

# BACKGROUND REPORT

April 2009

Footpath Trading Policy Review

TPG Ref: 1449

Client: City of Port Phillip

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## INTRODUCTION

When streets enhance the urban environment and meet the needs of pedestrians, they make a city livable and beautiful. Appealing, well maintained, safe and accessible public streets are a common theme and a necessary ingredient for positive urban experiences in all great cities around the world. Streets, when well designed and managed become public outdoor rooms. They are places for people to gather, meet, stroll, sit in cafes, window-shop, and spend time. They are the locations where connections are made among residents and visitors.

The social benefits of people spending time in streets and the spontaneous exchanges of communication that this enables have been well researched. In David Enwright's book *'Reclaiming the Streets'* he highlights that one significant benefit is the trust that is built between communities over many 'sidewalk' encounters. While each encounter may be in itself trivial the sum of the affect is not. Casual, public contact at the local level gives people a public identity and a "web" of public trust and respect is built, and a resource in a time of personal or neighbourhood need. Jane Jacobs in her book *'The Death and Life of Great American Cities'* suggests the absence of this trust is a disaster to a city street "...lowly and unpurposeful and random as they may appear, sidewalk contacts are the small change from which a city's wealth of public life may grow."

Anecdotally many councils have found that the introduction of outdoor eating and drinking has created a relaxed and sociable style of eating and drinking that has brought a renewed vitality within their city centres. There is general agreement that when people stay outside to eat, they embrace the season. And as they begin, companionably to absorb the sights and sounds around them, all of their senses are aroused, and they linger more over sensation.

Encouraging and facilitating opportunities for people to linger and spend time on streets creates the potential for streets to become vibrant and prosperous centres of culture and community once again and is therefore a highly valuable tool for strengthening our communities. As key objectives of Council there are several Council initiatives currently underway that are devoted to improving the pedestrian experience and focus on creating more vibrant and attractive shopping centre streets. These include a range of Urban Design Strategies, Structure Plans, Place Management Programs, and opportunities created by new development projects. The benefits arising from these initiatives are supported by the Footpath Trading Policy.

## REVIEW SCOPE

The existing Footpath Trading Guidelines were developed by Council in consultation with the local business community to provide a framework for the sustainable use and management of the municipality's footpath trading areas. These guidelines inform the decision process triggered by the permit requirements of the Footpath Activities Local Law No.7 and are designed to ensure that pedestrians have unobstructed and safe access to the City's footpaths at all times, while maintaining the visual amenity of streetscapes.

The City of Port Phillip is committed to supporting and enhancing the sustainable growth of local business and vibrant street life activity facilitated through this permit system. However, the commercial use of public space is viewed by Council as a privilege and not a right and as such, the guidelines needs to be regularly reviewed every five years to ensure the proper management of the City's footpaths.

The primary objectives of the review are:

- To ensure safe and equitable access along footpaths is maintained at all times;
- To ensure that the City of Port Phillip's streets remain lively and liveable; and
- To ensure consistent decision making and issuing of permits.

The secondary objectives are:

- To produce guidelines that are easy to read and understand; and
- Create community awareness of the footpath trading policy.

It is important to note that the review is not to include a review of the fees methodology in order not to confuse feedback in relation to the appropriateness of the guidelines as a management tool for footpath trading.

The purpose of this report is to:

- Review all relevant legislation that must be considered in the preparation of any footpath trading policy;
- Identify best practice in footpath trading policy by exploring the approaches of other Councils;
- Examine initial consultation findings already undertaken by Council both internally and externally; and
- Having regard to all of these findings, identify opportunities and constraints to the existing footpath trading policy and determine possible improvements to issues raised by stakeholders which can then be presented as part of further consultation.

## 1.1 GUIDING PRINCIPLES

In undertaking this review the following principles as largely derived from Local Law No. 7 will guide all decision making:

- (1) Good Governance - provide for the peace order and good government for the City of Port Phillip and the administration of the council's functions and powers
- (2) Vibrant & Attractive Streets - promote a vibrant street life, which balances the interests and needs of residents, ratepayers and visitors to the city, and facilitates attractive urban design outcomes.
- (3) Fair and Consistent decisions - regulate and control footpath activities to achieve fairness and consistency between traders in the use of footpaths and the overall management of parking capacity within a centre
- (4) Regulate and control footpath activities so that there is:
  - (a) Continuous accessible path – provide safe and unobstructed passage for pedestrians, in particular, those who may be physically or visually impaired and prioritize areas of high pedestrian traffic (i.e. retail core, entertainment precincts, and public transport pedestrian routes) as those requiring a minimum pedestrian zone of 1.8m wherever possible.
  - (b) Safety – provide safe and unobstructed vision for drivers of vehicles and cyclists.
  - (c) Amenity - limited impacts on the residential amenity and the streetscape that characterises the area.
  - (d) Hygiene – provide access to Council cleansing services and ensure trader orderly and clean waste management practices.
- (5) Promote a safe physical and social environment in which the potential for nuisance activities and risk and exposure to risk by footpath users is minimised.

## RELEVANT LEGISLATION

The following section of this report provides an overview of the legislative framework within which the Footpath Trading Policy operates.

### 1.2 FOOTPATH ACTIVITIES LOCAL LAW NO.7

As facilitated under section 111 and Schedules 10 and 11 of the Local Government Act 1989, Council has the power to make Local Laws.

Pursuant to this Local Law a person must obtain a permit from Council before using the footpath for the location of:

- Tables and chairs and ancillary equipment such as umbrellas, screens or planter boxes; or
- Display of goods; or
- Advertising signs; or
- Special events.

In considering an application and deciding whether to grant a permit for a footpath activity Council may have regard to:

- The effect on pedestrian traffic flows and safety;
- The impact on the appearance of the street and its surroundings;
- The duration of the use;
- The effect on vehicular traffic flows and safety;
- Compatibility with other uses in the street;
- Whether it is complementary to the primary adjoining use;
- Whether it is less intensive than the primary adjoining use;
- The applicant's previous record of compliance;
- Any relevant policies of the Council; and
- Any other matter relevant to the application.

In addition to these provisions the Local Law provides that Council may make guidelines for any of the four activities listed above and, in those guidelines may:

1. Designate precincts where footpath activities may be undertaken having regard to the physical characteristics and the capacity of the footpath to accommodate the activities; and
2. Designate zones on footpaths where specific activities are permitted; and
3. Identify the standards that are applicable to the footpath activities.

Importantly the Local Law includes provision for the cancellation, correction and enforcement of permits.

#### 1.2.1 Footpath Trading Guidelines 2005

In implementing this Local Law Council has prepared guidelines which were adopted in 2004. The guidelines clearly set out:

- Footpath management standards in relation to:
  - Safety and Accessibility
  - Community Amenity

- Design (including specific guidelines in relation to awnings, glass screens, and outdoor heaters)
- Hygiene and Cleanliness
- Footpath trading zones for pedestrians, trading and kerbside activities. Specific trading zone guidelines have also been prepared to reflect the typical footpath widths of 10 major shopping centre precincts including:
  - Bay Street, Port Melbourne
  - Clarendon Street, South Melbourne
  - Bridport Street, Albert Park
  - Victoria Avenue, Albert Park
  - Armstrong Street, Middle Park
  - Fitzroy Street, St. Kilda
  - Acland Street, St. Kilda
  - Carlisle Street, Balaclava
  - Ormond Road/Glenhuntly Road, Elwood
  - Glen Eira Road, Ripponlea
- Footpath dining standards in relation to:
  - Tables and chairs
  - Screens (standard)
  - Glass screens
  - Umbrellas
  - Heaters
  - Windproof ashtrays
  - Advertising
  - Liquor Licences
- Portable Advertising Signs/A-boards
- Display of Goods
- Planters
- Assessment considerations
- Display, amendments, transfer and renewal of permits
- Permit holder and Council responsibilities

When preparing Local Law No.7 and its accompanying guidelines Council must also be mindful of a number of key State and Commonwealth Government Acts as outlined to follow.

### 1.3 DISABILITY DISCRIMINATION ACT 1992

The Federal *Disability Discrimination Act 1992* (DDA) provides protection for everyone in Australia against discrimination based on disability. It encourages everyone to be involved in implementing the Act and to share in the overall benefits to the community and the economy that flow from participation by the widest range of people.

Disability discrimination happens when people with a disability are treated less fairly than people without a disability or are treated less fairly because they are relatives, friends, carers, co-worker or associates of a person with a disability.

The DDA makes it against the law to discriminate against someone if they have a disability in a range of areas of life such as employment, education, accommodation, sport but most relevantly to this review, the provision of goods, services and facilities. For example, when a person want goods or services from shops, pubs, places or entertainment, cafes, video shops, banks, lawyers, government departments, doctors, hospitals and so on.

The definition of "disability" in the DDA includes:

- Physical, intellectual, psychiatric, sensory, neurological, and learning disabilities
- Physical disfigurement, and
- The presence in the body of disease-causing organisms.

This broad definition is meant to ensure that everyone with a disability is protected and as such covers a disability which people: have now, had in the past (for example: a past episode of mental illness), may have in the future (eg: a family history of a disability which a person may also develop), and are believed to have (for example: if people think someone has AIDS).

The DDA also covers people with a disability who may be discriminated against because:

- They are accompanied by an assistant, interpreter or reader,
- They are accompanied by a trained animal, such as a guide or hearing dog, or
- They use equipment or an aid, such as a wheelchair or a hearing aid.

The DDA also protects people who have some form of personal connection with a person with a disability like relatives, friends, carers and co-workers if they are discriminated against because of that connection or relationship. For example, it is unlawful discrimination if people are refused access to a restaurant because they are with a friend who has a disability. Harassment because of disability, such as insults or humiliating jokes, is unlawful in employment, education and in the provision of goods, services and facilities.

A person with a disability has a right to obtain goods and use services and facilities in the same way as people without a disability. This includes goods, services and facilities from:

- |  |                                    |
|--|------------------------------------|
| ○ Shops and department stores                | ○ Swimming pools                   |
| ○ Cafes, restaurants, pubs                   | ○ Public transport                 |
| ○ Theatres and other places of entertainment | ○ Travel agents                    |
| ○ Banks, credit unions, building societies   | ○ Dentists, doctors, and hospitals |
| ○ Lawyers and legal services                 | ○ Hairdressers and beauty salons   |
| ○ Sports and social clubs                    | ○ Government-run services.         |

The DDA makes it against the law for providers of goods, services and facilities to discriminate against a person because of his or her disability. This means that providers of goods, services and facilities cannot:

- Refuse to provide a person with a disability with goods, services and facilities.
- Provide goods, services and facilities on less favourable terms and conditions.
- Provide the goods, services and facilities in an unfair manner.
- It also means that a person with a disability has a right to enter the premises of providers of goods, services and facilities if people without a disability can do so.

A person with a disability has a right to have access to places used by the public. The DDA makes it against the law for public places to be inaccessible to people with a disability. Places used by the public include public footpaths, walkways and pedestrian malls.

The DDA requires that every area and facility open to the public should be open and available to people with a disability. They should expect to enter and make use of places used by the public if people without a disability can do so.

The DDA does not require the provision of access to be made if this will cause major difficulties or excessive costs to a person or organisation. This is called "unjustifiable hardship". But before deciding that providing access is unjustified, the Australian Human Rights and Equal Opportunity Commission (HREOC) recommends that a person or organisation should:

- *Thoroughly consider how access might be provided;*
- *Discuss this directly with the person involved; and*
- *Consult relevant sources of advice.*

If adjustments cause hardship it is up to the organisation to show that they are unjustified.

### 1.3.1 Specific Footpath Requirements

The DDA has perhaps been the most influential piece of legislation with respect to the management of activities on footpaths. Over the past five years in particular, many municipalities have introduced a requirement that shop fronts be unobstructed by footpath trading.

As a footpath would come under the definition of 'premises' under the DDA it therefore becomes covered by section 23 of the DDA. In general local government authorities are responsible for footpaths and as such, a business operating on the footpath in way that causes a barrier to access may give rise to a complaint and be lodged directly against a local government authority, as could a complaint be lodged against the person or organisation directly creating the barrier. In addition it may be possible to lodge a complaint against the local government authority under section 122 of the DDA if it could be argued that the local government authority was 'permitting' barriers to access by failing to ensure the pathway is clear.

The question of whether or not a local government authority is permitting discrimination requires some evidence they actually have the authority to address the problem. Any person or organisation subject to a complaint may have a defence if the removal of the barrier would cause an unjustifiable hardship.

While the DDA does not contain specific standards in relation to the management of footpaths these are contained in Australian Standard 1428 part 1 and 2. An accessible footpath should, as far as possible, allow for a continuous accessible path of travel so that people with a range of disabilities are able to use it without encountering barriers. While a footpath necessarily follows the natural topography of the area, in the best possible circumstances a continuous accessible path of travel along a footpath should:

- *Have a gradient of no steeper than 1 in 20*
- *Have a cross fall of no steeper than 1 in 40*
- *Have kerb cuts with appropriate kerb ramps*
- *Incorporate appropriate Tactile Ground Surface Indicators where necessary to ensure adequate safety and orientation*
- ***Have a minimum clear width of at least 1.8 metres at the narrowest point and minimum clear height of 2 metres with nothing encroaching into that envelope***
- *Be as smooth as possible without raised or cracked paving or tree root damage*
- *Have a slip resistant surface during dry and wet conditions*

Part 13 of the Australian Roads Guide to Traffic Engineering Practice: Pedestrians sets the general minimum standard for footpath widths of 1.2 metres as adequate for most roads and street situations except in commercial and shopping environments, where the pedestrian demands and accident risk may require wider paths. The guide states that to enable wheelchairs to pass, an absolute minimum width of 1.5 metres is required.

Legal advice obtained for the purposes of this review recommended that footpath widths should be 1.8 metres wide wherever possible and not less than 1.5 metres. If a footpath is of 1.5 metres, passing spaces of not more than 6 metres should be provided as recommended by Australian Standards.

The HREOC is of the view that the continuous accessible path of travel should extend from the property line with no obstructions or projections in order to provide the best possible guidance line for all users including people with vision impairment. As such HREOC encourages Local Governments with responsibility for footpaths to develop policies that reflect this best practice and cite the policies of Yarra and Glen Eira Council's as being comprehensive (reviewed in Section 3.1 of this report).

### 1.3.2 Specific Building Line Requirements

Part of the continuous successful path of travel is having a guidance line in which a visually impaired person can rely to guide them along the path of travel. Although the issue was not finally determined in *DAIS v Stonnington Council* (16 January 1998) the Victorian Civil and Administrative Tribunal indicated its strong view that where the failure to provide a guidance line may force a visually impaired person to lose to their straight line, become disorientated or lose direction and risk injury, is likely to be unreasonable and in breach of anti discrimination legislation.

It is therefore advised that the building line is the only appropriate guidance line on Council footpaths. To use the footpath line is unsatisfactory in that it has encroachments by signs, parking metres, fire hydrants and the like. This is likely to cause disorientation and potential for serious injury as identified in the *Stonnington case*.

The DDA is applicable to both the Council in its management of the footpaths and the businesses operating along those footpaths are required to meet the obligations of the DDA and meet its requirements with regards to access to premises.

## 1.4 LIQUOR CONTROL REFORM ACT 1998

The Liquor Control Reform Act 1998 is the primary piece of legislation regulating the supply and consumption of liquor in Victoria. The Act aims to:

1. Contribute to minimising the harm arising from the misuse and abuse of alcohol by:
  - a. Providing adequate controls over the supply and consumption of liquor, and
  - b. Ensuring as far as practicable that the supply of liquor contributes to, rather than detracting from the amenity of community life.
2. Facilitate the development of a diversity of licensed facilities reflecting community expectations; and
3. Contribute to the responsible development of the liquor and licensed hospitality industries.

It is significant to note that for the purposes of this Act, the amenity of an area is defined as “*the quality that the area has of being pleasant and agreeable*” and that the factors that may be taken into account in determining whether the grant, variation or relocation of a license would detract from or be detrimental to the amenity of an area include:

- a. *The presence or absence of parking facilities;*
- b. *Traffic movement and density;*
- c. *Noise levels;*
- d. *The possibility of nuisance or vandalism;*
- e. *The harmony and coherence of the environment;*
- f. *Any other prescribed matters.*

The Act provides commonsense penalties (including fines and license suspension or cancellation) for failing to comply with license conditions or other breaches of the Act. Examples of behaviour prohibited under the Act include:

1. Unlicensed selling of liquor,
2. Consuming or having liquor on unlicensed premises,
3. Underage drinking,
4. Public drunkenness,
5. Anti-social behaviour in and around licensed premises, and disturbance of the neighbourhood amenity.

Under these laws Councils may introduce Local Laws limiting the places or times at which opened containers of liquor may be carried or consumed in public places other than those licensed under the Liquor Controls Reform Act.

The process for a license application is summarized in Appendix 1. As part of this process the Director of Liquor Licensing forwards a copy of the licence application to the Victorian Police and Council for their consideration and advice as to any concerns they may have. The views of the surrounding community are also sought through a form advertising process. It is significant to note that the Act provides that none of the following is a valid reason for an objection:

- o That the business carried on under the licence would or would not be successful
- o That the business of another licensee or permittee may be adversely affected by the grant, variation or relocation, and/or
- o That there is insufficient need or demand to justify the grant, variation or relocation.

The Director of Liquor Licensing may refuse to accept an objection if he/she considers that:

- o The person making the objection is not affected by the application
- o The objection is frivolous or vexatious or
- o The objection is not in accordance with the Act

Once the Director of Liquor Licensing has made their decision only the applicant can appeal against that decision.

An application may be refused if the Director of Liquor Licensing is of the view that:

- o The applicant is not a suitable person to hold a liquor licence
- o The grant of the application would detract from or be detrimental to the amenity (defined above) of the surrounding area

- The grant of the application would be conducive to or encourage the misuse or abuse of alcohol
- The application does not have an adequate knowledge of their responsibilities as a licensee and/or
- The application has not been made as required by the Liquor Control Reform Act 1998

Additional grounds of refusal are applicable to Club licences.

Licences are issued subject to conditions, some of which may need to be met before the licence may be used (e.g. construction of the premises), and, while subject to appeal, can be varied after giving of the notice to the licensee.

Ordinary trading hours for an On-Premises Licence are:

- 7am to 11pm, Monday to Saturday (excluding Anzac Day and Good Friday)
- 10am to 11pm on Sunday, and
- 12 noon to 11pm, Anzac Day and Good Friday.

Applicants may also apply for additional trading hours.

## 1.5 TOBACCO ACT 1987

On 1 March 2006, smokefree reforms to the *Tobacco Act 1987* commenced banning smoking in enclosed workplaces in Victoria including restaurants, cafes, shopping centres, gambling venues and licensed premises. It is also prohibited outside (and inside) at underage 'music and dance' events, under covered areas of train station platforms and at tram and bus shelters.

Progressive changes to this Act have placed increasing pressure on outdoor areas such as streets and footpaths as one of the few remaining outdoor dining places if predominantly used for the consumption of food and/or drink that are not required to be smoke free. Since 1 July 2007, smoking is permitted in outdoor dining or drinking areas unless the area has a roof in place and walls that cover more than 75% of the total notional wall area. All enclosed licensed premises must be smoke free. The term enclosed means an area, room or premises that is or are substantially enclosed by a roof and walls, regardless of whether the roof or walls or any part of them are: permanent or temporary; open or closed.

It is this changeability enabled through the position of retractable walls that means that the smoking status of outdoor areas can alter. A wall can mean anything that is fixed or moveable that significantly impedes air flowing through it. For example, it includes plastic, canvas and other similar materials. In some instances this will mean that as awnings are retracted sufficient wall area will be provided to meet the 25% of free wall space required to permit smoking. When drawn, the requirement is no longer met and smoking becomes prohibited.

In some instances determining to grant a permit for awnings or retractable/removable walls may in fact limit the use of the footpath for smoking.

## 1.6 PORT PHILLIP PLANNING SCHEME

### 1.6.1 Local Planning Policy

The Port Phillip Planning Scheme reflects a clear community desire to maintain and enhance the diversity and special qualities of the various neighbourhoods that make up the municipality. The Municipal Strategic Statement (MSS) consequently has a neighbourhood based approach which is somewhat reflected in the current footpath trading policy with its tailored approaches to centre.

Although not specific in its directions for footpath trading, the vision contained within the MSS for the retail centres as lively and viable places should also inform the footpath trading policy. More specifically Council envisages that retail centres:

- *Serve the local needs of shoppers and offer safety, security, comfort and convenience to all users.*
- *Balance parking demands generated by different users.*
- *Encourage a village atmosphere, public life and social and cultural activity.*
- *Provide good opportunities for residential land use in close proximity to retail centres to support strong economic activity, environmentally sustainable living and maximum use of public transport infrastructure.*
- *Retain and emphasise their local character, heritage and culture and provide good access for pedestrians, cyclists and public transport users, as well as motorists.*

The most relevant local planning policy is the Retail Centres Policy (Clause 22.02). The objectives of the policy are to maintain and enhance retail centres that (those objectives most relevant have been bolded):

- **Are economically viable, environmentally sustainable and socially vibrant.**
- *Serve the local shopping needs of the City's residents, workers and visitors.*
- **Offer safety, security, comfort, convenience and a high level of physical and visual amenity to all users.**
- **Encourage public life and social and cultural activity.**
- *Retain and emphasise their local character and heritage.*
- **Provide good access for pedestrians, cyclists and public transport users, as well as motorists.**
- **Do not adversely affect the amenity of adjacent residential areas.**
- *Provide good opportunities for residential land use in close proximity to retail centres to support strong economic activity, environmentally sustainable living and maximum use of public transport infrastructure.*

In order to achieve these objectives it is policy throughout all retail areas to (again, those objectives most relevant have been bolded):

- *Encourage premises within the centre to provide ground floor uses and frontages that are attractive to visitors.*
- **Encourage active street frontages, weather protected pedestrian spaces for promenading, and outdoor dining and innovative public space treatments.**
- *Encourage new development that is consistent with the local character of retail centres.*
- *Encourage residential land use and development above and behind shop premises.*
- *Discourage new bar or tavern uses, except in association with existing food and drink premises located on the ground floor.*
- *Discourage new industrial and warehouse uses, except for a laundromat.*
- *Allow a dry cleaning business where it will not adversely impact upon the amenity of any nearby residential uses.*
- *Discourage land uses in retail centres that may adversely affect the range of community services and residential opportunities within and nearby the centres.*
- **Require new eating premises in all centres to comply with any Council Parking Precinct Plans due to the limited supply of on street parking in the area.**

- *Require all applications that will result in an increase in car parking requirements and through traffic in the area, or that will seek a dispensation in car parking, to be accompanied by a parking analysis prepared by a suitably qualified consultant. The analysis should identify:*
  - *what the increase in car parking demand will be.*
  - *what impact this will have upon car parking demand in the area.*
  - *whether the car parking demand can be accommodated on site, and what the impact of this will be upon street parking.*
  - *where applicable, how the site will be accessed by heavy vehicles including the likely type and frequency of such vehicles, and the routes that they may use to access the site.*
- *Discourage the expansion of centres into adjacent residential areas.*
- ***Minimise potential adverse amenity impacts on adjacent residential areas including parking.***

Under the general provisions of the policy, it is policy to discourage new bar or tavern uses, except in association with existing food and drink premises located on the ground floor. In Fitzroy Street and Acland street shopping centres, it is policy to 'support the tourist and entertainment role of both centres while addressing the issues of car parking and noise generated by such uses'. Whereas in the Carlisle Street shopping centre, it is policy to 'encourage special interest/entertainment uses and eating premises to locate within the centre to supplement its primary retail function'.

### 1.6.2 Planning Permits

Clause 62 of the Planning Scheme specifies a number of exemptions in relation to footpath trading activities. Pursuant to Clause 62.01 of the Planning Scheme any requirement relating to the use of land does not apply to:

- *The use of land in a road if the use is associated with the use of adjoining land and is authorised by the Council under a local law.*
- *The use of land in a road to trade from a stall, stand, motor vehicle, trailer, barrow or other similar device if the use is authorised by the Council under a local law.*

Pursuant to Clause 62.02-1 any requirement relating to the construction of a building or the construction of carrying out of works does not apply to:

- *Buildings and works associated with a use on adjoining land or street trading if authorised under a local law.*

Pursuant to Clause 62.03 any requirement relating to the use of land or the construction of a building or the construction or carrying out of works does not apply to:

- *An event on public land; or*
- *Temporary buildings or works required for the event; where that event has been authorised by the public land manager or by the council under a local law.*

### Car Parking

As footpaths are invariably located within Road Zones beyond the title of the business usually contained within Business Zones, the requirement for a Planning permit for use or buildings or works is exempt as authorized by Local Law No.7. The significance of this exemption is highlighted when the issue of car parking is considered in relation to tables associated with restaurants, and the display of goods associated with shops. When applied for within a Business Zone a requirement for these uses would generate:

- *0.6 car spaces per seat available to the public*
- *8 car spaces per 100m<sup>2</sup> of leaseable floor area*

Before these requirements for car spaces are reduced or waived, an applicant must satisfy the responsible authority that the reduced provision is justified due to:

- *Any relevant parking precinct plan.*
- *The availability of car parking in the locality.*
- *The availability of public transport in the locality.*
- *Any reduction in car parking demand due to the sharing of car spaces by multiple uses, either because of variation of car parking demand over time or because of efficiencies gained from the consolidation of shared car parking spaces.*
- *Any car parking deficiency or surplus associated with the existing use of the land.*
- *Any credit which should be allowed for a car parking demand deemed to have been provided in association with a use which existed before the change of parking requirement.*
- *Local traffic management.*
- *Local amenity including pedestrian amenity.*
- *An empirical assessment of car parking demand.*
- *Any other relevant consideration*

Such exemption can therefore create a management dilemma for Council's which may on the one hand be experiencing difficulties in issuing planning permits for uses in Business Zones where they have been unable to be satisfied that a reduction or waiving of car parking requirements is justified, and yet on the other hand are issuing footpath trading permits for existing uses and seeking no car parking justification.

The Footpath Trading Guidelines seek to overcome this dilemma by specifically stating that "*footpath trading activity should not increase pressure on the available parking capacity in the area*" (p2) as part of the footpath management standards. This highlights the need for Council's Statutory Planning, Traffic Engineering and Economic Development Departments to work closely together to ensure delivery of this standard.

Local Law number 7 provides that Council may have regard to any other matter relevant to an application when deciding whether to grant a permit for outdoor trading. The provision of car parking in the local area is a relevant consideration.

### **Use of private spaces located within footpaths**

A footpath is defined as:

*"The area between the property boundary and the kerbside of a road primarily provided for use by pedestrians and not vehicles, and where a road is closed for a special event it is deemed to be a footpath".*

Pursuant to the definition, Local law number 7 is restricted in its scope and application to the area between the kerbside and a property boundary. It will therefore not apply in the circumstances where a title boundary extends onto a footpath.

Local law number 3, clause 44 states:

*"Behaviour on Council land*

*A person must not behave on Council land:*

1. *In a manner which causes interference with the quiet enjoyment by any other person using the Council land or living in close proximity to the Council land...."*

Council land is defined as:

*“means land, buildings and facilities which are owned or occupied by or vested in the Council or in respect of which the Council has the care and management to which the public has access whether an entry fee is paid or not and includes a public place.”*

Legal advice confirms that under Local Law No.7 and the footpath trading guidelines Council cannot restrict these areas from being used for outdoor trading, however, Local Law 3 provides a Council with the power to restrict the use of these areas for outdoor trading if they are causing an interference with the quiet enjoyment of any other person using the ‘Council Land’

Notwithstanding the above, the DDA is applicable to the footpath even if it is under private ownership.

### **Controlling the business mix**

Local Law number 7 at clause 8 lists the relevant considerations for Council when deciding whether to grant a permit for footpath activity.

- (1) The effect on pedestrian traffic flows and safety;*
- (2) The impact on the appearance of the street and surroundings;*
- (3) The impact on residential amenity;*
- (4) The duration of the use;*
- (5) The effect on vehicular traffic flows and safety*
- (6) Compatibility with other uses in the street*
- (7) Whether it is complementary to the primary adjoining use*
- (8) Whether it is less intensive than the primary adjoining use*
- (9) The applicant’s previous record of compliance;*
- (10) Any relevant policies of the Council; and*
- (11) Any other matter relevant to the application.*

These nature of any considerations made pursuant to this clause must be related to the primary purpose of the local law, namely footpath activities. The consideration of the business mix in the local area is not a relevant consideration and one which would go beyond the scope of the primary power of the local law.

## REVIEW OF APPROACHES

The following section of this report provides an overview of the footpath management practices of Councils across Australia highlighting differences in approach to Port Phillip wherever applicable. In essence all Councils use the kerb, trade and pedestrian zone approach. The detailed technical approaches for each of the Council's are summarized in Appendix 1.

### 1.7 IN & AROUND MELBOURNE

#### 1.7.1 Yarra

- Footpath Trading may be approved by Council after 11pm on a case by case basis. However Council's Liquor License Planning review panel extend their terms of reference to also review all applications for footpath trading after 11 pm. This committee comprises Team Leader Community Amenity, Statutory Planning and Victoria's Police Regional Inspector for Yarra. The panel considers the following issues: the activity to occur on the footpath (dining or substantially consumption of alcohol only); adjacent uses including the proximity to other late night trading venues; and refer the application to the Ward Councilors for comment.
- Footpath Trading may be approved by Council where traders are adjacent to narrow footpaths, however the Community Amenity Officer responsible for approving the license must visit the site and be satisfied that the walkway will not be compromised.
- Council is proposing to phase out high barrier screens in accordance with Council's Encouraging and Increasing Walking Strategy. Currently some licenses allow for high barrier screens to be up to 1.8meters high. The proposed maximum height of any barrier are 1.2 metres will ensure improved visibility for pedestrians and motorists, reduce visual clutter and assist in improving the amenity of an area.
- Easing the clearance from bus and trams stops and public seating to 1 metre other side of this public infrastructure will restrict footpath trading near pedestrian crossings where safety may be compromised, is necessary to remove conflicts with existing Council policies and/or other statutory planning requirements.

#### 1.7.2 Glen Eira

- Footpaths of a width of 2.9m and greater need to comply with guidelines in relation to zones and areas. Footpaths of width of less than 2.9 metres cannot be used for footpath trading.
- Permits are renewed annually prior to expiry (31 December).

#### 1.7.3 Melbourne

- City of Melbourne issues permits for 24 months
- Guidelines state as a minimum that outdoor cafes should allow sufficient space on the footpath for two mobility aids or child pushers to pass each other comfortably.
- Clearways operate during peak hours along a number of busy roads, and are either managed by the City of Melbourne or VicRoads. When clearway restrictions are in place, outdoor café patrons are exposed to greater risk because there are no parked cars to create a safety buffer between the outdoor cafes and moving traffic. Outdoor cafes on footpaths operating on streets with clearway zones are not permitted to trade during restricted times.
- Delineation markers to define limit of trading area for cafes provided by Council

#### 1.7.4 Maribyrnong

- Guidelines state that renewals are not automatic. Council will consider whether the guidelines have been met, whether the quality of the commercial street furniture, including signs and screens has been maintained, and if all reasonable requests made by Local Laws Offices have been complied with. It will consider whether there have been any breaches of the permit conditions, or if the permit is suspended.

#### 1.7.5 Bayside

- Permits issued for 12 months and expire 31 August each year
- Footpaths less than 2.5m cannot be used for outdoor dining or placement of articles. Research on other councils 2.2m is the minimum.
- Bayside also state that any premises where alcohol is served or consumed on the footpath must have its liquor license endorsed with a footpath as part of the 'licensed area' on the liquor license for that premise.

#### 1.7.6 Mornington Peninsula

- Mornington Peninsula Council have a process flow chart at the back of their guidelines to help the applicant understand how applications will be considered. A flow chart is in place for A frames, display of goods/planter boxes/screens and outdoor dining facilities.

#### 1.7.7 Stonnington

- To assist in the management of footpath congestion in the City of Stonnington, Victoria Police has suggested that kerbside dining be restricted after 11pm to reduce the conflict that occurs between different users of the footpath. Council's review in 2004/2005 considered the removal of tables and chairs and other obstructions such as awnings and heaters after 11pm in specific precincts to improve pedestrian footpath safety.

### 1.8 BEYOND

#### 1.8.1 Sydney

- Draft discussion paper dated February 2007 aims to replace the City of Sydney Outdoor Café Policy 2001
- In general and unless otherwise approved, outdoor seating areas will not be permitted to operate past 12.00 midnight
- Unsuitable locations are specified and include: civic or ceremonial spaces, hazardous places such as corner street intersections or unprotected elevated locations (unless in conjunction with a suitable safety rail the design of which is subject to Council approval).
- Criteria for consideration include: pedestrian and vehicular circulation; convenience and safety of patrons and the general public; existing streetscape elements; and in residential areas, residential amenity.
- Guidelines provide examples of furniture such as table, chairs, umbrellas that would be acceptable.
- Use of a Development Control Plan to complement planning provisions to assist in the management of the impact of late night trading premises on the sites and neighbourhoods in which they are located, and in particular protect the amenity of residential properties. Requires applicants to demonstrate responsible management over time through a series of successful trial periods and applies particular controls based on high impact (hotels nightclubs, large licensed premises/restaurants, theatres and karaoke venues) or low impact uses (licenses premises less than 200 square metres, or premises that may in the opinion of Council may impact on the amenity and safety of the neighbourhood because of anticipated high levels or nature of patronage)

### 1.8.2 North Sydney

- Guidelines provide examples of furniture that are acceptable and photographs and barriers, waterproof umbrellas etc
- Plans have to be to scale location of tables and chairs (alternative layouts) and planter boxes etc. Location of umbrellas and awnings drawn to scale
- As part of any application an operations Plan must also be submitted which must include the following information:
  - Trading hours
  - Furniture storage (where the furniture will be stored in the interior of the building shown on a plan)
  - Staffing levels (number of staffing to manage the outdoor seating area is to be specified including any casual staff who may be available during busy times)
  - Toilet facilities (applicant must specify access to existing and proposed toilet facilities)
  - Cleaning program (how the outdoor area will be cleaned if the use were not there. Ensure kept free of food or spillages on the footpath. The pavement needs to be washed down on a weekly basis). Lack of adequate cleanliness may result in the permit being revoked.
  - Wasted disposal. Wastes must be deposited in either 220 litre sulo bins or a dedicated skip. Significant increases in waste may require additional garbage bins or more frequent collections. Each application will be assessed on its own merits.
  - Cigarette butt requirements – all cigarette butts must be disposed of in wind free ashtrays. Planters must be cleared of cigarette butts and waste.
  - Pigeon and pest management – tables must be cleared of food straight away to avoid vermin.

### 1.8.3 Byron

- Approvals granted for a maximum of two years
- Maximum of one chair per square metre
- Where a footpath dining area is approved in association with licensed premises, liquor may not be supplied or consumed in the open air without approval from the licensing Court and Council. Where it is intended to serve alcohol and the area requiring approval forms part of an Alcohol Free zone, an adjustment to the Alcohol Free zone is required through a formal procedure including public advertising and an additional fee for service will be charged.
- Delineation of Dining Areas. The boundaries of footpath dining areas as approved, are to be marked. In most cases corner markers will suffice. In complex locations, it may be necessary to use additional markers along the boundary alignment. In paved areas, pavement markers e.g self adhesive tactile tiles ,metal studs or stone inserts installed flush with the paved surface can be used. The markers must remain in place throughout the duration of the license, and all furniture including umbrellas, planters and plants must be kept strictly within the boundaries of the licensed area.

### 1.8.4 Darwin

- Alfresco policy
- In November 2001 Decision 18/2571 which was adopted by Council was that
  - Council will allow the serving of Alcohol without a meal during the period 8pm to 2am the following day
  - Council will allow the serving of Alcohol with a meal during the period 11.30am until 8pm provided the following criteria are met:
    - Patrons shall consume alcohol only whilst seated at a table (bar stools and raised tables will not be approved).

- The area shall be clearly delineated with the use of barriers to the satisfaction of the Director of Technical Services

## 1.9 KEY IMPLICATIONS

Although the approach and requirements outlined by each Council is very similar the guideline documentation provided to applicants by most Council's is quite limited in terms of its explanation to requirements. An overall comparison of strategies and guidelines reveals that the City of Port Phillip sets a high benchmark in terms of providing easy to understand guidelines, and confirms that the adopted approach is fundamentally sound in terms of delivering on all legislative requirements.

Opportunities for improvement and/or consideration for change based on this aspect of the review are therefore quite limited but include:

### 1.9.1 Possible Improvements to Controls & Processes

- A specific panel to consider all extended trading applications
- Phasing out barriers higher than 1.2 metres in height
- Restricting trade on footpaths during clearway zones times
- Providing clear delineation of trading areas
- Specifying unsuitable locations for outdoor seating areas
- Consider issuing permits for 24 months
- Consider introducing alcohol or smoking free zones

### 1.9.2 Possible Improvements to Documentation

- Including pictorial representation for acceptable furniture or furniture types to be encouraged
- Adding flow charts to the guidelines to more clearly explain the approval process
- More detailed lists for information to help with decision making

## CONSULTATION

The following section of this report provides an overview of consultation held by the Economic Development team with the local community (external) and across Council departments (internal).

### 1.10 EXTERNAL

#### 1.10.1 Customer Survey

A survey of the local business community, residents, and visitors was completed by 133 respondents of whom nearly 70% had read the footpath trading guidelines and just under half currently hold a footpath trading permit.

Of those that held a permit, the majority had approval for A-boards or chairs and tables. Display of goods only accounted for 17% of respondents and the majority of respondents held permits that supported outdoor dining activity such as umbrellas, screens, and heaters.

All of the respondents rate Council's current Footpath Trading Service as follows:

- Access to council staff - 68% good or very good
- Access to information - 74% good or very good
- Ability of staff to address concerns - 43% below average or poor
- Time taken to process - 69% good or very good
- Management of compliance - 49% below average or poor

When rating the experience of applying for or amending permit 60% or more of respondents rated the process as easy or very easy indicating that there is a need for improvement in the permit process. The experience of paying or renewing permits was by contrast easier with more than 80% of respondents rating the process as easy or very easy.

Those suggestions raised to improve the service included:

- Greater education, monitoring and enforcement of the guidelines
- Reduce the paper work and/or simplify the form
- Reduce processing time taken (2-3 weeks too long)
- Greater flexibility in application of the guidelines/ need for ridged approach not understood
- Clarity around how the revenues raised are expended and possibly applied to improving footpaths
- Credit card and online payment processes, and
- Lower fees or recognize as part of general rates payment

When rating the guideline requirements and explanations 72% or more of respondents rated the guidelines as easy or very easy to understand suggesting that there is some improvement required in order to remove the confusion associated for the remaining 28% of customers.

Of the community issues of concern, those of most concern to the survey respondents were:

- Limited pedestrian access along the footpath
- Safety of pedestrians and patrons
- Feeling intimidated when walking past crowds of drinkers on the footpath

- The trading zone boundaries are not clear
- Too much clutter on footpaths, and
- Limited access to public furniture.

Based on these findings those aspects of the footpath trading service requiring the most improvement are:

- Enforcement of compliance with permits
- Increasing the ability of staff to adequately address concerns
- Increasing access to council staff (as this should also lead to greater ease of applying for or amending permits), and
- Further clarifying the guidelines and permit requirements (to reduce confusion and dependence on access to council staff).
- 

## 1.11 INTERNAL

Council officers were invited to identify issues, concerns or areas of improvements with the footpath trading service outlined to follow.

### 1.11.1 Issues Raised

#### Standards & Design

- After consultation people with disability are concerned with narrow paths due to increased signs boards, displays and public seating. People feel one person width that is left is not enough if using a wide wheelchair, guide dogs etc.
- Some streets considered too narrow for street furniture (e.g. Carlisle Street).
- Securing and storing screens, and numerous types creating messy appearance
- Furniture and displays placed outside designated zones
- External pull down blinds poor urban design outcome.
- Glass screens inappropriate in the context of historic streets.
- Umbrellas often dangerous and overhanging trading zone.
- Waste management – tables and chairs are placed hard up against bins and not 1 metre as per trading permit and have to ask people to move to empty them.
- Public furniture (seats) and infrastructure made inaccessible by displays and outdoor dining furniture
- Issues from transport division
  - No consultation with the custodians of the safety of all road users (traffic team)
  - No consideration for public transport users – seating approved at bus and tram stops preventing access for public transport users
  - Insufficient footpath width left for pedestrians
  - Vehicle and pedestrian sightlines are occasionally impacted on
  - Vehicle door opening is difficult when tables and chairs are too close to the kerb.

#### Dining

- Gas heaters (free standing) raise issues of safety for the public and environment sustainability
- Cigarette butt litter management.
- Kerbside furniture storage when business is closed preventing footpath cleaning.
- Too many types and styles of furniture.
- Density of use of the trade zones needs to be reviewed and managed (e.g. tapas bar benches accommodate more activity than standard tables and chairs)

- Consumption of liquor on footpaths (even if lawful) and possible conflict with pedestrians when anti-social behaviour and/or perceived threat from standing patrons arises.
- Smoking on footpaths also causes loss of amenity for pedestrians but cannot mandate internal smoking areas
- Noise from people and music
- Town planning – when restaurants go through the planning process, planners strictly assess the number of seats that can be supported due to the availability of car parking in the area etc. Having gone through that process and limiting the number of seats in the restaurants as a condition of permit, they are then so easily able to add additional seats outdoors without the same car parking assessment. In some cases venues have as much as doubled their seating – half their seating went through strict planning process and then the second half is obtained by virtually a simple payment of a fee.
- Similar concern that scrutiny applied to the issue of liquor licensing indoors is not applied to outdoors.
- Structure Plan objectives to limit footpath trading (of outdoor seating) in retail cores to facilitate the ‘walkability’ of centres are not being considered in the decision making process.

### **A-Boards**

- Multiple A-boards and inconsistency in sizes sign detract.
- Businesses who are not on the main street cannot put out boards as current rules state A boards can only be placed in front of their businesses. Need a creative way that these businesses can sign their businesses on the main street.

### **General**

- Recognise need to encourage alfresco dining and street vibrancy through displays (particularly florists and fruit shops) to attract customers.
- Balance compliance with DDA while retaining the character of shopping strips.
- Businesses rely on outdoor seating to increase their business.
- Outdoor seating encourages customers to spend more time in shopping centres

## **1.11.2 Improvements Suggested**

### **Integrated Town Planning and Urban Design Approach**

- Manage the growth of café, restaurant and tavern/bar premises to ensure they augment but do not displace shopping centre’s primary convenience shopping role.
- Limit the establishment of new café, restaurant and tavern/bar uses within the ‘retail core’ where the walkability, continuity of active frontages, and concentration of primary retail uses is paramount to maintain shopper convenience and retail competitiveness.
- Provide more substantial trade zones on the periphery of centres to facilitate and attract café, restaurant and tavern/bar premises leaving core areas to retail activities, and/or designate maximum lengths/percentages of street frontage that can be occupied by outdoor dining
- Plan, design and develop a walk-friendly environment within shopping centres with emphasis on safety, legibility, connectedness and comfort.
- Reduce the non-essential display of merchandise on footpaths to reduce footpath congestion in retail cores.
- Develop a program of priority improvements and an on-going maintenance regime to ensure Priority Walking Routes have appropriate infrastructure standards and are free from avoidable obstructions (being inappropriately located signage, street furniture, footpath trading).

- All future planning permits for café, restaurant, bar and retail uses should consider how a future trade zone will be provided and consider incorporating these within the shopping centre specific guidelines
- Consider varying pedestrian zones to reflect the need created by the intensity of the use (e.g wider zones in retail cores and narrower outside the retail core)
- Coordinate streetscape improvements (e.g. kerb extensions, street furniture and planting) nominated in Master Plans with footpath permit approvals nominating Council's timing commitments, materials etc.

### Standard and Design Changes

- Prepare detailed trade zone maps for each centre (starting with Acland Street)
- Require trader to install Council approved pavement markers (insets within the pavement) to indicate the extent of trading space to improve the ability of local laws enforcing the use of the street.
- Kerbside café trading against the property line needs to be considered.
- Building line/kerbside distances should be consistent across the municipality.
- Restrict amount of advertising on furniture to a maximum of 10% or 20% of the surface area
- Minimum pedestrian clearance should be increased from 1.5metres to 2 metres.
- Minimum pedestrian clearance should be increased from 2.3 metres in high pedestrian areas.
- Clearance from existing street infrastructure need to be reviewed.
- Allow for Council Street furniture to be relocated at traders cost when appropriate
- Access and clearance to underground and traffic control infrastructure needs to be reviewed.
- Line of sight and clearance issues around street corners/intersection need to be addressed
- Consider banning kerbside trading where there is insufficient separation between smokers, drinkers and pedestrians.
- Ensure consistent hours when trading is to cease outdoors.

### A-Boards

- Apply different levels of controls on the number of A-board per frontage in St.Kilda Road (limit to ground floor premises only).
- Establish a consistent size of a-board signs
- Umbrellas should be socket and sleeve like screens.
- Heaters (if continued to be supported) should be fixed to verandahs.

### Screens

- Restrict glass screens to foreshore areas only and use alternative windbreaks elsewhere (e.g. planting).
- Maximum length between screens should reflect the rhythm of the street rather than arbitrary 10m policy.
- Temporary barriers rather than permanent barriers (Restrict use of glass barriers to pavement insets to allow for daily removal).
- Establish objective where screens should be used/not used (e.g. to discourage people walking into traffic hazards, prevent use between trade zone and footpath)

### Displays

- Limit the height and size of displays

## 1.12 RESEARCH

The Inner City Entertainment Precincts (ICEP) Taskforce was a cross jurisdictional partnership established by the Minister for Police and Emergency Services to address public safety and security in Melbourne's inner city entertainment precincts, a number of which are contained within Port Phillip. Having regard to some of the issues outlined above the findings and recommendations of this Taskforce contained in its discussion paper 'A Good Night For All' need to be considered in the development of solutions for the footpath trading guidelines.

### 1.12.1 Findings

The key issues identified related to behaviour impacts on safety and amenity and in particular found:

- The cumulative impact of licensed premises is a problem.
- The 'as of right' provisions which enable restaurants to be established in the Business 1 Zone without planning permission has been identified as a key problem for stakeholders managing cumulative impact.
- Concern focuses on situations where a restaurant is opened which does not require planning permission, is granted a liquor license and then evolves into a late night bar, often providing entertainment activity without planning permission. Councils subsequently have no authority to act when activities impact on amenity. Such activities can therefore only be controlled through resource intensive enforcement of the Liquor control Reform Act 1998.
- Councils have indicated that existing planning system does not provide adequate tools to enable them to achieve the desired mix in areas where there are concentrations of licensed premises, particularly with regard to managing the cumulative impact of such uses. This is significant as research has suggested there is a link between the densities of alcohol outlets and the incidence of antisocial behavior and violence.
- Councils require specific assistance to identify benchmarks for the appropriate number and types of licensed premises in a specific area.

### 1.12.2 Recommendations

- Could amend VPPs to modify the 'as of right' provisions to change restaurants to a Section 2 use so that some restaurant uses require a permit within the Business 1 Zone is identified as an option for consideration.
- Consideration could be given to mandatory acoustic context reports for sensitive land uses around activity centres.
- The taskforce found that some situations arise where conditions on planning permits are changed at VCAT, and unintentionally, Liquor licensing are not made aware of these changes. Suggested that liquor management plans could also be included as a planning permit condition and include details of house policies, security arrangements and other operational matters on which staff are trained/informed. A uniform set of standard conditions should be developed for application on both planning permits and liquor licenses. Conditions would include: hours of operation, patron and music noise, patron numbers, rubbish storage and removal, liquor management plans, other noise (including that generated from outside areas and from internal areas through open windows or glass sliding doors).
- Guidelines should be prepared for the use of CCTV in public places
- Encourage staff to implement policies which are key to the proactive management of venues and patron behavior. This includes policies around security, or crowd control, most notably effective management of these services in venues.

- Need for greater consideration of planning policies in the liquor license application process, more consistency between planning permit and liquor licensing conditions for the same premises, and greater consistency between definitions incorporated in planning legislation and Victoria's liquor laws.
- A number of measures could include the development of uniform set of conditions for both liquor licenses and planning permits, the review of the definitions in planning schemes and liquor licensing regulatory frameworks, the establishment of a consultative mechanism to address problematic license applications and improved communications to all parties.
- Would be beneficial for the views of relevant areas of council other than town planning to be sought and considered in any objections made, as they are often more fully aware of the potential amenity impacts.

## RECOMMENDATIONS

Based on the findings of the review of the legislative framework, consultation, and other council practices this section of the report now explores options for improvements to the guidelines. It is recommended that these revised guidelines be applied to all permit applications and renewals to ensure consistency in decision making. All recommendations have been developed in line with the proposed revised guiding principles:

- (1) Good Governance - provide for the peace order and good government for the City of Port Phillip and the administration of the council's functions and powers
- (2) Vibrant & Attractive Streets - promote a vibrant street life, which balances the interests and needs of residents, ratepayers and visitors to the city, and facilitates attractive urban design outcomes.
- (3) Fair and Consistent decisions - regulate and control footpath activities to achieve fairness and consistency between traders in the use of footpaths and the overall management of parking capacity within a centre.
- (4) Regulate and control footpath activities so that there is:
  - (a) Continuous accessible path – provide safe and unobstructed passage for pedestrians, in particular, those who may be physically or visually impaired and prioritize areas of high pedestrian traffic (i.e. retail core, entertainment precincts, and public transport pedestrian routes) as those requiring a minimum pedestrian zone of 1.8m wherever possible.
  - (b) Safety – provide safe and unobstructed vision for drivers of vehicles and cyclists.
  - (c) Amenity - limited impacts on the residential amenity and the streetscape that characterises the area.
  - (d) Hygiene – provide access to Council cleansing services and ensure trader orderly and clean waste management practices.
- (5) Promote a safe physical and social environment in which the potential for nuisance activities and risk and exposure to risk by footpath users is minimised.

### 1.13 GIVENS

There are a number of attributes to the guidelines which are required by legislation:

- o Minimum footpath widths, as per the Australian Standard: “a minimum clear width of at least 1.8 metres at the narrowest point and minimum clear height of 2 metres with nothing encroaching into that envelope” wherever possible, and not less than 1.5 metres.
- o Trading zones for areas where there is consumption of alcohol are to be marked
- o The provision of a Local Law exempts applicants from planning requirements (Clause 62)
- o Footpaths are now the only area associated with cafes and restaurants where smoking is permitted
- o There is no requirement for a customer to be served a meal in order to consume alcohol
- o A continuous accessible path of travel should extend from the property line with no obstructions or projections (i.e. the continuous accessible path must include direct access into a property and therefore trading against the building line is in breach of anti discrimination legislation)
- o Use of footpath trading permits to control business mix is beyond the scope of the primary power of the local law
- o No appeal available to VCAT against a decision made pursuant to a Local Law

### 1.14 FLEXIBILITY

There are however, a number of attributes which have a degree of flexibility in their application:

- Permitted hours of operation of the activity
- Time limits applied either specifying the duration, commencement or completion date of the permit
- Removal of any goods or equipment from the footpath during particular hours
- Consultation with other Council departments (e.g. Planning, Engineering) to determine the impact upon local amenity, traffic and car parking management, infrastructure asset management, etc
- Consultation with external stakeholders such as the Police
- Advertising to adjoining owners and occupiers

## 1.15 OPTIONS

Clearly there is an option to maintain the policy in its current format. However based on the findings of this report a numbers of changes should be considered but done so in the context of the key effects sought and the strategic outcomes desired from the policy.

Issue		Recommendation		
Opportunity	Threat	Action	Key Effects Sought	Desired Strategic Outcome
Facilitate the most appropriate locations for outdoor seating	Too many seats in high pedestrian traffic areas	<ul style="list-style-type: none"> <li>Amend Local Law 7 to reflect the 5 guiding principles outlined above.</li> <li>Assess each centre and clearly identify through a series of centre specific maps the trading zone based on the cumulative requirements of the continuous accessible path and all setbacks to public street furniture and assets (including public transport stops) in accordance with the 5 amended guiding principles.</li> <li>Within these zones nominate those areas of high pedestrian traffic and introduce an increased square metre area per person /seat (e.g. 1.5 square metres per person in high traffic areas rather than 1 square metre) and high risk in terms of potential residential conflict</li> <li>Add a notation within the guidelines that any new kerb outstands will only be considered as part of a comprehensive streetscape improvement/urban design master plan prepared by Council</li> <li>Within the designated trade zone, identify a suitable location(s) as approved sites for not-for-profit organisations to provide temporary BBQ's.</li> </ul>	<ul style="list-style-type: none"> <li>Indirectly manage the number of seats in areas where parking is an issue</li> <li>Indirectly managed business mix to encouraged businesses to locate in centres where highest potential (lowest risk of pedestrian and residential conflict) has been identified</li> <li>Better management of outdoor cooking in centres</li> </ul>	<p>More closely manage car parking generated from cafes and restaurants even where as-of-right</p> <p>Reduced street clutter in busy centres and encourage greater activity in centres with capacity</p> <p>Encourage diversity of businesses in centres and manage the location of outdoor trading in terms of minimising risk potential</p>
Reduce footpath clutter	Too much clutter (both visual and physical) on footpaths	<ul style="list-style-type: none"> <li>Increase the pedestrian zone where possible from 1.5 minimum to: <ul style="list-style-type: none"> <li>1.8m for narrow footpaths; and</li> <li>2.3m for wider footpaths</li> </ul> </li> <li>Limit outdoor seating and display of non essential merchandise in the retail core</li> <li>Prohibit advertising on all umbrellas and awnings, and continue to limit advertising on barriers and other street furniture to a business name or relevant product names</li> <li>Introduce a suite of chairs, tables and heaters within the guidelines that demonstrate Council's preferred styles</li> </ul>	<ul style="list-style-type: none"> <li>Create a larger area for pedestrians to reduce the chances of conflict</li> <li>Reduce the opportunity for conflict in high pedestrian traffic areas</li> <li>Ensure provision of safe footpaths</li> </ul>	Reduced likelihood of pedestrian obstructions

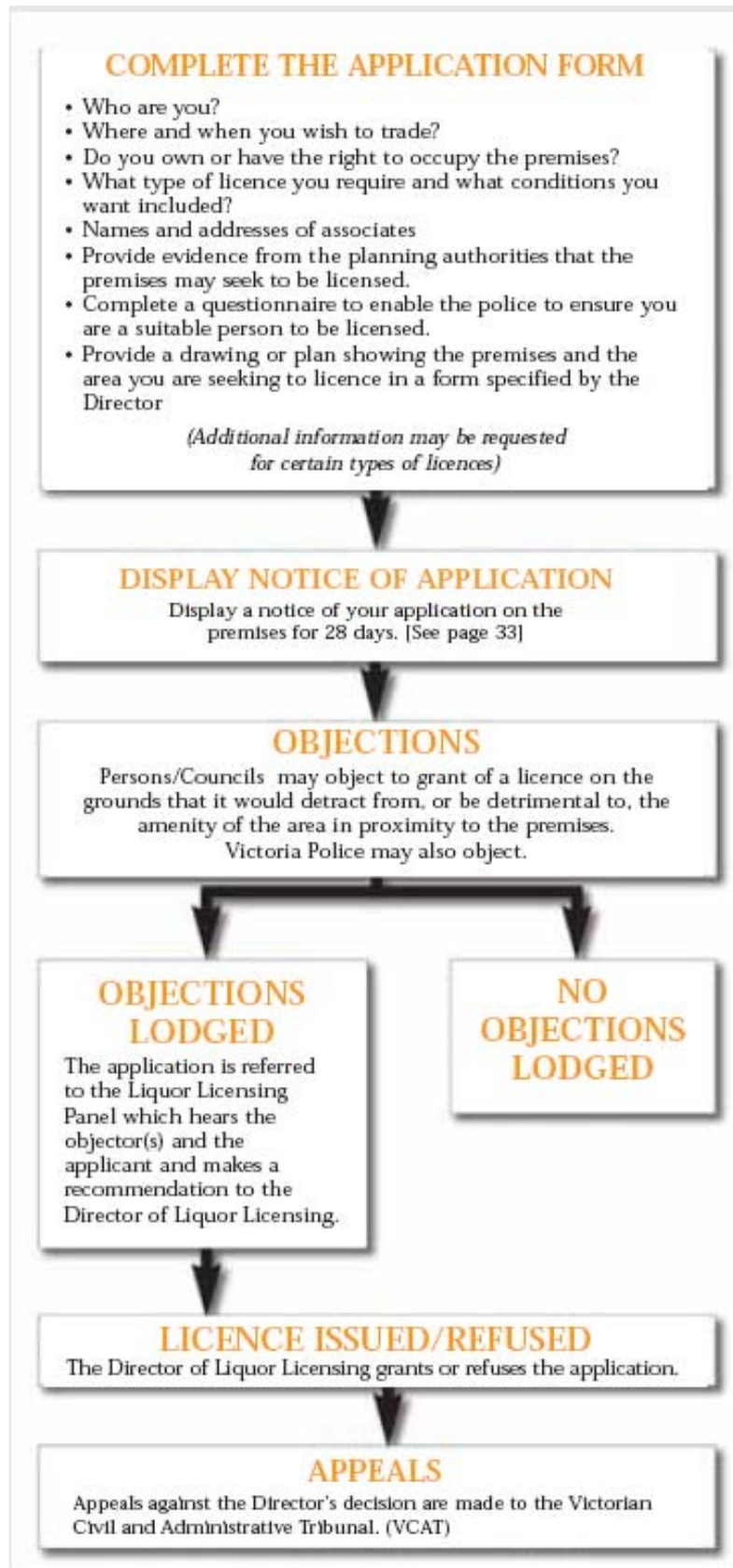
Issue		Recommendation		
Opportunity	Threat	Action	Key Effects Sought	Desired Strategic Outcome
		<ul style="list-style-type: none"> <li>Introduce a requirement that all furniture applications include specifications (including nominated colours) and endorse approved furniture by way of permit condition.</li> </ul>		
Facilitate outdoor seating where owners appropriately manage potential physical and social conflict	Conflict between outdoor seating areas/patrons and pedestrians	<ul style="list-style-type: none"> <li>Introduce a requirement for all outdoor seating to: <ul style="list-style-type: none"> <li>Be located within a suitably identified trade zone</li> <li>Limit new use on a sliding scale of one hour for each year of operation (commencing with 11pm closure up to a maximum of 1am) based on a high compliance and low complaint record where adjoining residential areas</li> <li>Limit existing use to a maximum of 1am based on a high compliance and low complaint record where adjoining residential areas</li> <li>Where there is no residential interface and a use is located within an entertainment precinct consider a maximum closing time of 3am</li> </ul> </li> <li>Require all applicants seeking extended hours of operation beyond 11pm to provide a plan of management with applications and incorporate this with any subsequent approval documentation</li> <li></li> </ul>	<ul style="list-style-type: none"> <li>Seats properly located within trade zone</li> <li>Encourage responsible permit self management</li> </ul>	Continuous accessible path
Increase access to public assets and improve vehicle sight lines	Conflict between patrons and traffic	<ul style="list-style-type: none"> <li>Sightlines need to be increased by: <ul style="list-style-type: none"> <li>Enforce max height of standard barriers (0.9m)</li> <li>Reduce the max height of planters from 1.0m to 0.9m</li> <li>Reducing max height of glass barriers to 1.2m</li> <li>Reducing max height of displays of goods to 0.9m</li> <li>Prevent all barriers and displays at intersection corners for a distance of 10m in either direction unless otherwise specified on the relevant trade zone map</li> <li>All barriers to be removable</li> </ul> </li> <li>All barriers (and umbrellas are to use a socket and</li> </ul>	<ul style="list-style-type: none"> <li>No vehicle driver sightlines are obstructed</li> <li>Consistent standards</li> <li>Better access to public seating</li> </ul>	No vehicle conflict Access to all public furniture ensured

Issue		Recommendation		
Opportunity	Threat	Action	Key Effects Sought	Desired Strategic Outcome
		<p>sleeve system installed and maintained at the costs of the applicant and reinstalled if necessary as part of any street works</p> <ul style="list-style-type: none"> <li>Enforce all required clearances to public seating and assets and ensure that these assets are connected via a clear path to the continuous accessible path zone</li> </ul>		
Consistent decision making	Decisions made without regard to all stakeholder views	<ul style="list-style-type: none"> <li>Consult with all relevant stakeholders in relation to the preparation of the trade zone maps: <ul style="list-style-type: none"> <li>Engineering – traffic</li> <li>Strategic Planning – structure plans</li> <li>Statutory Planning – permit re hours, licenses premises, seats</li> <li>Urban Design – kerb outstands and streetscape improvements/master plans</li> <li>Infrastructure Assets – public furniture and waste management</li> <li>Regional Police Inspector– complaints</li> <li>Ward Councillors – complaints</li> <li>Local Laws – complaints</li> </ul> </li> <li>Establish a panel to consider all applications past 11pm <ul style="list-style-type: none"> <li>Statutory Planning – permit re hours, licenses premises, seats</li> <li>Regional Police Inspector– complaints</li> <li>Ward Councillors – complaints</li> <li>Local Laws – complaints</li> </ul> </li> <li>Ensure all applications within a Heritage Overlay are referred to Council’s Heritage Advisor</li> <li>Ensure all outdoor seating applications are referred to Council’s Environmental Health Officers</li> <li>Ensure all Liquor Licence applications are commented upon by Statutory Planning, Environmental Health and the Footpath Trading Officer</li> <li>Establish standard conditions for all permits</li> </ul>	<ul style="list-style-type: none"> <li>Communication between council departments and external stakeholders when issuing permits</li> <li>All views of affected stakeholders taken into consideration when issuing a permit</li> <li>Greater understanding of all parties to the issues requiring consideration</li> <li>Reduce time delays caused through referrals</li> </ul>	More equitable decisions

Issue		Recommendation		
Opportunity	Threat	Action	Key Effects Sought	Desired Strategic Outcome
Consistent enforcement of permit conditions	Non compliance overlooked	<ul style="list-style-type: none"> <li>Greater monitoring of compliance with permits requiring quarterly checks</li> <li>Prohibit the transfer of permits</li> <li>Introduce a requirement for all trading areas to be clearly marked using pavement markers</li> <li>Introduce/update product specifications as part of the guidelines for: <ul style="list-style-type: none"> <li>Socket sleeve systems</li> <li>Barrier structures</li> <li>Awnings</li> <li>Chair and table leg minimum diameter</li> <li>Heaters – required minimum energy performance and clarify minimum head height clearance 2.7m</li> </ul> </li> <li>Add a notation to the guidelines that all structures attached to a building requires a building permit</li> </ul>	<ul style="list-style-type: none"> <li>Regular checks completed</li> <li>Trading zones easily identifiable</li> <li>Prevent damage to footpaths or other public infrastructure</li> </ul>	100% compliance by all permit holders
Increase awareness and understanding	Confusion around requirements by permit holders	<ul style="list-style-type: none"> <li>Introduce clearer guidelines as specified throughout these recommendations</li> <li>Provide a map of the approved trade zone (and seats and tables if relevant) as part of all approved permit documentation and consider including as part of sticky decal to premises</li> <li>Develop and provide an education program for first time applicants</li> <li>Develop and provide an education program for customer service staff to increase the number of staff able to handle enquiries</li> <li>Develop and conduct an awareness campaign for all property managers for the guidelines</li> <li></li> </ul>	<ul style="list-style-type: none"> <li>Greater understanding of requirements</li> <li>Greater resources to handle enquiries</li> </ul>	100% compliance by permit holders
Reduce processing time	Unnecessary delays and lost trade	<ul style="list-style-type: none"> <li>In addition to reducing the need for referrals by introducing trade zone maps set a maximum time limit for processing as 10 working days once all information is satisfactorily provided</li> </ul>	<ul style="list-style-type: none"> <li>Establish a clearer expectation of applicants as to how long processing will take</li> </ul>	Application expectations managed
		<ul style="list-style-type: none"> <li></li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>	

Issue		Recommendation		
Opportunity	Threat	Action	Key Effects Sought	Desired Strategic Outcome
Increase access to footpaths for cleaning	Footpath trading interfering with street cleaning and emptying of rubbish bins.	<ul style="list-style-type: none"> <li>• Introduce the hygiene and cleaning standards of the guidelines as permit conditions as relevant..</li> <li>• Introduce a permit conditions that notes a lack of adequate cleanliness may result in permit being revoked.</li> <li>• Prohibit any activities that may prevent Council's footpath cleansing program</li> </ul>	<ul style="list-style-type: none"> <li>○ Cleaner streets</li> </ul>	No increased demand for Council street cleaning service by private individuals
Control the number of A boards	Cluttered footpaths	<ul style="list-style-type: none"> <li>• Reduce the number of A-boards on the street by: <ul style="list-style-type: none"> <li>○ Prohibiting display of A-boards for those businesses with ground floor street frontage and at first floor (to encourage all advertising to be attached to the building façade and/or fascia)</li> <li>○ Limit the number of A-boards per premises located above first floor to one per property</li> <li>○ Enforce the size limits imposed and number now imposed</li> <li>○</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>○ To reduce clutter</li> </ul>	Continuous accessible path

## APPENDIX ONE | LIQUOR LICENSE APPLICATION PROCESS



## APPENDIX TWO | COUNCIL TECHNICAL REQUIREMENTS