.

HUMAN RIGHTS CONSIDERATIONS

The implications of adopting and implementing a revised policy have been assessed as compatible with the requirements of the Charter of Human Rights and Responsibilities Act 2006.

CONCLUSION

Consultation on the *Revised Footpath Trading and Access Policy 2018* commenced on 10 April 2018 closed on 9 May 2018. In response, Council received 923 submissions, including 334 signatories accompanying the Oakleigh Village Traders Association submission. 94.58% of participants expressed the view that they were not in support of the proposed changes for a range of reasons, but primarily relating to the impact on a person's ability to smoke in an outdoor trading area.

A number of themes emerged from the feedback received including concerns that the proposed changes will detract from the alfresco dining experience and will be detrimental to traders. Those in support of the changes hold a different view in that they see that the changes will bring about smoke free dining and are supportive of this.

There also appear to be strongly held views that the State laws around smoking in alfresco areas should not be infringed upon.

Having regard for the feedback received, officers have identified that there appears to be two options available for Council to consider and these are detailed in the recommendation of the report.