

CITY OF PORT PHILLIP REPORT

ORDINARY MEETING OF COUNCIL 16 JUNE 2010

1	FOOTPATH TRADING REVIEW
ADDRESS / LOCATION:	WHOLE OF MUNICIPALITY
GENERAL MANAGER:	SUE WILKINSON, ENVIRONMENT AND PLANNING
PREPARED BY:	SUE WILKINSON, ENVIRONMENT AND PLANNING AND ANITA LANGE, SPECIAL PROJECTS MANAGER
FILE NO.:	11/01/97-06
ATTACHMENTS:	1 – COUNCIL REPORT ON FOOTPATH TRADING REVIEW 24 MAY 2010 2- ATTACHMENT 3 OF COUNCIL REPORT 24 MAY 2010 3 - DRAFT SECTION INSERT ON TRANSPARENT DROP DOWN BLINDS 4 – PROPOSED FINAL CITY OF PORT PHILLIP FOOTPATH TRADING GUIDELINES – JUNE 2010 (PLACING OF FOOTPATH OBJECTS ON FOOTPATHS)

1. EXECUTIVE SUMMARY

- 1.1 This report provides advice in relation matters raised by Council its meeting on 12 April 2010 and further advice in relation to matters raised on 24 May 2010. The report recommends that Council adopt the final City of Port Phillip Footpath Trading Guidelines –June 2010 (Placing of Footpath Objects on Footpaths).

2. RECOMMENDATION

That Council:

- 2.1 Notes the responses to the matters arising from the 12 April 2010 council report.
- 2.2 Notes that the option nominated as the recommended option in Attachment 2 (previously reported to Council on 25 May 2010) has been included in the proposed final City of Port Phillip Footpath Trading Guidelines –June 2010 (Placing of Footpath Objects on Footpaths).
- 2.3 Adopts the final City of Port Phillip Footpath Trading Guidelines –June 2010 (Placing of Footpath Objects on Footpaths) as provided at Attachment 4 and authorises the General Manager Environment and Planning to approve the final designed version of the document.

- 2.4 Pursuant to Section 112(2) of the Local Government Act 1989 cause notice to be published in the Government Gazette of the amended document City of Port Phillip Footpath Trading Guidelines –June 2010 (Placing of Footpath Objects on Footpaths) provided at Attachment 4 as an incorporated document of the Footpath Activities Local Law No. 7 (2009).
- 2.5 Notes that the Council resolution on 24 May 2010 endorsed the changes to the implementation of the Guidelines to adopt the Ask, Tell, Enforce approach to enforcement and to allow a 12 month transition period and agreed that any requests for a longer transition period are to be referred to the Footpath Trading Panel.

3. BACKGROUND AND CONTEXT

- 3.1 Council considered a report on footpath trading and the proposed final Footpath Trading Guidelines at its meeting of the 24 May 2010 (Attachment 1). At that meeting Council resolved to:
 - Support the City of Port Phillip Footpath Trading Guidelines – May 2010 (Placing of Footpath Objects on Footpaths)
 - Endorse the changes to the implementation of the Guidelines to to adopt the Ask, Tell, Enforce approach to enforcement and to allow a 12 month transition period and agreed that any requests for a longer transition period are to be referred to the Footpath Trading Panel.
 - Seek further advice in relation to the use of drop down blinds, and
 - Make its final decision to adopt the Guidelines at its next Ordinary Meeting on 16 June.
- 3.2 This report provides the further advice in relation to the use of drop down blinds and clarifies the provisions relating to trading until 3 am in entertainment precincts.

4. DISCUSSION

Drop down transparent blinds

- 4.1 A number of submitters supported the introduction of drop down transparent blinds.
- 4.2 It was suggested by one submitter that drop down transparent blinds be permitted during periods of adverse weather conditions (potentially during the May to October trading months) and at other times when wind and rain create conditions that would warrant the use of screens for the protection of patrons.
- 4.3 Drop down transparent blinds are permitted in Glen Eira and Stonnington but not within the City of Melbourne.

- 4.4 This matter has been discussed with the Council's Urban Design Advisor, the Coordinator Place and Projects and the Place Manager. The urban design/public realm advice is mixed with arguments for and against permitting drop down transparent blinds.
- 4.5 The advice provided is as follows:

Advice by Place Manager - Activity Centres

Advice on the use of transparent drop down awning / screens in footpath trading applications in activity centres:

- *Use of drop down awnings, can facilitate a level of activity and amenity on streets, and can be beneficial in facilitating vibrant and safe public places. They can extend the length of trade into periods where hospitality trade can be slow (winter and shoulder seasons), and on days of inclement weather.*
- *The application of drop down awnings can be particularly appropriate where substantial footpath widths are provided (e.g. Fitzroy Street or on the Foreshore Promenade).*
- *Approval should consider whether the blind will affect the character or openness of the street. For example there may be some applications where blinds are inappropriate:*
 - *Further consideration should be given to whether these are appropriate on intact heritage verandas such as Clarendon Street;*
 - or*
 - *where the width of the footpath / street would present an overwhelming sense of containment.*
- *Screens should generally be transparent. There are some examples that exist through the city where approx 80% transparency is provided in a mix of clear and canvass screens.*
- *Inclusion of advertising, logos should not be allowed to avoid increased visual clutter within streetscapes.*
- *Specifications for fixing should be provided with / assessed in applications.*
- *Screens tend to bleach over time with excess exposure to light. Consider yearly condition audit / review.*

Council's Urban Design Advisor comments:

Urban design advice in regard to external pull down blinds:-

- *Outdoor café areas are part of the public realm. The public is entitled to have access to all common ground within the municipality for community, social and commercial interaction. The public realm should also allow for pedestrian flow and movement from one place to another.*
- *Pull down plastic blinds are characterised as translucent, allowing light to penetrate but causing sufficient diffusion to prevent recognition of people.*
- *Pull down plastic blinds present as a visual obstruction of street activity, views to building façades and business identification signage.*
- *Pull down plastic blinds impede the opportunity for visual connection and dislocate the user from the streetscape context.*
- *The retention of view lines in the public realm encourages a feeling of safety and community connection.*
- *Installing pull down plastic blinds encourages the privatisation of the public realm.*
- *Privatisation of the public realm results in reduced accessibility, visibility, amenity and safety to the public.*
- *Pull down plastic blinds are primarily associated with wind protection, however the associated fixings and cables further add to unnecessary clutter of the public realm.*
- *Given outdoor seating is often associated with smoking pull down plastic blinds may impede natural air flow and cause greater discomfort to other patrons.*
- *The controlled air conditioned interior of cafes and restaurants presents as a satisfactory alternative to outdoor areas in extreme weather conditions.*
- *Outdoor cafés should support human interaction and enhance existing urban character, heritage significance and street quality.*
- *From an urban design and heritage perspective plastic blinds should not be permitted in outdoor café areas in the City of Port Phillip.*
- *In the City of Melbourne, full-length plastic blinds are not permitted in outdoor cafés and is consistent with their Outdoor Café Guide.*

- 4.6 This matter has also been discussed with the Council's Manager Compliance and Parking who raised a safety concern that drop down transparent blinds can have the effect of potentially obscuring the natural surveillance that would occur along a street especially at night, in line with Crime Prevention through Environmental Design Principles (CPTED). This may be exacerbated at night where the combined impact of car and street lights and rain may block views from the road onto the footpath as well as along the footpath.

- 4.7 The installation of transparent drop down blinds is not supported by officers and consequently, a section relating to the installation of the blinds has **not** been included in the proposed final guidelines.
- 4.8 If Council determine to support the installation of transparent drop down blinds, it is recommended that the following conditions be applied;
- Plastic transparent drop down blinds must be UV resistant to avoid break down of the material and therefore a loss of transparency;
 - The plastic selected for blinds must be of maximum transparency;
 - All fixings must be fully concealed within the pavement and not create a trip hazard when not in use;
 - All fixings must be marine grade stainless steel;
 - Transparent drop down blinds should only be used in high wind areas and where pavement width would allow. Footpaths less than 2.9m cannot use blinds;
 - Transparent drop down blinds must be located outside and not intrude into the kerb zone;
 - All blinds should be retractable and ideally concealed within a pelmet;
 - The use of transparent drop down blinds must not extend beyond business hours;
 - Commercial advertising to transparent drop down blinds will not be supported;
 - To ensure adequate sight lines, transparent drop down blinds would not be permitted within 10 metres of an intersection unless approved by the Council's Traffic Engineer;
 - Transparent drop down blinds would not be permitted to the front of a State or Local graded heritage building.
- 4.9 It is noted that restricting the installation of blinds in heritage areas would considerably reduce the scope for transparent drop down blinds.
- 4.10 Under the Port Phillip Planning Scheme a planning permit is not required if the buildings and works associated with street trading is authorised under a local law. If council approves the inclusion of transparent drop down blinds in the Guidelines, urban design advice would be sought for all applications for transparent drop down blinds as part of the assessment process on a site by site basis. Permission under the Heritage Act will still be required for a property included on the Heritage Register under the Heritage Act 1995.
- 4.11 Should the council wish to introduce transparent drop down blinds into the Guidelines, this can be included as a new section in part 3 of the Guidelines. A draft insert outlining controls for transparent drop down blinds which could be included in the Guidelines, if approved, is provided at Attachment 3. This section is based on the current section on glass screens and awnings and includes or adapts most of the suggested conditions above as well as

includes some weather related restrictions. It has been prepared to be consistent with the rest of the Guidelines, so for example, it proposes that transparent drop down blinds would only be considered for footpaths of 6 metres or more width.

Trading Hours - 3:00 am variation

4.12 A concern has been raised regarding the provisions relating to the variation for restaurants and cafes to be able to trade until 3:00 am in the Bay St Port Melbourne, Clarendon St South Melbourne, Fitzroy St and Acland St St Kilda precincts. All applications for 3am trading are subject to a thorough review by the Footpath Trading Panel.

4.13 To clarify this point the text in the Guidelines (pages 8, 62, 66, 73 and 76) has been reworded as follows (Changes proposed are in strike though for deletions or in bold for additions):

*A variation for restaurants and cafes in entertainment precincts to trade until 3:00 am **may be permitted** in ~~has been approved for~~ the Bay St Port Melbourne, Clarendon St South Melbourne, Fitzroy St St Kilda and Acland St St Kilda Precinct.*

*Footpath trading hours ~~are~~ **may be permitted** until 3:00 am within (specify precinct) ~~unless otherwise approved~~ subject **to the approval** by Council. In instances where hours-of-operation conditions are in conflict with existing planning approval, the lesser of these requirements will apply.*

5. ALIGNMENT TO COUNCIL PLAN

5.1 Alignment To Council Plan

5.1.1 The final Guidelines are 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 The final Guidelines are consistent with the Council Plan and Council's Local Laws.

5.3 Finance / Resource Implications

5.3.1 There are staff resources implications related to the implementation of the new Guidelines which have been considered in the 2010/2011 draft City of Port Phillip Budget.

5.4 Legal & Risk Implications

5.4.1 Legal/risk issues have been addressed as part of the Guidelines. Proposed changes to the Guidelines, to the permit administration process as well as the production of new application forms will assist in making these responsibilities clearer.

5.4.2 Pursuant to Section 112(2) of the Local Government Act 1989, Council must publish notice in the Government Gazette of the amended incorporated document City of Port Phillip Footpath Trading Guidelines –June 2010 (Placing of Footpath Objects on Footpaths). This will be undertaken following adoption of the final version of the Guidelines.

6. IMPLEMENTATION STRATEGY

6.1 The next steps are:

- Council adopts revised Guidelines – 16 June 2010.
- Council causes notice to be published in the Government Gazette of the revised City of Port Phillip Footpath Trading Guidelines –June 2010 (Placing of Footpath Objects on Footpaths).
- New Guidelines apply – 1 July 2010.
- The Community Consultation and Transition Plan will be used to support a smooth transition from the current situation to the new arrangements. The key steps post the adoption of the new Guidelines are as follows:
 - May – 30 Jun 2010 – payments received from applicants for renewals
 - Mid June 2010 - reminder notice issued for renewal of permits. July – Dec 2010 – All permits will be re-assessed against the new Guidelines if adopted. Site visits of approximately 900 premises will be undertaken to assess permits against the new Guidelines. Agreement of transition plans where approved with up to 12 months to comply with new permits. Refunds will be issued if a reduction in footpath trading occurs after the site assessment. Permits and new applications will be referred to the Footpath Trading Panel for further consideration where appropriate, including where there may be a case for a longer transition period than 12 months.
 - Mid July 2010 - Final notice issued for permit holders. Permits will be cancelled if not paid.
 - July 2010 – June 2011 - Ongoing administration and enforcement of footpath trading.
 - After July 2011 there will be more proactive inspection and greater enforcement of permits.

- 6.2 It should be noted that the self assessment form was not included in the permit renewal letter as was reported in the 12 April 2010 report as this was considered premature until the Guidelines have been finalised.

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.