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## **SMOKING EXCLUSION ZONES AROUND CAFES IN THE CITY CENTRE**

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### **Purpose:**

Councillor Sally Townley has given notice of her intention to move:

That CHCC implement a non smoking policy applying to outdoor eating areas in the CBD. An outdoor eating area is each eating area defined by an Outdoor Eating Licence as issued under the Roads Act 1993. The CBD is defined as that area described in CHCC's CBD Masterplan (see separate attachment).

### **Rationale:**

CHCC recognises the right of diners to have smoke-free air while using the city's alfresco eating establishments in the City Centre. A Non Smoking Policy will support the rights of patrons to have smoke free eating.

The policy will give clear direction to smokers, business owners and non smokers by establishing non smoking areas. This will allow for greater self-regulation of smoking; business owners and patrons will have more confidence to request non smoking behaviour.

It is not proposed that Council Rangers or other staff will actively enforce this policy and it would be unrealistic to expect absolute compliance. Instead, introduction of this policy provides a social mechanism by which discouragement of smoking will lead to reduction.

### **Staff Comment:**

The following is taken from the most recent communication from NSW Health on this issue (dated 6 June, 2013).

"Since 7 January 2013, smoking has been banned in a number of public outdoor areas, including:

- Within 10 metres of children's play equipment in an outdoor public place;
- In open areas of swimming pool complexes;
- In spectator areas of sports grounds or other recreational areas during organised sporting events;
- At public transport stops and stations, including the area where people gather or queue to wait for the bus, taxi or light rail.
- Within 4 metres of a pedestrian access point to a public building; and
- From 6 July 2015, in commercial outdoor dining areas."

NSW Health is responsible for the enforcement of the provisions of this legislation.

This does not, of course, prohibit Council from moving ahead of the legislative requirement if it resolved to do so. However, the responsibility for enforcement of any local provisions would rest with Council.

Council outdoor dining licence agreements are issued under the provisions of the Roads Act and in accordance with the Outdoor Dining licence policy.

Under the standard agreement the Licensee must "...at all times observe and comply with the reasonable requirements of Council or any officer of the Council in respect of the equipment and generally concerning the use of the area." (cl 7.7)

And to "...Comply with all policies or rules adopted or made by council from time to time concerning the use of the roads for restaurant purposes." (cl 7.12)

Accordingly any policy adopted by Council to prohibit smoking in outdoor dining areas located within road reserves can potentially be policed through the existing licence agreement provisions (subject to resourcing).

If such a policy were to be adopted it is suggested that it apply uniformly to all outdoor dining licence areas.

It should be noted that in light of Council's limited resources the bulk of compliance management of licences is done on a reactive basis (that is ...when advised of a breach corrective action is taken). Accordingly it would be necessary to consult with the current licensees about any proposed "no smoking" policy including an appropriate transition phase. Non-adherence to such a policy could result in a significant increase in the time and resources needed to manage these licences and would need to be resourced appropriately.