

## 1.6 MAKING OF SMOKE FREE AREAS LOCAL LAW & REVISED FOOTPATH TRADING AND ACCESS POLICY

Responsible Acting Director: Natasha Swan

### **RECOMMENDATION**

*That Council:*

#### *Part A*

1. *Having:*

1.1 *completed the statutory process under Part 5 of the Local Government Act 1989 for the making of the proposed Smoke Free Areas Local Law (2021);*

1.2 *undertaken, and been satisfied with, the evaluation of the proposed Smoke Free Areas Local Law (2021), as set out in the Community Impact Statement attached to this Report; and*

1.3 *considered:*

1.3.1 *all submissions that were received in respect of the proposed Smoke Free Areas Local Law (2021); and*

1.3.2 *the report provided by the Committee of Council appointed to hear submitters in support of their submissions,*

*resolves to make the Smoke Free Areas Local Law (2021) in the form attached to this Report; and*

2. *Authorises the Chief Executive Officer to:*

2.1 *give public notice, and notice in the Victoria Government Gazette, of the making of the Smoke Free Areas Local Law (2021); and*

2.2 *send a copy of the Smoke Free Areas Local Law (2021), as made, to the Minister for Local Government.*

3. *Notes that at its meeting of 15 December 2020 Council noted an intention, subject to further community and stakeholder consultation, that should the new Local Law [Smoke Free Areas Local Law 2021] be made, Council will use the new Local Law to remove smoking in outdoor public spaces in its activity centres.*

4. *Directs officers to commence the process set out in the Smoke Free Areas Local Law 2021 to make Kingsway Glen Waverley and Eaton Mall in Oakleigh prescribed Smoke Free Areas under the provisions of the Local Law, being the busiest destinations in the municipality , noting that it is open to declare additional areas smoke free areas in the future.*
5. *Allocates \$30,000 for consultation and legal costs required to implement the recommendations in point 4 of this recommendation.*

#### *Part B*

1. *Notes that at its meeting of 15 December 2020 Council resolved to direct officers to review and update its Footpath Trading and Access Policy (the Policy), including amending the guidelines for assessment and determination, to clarify that Council, in making these public areas available for trade, requires that food must be made available for consumption at all times when these areas are in use. For the avoidance of doubt, this change would have the effect of requiring all outdoor dining areas to be smoke free and prevents a potential loophole following the adoption of a new Local Law whereby smoking is banned in all other public spaces in activity centres but is possible in outdoor dining areas which are designated as outdoor drinking areas.*
2. *Notes that at its meeting of 15 December 2020 Council, in reference to point 1 above, noted that, subject to community consultation and Council's further consideration, it is the current intention of Council that any changes will be implemented on 1 July 2021*
3. *Notes that the Revised Footpath Trading and Access Policy 2021 was released for public consultation on 18 February 2021 and that submissions closed on 22 March 2021.*
4. *Notes that there is significant community support for the changes introduced in the Revised Footbath Trading and Access Policy.*
5. *Resolves to adopt the Revised Footpath Trading and Access Policy 2021 in the form attached to this report with the commencement date being 1 July 2021.*

**INTRODUCTION**

The purpose of this report is to present the Summary of Proceedings report (Attachment One) of the Committee of Council appointed to hear any submitters requesting to be heard and to consider any submissions received under S.223 of the Local Government Act 1989 on its proposal to make the Smoke Free Areas Local Law 2021 (Attachment Two). This report also presents the result of public consultation regarding the Local Law and the Revised Footpath Trading and Access Policy 2021 (Attachment Three). The report recommends that Council makes the Local Law and resolves to adopt to the revised policy.

**BACKGROUND**

At its meeting on 27 January 2021 Council resolved to give notice of its proposal to make the Smoke Free Areas Local Law (2021) in the Victorian Government Gazette and a newspaper circulated within the municipality in accordance sections 119 (1) and 223 of the Local Government Act 1989.

On Thursday 18 February 2021 such notices were published in the Victorian Government Gazette and The Age newspaper. The notices stated:

- the purpose and general purport of the proposed Local Law;
- that a copy of the proposed Local Law can be obtained from Council's website;
- invited submissions, in accordance with section 223 of the Local Government Act 1989, within 28 days from the date of publication of the notice; and
- that a person making a submission is entitled to request to be heard in support of their submission.

The Local Law, along with a Community Impact Statement (Attachment Four) were made publicly available on Council's website and at service centres.

Furthermore, at its meeting on 27 January 2021 Council also resolved to release the Revised Footpath Trading and Access Policy for consultation.

**CONSULTATION PROCESS**

Whilst inviting submissions forms part of the statutory process required to make the Local Law, a consultation process was designed to consult on both the Local Law and revised policy at the same time but as separate items.

The process involved separate pages on the Shape Monash portal where people were invited to make submissions on the Local Law whereas on the 'revised policy page', participants were invited to respond to a questionnaire.

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.

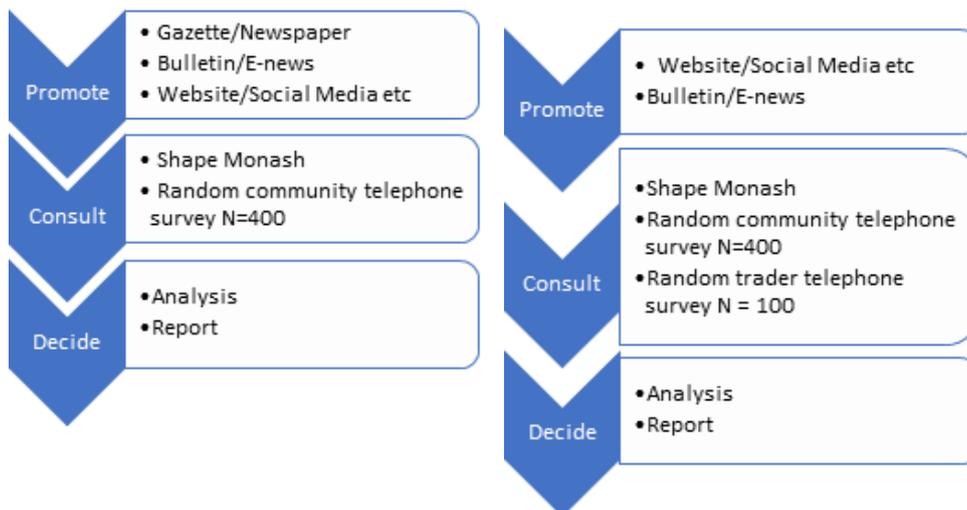
In all the consultation process was designed to explore

- overall support or opposition to the Local Law that, amongst other things, would enable Council to designate smoke-free areas
- overall support or opposition to changes to the Footpath Trading and Access Policy
- the likelihood of residents changing their patronage of local businesses if smoke-free controls were introduced
- the perceived impact to traders’ businesses if smoke-free controls were introduced

The consultation was promoted on Council’s 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 both proposals and directing them to the Shape Monash portal should they wish to participate in the consultation and/or make a submission.

**Smoke-free Areas Local Law**

**Amendment to Footpath Trading and Access Policy**



**CONSULTATION FEEDBACK**

The telephone surveys were conducted by JWS Research who collated their findings along with the feedback from the Shape Monash questionnaire and present their findings in Attachment Five: *Outdoor smoking and footpath trading: Community perceptions research*. Their analysis found:

***Overall community support to change the law and the policy***

Among residents of the City of Monash, there is a high level of support for the proposed smoke-free laws (87%). Support for change to the Footpath Trading and Access Policy is also high (79%).

- Smokers, who comprise just 12% of the community, are significantly less likely than average to support change to the smoke-free laws (71%) and the Footpath Trading and Access Policy (62%). That said, there remains majority support among smokers for these changes.

Around half of the community anticipates that if the law on outdoor smoking is changed and local street-based trading areas become smoke-free, they would be more likely to go for coffee or a drink (52%), go for a meal (51%) or attend events (49%). Less than half of the community (41%) expect that they would be more likely to visit shops or other businesses.

- For most of the remaining people, there would be no change to their patronage (4% or less claim they would be less likely to undertake each activity).
- The majority of smokers (upwards of three in five smokers) do not expect their habits to change if the proposed changes are implemented.

***Traders support changes to law and policy***

Among traders, support for the proposed changes to the outdoor smoking law is high (84%). Support for the change to the Footpath Trading and Access Policy is also high (79%).

***Most traders do not anticipate the outdoor smoke-free law would affect their business***

For the majority of traders (54%), smoking is already forbidden at outdoor seated areas where they operate. Most (53%) say the implementation of smoke-free dining would make no difference to their business.

- Just under a quarter of traders (23%) say it would improve business. A similar number (24%) say it would be worse for their business.

***Online (opt-in) survey findings are in line with the telephone surveys***

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The online surveys allowed members of the community who wish to contribute their opinion the opportunity to do so. The findings are broadly consistent with insights from the telephone surveys. There is majority support for changes to the Footpath Trading and Access Policy. The change has potential to increase patronage (or at least make no difference) to business.

### ***Local Law Submissions***

The Committee of Council appointed to hear any submitters requesting to be heard and to consider any submissions received under S.223 of the Local Government Act 1989 on its proposal to make the Smoke Free Areas Local Law 2021 convened on 11 May 2021.

Eleven submissions were received, and no submitter sought to be heard on their submission.

It is noted that the majority of submissions indicate support for the Local Law and some suggest that the Local Law controls should go further. Having considered the submissions the Committee recommends that Council makes the Smoke Free Local Law (2021)

### ***DISCUSSION***

#### ***Smoke-free Areas Local Law***

The proposed Smoke Free Areas Local Law will revoke Local Law No.4 - Prohibition on Smoking and will provide mechanisms for Council to prescribe areas within the municipality to be smoke-free.

The Local Law will become operational on the day following the notice of its making is published in the Victorian Government Gazette.

If made it will be open to Council to commence the process of prescribing areas within the municipality to be smoke-free and in doing so the Local Law provides that when determining a Smoke Free Area Council must have regard to the following factors:

- 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.

In addition, the Local Law includes and maintains the intent of the current Local Law with regard to smoking in proximity to Council buildings and clarification has been added that the Local Law applies to the extent that it is not inconsistent with any other applicable Act or regulation or the Monash Planning Scheme.

Whilst there are enforcement options available within the Local Law, it is anticipated that it will be self-enforcing with wilful compliance being achieved through community education and expectations that de-normalise smoking in declared smoke-free areas.

Given that the current Local Law will sunset on 30 September this year and the high level of community support for the proposed Local Law it is recommended that Council makes the Smoke Free Areas Local Law (2021) in the form attached to this report.

Furthermore, whilst there are enforcement options available, it is anticipated that the Local Law will be self-enforcing with wilful compliance being achieved through community education and expectations that de-normalise smoking in declared smoke-free areas.

Noting that at its meeting of 15 December 2020 Council noted an intention, subject to further community and stakeholder consultation, that should the new Local Law be made, Council will use the new Local Law to remove smoking in outdoor public spaces in its activity centres.

Consistent with this, and as a starting point, it is recommended that officers be directed to commence the consultation process set out in the Local Law proposing that Eaton Mall, Oakleigh and Kingsway, Glen Waverley be prescribed smoke free areas. These are the busiest destinations in the municipality, and it will be open to declare additional smoke free areas in the future.

The proposed smoke free areas in Eaton Mall and Kingsway are set out in Attachment Six and it should be noted that these areas constitute footpaths and other areas but not roads.

It is proposed that the consultation process focus on those areas and that random telephone interviews be used along with feedback gathered via the Shape Monash consultation platform. The cost to do this is around \$30k and this amount is not currently budgeted.

***Revised Footpath Trading and Access Policy***

Whilst acknowledging that a new Local Law would not apply to any areas that are expressly regulated by the Tobacco Act, such as permitted outdoor drinking areas, Council directed officers to review and update its Footpath Trading and Access Policy to clarify that Council, in making public areas available for trade, requires that food must be made available for consumption at all times when these areas are in use. Consistent with the Tobacco Act, as long as food is commercially available, smoking will be prohibited in these areas.

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 and that vision has been articulated in the revised Policy.

The Revised Footpath Trading and Access Policy 2021 was released for public consultation and as identified in the JLW research report there is a high level of community and trader support for the proposed changes.

The telephone surveys conducted are indicative of community and trader sentiment and it is noted that both surveys indicate that there is widespread community and trader support for the policy change. The online survey also found that almost all residents visit outdoor cafes on footpath areas and the majority of residents who took the survey expect that the policy change would increase their patronage.

Furthermore, the online survey found that most traders do not anticipate that changes to outdoor smoking rules would affect local businesses. Importantly however, it should be noted that some traders maintain significant concern that an inability to operate outdoor drinking areas, where a person may smoke, will be detrimental to their enterprise.

At its meeting of 15 December 2020 Council noted that, subject to community consultation and Council's further consideration, that it was the intention of Council that any changes will be implemented on 1 July 2021.

Having considered the proposed changes in the Revised Footpath Trading and Access Policy 2021 and the outcome of the public consultation it is recommended that Council adopts the policy with a start date of 1 July 2021.

***POLICY IMPLICATIONS***

The Monash Health and Wellbeing Plan 2017-2021 aims to reduce harms from smoking and undertakes these actions:

- *Promote and advocate to minimise harm from smoking.*

- *Facilitate opportunities for the community to better understand how to prevent and/or minimise harm from alcohol, smoking and other drugs.*

The recommendations in this report are also relevant to the following Council Plan objectives:

A Liveable & Sustainable City:

*We value our natural environment and want to preserve and enhance the leafy and green character of our city. Monash's desirability as a place to live, learn, work and play needs to be protected.*

Inviting Open & Urban Spaces:

*We will continue to improve our public infrastructure, meeting places and open spaces, providing inclusive, safe and inviting places for community use.*

An Inclusive Community:

*Our people and our communities are healthy, connected and engage.*

### **SOCIAL IMPLICATIONS**

The benefits of smoke-free areas are broadly considered to outweigh any perceived or demonstrated social implications. Smoking is legal and it is an individual's choice to smoke but smoking is already prohibited in many public places and smoke-free areas declared by Council will simply be an extension of these.

Whilst the implementation of a revised Footpath Trading and Access Policy will mean that traders cannot operate outdoor drinking areas where people may smoke, there are broader social and economic benefits in delivering Council's vision of attracting visitors and creating family friendly al fresco areas.

### **GENDER IMPACT ASSESSMENT**

The Gender Equality Act 2020 commenced on 31 March 2021. The Act includes Local Government within its definition of "Defined Entities" who have obligations to comply with the Act including promoting gender equality and conducting a gender impact assessment on our policies, programs and services where they have a direct and significant impact on the public.

The Smoke Free Areas Local Law and the revised Footpath Trading and Access Policy were prepared, and consulted on prior to the 31 March 2021 commencement date of the Gender Equality Act 2020. As such, while gender was included as a demographic question within the community consultation, a full gender impact assessment has not been undertaken. This will be undertaken when the policy is up for review.

***HUMAN RIGHTS CONSIDERATIONS***

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

***FINANCIAL IMPLICATIONS***

The outcomes arising from the recommendations in this report can, for the most part, be delivered within existing budget allocations. Nonetheless, the consultation process required to determine prescribed smoke free areas in Kingsway, Glen Waverley and Eaton Mall, Oakleigh will require a budget allocation of \$30,000.

***CONCLUSION***

The proposed Smoke Free Areas Local Law has been released for consultation in accordance with the required statutory process. The submissions received reflect the results of public consultation in that there is widespread support for Council to make the Local Law.

It is recommended that Council makes the Local Law and once made it will enable Council to commence the process of prescribing smoke-free areas.

Furthermore it is recommended that officers commence the consultation process required to make the footpath areas of Kingsway, Glen Waverley and Eaton Mall, Oakleigh – smoke free areas.

The Revised Footpath Trading and Access Policy 2021 has also been the subject of a consultation process that sought the views of both the general public and traders.

The policy confirms that 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. The policy therefore clarifies that Council, in making public areas available for trade, requires that food must be made available for consumption at all times when these areas are in use. Consistent with the Tobacco Act, as long as food is commercially available, smoking will be prohibited in these areas.

Having considered the proposed changes in the Revised Footpath Trading and Access Policy 2021 and the outcome of the public consultation it is recommended that Council adopts the policy with a start date of 1 July 2021.