

## Community Impact Statement

### Maroondah City Council

#### LOCAL LAW NO 14 GENERAL (AMENDMENT)



#### General Comments

It is proposed to amend Local Law 11, by amending to *Clause 6.1* and introducing a new *Clause 39A* and *Schedule 2* into the Local Law. This will be done by creating a new Local Law 14 General (Amendment).

#### Background

The Victorian Government has been progressively strengthening bans on smoking in public places. The most recent changes to the *Tobacco Act 1987 (Vic)* 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.<sup>1</sup>

Consistent with the move toward broader smoking bans, some councils have prohibited smoking in places not captured by restrictions under State law. For example, the Cities of Port Phillip and Hobsons Bay have prohibited smoking on beaches; Monash City Council has banned smoking at designated council events, as well as around entrances to schools, sports grounds, council offices and community centres; and Melbourne City Council has implemented bans at Block Place, The Causeway, Howey Place, Equitable Place, QV Melbourne, City Square, Goldsbrough Lane, and along running tracks at the Tan and Princes Park.<sup>2</sup>

With the recent changes to outdoor dining smoking bans, Maroondah Councillors requested consultation be conducted to gauge the level of community support for Ringwood Town Square becoming a smoke-free zone, given its outdoor dining spaces and the traffic zone in the centre of the Square. The results of this consultation are available in *Smoke-Free Ringwood Town Square - Report on Consultation - Final*<sup>3</sup>.

The consultation showed significant community support for Ringwood Town Square being smoke free.

This Community Impact Statement is a review document contemplated by the *Local Government Act 1989 (Vic)* whenever local laws are proposed to be made. This document intends to provide the reader with an accessible explanation and justification for Maroondah City Council's decision to exhibit a new local law related to smoke free areas. This document also forms the start of the formal consultation process.

#### Objectives

The objectives of the proposed Local Law are to:

- manage public places to enhance their enjoyment by the general public;
- prohibit smoking of tobacco products in certain public places; and
- provide for the peace, order and good government of the Municipal District.

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<sup>1</sup> Changes implemented by the *Tobacco Amendment Act 2016*. Available from [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au)

<sup>2</sup> Scollo, MM and Winstanley, MH. *Tobacco in Australia: Facts and issues*. Melbourne: Cancer Council Victoria; 2017. Available from [www.TobaccoInAustralia.org.au](http://www.TobaccoInAustralia.org.au)

<sup>3</sup> <http://www.maroondah.vic.gov.au/About-Council/Have-your-say/Consultations/Consultation/Should-Ringwood-Town-Square-be-a-smoke-free-zone>

**Assessment and Community Consultation**

The following table provide a summary of the proposed amendments to Local Law 11 by the creation of Local Law 14. This Local Law Community Impact Statement is in line with 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 <i>Tobacco Act 1987</i> 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.</p> <p>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 the public space to outdoor dining and community gathering places.</p> <p>Tobacco is the leading cause of preventable drug-related deaths and hospitalisation in Australia (NHMRC, 2009). It is estimated to cause 15% of all deaths, mainly through chronic conditions resulting from long-term smoking (DEECD, 2011). The adverse long-term health effects of smoking include increased risk of developing emphysema, coronary disease, and various cancers.</p> <p>The Victorian Population Health Survey 2014<sup>4</sup> indicates that, in the Eastern Metropolitan Region (EMR), 13.1% of the adult population currently smoke tobacco at least daily. Maroondah has the highest rate of smokers in the EMR, and is also higher than the State average (see Table 1).</p>

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<sup>4</sup> <https://www2.health.vic.gov.au/public-health/population-health-systems/health-status-of-victorians/survey-data-and-reports/victorian-population-health-survey/victorian-population-health-survey-2014>

Section	Outcome																																								
	<table><tr><th>LGA</th><th>Percent</th><th>LL</th><th>UL</th></tr><tr><td>Boroondara</td><td>7.2 *</td><td>4.1</td><td>12.3</td></tr><tr><td>Knox</td><td>13.3</td><td>8.5</td><td>20.3</td></tr><tr><td>Manningham</td><td>8.8 *</td><td>4.9</td><td>15.3</td></tr><tr><td>Maroondah</td><td>13.4</td><td>8.2</td><td>21.0</td></tr><tr><td>Monash</td><td>10.8</td><td>7.0</td><td>16.2</td></tr><tr><td>Whitehorse</td><td>5.2 *</td><td>3.0</td><td>8.9</td></tr><tr><td>Yarra Ranges</td><td>8.9</td><td>6.0</td><td>13.0</td></tr><tr><td>Eastern Metropolitan</td><td>9.8</td><td>8.1</td><td>11.8</td></tr><tr><td>Victoria</td><td>13.1</td><td>12.3</td><td>14.0</td></tr></table> <p>Table 1: Proportion of adults who are current smokers, Eastern Metropolitan by LGA, 2014</p>	LGA	Percent	LL	UL	Boroondara	7.2 *	4.1	12.3	Knox	13.3	8.5	20.3	Manningham	8.8 *	4.9	15.3	Maroondah	13.4	8.2	21.0	Monash	10.8	7.0	16.2	Whitehorse	5.2 *	3.0	8.9	Yarra Ranges	8.9	6.0	13.0	Eastern Metropolitan	9.8	8.1	11.8	Victoria	13.1	12.3	14.0
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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>It is consistent with the Maroondah City Council - <i>Council Plan 2017-2021</i>. The Council Plan is Maroondah City Council’s medium-term strategic document that sets key directions and priority actions to work towards the long-term community vision outlined in <i>Maroondah 2040: Our future together</i>. Both documents include many references to the health and wellbeing of its residents.</p> <p><b><i>Maroondah 2040: our future together</i></b></p> <p><b>A safe healthy and active community</b></p> <p>1.6 Actively promote health and wellbeing principles and initiatives within the community</p> <p>1.10 Embrace a preventative evidence-based approach to addressing issues of chronic and communicable disease, food safety, and public health</p> <p><b>A thriving and well-built community</b></p> <p>6.13 Coordinate and advocate for the increased utilisation, longevity and availability of fit-for-purpose public, private and not-for profit buildings and spaces that can act as key places for neighbourhood connection</p>																																								

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	<p><b>An attractive community</b></p> <p>6.6 Facilitate a vibrant day and night-time economy through development of high quality public spaces that incorporate diverse food, entertainment and cultural precincts</p> <p><b>An empowered community</b></p> <p>8.9 Create opportunities for shared decision making through active community involvement</p> <p>8.10 Work in partnership to advocate for and champion the needs and aspirations of the community to other levels of government, service providers and the business sector</p> <p>8.11 Foster a Council culture of collaboration and partnerships with individuals, community groups, businesses, service providers and other levels of government</p> <p><b>Maroondah Health and Wellbeing Plan 2017-2021</b></p> <p>1.1.5 Develop a Tobacco Control Strategy that includes legislative requirements and health promotion activities such as investigating the feasibility of localised smoking bans in public places</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.</p> <p>Measures of success will include –</p> <ul style="list-style-type: none"> <li>• Monitoring level of compliance and ease of understanding by public</li> <li>• Seeking feedback from visitors in the prescribed area</li> <li>• Ensuring resources available to administer and enforce the Local Law</li> </ul>
Considering possible alternatives to 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 including Banyule, Monash and Melbourne City Councils (prior to introducing local laws).</p>

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	<p>Promoting awareness through a well-developed communication strategy where people congregate generally appeals to a community sense of conscience and may have the desired effect of self-regulation. However, the <i>World Health Organisation</i><sup>5</sup> reports that introducing laws to ban smoking are a more popular and effective approach, and become more so after they are implemented.</p> <p>Qualitative feedback from the community - received during both initial consultations – showed that enforcement or regulation were necessary if smoking bans were put into place.</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 <i>Local Government Act 1989</i> . 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 <i>Tobacco Act 1987</i> provides for outdoor smoking bans but does not address this type of public space. It complements the legislative objectives of the bans to outdoor dining areas of commercial premises.
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 needs, recreational habits and demography 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"> <li>• Tobacco Act 1987</li> <li>• Environment Protection Act 1970</li> <li>• Public Health and Wellbeing Act 2008</li> <li>• Infringements Act 2006</li> </ul> <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>
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. State legislation does not prescribe this type of public land as an area that is required to be smoke free.

<sup>5</sup> *Making cities Smoke-free*, World Health Organisation, 2011, accessed on 20 June 2018 at [http://apps.who.int/iris/bitstream/10665/44773/1/9789241502832\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/44773/1/9789241502832_eng.pdf)

Section	Outcome
Identifying planning scheme requirements with which a Local Law may be inconsistent	<p>This proposed Local Law is neither inconsistent with, nor duplicates, the Maroondah Planning Scheme or the objectives of Victorian Planning Legislation, which are highlighted below:</p> <p><b><u>Planning and Development Act 1987</u></b>  <i>Section 4 Objectives</i></p> <p>(1) <i>The objectives of planning in Victoria are—</i></p> <p>(c) <i>to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria;</i></p> <p><b><u>Maroondah Planning Scheme</u></b>  <b>11.06-5 Neighbourhoods</b>  <i>Objective:</i></p> <ul style="list-style-type: none"> <li><i>To create a city of inclusive, vibrant and healthy neighbourhoods that promote strong communities, healthy lifestyles and good access to local services and jobs.</i></li> </ul> <p><i>Strategy:</i></p> <ul style="list-style-type: none"> <li><i>Create neighbourhoods that support safe communities and healthy lifestyles.</i></li> </ul> <p><b>21.05 Open space</b>  <i>Objective 1:</i></p> <ul style="list-style-type: none"> <li><i>To provide equitable access and distribution of open space that caters for a diverse range of formal and informal leisure uses for the entire community.</i></li> </ul> <p><b><i>Strategies:</i></b></p> <ul style="list-style-type: none"> <li><i>Provide for community involvement in the planning and management of Maroondah’s open space network.</i></li> <li><i>Provide opportunities for adolescents to be active as well as just socialise in safe, observable open spaces in each precinct</i></li> </ul> <p><i>Objective 2</i></p> <ul style="list-style-type: none"> <li><i>To ensure the preservation and enhancement of open space resources in the municipality that caters for changing demands.</i></li> </ul> <p><i>Objective 3</i></p> <ul style="list-style-type: none"> <li><i>To enhance the visual, environmental and recreational amenity of the municipality through the provision of an extensive, high quality open space network that is sustainable and accessible</i></li> </ul> <p><b>21.06 Built form and urban design</b>  <i>Objective 1</i></p> <ul style="list-style-type: none"> <li><i>To ensure the ongoing development of a quality and attractive built environment based on sound planning and consistent urban design principles.</i></li> </ul>

Section	Outcome
	<p><b>Strategy</b></p> <ul style="list-style-type: none"> <li>○ <i>Ensure that Maroondah's public facilities, buildings, roads and paths are designed to reflect the environmental standards of the municipality and to minimise ongoing maintenance.</i></li> </ul> <p><b>Objective 2</b></p> <ul style="list-style-type: none"> <li>● <i>To protect and enhance the visual amenity of residential, commercial and industrial precincts and streetscape.</i></li> </ul> <p><b>Strategy</b></p> <ul style="list-style-type: none"> <li>○ <i>Promote the development of sustainable and functional urban places that foster a sense of community.</i></li> </ul> <p><b>Objective 3</b></p> <ul style="list-style-type: none"> <li>● <i>To encourage development that provides and creates high quality urban places.</i></li> </ul> <p><b>Strategy</b></p> <ul style="list-style-type: none"> <li>○ <i>Require all new development to incorporate the highest standards of urban image, landscape design and building design innovation.</i></li> </ul>
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.
Legislative approach adopted	<p>Consistent with other local governments (City of Melbourne), 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"> <li>• ensuring the Local Law does not conflict with, overlap or duplicate State legislation, including other statutory rules;</li> <li>• providing for reasonable penalties; and</li> <li>• developing reasonable enforcement procedures, including an education approach, official warnings where appropriate and internal review process for infringement notices.</li> </ul> <p>Council has also ensured that the proposed Local Law</p> <ul style="list-style-type: none"> <li>• is written in plain language, using common Australian terms and in an unambiguous manner which is in accordance with modern standards of drafting local laws;</li> <li>• is consistent with the principles, objectives and intent of the <i>Local Government Act 1989</i>;</li> <li>• does not contain any matter that should properly be dealt with by any other Act;</li> <li>• does not unduly trespass on rights and liberties of the person; and</li> <li>• is not inconsistent with the principles of justice and fairness.</li> </ul>

Section	Outcome
The least burden / greatest advantage test for Local Laws	<p>In consultation undertaken in 2017, over 90% of respondents supported Ringwood Town Square being smoke free.</p> <p>In consultation undertaken in 2018, 86.3% of respondents supported Croydon Town Square being smoke free.</p> <p>The benefits could include:</p> <ul style="list-style-type: none"> <li>• a potential increase in business activities and events as the area becomes more inviting and attractive to patrons (although those who smoke may be discouraged to be present, with the consequent risk that some patrons may go elsewhere);</li> <li>• a cleaner, more pleasant experience for patrons and members of the public;</li> <li>• reduced risks to health associated with second hand smoke;</li> <li>• modelling behaviour to children, as they would not be exposed to smoking whilst visiting the areas;</li> <li>• provision of a clear understanding of the area that is smoke free for community members; so, it is not confused by outdoor dining zones; and</li> <li>• the provision of a supportive environment for those wishing to quit smoking and those who have recently quit.</li> </ul> <p>The low impact regulatory approach proposed in implementing this proposed Local Law has minimal or no compliance costs for community and businesses.</p> <p>The potential cost implications for Council could include:</p> <ul style="list-style-type: none"> <li>• the design, development and implementation of signage and butt out bins at the entrances to prescribed smoke free places;</li> <li>• staff resources with the development and presenting of community/trader educational sessions. This is already incorporated in day to day business;</li> <li>• development, design and printing of educational materials; and</li> <li>• media articles and positive messaging.</li> </ul> <p>The introduction of a designated smoke free area in Ringwood Town Square and Croydon Town Square and other public places, 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.</p> <p>Smoke-free laws are good for business<sup>6</sup>. Not a single scientifically objective study has found a negative economic impact of introducing smoke-free legislation. Objective, peer-reviewed studies have consistently found that smoke-free laws have a neutral or positive impact</p>

<sup>6</sup> *Making cities Smoke-free*, World Health Organisation, 2011, accessed on 6 Feb 2018 at [http://apps.who.int/iris/bitstream/10665/44773/1/9789241502832\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/44773/1/9789241502832_eng.pdf)



Section	Outcome
	<p>on businesses, including those in the hospitality or catering sector. This is also reflected in the results of Council's recent consultation<sup>7</sup>. Over 60% of respondents stated that they would be more likely to visit Ringwood Town Square more often to shop (33%), dine (60%) and attend events (37%) if it was smoke free.</p> <p>In the recent online survey for Croydon Town Square – 17 respondents identified as being a business owner in Main Street area. Of those, 76.5% stated they supported the idea of a smoke-free Town Square, while 5 businesses expressed concern that it may impact their business. It should be noted, however, that 76.6 percent of survey respondents (n=311) indicated that they would be more likely to use Croydon Town Square as a meeting place or to attend events if the venue was made smoke-free.</p> <p>Alternative locations outside the designated smoke free area will be available for smokers.</p>
Restriction of competition	The proposed Local Law may restrict competition by distinguishing areas such as Ringwood and Croydon Town Squares from other locations where there are business premises. Smoke-free areas may attract prospective customers from other areas or discourage attendance by smokers. If the proposed Local Law has the effect of restricting competition the benefits of the restriction outweigh the disbenefits of the restriction, and can be characterised as being in the public interest.
Penalties	<p>Penalties are designed as a deterrent, both specific and general, consistent with the principles of the Victorian <i>Sentencing Act 1991</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.</p> <p>The penalty schedule is highlighted within Schedule 1 of the proposed Local Law.</p>
Permits	There are no permits applicable to the proposed Local Law
Fees	There are no fees applicable to the proposed Local Law
Performance standards or prescriptive	<p>To the extent that it is practicable, a performance based standard has been adopted for the proposed Local Law.</p> <p>A performance based approach provides the objective that the law is to expected to achieve without strict and rigid specifications for compliance.</p>
Charter of Human Rights and Responsibilities	<p>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> (Charter).</p> <p>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</p>

<sup>7</sup> <http://www.maroondah.vic.gov.au/About-Council/Have-your-say/Consultations/Consultation/Should-Ringwood-Town-Square-be-a-smoke-free-zone>

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	<p>(ICESCR), which has been ratified by Australia. Article 12 requires parties the ICESCR to take steps to achieve the full realisation of this rights, including measures necessary for the prevention, treatment and control of epidemic diseases and the healthy development of children. Health is a fundamental human right that is essential for the enjoyment of many of the individual rights protected by the Charter (including the right to life which is protected in section 9 of the Charter).</p>
Community Consultation	<p>Over a three-month period from late August to mid November 2017 the Maroondah community was asked if it supported the introduction of smoking bans in Ringwood Town Square, as well as how such a ban would be likely to influence their use of the space.</p> <p>Residents could provide a response by attending two activations at Ringwood Town Square; one activation at Café Consult at Maroondah Festival; and a survey, available in both hard-copy at Council's three service centres and in an on-line format. A separate on-line survey was sent to the businesses located in Ringwood Town Square and a drop-in session was held specifically for businesses in Town Square.</p> <p>With a total of 1,596 responses received, Council was able to gauge a significant degree of support with <b>90 per cent</b> of correspondents supporting a smoke-free Ringwood Town Square.</p> <p>Over a shorter period in July 2018, the Maroondah community were asked if they supported the introduction of smoking bans in Croydon Town Square when it opens later in the year. Residents could provide a response by attending two activations in Croydon Main Street, and a survey in both hard-copy at Council's three service centres and in on-line format. Details of the survey were distributed through the Croydon Main Street Traders Association on 2 occasions.</p> <p>With a total of 700 responses received, there was a significant degree of support: with <b>86.3 per cent</b> of correspondents also supporting a smoke-free Croydon Town Square. A significant number of respondents indicated they would be more likely to use Croydon Town Square as a meeting place or attend events if it was smoke-free.</p> <p>Of the 294 responses from the two activations in Main Street - 79.6 percent supported the idea; 9.8% were neutral, and 10.5% said they didn't support the idea.</p>
Submissions	<p>As part of exhibiting the proposed Local Law a formal submission process will now be available in accordance with the legislative requirements prescribed under section 223 of the <i>Local Government Act 1989</i>. Council will publish a public notice calling for written submissions in relation to the proposed Local Law. Those submissions will then be considered by Council as part of the formal consultation process.</p>