



# Draft Footpath Trading Policy

2022-2025

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This policy supersedes previous versions

### Version Control

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Bayside City Council proudly acknowledges the Bunurong People of the Kulin Nation as the Traditional Owners and Custodians of this land, and we pay our respects to their Elders, past, present and emerging.

Council acknowledges the Bunurong's continuing relationship to the land and waterways and respects that their connection and spiritual identity is maintained through ancient ceremonies, songlines, dance, art and living culture.

Council pays tribute to the invaluable contributions of the Bunurong and other Aboriginal and Torres Strait Island elders who have guided and continue to guide the work we do.



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## 1. Introduction

Footpath trading in the City of Bayside provides trade opportunities for businesses, enhanced public spaces, and sustained, inclusive access.

Footpath trading aids the commercial viability of small businesses by increasing the area available for commercial activities. It allows them to use the area adjoining the kerb, which increases the visibility of their commercial offerings to customers. Footpath trading plays a key role in promoting retail resilience and the ability of local businesses to employ staff.

Effective regulation of footpath trading ensures that universal access to activity centres for all residents is maintained. This universal access allows all residents to equally enjoy Bayside's village feel. The *Disability Discrimination Act 1992* (Cth) legislates the requirements for universal access and has informed Bayside's approach to footpath trading regulation. For more information about how the *Disability Discrimination Act 1992* informs Bayside's footpath trading policy, see Appendix 1.

Responsible management of footpath trading requires the balancing of a variety of competing interests. This policy seeks to balance these interests and ensures that footpath trading aids the commercial viability and resilience of businesses, while also activating and enhancing the public realm for all residents.

## 2. Footpath trading and activation principles

This *Footpath Zoning, Trading and Activation Policy* is based on the following principles:

- (i) Council recognises the valuable role of footpath trading in (a) promoting the commercial viability of local businesses, and thereby enhancing local employment, and (b) activating and enhancing the vibrancy of the public realm.
- (ii) Council supports responsibly managed footpath trading within clearly defined Trading Zones.
- (iii) Council recognises that footpath trading must not adversely impact on pedestrian safety, including all-abilities access as per the requirements and the *Disability Discrimination Act 1992* (Cth).



- (iv) Council is committed to ensuring that the requirements relating to footpath trading are easily understood.
- (v) Council will not impose any unreasonable financial or regulatory burdens on footpath trading.
- (vi) Everyone has the right to take part in community activities.
- (vii) When permanent structures are proposed for any footpath area within the municipality, high standards of design are the starting point for the assessment of the proposal.
- (viii) From time-to-time Council will adopt policies that will allow or not allow footpath trading activities in certain areas. Where such a policy is adopted, Council will liaise with affected businesses.
- (ix) Footpath activity must make a positive contribution to the character and amenity of the area and surrounding residential areas.

### 3. Definitions

**Alfresco dining** means dining outdoors usually on the footpath in front of the food premises and may include private infrastructure such as tables, chairs, umbrellas, menu boards, and any other items authorised by Council and endorsed on a plan of the site.

**Footpath trading markers** are installed in some locations to delineate the Trading Zone in front of the commercial premises. This is to promote community safety and to ensure all-abilities access as required under the *Disability Discrimination Act 1992*.

**Goods and goods displays** include merchandise and services for sale on the footpath in front of the attached premises, and may include ancillary items such as racks, fixtures, fittings, and tables for display purposes.

**Kerb Zone** is the buffer between the kerb and the Trading Zone allowing access to and from parked vehicles.

**Pedestrian Zone** is the section of the footpath between the property or building line of the premises and the Trading Zone and must be kept clear of all items (e.g., dog bowls and waiter tables). The permit holder must not place any items in the Pedestrian Zone. This is vital for public safety and to meet the requirements of the *Disability Discrimination Act 1992* (Cth).

**Permit holder** is the business holding a Council-issued permit for footpath trading.

**Trading Zone** is the only area of the footpath where goods, café furniture and ancillary items may be placed and is defined as the section of the footpath between the Pedestrian Zone and the Kerb Zone. This is where the Permit Holder may place signs, goods, café furniture and

ancillary items approved by the permit and where commercial activities may take place.

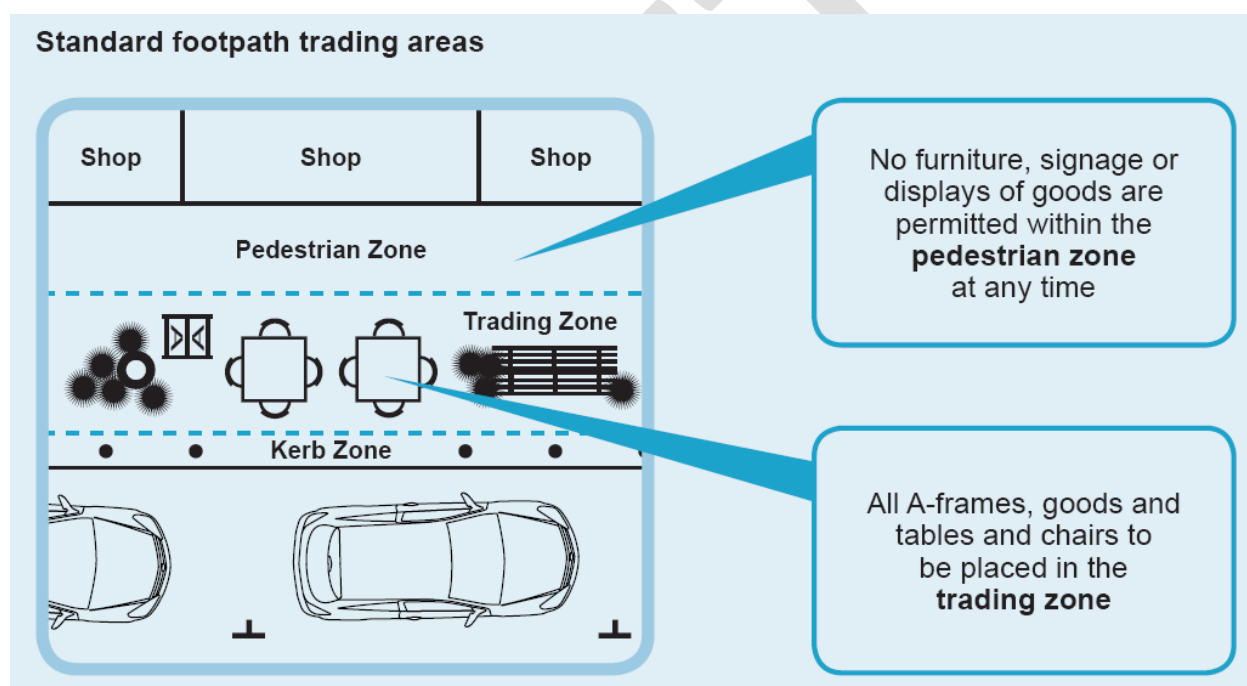
Where premises are adjacent to an intersection, the trading zone must not extend past the building line.

#### 4. Trading Zone siting requirements

##### 4.1 Minimum dimensions

Trading Zones are only appropriate where the footpath width allows sufficient room for the Pedestrian Zone and the Kerb Zone.

Where an existing Footpath Trading Permit has been granted, and the space available does not allow for the required Pedestrian Zone width, the permit will be reviewed and may be revoked at Council's discretion to ensure that the function of the Pedestrian Zone is not unduly compromised.



##### 4.2 Footpaths less than 2.5m wide

To provide an adequate-sized Pedestrian Zone, footpaths of less than 2.5m cannot be used for outdoor dining or placement of objects.

##### 4.3 Footpaths from 2.5m to 3.5m wide

To provide a clear Pedestrian Zone, the footpath is divided into three zones.

**4.3.1 Pedestrian Zone:** extends from the building line or shopfront for a minimum of 1.5m. No items may extend into this zone at any time.

Items overhead cannot extend below a height of 2.4m.



4.3.2 **Trading Zone:** the only area of the footpath where goods, café furniture and ancillary items may be placed. Where premises are adjacent to an intersection the Trading Zone must not extend past the building line.

4.3.3 **Kerb Zone:** a minimum of 400mm buffer from the kerb to allow access to and from parked vehicles; 1.5m where there is a disabled parking bay; and 600mm where there is a loading zone. The Kerb Zone width is determined by the parking method adjacent to the kerb. Kerbs with parallel parking have a Kerb Zone width of 400mm. Kerbs with angle parking have a Kerb Zone width of 800mm.

No items may be placed in the Pedestrian Zone or the Kerb Zone.

#### 4.4 Footpaths from 3.5m to 4m wide

To provide a clear Pedestrian Zone, the footpath is divided into three zones.

4.4.1 **Pedestrian Zone:** extends from the building line or shopfront for a minimum of 1800mm. No items may extend into this zone at any time.

Items overhead cannot extend below a height of 2.4m.

4.4.2 **Trading Zone:** the only area of the footpath where goods, café furniture and ancillary items may be placed. Where premises are adjacent to an intersection the Trading Zone must not extend past the building line into the intersection.

4.4.3 **Kerb Zone:** a minimum of 400mm buffer from the kerb to allow for access to and from parked vehicles including at loading zones, and at least 1.5m where there is a disabled parking bay. The Kerb Zone width is determined by the parking method adjacent to the kerb. Kerbs with parallel parking have a Kerb Zone width of 400mm. Kerbs with angle parking have a Kerb Zone width of 800mm.

No items may be placed in the Pedestrian Zone or the Kerb Zone.

#### 4.5 Footpaths 4m or wider

To provide a clear Pedestrian Zone, the footpath is divided into three zones.

4.5.1 **Pedestrian Zone:** extends from the building line or shopfront for a minimum of 1.8m. No items may extend into this zone at any time. Items overhead cannot extend below a height of 2.4m.

4.5.2 **Trading Zone:** the only area of the footpath where goods, café furniture and ancillary items may be placed. Where premises are adjacent to an intersection the Trading Zone must not extend past the building/property line.

4.5.3 **Kerb Zone:** a minimum of 400mm buffer from the kerb to allow for access to and from parked vehicles including at loading zones, and at least 1.5m where there is a disabled parking bay.

The Kerb Zone width is determined by the parking method adjacent to the kerb. Kerbs with parallel parking have width of 400mm. Kerbs with angle parking have a Kerb Zone width of 800mm.

No items may be placed in the Pedestrian Zone or the Kerb Zone.

Footpath width	2.5-3.5m	3.5-4m	4m+
Kerb Zone - parallel parking	400mm	400mm	400mm
Kerb Zone - angle parking	800mm	800mm	800mm
Pedestrian Zone	1500mm	1800mm	1800mm

#### **4.6 Prows/expanded footpath areas**

In a number of activity centres, Council has extended the footpath into the roadway to provide either traffic management measures by emphasising pedestrian priority or as part of an overall urban design plan for the centre. In these locations Kerb Zones will continue to follow the kerb line.

#### **4.7 Recessed shopfronts/buildings**

4.7.1 Throughout the municipality circumstances exist where the shopfront or building is set back from the front title boundary.

4.7.2 Trading activity may occur in the area between the building and title boundary if it complies with the Bayside Planning Scheme and does not extend beyond the title boundary onto the footpath.

#### **4.8 Property boundaries**

4.8.1 A setback to the Trading Zone of 500mm is required at each side of the boundary of each property to allow access from the footpath to the road, between each property.

4.8.2 Businesses on the corner of a street must not inhibit the required line of sight for pedestrians and traffic to safely use the street and crossings. A 45-degree corner exclusion area is considered the minimum requirement, to ensure safe vehicle and pedestrian movements around corners. Council may increase this exclusion area for safety reasons. The diagram shows the minimum line of sight and allowable trading area.

#### **4.9 Other siting requirements**

4.9.1 Where a property exceeds 12m of frontage then a break of 1m shall be provided to the satisfaction of Council at an appropriate point to allow access to the Pedestrian Zone. In considering the location of a break in the Trading Zone, no more than 6m of no access is allowed. Some sites may require increased access and Council reserves the right to require additional access upon

inspection. Council will consider the car parking spaces on the road and the location of any other infrastructure.

- 4.9.2 Any footpath trading activity may be outside only the premises to which it relates, except by the permission of the adjoining property owner and contained within the property line, with 500mm on each side of the property line to allow for access to the Pedestrian Zone. If the consenting business ceases to operate at the original address, consent must be obtained again from the new tenants and provided to Council.
- 4.9.3 Where a footpath trading activity is proposed near a mid-block pedestrian crossing, the location of the activity shall provide separation from the crossing and ensure sight lines for pedestrians are protected (usually a minimum of 2 metres is required).
- 4.9.4 The outdoor trading or seating arrangements must not interfere with front and rear doors of public buses. Up to a 2-metre clearance within the front and rear of bus zones allows adequate clearance for passengers to embark/disembark to and from buses safely.
- 4.9.5 Where a trading activity is proposed adjacent to car parking spaces designated for people with disabilities, a Kerb Zone of up to 1.5m will be required.
- 4.9.6 Services such as gas, power, water, and telecommunications should not be covered or obstructed by any permanent structures.
- 4.9.7 Unless exceptional circumstances apply, trading activities (including outdoor eating facilities) will not be placed within 1m of any Council seat, rubbish bin, or other item of street furniture.
- 4.9.8 The placement of signs, goods, heaters, tables, or chairs in a kerb extension area can only be approved by Bayside City Council's Traffic Engineer.

## **5 Outdoor dining**

### **5.1 Operators' responsibilities**

- 5.1.1 Restaurant and café furniture and associated ancillary items are permitted only at premises registered to serve food and/or beverages under the *Food Act 1984*.
- 5.1.2 In exceptional circumstances Council may allow tables and chairs to be placed outside non-registered premises. Applicants

need to demonstrate to Council why the tables and chairs are necessary.

- 5.1.3 The permit holder is responsible for the conduct of patrons at tables and chairs in the outdoor seating area and must:
- ensure that patrons do not move tables and chairs from their positions and obstruct the Pedestrian Zone
  - ensure that patrons do not create any obstruction to the Pedestrian Zone, including pets, prams, or other personal items
  - not serve food and beverages to patrons standing on the footpath within the Pedestrian Zone
  - ensure patrons do not consume food or beverages within the Pedestrian Zone.
- 5.1.4 Regarding 8.1.3, Council may place a condition on a permit requiring a permit holder to place signs in the outdoor seating area.
- 5.1.5 Businesses are responsible for all litter generated by patrons using their footpath dining areas. A business must comply with the Tobacco Act 1987 on outdoor dining areas.
- 5.1.6 Serving staff at outdoor eating facilities should give pedestrians right of way.
- 5.1.7 Each operator is responsible for maintaining the outdoor eating area. A permit may be cancelled or suspended if littering, untidiness or failure to maintain the Pedestrian Zone is noted.
- 5.1.8 Items placed on the footpath must be stable, of a design approved by Council, and not damage the footpath.
- 5.1.9 Items placed on the footpath must be maintained by the licensee to a standard acceptable to Council.
- 5.1.10 Businesses will reimburse Council for any reinstatement work if found responsible for damage to footpaths, street fixtures and furniture.
- 5.1.11 Premises where alcohol is served or consumed on the footpath must have a liquor licence endorsed with the footpath as part of the licensed area.
- 5.1.12 Businesses must not leave any goods, A-frame/s, tables and chairs on the footpath outside of their normal trading hours. Items must be removed when the business is closed.
- 5.1.13 The permit holder must provide Council with evidence of current public liability insurance that notes Council's interest and will be determined by Council's insurance policy. For prevailing insurance requirements, please refer to the Footpath Trading Guidelines found at <https://www.bayside.vic.gov.au/services/business-and-commerce/footpath-trading-permit-guidelines-and-fees>. Any permit issued will be on the basis that the insurance will be current for the period of the permit. Any permit issued is valid only while the public liability insurance is current.
- 5.1.14 The permit holder must provide indemnity against loss or damage in a form suitable to Council. (See Appendix 2)

## **5.2 Furniture and fittings**

- 5.2.1 No sound-amplification equipment or similar equipment may be erected or used in the outdoor seating area without first obtaining a separate local law permit.
- 5.2.2 No live entertainment is permitted without first obtaining a separate local law permit.
- 5.2.3 If patio heaters (which have a base on the footpath) are used, they must be located within the Trading Zone, covered by the business's public liability insurance and must be licensed as part of a permit.
- 5.2.4 All outdoor heaters must comply with safety standards specified by the Energy Safe Victoria which may be obtained by telephoning Energy Safe Victoria on 1800 069 588 or from their website at [www.esv.vic.gov.au](http://www.esv.vic.gov.au)
- 5.2.5 Umbrellas may be placed only in the Trading Zone.
- 5.2.6 Where umbrellas are permitted, they must be 2.2m high at the lowest point other than the centre pole and must not extend over the kerb. When raining, water run-off from large umbrellas should not fall into the Pedestrian Zone.
- 5.2.7 Umbrellas must be secured in a manner approved by Council. If requesting approval of umbrellas that do not have a lock-in device, clearly note this on the application form.
- 5.2.8 For safety reasons screens or screening devices may be placed where there are tables and chairs. The screens must be no higher than 1m high and must be secured in a position approved by Council. Details to be provided with permit application.
- 5.2.9 Where an applicant proposes to suspend a fixture or fitting (for example, lights or heaters) from the underside of a veranda or building, the fixture or fitting is to be attached in accordance with appropriate engineering standards and have a minimum clearance of 2.4m above the Trading Zone. Outside of operating hours of the business, fixtures or fittings that are retractable must be drawn in.
- 5.2.10 Advertising signage on temporary windbreaks or umbrellas must identify the operator of the business in compliance with the Bayside Planning Scheme.
- 5.2.11 No advertising is permitted on permanent screens other than the name of the premises.
- 5.2.12 Permanent screens – see section 8.4.
- 5.2.13 Council may, if the circumstances arise, require a marker to be placed on the footpath to clearly designate the Trading Zone.
- 5.2.14 All moveable furniture and fittings must be removed from footpaths when the Bureau of Meteorology forecasts wind speeds in excess of 30 knots.

## **6 Goods on footpaths**

- 6.1 In order to provide a Pedestrian Zone, goods and displays may be displayed only in the Trading Zone of the footpath.
- 6.2 Goods may be displayed in the Trading Zone only during normal or authorised trading hours, and must not be placed on a footpath prior to 7am each trading day or remain on the footpath after 11pm on each trading day.
- 6.3 Goods (except furniture) must be displayed on stable stands that are approved by Council and able to withstand adverse weather. Stands must be secured so that adverse weather will not create a risk for pedestrians, property, or passing traffic. Stands and goods must not damage footpaths.
- 6.4 Goods or displays are not permitted where access to a loading zone or disabled parking bay will be obstructed. (At least 1.5m from the kerb.)
- 6.5 Goods or displays are not permitted where they will cause difficulty to pedestrians and people exiting or entering parked vehicles or footpaths.
- 6.6 Goods displays cannot exceed a height of 1.5m.
- 6.7 Stands and displays should contrast with their background to assist people with vision impairment.
- 6.8 Goods displays cannot overhang the kerb zone or Pedestrian Zone.
- 6.9 The permit holder must provide Council with evidence of current public liability insurance that notes Council's interest and will be determined by Council's insurance policy. For prevailing insurance requirements, please refer to the Footpath Trading Guidelines found at <https://www.bayside.vic.gov.au/services/business-and-commerce/footpath-trading-permit-guidelines-and-fees>. Any permit issued will be on the basis that the policy will be current for the period of the permit.
- 6.10 All goods, displays and fittings must be removed from footways when the Bureau of Meteorology forecasts wind speeds in excess of 30 knots.

## **7 Signs on footpaths**

- 7.1 All permitted signs are to be secured by a means that is not reliant on or physically tied to any Council infrastructure (e.g., seats, poles, trees.). The means by which these signs are secured must not extend beyond the circumference of the sign and must be of a type approved by Council. Signs and the securing devices are to be removed in accordance with permitted display times.
- 7.2 Inflatable signs, portable electric signs, illuminated, revolving, spinning or flashing signs, flags, tear drop signs, and banners are prohibited.
- 7.3 Signs can be placed only in the Trading Zone and directly adjacent to the business they are advertising.
- 7.4 Signs must be in place only during normal trading hours.



- 7.5 Signs on footpaths must be secured by a Council-approved method.
- 7.6 An advertising sign must not exceed 900mm in width or 1m in height.
- 7.7 The maximum number of signs permitted is one per premises.
- 7.8 The permit holder must provide Council with evidence of current public liability insurance that notes Council's interest and will be determined by Council's insurance policy. For prevailing insurance requirements, please refer to the Footpath Trading Guidelines found at <https://www.bayside.vic.gov.au/services/business-and-commerce/footpath-trading-permit-guidelines-and-fees>. Any permit issued will be on the basis that the policy will be current for the period of the permit. Any permit issued will be valid only while the public liability insurance is current.
- 7.9 All signs must be removed from footways when the Bureau of Meteorology forecasts wind speeds in excess of 30 knots.

## **8 Other obstructions**

### **8.1 Miscellaneous footpath trade items**

- 8.1.1 Request for placement of any other obstruction, fixture, fitting or equipment that is not within the definition of sign, goods, or outdoor-eating facility is to be noted on an application form and the applicant is to demonstrate compliance with this policy before approval is issued.
- 8.1.2 Any obstruction can be placed only within the Trading Zone.
- 8.1.3 The fee applicable will be determined by Council depending on the obstruction.
- 8.1.4 The permit holder must provide Council with evidence of current public liability insurance that notes Council's interest and will be determined by Council's insurance policy. For prevailing insurance requirements, please refer to the Footpath Trading Guidelines found at <https://www.bayside.vic.gov.au/services/business-and-commerce/footpath-trading-permit-guidelines-and-fees>. Any permit issued will be on the basis that the policy will be current for the period of the permit. Any permit issued will be valid only while the public liability insurance is current.

### **8.2 Café blinds**

- 8.2.1 Council is not in favor of the installation of blinds from verandahs. Any business considering the installation of blinds needs to discuss this with Council first as access and safety issues are paramount considerations for Council before permitting the installation of blinds.

- 8.2.2 Proposals for café blinds must be lodged with Council for approval. It must include a copy of the property plan showing measurements of blinds, distance from kerb and adjoining premises and detail the method to be used for attachment to the footpath. A report from an engineer must also be included confirming the blinds and their contact points can bear the wind and the awning can safely bear the weight of the blinds with wind.
- 8.2.2 An application under *Building Regulations 2018* (Council report and consent application form, non-siting matters) is required to be submitted to Council's Building Department for approval.
- 8.2.3 Blinds are not to be a visual obstruction between the footpath and the street. The majority of the blind is required to be transparent up to 2.4m above pavement level. The only signage on the blind is to be the logo of the business.
- 8.2.4 Blinds are not to obstruct the free flow of pedestrians either in the Pedestrian Zone or for the access required to link the Pedestrian Zone to the Kerb Zone (see 4.8 Property Boundaries).
- 8.2.5 Café blinds must be retracted at the close of business each evening.
- 8.2.6 Blinds must be installed to ensure fixings to verandas, buildings and pavement are adequate and structurally sound. The impact of wind loadings must also be assessed for compliance by Council's Building Department.

### 8.3 Temporary barbeques and sausage sizzles

- 8.3.1 Barbeques and sausage sizzles may be allowed adjacent to a butcher shop for trade purposes (by the proprietor). Permission may be given for placement of a barbeque in the Trading Zone once a month.
- 8.3.2 Portable barbeques must be brought in during non-trading hours, Permanent barbeques are not permitted.
- 8.3.3 Barbeques and sausage sizzles may be allowed for charity and events adjacent a shop within the business zone or on Council-owned land. Permission must be obtained from the shop/business owner before an application is submitted. Permission may be given for placement of a barbeque in the Trading Zone. Council also has several permitted street stall sites for **community or charitable organisations** within Bayside City Council municipal boundaries
- 8.3.4 Applications submitted for barbeques and sausage sizzles are referred to Council's Environmental Health Department for approval. Food-handling practices required by the Environmental Health Department are conditions of the permit.



- 8.3.5 The permit holder must provide Council with evidence of current public liability insurance that notes Council's interest and will be determined by Council's insurance policy. For prevailing insurance requirements, please refer to the Footpath Trading Guidelines found at <https://www.bayside.vic.gov.au/services/business-and-commerce/footpath-trading-permit-guidelines-and-fees>. Any permit issued will be on the basis that the policy will be current for the period of the permit. Any permit issued will be valid only while the public liability insurance is current.

#### **8.4 Technical standards for permanent screen structures**

Permanent glass screens and supporting structures may be allowed. The following standards apply to permanent screen structures:

- 8.4.1 Council is not in favor of the installation of railings or glass screens. Any business considering the installation of railings or glass screens needs to discuss this with Council first as access and safety issues are paramount considerations for Council before permitting the installation of such fixtures.
- 8.4.2 Consent from Council's Building Department must be obtained before a local law permit application is submitted for permanent glass screens and supporting structures.
- 8.4.3 Screens are made of laminated glass to a maximum height of 1.5m with a minimum thickness of 10.38mm.
- 8.4.4 The screens will have a minimum clearance of 200mm from the footpath surface.
- 8.4.5 Screens will not have a return length of more than 2m.
- 8.4.6 Strength and fastening of glass screens must be certified by a structural engineer.
- 8.4.7 Glass may be frosted or have a screen print pattern to a height of 500mm above pavement level. Above 500mm the glass is to be clear.
- 8.4.8 A safety screen print pattern is to be visible at a height of approximately 700mm above pavement level.
- 8.4.9 No commercial advertising is permitted on the screens other than the name or logo of the café/restaurant.
- 8.4.10 Support poles to be a minimum 48mm diameter, made of extruded aluminium and finished in a clear anodised coating. Other colours are subject to approval. Non-standard fixtures and fittings will be considered by Council in conjunction with relevant adopted urban design policies.
- 8.4.11 The bases of screens are to be of cast aluminium and fastened so that the screen is positioned according to the siting requirements of this policy.

- 8.4.12 Design and construction of glass screens must conform to Australian Standards and Bayside City Council's recommendations.
- 8.4.13 Screens must be cleaned regularly and maintained by the operator of the premises. Screens are to be replaced within 24 hours of any damage that may cause risk to public safety, otherwise within one week of the damage occurring.
- 8.4.14 Graffiti is to be removed within 24 hours.

## **9 General**

### **9.1 Maintenance of footpaths**

Bayside City Council manages the use of footpaths at all times and reserves the right to reclaim access to and remove all footpath trading from footpaths at any time for any purpose. Council endeavours to provide adequate notice to any licence-holder.

Except where permanent structures have been installed, Council will manage repairs and replacement of footpaths and Council furniture.

### **9.2 Activities of service authorities**

Council is not able to provide notification of actions of service authorities that may interrupt or affect the use of footpaths for trading activities. When Council is the authority required to carry out works, it will give notice to affected traders where possible.

Council will request that service authorities give adequate notice of street works, but is not able to guarantee the notice will be provided.

### **9.3 Compensation for loss of trade**

When a service authority is required to carry out work within the road reserve which necessitates the removal and/or alteration of footpath trading arrangements, no compensation will be payable for any loss of trade experienced during or after the works.

### **9.4 Inspection**

Council will regularly inspect areas that have been granted footpath trading.

Authorised officers can give direction to permit holders regarding compliance with the permit. Failure to respond to a lawful direction can result in enforcement. See section 13.

### **9.5 Revocation/suspension/modification**

Council may at its discretion suspend, revoke, amend, relocate or modify any permit it issues. If this action is taken, the permit

holder or any other person will not be entitled to compensation or damages of any kind.

## 10 Applying for a permit

10.1 To obtain a permit, applicants must:

- 10.1.1 complete and sign an application for Footpath Trading Permit
- 10.1.2 provide a site plan drawn to scale that shows dimensions of proposed kerb café, goods display, etc.
- 10.1.3 indicate setbacks from shop frontage, kerb and site boundaries, and existing elements, e.g., tree, light pole, rubbish bin, public transport shelters, etc. A separate fee will be charged for requests to relocate Council furniture, e.g., seats, rubbish bins, etc.
- 10.1.4 provide a photograph(s) of the area at the front of the shop/premises where planning to locate the footpath trading activity
- 10.1.5 contact Council's responsible officer for any new applications for alfresco dining, to arrange a time for the site to be inspected
- 10.1.6 provide a Certificate of Currency for a public liability insurance policy that covers death or injury of any person or damage to any property that could arise from the display that will be authorised by the permit. The certificate is to list:
  - 10.1.6.1 Bayside City Council as an interested party,
  - 10.1.6.2 Public liability insurance consistent with minimum requirement determined by Council's insurance policy<sup>1</sup>.
  - 10.1.6.3 the insured (including situation of risk),
  - 10.1.6.4 the company insuring you,
  - 10.1.6.5 expiry date,
  - 10.1.6.6 policy number.
  - 10.1.6.7 indemnity in a form similar to Appendix 2.

## 10.2 Transfer of permit

A permit cannot be transferred without prior written approval from Bayside City Council.

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<sup>1</sup> For prevailing insurance requirements, please refer to the Footpath Trading Guidelines found at <https://www.bayside.vic.gov.au/services/business-and-commerce/footpath-trading-permit-guidelines-and-fees>

- 10.2.1 A permit can be transferred from one proprietor to another, provided that the address of the premises is the same and there is no change to the approved permit. The new owner is required to complete an application form, signed indemnity, and provide a *Certificate of Currency*. The new owner is responsible for outstanding fees in relation to the permit and any monies that have been paid for the permit are to be reconciled between the vendor and purchaser at the time of settlement. A permit cannot be transferred without prior written approval from Bayside City Council

### 10.3 Decision guidelines

- 10.3.1 Council reserves the right to reject any application made for footpath trading.
- 10.3.2 In addition to matters set out above, when considering whether to grant a permit for an outdoor eating facility, Council considers:
- a) how the proposal meets the general and specific principles of this policy
  - b) effect on pedestrian flow and safety
  - c) impact on the appearance of the street and its surroundings
  - d) design and standard of any permanent structures proposed
  - e) any effects on general trading within the area
  - f) any possible effects to nearby residential properties
  - g) hours of operation of the facility/use, and how it relates to the use of the adjacent land
  - h) whether approval has been granted for advertising or other forms of trading activities for the premises
  - i) the effect on vehicle flow and traffic safety
  - j) whether it is complementary to the business plan for the activity centre
  - k) whether it complements Council's policy for the activity centre or precinct
  - l) whether the conditions of any previous approval have been complied with
  - m) whether the proposal will under any circumstances be detrimental to the amenity of the area, including residential amenity.

## 11 Fees and period of permits

- 11.1 Bayside City Council sets its fees and charges each year as part of its budget/estimate process.
- 11.2 Fees are charged on a pro-rata basis
- 11.3 The current fees are available on request.

- 11.4 Businesses and permit applicants should note that permanent structures have a fee other than those for non-permanent footpath trading activities.
- 11.5 Unless otherwise specified on the permit, a permit will expire on 31 August each year except in those instances when it is withdrawn or revoked by an Authorised Officer prior to the expiry date.
- 11.6 A permit will be invalid if the permit holder fails to maintain public liability insurance, in accordance with this policy.

## 12. Refunds

- 12.1 No refunds on new applications / transfer fees
- 12.2 A pro-rata refund will be given in accordance with Councils Fees and Charges (less administration fee) if a permit is forfeited.

## 13. Enforcement

- 13.1 If a local law, the *Footpath Trading Policy*, or specific permit condition is breached, Council may issue:
- a) a verbal warning
  - b) a *Notice to Comply* – a first and final written warning with time limit for compliance
  - c) an infringement notice – a fine for noncompliance with the *Notice to Comply*
  - d) further fines or permit suspensions for a minimum period of three months and/or prosecution.
- 13.2 Council may impound any items on the footpath that do not comply with local laws, this policy, or any conditions placed on a permit. See Appendix 3 for procedures for the impounding of outdoor trading items.
- 13.3 Incidents of noncompliance are noted on a business's file and taken into consideration when determining penalties for additional/future breaches of compliance.
- 13.4 Second and subsequent fines will be issued without warning for further acts of noncompliance.
- 13.5 Incidents of noncompliance are taken into consideration when requests to modify a permit are submitted.

## Appendix 1 - Pedestrian safety and all-abilities access

Pedestrian safety and all-abilities access are paramount concerns in the responsible management of footpath trading.

There must be sufficient space in the Pedestrian Zone for pedestrians to walk past in both directions, and there should be no sharp or otherwise dangerous objects which they can catch themselves on.

It is equally important that businesses have a system in place to manage any spills in the Pedestrian Zone.

Footpaths are subject to Section 23 of the *Disability Discrimination Act 1992* (Cth).<sup>2</sup> This means that it is unlawful to discriminate against a person by restricting access. One of the examples provided on the Australian Human Rights Commission website of such discrimination is:

*-A business operating on the footpath in a way that causes a barrier to access.*<sup>3</sup>

However within (<https://humanrights.gov.au/our-work/disability-rights/frequently-asked-questions-access-premises#footpath>) the answer to the question "What is an acceptable footpath?" included the following:

*"Public footpaths do not have a building classification, so while they are covered by the definition of 'premises' they are not subject to the Premises Standards, but remain subject to the general non-discrimination provisions of the DDA.*

*This means that there is no mandatory minimum technical compliance standard under the DDA that can be referred to in relation to footpaths."*

The Commission's website notes that while there is no adopted standard to ensure that a footpath trading arrangement meets the requirements of section 23, it considers best practice to be the advice in Australian Standard 1428.2, which shows that

*...the minimum width required for 2 people using wheelchairs to pass each other is 1800 mm.*<sup>4</sup>

The Commission further recommends that footpaths should -

*Have a Pedestrian Zone with a minimum clear width of 1.8 metres at the narrowest point and a minimum clear height of 2 metres with nothing encroaching into that envelope.*<sup>5</sup>

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<sup>2</sup> <https://www.humanrights.gov.au/our-work/disability-rights/frequently-asked-questions-access-premises#footpath>

<sup>3</sup> <https://www.humanrights.gov.au/our-work/disability-rights/frequently-asked-questions-access-premises#footpath>

<sup>4</sup> <https://www.humanrights.gov.au/our-work/disability-rights/frequently-asked-questions-access-premises#footpath>

<sup>5</sup> <https://www.humanrights.gov.au/our-work/disability-rights/frequently-asked-questions-access-premises#footpath>

*In addition the Commission is of the view that the continuous accessible path of travel should extend from the property line with no obstructions or projections in order to provide the best possible guidance line for all users including people with a vision impairment.<sup>6</sup>*

*However the commission also says that*

*“In providing this advice the Commission is not saying that compliance with the DDA can only be achieved by providing footpaths this wide, but rather a footpath of this minimum width would provide amenity for all users, especially in areas of high pedestrian traffic, such as High Street shopping areas.*

*The Commission notes, however, that topographical issues, historical practices and local conditions will affect the capacity of local government authorities to achieve this level of good practice in all circumstances.”*

These considerations have directly informed Council's footpath zones.

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<sup>6</sup> <https://www.humanrights.gov.au/our-work/disability-rights/frequently-asked-questions-access-premises#footpath>

**APPENDIX 2 - FORM OF INDEMNITY – COMPANIES AND INCORPORATED ASSOCIATIONS**

**This is a legally binding agreement.**

This Indemnity is between **BAYSIDE CITY COUNCIL (Council)** and the company or incorporated association named

..... **(Organisation).**

It arises out of a proposal by Council to issue a permit to the Organisation under Council's Local Law No. 2 'Neighbourhood Amenity' – Part 7 Business & Builders.

The Organisation agrees that, in exchange for Council's issue of the permit under the Local Law, it will indemnify Council and keep Council indemnified against any and all liability (including liability and negligence) and any and all loss, damage, costs and expenses incurred by Council which arise out of anything done or omitted to be done by the Organisation in or on the area which is the subject of the permit.

SIGNED SEALED AND DELIVERED by )

**(insert name)** ..... )

for and on behalf of the Organisation in the )

presence of: )

.....  
**(Witness)**

.....  
**(Date)**



## FORM OF INDEMNITY – INDIVIDUALS

This is a legally binding agreement.

_____	(Name of Guarantor)
_____	(Address)
_____	(Occupation)
_____	(Name of Organisation)
_____	

It is between **BAYSIDE CITY COUNCIL (Council)** and the person named above **(Guarantor)**. It arises out of an indemnity given by the company or incorporated association named above **(Organisation)** concerning the proposed issue of a permit to the Organisation under Council's Local Law No. 2 'Neighbourhood Amenity' – Part 7 Business & Builders.

The Guarantor agrees that, in exchange for Council issuing the permit under the Local Law, the Guarantor will pay and make good to Council on demand any loss, damage, costs and expenses incurred by Council as a result of the Organisation's refusal or failure to honour the indemnity given by it.

The Guarantor further agrees that any negligence or tolerance by Council in attempting to obtain payment or enforce the performance of the Organisation's indemnity will not release or, in any way affect, the Guarantor's liability under this agreement.

Finally, the Guarantor agrees that the guarantee given under this agreement is a continuing guarantee and that the Guarantor's liability will not be affected by any indulgence shown to the Organisation by Council.

SIGNED SEALED AND DELIVERED BY \_\_\_\_\_ )

**(Guarantor)** ..... )

in the presence of: \_\_\_\_\_ )

.....

**(Witness)**

.....

**(Date)**

## Appendix 3: Impoundment

