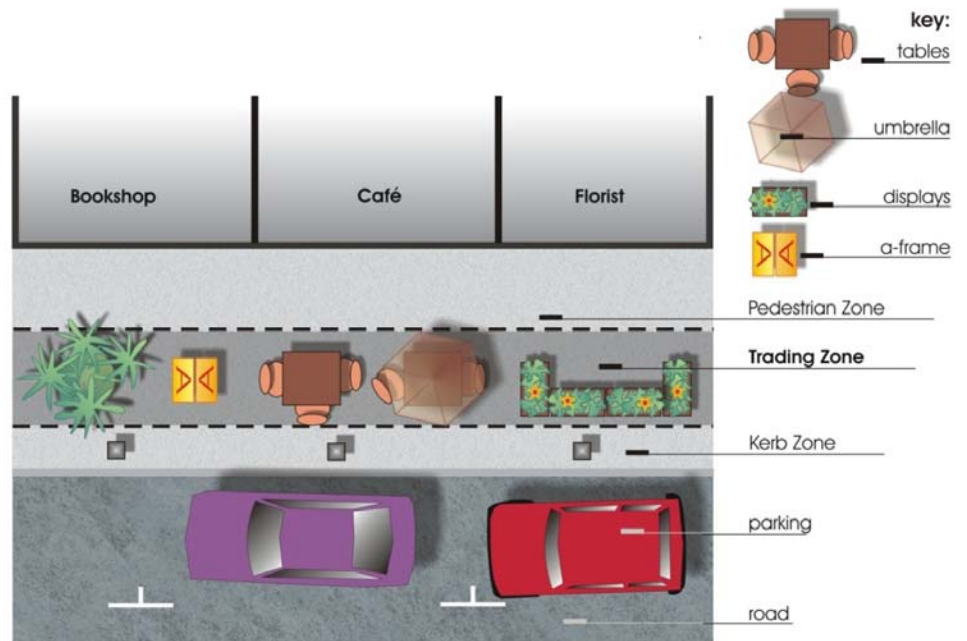


# Final Report

Footpath Trading Policy Review



# FINAL REPORT



July 2009

Footpath Trading Policy Review

TPG Ref: 1449

Client: City of Port Phillip

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## INTRODUCTION

The primary objectives of this review were:

- 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 were:

- 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 consultation undertaken as part of this review;
- Review these findings in relation to those recommendations identified in the Background Paper; and
- Make final recommendations for improvements to the existing footpath trading policy.

## CONSULTATION REVIEW

### 1.1 PROCESS AND FINDINGS OF ADDITIONAL CONSULTATION

The following section of this report provides an overview of additional consultation that was held in partnership with the Economic Development team and the local community.

As part of this consultation a series of information sessions were held across the municipality. A marquee containing information panels about the existing guidelines and some suggested improvements was positioned at the following times and locations.

- Clarendon Street: 12 - 2pm, Thursday 11 June 2009
- Bay Street: 12 - 2pm, Friday 12 June 2009
- Fitzroy Street: 9am – 11am, Saturday 13 June 2009
- Acland Street: 1 - 3pm, Saturday 13 June 2009
- Carlisle Street: 12 - 2pm, Friday 19 June 2009
- Bridport Street: 9am – 11am, Saturday 20 June 2009
- Ormond Road: 1pm – 3pm, Saturday 20 June 2009

In line with the review objectives the information sessions provided the community with the opportunity to learn about the guidelines. They also provided an opportunity to gather feedback about how suitable the guidelines are considered, and more specifically, what the community likes the most and least about footpath trading.

A total of 149 in-centre surveys were completed, comprising 84% residents, 10% business and 6% visitors. Those centres where respondents spent the most time were: Acland Street (21%), Albert Park (15%), Elwood (11%), Balaclava (10%) and Fitzroy Street (9%).

The key findings from the in-centre surveys were:

- 84% of respondents indicated that the kerbside trading zones are the most suitable layout to manage footpath trading.
- When considering **what respondents like most** about footpath trading 52% of respondents stated that they like the atmosphere and vibrancy that footpath trading creates in a centre.
- When considering **what respondents like least** about footpath trading 24% of respondents stated that they dislike the way chairs and tables spill into the pedestrian zone, 22% dislike the use of narrow footpaths, and 11% believe there is a lack of enforcement of the guidelines.
- Notably respondents were virtually evenly split between those that had nothing they either liked (20%) or disliked (22%) about footpath trading.

A summary of the findings of likes and dislikes are contained in Tables 1 and 2 to follow.

TABLE 1 – What Respondents Like About Footpath Trading

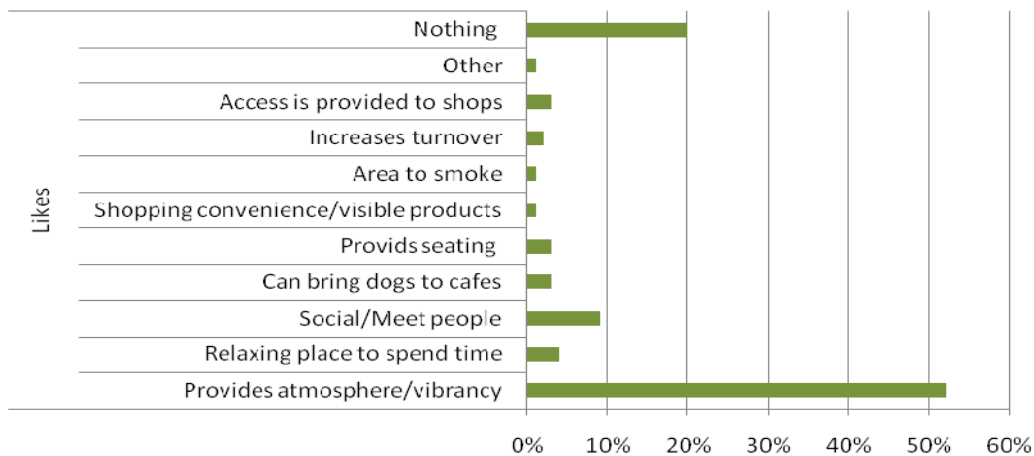
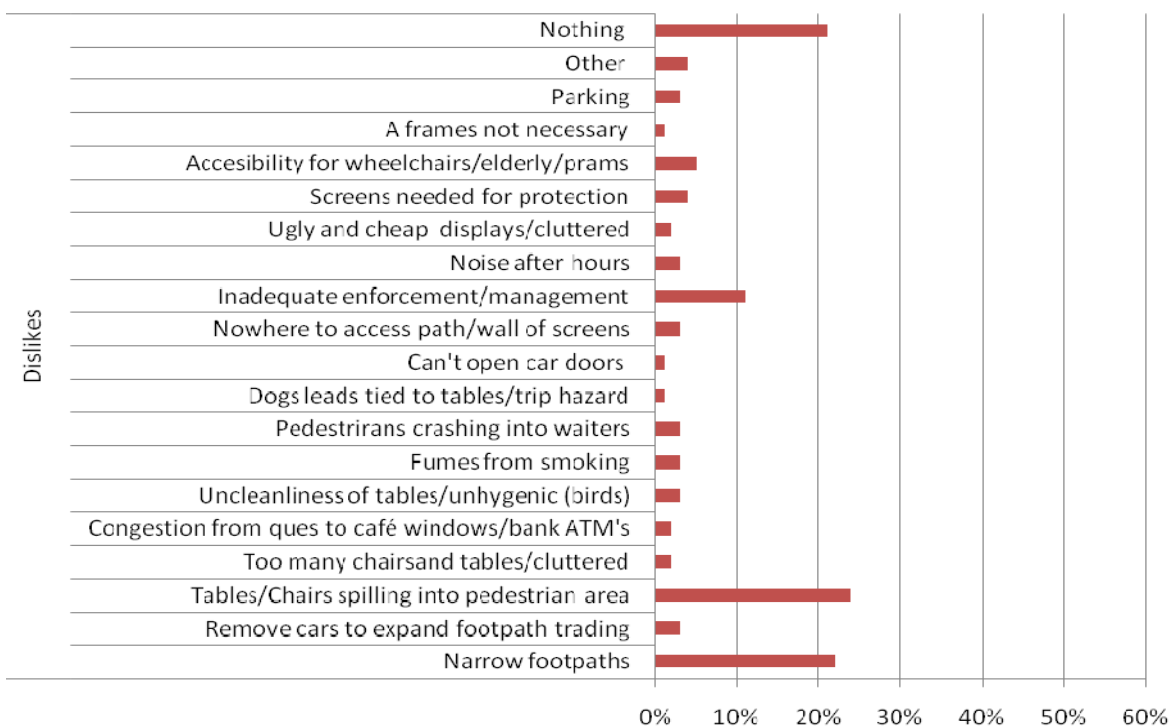


TABLE 2 – What Respondents Like Least About Footpath Trading



An opportunity was also provided for the community to provide feedback on Council's website and to make written submissions. To this end a further 15 submissions were received. Virtually evenly split between residents and business operators, this feedback was generally in line with the findings above. However, a number of submissions highlighted concerns in relation to:

- The management of different times between footpath trading permits and liquor licenses
- The management of different times between bars and restaurants for footpath trading permits
- The intensification of the use of footpaths for smoking purposes and smokers not being able to stand in trading zones
- The prohibition of the use of pull down screens
- The requirement to remove rather than permanently place planter boxes and pots
- The requirement to remove all outdoor furniture when trading is still occurring
- The absence of a facility to obtain temporary licenses to increase seating for events
- The use of outdoor electric heating

## **1.2 CONCLUSIONS FROM ALL CONSULTATION**

For the most part all of these findings suggest that the community generally finds that there is a lot more to like about footpath trading than there is to dislike. Of concern to residents however, is the management and enforcement of tables and chairs in particular, and the use of narrow footpaths (most commonly identified as Ormond Road, Carlisle and Acland Streets with pedestrian areas of only 1.5 metres). Unless carefully managed and enforced, these narrow footpaths become too congested and cluttered.

Business operators clearly embrace the opportunity for footpath trading but have concerns in relation to the management of trading hours, maximizing customer comfort, and managing smoking.

Based on the findings of the preliminary consultation undertaken for the Background Report, the issues of most concern to the community that need to be addressed are:

- Limited pedestrian access along the footpath due to obstructions within the pedestrian zone
- Safety of pedestrians and patrons
- Cleanliness of outdoor eating areas
- Feeling intimidated when walking past crowds of drinkers on the footpath
- Noise generated from late night outdoor trading; and
- Limited access to public furniture.

Those aspects of the footpath trading service requiring the most improvement are:

- Enforcement of compliance with permits
- Better management of trading zones by traders
- Further clarifying the guidelines and permit requirements; and
- Increasing the ability of staff to adequately address and respond to concerns.

## FINAL RECOMMENDATIONS

This review has clearly identified that the Port Philip Footpath Trading Guidelines set a high benchmark in Local Government with respect to the core standards for successfully managing footpath trading and the manner in which these are documented. Enabling footpath trading is generally well regarded by the community and business operators have embraced the opportunity.

The principles that have informed the guidelines as provided for in Local Law No.7 have provided a sound basis on which to make decisions on footpath trading. As can be seen from Table 3, the Footpath Trading Guideline principles and core standards all work together to deliver Local Law No.7's Principle Objectives if they are implemented and managed consistently. While there is a clear emphasis is on safety and accessibility the guidelines also facilitate vibrancy and equity and consistency in decision making.

**TABLE 3 – Assessment Guideline Principles and Standards against Local Law Objectives**

Principles and Core standards	Principle Objective						
	Peace, order & good government	Vibrant street life which balances interests	Fairness & consistency in regulations & controls	Regulate & control footpath activities so that there is:			Safe physical & social environment, risk to footpath users is minimised
				Safe & unobstructed passage for pedestrians	Safe & unobstructed vision for drivers	Limited impacts on the residential amenity & the streetscape	
Does Standard Achieve Principal Objectives?							
<b>Principle: Safety and Accessibility</b> <b>Core Standards:</b> <ul style="list-style-type: none"> <li>A continuous accessible path no less than 1.5m wide along the building line</li> <li>Required setbacks and clearances to all intersections, kerbs and public assets</li> <li>Inviting, clean and safe footpaths</li> </ul>	✓	✓	✓	✓	✓	✓	✓
<b>Principle: Community Amenity</b> <b>Core Standards</b> <ul style="list-style-type: none"> <li>Complying with all Environment Protection Authority noise requirements</li> <li>Avoiding activities that obstruct footpaths or create hazards</li> <li>Ceasing footpath trading by 11pm for hotels and 1 am for restaurants and cafes</li> <li>With the exception of fixed glass screens removing all furniture, signs, planters and displays at the close of business</li> <li>Not increasing pressure on available parking capacity</li> </ul>	✓	✓	✓	-	-	✓	-
<b>Principle: Design Considerations</b> <b>Core Standards for all structures:</b> <ul style="list-style-type: none"> <li>All Heritage requirements are met</li> <li>Compliance with council's streetscape master plans and designs</li> <li>Do not enclose public spaces</li> </ul>	✓	-	✓	-	-	✓	-
<b>Principle: Hygiene and Cleanliness</b> <b>Core Standards:</b> <ul style="list-style-type: none"> <li>Compliance with all Food Safety Regulations when preparing, handling and serving food and drinks to patrons located on the footpath</li> <li>Clearing all litter, food scraps and other rubbish within the immediate area</li> <li>Depositing all litter in the permit holder's own bins kept within the premises not in public street bins</li> <li>Providing windproof ashtrays</li> <li>Removing all furniture to ensure that the footpath can be easily cleaned by council</li> </ul>	✓	-	✓	-	-	-	-

Consultation with the community has highlighted however, that delivery of all of the principle objectives is not always the case, and issues arise which should otherwise be addressed by the guidelines. The most significant improvements therefore need to be made in respect of permit holder education and management/enforcement (i.e. improving the process for implementing the guidelines rather than the guidelines themselves).

For this reason it is recommended that education and management improvements be made and monitored prior to any significant changes (such as increasing minimum pedestrian zone widths) to the guidelines themselves. In light of this recommendation, the draft recommendations outlined in the Background Report have been revisited, amended and reprioritized as contained in Table 4 to follow. The emphasis of the recommendations is clearly focused on education and introducing changes, such as pavement markers to define trading zones, in order to improve the management of trading zones.

Key to the success of this approach will be ensuring that all permit holders apply for new permits in accordance with the changes outlined in these recommendations. This will remove anomalies evident in some of the existing permits and reassert Council's position that footpath trading is a privilege not a right.

TABLE 4 – Final Recommendations

Issue		Recommendation			Priority
Opportunity	Threat	Action	Key Effects Sought	Desired Strategic Outcome	High – 12mths Medium – 2yrs Low – 3/5 yrs
Consistent enforcement of permit conditions	Non compliance overlooked	<ul style="list-style-type: none"> <li>Greater monitoring of compliance with permits requiring quarterly checks and specific 12 month review and assessment</li> <li>Prohibit the transfer of permits</li> <li>Introduce a requirement for all trading areas to be clearly marked using pavement markers installed and maintained at the costs of the applicant and reinstalled if necessary as part of any street works</li> <li>Introduce/update product specifications as part of the guidelines for:                             <ul style="list-style-type: none"> <li>Pavement markers</li> <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  If no substantial improvement in compliance effect all Medium recommendations	High
Increase awareness and understanding	Confusion around requirements by permit holders	<ul style="list-style-type: none"> <li>Require all permit holders to seek new permits in accordance with the revised guidelines</li> <li>Develop and provide an education program for all permit holders and on an ongoing basis 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> </ul>	<ul style="list-style-type: none"> <li>Consistent application of all guidelines to all permit holders</li> <li>Greater understanding of requirements</li> <li>Greater resources to handle enquiries</li> </ul>	100% compliance by permit holders  If no substantial improvement in compliance effect all Medium recommendations	High
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> </ul> </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	High

Cont.

Issue		Recommendation			Priority
Opportunity	Threat	Action	Key Effects Sought	Desired Strategic Outcome	High – 12mths Medium – 2yrs Low – 3/5 yrs
		<ul style="list-style-type: none"> <li>◦ Limit all existing use to a maximum of 1am based on a high compliance and low complaint record where adjoining resident 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> <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 (Refer Appendix 1 for draft requirements)</li> </ul>			
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</li> <li>◦ All barriers to be removable</li> </ul> </li> <li>• All barriers (and umbrellas are to use a socket and sleeve system installed and maintained at the costs of the applicant and reinstalled if necessary as part of any street works</li> <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>	<ul style="list-style-type: none"> <li>• No vehicle driver sightlines are obstructed</li> <li>• Consistent standards</li> <li>• Access to all public furniture ensured</li> <li>• Better access to public seating</li> </ul>	No vehicle or pedestrian conflict	High
Revisit the principles that guide the Footpath Trading Guidelines to provide greater clarity of their intent and include more specific reference to the need for wider pedestrian zones as part of the Local Law		<ul style="list-style-type: none"> <li>• Amend the Local Law Principle Objectives as follows:                             <ol style="list-style-type: none"> <li>1. <b>Good Governance</b> - provide for the peace order and good government for the City of Port Phillip and the administration of the council's functions and powers</li> <li>2. <b>Vibrant &amp; Attractive Streets</b> - 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.</li> </ol> <p style="text-align: right;"><i>Cont.</i></p> </li> </ul>	<ul style="list-style-type: none"> <li>• Specific reference to the provision of a wider pedestrian zone width</li> </ul>	<ul style="list-style-type: none"> <li>• Greater clarity around the principles that guide the Footpath Trading Guideline core standards</li> </ul>	Medium – implement only if recommendation 1 does not achieve key effects sought

Issue		Recommendation			Priority
Opportunity	Threat	Action	Key Effects Sought	Desired Strategic Outcome	High – 12mths Medium – 2yrs Low – 3/5 yrs
		<p>3. <b>Fair and Consistent decisions</b> - 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.</p> <p>4. <b>Regulate and control footpath activities</b> so that there is:</p> <ul style="list-style-type: none"> <li>a) <b>Continuous accessible path</b> – 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.</li> <li>b) <b>Safety</b> – provide safe and unobstructed vision for drivers of vehicles and cyclists.</li> <li>c) <b>Amenity</b> - limited impacts on the residential amenity and the streetscape that characterises the area.</li> <li>d) <b>Hygiene</b> – provide access to Council cleansing services and ensure trader orderly and clean waste management practices.</li> </ul> <p>5. <b>Minimise</b> - the potential for nuisance activities and risk and exposure to risk by footpath users by providing a safe physical and social environment</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	Medium - implement only if recommendation 1 does not achieve key effects sought

Issue		Recommendation			Priority
Opportunity	Threat	Action	Key Effects Sought	Desired Strategic Outcome	High – 12mths Medium – 2yrs Low – 3/5 yrs
Facilitate the most appropriate locations for outdoor seating	Too many seats in high pedestrian traffic areas	<ul style="list-style-type: none"> <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>	Medium - implement only if recommendation 1 does not achieve key effects sought
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> </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	Medium - implement only if recommendation 1 does not achieve key effects sought

Cont.

Issue		Recommendation			Priority
Opportunity	Threat	Action	Key Effects Sought	Desired Strategic Outcome	High – 12mths Medium – 2yrs Low – 3/5 yrs
		<ul style="list-style-type: none"> <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>			
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	Low
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> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>○ To reduce clutter</li> </ul>	Continuous accessible path	Low

## APPENDIX ONE | DRAFT PLAN OF MANAGEMENT REQUIREMENTS

## Plan of Management Requirements

All applicants seeking a footpath trading permit that operates beyond 11pm are required to provide a plan of management with their application which will be incorporated as part of any subsequent approval document. This plan must clearly outline:

### *Site and Location Details*

- A description of the primary use of the premises as well as any secondary/ancillary uses (e.g. liquor sale, entertainment, or gaming), and details of the maximum capacity of the premises
- Identification of any outdoor seating adjacent to boundaries of the site used in association with the use of premises
- A floor plan that shows the location of external doors, windows and other openings to residential and other sensitive land uses
- A location plan that shows the proximity of the site to off street car parking, public transport and taxi ranks within 100m radius of the site, and all noise sensitive uses in close proximity to the site
- A summary of other late night trading premises that operate beyond 11pm within a 200m radius of the premises indicating the nature of their use, their trading hours and distance from the premises

### *Organisation Overview*

- Provide a brief statement of the operational details of the premises including: number of staff (including security); any liquor licenses and /or entertainment approvals; a description of actions that the proprietor/licensee has taken to co-operate with police and/or the local community regarding management of the premises; membership of a Licensing Accord; actions taken to liaise with the local community about the premises management and activities (e.g. letter drops)
- Details of how all outdoor furniture will be stored off the street when extended trading on the footpath closes
- Confirmation of written consent to the application from the building owner

### *Hours of operation*

- A clear schedule of the proposed hours of operation for each day of the week for all areas of the premises
- Describe when and how the site will be cleaned and generally serviced reflecting council's cleansing program

### *Security and Safety*

- A description of any arrangements that will be made for the provision of security staff and the hours they will be on duty (if relevant)
- Details of any methods to implement harm minimisation associated with the serving of alcohol, the responsible service of alcohol, and any steps that will be taken to manage patron behaviour on the footpath
- A completed copy of the most recent enforcement list confirming that liquor licensed premises compliance
- Details of all actions that will be taken to respond and record complaints made about the operation of the premises

### *General Amenity*

- Details of all measures that will be taken to ensure that amenity impacts that may result from the operation of the premises are minimised by reason of noise, vibration, smell or otherwise
- The identification of all likely noise and vibration sources associated with the operation of the premises such as public entertainment; patrons leaving and entering the premises; operation of mechanical plant and equipment; waste disposal, sorting and collection of bottles etc