

# Local Law Guidelines, Neighbourhood Amenity Local Law 2021

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**ATTACHMENTS:**

1. Footpath Trading Policy 2022

In these Local Law Guidelines, “the Local Law” means the “Neighbourhood Amenity Local Law 2021”.

All words and phrases defined in the Local Law have the same meaning in these Local Law Guidelines, unless the context suggests otherwise.

## **PART 2 - YOUR PROPERTY, TREES AND PETS**

### **DIVISION 1 - YOUR PROPERTY**

#### **11. PROPERTY NUMBERS: SIZE, LOCATION AND VISIBILITY**

In determining if the requirements of clause 11 of the Local Law are complied with, an Authorised Officer or a Delegated Officer must have regard to:

- (1) the size of the property number;
- (2) the accuracy and completeness of the property number;
- (3) the state of repair of the property number having regard to its visibility;
- (4) the colour of the property number;
- (5) the legibility of the property number from the road immediately adjacent to the front boundary of the property having regard to all or any of:
  - (a) its size, accuracy and completeness;
  - (b) its state of repair;
  - (c) its colour;
  - (d) its distinction from its background; and
  - (e) its freedom from obstruction; and
- (6) any other matter the Authorised Officer or Delegated Officer reasonably believes is relevant.

#### **12. UNSIGHTLY AND DANGEROUS PROPERTIES**

In determining if a building or other structure on private property is dilapidated under clause 12(2) of the Local Law, an Authorised Officer or a Delegated Officer will consider its state of neglect, disrepair or damage.

This may include but is not limited to consideration of conditions and damage such as:

- (1) broken windows and doors;
- (2) significant damage to roofs and gutters;

- (3) external wall finishes such as peeling paint;
- (4) architectural features;
- (5) graffiti; and
- (6) partially demolished structures;

### **13. GRAFFITI**

This section is intentionally blank.

### **14. DOMESTIC WASTE INCLUDING RECYCLABLE AND HARD RUBBISH COLLECTIONS**

The following set out the guidelines which an occupier must comply with:

#### **(1) Use of Bins**

All domestic waste must be placed in rubbish bins ready for collection except that rubbish bins awaiting collection must not be placed on the nature strip, or any other place of collection outside the property boundary, any more than 24 hours prior to the collection day specified by Council from time to time.

#### **(2) Storage of Bins**

All domestic waste bins must be stored and maintained in a clean and sanitary condition on the property to which they have been issued.

#### **(3) Prohibited Waste**

The following material is prohibited from being placed in rubbish bins for collection by Council:

- (a) slops, liquid waste, harmful or offensive material;
- (b) dirt, dust, or other matter from any vacuum cleaner, ashes, hair or other similar matter or moist refuse, unless it has been securely wrapped in paper or some other impermeable cover or container to prevent its escape;
- (c) ashes or other like matter unless they have been mixed with water to form a consistency of a stiff paste before being wrapped and placed in the bin;
- (d) glass or other sharp objects unless they are properly contained or wrapped in such a way as to render them harmless and inoffensive;
- (e) oil, paint, solvents, acids or similar substance or any other substance which may damage the bin or reduce its strength or effectiveness;
- (f) e-waste (electronic waste), defined as any item with an electrical plug, cord or battery;

- (g) trade wastes of any kind; and
- (h) any other matter identified by Council by notice to occupiers of a property.

#### (4) Recycling and Hard Rubbish Collection

- (a) Where Council has notified occupiers of properties of a recycling or hard rubbish collection, or where an on-demand recycling or hard rubbish collection may operate, the material to be recycled and the hard rubbish to be collected must be left for collection in accordance with Council's instructions;
- (b) Any materials placed on nature strip for recyclable material or hard rubbish collection in accordance with any instruction determined by Council, must not be placed there earlier than 7 days prior to the nominated collection date and materials kept neatly so as to not cause a safety hazard; and
- (c) Any materials placed on nature strip for Recyclable Material or Hard Rubbish collection in accordance with any instruction determined by Council but not collected, regardless of the reason, must be removed no later than 7 days after the nominated collection date.

#### (5) Removal of Bins and any Spillage

Once the waste has been collected by Council, the empty bins must be returned to the property by the owner or occupier and any waste which has spilled onto the road, nature-strip or surrounding area must be removed by the owner or occupier responsible for the bin within twenty-four (24) hours of collection.

#### (6) Cleanliness

Bins must be maintained in a clean and tidy manner so as not to cause any health threat or be offensive to any person.

### **15. REMOVING WASTE WITHOUT AUTHORITY**

This section is intentionally blank.

### **16. BURNING OF MATERIALS**

- (1) When determining whether an offence has occurred in relation to the burning of offensive materials in the open and offensive emissions of smoke and odour from outdoor burning, Council or an Authorised Officer or a Delegated Officer must have regard to:
  - (a) Offensive materials that may not be burnt at any time include, but are not limited to, any substance containing any:
    - (i) manufactured chemical;
    - (ii) rubber or plastic;

- (iii) petroleum, oil or petroleum-based product;
  - (iv) paint or receptacle which contains or which contained paint;
  - (v) food waste, fish or other offensive or noxious matter; or
  - (vi) any other material an Authorised Officer or a Delegated Officer reasonably believes is an offensive material.
- (b) Offensive emissions of smoke and odour from outdoor burning do not include:
- (i) the normal odour of food cooking on a permanent or portable barbeque; or
  - (ii) any emission of offensive smoke or odour from burning materials that the person responsible immediately extinguishes or otherwise prevents from continuing to enter any neighbouring property, and which does not recur within 14 days.
- (2) When determining whether to grant a permit for burning materials in the open as required by clause 16(2), Council or its Authorised Officer or Delegated Officer must have regard to:
- (a) the location of the proposed outdoor burning in proximity to adjoining land;
  - (b) the land-use of the applicant's land and that of adjoining allotments where the burning is to take place;
  - (c) any alternative means of disposal;
  - (d) any adequate means of supervising the burning;
  - (e) any adequate means of controlling and extinguishing the spread of fire;
  - (f) the degree to which the material to be burnt is clean and dry or may produce offensive, toxic or unpleasant smells or smoke;
  - (g) the purpose stated for the burning and available alternative disposal methods;
  - (h) any relevant policies of the Environment Protection Authority; and
  - (i) any other matter an Authorised Officer or a Delegated Officer reasonably believes to be relevant to the circumstances of the application.

## **17. FIRE HAZARDS**

This section is intentionally blank.

## **18 CAMPING ON PRIVATE PROPERTY**

In determining whether to grant a permit to allow camping in an area which is private property and is not a licensed caravan park and has not been prescribed by Council to be a Camping Area as required by clause 18(1), Council or an Authorised Officer or a Delegated Officer must have regard to:-

- (1) the location of the land;
- (2) the land-use of the applicant's land and that of adjoining allotments;
- (3) the suitability of the land for camping;
- (4) the number of tents or other structures to be located on the land;
- (5) the length of time the tents and other structures will be erected on the land;
- (6) the availability of sanitary facilities to the land;
- (7) the likely damage to be caused; and
- (8) any other matter the Authorised Officer or Delegated Officer reasonably believes is relevant to the application.

## **19. AUDIBLE INTRUDER ALARMS**

The following are the operating guidelines for the purpose of clause 19 of the Local Law:

- (1) Any form of intruder alarm must not emit a noise audible beyond the boundary of the property on which it is installed unless the alarm is so constructed or regulated to ensure that:
  - (a) whenever a detection device is activated the Audible Intruder Alarm is automatically rendered inaudible beyond the boundary of the Urban Premises within five (5) minutes of being activated; and
  - (b) the Audible Intruder Alarm cannot reactivate following the operation of that single detection device until the alarm condition has been manually reset.
- (2) Despite Guideline (1) above, an Audible Intruder Alarm may operate for a further period of five (5) minutes following the cessation of the Alarm in accordance with Guideline (1)(a), provided the alarm is activated by a different detection device;
- (3) Where Council receives any complaint that an Audible Intruder Alarm operates on any Property in a way which does not comply with Guideline (1)(a) (whether modified by sub-clause (2) or not), it may investigate the complaint;

- (4) If the investigating officer confirms a failure to comply with Guideline (1), a Notice to Comply may be issued to the owner or occupier requiring that the Audible Intruder Alarm be:
  - (a) adjusted to comply with this Guideline;
  - (b) replaced with a complying Audible Intruder Alarm; or
  - (c) switched off or disconnected.
- (5) If an Authorised Officer or a Delegated Officer determines that urgent circumstances exist under Clause 89, such as a danger to public health from ongoing or uncontrolled repeated loud noise at night, that Officer may take urgent action to ensure that the Audible Intruder Alarm be:
  - (a) adjusted to comply with this Guideline; or
  - (b) switched off or disconnected.

## **20. SHIPPING CONTAINERS**

In determining whether to grant a permit for a shipping container on any road, Council Land or private property, an Authorised Officer or a Delegated Officer must follow these Guidelines:

- (1) The permit for a shipping container must be time limited and will be for the number of days or to the date entered on the permit;
- (2) If the Authorised Officer or Delegated Officer reasonably believes the shipping container will create a traffic hazard or obstruction, or other danger to the public, the applicant may be required to take out public liability insurance (minimum \$20 million) and prior to the issue of the permit or the placement of the container, and Council must be provided with a Certificate of Currency of Public Liability Insurance for the application;
- (3) The application or permit should inform the applicant of the safety requirements for the shipping container: that it is the permit holder's responsibility to ensure the container does not represent an unacceptable risk to the health and safety of the public. Any concerns the Authorised Officer or Delegated Officer may have about safety must be satisfactorily resolved prior to issuing the permit;
- (4) The applicant must not intend to use or use the shipping container as a permanent structure or for any purpose that requires planning or building permit approval;
- (5) Any damage to Council property caused by the placement or removal of the shipping container, including pavement, nature strip and services, is to be reinstated by the permit holder. If reinstatement is not completed, works will be undertaken by Council at the permit holder's expense;



- (6) The placement of a container must not obstruct motorists' vision or line of sight at intersections;
- (7) A container proposed to be placed on a road or Council Land may require a traffic management plan and suitable safety measures to ensure no hazard is posed to road users or the public;
- (8) Pits, valve covers and hydrants must not be obstructed and remain accessible; and
- (9) If the shipping container constitutes a traffic hazard or obstruction, the container must be mounted with yellow reflective tape on the corners of the containers, or lights which must be illuminated between sunset and sunrise and visible from a distance of 200 metres to prevent a hazard to the public.

## **DIVISION 2 - YOUR TREES**

### **21. TREE PROTECTION- GUIDELINES**

The provisions of clause 21 of the Local Law will be administered in accordance with these Guidelines.

In determining whether a tree is protected under the Local Law, whether a tree-protection offence has occurred and/or whether to issue a permit for removal or pruning of a tree, the Authorised Officer or Delegated Officer must have regard to the following matters:

- (1) When measuring whether or not the single or combined tree trunk circumference is 155 centimetres or more at one metre above ground level, the instrument used for measuring the trunk circumference or combined trunk circumference should be placed at a 90 degree angle to the growth direction of the trunk;
- (2) Any tree is exempt from protection if it is of a species which is a declared noxious weed species;
- (3) In an emergency, any tree that is an immediate threat to life and or property may be removed without a permit;
- (4) A permit for pruning is not required if the pruning is to be carried out by a qualified arborist, in accordance with Australian Standard No.4373. 2007 Pruning of Amenity Trees, who certifies his or her work and provides photographs before and after the work;

#### **Permit Application Considerations:**

**Note: An objective of Council's Urban Forest Strategy seeks to ensure we maintain our existing canopy cover across the Bayside municipality and avoid further decline.**

When assessing a permit application to remove, cut, trim, lop or prune a protected tree or significant tree, the following must be taken into consideration:

- (5) Whether a building permit has been issued under the Building Control Act

1993 and the permitted building(s) and/or construction works:

- (a) are located in such a position that the subject tree is within the envelope of the permitted buildings or works;
  - (b) encroach on the tree protection zone of an existing tree by more than 40%; or
  - (c) encroach on the structural root zone of an existing tree.
- (6) Verifiable evidence of structural damage to a building, services or infrastructure which can only be overcome by implementing a remedy that is unreasonable or greatly disproportionate to the amenity value of the tree;
- (7) Tree risk assessment using an industry standard tree risk assessment methodology undertaken by a minimum AQF Level 5 arborist or equivalent, who is formally trained in a tree risk assessment method and holds a current qualification or licence from that training;
- (8) The retention value of the tree as defined in Appendix 5 of Council's Landscape Guidelines;
- (9) The useful life expectancy of the tree as defined in Appendix 5 of Council's Landscape Guidelines;
- (10) The habitat value of the tree;
- (11) Evidence from Council staff indicating the tree has a detrimental impact on the surrounding environment or public health;
- (12) Special circumstances including medical conditions, disability, access safety or financial hardship, where there is no other reasonably practicable way to manage issues directly related to the tree; following referral to the Manager Community Care or responsible delegate to determine if assistance or supports are available, reasonable and proportionate.
- (13) Any permit granted may contain a condition stipulating that upon removal of a tree, one or more new trees, which may also include suitable middle-story or under-story planting where appropriate, must be planted and maintained to Council's satisfaction in accordance with Council's Landscape Guidelines and area Precinct Plan, or as otherwise required by the permit.

## **22. TREES PLANTS NOT TO OBSTRUCT OR OBSCURE**

In determining whether to issue a permit for overhanging trees, or whether there has been an offence related to overhanging trees under clause 22 of the Local Law, an Authorised Officer or a Delegated Officer must have regard to whether the overhanging trees:

- (1) have been pruned to comply with the following requirements:

Canopies shall be lifted to provide the following clearances:

- Footpaths 2.4 metres to lowest foliage or limb;
- Laneways 4.5 metres to lowest foliage or limb;

- (2) obstruct the view between drivers of vehicles at an intersection;
- (3) obstruct the view between drivers of vehicles and pedestrians where they come close to each other;
- (4) obscure a Traffic Control Device from the driver of an approaching vehicle or a pedestrian;
- (5) obscure street lighting;
- (6) obstruct vehicular traffic; and
- (7) otherwise constitute a danger to vehicles or pedestrians or compromises the safe and convenient use of a road or laneway.

The requirements for a clear view at intersections, pedestrian/vehicle conflict areas and traffic control devices are as follows:

- (a) The view between vehicles at intersections:

Plants, fences and other obstructions must, wherever practicable, be kept to a maximum height of one (1) metre in the following areas:

- (i) at signalised intersections

*(A triangular area between the corner of each property at the intersection and a line drawn between points 3m back from the intersection.);*

- (ii) at major/minor intersections and roundabouts

*(A triangular area in both directions from a minor road, or to the right only at a roundabout);*

- (b) The view between vehicles and pedestrians:
  - (i) Where pedestrians are likely to cross a road or be in close proximity to a road, plants must be no higher than 600mm above the ground for a distance of two (2) metres from the road, except that trees with narrow, clean trunks may be planted (subject to any other requirements for safety and visibility), so long as their foliage is no lower than 2.4 metres above the ground.

### **23. TREES OR PLANTS CAUSING DAMAGE TO A MUNICIPAL PLACE**

This section is intentionally blank.

### **24. VEGETATION ON NATURE STRIPS**

The following set out the guidelines which a person must comply with as required by clause 24 of the Local Law:

- (1) Planting is limited to drought tolerant indigenous ground covers, shrubs and grasses;
- (2) The planting zone must be set back at least 500mm from the back of kerb and kept clear to allow for people to enter and exit their vehicles and properties safely;
- (3) Plantings on corner blocks within 9 metres of an intersection are limited to ground cover plants only to ensure a clear line of sight for motorists;
- (4) Adequate space is provided for placing rubbish and recycling bins for collection;
- (5) A minimum of 1.5 metres from the property line is kept clear to allow for pedestrian access, mail, paper and other deliveries;
- (6) Plantings are kept pruned to a maximum height of 600mm at all times;
- (7) Only permitted gravels and mulches can be used including:
  - a) Fine gravel mulches such as compacted washed granitic sand or similar, or
  - b) Pine or hardwood chips 12mm to 25mm in size;
- (8) Where a gravel or mulch is used on the nature strip:
  - a) it must remain on the nature strip and not allowed to spill onto the footpath, driveways or in the kerb and channel;
  - b) levels must not extend above the level of the footpath or kerb; and
  - c) it must be maintained in a weed free condition; and

(9) Items not permitted on the nature strip:

- a) Synthetic turf;
- b) Letterboxes;
- c) Irrigation;
- d) Rocks; or
- e) Any Items that obstruct the safe flow and vision of pedestrians and traffic or pose a hazard to the public.

### **DIVISION 3 - YOUR PETS**

#### **25. KEEPING ANIMALS**

In determining whether to grant a permit for the keeping of animals where the number exceeds that determined by Council as set out clause 25 (1), Council or an Authorised Officer or a Delegated Officer must have regard to:

- (1) whether a Planning Scheme permit may be required, such as for boarding or breeding of animals;
- (2) the land-use of the applicant's land and that of adjoining allotments;
- (3) the proximity to adjoining properties;
- (4) the amenity of the area;
- (5) the type and additional numbers of animals to be kept;
- (6) the likely effects on adjoining owners;
- (7) the adequacy of animal accommodation; and
- (8) any other matter the Authorised Officer or Delegated Officer reasonably believes is relevant to the application.

#### **26. ANIMAL ACCOMMODATION**

In determining what is reasonable accommodation for kept animals and whether such accommodation is adequately maintained as required by clause 26 of the Local Law, an Authorised Officer or a Delegated Officer must have regard to:

- (1) whether a Planning Scheme permit may be required, such as for boarding or breeding of animals;
- (2) the type of animals to be kept and whether those animals are adequately secured within the property boundary;
- (3) the height of the accommodation;

- (4) the location of the accommodation having regard to the amenity of the area;
- (5) the size of the accommodation in terms of its adequacy to house the proposed number and type of animals;
- (6) the security of the accommodation in terms of the animals to be housed in it;
- (7) whether all excreta and other waste are removed and/or treated as often as necessary so that they does not cause a nuisance or offensive condition;
- (8) whether all excreta and other waste are stored in a fly and vermin proof receptacle until removed from the premises or otherwise disposed of to the satisfaction of the Municipal Environmental Health Officer;
- (9) whether the ground surrounding the accommodation is drained to the satisfaction of the Municipal Environmental Health Officer;
- (10) whether the area of land within three (3) metres of the area or structure in which the animal is kept free from dry grass, weeds, refuse, rubbish or other material capable of harbouring vermin;
- (11) whether all food, grain or chaff is kept in vermin proof receptacles;
- (12) whether the area where animals are kept is always thoroughly cleaned and maintained in a clean and sanitary manner to the satisfaction of the Municipal Environmental Health Officer; and
- (13) any other matter/issue pertaining to the accommodation that the Authorised Officer or Delegated Officer reasonably believes is relevant.

## **27. ANIMAL EXCREMENT AND CONDUCT**

This section is intentionally blank.

## **28. WASP NEST(S) TO BE REMOVED**

This section is intentionally blank.

## **29. FEEDING OF BIRDS ON PRIVATE PROPERTY**

This section is intentionally blank.

## **PART 3 - VEHICLES AND ROADS**

### **30. PLACING BULK RUBBISH CONTAINERS**

In determining whether to grant a permit for the placement of a bulk rubbish container on a road as required by clause 30 of the Local Law, an Authorised Officer or a Delegated Officer must have regard to:

- (1) whether the placement will obstruct the passage of vehicles and pedestrians, obscure the view of motorists or present a physical hazard;

- (2) whether the placement will contravene any traffic control signs;
- (3) protection of any Council assets;
- (4) any requirements under the provisions of the *road Management Act 2004* and any requirements or provisions in the current *Code of Practice for Placement of Waste Bins on roadsides (Vic roads Publication No. 00623)* 2001 as amended from time to time;
- (5) the current (and historical) status of the applicants' trading account with Council;
- (6) whether a copy of a valid insurance certificate of currency has been provided to Council;
- (7) whether an indemnity/guarantee has been provided to Council; and
- (8) any other matter Authorised Officer or Delegated Officer reasonably believes is relevant to the application.

Note: See also the following clauses in the Local Law:

- Clause 48, Trade or Commercial Waste Bins and Waste Hoppers.
- Clause 64, Obstructions on Council Land.

### **31. MOTOR BIKES AND MOTORISED RECREATIONAL VEHICLES**

In determining whether to issue a permit for the use of for the use of a motor bike or motorised recreational vehicle under the Local Law on Council Land, an Authorised Officer or a Delegated Officer must have regard to:

- (1) the location of Council Land or private property where the vehicle is to be used;
- (2) the land-use of the applicant's land and that of adjoining allotments within a 500 metre radius;
- (3) the suitability of the land for use by a motor bikes or motorised recreational vehicles (as the case may be);
- (4) the number of vehicles for which the permit is required;
- (5) the days, times and hours such vehicles are to be used;
- (6) the likely effect on the amenity of the area including noise impacts;
- (7) whether owners and occupiers of neighbouring properties should be asked to make comment;
- (8) the likely damage which may be caused to Council Land or any Council Land (as the case may be); and
- (9) any other matter the Authorised Officer or Delegated Officer reasonably believes is relevant to the application.

### **32. REPAIR OF VEHICLES IS PROHIBITED**

This section is intentionally blank.

### **33. DERELICT, ABANDONED AND UNREGISTERED VEHICLES**

In determining whether a vehicle is abandoned because it is unroadworthy, Council or an Authorised Officer or a Delegated Officer must not conclude that a vehicle is unroadworthy unless an officer or employee of the Department of Transport acting in the course of their official duties or a member of Victoria Police has advised that the vehicle is unroadworthy.

In determining whether to grant a permit to leave any derelict, abandoned or unregistered vehicle on any road or Council Land, whether temporarily or permanently, Council or an Authorised Officer or a Delegated Officer must have regard to:

- (1) any exceptional circumstances;
- (2) whether the road is an Arterial road;
- (3) the relevant parking restrictions;
- (4) whether an unregistered vehicle has an unregistered vehicle permit issued to it by Department of Transport and it is in the process of being prepared for registration;
- (5) whether the vehicle has significant damage indicating it may be unroadworthy;
- (6) the location the vehicle is to be left;
- (7) the suitability of allowing the vehicle to be left on the road or Council Land including likely impacts on the amenity and safety of the area, other road users and parking;
- (8) the duration of time sought to leave the vehicle on the road or Council Land;
- (9) the likely damage which may be caused to the road or Council Land (as the case may be); and
- (10) any other matter the Authorised Officer or Delegated Officer reasonably believes is relevant to the application.

**NOTE: Council will not support an application for a permit to leave any derelict, abandoned or unregistered vehicle on any road or Council Land unless in exceptional circumstances.**



### **34. HEAVY OR LONG VEHICLES: PARKING ON A ROAD OR ON PRIVATE PROPERTY OR COUNCIL LAND**

In determining whether to grant a permit for the parking or storage of a heavy vehicle or long vehicle for more than one (1) hour on any private property, Council Land or road for which Council is the Responsible road Authority, Council or an Authorised Officer or a Delegated Officer must have regard to:

- (1) whether the road is a declared Arterial road;
- (2) whether the road carries less than 5,000 vehicles per day;
- (3) the width of the road and clearance distance for passing traffic;
- (4) whether the vehicle will obstruct the passage of vehicles and pedestrians, obscure the view of motorists or present a physical hazard;
- (5) whether the parking will contravene any traffic control devices;
- (6) protection of any Council assets;
- (7) any requirements under the provisions of the *Road Management Act 2004*;
- (8) whether the vehicle would be clearly visible to approaching motorists at a safe distance, given the speed and nature of traffic if left during hours of darkness;
- (9) whether the requirements of regulations regarding vehicle lighting will be complied with; and
- (10) any other matter the Authorised Officer or Delegated Officer reasonably believes is relevant to the circumstances of the application.

### **35. STORING VEHICLES**

In determining whether to grant a permit to keep or store any heavy vehicle or long vehicle upon any road or on any other property (whether private property or Council Land) as required by clause 35, an Authorised Officer or a Delegated Officer must have regard to:

- (1) whether the vehicle is derelict, abandoned or unregistered;
- (2) any exceptional circumstances;
- (3) the impacts on amenity, safety and parking in the area;
- (4) the proximity to adjoining properties;
- (5) the likely effect on adjoining owners or occupiers; and
- (6) any other matter an Authorised Officer or a Delegated Officer reasonably believes is relevant to the application.

**Note: Council seeks to ensure parking access remains available and roads are safe therefore storing any heavy vehicle or long vehicle upon any road will only be considered in exceptional circumstances.**

In administering clause 35(2) of the Local Law, an Authorised Officer or a Delegated Officer is entitled to regard a boat, trailer or caravan as having continued to occupy a road or Council Land and to be stored there notwithstanding that the boat, trailer or caravan has been moved a short distance along the same road or Council Land in an attempt to demonstrate that the boat, trailer or caravan has been used and is not being stored.

In determining whether to grant a permit to occupy the road or Council Land under clause 35(2), an Authorised Officer or a Delegated Officer must consider any exceptional circumstances, the duration of time proposed, the impact on amenity, safety and parking in the relevant area, the likely effect on occupiers of adjoining properties and any other matter that the Authorised Officer or a Delegated Officer reasonably believes is relevant to the application.

**Note: Council seeks to ensure boats, trailers or caravans are not stored for long periods on roads or Council Land unless in exceptional circumstances.**

Note: derelict, abandoned or unregistered vehicles will be subject to the considerations of clause 33, *Derelict, Abandoned and Unregistered vehicles*

### **36. HEAVY VEHICLES: PERMITS FOR USE ON RESTRICTED USE ROADS**

In determining whether to grant a permit to use a road contrary to any sign erected on it, Council or an Authorised Officer or a Delegated Officer must have regard to:

- (1) any exceptional circumstances;
- (2) the amount of the damage likely to be caused to the road by the vehicle in respect of which the permit is sought;
- (3) the type and weight of vehicle;
- (4) the goods to be transported and the weight of those goods;
- (5) alternative roads which are available;
- (6) the necessity to impose speed limits; and
- (7) any other matter the Authorised Officer or Delegated Officer reasonably believes is relevant to the circumstances of the application.

### **37. BIKE SHARE SCHEME**

In determining whether to grant a person who owns or operates a bike share scheme a permit to allow any bicycle owned or operated by that person to be within the municipal district, Council or an Authorised Officer or a Delegated Officer must have regard to:

- (1) whether the service is a docked or dockless service;
- (2) the ability of that person to locate and manage any bikes not docked to ensure no adverse safety, amenity or environmental impacts;
- (3) the area of the municipality to which the permit applies;
- (4) the payment of a deposit or bond against any damage to Council Land or assets;
- (5) public liability insurance at a minimum of \$20 million;
- (6) the provision of an indemnity from the permit holder indemnifying Council in respect of any injury to any person or any damage to any property which may occur in connection with the use of the public place by the permit holder; and
- (7) any other matter the Authorised Officer or Delegated Officer reasonably believes is relevant to the circumstances of the application.

### **38. E-SCOOTER SHARE SCHEME**

In determining whether to grant a person who owns or operates an e-scooter share scheme a permit to allow any e-scooter owned or operated by that person to be within the municipal district, Council or an Authorised Officer or a Delegated Officer must have regard to:

- (1) whether the service is a docked or dockless service;
- (2) the ability of that person to locate and manage any e-scooter not docked to ensure no adverse safety, amenity or environmental impacts;
- (3) the area of the municipality to which the permit applies;
- (4) the payment of a deposit or bond against any damage to Council Land or assets;
- (5) public liability insurance at a minimum of \$20 million;
- (6) the provision of an indemnity from the permit holder indemnifying Council in respect of any injury to any person or any damage to any property which may occur in connection with the use of the public place by the permit holder; and
- (7) any other matter the Authorised Officer or Delegated Officer reasonably believes is relevant to the circumstances of the application.

### **39. STREET PARTIES & STREET FESTIVALS: PERMITS**

In determining whether to grant a permit for a street party, street festival or procession, Council or an Authorised Officer or a Delegated Officer must have regard to:

- (1) whether the street party, street festival or procession is planned for a declared Arterial road or any other main thoroughfare under the management and control of Department of Transport, requiring prior permission by the Chief Commissioner of Victoria Police and Department of Transport, and whether their requirements have been met including an appropriate traffic detour signing scheme;
- (2) whether the road can be closed to vehicular traffic, or partly closed with safe and effective separation of vehicular traffic and street party, street festival or procession patrons and equipment for the duration of the event;
- (3) whether all owners or occupiers of all properties with any immediate vehicular access via the section of road to be closed have been advised by letter and given seven (7) days to comment or object or other arrangements to Council's satisfaction have been put in place to alert relevant owners and occupiers of properties;
- (4) whether a person on behalf of the applicant has been nominated to erect and remove the barriers which close the road at locations and times specified by Council or the Authorised Officer or Delegated Officer;
- (5) whether the footpath on at least one side of the road can be kept clear of obstructions; and
- (6) any other matter the Authorised Officer or Delegated Officer reasonably believes is relevant to the application.

## **PART 4- BUSINESS AND ASSET PROTECTION**

### **DIVISION 1 - BUSINESS**

#### **40. ROADSIDE TRADING OR PERFORMING**

In determining whether to grant a permit to allow trading or performing from a road or to a person on a road, an Authorised Officer or a Delegated Officer must have regard to:

- (1) whether the safety of road users or the passage of vehicles will be affected by the placement or performance;
- (2) whether permits required by *Public Health and Wellbeing Act 2008*, *Food Act 1984* or any other legislation have been obtained;
- (3) whether the activity will disturb, annoy or disrupt adjacent property owners or occupiers;

- (4) whether the activity will be detrimental to the amenity of the area;
- (5) the nature and duration of any performance and whether it should be time limited;
- (6) whether an alternative performance location can be identified to reduce any annoyance or disruption to property owners or occupiers or other persons lawfully using the area;
- (7) whether audience attracted by a performance may cause traffic, pedestrian or trader disruption;
- (8) whether other performers will be unfairly impacted or excluded by the location or duration of any permit;
- (9) whether appropriate arrangements can be made for wastewater disposal, litter and garbage; lighting; and advertising signs;
- (10) whether the consent of Department of Transport has been obtained where the road is an arterial or Department of Transport controlled road;
- (11) whether any indemnity/guarantee has been provided to Council;
- (12) whether the activity will be detrimental to local businesses in the vicinity; and
- (13) any other matter the Authorised Officer or Delegated Officer reasonably believes is relevant to the application.

#### **41. REGULATION OF TRADING SITES**

This section is intentionally blank.

#### **42. DISPLAYING GOODS FOR SALE**

The provisions of clause 42 of the Local Law will be administered in accordance with the provisions of Council's *Footpath Trading Policy* incorporated into these guidelines and attached as Attachment 2. That policy sets out requirements and considerations for the purposes of clause 42.

#### **43. USING COUNCIL LAND FOR OUTDOOR EATING FACILITIES**

The provisions of clause 43 of the Local Law will be administered in accordance with the provisions of Council's *Footpath Trading Policy* incorporated into these guidelines and attached as Attachment 2. That policy sets out requirements and considerations for the purposes of clause 43.

#### **44. REMOVING THE FACILITY**

This section is intentionally blank.

#### **45. ADVERTISING SIGNS: ERECTING OR PLACING – GUIDELINES (INCLUDING MOBILE BILLBOARDS)**

The provisions of clause 45 of the Local Law will be administered in accordance with the provisions of Council's *Footpath Trading Policy* incorporated into these guidelines and attached as Attachment 2. That policy sets out requirements and considerations for the purposes of clause 45.

The erection or placing of advertising signs on the following parts of roads is not permitted:

- (1) On any road or Council Land that is not directly adjacent to the business it is promoting;
- (2) Adjacent to any property line on a footpath in the area referred to as the Pedestrian Zone;
- (3) On any vehicle parked or left standing on a road; or
- (4) In any other location which, in the reasonable opinion of an Authorised Officer or a Delegated Officer, is likely to obstruct motorists' lines of sight or cause danger to any road user, pedestrian or visually disabled person.

In determining whether to grant a permit to allow advertising signs to be placed on a road as required by clause 45(1), the Authorised Officer or Delegated Officer must have regard to:

- (1) the size of the sign;
- (2) any other signs for the applicant's premises;
- (3) whether the safety of road users or the passage of vehicles will be affected by the sign;
- (4) whether the consent of Department of Transport has been obtained where the road is an arterial or Department of Transport controlled road;
- (5) whether the activity will be detrimental to the amenity of the area;
- (6) whether any indemnity/guarantee has been provided to Council;
- (7) whether the activity will be detrimental to local businesses in the vicinity;
- (8) whether the sign is to advertise a non-commercial local educational, cultural, political, religious, social or recreational event on a municipal reserve in which case it is may be subject to a use of municipal reserve permit and the application should be referred accordingly; and
- (9) any other matter the Authorised Officer or Delegated Officer reasonably believes is relevant to the application.

In determining whether to grant a permit to display for sale any vehicle, trailer, boat or other equipment on any road or Council Land as required by clause 45(3), the Authorised Officer or Delegated Officer must have regard to:

- (1) whether the safety of road users or the passage of vehicles will be affected;
- (2) whether the consent of Department of Transport has been obtained where the road is an arterial or Department of Transport controlled road;
- (3) whether the activity will be detrimental to the amenity of the area;
- (4) whether the activity may pose a risk of damage to Council Land;
- (5) whether the activity will be detrimental to local businesses in the vicinity;
- (6) whether any indemnity/guarantee has been provided to Council; and
- (7) any other matter the Authorised Officer or Delegated Officer reasonably believes is relevant to the application.

#### **46. SHOPPING TROLLEYS**

The following is the process to be followed by an Authorised Officer or a Delegated Officer where a shopping trolley is left on a road or Council Land in breach of clause 46 of the Local Law:

- (1) Where a shopping trolley has been left on a road or Council Land, the proprietor of the premises identified on the shopping trolley shall be notified and given a reasonable opportunity to recover the trolley, unless the shopping trolley or its location poses a danger to the users of the road or Council Land;
- (2) If, following notification, the proprietor does not recover the shopping trolley in question within a reasonable period, an Authorised Officer or a Delegated Officer may impound that shopping trolley and issue an infringement to the proprietor of the business; and
- (3) Where a shopping trolley that has been left on a road or Council Land contains the personal belongings of a person who is homeless, an authorised officer must take all reasonable steps to ensure that those belongings are removed for safe keeping and returned to the owner.

#### **47. COLLECTIONS**

In determining whether to grant a permit to allow a collection under clause 47 of the Local Law, an Authorised Officer or a Delegated Officer must have regard to:

- (1) the limited number of collection permits to be granted (one per month per location or postcode area, whether door-to-door, highway, or other) and a preference to be given to volunteer collectors for charitable organisations benefiting the Bayside community;

- (2) whether the organisation has already received a permit in any particular year for the location or area sought;
- (3) the times and days it is proposed to collect;
- (4) the land-use of the relevant land on which the collection would take place and that of adjoining allotments;
- (5) the matter or thing to be collected and/or distributed;
- (6) the age of the participants and the capacity for them to be supervised;
- (7) whether an indemnity/guarantee has been provided to Council;
- (8) the roads or areas in which the collections would take place;
- (9) the impact on Traffic and safety of pedestrians;
- (10) any view of the Victoria Police or Department of Transport (where relevant) concerning the proposed location or conduct of any collection, especially regarding a highway collection;
- (11) whether the following mandatory requirements for highway collections can be satisfied:
  - (a) the nominated intersection must be controlled by traffic signals;
  - (b) highway collections should be limited to weekends or public holidays;
  - (c) no highway collection shall take place between sunset and sunrise;
  - (d) no highway collections shall take place at an intersection located in a speed zone greater than 70 kilometres per hour;
  - (e) no highway collection shall commence or continue during inclement weather or abnormal atmospheric conditions;
  - (f) collectors shall only enter upon the carriageway:
    - i. when a red traffic control signal is displayed facing vehicles from which they wish to solicit for contributions;
    - ii. shall immediately leave the carriageway and remain on the reservation; or
    - iii. footpath when that traffic control signal changes from red; and
- (12) any other matter the Authorised Officer or Delegated Officer reasonably believes is relevant to the application.



## 48. TRADE WASTE BINS AND WASTE HOPPERS

The following set out the guidelines which an occupier must comply with under clause 48 of the Local Law:

### (1) Construction of Bins

Waste hoppers or bins used for the collection and storage of trade waste must:

- (a) be constructed of approved impervious material to the satisfaction of the Municipal Environmental Health Officer to prevent leakage, absorption or accumulation of any refuse or rubbish that may be deposited in it;
- (b) be water-tight, fly and vermin proof;
- (c) if its capacity exceeds 500 litres, contain a removable drainage plug for the purpose of cleaning; and
- (d) be fitted with fly and vermin proof lid with overlapping flanges which must be kept continuously closed; except when being used for the immediate deposit of waste material.

### (2) Emptying of Trade Waste Bins

Waste hoppers or bins used for the collection and storage of trade waste must be emptied at least weekly or more regularly if the contents become offensive;

### (3) Cleanliness and Storage of Bins

The occupier of private property must ensure that, in relation to bin used for the collection and storage of trade waste:

- (a) the bin is stored and maintained in a clean, sanitary and inoffensive condition and must clean and always keep clean any footway, pavement or ground adjoining the storage area, to the satisfaction of the Municipal Environmental Health Officer;
- (b) the surface upon which the bin is stored is impervious, and graded and drained to the sewer or an approved outlet with such silt traps or other treatment devices as required by the Municipal Environmental Health Officer;
- (c) the storage site is supplied with a tap connection and hose of a size approved by the Municipal Environmental Health Officer to the satisfaction of the Municipal Environmental Health Officer;
- (d) the bin is screened in such a way and with such material as approved by the Municipal Environmental Health Officer;

- (e) the bin is adequately fenced or constructed in such a way to deny access to the public; and the bin is stored and maintained in a clean and sanitary condition on the land to which it relates.

#### (4) Notice of Materials to be Deposited

Every waste hopper or recycling bin used for the collection of waste or recyclable material must display a notice indicating the type of waste or material which is permitted and stating that it is an offence to deposit any material contrary to the notice.

### **DIVISION 2 – ASSET PROTECTION**

#### **49. DRAINAGE TAPPING**

In distinguishing between regular rainwater and groundwater being discharged into Council drains, water that enters as a result of rain for a period of 24 hours after rainfall is considered stormwater.

In determining whether to grant a permit to allow a person to tap into any drain under the control of Council as required by clause 49(1), an Authorised Officer or a Delegated Officer must have regard to the following requirements:

- (1) the application for a drainage tapping must include a written request, together with plans approved by a building surveyor;
- (2) the applicant must pay the permit fee in advance of the issuing of the permit;
- (3) the Authorised Officer or Delegated Officer must issue detailed permit conditions regarding excavations, temporary seals, road opening and road opening fee procedures, safety signage for traffic and pedestrians, site cleanliness, final permanent repairs, manner of tappings, and restoration of nature strips;
- (4) a drainage tapping to a legal point of discharge is for the purpose of rainwater only, any other discharge intended must be revealed on the application and is subject to approval by the Authorised Officer or Delegated Officer. Additional information regarding the source, quality, chemical and biological content, quantity and frequency of any other discharge should be given; and
- (5) in considering whether to grant a drainage tapping permit and/or the appropriate conditions applicable to that permit, the Authorised Officer or Delegated Officer may consider any other matter he or she reasonably believes is relevant to the application.

In determining whether to grant a permit to allow a person to discharge groundwater into any drain under the control of Council or into or onto any road or Council Land as required clause 49(2), an Authorised Officer or a Delegated Officer must have regard to the following requirements:

- (1) the application must include a written request, together with plans approved by a building surveyor;

- (2) the applicant must pay the permit fee in advance of the issuing of the permit; and
- (3) the Authorised Officer or Delegated Officer must issue detailed permit conditions regarding excavations, temporary seals, road opening and road opening fee procedures, safety signage for traffic and pedestrians, site cleanliness, final permanent repairs, manner of tapplings, and restoration of nature strips.

The Authorised Officer or Delegated Officer must, in considering whether to grant such a permit, have regard to:

- (1) Council's *Subterranean Water Guidelines*;
- (2) whether discharge of groundwater into the environment is a last resort;
- (3) whether groundwater is treated prior to any discharge to ensure the environment is not adversely affected;
- (4) any additional information regarding the source, quality, chemical and biological content, quantity and frequency of any other discharge; and
- (5) any other matter he or she reasonably believes is relevant to the application.

#### **50. A VEHICLE CROSSING IS REQUIRED**

This section is intentionally blank.

#### **51. CONSTRUCTING VEHICLE CROSSING**

This section is intentionally blank.

#### **52. REMOVING REDUNDANT VEHICLE CROSSINGS**

In determining if a vehicle crossing is redundant and Authorised Officer or Delegated Officer will have regard to whether the development of the private property prevents vehicle access onto the land from the vehicle crossing.

#### **53. TEMPORARY VEHICLE CROSSINGS**

This section is intentionally blank.

#### **54. ASSET PROTECTION GENERALLY**

Protection Works required by an Asset Protection permit will apply to:

- (1) All trees located on Council Land within 4 metres of a building will require protective tree barriers, unless reasonable grounds for exclusion can be shown;

- (2) Other additional trees beyond 4 metres from the building site may also require protective tree barriers if in the reasonable opinion of an Authorised Officer or a Delegated Officer they are at genuine risk of damage from traffic movements or other relevant circumstances related to the building works;
- (3) All protective barriers for trees must be properly constructed and installed at the cost of a person in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, as it is amended from time to time;
- (4) For the purposes of this Guideline, a protective barrier may not be required in respect of any tree if Council or an Authorised Officer or a Delegated Officer has advised in writing that a barrier is not required for that tree;
- (5) Protection works will include fencing of the private property of the building works in a manner which:
  - (a) restricts access from Council Land by the general public to the private property at which the building works are being undertaken;
  - (b) retains any refuse and debris from the building works being undertaken at the private property within the boundaries of the private property; and
  - (c) is constructed and installed in accordance with any written direction of Council or an Authorised Officer or a Delegated Officer.
- (6) Any other Council asset at risk of damage from the building works and related activity around the building site.

When considering whether an Asset Protection permit should require the payment of a security bond or an alternative form of security such as a bank guarantee, an Authorised Officer or a Delegated Officer will consider the following:

- (1) the nature of the proposed building works;
- (2) the duration of the building works;
- (3) the condition of the roads, land and assets surrounding the building site;
- (4) an appropriate sum for the bond given the potential risk and likely costs to repair damaged assets; and
- (5) any other relevant matter the officer reasonably believes is relevant.

When considering the application of (or a refund of) a security bond or guarantee, an Authorised Officer or a Delegated Officer will consider the following:

- (1) The findings of any inspection made by an Authorised Officer or a Delegated Officer of the roads, Council Land and other Council assets in the vicinity of the private property after the owner or occupier of the private property advised Council in writing that the building works were completed; If in the opinion of the Authorised Officer or Delegated Officer, the building works or activities associated with the building works have caused:
  - (a) damage to roads, Council Land or other Council assets; or
  - (b) deposited residue, dirt or mud on roads, Council Land, drains or other Council assets;the Authorised Officer or Delegated Officer may serve a Notice to Comply on a person requiring a person to repair the damage or remove the material; and
- (2) If the person on whom the Notice to Comply is served fails to repair the damage or remove the material as required by the Notice to Comply, an Authorised Officer or a Delegated Officer may apply the guarantee or bond towards the cost of repairing the damage or removing the material.

## **55. MANAGING AMENITY ON BUILDING SITES**

Unless approved otherwise by a Construction Management Plan forming part of a planning permit, the builder of a building site must comply with the following measures as required by clause 55(1) of the Local Law:

### (1) Fencing

The private property must be fenced in a manner which:

- (a) restricts access from Council Land by the general public to the private property at which the building works are being undertaken;
- (b) retains any refuse and debris from the building works being undertaken at the private property within the boundaries of the private property; and
- (c) is constructed and installed in accordance with any written direction of Council or an Authorised Officer or a Delegated Officer.

### (2) Site Identification

A private property must display site information including the following information:

- (a) the name of the person carrying out the building works;
- (b) the street and lot number relevant to the private property; and
- (c) a 24-hour emergency contact telephone number or numbers of the person carrying out the building works;

The information must be displayed in a manner approved by an Authorised Officer or a Delegated Officer, located close to the site entry and site boundary, clearly legible from within a vehicle on the adjoining roadway, and in accordance with any planning or building requirements.

(3) Stormwater Management

Stormwater from the site:

- (a) is to be connected to the stormwater system as soon as possible; and
- (b) managed to ensure contamination of run-off by chemicals, sediments, animal wastes or gross pollutants does not cause stormwater pollution.

(4) Protection of the environment and vegetation

The builder of a building site must ensure:

- (a) Council trees are protected in accordance with Council's *Guideline for Working Near Council Trees*;
- (b) the preservation of grass and vegetation around the building site;
- (c) the minimisation of work on slopes, along streams and environmentally sensitive areas;
- (d) the minimisation of soil exposure and revegetation of Council Land as soon as practicable;
- (e) excess soil is removed from the building site as soon as practicable;
- (f) roads are maintained free of dust, mud and debris;
- (g) no building clean-up, wash down, run off from pressure cleaning brick, tile or pavement cutting or other wastes are discharged offsite or allowed to enter the stormwater system; and
- (h) stormwater entry pits are protected to ensure no stormwater pollution from the building site enters Council's stormwater drains.

(5) Site access and access roads

The builder of a building site must ensure:

- (a) the minimisation of dust or mud from the building site onto road surfaces; and
- (b) the prompt cleaning of any materials, dust or mud from the building site on surrounding footpaths and roads.

(6) Stockpiles and batters

The builder of a building site must ensure:

- (a) stockpiles must not be placed on Council Land and roads unless a Local Law permit has been obtained; and
- (b) permitted stockpiles must be positioned away from drainage flows.

(7) Noise Control

The builder of a building site must ensure:

- (a) building site operating hours must be in accordance with the Local Law prescribed times unless a Local Law permit has been granted to work outside of the prescribed hours or approved otherwise as part of a Construction Management Plan approved as part of a planning permit applying to the private property for the building work;
- (b) deliveries to the site only occur during building site operating hours prescribed in the Local Law unless a permit has been granted to work outside of the prescribed hours;
- (c) equipment used should be of the lowest possible noise rating and incorporate best practice silencing technology wherever possible; and
- (d) trucks must not idle in areas close to residences.

(8) Waste Management

The builder of a building site must ensure:

- (a) litter from the building site is contained in a container kept on the building site unless a Local Law permit has been obtained for alternative waste disposal;
- (b) spills, paint residues or other liquid wastes are cleaned immediately and prevented from entering the stormwater system or soaking into the ground;
- (c) the provision of a dedicated chemical storage area on site;
- (d) recycling wherever possible and ensuring only waste which is not recyclable is sent to landfills; and
- (e) concrete waste from concrete deliveries for the site is contained on site or on the delivery truck.

(9) Outside the Site

The builder of a building site must ensure:

- (a) no concrete or concrete wash-down water or residue enters or remains on Council Land, roads or enters Council's drains;

- (b) no litter, contaminated run-off, chemicals, sediments, animal wastes or gross pollutants enter Council drains;
- (c) Council Land and any road adjacent to the building site remains safe for the public;
- (d) roads, footpaths and gutters around the site are inspected and cleaning daily;
- (e) Council is immediately notified of any damage to Council Land or assets;
- (f) the minimisation of dust from the site;
- (g) all equipment and material used in association with the building works is kept on the building site unless a permit under the Local Law has been obtained;
- (h) trenches are reinstated as soon after pipes or cables are laid;
- (i) building works do not undermine Council Land; and
- (j) building works do not encroach onto Council Land or vested easements unless otherwise consented to by the relevant authority.

## 56. OCCUPATION OF ROADS

In determining whether to grant a permit for occupation of a road as required clause 56(1), an Authorised Officer or a Delegated Officer must have regard to:

- (1) the suitability of the proposed occupation;
- (2) whether the occupation is required as part of a building site's public protection requirements under regulation 116 of the *Building Regulations 2018*;
- (3) any requirements under the provisions of the *Road Management Act 2004*;
- (4) whether the road is a declared Arterial road;
- (5) any relevant approvals from external agencies or authorities;
- (6) whether a satisfactory Traffic Management Plan in accordance with *AS1742.3 Manual for Uniform Traffic Control Devices, Part 3, Traffic Control Devices for Works on roads*, has been supplied with the application;
- (7) whether an Asset Protection permit has been issued or should be required;
- (8) whether any Council assets require protection or removal;



- (9) whether public liability insurance at a minimum of \$20 million has been supplied; and
- (10) any other matter the Authorised Officer or Delegated Officer reasonably believes is relevant to the circumstances of the application.

## **PART 5 - SMOKING AND ALCOHOL**

### **57. CONSUMPTION AND POSSESSION OF LIQUOR ON ROADS**

This section is intentionally blank.

### **58. CONSUMPTION AND POSSESSION OF LIQUOR ON MUNICIPAL RESERVES**

In preparing a Report to Council for a Resolution prescribing municipal reserves where further restrictions apply to consume liquor or possess or control liquor in unsealed containers, Council officers must follow the following procedure:

- (1) Consider the urgency of any such proposals including input from Victoria Police;
- (2) Prepare and implement a community and internal stakeholder consultation plan consistent with Council's Communication and Engagement Policy if the restrictions are intended to be permanent;
- (3) Provide a summary of key evidence-based research and relevant government and comparative municipality initiatives;
- (4) Prepare an analysis of enforcement issues, including procedures and estimated costs to Council;
- (5) Prepare a risk analysis for the proposed prescription; and
- (6) Prepare a Report for Council summarising all the above, including a recommendation where further restrictions apply to consume liquor or possess or control liquor in unsealed containers.

### **59. EXEMPTION**

This section is intentionally blank.

### **60. SMOKING IN MUNICIPAL PLACE**

In preparing a Report to Council for a Resolution prescribing an area a Smoke Free or a Non-Smoking Area, Council officers must follow the following procedure:

- (1) Prepare and implement a community and internal stakeholder consultation plan consistent with Council's Communication and Engagement Policy;

- (2) Provide a summary of key evidence-based research and relevant government and comparative municipality initiatives;
- (3) Prepare an analysis of enforcement issues, including procedures and estimated costs to Council;
- (4) Prepare a risk analysis for the proposed prescription; and
- (5) Prepare a Report for Council summarising all the above, including a recommendation for an area to be declared 'smoke free'.

## **PART 6 - COUNCIL LAND (INCLUDING MUNICIPAL PLACES, PARKS, FORESHORE AND COUNCIL BUILDINGS)**

### **DIVISION 1 – MUNICIPAL PLACES AND OTHER COUNCIL LAND**

#### **61. BEHAVIOUR IN A MUNICIPAL PLACE - PROHIBITIONS**

When determining if certain behaviour is an offence in or on a municipal place, Council or an Authorised Officer or a Delegated Officer must follow these guidelines regarding prohibited behaviour when accessing, using or remaining in a municipal place:

Behaviour considered a breach of the Local Law in or upon any municipal place by any person includes:

- (1) behaving in a manner which is boisterous or harmful and which interferes with the quiet enjoyment by any person using the municipal place or any neighbouring residential premises;
- (2) behaving in a way that is detrimental to the municipal place or other public assets, or in a way that substantially increases the level of personal risk to other users or potential users of that municipal place; and
- (3) except where such behaviour is a reasonable part of an approved public theatrical performance or artistic exhibition:
  - (a) use language or behave in a manner which is indecent, offensive or abusive or which annoys, disturbs, interrupts, molests or obstructs any person's enjoyment of a municipal place;
  - (b) access any pornography on any computer or electronic device;
  - (c) act in a way which endangers any person;
  - (d) use any volatile, explosive or flammable matter;
  - (e) damage, destroy, write on, interfere with, remove or affix anything to any building, improvement or other structure of any kind;

- (f) carry firearms unless specifically authorised to do so, except if that person is a member of the Victoria Police acting in the course of his or her duties or a person falling within the scope of section 130(2) of the *Firearms Act 1996*;
- (g) shoot, snare, molest, injure or in any way harm or interfere with any bird or animal;
- (h) use any life-saving or fire-fighting device unless during an emergency, an authorised practice or rehearsal for an emergency or with the approval of a person in charge or an Authorised Officer or Delegated Officer; or
- (i) act contrary to any sign or conditions of use applying to that municipal place.

## **62. DAMAGING/DEFACING A MUNICIPAL PLACE**

This section is intentionally blank.

## **63. INTERFERENCE WITH A WATERCOURSE AND OTHER AREAS**

This section is intentionally blank.

## **64. OBSTRUCTIONS ON COUNCIL LAND**

This section is intentionally blank.

## **65. MODEL AIRCRAFT**

In deciding whether to prescribe Council Land or part of Council Land as Council Land or part of Council Land on which a person must not, without a permit, operate or allow another person to operate a model aircraft, Council must take into account:

- (1) the nature of the Council Land (or part of Council Land);
- (2) whether the Council Land (or part of Council Land) is an environmentally sensitive area or habitat for wildlife;
- (3) whether there are any flora or fauna on the Council Land (or part of Council Land); and
- (4) the extent to which the Council Land (or part of Council Land) is frequented by members of the public, and by any animals under the control of members of the public.

In determining whether to grant a permit to allow the operation of model aircraft on Council Land or part of Council Land under clause 65, an Authorised Officer or a Delegated Officer must have regard to:

- (1) the location the model aircraft is to be flown and proximity to other people, environmentally sensitive areas and wildlife habitats;

- (2) the risk posed to the public, property and the environment; and
- (3) any other matter the Authorised Officer or Delegated Officer reasonably believes is relevant to the application.

## **DIVISION 2 – PARKS AND FORESHORE**

### **66. BEHAVIOUR WITHIN A MUNICIPAL RESERVES - PROHIBITIONS**

In determining whether behaviour of any person within a municipal reserve constitutes a breach of the Local Law, an Authorised Officer or a Delegated Officer must follow these guidelines.

Behaviour considered a breach of the Local Law in or upon any municipal reserve by any person includes:

- (1) acting to endanger any person, with or without their knowledge;
- (2) interfering with any structure, notice, building or part of it, seat, playequipment, tree or plant;
- (3) acting contrary to any notice or sign;
- (4) leaving in the municipal reserve or in any building on it any litter except inreceptacles provided;
- (5) walking on flower beds or borders, climbing trees, steep banks or cliff faces, or getting on or over any fence or gate or entering any prohibited areas as designated by Council or an Authorised Officer or a Delegated Officer from time to time;
- (6) posting bills or advertisements on any of the fences, gates, walls, seats of other structures;
- (7) using, other than as part of an approved permitted use, any amplifier, musical instrument, public address or sound broadcasting equipment so as to disturb other persons;
- (8) behaving in a disorderly, unseemly or indecent manner;
- (9) spitting or expectorating upon or otherwise fouling any path or structure;
- (10) rolling or throwing stones or missiles, other than in approved permitted organised sporting practice or competition;
- (11) creating or taking part in any fight or disturbance;
- (12) entering or remaining while in an intoxicated condition or while under the influence of any illicit drug;
- (13) playing any unlawful game or making any wager for money or carrying on any form of gambling;

- (14) acting contrary to any lawful direction by any Council staff or an Authorised Officer or a Delegated Officer, including a direction to leave the municipal reserve;
- (15) remaining at any time when lawfully directed to leave by any Authorised Officer or Delegated Officer or employee of Council notwithstanding that a fee or charge for admission may have been paid;
- (16) unreasonably interfering with hindering or interrupting any employee of Council or an Authorised Officer or a Delegated Officer in carrying out their duties; and
- (17) causing a kite to fly in or over that municipal reserve in such a manner to unreasonably interfere with the enjoyment of any other person.

#### **67. ACTIVITY WITHIN A MUNICIPAL RESERVE – PERMITTED ACTIVITIES**

This section is intentionally blank.

#### **68. ACCESS TO MUNICIPAL RESERVES**

This section is intentionally blank.

#### **69. CAMPING PROHIBITED ON COUNCIL LAND**

If the person or persons may be experiencing homelessness the following requirements must be followed by an Authorised Officer or a Delegated Officer:

- (1) Refer the matter to Victoria Police if public safety is at imminent risk;
- (2) If a person or persons are sleeping rough and have set up a campsite the matter will be referred to the Manager Community Services or responsible delegate to identify assistance/supports that may be required and to determine the appropriate intervention/response to support the person or persons; and
- (3) If the person refuses to accept assistance and/or supports and where there is an impact on the safety and/or amenity of the broader community, an Authorised Officer or a Delegated Officer may act to eliminate the safety and/or amenity impact on the community in consultation with the Manager Community Services or responsible delegate.

#### **70. LIGHTING FIRES**

In determining whether to grant a permit to light, use or congregate around a fire on any municipal place or municipal reserve, Council or an Authorised Officer or a Delegated Officer must take into account the following:

- (1) the purpose for the fire such as for cultural or ceremonial purposes;
- (2) any exceptional circumstances;
- (3) the risk to public safety and the surrounding environment;

- (4) measures proposed to ensure the fire is managed safely; and
- (5) any other matter the Authorised Officer or Delegated Officer reasonably believes is relevant to the application.

#### **71. FILMING ON COUNCIL LAND**

Consideration of the film friendly principles under the *Filming Approval Act 2014*.

#### **72. PARKING ON MUNICIPAL RESERVES**

This section is intentionally blank.

#### **73. RIDING ANIMALS ON COUNCIL LAND**

This section is intentionally blank.

#### **74. FEEDING OF BIRDS ON PUBLIC LAND**

This section is intentionally blank.

#### **75. USE OF WHEELED NON-MOTORISED RECREATIONAL DEVICES AND WHEELED CHILD'S TOYS**

In preparing a Report to Council for a Resolution prescribing areas in which non-motorised recreational devices and /or wheeled child's toys must not be used, Council officers must follow the following procedure:

- (1) Consider the urgency of any such proposals including input from Victoria Police;
- (2) Prepare and implement a community and internal stakeholder consultation plan consistent with Council's Communication and Engagement Policy;
- (3) Provide a summary of key evidence-based research and relevant government and comparative municipality initiatives;
- (4) Prepare an analysis of enforcement issues, including procedures and estimated costs to Council;
- (5) Prepare a risk analysis for the proposed prescription; and Prepare a Report for Council summarising all the above, including a recommendation for areas in which non-motorised recreational devices and /or wheeled child's toys must not be used.

#### **76. BATHING BOXES**

In determining whether to issue or transfer a bathing box permit or licence, an Authorised Officer or a Delegated Officer must have regard to:

- (1) the applicant for a licence must pay the licence fee in full, and/or any transfer fee applicable, prior to the application or transfer being processed or the licence being issued;
- (2) an application for a licence may be refused to any person who is not a bona fide owner or occupier of a dwelling within the municipal district;
- (3) the bathing box must only be used and occupied for the purposes of convenience, comfort, shelter and shade (excluding overnight accommodation) and the storage of equipment and accessories incidental to the use of and access to the Brighton Beach Reserve and any evidence to the contrary should be resolved prior to the issue or renewal of a licence;
- (4) the bathing box must be maintained in good condition acceptable to Council and any evidence to the contrary should be resolved prior to the issue or renewal of a licence;
- (5) the applicant must give evidence (a Certificate of Currency) of Public Liability Insurance in relation to the bathing box in an amount determined of not less than \$20 million prior to the issue or renewal of a licence;
- (6) Council may refuse any application for a licence or by giving one (1) months' notice in writing to the holder of any such licence cancel the licence if it considers it is necessary in the interests of the public so to do and no compensation shall be payable by Council by reason of such cancellation;
- (7) if Council intends to cancel a licence for breach of conditions, Council's Standard permit Conditions would apply; and
- (8) if Council refuses the application for a licence or gives notice of the cancellation of a licence for whatever reason, the applicant or Licensee may within 28 days of notice of the decision, make a submission to Council to have the decision reviewed.

### **DIVISION 3 – COUNCIL BUILDINGS**

#### **77. BEHAVIOUR IN A MUNICIPAL BUILDING – PROHIBITIONS**

When determining if certain behaviour is an offence in a municipal building, Council or an Authorised Officer or a Delegated Officer must follow these guidelines regarding prohibited behaviour.

Behaviour considered a breach of the Local Law in a municipal building by any person includes:

- (1) accessing a municipal building if under the age of 8 years unless in the care of an adult;
- (2) depositing any litter in a municipal building except in receptacles provided for that purpose;

- (3) hawking, selling, offering for sale or hiring out any goods, articles or services in a municipal building without Council's or an Authorised Officer's or a Delegated Officer's prior written consent;
- (4) entering or remaining in a municipal building while intoxicated or under the influence of any illegal drug or bring any illegal drug into a municipal building, except only a person attending a function in a municipal building organised with the approval of Council or the Manager in accordance with a liquor licence or permit or a person delivering Liquor to the building in accordance with an order of Council;
- (5) bringing any animal into a municipal building or allowing any animal under his or her control to remain in a municipal building, except an assistance animal as defined by the *Disability Discrimination Act 1992*, or a person attending a Council approved function involving the showing of animals;
- (6) bringing into a municipal building any Wheeled Non-Motorised Recreational Device or Wheeled Child's Toy other than a pram or pusher with a child or a wheelchair or other apparatus for the purpose of assisting a disabled person or a trolley or other similar device in the process of assisting the delivery or removal of goods;
- (7) bringing into a municipal building any chemical, substance, liquid or powder which is dangerous to health or has the potential to foul, pollute or soil any part of a municipal building or to cause discomfort to any persons in a municipal building whether by offensive or noxious smell or otherwise;
- (8) entering or remaining in any part of a municipal building, other than:
  - (a) during the hours in which the municipal building is open to the public;
  - (b) through an entrance provided for the purpose of public entry;
  - (c) in an area set aside for public use;

unless that person has the approval of the Manager, an Authorised Officer or a Delegated Officer or Chief Executive Officer, or is a member of Council staff in the course of his or her duties or is a person engaged by Council in the course of performing the function for which he or she was engaged;
- (9) obstructing, hindering or interfering with any Manager, attendant, or other member of Council staff or any person employed at the municipal building in the performance of his or her duties; and
- (10) re-entering a municipal building within 24 hours after being directed by the Manager, an Authorised Officer or a Delegated Officer or an attendant to leave for any breach of the Local Law or any other law.

## **78. AVAILABILITY AND HIRE**

This section is intentionally blank.



## **PART 7 - FEES AND CHARGES**

### **79. SETTING FEES AND CHARGES**

This section is intentionally blank.

### **80. WAIVER OF FEES AND CHARGES**

This section is intentionally blank.

## **PART 8 - PERMITS**

### **81. GRANT OF PERMIT**

In relation to the exercise of the discretion under the Local Law for the processing of permit applications and the issuing of permits, an Authorised Officer or a Delegated Officer must take into account all of the following factors, considerations and circumstances, as well as any other matters in any other guidelines specific to the type of permit being sought:

- (1) whether additional information is required before dealing with an application;
- (2) whether the appropriate fee or charge has been paid or made subject to an approved payment system, which must occur before the application can be processed;
- (3) whether or not public notice, or written notice to specified adjoining landholders or other parties, of the permit application inviting submissions, should have been or will be made;
- (4) whether the applicant is a Service Authority or a person employed by or acting on behalf of a Service Authority that is not required to obtain a permit in respect of activities for the purposes of the Service Authority, although is nevertheless required to notify Council of any activity prior to its commencement;
- (5) whether the applicant has been exempted by Council from a requiring a permit, although this exemption may be subject to certain conditions being met and maintained during the term of an exemption and the exemption may be modified or cancelled in the same way as a permit.
- (6) whether the rectification, remedying or restoration of a situation or circumstance is required prior to issuing or as a condition of any permit;
- (7) before issuing a correction to a permit, whether the value, importance and impact of any correction warrants that correction when compared with those works already undertaken or expenses already incurred under the existing permit that might be adversely impacted in time lost and/or new expense to the permit holder by the issue of the correction to the permit

- (8) whether the consent of the owner has been obtained where the applicant is not the owner of the property for which the permit is sought;
- (9) whether this application is or should be conditional upon the granting of some other permit which may be required by Council whether under the Local Law or otherwise;
- (10) whether the permit should be subject to the happening of an event;
- (11) in what way a time limit should be applied by specifying the duration, commencement or completion date; and
- (12) any other matter which Council officer reasonably believes in the circumstances is relevant to the exercise of this discretion.

## **82. SCOPE OF PERMITS**

This section is intentionally blank.

## **PART 9 - ENFORCEMENT**

### **83. EXEMPTIONS**

Council's permit system and associated fee structure is designed to ensure sound fair and accountable management of Council's assets and responsibilities. Council's fee structures already make allowance for community users. Standard permit conditions inform permit holders of their rights of appeal.

Therefore, in the serious matter of considering whether to recommend a permit exemption or fee waiver, an Authorised Officer or a Delegated Officer must have regard to:

- (1) Only a Director, the CEO or Council itself may authorise an exemption from a permit or a fee waiver, therefore any recommendation for such an exemption or fee waiver must be made in writing to the responsible Director, CEO or as a Report to Council;
- (2) Each request for an exemption from a permit or fee waiver must be treated on its individual merits considering the factors set out below, but in the absence of clear or strong justification, should not be recommended; and
- (3) All the following matters are to be taken into consideration:
  - (a) why do the normal permit and its relevant fee structure not work in this case and can these matters be resolved?
  - (b) is the proposed activity or other behaviour of such a kind as to be not contemplated by or capable of being encompassed within the standard relevant permit or permit fee structure?

- (c) is this matter better dealt with under clause 84, Power of Authorised Officers or Delegated Officers to Issue a Notice to Comply, or clause 89, Urgent Powers, of the Local Law, or by reference to Commercial Services to negotiate a long-term Council Lease?
- (d) would an exemption from a permit or waiver of a permit fee seriously increase public risk or Council liability from the proposed activity or behaviour?
- (e) what overriding Council policy or public good is involved to recommend a permit exemption and/or permit fee waiver, which will be seriously inhibited or prevented by the required permit or relevant fee? For example, a genuine scientific research project being undertaken on behalf of recognised research organisation such as a University, Government Department or CSIRO.
- (f) how will the community of Bayside benefit directly or indirectly from the planned activity, which will be seriously inhibited or prevented by the required permit or relevant fee?
- (g) are there overriding special circumstances related to an individual's or a group's personal disadvantage that would consequently be unfairly or unjustly impacted by the normal required permit or relevant fee?
- (h) would issuing this permit exemption and or permit fee waiver set a public policy precedent for similar applications, in which case, should any recommendation be subject to Council approval?
- (i) what are the appropriate conditions, limitations (including time limitations and public liability insurance) which should be included in any letter of exemption from a permit or waiver of permit fee?
- (j) has the applicant party been warned that permit exemptions and permit fee waivers may be subject to conditions and may be cancelled or varied at any time if those conditions are broken?

#### **84. POWER OF AUTHORISED OFFICER OR DELEGATED OFFICER TO ISSUE A NOTICE TO COMPLY**

When considering whether to issue a Notice to Comply, an Authorised Officer or a Delegated Officer must have regard to the following requirements:

- (1) A Notice to Comply must state:
  - (a) the time within which the breach (to which the Notice to Comply relates) must be remedied;
  - (b) any consequence or penalty that may apply if the person served with a Notice to Comply fails to remedy a situation in accordance with the Notice to Comply;

- (c) the following procedural matters:
  - (i) whether the power exercised to issue the Notice to Comply is derived from Council's Local Laws (and thereby *the Local Government Act 1989* or *Local Government Act 2020*), in which case Council's decision is final on any appeal about any matter or penalty related to that Notice to Comply, or
  - (ii) or whether the power is derived from some other empowering legislation, in which case there is to be a right of judicial review of any appeal decision by Council on any matter or penalty related to that Notice to Comply.
- (2) The time specified in a Notice to Comply must be reasonable in the circumstances, and what will be reasonable will vary depending on the matters to be remedied but should take into account, if applicable:
  - (a) the amount of work to be performed in order to observe the Notice;
  - (b) the degree of difficulty;
  - (c) the availability of necessary materials or other necessary items;
  - (d) climatic conditions;
  - (e) the degree of risk or potential risk; and
  - (f) any other relevant factor that the Authorised Officer or Delegated Officer reasonably believes is relevant in the circumstances.

## **85. FAILURE TO ADHERE TO A NOTICE TO COMPLY**

This section is intentionally blank.

## **86. IMPOUNDING**

When considering and/or exercising the power to impound (and dispose of), an Authorised Officer or a Delegated Officer must have regard to:

In disposing of an impounded animal or thing an Authorised Officer or a Delegated Officer will have regard to the following consideration:

Council's policy for the disposal of unrecovered impounded items is as follows:

- (1) Where the item is declared by the Authorised Officer or Delegated Officer to have no saleable value, it may be disposed of in the most economical way, as determined by the Authorised Officer or Delegated Officer;
- (2) Where the item is declared by the Authorised Officer or Delegated Officer to have some saleable value, the item may be disposed of by tender, public auction or private sale, or failing sale may be given away or disposed of at the discretion of that Authorised Officer or Delegated Officer;

(3) When choosing which method of disposal by sale, the Authorised Officer or Delegated Officer will consider the following matters:

- (a) If the total estimated value of the impounded animal or thing is unknown, expert advice should be sought to obtain an estimate of its value;
- (b) If the estimated value exceeds \$2,000, disposal should be by way of tender or public auction first, and only by way of private sale if the animal or thing fails to sell by tender or public auction; and
- (c) Sale of impounded animals or things by any means and of any value must be fully documented and reported to Council Executive by the Authorised Officer or Delegated Officer.

## **87. RECOVERY OF EXPENSES**

This section is intentionally blank.

## **88. APPEALS**

This section is intentionally blank.

## **89. URGENT POWERS**

When considering whether to exercise urgent powers in urgent circumstances, an Authorised Officer or a Delegated Officer will apply the following guidelines:

What is regarded as urgent circumstances and whether action should be taken will depend on the circumstances of each situation. Factors to be taken into consideration may include:

(1) Where:

- (a) the person by whose default, permission or sufferance the situation has arisen; or
- (b) the owner or the occupier of the premises or property affected;

is not known or cannot be found.

(2) The right of directly concerned persons to be heard, whether owner or occupier or some other person, provided in the reasonable belief of the Authorised Officer or Delegated Officer this will not cause unacceptable delay in rectifying or reducing an urgent risk.

(3) Where, in the opinion of the Authorised Officer or Delegated Officer, there exists an urgent risk or threat to:

- (a) public health;
- (b) public safety;

- (c) the environment; or
  - (d) animal welfare
- (4) Whether the need to act is sufficiently urgent, and that the time involved or difficulties associated with the serving of a written warning or Notice to Comply may place a person, or any animal, property or thing at risk or in danger;
  - (5) Wherever practicable, a Senior Officer is given prior notice of the proposed action;
  - (6) Details of the failure and remedying action are, as soon as possible, forwarded to the person on whose behalf the action was taken;
  - (7) The urgent action taken by an Authorised Officer or a Delegated Officer must not extend beyond what is necessary to cause the immediate abatement of or to minimise the risk or danger involved; and
  - (8) An Authorised Officer or a Delegated Officer who takes urgent action must ensure that, as soon as practicable, a report of the action taken is submitted to the Chief Executive Officer.

#### **90. POWER TO ISSUE A DIRECTION**

This section is intentionally blank

### **PART 10 - OFFENCES, PENALTIES, INFRINGEMENT NOTICES AND OFFICIAL WARNINGS**

#### **91. OFFENCES AND PENALTIES**

This section is intentionally blank.

#### **92. INFRINGEMENT NOTICES**

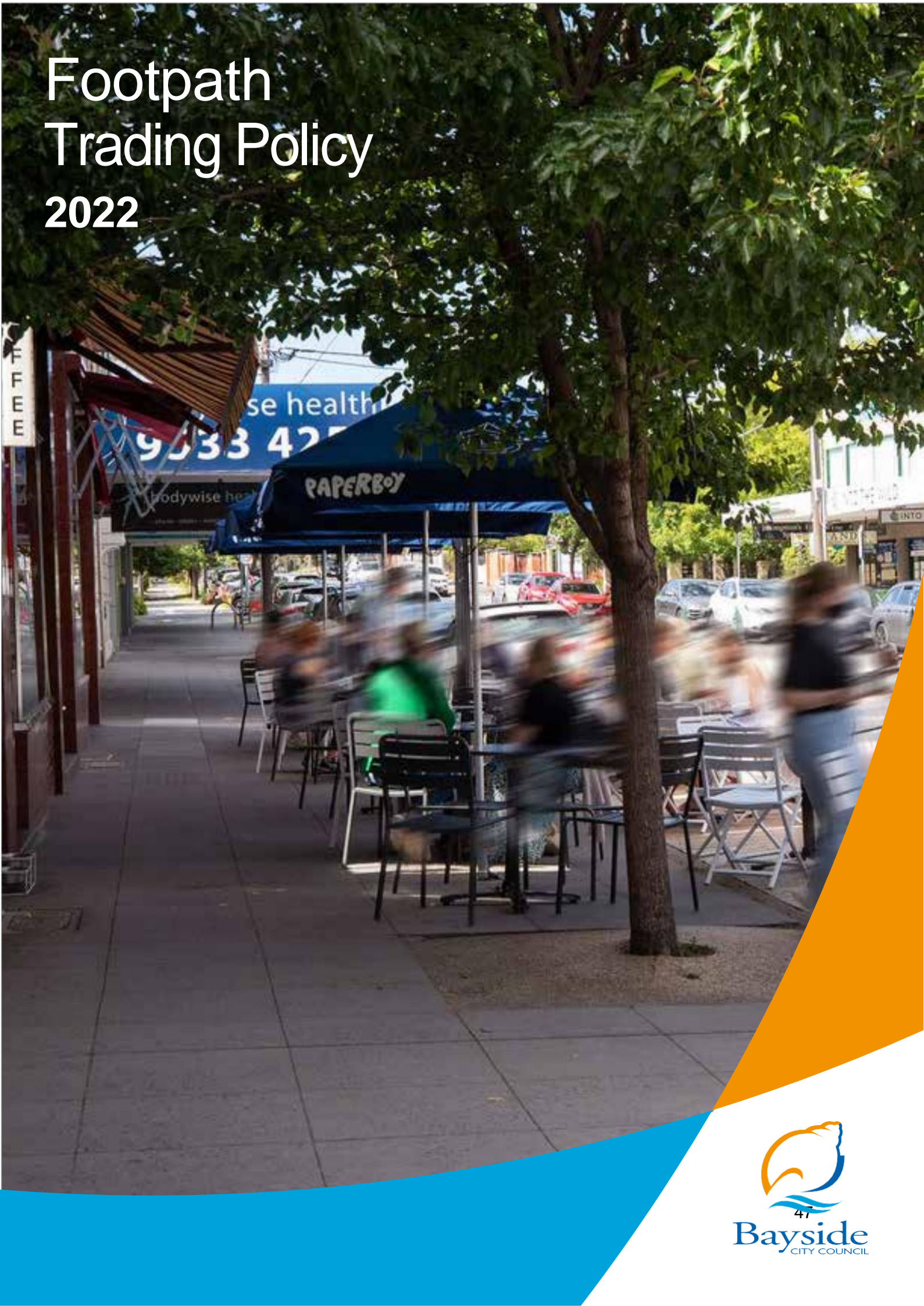
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#### **93. OFFICIAL WARNINGS**

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# Footpath Trading Policy 2022





### **Acknowledgement of Traditional Owners**

Bayside City Council proudly acknowledges the Bunurong People of the Kulin Nation as the Traditional Owners and Custodians of this land, and we pay our respects to their Elders, past, present and emerging.

Council acknowledges the Bunurong's continuing relationship to the land and waterways and respects that their connection and spiritual identity is maintained through ancient ceremonies, songlines, dance, art and living culture.

Council pays tribute to the invaluable contributions of the Bunurong and other Aboriginal and Torres Strait Island Elders who have guided and continue to guide the work we do.

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## 1. Introduction

**Footpath trading in the City of Bayside provides trade opportunities for businesses, enhanced public spaces, and sustained, inclusive access.**

Footpath trading aids the commercial viability of small businesses by increasing the area available for commercial activities. It allows them to use the area adjoining the kerb, which increases the visibility of their commercial offerings to customers.

Footpath trading plays a key role in promoting retail resilience and the ability of local businesses to employ staff.

Effective regulation of footpath trading ensures that universal access to activity centres for all residents is maintained. This universal access allows all residents to equally enjoy Bayside's village feel. *The Disability Discrimination Act 1992* (Cth) legislates the requirements for universal access and has informed Bayside's approach to footpath trading regulation. For more information about how the *Disability Discrimination Act 1992* informs Bayside's footpath trading policy, see **Appendix 1**.

Responsible management of footpath trading requires the balancing of a variety of competing interests. This policy seeks to balance these interests and ensures that footpath trading aids the commercial viability and resilience of businesses, while also activating and enhancing the public realm for all residents.





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## 2 Footpath trading and activation principles

### This *Footpath Trading Policy*

is based on the following principles:

- 1 Council recognises the valuable role of footpath trading in (a) promoting the commercial viability of local businesses, and thereby enhancing local employment, and (b) activating and enhancing the vibrancy of the public realm.
- 2 Council supports responsibly managed footpath trading within clearly defined Trading Zones.
- 3 Council recognises that footpath trading must not adversely impact on pedestrian safety, including all-abilities access as per the requirements and the *Disability Discrimination Act 1992* (Cth).
- 4 Council is committed to ensuring that the requirements relating to footpath trading are easily understood.
- 5 Council will not impose any unreasonable financial or regulatory burdens on footpath trading.
- 6 Everyone has the right to take part in community activities.
- 7 When permanent structures are proposed for any footpath area within the municipality, high standards of design are the starting point for the assessment of the proposal.
- 8 From time-to-time Council will adopt policies that will allow or not allow footpath trading activities in certain areas. Where such a policy is adopted, Council will liaise with affected businesses.
- 9 Footpath activity must make a positive contribution to the character and amenity of the area and surrounding residential areas.



### 3. Definitions

**Alfresco dining** means dining outdoors usually on the footpath in front of the food premises and may include private infrastructure such as tables, chairs, umbrellas, menu boards, and any other items authorised by Council and endorsed on a plan of the site.

**Footpath trading markers** are installed in some locations to delineate the Trading Zone in front of the commercial premises. This is to promote community safety and to ensure all-abilities access as required under the *Disability Discrimination Act 1992*.

**Goods and goods displays** include merchandise and services for sale on the footpath in front of the attached premises, and may include ancillary items such as racks, fixtures, fittings, and tables for display purposes.

**Kerb Zone** is the buffer between the kerb and the Trading Zone allowing access to and from parked vehicles.

**Pedestrian Zone** is the section of the footpath between the property or building line of the premises and the Trading Zone and must be kept clear of all items (e.g., dog bowls and waiter tables). The permit holder must not place any items in the Pedestrian Zone. This is vital for public safety and to meet the requirements of the *Disability Discrimination Act 1992* (Cth).

**Permit holder** is the business holding a Council-issued permit for footpath trading.

**Trading Zone** is the only area of the footpath where goods, café furniture and ancillary items may be placed and is defined as the section of the footpath between the Pedestrian Zone and the Kerb Zone. This is where the Permit Holder may place signs, goods, café furniture and ancillary items approved by the permit and where commercial activities may take place.

Where premises are adjacent to an intersection, the trading zone must not extend past the building line.

## 4. Trading Zone siting requirements

### Minimum dimensions

Trading Zones are only appropriate where the footpath width allows sufficient room for the Pedestrian Zone and the Kerb Zone.

Where an existing Footpath Trading Permit has been granted, and the space available does not allow for the required Pedestrian Zone width, the permit will be reviewed and may be revoked at Council's discretion to ensure that the function of the Pedestrian Zone is not unduly compromised.

### 1 Pedestrian Zone

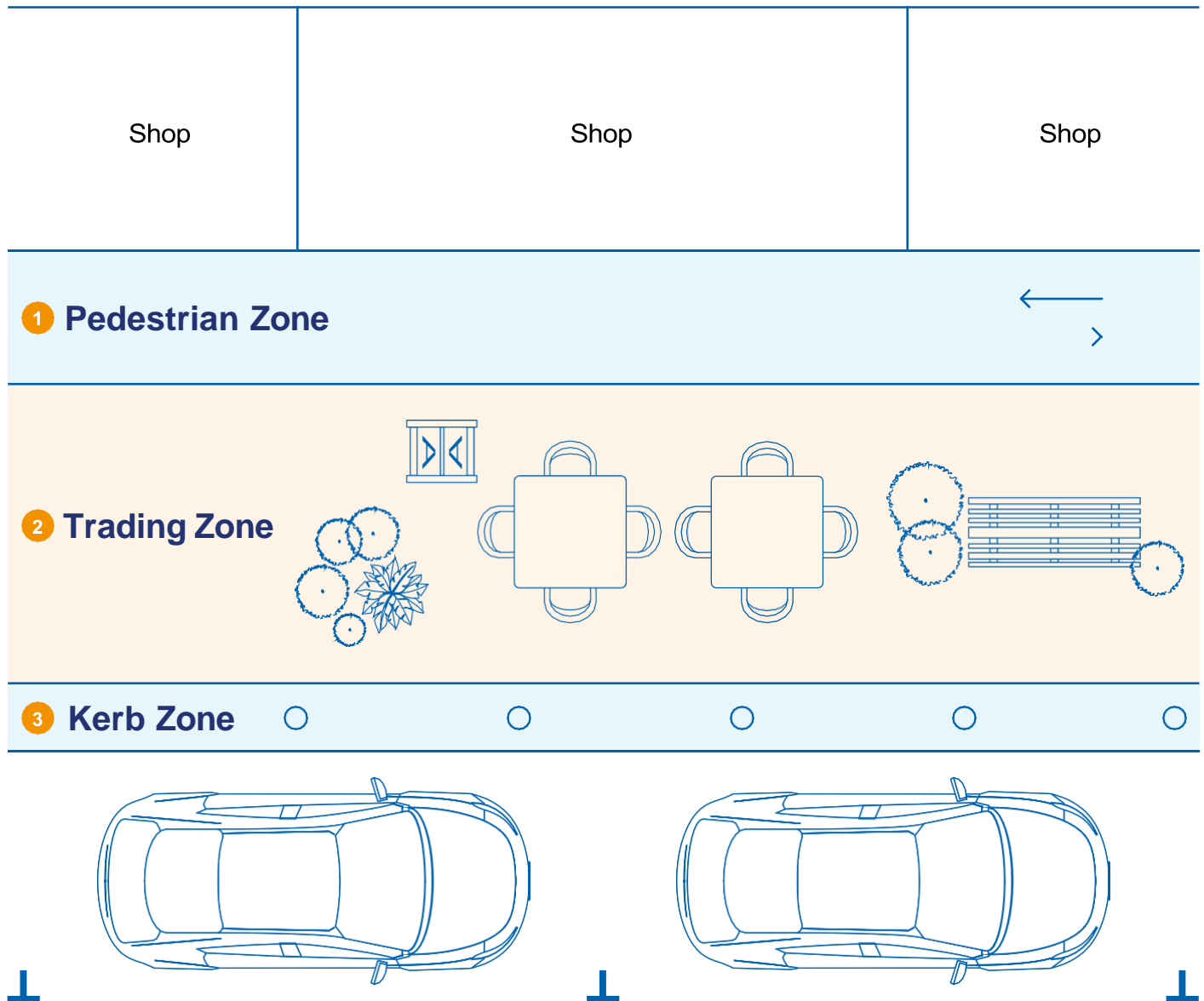
No furniture, signage or displays of goods are permitted within the pedestrian zone at any time.

### 2 Trading Zone

All A-frames, goods and tables and chairs to be placed in the trading zone.

### 3 Kerb Zone

Keep clear at all times.



### Footpaths less than 2.5m wide

To provide an adequate-sized Pedestrian Zone, footpaths of less than 2.5m cannot be used for outdoor dining or placement of objects.

### Footpaths from 2.5m to 3.5m wide

To provide a clear Pedestrian Zone, the footpath is divided into three zones.

#### 4.1 Pedestrian Zone

Extends from the building line or shopfront for a minimum of 1.5m. No items may extend into this zone at any time.

Items overhead cannot extend below a height of 2.4m

#### 4.2 Trading Zone

The only area of the footpath where goods, café furniture and ancillary items may be placed. Where premises are adjacent to an intersection the Trading Zone must not extend past the building line.

#### 4.3 Kerb Zone

A minimum of 400mm buffer from the kerb to allow access to and from parked vehicles; 1.5m where there is a disabled parking bay; and 600mm where there is a loading zone. The Kerb Zone width is determined by the parking method adjacent to the kerb. Kerbs with parallel parking have a Kerb Zone width of 400mm.

Kerbs with angle parking have a Kerb Zone width of 600mm if a physical barrier is provided between the Kerb Zone and the Trade Zone, otherwise a width of 800mm is required.

No items may be placed in the Pedestrian Zone or the Kerb Zone.

### Footpaths from 3.5m to 4m wide

To provide a clear Pedestrian Zone, the footpath is divided into three zones.

#### 4.4 Pedestrian Zone

Extends from the building line or shopfront for a minimum of 1.8m. No items may extend into this zone at any time.

Items overhead cannot extend below a height of 2.4m.

#### 4.5 Trading Zone

The only area of the footpath where goods, café furniture and ancillary items may be placed. Where premises are adjacent to an intersection the Trading Zone must not extend past the building line into the intersection.

#### 4.6 Kerb Zone

A minimum of 400mm buffer from the kerb to allow for access to and from parked vehicles including at loading zones, and at least 1.5m where there is a disabled parking bay. The Kerb Zone width is determined by the parking method adjacent to the kerb. Kerbs with parallel parking have a Kerb Zone width of 400mm. Kerbs with angle parking have a Kerb Zone width of 600mm if a physical barrier is provided between the Kerb Zone and the Trade Zone, otherwise a width of 800mm is required.

No items may be placed in the Pedestrian Zone or the Kerb Zone



## 4. Trading Zone (continued)

### Footpaths 4m or wider

To provide a clear Pedestrian Zone, the footpath is divided into three zones.

#### 4.7 Pedestrian Zone

Extends from the building line or shopfront for a minimum of 1.8m. No items may extend into this zone at any time. Items overhead cannot extend below a height of 2.4m.

#### 4.8 Trading Zone

The only area of the footpath where goods, café furniture and ancillary items may be placed. Where premises are adjacent to an intersection the Trading Zone must not extend past the building/property line.

#### 4.9 Kerb Zone

A minimum of 400mm buffer from the kerb to allow for access to and from parked vehicles including at loading zones, and at least 1.5m where there is a disabled parking bay. The Kerb Zone width is determined by the parking method adjacent to the kerb. Kerbs with parallel parking have width of 400mm. Kerbs with angle parking have a Kerb Zone width of 600mm if a physical barrier is provided between the Kerb Zone and the Trade Zone, otherwise a width of 800mm is required.

No items may be placed in the Pedestrian Zone or the Kerb Zone.

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Footpath width	2.5-3.5m	3.5-4m	4m+
Kerb Zone - parallel parking	400mm	400mm	400mm
Kerb Zone - angle parking	800mm*	800mm*	800mm*
Pedestrian Zone	1.5m	1.8mm	1.8mm

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\*Note: The Kerb Zone for angle parking can be reduced to 600mm if a physical barrier separates it from the Trade Zone.

### Prows/expanded footpath areas

In a number of activity centres, Council has extended the footpath into the roadway to provide either traffic management measures by emphasising pedestrian priority or as part of an overall urban design plan for the centre. In these locations Kerb Zones will continue to follow the kerb line.

### Recessed shopfronts/buildings

#### 4.10

Throughout the municipality circumstances exist where the shopfront or building is set back from the front title boundary.

#### 4.11

Trading activity may occur in the area between the building and title boundary if it complies with the Bayside Planning Scheme and does not extend beyond the title boundary onto the footpath.

### Property boundaries

#### 4.12

A setback to the Trading Zone of 500mm is required at each side of the boundary of each property to allow access from the footpath to the road, between each property.

#### 4.13

Businesses on the corner of a street must

not inhibit the required line of sight for pedestrians and traffic to safely use the street and crossings. A 90-degree corner exclusion area is considered the minimum requirement, to ensure safe vehicle and pedestrian movements around corners. Council may increase this exclusion area for safety reasons



# little sister

BRIGHTON





## 4. Trading Zone (continued)

### Other siting requirements

#### 4.14

Where a property exceeds 12m of frontage then a break of 1m shall be provided to the satisfaction of Council at an appropriate point to allow access to the Pedestrian Zone. In considering the location of a break in the Trading Zone, no more than 6m of no access is allowed. Some sites may require increased access and Council reserves the right to require additional access upon inspection. Council will consider the car parking spaces on the road and the location of any other infrastructure.

#### 4.15

Any footpath trading activity may be outside only the premises to which it relates, except by the permission of the adjoining property owner and contained within the property line, with 500mm on each side of the property line to allow for access to the Pedestrian Zone. If the consenting business ceases to operate at the original address, consent must be obtained again from the new tenants and provided to Council.

#### 4.16

Where a footpath trading activity is proposed near a mid-block pedestrian crossing, the location of the activity shall provide separation from the crossing and ensure sight lines for pedestrians are protected (usually a minimum of 2 metres is required).

#### 4.17

The outdoor trading or seating arrangements must not interfere with front and rear doors of public buses. Up to a 2-metre clearance within the front and rear of bus zones allows adequate clearance for passengers to embark/disembark to and from buses safely.

#### 4.18

Where a trading activity is proposed adjacent to car parking spaces designated for people with disabilities, a Kerb Zone of up to 1.5m will be required.

#### 4.19

Services such as gas, power, water, and telecommunications should not be covered or obstructed by any permanent structures.

#### 4.20

Unless exceptional circumstances apply, trading activities (including outdoor eating facilities) will not be placed within 1m of any Council seat, rubbish bin, or other item of street furniture.

#### 4.21

The placement of signs, goods, heaters, tables, or chairs in a kerb extension area can only be approved by Bayside City Council's Traffic Engineer.

## 5. Outdoor dining

### Operators' responsibilities

#### 5.1

Restaurant and café furniture and associated ancillary items are permitted only at premises registered to serve food and/or beverages under the *Food Act 1984*.

#### 5.2

In exceptional circumstances Council may allow tables and chairs to be placed outside non-registered premises. Applicants need to demonstrate to Council why the tables and chairs are necessary.

#### 5.3

The permit holder is responsible for the conduct of patrons at tables and chairs in the outdoor seating area and must:

- ensure that patrons do not move tables and chairs from their positions and obstruct the Pedestrian Zone
- ensure that patrons do not create any obstruction to the Pedestrian Zone, including pets, prams, or other personal items
- not serve food and beverages to patrons standing on the footpath within the Pedestrian Zone
- ensure patrons do not consume food or beverages within the Pedestrian Zone.

#### 5.4

Regarding 8.1.3, Council may place a condition on a permit requiring a permit holder to place signs in the outdoor seating area.

#### 5.5

Businesses are responsible for all litter generated by patrons using their footpath dining areas. A business must comply with the *Tobacco Act 1987* on outdoor dining areas.

#### 5.6

Serving staff at outdoor eating facilities should give pedestrians right of way.

#### 5.7

Each operator is responsible for maintaining the outdoor eating area. A permit may be cancelled or suspended if littering, untidiness or failure to maintain the Pedestrian Zone is noted.

#### 5.8

Items placed on the footpath must be stable, of a design approved by Council, and not damage the footpath.

#### 5.9

Items placed on the footpath must be maintained by the licensee to a standard acceptable to Council.

#### 5.10

Businesses will reimburse Council for any reinstatement work if found responsible for damage to footpaths, street fixtures and furniture.

#### 5.11

Premises where alcohol is served or consumed on the footpath must have a liquor licence endorsed with the footpath as part of the licensed area.

## 5. Outdoor dining (continued)

### 5.12

All footpath trading must cease at 11pm nightly and businesses must not leave any goods, A-frame/s, tables and chairs on the footpath outside of their normal trading hours. Items must be removed when the business is closed.

### 5.13

The permit holder must provide Council with evidence of current public liability insurance that notes Council's interest and will be determined by Council's insurance policy.

For prevailing insurance requirements, please refer to the Footpath Trading Guidelines found at <https://www.bayside.vic.gov.au/services/business-and-commerce/footpath-trading-permit-guidelines-and-fees>. Any permit issued will be on the basis that the insurance will be current for the period of the permit. Any permit issued is valid only while the public liability insurance is current.

### 5.14

The permit holder must provide indemnity against loss or damage in a form suitable to Council. (See Appendix 2)

### Furniture and fittings

#### 5.15

No sound-amplification equipment or similar equipment may be erected or used in the outdoor seating area without first obtaining a separate local law permit.

#### 5.16

No live entertainment is permitted without first obtaining a separate local law permit.

### 5.17

If patio heaters (which have a base on the footpath) are used, they must be located within the Trading Zone, covered by the business's public liability insurance and must be licensed as part of a permit.

Note: All gas heaters, whether moveable or fixed, will not be permitted from the 2025 permit period onwards.

### 5.18

All outdoor heaters must comply with safety standards specified by the Energy Safe Victoria which may be obtained by telephoning Energy Safe Victoria on 1800 069 588 or from their website at [www.esv.vic.gov.au](http://www.esv.vic.gov.au)

### 5.19

Umbrellas may be placed only in the Trading Zone.

### 5.20

Where umbrellas are permitted, they must be 2.2m high at the lowest point other than the centre pole and must not extend over the kerb. When raining, water run-off from large umbrellas should not fall into the Pedestrian Zone.

### 5.21

Umbrellas must be secured in a manner approved by Council. If requesting approval of umbrellas that do not have a lock-in device, clearly note this on the application form.

### 5.22

For safety reasons screens or screening devices may be placed where there are tables and chairs. The screens must be no higher than 1m high and must be secured in a position approved by Council. Details to be provided with permit application.

### 5.23

Where an applicant proposes to suspend a fixture or fitting (for example, lights or heaters) from the underside of a veranda or building, the fixture or fitting is to be attached in accordance with appropriate engineering standards and have a minimum clearance of 2.4m above the Trading Zone. Outside of operating hours of the business, fixtures or fittings that are retractable must be drawn in.

### 5.24

Advertising signage on temporary windbreaks or umbrellas must identify the operator of the business in compliance with the Bayside Planning Scheme.

### 5.25

No advertising is permitted on permanent screens other than the name of the premises.

### 5.26

Permanent screens – see section 8.17.

### 5.27

Council may, if the circumstances arise, require a marker to be placed on the footpath to clearly designate the Trading Zone.

### 5.28

All moveable furniture and fittings must be removed from footpaths when the Bureau of Meteorology forecasts wind speeds in excess of 30 knots.

### 5.29

All footpath trading furniture, such as seating, tables, eating surfaces and the like, must not exceed a height of 1.2 meters.



## 6. Goods on footpaths

### 6.1

In order to provide a Pedestrian Zone, goods and displays may be displayed only in the Trading Zone of the footpath.

### 6.2

Goods may be displayed in the Trading Zone only during normal or authorised trading hours, and must not be placed on a footpath prior to 7am each trading day or remain on the footpath after 11pm on each trading day.

### 6.3

Goods (except furniture) must be displayed on stable stands that are approved by Council and able to withstand adverse weather. Stands must be secured so that adverse weather will not create a risk for pedestrians, property, or passing traffic. Stands and goods must not damage footpaths.

### 6.4

Goods or displays are not permitted where access to a loading zone or disabled parking bay will be obstructed. (At least 1.5m from the kerb.)

### 6.5

Goods or displays are not permitted where they will cause difficulty to pedestrians and people exiting or entering parked vehicles or footpaths.

### 6.6

Goods displays cannot exceed a height of 1.5m.

### 6.7

Stands and displays should contrast with their background to assist people with vision impairment.

### 6.8

Goods displays cannot overhang the kerb zone or Pedestrian Zone.

### 6.9

The permit holder must provide Council with evidence of current public liability insurance that notes Council's interest and will be determined by Council's insurance policy.

For prevailing insurance requirements, please refer to the Footpath Trading Guidelines found at <https://www.bayside.vic.gov.au/services/business-and-commerce/footpath-trading-permit-guidelines-and-fees>. Any permit issued will be on the basis that the policy will be current for the period of the permit.

### 6.10

All goods, displays and fittings must be removed from footways when the Bureau of Meteorology forecasts wind speeds in excess of 30 knots.



## 7. Signs on footpaths

### 7.1

All permitted signs are to be secured by a means that is not reliant on or physically tied to any Council infrastructure (e.g., seats, poles, trees.). The means by which these signs are secured must not extend beyond the circumference of the sign and must be of a type approved by Council. Signs and the securing devices are to be removed in accordance with permitted display times.

### 7.2

Inflatable signs, portable electric signs, illuminated, revolving, spinning or flashing signs, flags, tear drop signs, and banners are prohibited.

### 7.3

Signs can be placed only in the Trading Zone and directly adjacent to the business they are advertising.

### 7.4

Signs must be in place only during normal trading hours.

### 7.5

Signs on footpaths must be secured by a Council-approved method.

### 7.6

An advertising sign must not exceed 900mm in width or 1m in height.

### 7.7

The maximum number of signs permitted is one per premises.

### 7.8

The permit holder must provide Council with evidence of current public liability insurance that notes Council's interest and will be determined by Council's insurance policy.

For prevailing insurance requirements, please refer to the Footpath Trading Guidelines found at <https://www.bayside.vic.gov.au/services/business-and-commerce/footpath-trading-permit-guidelines-and-fees>. Any permit issued will be on the basis that the policy will be current for the period of the permit. Any permit issued will be valid only while the public liability insurance is current.

### 7.9

All signs must be removed from footways when the Bureau of Meteorology forecasts wind speeds in excess of 30 knots.



## 8. Other obstructions

### Miscellaneous footpath trade items

#### 8.1

Request for placement of any other obstruction, fixture, fitting or equipment that is not within the definition of sign, goods, or outdoor-eating facility is to be noted on an application form and the applicant is to demonstrate compliance with this policy before approval is issued.

#### 8.2

Any obstruction can be placed only within the Trading Zone.

#### 8.3

The fee applicable will be determined by Council depending on the obstruction.

#### 8.4

The permit holder must provide Council with evidence of current public liability insurance that notes Council's interest and will be determined by Council's insurance policy. For prevailing insurance requirements, please refer to the Footpath Trading Guidelines found at <https://www.bayside.vic.gov.au/services/business-and-commerce/footpath-trading-permit-guidelines-and-fees>. Any permit issued will be on the basis that the policy will be current for the period of the permit. Any permit issued will be valid only while the public liability insurance is current.

### Café blinds

#### 8.5

Council is not in favor of the installation of blinds from verandahs. Any business considering the installation of blinds needs to discuss this with Council first as access and safety issues are paramount considerations for Council before permitting the installation of blinds.

#### 8.6

Proposals for café blinds must be lodged with Council for approval. It must include a copy of the property plan showing measurements of blinds, distance from kerb and adjoining premises and detail the method to be used for attachment to the footpath. A report from an engineer must also be included confirming the blinds and their contact points can bear the wind and the awning can safely bear the weight of the blinds with wind.

#### 8.7

An application under Building Regulations 2018 (Council report and consent application form, non-siting matters) is required to be submitted to Council's Building Department for approval.

#### 8.8

Blinds are not to be a visual obstruction between the footpath and the street. The majority of the blind is required to be transparent up to 2.4m above pavement level. The only signage on the blind is to be the logo of the business.

#### 8.9

Blinds are not to obstruct the free flow of pedestrians either in the Pedestrian Zone or for the access required to link the Pedestrian Zone to the Kerb Zone (see 4.8 Property Boundaries).

### 8.10

Café blinds must be retracted at the close of business each evening.

### 8.11

Blinds must be installed to ensure fixings to verandas, buildings and pavement are adequate and structurally sound. The impact of wind loadings must also be assessed for compliance by Council's Building Department.

## Temporary barbeques and sausage sizzles

### 8.12

Barbeques and sausage sizzles may be allowed adjacent to a butcher shop for trade purposes (by the proprietor). Permission may be given for placement of a barbeque in the Trading Zone once a month.

### 8.13

Portable barbeques must be brought in during non-trading hours, Permanent barbeques are not permitted.

### 8.14

Barbeques and sausage sizzles may be allowed for charity and events adjacent a shop within the business zone or on Council-owned land. Permission must be obtained from the shop/business owner before an application is submitted. Permission may be given for placement of a barbeque in the Trading Zone. Council also has several permitted street stall sites for community or charitable organisations within Bayside City Council municipal boundaries.

### 8.15

Applications submitted for barbeques and sausage sizzles are referred to Council's Environmental Health Department for approval. Food-handling practices required by the Environmental Health Department are conditions of the permit.

### 8.16

The permit holder must provide Council with evidence of current public liability insurance that notes Council's interest and will be determined by Council's insurance policy.

For prevailing insurance requirements, please refer to the Footpath Trading Guidelines found at <https://www.bayside.vic.gov.au/services/business-and-commerce/footpath-trading-permit-guidelines-and-fees>. Any permit issued will be on the basis that the policy will be current for the period of the permit. Any permit issued will be valid only while the public liability insurance is current.

## Technical standards for permanent screen structures

Permanent glass screens and supporting structures may be allowed. The following standards apply to permanent screen structures:

### 8.17

Council is not in favor of the installation of railings or glass screens. Any business considering the installation of railings or glass screens needs to discuss this with Council first as access and safety issues are paramount considerations for Council before permitting the installation of such fixtures.

## 8. Other obstructions (continued)

### 8.18

Consent from Council's Building Department must be obtained before a local law permit application is submitted for permanent glass screens and supporting structures.

### 8.19

Screens are made of laminated glass to a maximum height of 1.5m with a minimum thickness of 10.38mm.

### 8.20

The screens will have a minimum clearance of 200mm from the footpath surface.

### 8.21

Screens will not have a return length of more than 2m.

### 8.22

Strength and fastening of glass screens must be certified by a structural engineer.

### 8.23

Glass may be frosted or have a screen print pattern to a height of 500mm above pavement level. Above 500mm the glass is to be clear.

### 8.24

A safety screen print pattern is to be visible at a height of approximately 700mm above pavement level.

### 8.25

No commercial advertising is permitted on the screens other than the name or logo of the café/restaurant.

### 8.26

Support poles to be a minimum 48mm diameter, made of extruded aluminium and finished in a clear anodised coating. Other colours are subject to approval. Non-standard fixtures and fittings will be considered by Council in conjunction with relevant adopted urban design policies.

### 8.27

The bases of screens are to be of cast aluminium and fastened so that the screen is positioned according to the siting requirements of this policy.

### 8.28

Design and construction of glass screens must conform to Australian Standards and Bayside City Council's recommendations.

### 8.29

Screens must be cleaned regularly and maintained by the operator of the premises. Screens are to be replaced within 24 hours of any damage that may cause risk to public safety, otherwise within one week of the damage occurring.

### 8.30

Graffiti is to be removed within 24 hours.





## **9. General**

### **Maintenance of footpaths**

Bayside City Council manages the use of footpaths at all times and reserves the right to reclaim access to and remove all footpath trading from footpaths at any time for any purpose. Council endeavours to provide adequate notice to any licence-holder.

Except where permanent structures have been installed, Council will manage repairs and replacement of footpaths and Council furniture.

### **Activities of service authorities**

Council is not able to provide notification of actions of service authorities that may interrupt or affect the use of footpaths for trading activities. When Council is the authority required to carry out works, it will give notice to affected traders where possible.

Council will request that service authorities give adequate notice of street works, but is not able to guarantee the notice will be provided.

### **Compensation for loss of trade**

When a service authority is required to carry out work within the road reserve which necessitates the removal and/or alteration of footpath trading arrangements, no compensation will be payable for any loss of trade experienced during or after the works.

### **Inspection**

Council will regularly inspect areas that have been granted footpath trading.

Authorised officers can give direction to permit holders regarding compliance with the permit. Failure to respond to a lawful direction can result in enforcement. See section 13.

### **Revocation/suspension/ modification**

Council may at its discretion suspend, revoke, amend, relocate or modify any permit it issues.

If this action is taken, the permit holder or any other person will not be entitled to compensation or damages of any kind.



# 10. Applying for a permit

## To obtain a permit, applicants must:

### 10.1

Complete and sign an application for Footpath Trading Permit.

### 10.2

Provide a site plan drawn to scale that shows dimensions of proposed kerb café, goods display, etc.

### 10.3

Indicate setbacks from shop frontage, kerb and site boundaries, and existing elements, e.g., tree, light pole, rubbish bin, public transport shelters, etc. A separate fee will be charged for requests to relocate Council furniture, e.g., seats, rubbish bins, etc.

### 10.4

Provide a photograph(s) of the area at the front of the shop/premises where planning to locate the footpath trading activity.

### 10.5

Contact Council's responsible officer for any new applications for alfresco dining, to arrange a time for the site to be inspected.

### 10.6

Provide a Certificate of Currency for a public liability insurance policy that covers death or injury of any person or damage to any property that could arise from the display that will be authorised by the permit. The certificate is to list:

### 10.7

Bayside City Council as an interested party,

### 10.8

Public liability insurance consistent with minimum requirement determined by Council's insurance policy<sup>1</sup>.

### 10.9

The insured (including situation of risk),

### 10.10

The company insuring you,

### 10.11

Expiry date,

### 10.12

Policy number.

### 10.13

Indemnity in a form similar to Appendix 2.

<sup>1</sup> For prevailing insurance requirements, please refer to the Footpath Trading Guidelines found at <https://www.bayside.vic.gov.au/services/business-and-commerce/footpath-trading-permit-guidelines-and-fees>.

## 10. Applying for a permit (continued)

### Transfer of permit

A permit cannot be transferred without prior written approval from Bayside City Council.

#### 10.14

A permit can be transferred from one proprietor to another, provided that the address of the premises is the same and there is no change to the approved permit. The new owner is required to complete an application form, signed indemnity, and provide a Certificate of Currency. The new owner is responsible for outstanding fees in relation to the permit and any monies that have been paid for the permit are to be reconciled between the vendor and purchaser at the time of settlement. A permit cannot be transferred without prior written approval from Bayside City Council.

### Decision guidelines

#### 10.15

Council reserves the right to reject any application made for footpath trading.

#### 10.16

In addition to matters set out above, when considering whether to grant a permit for an outdoor eating facility, Council considers:

- a) how the proposal meets the general and specific principles of this policy
- b) effect on pedestrian flow and safety
- c) impact on the appearance of the street and its surroundings
- d) design and standard of any permanent structures proposed
- e) any effects on general trading within the area
- f) any possible effects to nearby residential properties
- g) hours of operation of the facility/use, and how it relates to the use of the adjacent land
- h) whether approval has been granted for advertising or other forms of trading activities for the premises
- i) the effect on vehicle flow and traffic safety
- j) whether it is complementary to the business plan for the activity centre
- k) whether it complements Council's policy for the activity centre or precinct
- l) whether the conditions of any previous approval have been complied with
- m) whether the proposal will under any circumstances be detrimental to the amenity of the area, including residential amenity.

## 11. Fees and period of permits

### 11.1

Bayside City Council sets its fees and charges each year as part of its budget/estimate process.

### 11.2

Fees are charged on a pro-rata basis.

### 11.3

The current fees are available on request.

### 11.4

Businesses and permit applicants should note that permanent structures have a fee other than those for non-permanent footpath trading activities.

### 11.5

Unless otherwise specified on the permit, a permit will expire on 31 August each year except in those instances when it is withdrawn or revoked by an Authorised Officer prior to the expiry date.

### 11.6

A permit will be invalid if the permit holder fails to maintain public liability insurance, in accordance with this policy.





## 12. Refunds

### 12.1

No refunds on new applications/transfer fees

### 12.2

A pro-rata refund will be given in accordance with Councils Fees and Charges (less administration fee) if a permit is forfeited.

## 13. Enforcement

### 13.1

If a local law, the Footpath Trading Policy, or specific permit condition is breached, Council may issue:

- a) a verbal warning
- b) a Notice to Comply - a first and final written warning with time limit for compliance
- c) an infringement notice - a fine for noncompliance with the Notice to Comply
- d) further fines or permit suspensions for a minimum period of three months and/or prosecution.

### 13.2

Council may impound any items on the footpath that do not comply with local laws, this policy, or any conditions placed on a permit. See Appendix 3 for procedures for the impounding of outdoor trading items.

### 13.3

Incidents of noncompliance are noted on a business's file and taken into consideration when determining penalties for additional/future breaches of compliance.

### 13.4

Second and subsequent fines will be issued without warning for further acts of noncompliance.

### 13.5

Incidents of noncompliance are taken into consideration when requests to modify a permit are submitted.

### Pedestrian safety and all-abilities access

Pedestrian safety and all-abilities access are paramount concerns in the responsible management of footpath trading.

There must be sufficient space in the Pedestrian Zone for pedestrians to walk past in both directions, and there should be no sharp or otherwise dangerous objects which they can catch themselves on.

It is equally important that businesses have a system in place to manage any spills in the Pedestrian Zone.

Footpaths are subject to Section 23 of the *Disability Discrimination Act 1992* (Cth)<sup>2</sup>. This means that it is unlawful to discriminate against a person by restricting access. One of the examples provided on the Australian Human Rights Commission website of such discrimination is:

*A business operating on the footpath in a way that causes a barrier to access*<sup>3</sup>.

However within (<https://humanrights.gov.au/our-work/disability-rights/frequently-asked-questions-access-premises#footpath>) the answer to the question 'What is an acceptable footpath?' included the following:

*'Public footpaths do not have a building classification, so while they are covered by the definition of "premises" they are not subject to the Premises Standards, but remain subject to the general non-discrimination provisions of the DDA.*

*This means that there is no mandatory minimum technical compliance standard under the DDA that can be referred to in relation to footpaths.'*

The Commission's website notes that while there is no adopted standard to ensure that a footpath trading arrangement meets the requirements of section 23, it considers best practice to be the advice in Australian Standard 1428.2, which shows that

*...the minimum width required for 2 people using wheelchairs to pass each other is 1.8m<sup>4</sup>.*

The Commission further recommends that footpaths should -

*Have a Pedestrian Zone with a minimum clear width of 1.8 metres at the narrowest point and a minimum clear height of 2 metres with nothing encroaching into that envelope*<sup>5</sup>.

*In addition the Commission is of the view that the continuous accessible path of travel should extend from the property line with no obstructions or projections in order to provide the best possible guidance line for all users including people with a vision impairment*<sup>6</sup>.

However the commission also says that

*'In providing this advice the Commission is not saying that compliance with the DDA can only be achieved by providing footpaths this wide, but rather a footpath of this minimum width would provide amenity for all users, especially in areas of high pedestrian traffic, such as High Street shopping areas.*

*The Commission notes, however, that topographical issues, historical practices and local conditions will affect the capacity of local government authorities to achieve this level of good practice in all circumstances.'*

These considerations have directly informed Council's footpath zones.

<sup>2</sup> <https://www.humanrights.gov.au/our-work/disability-rights/frequently-asked-questions-access-premises#footpath>

<sup>3</sup> <https://www.humanrights.gov.au/our-work/disability-rights/frequently-asked-questions-access-premises#footpath>

<sup>4</sup> <https://www.humanrights.gov.au/our-work/disability-rights/frequently-asked-questions-access-premises#footpath>

<sup>5</sup> <https://www.humanrights.gov.au/our-work/disability-rights/frequently-asked-questions-access-premises#footpath>

<sup>6</sup> <https://www.humanrights.gov.au/our-work/disability-rights/frequently-asked-questions-access-premises#footpath>

## Appendix 2

### Form of Indemnity

#### Companies and Incorporated Associations

This is a legally binding agreement.

This Indemnity is between **BAYSIDE CITY COUNCIL (Council)** and the company or incorporated association named

\_\_\_\_\_ **(Organisation)**.

It arises out of a proposal by Council to issue a permit to the Organisation under Council's Neighbourhood Amenity Local Law 2021 – Part 4 Business & Asset Protection.

The Organisation agrees that, in exchange for Council's issue of the permit under the Local Law, it will indemnify Council and keep Council indemnified against any and all liability (including liability due to negligence) and any and all direct or indirect loss, damage, costs and expenses, incurred by Council which arises out of anything done or omitted to be done by the Organisation in or on the area which is the subject of the permit, except to the extent that such liability, loss, damage, costs or expenses was caused or contributed to by a negligent, unlawful, wilful or fraudulent act or omission of the Council.

SIGNED SEALED AND DELIVERED by

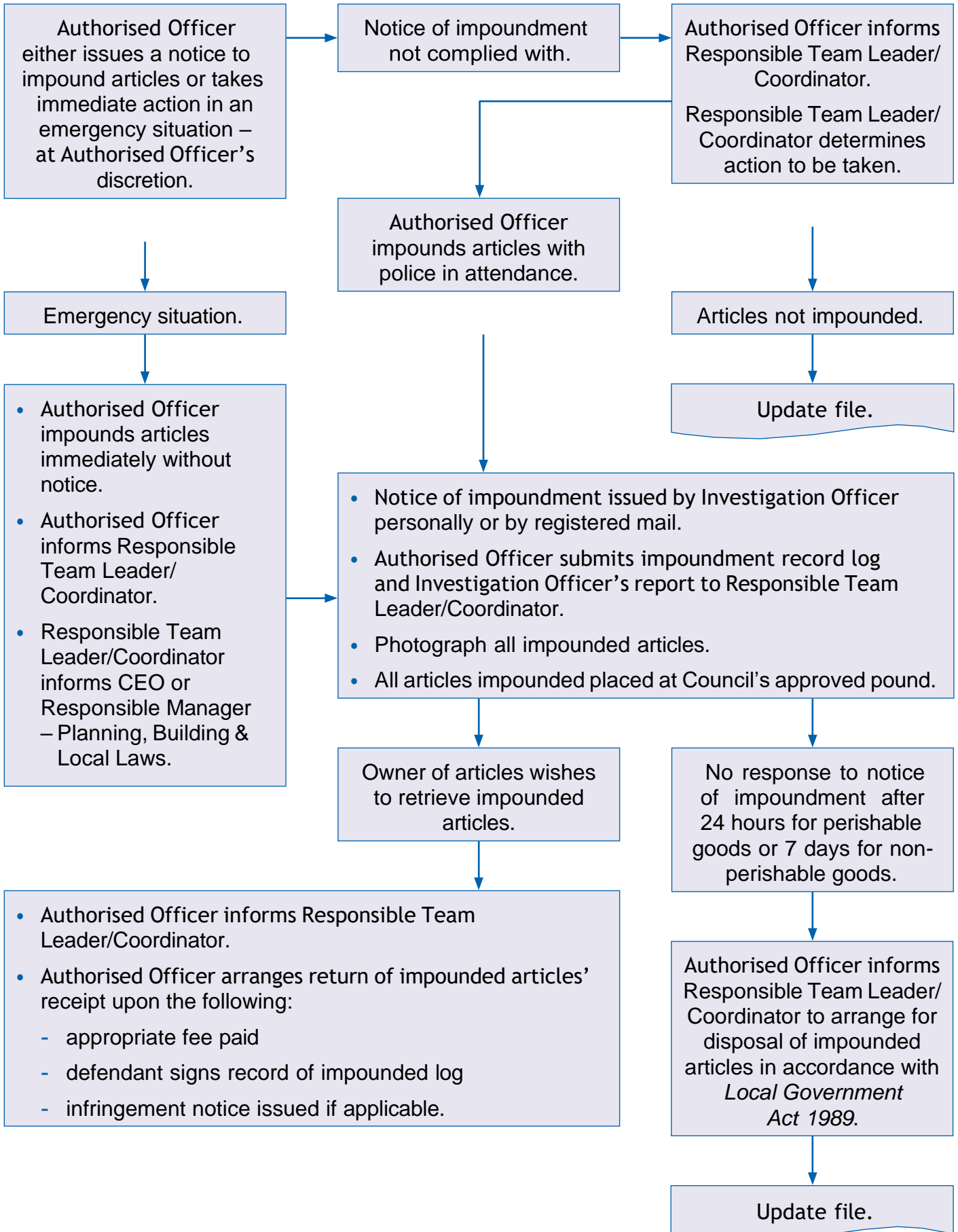
**(insert name)** \_\_\_\_\_

for and on behalf of the Organisation in the presence of: \_\_\_\_\_

\_\_\_\_\_  
**(Witness)** \_\_\_\_\_



Impoundment





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Bayside  
City Council

**Corporate Centre**  
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Sandringham

**Phone**

9599 4444

**Website**

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