



Footpath Trading & Activities Guidelines 2021

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Introduction

Use of a footpath for advertising and trading is a popular aspect of the retail environment, with the use of the footpath in front of commercial premises potentially adding to the vibrancy and appeal of a business when appropriately managed.

Council is committed to supporting local businesses and acknowledges that the use of the footpath and road reserve areas can enhance local businesses. However, as footpaths and road reserves generally are publicly owned, Council has a legal obligation to ensure that these public spaces provide safe, accessible and unobstructed passage for pedestrians, regardless of mobility levels; and ensures the amenity of the streetscape is maintained and enhanced.

Footpaths cater for a wide range of needs to that of shoppers, tourists, public transport users, delivery persons, pet owners and those with mobility needs. Whilst the trading activities on the footpath are an important part of the retail environment, Council has a legal responsibility under the Disability Discrimination Act 1992(Vic) (DDA) – section 32 Access to Premises, to ensure safe and equitable usage of footpaths for people with a range of needs and disabilities.

The Human Rights and Equal Opportunity Commission recommends that in order for Local Government to fulfil its responsibilities under the DDA, footpaths should as far as possible allow for a continuously accessible path of travel that extends from the property line at least 1.8 metres wide and 2.2 metres high with no obstructions or projections, in order to provide an unobstructed pedestrian zone.

Council has a legal obligation through the Local Government Act 1989 to provide a safe and unobstructed footpath environment for all pedestrians.

It should be noted that the following conditions only apply to temporary fixtures. Any business that wishes to seek approval for a permanent addition to Council controlled land including footpaths and road reserves need to contact Council on (03) 5366 7100.

Objectives

Council has the following objectives when considering street activity applications:

1. **Public safety:** footpaths are safe and have an unobstructed passage for all pedestrians and provide safe and unobstructed vision for road users.
2. **Accessibility:** footpaths provide clear and unobstructed access for pedestrians of all abilities.
3. **Economic benefit:** assist in developing thriving and prosperous businesses and shopping areas.
4. **Amenity:** any activity will fit with the overall street character maintaining an attractive and clean visual amenity.
5. **Interaction:** activity supports interaction leading to social benefits, street trading and alfresco dining as enjoyable activities.
6. **Public Health:** enhance the outdoor environment by providing shelter from the sun and limiting the impact of tobacco smoke.

These objectives will be achieved by:

1. A formal permit application process so Council can consider what the activity offers the area and whether it supports local business and community groups.
2. Permits must be issued prior to any activity occurring.
3. A clear set of permit conditions highlighting the responsibilities of the permit holder.
4. Council will monitor compliance with this policy and the conditions of relevant permits.
5. A breach or non-compliance with the permit or failing to obtain a permit will result in enforcement measures being taken.

Section 1

Permits & Insurance

Permits

Permit Types

Risk Assessment and Site Monitoring

Considerations Regarding Other Associated Permits

Permit Revocation Conditions

Permits

Council administers a permit system which is in place to regulate and standardise the placement of items on roads (including footpaths) and council land.

The Moorabool Shire Council Community Local Law 2019 prohibits the placement of items on roads and Council land unless a permit has been issued. The permit allows for the placement of approved items on the footpath or road reserve adjacent to the business, provided business operators comply with the permit conditions.

A Street Trading permit will only be approved where pedestrian access is not obstructed, regardless of mobility levels, the environment is safe, and the visual amenity of the area is maintained. It is unlikely that footpath dining permits will be issued where footpaths are less than 2.5 metres wide (shopfront to kerbside).

Applicants must not breach existing Council planning conditions, as specified in individual Town Planning permits pertinent to the property (e.g. seating capacity must not be exceeded).

A permit grants limited rights to business operators to place items on the footpath provided they comply with the conditions of their permit. The Council issued permit must be displayed in a conspicuous location on the front window of the business at all times and will expire on the expiry date as listed. Renewal is required at least 28 days prior to the expiry of the permit, including an application renewal fee which is non-refundable.

If a business wishes to utilise a space on the footpath or road outside an adjoining business to place items, they must obtain the written consent of that business. This written consent though supportive of the application, will not be in and of itself a guarantee that Council issue a permit for use of that footpath or road reserve.

Permit types

The items you can apply for a permit for under this policy include:

- Tables and chairs;
- Goods display;
- A-Frame signs / teardrop banners;
- Outdoor heaters;
- Shade shelters, umbrellas, awnings;
- Free / fixed standing barrier screens;
- Planter boxes;
- Temporary community food stalls and sausage sizzles
- Real estate agent pointer boards.

Risk assessment and site monitoring

All applications will be assessed against Council's standard risk assessment framework to ensure the proposed activity is within the acceptable range to proceed. This may include a site visit meeting with the applicant.

Council will conduct a minimum of one site inspection during the permit period where an annual permit has been provided.

Considerations regarding other associated permits

- The permit holder is responsible for obtaining all necessary approvals to trade from the footpath area (e.g. planning permit; if required).
- All food associated uses must receive a permit from Council's Environmental Health unit prior to permit application and must demonstrate this approval.
- If alcohol is to be served from the outdoor eating facility, a liquor licence permitting such sale and consumption must be obtained.

Permit revocation conditions

A permit immediately expires if:

- The permit holder ceases to be a proprietor of the business; or
- The permit holder fails to maintain public liability insurance.
- Or if deemed necessary by a council Authorised Officer

Permit fees and charges are set annually and will increase in accordance with Council fees and charges.

Public Liability Insurance

The permit holder has an obligation to ensure:

- The permit holder shall at all times during the agreed Term, be the holder of a current Public Liability Policy of insurance (“The Public Liability Policy”) in respect of the activities specified herein in the name of the Permit Holder providing coverage for a minimum sum of \$10M (or more).
- The Public Liability Policy shall cover such risks and be subject only to such conditions and exclusions as are approved by the Council and shall extend to cover the Council in respect to claims for personal injury or property damage arising out of the negligence of the Hirer/User/Permit holder.

Section 2

Footpath Trading Zones

Footpath Trading Zones

Corner Locations

Overhead Items

Existing Public Infrastructure

Display of Goods

Tables & Chairs

Umbrellas

Heaters

Planter Boxes & Barrier Screens

Footpath trading zones

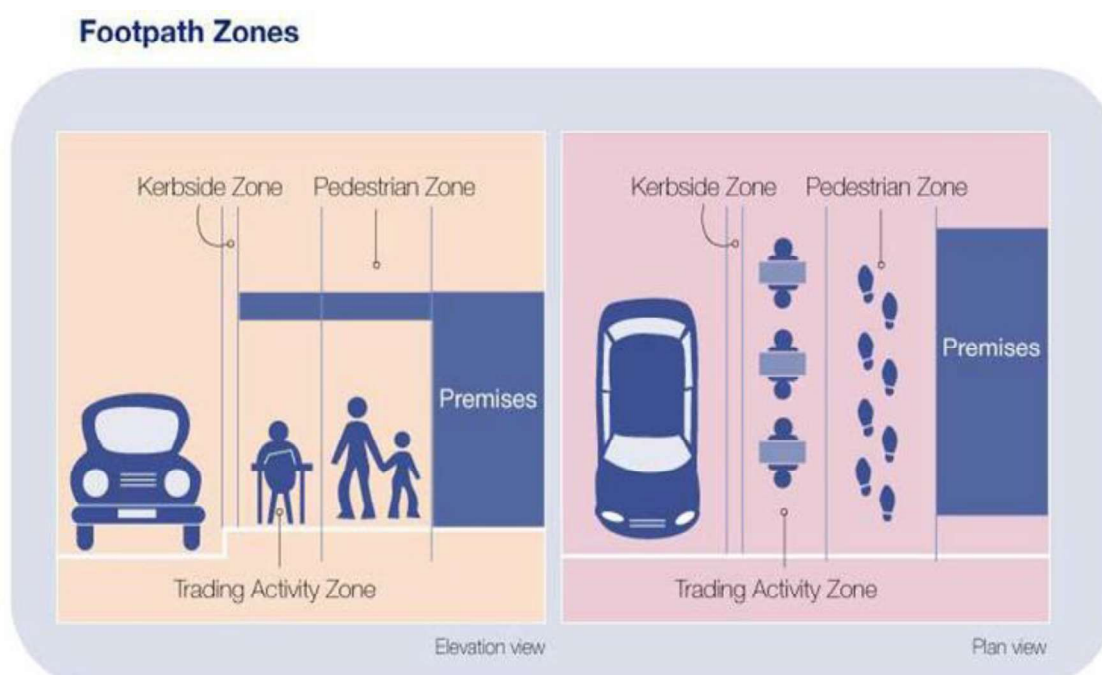
In order to maintain an unobstructed access to the footpath, the footpath area is divided into three zones to ensure complimentary use of the area between public and commercial uses. These zones will vary in size depending on the width of the footpath area.

Footpaths less than 2.5m wide will not be considered for footpath trading activity as it will prevent a continuous accessible path for people of all abilities as required by the *Disability Discrimination Act 1992*. These zones consist of:

Pedestrian Zone – The pedestrian zone provides a continuous accessible path of travel for people of all abilities. It extends a minimum of 1.8 metres from the property boundary.

Kerbside Zone – The kerbside zone is a buffer from the kerb to allow for access to and from parked vehicles. A minimum of 40 centimetres from the front of the kerb for locations where adjacent vehicle parking is parallel to the curb and a minimum of 60 centimetres if adjacent vehicle parking is nose to curb.

Trading Activity Zone (the balance of the footpath width) – the only area of the footpath where commercial activity can take place. This zone allows for commercial use including furniture, goods/ services and trading. This zone is the distance between the kerbside zone and the pedestrian zone and the width will vary depending on the overall width of the footpath. All commercial use on a footpath must be contained within this zone and can occur only during normal trading hours.

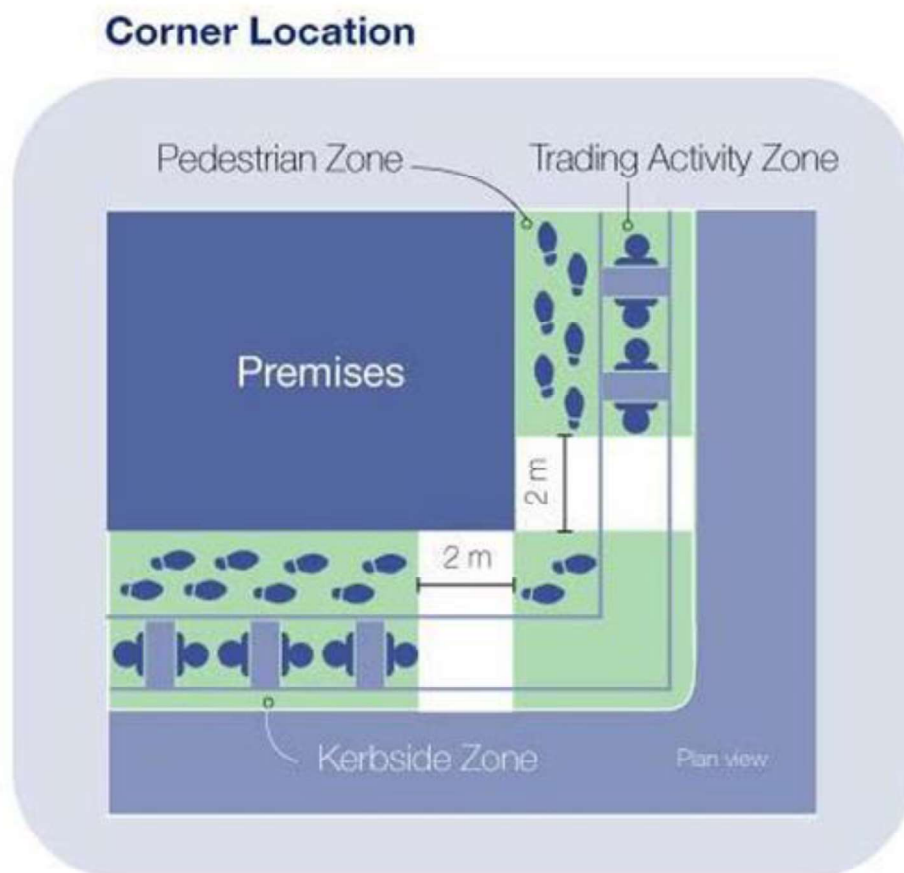


The below table establishes the minimum requirements for each zone based on the overall width of the footpath.

Total Footpath Width	Footpath Over 2.5m Wide
Pedestrian Zone	Minimum 1.8m from the property line towards the kerb
Trading Activity Zone	Remaining area once walkway and kerbside zones are identified
Kerbside Zone	Minimum 0.4m from the kerb of the road if adjacent parking is parallel parking
	Minimum 0.6m from the kerb of the road if adjacent parking is nose to curb parking
	Minimum of 0.6m from the kerb if adjacent parking space is a disabled parking space

CORNER LOCATIONS

In order to protect the safety of pedestrians and motorists, no items must be placed within 2.0m of an intersection of building lines, the corner in which two side of a building meet, without the approval of Council's Traffic Engineering section.



Overhead items

Signs and awnings may only be hung from a building where a minimum clearance between the hanging object and the footpath below is greater than 2.2 metres.

Note: A Planning Permit may be required in some circumstances.

Existing public infrastructure

Moorabool Shire Council is responsible for providing various public infrastructure. Street activity must not compromise the ability of the general public to access and use the public infrastructure.

As a general rule, public infrastructure will not be relocated to accommodate activity on the footpath. The applicant may apply for public infrastructure to be relocated. If it can be successfully relocated, the applicant will be liable for the relocation costs.

Service authorities or Council may need to access the public land to undertake works or for a planned event. Where possible Council will give 7 days' notice in advance to any permit holders who may be affected. In an emergency situation, or when urgent works are required, sites may need to be cleared immediately.

It is likely that a clearance of 1.0 metre applies to existing public infrastructure and public street furniture and other requirements that may be included in a permit.

Display of goods

- Goods must be placed in the Trading Zone only and must not impair the vision of motorists or pedestrians. All goods displays must be positioned so browsing shoppers do not encroach into the Pedestrian Zone or Kerb side Zone.
- Any goods must complement and enhance the character of the streetscape, be of good quality and design, improve customer amenity, and not pose a hazard to pedestrians.
- All goods displays must be portable. Goods display stands must be a maximum height of 1.5 metres, and a maximum width of 1.0 metre. Unless otherwise approved.
- The display of fresh flowers, fruit and vegetables, tinned or dry packaged food and plants must also be a minimum height of 60 centimetres above the footpath level. Unless otherwise approved.
- Goods and display units must be removed when business has ceased trading each day.
- Goods display units must provide pedestrian access to the kerb at intervals of 12 metres along their length. This access space must be at least 1.0 metre in width.
- Stands must be secured and must not have any illuminated or movable parts.
- The street trading area must be maintained to ensure it is tidy and free of litter and all items are clean and safe.

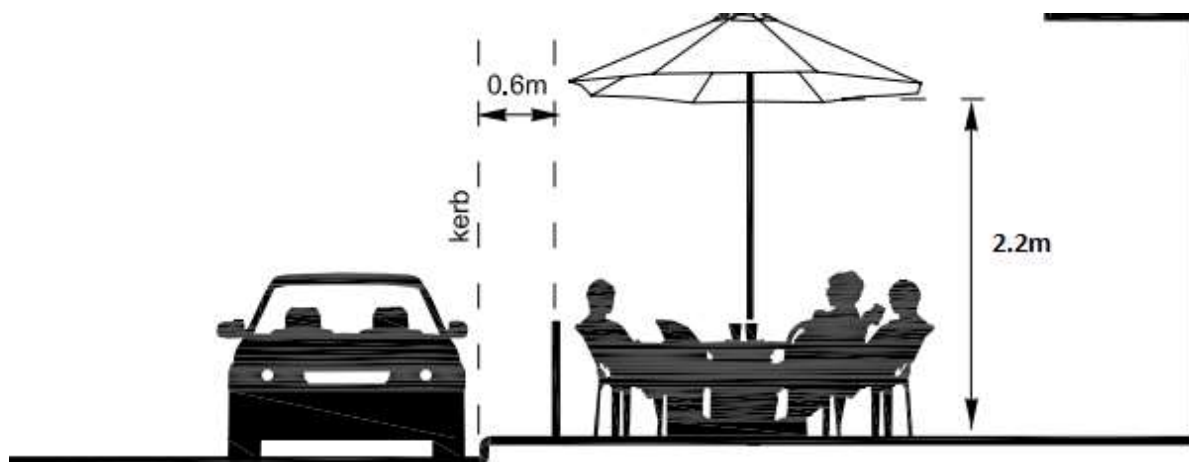
Tables & chairs

- Tables or chairs must not impede the vision or obstruct the movement and free passage of motorists or pedestrians and must be placed within the trading zone only.
- Any fixtures, furniture and accessories must complement and enhance the character of the streetscape, be of good quality and design – meeting Australian Standards where required, improve customer amenity, and not pose a hazard to pedestrians or motorists.
- Any umbrellas used in conjunction with any table must allow a minimum height clearance of 2.2 metres above the footpath and only cover the Trading Zone.
- Tables and chairs must be of an outdoor design that is portable, sturdy and windproof, and uniform in design and style within the one premise.
- Tables, chairs and any umbrellas must be removed when business has ceased trading each day.
- Screens must only be placed on the perimeter of the approved trading zone and cannot promote any products. Unless otherwise approved.
- Temporary screens cannot exceed 1.0 metre in height and 12 metres in length and must be removed when business has ceased trading each day.
- The design and location of any barriers, screens or awnings around an outdoor seating area adjoining a road under the control and management of the Victorian Roads Corporation (main roads) must be to that authority's satisfaction.
- The permit holder is responsible for the conduct of patrons in regard to noise and obstructions (e.g. chairs, prams, trolleys in the Pedestrian Zone or Kerbside Zone).
- The street trading area must be maintained to ensure it is tidy and free of litter and all items are clean and safe.
- If alcohol is to be served from the outdoor eating facility, a liquor licence permitting such sale and consumption must be obtained prior to applying for a permit under this policy.

Umbrellas

Any semi-fixed free-standing umbrellas installed within the street trading area must:

- Comply with any relevant Australian safety standards;
- Be constructed of materials to achieve a wind rating of up to 120km/h;
- Have a minimum clearance height of 2.2 metres;
- Only have one central pole support using a socket and sleeve system or other system that minimises damage to the footpath and enables reinstatement of the pavement should the umbrella be required to be removed;
- Be of a neutral colour scheme.



Heaters

Any free standing electric or gas outdoor heaters used within the street trading area must:

- Be installed and operated according to specifications outlined by the manufacturer.
- Comply with AS4565 (AG405) radiant Gas Heaters and AS 5601/AG 601 Gas Installations.
- Ensure the gas cylinder is contained within lockable housing, that it is in date and of serviceable quality with hoses and fittings regularly checked for leaks.
- Be maintained by the permit holder with service records made available upon request.
- Comply with safety standards specified by Energy Safe Victoria. (These can be obtained by telephone Energy Safe Victoria on 1800 800 or from their website at www.esv.vic.gov.au).

Planter boxes & barrier screens

- Planter boxes or removable screens can be used in alfresco dining areas.
- They can also separate the seating area from the kerb, provided the minimum setback is maintained.
- There must be a gap between each trading premises' planter boxes and or barrier screens which allows for pedestrian access between the footpath to the kerb. This access space must be at least 1.0 meter in width, where there is an adjoining premises this gap must be equally shared between both premises.
- The maximum height for barrier screens or planters (including the plant height) is 1.0 metres.
- Each planter or barrier screen should not exceed a length of 12 metres.
- The permit holder is responsible for maintaining the planter boxes.
- Plant species used should be evergreen; dense in cover; slow growing; drought tolerant; non-toxic; low pollen and not prickly. Artificial plants of a good quality and appearance may also be utilised.
- Planter boxes cannot have sharp corners or edges, or any protruding material.

Section 3

Temporary Signage

Temporary Signage (A – Frames)

Temporary Signage (Pointer Boards)

Temporary signage (a - frames)

- Advertising signs must not exceed 90 centimetres in height or 60 centimetres in width.
- All signs must complement and enhance the character of the streetscape, be of good quality and design, improve customer amenity, and not pose a hazard to pedestrians. Illuminated, spinning, revolving or flashing signs are prohibited. No other items are to be affixed to signs.
- Signs must only display the business name and must not promote any products, unless otherwise approved by Council.
- A-frame signs should have a contrasting colour to their background to assist people with vision impairment.
- Signs must be removed when business has ceased trading each day.
- Only one sign is allowed for each business and must (unless otherwise permitted) only be displayed outside that premises.
- Advertising signs should be weighted so to avoid being blown over and should not be secured to any existing infrastructure.
- Signs must not impair the vision of motorists or pedestrians.
- Signs must not be placed on roundabouts, roadways, traffic islands or garden beds at any time.
- The footpath trading area must be maintained to ensure it is tidy and free of litter and all items are clean and safe.
- Inflatable signs, portable electric signs, illuminated, revolving, spinning or flashing signs, flags and banners must not be displayed on or above the footpath area except with the specific written approval of Council. In addition, promotional flags or any other items or signs attached to doorways or shop facades must provide a minimum of 2.2 metres clearance above the footpath

Temporary real estate signage (pointer boards)

- Real estate agents must obtain an annual licence to display free-standing signs (pointer boards) and must adhere to the requirements of these Guidelines with respect to the placement of all signs. Free-standing Real Estate Agent signs (pointer boards) may only be placed out for display 30 minutes before and after a premise is open for inspection and one hour prior to an auction. Note real estate agents can have a maximum of three signs per property (open house or auction)
- A maximum of three pointer boards will be permitted per property. One located on the nature strip or dividing strip directly adjacent of the property for sale or rent and one at each end of the street that the property is located.
- Pointer boards can be a maximum height of 40cm and width of 40cm in size.

Section 4

Litter & Amenity

Litter & Amenity

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- Litter generated by footpath trading must not be swept into the street gutter or adjacent footpath areas and must be picked up and deposited within the operator's own bins, kept within the premises.
- Litter generated by footpath trading must not be placed within public waste receptacles.
- Food scraps or other rubbish within the immediate area must be removed and deposited within the operator's own bins - no trade waste is to be placed in public street litter bins.
- Litter must always be cleared from the trading area by the business operator.
- Any items placed on the footpath area must not cause any undue obstruction or danger, restrict the reasonable access or exit of any premises, or obstruct the vision of motorists at intersections.
- Permit holders must ensure that no noise or other disturbance emanates from the footpath activity, so as to cause a nuisance to others or detriment to the amenity of the area.
- The permit holder thoroughly must clean the area where footpath trading is taking place every trading day.

Section 5

Enforcement

Enforcement

Enforcement

Council Authorised Officers will monitor the compliance of the Street Trading & Activities Policy and the conditions attached to relevant permits. Any breaches of Council's Community Local Law, this policy or permit conditions will be investigated and if necessary, enforcement action will be taken.

Council will adopt the approach of engaging and educating the permit holder in matters where a breach has been detected. Enforcement action will only be taken if the permit holder continues to fail to comply with the requirements of their permit or this policy. Council reserves the right to take immediate enforcement action for any breach under this policy or Moorabool Community Local Law No.1 2019.

Enforcement action may include:

- Notice to Comply.
- Official Warning.
- Suspension of the permit for a period of time.
- Cancellation of the permit for a set period or indefinitely.
- Goods / items to be impounded.
- Infringements to be issued.
- Court prosecution (for failure to pay fines or repeated acts of non-compliance).

Prior to suspension or cancellation of a permit, the permit holder will have an opportunity to make a submission to Council on the proposed enforcement action. Where a permit is suspended or cancelled, refunds will not be available.

Council reserves the right to cancel, suspend or amend a permit where the street activity detracts from or is detrimental to the safety, accessibility or amenity of an area or negatively impacts the wider community.