



*City of*  
**Whittlesea**

## **Footpath Trading Policy**

**Adopted: 29 May 2007**

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## **1 INTRODUCTION**

### **1.1 Background**

Footpaths need to cater for a wide range of needs – the needs of shoppers, tourists, public transport users, people making deliveries, older persons, those with particular mobility needs, children, pet owners and young families. Footpaths are also used by local businesses for outdoor eating areas and the display of goods, which can enhance the vibrancy, interest and diversity of shopping centres.

While the trading activities on the footpath can be an important part of the retail environment, the primary purpose of footpaths is to provide for safe pedestrian access and footpath trading activities must be regulated to ensure that access and safety can be maintained.

In considering the options that may be available for footpath trading it is important to recognise that any commercial use of public space is not a right but a privilege which may be granted where access, community safety and amenity of the streetscape can be ensured.

Council has a legal obligation in accordance with the Commonwealth Disability Discrimination Act (DDA) 1992 to provide a safe and unobstructed footpath environment for pedestrians, regardless of their mobility levels.

The *Whittlesea Footpath Trading Policy* has been developed to regulate all commercial activity on our footpaths by providing for a continuous accessible path of travel extending a specified distance from the building or property line.

### **1.2 Objectives of the Footpath Trading Policy**

The objectives of the Whittlesea Footpath Trading Policy are:

- a) To maintain clear, safe and unobstructed access for pedestrians of all abilities on Whittlesea's footpaths, and
- b) To encourage consistent footpath trading activities which contribute positively to the amenity, vibrancy and viability of commercial areas, and
- c) To provide clear guidance for the consideration of applications for permits made pursuant to Whittlesea City Council's Local Laws or the Whittlesea Planning Scheme (as applicable), for the placement of items associated with footpath trading on footpaths in the municipality.

### **1.3 Scope of the Policy**

The Whittlesea Footpath Trading Policy applies to the use of footpaths within the City of Whittlesea for commercial purposes, by any individual, organisation or business unless a duly-approved variation is permitted by Council. The policy should be read in conjunction with Council's Local Laws.

## 2 DEFINITIONS

The following meanings apply to words used in the Footpath Trading Policy.

Word	Meaning
Authorised Officer	means an authorised officer appointed under Section 224 of the Local Government Act 1989.
Footpath	means the area between a property boundary and the face of the nearest kerbside of a road, which is provided for use by pedestrians and includes a nature strip, splay corners and entry areas not in private ownership.
Footpath Trading	means the use of footpaths for commercial activities, including outdoor eating areas and the display of goods.
Pedestrian	means any person travelling on a footpath, whether walking or by using a pram; stroller; shopping trolley; delivery trolley; a guide dog or other assistance animal; or a mobility aid such as a wheelchair, motorised scooter, walker, crutch or walking frame or any other aid to assist mobility or orientation.

## 3 FOOTPATH USE & ACTIVITIES

### 3.1 Footpath Zones

In order to provide for clear and unobstructed access for pedestrians, three footpath zones are defined within the width of the footpath:

#### 1. Pedestrian Zone

The pedestrian zone provides a continuous accessible path of travel for people of all mobilities, extending out from the property line.

Note that dimensions for footpath zones throughout this document are based on Part 13 of AustRoads Guide to Traffic Engineering Practice and AS 1428.1 and 1428.2.

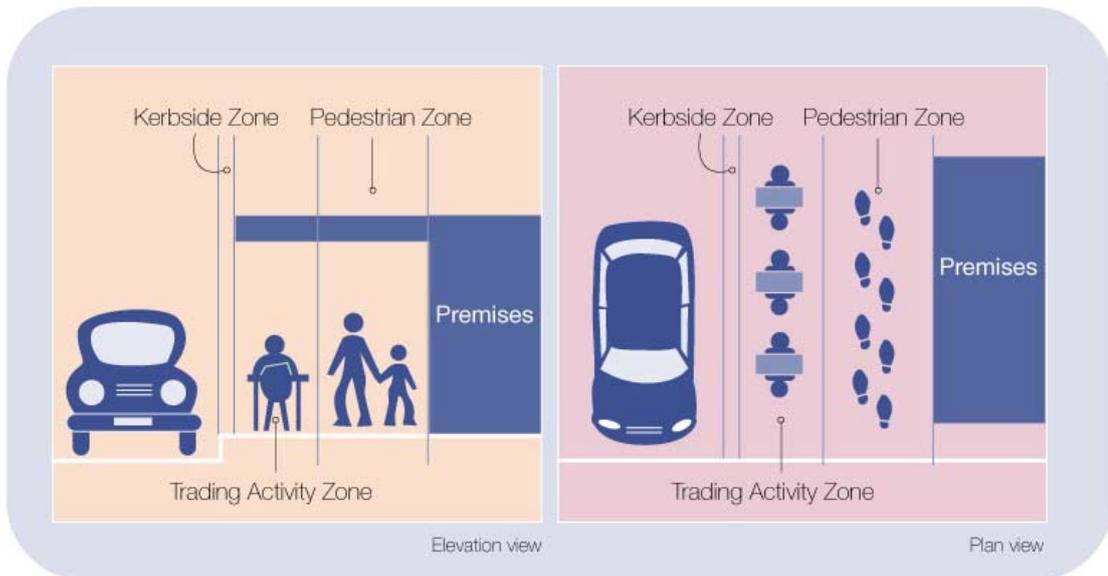
#### 2. Trading Activity Zone

The trading activity zone is that area of the footpath where goods, outdoor eating furniture and ancillary items may be placed and where other permitted street activities may take place. Council may place markers in the footpath or otherwise delineate the Trading Activity Zone.

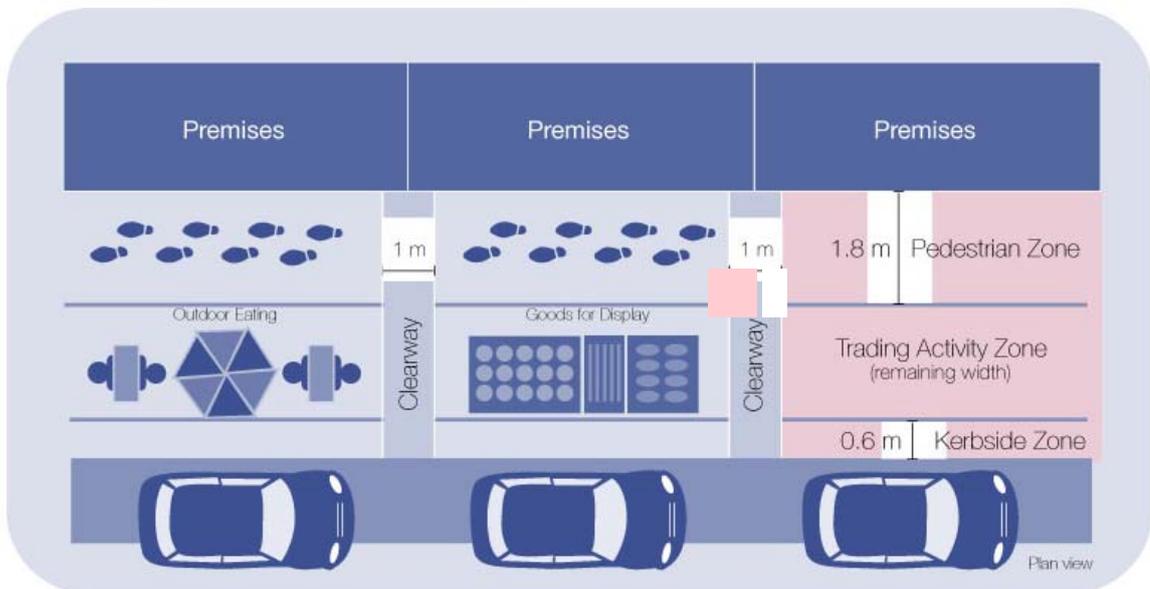
#### 3. Kerbside Zone

The kerbside zone is a buffer from the kerb to allow for access to and from parked vehicles.

**Footpath Zones: View 1**



**Footpath Zones : View 2**



**3.2 Footpaths wider than 3500 mm**

For footpaths wider than 3500 mm:

The **Pedestrian Zone** extends from the building line or shopfront of premises for a minimum of 1800 mm. No items may extend into this zone at any time, including items overhead below a height of 2200 mm .

The **Trading Activity Zone** is the only area of the footpath where goods, outdoor eating furniture and ancillary items, may be placed, subject to the provisions of this Policy. A setback of 500 mm is required from each side boundary of premises in order to ensure a 1000 mm wide accessway between premises from the kerb to the Pedestrian Zone.

The **Kerbside Zone** is a minimum of 600 mm buffer as measured from the face of kerb to allow for access to and from parked vehicles including at loading zones. Where there is a disabled parking bay, the setback from the kerb will be at least 1500 mm.

No items may be placed in either the Pedestrian Zone or the Kerbside Zone.

### **3.3 Footpaths from 2500 mm to 3500 mm wide**

For footpaths from 2500 mm to 3500 mm:

The **Pedestrian Zone** extends from the building line or shopfront of premises for a minimum of 1500 mm. No items may extend into this zone at any time, including items overhead below a height of 2200 mm.

The **Trading Activity Zone** is the only area of the footpath where goods, outdoor eating furniture and ancillary items, may be placed, subject to the provisions of this Policy. A setback of 500 mm is required from each side boundary of a premises in order to ensure a 1000 mm wide accessway between premises from the kerb to the Pedestrian Zone.

The **Kerbside Zone** is a minimum of 600 mm buffer as measured from the face of the kerb to allow for access to and from parked vehicles. Where there is a disabled parking bay, the setback from the kerb must be at least 1500 mm.

No items may be placed in either the Pedestrian Zone or the Kerbside Zone.

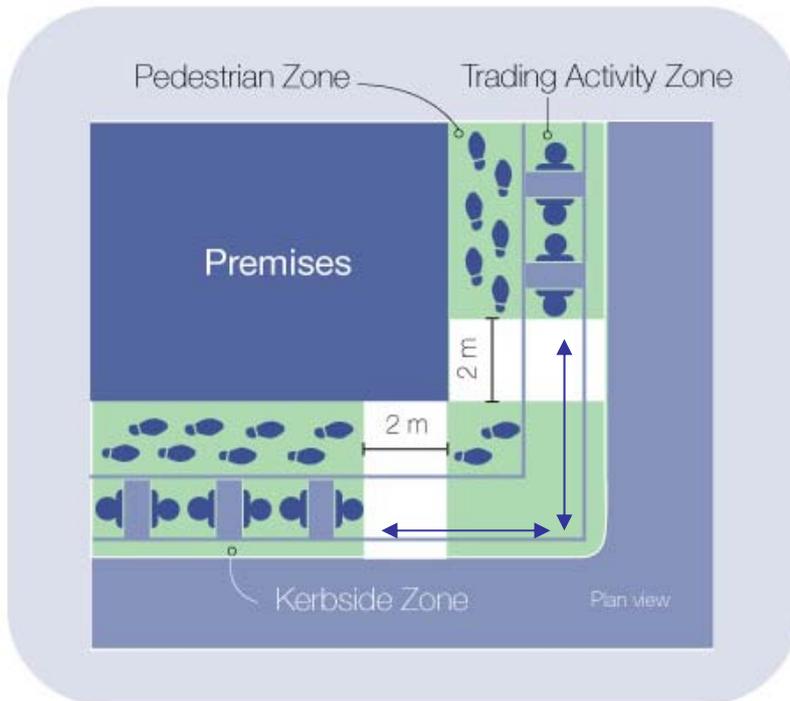
### **3.4 Footpaths less than 2500mm wide**

In order to provide a continuous accessible path of travel for people of all abilities, as required by the DDA 1992, footpaths of less than 2500 mm may not be used for footpath trading.

### 3.5 Corner Locations

In order to protect the safety of pedestrians and motorists, no items may be placed within 2000 mm of an intersection of building lines without the approval of Council's Traffic Engineering Section.

#### Corner Location



## 4 PERMIT REQUIREMENTS

A permit is required under Whittlesea City Council's Local Law and in specified circumstances under the Whittlesea Planning Scheme, for outdoor eating facilities, chairs and tables, the placement of goods or other items, or the display of temporary advertising signs, on footpaths within the City of Whittlesea, as detailed in Section 7.

## 5 SPECIFIC REQUIREMENTS FOR FOOTPATH TRADING ACTIVITIES

### 5.1 Outdoor Eating

Any chairs, tables and ancillary items associated with outdoor eating:

- a) may only be placed outside premises which are registered under the Food Act 1984 to serve food and/or beverages;
- b) may only be placed in the Trading Activity Zone of the footpath;
- c) may only be placed on the footpath during the normal trading hours of the business to which they relate, unless otherwise approved by Council;

- d) must be of a design approved by Council and in particular:
  - i. must be of a style, appearance, materials, finishes and colours which are of a high standard, attractive, durable, shatterproof, unobtrusive and complement the character of the streetscape. Furniture constructed wholly of plastic will not be permitted;
  - ii. must be uniform in style and design for each premises;
  - iii. must contrast with their background to assist people with vision impairment;
  - iv. must be portable, yet sturdy and windproof; and
  - v. must have a minimum 30 mm diameter rubber tip on chair and table legs to protect the footpath surface.

The permit holder must:

- a) supply each table outside with a wind-proof ashtray at all times and be responsible for cigarette ash, butts and any other litter generated by patrons of a footpath eating area; (this provision only applies if the outdoor eating area meets the requirements of the Tobacco Act for outdoor smoking).
- b) maintain the footpath eating area in a clean and tidy condition;
- c) ensure tables and chairs or ancillary items are not moved from their positions and obstruct the Pedestrian Zone;
- d) ensure that patrons do not allow pets, prams or any other personal items to obstruct the Pedestrian Zone;
- e) ensure that food and beverages are not served to patrons standing on the footpath within the Pedestrian Zone;
- f) ensure that no noise or other disturbance creates a nuisance or causes detriment to the amenity of the neighbourhood in the opinion of an Authorised Officer; and
- g) be responsible for reimbursing Council for any reinstatement works as a result of damage to footpaths or street fixtures and furniture.

Other conditions may be placed on a permit including; requiring a permit holder to place written reminders to patrons in the outdoor eating facilities on the footpath, regarding the above responsibilities, if deemed appropriate by an Authorised Officer.

Liquor is not to be sold, consumed or served within the Trading Activity Zone unless approved by Council and the Liquor Licensing Commission pursuant to the Liquor Reform Act 1998.

Premises where alcohol is served or consumed on the footpath must have its liquor licence endorsed with the footpath as part of the "licensed area" on the liquor licence for those premises.

Waiting staff at premises with outdoor eating facilities on the footpath must facilitate free access by all footpath users within the Pedestrian Zone and give all footpath users priority right of way.

Separate cash registers, counter facilities or storage facilities are not permitted on the footpath.

No food or drink is to be prepared, cooked or heated in the Footpath Trading Zone except in accordance with any permit granted for temporary food premises.

The handling and serving of food and drinks to patrons within the Footpath Trading Zone must be conducted in accordance with the requirements of Food Safety Standards and Council's Health Services Section.

## **5.2 Goods**

### 5.2.1 Any goods for display:

- a) may only be placed in the Trading Activity Zone of the footpath;
- b) may only be placed on the footpath during the normal trading hours of the business to which they relate;
- c) must not exceed a height of 1500 mm or a length/width of 750 mm;
- d) must be kept in a clean and tidy state, including the area around the display; and
- e) if a display of foodstuffs, must comply with Council's Health Services requirements.

### 5.2.2 Goods (except furniture) must be displayed on stands approved by Council, which in particular:

- a) must be of a style, appearance, materials, finishes and colours which are of a high standard, attractive, durable, shatterproof, unobtrusive and complement the character of the streetscape;
- b) must not have sharp, pointed, or jagged edges, corners or protrusions;
- c) must be stable and able to withstand adverse weather conditions;
- d) must be secured in a manner that ensures that adverse weather conditions will not create a risk for any footpath users, property or passing traffic but may not be affixed to any footpath, building, street furniture, pole or other structure;
- e) must contrast with their background to assist people with vision impairment;
- f) must not comprise any movable parts (eg. spinning, flapping);
- g) must not be illuminated externally or internally,
- h) must not cause any damage to the footpath surface.

### 5.2.3 Goods for display will not be permitted:

- a) where access to a loading zone or disabled parking bay will be impeded;
- b) where they will cause difficulty to any footpath users, including pedestrians and people exiting or accessing parked vehicles or the footpath;
- c) to overhang either the kerb or Pedestrian Zone.

## **5.3 Outdoor Speakers/Amplification equipment**

Permission will be required to affix speakers to a building or verandah.

Use of the footpath for live entertainment requires the written permission of an Authorised Officer.

Any noise/sound produced must not be annoying or cause a disturbance, which in the opinion of Authorised Officer, creates a nuisance or causes detriment to the amenity of the neighbourhood.

No sound amplification equipment or jukeboxes may be utilised on the footpath area.

#### **5.4 Outdoor Heaters**

Any outdoor heater:

- a) must be associated with the use of the footpath for an outdoor eating facility;
- b) may only be placed or fixed in the Trading Activity Zone; and
- c) must comply with the safety standards specified by the Office of Gas Safety and Australian Standard AS4565. (Refer to the *Safety Guide for Use of Portable Heaters in Public Places* and related guidelines for staff and employers – [www.ogs.vic.gov.au](http://www.ogs.vic.gov.au))

#### **5.5 Umbrellas**

Any umbrellas:

- a) may only be placed in the Trading Activity Zone;
- b) must be not less than 2200 mm high at the lowest point other than the pole and must not protrude over the kerb;
- c) must be weighted and/or secured so as not to pose a safety hazard.

At times when it is raining, water from large umbrellas must be discharged outside the Pedestrian Zone.

Umbrellas may be secured to the footpath by a lock-in device. Lock-in devices will only be approved where the device lies flush with the footpath when the umbrellas are not displayed. Plans and specifications of the items will be required to be lodged with Council prior to any umbrella being placed with a lock-in device.

#### **5.6 Barrier Screens**

Barrier screens include:

- *low barrier screens*, which are predominantly of a metal tubular frame with canvas or vinyl inserts;
- *high barrier screens*, which are usually made of clear material such as safety glass or heavy duty plastic and are fitted to the footpath by lock-in devices; and
- *full-length awnings/blinds*, which are commonly attached from a verandah to the footpath.

The form and construction of any barrier screen must be suitable for its functional requirements and location, taking into account prevailing weather conditions.

##### **5.6.1 Low Barrier Screens**

Low barrier screens:

- a) must be associated with the use of the footpath for an outdoor eating facility;
- b) may only be placed in the Trading Activity Zone;
- c) may be no more than 1200 mm high;

- d) may only be in place during the normal trading hours of the business with which they are associated; and
- e) must be placed so that the screens are stable and secure or weighted so that they will not be moved by patrons or winds.

Low barrier screens must be removed after the normal trading hours of the business with which they are associated in order to facilitate street cleaning services.

### 5.6.2 High Barrier Screens

High barrier screens:

- a) must be associated with the use of the footpath for an outdoor eating facility;
- b) may only be placed in the Trading Activity Zone;
- c) may only be in place during the normal trading hours of the business to which they relate;
- d) must be at least 1500 mm high (except where the premises are located on corner), be transparent and constructed of safety glass or heavy-duty plastic;
- e) must have a 75 mm wide band 1000 mm above the ground that contrasts with its background to provide a visual guide for all pedestrians;
- f) must be fitted to the footpath with a lock-in device, but be removable;

High barrier screens must be removed after the normal trading hours of the business with which they are associated in order to facilitate street cleaning services.

Lock-in devices will only be approved where the device lies flush with the footpath when the barriers (or part thereof) are not in place. Plans and specifications of the items will be required to be lodged with Council prior to any screen being placed with a lock-in device.

Where the premises are located on a corner an application for screen will be assessed by Council's Traffic Engineering Section with regard to line of sight and a lower screen may be required.

### 5.6.3 Full Length Awnings/Blinds

Full length awnings or blinds may only be placed in the Trading Activity Zone.

Full length awnings or blinds may only be fitted subject to Council approval and requirements.

Full length awnings or blinds must be removed/rolled up after the normal trading hours of the business with which they are associated in order to facilitate street cleaning services.

## 5.7 Planter Boxes

Planter boxes:

- a) may only be placed in the Trading Activity Zone and plants shall not extend beyond that zone;
- b) may only be in place during the normal trading hours of the business to which they relate;
- c) must in opinion of an Authorised Officer, provide a positive contribution to the visual amenity of the street;

- d) must not exceed 1200 mm in height above the footpath level (including plants);
- e) must be well maintained with healthy plants of suitable form, hardiness and species
- f) must not be watered in a manner which results in the growth of mosses, algae or slime moulds; and
- g) must be free of litter, including cigarette butts.

## **6 GENERAL REQUIREMENTS**

### **6.1 Street Cleaning**

All tables, chairs, goods, displays and ancillary items must be removed and the footpath kept clear to facilitate cleansing between 11.00pm. and 7.00am. the following day.

### **6.2 Safety**

All items placed on the footpath shall be stable, must not pose a hazard to pedestrians or road users and shall not:

- include sharp or protruding items;
- be capable of shattering;
- include moving or oscillating parts;
- include reflective items that pose a risk to traffic; or
- be located where pedestrian or driver sightlines will be obstructed.

### **6.3 Public Infrastructure**

A minimum clearance of 1000 mm, or less if permitted by Council, shall be provided from any existing street furniture or other infrastructure on or adjacent to the footpath, including seats; benches; bollards; litter bins; bike racks; post boxes; telephone boxes; service pits; public transport stops/taxi ranks; public transport shelters; disabled car spaces; loading zones; parking meters; traffic signal boxes; fire hydrants and other emergency assets; pedestrian crossings; and street trees or shrubs.

Application may be made to Council for the relocation, at the applicant's cost, of Council items of infrastructure, in association with a permit for footpath trading.

Any request for relocation of seats, benches or bicycle racks, must be accompanied by a plan showing the site for the proposed relocation of the item and letters of no objection from the owner and occupier of the premises adjacent to which the item is proposed to be relocated.

### **6.4 Service Authority Works and Special Events**

Service authorities or Council may require the use of a site to undertake works. When this, or any parade, festival or special event is scheduled, it will be normal practice to give at least seven days notice of the requirement to remove all items from the footpath. In an emergency, sites may need to be cleared immediately. Permit holders will be responsible for the removal and replacement of all items and any associated costs.

## **6.5 Evidence of a Permit**

Any business that is permitted to undertake a commercial activity on the footpath adjacent to that business must display a permit sticker or similar provided by Council in the window of the business premises at all times.

The permit sticker may include the permit number, date of issue and a summary of the items permitted to be placed on the footpath.

## **7 ADMINISTRATION OF THE POLICY**

### **7.1 Applying for a permit under Council's Local Laws**

A permit is required under Whittlesea City Council's Local Law to place goods for display, movable advertising signs, chairs or tables or outdoor eating facilities on the footpath or the temporary occupation or fencing of the footpath.

#### **7.1.1 Application Requirements**

To apply for a permit an applicant must:

- complete and sign the Footpath Trading Activity application (and licence agreement);
- provide a site plan of existing conditions at a scale of 1:100 that shows:
  - the width of the frontage and of the footpath from outside edge of kerb to the building lines;
  - location of building lines and type of abutting uses;
  - location of existing trees, light poles, signs, existing street furniture, pits, fire hydrants, car parking and other public infrastructure;
- provide a site plan of proposed footpath activity at a scale of 1:100 that shows the area and layout of the proposed footpath activity, including the proposed location of chairs, tables, screens, awnings, heaters, umbrellas, planter boxes, or movable signs;
- provide details of any lock-in devices to be used;
- provide details of proposed furniture, including colour photographs or detailed design drawings of proposed furniture and any means by which they may be proposed to be secured;
- provide details of any proposed advertising, including a colour photograph of detailed design drawings of any proposed advertisement and a clear indication of its size;
- provide details of the hours of operation of the business to which the activity relates and the hours of operation proposed for the footpath activity;
- if the premises is currently licensed to serve alcohol, whether it is proposed to be served in a proposed outdoor eating area;
- provide details of any planning permit issued for the use and development of the land and confirmation of the need or otherwise for a planning permit for the proposed footpath trading activity (refer to Section 7.2)
- Provide a copy of the applicant's Certificate of Currency for public liability insurance (refer to section 7.3)
- forward the prescribed application and usage fees (payable to Whittlesea City Council) and the application form, together with the above information and fee to:

Local Laws  
City of Whittlesea  
Locked Bag 1  
Bundoora MDC 3083

### 7.1.2 Decision Making

In considering an application for a permit to place items on the footpath under Council's Local Laws, in addition to the matters specified in Council's Local Laws and the specific and general requirements specified in this Policy, an Authorised Officer shall have regard to the specific local conditions relevant to the application, including:

- a) the width of the footpath;
- b) the location of existing trees, street furniture or other public infrastructure;
- c) proximity to major roads, disabled parking bays, loading bays, loading zones, clearways, trees and angle parking;
- d) the likely number of pedestrians, at particular times of day; and
- e) the location of nearby residences.

Council may issue a permit pursuant to a written application with modifications and with or without conditions or further conditions.

Council may; refuse to issue a permit, refuse to modify the conditions of an existing permit or cancel a permit if:

- a) any requirements of this Policy are not met;
- b) the sight and access of drivers, cyclists or pedestrians is interfered with so as to create a hazardous situation;
- c) there is likely to be detriment to the amenity of the area;
- d) any existing permit conditions have not been complied with and there has been a failure to comply with a Notice to Comply served in accordance with Council's Local Laws; or
- e) the permit holder fails to maintain public liability insurance.

Before a permit is granted for the first time, or after a change of business use, Council may require the applicant to give notice of the application to persons who may be affected by the granting of a permit which will entitle those persons to make a submission which must be considered by Council before a determination is made on the application.

### 7.1.3 Fees and term

Fees and charges for the placement of items on the footpath are determined under Council's Local Law.

The currently applicable fees or charges for usage of the footpath area are shown in Attachment 1 but will be reviewed annually.

Unless otherwise specified on the permit, it shall expire one year from the date of issue, except in those instances where it is withdrawn by an Authorised Officer prior to the expiry date.

If an Authorised Officer refuses to issue a permit, the fee, less administration costs, may be refunded.

Permits are not transferable. A new permit must be obtained if the proprietorship of a business changes.

A permit expires if the permit holder ceases to maintain public liability insurance or to meet any of the conditions set within the Permit and/or this Policy.

## **7.2 Applying for a permit under the Whittlesea Planning Scheme**

A planning permit will also be required under the Whittlesea Planning Scheme:

- where liquor is to be sold, consumed or served within the Trading Activity Zone; or
- where it is proposed to construct permanent fixtures within or above the footpath area.

A permit may also be required under the Whittlesea Planning Scheme for seating within the Trading Activity Zone. In order to ascertain whether a permit is required for seating under the Whittlesea Planning Scheme applicants must check with Council's Planning Services Department providing the following details:

- the current use of the relevant premises;
- details of existing planning permits (if known)
- the existing number of seats, where relevant; and
- the number of seats proposed to be located in the Trading Activity Zone.

### **7.2.1 Application Requirements**

The information required to be provided with any application for a planning permit is that specified in the *Guide to Development in Whittlesea* checklist relevant to the particular use or development.

### **7.2.2 Decision Making**

Any application for a permit under the Whittlesea Planning Scheme will be considered in accordance with the provisions of that Scheme.

### **7.2.3 Fees and term**

Separate fees are required and a separate term applies for planning permits as prescribed under the Planning and Environment Act.

## **7.3 Public Liability Insurance and Indemnity**

The applicant for a permit issued in accordance with this Policy under Council's Local Laws, must, at all times during the whole term of any permit issued, be the holder of a current public liability insurance policy which provides cover for the applicant in relation to the activities to be undertaken in accordance with the permit.

The public liability insurance policy must be in the name of the applicant and provide coverage for an amount of not less than \$10 million in relation to any one incident.

A copy of the current Certificate of Currency must be provided to Council with the application for the Permit and any subsequent applications to renew the permit.

## **8 ENFORCEMENT**

Council Authorised Officers will check compliance with this Policy and with the conditions of relevant permits on a regular basis.

Upon detection of a non-compliance with Council's Local Laws the Footpath Trading Policy or a specific condition of any permit issued, an Authorised Officer will take action in accordance with Whittlesea City Council Local Laws or the Whittlesea Planning Scheme, as applicable.

Enforcement action may include a verbal direction to comply, a written notice to comply, an Infringement Notice and the Authorised Officer may impound the items on the footpath that do not comply with the Local Laws, this Policy or the conditions placed on any permit.

## **9 TRANSITIONAL ARRANGEMENTS**

Following completion of the Transition period, the use of footpaths in Whittlesea for commercial purposes must comply with the provisions of this Policy.

## **ATTACHMENT 1:**

The Footpath Trading Permit fee is ten fee units.

The rate for fee units is indexed annually by the State Government, so that it is raised in line with inflation. Any change to the value of a penalty unit will happen on 1 July each year.

The value of one fee unit is currently \$11.35 as at 30 April 2009. This value may increase at the beginning of a financial year.

The cost of fees is calculated by multiplying the number of units by the current value of the fee or unit. The exact cost may be rounded up or down.