

Community Impact Statement – Amendment to Mornington Peninsula Shire General Purposes Local Law – Declaration of Smoke Free Areas

At its meeting on 27 August 2019, Mornington Peninsula Shire Council (the Council) resolved to amend General Purposes Local Law of the Council (2012) (General Purposes Local Law) to incorporate clauses regulating smoking.

Background

The Victorian Government has been progressively strengthening bans on smoking in public places. The most recent changes to the *Tobacco Act 1987 (Vic)* (Tobacco Act) came into effect on 1 August 2017, prohibiting smoking in outdoor areas within food venues; footpath dining areas; courtyards and beer gardens at times food is being eaten or is available to be eaten; all outdoor areas at food fairs; and within 10 metres of a food stall or food vendor at organised events.

Council plays a crucial role in reducing smoking rates on the Mornington Peninsula through its obligations under the Tobacco Act, and support of smoking cessation programs for employees and the community. This will be achieved through the current development of a Smoke Free Environment Policy (Policy), supported by a proposed amendment to the General Purposes Local Law. This would allow Council to declare specified public areas on the Mornington Peninsula as smoke free.

The main Policy aims are to reduce the health and environmental impacts of smoking by:

- Reducing smoking rates;
- Creating smoke free public zones on Council land; and
- Providing incentives for other land owners to create smoke free public zone.

At its meeting on 27 August Council resolved to exhibit this draft Policy for community consultation for a period of 42 days. The consultation period was extended until 31st October 2019.

Purpose of the Proposed Amendment of the Local Law:

The purpose and general purport of the amendment to the General Purposes Local Law are to:

- amend the Local Law to incorporate clauses regulating smoking;
- provide a safe and healthy environment so that the community within the municipality can enjoy a quality of life that meets its expectations;
- protect the community from the harmful effects of second-hand smoke;
- de-normalise smoking behaviours, which is particularly important for discouraging children from taking up smoking;
- provide residents and visitors with smoke free public areas; and
- prescribe penalties for smoking offences under the Local Law.

This Community Impact Statement is a review document required by the *Local Government Act 1989* (Vic) (Local Government Act) whenever local laws are proposed to be made or amended. This document will provide information and evidence to support Council's decision to exhibit an amended local law related to smoke free areas. This document is part of the formal consultation process under the Local Government Act.

Assessment and Community Consultation:

The following table provide a summary of the outcomes of the proposed amendment to the General Purposes Local Law. This Local Law Community Impact Statement meets the requirements in Local Government Victoria's "Better Practice Manual - Guidelines for Local Laws Manual" (2010)

Section	Outcome
Identifying the Problem	<p>This is identified in the objectives of the proposed Local Law. The Victorian Government has been progressively strengthening bans on smoking in public places. The most recent changes to the Tobacco Act came into effect on 1 August 2017, prohibiting smoking in outdoor areas of food venues; footpath dining areas; courtyards and beer gardens at times food is being eaten or is available to be eaten; all outdoor areas at food fairs; and within 10 metres of a food stall or food vendor at organised events. Consistent with the move toward broader smoking bans, the proposed Local Law seeks to prohibit smoking in places not captured by restrictions under State legislation. It complements the legislation by reducing the impacts of second-hand smoke that can occur due the close proximity of areas where people can smoke to outdoor dining and other public areas.</p> <p>Despite progress made in reducing smoking rates in Victoria, tobacco remains the leading avoidable cause of cancer and a leading cause of cardiovascular disease, killing 4,000 Victorians each year. Further relevant facts include:</p> <ul style="list-style-type: none"> • 12 per cent of 16-year-old and 16 per cent of 17-year-old Victorian school students smoked in the last week • 41 per cent of Aboriginal people smoke daily • 13.1% of Mornington Peninsula residents aged 18 years or over are smokers, equal to the State average of 13.1% and slightly lower than the average for the Southern Metropolitan Region of 13.8% • Second-hand smoke may bring on acute health events like asthma, wheezing, nasal, throat and sinus irritation. Approximately two million Australians suffer from asthma which was the underlying cause in 416 deaths in Australia in 2010 • Exposure to secondhand smoke increases the risk for chronic, and even fatal, health conditions that include cardiovascular disease, heart disease, and lung cancer • Low levels of exposure to secondhand smoke can lead to an increased risk of cardiovascular disease and acute cardiac events
Relating the problem to Council policy objectives Identifying if it is a Council problem	<p>The objective of the proposed Local Law is within the functions and powers of Council. It also relates to a number of Council's policy objectives. This is demonstrated in the objective of the proposed Local Law.</p> <p>Mornington Peninsula Shire's Health and Wellbeing Plan 2017-2021 was adopted by Council in October 2018 and includes a key action to "Develop and implement a municipal Smoke Free Environments Policy that aligns with legislative requirements under the Tobacco Act"</p> <p>The background report for this Plan includes a strategy for smoking cessation and states Mornington Peninsula Shire will work to ensure that action on smoking is a core part of:</p> <ul style="list-style-type: none"> • local health, education and community services and strategic partnerships • sport and leisure strategies and safety programs • social inclusion initiatives • workforce health programs • health promotion plans and actions

	<ul style="list-style-type: none"> • local business activity. <p>A Local Law to declare and enforce smoke free areas supports the Our Place theme in the Council's Community Plan 2017-2021</p>																																										
Measuring Success	<p>The success of the proposed Local Law will be measured to the extent it addresses community expectation and provides clear guidance to the community. Measures of success will include:</p> <ul style="list-style-type: none"> • Monitoring level of compliance and ease of understanding by the public • Seeking feedback from residents, visitors and businesses in the declared areas • Ensuring resources available to administer and enforce the General Purposes Local Law • Annual community survey as part of the Smoke Free Policy review • Number of smoke free areas that are declared each year • Reduction in butt litter • Reduction in community complaints 																																										
Considering possible alternatives to the proposed Local Law	<p>Council has considered whether there is a possible alternative to the proposed Local Law that might better suit the needs of the community. Self-enforcement through signage which reinforces a positive health message has been trialled in a number of councils and is only effective where other regulatory mechanisms are in place such as leases, licenses and land user agreements</p> <p>A range of measures were considered during the development of the Smoke Free Policy, including programs from interstate and at other Victorian Councils.</p> <table border="1"> <thead> <tr> <th>Council</th> <th>Smoke Free Area/s on Council Land</th> <th>Method/s Used</th> </tr> </thead> <tbody> <tr> <td>Warrnambool</td> <td>Building entrances, parks, offices, sports grounds, leisure centres</td> <td>Policy and Local Law</td> </tr> <tr> <td>Hobsons Bay</td> <td>Beaches, offices, playgrounds</td> <td>Local Law</td> </tr> <tr> <td>Monash</td> <td>Building entrances (10m), playgrounds Outdoor dining/drinking areas from 1 August 2017</td> <td>Local Law Lease agreements</td> </tr> <tr> <td>Melbourne</td> <td>Seven prescribed outdoor precincts</td> <td>Local Law</td> </tr> <tr> <td>Greater Shepparton</td> <td>Outdoor dining areas (trial)</td> <td>Policy and lease agreements</td> </tr> <tr> <td>Casey</td> <td>Building entrances (10m)</td> <td></td> </tr> <tr> <td>Frankston</td> <td>Frankston and Seaford Foreshore, Central Business District (except outdoor cafes)</td> <td>Local Law</td> </tr> <tr> <td>Baw Baw</td> <td>Outdoor dining areas</td> <td>Lease agreements</td> </tr> <tr> <td>Surf Coast</td> <td>Beaches</td> <td>Local Law</td> </tr> <tr> <td>Bayside</td> <td>Beaches – proposed 2019</td> <td>Local Law</td> </tr> <tr> <td>Port Phillip</td> <td>Beaches (2010 to 2013)</td> <td>Local Law</td> </tr> <tr> <td>Banyule</td> <td>Along Greensborough Walk and Town Square At all events run or sponsored by Council Within 10 metres of council owned building entrances</td> <td>Policy</td> </tr> <tr> <td>Boorondara</td> <td>Building entrances (10m), sports grounds</td> <td>Local Law</td> </tr> </tbody> </table>	Council	Smoke Free Area/s on Council Land	Method/s Used	Warrnambool	Building entrances, parks, offices, sports grounds, leisure centres	Policy and Local Law	Hobsons Bay	Beaches, offices, playgrounds	Local Law	Monash	Building entrances (10m), playgrounds Outdoor dining/drinking areas from 1 August 2017	Local Law Lease agreements	Melbourne	Seven prescribed outdoor precincts	Local Law	Greater Shepparton	Outdoor dining areas (trial)	Policy and lease agreements	Casey	Building entrances (10m)		Frankston	Frankston and Seaford Foreshore, Central Business District (except outdoor cafes)	Local Law	Baw Baw	Outdoor dining areas	Lease agreements	Surf Coast	Beaches	Local Law	Bayside	Beaches – proposed 2019	Local Law	Port Phillip	Beaches (2010 to 2013)	Local Law	Banyule	Along Greensborough Walk and Town Square At all events run or sponsored by Council Within 10 metres of council owned building entrances	Policy	Boorondara	Building entrances (10m), sports grounds	Local Law
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	<p>No suitable alternatives have been identified to the introduction of this proposed Local Law. A current survey of Mornington Peninsula Shire residents indicates 67% support for a Local Law to regulate smoking in public areas.</p> <p>The World Health Organisation reports that introducing laws to ban smoking are a popular and effective approach, and become more so after they are implemented.</p>
Identifying (and staying within) the power to make a Local Law	The proposed Local Law identifies the authority on which it is based and remain within that power. The Local Law is made under section 111 of the Local Government Act. A Local Law is a 'subordinate instrument' and is governed by the <i>Interpretation of Legislation Act 1984</i> .
Identifying existing legislation that might be used instead of a Local Law	The proposed Local Law seeks to supplement existing State legislation and ensures there is no duplication of local laws and State legislation. The Tobacco Act provides for outdoor smoking bans but does not address a range of other public spaces. The Local Law will complement and reduce inconsistencies in tobacco legislation.
Considering if a State Act is more appropriate than a Local Law	<p>The proposed Local Law allows for the management of the municipality on a local level tailored to the health profile and environmental concerns of the community. However, there are circumstances in which broader state legislation may be more appropriate, for example</p> <ul style="list-style-type: none"> • <i>Tobacco Act 1987</i> • <i>Environment Protection Act 1970</i> • <i>Public Health and Wellbeing Act 2008</i> • <i>Infringements Act 2006</i> <p>Any overlap or conflict with State legislation will result in the State legislation taking precedence over the proposed Local Law and the Local Law being inoperative to the extent of the inconsistency.</p> <p>Inconsistencies in State tobacco legislation have not been addressed and there are no plans by State Government to make any legislative changes. The <i>Environment Protection Act 1970</i> and <i>Public Health and Wellbeing Act 2008</i> are not specific to smoke free areas and do not regulate smoking in public areas. These State Acts will not achieve the outcomes of the proposed Local Law</p>
Identifying existing legislative provisions that may be overlapped by a Local Law	While legislation such as the <i>Public Health and Wellbeing Act 2008</i> directs Council to create an environment which supports the health of members of the community, Council does not consider that the proposed Local Law contains any provision that overlaps or conflicts with existing State legislation. Declared smoke free areas under the Local Law will not duplicate or contradict those areas already mandated as smoke free under current tobacco legislation.
Identifying planning scheme requirements with which a Local Law may be inconsistent	This proposed Local Law is neither inconsistent with, nor duplicates, the Mornington Peninsula Planning Scheme or the objectives of Victorian Planning Legislation.
A risk management approach to Local Laws	A risk management approach has been used in the consideration of developing the proposed Local Law. The aim of which is to ensure all risks have been identified and addressed. Risks were assessed during the development of the draft Policy.
Legislative approach adopted	<p>Council has taken a low impact regulatory approach to ensure there is minimal regulatory burden placed on the community and businesses and has approached the development of the proposed Local Law by:</p> <ul style="list-style-type: none"> - Assessing community support through on line and hard copy survey (indicating 79% support for smoke free areas) - Ensuring the Local Law does not conflict with, overlap or duplicate State legislation, including other statutory rules - Providing for reasonable penalties - Developing consistent and transparent procedures, including an education approach, official warnings where appropriate and internal review process for infringement notices - Setting out education programs, compliance protocols and a clear criteria for determining smoke free areas in the Policy

The least burden / greatest advantage test for Local Laws

Significant advantages and benefits to the community from smoke free areas are shown in the outcomes of the consultation survey:

- 80% are concerned by second hand smoke
- 79% support more smoke free public environments
- 67% support a Local Law and fines for smoking
- 61% support butt bins next to smoke free areas

For specific areas to be made smoke free, community support for each type of area is as follows:

- | | |
|--|-----------------------------------|
| - Playgrounds 96% | - Outdoor dining and drinking 84% |
| - Libraries 95% | - Sports Reserves 82% |
| - Galleries 94% | - Bushland reserves 81% |
| - Leisure Centres 93% | - Beaches 77% |
| - Public halls and Council offices 91% | - Foreshore camping 72% |

73% support smoke free environments in all public areas which would include footpaths, car parks and other common public areas
13% of respondents are smokers. 287 survey responses were received. Survey commenced on 28th August

The benefits are likely to include:

- a potential increase in business activities and events in declared smoke free areas
- a cleaner, more pleasant experience for patrons and members of the public
- reduced risks to health associated with second hand smoke
- modelling behaviour to children, as they would not be exposed to smoking whilst visiting the areas
- provision of a clear understanding of smoke free areas for community members
- the provision of a supportive environment for those wishing to quit smoking and those who have recently quit.

The low impact regulatory approach proposed in implementing this proposed Local Law has no compliance burden for community and businesses.

The cost implications for Council include:

- the design, development and implementation of signage and butt out bins
- staff resources with the development and presenting of community/trader educational sessions
- development, design and printing of educational materials; and
- media articles and positive messaging.

The introduction of designated smoke free areas, as well as positive health promotion initiatives, has the potential to impact on smoking rates. This would suggest that illnesses/disease connected with smoking would decrease, providing a positive financial impact on the overall health system and economy. Reduction in second hand smoke exposure will also have positive impacts.

Economic Benefits:

There is substantial evidence to show that loss of revenue is nil or short-lived at worst when a smoke free policy is introduced. Examples of research findings are below:

- In July 2006, Queensland became the first state to implement a smoking ban that covered 100% of al fresco dining areas and a majority of drinking areas. According to research conducted after the commencement of this ban, 30% of Queenslanders surveyed said they were visiting outdoor dining and drinking venues more often following the ban.

	<ul style="list-style-type: none"> A 2013 Cancer Council Victoria Survey found that slightly more than one in five Victorians (22%) stated that they would visit cafes or restaurants more often if a ban was enforced. A majority of Victorians (73%) reported that a ban on smoking in outdoor dining areas would make no difference to the frequency at which they visit cafes or restaurants. Only 5% of Victorians predicted that they would dine out less often after a ban. <p>This evidence from the implementation of bans in outdoor dining and drinking areas is consistent with a comprehensive body of evidence about the impact of indoor smoking bans on business. A 2003 review of 100 economic studies assessing the impact of indoor smoke free law on trade found there was no impact, or no lasting negative impact on trade as a result of the bans. In a systematic review of all the scientific evidence concerning the effectiveness of smoke free policies, the World Health Organization International Agency for Research on Cancer found that there was “sufficient” evidence (the highest category of scientific certainty) that such policies do not cause a decline in business.</p>
Restriction of Competition	<p>A review of the draft Local Law has been conducted in accordance with National Competition Principles. The substantive provisions of the draft Local Law have effect throughout the Municipal district. The Policy sets clear criteria for declaring smoke free areas. Consistent application of smoke free dining and drinking areas on all Council footpaths and reserves will aid in fair competition for businesses.</p> <p>Council is of the view that the proposed Local Law complies with the National Competition Principles. Public benefit will be achieved by implementing the Policy, and no restrictions on competition will result (as defined in National Competition Policy 1995)</p>
Penalties	Penalties are designed as a deterrent, both specific and general, consistent with the principles of the <i>Sentencing Act 1991 (Vic)</i> . The penalty amounts that will be applicable to the proposed Local Law are those in Local Law 11 and are considered to be appropriate.
Permits	N/A
Fees	N/A
Performance Standards	To the extent that it is practicable, a performance-based standard has been adopted for the proposed Local Law. A performance-based approach provides the objective that the law is to expected to achieve without strict and rigid specifications for compliance
Charter of Human Rights and Responsibilities	The proposed Local Law does not engage any of the human rights described in the <i>Charter of Human Rights and Responsibilities Act 2006</i> . The proposed Local Law will, however, positively engage the right of everyone to enjoy the highest attainable standard of health which is recognised by international human rights law, including article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which has been ratified by Australia
Community Consultation	<p>To inform and support the proposed Local Law amendment, the Council prepared a draft Policy for community consultation. The process for community consultation is as follows:</p> <p>Scope is based on the three main Policy principles:</p> <ul style="list-style-type: none"> Reduce smoking rates Create smoke free public zones on Shire land Provide incentives for other land owners to create smoke free public zones <p>Reach is to four main groups:</p> <ul style="list-style-type: none"> Shire staff and contractors Agency experts to analyse and support the background paper and Policy General public, both residents and visitors Community groups and businesses who use Council land or buildings on a regular basis

Part A) Targeted Community Consultation

The Policy and Background paper was circulated to the following agencies for comment:

1. QUIT
2. Cancer Council Victoria, Cancer Council Australia
3. Australian Medical Association
4. Victorian Department of Health and Human Services
5. Municipal Health and Wellbeing Committee
6. DELWP
7. Parks Victoria
8. Department of Health and Human Services

Part B) General Community Consultation

- On line survey - Survey Monkey. Data can be analysed by postcode/township and types of smoke free zones (e.g. beaches/sports grounds)
- Hard Copy survey for youth services staff to circulate
- Standard letter and draft Policy to key stakeholders
- Social media incl. Instagram, Facebook, Snapchat
- Circulate using Shire and MP Regional Tourism social media
- Targeted information sessions.
- Pen Wide
- Exhibit draft Policy with background paper and Local Law amendment on the Shire's web site
- Notice in local newspaper
- Government Gazette notice

Any person affected by the proposed local law may make a submission to Council. All submissions received on or before 5.00pm on Thursday 31 October 2019 will be considered by Council in accordance with section 223 of the Local Government Act.

Any person making a submission is entitled to request (in the submission itself) to be heard at a Council meeting in support of the submission, either in person or by a person acting on his or her behalf. Notice of the meeting date and time will be given to each person who has lodged a submission.

Copies of the proposed Amendment of the Local Law, the Policy and Background Paper – Development of the Shire's Smoke Free Environment Policy can be inspected at or obtained from Council's Civic Centres.

