

FOOTPATH TRADING PROCEDURE

Date approved:	04/07/2017	Date procedure will take effect:	04/07/2017	Date of Next Review:	July 2019
Approved by:	Director Development				
Policy / Procedure Owner title:	Manager Statutory Services				
Author:	Community Laws Coordinator				
Responsible Business Unit:	Statutory Services				
Supporting documents (policy associated with this procedure, forms etc):	Footpath Trading Policy Citizen Response Policy Information Privacy Policy				
References and Legislation:	<i>Charter of Human Rights and Responsibilities Act 2006</i> <i>Disability Discrimination Act 1992</i> <i>Environment Protection Act 1970</i> <i>Food Act 1984</i> General Local Law 2011 <i>Information Privacy Act 2000</i> <i>Local Government Act 1989</i> <i>Planning and Environment Act 1987</i> (and the East Gippsland Shire Planning Scheme) <i>Summary Offences Act 1966</i> Road Safety Road Rules 2009				
Audience:	Public				
Expiry date of procedure (if applicable):	N/A				

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1 Introduction / Background

1. East Gippsland Shire Council has the responsibility to enforce the provisions of a wide range of legislation providing for the safety, health and amenity of the community.
2. This procedure will provide a framework for the sustainable use and management of our roads, road related areas and public spaces (RRAPS).
3. This procedure will assist business operators to make an application to Council for the placement of items on a RRAPS, and will form the basis of any approval by Council's authorised officer to grant a permit. Part A of the Procedure outlines the objectives and performance standards that will be considered, and Part B specifies the mandatory requirements that will need to be met to enable Council Officers to give approval for the granting of a permit.

2 Scope / Purpose

4. This procedure supports the Footpath Trading Policy and will facilitate footpath trade which does not obstruct pedestrian access or create an unsafe or unsightly environment within the East Gippsland Shire. Compliance with this framework will contribute to the ambiance and vitality of public areas.

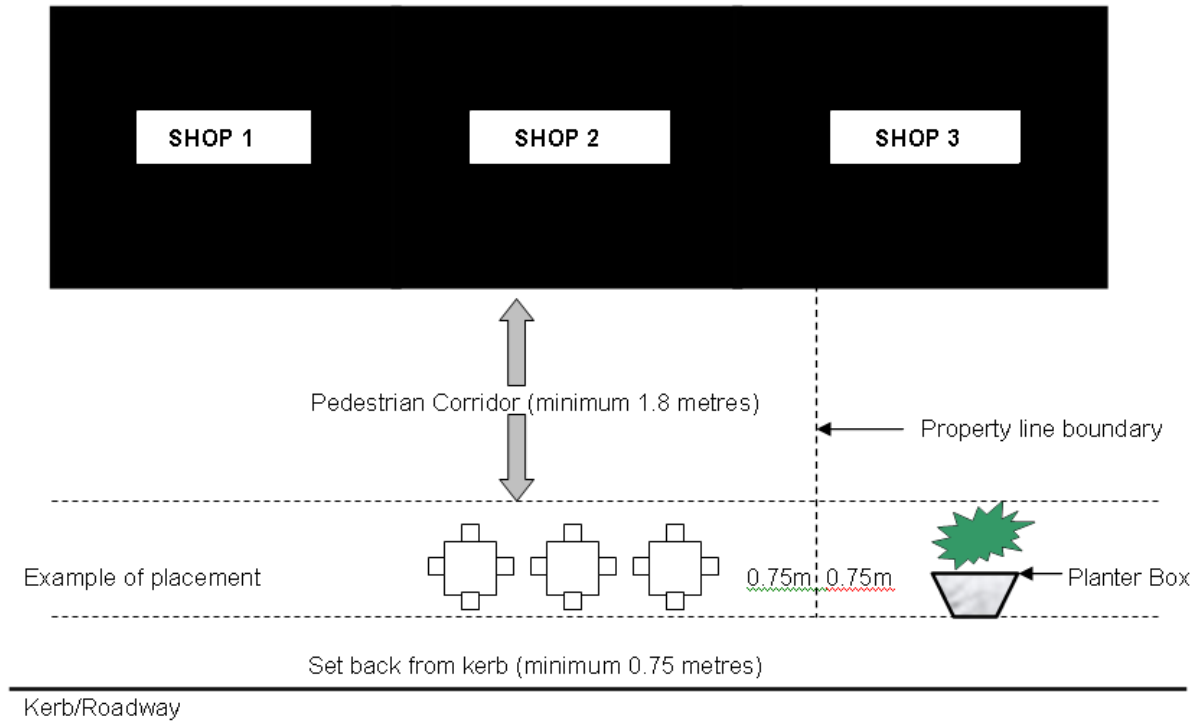
3 Definitions and Abbreviations

Word/Term	Definition (with examples if required)
Application	Document submitted by applicant to Council seeking permission to place items on public footpaths/spaces.
Authorised Officer	Authorised Officer of Council appointed under section 224 of the <i>Local Government Act 1989</i>
Council	East Gippsland Shire Council
Footpath Width	The distance from the face of the kerb line to the outside edge of the property line
General Local Law 2011	Local legislation, applicable within the East Gippsland Shire, adopted by Council under the authority of the <i>Local Government Act 1989</i> .
Advertising Sign	A portable sign that is used for the purposes of soliciting sales, and includes an A-Frame Sign or other free-standing portable advertising sign
Footpath	An area open to the public that is designated for, or has as one of its main uses, use by pedestrians
Kerbside Zone	The 0.75metre buffer space between the edge of road (kerb) and article placed on footpath, allowing for access to and from parked vehicles
Outdoor Dining	Any area of the footpath being used for the purposes of providing an outdoor dining area

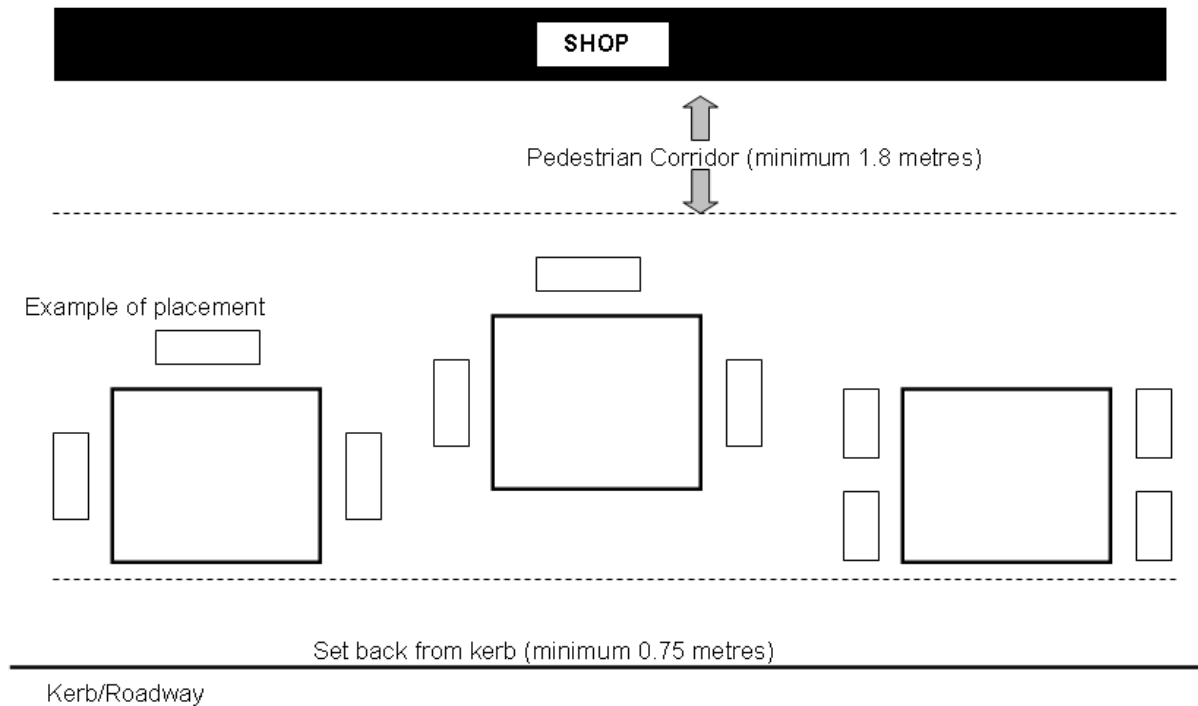
Pedestrians	Any person travelling along a footpath whether walking independently; is assisted by a guide dog; is assisted by a mobility aid such as a wheel chair, motorised scooter, walker, crutch or frame or any other aid to assist mobility or orientation. This includes a person who wheels a recreational vehicle, pram or stroller, shopping trolley or a delivery trolley.
Pedestrian Corridor	An area between the property line and the inner edge of the Trading zone
Permit	Unless otherwise identified, “permit” means a permit issued by East Gippsland Shire Council under a Local Law which authorises a particular activity on council land (Note: in certain areas, additional approvals may be required for any permanent alterations or additional works)
Permit Holder	The person named as the ‘applicant’ on the application form
Public Space	Council owned and Crown managed land open to and used by the public
Road	Has the same meaning as “Road” in the <i>Local Government Act 1989</i>
Road Related Area	Has the same meaning as defined by the Victorian <i>Road Safety Road Rules 2009</i>
RRAPS	Roads, road related areas and public spaces
Trading Zone	The area between the Pedestrian Corridor and the Kerbside Zone

4 Flowchart / Diagrams

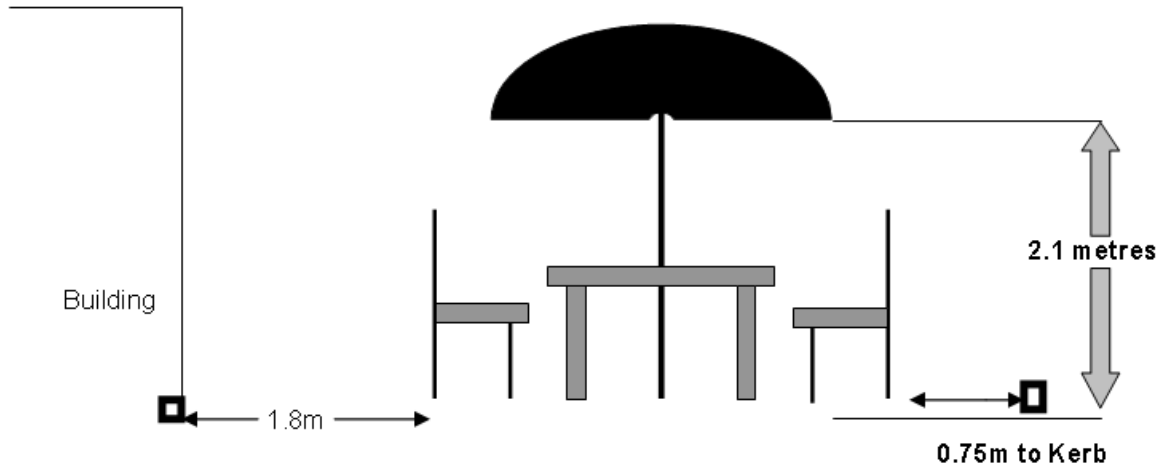
4.1 Placement of Tables



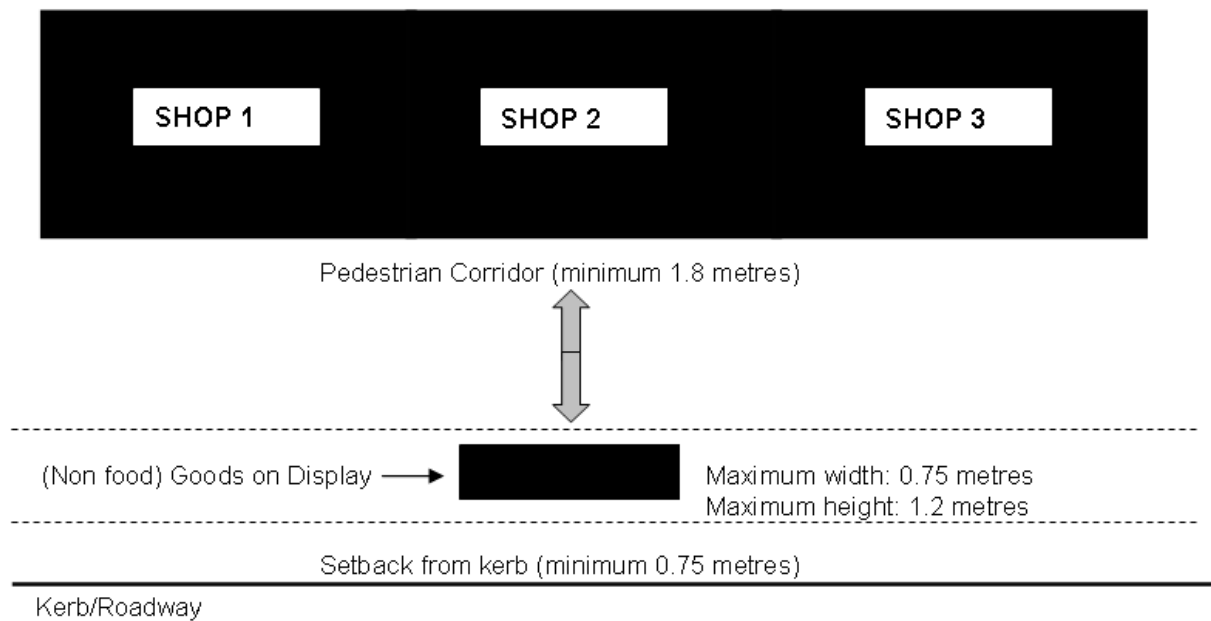
4.2 Placement of Chairs/Screens



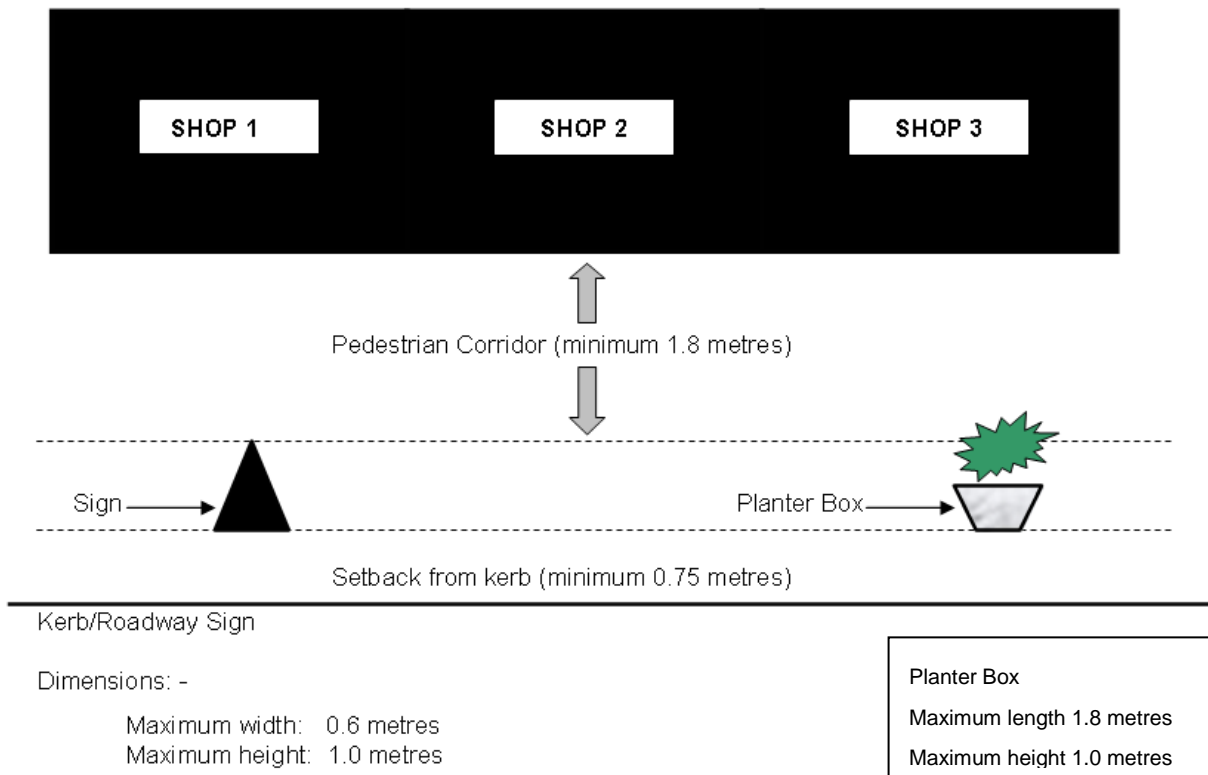
4.3 Placement of Umbrellas



4.4 Placement of Goods Displays



4.5 Placement of 'A' Frame Signs and Planters



PART A – OBJECTIVES AND PERFORMANCE STANDARDS

5 Instructions

5. Applicants are required to submit an application, including the payment of a fee, with a site plan detailing the proposal and evidence of public liability insurance coverage.
6. A permit grants limited rights to business operators to place items on the road, road related areas and to use public space for business and commercial purposes. The permit may specify conditions such as hours of use, period of permit and type of items to be placed. Council reserves the right to withdraw the permit should the area be required for any other purpose and/or if conditions of use are not being adhered to.
7. It is anticipated that in some circumstances, eg narrow footpaths, Council may not be in a position to issue a permit. The permit period will normally be twelve months from 1 July and renewed annually. New applications will also expire on 30 June. Pro-rata payments may be considered.
8. The placement of items on the road, road related areas and use of public space may be influenced by local conditions including the width of footpaths, proximity to major roads, loading zones, clearways, designated parking bays for people with disabilities, traffic lights, pedestrian crossings, pram crossings, placement of other existing or proposed street furniture, landscaping or the volume of pedestrians using footpaths at particular times. All activity must operate within the boundaries that are determined by the authorised officer.
9. Both Council and individual traders have a duty of care to road users and consumers, and it is most important that kerbside furniture, or other items, are placed in such a way that people with disabilities (independent mobility aids, vision impairments), and those with prams or trolleys can move easily along the footpath. Similarly provision must be made for people entering or exiting parked vehicles.

Physical Safety

10. The safety of all pedestrians, motorists, cyclists and other footpath or road users must be a priority and is one of Council's major obligations. Pedestrians crossing the road should not be faced with a continuous row of screens or planter boxes that prevent access to the footpath. Sight lines for users need to be considered in each situation and in particular at intersections.
11. Where the requirements of these guidelines cannot be satisfactorily complied with and an authorised officer believes the proposal will create a hazard to pedestrians, motorists or cyclists, a permit will not be issued.

Advertising

12. The opportunity to place items on the road, road related areas and public space (other than for "A" frame signage) is not intended to provide for additional advertising space. Excessive advertising on outdoor structures such as chairs, umbrellas and the like, would be considered contrary to the spirit and intent of this Policy. All advertising will need to comply with East Gippsland Shire Council's Planning Scheme.

Community Safety

13. Increased activity such as that provided by kerbside dining adds to community safety – the sense of seeing and being seen. A diverse streetscape also encourages increased usage of public spaces, and has the potential to strengthen our sense of community with strip shopping centres being seen as important meeting places.

Food Safety

14. The proprietor of any business granted an appropriate permit must ensure that food is displayed on footpaths in strict accordance with the *Food Act 1984*, its food safety plan and these guidelines.

Amenity

15. Operators must comply with other relevant standards, including the Environment Protection Authority's noise emission controls, and ensure that no noise or other disturbance causes a nuisance to others or causes detriment to the amenity of the neighbourhood.

Applicants need to ensure that proposals do not detract from the overall streetscape and image of the area. Bulky furniture, excessive signage or goods displays may add unnecessary clutter that detracts from the image of a particular street or shopping precinct, and could create a hazard to the vision impaired. The design of furniture and items should take account of safety, e.g. rounded edges on tables; provision to withstand windy conditions, etc.

Operators must clear away litter, food scraps and other rubbish left on the RRAPS and deposit it within the operator's own bins that are kept inside the premises.

Urban Design

16. It is not proposed to define or specify the particular design or colour scheme of items placed on the footpath. However, applicants will need to consider heritage overlays, existing streetscapes, any planning strategy and any design or colour themes agreed amongst trader associations when selecting furniture.

Food display stands will need to comply with the safety design standards set out in these guidelines (refer Section 4).

Service Authorities and Special Events

17. Service authorities may require access to work on underground services, or it may be necessary to remove items for annual parades, festivals or special events. Reasonable notice will be given where possible.

PART B – MANDATORY REQUIREMENTS

Kerbside Dining

1. Tables and chairs must be setback by a minimum of 0.75 metres from the kerb (see Diagrams 4.1 and 4.2 – Section 4). Chairs must not be placed to back onto the kerb unless a screen or planter box separates them. Setbacks greater than 0.75 metres may be required under some circumstances.

Tables and chairs may only be placed outside the premises to which they relate and must be confined within the property boundary lines (see Diagram 4.1).

An unobstructed minimum 1.8 metre wide pedestrian corridor is required along the footpath parallel to the premise's building line (see Diagram 4.1).

Permission may be granted to extend the placement of tables and chairs beyond the immediate boundary of the operator's premises. An application will need to be accompanied by written permission from the proprietor of the premises that fronts the footpath on which the tables and chairs are intended to be placed.

In determining the approval of an application, Council's authorised officer will need to be satisfied that the intent and requirements of these guidelines can be adhered to. Such approval may be withdrawn at any time.

Advertising

2. Council encourages innovation in design; however the opportunity of footpath trading should not be used as a basis for creating increased advertising space.

Applicants may feature the name of their business premises or relevant product names on umbrellas or screens in compliance with East Gippsland Shire Council's planning guidelines. Details of any proposed signage on furniture must be submitted with the application.

Screens/Planters/Umbrellas

3. The maximum height for screens or planters (including plant height) is 1.0 metre. Planters can be used as screens to divide and delineate one kerbside dining site from another however must not extend beyond the width of the seating area. They may also be used to separate the seating area from the kerb. Each planter or screen must not exceed a length of 1.8 metres and those parallel to the kerb must have a spacing of 0.75 metres between.

Umbrellas may be provided for each table on the condition that there is a minimum of 2.1 metres height clearance from the underside of the umbrella to the footpath and they are securely weighted or fastened. The umbrella must not extend into the pedestrian corridor so as to cause a hazard to people moving past the site (see Diagram 4.3 – section 4).

Hours of Operation

4. The road, road related areas and public space may be used for trading in accordance with the hours of the business. After closing all items must be removed from the area.

Notwithstanding the above, all tables, chairs and ancillary items must be removed and the area kept clear to facilitate street cleaning when required. An authorised officer may direct the removal of items at particular times or on particular days to accommodate this activity.

Food Safety

5. No food or drink is to be prepared, cooked or heated at the kerbside seating.

The preparation, handling and serving of food and drinks to patrons at tables and chairs is to be in accordance with the *Food Act 1984*, Codes of Practice and any requirements as specified by Council's environmental health unit .

Amenity

6. The proprietor of the kerbside seating must take all necessary steps to ensure that no noise or other disturbance emanates from the kerbside activity which causes a nuisance to others or causes detriment to the amenity of the neighbourhood.

No sound amplification equipment, juke boxes or loud speakers shall be placed or used in the kerbside seating area for the purpose of announcements, broadcasts, playing of music (whether recorded or otherwise) or similar purposes.

No live entertainment is permitted without the written permission of the authorised officer.

The permit holder is responsible for:

- the conduct of patrons at tables and chairs; and
- ensuring patrons do not re-arrange the tables and chairs and/or obstruct the footpath.

Advertising Signs on Footpath (“A” Frame Signs)

7. Advertising signs may be displayed a minimum of 0.75 metres from the kerb (see Diagram 4.5 – section 4) and must comply with East Gippsland Shire Council's planning guidelines. Setbacks greater than 0.75 metres may be required under some circumstances.

An unobstructed minimum 1.8 metre wide pedestrian corridor is required along the footpath parallel to the premise's building line (see Diagram 4.5 – section 4).

An advertising sign must not exceed 0.6 metres in width or 1.0 metre in height. Despite this requirement an authorised officer may approve an existing sign to exceed these dimensions provided the sign is stable, does not cause an undue obstruction and meets all other criteria set out in these guidelines.

Portable electric signs, illuminated, revolving, spinning or flashing signs are prohibited.

Advertising signs may only be displayed outside the premises to which they relate and only at times during which those premises are open to the public.

The maximum number of signs allowed per premises is two (2).

Applicants wishing to place advertising signs relating to premises that do not have a street frontage may be granted a permit to place an advertising sign on a nearby footpath. Written approval from the adjoining business must be provided.

Designated Use Zones

8. Shop fronts facing a loading zone, taxi rank, bus stop etc may be considered for a permit. Council must ensure that couriers, passengers and pedestrians can safely access the footpath.

Disabled Parking Spaces

9. Shop fronts facing a disabled parking space may be considered for a permit. Council must ensure that the disabled parking space can be accessed safely by people with a disability.

Goods Displays

10. Goods for display or sale must only be placed on the kerbside of the footpath and must not extend more than 0.75 metres in width. The total maximum height for a goods display, including the stand, goods and any signage/decoration, must not exceed 1.2 metres.

An unobstructed minimum 1.8 metre wide pedestrian corridor is required along the footpath parallel to the premise's building line (see Diagram 4.4 – section 4).

Goods or their display stands must not be affixed to any footpath, building, street furniture, pole or other structure. Sandbags and/or similar devices should be used to prevent disturbance by wind.

Goods may only be placed outside the premises to which they relate and only at times during which those premises are open to the public.

Planter Displays (exclusive of kerbside dining activity)

11. A permit will only be granted for planter tubs/boxes to be displayed that are setback a minimum of 0.75 metres from the kerb.

Planter tubs/boxes must not be fixed to the footpath, poles or any street furniture; although in some cases Council may allow them to be left permanently in position during the life of the relevant permit.

While each application will be considered on its merits, normally the maximum number of planter tubs/boxes that will be allowed will be four.

The permit holder is responsible for the care, maintenance and replacement of planter tubs/boxes and any plants therein.

An unobstructed 1.8 metre wide pedestrian corridor is required along the footpath parallel to the premise's building line (see Diagram 4.5 – section 4).

CONDITIONS APPLICABLE TO ALL PERMITS

- a) The placement of items on the road, road related areas and public spaces must allow for free access to public transport stops, water hydrants, pedestrian crossings, bins, seats, post boxes and all other facilities provided within the footpath reserve.
- b) The permit holder must maintain the area in a clean condition and clear away litter, food scraps, cigarette butts and any other rubbish left on the RRAPS and deposit waste within their own bins kept inside the premises. Private bins cannot be stored on the footpath and public litter bins are not to be used by the operator for depositing litter.
- c) The operator must not sweep or deposit any dirt; litter (including cigarette butts), food scraps or any other rubbish left on the RRAPS into the kerb and channel or road side drainage.
- d) The feet or wheels of all items placed on the road, road related areas and public spaces must be covered and maintained with a suitable rubber stopper/tyre or other device to protect the area to the satisfaction of the authorised officer. It is the responsibility of the permit holder to ensure any items placed on the footpath do not cause damage to council assets.
- e) All outdoor furniture and display items should be safe, structurally sound and of a design and construction so as to be able to withstand windy conditions. Safety should always be the first consideration. Advertising signs must be properly constructed, stable and erected to prevent them being moved by the wind. Items must not be permanently affixed to any footpath, building, street furniture, pole or other structure. Display stands for goods must be properly constructed, stable, kept in good condition and not detract from the overall appearance and amenity of the area.
- f) Advertising signs, goods, chairs and tables should have a contrasting colour to their background to assist the vision impaired.
- g) All tables, chairs, goods displays, "A" frame signs and ancillary items must be removed and the footpath kept clear to facilitate cleaning between hours specified by Council.

SERVICE AUTHORITY WORKS AND SPECIAL EVENTS

Service authorities or council work crews will, on occasions, require the use of a RAPPs to undertake repairs or maintenance. When this or any parade, festival or special event is scheduled, it will be normal practice to give at least seven days notice in advance. 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.

PUBLIC LIABILITY INSURANCE AND INDEMNITY

Indemnity and Release – Public Liability Insurance

The permit holder must at all times during the agreed term provide cover of no less than the amount of \$10 million for any single occurrence during the policy period.

The permit holder must at all times during the agreed term be the holder of a current public liability policy of insurance ("The Public Liability Policy") in respect of the activities specified herein in the name of the permit holder providing coverage for a minimum sum of \$10 million (or more).

The public liability policy must cover such risks and be subject only to such conditions and exclusions as are approved by the Council and must extend to cover the Council in respect to claims for personal injury or property damage arising out of the negligence of the permit holder.

Council's Indemnity

The permit holder agrees to indemnify and to keep indemnified the Council, its servants and agents, and each of them from and against all actions, costs, claims, charges, expenses, penalties, demands and damages whatsoever which may be brought, made or claimed against them, or any of them, in conjunction with the permit holder's performance, or purported performance, of its obligations under this permit and be directly related to the negligent acts, errors or omission of the permit holder.

The permit holder's liability to indemnify the Council shall be reduced proportionally to the extent that any act or omission of the Council, its servants or agents, contributed to the loss or liability.

DECISION MAKING

Local conditions will influence the placement of items. Council cannot permit activity where it would compromise pedestrian or traffic safety. Relevant local conditions include the width of the footpath, proximity to major roads, loading zones, clearways and trees, angle parking and the number of pedestrians at particular times of the day.

An authorised officer has the right to consent to an application as submitted or with modifications and with or without conditions as set out in the permit.

An authorised officer has the authority to refuse an application or withdraw a permit if: -

- the sight of pedestrians crossing at an intersection or crossing is interfered with so as to obscure oncoming traffic;
- access for people with disabilities is compromised;
- the sight of the driver of a vehicle is interfered with and vision of pedestrians, signals or signs is obscured;
- permit requirements have not been met and/or there is continuing failure to comply with directions;
- the permit holder fails to maintain public liability insurance; and
- under any other circumstances that the authorised officer believes will create a safety hazard to pedestrians, motorists or cyclists or cause detriment to the amenity of the area.

PERMIT FEE AND PERIOD OF PERMIT

Fees are determined by the number of square metres of footpath to be used and may vary from year to year as determined by Council resolution.

Upon written request and notification of discontinuation of use, pro-rata refunds will apply based on the following: -

- permit fees will only be refunded if the amount to be refunded is \$30.00 or greater;
- a maximum of 50% of the permit fee may be refunded;

Fees will only be refunded in the following circumstances: -

- single event permits – if request is made at least seven days prior to the event date; or
- short term permits (e.g. less than 12 months) – if the request is made prior to 50% of the permit period elapsing.

Permits are not transferable. A new permit must be obtained if the proprietorship of a business changes or the business relocates to another site.

A permit expires also if: -

- the permit holder ceases to be the proprietor of the business; or
- the permit holder ceases to maintain public liability insurance.

APPLYING FOR A PERMIT

To obtain a permit, applicants are required to: -

- complete and sign the 'Footpath Trading Permit application' (available from Council website);
- provide a site plan that shows dimensions of the proposed kerbside dining, goods/food display, planter tubs/boxes or advertising signs etc;
- indicate total footpath width, width of proposed display or sign, setbacks from kerb, site boundaries and any existing elements, e.g. tree, light pole, rubbish bin etc (refer diagrams, section 4);
- provide a copy of current public liability insurance or a certificate of currency in relation to a public liability policy of insurance, insuring against liability for the death of, or injury to, any person or damage to any property arising out of the display that will be authorised by the permit ;
- deliver the application form, together with the above information and applicable fee, to any of Council's Service/Library Centres listed below, or mail to:

East Gippsland Shire Council, PO Box 1618, Bairnsdale, Vic. 3875

In person: Corporate Centre, 273 Main Street, Bairnsdale
Lakes Entrance Service Centre, 18 Mechanics Street, Lakes Entrance
Orbost Service Centre, 1 Ruskin Street, Orbost
Omeo Service Centre, 179 Day Avenue, Omeo
Paynesville Service Centre, 55 The Esplanade, Paynesville

Buchan Outreach Centre, 6 Davies Street, Buchan
Cann River Outreach Centre, 11 Genoa Street, Cann River
Bendoc Outreach Centre, 18 Dowling Street, Bendoc
Mallacoota Service Centre 70 Maurice Ave, Mallacoota
Telephone: (03) 5153 9500
1300 555 886 (local residents cost of local call)

Fax: (03) 5153 9576 (form only)

Email feedback@egipps.vic.gov.au

ENQUIRIES

Any queries concerning an application, the policy, this procedure or if further assistance is required, please contact Council's Community Laws Department on 03 5153 9500.

6 Roles and Responsibilities

Relevant officer:	Roles and responsibilities:
Corporate Records Unit	Ensure timely registration of correspondence and tasking to the appropriate Action Officer.

Manager Statutory Services	To ensure staff and community awareness of and adherence to the Policy and this Procedure
Community Laws Coordinator	To ensure staff and community awareness of and adherence to the Policy and this Procedure
Community Laws Officers	To advise and ensure permit holder compliance with relevant legislation

All staff have an obligation to report occurrences of non-compliance with Council policy/protocol/procedure. Incidents of non-compliance should be reported immediately to the Director responsible for this Procedure, the Policy Owner or the Administration Unit.

Where non-compliance has been identified the matter will be investigated by internal review and, where applicable, further action taken in accordance with Council's Disciplinary Procedures Policy.

7 Version Control Table

Version Control	Date Effective	Approved By	Amendment
1	02/07/2013	Manager Health and Community Laws	First version. Procedure created from previous policy and formatted into new template.
2	04/07/2017	Manager Statutory Services	Updated procedure to reduce duplication and provide clarity.