



WARRNAMBOOL
CITY COUNCIL

Footpath Trading Policy

November 2007

Contents

Section One: Policy Overview **3**

Purpose of Guidelines
Streets and Roads Local Law No. 5

Section Two: Footpath Zones and Locations **4**

Zones and Locations
Existing Public Infrastructure
Available Areas
Other Activity

Section Three: Design Standards **7**

Footpath Dining
Portable Advertising Signs/A frames
Display of Goods

Section Four: Management and Responsibilities **10**

Operators Responsibilities
Council Responsibilities
Useful Contacts

Appendices

Application Process **12**
Checklist **15**
Outdoor Dining Application Form
Advertising Signs/Displaying Goods Application Form

Section One — Policy Overview

Introduction

The City of Warrnambool is committed to supporting and enhancing local business and street life. Our aim is to ensure a safe and vibrant environment that reflects Warrnambool's energy and continues to facilitate a wide range of street trading opportunities.

Whilst acknowledging the importance of street trading opportunities for traders, we must be mindful that footpaths are available for all persons and it is critical that we understand that commercial use of public space is a privilege not a right. This framework also must take into consideration Council's clear obligations to allow for pedestrians to move through the streetscape in a safe and accessible manner. Pedestrian safety and accessibility is a key consideration in the development of these guidelines and as such public safety must be maintained.

Objectives:

There are four main Council priorities regarding the development of this policy:

- 1) To ensure our shopping centres and footpaths are accessible to all of the community and comply with the Disability Discrimination Act 1992 (Cwth).
- 2) Safe and responsible management of public infrastructure, and;
- 3) To improve the amenity and aesthetics of street trading furniture.
- 4) To ensure that pedestrian activity remains the principal activity on City Centre footpaths.

The purpose of the following policy and guidelines is to provide traders and footpath users with information pertaining to the use of footpaths, applying for footpath trading permits and the operation of the guidelines.

The policy seeks to provide support to local businesses, provide a framework for future streetscape use, manage our street trading environment and address our legal responsibilities in relation to footpath use. Council also requires that the development of street trading be in keeping with the character of the city and ensure that the visual amenity of our streetscape remains vibrant and consistent.

Council will retain the right to decline permit applications where the guideline purposes are not reflected and pedestrian safety is affected. The policy and guidelines should be read in conjunction with Local Law No.5 to ensure a complete and thorough understanding of your rights and obligations.

Streets and Roads Local Law No. 5

The main aims of the Local Law and the Footpath Trading Policy can be stated as to:

- Control and regulate secondary activities on roads including trading, placement of goods and equipment, repairs to vehicles, street parties, festivals and processions, advertising and collections (which does not compromise the primary need for the passage and repassage of people and goods);
- Provide free and safe access for people with sight and movement impairment or disabilities; and
- > Provide generally for the peace, order and good government of the municipal district.

No items may be placed on the footpaths or road reserves except in accordance with a permit issued by Council under its Local Law No. 5. To be granted a permit, a trader must sign an agreement to comply with this policy. Permits will be issued with the condition that the permit holder must comply with this policy. Non-compliance is an offence against the above Local Law and will result in enforcement measures being taken.

Section Two — Footpath Zones and Locations

Appropriate Zones and Locations

Council has developed three categories for trading relating to the Footpath Widths within Warrnambool's shopping areas. The location of the 'trading' on the footpath must provide for a clear, continuous and safe access of travel for pedestrians and also provide a relaxed environment that enhances the streetscape and other functions of the area.

The footpath has been divided into three 'Zones' to ensure complementary use of the area between public and commercial uses. The zones consist of:

- Pedestrian Zone
- Trading Zone
- Kerb Zone

Pedestrian Zone

The pedestrian zone must have an unobstructed, safe and continuous path of travel from the building line or shop front of a **minimum 2.0 metres**. No goods/services, A-Frame signage, furniture or trading can occur in this zone at any time.

Kerb Zone

The Kerb Zone is the area between the Trading Zone and the gutter. There are strict requirements for the width of this area dependent on parking conditions adjacent to the area.

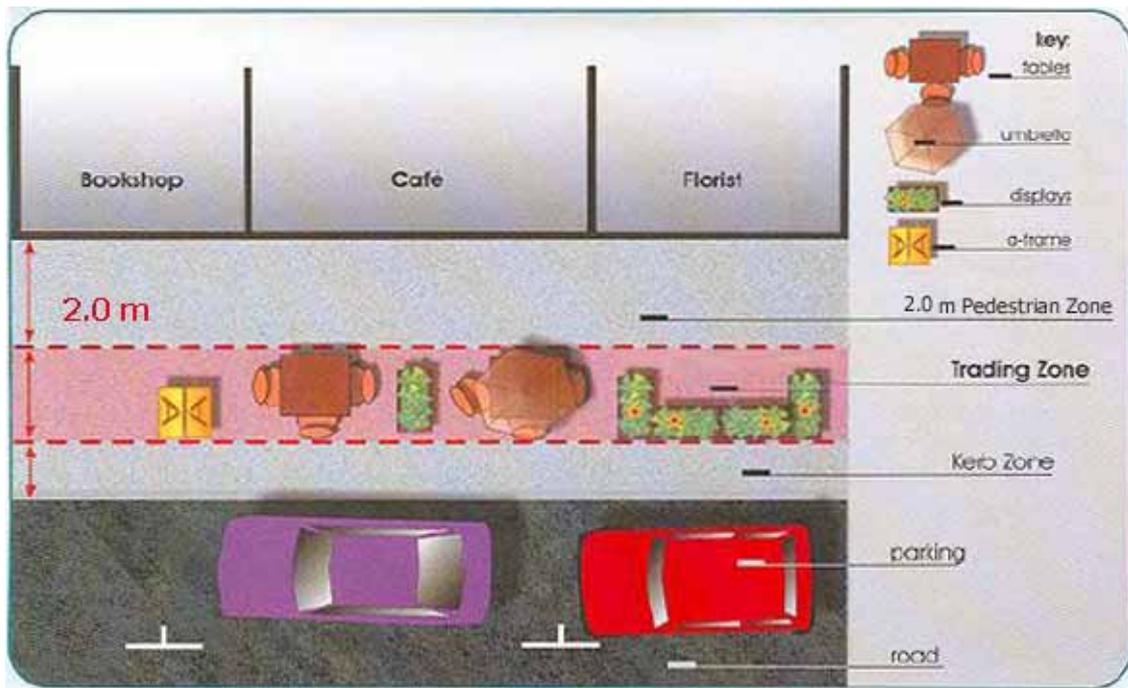
- 0.6m required when adjacent to angled or parallel parking bays
- 1.2m required when adjacent to disabled parking areas, loading zones, taxi zones or bus zones.

Trading Zone

This zone allows for commercial use including furniture, goods/services, A-Frame signage and trading. This zone is the distance between the Pedestrian Zone and the Kerb Zone and the width will vary depending on the overall width of the pavement. All commercial use must be contained within this zone and can occur only during normal trading hours, provided that no furniture, goods/services, A-Frame signage remains on the footpath after 10pm unless otherwise agreed by the Chief Executive or his delegate.

The placement of furniture, goods/services and A-frames signs shall be aligned against the Kerb Zone.

This zone must have a 1.5m break between each adjacent premises to allow for access from the Kerb Zone to the pedestrian zone and a 1 metre break between two displays in front of the same business (if permitted).



Existing Public Infrastructure

The following clearances apply to existing public infrastructure and public street furniture:

- 1.0 metre clearance required from public infrastructure such as — fire hydrants, bins, payphones, parking meters, public seats and bike stands.
- 0.5 metre clearance required at all times from other street furniture such as — bollards, tree pits, backs of seats, poles. (also including trees and/or planter boxes)

The above public infrastructure on footpaths has priority over commercial interests (footpath trading) at all times.

As a general rule public infrastructure already in place will not be moved or removed (relocated or repositioned) as a result of unavailable space to trade within a designated trading zone. Should you have existing infrastructure at the front of your shop an application may be made to remove infrastructure, if this does not decrease the amenity of the area. All costs for removal and pavement reinstatement will be borne by the person applying for the permit. Traders should take this into account when selecting a site.

Existing Council street furniture and infrastructure must not be used for any trading purposes including for business signage or displays.

Available Areas

Tables and chairs and goods/services and A-Frame signs are permitted only outside the premises to which they relate and must be contained within the property line, with the required set back.

The footpath is a public zone and as such is not owned by any one business. This means that no business is allowed to 'rent' or allocate footpath space to an adjoining premises seeking to occupy that area.

Permit approvals for tables and chairs, goods/services and A-Frame signs in commercial or industrial areas on footpaths or road reserves adjacent to Highways shall be considered in conjunction with Council and VicRoads.

Permits will not be issued in relation to Home Occupation, Home Industries or Professional Consulting Rooms or the like, located in Residential Zones.

Other Activities

Several other footpath uses involving human activity are covered under existing Local Laws and are exempt from this Policy. These include:-

- Queuing at wall mounted automatic teller machines
- Raffle ticket sales and street stalls
- Busking

Section Three — Design Standards

Footpath Dining

Tables and Chairs

- Up to four chairs are permitted with each table.
- All tables and chairs must remain within the Trading Zone for the duration of their use. Cafe furniture must be of a high standard in appearance and durable in nature. In all instances Council must approve furniture design before use.
- For safety reasons, furniture that is constructed solely of plastic is unacceptable.
- The design and colour of any Tables and Chairs must be consistent with any urban design guidelines set down for shopping centres.
- Tables and chairs should be portable however need to be strong and windproof. This may include metal and timber or metal frame and plastic tabletop and chair back/seat.
- The base and ends of all cafe furniture or items must have suitable rubber stoppers (at least 30mm diameter) on the ends to prevent pavement damage. It is the responsibility of the cafe owner to ensure all public assets in contact with the goods/items placed on the footpath are not damaged.
- It is the responsibility of the cafe owner that no chairs or tables (or other items) on the footpath are moved by patrons and obstruct the Pedestrian Zone.
- Where possible tables and chairs should have a contrasting colour to their background to assist the vision impaired (This means that the colour must be different between the chairs/tables to such elements as the concrete and shop front colour to allow easy identification).
- Table and chair legs should not extend on an angle that would cause tripping points to pedestrians
- At any intersection tables/chairs must not extend beyond the building line (unless special requirements exist).
- All tables and chairs must be removed at the end of business each day, provided that no tables and chairs remain on the footpath after 10pm, unless otherwise agreed by the Chief Executive or his delegate.

Screens (standard/canvas)

- Standard screens must not be of a height over 0.9m nor longer than 5.0m. Screens may not be appropriate (nor approved) within some areas where footpath width is narrow.
- All screens must be removed at the end of business each day, provided that no screens remain on the footpath after 10pm.
- Refer to advertising guidelines.
- Spaces may be required between screens to allow for pedestrian access across the Kerb Zone.

Glass Screens

- Glass screens will not be permitted for use.

Umbrellas

- Umbrellas are to be used only in areas where there are no obstructions caused by canopies or trees, or where the use of the umbrella will not interfere or damage existing items.
- Where umbrellas are allowed they must be of a minimum (at the lowest point) of 2.0m above the level of the footpath (min clearance of 2.0m).
- All umbrellas must be removed at the end of business each day or by 10pm.
- Umbrellas must not extend beyond the trading zone.
- They must be of robust design and secured at all times.
- Must be removed in times of strong winds or storms.
- Refer to advertising guidelines.

Heaters

- All outdoor heaters must comply with safety standards specified by Energy Safe Victoria (or relevant authority).
- Heaters must be located within the trading zone only.
- Patio heaters must be removed at the close of business each day.
- Council approval will be required for the installation of fixed heaters.
- In some instances where the footpaths have narrow trading zones, the use of heaters may not be permitted if it does not fall within the required zone.
- Heaters are to be licensed as part of a permit and covered by trader's public liability insurance.

Windproof ashtrays

- All permit holders **must** provide windproof ashtrays on each table provided within the trading zone at all times. The permit holder is responsible for all cigarette ash, butts and other litter generated by patrons of their footpath trading areas.
- Operators must not sweep any litter, including cigarette butts, into the gutter.

Advertising

Council understands the need for businesses to engage in marketing and advertising as a part of their comprehensive business strategy. As such, Council allows for identification and promotion signs that meet not only the needs of the business but considers the amenity of the area and streetscape appearance for the whole community.

- The name or logo of a business may be displayed on every alternate panel of a cafe screen or umbrella as long as the size and/or logo cover no more than 33% of the total area of the panels.
- Screens or umbrellas within the trading zone may have commercial advertising (such as the name of the screen provider) on alternate panels only, on no more than 20% of the surface area, provided that no cigarette or alcohol advertising is permitted.
- Details of any proposed signage on furniture must be submitted with any application to trade on the footpath.
- No cafe or commercial advertising is allowed on chairs or tables unless required for identification purposes **ONLY** and placed in an unobtrusive manner allowing for identification by traders, of business property.
- Should a trader have existing (*existing advertising is advertising that is on any item or furniture that is owned/purchased prior to July 2007 — after this date all new furniture must comply with policy guidelines*) advertising on any surface, over the allowed indicated level, this information should be submitted with the application for review. Each application will be reviewed and approved/not approved on a case-by-case basis.

Portable Advertising Signs (A Frames)

- A frames may only be displayed within the Trading zone and must be securely placed and windproof.
- Portable electric, illuminated or flashing, revolving/spinning signs are prohibited at all times.
- An advertising sign must not exceed a height of 1.2m or width of 0.8m provided that when approved for location on highways or the industrial estate the maximum height is 1.5m.
- Signage can only be displayed during normal business hours and must be removed from the trading area at the close of business.
- Only **one** sign per 6 metres of shop frontage will be considered for permit.
- A frames or advertising signs must be free-standing and not be fixed to any footpath, pole or other structure.
- Permission may be granted for an application where the business has no street frontage and the sign is placed outside premises not occupied by the applicant. In this instance the owner of the premises where the sign is to be placed must provide written permission and there must be public liability extended to cover the goods/sign. Permission will need to be renewed annually or on change of business ownership.
- At any intersection A-Frame signs and Goods/ Services must not exceed beyond the building line (unless special requirements exist).

Display of Goods

- Goods for sale or display must be located within the trading zone.
- Goods and goods stands must only be placed on the footpath during the normal business hours.
- All goods stands must be suitable/stable and approved by the responsible authority.
- Goods or their displays must not be fixed to any footpath, building, asset, pole or other structure.
- The placement of goods on the footpath must not exceed a height of 1.5 metres, depth of 0.8 metres or length of 1.5 metres for a single display.
- If the shopfront exceeds 6 metres an additional display, of the same maximum dimensions may be permitted at the discretion of Council subject to there being no amenity, aesthetic or obstruction issues or conflicts.
- The second display shall be subject to a separate permit with a fee equal to the first permit fee.
- Goods should have a contrasting colour to their background to assist the vision impaired.

Other

- The operator is responsible for obtaining all necessary approvals to trade from the footpath area.
- All food associated uses must receive a permit from Council's Environmental Health unit prior to permit application and must demonstrate this approval.
- If alcohol is to be served from the outdoor eating facilities, a liquor licence permitting such sale and consumption must be obtained in addition to a permit to allow open alcohol in containers in accordance with the provisions of Local Law 4.
- Litter must be cleared from the trading area at all times by the business operator.
- Food scraps or other rubbish within the immediate area must be removed and deposited within the operators own bins kept within the premises.

- Litter generated by footpath trading must not be swept into the street gutter or adjacent footpath areas and must be picked up and deposited within the operators own bins kept within the premises.
- Operators must ensure that no trade waste from their premises is placed in public street litterbins.
- Any items placed on the footpath area must not cause any undue obstruction or danger, restrict the reasonable access or exit from any premises, or obstruct the vision of motorists at intersections.
- Operators must ensure that no noise or other disturbance emanates from the footpath activity so as to cause a nuisance to others or detriment to the amenity of the neighbourhood.

Section Four — Management and Responsibilities

Operators Responsibilities

The operation of footpath trading is the responsibility of the permit holder.

The permit holder must operate in accordance with the conditions of the permit and the requirements set out in this document, must monitor the footpath trading at all times, and must meet all obligations to a high standard.

Council Responsibilities

The Council will continue to maintain and manage the use of land at all times and reserves the right to reclaim access to and remove all footpath trading at any time for any purpose deemed suitable by Council.

Where service authorities and others are required to carry out works within the road reserve (or works at or adjacent to the permit holders footpath trading area) which require removal and/or alteration to the footpath trading arrangements, no compensation is payable for any removal of fittings or fixtures associated with the footpath trading permit or for the loss of trade experienced due to these works. Any reinstatement of fixtures or fittings to do with the footpath-trading permit is the responsibility of the permit holder (this does not include refitting public infrastructure).

Council regularly requires access to footpath areas for the purposes of maintenance and asset renewal programs. Due to the necessity to source labour and materials during business hours, it is impractical to program these works outside shop trading hours. Except for emergency works, Council will give reasonable notification of such works but reserves the right to occupy the trading zone for the purpose of asset maintenance or renewal. No compensation will be payable by Council for the loss of use of the trading zone. In special circumstances, such as if works take a prolonged period of time, compensation may be made at Council's sole discretion but will be strictly limited to reimbursement of the permit fees on a pro-rata basis.

Compliance protocol

Council staff will monitor and evaluate ALL footpath trading on a regular basis. Any observed infringement of the Footpath Trading Policy or permit conditions will be investigated and enforcement action taken if considered necessary.

Upon detection of a breach of the Local Law, Footpath Trading Policy or a specific licence condition, Council (including its staff and authorised officers) may take the following action:

1. Verbal Notice to Comply issued to the permit holder – a first and final verbal warning – Must comply within the time limit stated (eg 1 week).
2. Written Notice to Comply Issued – a first and final written notice – Must comply within the time limit stated (eg 1 week).
3. Infringement Notice issued –fine for non-compliance.
4. Further fines or permit suspension for a minimum period of three months and/or prosecution.
5. Revocation/cancellation of the permit.

Council may also impound any items that are placed on the footpath that do not comply with Local Laws, this Policy or any conditions placed on a permit.

Prior to cancellation of a permit, Council will provide to the permit holder an opportunity to make comment on the proposed cancellation. Incidents of non-compliance will be noted and may be taken into consideration for future permit applications. Second and subsequent fines will be issued without additional warning for further acts of non-compliance. Failure to maintain public liability insurance is considered a serious breach.

Permit fees and Application Process

A permit fee will be paid at the initial application.

Annual renewal fees are payable by 1st July each year. Pro-rata fees are applicable.

Council will undergo a review of the fee structure and application process every 12 months to ensure it is in line with any changes in legislation and to make changes to fee structures as required.

Application Process

Applying for a Permit - Process

Please read and ensure your understanding of the guidelines contained within this document, prior to submitting your application to Council for footpath trading. All footpath-trading permits expire on the 30th June of every year.

To apply for a permit you must obtain an application form and checklist and submit this with the following:

Application Requirements

Each person seeking a permit will be required to provide the following information:

Application form - including a clear written statement of what kind of permit is being sought and a copy of certificate of Public Liability Insurance. (if applicable)

Site plan of existing conditions 1:100 – accurately showing the width of the building frontage and the footpath from kerb to building line, location of building lines and the type of abutting properties, existing infrastructure and other features (including Council infrastructure, such as bins or parking meters, and disabled parking or loading, taxi or bus zone bays). All dimensions associated with the footpath area should be shown. (Site plan not required for A-Frame signs).

Site plan of proposed conditions 1:100 – accurately showing the area and layout of the proposed footpath activity, including the proposed location of all items.

Details of Furniture – including colour drawing (architectural/design) or colour photograph (eg tables, chairs, screens, planter boxes, heaters, umbrellas, etc).

Details of advertising – a colour photograph or detailed design drawing of proposed advertising logo, and clear indication of its size and location within the trading zone.

Details of approval from other Council departments eg. Health

Details of liquor licence (including plan of licensed area).

Permit Fee – Cheque for prescribed amount payable to Warrnambool City Council (refundable if permit not approved).

Certificate of Currency (Public Liability Insurance) - for a minimum of \$5,000,000 specifically covering the area occupied by the footpath trading and noting the interests of Warrnambool City Council.

Completed Indemnity Form – located on the reverse of the Application form.

A checklist is also included in the application material to ensure you provide all information correctly. Applications received without all required information may delay the assessment of a permit application.

Application Assessment

On receipt of an application a council officer will:

Check all relevant information has been received – If incomplete, the applicant will be contacted to discuss and clarify outstanding requirements and make arrangements for the information to be provided.

Check application to ensure it meets all set requirements. Council will check all applications to ensure there are no outstanding Health, Building or Planning orders or notices on the property. A permit will only be issued when any matters are resolved. It is the responsibility of the applicant to ensure all other relevant approvals/permits are obtained. Approval of a footpath trading permit does not imply that other permits are not required nor does it imply precedence over these permit requirements.

Inspect site and check accuracy of plans

Issue or refuse a permit

The applicant is required to make any changes or amendments and these are to be re-submitted before approval can be given.

Fees

Payment of permit fees is due when forwarding application . The permit renewal fees may vary from year to year as determined by Council.

New applications received between 1st January and 30th June will pay 50% of the fee.

Re-application for a permit

Permits are renewed annually at the beginning of the financial year. It is the responsibility of the permit holder to ensure all required information is submitted to Council prior to the end of the financial year (eight weeks prior) they hold a current permit for to ensure the permit remains valid for the next period.

Transfer of Business

Permits are not transferable. If business ownership changes, a new permit must be applied for.

Consumption of Liquor within a Kerbside Cafe area

Should the applicant intend to serve alcohol from the outdoor eating facilities, it will be necessary to obtain a liquor licence. (Proof of licence is required when applying for a Footpath Trading Permit). You may require a Town Planning Permit and approval for open alcohol containers in accordance with the provision of Local Law 4.

Public Liability

Unless provided by Warrnambool City Council in the form of a blanket cover, every applicant for a permit to trade on the footpath/Council land, shall have and maintain for the term of any permit issued public liability insurance cover of at least five million (\$5,000,000) dollars. This cover must be demonstrated when the application is lodged. It is the responsibility of the permit holder that the insurance remains up to date for the duration of the permit issued. Failure to maintain public liability insurance is considered a serious breach.

General Conditions

It is the responsibility of the permit holder to ensure Council contractors, including street cleaning staff, have full access to the footpaths during cleaning periods. This generally occurs prior to nine am each morning. However, should you require goods/services or chairs/tables to be outside prior to this time please inform Council of this when making your application.

It is the responsibility of the permit holder to ensure that no refuse is emitted from, or remains after the removal of any goods/services or furniture.

Traders must apply in writing to amend an existing permit. Amendments can include changes to furniture design or amount of advertising. Amendment fees will apply and Council will advise the permit holder of the success of the application as per the 'assessment procedure'.

The permit must be displayed at all times on the shop front window facing out to the street, so it can be seen outside the premises to which they pertain and be available for immediate inspection at all times when the premises are operating. Permit stickers for A-Frame signs must be displayed on the outside of the sign.

All goods/services and furniture must be removed from Council land when the business to which they pertain is closed.

Council may from time to time by resolution vary any condition for the issue of permits for Footpath Trading within the municipality. No refund or partial refund will be made for any unused period of the duration of the permit, or for a permit refusal.

Permits are non transferable between business owners and traders. An application to amend the permit must be made to Council with authorisation from the new business owner and the leaving business owner.

Application to Vary Permit Requirements / Variations to Application

A 'Variation Panel' within Council may consider applications for variation within areas. The panel will consider applications with regard to the following criteria.

- Effect on pedestrian traffic flows and safety
- Impact on appearance of the street and surrounds
- Impact on residential amenity
- Duration of use
- Effect on vehicular traffic flow and safety
- Whether it is complimentary to the primary adjoining use
- Whether it is less intensive than the primary adjoining use
- The applicants previous record of compliance
- Any relevant policies of the council
- Any other matter relevant to the application

The panel would typically consist of officers such as: Executive Manager Health & Amenity Services, Council Local Laws officer, Planning Officer, Engineer.

Transition period

Each renewal permit holder (from 1st July 2007) must make all attempts to comply with the Policy immediately. There will be a transition and compliance period for renewal permit holders only, for a period of 3 months until 1st October 2007.

Each existing permit holder will then be required to meet all of the new policy standards or it will be considered an infringement and will be enforced accordingly. All new permit holders (after 1st July 2007) will be required to meet all application requirements immediately.



Checklist

Applying for a Footpath Trading Permit

Applicants are advised to read and familiarise themselves with Council's Footpath Trading Policy prior to any formal application being made to Council.

Failure to submit all the details (refer to guidelines) may result in delays in processing the application. It is your responsibility to check with relevant Council Departments to ensure you have all the required permits and licences.

On receiving your application the responsible officer will:

- Check all relevant information has been received
- Arrange a time to meet on site for an inspection
- Assess the application based on the Footpath Trading Policy.

Checklist for Applicants

<u>Have you Submitted this Information:</u>	Tick the Boxes
1. A signed application form	<input type="checkbox"/>
2. Permit Fees – as prescribed (Cheque made payable to the Warrnambool City Council)	<input type="checkbox"/> <input type="checkbox"/>
3. Unless provided by Council, a Certificate of Currency (Public Liability Insurance) for a minimum of \$10,000,000 specifically covering the area occupied by the footpath trading and noting the interests of Warrnambool City Council	<input type="checkbox"/>
4. A site plan 1:100 scale of existing conditions (eg building frontage, abutting properties, existing infrastructure, etc)	<input type="checkbox"/>
5. A site plan 1:100 scale of proposed footpath activity	<input type="checkbox"/>
6. Details of furniture/goods/items (colour, design, etc)	<input type="checkbox"/>
7. Details of any advertising (design, size, etc)	<input type="checkbox"/>
8. Details of approval from other Council departments	<input type="checkbox"/>
9. Details of liquor licence (including plan of licensed area)	<input type="checkbox"/>