

**1.8 PRESCRIBING SMOKE-FREE AREAS**

Responsible Director: Peter Panagakos

**RECOMMENDATION**

*That Council,*

1. *having considered the matters specified in clause 8.2 of the Smoke Free Areas Local Law (2021) (Local Law), including submissions received in respect of the prescription of 'Smoke Free Areas', prescribe pursuant to clause 8.1.3 of the Local Law the areas coloured pink in Attachment One, being the:
  - 1.1 *thoroughfare along the length of Eaton Mall, Oakleigh, between Atherton Road and Oakleigh Central;*
  - 1.2 *footpaths and other pedestrian areas between the kerbside and adjacent buildings along the length of Kingsway, Glen Waverley, between O'Sullivan Road and Bogong Avenue; and*
  - 1.3 *footpaths and other pedestrian areas of the Monash Civic Centre and Glen Waverley Library precinct, between Kingsway and Springvale Road,*

*to be 'Smoke Free Areas' for the purposes of the Local Law from 19 October 2021; and**
2. *authorises the Chief Executive Officer to:
  - 2.1 *publish such public notice as she thinks appropriate in relation to the prescription of the Smoke Free Areas; and*
  - 2.2 *send notices to all owners and occupiers of land abutting the Smoke Free Areas advising of Council's decision and that smoking in the Smoke Free Areas is an offence, and requesting that they assist in raising awareness of the restrictions and encourage their patrons to comply with the Local Law;**
3. *notes that the designation as Smoke Free Areas takes effect from 19 October 2021, to allow for the delay associated with the publication of any notice outlined in point 2 above and for the installation of signage in the smoke free areas, as these can only be planned for and occur should Council accept the recommendations in this report; and*

4. *allocates \$15,000 for the procurement and installation of appropriate signage, as determined by the Chief Executive Officer, or her delegate to be installed within Smoke Free Areas.*

### **INTRODUCTION**

This report recommends that Council, after having considered the matters set out in the Smoke Free Areas Local Law 2021 (**Local Law**), and having completed the required processes, prescribes the areas in and around Eaton Mall, Oakleigh and Kingsway, Glen Waverley identified in Attachment One, to be Smoke Free Areas for the purposes of the Local Law.

### **BACKGROUND**

At its meeting of 25 May 2021 Council adopted the Local Law. Among other things, the Local Law gives Council the power to prescribe 'Smoke Free Areas' within which smoking is prohibited. At the same meeting Council resolved to commence the process required to declare Smoke Free Areas in and around Eaton Mall – Oakleigh and Kingsway – Glen Waverley.

Eaton Mall, Oakleigh and Kingsway, Glen Waverley were selected as the appropriate locations as, aside from being the two largest Activity Centres, they are also the busiest destinations with the largest concentration of food premises in the municipality. Council also resolved that it is open to them declare additional smoke free areas in the future.

The Local Law sets out the process for prescribing Smoke Free Areas.

Subsequent to this decision of Council, consultation with affected owners and occupiers has been undertaken and is presented in this report for Council's consideration. The report also consider other matters which Council must have regard to before prescribing a Smoke Free Area as well as other matters associated with the decision making process.

### **DISCUSSION**

The Local Law provides that when determining whether to prescribe a Smoke Free Area, Council must have regard to the following factors and each of these are discussed in turn:

- the size of the proposed Smoke Free Area;
- the proximity of the proposed Smoke Free Area to a public place, part or all of which is not in a Smoke Free Area;
- the views of any person who is the owner or occupier of any part of the proposed Smoke Free Area;

- the extent and outcome of any community engagement on the proposal to prescribe the Smoke Free Area;
- any benefits to the community which would be achieved by Council prescribing the proposed Smoke Free Area; and
- any detriment to the community which would be caused by Council prescribing the proposed Smoke Free Area.

#### ***Size of the Smoke Free Areas***

The proposed Smoke Free Areas do not apply a broad brush approach across large areas of the Oakleigh and Glen Waverley Activity Centres. Instead, the proposed boundaries target locations within the Activity Centres in which smoking is most likely to be detrimental to the amenity and vitality of the area. In particular, the proposed Smoke Free Areas are generally limited to footpaths and areas where foot traffic is heavy and alfresco trading is common and, consequently, where smoking is most likely to adversely affect the experience of other visitors to the area.

In Glen Waverley the proposed Smoke Free Area also includes the Civic Centre and Library precinct. Council considers that this is land owned and directly controlled by Council, and is entirely occupied for municipal purposes, such that Council can determine its most appropriate use.

#### ***Proximity of the proposed Smoke Free Area to a public place, part or all of which is not in a Smoke Free Area***

The proposed Smoke Free Areas are adjacent to public places such as roads, car parks and footpaths. In Oakleigh a small proportion of the area is opposite Warrawee Park and in Glen Waverley parts of the area are in close proximity to the Glen Waverley railway station and Glen Waverley Uniting Church.

#### ***Extent and outcome of any community engagement on the proposal to prescribe the Smoke Free Area***

##### ***Making the Local Law***

Given its recency and relevance it is important to consider the community engagement that occurred in making the Local Law along with the community engagement that has since occurred and is specific to the proposed Smoke Free Areas.

Prescribing Smoke Free Areas is a primary objective of the Local Law and from the outset Council has been clear that it would use the Local Law to prohibit smoking in outdoor public spaces in its activity centres or in specific locations in its activity centres.

This objective, and the decision to make the Local Law, was the subject of an extensive community engagement exercise that was promoted on Council's

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website, the Bulletin, E-news, and in social media. For the sake of thoroughness, a letter was sent to all traders (hospitality and other), alerting them to the proposed Local Law and directing them to the Shape Monash portal should they wish to participate in the consultation and/or make a submission.

In addition to the Shape Monash pages, random telephone surveys were also conducted to ascertain a reliable measure of community and trader sentiment across the whole of the municipality. In doing so 400 residents were surveyed along with 100 traders who were selected at random from a cohort of around 390+ traders who hold a current footpath trading permit.

Among residents there was a high level of support for the proposed smoke-free laws (87%) and among traders, support for the proposed law was also high (84%).

#### Proposed Smoke Free Areas

Officers wrote to the owners and occupiers of all properties that fall within the proposed Smoke Free Areas and directed them to the Shape Monash consultation platform to share their views. In addition to this the specific proposal to make Smoke Free Areas in and around Eaton Mall and Kingsway was promoted on Council's webpage and social media with community members being invited to also be heard via Shape Monash.

The engagement pages on the portal included information about the proposed Smoke Free Areas and invited visitors to complete surveys specific to both areas.

The surveys were available online between 22 June and 23 July 2021. Registration to the engagement platform, Shape Monash was a requirement to participate in the survey.

As part of the consultation, 927 surveys were completed relating to the proposed Smoke Free Area in Eaton Mall, and 881 surveys were completed relating to the proposed Smoke Free Area in Kingsway.

During the consultation, the provider who hosted our survey observed an anomalous pattern in the survey responses that they alerted us to. When collating the data it became evident that 92% of 927 (Eaton Mall) and 96% of 821 (Kingsway) of responses were submitted from just 7 devices.

In both surveys, the responses by-and-large were inputted in rapid succession with minimal time separating each response. While the exact reason for this anomaly is not known, it is noted in this report because of the extent of the abnormality.

The provider went on to say that it is convention to delete survey submissions that are deemed suspicious, having regard to various indicators

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that the submissions may not be genuine, as part of the data cleaning process. This has not occurred in this instance. Ultimately it is up to Council to consider the responses, in light of what is said above with respect to the integrity of the survey process and determine the weight to be attributed to the survey outcomes.

For clarity, we have included details of all responses received to the survey in this report and the summary table, but have for reference purposes separated and grouped the submissions received from the common devices which the provider of our survey platform deemed suspicious.

In addition to the submissions received from the common devices as outlined above, 37 individual submissions were received relating to Kingsway and 72 relating to Eaton Mall.

#### *Kingsway 844 Submissions from 7 Common device submissions*

100% of the submissions did not agree with the size and extent of the proposed Smoke Free Area and all but three offered no comment to address any benefit or detriment to the community in relation to the proposal. 58% identified as Monash residents and 67% identified as smokers.

Statements provided:

- *This is discrimination - council doesn't care if the community smokes or not.*
- *This is discrimination against specific races that populate these two areas.*
- *All the businesses in Glen Waverley will suffer dramatically. It should not be smoke free.*

#### *Kingsway –37 Individual Submissions*

81% of submitters agreed with the size and extent of the proposed Smoke Free Area and among those that disagreed with the proposed boundaries, three participants provided a response:

- *It does not go far enough. I'm not sure if it covers the two train station streets*
- *It should encompass the entire precinct*
- *Smoke free zones along all shop fronts of railway parade north and south, all shops along Coleman parade to Springvale road, all shop front along Springvale road, all shop fronts that are on the rear of shops fronting Kingsway / opposite Dan Murphy*

Additionally, 19 submitters provided comments that addressed the benefits of the proposed Smoke Free Area with no comment

provided that suggested any detriment. All of the comments are detailed in Attachment Two with the following being examples:

- *Smoking is a health hazard. Passive smoking is a health hazard. All shops and businesses in the area should have smoke free zone outside in the footpaths. I think it is discrimination and illogical to have some shop front/footpaths as smoke free and others not. It should be all, including shops between glen and the road with the chicken /hairdresser shop.*
- *This will be a fantastic change. The entire atmosphere of Kingsway will greatly improve by prohibiting people from smoking there, and the health and happiness of all who work and reside there will benefit from this new rule.*
- *I fully support the proposal. For too long smokers have been allowed to dominate public spaces in Monash making them virtually unusable to other members of the public that don't want to put up with the chain smoking that takes place. My family and many other members of the community avoid areas like Kingsway because of the smoking. It's unfair that we aren't able to enjoy the great space that has been created by the Council so that a minority can smoke. Thank you so much for putting this proposal forward. To me, it is clear the community does not want smokers to ruin the public spaces for them. It is a serious health concern, as well as all of the cigarette butts that are littered. I hope that in time the Council will go further than these two proposals and also extend this to other activity centres throughout Monash. Thank you*

Of the individual submissions, 94% identified as residents and one person identified as a smoker.

Overall, whilst there were thoughts of improvement and change, 89% of respondents were generally positive about the change being made.

#### *Eaton Mall – 855 Submissions From 7 Common Devices:*

100% of the submissions did not agree with the size and extent of the proposed area and all but three offered no comment to address any benefit or detriment to the community in relation to the proposal. 57% identified as Monash residents and 67% identified as smokers.

Statements provided:

- *This is discrimination against specific races that populate these two areas.*
- *All the businesses in Eaton mall will suffer dramatically. It should not be smoke free.*

- *Keep it as it is with smoking areas. It has been working well. Some people in the council should actually do something productive during their work hours, rather than think up bullshit ideas.*

#### *Eaton Mall – 72 Individual Submissions*

71% of submitters agreed with the size and extent of the proposed Smoke Free Area. Amongst those that disagreed with the proposed boundaries, 15 participants provided the following responses:

#### Expanded boundaries:

- *Should be at the front of any eatery*
- *They should be expanded to cover the footpath adjacent to pedestrian crossings.*
- *All*
- *Stay at Eaton Mall and park and Library*
- *Extended to the car parks in the area where many people leave cigarette butts which get picked up by kids.*
- *Have it encompass the entire Oakleigh CBD precinct*
- *All*

#### Reduced boundaries:

- *Eaton Mall shouldn't be a smoke free zone*
- *Remove restrictions from Chester and Portman Sts*
- *None. There only limited areas that people can smoke that it can be discriminatory*
- *I would only have Eaton Mall only smoke free*
- *It's is way to [sic] large. Leave it the way it is*
- *Don't put the smoke free area in*
- *No boundaries! No Ban. This is discrimination to our community.*
- *I do not agree with any smoke free designated areas as proposed by Council.*

Accounting for the positive sentiment in the suggestions above the overall results indicate a general positive sentiment of 82% of individuals submissions towards the proposal.

There were 40 submissions that addressed the benefits to the community and 9 that addressed detriments. Two respondents addressed both benefits and detriments. Benefits were seen to be around health (45%) and amenity (55%). Some examples of statements are included below:

#### Benefits to the Community

- *A healthier environment for a popular area that is frequented by families and many children. Less litter.*

- *It is proven that passive smoking creates health issues. Smoking keeps me away from Eaton mall and cafes and restaurants in that area*
- *The benefit is that everyone can enjoy visiting Eaton Mall. The current non-smoking areas are not working depending on the direction of the wind.*

#### Detriment to the Community

- *Creating 100% smoke free targeted DIRECTLY at the hospitality business that line Eaton Mall is going to destroy the neighbourhood. This is a uniquely European space frequented traditionally by those who smoke with their coffee. I do not disagree with smoke free entirely, I just feel that we need to strike a balance in this area which is not going to destroy the atmosphere and business - particularly at this time.*
- *Older smokers enjoy sitting in cafes at Eaton Mall where they can have a coffee and smoke in a designated area. Changing this would greatly reduce this demographic as there is nothing for them to enjoy. There are plenty of areas in Eaton Mall where people can sit and enjoy a meal without being disturbed by smoke. All areas where food is served are already non smoking.*

In reading these responses, it should be noted that the Local Law does not apply to outdoor dining and drinking areas, which are regulated under the *Tobacco Act 1987*. That said, recent amendments to Council's Footpath Trading and Access Policy have introduced an expectation that, where a permit is sought for footpath trading areas in these precincts, food will be made available for consumption. This may have the effect of attracting the prohibitions under the *Tobacco Act 1987* in connection with these areas (this is discussed further below under 'policy implications').

#### ***Views of any person who is the owner or occupier of any part of the proposed Smoke Free Area***

Officers wrote to the owners and occupiers of all properties that fall within the proposed Smoke Free Areas and directed them to the Shape Monash consultation platform to share their views.

#### *Eaton Mall 6 responses received.*

One submitter identified as a landowner and 5 submitters identified themselves as running a business within the proposed area. All but one submitter expressed support for the proposal and the following comments were received:

- *I totally agree with the non-smoking areas proposed, as it will improve the amenity for families/children to visit and improve the shopping areas.*
- *Whilst I do not support smoking and in particular passive smoking, this is a unique community precinct that will in my view be severely impacted by this proposal. Clearly smoking inside the restaurant /food/ retail venues should continue to be prohibited but as the Mall is principally an outdoor area that has been promoted as a tourist destination (both locally and internationally) such a proposal has the very real risk of destroying this unique area.*

*Kingsway 2 responses received.*

One submitter identified as a landowner and one submitter identified themselves as running a business within the proposed Smoke Free Area. The submitter who is a landowner expressed support for the proposal whereas the business operator did not. The following comment was received:

- *This will be a fantastic change. The entire atmosphere of Kingsway will greatly improve by prohibiting people from smoking there, and the health and happiness of all who work and reside there will benefit from this new rule.*

The survey results are set out in Attachment Two.

### **POLICY IMPLICATIONS**

Prescribing Smoke Free Areas in Kingsway and Eaton Mall will complement Council's Footpath Trading and Access Policy. The Policy was revised in May this year to clarify that Council, in making public areas available for trade, will generally require that food is made available for consumption at all times when these areas are in use. As a result, as long as food is commercially available, the prohibitions on smoking under the *Tobacco Act 1987* will apply in these areas.

This Policy, together with Eaton Mall and Kingsway being prescribed Smoke Free Areas, will mean that these areas will effectively be smoke free.

### **SOCIAL IMPLICATIONS**

The support for these areas being made smoke free expressed by individual submitters is consistent with the community sentiment expressed when the Local Law was made. This supports the general proposition that the benefits of smoke-free areas are broadly considered to outweigh any perceived or demonstrated social detriment that may occur as a result of banning smoking.

Put another way, while smoking is legal and it is an individual's choice to smoke, it is generally accepted that smoking should be prohibited in certain places, including many public spaces. Consistent with this, the proposed Smoke Free Areas seek to extend the places in which smoking is prohibited.

**HUMAN RIGHTS CONSIDERATIONS**

The implications of the Local Law have been assessed as compatible with the requirements of the *Charter of Human Rights and Responsibilities Act 2006*.

**GENDER EQUITY ASSESSMENT**

The ability to prescribe Smoke Free Areas arises from the Local Law which was adopted in May 2021. The process of making the Local Law occurred prior to the commencement of the Gender Equality Act 2020 and did not include a gender impact assessment. Consequently, a gender impact assessment has not been undertaken in this instance.

Nonetheless, when the Local Law is up for review, Council will reconsider whether or not a gender impact assessment is required.

**FINANCIAL IMPLICATIONS**

The implementation of the proposed Smoke Free Areas can be delivered within existing budget allocations, save for the costs associated with the installation of signage. It will be necessary to install advisory signs within these areas and an additional \$15,000 will need to be allocated for their procurement and installation.

**CONCLUSION**

Council had previously resolved to commence the process required to prescribe Smoke Free Areas in and around Eaton Mall – Oakleigh and Kingsway – Glen Waverley. The process required to do this is set out in the Local Law and having completed that process it is open to Council to prescribe these areas as Smoke Free Areas.

The community engagement process has resulted in Council receiving a total of 1,808 submissions. As outlined in the report, 94% of the survey responses were received from a limited number of devices in circumstances that our survey provider identified as abnormal. 109 submissions were received from individuals.

On the face of the totality of the submissions, the proposal lacks support. However, Councillors should have regard to the circumstances in which the majority of submissions were received – i.e. 1,699 submissions received from 7 devices – when assessing the survey results as a whole. Further, as the dubious submissions from common devices simply reject the proposal without providing any further supporting detail, these responses lack substance and provide no real insight with respect to the detriment the proposal may cause. In contrast, the individual submissions generally support both proposed Smoke Free Areas and specify a range of benefits that have been provided for Council's consideration.

Having considered the matters specified in clause 8.2 of the Local Law, including submissions received in respect of the prescription of 'Smoke Free Areas', it is recommended that Council declares the areas in and around Eaton Mall and Kingsway described in Attachment One, to be Smoke Free Areas.