

**ORDINARY MEETING OF COUNCIL  
8 FEBRUARY 2010**

<b>5</b>	<b>FOOTPATH TRADING REVIEW</b>
<b>LOCATION/ADDRESS:</b>	<b>WHOLE MUNICIPALITY</b>
<b>GENERAL MANAGER:</b>	<b>SUE WILKINSON, GENERAL MANAGER ENVIRONMENT AND PLANNING</b>
<b>PREPARED BY:</b>	<b>ANITA LANGE, SPECIAL PROJECTS MANAGER</b>
<b>FILE NO.:</b>	<b>11/01/97-02</b>
<b>ATTACHMENTS:</b>	<b>1 - DRAFT CITY OF PORT PHILLIP FOOTPATH TRADING GUIDELINES – FEBRUARY 2010 2 - COMMUNITY CONSULTATION AND TRANSITION PLAN 3 - LIST OF PROPOSED CHANGES AND RATIONALE 4 - COMMENTS ON ISSUES RAISED DURING THE REVIEW AND AS A RESULT OF CONSULTATION</b>

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**1 EXECUTIVE SUMMARY**

- 1.1 An extensive review of the council's current footpath trading service has been undertaken and a revised set of draft guidelines has been prepared. It is recommended that the opportunity be provided for traders and the general community to input to the draft guidelines so that the council can determine the final guidelines by late April 2010.
- 1.2 Council is also undertaking further research work to assess car parking demand for outdoor dining and will consider the outcomes of this research prior to determining a final position on the guidelines

**2 RECOMMENDATION**

That Council:

- 2.1 Agrees to release the "Draft City of Port Phillip Footpath Trading Guidelines – February 2010" for public review.
- 2.2 Adopts the proposed Community Consultation and Transition Plan to guide the review, adoption and implementation of the new guidelines.
- 2.3 After due consideration of all issues raised, agrees to receive and hear submissions and determine a final position on the footpath trading guidelines by the end of April 2010.

### **3 BACKGROUND AND CONTEXT**

#### OVERVIEW OF REVIEW

- 3.1 The council's current footpath trading service supports approximately 750 permits that allow for a range of commercial purposes including the placement of advertising signs, display of goods, tables, chairs and ancillary equipment such as umbrellas, heaters, planter boxes and screens. Approximately 50% of all permits are for tables and chairs on the footpath by cafes, restaurants and hotels.
- 3.2 The current Footpath Trading Guidelines have been in place since 2004. The council proposed a review of the guidelines in September 2008 and to this end has undertaken the following work:
- Commissioned a specialist town planning and development consultant *The Planning Group* to undertake background and final reports on footpath trading that covered relevant legislation, approaches to footpath trading in and around Melbourne and beyond, implications for Port Phillip, results of consultation and made some initial recommendations followed up by some final recommendations;
  - Conducted a survey of the local business community to investigate concerns and issues with footpath trading;
  - Conducted on-street consultation in the seven main shopping precincts in June 2009 to test some of the findings in the first consultant report with findings included in the consultant's Final Report;
  - Received and considered a number of written submissions;
  - Met with a number of stakeholders including the Scooter Group (local disability group), Liquor Licence Accord, the Police and several Trader Associations; and
  - Conducted an internal review of the Report recommendations.
  - An internal review taskforce of officers from the Footpath Trading, Statutory Planning, Strategic Planning, Transport and Traffic, Local Laws, Economic Development, Development Compliance and Governance have been involved in considering the issues raised, reviewing the Consultant's report, preparing draft guidelines and considering the implementation issues. This work has also taken account of the council's legal and stewardship obligations and advice from the council's risk insurers Civic Mutual Plus
- 3.3 The internal review has covered the whole service from the policy and guidelines, administration, enforcement, to communication of footpath trading to the community. An important objective has been to ensure consistent decision making for all applications, between the footpath trading service and other areas of Council service delivery ( i.e. planning, traffic and transport, open space, etc), and in enforcement.

3.4 The internal review found the main issues to be the:

- Difficulty of prioritising issues in deciding on applications;
- Generous interpretation of guidelines to encourage footpath trading within the city;
- Inconsistent decision making and permit administration, documentation and enforcement; and
- Varying degrees of compliance with existing permits.

3.5 The findings have highlighted the need to:

- Provide clearer more transparent decision-making;
- Provide clearer and more specific guidelines;
- Improve administration and documentation processes;
- Address anomalies to meet legislation and changing community expectations; and
- Improve enforcement following the introduction of new guidelines.

3.6 The main changes made to the guidelines include the following:

- Clarification of the 6 priorities for footpath trading as: public safety; accessibility for all; residential amenity; vibrant street life; attractive streetscape and leisure opportunities.
- Clearer standards in some areas in relation to pedestrian zone widths, kerb zone widths, clearances from intersections, clearances for public transport infrastructure, requirement for delineation markers, display of goods height and width, A boards and planters.
- Introducing compulsory socket and sleeve systems for some removable screens and all umbrellas.
- Ensuring DDA (Disability Discrimination Act 1992) compliance by not permitting trading against the building line in order to allow for a continuous accessible path of travel.
- Addressing the requirements for a smoker's area and managing queuing on the footpath.
- Clarifying standards for outdoor heaters and aiming to reduce their environmental impact.
- Allowing outdoor furniture to remain securely stacked within the trading zone at the end of footpath trading time until the close of business.
- Clearer enforcement approach to non-compliance with permit conditions.
- New process to relocate public infrastructure to support footpath trading.

DETAIL OF REVIEW

- 3.7 One of the overarching issues affecting footpath trading is how to address all of the various issues and make consistent and sustainable decisions on applications. Whilst footpath trading sits outside the Council's statutory planning process it still needs to apply the same kind of principled and policy based decision making to applications on council owned land (i.e. the footpath) as it does when determining applications on private and public land under the Planning Scheme.
- 3.8 To address this issue it is proposed to include a list of priorities for footpath trading to make the rationale for the guidelines and their administration and enforcement clear. These priorities will be used to guide council's assessment of applications against the impact the proposed footpath trading will have on the current existing situation at the time of the application.
- 3.9 The priorities for footpath trading are listed below:

<b>Priority</b>	<b>Objective</b>
1. Public safety	Streets are : <ul style="list-style-type: none"><li>• safe and have unobstructed passage for pedestrians, in particular, those who may be physically or visually impaired, and</li><li>• Safe and have unobstructed vision for drivers of vehicles and cyclists.</li></ul>
2. Accessibility for all	Streets are easily navigated by all pedestrians, allow appropriate pedestrian traffic flows and supports public transport use.
3. Residential amenity	Footpath trading (and any associated off site impacts) do not cause any additional significant negative impacts on the amenity of surrounding residential areas in relation to nuisance, noise, parking and other amenity considerations.
4. Vibrant street life	Streets are vibrant and lively and contribute positively to an area's sense of place and character
5. Attractive streetscape	Streets are attractive, clean and pleasant and the heritage significance of any heritage place is not diminished.
6. Leisure opportunities	Footpath trading supports social interaction, alfresco dining and drinking as enjoyable leisure activities

3.10 A number of key issues were raised as part of the review from traders, the community or as part of the Consultant’s reports. The key issues and how they have been addressed in the draft guidelines is detailed below:

<b>Issue</b>	<b>Comment</b>	<b>Proposed change in draft guidelines</b>
<p>1. Appropriateness of current standards for trading zone widths, clearances, outdoor furniture and screens, display of goods and A boards</p>	<p>The current guidelines have been reviewed and have found to contain less than desirable standards in some areas in relation to pedestrian zone widths, kerb zone widths, clearances from intersections, clearances for public transport infrastructure, requirement for delineation markers, installation of socket and sleeve systems for removable screens and umbrellas, display of goods height and width, A boards and planters.</p> <p>Attachment 3 includes the existing situation, proposed changes and the rationale.</p> <p>Whilst some of these improved standards will reduce the trading zone and the number of tables and chairs and outdoor displays it is felt that these changes are justified due to safety and accessibility considerations.</p>	<p>The guidelines will contain clearer and improved standards.</p> <p>Socket and sleeve systems for some removable screens and umbrellas will be compulsory.</p> <p>In some cases trading zone will reduce in width and length to meet the new standards or there may be additional costs to be borne by traders if safety issues cannot be mitigated without the installation of devices such as bollards.</p> <p>Each case will be assessed on a case by case basis and there will be the opportunity to apply for a review by the Footpath Trading Panel.</p>
<p>2. Hours of footpath trading for licensed venues</p>	<p>The hours for licensed venues are currently 11pm for hotels and bars and 1am for restaurants and cafes with exceptions for entertainment precincts (Council currently allow 3am in Bay, Clarendon, Fitzroy and Acland Sts).</p>	<p>No change proposed -</p> <p>It is considered premature to reduce the 3am limit prior to the availability of better data such as the cumulative impacts research currently underway (due by mid 2010).</p> <p>Hotels trading in residential areas will continue to be assessed on a case by case basis to focus on maintaining residential amenity</p>

<p>3. Ensuring DDA compliance</p>	<p>The current guidelines are clear that there should be no trading against the building line to ensure a continuous accessible path of travel along the building line. Council has responsibilities under the <i>Disability Discrimination Act 1992</i> and the possibility of action being initiated under this Act if it permits non-compliance.</p> <p>Council has allowed a few traders to continue to trade against the building line. However it is recommended that council not allow this practice to continue and work with affected traders to achieve DDA compliance. In some cases these permits can be assessed by a Disability Consultant at the expense of the business owner if the request to comply is challenged.</p>	<p>No change to the guidelines but a change to administration. This will also be an issue targeted in enforcement.</p>
<p>4. Parking - ensuring consistency in treatment of parking between planning and footpath trading applications</p>	<p>Outdoor dining is predominately a seasonal and weather dependant activity. Anecdotal evidence to date suggests it does not normally place additional pressure on parking capacity in centres beyond what is approved for the internal seating of a café, restaurant or hotel. Patrons will normally either sit inside or outside the venue and apart from limited peak periods, most venues will not reach full capacity.</p> <p>In order to test this premise the council will undertake some further research work over the months of February to March to gauge the occupancy rates regarding both outdoor and indoor seating in a sample of venues across the city. This will provide the council with a clearer basis to determine applications in areas where there is a parking capacity concern. Depending on the outcome of the study the council may make further changes to its processes when assessing parking capacity for footpath trading applications.</p>	<p>Council will carry out some further research work to determine parking capacity issues in the approval of footpath trading. The research work will be available by the end of March to allow consideration for the final review of the guidelines.</p>

<p>5. Managing smokers on the footpath</p>	<p>With the changes to the <i>Tobacco Act 1987</i>, venues need to provide an outdoor smokers area. For some venues the only area available is the footpath area i.e. the trading zone. To accommodate both seated patrons in the trading zone and standing smokers it is proposed to provide traders with the option of replacing chairs and tables within the trading zone after 10 pm to allow for outdoor standing smokers area (with same number of people).</p> <p>The time of 10pm has been selected as the problem of outdoor smokers blocking the footpath is primarily an issue in the late evening for hotels and for cafes/restaurants that turn into late night venues/bars.</p>	<p>Section 2.6 on Smoker's area included in the draft guidelines.</p>
<p>6. Queuing of patrons in pedestrian zone</p>	<p>An issue raised is the queuing of patrons and the subsequent blocking of the footpath.</p> <p>Permit holders should ensure their patrons keep the pedestrian zone clear at all times and accommodate any queuing in the trading zone. A section in the draft guidelines has been included that traders must accommodate queues within the trading zone. No rope and bollards will be allowed in the pedestrian zone.</p> <p>This requirement will address the disability issue by enabling a continuous accessible path of travel along the building line so that people with a disability can use the footpath without encountering barriers such as people queuing and rope and bollards</p> <p>Council will be better able to regulate and enforce the queuing of patrons by clarifying queuing as a footpath trading issue and including conditions on permits for certain premises. Enforcement will then have the power to force venue operators to better manage queues as well as refer to the guidelines in</p>	<p>Draft guidelines to make it clear that it is the permit holder's responsibility to ensure that their patrons or clients do not impede the flow of pedestrian traffic in the pedestrian zone (section 1.7.1).</p> <p>New section 2.7 includes comments and diagram on accommodating the queuing of patrons.</p>

	instances where traders start introducing queues for certain events.	
7. Reducing the environmental impact of heaters	<p>The current guidelines allow moveable and permanent gas and electric heaters.</p> <p>It is proposed to discourage electric heaters and to introduce clearer specifications for gas heaters with the onus on the applicant to provide advice that they comply with relevant safety standards. Apart from ensuring that gas heaters are operating efficiently and therefore minimizing environmental impacts, this is also a risk issue identified by the Council's insurers.</p>	<p>The draft guidelines discourage electric heaters except where there are special circumstances.</p> <p>New section with clearer specifications and additional information on using outdoor heaters to reduce environmental impacts.</p> <p>New annual trader self – assessment form for gas heaters to ensure compliance with Australian standards and regulations and improved environmental performance.</p> <p>It is also proposed to introduce a levy for outdoor heaters in next fee review (for 2010/11).</p>
8. Ensuring consistency of permits with liquor licensing controls	The current guidelines specify that footpath trading permits be consistent with planning permit hours and on premises liquor licence permits.	No change proposed to current guidelines.
9. Leaving outdoor furniture within trading zone at end of footpath trading time but prior to close of business	<p>The current guidelines require traders to pack away the outdoor furniture at the end of the footpath trading period and place the goods within the premises. There are a number of permits that allow outdoor furniture to be stacked in the trading zone until the close of business as there is no suitable place within the premises and moving the furniture indoors would disrupt the flow of business. This was a big issue for a number of traders.</p> <p>On review it was found that in the case where there is no alternative space available within the business</p>	Allow outdoor furniture to be securely stacked in the trading zone until the close of business, provided certain requirements are met with regard to safety, furniture oversight and there is no alternative space available within the business premises.

	premise at the close of footpath trading, the outdoor furniture should be allowed to be securely stacked in the trading zone until the close of business, provided certain requirements are met with regard to safety, furniture oversight, minimisation of noise when moving furniture indoors at close of business etc	
10. Clearer enforcement approach to non-compliance with permit conditions	The current guidelines are not as clear about the current approach to enforcement in cases where there is non-compliance.	Further detail is included in the guidelines on enforcement as follows:  <i>Each breach receives a warning or an infringement depending on the gravity of the offence. Cases where there are 3 breaches within a 12 months period will be referred to the footpath trading panel with a view to cancelling or varying the permit.</i>

3.11 A number of additional issues were also raised and the proposed response in the draft guidelines is included in attachment 4.

3.12 The layout of the guidelines was generally well received (65% of respondents found them to be easy) but that there needed to be more information and better diagrams to illustrate some of the points. It is therefore proposed to retain the same layout of the guidelines but to modify them as follows:

<b>Current section</b>	<b>Revised section in draft guidelines</b>
1. Overview	Greater explanation of Council's objectives and explanation about council priorities for footpath trading.  Improved clarification of footpath management standards.
2. Footpath zones	More specific standards e.g. increased pedestrian zone widths, increase in kerb zone widths, increased clearances from public infrastructure and public transport infrastructure to meet safety and accessibility considerations.
3. Design standards	More specific standards for outdoor furniture.  More specific design specifications for heaters, awnings, umbrellas and screens.
4. Application process	Clearer application process.  New assessment form which provides the applicant with the opportunity to provide information and indicate their

<b>Current section</b>	<b>Revised section in draft guidelines</b>
	understanding of and compliance with guidelines.
5. Management and responsibilities	Greater clarity on applicant's role and responsibilities.

3.13 Further strategic work is also planned in 2010/2011 on the link between footpath trading and parking capacity, the cumulative impacts of licensed venues and the role that footpath trading plays in achieving the Council's broader strategic planning objectives on shopping centre's strategic roles and functions and the preparation of centre plans that show footpath trading zones. This may affect a future iteration of the guidelines.

#### **4 CONSULTATION AND STAKEHOLDERS**

##### *4.1 Community Consultation*

4.1.1 The Community Consultation and Transition Plan in Attachment Two contains the main steps in consulting on the draft guidelines and agreeing to a final set of guidelines. It also contains the proposed transition.

4.1.2 A key aspect in the design of the review has been to provide the community and especially traders with a clear and reasonable process, ample opportunity for consultation and ensure there is scope to modify the guidelines prior to introducing the new guidelines.

##### *4.2 Internal consultation*

4.2.1 Internal consultation has been extensive and covered all relevant areas of the council.

## **5 DISCUSSION**

### *5.1 Alignment To Council Plan*

- 5.1.1 The proposal is consistent with the Council Plan and in particular the Plan's emphasis on Enhancing Liveability and section 4.1 a sense of place and section 4.2 shaping the future of our city.

### *5.2 Policy Implications Plan*

- 5.2.1 This proposal is consistent with the Council Plan and Council's approach to review of its Local Laws.
- 5.2.2 Footpath activities Local Law no 7 provides council with the statutory control to enforce the management of footpath trading. The Local Law was re-created on 6<sup>th</sup> April 2009 based on the previous Local Law with some minor wording changes and increases to some of the penalty units. The revised draft guidelines have been developed to achieve consistency with and assist the administration of the local law objectives.

### *5.3 Finance / Resource Implications*

- 5.3.1 There are finance/resource implications in the implementation of the new guidelines. The implementation of the new guidelines will have resource implications beyond the existing budget due to the additional staffing time to work with permit holders to explain the changes and deal with some of the more complex applications, additional enforcement and costs associated with future strategic work. This will be coupled with a likely reduction in fee income due to reduced trading zone areas in some cases resulting in additional resources being required for this service.

### *5.4 Legal & Risk Implications*

- 5.4.1 There are legal/risk issues in the footpath trading service and these have been addressed as part of the review. All the hazards/risks assessed are existing issues that are covered in the existing guidelines and relate primarily to how permit holders comply with their existing permits. Proposed changes to the Guidelines, to permit administration as well as the new application forms will assist in making these responsibilities clearer.
- 5.4.2 Addressing the lack of DDA compliance for a small number of permits will also support Council's responsibilities under the *Disability Discrimination Act 1992* and reduce the possibility of action being initiated under this Act if council permits non-compliance. The council will work with permit holders to ensure they meet DDA obligations.

## **6 IMPLEMENTATION STRATEGY**

### **6.1 Community Consultation and Transition Plan**

6.1.1 It is expected that the draft guidelines will generate much interest and debate especially amongst traders. A community consultation and transition plan has been developed to allow for review of the draft guidelines prior to the council reviewing and hearing submissions and determining the final guidelines.

6.1.2 Attachment Two contains the Community Consultation and Transition Plan. It comprises six main steps:

- Release of draft guidelines (February 2010)
- Opportunity for public review of draft guidelines (February 2010 to 26 March 2010) with a number of key consultation opportunities between February and March
- Council meeting to consider and hear submissions/ results of further consultation and determine and adopt final guidelines and transition plan (April 2010)
- Revised Guidelines implemented (May 2010 onwards)
- Permit renewals (July to Dec 2010)
- End of transition period (July 2011)

6.1.3 The plan also includes the proposed transition so that traders can be aware of how and over what time the council plans to implement the changes. The phasing in of new guidelines is proposed as follows:

- Compliance with existing permit requirements – immediate
- Compliance with changes to guidelines:
  - No expense to trader – from 1 July 2010
  - Trader incurs additional expenditure in purchasing new or adapting existing equipment – completed by 30 June 2011
  - Special cases – to be determined in consultation with traders and/or referred to Footpath Trading Panel

## **7 OFFICER DIRECT OR INDIRECT INTEREST**

7.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.