
STRATEGY AND POLICY REVIEW COMMITTEE
6 APRIL 2009 **GOVERNANCE AND COMPLIANCE**

A10 **NEW FOOTPATH ACTIVITIES LOCAL LAW**

LOCATION/ADDRESS:

RESPONSIBLE EXECUTIVE DIRECTOR: **GEOFF OULTON, EXECUTIVE DIRECTOR, COMMUNITY DEVELOPMENT AND PLANNING**

AUTHOR: **KIRSTEN HUGHES, COORDINATOR LOCAL LAWS AND ANIMAL MANAGEMENT**

FILE NO.:

ATTACHMENTS:

- 1. PROPOSED NEW FOOTPATH ACTIVITIES LOCAL LAW NO 7.**
- 2. PUBLIC NOTICE OF INTENTION TO CREATE NEW LOCAL LAW.**

1. EXECUTIVE SUMMARY

- 1.1. As of 1 July 2009 the current local law regulating footpath trading, the Footpath Activities Local Law No 7, shall cease to have effect, as a result of the sunset clause provision within the Local Government Act.
- 1.2. In order to continue to regulate footpath trading, the Council must make a new Local Law.
- 1.3. It is proposed that a new Local Law be created, essentially replicating the current Footpath Activities Local Law No 7, with some minor wording changes to improve readability but not alter the intent of the Local Law and the following changes:
 - 1.3.1. A new clause (Clause 12 – special events) has been created to distinguish events, which are regulated by Community Amenity Local Law No 3;
 - 1.3.2. Increase the infringement penalty to 10 penalty units and increase the maximum penalty to 20 penalty units for Clause 7, Permit Required, Clause 11, Offences and Clause 17, Permit Conditions.
- 1.4. The new Local Law will ensure that the regulation of footpath activities can continue.

2. RECOMMENDATION

- 2.1. That the Council resolve that, in accordance with section 119(1) of the Local Government Act 1989, that:
- Council give notice in the Government Gazette and by public notice that it proposes to make the Footpath Activities Local Law No 7 (2009); and
 - Any submissions made in response to the notice in the Government Gazette and the public notice be considered by Council at its meeting on 1 June 2009 commencing at 6.00pm.

3. BACKGROUND AND CONTEXT

- 3.1. Under the Local Government Act Councils have the powers to make local laws. Each local law that is created has a sunset clause, meaning that it ceases to have effect after ten years of operation.
- 3.2. Council made a local law to manage the activities associated with footpath trading activities within the municipality, which includes the ability to charge fees and issue permits for activities on Council footpaths and also to enforce permit activities. On 1 July 1999 the Footpath Activities Local Law No 7 came into effect, and the final date of operation for this local law is 30 June 2009.
- 3.3. In order to continue to manage, permit and enforce the activities associated with footpath trading Council must create a new footpath activities local law. Without a footpath trading local law Council cannot collect fees associated with footpath trading permits or manage any of the activities that are currently regulated on footpaths.
- 3.4. There is currently a review occurring with respect to the current footpath trading guidelines. It is proposed that a new local law is adopted while acknowledging that it may require amendment following the review.

4. RECOMMENDED OPTION

- 4.1. Criterion for recommendation
- The recommendation must ensure that the Council continues to be able to regulate footpath trading activity, as an inability to regulate this activity would have potential to cause significant amenity concerns and also affect income received by Council. The decision must also be guided by statutory requirements under the Local Government Act.

4.2. Sustainability assessment

SOCIAL EQUITY

Social Pillar	<p>A footpath activities local law allows Council to manage footpath activities, taking into account sustainability of the practices and amenity issues that may affect other community members. The local law provides a clear framework for the use of footpaths by private enterprise. Footpath activities provide dynamic and vibrant streets where public dining can be done outdoors.</p> <p>Footpath trading activities are managed using a permit system. Each permit has standard conditions, and some permits will attract additional conditions, all of which are designed to reduce potential negative amenity impacts. Regular inspections of footpath activities are undertaken by local laws officers to ensure permit compliance. There are clear processes to review permits for consistent breaches of permit conditions.</p>
---------------	---

ECONOMIC VIABILITY

Economic Pillar	<p>The management of footpath activities via the Local Law provides an economic benefit to the Council, as it is a user pays system. It ensures Council assets are monitored closely and kept at an appropriate standard. It provides an economic benefit to those businesses that take up footpath trading as there is a culture around outdoor dining within this municipality. Effective regulation also provides some certainty to businesses regarding the financial impact of kerbside trading activities.</p>
-----------------	--

ENVIRONMENTAL RESPONSIBILITY

Environmental Pillar	<p>The use of footpath trading permits requires venues to ensure the adjacent footpath areas are clean. Cleanliness is a condition of the permit. The footpath trading guidelines provide information with respect to the types of furniture that can be used, ensuring that the urban environment remains attractive and live-able.</p>
----------------------	--

CULTURAL VITALITY

Cultural Pillar	<p>The City of Port Phillip has a number of vibrant café and entertainment precincts that embrace the use of outdoor dining. Footpath activities are seen as part of the normal environment, with an eclectic mix of fine dining establishments and small boutique cafes, as well as fast food and displays of goods. Footpath activities bring a significant diversity within the community.</p>
-----------------	---

4.3. Policy and legislative implications

Council has a local law regulating footpath activities. The only changes to this new local law are to increase some penalties to ensure that they act as a more effective deterrent and to clarify that special events are regulated by Community Amenity Local Law No 3..

The provisions of the Local Government Act mean that Council may make a new local law to manage footpath trading activities. The current local law will cease to operate after 30 June 2009. If Council wishes to continue to manage footpath activities then the new local law must be in place by 1 July 2009.

4.4. Risk implications

A local law managing footpath activities provides a significant tool in risk management, as it allows this activity under clearly controlled conditions. Failure to have such a local law could result in significant concerns regarding safety and amenity, as the mode of control by local law would no longer be available. It would also result in a significant loss of income to Council.

4.5. Resource implications

There are no resource implications. The new local law will replace the old local law. Costs associated with legal advice pertaining to this issue have already been budgeted. There will be a small amount of administration to update systems such as the electronic infringements system, but this is negligible and needs to be done at the start of the financial year anyway, to update penalty amounts.

5. ALTERNATIVE OPTIONS

5.1. Alternative 1

Wait until the review of the footpath trading guidelines is completed prior to enacting a new Local Law.

5.1.1. Sustainability assessment

Social Equity Pillar	This would mean that there would be a period of time where footpath activities would not be regulated, which could have serious amenity issues, particularly relating to licensed venues.
Economic Viability Pillar	Delay in enacting a new footpath Local Law would result in reduced income for Council.
Environmental Responsibility Pillar	Delay in enacting a new footpath Local Law would result in numerous environmental risks becoming unregulated for a time.

**AGENDA - STRATEGY AND POLICY REVIEW COMMITTEE - 6 APRIL 2009
GOVERNANCE AND COMPLIANCE**

Cultural Vitality Pillar	Delay in enacting a new footpath Local Law may result in an increase in poor behaviour associated with licensed venues. This has serious cultural vitality issues and is quite contrary to the intended 'café culture' objectives associated with kerbside dining.
--------------------------	--

5.1.2. Policy and legislative implications

To delay the making of this local law would create a policy and legislative vacuum. This is not desirable.

5.1.3. Risk implications

There are substantial risks to safety, amenity and budget associated with a delay in the making of this local law.

5.1.4. Resource implications

The making of the local law is not resource intensive, as described in 3.5, above. This is not at issue.

6. PARTICIPATION AND ENGAGEMENT

6.1. Internal

6.1.1. The people who have been engaged with in relation to this issue are:

Economic Development Department

Manager Parking, Health and Enforcement

Local Laws Unit

6.2. External

6.2.1. The external people and/or organisations who have been engaged with in relation to this issue are:

Maddocks Lawyers

6.2.2. Community consultation will occur through the giving of public notice in the in the Government Gazette and the local media, as required under the Local Government Act. Feedback from this consultation will be the subject of a future Council report.

7. IMPLEMENTATION

7.1. This is an approximate time frame for implementation.

Report to Council	6 April 2009
Resolution by Council	27 April 2009
Statutory Advertising	29 April – 13 May

**AGENDA - STRATEGY AND POLICY REVIEW COMMITTEE - 6 APRIL 2009
GOVERNANCE AND COMPLIANCE**

Report to Council re: feedback	1 June 2009
Resolution by Council to pass new Local Law	22 June 2009
Advertising re commencement of new Local Law	25 June 2009
Commencement of Local Law	1 July 2009

8. COMMUNICATION

- 8.1. Information shall be updated on the Council website and changes shall be communicated to the traders via the Economic Development unit.
- 8.2. Statutory advertising shall provide opportunity for public comment.