

PLANNING COMMITTEE REPORT

Agenda Item 5.3

13 November 2007

OUTDOOR CAFÉ GUIDE

Division Sustainability and Regulatory Services

Presenter Gordon Duncan, Principal Engineer Infrastructure

Purpose

1. To seek Planning Committee approval of the Outdoor Café Guide, incorporating updated standards and conditions applicable to the operation and management of outdoor cafes throughout the municipality.

Recommendation from Management

2. That the Planning Committee:
 - 2.1. note the outcome of further public consultation and communication with key stakeholders including café and restaurant operators, residents and resident groups conducted subsequent to the Planning Committee resolution of 3 July 2007;
 - 2.2. note the further streamlining of policy and the removal of inconsistencies subsequent to the Planning Committee resolution of 3 July 2007; and
 - 2.3. approve the Outdoor Café Guide.

Key Issues

3. A report on the Review of the Kerbside Café Code was submitted to Planning Committee at its meeting on 3 July 2007.
4. The resolution of Committee was as follows:
 - 4.1. That the Planning Committee defer consideration of the Review of the Kerbside Café Code for three cycles to allow for further public consultation:
 - 4.1.1. to remove inconsistencies within the code;
 - 4.1.2. to streamline the code; and
 - 4.1.3. for further public consultation with cafes and restaurant operators and residents within the municipality on the proposed changes of the Kerbside Café Code.
5. The name of the document has now been changed to “Outdoor Café Guide” as it is more accurate to define it as such given its scope, being to cover all outdoor cafes in public spaces, and intent, to give greater flexibility with respect to design guidelines.

Summary of Consultation Outcomes

6. Contact was made with 639 stakeholders requesting their participation in a telephone questionnaire. Of these stakeholders, 410 agreed to participate and were surveyed on the proposed changes. The remaining 229 stakeholders declined to participate primarily on the basis that they had participated in previous consultation processes.
7. The overall results are summarised as follows:
 - 7.1. 77 per cent of the respondents strongly agreed or agreed with the proposed changes;
 - 7.2. 17 per cent of the respondents strongly disagreed or disagreed with proposed changes; and
 - 7.3. six per cent of the respondents neither agreed nor disagreed with the proposed changes.
8. A more detailed breakdown of the results, and responses to some of the issues raised, are discussed below.

Refinement of the Guide

9. Further refinement of the Guide was completed to streamline the policy and remove inconsistencies. This has culminated in the production of a graphically designed Guide and “Mini Guides” (or fact sheets) which aim to summarise the requirements for precinct specific areas. The ‘Summary’ Guide also seeks to streamline the policy into a user friendly format. (Refer to Attachments 1, 3 and 4).

Time Frame

10. Subject to Committee endorsement, the Guide will be implemented for new applications from 1 February 2008. An implementation phase of 24 months is proposed for existing permit holders where any structural changes are required as a result of new requirements.

Relation to Council Policy

11. The principles contained in the revised policy are consistent with Council’s strategic objectives. This will ensure that the energy of the city is evident through its vibrant street life. The Guide is aligned with the Strategic objectives found in the City of Melbourne Council Plan 2005-2009:
 - 11.1. Innovative and Vital Business City: Support the establishment and growth of innovative new businesses and business support services; and
 - 11.2. Engaging City: Adopt a new urban strategy and implement initiatives to improve amenity, safety and the quality of the city’s public environment.

Consultation Outcomes

12. Subsequent to Council’s Planning Committee resolution of 3 July 2007, further detailed consultation was conducted with key industry associations, resident groups, café owners, restaurateurs, precinct and community organisations, disability associations, architects and designers (refer to Attachment 3 Survey Results and Table of Stakeholder Consultation).
13. The communication and consultation process hinged on the following activities:
 - 13.1. a telephone survey questionnaire was conducted with over 639 Stakeholders;
 - 13.2. the development of a ‘Summary Outdoor Café Guide’ and posting on the City of Melbourne website (refer to Attachment 2) ;

- 13.3. individual consultation with peak bodies, expert industry leaders, key community opinion leaders, and precinct groups (eg. Restaurant and Catering Victoria, Australian Hotels Association, Melbourne South Yarra Group, Parkville Association Inc, Carlton Residents Assoc, East Melbourne Group, Residents 3000, Hardware Lane Assoc, Greek Precinct Assoc, and Carlton Business Association Inc.); and
- 13.4. an information session with Carlton business traders on 11 September 2007 to address questions raised by various Lygon Street traders and the Carlton Business Association. A survey questionnaire was used in consulting 639 stakeholders, including kerbside café permit holders, residents, residential groups, precinct groups, architects, designers and key associations to discuss the proposed changes to the Kerbside Café Code.
14. The telephone questionnaire consisted of twelve questions relating to each of the proposed changes to the Kerbside Café Code (refer to Attachment 3, Survey Analysis Results Report and Table of Stakeholder Consultation).
15. Out of the 639 stakeholders contacted 410 agreed to participate and were surveyed on the proposed changes. The remaining 229 Kerbside Café Permit holders declined to participate in the survey as they indicated that they had participated in numerous previous consultations and workshops.
16. All residential groups, precinct groups and associations, key architects, designers and developers contacted agreed to participate in the survey and were engaged in extensive consultation of the proposed changes.
17. The breakdown of the stakeholders who participated in the survey are as follows:
 - 17.1. total of 380 Kerbside Cafe Permit Holders
 - 17.2. total of five Residential Groups or Associations;
 - 17.3. total of 15 Precinct Groups and Associations; and
 - 17.4. total of 10 Architects, Designers or Developers.
18. Attachment 3 shows in considerable detail the results of the survey, including breakdown by the various groups surveyed, including Kerbside Café Permit Holders, Residential Groups, Precinct Groups or Associations, and Architects, Designers or Developers.
19. The overall results of the survey can be summarised as follows:
 - 19.1. 77 per cent of the respondents strongly agreed or agreed with the proposed changes;
 - 19.2. 17 per cent of the respondents strongly disagreed or disagreed with proposed changes; and
 - 19.3. six per cent of the respondents neither agreed or disagreed with the proposed changes.
20. A number of letters endorsing the new Guide have been submitted by various organisations, peak bodies and precinct groups.
21. The main areas of disagreement were generally from kerbside café permit holders, as outlined below, with comments in response to the concerns expressed:
 - 21.1. the proposal to specify the maximum number of tables and chairs in an approved outdoor café area was met with opposition by some of the surveyed traders. All other stakeholders agreed with the principle, including a majority of kerbside café traders who supported the change. The principle of stipulating the maximum number of chairs and tables in a café area is seen as industry best practice and used by most other Australian cities and councils in Victoria;

- 21.2. the new Guide seeks to clarify the principles for installing fixed furniture in front of heritage grade buildings and articulates the requirements in more detail. The underlying objective is to provide information to applicants in more detail so that there is an understanding as to 'why' requirements are necessary. There may have been some confusion in the way this question was understood by some of the café traders. The heritage guidelines for fixed furniture attracted opposition by over a quarter of kerbside traders, but met unanimous agreement by all other stakeholders surveyed and consulted with. It should be noted here that there is no policy change from the existing Code;
- 21.3. the requirement to obtain a letter of consent from the café operator's building owner when establishing an outdoor café area was opposed by a number of the kerbside café traders and precinct groups surveyed. Most other stakeholder groups favoured this proposal. After careful review of this policy and comments submitted by key stakeholders, the recommended requirement has been simplified from 'obtaining consent' to 'notifying the building owner or body corporate';
- 21.4. the proposal to standardise the hours of operation of outdoor cafes within the central city generally to 11.00 pm was supported by the majority of stakeholders surveyed. Approximately one quarter of kerbside café traders disagreed or strongly disagreed with the principle. It should be noted that the current policy limits the hours of operation to 11.00 pm across the city. This accords with current city safety strategies and principles to enhance safety and amenity in the central city. The underlying objective is to provide information to applicants in more detail so that there is an understanding as to 'why' this requirement is necessary. The Director of Liquor Licensing Victoria is also opposed to issuing any outdoor venues with a liquor licence beyond 11.00 pm in the central city; and
- 21.5. free training and education provided to new applicants by the City of Melbourne was supported by the majority of stakeholders surveyed. There was however some disagreement by kerbside café operators/traders with this initiative. It was generally perceived by these traders that it was up to the management of the business to train their staff on the operation and management responsibilities of their outdoor café area.

Finance

22. There is no immediate financial impact arising from the recommendations in this report. Two new compliance officer positions have been approved as part of the operational efficiency review which will assist in communication activities, administration and implementation of the updated provisions to permit holders.

Legal

23. Council's powers with respect to street trading are set out in Part 5 of the Activities Local Law 1999.

Sustainability

24. The Guide takes into consideration the following key sustainability issues:

Social

- 24.1. the principles in the Guide maintain that outdoor cafes should be integrated with existing street activities, pedestrian circulation and traffic safety by maintaining adequate clearances and allowing convenient access for all. The Guide seeks to maximise positive benefits of outdoor cafes in the public space;

- 24.2. the Guide promotes the principle that outdoor cafés provide a sense of security through passive and active surveillance by café patrons and staff. This leads to a positive social contribution to the street environment and personal safety. To ensure due consideration is given to the impact on the amenity of residential areas, the Guide also includes rigorous criteria for the assessment of character, operation, safety, amenity and suitability of kerbside cafés; and
- 24.3. the Guide recognises that city safety is a high priority for the City of Melbourne and promotes operation and management principles for safe behaviour, social support and community cohesion. Public safety is also promoted by means of best practice design principles for furniture installation, construction, placement, circulation and pedestrian clearances.

Environmental

- 24.4. the Guide supports strategies to reduce waste generated by kerbside cafes. It encourages owners and operators to minimise noise and disposal of waste and litter in the public environment. The Guide introduces essential waste management practices and principles for proprietors to maximize positive benefits to environmental sustainability; and
- 24.5. the Guide introduces best practice guidelines for the management and maintenance of gas heaters in public place. This includes limiting outdoor gas heater use and principles for safe storage and placement of gas heaters for reducing environmental impacts.

Economic

- 24.6. the principles contained in the Guide seek to protect and enhance the value of city assets. The Guide promotes a greater appreciation and sensitivity towards enhancing existing urban character, cultural significance of buildings and the street quality of Melbourne's heritage. Cost recovery principles in the Guide relate to the reinstatement of public infrastructure due to damage caused by café operations. The updated conditions and management responsibilities provide a means to maximize positive benefits of protecting city assets and reducing costs to Council.

Comments

25. The aim of the Guide is to ensure Council policy remains relevant and responsive to the city's vibrant cafe culture and community expectations. The Guide is intended to supersede the current Kerbside Café Code which was first launched in April 2001.
26. The Guide reflects Council's commitment to supporting and managing kerbside cafes in partnership with business owners and operators whilst balancing these interests with the needs of the broader community.
27. The Guide is intended to reach the following key target audiences:
 - 27.1. current permit holders who own and/or manage a café in the municipality;
 - 27.2. prospective applicants where there is a potential for a kerbside cafe area;
 - 27.3. developers and companies interested in building a café with an outdoor element;
 - 27.4. architects, designers and development consultants engaged to design kerbside café areas, structures and furniture;
 - 27.5. other connected business owners and operators;

- 27.6. affected residents, precinct and community groups; and
- 27.7. authorities such as Victoria Police, Heritage Victoria, Liquor Licensing Victoria, Metropolitan Fire Brigade, etc.

Background

- 28. A fundamental objective of Council is to facilitate improved management of outdoor cafes in the public place by logical principles, strong decision making criteria and best practice standards for the effective management of outdoor cafes now and in the foreseeable future. The updated standards and conditions are framed by a new Outdoor Café Guide (“the Guide”) that aims to:
 - 28.1. encourage high quality outdoor cafes to enhance the amenity, vitality and ambience of the City of Melbourne;
 - 28.2. provide a comprehensive framework for the development, management and control of outdoor cafes in the public realm; and
 - 28.3. ensure that outdoor cafes do not interfere with the safe and reasonable movement of pedestrian, vehicular traffic and other street activities.
- 29. The public place is defined as the city’s public environment which provides the physical setting for all members of the community to access and enjoy cultural, social and recreational activities. The City of Melbourne adheres to the principle that public places should be free of restrictions on individuals and social groups regardless of ethnicity, age, economic circumstance, gender or physical disability.
- 30. The quality of a city’s public environment is measured by the way this basic principle is expressed. While the principle is simple enough, the reality is more complex. For instance, the establishment of a kerbside café brings public and private interests together in one place.
- 31. The relationship between these two interests must be carefully managed and balanced to maintain the use, variety and enjoyment of the public environment. The fundamental purpose of this Guide is to minimise the potential for conflict between kerbside cafe areas and other public uses in the city.
- 32. The expansion of kerbside cafes in the public space has played a significant role in making Melbourne a vital, vibrant and cosmopolitan city. Simultaneously, outdoor cafés have contributed to the image, reputation and commercial success of cafés and restaurants. The popularity of outdoor dining has seen the number of kerbside cafes grow from under 50 in the early 1990’s to well over 600 today. Committed to enhancing urban life, the City of Melbourne has always been keen to promote the continuing development of kerbside cafes through an integrated approach to design and appropriate site selection with regards to safety and amenity.
- 33. The Council adopted Street Trading Strategy 1995 (and Street Trading Review 2003) remains the overarching policy framework for the implementation and management of street trading activities in the public domain. Enforcement and compliance activities in relation to the sale of goods and services in the public space are controlled directly by the *Activities Local Law 1999*, Part 5 ‘Street Trading’. The primary objective of the existing *Activities Local Law 1999* with regard to Street Trading is to: “*manage and facilitate responsible trading and entertainment on streets and public places to increase the attractiveness and comfort of these places.*”
- 34. The principles of the Guide were developed to provide a set of best practice planning and design guidelines for the establishment of new kerbside cafes and the effective management of existing operations. The principles also promote an awareness and understanding of why requirements are necessary.

35. The review has involved considerable input from key stakeholders, community organisations and business traders. This active engagement of stakeholders has provided an important opportunity for the reassessment of the current conditions relating to the operation of kerbside cafes in the City of Melbourne.
 36. In summary the strategic aims of the review have been successfully met. If endorsed, the updated conditions and design guidelines will be circulated to stakeholders in accordance with standard Council communication practices.
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Attachments:

1. Draft Outdoor Café Guide
2. Summary of Draft Outdoor Café Guide
3. Survey Analysis Results Report and Key Stakeholder Consultation Table
4. Mini-Guides (fact sheets)

FINANCE ATTACHMENT

OUTDOOR CAFÉ GUIDE

There are no direct financial implications arising from the recommendations contained in the report.

Joe Groher
Manager Financial Services

LEGAL ATTACHMENT

OUTDOOR CAFÉ GUIDE

Legal advice has and will continue to be provided regarding amendments to the Kerbside Café Code (renamed the Outdoor Café Guide) as required.

Council's powers with respect to street trading are set out in Part 5 of the *Activities Local Law 1999*, the aim of which is stated as "*to manage and facilitate responsible trading and entertainment on streets and public places to increase the attractiveness and comfort of these places...*"

Section 3C(1) of the *Local Government Act 1989* ("the Act") provides that:

"the primary objective of a Council is to endeavour to achieve the best outcomes for the local community having regard to the long term and cumulative effects of decisions".

Section 3C(2) of the Act further sets out that in seeking to achieve its primary objective, a Council must have regard to facilitating objectives including:

"to promote the social, economic and environmental viability and sustainability of the municipal district."

Section 3E(1)(d) of the Act provides that one of the functions of a Council is undertaking strategic and land use planning for the municipal district.

This report is consistent with these objectives and functions.

Kim Wood
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