



1.0 AUTHORITY

- *Disability Discrimination Act (Cth) 1992*
- *Planning and Environment Act 1987*
- *Planning and Environment (Fees) Regulations 1989*
- *Local Government Act 1989*
- *Liquor Reform Act 1998*
- *Building Code of Australia 1996*
- *Road Safety Act 1986*
- *Food Act 1984*
- *Mornington Peninsula Planning Scheme*
- *Community Amenity (Amendment) Local Law 2022*

2.0 INTENT

The purpose of this Policy is to facilitate a balance between local businesses seeking use of footpaths for trading, whilst ensuring safe footpath access for all users, including pedestrians, people with disabilities, and those using mobility aids.

3.0 SCOPE

This policy applies to all individuals, organisations and businesses who seek to use public footpaths to conduct commercial activities within the municipality. Commercial activities on footpaths must comply with the Mornington Peninsula Planning Scheme and any other relevant Act, Regulation Standard or Guideline.

4.0 GOVERNANCE PRINCIPLES

Under the *Local Government Act 2020*, Council must give effect to the following overarching governance principles:

- Council decisions are to be made and actions taken in accordance with the relevant



law.

- Priority is to be given to achieving the best outcomes for the municipal community, including future generations.
- The economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted.
- The municipal community is to be engaged in strategic planning and strategic decision making.
- Innovation and continuous improvement is to be pursued.
- Collaboration with other Councils and Governments and statutory bodies is to be sought.
- The ongoing financial viability of the Council is to be ensured.
- Regional, state and national plans and policies are to be taken into account in strategic planning and decision making.
- The transparency of Council decisions, actions and information is to be ensured.

5.0 POLICY STATEMENT

5.1 Footpath Zones

Three Footpath Zones have been designated to ensure local businesses seeking use of footpaths for trading can maintain clear and unobstructed access for footpath users, an allocated trading space for businesses, as well as ensuring safe pedestrian access to vehicles from the roadside. See Diagram 3.

5.1.1 Pedestrian Zone

The Pedestrian Zone extends from the property boundary for a minimum of 1.8 metres to allow clear and unobstructed access for footpath users. Where the frontage of a building is set back from other adjacent buildings on the street forming an irregular building line, this space may be considered part of the Trading Zone, however it must not interfere with the safe and unimpeded use of the footpath. No items are permitted to be placed within the Pedestrian Zone.

5.1.2 Trading Zone

The Trading Zone is the section of footpath between the Pedestrian Zone and the Kerbside Zone. Permit holders may place items in this area in accordance with their approved Footpath Trading Permit.

5.1.3 Kerbside Zone



The Kerbside Zone is located between the Trading Zone and the kerb of the road. The Kerbside Zone must be a minimum of 0.3 metres wide to allow safe access to vehicles parked at the roadside, and for safe refuge for pedestrians crossing the road. A wider Kerbside Zone may be required in some circumstances to safeguard Shire or other Authority infrastructure. No items permitted to be placed on the footpath under this Policy may be placed in the Kerbside Zone.

5.2 Clearances

- 5.2.1 A minimum clearance of 0.5 metres must be maintained on either side of the business frontage to create a walkway from the Kerbside Zone through the Trading Zone. Where a business frontage is more than 8 metres long, a 1 metre access way should be provided every four metres. See Diagram 2.
- 5.2.2 Where premises are adjacent to a pedestrian crossing, the Trading Zone must not extend past the peripheral lines, or “vehicle stop line” of the crossing. See Diagram 4.
- 5.2.3 A minimum clearance of 0.5 metres, or greater if deemed appropriate by a Shire Authorised Officer, must be provided on either side of any asset permanently affixed to the footpath such as, but not limited to, rubbish bins, parking meters, bike racks, post boxes, fire hydrants, bollards, seats, traffic signal boxes and service pits.
- 5.2.4 A minimum clearance of 1.5 metres, or greater if deemed appropriate by a Shire Authorised Officer, must be provided on either side of a bus stop, loading zone or taxi zone.
- 5.2.5 Any request to relocate or remove any public infrastructure can only be approved by a Shire Executive Officer. Any costs associate with the relocation or removal of these items will be at the applicant’s expense and the items may be relocated nearby. A deposit against any costs may be required before works commence.

5.3 Shire works



5.3.1 The Shire may require the use of public land, including a footpath or roadway used for footpath trading, to undertake works, or for a planned event. Shire Officers will give seven days' notice to affected permit holders where possible. In an emergency, sites may need to be cleared immediately. Permit holders will be responsible for the movement of all items and any associated costs.

5.4 Storage of items

5.4.1 All items associated with footpath trading must be removed from the Trading Zone at the close of the trading day. No area of the footpath may be used to keep or store items associated with footpath trading unless permitted as a condition of the permit. Additional fees may apply for the storage of these items.

5.4.2 Items permitted under Clause 5.4.1 must not be reliant on, or physically attached to, any Shire or other authority's infrastructure at any time.

5.4.3 The Shire accepts no responsibility or liability for damaged or stolen items permitted under Clause 5.4.1.

5.5 Permanent fixings and damage

5.5.1 The fixing or installation of permanent infrastructure to any footpath or roadway will only be permitted in exceptional circumstances, subject to the granting of an additional permit to work within the road reserve, assessed by the Asset Protection team. No works can occur within the road reserve, prior to the issuing of the appropriate permit.

5.5.2 If any items are permanently affixed to, or installed on, any footpath or roadway without the appropriate permit or agreement in place prior to the installation, the Shire may require the item/s to be removed and the footpath reinstated to its original condition at the expense of the permit holder. Further enforcement action may be taken by the Shire.

5.5.3 If any damage is caused to the surface of the Trading Zone, adjacent areas or adjacent Shire infrastructure as part of the permit holder's use of the Trading



Zone, the permit holder will be liable for the full cost of any reinstatement works undertaken by the Shire. Further enforcement action may be taken by the Shire.

- 5.5.4 For the purposes of footpath trading under this Policy, fixed or temporary gazebos, marquees and any similar structures are strictly prohibited on the footpath at all times, regardless of duration, purpose, or design. This does not apply to permits approved under any other policy.

5.6 General requirements

- 5.6.1 Any items allowed under the Policy must be stable and suitably designed to prevent damage to the footpath, withstand inclement weather and maintain an attractive appearance.
- 5.6.2 Any items allowed under the Policy should be of a contrasting colour to their background to assist people with vision impairment.
- 5.6.3 Any items allowed under the Policy must not be reliant on, or physically attached to, any Shire infrastructure at any time.
- 5.6.4 Any items allowed under the Policy must be directly outside the premises to which they relate. No items are permitted to be placed within the Trading Zone of neighbouring premises.
- 5.6.5 No food or drink items are permitted to be prepared, cooked or heated in the Trading Zone without written approval of a Shire Authorised Officer. Any such activity must also be compliant with the permit holder's Food Act Registration.
- 5.6.6 Permit holders are not permitted to cover any part of the surface of the Trading Zone area with any material, eg. artificial turf or rugs.
- 5.6.7 Trading on a nature strip, or part thereof, may be considered by the Shire based on assessment and approval by a Shire Authorised Officer. If works are required to allow trade on the nature strip, any costs incurred shall be at the permit holder's



expense, including any additional Shire permits which must be obtained before any works commence.

5.6.8 At the end of the permit period, whether by expiry or cancellation of the permit, any remedial works required to return the nature strip to its original condition will be at the permit holder's expense and must be completed to the satisfaction of a Shire Authorised Officer.

5.6.9 Where a Footpath Trading Permit authorises the service of food and/or beverages, service must be provided only to patrons who are seated. Standing consumption of food or beverages within the permitted footpath trading area is prohibited

5.7 Tables and chairs

5.7.1 Chairs must be placed to ensure the back of the chair does not encroach on the Pedestrian Zone or the Kerbside Zone.

5.8 Signage

5.8.1 Signage must only be placed within the Trading Zone and must be secured in a manner which ensures that they do not create a risk for pedestrians, property or passing traffic. Signage must not be reliant on, or physically attached to, any Shire infrastructure. Any device used to secure the sign must be removed when the sign is not displayed.

5.8.2 Promotional flags or any other items or signs attached to doorways or shop facades must provide a minimum of 2 metres clearance above the footpath.

5.8.3 Inflatable signs, electric signs (either mains or battery powered), illuminated, revolving, spinning or flashing signs, or similar items are not permitted in the Trading Zone.

5.8.4 Any signage displayed within the Trading Zone must comply with the Shire's Signage Policy.



5.9 Display and placement of goods

- 5.9.1 Any display of goods on the footpath must not exceed a height of 1.7 metres, length of 3 metres and depth of 1 metre for any single item.
- 5.9.2 For every 3 continuous metres of stands/goods and associated items, a 1 metre clear access path from the Kerbside Zone to the Pedestrian Zone must be maintained.
- 5.9.3 Any display of goods must remain within the Trading Zone whilst the business is open for trade. When inclement weather poses a risk to a display of goods, any display of goods must either remain within the Trading Zone or be removed. A display of goods is not permitted to be placed within the Pedestrian Zone at any time.
- 5.9.4 A display of goods will not be authorised where they diminish the amenity, safety and/or appearance of an area. Display stands must be kept in a state of good repair.

5.10 Umbrellas and awnings

- 5.10.1 Any umbrella canopy or awning canopy must be fully contained within the Trading Zone and must provide a minimum of 2 metres clearance above the footpath.
- 5.10.2 Any umbrellas or sunshade devices must be securely anchored to a removable base to prevent dislodgement by inclement weather.
- 5.10.3 Fixed awnings extending out horizontally or to the ground from the roofline may require additional permit/s from the Shire. Any required permit/s must be obtained before any infrastructure is installed.
- 5.10.4 All awnings must be kept in a state of good repair.



5.11 Temporary barrier/café screens

- 5.11.1 Temporary barrier/cafe screens must not exceed 1.2 metres in height.
- 5.11.2 For a frontage of 8 metres or more where barrier/cafe screens are erected, a 1 metre clear access path from the Kerbside Zone to the Pedestrian Zone should be maintained every 4 metres. See Diagram 2.

5.12 Outdoor heaters

- 5.12.1 Any moveable patio heater canopy must be fully contained within the Trading Zone and must provide a minimum of 2 metres clearance above the footpath.
- 5.12.2 Any fixed overhead heaters may only be installed with the appropriate permit/s from the Shire. Any required permit/s must be obtained before any infrastructure is installed.
- 5.12.3 All outdoor heaters, whether temporary or fixed, must comply with safety standards specified by Energy Safe Victoria.

5.13 Planter boxes

- 5.13.1 All planter boxes must be a maximum of 1.2 metres high (including foliage) and 1.8 metres wide.
- 5.13.2 All planter boxes must be removable and must have a locking mechanism to prevent movement or becoming a hazard.
- 5.13.3 Planter boxes must be maintained with healthy plants and be kept free from cigarette butts and other litter.



5.14 Conduct of patrons

5.14.1 The permit holder is responsible for the conduct of patrons using the Trading Zone and must:

- ensure that patrons do not move tables and chairs into the Pedestrian Zone or Kerbside Zone.
- ensure that patrons do not allow pets, prams, bicycles or any other items to obstruct the Pedestrian Zone or Kerbside Zone.
- ensure that staff do not serve food or beverages to a person in the Pedestrian Zone or Kerbside Zone.
- adhere to the endorsed site plan and permit conditions at all times.
- ensure that patron behaviour does not interfere with other any persons in the vicinity.

5.15 Litter Control

5.15.1 The permit holder is responsible for maintaining the area within and adjacent to the Trading Zone in a clean and safe manner.

5.16 Noise and entertainment

5.16.1 No outdoor speakers, sound amplification equipment, jukeboxes or similar are permitted in the Trading Zone, except where a licence is issued under section 173 of the *Planning and Environment Act 1987* and the licence expressly permits such activities.

5.16.2 No live entertainment is permitted within the Trading Zone unless the entertainment is deemed to be a busking activity and the appropriate permit has been issued by a Shire Authorised Officer.

5.17 Footpath trading areas serving liquor



- 5.17.1 Where liquor is being served for immediate consumption as part of trading within the Trading Zone, a business must hold a Footpath Trading Permit (with Liquor) permitting use of the Trading Zone, and a current Liquor Licence which includes the Trading Zone as part of the red line area.
- 5.17.2 Businesses whose primary activity is the sale of packaged liquor are not eligible for a Footpath Trading Permit.
- 5.17.3 The sale and consumption of alcohol within the municipality must be in line with the Shire's Alcohol Harm Prevention Policy.

5.18 Public liability insurance

- 5.18.1 The permit holder must maintain a minimum \$20 million Public Liability Insurance policy for the duration of the approved permit. The Public Liability Insurance policy must be able to meet any claim which may be sustained against the permit holder or the Shire in relation to the death or injury of a person, or damage to any property arising out of anything authorised by a Footpath Trading permit.
- 5.18.2 If permit holder's Public Liability Insurance expires during the operation period of the permit, the permit holder must provide the Shire with a new Certificate of Currency at least 30 days before the expiration. If the permit holder fails to provide the new Certificate of Currency to the Shire, the Shire may cancel the permit with immediate effect.

5.19 Permit applications

- 5.19.1 An application for a Footpath Trading Permit may be approved by the Shire as submitted by the applicant, or approved subject to modifications and/or conditions imposed at the Shire's discretion.



5.19.2 To apply for a Footpath Trading Permit, applicants must:

- Lodge an application for a Footpath Trading Permit in the form prescribed by the Shire
- Make payment of the applicable application fee set by the Shire
- Provide a plan, drawn to scale, showing:
 - the location and dimensions of the premises, the neighbouring premises and the widths of the Kerbside, Trading and Pedestrian Zones.
 - all existing street infrastructure and footpath features within or near the Footpath Trading Zone such as trees, light poles, rubbish bins, bike racks and/or public transport shelters and any parking restrictions or controls in place.
 - the location and dimensions of all proposed items to be placed on the footpath, including (but not limited to) tables, chairs, umbrellas, heaters, planter boxes and screens.
 - in accordance with Clause 5.18 of the Policy, the applicant must provide a copy of their Public Liability Insurance Certificate of Currency, listing the Mornington Peninsula Shire as an interested party. The Certificate of Currency must show:
 - the insured businesses details, including trading name (if applicable) and the premises insured
 - the insurer's details
 - the policy number
 - minimum value of liability insured
 - the policy expiry date

5.20 Permit renewals

5.20.1 A Footpath Trading Permit may be renewed upon:

- Payment of the specified annual fee
- Proof of current Public Liability Insurance to the specifications in this Policy

5.20.2 The Shire reserves the right to refuse to renew a permit at its discretion.



5.21 Permit amendments

- 5.21.1 A permit holder may make an application to the Shire to amend an approved permit or endorsed plan. The Shire may charge a scheduled fee for any changes required to a permit at the discretion of a Shire Authorised Officer.
- 5.21.2 Public notification of an application to amend an approved permit or endorsed plan may be required prior to the Shire making its decision.
- 5.21.3 An application to amend an approved permit or endorsed plan will be refused where any part of the application is in contradiction with any Clause of the Policy.

5.22 Permit fees

- 5.22.1 A non-refundable application fee will be charged by the Shire to cover the administrative costs associated with checking and approving a new Footpath Trading Permit.
- 5.22.2 The permit fee will be determined by the square metreage occupied by the permit holder's items within the Trading Zone in accordance with the endorsed plans submitted at the time of application.
- 5.22.3 If the permit holder occupies more than the declared square metreage within the Trading Zone upon physical inspection and calculation by an Authorised Officer, the Shire reserve the right to charge the permit holder for the additional square metreage occupied. Failure to pay the additional fees in full within the set time frame may result in the Shire cancelling the approved permit. Enforcement action may be taken by the Shire if appropriate.

5.23 Permit transfers

- 5.23.1 An approved permit may be transferred to a new owner upon the sale of a business provided the business remains on the same premises and there is no change to the permit conditions, the endorsed site plan or trading activity.



5.23.2 Before the new owner commences trading within the scope of the Policy, a transfer request must be submitted to the Shire in writing accompanied by a copy of their Public Liability Insurance Certificate of Currency in accordance with Clause 5.19.2 of the Policy. There is no fee to transfer an approved permit where no changes to the permit conditions, the endorsed plan or trading activity are required.

5.23.3 If the new business owner wishes to make changes to the permit conditions, the endorsed site plan, or if the business changes its trading activity, a new permit application must be made. The business will not be permitted to trade within the Trading Zone until a new permit has been approved.

5.24 Permit duration

5.24.1 All approved permits will expire on 31 July of each year, regardless of the permit application or approval date.

5.25 Permit cancellation

5.25.1 If a permit is cancelled by the permit holder for any reason within the operation period of the permit, the Shire will not refund any fees paid.

5.26 Non-compliance and enforcement

5.26.1 Shire Authorised Officers will periodically inspect the premises of all permit holders to ensure compliance with permit conditions and the Policy.

5.26.2 If a Shire Authorised Officer identifies any breaches of the permit conditions or the Policy, the Shire may take enforcement action, including but not limited to:

- 5.26.2.1 The issuing of a verbal or written direction to the permit holder to rectify the breach within a set time frame
- 5.26.2.2 The issuing of infringements
- 5.26.2.3 Prosecution in the Magistrates Court
- 5.26.2.4 Modification of the permit conditions or endorsed site plan
- 5.26.2.5 Cancellation of the permit



5.26.2.6 Refusal to renew a permit at the expiration of the current operational period

5.26.3 Any substantiated incidents of non-compliance with permit conditions or the Policy will be taken into consideration by the Shire should the permit holder lodge an application to amend or renew a current permit or obtain a new permit.

5.26.4 Prior use of any part of the Kerbside, Trading or Footpath Zones with or without a permit does not create an entitlement to continue the use of any part of these Zones which is not in line with the Policy.

5.26.5 Except where an existing Permit or Lease/Licence arrangement is in place with specific conditions in contradiction of the Policy, compliance with the Policy is mandatory. When such an arrangement expires, compliance with the Policy thereafter is mandatory.

6.0 HUMAN RIGHTS CHARTER COMPATIBILITY

This policy has been assessed as being compatible with the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*.

7.0 ASSOCIATED DOCUMENTS

- *Disability Discrimination Act 1992*
- *Planning and Environment Act 1987*
- *Planning and Environment (Fees) Regulations 1989*
- *Local Government Act 1989*
- *Liquor Reform Act 1998*
- *Building Code of Australia 1996*
- *Road Safety Act 1986*
- *Food Act 1984*
- Australian Standards
- Mornington Peninsula Planning Scheme
- Community Amenity (Amendment) Local Law 2022
- Council and Wellbeing Plan 2021-2025



8.0 DEFINITIONS

Explain the meaning of terminology and words used in the policy.

Commercial activity	Any activity that is associated with the operation of the adjacent business. For the purpose of this Policy, it includes, but is not limited to, the use and placement of outdoor dining facilities, A-frames, display of goods, screens, planter boxes, whether temporary or permanent within the Trading Zone.
Display of goods	The offer, display or exposure of any goods, merchandise, wares, article or thing placed within the Trading Zone.
Footpath	The area between a property boundary and the nearest kerb, which is provided for use by pedestrians and not vehicles. The footpath may include a nature strip, splay corners and entry areas not in private ownership. Where a road is closed for a special event, it is deemed to be a footpath and all access considerations come into effect.
Kerb	Concrete edging between footpath and road trafficable surface. May be vertical or at an angle. May be accompanied by a channel/gutter. For the sake of this Policy, the measurement of the Kerbside Zone is taken from the front of the kerb where it starts to descend (vertically or at an angle) towards the gutter.
Kerbside zone	The Kerbside Zone is located between the Trading Zone and the kerb of the road. The Kerbside Zone must be a minimum of 0.3 metres wide to allow safe access to vehicles parked at the roadside, and for safe refuge for pedestrians crossing the road. A wider Kerbside Zone may be required in some circumstances to safeguard Shire or other Authority infrastructure.
Pedestrian	Any person traveling along a footpath whether walking, using a wheeled recreational vehicle, pram, stroller, shopping/delivery trolley, a guide dog or other assistance animal, or a mobility aid such as a wheelchair, motorized scooter, walker, crutch or walking frame, or any other aid to assist mobility or orientation.



Pedestrian zone

The Pedestrian Zone extends from the property boundary for a minimum of 1.8 metres to allow clear and unobstructed access for footpath users. Where the frontage of a building is set back from other adjacent buildings on the street forming an irregular building line, this space may be considered part of the Trading Zone, however it must not interfere with the safe and unimpeded use of the footpath.

Planter box/es

A container made of any material used as a display (whether containing live plants or not) on footpaths and/or for segregating different parts of the footpath. All dimensions and setbacks relating to planter boxes within this Policy include the container, support structures and any vegetation or other contents.

Road

For the purpose of this Policy, a Road is an area that is open to, or used by the public, and is developed for, or has as one of its main uses, the driving or riding of motor vehicles; or a place that is a road by virtue of a declaration under Section 3(2)(a) of the *Road Safety Act 1986*. 'A Road' includes car parking spaces.

Screen/s

Furniture used to provide a barrier between outdoor dining facilities and the road.

Trading zone

The section of footpath between the Pedestrian Zone and the Kerbside Zone. Permit holders may place items in this area in accordance with their approved Footpath Trading Permit.

9.0 POLICY SPONSOR

The Manager – Community Safety, Health and Compliance is responsible for overseeing the application and review of the Footpath Trading Policy.

10.0 DOCUMENT CONTROLS

The Shire will review the Footpath Trading Policy within four years or earlier as required.



10.1 Document Version Table

Summarise the key changes made to the document to provide a quick understanding of the updates.

Document Version Control				
Version	Section	Revision Description	Date Revised	Approved by

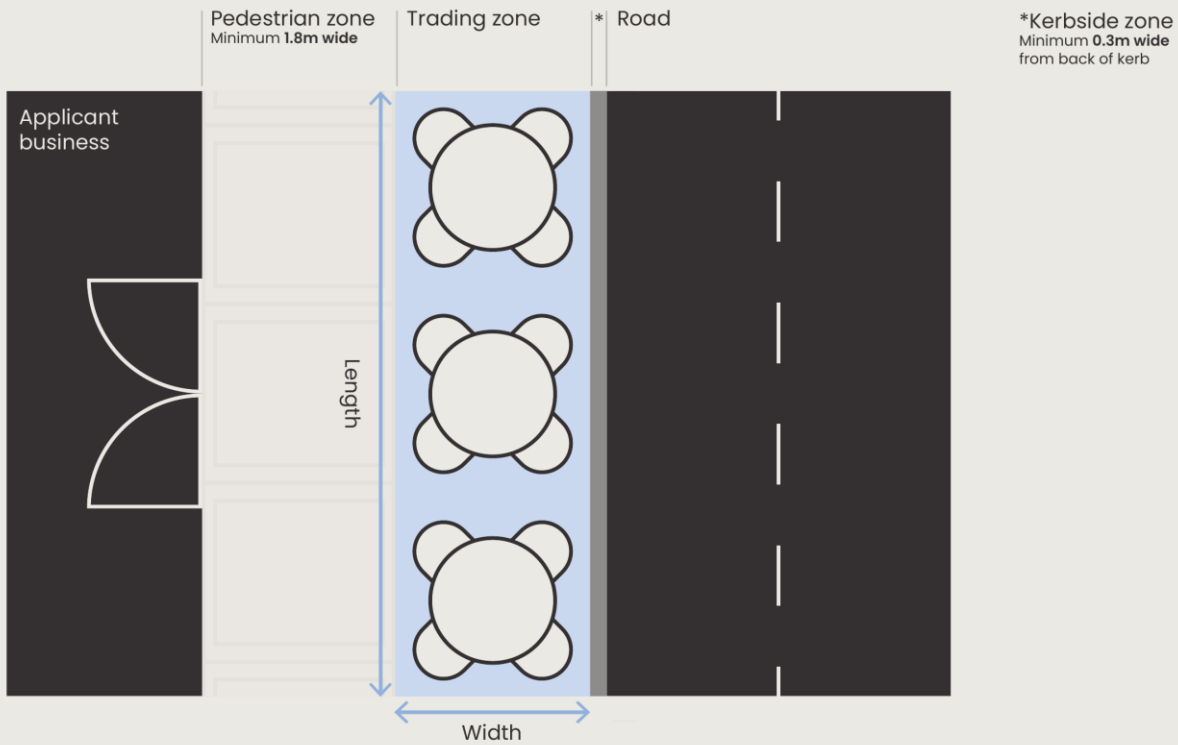
Administrative Updates

It is recognised that, from time to time, circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter this document, such a change may be made administratively. Examples include a change to the name of a Shire department, the change to an existing policy or document referred to in this policy, and minor updates to legislation and the like which does not have a material impact. However, any change or update which materially alters the document must be by resolution of Council.



Footpath trading

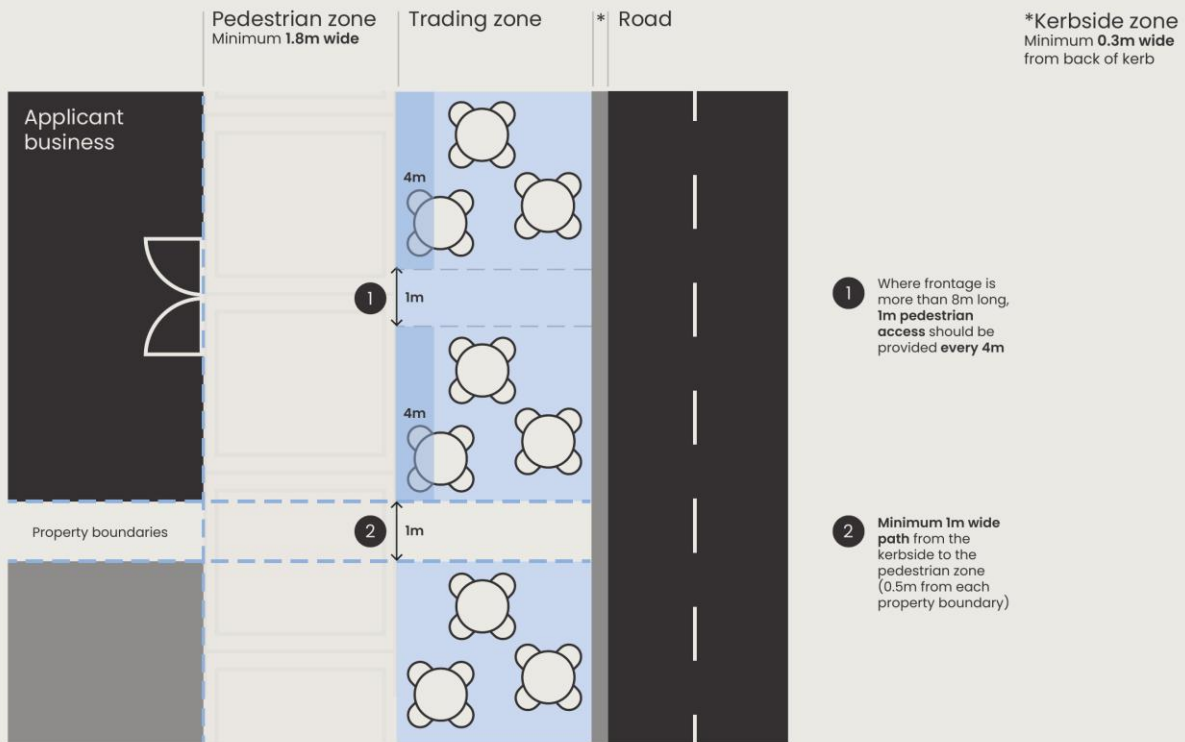
Diagram #1





Footpath trading

Diagram #2

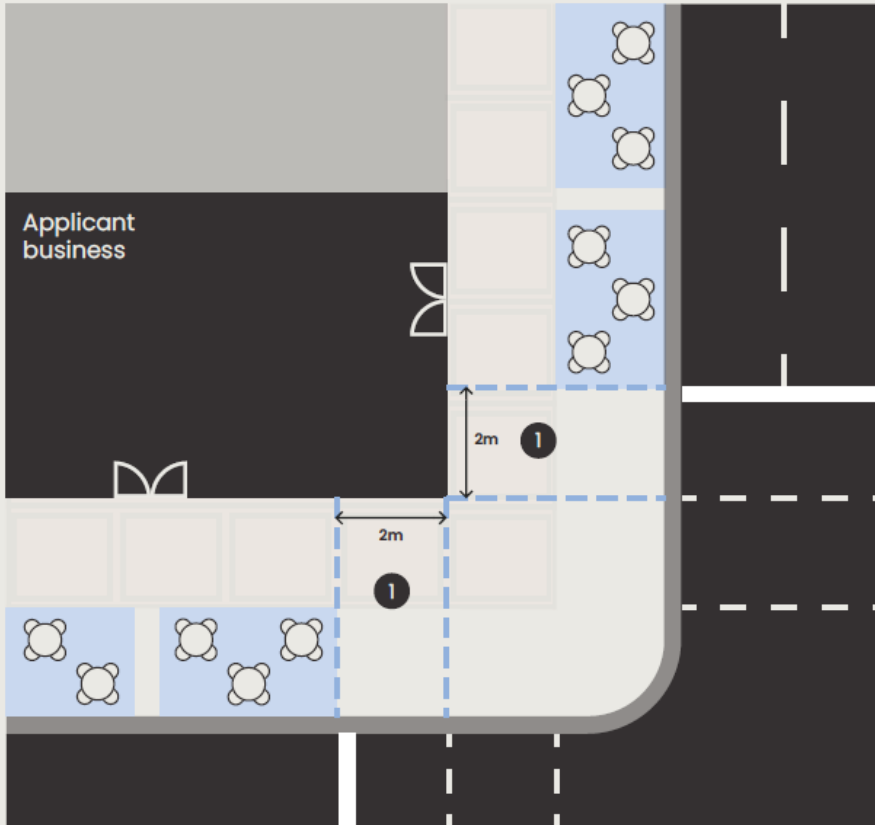




Footpath trading

Diagram #3

Note: Must maintain clear lines of sight for turning vehicles to ensure pedestrian safety



***Kerbside zone**
Minimum 0.3m wide
from back of kerb

1 Minimum 2m
set back
from the
property line

Pedestrian zone (PZ) Minimum 1.8m wide clear path

Trading zone (TZ)

*
Road



Footpath trading

Diagram #4

