

# Agenda

## Council Meeting

**Monday, 12th October 2020**

Commencing at 6.30pm

via the Zoom platform

[kingston.vic.gov.au](http://kingston.vic.gov.au)

Julie Reid  
Chief Executive Officer  
Kingston City Council



**Notice** is given that a Meeting of Kingston City Council will be held at 6.30pm via the Zoom platform, on Monday, 12 October 2020.

**1. Apologies**

**2. Foreshadowed Declaration by Councillors, Officers or Contractors of any Conflict of Interest**

*Note that any Conflicts of Interest need to be formally declared at the start of the meeting and immediately prior to the item being considered – type and nature of interest is required to be disclosed – if disclosed in writing to the CEO prior to the meeting only the type of interest needs to be disclosed prior to the item being considered.*

**3. Planning and Development Reports**

3.1 Response to Victoria's Hospitality Roadmap to Reopening ..... 5

**4. Confidential Items**

Nil

### **3. Planning and Development Reports**

12 October 2020

**Agenda Item No: 3.1**

## **RESPONSE TO VICTORIA'S HOSPITALITY ROADMAP TO REOPENING**

**Contact Officer: Tania Asper, Manager City Economy and Innovation  
Morgan Henley, Festivals and Events Coordinator**

### **Purpose of Report**

This report is in response to Victoria's Hospitality Roadmap to Reopening which was announced on 6 September 2020. The Roadmap to Reopening outlines considered and gradual steps to ensure that businesses can open safely and effectively. For hospitality businesses this means primarily outdoor dining with restricted indoor dining from 19 October 2020, subject to State Government announcements confirming the transition to the next step in the Roadmap.

The report also responds to Notice of Motion No. 38/2020, Outdoor Trading Provisions at the Council meeting on 21 September 2020. The Notice of Motion sought information on what local laws and fees and charges would need to be changed to allow hospitality businesses (food and beverage retailers) to maximise their opportunity to take advantage of relaxed outdoor trading provisions; and the identification of any unintended consequences of these temporary arrangements.

### **Disclosure of Officer / Contractor Direct or Indirect Interest**

No Council officer/s and/or Contractor/s who have provided advice in relation to this report have declared a Conflict of Interest regarding the matter under consideration.

### **OFFICER RECOMMENDATION**

That Council:

1. Delegate the General Manager Planning and Development and Manager City Economy and Innovation the function of considering applications for licences for outdoor dining pop-ups as described in Section 3.3 of this report that would otherwise be determined by Council under Clause 6.6 of the Commercial Use of Council Land Policy until 30 June 2021.
2. Consider a report at its November Council Meeting for any significant proposals by businesses for the Commercial Use of Council Land (that fall outside those described in Section 3.3 of this report) including where Council is the Committee of Management.
3. Waive licence fees for outdoor dining pop-ups issued under the Commercial Use of Council Land Policy until 30 June, 2021 and recover these costs as appropriate through the State Government's 'Local Council Outdoor Eating and Entertainment Package' funding.
4. Waive bonds for outdoor dining pop-up licences under the Commercial Use of Council Land Policy until 30 June 2021 at the discretion of the Manager City Economy and Innovation following advice from relevant Council Departments and recover these costs as appropriate through the State Government's 'Local Council Outdoor Eating and Entertainment Package' funding.

5. Note that mobile food businesses (i.e food trucks) are not eligible to apply for Outdoor Dining Pop-ups and that through the initial establishment of Council's support program it continues to encourage the activation of such businesses as described in Section 3.3.6 of this report.
6. Monitor its initial approach to supporting 'Victoria's Hospitality Roadmap to Reopening' following the first phase of business support identified in this report, and that Councillors are briefed on the 'take up' of the initiatives in December 2020.

## 1. Executive Summary

On 6 September, the Victorian Government announced Victoria's roadmap for reopening which outlines considered and gradual steps to ensure that businesses can open safely and effectively. Hospitality is expected to reopen from Monday 19 October for predominantly outdoor seated service. Mobile food businesses (ie. food trucks) are specifically excluded from the Victorian Government's Hospitality Roadmap Guidelines with support for outdoor dining activation being provided to commercial premises only. Council will continue to provide support to these business in identified existing locations.

In preparation of the reopening of hospitality businesses in line with the government's focus on primarily outdoor dining, this report outlines the approach to outdoor dining activation which is categorised into three primary streams:

- **Footpath Activities** – Businesses with a Footpath Activities Permit will be able to apply to expand their outdoor area to the footpath in front of adjoining businesses; and/or into adjacent kerbside car parking spaces (this is still being investigated by Council officers). Any business wishing to use the footpath without a Footpath Activities Permit will be required to obtain this permit first.
- **Outdoor Dining Pop-ups** – Businesses can apply to establish a temporary outdoor dining pop-up in an area of Council-owned or managed land and is disconnected from their business premises. Outdoor dining pop-ups will be activated on certain days and times of the week, such as weekends or evenings.
- **Council-led Activations** – Public outdoor "dining halls" will be developed with a priority on implementing activities that support whole-of-centre. Nothing specific has been proposed at this time.

It is proposed that permits for expanded outdoor dining to the adjoining businesses will be valid to 30 April 2021 with the option to extend for a further two months (to 30 June 2021). The adjacent kerbside parking (parklets) would be installed on a trial basis to 31 January 2021. A review of the parklets will be managed by Council officers to determine whether the timeframe should be extended or car parking reinstated.

To enable licences to be quickly issued for Outdoor Dining Pop-ups changes will be required to the manner in which the Commercial Use of Council Land Policy is applied. It is recommended that the General Manager Planning and Development and Manager City Economy and Innovation become the delegated authority for approving licences for outdoor dining pop-ups as described above that would otherwise be determined by Council under Clause 6.6 of this policy until 30 June 2021 provided all the required internal and external approvals (eg. Coastal Management Act Consent) are established. It is also recommended that fees be waived for these licences until 30 June 2021. In addition, it is recommended that the operational requirement for a Bond from applicants be waived until 30 June 2021 at the discretion of the Manager City Economy and Innovation following advice from relevant Council Departments and recover these costs as appropriate through the State Government's 'Local Council Outdoor Eating and Entertainment Package' funding.

The report proposes that a report be brought to the November Council Meeting for any sufficiently advanced proposals for a more extended use of Council land or land Council is the Committee of Management over that would involve sustained occupation of public or private land and not be of a 'pop up', 'footpath trading' or 'parklet' nature.

Notice of Motion 38/2020 considered at the Council Meeting on 21 September, 2020 sought advice on 'unintended consequences' of the proposed approaches to outdoor dining. Recognising the balance that needs to be struck between supporting business and managing the challenges this will bring those 'unintended consequences' include:

- Increased complaints
- Damage to Council assets
- Identification of non-compliant businesses.

## 2. Background

In response to Notice of Motion No. 38/2020, Outdoor Trading Provisions at its 21 September 2020 Meeting, Council resolved:

*That officers provide an urgent report on what local laws and fees and charges would need to be changed to allow hospitality businesses (food and beverage retailers) to maximise their opportunity to take advantage of relaxed outdoor trading provisions. The report should also note any concerns or unintended consequences discovered.*

In response to the consideration of extending rent relief to its commercial tenants during the extended COVID-19 State of Emergency, at its 21 September 2020 Meeting, Council also resolved to:

*That Council having consideration of the State Government's "Roadmap to Recovery" Program extends its commercial rent waiver for commercial tenants currently receiving the waiver from 30 September 2020 to 31 December 2020.*

In response to fees associated with Footpath Activities Permits, at its 24 August 2020 Meeting, Council resolved:

1. *Council extend all current Footpath Activities Permits to 31 July 2021 subject to appropriate documentation being submitted to Council as part of the 2020/2021 renewal process.*
2. *No fees be charged for any new Footpath Activities Permit applications up to 31 July 2021 and Amendments be made to Council's Budget to deduct the assumed income of \$115,989.*

## 3. Discussion

### 3.1 Council Plan Alignment

Goal 4 - Our free-moving safe, prosperous and dynamic city  
Direction 4.1 - Vibrant shopping centres and employment precincts

Local government has a critical role to play in enabling businesses to expand their outdoor dining areas. Through waiving of fees and simplifying approval processes, Council can support businesses to re-open and operate in a safe manner that is in accordance with Victorian Government requirements.

### 3.2 Consultation/Internal Review

An internal working group has been established to oversee the implementation of outdoor dining. Under the guidance of the Manager City Economy and Innovation, the core working group comprises representatives from Festivals and Events, Business Directions, City Transformation, Environmental Health and Traffic.

Other key internal stakeholders have helped develop Council's response including:

- Infrastructure
- Waste
- Public Places and Projects
- Sport and Recreation
- Parks
- Statutory Planning
- Property Services
- Risk
- Local Laws

### 3.3 Operation and Strategic Issues

#### 3.3.1 Footpath Activities Permit

The primary approach to maximising outdoor dining for businesses is to allow existing footpath activity permit holders to expand their operations into the adjacent footpath activity area. Where businesses do not have a valid Footpath Activities Permit, they will be required to obtain one before they commence occupying any part of the footpath.

Where businesses look to expand into the adjacent footpath, written support from the neighbouring business is required unless the premises are vacant.

Businesses may request the removal or relocation of street furniture such as a bench, bike rack or bin within the footpath to maximise the outdoor dining area. Council will support the temporary removal/relocation of street furniture at no cost to the business.

Permits issued for the temporary expansion of the footpath trading area will be valid to 30 April 2021 with the option to extend for a further two months to 30 June 2021.

#### 3.3.2 Adjacent Kerbside Car Parking (parklet)

For businesses that have kerbside car parking space/s adjacent to them, Council will consider the suitability for businesses to occupy this space to expand their outdoor dining area. Commonly referred to as "parklets", these may offer greater outdoor area than what can be offered through the footpath only.

The Working Group has looked at each activity centre holistically to identify where it may be appropriate to consider transforming car parking spaces into parklets. The analysis considered requests from businesses as well as the group's collective knowledge of food premise locations. Whilst the review was comprehensive, it was based on aerial photos and general knowledge of businesses likely to seek an expansion into kerbside parking. It is likely that additional requests from businesses will emerge as the deadline gets closer for re-opening.

To ensure a whole-of-centre approach is adopted with the nominated parklets, it is recommended that Council engage a parking consultant to prepare a Traffic Management Plan for relevant centres. Additional Traffic Management Plans may be required where additional requests for parklets are submitted from businesses and the Working Group is of the mind to support such requests. Careful consideration will be given to factors including the traffic speed environment and road use profile as part of determining where parklets are appropriate.

To reduce Council's risk, Officers are exploring the establishment of the parklet by Council and its subsequent management by the business. On the basis this proceeds implementation by Council will include the installation of suitable barriers (not secured to the roadway and solid enough to be immovable and provide safety between cars and people) and decking (ensuring level access for all and minimising trip hazards from the kerb). The management of the parklet will have conditions imposed by Council, including the adherence to Government operating restrictions and a COVID-safe plan, all of which would be the responsibility of the business. The parklets would be installed on a trial basis to 31 January 2021 recognising changes to indoor dining restrictions may continue to evolve. A review of the parklets will be managed by Council officers to determine whether the timeframe should be extended or car parking reinstated noting the competing seasonal demands which will not always be able to be managed to the satisfaction of all stakeholders, given the business recovery and activation objectives.

A number of issues still need to be worked through before this option becomes viable:

- Not all businesses will be able to occupy the adjacent kerbside parking and there is a question of equity.
- The loss of car parking will at times create contention between the businesses who are rebuilding a customer base and other members of the community. With the short timeframe before implementation is required, there is limited opportunity for consultation and prompt decisions will be required noting the emphasis on the business to demonstrate the benefit and requisite safety considerations.
- Demand on parking in beachside centres will increase in Summer. There may be an increase in complaints as a result; again needing to be balanced against customer demand and business recovery and activation objectives.
- Potential adverse impact to drainage and other infrastructure from providing level flooring in the parklets. This may render some locations not appropriate.
- The cost associated with implementing parklets has the potential to be expensive. The need for heavy, substantial barriers may require special installation involving cranes or the like which adds to the complexity and cost.
- Parklets may not be a suitable long-term solution and dependent on the implementation method may be set up for an initial 2-3 months until indoor dining restrictions are eased.

The working group continues to work through these issues with the aim to finding easily implementable and affordable solutions.



### 3.3.3 Outdoor Dining Pop-ups

Businesses can apply to establish a temporary outdoor dining pop-up in an area of Council-owned or managed land that is disconnected from their business premises. Outdoor dining pop-ups will be activated on certain days and times of the week, such as weekends or evenings. For example, a restaurant business or group of businesses could apply to establish a pop up in a nearby park, or car park area on Friday evening, and Saturday and Sunday.

For this option, businesses are not required to hold a footpath activity permit to be eligible but will require Council approval.

Clause 6.6 of Council's Commercial Use of Council Land Policy requires that Commercial Activities with an operating time exceeding two days or more (excluding bump in and bump out time) requires a resolution of Council. It is likely that requests for pop-ups will vary in frequency and time with a collective impact of more than two days. Owing to the need for expediency, it is recommended that the General Manager Planning and Development and Manager City Economy and Innovation be issued delegated authority to approve licences for outdoor dining pop-ups where all relevant external approvals are in place.

To reduce the financial burden to businesses, it is recommended that all fees for outdoor dining pop-ups be waived until 30 June 2021. Applicants are generally required to pay a Bond when licences are issued for events on Council land. To keep the process as simple as possible for businesses, it is recommended that where deemed appropriate (by relevant Council Departments) this requirement be waived until 30 June 2021 to reduce the upfront financial burden to them. The analysis will include any significant risk around 'reinstatement' costs to the Council.

Businesses applying for outdoor dining pop-ups will be required to enter a licence agreement with Council. To help manage any unforeseen impacts, consideration is being given to issuing licences for outdoor dining pop-ups on a trial basis initially with options for extensions if relevant to the businesses proposal.

At the time of preparing this report Officers were awaiting advice from the State Government on any changes it is proposing to make to the requisite planning or other approvals for the use of public or private land including where Council may be the Committee of Management. This advice will be important in some circumstances whereby legislative approvals may be required by a business seeking to use public or private land (eg. a request by a business to use coastal crown land where consent may be required under the Coastal Management Act).

### 3.3.4 Single Application Form

A single application form has been developed for outdoor dining activations. Businesses without a current Footpath Activities Permit will be channelled through the standard application process first. Submitted single application forms will be directed to the appropriate lead team for consideration:

- Footpath Activities Permit – expanded footpath: Environmental Health
- Footpath Activities Permit – adjacent kerbside parking: Working Group
- Outdoor Dining Pop-up: Festivals and Events
- Request to relocate or temporarily remove street furniture: Infrastructure

**3.3.5 Council-lead Activation**

Council-led outdoor dining activations will be developed with a priority on implementing activities that support whole-of-centre. Nothing specific has been proposed at this time.

Council's Festivals and Event team is also proposing a Tinsel Trail as part of the Christmas approach. Opportunities to leverage outdoor dining will be considered as part of the detailed planning for these activations.

**3.3.6 Food Trucks**

To ensure consistency with the Victorian Government's Hospitality Roadmap to Reopening Guidelines, mobile food businesses (ie. food trucks) are not eligible to apply for any of the initiatives outlined in this report. Kingston currently has 10 dedicated sites for food trucks that it allocates via a tender process every three years. No change is proposed to this program as the focus of the hospitality roadmap is commercial premises only. Careful consideration of the management of 'Food Trucks' is required given the challenges they present to the successful establishment of existing Kingston food based businesses in shopping strips that will be looking to re-establish a customer base.

**3.4 Unintended Consequences**

**3.4.1 Increase in complaints**

The reality is that not all requests to use Council land for outdoor dining will be able to be accommodated and this may lead to disgruntled businesses. While officers will look to offer alternatives in situations where a request cannot be accommodated, there is unlikely to be a solution for everyone. This may lead to an increase in complaints.

Should the implementation of parklets be pursued, there will be a loss of car parking in centres. Car parking is a key issue for some businesses and the loss of public parking to benefit one business over another may not be welcomed by all. There may also be criticism from the community about loss of parking in centres, particularly if they are required to park further away or struggle to find a vacant space. For beachside centres this is likely to be heightened in summer. This must though be considered in the context of business recovery and activation objectives.

Greater congestion within footpaths is also a likely outcome from this initiative. Whilst businesses will be required to maintain a dedicated 1.5 metre wide pedestrian zone at all times, it is inevitable that this will be encroached by seated patrons, dogs and the like. However, this could be managed through ongoing education with businesses, as well as interventions such as footpath decals to delineate the pedestrian zone.

Conversely, the decision to not offer additional outdoor dining opportunities will lead to criticism of Council. The working group has already collated 28 requests for outdoor dining from businesses and more are expected as businesses prepare for reopening. Regular communication will be key to Council managing business and community expectations.

3.4.2 Damage to Council Assets such as Footpaths or Roadways

Businesses are likely to want to secure umbrellas, screens and the like into Council's footpaths/roadways. Some will seek Council approval and some will not, therefore damaging the footpath/road. As a result, there may be rectification works required at the conclusion of this initiative and Council will bear the costs.

The report reinforces the potential to waive bonds in situations where the risk to Council assets can be reasonably mitigated.

3.4.3 Non-Compliant Businesses

It is possible that through the application process for outdoor dining, some businesses may be identified as operating without the necessary planning permission or food premises registration. Due consideration will be given to each circumstance before any compliance action is pursued.

**4. Conclusion**

**4.1 Environmental Implications**

The pandemic has seen an increase in cycling and walking within neighbourhoods and it is expected that the reactivation of businesses will see residents continuing to walk or cycle to their local centres.

The implementation of outdoor dining initiatives may have some adverse environmental impact through use of public or private land that would have otherwise been left unobstructed. The use of kerbside parking for outdoor dining (parklet) may obstruct overland flow of waste water that needs to be carefully considered.

**4.2 Social Implications**

Outdoor dining provides opportunities to the community to reconnect with friends and family in a local setting. The economic benefits for businesses are significant with restricted ability to accommodate dine-in customers. Subsequently, outdoor dining offers both businesses and customers an opportunity to reconnect with a sense of normality. Business will be very keen to quickly re-establish a loyal customer base and Council will wherever possible need to be proactive in assisting to strengthen the vibrancy of our shopping precincts.

**4.3 Resource Implications**

Significant officer resources will be required to manage this initiative including set up, coordination, assessment and monitoring. It is anticipated that 2 FTE will be required for the set up and ongoing coordination over the next four weeks. Prioritised assistance from the following teams will be required to ensure speedy assessment of applications:

- Environmental Health
- Traffic
- Festivals and Events
- Property Services
- Parks
- Infrastructure

Fees have already been waived by Council for Footpath Activities Permits. No additional fees are proposed for expanding the footpath trading to either the adjacent business/s or kerbside parking (parklet). As footpath trading fees are calculated on a

per item basis (eg. number of tables and chairs), it is difficult to calculate what the financial difference would be.

Licences for outdoor dining pop-ups would incur a fee (variable depending on the scale of the event) under the Commercial Use of Council Land Policy. Businesses would also be asked to pay a Bond to cover any damage to Council land by the event. To reduce the financial burden to businesses it is recommended that all fees and requirement for outdoor dining pop-ups be waived until 30 June 2021. Council will also consider waiving bonds on the basis the costs to the broader community are reasonably mitigated by the business. As an estimate of the cost of waiving fees, in the period 1 November 2019 – 28 February 2020, Council received \$32,800 in Commercial Event fees.

The installation of parklets will come at a cost, which is unknown at this stage as Traffic Management Plans will confirm the level of intervention required. Advice from the Traffic team indicates the series of Traffic Management Plans required are likely to cost in the order of \$5,000 with parklet components and installation costs additional to this. Based on this initial information careful consideration will need to be given to the direct business benefit of pursuing parklet requests.

On 14 September 2020, the Victorian Government announced the \$87.5 million Outdoor Eating and Entertainment Package whereby metro councils will receive up to \$500,000 to assist with implementation costs for outdoor dining. Expenditure on initiatives including food trucks is specifically excluded. It is understood that Council will shortly receive a Funding Agreement for up to \$500,000. Based on the funding guidelines and our approach to outdoor dining, the following elements could be covered by the grant:

- Administering permit regulation and approvals processes
- Traffic management
- Implementation of the parklet program – fitout of barriers and base
- Additional waste and cleaning of public areas
- Additional enforcement and monitoring activities
- Local marketing and promotional activities

The recommendations provided within this report identify using the funds provided to cover the envisaged significant costs to Council and supplementing business activity.

#### 4.4 Legal / Risk Implications

Footpath Activities Permit holders are already required to provide Public Liability Insurance (\$20M) and sign an Indemnity Form. This would adequately cover the expanded footpath area.

To minimise Council's risk with extending the footpath trading to the adjacent kerbside car parking (parklet), Council will install the barriers and decking to level with the footpath. Umbrellas and the like will be required to be weighted down and not overhang the roadway or Pedestrian Zone.

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