

## 10. Reports by the Organisation

### 10.1 RESPONSE TO PETITION - TO BAN SMOKING IN AND AROUND RICKETTS POINT MARINE SANCTUARY

City Planning & Amenity - Amenity Protection  
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#### Executive summary

##### **Purpose and background**

The purpose of this report is to present the proposed response to a petition seeking to ban smoking in and around Ricketts Point Marine Sanctuary.

At the Ordinary Council meeting on 19 February 2019, Council received a petition containing 20 signatories (10 are Bayside residents) seeking Council to:

*“Ban smoking on the beaches, car parks, barbeques and foreshore areas in and around the Ricketts Point Sanctuary”.*

Ricketts Point Marine Sanctuary is a 115 hectare sanctuary that forms part of a system of 13 marine national parks and 11 smaller marine sanctuaries created in November 2002 by the Victorian Government to ensure that representative samples of Victoria’s diverse and distinctive marine environment are conserved for future generations.

Ricketts Point Marine Sanctuary is significant as it protects a diversity of habitats including rocky sandstone intertidal and subtidal reefs, sandy beaches, subtidal soft substrates and seagrass beds in a small accessible area in a highly urbanised setting.

The sanctuary has diverse invertebrate fauna and provides roosting and feeding areas for migratory and threatened bird species. The sanctuary also contains unusual geomorphological features, including extensive rock platforms and sea caves.

In addition to the sanctuary, there are a number of highly valued foreshore locations within Bayside, including the Brighton Dendy Street Beach area and Brighton Dunes.

#### Littering and cigarette smoke exposure

The most recent ‘Clean Up Australia’ rubbish report indicates cigarette butts are the most common item of litter, representing 12% of all litter collected. It is estimated that approximately 7 billion of the 24 billion filtered cigarettes sold every year in Australia are littered.

While localised responses may have some benefits in reducing litter, the protection of our marine environments requires a holistic approach, as cigarette butt litter from across Melbourne can get washed into stormwater drains, into waterways and eventually the Bay. As cigarette butts are made from non-biodegradable plastic and can take 12-15 years to break down, they can be transported long distances.

A key environmental impact of cigarette butts is that they are mistaken for food and have been found in the stomachs of fish, birds, sea turtles and other marine creatures. As the butts swell in the animal stomach they may cause false satiation, leading to the animal eventually starving to death. There is also a potential concern regarding the leaching of toxic chemicals, but this has not been proven.

There are clear human health impacts from direct exposure to cigarette smoke as well as exposure to second hand cigarette smoke. However, the risks associated with brief second

hand smoke exposure in an outdoor setting such as a beach or parks have not been assessed by officers.

## Key issues

### Relevant legislation

The *Tobacco Act 1987* regulates the use, supply and promotion of tobacco in Victoria. The Act is designed to reduce the incidence of smoking in the community and the avoidable illness and death which result from tobacco smoke.

State-wide initiatives include bans on smoking in food retail establishments, and in outdoor areas such as playgrounds, outside school and preschool entrances and in between the lifesaving flags on patrolled beaches. In addition, there is a ban on the sale of tobacco products to children. Council, through the Environmental Health Officers, enforces this legislation.

The Victorian Government initiatives are primarily aimed at reducing the prevalence of smoking among adults and the uptake of smoking by young people and to achieve an ongoing reduction in exposure to second hand smoke by non-smokers including children.

Littering is regulated under the *Environment Protection Act 1970* with an infringement of \$322 for an offence. Council, through Local Law officers, are able to enforce this legislation.

### Council's Local Law No.2 'Neighbourhood Amenity'

Implementation of a smoking ban at Ricketts Point Marine Sanctuary can occur under Council's current Local Law No. 2 'Neighbourhood Amenity' ("Council's Local Law").

Council's Local Law (Clause 68) allows Council to declare a Municipal place or part of a Municipal place to be smoke free according to the incorporated guidelines.

In preparing a Report to Council for a resolution declaring an area to be Smoke Free, Council officers must follow the following procedure:

- Prepare and implement a community and internal stakeholder consultation plan consistent with Council's Communication and Engagement Policy;
- Provide a summary of key evidence-based research and relevant government and comparative municipal initiatives;
- Prepare an analysis of enforcement issues, including procedures and estimated costs to Council;
- Prepare a risk analysis for the proposed declaration; and
- Prepare a Report for Council summarising all of the above, including a recommendation for an area to be declared 'smoke free'.

Council's Local Law was established in April 2012 and expires in April 2022. A full review will commence in late 2020. It is possible to immediately commence the procedure for declaring a local smoking ban at Ricketts Point Marine Sanctuary. However, if the Local Law full review alters the above provisions in Clause 68, this could impact the validity of any existing smoke free declarations. There are also clear efficiencies with an integrated review that considers smoking at all Municipal places, in comparison to a review at a local level such as Ricketts Point Marine Sanctuary.

### Local Government Research

Surf Coast Shire has a Local Law that bans the act of smoking on the foreshore (sand only). The motivation for the introduction of the Local law was to alleviate environmental and litter concerns. An educational approach is taken and patrols are undertaken as part of animal management patrols.

City of Melbourne has an amendment to its Local Law that allows Council to declare a municipal place as smoke free. The City of Melbourne has declared some laneways and public parks (The Tan and Princes Park, Carlton) as smoke free areas. The objective is to highlight the risks of passive smoking and to promote the benefits in ceasing smoking.

City of Hobart have recently introduced smoking bans in selected parks, under the state Public Health Act. The driver was to ensure community enjoyment of the parks, as well as reducing the impact of cigarette butt litter on the environment.

Waverley Council, which includes Bondi Beach in New South Wales, has prohibited smoking on its beaches (sand only). The motivation for the introduction was to alleviate environmental and littering concerns. Due to the differences in state legislation, this was implemented through prohibition signage rather than a Local Law.

The introduction of the above controls was supported by extensive community engagement. Advice from officers from these Councils is that enforcement of smoking bans is challenging and the focus is primarily on education. There have been few infringements issued typically linked to littering offences (rather than the act of smoking).

### Implications of a Local Law smoking ban

The key implications / considerations of implementing a Local Law ban on smoking at Ricketts Point Marine Sanctuary are:

- There is an available vehicle that enables Council to assess and implement a ban (Council's Local Law). There isn't any other legislation that bans smoking in this area; however, littering cigarette butts is already addressed under the Environment Protection Act;
- Litter and second hand smoke exposure are clearly important issues; however, a ban on smoking at Ricketts Point may have minimal impact on either issue. This reflects the scale of litter sources to the marine environment and the dilution of smoke in the outdoor location;
- As there are a number of high value foreshore locations within the municipality, there are efficiencies in reviewing smoking bans holistically for Municipal places;
- A smoking ban at Ricketts Point will result in community expectations that smoking does not occur and that Council allocates resources to enforce the ban. Achieving high rates of compliance would require intensive, ongoing patrols. An analysis of enforcement issues including costs, would be undertaken as part of the review process to declare a smoke free ban;
- While there are Councils with smoking bans, they undertake little enforcement and primarily focus on education. Therefore, Council could implement a robust education campaign, without imposing a smoking ban. The education could focus on all sources of litter e.g. plastics and cigarette butts to drive behavioural change; and
- The areas declared as smoke free will need to be clearly defined with supporting signage installed. The specific locations that are smoke free areas will be defined in the review process and will need to consider potential impacts such as on the operation of cafes.

Attachment 1 shows the proposed areas for review for the Ricketts Point Marine Sanctuary and surrounds and Attachment 2 shows the potential areas for review for the Brighton Dendy Street Beach area and Brighton Dunes.

### **Recommendation**

That Council:

- 1) Commences a process in accordance with Clause 68 of Council's Local Law No.2 'Neighbourhood amenity', to declare the following Municipal places as smoke-free:
  - a) Ricketts Point Marine Sanctuary and surrounds (the area identified in Attachment 1 of the Report); and
  - b) Brighton Dendy Beach including Brighton Dunes (the area identified as Attachment 2 of the Report).
- 2) Receives a further report following the completion of the engagement, research and risk assessment process, to determine specific areas proposed to be declared as smoke free.

### **Support Attachments**

1. Ricketts Point Marine Sanctuary - Proposed review area ↓
2. Brighton Dendy Beach and Brighton Dunes - Proposed review area ↓

## **Considerations and implications of recommendation**

### **Liveable community**

#### **Social**

The reduction of cigarette butt litter in Bayside streets and on beaches will result in cleaner streets and beaches and improved amenity for the Bayside community and visitors.

Council's Local Law No.2 is designed to secure community safety, protect public assets and enhance neighbourhood amenity.

#### **Natural Environment**

The reduction of cigarette butt litter will enhance protection for local wildlife include marine birds and mammals, shellfish and fish.

#### **Built Environment**

There are no Built Environment implications as a result of this report

#### **Customer Service and Community Engagement**

Clause 68 of Council's Local Law requires community consultation to be undertaken as part of the process to declare any Municipal places as smoke free.

#### **Human Rights**

Council has the power to make local laws for or with respect to any act, matter or thing in response of which the Council has a function or power under the *Local Government Act 1989*. In doing so, a Local Law must not be inconsistent with any Act or regulation including Human Right considerations.

#### **Legal**

The *Local Government Act 1989* prescribes the process that Council must undertake for an amendment or review of the Local Law. The Local Law provides guidelines for the process to declare a Municipal Place as being non-smoking.

#### **Finance**

The cost of the process to implement a smoking ban is estimated at approximately \$30,000 which includes community consultation, evidence based research and legal advice. Moderate enforcement action (twice daily patrols) would be an incremental cost of approximately \$5,000 per annum.

#### **Links to Council policy and strategy**

The reduction of cigarette butt litter as part of Council's operations achieves Goal 5 'Environment' of the Council Plan, states that:

*"Council and the Bayside community will be environmental stewards, taking action to protect and enhance the natural environment, while balancing appreciation and use with the need to protect natural assets for future generations."*

**Options considered****Option 1(Recommended Option)**

<b>Summary</b>	Commence the process to implement a smoking ban at Ricketts Point Marine Sanctuary and Brighton Dendy Street Beach area.
<b>Benefits</b>	The ban will be introduced earlier than a holistic review of smoking at Municipal places.  The learnings from the process can inform a subsequent holistic approach to smoking at Municipal places.
<b>Issues</b>	The issue will be addressed in an ad hoc approach rather than considering Municipal places and litter in a holistic manner.  A full review of the Local Law is scheduled to commence in 2020. If there are changes to the current procedure for declaring a Municipal place as being non-smoking, then any existing bans may need to be revisited.

**Option 2**

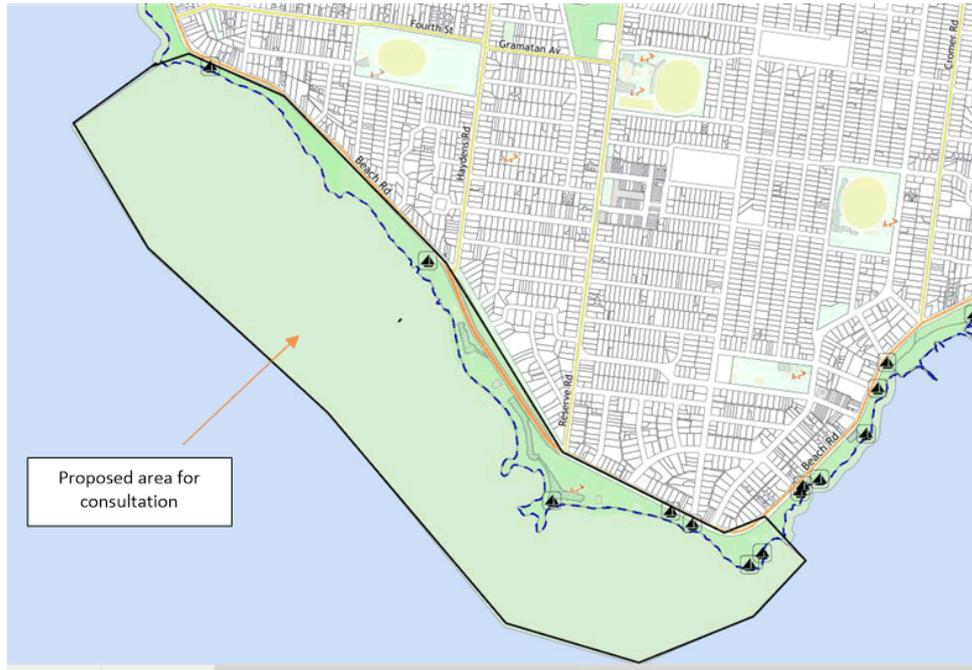
<b>Summary</b>	Undertake a holistic review of the potential value of smoking bans at all Municipal places.
<b>Benefits</b>	Provides a holistic focus on smoking and litter rather than a single local solution and recognises the broad sources of litter to the marine environment.  A holistic review of smoking at Municipal places is more efficient than ad-hoc reviews at individual sites.
<b>Issues</b>	It will take longer to review and implement a holistic approach to Municipal places, in comparison to solely focusing on Ricketts Point Marine Sanctuary and Brighton Dendy Street Beach.  A full review of the Local Law is scheduled to commence in 2020. If there are changes to the current procedure for declaring a Municipal place as being non-smoking, then any existing bans may need to be revisited.

**Option 3**

<b>Summary</b>	No bans to be implemented.
<b>Benefits</b>	Avoids the costs of preparing and enforcing a smoking ban.
<b>Issues</b>	While there can be enforcement of littering through the Environment Protection Act, there would not be enforcement tools for smoking.

Ricketts Point

Attachment 1



Brighton Dendy Beach and Brighton Dunes

Attachment 2

