

General Local Law 2018 - Incorporated Document
FOOTPATH TRADING POLICY: 2018-2028
 Document Version No: 2018.01



COUNCIL POLICY

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| DOCUMENT NUMBER: | CPO-CORPS-LL-001 |
| DEPARTMENT: | Corporate Services |
| UNIT: | Local Laws |
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REFERENCES:

Relevant laws include but are not limited to the:

Summary Offences Act 1966 (Vic),

Food Act 1984,

Public Health and Wellbeing Act 2008,

Environment Protection Act 1970,

Disability Act 2006

Tobacco Act 1987; and

Glenelg Shire Council General Local Law 2018.



Footpath Trading Policy



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1. Purpose

The footpath trading policy has been developed to ensure that pedestrians have unobstructed and safe access to our footpaths at all times, while maintaining the visual amenity of our streetscapes.

The Glenelg Shire Council is committed to supporting and enhancing the sustainable growth of local business and vibrant street life activity. However, it is important to acknowledge that the commercial use of public space is a privilege, not a right.

Pedestrian access is the primary purpose of footpaths, not trading. Council's footpath trading policy has been developed with this in mind.



2. Scope

This policy applies to any business, individual or organisation that wishes to utilise Glenelg Shire Council footpaths for:

- a. the display of goods
- b. the sale of goods and/or services
- c. display of signage, including A-frames
- d. erection of banners
- e. provision of eating facilities
- f. other specific activities

3. Council Policy

The essential key to an effective accessible pedestrian system throughout shopping precincts is the development and maintenance of a continuous accessible path of travel. This should provide a consistent footpath environment inclusive of the needs of all the community, including older persons or people with disabilities.

4. Permit Required

A permit must be obtained from the Glenelg Shire Council prior to the use of a council footpath for the purpose specified in clause 2 - Scope.

General Conditions

5. Community Safety & Amenity

Traders are obligated to comply with the following general requirements:

- a. That a continuous accessible path of travel is established.
- b. That required clearances and setbacks are maintained at all times.
- c. All footpath trading furniture, signage, goods and flags must be removed from the footpath at the close of business.

6. Standard Footpath Trading Zones

Throughout the Glenelg Shire Council, four (4) zones are applicable to footpath trading:

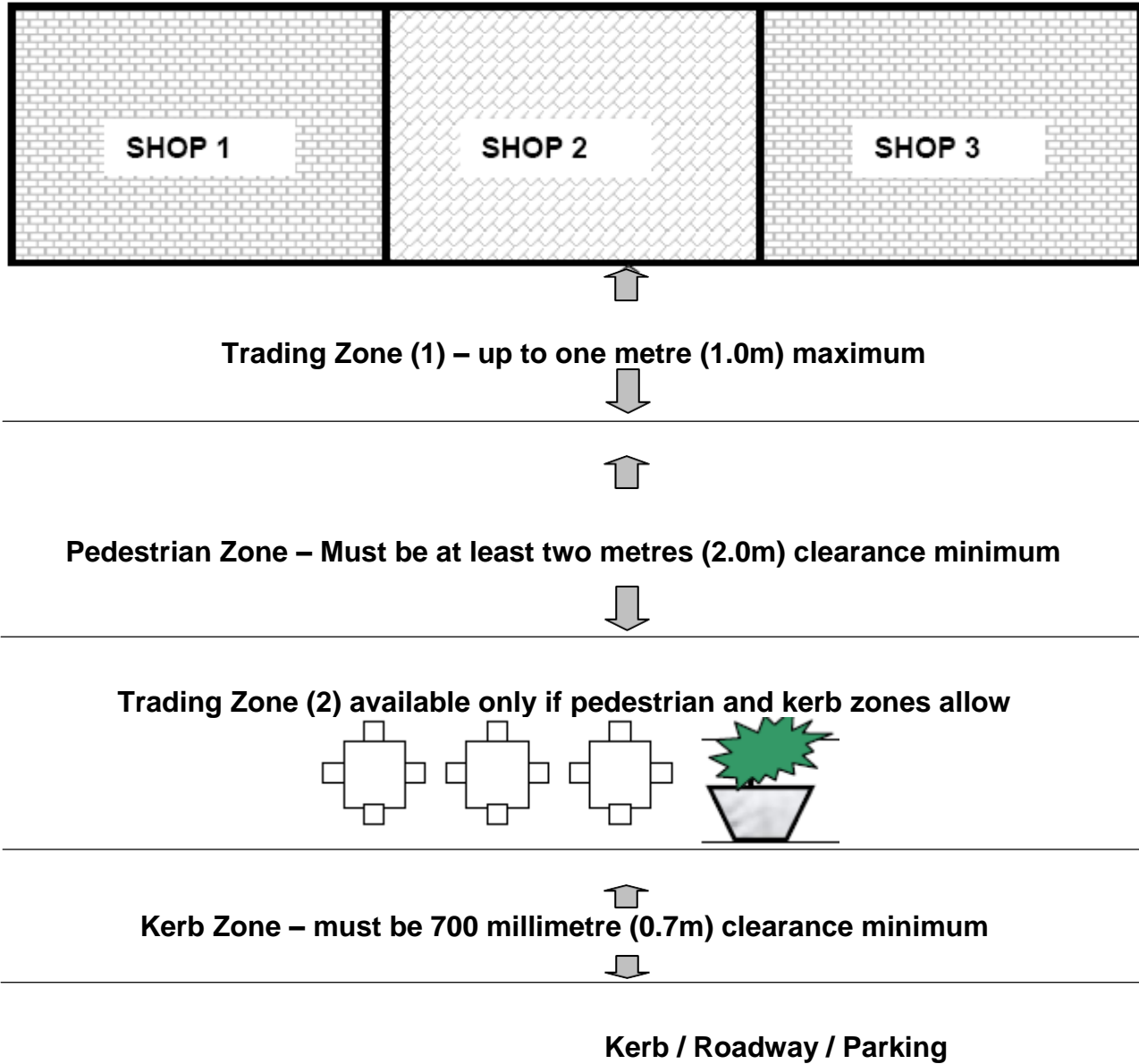
- a. Trading zone 1
- b. Pedestrian zone
- c. Trading zone 2
- d. Kerb zone

Existing trees, artwork, street furniture, public infrastructure and the width of the footpath, may prohibit or limit footpath trading activity. The public space will only be allowed to be used for commercial activity as long as all public requirements have been met relating to pedestrian and kerb access zones.

Council infrastructure will generally not be relocated or removed to provide footpath space for placement of signs, furniture or goods for display.

(A diagram showing the zones in a visual form follows).

Example of Zones



7. Pedestrian Zone

The pedestrian zone is an unobstructed pedestrian footpath corridor not less than 2.0m in width and 2.0m in height, unless indicated by a specific precinct allowance.

To ensure a continuous and accessible path of travel, no furniture, signage, flags or displays of goods are permitted within the pedestrian zone at any time.

8. Trading Zone

The trading zones are the ONLY areas of the footpath where traders may display goods, signs, teardrop flags or provide eating facilities and associated furniture. Footpath trading furniture, signage, teardrop flags and displays of goods must be contained within these zones at all times.

Trading zone 1 is the space between the building line and the pedestrian zone. **This space will only be permitted where the 2.0m pedestrian zone can be maintained.** In circumstances where the pedestrian zone of 2.0m cannot be maintained, the trader may be prohibited, or have a reduced space available in trading zone 1.

Trading zone 2 is the space between the pedestrian zone and the kerb zone (the kerb zone is 0.7m wide from the gutter). The trading zone varies in width from street to street depending on the overall width of the footpath. **In some circumstances the size of the footpath or the presence of infrastructure may prohibit the trader from utilising this zone.**

All trading zones must have a minimum 0.5m clearance space between the adjoining property boundary or a line extending from the adjoining property boundary to the kerb. Where two adjoining businesses both undertake footpath trading the clearance space will be a minimum of 1.0m (0.5m for each business).

To ensure adequate access between the road and the pedestrian zone, a 1.5m space must be provided at the centre of trading zone 2, where the length is greater than 10.0m.

Where premises are adjacent to an intersection the trading zone must not extend into an exclusion zone (3.0m from intersection).

9. Kerb Zone

The kerb zone is the area between the gutter and the trading zone and is generally 0.7m, however in the following situations increased standards apply.

| Situation | Clearance Required |
|--------------------------|--------------------|
| Standard Angle Parking | 0.7m |
| Disabled Parking | 1.5m |
| Pedestrian Crossings | 3.0m |
| Adjacent to Intersection | 3.0m |

10. Clearances from Public Infrastructure

Council infrastructure would generally not be relocated to allow enough room for the display of items prior to or after a footpath trading permit is granted.

The following table highlights the clearances required from public infrastructure.

| Type of Infrastructure | Required Clearance |
|------------------------|--------------------|
| Bicycle Stands | 1.0m |
| Fire Plugs | 0.5m |
| Public Seating | 0.5m |
| Rubbish Bins | 0.5m |
| Parking Meters | 0.5m |
| Garden Beds | 0.5m |

11. Adjacent Premises

If seeking to occupy the trading zone of adjacent premises, written consent is required annually from both the owner and occupier of that premises. Site plans for this combined footpath trading area must be included in a footpath trading application.

Where this section applies, there still must be a minimum of 0.5m clearance space between each separate property boundary or a line extending from the adjoining property boundary to the kerb.

12. Precinct Specific Guidelines

Council reserves the right to amend the dimensions of trading zones for specific precincts.

Currently there are no specific precincts approved.

13. Heritage Considerations

To ensure the appearance of any structures associated with footpath activity are appropriate and in keeping with Council's heritage controls, any proposed structures within a Heritage Overlay may be referred to the Council's heritage advisor for consideration.

14. Hygiene and Cleanliness

To ensure the hygiene and cleanliness of footpath areas is maintained, the following standards apply:

- a. Litter must be cleared from the trading area by the permit holder at all times.
- b. Food scraps and any other rubbish within the immediate area must be removed and deposited within the permit holders own bins kept within the premises.
- c. Litter generated by footpath trading must not be swept into the gutter or adjacent footpath areas. It must be picked up and deposited within the permit holders own bins kept within the premises.
- d. The preparation, handling and serving of food and drinks to patrons located on the footpath must be conducted in accordance with the Food Safety Regulations.

15. Public Liability Insurance & Indemnity

The permit holder shall, at all times during the Agreement Term, be the holder of a current Public Liability Policy of Insurance (“The Public Liability Policy”) to cover legal liability to third parties for personal injury or property damage as a result of an occurrence in connection with the business of the insured, as specified in the public liability policy in the name of the permit holder providing coverage for an amount of at least \$10 million.

The applicant / permit holder is to provide evidence of public liability insurance with a Certificate of Currency produced annually to enable renewal of the permit.

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

The permit holder’s liability to indemnify the Glenelg Shire Council shall be reduced proportionally to the extent that any act or omission of the Glenelg Shire Council contributed to the loss or liability.

Outdoor Eating Facilities

16. General Conditions – Outdoor Eating Facilities

In addition to the general requirements, outdoor eating facilities are also obliged to comply with the following requirements:

- a. Permits will only be granted to premises which are registered as such under the *Food Act 1984*. Permit holders are required to comply with all relevant Food Handling Regulations at all times.
- b. Tables and chairs will be placed in accordance with the approved plan and in the same location on each occasion and must at all times be located within the designated trading zones.
- c. Permit holders must maintain access for all users in and around the footpath at all times. Permit holders are responsible for repositioning furniture when moved outside the trading areas by patrons.
- d. Permit holders must ensure that patrons do not allow pets, prams or any other personal items to obstruct the pedestrian zone.
- e. Permit holders must monitor the trading zones and observe patrons at all times and respond to behaviour that may interfere with the use, enjoyment and personal comfort of others using the footpath area.
- f. Footpath trading is to cease by 11.00pm, unless written permission is provided for specific events, to ensure nearby residents are not negatively affected. The Council reserves the right to determine footpath trading hours for specific areas.
- g. Serving staff at outdoor eating facilities shall facilitate free access by pedestrians and give passing pedestrians priority over their own movements into and out of the building.
- h. Furniture must be well maintained, be of sturdy construction, easy to be removed from the footpath and its design and use must not cause damage to the existing footpath or other public infrastructure. The Council reserves the right to approve all furniture before it is used.
- i. The base of all items placed on the footpath must be covered with a suitable rubber stopper or similar device to protect the footpath. It is the permit holder's responsibility to maintain the base of all items.
- j. Tables and chairs should have a contrasting colour to their background to assist people with vision impairment.



- k. The permit holder will be responsible for reimbursing Council for any reinstatement works as a result of damage to footpaths caused by chairs and tables.
- l. All outdoor eating facility furniture is to be removed from the footpath area at close of business.

17. Allowable Number of Chairs and Tables

The number of tables and chairs permitted on the footpath is determined by the size of the footpath area and trading zones directly in front of the associated premises, together with amenity of the area. Traders must ensure that the chairs and tables do not enter the kerb or pedestrian zones at any time, whether in use, or not, by patrons.

18. Liquor Licences

The following conditions relate to outdoor eating facilities serving liquor:

- a. Liquor is not to be sold, consumed or served within the trading zones unless approved by the Council and the Liquor Licensing Commission pursuant to the *Liquor Control Reform Act 1998*.
- b. Subject to Council approval, any premises that propose to serve alcohol on the footpath must have their liquor licence endorsed to include the footpath as part of the "licensed area" on the liquor licence for that premises.
- c. Subject to Council approval, any premises that propose to serve alcohol on the footpath must only serve alcohol to the outdoor dining area during times whilst food is being served.
- d. The Council's General Local Law 2018 states that without a permit, a person must not consume, or have in his or her possession, in an unsealed container, any alcohol in or on any public place declared by resolution of Council (Schedule 4 in the List of Schedules) unless the public place is a licensed premises or authorised premises under the *Liquor Control Reform Act 1998*.

19. Screens

To preserve the general appearance and openness of the streetscape, the maximum height for portable screens is 0.9m and the maximum allowable length is 10.0m.

Screens must be securely placed to prevent accidental dislodgement but must not be affixed to any Council structure or footpath.

Permanent screens such as glass screens may be permitted subject to relevant Council approval.

Portable Advertising Signs / A-Frames / Flags

20. General Conditions – Signs

In addition to the general requirements, traders wishing to display signs are also obliged to comply with the following requirements:

- a. If the footpath width does not allow for a trading zone large enough to accommodate an A-Frame then they will be prohibited from use in that location.
- b. A-Frames are to be displayed in the approved trading zones directly outside the premises which they relate to and must only be displayed during the business hours of that premises. Premises without street frontage may apply for an A-Frame on a nearby footpath, provided the owner and occupier of the affected premises provides written authorisation. This permission must be renewed annually.
- c. Only one (1) A-Frame per business is permitted, unless the premises are located on a corner where two signs (one per frontage) may be permitted (subject to restrictions on intersection clearance).
- d. A-Frames must be placed in the designated trading zone. A-Frames must not be placed in the pedestrian or kerb zone.
- e. Signs will be placed in accordance with the approved plan and in the same location on each occasion.
- f. Signs must be secured in a manner which ensures that adverse weather conditions will not create a risk to the public, property or motor vehicles. Signs must not be affixed to any footpath, building, street furniture, pole or other Council structure.
- g. An Authorised Officer of Council may request an A-Frame sign to be removed or relocated if, in the officer's opinion, the sign is unsuitable or creates an obstruction or danger to the public.



21. Types of Signage

- a. A-Frames must not exceed a height of 1.0m or a width of 0.8m and must not have more than two faces. Signs shall be of solid construction and have no uneven projections or protruding parts.
- b. Lettering and artwork on signs is to be non-offensive in terms of images, words and language used. Text on signs should only relate to the business operations being conducted at that premises.
- c. Signs shall have no moving or flashing lights. Inflatable signs, portable electric signs, illuminated, revolving, spinning or flashing signs are prohibited from the footpath and veranda posts.

22. Council Approved Signs

Council may require that the permit holder affixes a Council supplied sticker to any approved signs to assist in the identification of approved signs. Traders who do not display any supplied stickers on approved signs, or display signage without approval will be subject to Council enforcement action which may result in cancellation of the permit and issuing of penalties.

23. Flags and Banners

- a. Banners and traditional style flags are prohibited from the footpath and veranda posts.
- b. Teardrop style flags are permitted for use but must be located ONLY in the trading zone 2 area directly outside the business which it relates to.
- c. The number of teardrop flags intended for use must be specified in the original permit application with consideration given to the required clearances as detailed in this policy.
- d. Teardrop style flags must be secured in a manner which ensures that adverse weather conditions will not create a risk to the public, property or motor vehicles. Teardrop style flags must not be affixed to any building, street furniture, pole or other Council structure. Teardrop style flags may be affixed to a footpath only upon application and the issuing of a Works in Road Reserve permit.

Display of Goods

24. General Conditions – Display of Goods

In addition to the general requirements, traders wishing to display goods are obliged to comply with the following requirements:

- a. Goods will be placed in accordance with the approved plan and in the same location on each occasion.
- b. Display of goods can only be placed outside the premises to which they relate.
- c. Goods must only be displayed within the designated trading zones.
- d. Goods must only be placed on the footpath during trading hours.
- e. Goods displayed on stands must be secured in a manner which ensures that adverse weather conditions will not create a risk for pedestrians, property or passing traffic. Goods and/or stands must not be affixed to any footpath, building, street furniture, pole or other Council structure.
- f. Display of goods should not exceed a height of 1.5m or a maximum length of 1.5m. Notwithstanding the provisions of clause 8 of this policy, there should be a minimum clearance space in trading zone 2 of 1.0m for each 1.5m display to allow for pedestrian access.
- g. Food displays must comply with any requirements of the Council's Environmental Health Unit.



Other Specific Activities

25. Umbrellas

Umbrellas are permitted subject to the following conditions:

- a. The width of the umbrella is the same or less than the width of the trading zone and does not protrude outside the trading zone.
- b. There is a minimum clearance of 2.2m from the footpath to the underside of the umbrella.
- c. Umbrellas must be securely placed to prevent accidental dislodgement but must not be fixed to any Council structure or footpath.

26. Heaters

Portable free standing gas heaters and heaters fixed to the building structure may be allowed subject to Council approvals.

27. Advertising

All details of proposed advertising must be included in the footpath trading application and is subject to approval by Council. Applicants may feature the name of their business or relevant product names on umbrellas, screens or other footpath trading furniture.

Applicants are responsible to ensure that any advertising does not breach town planning requirements by consulting with Council's Planning Unit.

28. Outdoor Speakers & Live Entertainment

To ensure that noise is minimised and to protect the amenity of the area, the provision of live entertainment in an outdoor trading area requires written permission from Council.

Permit Application, Amendments & Renewal

29. Street Trading Application Process

Traders are advised to read and familiarise themselves with these guidelines prior to any formal application being made to Council. It is important to understand the design requirements, legal obligations, costs and responsibilities involved in managing the footpath area. Failure to submit the required information may result in delays in processing the application or a refusal of permit.

Applicants are advised to obtain a permit for the required footpath occupation prior to purchasing any furniture as it may not be possible for Council to permit the desired number, style or location of the proposed furniture. Applicants should consult with the Council's Health Unit prior to submitting an application for an outdoor eating facility.

Permits are valid from the date of issue to the common expiry date of the 31 August each year, after which they are renewed annually subject to payment of the annual fee and compliance with this policy.

Council may require that any proposal for footpath trading is advertised in the newspaper distributed in the locale of the business for public consideration.

30. Expiry of Permit

Permits for footpath trading are renewed annually at a common expiry date. A renewal notice is issued by Council for all existing permit holders. It is the responsibility of the permit holder to ensure all permit renewal details including public liability, amendments and fees are forwarded to the Council within 30 days of receiving the renewal notice.

Failure to provide all renewal documentation and relevant fees will result in the cancellation of the permit.

The permit shall expire in either of the following circumstances:

- After the 31 August each year
- If the business changes ownership
- If the business changes address
- If the public liability insurance lapses
- If the permit is cancelled by Council

A permit may be revoked if the authorised Council officer believes that circumstances create a safety hazard to pedestrians, motorists or cyclists or cause detriment to the amenity of the area.

31. Information Required from the Applicant

Applicants must complete the Footpath Trading Application form that can be obtained from Council's Customer Service Centres or from www.glenelg.vic.gov.au.

The following information is to be provided annually to the Glenelg Shire Council Local Laws Unit by the applicant for a footpath trading permit.

- a. Where applicable, the applicant must provide in writing that all necessary town planning, liquor licensing and health requirements have been met.
- b. A site plan showing the width of the building frontage, the footpath from the outside edge of the kerb to the building line, location of building line and the type of abutting properties, existing trees, parking meters, light poles, signs, existing street furniture, pits, fire hydrants and other features must be provided. All dimensions associated with the footpath area should be shown.
- c. The plan also needs to identify the location and type of parking adjacent to the proposed activity and highlight the existence of any disabled parking bays or pedestrian crossings.
- d. The site plan should also include the area and layout of the proposed footpath activity. This includes the proposed location of chairs, tables, screens, heaters, umbrellas, signs, flags or goods for display.
- e. The pedestrian zone, trading zones and kerb zone must also be clearly indicated on the site plan.
- f. Provide details of the design and material used in the proposed furniture and/or signage.
- g. Provide a design or photograph of advertising signage including details of logo, size and location within the trading zone.
- h. Return the signed indemnity form as provided in the footpath trading application form.
- i. Provide evidence of the required public liability insurance in the form of a Certificate of Currency,
- j. Payment of the relevant fees, if applicable.
- k. Written consent from owner and occupier of adjacent premises if that area is to be included on the permit.

32. Council Assessment and Consideration

On receiving a written application Council will:

- a. Check that all relevant information has been received.
- b. Check that the application meets the requirements of the Council Footpath Trading Policy.
- c. Inspect the site and check the accuracy of submitted application plans.
- d. Check that payment of the scheduled fees has been submitted with the application.
- e. Undertake an assessment of compliance with the permit conditions and decide if the permit may compromise pedestrian or vehicle traffic safety or cause detriment to the amenity of the area. The assessment will also consider any relevant local conditions.
- f. Advise the applicant if their permit has been approved, declined or requires further information.

A permit is issued at the discretion of a Council Authorised Officer. Refused permits will have the permit fee fully refunded.

33. Amendments to an Existing Permit

A permit is only valid for the specified business, operating from the nominated address, while it is owned by the original applicant.

Permit holders must submit an application in writing for any amendment to their existing permit. Amendments include changing furniture design, adding furniture or increasing advertising. Failure to advise Council of amendments to an existing permit may result in cancellation of the permit.

Council will notify the permit holder, at their earliest convenience, of their decision on the amendment. No additional fees will be payable for an amended application, however fees may apply if the type of activity is changed, i.e. introducing goods for sale when not part of the original permit.

34. Transfer of Ownership

A footpath trading permit applies only to the premises for which it is issued and is not transferable from one business property to another. A new business owner of premises with an existing footpath trading permit must submit a written application for a transfer of ownership to maintain the permit and continue to trade on the footpath. Proof of insurance in the name of the new applicant must be provided to Council with the application if there is no change to activity on the original permit.

No additional fees are payable for a transfer of ownership application.

35. Breach of Permit Conditions

A permit may be revoked by Council at any time if the permit holder fails to comply with any of the conditions of the permit. Continuous breach of permit conditions may result in immediate suspension or cancellation of the permit, or the Council may, on expiry of the current permit refuse to issue any further permits for a period of at least 12 months.

The Council may in its absolute discretion, suspend, relocate, amend and/or cancel the permit on such terms and for such reasons as the Council considers appropriate. Where Council suspends, relocates, amends and/or cancels the permit (whether pursuant to this clause or otherwise) neither the permit holder or any other person shall be entitled to any payment, compensation or damages of any kind whatsoever from the Council.

A permit may be revoked if the authorised Council officer believes that circumstances create a safety hazard to pedestrians, motorists or cyclists or cause detriment to the amenity of the area.

The issuing of a permit is deemed to be an opportunity offered by Council to the applicant if set conditions and guidelines are met. It is not a right or entitlement of every business to have access to a trading zone, even if the area is deemed suitable. Council may choose to conduct/allow/allocate the footpath space for other activities at its discretion.

36. Compliance Monitoring

The Council's Local Laws officers will monitor the operation of the footpath trading permits and ensure the conditions of the permit are met.

Following a complaint or observation of a breach of a footpath trading permit, a Council officer will contact the permit holder and take appropriate enforcement action where required. The Local Laws officers may impound non-conforming items and items displayed on the footpath.

For a breach of permit any one of the following procedures may be applied, not necessarily in the order shown:

- a. Verbal discussion with the permit holder
- b. Verbal warning issued
- c. Notice to Comply issued
- d. Infringement Notice served
- e. Seizure of all street furniture
- f. Institute legal proceedings

Depending on the facts of a particular case, the Glenelg Shire Council reserves the right to proceed immediately to instituting legal proceedings.

37. Permit Holders Responsibilities

It is the permit holder's responsibility to ensure the appropriate management of their footpath trading permit. Permit holders are required to:

- a. Operate in accordance with the conditions of the permit and the requirements and objectives outlined in this policy.
- b. Monitor the trading zone and to observe patrons at all times and respond to behaviour that may interfere with the use, enjoyment and personal comfort of others using the footpath area.
- c. Observe all Local Law provisions relating to footpath trading, including noise, responsible serving of liquor and health and amenity.
- d. Maintain access for all users in and around the footpath at all times, repositioning furniture when moved outside the trading zone by patrons.
- e. Signs, display of goods and outdoor eating facilities shall be placed in accordance with the approved plan and in the same location on each occasion.
- f. Uphold the cleanliness of the footpath area, ensuring tables and chairs are kept clean and litter is removed and deposited in bins kept within the premises.
- g. Remove all signs, goods and furniture from the footpath area at the close of business.
- h. The adequate securing and safe positioning of furniture, umbrellas, flags and screens to ensure that they can not be dislodged by gusty winds.
- i. The permit holder must, within 14 days, remove all relevant furniture and reinstate the public space to its predevelopment condition at the expiry, termination or cancellation of the permit. Should the permit holder fail to comply with this condition, the Council may carry out the necessary works at the permit holder's cost.

38. Access to Underground Services

Services such as sewers, gas, water, telecommunications and electricity should not be obstructed by any structures, including screens or umbrellas.

The Council and other service authorities reserve the right to access all underground services within the footpath trading area without notice to the permit holder at all times.

39. Compensation and Loss of Trade

There is no compensation for the removal of footpath trading furniture or any loss of trade when service authorities and others are required to carry out works within the road reserve. It is the responsibility of the permit holder to reinstate fittings or fixtures, not the person, service authority or contractor executing the works.

No compensation is provided for any problems, inconvenience or loss of trade resulting from activities or works carried out by the Council or its contractors, at or adjacent to a permit holders footpath trading area.

40. Reference to Legislation

Any reference to legislation within this policy must be read as any amendments of that legislation from time to time or its successor.

41. Records Management

All Council records created and managed as a result of implementing this policy will be managed in accordance with the Council's Records Management Policy.

The Records Management Policy assigns responsibilities for records management to employees, supervisors, volunteers and other specific positions.

No Council records are to be destroyed without consideration of the requirements of the Act(s) that govern the functions relevant to this policy. Prior to destruction, advice must be sought from the Records Management Unit, with consideration to the requirements of the appropriate Retention and Disposal Authority (RDA).