

Footpath Trading/ Business Use of a Road **Policy**

Reference Number:	CR19/34745
Type:	Council Policy
Responsibility:	Business and Innovation
Responsible Officer (s):	Economic Development Officer
Initial Adopted Date:	November 2011 (as <i>Footpath Trading Policy</i>)
Last Review Date:	June 2019
Next Review Date:	June 2023
Legislation:	Local Government Act 1999, reference Chapter 11 (S 221/222) Development Act 1993 Disability Discrimination Act 1992 Road Traffic Act 1961
Related Documents:	<i>Footpath Trading/Business Use of a Road</i> Guidelines & Application for Permit Corporate Risk Management Policy Risk Management Framework Relevant Australian Standards Care, Control & Management of Roads (Highways) by the Commissioner of Highways. <i>Operational - Instruction 20.1 (DPTI)</i>

1 Purpose

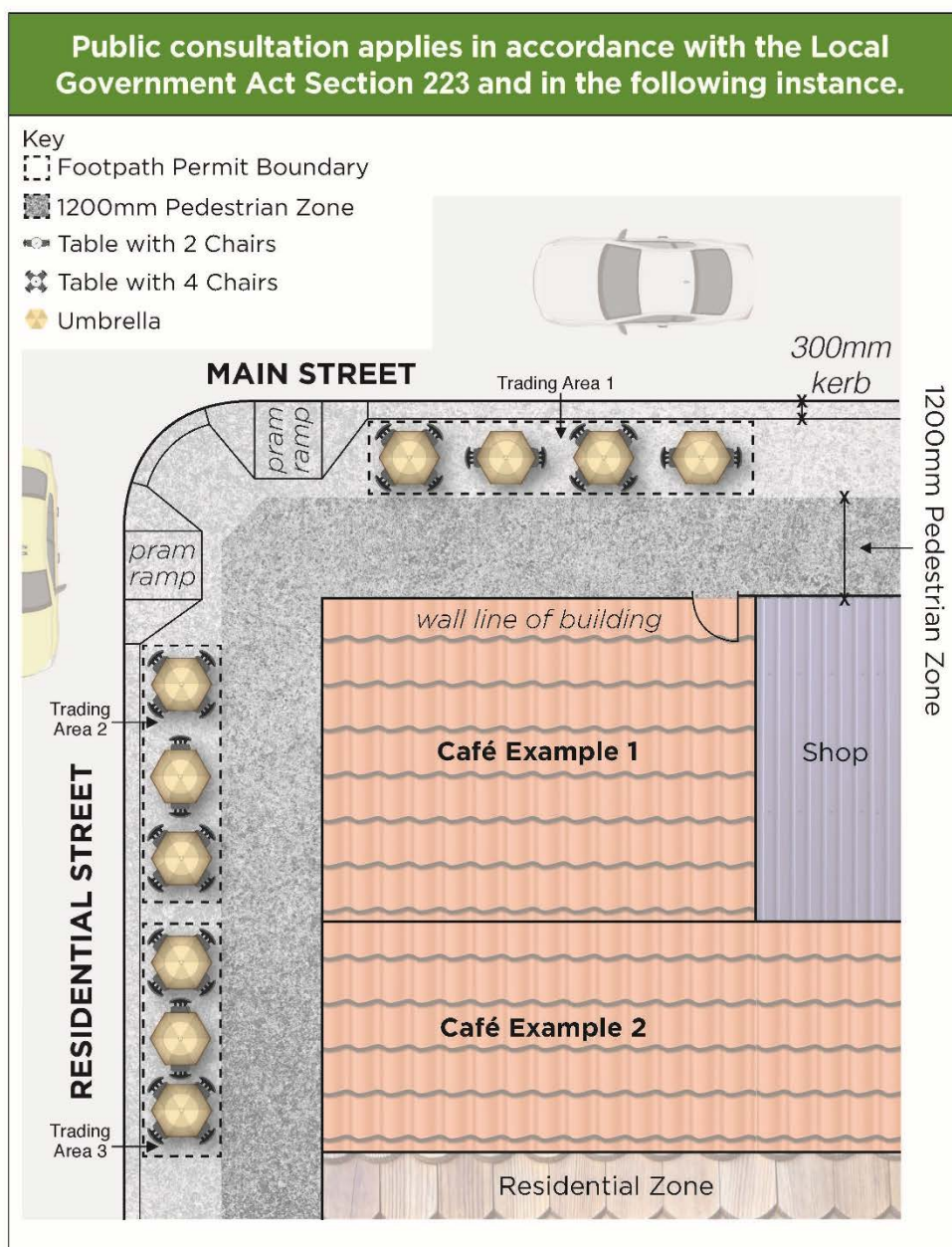
- 1.1 The City of Prospect ("Council") recognises the importance of a culturally diverse, accessible dining and attractive business precinct to add vibrancy and economic prosperity to the City.
- 1.2 The Footpath Trading Policy/Business Use of a Road Policy ("the Policy") encourages and regulates commercial and non-commercial (business) activity occurring on Council roads (including the footpath area). The Policy sets out Council's position with regard to the formal use of a road by an external party for the purposes of business and trading.

2 Policy Statement

- 2.1 Council provides a public road (and in particular a footpath area) for general (and safe) pedestrian and disability access. The Council is empowered to allow (in specific circumstances) the use of a road for business purposes (for instance, Outdoor Dining).
- 2.2 Council encourages the appropriate use of footpaths for the purposes of business use – including outdoor dining for the enhancement of street life.
- 2.3 Council supports designs to protect and enhance the character of its surrounding streetscape.
- 2.4 Council has a legal obligation to provide a safe and accessible environment for all users of its public roads within the City. The Policy will enable Council to safely manage the competing needs of pedestrians, road users, residents and business owners. Council will undertake a disability access audit of the village heart and other relevant dining areas.
- 2.5 Footpath Trading/Business Use of a Road must be formalised and permitted by the Council. Footpath Trading/Business Use of a Road (Permit) will be subject to general and specific conditions as determined by the Council.
- 2.6 Non-compliance with conditions will result in enforcement via penalty fees.
- 2.7 When there is an application for outdoor dining in a commercial or high-street zone there is no need to consultation with residents.
- 2.8 Public Consultation will be undertaken in accordance with Council's policy and whenever the Local Government Act Section 223 dictates. In addition, public consultation will be undertaken:
 - 2.8.1 Where the footpath is expanded and vehicular traffic movements will be impeded to a material degree.
 - 2.8.2 Where the intended outdoor dining site is on a corner of a non-residential zone and a residential zone. (Figure 1)

In the case that an outdoor dining permit/change of use is in a residential zone, public consultation will be undertaken as part of the Development Act 1993. An outdoor dining permit will only be considered after planning approval is granted and there will be no further public consultation.

Figure 1 (example) – Trigger for public consultation.



2.9 Council is the final decision maker in cases where an applicant's business is located on a corner of a non-residential zone and a residential zone and wherever the footpath is expanded and vehicular traffic movements will be impeded to a material degree.

3 Scope

- 3.1 The Policy applies to all (business) use of a public road by a party external to Council.
- 3.2 The Policy does not apply to alterations to a road that are subject to the provisions of the Development Act.
- 3.3 The Policy does not apply to the placement of Moveable Signs (By-Law no 2).

4 Objectives

- 4.1 The objectives of the Policy (and associated Guidelines) are:
 - 4.1.1 To ensure a systematic approach to manage business activity on a public road;
 - 4.1.2 To achieve Council's goals, objectives and targets within an acceptable (tolerable) level of risk;
 - 4.1.3 To ensure that Council follows the requirements of the relevant legislation for permitting a business activity (including and alteration) on a road;
 - 4.1.4 Ensure that Council footpaths are safe and accessible by maintaining a consistent and predictable clear path of travel for all users

5 Definition

Footpath Trading/Business Use of a Road includes any formal activity occurring on a Council owned and managed road, such as outdoor dining or carrying a business from the side of the road and will include the placement of tables, chairs, other outdoor furniture and/or other temporary or permanent structures.

Definitions are outlined within the Footpath Trading/Business Use of a Road Guidelines.

6 Legislative and Policy Requirements

The Local Government Act 1999 ("the Act"), and the Development Act 1993 provide Council with relevant and broad powers to allow and manage a business activity on a road.

6.1 Local Government Act 1999

Where the business activity area is operating on a public road or may alter a road (this includes the footpath area) a permit/authorisation is required from Council pursuant to Sections 221 and 222 of the Act.

Considerations relating to an alteration/business activity on a road include (but are not limited to):

- The provision of a business activity on the road (including footpath area);
- The installation of fixtures and fittings (in addition to any that may require approval under the Development Act 1993) and the location and maintenance of all fixtures and fittings;

- The term of the permit to be determined by Council;
- Any requirements of the Public Consultation Policy.

The provisions of the Act do not apply to a person who has some other statutory authorisation to make an alteration to a road.

6.2 **By-Law No.2 - Moveable Signs**

By-Law 2 is made to set standards for moveable signs on roads. It provides Conditions for (and the) placement of signs.

6.3 **Development Act 1993**

The erection of some fixtures may constitute *building work* for the purposes of the Development Act 1993 and therefore will require the approval of Council. Due to the temporary/limited nature of business activity, and as reinforced by short-term permits, most activities will not be deemed to constitute building work or change in use.

Changes of a more permanent nature or longer period may be subject to a development application pursuant to the development legislation.

6.4 **Disability Discrimination Act 1992**

Matters requiring consideration under the Disability Discrimination Act 1992 would include (but not be limited to):

- to eliminate, as far as possible, discrimination against persons on the ground of disability in the areas of:
 - a) access to premises;
 - b) the provision of goods, facilities and services.
 - c) clear walkway

6.5 **Council's Policies and Procedures**

The Policy is to be read and implemented in conjunction with Council's other relevant policies, procedures, documents and strategies.

7 **Review**

The Policy will be reviewed every 4 years or as required.

8 **Access to the Policy**

The Policy is available for public reference on the Council's website www.prospect.sa.gov.au or from Customer Service at the Civic Centre, 128 Prospect Road, Prospect SA 5082.

9 **Further Information**

For further information about the Policy please contact:

Director Business and Innovation

City of Prospect, 128 Prospect Road, Prospect SA 5082

Ph. 8269 5355

Email: admin@prospect.sa.gov.au