

1.9 FOOTPATH TRADING AND ACCESS POLICY

Responsible Director: Peter Panagakos

RECOMMENDATION

That Council:

- 1. Notes that a review of the Footpath Trading and Access Policy 2016 has been conducted in accordance with Council's resolution of 12 December 2017 and that the feasibility of altering the Policy to reflect that outdoor trading areas on Council-controlled land be used for the service of food has been investigated.*
- 2. Notes that a Revised Footpath Trading and Access Policy 2018 has been drafted which responds to Council's resolution of 12 December 2017 that enables footpath trading permits to be issued with a condition requiring food to be made available for consumption at all times that a permit area is in use should Council ultimately wish to make this change to the policy and permits.*
- 3. Notes that the resolution of 12 December 2017 stated that any changes proposed to the policy would be the subject of public consultation.*

BACKGROUND

At its meeting of 12 December 2017 Council directed officers to undertake a review of Council's Footpath Trading and Access Policy 2016, with the view to investigate the feasibility, or otherwise, of altering the policy to reflect that all outdoor trading areas on Council controlled land, across the entire municipality, be used for the service of food.

The resolution expressed Council's intention that the approach should apply consistently across the whole municipality.

The Policy has been reviewed and the *Revised Footpath Trading and Access Policy 2018* has been prepared for Councils consideration (Attachment One).

DISCUSSION

In August 2017 changes to the Tobacco Act brought about the notion of outdoor drinking areas and outdoor dining areas. 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.

To cater for smokers, some traders within the municipality have been utilising their outdoor trading areas on Council land as outdoor drinking areas where the consumption of meals is not permitted.

Whilst it is Council's clear preference that all outdoor dining and drinking areas are smoke free, as per previous resolution of Council, it is powerless to intervene given the relevant controls are a matter of State law and jurisdiction.

What remains however, is a concern that the operation of outdoor drinking areas detracts from Council's vision for outdoor trading areas on its land.

Dedicating footpath trading areas for the sole purpose of consuming drinks and packaged snacks was never envisaged by Council. Instead Council has always sought to ensure that outdoor dining adds to the vibrancy and attractiveness of an area with a welcoming family friendly feel.

That vision has been articulated in the revised policy as follows:

Councils vision for footpath trading areas

Council wishes to foster the development and continued improvement of vibrant and welcoming communities within its municipal district. It encourages the use of outdoor trading areas by local businesses for this purpose. It is Council's intention that outdoor trading areas will be utilised to attract visitors and create welcoming family environments. Where a local business wants to make use of an outdoor trading area, Council, in assessing these requests, will ensure that traders contribute to the local atmosphere and vitality and engage in uses that are complimentary to the existing use being made of nearby outdoor trading areas. For example, where an outdoor trading area is in an area predominantly used for al fresco dining, Council may require a trader to make food available for consumption in such areas at all times.

Where the policy is specific to Eaton Mall, Oakleigh the revised policy states:

Council's vision for Eaton Mall

Eaton Mall is locally and internationally renowned as a food destination, providing predominantly Greek cuisine in an al fresco environment. The atmosphere and vitality of Eaton Mall is entirely unique in Melbourne and Council is dedicated to retaining that character.

Council's vision for Eaton Mall is to protect, and continue to improve on, its renown. It will do so by ensuring that traders in Eaton Mall continue to contribute to its atmosphere and vitality, particularly by making food available for consumption in al fresco areas at all times.

If the revised policy was to be adopted by Council, footpath trading permit conditions could then be used to implement the vision described above. A permit condition may be as follows:

At all times the permit area is in use, the permit holder must allow it to be used for the consumption of food provided on a commercial basis, whether that food is provided by the permit holder or somebody else. A snack (i.e. pre-packaged shelf-stable food or piece of fruit) does not constitute 'food' for the purposes of this condition.

The effect of the condition will be that a trader will be required to make food commercially available at all times that an outdoor dining area is in use and it follows, unable to permit smoking in those areas. As such a number of issues and opportunities arise that Council needs to consider.

Issues	Opportunities
<ul style="list-style-type: none"> • Some traders are likely to oppose any change that restricts their ability to operate outdoor drinking areas where people may smoke • The approach may appear to be inconsistent with how footpath trading is managed by some neighbouring Councils • Stakeholders who are opposed to the changes may form a view that the change is solely designed to restrict smoking and as such a decision by Council to make the changes may be the subject of judicial review • Some patrons wish to enjoy outdoor drinking areas where they may smoke. • There may be instances where customers choose to patronise eating establishments outside of the municipality 	<ul style="list-style-type: none"> • The alfresco dining experience is reinforced through a commonality in the manner that outdoor eating areas are managed • The approach is consistent with Council's vision for alfresco dining areas especially given that it was never envisaged that service in these areas would be limited to drinks and pre-packaged snacks • All residents and visitors will be able to enjoy a meal on all Council owned footpath trading permit areas as opposed to a range of confusing arrangements some of which are solely aimed at allowing smoking • It would reinforce Council's intention that these trading areas are used for their intended purpose and reinforces the family friendly environment Council has sought to create

The intention of these changes should Council seek to introduce them would create a consistency of use of the areas for the purpose of alfresco dining.

Should Council decide to adopt the changes a decision will need to be made regarding when the changes will be implemented. The application renewal process for footpath trading permits commences in May with the view to having permits issued in July. Given the need to consult on the changes it is unlikely that the consultation and decision making process could be completed prior to the commencement of the renewal process. Therefore, at the appropriate time, Council will need to consider the following options:

- 1) Proceed with the renewal process and amend permits as and when required;
- 2) Proceed with the renewal process but make permits valid for a short term and reissue permits with changed conditions thereafter if ultimately approved;
- 3) Delay the renewal process and continue to honour approvals previously issued ensuring public liability cover is valid and extend the expiry date of existing permits to a time that coincides with an implementation date for the changes.

POLICY IMPLICATIONS

The revised policy, if adopted at some point in time, 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. Whilst implementation of a revised policy will mean that traders cannot operate outdoor drinking areas where people may smoke, there are broader social and economic benefits in delivering Councils vision of attracting visitors and creating family friendly alfresco areas.

CONSULTATION

Should Council be of the mind to adopt a revised policy it will be necessary to consult and engage with traders who currently operate outdoor dining and/or drinking areas and to seek the views of the broader community.

To do this Council officers would prepare a Consultation Plan that includes the following elements:

- Mail-out to permit holders
- Mail-out to traders in Eaton Mall, Oakleigh and Kingsway, Glen Waverley
- A media release
- Articles or promotion:
 - in the Bulletin
 - Council's Website
 - on advertising boards (Eaton Mall)

FINANCIAL IMPLICATIONS

A dedicated, but short term resource is therefore required to prepare, coordinate and deliver the consultation process at a cost of \$15,000 and an additional \$2500 is required for advertising, printing and mailing.

These costs cannot be met within the budget currently allocated to the responsible department.

CONCLUSION

The *Footpath Trading and Access Policy 2016* has been the subject of a review and a revised policy has been prepared in response to Council's decision of 12 December 2017.

The revised policy reflects Council's intention that outdoor trading areas are utilised to attract visitors and create welcoming family environments. Such a revision would enable Council to require that food, in the form of meals and not snacks, be always available for consumption.

Importantly, if such a requirement was adopted, traders will be unable to operate outdoor drinking areas, where a person may smoke, and this is likely to be met with some opposition from traders and some members of the community.