

**ORDINARY MEETING OF COUNCIL
14 SEPTEMBER 2009**

11	LAMARO'S - FOOTPATH TRADING PERMIT REVIEW
LOCATION/ADDRESS:	LAMARO'S, 273 CECIL STREET, SOUTH MELBOURNE
GENERAL MANAGER:	SUE WILKINSON, GENERAL MANAGER ENVIRONMENT AND PLANNING
PREPARED BY:	CHRIS PIKE, ACTING MANAGER ECONOMIC DEVELOPMENT AND TOURISM
FILE NO.:	0980/273-01 : CECIL ST 273 - 279 - BAYVIEW HOTEL – SOUTH MELBOURNE
ATTACHMENTS:	NIL.

1. EXECUTIVE SUMMARY

- 1.1 Council has received an application from Lamaro's Café Bar and Dining Room to amend their footpath trading permit conditions. The applicant is seeking an extension to the current hours of operation by one hour, from 9pm to 10pm during daylight saving time and from 7pm to 8pm during all other times.
- 1.2 As the current permit conditions, in particular the hours of operation, were set by way of a Council decision, it is necessary to amend these with a further Council decision.

2. RECOMMENDATION

That Council:

- 2.1 Agrees to amend the footpath trading permit conditions for Lamaro's Café Bar and Dining Room to enable trading to 8pm during non-daylight saving time.
- 2.2 Declines to amend the footpath trading permit conditions for Lamaro's Café Bar and Dining Room to enable trading to 10pm during daylight saving time.

3. BACKGROUND AND CONTEXT

- 3.1 Council has received an application from Lamaro's Café Bar and Dining Room to amend their footpath trading permit conditions. The applicant is seeking an extension to the current hours of operation by one hour, from 9pm to 10pm during daylight saving time and from 7pm to 8pm during all other times.

- 3.2 As the current permit conditions, in particular the hours of operation, were set by way of a Council decision, it is necessary to amend these with a further Council decision.
- 3.3 At its Statutory Planning Committee meeting of 8 December 2003 Council approved a planning application to renovate the hotel at 273 Cecil Street, South Melbourne. At this meeting the following motion was carried:
 - 3.3.1 “That the Council indicate to Council's Local Laws Section that any footpath outdoor dining area for the hotel use shall be consistent with footpath trading guidelines with regard to the maximum numbers of tables and chairs
 - 3.3.2 That the use be limited to daylight hours only.”
- 3.4 Following this the applicant took the matter to VCAT to contest the planning permit conditions (not specifically relating to footpath trading). A settlement was reached on 29 March 2004. The final permit conditions stated that “any outdoor seating outside the Title boundary and associated with the Hotel premises is required to comply with any permit issued by Council” (sic) Local Laws section”.
- 3.5 The operator was provided with a footpath trading permit on 8 September 2005. For practical purposes, “daylight hours” was defined as 8am to 9pm during daylight saving time and 8am to 7pm at all other times. These are the current permit conditions.
- 3.6 The footpath trading permit allows for a maximum of four tables and 16 chairs.
- 3.7 Lamaro’s Café Bar and Dining Room is located in a residential zone.

4 CONSULTATION AND STAKEHOLDERS

- 4.1 Council Officers received a petition of support with 194 signatures. The focus of the petition was the ability of customers on “balmy summer evenings.....to be able to drink and dine outside at [their] leisure instead of being forced to move back inside at 9pm”.
- 4.2 This petition was included in the Council Meeting agenda on 24 August 2009.
- 4.3 Upon receipt of the application and cognisant of the level of objection to the original planning permit Council officers undertook consultation on the application in the following ways:
 - 4.3.1 Letters sent to 57 local residents in the immediate vicinity.
 - 4.3.2 The applicant displayed a public notice of application for a footpath trading permit for 28 days.

- 4.4 Officers received one letter of support and 11 letters of objection. All were from residents in the immediate vicinity.
- 4.5 The supporter considers that the outdoor operations bring vitality and security to the area.
- 4.6 The objectors' main concerns can be summarised as:
 - 4.6.1 Negative impact on residential amenity through increased noise levels, littering and parking congestion. This would be caused not only by those outside but also those leaving the venue.
 - 4.6.2 The difficulty of moving patrons inside remains and would get harder as more alcohol had been consumed.
- 4.7 The application was referred to the Footpath Trading Panel. This group of officers meets regularly to advise the Footpath Trading Coordinator on more complex applications. Its membership consists of officers with expertise in economic development and tourism, local laws, development compliance, traffic, transport and parking, urban design and Councillor liaison.
- 4.8 The Footpath Trading Coordinator (and panel) draws on Local Law No.7 (2009) - Footpath Activities when considering applications.
- 4.9 The panel met twice in July and August 2009. In this particular case the following factors identified in the Local Law were the key considerations in arriving at the recommendation before Council:
 - 4.9.1 The impact on residential amenity
 - 4.9.2 Compatibility with other uses in the street
 - 4.9.3 The applicant's previous record of compliance.
- 4.10 In addition, officers drew on their substantial experience of observing the behaviour of patrons at licensed venues, particularly later into the evening.

5. DISCUSSION

5.1 OPTIONS

- 5.1.1 The preferred course of action is for Council to extend the footpath trading hours of operation by an hour during non-daylight saving time only. The hour extension during daylight saving time is not considered appropriate.
- 5.1.2 The applicant is considered to be a responsible business owner conscious of the venue's location in a residential area.

5.1.3 However, this does not outweigh the negative impact that a daylight saving time extension would have on residential amenity, even allowing for the best efforts of the applicant. In particular, the noise that would be generated by patrons within the footpath trading zone is considered inappropriate in a residential area after 9pm. This is a time when it might reasonably be expected that residents should enjoy a peaceful evening.

5.1.4 Furthermore, there is a higher likelihood that patrons will be drinking rather than dining after 9pm. Council officers' city-wide experiences are that patron behaviour in the footpath trading zones of licensed venues becomes more problematic after 9pm. Specifically patrons tend to become not only noisier but also less willing to abide by the conditions relating to the operation of a footpath trading zone (e.g. the maximum number of patrons permitted, the use of seating, the 'closing' time for footpath trading). This can be the case despite the best efforts of venue operators.

5.1.5 Other options open to Council include:

5.1.6 The rejection of any extension

5.1.7 The approval of an extension to hours both during non-daylight saving time (to 8pm) and daylight saving time (to 10pm)

5.2 ALIGNMENT TO COUNCIL PLAN

5.2.1 This matter addresses the strategy to 'Improve the interface between residential and visitor impact - Minimise the negative impact of licensed venues'

5.3 POLICY IMPLICATIONS PLAN

5.3.1 Local Law no.7 – Footpath Activities and the Footpath Trading Guidelines guide decision-making on footpath trading applications. The Guidelines are currently being reviewed by council officers.

5.3.2 Whilst the recommendation before Council is consistent with the Local Law and the current guidelines, it does vary from the previous decisions made by Council officers for licensed venues in a residential zone. Five other hotels operate within residential zones with four of these permitted to trade on the footpath until 11pm and one until 1am.

5.3.3 Council's decision on this application would set a new precedent for footpath trading conditions for licensed venues in residential zones. This would be incorporated into the revised Footpath Trading Guidelines and the consideration of future permit applications and renewals.

5.4 FINANCE / RESOURCE IMPLICATIONS

5.4.1 There are no financial implications for Council.

5.5 LEGAL & RISK IMPLICATIONS

- 5.5.1 There is clearly a level of support for this venue as demonstrated by the petition and letter of support for the application. A decision not to grant an extension to its footpath trading hours, particularly during daylight saving time, would be unfavourably received by this group.
- 5.5.2 The ripple effects of this decision might also be felt by those residents and visitors who frequent this and other licensed venues later in the evening, so impacting on people's experiences and perceptions of nightlife in Port Phillip.
- 5.5.3 There is no appeal available to VCAT against a decision made pursuant to a local law.

6. IMPLEMENTATION STRATEGY

6.1 TIMELINE

- 6.1.1 If Council agrees to a change to the applicant's permit conditions, this will be implemented with immediate effect.

6.2 COMMUNICATION

- 6.2.1 Once Council has made a decision the applicant will be informed both verbally and in writing (including a revised permit) within 7 days.
- 6.2.2 Submitters to Council (excluding those named in the petition) will be informed of Council's decision within 14 days.

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.